

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 27, 2022

3:34 p.m.

MEMBERS PRESENT

Senator Joshua Revak, Chair
Senator Peter Micciche, Vice Chair
Senator Gary Stevens
Senator Natasha von Imhof
Senator Jesse Kiehl
Senator Scott Kawasaki

MEMBERS ABSENT

Senator Click Bishop

COMMITTEE CALENDAR

SENATE BILL NO. 227

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

- MOVED CSSB 227(RES) OUT OF COMMITTEE

SENATE BILL NO. 230

"An Act establishing a \$25 fee to construct or use a trapping cabin on state land; and exempting trapping cabin permittees from additional land use fees."

- MOVED CSSB 230(RES) OUT OF COMMITTEE

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

BILL: SB 230

SHORT TITLE: TRAPPING CABINS: FEE FOR CONSTRUCTION

SPONSOR(s): RESOURCES

03/11/22 (S) READ THE FIRST TIME - REFERRALS
03/11/22 (S) RES
03/23/22 (S) RES AT 3:30 PM BUTROVICH 205
03/23/22 (S) Heard & Held
03/23/22 (S) MINUTE (RES)
04/22/22 (S) RES AT 3:30 PM BUTROVICH 205
04/22/22 (S) -- MEETING CANCELED --
04/27/22 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

INTIMAYO HARBISON, Staff
Senator Josh Revak
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented an explanation of changes from Version B to Version I of SB 227 on behalf of the committee.

RON OPSAHL, Assistant Attorney General
Natural Resources Section
Civil Division
Department of Law
Anchorage, Alaska

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

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

POSITION STATEMENT: Answered questions during the discussion of SB 227.

INTIMAYO HARBISON, Staff
Senator Josh Revak

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented an explanation of changes from Version A to Version B of SB 230 on behalf of the committee.

CHRISTY COLLES, Chief of Operations
Division of Mining, Land, and Water
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 230.

ACTION NARRATIVE

[3:34:18 PM](#)

CHAIR JOSHUA REVAK called the Senate Resources Standing Committee meeting to order at 3:34 p.m. Present at the call to order were Senators Kiehl, Kawasaki, von Imhof, Stevens, Micciche, and Chair Revak.

SB 227-STATE OWNERSHIP OF SUBMERGED LAND

[3:35:01 PM](#)

SENATE BILL NO. 227 "An Act relating to state ownership of submerged land within and adjacent to federal areas; and providing for an effective date."

[CSSB 227, Version B, was before the committee.]

[The bill was previously heard on 4/8/2022 and 4/20/2022.]

[3:35:35 PM](#)

VICE CHAIR MICCICHE moved to adopt the committee substitute (CS) for SB 227, work order 32-GS2561\I, Version I, as the working document.

CHAIR REVAK objected for discussion purposes.

[3:36:06 PM](#)

INTIMAYO HARBISON, Staff, Senator Josh Revak, Alaska State Legislature, Juneau, Alaska, offered his view that Version I would address the concerns raised at the last hearing. He paraphrased the Explanation of Changes on behalf of the committee, which read:

[Original punctuation provided.]

SB 227 Explanation of Changes Version \B to Version \I

P.1, line 8-9.

Amended to read "navigable water within the boundaries of and adjacent to federal areas".

P.2, line 2-3.

Amended to read "navigable water listed in AS 38.04.063 that is within the boundaries of and adjacent to federal areas".

[3:37:09 PM](#)

P.2, line 11-12.

Amended to read "navigable water within the boundaries of and adjacent to federal areas".

P.3, line 4.

Strike "or"

P.3, line 6.

Add "or" following ";".

P.3, line 7.

Insert "(C) other federal areas".

P4., line 1.

Amended to read "navigable water within the boundaries of and adjacent to federal areas".

P 4., line 11

Sec. 7. AS 38.04.062 is amended by adding new subsections to read:

(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, and after considering factors that include

[3:37:53 PM](#)

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

P.5, line 1-2.

Amended to read "that is within the boundaries of and adjacent to federal areas."

[3:38:44 PM](#)

SENATOR KAWASAKI referred to page 4, line 11 of the explanation of changes, related to boatable waters. He stated that sometimes rivers are boatable right after breakup, but the high-water mark would be lower the rest of the year. He wondered how that would affect the determination of boatable.

