

CS FOR HOUSE BILL NO. 175(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/27/07

Offered: 3/27/07

Sponsor(s): REPRESENTATIVES JOHNSON, Kelly, Hawker, Foster, Buch, Kawasaki, Gardner, Gara,
LeDoux, Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the prohibition of the exercise of the power of eminent domain**
2 **against a recreational structure for the purposes of developing a recreational facility or**
3 **project; and relating to access to fishing waterways."**

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

5 * **Section 1.** AS 09.55.240(e) is amended to read:

6 (e) The power of eminent domain may not be exercised for the purpose of
7 developing a recreational facility or project if the property to be acquired includes an
8 individual landowner's personal residence **or recreational structure** or that portion of
9 an individual's property attached to and within 250 linear feet of an individual
10 landowner's personal residence **or recreational structure** unless the landowner
11 consents either before or after a condemnation proceeding has been filed.

12 * **Sec. 2.** AS 09.55.240(h)(3) is amended to read:

13 (3) "personal residence" means a structure that is the dwelling place of
14 an individual that

1 (A) must be used by the owner or beneficiary of a trust holding
2 legal title to the structure as a dwelling unit, as opposed to a rental, storage, or
3 other commercial space;

4 (B) must be inhabited by the owner, prior owner, or beneficiary
5 of a trust holding legal title to the structure for at least 90 days during the 12-
6 month period immediately before the date an action for the exercise of the
7 power of eminent domain is filed;

8 (C) must constitute an ordinary home for general living
9 purposes [, AS OPPOSED TO A DWELLING USED ONLY FOR
10 SEASONAL RECREATIONAL OR TEMPORARY PURPOSES]; and

11 (D) may not have been constructed, placed, or occupied for the
12 purpose of avoiding eminent domain proceedings;

13 * **Sec. 3.** AS 09.55.240(h) is amended by adding a new paragraph to read:

14 (6) "recreational structure" means a permanent structure that is used by
15 the owner of or beneficiary of a trust holding legal title to the structure as a dwelling
16 for seasonal recreational purposes.

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

18 **Sec. 38.50.015. Access along fishing waterways.** (a) The commissioner and
19 the commissioner of fish and game jointly shall prepare and maintain a list that
20 identifies land to or along fishing waterways where public access is or may in the
21 future be impeded by private land ownership. The list must include at least two and
22 not more than five meander miles along fishing waterways, and may identify land to
23 be used for public access for fishing, hunting, or other recreational purposes. The list
24 shall be prepared before December 1 of each year, except that the commissioner and
25 the commissioner of fish and game are not required to prepare a new list if the existing
26 list contains at least two meander miles of private land along fishing waterways.

27 (b) Before February 1 of each odd-numbered year, the commissioner, with the
28 concurrence of the commissioner of fish and game, shall submit to the legislature a
29 plan to acquire by easement, fee, or other interest, public access to or along fishing
30 waterways through trade with or purchase from a willing landowner or landowners.

31 (c) An agreement for an easement that provides public access to a fishing

1 waterway under this section may allow the owner of the land granting the easement to
2 develop the land subject to the rights granted by the easement.

3 (d) The commissioner may close or restrict public access acquired under this
4 section if necessary to protect habitat along a fishing waterway.

5 (e) The commissioner and the commissioner of fish and game shall consider
6 land providing public access along Montana Creek upstream of the Parks Highway,
7 and along Anchor River and Deep Creek on the Kenai Peninsula for inclusion in the
8 plan under (b) of this section.

9 (f) The commissioner may not obtain a property interest in land under this
10 section unless the commissioner has made not less than an equivalent acreage of state
11 land available for disposal for private use under AS 38.05.050 in the same calendar
12 year.

13 (g) In this section,

14 (1) "fishing waterway" means a waterway that contains wild sport fish
15 or fish of a species, physical size, and abundance that may support a sport,
16 commercial, personal use, or subsistence fishery;

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