

H B

3 1 6

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

SENATE RESOURCES COMMITTEE,

1) 1) 5/3/85, 1:35  
5/7/85, 3:40

Offered: 4/16/85  
Referred: Rules

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

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 **SENATE CSM** CS FOR HOUSE BILL NO. 316 (Finance) am **(Resources)**

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 waters 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. AS 38.05 is amended by adding a new section to read:

10 Sec. 38.05.126. PUBLIC RIGHTS TO NAVIGABLE OR PUBLIC WATER. (a)

11 The natural resources and the natural scenic beauty of the state are a  
12 public right, and the people of the state have a vested right in the  
13 preservation, protection, and enjoyment of all of the navigable or  
14 public water of the state in its present state and in the use of the  
15 water for recreational and other public purposes.

16 (b) The state has full power and control of all of the navigable  
17 or public water of the state, both meandered and unmeandered, and it  
18 holds and controls all navigable or public water in trust for the use  
19 of the people of the state.

20 (c) Ownership of land bordering navigable or public water does  
21 not grant an exclusive right to the use of the water and any rights of  
22 title to the land below the ordinary high water mark are subject to  
23 the rights of the people of the state to use and have access to the  
24 water for recreational purposes or any other public purpose for which  
25 the water is used or capable of being used consistent with the public  
26 trust.

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

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

new language

1           Sec. 38.05.128. OBSTRUCTIONS TO PUBLIC WATER. (a) A person may  
2 not obstruct or interfere with the free passage or use of any navi-  
3 gable or public water of the state unless authorized to do so by federal  
4 agency, federal law, or federal permit, or by the commissioner, after  
5 public hearing.

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

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

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

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

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

17 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).

HB 316

GOOD AFTERNOON MADAM CHAIR, MY NAME IS BOB LOESCHER AND I AM VICE PRESIDENT, RESOURCE MANAGEMENT, FOR SEALASKA CORPORATION. SEALASKA IS THE REGIONAL ANCSA CORPORATION FOR SOUTHEAST ALASKA, AND IT CURRENTLY OWNS SOME 450,000 SURFACE AND SUBSURFACE ACRES IN THE REGION -- VIRTUALLY ALL OF WHICH LIES ADJACENT TO STATE TIDELANDS.

SEALASKA'S ABILITY TO DEVELOP ITS UPLANDS -- WHETHER FOR TIMBER, FISHERIES OR OTHER PURPOSES -- IS DEPENDENT UPON ACCESS TO THE STATE'S NAVIGABLE WATERS. AS A RESULT, THE CORPORATION IS DEEPLY CONCERNED OVER ANY LEGISLATION WHICH WOULD THREATEN THE ABILITY OF ALASKA INDUSTRY TO USE TIDELANDS, AND THE NAVIGABLE WATERS THEMSELVES FOR TRANSPORTATION AND COMMERCE. HB 316 PRESENTS PRECISELY SUCH A THREAT, AND MY PURPOSE HERE TODAY IS TO URGE THIS COMMITTEE TO HOLD THIS LEGISLATION UNTIL NEXT SESSION, SO THAT ITS POTENTIALLY FAR REACHING CONSEQUENCES CAN BE GIVEN FAR MORE THOUGHT THAN HAS HAPPENED TO DATE.

I HAVE READ THE SPONSOR'S MAY 2 MEMO TO THE COMMITTEE, AND I UNDERSTAND THAT THE PURPOSE OF THIS BILL IS QUITE LIMITED. IN THE WORDS OF THE

SPONSOR, IT IS INTENDED TO "EXPEDITE" ENFORCEMENT ACTION FOR UNLAWFUL OBSTRUCTIONS OF STATE TIDELANDS, AND PUBLIC WATERS. IT DOES SO, AND DOES SO ONLY BY MAKING UNLAWFUL OBSTRUCTION A CRIME.

