

**SCOMM**

**138:6**

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

GF-  
Kim-  
we should  
schedule

MEMORANDUM

DATE: March 7, 2005  
TO: Rep. Bill Thomas  
Rep. Gabrielle LeDoux  
FROM: Rep. Les Gara

A handwritten signature in dark ink, appearing to be "Les Gara", written over the "TO:" line.

RE: Hearing Request for HB-37, "Public Access to Fishing Streams"

I respectfully request that HB 37, an act relating to public access to fishing streams, be scheduled for hearing in the House Special Committee on Fisheries. Please feel free to contact me, or my aide Cindy Smith, with questions or thoughts at 465-2647.

Attached you will find a background packet for HB 37. This includes the original bill, a sponsor's statement, and backup materials.

Thank you for your consideration.

24-LS0284\I  
Bullock  
4/14/05

**CS FOR HOUSE BILL NO. 37( )**

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

**BY**

**Offered:**  
**Referred:**

**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 uncoded 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.

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

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

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

(b) Public access may be acquired by

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

(2) trading state land for private land; or

(3) purchasing or leasing private land.

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

(d) In this section,

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

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

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

**LAND TO BE CONSIDERED FOR FIRST LIST.** Notwithstanding the discretion of 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 <sup>must</sup> ~~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.

24-LS0544\Y  
Utermohle  
4/12/05

**CS FOR HOUSE BILL NO. 218( )**

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

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE THOMAS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to cost recovery fisheries for private nonprofit hatchery facilities."**

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

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

5 FINDINGS. The Alaska State Legislature finds that Alaska private nonprofit salmon  
6 hatcheries should maximize the harvests of returning hatchery-produced salmon by  
7 commercial salmon fishing permit holders. The legislature also finds that private nonprofit  
8 hatcheries should minimize, to the greatest extent feasible, the direct sale of salmon harvested  
9 in special harvest areas.

10 **\* Sec. 2.** AS 16.10 is amended by adding a new section to read:

11 **Sec. 16.10.455. Cost recovery fisheries.** (a) A hatchery permit holder may  
12 harvest salmon for a facility in a special harvest area through agents, contractees, or  
13 employees of the permit holder as provided under regulations of the Board of Fisheries  
14 or through the common property fishery under this section.

15 (b) A hatchery permit holder may elect to harvest surplus salmon produced at

1 a facility in a special harvest area established for that facility through the common  
2 property fishery. The commissioner of fish and game, after reasonable consultation  
3 with the hatchery permit holder, affected commercial fishermen, and other interested  
4 or knowledgeable parties, shall adopt regulations governing the harvest of surplus  
5 salmon in a special harvest area if the hatchery permit holder elects to harvest surplus  
6 salmon produced at a facility through the common property fishery. The regulations  
7 must specify the terms, conditions, and rules under which the common property  
8 fishery in the special harvest area shall be conducted, including requirements for hold  
9 inspections and reporting of harvests and sales of salmon taken in the special harvest  
10 area. The board may adopt regulations, as the board considers appropriate, regarding  
11 a fisheries management plan governing operations under this subsection in a special  
12 harvest area, including allocation plans. Participation in the fishery must be open to  
13 all interim-use permit and entry permit holders who hold permits to operate a type of  
14 gear that may be used in the administrative area in which the special harvest area is  
15 located if that type of gear is authorized by regulation to be used in the special harvest  
16 area. An interim-use permit holder or an entry permit holder who takes salmon in a  
17 common property fishery in a special harvest area may sell the salmon to any fish  
18 buyer or processor who is licensed to do business in the state.

19 (c) As a condition of participation in a common property salmon fishery in a  
20 special harvest area under this section, a fisherman who participates in the fishery is  
21 subject to the payment of the assessment levied under (d) of this section. The  
22 assessment is levied on the value of salmon that the fisherman takes in the special  
23 harvest area and either sells to a buyer or exports from the state without being sold in  
24 the state. If the buyer of the salmon is licensed under AS 43.75, the buyer shall collect  
25 the assessment on salmon taken in a special harvest area at the time of purchase and  
26 remit the assessment to the Department of Revenue in accordance with regulations  
27 adopted by the Department of Revenue. If a fisherman does not sell salmon harvested  
28 in a special harvest area to a buyer licensed under AS 43.75 or if a fisherman does not  
29 sell salmon harvested in a special harvest area to a buyer before the salmon are  
30 exported from the state, the fisherman shall remit the amount of the assessment to the  
31 Department of Revenue in accordance with regulations adopted by the Department of

