



Committee Substitute Senate Bill 227 (RES)
State Ownership of Submerged Land
Sectional Analysis, Version I, 4.29.22

Section 1 – Amends uncodified law by adding a new section to describe the purpose of the bill.

Section 2 – Amends AS 38.04.062(a) to add the clause ‘, including submerged land underlying navigable water listed in AS in AS 38.04.063 that is within the boundaries of and adjacent to federal areas.’ This language is intended to link the state's assertion of rights over submerged lands in existing AS 38.04.062(a) with the proposed list of submerged lands within federal areas as designated in section 8 of the bill.

AS 38.04.062(a) declares that except for conveyances pursuant to AS 38.05.820 and 38.05.825, ‘the state owns all submerged land underlying navigable water to which title passed to the state at the time the state achieved statehood under the equal footing doctrine or 43 U.S.C. 1301 - 1315 (Submerged Lands Act of 1953).’ Arguably, this existing declaration already incorporates submerged lands in federal areas without the need to explicitly add a reference to them. However, the added text creates a potentially helpful reference to the proposed statute.

Section 3 – Amends AS 38.04.062(d) by adding the following sentence: ‘The commissioner shall conduct ongoing research to identify submerged land underlying navigable water within the boundaries of and adjacent to federal areas to determine state title to corresponding submerged land underlying navigable water.’

Section 4 – Amends AS 38.04.062(d) by inserting a citation to proposed new section of statute under this bill. Added text is as follows, ‘AS 38.04.063 or.’ Subsection (d) provides that ‘[w]ater not included’ on the lists of navigable and non-navigable waters maintained by the DNR commissioner is not considered navigable or non-navigable until the commissioner has made a determination as to navigability. By incorporating the citation to proposed AS 38.04.063, any waters omitted from the codified list of submerged lands in federal areas are likewise not to be considered navigable or non-navigable until the commissioner makes a determination.

Section 5 – Amends AS 38.04.062(e) by inserting the clause ‘(b) or (c) of.’ Subsection (e) operates as a disclaimer for determinations of navigability by the DNR commissioner, providing that they do not create an interest in real property, may not be recorded, and do not constitute final agency action. Because the proposed edits to AS 38.04.062 create new obligations for the DNR commissioner concerning navigable waters in federal areas, which may include navigability determinations made as a result of administrative or judicial proceedings, ‘(b) or (c) of’ was inserted before ‘this section’ to distinguish the commissioner's non-binding determinations from determinations that have binding effect.

Section 6 – Amends AS 38.04.062(g) by replacing ‘this section’ with ‘AS 38.04.062 - 38.04.063,’ renumbering existing definitions, and adding proposed definitions for ‘federal areas,’ ‘mean high water,’ ‘mean high water line,’ ‘ordinary high water mark,’ and ‘submerged land.’

Section 7 – Adds new subsections (h) - (j) to AS 38.04.062 that creates an obligation on DNR to report annually to the legislature.

Subsection (h) requires the commissioner to submit an annual report to the legislature by the first day of each regular session identifying navigable waters within the boundaries of and adjacent to federal areas that are not listed in AS 38.04.063(b) and any modifications or changes to navigable waters within the boundaries of and adjacent to federal areas that have been previously identified and listed in AS 38.04.063(b)

Subsection (i) provides that the commissioner's failure to include or identify navigable waters in accordance with the requirements of AS 38.04.062 does not relinquish any state right in the submerged lands underlying those navigable waters. Subsection (i) is intended to preserve the state's rights to submerged lands.

Subsection (j) provides that a navigability determination of the commissioner is based on evidence consistent with the definition of ‘navigable water’ at AS 38.04.062(g) and consideration of the factors listed in AS 38.04.062(j)(1-4).

Section 8 – Amends AS 38.04 by adding a new section AS 38.04.063 concerning state ownership of submerged within federal areas. This section makes clear that since statehood, that State owns, claims, occupies, possesses, manages, and controls all submerged lands underlying navigable waters listed in (b) of this new section of statute., except as provided under AS 38.04.062(f). It further identifies navigable waterbodies that are currently known within the boundaries of and adjacent to federal areas. This section was drafted to model existing AS 19.30.400 which codifies state claims of rights-of-way granted under former 43 U.S.C. 932 (Revised Statute 2477).

Section 9 – Amends the uncoded law of the state to add a new section providing that Section 8 of the bill is retroactive to January 3, 1959. This bill will require a special vote of two-thirds of the members of each house because the proposed retroactive effective date for this section varies from the standard language providing for an effective date 90 days after enactment.

Section 10 – Provides for an immediate effective date under AS 01.10.070(c).