UNLAWFUL OBSTRUCTION, HOWEVER, IS ALREADY A CRIME. THE STATE, OF COURSE, OWNS THE BED OF TIDE AND SUBMERGED LANDS BENEATH NAVIGABLE WATERS, AND CURRENT LAW REQUIRES ANY OCCUPANT TO OBTAIN EITHER A PERMIT OR A TIDELANDS LEASE FROM THE DEPARTMENT OF NATURAL RESOURCES. IF ONE CREATES AN OBSTRUCTION WITHOUT THE APPROPRIATE PERMIT OR LEASE, ONE IS TRESPASSING, AND TRESPASSING IS A CRIME.

MOREOVER, CURRENT FEDERAL LAW ALREADY REQUIRES ANYONE WHO WISHES TO OBSTRUCT NAVIGABLE WATERS TO OBTAIN A PERMIT FROM THE U.S. ARMY CORPS OF ENGINEERS. THAT PERMIT PROCESS IS EXTREMELY LENGTHY -- REQUIRING SOMETIMES MANY MONTHS -- AND ALREADY INVOLVES CONSULTATION WITH THE STATE, LOCAL GOVERNMENTS AND AFFECTED CITIZENS. WHY, IT MIGHT FAIRLY ASK, MUST THE STATE ESTABLISH A PARALLEL PERMIT REQUIREMENT TO A REGULATORY PROCESS WHICH HAS WORKED WELL, AND FULLY PROTECTS THE PUBLIC INTEREST?

ALTHOUGH THE BILL SERVES NO NECESSARY PURPOSE, IT RAISES SERIOUS LEGAL AND POLICY ISSUES WHICH DEMAND FURTHER STUDY. ALTHOUGH THE SPONSOR HAS ASSURED THE COMMITTEE THAT THE BILL IS NOT INTENDED TO ALLOW ACCESS TO PUBLIC WATERS OVER PRIVATE LAND, THE BILL BROADLY SPEAKS OF A VESTED "PUBLIC RIGHT" TO USE AND ENJOY NAVIGABLE WATERS. AND, IN OTHER STATES -- SUCH AS CALIFORNIA -- SIMILAR GENERAL AND APPARENTLY HARMLESS LANGUAGE HAS BEEN USED BY THE COURTS TO FORCE PRIVATE LANDOWNERS TO ALLOW THE PUBLIC TO CROSS THEIR PROPERTY TO REACH THE BEACH. THERE IS A LARGE AND DISTURBING BODY OF CASE LAW ON THIS TOPIC, AND I HAVE SEEN NO LEGAL ANALYSIS OF THE EFFECT OF THIS LANGUAGE IN LIGHT OF THOSE COURT DECISIONS.

SIMILARLY, THIS BILL COULD CREATE SIGNIFICANT LEGAL PROBLEMS FOR THOSE ATTEMPTING TO USE TIDELANDS FOR COMMERCE AND NAVIGATION. LAST SESSION, THE LEGISLATURE -- QUITE CORRECTLY -- ACCORDED UPLAND OWNERS A PREFERENCE TO OBTAIN A TIDELAND'S LEASE FOR WATER DEPENDENT PURPOSES. HERE, HOWEVER, WE SEE THE LEGISLATURE ELEVATING RECREATION AND PRESERVATION USES TO PRIMACY. WHILE THERE ARE MANY STATE TIDELANDS WHICH SHOULD BE PRESERVED, AND WHICH SHOULD BE SET ASIDE FOR PUBLIC RECREATION, THERE ARE OTHER ACRES

WHICH MAY AND SHOULD BE USED FOR DOCKS, TRANSFER FACILITIES AND OTHER INSTRUMENTALITIES OF COMMERCE. I CAN FAR TOO EASILY SEE A LAWSUIT OVER THE GRANT OF A TIDELANDS LEASE FOR A DOCK BASED UPON AN INTEREST GROUP'S CLAIM THAT COMMERCIAL DEVELOPMENT VIOLATES THE FIRM STATE POLICY OF PRESERVATION AND RECREATION CONTAINED IN THIS BILL. AGAIN, THE IMPLICATIONS ARE EXTREME, YET NO LEGAL ANALYSIS HAS BEEN DONE.

