

HOUSE BILL NO. 37

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, Elkins

Introduced: 1/10/05

Referred: House Special Committee on Fisheries, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to public access to fishing streams."**

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 FINDINGS AND INTENT. (a) The legislature finds that

6 (1) the state has some of the most vibrant fishing streams in the world;

7 (2) the waters of the state are home to trophy salmon, trout, grayling, char, and
8 other fish, and Alaskans greatly value this resource for nutritional, cultural, recreational, and
9 other purposes;

10 (3) the state's streams are noted worldwide for the presence of wild trout, char,
11 and grayling that grow to sizes no longer achieved in many other areas of the world, and for
12 the return of wild salmon and other anadromous fish in their natural numbers;

13 (4) it is in the interest of Alaskans to protect access to important recreational
14 waters and to travel by water and land along these waters to fish, hike, boat, and camp;

15 (5) while the state has retained public access to and along important

1 recreational waters when land has been transferred under current law, land sales and disposals
 2 under prior laws or by the federal government to private landowners resulted in hampered or
 3 no legal public access to important fishing waters in the state;

4 (6) in many places in the world, important recreational and fishing waters
 5 have been privatized; in those places, public access to fishing and recreational water is
 6 prohibited, and persons are prohibited from traveling, stopping, or camping along stream
 7 banks; in many other places, access is only permitted at high cost or by invitation;

8 (7) it is in the interest of the state to try to negotiate land or easement
 9 purchases or trades for property along important fishing and recreational waters before

10 (A) it becomes too expensive to accomplish the goal of preserving and
 11 protecting public access to and along the state's important fishing waters; and

12 (B) the land has become developed and settled; if the state waits to
 13 negotiate trades and purchases until after land has been developed, the state will have
 14 to expend potentially excessive amounts of money to regain public access; and

15 (8) it is in the interest of private property owners to prevent the involuntary
 16 taking of private property and to sell or trade property rights only in a voluntary manner.

17 (b) It is the intent of the legislature

18 (1) that, in implementing this Act, the Department of Natural Resources and
 19 the Department of Fish and Game may not be placed under strictures or be subject to appeal
 20 rules that would add undue cost to this program;

21 (2) to protect the public's right to access the state's fishing streams; and

22 (3) to provide an efficient and effective way to regain public easements or
 23 ownership of land along important fishing streams that might be lost due to future private
 24 development.

25 * **Sec. 2.** AS 16.05 is amended by adding a new section to read:

26 **Sec. 16.05.096. Identification of privately held land along fishing**
 27 **waterways.** (a) Before July 1 of each year, the commissioner shall submit to the
 28 commissioner of natural resources a list of land along fishing waterways where access
 29 to the waterways is impeded by private land ownership.

30 (b) When identifying land for the list in (a) of this section, the commissioner
 31 shall solicit and review input from the public concerning land that may be included on

1 the list.

2 (c) Factors to be considered by the commissioner when identifying land to be
3 listed under (a) of this section include whether

4 (1) public access is needed to allow desirable access to and
5 recreational or subsistence use of the fishery resources present in the waterway;

6 (2) private land ownership prevents public access to a section of the
7 waterway that is highly desirable for its fishing or recreational attributes;

8 (3) public access to a section of the waterway would significantly
9 enhance the public's enjoyment of that waterway;

10 (4) the waterway contains wild sport fish or fish of a species, physical
11 size, and abundance that may support a commercial, personal use, or subsistence
12 fishery;

13 (5) the fish population on the waterway may support a catch and
14 release sport fishing or other sport, commercial, personal use, or subsistence fishery.

15 (d) In reviewing land for identification under (a) of this section, the
16 commissioner shall give priority to land along fishing waterways that

17 (1) is reasonably accessible by foot, including by backcountry hiking,
18 from the state's road system;

19 (2) is undeveloped and may be acquired by the state through purchase
20 or trade;

21 (3) has the greatest potential for public recreational or subsistence use
22 and enjoyment based on the size and abundance of fish, even if the location may be in
23 a remote part of the state.

24 (e) The decision by the commissioner to include or exclude land on the list in
25 (a) of this section is within the discretion of the commissioner and is not subject to
26 appeal. The commissioner shall, however, make the list proposed to be submitted to
27 the commissioner of natural resources publicly available before submission of the list
28 and may consider public comment before submission of the list.

29 (f) In this section, "fishing waterway" means a waterway that contains wild
30 sport fish or fish of a species, physical size, and abundance that may support a
31 commercial, personal use, or subsistence fishery.

1 * **Sec. 3.** AS 38.50 is amended by adding a new section to read:

2 **Sec. 38.50.015. Access to fishing waterways.** (a) After receiving from the
3 commissioner of fish and game a list prepared under AS 16.05.096 that identifies land
4 along fishing waterways where access to the waterways is impeded by private land
5 ownership, the commissioner shall proceed to acquire public access to waterways
6 across those lands.

7 (b) Public access may be acquired by

8 (1) acquiring an easement for access across each parcel of land;

9 (2) trading state land for private land; or

10 (3) purchasing private land.

11 (c) In acquiring public access under (b) of this section, the commissioner has
12 the discretion to negotiate without regard to the fair market value of the land or
13 easement so long as the access acquired and the consideration tendered is in the best
14 interest of the state.

15 (d) Before February 1 of each year, the commissioner and the commissioner
16 of fish and game shall submit a plan to acquire public access to fishing waterways
17 through trade or purchase for the following fiscal year. The plan must include a
18 minimum access to not less than a total of two meander miles along fishing
19 waterways.

20 (e) In this section,

21 (1) "fishing waterway" has the meaning in AS 16.05.096;

22 (2) "meander mile" means a distance of one mile measured following
23 the course of a waterway.

24 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **LAND TO BE CONSIDERED FOR FIRST LIST.** Notwithstanding the discretion of
27 the commissioner of fish and game under AS 16.05.096 as enacted in sec. 2 of this Act, the
28 initial list to be submitted to the commissioner of natural resources before July 1 following the
29 effective date of this Act shall include land

30 (1) adjacent to or near Montana Creek and Willow Creek above the Parks
31 Highway on waterways that are open to trout and grayling fishing;

- 1 (2) along Anchor River and Deep Creek on the Kenai Peninsula where the
2 waterways are open to steelhead, salmon, Dolly Varden, or trout fishing; and
3 (3) along the Salcha River located off the Richardson Highway where the river
4 is open to grayling fishing.