

**PROPOSED AMENDMENTS TO
SENATE BILL 1060**

1 On page 1 of the printed bill, after “provisions;” insert “and” and delete
2 “; and declaring an emergency”.

3 Delete lines 4 through 29 and delete pages 2 and 3 and insert:

4 **“SECTION 1. As used in sections 1 to 10 of this 2010 Act:**

5 **“(1) ‘Barrier’ means a bridge, fence, dam or any other natural or**
6 **artificial obstruction located in or over a Class 1 waterway that:**

7 **“(a) Restricts or interferes with passage on or through the**
8 **waterway; and**

9 **“(b) Effectively obstructs the public use of the waterway.**

10 **“(2) ‘Class 1 waterway’ means any segment of a waterway that is**
11 **floatable or tidally influenced.**

12 **“(3) ‘Class 2 waterway’ means any segment of a waterway that is**
13 **not a Class 1 waterway.**

14 **“(4) ‘Emergency use’ means the use of property:**

15 **“(a) To obtain immediate and necessary medical attention; or**

16 **“(b) Necessitated by damage to a boat or inflatable device used by**
17 **a person making public use of a waterway, if the damage makes con-**
18 **tinued use of the boat or inflatable device unsafe or impracticable, for**
19 **purposes of temporarily engaging in repair of the boat or inflatable**
20 **device or for direct egress from the waterway to the nearest reason-**
21 **able public access point.**

22 **“(5) ‘Floatable’ means having the capacity, in terms of length,**

1 width and depth, to enable a boat or other vessel to make successful
2 progress through a waterway at any time of the year, regardless of the
3 presence of shallow rapids, exposed cobble or other objects that may
4 impede passage.

5 “(6) ‘Lake’ means:

6 “(a) A natural inland body of water.

7 “(b) An artificial body of water created by the impoundment of a
8 floatable river or stream.

9 “(7) ‘Line of ordinary high water’ means the line on the bank or
10 shore to which the high water ordinarily rises annually in season.

11 “(8) ‘Portage’ means to move a boat or inflatable device overland
12 to avoid a barrier to navigating a waterway.

13 “(9) ‘Public use’ means participation in water-dependent activities
14 and incidental uses connected with those activities.

15 “(10)(a) ‘Waterway’ means:

16 “(A) A river or stream originating from a headwater.

17 “(B) A lake.

18 “(b) ‘Waterway’ does not include artificial canals, channels or
19 ditches created to divert water for the purpose of irrigation or power
20 generation.

21 “SECTION 2. (1) Except as provided in this section, a person may
22 use a Class 1 waterway for public use between the lines of ordinary
23 high water.

24 “(2) A person may not use a Class 2 waterway for public use without
25 the express permission of the person who owns the property imme-
26 diately adjacent to the waterway, unless the property is under public
27 ownership.

28 “(3) An owner or operator of a hydroelectric power generating fa-
29 cility may restrict the use of a Class 1 waterway in and around the
30 facility and related structures as necessary to protect against injury

1 or loss of life.

2 “(4) A state agency with management authority over a waterway,
3 after consultation with the Department of State Lands, by rule may
4 impose restrictions on the use of the waterway between the lines of
5 ordinary high water or may designate areas where public use may oc-
6 cur.

7 **“SECTION 3. (1) A person making public use of a Class 1 waterway**
8 **may travel on private property adjacent to the waterway that is above**
9 **the line of ordinary high water for emergency use, for portage or to**
10 **continue public use of the waterway if the person takes:**

11 **“(a) The most direct and least intrusive path possible;**

12 **“(b) Reasonable steps to avoid damaging the property; and**

13 **“(c) Reasonable steps to repair any actual damage done to the**
14 **property.**

15 **“(2) It is a defense to a civil action based in trespass or a charge**
16 **of criminal trespass under ORS 164.245, 164.255 or 164.265 if a person**
17 **making public use of a Class 1 waterway entered property adjacent to**
18 **the waterway for emergency use, for portage or to continue public use**
19 **of the waterway and complied with the requirements of subsection (1)**
20 **of this section.**

21 **“(3) A person using private property adjacent to a waterway for**
22 **emergency use, for portage or to continue public use of the waterway**
23 **is liable for actual damage caused to the property.**

24 **“SECTION 4. The right to public use of a Class 1 waterway and the**
25 **public use of a Class 1 waterway do not:**

26 **“(1) Grant any easement or right to enter private property to gain**
27 **access to the waterway.**

28 **“(2) Allow a person to obtain a prescriptive easement to public or**
29 **private lands.**

30 **“(3) Affect the title to or ownership of lands below the line of ordi-**

1 nary high water.

