

SB 74 -2, -3, -4 STAFF MEASURE SUMMARY

Senate Committee On Natural Resources and Wildfire

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Meeting Dates: 3/13, 4/1, 4/3

WHAT THE MEASURE DOES:

The measure requires the Department of State Lands (DSL) to study determinations of navigability on Oregon waterways and requires a report to be submitted to interim committees related to natural resources no later than September 15, 2026. Sunsets January 2, 2027.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: May have revenue impact, but no statement yet issued

ISSUES DISCUSSED:

- Waterway usage for trade and travel at the time of statehood, with canoes being a primary mode of travel
- Federal tests and historical determinations for state navigability, including waterway analysis in 1859 and forensic studies
- Department of State Lands' process for property deed exchanges, prioritizing state ownership of current waterways
- Land Board's authority to make navigability declarations and resolve landowner disputes, including the distinction between smaller and larger waterways
- Public notice requirements and notifications to impacted landowners, particularly for rivers and the definition of lakes under the statute

EFFECT OF AMENDMENT:

-2 amendment replaces the measure. It creates new provisions for determining navigability, amending Oregon Revised Statutes 274.408 (Beds of Streams, Lakes and Bays- Ownership).

Detailed Summary:

The -2 amendment allows the Department of State Lands (DSL) to determine that the state's interest in a waterway extends to the current submerged and submersible lands within it in a report to the State Land Board, further declaring that the boundary of the waterway will shift with future changes in land (accretion). Authorizes DSL to negotiate property deed exchanges with affected property owners, with the priority being state ownership of the existing waterway, rather than a 1-to-1 property value exchange. Additionally, the amendment requires the county clerk to record a declaration of state ownership in the county's deed records.

Removes requirement that public notice of state's claim should be useful in establishing the **exact location in relation to existing legal descriptions**.

-3 amendment incorporates the changes in the -2, and authorizes DSL to negotiate property exchanges with owners affected by a declaration, prioritizing state ownership of the waterway, without requiring an equal exchange of property values. Additionally, the department can convey mineral and geothermal resource rights for properties exchanged. Finds that the state's interest in a waterway does not apply to a meandered lake.

-4 amendment replaces the measure. Directs the Department of State Lands (DSL) to study the effects of asserting title to existing submerged or submersible lands, without regard to common law principles of accretion and avulsion, after determining navigability. Requires DSL to submit their findings and potential recommendations for legislation to the State Land Board and an interim committee of the Legislative Assembly related to natural

resources by September 15, 2026.

Detailed Summary:

Directs DSL to study the effects of asserting title to existing submerged or submersible lands, without regard to common law principles of accretion and avulsion, after determining navigability. The study must assess the following:

- The impact of asserting title on private property owners, including potential loss of land value, loss of access, and effects on land use.
- The economic and social impacts on communities
- Legal and administrative costs, including potential litigation costs associated with assertion of title.
- Historical changes to waterway boundaries in Oregon due to natural processes.

Requires DSL to consult with property owners, local governments, and legal experts, and hold public hearings in different regions of Oregon for public input. Requires DSL to submit their findings and any legislative recommendations to the State Land Board and an interim committee of the Legislative Assembly related to natural resources by September 15, 2026.

BACKGROUND:

Oregon Revised Statutes 196.800 defines a waterway as “tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state and those portions of the ocean shore.”

Oregon was granted ownership of the waterways used for navigation, commerce and fishing at statehood. These waterways include the territorial sea, coastal bays and estuaries, and coastal rivers to head of tide. The Public Trust Doctrine provides a framework for navigability, defining state-owned waterways as “navigable,” including submerged and submersible lands. The public has a right to use an Oregon waterway that has been determined to be navigable for recreation, including navigation, fishing and commerce. Over time, other waterways were determined to be Oregon-owned through court decisions, state laws, or State Land Board declarations. These waterways met the federal test of navigability and were declared “navigable-for-title” and open to the public for navigation, commerce, recreation, and fishing.

Navigability declarations must address the following:

1. Could the waterway have been used for trade and travel at the time of statehood?
2. Is the waterway considered state owned?

Oregon Administrative Rules 141-082-0260 (3) & (6) requires the Department of State Lands to manage submerged and submersible lands to ensure the collective rights of the public, including navigation, fishing, recreation and other public trust values.

The Department of State Lands asserts that state ownership of waters becomes difficult to determine specifically in rivers, as they often change over time. State ownership of rivers is typically the riverbed and riverbank to the line of ordinary high water; however, riverbanks and beds at statehood often shift due to natural geological processes, either gradual or sudden. To declare a waterway navigable for title and Oregon-owned, the state is required to precisely map all gradual and sudden changes since statehood.