

# Senate Bill 1028

Sponsored by COMMITTEE ON RULES (at the request of Senators Ted Ferrioli and Kate Brown)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes public right to use certain waterways up to line of ordinary high water for certain recreational purposes. Specifies limit of public right.

Directs State Land Board to adopt statewide management plan governing recreational use of certain waterways. Allows modification of plan.

Directs State Land Board to appoint Class 1 Waterways Advisory Committee. Specifies duties.

Establishes Class 1 Waterways Subaccount within Boating Safety, Law Enforcement and Facility Account. Continuously appropriates moneys in subaccount to State Marine Board for purposes of regulating waterways.

Directs State Marine Board to establish program for regulation of recreational use of waterways of state. Directs board to issue recreational use registrations. Directs use of registration fees. Specifies that portion of fees be allocated to counties for law enforcement.

Punishes violation of statewide management plan and violation of public right to use certain waterways by maximum fine of \$360.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to recreational use of waterways; creating new provisions; amending ORS 105.672, 390.131,  
3 830.110, 830.140 and 830.150; appropriating money; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) The State Land Board by rule shall adopt and administer a statewide**  
6 **management plan to govern the recreational use of Class 1 waterways under section 5 of this**  
7 **2005 Act. The statewide management plan shall include:**

8 (a) Provisions specifying the time, manner, type and extent of the recreational uses al-  
9 lowed on Class 1 waterways located throughout the state; and

10 (b) A method for modifying the time, manner, type and extent of recreational uses al-  
11 lowed on a particular Class 1 waterway.

12 (2) The board shall, from time to time, review the statewide management plan for possi-  
13 ble modification.

14 (3) The board may, pursuant to a memorandum of understanding, delegate the authority  
15 to develop and administer the statewide management plan to another public body, as defined  
16 in ORS 174.109. The memorandum may include provisions for the payment of expenses in-  
17 curred in developing and administering the statewide management plan from moneys re-  
18 ceived by the board from the Class 1 Waterways Subaccount established pursuant to section  
19 10 of this 2005 Act.

20 **SECTION 2. (1) The State Land Board shall appoint a Class 1 Waterways Advisory Com-**  
21 **mittee to advise and aid the State Land Board in the administration of section 5 of this 2005**  
22 **Act.**

23 (2) The advisory committee shall be composed of nine members appointed by the State  
24 Land Board from the following interests:

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (a) Three members who represent riparian landowners.
- 2 (b) Two members who represent recreational interest groups.
- 3 (c) One member who represents federally recognized Indian tribes.
- 4 (d) One member who represents the general public.
- 5 (e) One member who represents the State Parks and Recreation Department.
- 6 (f) One member who represents the State Marine Board.

7 (3) The State Land Board may determine the terms of the members of the advisory  
8 committee.

9 (4) The advisory committee shall have a primary responsibility to:

10 (a) Seek out and serve as a resource for information on:

- 11 (A) The recreational use of Class 1 waterways;
- 12 (B) Any conflict between landowners and recreational users; and
- 13 (C) Proposed modifications to the recreational uses allowed; and

14 (b) Propose to the State Land Board suggestions for adding to, modifying or excluding  
15 the time, manner, type and extent of the recreational use of Class 1 waterways.

16 (5) Members of the advisory committee are not entitled to compensation, but at the dis-  
17 cretion of the State Land Board may be reimbursed from funds available to the board for  
18 actual and necessary travel and other expenses incurred in the performance of their official  
19 duties in the manner and amount provided in ORS 292.495.

20 **SECTION 3.** Sections 4 to 10 of this 2005 Act are added to and made a part of ORS  
21 chapter 830.

22 **SECTION 4.** As used in sections 4 to 10 of this 2005 Act:

23 (1) "Bank" means the portion of a waterway that lies between the line of ordinary high  
24 water and the waterline of a waterway.

25 (2) "Barrier" means an obstruction located in a waterway that totally or effectively  
26 blocks the use of the waterway.

27 (3) "Class 1 waterway" means any segment of a floatable, natural, tidal or nontidal  
28 waterway and its banks.

29 (4) "Class 2 waterway" means any segment of:

- 30 (a) A waterway that is not a Class 1 waterway;
- 31 (b) An ephemeral waterway; or
- 32 (c) The Metolius River.