IN SUM, THE STATE'S RESPONSIBILITIES OVER TIDELANDS COVER A VARIETY OF PURPOSES, AND THEY ARE EXTREMELY IMPORTANT NOT ONLY FOR PUBLIC RECREATION, BUT FOR COMMERCE AND TRANSPORTATION. ANY ATTORNEY WILL TELL YOU THAT THE LAW REGARDING THE USE OF TIDELANDS IS DELICATE AND SENSITIVE, AND THAT ANY LEGISLATION WHICH ADDRESSES THIS ISSUE SHOULD HAVE ITS WORDS MOST CAREFULLY CHOSEN, AND AFTER THE FULLEST CONSIDERATION OF THE POSSIBLE CONSEQUENCES OF THE BILL. THEREFORE, SINCE THERE IS NO PRESSING NEED FOR THIS LEGISLATION -- SINCE THE UNAUTHORIZED OBSTRUCTION OF PUBLIC TIDELANDS IS ALREADY A CRIME, AND SINCE ANY OBSTRUCTION ALREADY REQUIRES A PERMIT FROM THE CORPS -- SEALASKA URGES THE COMMITTEE TO RETURN THIS BILL TO ITS LEGAL STAFF FOR A FULL ANALYSIS OF THE ISSUES I HAVE RAISED HERE.

I WOULD LIKE TO THANK THE COMMITTEE FOR THE TIME GIVEN ME, AND I WILL BE  
HAPPY TO ANSWER ANY QUESTIONS.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



POUCH V  
JUNEAU, ALASKA. 99811  
(907) 465-4907

## Senate Committee on Resources

M E M O R A N D U M

May 7, 1985

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff *MEC*

RE: SENATE CS for CS for HB 316 (Resources)  
"An Act relating to navigable or public waters of the state;  
and providing for an effective date."

The proposed CS for HB 316 has been developed with the help of the sponsor and representatives of a number of interested groups and addresses concerns that were raised at the committee hearing on Friday.

Section 1 is now findings and purposes and is noncodified. Section 1(a) has been rewritten and sections 1 (b) and (d) have had additions.

Section 2(a) has been reworded and section 2(b) has been changed to make obstruction of navigable water a class B misdemeanor. Class B misdemeanors are punishable by up a \$1,000 fine or up to 90 days in jail.

There have not been any other changes in the rest of the bill.

The committee substitute is supported by all the groups that have contacted this office.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

IN THE HOUSE

BY THE RESOURCES COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 316 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

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

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

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

- 1 (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)); or  
5 (4) authorized by the commissioner after reasonable public  
6 notice.

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

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

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

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

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

18 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
19 10.070(c).  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



POUCH V  
JUNEAU, ALASKA. 99811  
(907) 465-4907

## Senate Committee on Resources

M E M O R A N D U M

May 2, 1985

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff *MVA*

RE: CS for HB 316 (Finance) am  
"An Act relating to navigable or public waters of the state;  
and providing for an effective date."

This bill is intended to clarify the right of the public to use public and navigable waters, as set forth by the Alaska Constitution, Article VIII, Section 14.

Attached is a copy of the bill history. This bill passed the house 38 to 0. Also attached is a zero fiscal note, a memo to committee members from the sponsor, Rep. Cotten, and copies of the related statutes and section of the constitution.

HB 316

MEASURE HISTORY

PAGE 01 OF 02

CSHB 316 FIN AM

AN ACT RELATING TO THE NAVIGABLE OR PUBLIC WATERS OF THE STATE; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: COTTEN

CO-SPONSORS: SHULTZ, MILLER, MW, PHILLIPS, JENKINS, SZYMANSKI, DAVIS

\$000 GENERAL(FNOTE)

\$000 OTHER(FNOTE)