1 Revenue.

2 (d) The Department of Revenue shall annually set the rate of the assessment  
3 levied on salmon taken in a special harvest area in consultation with the Department of  
4 Fish and Game, the Department of Commerce, Community, and Economic  
5 Development, the hatchery permit holder, and representatives of affected commercial *delete*  
6 fishermen. The rate of the assessment shall take into account the operating, capital,  
7 and maintenance costs of the hatchery permit holder for the facility for which the  
8 special harvest area is established, reasonable overhead expenses, including debt  
9 service on loans for the facility, <sup>corporation</sup> the estimated return and harvest of salmon in the  
10 special harvest area, the projected price to be paid for salmon in the region, and the  
11 amount by which the assessment collected in previous years under estimated or over  
12 estimated the costs to the hatchery permit holder for the operation of the facility. The  
13 total rate of the assessment may not exceed 40 percent of the value of the salmon.

14 (e) The Department of Revenue shall deposit the assessments collected under  
15 this section in the general fund. The legislature may appropriate the funds collected  
16 under this section to the hatchery permit holder who operates a facility in the special  
17 harvest area in which the assessment was levied. A hatchery permit holder shall use  
18 funds appropriated under this subsection for the purposes set out under  
19 AS 16.10.450(a).

20 (f) A person who violates a regulation adopted by the Department of Fish and  
21 Game or the Board of Fisheries under (b) of this section is guilty of a misdemeanor  
22 under AS 16.05.723. A person who violates a regulation adopted by the Department  
23 of Revenue under (c) of this section is guilty of a class A misdemeanor.

24 (g) In this section,

25 (1) "facility" means a hatchery or salmon rehabilitation project for  
26 which a permit is issued under AS 16.10.400 - 16.10.470;

27 (2) "special harvest area" means a special harvest area established  
28 under regulations of the Board of Fisheries in which a hatchery permit holder may  
29 harvest salmon for the hatchery at times set by the board or the department;

30 (3) "value" has the meaning given in AS 43.75.290.

31 \* Sec. 3. AS 43.76.035 is amended to read:

- 1 **Sec. 43.76.035. Exemption.** AS 43.76.001 - 43.76.040 do not apply to  
2 salmon harvested under a special harvest area entry permit issued under AS 16.43.400  
3 or in a common property fishery conducted in a special harvest area under  
4 AS 16.10.455.

would like them to  
reconsider  
exemption

42111111

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## **HB 37: State Land Trades/Purchases To Regain Fishing Stream Access From Willing Landowners**

Alaska's rivers are a treasured resource for fishermen, boaters, hunters, hikers, and people of all walks of life. We need to protect the public's access to them. House Bill 37 aims to ensure future public access to Alaska's fishing streams by putting in place a mechanism for voluntary land exchanges (or purchases) between the State and private owners along important recreational rivers. The program would be facilitated by the Department of Natural Resources and would be completely voluntary. It would not take land away from citizens who don't want to trade for other public land.

There are currently large stretches of private land on streams such as the Anchor River, Deep Creek, Parks Highway Streams, the Salcha River and others throughout the state. Today the public uses these streams, and has access to them. Once they're developed, we'll never be able to afford to get them back. HB 37 requires the state to identify private lands along certain high value recreational waters for possible easement or land purchases or trades.

To avoid costly litigation, it requires the state to use its expertise within the Departments of Fish and Game and Natural Resources to identify the most desirable lands for purchase or trade, after public input. But the bill does not allow legal challenges of those determinations.

Other states have waited too long to take steps like the ones proposed by this bill. In Montana, for example, fishermen have to pay for public access to some rivers. One hundred eighty miles of the Missouri River have been lost to public access, and that state now budgets \$300,000 per year to buy back parcels of riverbank land.

HB 37 will help insure that unparalleled recreational opportunities in our vibrant river corridors remain accessible, for our own and for future generations. It provides that the state should keep a registry of lands for possible trade or purchase.

