

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON FISHERIES**

May 12, 2022  
3:32 p.m.

**MEMBERS PRESENT**

Representative Geran Tarr, Chair  
Representative Louise Stutes, Vice Chair  
Representative Dan Ortiz  
Representative Sarah Vance  
Representative Kevin McCabe

**MEMBERS ABSENT**

Representative Jonathan Kreiss-Tomkins  
Representative Andi Story

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 227(RES)

"An Act relating to state ownership of submerged land underlying navigable water within the boundaries of and adjacent to federal areas; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 227

SHORT TITLE: STATE OWNERSHIP OF SUBMERGED LAND

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

|          |     |                                      |
|----------|-----|--------------------------------------|
| 03/11/22 | (S) | READ THE FIRST TIME - REFERRALS      |
| 03/11/22 | (S) | RES                                  |
| 04/08/22 | (S) | RES AT 3:30 PM BUTROVICH 205         |
| 04/08/22 | (S) | Heard & Held                         |
| 04/08/22 | (S) | MINUTE(RES)                          |
| 04/15/22 | (S) | RES AT 3:30 PM BUTROVICH 205         |
| 04/15/22 | (S) | -- MEETING CANCELED --               |
| 04/18/22 | (S) | RES AT 3:30 PM BUTROVICH 205         |
| 04/18/22 | (S) | -- MEETING CANCELED --               |
| 04/20/22 | (S) | RES AT 3:30 PM BUTROVICH 205         |
| 04/20/22 | (S) | Heard & Held                         |
| 04/20/22 | (S) | MINUTE(RES)                          |
| 04/27/22 | (S) | RES AT 3:30 PM BUTROVICH 205         |
| 04/27/22 | (S) | Moved CSSB 227(RES) Out of Committee |

04/27/22 (S) MINUTE (RES)  
04/29/22 (S) RES RPT CS 2DP 3NR 1AM NEW TITLE  
04/29/22 (S) DP: REVAK, MICCICHE  
04/29/22 (S) NR: STEVENS, KIEHL, VON IMHOF  
04/29/22 (S) AM: KAWASAKI  
05/05/22 (S) TRANSMITTED TO (H)  
05/05/22 (S) VERSION: CSSB 227 (RES)  
05/09/22 (H) READ THE FIRST TIME - REFERRALS  
05/09/22 (H) RES  
05/09/22 (H) FSH REFERRAL ADDED BEFORE RES  
05/12/22 (H) FSH AT 10:00 AM GRUENBERG 120

**WITNESS REGISTER**

JIM WALKER, Section Chief  
Public Access Assertion and Defense  
Division of Mining Land and Water  
Department of Natural Resources  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 227.

CRAIG COMPEAU  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 227.

MIKE SEWRIGHT, Assistant State Attorney General (retired)  
Member, Board of Directors Safari Club International  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 227.

ALEX JOHNSON, Alaska Senior Program Manager  
National Parks Conservation Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition the SB 227.

**ACTION NARRATIVE**

[3:32:00 PM](#)

**CHAIR GERAN TARR** called the House Special Committee on Fisheries meeting to order at 3:32 p.m. Representatives Vance, McCabe, Stutes, Ortiz, and Tarr were present at the call to order.

**SB 227-STATE OWNERSHIP OF SUBMERGED LAND**

[3:32:37 PM](#)

CHAIR TARR announced that the only order of business would be CS FOR SENATE BILL NO. 227(RES), "An Act relating to state ownership of submerged land underlying navigable water within the boundaries of and adjacent to federal areas; and providing for an effective date."

CHAIR TARR noted for the committee's reference that there exist additional documents in the committee packet, including a legal opinion from Legislative Legal & Research Services, a response from the United States Department of Agriculture National Forest Service, press articles related to the proposed legislation, and letters of support and opposition to SB 227. She invited Mr. Walker from the Department of Natural Resources to explain the difference between the underlying bill and the committee substitute before the committee.