33 (5) "Emergency use" means a use of property:

- 34 (a) To obtain immediate and necessary medical attention; or
- 35 (b) Necessitated by damage to a boat used by a person making recreational use of a  
36 waterway, if the damage is of a nature so as to make continued use of the boat unsafe or  
37 impracticable, for purposes of temporarily engaging in boat repair or for egress from the  
38 waterway.

39 (6) "Ephemeral waterway" means a waterway that:

- 40 (a) Flows only during and immediately after periods of heavy precipitation;
- 41 (b) Receives little or no ground water to sustain its flow; and
- 42 (c) Has a bed that is above the water table.

43 (7) "Floatable" means having the capacity, in terms of length, width and depth, necessary  
44 to enable a boat to make successful progress through a waterway at any time, regardless  
45 of the presence of shallow rapids, exposed cobble or other objects that may impede passage.

1 (8) "Line of ordinary high water" means the line on the bank of a waterway to which high  
2 water ordinarily rises.

3 (9) "Portage" means to move a boat overland to avoid a barrier to navigating a waterway.

4 (10) "Recreational use" means participation in water-dependent activities and incidental  
5 uses connected with those activities.

6 **SECTION 5.** (1) Except as provided in this section, a person may make recreational use  
7 of any waterway.

8 (2) A person may not use a Class 2 waterway for a recreational use unless the person  
9 obtains the express permission of the riparian landowner. However, a person using a Class  
10 2 waterway that is located on public lands may act as if the person has express permission  
11 of the riparian landowner if the person complies with all applicable laws, rules and policies  
12 established by any public body, as defined in ORS 174.109, or federal agency with management  
13 authority over the Class 2 waterway.

14 (3) An owner or operator of a hydroelectric power generating facility may restrict the  
15 use of a waterway in and around the facility and related structures in a manner that the  
16 owner or operator determines necessary to protect against injury or loss of life.

17 (4) A person may not use a Class 1 waterway for a recreational use if the use has been  
18 limited, restricted or excluded by:

19 (a) A statewide management plan adopted by the State Land Board pursuant to section  
20 1 of this 2005 Act; or

21 (b) State law, federal law or rules of a state or federal agency.

22 (5) Unless allowed pursuant to the statewide management plan adopted pursuant to sec-  
23 tion 1 of this 2005 Act, a person may not, without obtaining the express permission of the  
24 riparian landowner, use a Class 1 waterway for the following purposes:

25 (a) Building open fires;

26 (b) Disposing of human waste;

27 (c) Overnight camping;

28 (d) Hunting or discharging weapons, except for the purpose of hunting waterfowl when  
29 specifically authorized by the State Department of Fish and Wildlife; or

30 (e) Placing or creating any permanent or seasonal structure, including a duck blind or  
31 boat moorage.

32 (6) A person may not use a waterway for a recreational use that involves a boat unless  
33 the person:

34 (a) Holds a valid certificate of number for the boat, as evidenced by the display of an  
35 identifying number on the boat with current validation stickers issued under ORS 830.795;

36 (b) Holds a valid nonmotorized boat certificate of number for the boat, as evidenced by  
37 the display of an identifying number on the boat along with a current validation sticker or  
38 tag issued under section 12 of this 2005 Act; or

39 (c) Holds a valid, effective recreational use registration issued pursuant to section 9 of  
40 this 2005 Act.

41 **SECTION 6.** (1) A person making recreational use of a waterway pursuant to section 5  
42 of this 2005 Act may travel on property adjacent to the waterway that is above the line of  
43 ordinary high water for emergency use or to portage if the person takes:

44 (a) The most direct and least intrusive path;

45 (b) Reasonable steps to avoid damaging the property; and

1 (c) Reasonable steps to repair any damage the person may have caused to the property.

2 (2) It is a defense to a charge of criminal trespass under ORS 164.245, 164.255 or 164.265  
3 that a person making recreational use of a Class 1 waterway entered property adjacent to a  
4 waterway for emergency use or to portage and complied with the requirements of this sec-  
5 tion.

6 (3) A person using property adjacent to a waterway for emergency use or to portage is  
7 liable for actual damage caused to the property.

8 **SECTION 7.** (1) For purposes of this section, “prescriptive easement” means the right  
9 of a person to use the property of another person that is acquired by open, exclusive, noto-  
10 rious, hostile, adverse, continuous and uninterrupted use of the property for at least five  
11 years.

12 (2) A person may not acquire a prescriptive easement to public or private land:

13 (a) Through the recreational use of a waterway, including the land lying below the line  
14 of ordinary high water and portage routes; or

15 (b) By entering or crossing the property of a landowner to access a waterway.