The bill does not mandate any funding for trades or purchases, and therefore will lapse, in effect, once the state determines there is no longer a need to trade for or purchase public access.

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## **HB 37: Sectional Analysis** **State Land Trades/Purchases To Regain Fishing Stream Access From Willing Landowners**

The Bill's sections provide as follows:

### **Section 1: Findings.**

**Section 2.** This section gives the Commissioner of DNR the authority to prioritize lands which provide important public fishing stream access after public comment and consultation with the Department of Fish and Game. To prevent unneeded expense, the Commissioner's determinations are not appealable. The Commissioner is given the leeway to make these decisions, and is allowed to make the decisions upon available agency knowledge and public comment without engaging in expensive study.

**Section 3.** The state is encouraged to develop a registry of lands that are important for public fishing access, and to try to arrange a trade with willing landowners for other state lands, purchase the land outright, or purchase easements on it. To encourage transactions that would benefit the public, the Commissioner may pay more than market value if needed to make a land trade or land or easement purchase.

**Section 4.** The Commissioner is encouraged to seek land purchases or exchanges on important fishing streams prior to private development on those streams, at which point such a transaction would become prohibitively expensive. Streams with undeveloped private lands that, if developed, would impede important public access, include the following prized trout/steelhead/salmon fisheries: Montana and Willow Creeks above the Parks Highway in Southcentral Alaska; the Anchor River and Deep Creek on the Kenai Peninsula; and the Salcha River south of North Pole. The Commissioner is encouraged to seek to obtain public access on these and other streams that provide important public fishing opportunities.

**Rep. Les Gara**

---

**From:** Brent Fenty [bfenty@earthlink.net]  
**Sent:** Sunday, February 27, 2005 5:42 PM  
**To:** Rep. Les Gara  
**Subject:** HB 37

Rep. Gara-

I just want to say thanks for your introduction of HB 37. I was particularly pleased to see that Montana and Willow Creek were prioritized in the bill as I think development threats loom in the near future for these terrific fisheries. Thanks again.

Tight lines,  
Brent

--

Brent Fenty  
PO Box 142771  
Anchorage, AK 99514

(907) 770-9967  
bfenty@earthlink.net

# B



## MOLLY IVINS LETS LOOSE

Political columnist Molly Ivins will speak in Anchorage on July 21. Check out what she told the Daily News about both George Bushes, sodomy in Texas, tax cuts, her new book, and the Alaska-Texas rivalry: **Q&A in Opinion, Page J-3**

SECTION

ANCHORAGE DAILY NEWS • www.adn.com

★ SUNDAY, JULY 13, 2003

# ALASKA

## Prime fishing land might be sold off

■ **ANCHOR RIVER:** Sale of five-acre parcels could eliminate public access.

By JOEL GAY  
Anchorage Daily News

The beaches, banks and wetlands along one of the Kenai Peninsula's most popular fishing streams are being subdivided into five-acre parcels that, if sold, could eliminate public access to the lower Anchor River.

The owners say they've tried for years to sell the land to the state but could never agree on a price. Now it's time to move on, they say, and the first

step is chopping their two large parcels into 20 smaller ones.

They hope to win preliminary approval of their subdivision plan Monday night from the Kenai Peninsula Borough. The lots could be on the market later this summer.

Supporters of a buyout still hope the land can be purchased and put into public ownership. The landowners say they're still willing to sell. But time is drawing short, said Lynn Whitmore, a longtime local angler who just recently learned about the proposed subdivision.

"I'm going to urge that they try to convert this to public land, by whatever

■ **THE KENAI PENINSULA BOROUGH PLAT COMMITTEE** will hold a public hearing on the proposed Anchor River subdivision at 5:30 p.m. Monday in the Borough Building in Soldotna. For more information, go to [www.borough.kenai.ak.us/planningdept](http://www.borough.kenai.ak.us/planningdept), then click on Plat Committee, then Agendas.

means necessary," he said. "I want the (borough) mayor or somebody to sit down with these two sides and resolve this."

Anchor Point pioneer Vern Mutch homesteaded the area decades ago, selecting land that ran from atop the bluffs to the Cook Inlet beach, with the

river running through it. His son Paul, a commercial fisherman who lives in Ugashik, now owns much of the land, including a 45-acre parcel just north of one of the river's most popular fishing spots, the Grass Hole.