[3:39:20 PM](#)

RON OPSAHL, Assistant Attorney General, Natural Resources Section, Civil Division, Department of Law, Anchorage, Alaska, responded that the bill used boatable "at any time" to make it less restrictive. He explained that the issue with the previous language, "boatable during the open-water season," could be interpreted to mean that it must be boatable during the entire open-water season. The original language was for one-third of the open water season, but the Alaska Department of Fish and Game (ADF&G) thought that language was too restrictive. Currently, case law doesn't define how much of the open-water season needs to be available for boatability. However, as case law develops, it will better define the open-water season. He noted that the department did not want to codify something more restrictive than necessary.

SENATOR KAWASAKI asked for clarification that this change is more permissive and less restrictive.

MR. OPSAHL replied that is correct.

[3:41:00 PM](#)

SENATOR VON IMHOF asked whether questions were limited to the committee substitute right now.

CHAIR REVAK answered yes, questions right now were about the changes incorporated in the committee substitute.

[3:41:18 PM](#)

CHAIR REVAK withdrew his objection; he found no further objection, and Version I was adopted as the working document. He solicited further questions

[3:41:41 PM](#)

SENATOR VON IMHOF referred to page 5, line 5, which indicates the "SWFA" number, the identification number assigned to the body of water on April 20, 2022, by DNR [in its Navigable Waters

in Federal Areas Database]. She asked whether the SWFA number was listed on DNR's website so someone could input the numbers and pull up the navigable water and that perhaps it would pull up a map showing the location.

[3:42:24 PM](#)

JIM WALKER, Public Access Assertion and Defense Section Chief, Division of Mining, Land and Water, Department of Natural Resources, Anchorage, Alaska, answered that it would be available, but some technical aspects were being worked through to add the specific numbers. He noted that the files were being maintained at DNR. The water body is currently listed on DNR's Navigable Waters Map. The unnamed water bodies listed in the bill have specific geographic descriptive information that would allow someone to identify them on the map.

[3:43:27 PM](#)

SENATOR VON IMHOF related her understanding that the SWFA would be available soon. She referred to page 9, line 8, the line item for Big Lake, SWFA 0100. She asked which Big Lake it refers to since it is a common name for lakes. She noted that Big Lake is a popular destination in the Mat-Su Valley, so some people wondered which lake is SWFA 0100. She asked where the public could find that information.

MR. WALKER directed attention to the bottom of page 8 and page 9, lines 1-3, which reference water bodies in Denali National Park and Preserve. He explained that Big Lake in Mat-Su is not covered in this bill because it does not fall within the federal area. The SWFA water bodies are only located within federal CSUs and other statewide areas. The SWFA number will appear on a specific water body identified on DNR's Navigable Waters Map. He referred to page 11, various unnamed lakes and rivers listed have specific descriptions within the statutory language in the bill, which also appear on DNR's Navigable Waters Map, which pinpoints the precise location of the unnamed lake or river.

[3:46:46 PM](#)

SENATOR VON IMHOF asked for an estimate of when the link would be available on the website.

MR. WALKER suggested that if someone has a specific question on the location of a water body, they could call DNR and speak to him or his staff. He estimated that the website to pinpoint the SWFA would be available in several weeks.

[3:47:42 PM](#)

SENATOR VON IMHOF asked whether boatable or navigable water definitions align with the federal definition.

MR. WALKER explained that the definitions align with federal case law, including the US District Court decision in State of Alaska v. the United States related to the Gulkana River 662 F. Supp. 455 (1987), and the US Supreme Court ruling in the John Sturgeon decision. [Sturgeon v. Frost, 139 S. Ct. 1066 (2019)].

[3:48:46 PM](#)

SENATOR VON IMHOF referred to page 4, lines 14-15, and read a portion of AS 38.04.062(j)(1), "...in this paragraph, "customary and traditional watercraft" includes poling boats, skin boats, motorized and nonmotorized inflatable rafts, canoes, motorized riverboats, airboats, jetboats, and other watercraft"

MR. WALKER read the definition, as follows:

"customary and traditional watercraft" includes poling boats, skin boats, motorized and nonmotorized inflatable rafts, canoes, motorized riverboats, airboats, jetboats, and other watercraft in use anywhere in the United States at the time the state achieved statehood;

SENATOR VON IMHOF asked whether he was referring to the definition in federal case law.

MR. WALKER answered that the decision for the Gulkana River [Gulkana River [662 F. Supp.455 (1987)]] explicitly states that language.