CURRENT STATUS: (S) RES

DATE		PAGE	ACTION
03/25/85	(H)	698	READ THE FIRST TIME
04/10/85	(H)	867	RES RFT 4DP 3NR
04/10/85	(H)	867	FISCAL NOTE ZERO
04/16/85	(H)	947	FIN RFT W/CS 7DP 1NR
03/25/85	(H)		RLS TO CALENDAR 4/18/85
04/18/85	(H)	984	READ THE SECOND TIME
04/18/85	(H)	984	CSHB 316(FIN) ADOPTED UNAN CONSENT
04/18/85	(H)	984	AM NO 1 ADOPTED UNAN CONSENT
04/18/85	(H)	984	ADVANCED TO THIRD READING UNAN CONSENT
04/18/85	(H)	984	READ THE THIRD TIME CSHB 316(FIN)AM

HB 316

MEASURE HISTORY

PAGE 02 OF 02

DATE		PAGE	ACTION
04/18/85	(H)	984	PASSED Y38 N- X1 A1
04/18/85	(H)	985	EFFECTIVE DATE SAME AS PASSAGE
04/18/85	(H)	985	TAYLOR NOTICE OF RECONSIDERATION
04/19/85	(H)	1008	RECONSIDERATION NOT TAKEN UP
04/19/85	(H)	1008	TRANSMITTED TO (S)
04/22/85	(S)	869	READ THE FIRST TIME
			RESOURCES
			STATE AFFAIRS
			RULES

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 316  
Title: Navigable or Public Waters

FISCAL DETAIL

Agency Affected: Natural Resources  
Program Category Affected: NRMEC

Sponsor: Cotten Shultz, MW Miller, & Phillips  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Land & Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>		-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact

Prepared By: Mike Vediner *Baator*  
Division: Land & Water Management

Phone: 465-2400  
Date: 4-9-85

Approved by Commissioner: Wm D Arnold, Deputy  
Agency: Department of Natural Resources

Date: 4-9-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

MEMORANDUM

TO: Members of the Senate Resources Committee  
FROM: Rep. Sam Cotten  
RE: HB 316, an act relating to navigable or public waters  
DATE: May 2, 1985

---

The purpose of this bill is to clarify the right of the public to use public and navigable waters, as created by the Alaska Constitution, Article VIII, Section 14.

Public and navigable waters are defined by statute, AS 38.05.965 (12) and (16). Basically, public waters encompass a very wide range of water bodies. Navigable waters are basically those waters that are susceptible for use in commerce, mainly navigation. All public waters are navigable but not all navigable waters are public. Public waters are those that may be important for any public purpose, including wildlife habitat.

This bill clarifies the public's right to use and have access over water. It creates a remedy, namely, misdemeanor sanctions for any obstructions of that public right.

Currently, courts are the only recourse. A public or private party that is obstructed faces the task of suing the obstructor in superior court which can be very expensive. HB 316 will make this access right more easily enforced, providing the public with a clearer standard.

The bill does not guarantee or allow any access over private land, except to the extent already provided by AS 38.05.127 over state land.

There is one case currently being handled by the Department of Law concerning the obstruction across a passage along the Talkeetna River. The bill, if it becomes law, would expedite abatement of this type of obstruction.

y general. — It the public notice n applies equally disposals actions. Att'y Gen. uirement of AS not apply to the extension that e of unitization s a measure to of unitized oper- n. November 25,

(os. 2551, 2587),

- Where the last r was less than a re was not suffi- to this section. p. No. 1284 (File d 8 (1976). one of general aper which con- rest to the com- rse readership is . Moore v. State, File Nos. 2551,

ation entitled ng within 30 ommissioner ion to hold a

38.05.945(c)" was s section" in the or of statutes in

ited; penal- mpts to bar- ot bid freely t public sale; nt, hinders, idding upon e by a fine of an one year, 2 ch 61 SLA

Revisor's notes. — Formerly AS 38.05.355. Renumbered in 1984.