The state Division of Parks owns the adjoining lot to the south, where it provides parking and a boat launch. But thousands of fishermen every year pass through the state land onto the Mutch property, where they camp on the gravel beach and tromp through wetlands to reach the river.

Many also walk or drive ATVs even farther north, toward the river mouth, where they trespass on a 12-acre par-

cel owned by Jim Jacobs.

The parks superintendent on the lower peninsula, Chris Degernes, said it's difficult to imagine the private land suddenly being posted with no-trespassing signs. "The public has used that property so many years — as if it were public — that it will be difficult to keep the public off," she said.

The Division of Parks and the Alaska Department of Fish and Game have wanted to buy the Anchor River lands for years, she said. It's rich territory. About 50,000 to 60,000 people visit every year, she said, mostly to fish. The

See Page B-6, LAND

## Trees cut to reduce fire danger

■ **CLEARING:** Crews of firefighters at work in woods throughout city.

By TATABOLINE BRANT  
Anchorage Daily News

Firefighters cut down several tall trees in Kincaid Park last week and chopped them into firewood-sized logs, and officials say the work is just one small part of an ongoing federally funded effort to reduce the chance of a bad wildfire in Alaska's largest city.

About a dozen brush piles lined Raspberry Road near Kin-

## WEST COAST WEATHER



## HUD funds for city in jeopardy

■ **GRANTS:** "It's at a critical stage," says Mayor Begich, who has stepped in.

By ROSEMARY SHINOHARA  
Anchorage Daily News

The new mayor's transition report last week pointed to a crisis in public housing. The city is in danger of losing federal Housing and Urban Development grants next year if it doesn't spend \$2.6 million by Nov. 2.

# LAND: Price undecided

Continued from B-1

season starts Memorial Day with king salmon, then continues through freezeup with runs of silver salmon, Dolly Varden and steelhead trout. Migrating birds stop by every spring and fall, and others spend the winter.

There is strong support for public ownership, Degernes said, but the stumbling block has always been the land appraisal.

"Land like that is difficult to appraise," she said. Comparable lands rarely sell, so there is little to base an estimate of land value on. And the land is impossible to develop because of its wetlands, the constantly changing river course and winter storm damage.

The Kenai Peninsula Borough appraises the Mutch property at \$16,500 and the Jacobs land at \$15,000. The owners believe the parcels are worth much more, as does the state, though neither side will reveal its offer. But they can't agree on a price, Degernes said.

"We can't just pay what the seller wants," she said. "It has to be based on fair market value, and that's been the stumbling block time and time again."

After negotiations with Fish and Game fell apart several years ago, The Nature Conservancy stepped in. The conservancy buys high-value land, often using a combination of government grants and private funds. It won a \$417,000 National Coastal Wetland Conservation grant to buy the Mutch and Jacobs properties, plus another large lot in the same area. A deal looked possible, according to both sides.

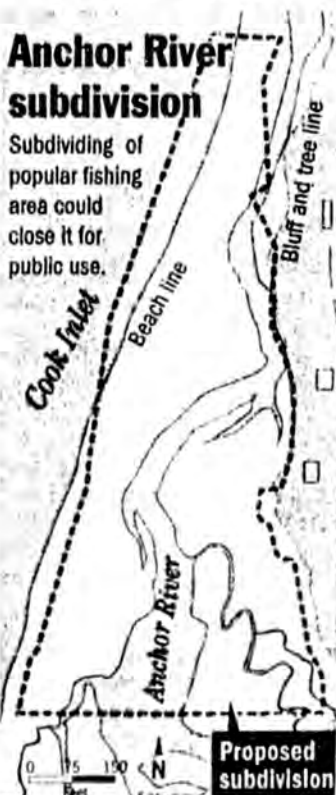
Then a new hurdle arose regarding the river bottom itself. Who owns it?

Surveyor Jerry Anderson, who represents the landowners, said previous court cases make it clear: "The water belongs to the state, but the land underneath (belongs) to the owner." By his reckoning, the two parcels add up to roughly 93 acres.