16 (3) The ability to make recreational use of a waterway pursuant to section 5 of this 2005  
17 Act does not grant any easement or right to enter or cross the property of a landowner in  
18 order to make recreational use of the waterway unless:

19 (a) The easement or right existed prior to the effective date of this 2005 Act; or

20 (b) The reason for the entry onto or the crossing of the property is for emergency use  
21 or to portage.

22 **SECTION 8.** A riparian landowner affected by the authority of a person to make recre-  
23 ational use of a Class 1 waterway pursuant to section 5 of this 2005 Act is not liable:

24 (1) For damage to natural resources, including habitat, fish, wildlife and water quality,  
25 caused by persons making recreational use of a waterway or using property for emergency  
26 use or to portage; or

27 (2) In contract or tort for any personal injury, death or property damage pursuant to  
28 ORS 105.682.

29 **SECTION 9.** (1) The State Marine Board shall, consistent with the statewide management  
30 plan adopted pursuant to section 1 of this 2005 Act, establish a program for the regulation  
31 of the recreational use of the Class 1 waterways and Class 2 waterways of the state. The  
32 program shall include provisions for:

33 (a) The issuance of transferable recreational use registrations that allow holders to en-  
34 gage in the recreational use of Class 1 waterways with nonmotorized boats pursuant to sec-  
35 tion 5 of this 2005 Act.

36 (b) The designation of agents of the board to issue recreational use registrations.

37 (c) The assessment of an annual fee in the amount of \$20 for a recreational use regis-  
38 tration.

39 (2) Fees collected by the board or by its designated agents for recreational use registra-  
40 tions shall be paid into the Boating Safety, Law Enforcement and Facility Account, except  
41 that the board may authorize a designated agent other than a board employee to charge a  
42 service fee of \$2.50, in addition to the annual recreational use registration fee, for the issu-  
43 ance service performed by the agent.

44 (3) As part of the program established under this section, the board may:

45 (a) Develop and disseminate information and educational materials regarding the recre-

1 ational use of specific Class 1 waterways and portage routes, public boat launches and rec-  
2 recreational facilities located on or near the waterways.

3 (b) Develop and maintain recreational facilities on or near Class 1 waterways.

4 (c) Provide grants for the acquisition of an interest in land for the purpose of developing  
5 recreational facilities on or near Class 1 waterways.

6 (d) Specify the method of display of a recreational use registration.

7 **SECTION 10.** (1) The Class 1 Waterways Subaccount is established within the Boating  
8 Safety, Law Enforcement and Facility Account. The subaccount shall consist of moneys de-  
9 posited into the subaccount by the State Marine Board from fees collected pursuant to  
10 sections 9 and 12 of this 2005 Act. The moneys in the subaccount are continuously appropri-  
11 ated to the board for the purposes specified in this section.

12 (2) The board shall use the moneys in the subaccount for:

13 (a) Operating the recreational use registration program established pursuant to section  
14 9 of this 2005 Act;

15 (b) Providing law enforcement services related to Class 1 waterways;

16 (c) Providing information and education regarding recreational use of Class 1 waterways;

17 (d) Developing and operating recreational facilities on or near Class 1 waterways;

18 (e) Improving and maintaining access to Class 1 waterways for recreational use;

19 (f) Developing and administering the statewide management plan adopted pursuant to  
20 section 1 of this 2005 Act; and

21 (g) Any other purpose that the board determines is appropriate for the maintenance,  
22 enhancement or protection of the natural and scenic resources of Class 1 waterways.

23 (3) The board shall determine the amount of moneys required for law enforcement ser-  
24 vices on Class 1 waterways in each county. Funds available in the subaccount shall be ap-  
25 portioned according to the amounts required and shall be distributed under contracts entered  
26 into with the Department of State Police or a county sheriff. A contract with a county  
27 sheriff shall be entered into only with the approval of the governing body of the county. The  
28 board shall determine the intervals at which the moneys shall be distributed.

29 **SECTION 11.** Section 12 of this 2005 Act is added to and made a part of ORS 830.700 to  
30 830.870.

31 **SECTION 12.** (1) The owner of a boat that is not a motorboat or a sailboat of 12 feet or  
32 more in length may register the boat with the State Marine Board and obtain a nonmotorized  
33 boat certificate of number and identifying number without securing a certificate of title.

