

**HB**

**216**

<TARGET><BILL>HB 216</BILL><SUBJECT>HB  
216</SUBJECT><COMM>HRES29</COMM></TARGET>

29-LS0995\E  
Bullard  
3/14/16

**CS FOR HOUSE BILL NO. 216( )**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-NINTH LEGISLATURE - SECOND SESSION

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES TALERICO, Hughes, Tilton, Keller, Colver**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to obstruction or interference with a person's free passage on or use of**  
2 **navigable water; and amending the definition of 'navigable water' under the Alaska**  
3 **Land Act."**

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

5 **\* Section 1.** AS 38.05.128(a) is amended to read:

6 (a) A person may not obstruct or interfere with the free passage or use by a  
7 person of any navigable water unless the obstruction or interference is

8 (1) authorized by law or by a permit issued by a federal or  
9 [AGENCY AND A] state agency;

10 (2) [AUTHORIZED UNDER A FEDERAL OR STATE LAW OR  
11 PERMIT;

12 (3)] exempt under 33 U.S.C. 1344(f) (Clean Water Act);

13 **(3)** [(4)] caused by the normal operation of freight barging that is  
14 otherwise consistent with law; or

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**(4)** [(5)] authorized by the commissioner after reasonable public notice.

\* **Sec. 2.** AS 38.05.965(14) is amended to read:

(14) "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 **in any season and** for any useful public purpose, including [BUT NOT LIMITED TO] water suitable for commercial navigation, floating of logs, **harvesting of ice, state or federal military training,** landing and takeoff of aircraft, **operation of boats or other watercraft, hovercraft, snow machines, all-terrain vehicles, and other motorized or nonmotorized vehicles, storage of vehicles,** and [PUBLIC BOATING,] trapping, hunting [WATERFOWL AND AQUATIC ANIMALS], fishing, or other public recreational purposes;

# ALASKA STATE HOUSE

**Session:**

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## REPRESENTATIVE DAVE TALERICO

### Sponsor Statement for CS House Bill 216( )

*“An Act relating to obstruction or interference with a person’s free passage on or use of navigable water; and amending the definition of ‘navigable water’ under the Alaska Land Act.”*

The “Submerged Lands Act of 1953” recognized each state as holding the title for any submerged land under a navigable waterway within the boundaries of each state. Under Alaska law, this term is defined in AS 38.05.965(14) and specifies a number of activities that can be conducted in a body of water in order to deem the body as navigable. While the list of activities in statute is lengthy, there are a few omissions that House Bill 216 will address.

The first change that HB 216 will make is to insert additional activities to the definition of “navigable water” in order to ensure that there is no ambiguity. The bill includes the activities of harvesting of ice, military training, and operation of watercraft, hovercraft, snow machines and other vehicles, and hunting of any type of game. The second change is to allow all activities under this definition to be conducted “in any season” to ensure that these activities may be conducted whether the navigable body of water is thawed or frozen.

The final change in HB 216 is to combine AS 38.05.128(a)(1) and (2), to eliminate redundancy in this section regarding a government official blocking access to navigable waters.

Though these two changes to the definition of “navigable water” are minor, HB 216 will be a step towards protecting Alaska’s sovereignty and the rights of individual Alaskans.

Staff contact: Joshua Banks, (907) 465-2847

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## REPRESENTATIVE DAVE TALERICO

### Sectional Analysis – CS House Bill 216( )

*“An Act relating to obstruction or interference with a person’s free passage on or use of navigable water; and amending the definition of ‘navigable water’ under the Alaska Land Act.”*

**Sec. 1 – AS 38.05.128(a)**

Amends this section by effectively combining subsections (1) and (2) and deleting subsection (2), thus eliminating redundancy in this section relating to the allowance of blocking accessibility to navigable waters.

**Sec. 2 – AS 38.05.965(14)**

Amends this section to increase the number of activities that are allowed on ‘navigable water’ within the State of Alaska. Activities that are being added to the definition are: harvesting of ice, state or federal military training, operation of watercraft, hovercraft, snow machines, ATV’s, and other vehicles, and storage of vehicles. The language “waterfowl and aquatic animals” is deleted to allow for all forms of hunting on navigable waters.

This section is also amended to allow for all activities listed in the section to be conducted on navigable water during any season.

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## REPRESENTATIVE DAVE TALERICO

### Summary of Changes to CSHB 216( ) – Version W to Version E

- Eliminates the repeal of AS 38.05.128(a)(1) and instead combines AS 38.05.128(a)(1) and (2) and deletes subsection (2). This change has the same effect as the repeal of (a)(1) by eliminating redundancy regarding obstructing the free passage on navigable waters.
- Adds activities that are allowed to be conducted on “navigable water” in Alaska, including:
  - Operation of all-terrain vehicles
  - Storage of vehicles
  - Hunting any form of game rather than just waterfowl and aquatic animals

Staff Contact: Joshua Banks, (907) 465-2847

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB216-DNR-MLW-3-14-2016  
Title: NAVIGABLE WATER; INTERFERENCE,  
DEFINITION  
Sponsor: TALERICO  
Requester: House Resources

Department: Department of Natural Resources  
Appropriation: Fire Suppression, Land & Water Resources  
Allocation: Mining, Land & Water  
OMB Component Number: 3002

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

**Why this fiscal note differs from previous version:**

Initial Version
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Prepared By: <u>Brent Goodrum, Director</u>	Phone: <u>(907)269-8625</u>
Division: <u>Mining, Land and Water</u>	Date: <u>03/14/2016 12:00 AM</u>
Approved By: <u>Marty Rutherford, Acting Commissioner</u>	Date: <u>03/14/16</u>
Agency: <u>Department of Natural Resources</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB 216

**Analysis**

DNR anticipates that there will be no direct fiscal impact to the department from this legislation.

