

CS FOR HOUSE BILL NO. 37(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered: 4/18/05

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVES GARA, Elkins

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to voluntary land trades and purchases to enhance public access to**
2 **fishing streams."**

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

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

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

7 (1) it is in the interest of private property owners to prevent the involuntary
8 taking of private property and to sell or trade property rights only when the sale or trade is
9 voluntary;

10 (2) the state has some of the most vibrant fishing streams in the world;

11 (3) the waters of the state are home to trophy salmon, trout, grayling, char, and
12 other fish, and Alaskans greatly value this resource for nutritional, cultural, recreational, and
13 other purposes;

14 (4) the state's streams are noted worldwide for the presence of wild trout, char,

1 and grayling that grow to sizes no longer achieved in many other areas of the world, and for
2 the return of wild salmon and other anadromous fish in their natural numbers;

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

5 (6) while the state has retained public access to and along important
6 recreational waters when land has been transferred under current law, land sales and disposals
7 under prior laws or by the federal government to private landowners resulted in hampered or
8 no legal public access to important fishing waters in the state;

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

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

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

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

20 (b) It is the intent of the legislature

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

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

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

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

29 **Sec. 16.05.096. Identification of privately held land along fishing**
30 **waterways.** (a) Before July 1 of each year, the commissioner shall submit to the
31 commissioner of natural resources a list of land along fishing waterways where access

1 to the waterways is impeded by private land ownership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Sec. 38.50.015. Access to fishing waterways.** (a) After receiving from the
 6 commissioner of fish and game a list prepared under AS 16.05.096 that identifies land
 7 along fishing waterways where access to the waterways is impeded by private land
 8 ownership, the commissioner may proceed to acquire public access to waterways
 9 across those lands. The right of eminent domain may not be exercised to acquire land
 10 or interest in land under this section.

11 (b) Public access may be acquired by

12 (1) purchasing or leasing an easement for access across each parcel of
 13 land;

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

15 (3) purchasing or leasing private land.

16 (c) Before February 1 of each year, the commissioner and the commissioner of
 17 fish and game shall submit a plan to acquire public access to fishing waterways
 18 through trade or purchase for the following fiscal year. The plan must include a
 19 minimum access to not less than a total of two meander miles along fishing
 20 waterways. Within 60 days after receiving a written request from a landowner
 21 requesting the removal of the landowner's land from the list to be acquired under the
 22 plan, the commissioner shall remove the landowner's land from the list, even if the
 23 removal leaves less than two meander miles along fishing waterways.

24 (d) In this section,

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

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

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

30 **LAND TO BE CONSIDERED FOR FIRST LIST.** Notwithstanding the discretion of
 31 the commissioner of fish and game under AS 16.05.096 as enacted in sec. 2 of this Act, the

1 initial list to be submitted to the commissioner of natural resources before July 1 following the
2 effective date of this Act shall include land

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

5 (2) along Anchor River and Deep Creek on the Kenai Peninsula where the
6 waterways are open to steelhead, salmon, Dolly Varden, or trout fishing; and

7 (3) along the Salcha River located off the Richardson Highway where the river
8 is open to grayling fishing.