3:33:55 PM

JIM WALKER, Section Chief, Public Access Assertion and Defense, Division of Mining Land and Water, Department of Natural Resources, answered questions during the hearing on SB 227. He explained that SB 227 and HB 397 were previously identical to one another, and that the changes in the committee substitute before the committee were minor. He stated that the title was changed to include the words "and adjacent to" following the words "and within". He noted a similar change was made to Section 1, to insert "and adjacent to" following the words "waters in". He stated that Section 2 was changed by inserting "and adjacent to" following the words "land within". He stated that in Section 6, the committee substitute changed the definition of "federal areas" to mean land within state borders that is managed by a federal agency, including the United States National Park Service, the United States Fish and Wildlife Service, the United States Forest Service, or the United States Department of the Interior Bureau of Land Management, but does not include federally managed land that is subject to a pre-statehood federal withdrawal that clearly and explicitly evinces the intent to defeat state acquisition of title. He noted that the definitions of "mean high water" had been changed to mean the tidal datum plane of the average of all high tides, as would be established by the National Geodetic Survey, at any place of tidal influence; and "mean high water line" means the intersection of the datum plane of mean high water with the shore.

MR. WALKER further noted that the definition of "submerged land" was updated to mean land underlying navigable water up to the ordinary high-water mark or, in the case of tideland, up to the mean high water line. He noted that this change required additional conforming changes. Finally, he added that there had existed several typographical errors that had been corrected, and "one-third of the season" had been removed, and in its place was "at any time" during the open water season. He noted that the date of April 20, 2022, had been inserted in one provision that the department would seek to amend.

[3:38:17 PM](#)

REPRESENTATIVE ORTIZ referred to the legal opinion [included in the committee packet], entitled "HB 397 Research - Legal Opinion - Bullard 4.28.22.pdf," which read as follows [original punctuation provided]:

It is not clear what effect a statutory claim that the state owns submerged land beneath navigable water within and adjacent to certain federal areas in the state might have. A claim in state law that a body of water is navigable will not bind the federal government.

REPRESENTATIVE ORTIZ asked what the impact of the passage of SB 227 would be in consideration of that opinion.

MR. WALKER offered that during 60 years of [Alaska] statehood, there did not exist significant federal determination of navigability of waterways statewide, and that most navigable waters had the status of "undetermined." He stated that clear definition of ownership should precede an effective land management system. He stated that the bill would establish the waterways listed in the bill as navigable waterways which otherwise would be addressed via a slow federal process, to the benefit of federal upland owners. He reminded the committee that the Equal Footing Doctrine granted ownership of those lands at the time of statehood unless there had been an explicit withdrawal. He offered that the clarity of title of the submerged lands would provide the federal government to either agree with the state's determination, or to disagree. He offered an anecdote concerning the Tetlin National Wildlife Refuge in which the refuge manager had contacted the department and disclosed that there existed docks and other infrastructure that may have been built on state owned lands, and he was seeking guidance from the department. He explained that the

department had researched and decided that the activities that had been engaged had been mostly for allowable uses, and there were several docks and other infrastructure components that did require a permit. He noted that the state permitting process was much simpler than a federal permitting process. He suggested that the passage of SB 227 would result in increased cooperation from the federal government to comply with state land usage laws. He added that, should a dispute arise regarding land ownership, the state had prevailed in all similar litigation, and he would expect that the state would prevail in any such future litigation.

[3:44:15 PM](#)

REPRESENTATIVE ORTIZ asked whether the state had a role in the management of navigable waters adjacent to federal owned or federally managed lands in the absence of SB 227.

MR. WALKER stated that the state did have a role in working to clear titles of state-owned lands. He added that recordable disclaimers of interest (RDIs) had been sought and the state had participated in litigation to clear titles. He stated that the RDI program was slow and expensive, with the average time for resolution of an RDI being that of a decade. He described RDIs as being equivalent to a Quit Claim Deed and had been developed under the Federal Land Policy and Management Act of 1976 (FLPMA). He noted that Alaska's congressional delegation had requested an audit of the RDI system due to its perceived inefficiencies and expense.

