

Offered: 5/11/85

Original sponsors: Cotten, Shultz,  
M.W.Miller, et al

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 316 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the navigable or public water of  
7 the state; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. FINDINGS AND PURPOSE. (a) The people of the state have a  
10 constitutional right to free access to the navigable or public water of the  
11 state.

12 (b) Subject to the federal navigational servitude, the state has full  
13 power and control of all of the navigable or public water of the state,  
14 both meandered and unmeandered, and it holds and controls all navigable or  
15 public water in trust for the use of the people of the state.

16 (c) Ownership of land bordering navigable or public water does not  
17 grant an exclusive right to the use of the water and any rights of title to  
18 the land below the ordinary high water mark are subject to the rights of  
19 the people of the state to use and have access to the water for recreation-  
20 al purposes or any other public purpose for which the water is used or  
21 capable of being used consistent with the public trust.

22 (d) This Act may not be construed to affect or abridge valid existing  
23 rights or create any right or privilege of the public to cross or enter  
24 private land.

25 \* Sec. 2. AS 38.05 is amended by adding a new section to read:

26 Sec. 38.05.128. OBSTRUCTIONS TO NAVIGABLE WATER. (a) A person  
27 may not obstruct or interfere with the free passage by a member of the  
28 public on any navigable water as defined in AS 38.05.965(12) unless  
29 the obstruction or interference is

Original sponsor: Senator Shultz, M.W. Miller, et al.

- 1 authorized by a federal or state agency;
- 2 (2) authorized under a federal or state law or permit;
- 3 (3) exempt under the Federal Clean Water Act (33 U.S.C.,
- 4 1344(f));
- 5 (4) caused by the normal operation of freight barging that
- 6 is otherwise consistent with law; or
- 7 (5) authorized by the commissioner after reasonable public
- 8 notice.

9 (b) A violation of (a) of this section is a class B misdemeanor.

10 (c) An unauthorized obstruction or interference is a public  
11 nuisance and is subject to abatement. The cost of abatement shall be  
12 borne by the violator and is in addition to any penalty imposed by the  
13 court.

14 (d) This section may not be construed to affect or abridge valid  
15 existing rights.

16 \* Sec. 3. AS 38.05.127(c) is repealed and reenacted to read:

17 (c) Nothing in this section affects valid existing rights or  
18 limits in any way the constitutional right of the public to use and  
19 have free access to the navigable or public water of the state.

20 \* Sec. 4. This Act takes effect immediately in accordance with AS 01-  
21 10.070(c).

22 (b) This Act may not be construed to affect or abridge valid existing  
23 rights or create any right or privilege of the public to cross or enter  
24 private land.

25 \* Sec. 5. AS 38.05 is amended by adding a new section to read:

26 Sec. 38.05.128. OBSTRUCTION TO NAVIGABLE WATER. (a) A person

27 may not obstruct or interfere with the free passage by a member of the

28 public on any navigable water as defined in AS 38.05.021(1) unless

29 the obstruction or interference is