2 **“SECTION 5.** The Department of State Lands shall, to the extent
3 practicable, work with the Department of State Police and other ap-
4 propriate local, state and federal agencies to:

5 **“(1)** Ensure the rights of owners of property adjacent to waterways;

6 **“(2)** Ensure the right of persons to make public use of Class 1
7 waterways; and

8 **“(3)** Resolve issues related to conflicts between owners of property
9 adjacent to waterways and persons who make public use of Class 1
10 waterways.

11 **“SECTION 6.** The State Land Board, after consultation with the
12 Department of State Police, the State Parks and Recreation Depart-
13 ment, the State Marine Board and the State Department of Fish and
14 Wildlife, may adopt rules governing the public use of Class 1
15 waterways that are necessary to protect the public health and safety,
16 to protect public resources or to protect the interests of owners of
17 property adjacent to the waterways.

18 **“SECTION 7.** A landowner with property adjacent to or within a
19 Class 1 waterway:

20 **“(1)** Is not liable for damage to natural resources, including but not
21 limited to habitat, fish, wildlife and water, caused by persons making
22 public use of the waterway or by persons using the landowner’s prop-
23 erty for emergency use, for portage or to continue public use of the
24 waterway.

25 **“(2)** Must exercise the rights of a landowner with such care so as
26 not to unreasonably interfere with persons making public use of the
27 Class 1 waterway and with persons exercising the rights described in
28 section 3 (1) of this 2010 Act.

29 **“SECTION 8.** The Director of the Department of State Lands may
30 appoint an advisory group to explore particular areas of concern re-

1 **garding the public use of Class 1 and Class 2 waterways.**

2 **“SECTION 9. Nothing in sections 1 to 10 of this 2010 Act is intended**
3 **to limit any public rights on waterways under public ownership.**

4 **“SECTION 10. Sections 1 to 10 of this 2010 Act do not apply to:**

5 **“(1) Any treaty or right of any federally recognized Indian tribe.**

6 **“(2) Land held in trust by the federal government for Indian tribes**
7 **or individual members of Indian tribes.**

8 **“(3) The rights of a person who owns the property immediately ad-**
9 **acent to a waterway to engage in farming practice, as defined in ORS**
10 **30.930, except that the person may not erect a barrier.**

11 **“SECTION 11. ORS 105.672 is amended to read:**

12 **“105.672. As used in ORS 105.672 to 105.696:**

13 **“(1) ‘Charge’:**

14 **“(a) Means the admission price or fee requested or expected by an owner**
15 **in return for granting permission for a person to enter or go upon the**
16 **owner’s land.**

17 **“(b) Does not mean any amount received from a public body in return for**
18 **granting permission for the public to enter or go upon the owner’s land.**

19 **“(2) ‘Harvest’ has that meaning given in ORS 164.813.**

20 **“(3) ‘Land’ includes all real property, whether publicly or privately**
21 **owned.**

22 **“(4) ‘Owner’ means the possessor of any interest in any land, such as the**
23 **holder of a fee title, a tenant, a lessee, an occupant, the holder of an ease-**
24 **ment, the holder of a right of way or a person in possession of the land.**

25 **“(5) ‘Recreational purposes’ includes, but is not limited to, public use**
26 **pursuant to sections 2 and 3 of this 2010 Act, outdoor activities such as**
27 **hunting, fishing, swimming, boating, camping, picnicking, hiking, nature**
28 **study, outdoor educational activities, waterskiing, winter sports, viewing or**
29 **enjoying historical, archaeological, scenic or scientific sites or volunteering**
30 **for any public purpose project.**

1 “(6) ‘Special forest products’ has that meaning given in ORS 164.813.

2 “(7) ‘Woodcutting’ means the cutting or removal of wood from land by an
3 individual who has obtained permission from the owner of the land to cut
4 or remove wood.

5 “**SECTION 12.** A person commits a Class B violation if the person
6 violates section 2 (2) or (3), 3 or 7 (2) of this 2010 Act, any rule adopted
7 by the State Land Board pursuant to section 6 of this 2010 Act or any
8 rule adopted by a state agency pursuant to section 2 (4) of this 2010
9 Act.”.

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