34 (2) Upon the owner's submission of an application in a form approved by the board, the  
35 board shall issue to the owner a nonmotorized boat certificate of number and identifying  
36 number. The certificate shall state the identifying number awarded to the boat, the name  
37 and address of the owner, a description of the boat, the issue date of the certificate and the  
38 expiration date of the certificate.

39 (3) Along with the nonmotorized boat certificate of number, the board shall issue a vali-  
40 dation sticker or tag. The owner shall affix the sticker or tag to the boat so that the sticker  
41 or tag is visible for inspection. The identifying number shall be placed on the boat in the  
42 manner provided in ORS 830.780.

43 (4) The biennial fee for a nonmotorized boat certificate of number is \$2 per foot or por-  
44 tion of a foot.

45 (5) A nonmotorized boat certificate of number expires on December 31 of the year indi-

1 **cated on the certificate.**

2 **SECTION 13.** ORS 105.672 is amended to read:

3 105.672. As used in ORS 105.672 to 105.696:

4 (1) "Charge" means the admission price or fee asked by any owner in return for permission to  
5 enter or go upon the owner's land.

6 (2) "Harvest" has that meaning given in ORS 164.813.

7 (3) "Land" includes all real property, whether publicly or privately owned.

8 (4) "Owner" means the possessor of any interest in any land, including but not limited to pos-  
9 session of a fee title. "Owner" includes a tenant, lessee, occupant or other person in possession of  
10 the land.

11 (5) "Recreational purposes" includes, but is not limited to, outdoor activities such as hunting,  
12 fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities,  
13 waterskiing, winter sports, **recreational use of Class 1 waterways and Class 2 waterways pur-**  
14 **suant to section 5 of this 2005 Act**, viewing or enjoying historical, archaeological, scenic or sci-  
15 entific sites or volunteering for any public purpose project.

16 (6) "Special forest products" has that meaning given in ORS 164.813.

17 (7) "Woodcutting" means the cutting or removal of wood from land by an individual who has  
18 obtained permission from the owner of the land to cut or remove wood.

19 **SECTION 14.** ORS 390.131 is amended to read:

20 390.131. (1) The State Parks and Recreation Director is the executive head of the State Parks  
21 and Recreation Department and shall:

22 [(1)] (a) Be responsible to the State Parks and Recreation Commission for administration and  
23 enforcement of the duties, functions and powers imposed by law upon the commission and the de-  
24 partment.

25 [(2)] (b) Appoint, supervise and control all commission employees and, under policy direction of  
26 the commission, be responsible for all of the commission's functions and activities.

27 [(3)] (c) Establish such administrative divisions as are necessary to carry out properly the  
28 commission's functions and activities.

29 [(4)] (d) Contract with the Department of Transportation for the performance of such adminis-  
30 trative services as the director considers appropriate.

31 **(2) The director may enter into contracts or agreements with the State Land Board to**  
32 **develop and administer a statewide management plan described in section 1 of this 2005 Act.**

33 **SECTION 15.** ORS 830.110 is amended to read:

34 830.110. In addition to the powers and duties otherwise provided in this chapter, the State Ma-  
35 rine Board shall have the power and duty to:

36 (1) Make all rules necessary to carry out the provisions of this chapter. The rules shall be made  
37 in accordance with ORS chapter 183.

38 (2) Devise a system of identifying numbers for boats, floating homes and boathouses. If an  
39 agency of the federal government has an overall system of identification numbering for boats within  
40 the United States, the system devised by the board shall conform with the federal system.

41 (3) Cooperate with state and federal agencies to promote uniformity of the laws relating to  
42 boating and their enforcement.

43 (4) Make contracts **and agreements** necessary to carry out the provisions of ORS [830.060 to  
44 830.145, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830  
45 to 830.870] **chapter 830 or to develop and administer a statewide management plan described**

1 **in section 1 of this 2005 Act.**

2 (5) Advise and assist county sheriffs and other peace officers in the enforcement of laws relating  
3 to boating.

4 (6) Study, plan and recommend the development of boating facilities throughout the state which  
5 will promote the safety and pleasure of the public through boating.

6 (7) Publicize the advantage of safe boating.

7 (8) Accept gifts and grants of property and money to be used to further the purposes of this  
8 chapter.

9 (9) Exempt from any provisions of this chapter any class of boats if it determines that the safety  
10 of persons and property will not be materially promoted by the applicability of those provisions to  
11 the class of boats, but the board shall not exempt from numbering any class of boats unless it de-  
12 termines that the numbering will not materially aid in their identification and unless the secretary  
13 of the department of the federal government under which the United States Coast Guard is operat-  
14 ing has exempted from numbering the same boats or classes of boats.