[3:50:01 PM](#)

SENATOR KAWASAKI asked for the effect if one of the bill's descriptions or citations for the SWFA navigable waters was listed wrong

MR. WALKER answered that SB 227 requires DNR to present suggested waters to include in the listing at the beginning of each legislative session. He noted that the US Fish and Wildlife Service continues its work in the Chugach National Forest and on Bureau of Land Management (BLM) lands. He related that DNR must amend any descriptions consistent in developing case law or work. For instance, if the state prevailed in litigation and a federal court agreed that a waterway was navigable further upstream than described in statute or further downstream, DNR would ask the legislature to amend the entry. He predicted that

this work would be ongoing and span several legislative sessions.

[3:52:40 PM](#)

SENATOR KAWASAKI stated that he had introduced a bill to expand the boundaries of the Creamer's Field Wildlife Refuge. He highlighted that the boundaries were cited wrong in the bill, so the governor had to veto the bill. He noted that the legislature had to go through the process again, so he wondered how a mistake would affect the navigable waters.

MR. WALKER answered that it would be similar; DNR would bring it before the legislature if a line item were incorrectly identified in the bill. He offered his view that a line-item description mistake would not likely invalidate the bill. He referred to the Revised Statute (RS) 2477 (Section 8 of the Mining Act of 1866) upon which this bill is based. The SOA asserted ownership over certain RS 2477 trails in the 1990s, so the bill refers to a file number maintained by DNR for a particular RS 2477 trail. Those files have expanded over time, and some have been litigated. However, the minor adjustments have not invalidated the enabling statute.

[3:56:07 PM](#)

SENATOR KIEHL asked whether DNR would need specific legislation to partner in instances where there is a broad, shared management plan that would enable infrastructure by the federal government or visitor improvements.

MR. WALKER answered that the department has that power now. It is good for all Alaskans and adjoining landowners with management and control authority to work together for the public good whenever possible. For example, if a federal agency approached DNR with a plan to enhance the visitor experience on state-owned uplands by building a dock, boat, or ramp, the department would work closely to facilitate, enable, and expedite the permitting process. However, the key is recognition of state and federal jurisdiction and authority. If the state wishes to use submerged federal lands, it should go through the federal authorization process and vice versa. He predicted that if SB 227 were to pass, it would foster better state and national partnerships. He said good land management requires a clear determination of federal and state land boundaries.

[3:59:56 PM](#)

SENATOR KIEHL said he appreciated knowing that DNR has that power. He offered his view that it takes a willingness of state and federal staff to work together to accomplish the goals.

[4:00:54 PM](#)

MR. WALKER related that he received a call from the refuge manager of the Tetlin National Wildlife Refuge, which is under U.S. Fish and Wildlife Service (USFWS), asking what he needed to do to get federal infrastructure that falls within the refuge on state submerged land into compliance with state law.

[4:02:06 PM](#)

SENATOR MICCICHE moved to report the committee substitute (CS) for SB 227, work order 32-GS2561\I, from committee with individual recommendations and accompanying fiscal notes.

CHAIR REVAK found no objection, and CSSB 227(RES) was reported from the Senate Resources Standing Committee.

[4:02:40 PM](#)

At ease

SB 230-TRAPPING CABINS: FEE FOR CONSTRUCTION

[4:04:50 PM](#)

CHAIR REVAK reconvened the meeting and announced the consideration of SENATE BILL NO. 230 "An Act establishing a \$25 fee to construct or use a trapping cabin on state land; and exempting trapping cabin permittees from additional land use fees."

CHAIR REVAK solicited a motion to adopt a committee substitute as a working document.

[4:05:23 PM](#)

VICE CHAIR MICCICHE moved to adopt the committee substitute (CS) for SB 230, work order 32-LS1624\B, as the working document.

[4:05:41 PM](#)

CHAIR REVAK objected for discussion purposes.

[4:05:45 PM](#)

INTIMAYO HARBISON, Staff, Senator Josh Revak, Alaska State Legislature, Juneau, Alaska, paraphrased the explanation of Changes from version A to version B on behalf of the committee:

[Original punctuation provided.]

SB 230 Explanation of Changes Version \A to Version \B

Page 1, Lines 1-2

Reflects a title change, to more broadly include trapping cabins on state land, as well as the fees associated with them.

Sec 1., Page 1, Line 14

Removes language referencing, AS 38.95.075(b), 38.95.080(f), and replaces with 38.95.080(g).

