



Committee Substitute Senate Bill 227 (RES)
State of Ownership of Submerged Land
Summary of Changes, Version I, 5/9/2022

This Committee Substitute provides clarifying and conforming language to describe the extent of what is navigable in and adjacent to federal areas. Most of the changes represent minor adjustments that better capture the legislative intent and more clearly define the purview of the legislation. The most significant change is found in Section 7 of SB 227 that, as amended, reads:

(j) For purposes of (b) and (c) of this section, the commissioner shall make a determination of navigability based on evidence consistent with the meaning given to “navigable water” in (g) of this section, after considering factors that include:

*(1) a showing that a river is boatable **at any time** during the open-water season by customary and traditional watercraft.*

Referring back to the definition of “navigable waters” earlier in the legislation, this amended language confirms that a river can be determined “navigable-in-fact” by Department of Natural Resources (DNR) —meaning that the state owns the submerged lands underneath and manages the waters that flow above—if, at any time during the open-water season (i.e. the water is not frozen), it can be boated by customary and traditional watercraft (or modern watercraft that are meaningfully similar to customary and traditional watercraft).

This committee substitute comports with federal caselaw for determining “navigability-in-fact” and thus state ownership of the submerged lands and state management authority over the waters above. It assures that DNR navigability determinations are as expansive as allowed by federal caselaw.