REPRESENTATIVE ORTIZ referred to Ward Lake near Ketchikan and stated that he had observed effective [federal] management and public usage of the popular area and asked why there would need to be a change to that management that would involve the state.

MR. WALKER offered an example in which a resident of Prince of Whales Island who had been using a small jet boat on the Thorne River for decades, had contacted the department and disclosed that the United States Forest Service (USFS) had cautioned him that he would receive a federal citation, should he continue the activity. He noted that the Thorne River was contained in SB 227. He offered a hypothetical comparison in which a neighbor would decide what a landowner could do on his/her own property, and that such decisions should be made by the landowner. He suggested that in cases where effective management was in place, no change of management would be necessary. He added that state owned lands were promised at statehood and that Alaska has a lot

more submerged lands than in other states. He submitted that, when adjacent landowners agree, no intervention is necessary and that, when "things go bad," the landowner should make decisions regarding land use.

[3:50:19 PM](#)

REPRESENTATIVE ORTIZ mentioned his use of Ward Lake and his use of Wilson Lake and asked whether there existed a potential for interference with clean water management maintenance.

MR. WALKER answered that the proposed bill would not interfere with federal monitoring or activities under the Clean Water Act. He drew the distinction that the bill would rather concern property ownership and the regulation of the uses of the water flowing over the submerged lands. He noted that, should any degrading use that could affect adjoining lands occur, the adjacent landowner would be able to seek remedies.

CHAIR TARR summarized that there exists dissatisfaction on the part of the state to conclude RDI processes, and asked whether, should SB 227 pass, there would exist two scenarios in which either the federal government would challenge the state, or it would not. She asked whether the potential for additional litigation exists, considering the attorneys' opinions that it would not persuade the federal government to decline litigation. She expressed her concern that there could be increased costs due to potential litigation.

[3:54:45 PM](#)

MR. WALKER answered that constant litigation is the current reality. He suggested that the federal government had willfully withheld findings of navigability that result in the federal agencies "pulling the rug out from the state in court," pending the federal determination of navigability. He stated that SB 227 would designate all the obviously navigable waters as such and designate all the obviously non-navigable waters as such. He stated that the bill would not designate waterways as navigable over which reasonable parties may disagree. He stated that, should the federal government disagree with the state's designation of a waterway as navigable, it would have the right to file a lawsuit, as it currently occurs. He recalled the ruling in Alaska v. United States in which the judge had opined that the federal government had acted in bad faith regarding the Mosquito Fork submerged land usage. He stated that the passage

of SB 227 would enable the state to assert a clear claim of title of submerged lands.

MR. WALKER opined that the passage of SB 227 would not result in an invitation to additional litigation. He suggested that the passage of the bill would result in more meaningful discussions regarding land ownership and that such conversations had been prompted by the filings of SB 227 and HB 397.

[3:58:36 PM](#)

CHAIR TARR noted that state ownership of submerged lands was based on navigability and stated that there may exist differences regarding the designation of some lands since statehood and postulated that those differences may pose additional challenges to the assertion of ownership of some submerged lands.

MR. WALKER stated that the law prescribes that, if a river is currently in its natural and ordinary condition, and that no manmade changes have been made since statehood, then the waterway was navigable at statehood and remains navigable now. He added that any waterway upon which a reasonably defined boat may operate is navigable and assumed to have been navigable since statehood. He added that the state is obligated to prove in court assertions of land ownership, and it has adopted new, cost-effective technologies such as drones to document the evidence required to prevail in court.