Sec 2., Page 2, Line 8

Repealed and re-enacted to allow for the construction and use of trapping cabins on state land.

Sec 3., Page 2, Line 17

Repealed and re-enacted to clarify who qualifies for a permit, and when the Commissioner shall issue a permit.

Sec 4., Page 2, Line 27

Is amended to specify that the director shall establish conditions in which a permit shall be issued and further establishes restrictions on those conditions established by the director.

Sec 5., Page 3, Line 25

Is amended to clarify that the state is not disposing of land that has been permitted and that a permit does not establish preference rights for lease or purchase.

Sec 6., Page 4, Line 4

Adds a new subsection establishing that the director may issue multiple permits for the use of a trapping cabin if current permit holders agree. Further clarifies that the department may not charge additional fees for use or construction of a trapping cabin under this section.

Sec 7., Page 4 Line 10

Amended to clarify definitions.

Sec 8., Page 4, Line 17

Repeals AS 38.95.075

[4:08:38 PM](#)

SENATOR KIEHL referred to AS 38.95.080(a), which is repealed and reenacted in Version B. He expressed concern that it does away with the requirement that the person have an established trapline that they use regularly. He acknowledged that the language may have been relocated within the bill.

MR. HARBISON offered his belief that it was still within bill. He directed attention to Sec. 3. AS 38.95.080(b)(3)(A), which read:

(3) provides proof acceptable to the commissioner that the person

(A) has an established trapline of sufficient length to justify the need for cabin construction or use; and

[4:09:53 PM](#)

CHRISTY COLLES, Chief of Operations, Division of Mining, Land, and Water, Department of Natural Resources, Anchorage, Alaska, stated that the requirement to provide proof that a trapline is of sufficient length to justify the need for a cabin is in regulation. She noted that the division works with the Alaska Department of Fish and Game (ADF&G) on the parameters. She said the language cited provides the authority for the division to acquire the information needed.

SENATOR KIEHL asked if this is drafted such that an application must meet subparagraphs (A) and (B) to be permitted.

MS. COLLES replied yes, both would be needed.

[4:11:14 PM](#)

SENATOR KIEHL referred to Sec. 8. AS 38.95.075, which is repealed. He asked whether that referred to the old trapping cabins, pre-1984 to 1986. He recalled that only a few of those cabins remained. He wondered what would happen to those cabins by repealing that provision.

MS. COLLES answered that when a statute is repealed, the department would continue the authorization until the statute expires. Once it is expired, the department would authorize it under AS 38.95.080. AS 38.95.075 is the oldest statute and it is difficult to administer because there are cabins on state land are not owned by anyone, or the owners would like someone else to use them. The department doesn't have a way to authorize the existing cabin because the parameters in AS 38.95.075 are so restrictive. The department believes that repealing the old

statute will give the department flexibility to authorize the existing cabins under AS 38.95.080.

[4:12:56 PM](#)

SENATOR KIEHL asked whether the cabins authorized under AS 38.95.080 would be subject to size limits.

MS. COLLES answered yes, they would be subject to size requirements, but most of these cabins are not above the allowed square footage. She said she had not seen this issue arise thus far.

[4:13:51 PM](#)

SENATOR KIEHL commented that he hoped that the pre-1984 cabins would be sufficiently grandfathered.

CHAIR REVAK answered that is certainly the committee's intent.

MS. COLLES said it also reflects the department's intent. DNR has no desire to take away people's trapping cabins. She said she was unaware of any cabins that do not meet the size requirements.

[4:15:06 PM](#)

At ease

[4:16:01 PM](#)

CHAIR REVAK reconvened the meeting, stating that the Senate Resources Standing Committee has clarified that the intention is to grandfather in those cabins. He said he would work on that issue with the Senate Finance Committee, the next committee of referral.

CHAIR REVAK removed his objection; he found no further objection, and the committee substitute (CS) for SB 230, Version B, was adopted as the working document.

[4:17:08 PM](#)

SENATOR MICCICHE moved to report the committee substitute (CS) for SB 230, work order 32-LS1624\B, from committee with individual recommendations and attached fiscal note(s).

CHAIR REVAK found no objection, and CSSB 230(RES) was reported from the Senate Resources Standing Committee.

[4:18:03 PM](#)

There being no further business to come before the committee,
Chair Revak adjourned the Senate Resources Standing Committee
meeting at 4:18 p.m.