

SB 74 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Natural Resources and Wildfire

Action Date: 04/08/25
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 5-0-0-0
Yeas: 5 - Girod, Golden, Nash, Prozanski, Taylor
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
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Meeting Dates: 3/13, 4/1, 4/8

WHAT THE MEASURE DOES:

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

Detailed Summary:

Authorizes DSL, notwithstanding common law principles of accretion and avulsion, to find 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. Authorizes DSL to negotiate property exchanges with affected landowners at any time after the study begins and before the Board adopts the draft report. If DSL cannot reach an agreement with an affected property owner, directs agency to determine the state's interest using common law principles of accretion and avulsion.

If the draft report finds that the state's interest includes submerged and submersible lands, the Land Board may declare that the waterway's boundary will adjust with future changes due to accretion. Directs DSL to prioritize state ownership of the waterway, without requiring an equal exchange of property values. Authorizes DSL to transfer mineral and geothermal resource rights for properties exchanged.

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 the 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.

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:

The amendment replaces the measure.

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

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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.