

HOUSE BILL NO. 40

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

BY REPRESENTATIVE GARA

Introduced: 1/16/07

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to voluntary land trades, purchases, and leases to enhance public**
2 **access to certain streams for fishing, hunting, and recreational activities."**

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

4 *** Section 1.** AS 16.05 is amended by adding a new section to read:

5 **Sec. 16.05.096. Identification of privately held land along fishing**
6 **waterways.** (a) Subject to (h) of this section, before July 1 of each year, the
7 commissioner shall submit to the commissioner of natural resources a list of land
8 along the following fishing waterways and additional waterways identified under (e)
9 of this section where access to the waterways is impeded by private land ownership:

10 (1) adjacent to or near Montana Creek, Goose Creek, Little Willow
11 Creek, and Willow Creek above the Parks Highway;

12 (2) along Anchor River and Deep Creek on the Kenai Peninsula; and

13 (3) along the Salcha River located off the Richardson Highway.

14 (b) When identifying land for the list in (a) and (e) of this section, the

1 commissioner shall

2 (1) solicit and review input from the public concerning land that may
3 be included on the list; and

4 (2) only include on the list land across which the owner voluntarily is
5 willing to allow or negotiate public access.

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

8 (1) private land ownership prevents public access to a section of the
9 waterway for its fishing, hunting, or other recreational attributes; and

10 (2) public access to a section of the waterway would significantly
11 enhance the public's enjoyment of that waterway.

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

14 (1) is reasonably accessible, including by backcountry hiking or off-
15 road vehicle, from the state's road system;

16 (2) is undeveloped and may be acquired by the state through purchase
17 or trade.

18 (e) After considering the factors in (c) of this section and establishing priority
19 under (d) of this section, the commissioner may add land to the list along a waterway
20 not listed in (a) of this section, except that land adjacent to the Kenai River that is
21 downstream of Skilak Lake may not be added to the list.

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

27 (g) The commissioner may remove land from the list described in (a) of this
28 section if the owner of the land is no longer interested in a voluntary sale, trade, or
29 other transfer of an interest for the purpose of providing access to a waterway.

30 (h) The commissioner is not required to submit a new list of land under (a) of
31 this section if

1 (1) the existing list includes two or more meander miles of land along
2 fishing waterways; or

3 (2) no land is available for which the owner voluntarily is willing to
4 allow or negotiate public access.

5 (i) In this section, "fishing waterway" means a waterway that contains wild
6 sport fish or fish of a species, physical size, and abundance that may support a sport,
7 commercial, personal use, or subsistence fishery.

8 * **Sec. 2.** AS 38.50 is amended by adding a new section to read:

9 **Sec. 38.50.015. Access to fishing waterways.** (a) After receiving from the
10 commissioner of fish and game a list prepared under AS 16.05.096 that identifies land
11 along fishing waterways where access to the waterways is impeded by private land
12 ownership, the commissioner may proceed to acquire public access to waterways
13 across those lands. Nothing in this section expands the right of eminent domain for a
14 public use beyond the uses authorized under AS 09.55.240.

15 (b) The commissioner may use money from the public access fund established
16 under AS 38.05.874 for the purchase or lease of an easement, purchase of land,
17 purchase or lease of another property interest in land, or costs related to land trades to
18 obtain a property interest in land identified under AS 16.05.096. Money from the
19 public access fund may not be used to obtain a property interest in land identified
20 under AS 16.05.096 through the exercise of the right of eminent domain.

21 (c) The commissioner may not obtain a property interest in land under (b) of
22 this section unless the commissioner has made not less than an equivalent amount of
23 state land available for disposal for private use under AS 38.05.050 in the same fiscal
24 year.

25 (d) An agreement for a public access easement may allow the owner of the
26 land granting the easement to develop the land subject to the rights granted by the
27 easement.

28 (e) Before February 1 of each year, the commissioner and the commissioner of
29 fish and game shall submit a plan to acquire public access to fishing waterways
30 through trade or purchase for the following fiscal year. The plan must include a
31 minimum access to not less than a total of two and not more than five meander miles

1 along fishing waterways unless this amount of land is unavailable for sale or lease
 2 from a willing land owner. Within 60 days after receiving a written request from a
 3 landowner requesting the removal of the landowner's land from the list to be acquired
 4 under the plan, the commissioner shall remove the landowner's land from the list, even
 5 if the removal leaves less than two meander miles along fishing waterways.

6 (f) The commissioner or the commissioner of fish and game may close or
 7 restrict public access acquired under this section if necessary to protect habitat along a
 8 fishing waterway.

9 (g) In this section,

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

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

13 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

15 **LAND TO BE CONSIDERED FOR FIRST LIST.** Notwithstanding the discretion of
 16 the commissioner of fish and game under AS 16.05.096, as enacted in sec. 1 of this Act, the
 17 commissioner of fish and game shall submit to the commissioner of natural resources before
 18 July 1 following the effective date of this Act a description of land

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

21 (2) along Anchor River on the Kenai Peninsula where the waterways are open
 22 to steelhead, salmon, Dolly Varden, or trout fishing.