

Senate Bill 74 as amended: Improving Process for Declaring Waterways to be Oregon-Owned

Provides flexibility to issue a navigability declaration that sets the legal boundaries at the current river boundary, promotes efficient, effective processes

Background

At statehood, the “submerged and submersible lands” of all navigable and tidally influenced waterways became Oregon-owned. Tidally influenced waterways explicitly included the territorial sea, coastal bays and estuaries, and coastal rivers to head of tide. Other waterways are determined to be navigable and Oregon-owned through court decisions, legislative actions, or navigability declarations by the State Land Board.

The Public Trust Doctrine protects the public’s right to use Oregon-owned waterways for navigation, fishing, commerce, and recreation. The people of Oregon are also compensated for use of these waterways – marinas, docks, and bridges are types of uses that require payment.

Existing Navigability Declaration Process

The Land Board’s jurisdiction to assert title to navigable waterways on behalf of the State of Oregon is found in [ORS 274.402 through ORS 274.412](#). The navigability determination process is established in [OAR 141-121](#).

A Land Board navigability declaration includes two elements:

1. **Whether the river was navigable at statehood.** This requires extensive historical research of river usage at the time of statehood. This could include the nature and location of the historical use of the river, including past recreational or economic activity on the river, for example.
2. **Where the legal boundary currently exists.** This requires evaluation of the river channel as it existed at statehood and any changes that have occurred since.

Complexities of Evaluating River Change

Declaring navigability and Oregon ownership of rivers is currently a particularly complex and costly challenge, because:

Rivers change over time – and how those changes occur matters in determining where the legal boundary is. Under the principles of common law, when change

happens *gradually* through accretion, the property boundary shifts with the river channel. But when change happens *suddenly*, due to flooding, people adding or removing materials, or another avulsive event, the property boundary stays where it was immediately before the sudden change.

To declare a waterway Oregon-owned, existing law requires the state to exactly map all gradual and sudden changes that have happened since statehood. In what can be a costly, lengthy process, DSL must identify every change that's occurred and analyze whether that change was gradual or sudden, for what can be hundreds of river miles. The complexity level and resource demands for this type of map work has made pursuing navigability studies unfeasible for the Department.

The Problem: Ownership Confusion, Extended Uncertainty

Under the existing process prescribed in [ORS 274](#), where the legal boundary depends on the type of change, there is confusion and uncertainty regarding the state's potential ownership claim for much of a very long process.

For sudden changes, the state may end up owning dry land far from the river, and private parties may own some segments of riverbed and riverbank. Once the Land Board declaration is adopted, DSL may then negotiate with landowners to exchange lands so that ownership of the beds and banks of navigable rivers will align with all parties' expectations. But under current statute, this negotiation could only occur *after* the declaration has survived litigation and appeals.

This ongoing lack of clarity is difficult for both river-adjacent property owners and communities.

The Solution: Provide Straightforward Option to Simplify Process

The statutory changes proposed in SB 74 as amended would:

Provide flexibility to use the current river boundary as the legal boundary. SB 74, once amended, would provide the option ("may" instead of "shall") of treating all activity on a river since statehood as gradual change, matching state ownership to the shoreline. This would mean ownership boundaries would better align with public expectations and current geography.

Improve the efficiency of the navigability process. Having this proposed option could remove the lengthy, costly mapping of historic channels and historic river movement. The map work required by current statute is intensive, time-consuming,

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and expensive. Due to these barriers the Department has not advanced a handful of navigability study requests, mostly from waterway users seeking clarity for recreational use.

Retain existing navigability declaration process elements, requirements.

Navigability declarations would continue to include the same two elements of determining historic navigability and current legal boundary. **Other steps in the process for a navigability declaration would not change, including public notices, public comment period, and consideration of testimony.**

Retain existing approach for private landowner flexibility. This process change must remain a *discretionary option* for the Land Board, in order to avoid unlawful taking of property. If a neighboring landowner desires, the Land Board could follow the traditional statutory approach, mapping out the original waterway and researching historic river movements to determine the legal boundary. The Department and landowner could then decide whether to negotiate an exchange of lands, but this would be a decision resulting from discussion by both parties, rather than a pre-determined result of the navigability declaration process. In any negotiation with an affected property owner, the department shall prioritize the goal of state ownership of the existing waterway, not an equal exchange of property values.

Fiscal Impact

None. DSL's current service level budget for 2025-27 can support implementation.

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