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HB 98

Sectional Analysis

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

Page 2, line 1, revises the phrase “at the time” to become “on the date”, and adds 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.’ Provides clarity that the State owns all submerged lands under navigable from the date of statehood, including lands within the boundaries of sand adjacent to federal lands. AS 38.04.062(a) declares that ‘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).’

Section 3 – Amends AS 38.04.062(d) by (Page 2, line 10), revising the phrase “at the time” to become “on the date”, and adds 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(c) by revising the phrase “at the time” to become “on the date”.

Section 5 – amends AS 38.04.062(d) by referencing the list of navigable waters described fully in new AS 38.04.063 and revises the phrase “at the time” to become “on the date”.

Section 6 - Amends AS 38.04.062(e) by inserting the clause ‘(b) or (c) of (new section 3 and 4).’ 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

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federal areas, which may include navigability determinations made because 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 7 – amends by revising the phrase “at the time” to become “on the date”.

Section 8 - 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 9 - 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 the 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). Page 4 to page 87.

Section 10 - Amends AS 38.04.910 by adding new paragraphs for definitions, 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 11 – repeals existing 38.04.06(g) which is current definition.

Section 12 - Amends the uncodified law of the state to add a new section providing that Section 9 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 13 - Provides for an immediate effective date under AS 01.10.070(c).