



# Oregon

Kate Brown, Governor

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**DATE:** May 7, 2019

**TO:** Senate Committee on Environment and Natural Resources

**FROM:** Mac Lynde, Deputy Highway Division Administrator

**SUBJECT:** HB 2835A (-A4) – Public Use Waterway Access

## INTRODUCTION

House Bill 2835A (-A4) defines public access site and requires a state agency to post notice of restrictions or closures of public lands used to access a floatable natural waterway. The bill further requires the Department of Transportation (ODOT) to notify specified state agencies when ODOT proposes a major bridge construction project and allows agencies to suggest changes to ODOT bridge projects to enable public access to recreational waterways.

## DISCUSSION

ODOT's mission is to provide a safe and reliable multimodal transportation system that connects people and helps Oregon's communities and economy thrive. ODOT delivers on this mission by investing in transportation projects across the state, including maintaining public highways and bridges.

House Bill 2835A (-A4) aims to enhance recreational access to waterways by ensuring the public has current information about closures and restrictions of recreational waterways and by expanding public access where practicable. Recreational access to public waterways falls outside the traditional scope of ODOT's mission to preserve, maintain, and enhance Oregon's transportation system; however, ODOT appreciates the proponents' interest in identifying opportunities to enhance public access to recreational waterways through partnership with other agencies. HB 2835A establishes a process whereby the Oregon Department of State Lands (DSL), Oregon Parks and Recreation Department (OPRD), and Oregon State Marine Board (OSMB) can propose changes to state transportation projects that provide public access to recreational waterways.

The -A4 amendment clarifies this process and ensures State Highway Fund dollars are used consistent with constitutional direction:

- When ODOT proposes funding of a major bridge construction project through a draft Statewide Transportation Improvement Program (STIP) and ODOT determines the project may be suitable for public access to a recreational waterway, it will notify named agencies (DSL, OPRD, and OSMB) of the opportunity to propose project changes;
- Notified agencies may propose changes to enable public access and may provide certain information in support of the proposal, including an estimate of funding availability from sources other than the State Highway Fund;

- ODOT must consider the proposed changes before the draft STIP is finalized but retains sole discretion to accept or decline the proposed changes;
- When considering the proposed changes, ODOT may consider whether the project adversely impacts public access, alters the purpose of the bridge project, violates State Highway Fund restrictions, impacts traffic or highway safety, and any other project factors.

As provided in Article IX Section 3a of the Oregon Constitution, State Highway Fund dollars must “be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state.” Expanding public access to recreational waterways is not an eligible use of State Highway Fund dollars.

ODOT understands the bill’s proponents intend this new process to provide consideration of changes tied to major bridge projects *suitable for public access*, and not any or all land or facilities owned by ODOT. ODOT owns lands across the state that are not legally publicly accessible, lands acquired pursuant to an easement, and other lands where public access is unsafe or unfeasible.

HB 2835A (-A4) provides ODOT broad rulemaking authority; ODOT looks forward to providing additional clarity in rule regarding the process of project identification and consideration of proposed changes.

#### **SUMMARY**

House Bill 2835A (-A4) directs ODOT to consider the feasibility of providing public access to a floatable natural waterway from a bridge or bridge structure. ODOT appreciates the revised scope provided in the –A4 amendments and we look forward to partnership with our sister agencies and with the bill’s sponsors and proponents.

Please feel free to reach out to me with any additional questions.