**Section 1** of the bill proposes to revise AS 38.05.965(14) to amend the definition of "navigable water" for purposes of state law on public use to remove the phrase "but not limited to" and instead enumerate different useful public purposes of waterbodies in both frozen and liquid states. Removing the open ended language and instead providing additional definitions of useful public purposes may create ambiguity about navigability and the intent of the change, and thus indirectly result in increased costs for the State during future navigability determinations and litigation related to the ability of the public to use state waters.

**Section 2** of the bill proposes to revise AS 38.05.128(a) to repeal paragraph (1), which provides that obstructions to navigable waters may be authorized by a federal agency and state agency. This does not seem to significantly alter DNR's management of water, and is not expected to result in direct costs.

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## REPRESENTATIVE DAVE TALERICO

### MEMORANDUM

Date: March 18, 2016

To: Representative Benjamin Nageak, Co-Chair  
House Resources Committee

From: Representative Dave Talerico

A handwritten signature in black ink, appearing to read "DT", located next to the "From:" field.

Re: Response to Questions Raised – March 16, 2016

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#### **Response to House Resources Questions – March 16, 2016**

During the hearing for House Bill 216 on March 16, there were a few questions that were brought up that required additional research to answer. Below is my response to these questions.

#### **Protection of Sensitive Areas**

Representatives Seaton and Herron brought forward the concern that the inclusion of certain activities on navigable waters could cause harm to certain sensitive areas, such as salmon spawning ground. There are a number of areas in Alaska Statute that prohibit specific activities in or around certain bodies of water, including:

AS 16.05.871 Protection of fish and game – Requires a person to obtain a permit to conduct certain activities around anadromous waters to ensure that there is adequate protection of fish and game.

AS 16.05.896 Penalty for causing material damage – Makes it a misdemeanor offense to cause material damage to salmon spawning grounds or to interfere with the salmon migration.

There are also a number of laws that allow the Department of Natural Resources to restrict or manage the use of waters through regulation, such as determining what uses are incompatible within a certain area. In addition to these laws, the State may obstruct the free passage of a person on navigable water under AS 38.05.128(a) if they are conducting these activities.

### ***Gibbons v. Ogden***

Representative Josephson brought forward a concern that the 1824 U.S. Supreme Court case *Gibbons v. Ogden* may cause a problem for the state's definition of navigable water. This case deals with the power that Congress has over navigation in regards to commerce. While the Supreme Court ruled that the Federal government has authority over interstate commerce and that Federal law supersedes state law regarding this issue. This case did not discuss the matter of navigability of a body of water, unless it was closely associated with interstate commerce. HB 216 deals with accessibility of navigable waters and not commerce that is conducted on a body of water, therefore *Gibbons v. Ogden* likely does not apply to this bill.

### **Deleting "but not limited to"**

There was a concern raised by a number of testifiers that taking the words "but not limited to" would put a limitation on the activities that are allowed on a navigable body of water. The attorney that has drafted this bill explained to us that by taking the words "but not limited to" and leaving in "including" allows this definition of navigable water to not be confined to the activities that are specified. He also explained that there is a trend in Alaska legislative drafting to move away from using the words "including but not limited to" in statute to just say "including" as it has the same legal meaning and is more concise.

**Julie Morris**

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**From:** Charles Derrick <cderrickak@gmail.com>  
**Sent:** Wednesday, March 16, 2016 11:54 AM  
**To:** Rep. David Talerico  
**Subject:** Support for HB 216

Rep. Talerico please note my support for HB216 AND THANK YOU FOR YOUR EFFORTS TO SEE ITS  
PASSAGE  
CHUCK DERRICK  
891 SELDOM SEEN RD  
FAIRBANKS AK 99712

**Julie Morris**

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**From:** Morisky <guide@wildernessfishing.com>  
**Sent:** Wednesday, March 16, 2016 9:56 AM  
**To:** Rep. David Talerico  
**Subject:** HB 216- Support

Representative Talerico,

I am writing you today to indicate my full support for HB 216, a Bill that will strengthen our right to access/navigate our state waters in any season.

As agencies, individuals and others have shown a desire to restrict access to our outdoor resources, it is important that this bill be passed to strengthen our access rights.

Historically, many Alaskans have used the spiderweb of flowing waters in our state for access. This was during the entire year, but especially in the winter.

Access to our navigable waterways in the summer and fall seasons can be problematic, due to the lack of public boat launches. This Bill would provide additional protections for access to our navigable waterways year round, for all lawful purposes.

Thank you for this opportunity to provide a Public Opinion Message on this House Bill.

Sincerely,  
Reed Morisky

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Reed Morisky  
Arctic Grayling Guide Service  
WILDERNESS FISHING  
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Fairbanks, AK 99708

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[guide@wildernessfishing.com](mailto:guide@wildernessfishing.com)  
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## Julie Morris

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**From:** Mike Tinker <miketinkerak@gmail.com>  
**Sent:** Wednesday, March 16, 2016 9:10 AM  
**To:** Rep. David Talerico  
**Subject:** HB 216

Good morning, Dave. Please include the Laundry House Gang in support of this bill. A good idea to be specific but also inclusive. Hearing schedule makes it a squeeze to testify as Wednesday is meeting day for and several of Sen. Sullivan's staff will be there. We will, if we can. I've had several discussions with John Sturgeon in the last week. Very optimistic that the Supreme Court will do the right thing for us. The struggle will be to get the Governor on board with kicking other slats out from under the federal steamroller. Have a great day. About four inches of new snow in West Ester this morning.

Sent from my iPad