

CS FOR HOUSE BILL NO. 40(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/7/07

Referred: Finance

Sponsor(s): REPRESENTATIVES GARA, Johnson, Gardner, Hawker, Seaton, Crawford, Foster

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) exclude land from the list if the commissioner is notified that the
5 owner is unwilling 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 or may prevent in the future public
9 access to a section of the waterway for its fishing, hunting, or other recreational
10 attributes; and

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

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

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

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

19 (e) After considering the factors in (c) of this section and establishing priority
20 under (d) of this section, the commissioner may add land to the list along a waterway
21 not listed in (a) of this section.

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 shall 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 or may in the future be
12 impeded by private land ownership, the commissioner may proceed to acquire public
13 access to waterways across those lands. Nothing in this section expands the right of
14 eminent domain for a 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 this
22 section unless the commissioner has made not less than an equivalent acreage of state
23 land available for disposal for private use under AS 38.05.050 in the same fiscal year.

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

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

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