15 (10) Appoint and require the bonding of agents to issue a temporary permit to operate a boat.  
16 The agents may charge, in addition to the prescribed fees, \$1 per transaction for their services in  
17 issuing the temporary permit.

18 (11) Publish and distribute to the interested public the boating laws of this state and resumes  
19 or explanations of those laws.

20 (12) Publish and distribute forms for any application required under this chapter and require the  
21 use of such forms.

22 (13) Make rules for the uniform navigational marking of the waters of this state. Such rules shall  
23 not conflict with markings prescribed by the United States Coast Guard. No political subdivision  
24 or person shall mark the waters of this state in any manner in conflict with the markings prescribed  
25 by the board.

26 (14) Make rules regarding marine toilets and their use consistent with the prevention and con-  
27 trol of pollution of the waters of this state and not in conflict with the rules of the Department of  
28 Human Services or the Environmental Quality Commission.

29 (15) Institute proceedings to enjoin unlawful obstructions injuring free navigation on the waters  
30 of this state.

31 (16) Make rules regulating water ski course markers, ski jumps and other special use devices  
32 placed in the waters of this state. Such rules may regulate the installation and use of the devices  
33 and may require a permit.

34 (17) Adopt rules necessary to carry out and enforce the provisions of ORS 830.950 and 830.955.  
35 The rules shall include but need not be limited to:

36 (a) The kinds of protective covering or physical barriers that are acceptable to be used between  
37 a submersible polystyrene device and the water.

38 (b) Guidelines for the use of submersible polystyrene devices for the repair or maintenance of  
39 existing docks or floats.

40 (18) Adopt rules providing for establishment of a Safe Boating Education Course to be made  
41 available to courts and law enforcement agencies within this state for use as a sentencing option  
42 for those individuals convicted of boating offenses. The board shall specify the content of the Safe  
43 Boating Education Course and shall prescribe procedures for making the course available to local  
44 courts and law enforcement agencies, including procedures for promptly notifying such courts  
45 whether individuals required to enroll in the course have taken and successfully passed the course.

1 Such rules may provide for administration of the course through nonprofit organizations, such as the  
 2 United States Coast Guard Auxiliary, United States Power Squadrons or similar groups.

3 (19) For purposes of ORS 830.175, 830.180, 830.185 and 830.195, in cooperation with the State  
 4 Aviation Board, regulate boats that are seaplanes as provided in ORS 830.605 and 835.200.

5 **SECTION 16.** ORS 830.140 is amended to read:

6 830.140. (1) On or before the 10th day of each month, the State Marine Board shall pay into the  
 7 State Treasury[, *except as provided in ORS 830.926,*] all moneys received by the board during the  
 8 preceding calendar month. The State Treasurer shall credit the moneys to the Boating Safety, Law  
 9 Enforcement and Facility Account, which account hereby is created, separate and distinct from the  
 10 General Fund. The moneys in the account hereby are continuously appropriated to the board for the  
 11 purpose of paying the expense of administering and enforcing the provisions of this chapter. The  
 12 board shall keep a record of all moneys received and expended.

13 **(2) The board shall determine the amount of moneys deposited in the account that is**  
 14 **from fees collected pursuant to ORS 830.790 and 830.850 and deposit that amount into the**  
 15 **Abandoned Boat Removal and Cleanup Subaccount.**

16 **(3) The board shall determine the amount of moneys deposited in the account that is**  
 17 **from fees collected for nonmotorized boat certificates of number pursuant to section 12 of**  
 18 **this 2005 Act and fees collected for recreational use registrations pursuant to section 9 of**  
 19 **this 2005 Act and deposit that amount into the Class 1 Waterways Subaccount.**

20 [(2)] **(4) After depositing the amounts described in subsections (2) and (3) of this section**  
 21 **and** after paying the necessary expenses incurred by the board in administering this chapter, the  
 22 funds available in the account shall be distributed, in the amounts required, for the purpose of en-  
 23 forcing the provisions of this chapter and the regulations adopted pursuant thereto. The board shall  
 24 determine the amount required for enforcement in each county, considering the survey conducted  
 25 under ORS 830.115. The funds available shall be apportioned according to the amounts required and  
 26 distributed, for enforcement in each county where there is a need, under a contract entered into  
 27 with a city, with the Department of State Police or with the sheriff of the county. A contract with  
 28 a city or a sheriff shall be entered into only with the approval of the governing body of the city or  
 29 county. The board shall determine the intervals at which the moneys shall be distributed.