MR. WALKER referred to the Mendenhall Lake in Juneau and noted that the Tongass National Forest had been withdrawn at statehood but that [the claim of ownership of the submerged land] had been upheld by the court. He provided further examples concerning the Stikine River and the Taku River that had been involved in the RDI process for over a decade. He referred to the process of asserting land ownership in the Chugach National Forest had been identical to the outcome as the claims within the Tongass National Forest. He stated that previously discredited arguments were brought forth by the federal government against state claims of land ownership and that SB 227 would further the state's position regarding the waterways listed in the bill. He stated that the passage of SB 227 and HB 397 would solve the problems that are reoccurring in the courts.

[4:05:03 PM](#)

CHAIR TARR noted that there were hundreds of waterways listed in the proposed bills and suggested that concerns over increased litigation would result from the state addressing all the waterways at once and that the federal government may consider them on an individual basis.

MR. WALKER stated that he would not predict that as an outcome. He stated that the only options available to the state would be to assert ownership, to assert management as though the state was the owner, or litigation. He stated that the passage of the bills would not change the state's position in litigation whatsoever.

[4:07:11 PM](#)

CHAIR TARR opened public testimony on SB 227.

[4:07:22 PM](#)

CRAIG COMPEAU testified in support of SB 227. He stated that his family had been engaged in a boating business on Alaska rivers since the 1940s. He stated that the state had spent millions of dollars and decades of time debating whether individual rivers are navigable in cases that he characterized were, without question, navigable. He claimed that there exist delay tactics and federal overreach that included interference from outside interests. He urged the committee to pass SB 227.

[4:08:57 PM](#)

MIKE SEWRIGHT, Assistant State Attorney General (retired), Member, Board of Directors Safari Club International, testified in support of SB 227. He cited his experience as a former state attorney involved in the litigation over ownership of submerged lands and lauded the bill as significant. He requested that the committee read the letter entitled, "SB 227 Testimony - Support - SCI AK 5.9.22.pdf," [included in the committee packet] since its author, John Sturgeon, was unable to personally testify to the committee due to a scheduling conflict. He stated that SB 227 would establish navigability standards and would include the types of small watercraft that have been approved by the courts and the United States Department of the Interior. He stated that the bill would not amount to an attempt to expand the law. He stated that the passage of SB 227 would provide the public with clarity regarding which lands are state-owned. He stated that the proposed legislation has been drafted based on language taken directly from related court cases. He stated that it had

been established by the courts that the use, or the susceptibility for use, by small watercraft and river boats capable of transporting 800-1,000 pounds of people and gear for tourism, guided fishing, and other activities demonstrated a waterway's navigability.

MR. SEWRIGHT stated that the significance of navigability would be to establish state ownership of the submerged lands and would establish paramount state control of the overlying waterways for management purposes. He suggested that SB 227 was not partisan in nature. Further, he stated his belief that the passage of SB 227 would not result in any added expense to the state. He compared the proposed bill as being like prior legislation that established RS2477 trails as state-owned. He urged the passage of SB 227.

[4:15:01 PM](#)

CHAIR TARR asked for Mr. Sewright's opinion on the reasons for delays with the federal RDI processes.

MR. SEWRIGHT offered that federal agencies failed to recognize waterways as navigable due to its intent to continue federal jurisdiction over the waterways within federally owned lands and suggested that there may exist bureaucracy and a negative impetus to address the issues. He suggested that the state asserting ownership of the lands would prompt federal agencies to cooperate with the state on the issues of land ownership.

CHAIR TARR stated her belief that there would be increased management activities, should SB 227 pass, and that there would exist additional associated costs. She asked for M. Sewright to offer his opinion based on his experience regarding any associated costs.

MR. SEWRIGHT stated that, based on his experience, the passage of the bill identifying the waterways would not result in additional expense nor in additional litigation and suggested that the opposite may occur, since the bill would eliminate uncertainty as to who is claiming ownership of the lands. He reminded the committee that he had never been involved in related litigation in which the state had not prevailed in court.

