

Representative R. Curt Webb proposes the following substitute bill:

PUBLIC ACCESS TO PRIVATE STREAM

BEDS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

General Description:

This bill recognizes public recreational use of privately owned beds below public waters.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows public recreational use of private beds in connection with recreational activities using public waters;
- ▶ addresses the scope of the public's right to use private beds;
- ▶ prohibits certain conduct in connection with the use of a private bed;
- ▶ provides a criminal penalty for a violation of provisions concerning public recreational use of a private bed; and
- ▶ provides liability protections for the owner of a private bed.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



- 26 **73-6a-101**, Utah Code Annotated 1953
- 27 **73-6a-102**, Utah Code Annotated 1953
- 28 **73-6a-201**, Utah Code Annotated 1953
- 29 **73-6a-202**, Utah Code Annotated 1953
- 30 **73-6a-301**, Utah Code Annotated 1953
- 31 **73-6a-302**, Utah Code Annotated 1953

32

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **73-6a-101** is enacted to read:

35 **CHAPTER 6a. RECREATIONAL USE OF PUBLIC WATER**

36 **Part 1. General Provisions**

37 **73-6a-101. Title.**

38 This chapter is known as "Recreational Use of Public Water."

39 Section 2. Section **73-6a-102** is enacted to read:

40 **73-6a-102. Definitions.**

41 As used in this chapter:

42 (1) "Impounded wetland" means a wetland or wetland pond that is formed or the level
43 of which is controlled by a dike, berm, or headgate that retains or manages the flow or depth of
44 water, including connecting channels.

45 (2) "Permission" is as defined in Section 23-20-14.

46 (3) "Private bed" means a privately owned bed below a public water in the area actually
47 wetted by the public water.

48 (4) "Property to which access is restricted" means real property:

49 (a) that is cultivated land, as defined in Section 23-20-14;

50 (b) that is:

51 (i) properly posted, as defined in Section 23-20-14;

52 (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or

53 (iii) posted as described in Subsection 76-6-206.3(2)(c);

54 (c) that is fenced or enclosed as described in:

55 (i) Subsection 76-6-206(2)(b)(ii); or

56 (ii) Subsection 76-6-206.3(2)(b); and

57 (d) that the owner or a person authorized to act on the owner's behalf has requested a
58 person to leave as provided by:

59 (i) Section 23-20-14;

60 (ii) Subsection 76-6-206(2)(b)(i); or

61 (iii) Subsection 76-6-206.3(2)(a).

62 (5) (a) "Public water" means water:

63 (i) described in Section 73-1-1; and

64 (ii) flowing on the surface:

65 (A) within a natural or realigned channel; or

66 (B) ponded in a natural lake, pond, or reservoir on a natural or realigned channel.

67 (b) "Public water" does not include:

68 (i) water flowing or collecting on private property in a manmade:

69 (A) irrigation canal;

70 (B) irrigation ditch; or

71 (C) impoundment or reservoir constructed outside of a natural or realigned channel;

72 (ii) water in a public or private aquaculture facility, private fish pond, or fee fishing
73 facility; or

74 (iii) water flowing or collecting on an:

75 (A) impounded wetland;

76 (B) jurisdictional wetland described in 33 C.F.R. 328.3; or

77 (C) a migratory bird production area, as defined in Section 23-28-102.

78 (6) "Recreational activity" means an activity requiring the use of the water that is:

79 (a) lawful;

80 (b) engaged in for a recreational purpose; and

81 (c) consistent with the amount of water actually present at the time the activity occurs.

82 Section 3. Section **73-6a-201** is enacted to read:

83 **Part 2. Recreational Use of Private Beds**

84 **73-6a-201. Recreational use of public waters over private beds.**

85 (1) Except as provided by Subsections (2) and (7), a person who touches a private bed
86 without permission is subject to liability for trespass under:

87 (a) Section 23-20-14;

- 88 (b) Section 76-6-206;
89 (c) Section 76-6-206.3; and
90 (d) a civil action for a claim arising out of touching the private bed.
91 (2) A person engaged in a recreational activity in a public water that contains water at
92 the time of the recreational activity:
93 (a) may touch a private bed below the public water; and
94 (b) may not touch a public or private bed located in a public or private aquaculture
95 facility, private fish pond, or fee fishing facility.
96 (3) While engaging in a recreational activity as authorized by Subsection (2), a person
97 may enter private property from the area described in Subsection (2) only if:
98 (a) the person has permission to enter the private property; or
99 (b) (i) a manmade obstruction materially interferes with the recreational activity; and
100 (ii) the person walks or portages on private property around the manmade obstruction
101 in the most direct and least obtrusive manner to re-enter the public water at the nearest safe
102 point above or below the manmade obstruction.
103 (4) The owner of a private bed may place a fence across the public water.
104 (5) Except as provided by Subsection (3), a person engaging in a recreational activity
105 on a public water over a private bed, may only enter or exit the public water:
106 (a) on public property, including highway rights-of-way, other public water, or other
107 public property, unless prohibited by the entity with jurisdiction over the use of the public
108 property; or
109 (b) on private property with permission.
110 (6) A person may not engage in a recreational activity on a public water if the
111 recreational activity:
112 (a) destroys, damages, removes, or alters real or personal property, including:
113 (i) a fence, as provided in Section 4-26-4;
114 (ii) a structure;
115 (iii) a diversion works; or
116 (iv) vegetation, soil, or rock other than incidental to ordinary use;
117 (b) alters or obstructs water flows;
118 (c) involves construction or maintenance of a structure on the bed;

119 (d) is undertaken on:
 120 (i) horseback;
 121 (ii) a motor vehicle, as defined in Section 41-6a-102;
 122 (iii) an off-highway vehicle, as defined in Section 41-22-2; or
 123 (iv) a non-motorized wheeled vehicle; or
 124 (e) occurs on a public water containing a natural obstacle that would require the person
 125 to walk or portage over private property to avoid the natural obstacle if:

126 (i) the private property is property to which access is restricted; or
 127 (ii) the person does not have permission to walk or portage over the private property.

128 (7) (a) Notwithstanding the access described in Subsection (2), nothing in this chapter
 129 prohibits a person from acquiring or restricting access to a greater or lesser extent than
 130 provided for in Subsection (2) under another provision of law.

131 (b) Notwithstanding Subsection (7)(a), the public has no right to an easement for
 132 recreational activity on a private bed solely on the basis of the public's ownership of the public
 133 waters.

134 Section 4. Section **73-6a-202** is enacted to read:

135 **73-6a-202. Penalty.**

136 A person who violates this part is guilty of a class B misdemeanor.

137 Section 5. Section **73-6a-301** is enacted to read:

138 **Part 3. Miscellaneous**

139 **73-6a-301. Applicability of the chapter.**

140 The provisions of this chapter do not affect:

141 (1) the title or ownership of the surface waters, beds, or portage routes of public water;

142 (2) sovereign lands, as defined in Section 65A-1-1; or

143 (3) the rights recognized in Section 23-21-4.

144 Section 6. Section **73-6a-302** is enacted to read:

145 **73-6a-302. Landowner liability.**

146 An owner with a private bed that is subject to the authorization recognized in this
 147 chapter has the liability protection afforded by Title 57, Chapter 14, Limitation of Landowner
 148 Liability - Public Recreation.