30 [(3)] **(5)** The governing body of any county having within its boundaries a city providing recre-  
 31 ational boating facilities including launching ramps, may contract with the city for the purpose of  
 32 enforcing the provisions of this chapter and the rules and regulations made pursuant thereto.

33 [(4)] **(6)** If the city enters into a contract with the board or with a county, the county is relieved  
 34 of its enforcement responsibilities within the city as agreed to by the county and the city or by the  
 35 board and the city.

36 **SECTION 17.** ORS 830.150 is amended to read:

37 830.150. (1) Amounts remaining in the Boating Safety, Law Enforcement and Facility Account  
 38 in excess of funds obligated under ORS 830.140 [(2)] shall be distributed, upon application, to the  
 39 state, a city, county, water improvement district, park and recreation district or a port. Distribution  
 40 shall be made on the basis of need for a facility as that need appears to the State Marine Board.

41 (2)(a) In distributing funds under subsection (1) of this section, the board shall give first priority  
 42 to applications for facilities designed to control water pollution or otherwise enhance water quality,  
 43 including but not limited to pumping stations for recreational boat holding tanks, and to those other  
 44 facilities for which there appears the greatest public need.

45 (b) Subject to paragraph (a) of this subsection, the board may distribute funds for:



1 (A) Construction and maintenance of boating facilities, for the acquisition of property therefor,  
 2 and other related facilities such as parking, potable water, sanitation and other facilities for the  
 3 convenience of the public using the boating facilities; and

4 (B) Removal of derelict structures floating upon and abandoned dock or boat mooring facilities  
 5 situated in, upon or over the waters of this state if such structures or facilities constitute a hazard  
 6 to boating upon such waters.

7 (3) Prior to making any distribution of funds under this section, the board shall hold a public  
 8 hearing in the area where a facility is to be constructed or land acquired if in the judgment of the  
 9 board, use of the facility would stimulate significant change in the character of the recreational use  
 10 of the waters.

11 (4) The board shall make no distribution of funds under this section for construction or acqui-  
 12 sition if in the judgment of the board the applicant has not included in the construction or acquisi-  
 13 tion plans adequate provision for protecting the quality of the waters affected by the plans. The  
 14 board's denial of any application under this subsection must include specific notice to the applicant  
 15 of the point or points of the plan that are found by the board to be inadequate.

16 **SECTION 18. (1) A person who violates section 5 of this 2005 Act or any provision of the**  
 17 **statewide management plan adopted pursuant to section 1 of this 2005 Act commits a Class**  
 18 **B violation.**

19 **(2) Fines imposed as a result of conviction of a violation of section 5 of this 2005 Act shall**  
 20 **be deposited into the State Treasury for credit to the Class 1 Waterways Subaccount estab-**  
 21 **lished pursuant to section 10 of this 2005 Act.**

22 **SECTION 19. Nothing in section 5, 6 or 7 of this 2005 Act affects the title to or ownership**  
 23 **of:**

- 24 (1) **The surface water contained within a waterway;**
- 25 (2) **The land lying below the line of ordinary high water of a waterway; or**
- 26 (3) **The established portage routes within the state.**

27 **SECTION 20. Nothing in section 5, 6 or 7 of this 2005 Act affects:**

- 28 (1) **The right of a landowner to engage in a farming practice, as defined in ORS 30.930.**
- 29 (2) **Any treaty or right of any federally recognized Indian tribe.**
- 30 (3) **Land held in trust by the United States for Indian tribes or individual members of**  
 31 **Indian tribes.**

32 (4) **The recreational use of the surface waters of lakes, ponds and other confined water**  
 33 **bodies.**

34 (5) **The rights or responsibilities established under a management plan for a Class 1**  
 35 **waterway adopted pursuant to the federal Wild and Scenic Rivers Act (P.L. 90-542).**

36 **SECTION 21. (1) Sections 5, 6 and 7 of this 2005 Act become operative January 1, 2006.**

37 **(2) Notwithstanding subsection (1) of this section, the State Land Board, State Marine**  
 38 **Board and State Marine Director may take any administrative action necessary prior to**  
 39 **January 1, 2006, in order to carry out the purposes of this 2005 Act.**

40 **SECTION 22. This 2005 Act being necessary for the immediate preservation of the public**  
 41 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
 42 **on its passage.**