[4:20:08 PM](#)

REPRESENTATIVE VANCE asked whether the long processes associated with establishing land ownership was common in other states.

MR. SEWRIGHT answered that it was more common in Alaska due to the large number of waterways in Alaska. He noted that many other states had more private land ownership. He noted that Alaska has many times more federal lands than in any other state, and that the federal government had asserted ownership of those lands following statehood. He stated that federal assertion of lands should not affect the question of navigability of waterways. He stated that there exist many cooperative management agreements for certain lands.

[4:22:57 PM](#)

ALEX JOHNSON, Alaska Senior Program Manager, National Parks Conservation Association, testified in opposition to SB 227. He cautioned the committee to "be careful what you wish for" since the state does not have the budget for management and law enforcement activities for the management of the lands in the bill. He suggested that the question of navigability was not as simple as other testifiers had asserted it to be. He stated that there had been benefit to the state from federal management of activities on such lands.

CHAIR TARR recalled Representative Vance's earlier question regarding related issues in other states, and asked Mr. Johnson to offer his organization's perspective.

MR. JOHNSON echoed Mr. Sewright's earlier testimony that Alaska is unique to other states in land and water management. He stated that he did not have direct experience with such matters in other states but offered to conduct research and share his findings with the committee.

[4:27:37 PM](#)

CHAIR TARR, after ascertaining there was no one else who wished to testify, closed public testimony on SB 227.

CHAIR TARR stated that some Alaska Native Claims Settlement Act (ANCSA) corporations had expressed concerns that the bill was rushed and that their feedback had not been sought.

MR. WALKER stated that he was previously unaware of such concerns and reminded the committee that the bill would only pertain to federally owned areas and would have no applicability

to Native-owned or privately owned lands. He listed the affected lands as those associated with the National Park Service, U.S. Fish & Wildlife Service areas, U.S. Forest Service areas, and the Bureau of Land Management areas. He invited any party interested in the pending legislation to contact his office.

CHAIR TARR noted that there had been issues with land selection based on ANCSA and asked whether the potential for similar issues existed, should SB 227 pass.

MR. WALKER asserted that it would not. He stated that the bill does not claim lands to fulfill such land grants and only pertains to federal CSUs and other federal areas that have been previously established.

[4:31:06 PM](#)

CHAIR TARR asked whether additional financial resources should be considered since the state's management duties would increase, should the bill pass.

MR. WALKER stated that the question regarding increased cost had been asked and that, following additional research by his office, the pending bill consists of 8,971 river miles and 488,992 lake acres. He stated that DNR manages 100 million acres of state land. He characterized the lands listed in the bill were small by way of comparison. He noted that DNR would add an annual reporting requirement and that there could be suggested additions to the list. He stated that, in most instances, there would exist only one permit applicant, and the applicant would be the United States government. He added that the adjudication of a permit would be exponentially cheaper than litigation.

[4:35:26 PM](#)

REPRESENTATIVE VANCE asked whether the state would refrain from evicting users of state-owned lands.

MR. WALKER answered the Representative Vance was correct. He noted that when the Dunleavy administration issued its Unlocking Alaska Initiative, state agencies contacted the federal government to request cooperation regarding its infrastructures and bringing them into compliance with state permitting regulations. He added that the state would honor federal permits for land use. He stated that the intention is

to cooperate as an adjoining landowner with the owner of the uplands for the public's benefit.

[4:37:55 PM](#)

REPRESENTATIVE VANCE rhetorically asked the reason the legislation had not been introduced sooner and suggested that the bill would allow Alaska to come into its own existence.

REPRESENTATIVE MCCABE commented that it requires two parties to negotiate, and the passage of the bill could force the federal government to the negotiating table.

[SB 227 was held over.]

[4:41:39 PM](#)

#### **ADJOURNMENT**

The House Special Committee on Fisheries meeting was recessed to a call of the chair at 4:41 p.m. [The meeting never reconvened.]