

SB 74 A STAFF MEASURE SUMMARY

House Committee On Agriculture, Land Use, Natural Resources, and Water

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Meeting Dates: 4/28, 5/12

WHAT THE MEASURE DOES:

The measure modifies the process used by the Department of State Lands to determine a waterway's navigability.

Detailed Summary:

Authorizes the Department of State Lands (DSL) to:

- Find, notwithstanding common law principles of accretion and avulsion, in draft report on a navigability determination that the state's interest in waterway should extend to current submerged and submersible lands within the waterway.
- Negotiate property exchanges with affected landowners at any time after the study begins and before the Board adopts the draft report.
- Declare that the waterway's boundary will adjust with future changes due to accretion if the draft report finds that the state's interest includes submerged and submersible lands
- Transfer mineral and geothermal resource rights for properties exchanged.

Directs DSL to:

- Determine the state's interest using common law principles of accretion and avulsion if DSL cannot reach an agreement with an affected property owner.
- Prioritize state ownership of the waterway, without requiring an equal exchange of property values.

Specifies that measure provisions related to common law principles of accretion and avulsion and draft report findings on state's interest in waterway do not apply to meandered lakes. Requires a county clerk to record a declaration of state ownership in the county's deed records and revises requirements related to public notice of the state's claim.

FISCAL: Has minimal fiscal impact

REVENUE: No revenue impact

SENATE VOTE: Ayes 23; Nays 6; Excused 0

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

ORS 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 address if the waterway had been used for trade and travel at the time of statehood and if the waterway is considered state owned.

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