**Sec. 38.05.965. Definitions.** In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "mineral land" means land prospectively valuable for mineral deposits;

(11) "multiple use" has the meaning given in AS 38.04.910;

(12) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(13) "park and recreation land" means land chiefly valuable for public park and recreation use;

(14) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(15) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(16) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(17) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions; under the rule, if the area covered by a lease in excess of the permitted maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease; if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease;

(18) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

(19) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;

(20) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;

(21) "tideland" means land which is periodically covered by tidal water between the elevation of mean high and mean low tides;

(22) "timber land" and "material land" mean state land chiefly valuable for materials, including, but not limited to, sand, stone, gravel, pumice, common clay, or timber and other forest products;

(23) "university land"

(A) means

(i) all sections 33 reserved to the university under 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;

**Section 11. Mineral Rights.** Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

**Section 12. Mineral Leases and Permits.** The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

**Section 13. Water Rights.** All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

**Cross reference.** — See note to Alaska Const., art. VIII, § 15.

**Legislative intent.** — The provisions in this article were intended to permit the broadest possible access to and use of state

waters by the general public. *Wernberg v. State*, Sup. Ct. Op. No. 972 (File No. 1797), 516 P.2d 1191 (1973), rehearing denied, 519 P.2d 801 (1974).

**Section 14. Access to Navigable Waters.** Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

**Legislative intent.** — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. *Wernberg v. State*, Sup. Ct. Op. No. 972 (File No. 1797), 516 P.2d 1191 (1973), rehearing denied, 519 P.2d 801 (1974).

The owner of the uplands has been stated to have the right of access for the purpose of navigation, but no right of possession of the land below high water mark as against another. 1959 Op. Att'y Gen., No. 1.

**Free access may be exercised by means of wharf or other structure.** — In *Dalton v. Hazelet*, 182 F. 561 (9th Cir. 1910), it was recognized that the right of free and unobstructed access may be exercised by means of a wharf or other structure over shoal water from the upland property to deep water. 1959 Op. Att'y Gen., No. 1.

**Section 15. No Exclusive Right of Fishery.** No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amendment effective October 14, 1972]

**Cross reference.** — For provisions relating to the limitation of entry into the fisheries of the state, see AS 16.43.

**Effect of amendment.** — The amendment approved August 22, 1972 (7th Legislature's HCS CSSJR 10) added the last sentence.

This section was derived from the White Act, 48 U.S.C. §§ 221, 222. 1961 Op. Att'y Gen., No. 3.

The first judicial application of this constitutional provision should properly be by an Alaska court. *Reetz v. Bozanich*, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

The White Act merely expressed the common law in prohibition against exclusive fishing rights. *Grimes Packing Co. v. Hynes*, 11 Alaska 154, 67 F. Supp. 43 (D. Alas. 1946), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

It did not permit a monopoly of fishing in Indian citizens as a conservation measure. *Hynes v. Grimes Packing Co.*, 11 Alaska 504, 67 F. Supp. 43 (D. Alas. 1946), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

**Right to use foreshore.** — The mere physical passage is not the only right involved in the right of access. The upland owner has the right to use the foreshore in such manner as is necessary for the complete enjoyment of his right. 1959 Op. Att'y Gen., No. 1.

**Actionable use of tidelands.** — Any use of tidelands in such a manner as to deny the upland owner access to the navigable waters would be actionable. 1959 Op. Att'y Gen., No. 1.

The Alaska Constitution allows the state to take riparian or littoral property rights for "beneficial or public uses" other than in aid of water navigation. *Wernberg v. State*, Sup. Ct. Op. No. 972 (File No. 1797), 516 P.2d 1191 (1973), rehearing denied, 519 P.2d 801 (1974).

other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

Under the language of the White Act (48 USC § 222) the Secretary of Interior was prohibited from granting any exclusive or several right of fishery in favor of the Natives on the Karluk River on Kodiak Island. The court held that the prohibition against granting and exclusive right of fishery applied to commercial fishing by natives equally with fishing companies, and that the secretary could not grant to the occupants of an Indian reservation the privilege of exclusive commercial fishing rights. 1960 Op. Att'y Gen., No. 9, citing *Hynes v. Grimes Packing Co.*, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

**Constitutionality of ch. 186, SLA 1968.** — See *Bozanich v. Reetz*, 297 F. Supp. 300 (D. Alas. 1969); *Reetz v. Bozanich*, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

Quoted in *Metlakatla Indian Community v. Egan*, 11 Alaska 504, 67 F. Supp. 43 (D. Alas. 1946), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).