The Nature Conservancy isn't sure. It wants the issue cleared up to determine how much acreage really exists, said Kenny Powers, the group's director of land protection. "We're happy to pay them for all the

## Anchor River subdivision

Subdividing of popular fishing area could close it for public use.



CHARLES ATKINS / Anchorage Daily News

turn the normally angler-friendly Anchor River into a comb fishery. More fishermen would likely cause more habitat damage on the grassy banks stream, he said.

The closure would also block access to the river mouth key fishing area. Many anglers start fishing at low tide, walk steadily upstream and follow the fish as the water rises. Except at low tides, they could reach the river mouth with trespassing.

He understands the owners' frustration, Whitmore said. Rowdy teens and adults party on the land every Memorial Day, and even law-abiding fishermen trespass regularly. Nevertheless, he added, "it'd be an absolute catastrophe to have it developed."

Even if the two sides can agree on a price, a potential hurdle remains. Can people

land they own. It's just a question of who owns the river bed," he said.

Powers said he thinks a deal is still possible. "The public values are there and the resources are there that deserve public protection, so we're continuing to be interested," he said. All that remains is to agree on a price. "That's the million-dollar question," he said.

The sellers are broadening the market, Anderson said. "If (the state) isn't going to put the money up, they're going to sell it somebody else."

The land is too wet for homes or cabins, Anderson said, but people will buy the five-acre lots if only to have a place to park their recreational vehicles.

Local fishermen would hate to see no-trespassing signs appear on the lower river, said Whitmore, who has fished there 30 years. The new subdivision could close off about a mile of riverbank.

"If you lose access to that portion of river, it means you compress those 1,000 fishermen into one-third less space," he said. "The people will still come, but they'll have much less space to fish," which could

Murkowski, who has voiced philosophical objection to the government's buying private land, would have to approve the use of state or federal funds. Last month, he killed one such land deal on Afognak Island while approving another for ski trail land near Homer.

Powers, of The Nature Conservancy, said he doubts the governor would veto a deal. "The state has been very supportive of this acquisition, as has community, because of the high value of the resources," he said. "I'd be surprised if Gov. Murkowski did not support this project."

Daily News reporter Joel Gay can be reached at jgay@adn.com or at 257-4310.

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## FREE SKIN CANCER SCREENING

# TOYS OF SUMMER

Sec. ~~38.05.127~~. Access to navigable or public water.

(a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas, gas only, and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.



## ALASKA FLYFISHERS

Winners of the 1994 McKenzie Cup



March 9, 2005

Dear Representative Gara:

Based on our collective individual and organizational experience, the Alaska Fly Fishers strongly support the objective of House Bill 37.

The Alaska Fly Fishers (AFF) was founded in 1973 at Anchorage with the objectives of "to preserve the sport of fly fishing, advance the principles of fair chase and fair catch, educate members and the public in the necessity of preserving our outdoor heritage, promote the ethical utilization of the resources of our woods and waters and to organize and unite the fly fishers of Alaska for mutual community benefit." AFF is one of the largest sport fishing organizations in Alaska. I feel we have consistently taken actions which support those objectives.

For nearly as long as AFF has existed, we have provided public education (at low or no cost), participated in conservations projects, and participated in organizations which contribute to Alaska's natural resources. Our public education includes annual seminars on fly fishing, fly tying, and donations of books to the public libraries. Conservation projects include an annual Kenai River Cleanup (for 11 consecutive years), bank stabilization of Campbell Creek, and bank stabilization at Jim's Landing on the Kenai River. The organizations our members have participated in include Fish & Game Advisory Committees and Regional Subsistence Advisory Councils.

An important element of maintaining our habitat and resources is public involvement and support. In order to do this, the public must have a vested interest. If they are denied access to these resources, we can't expect this broad support.

The AFF concludes that the objectives of HB 37 are mutually supportive of the objectives of AFF.

Sincerely,

  
Bob Fairchild  
President

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: H.B. 37  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
Title An act relating to public access RDU Sport Fisheries  
to fishing streams Component Sport Fisheries  
Sponsor Representative Gara  
Requester House Special Committee on Fisheries Component No. 464

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2006    | FY 2007    | FY 2008    | FY 2009    | FY 2010    | FY 2011    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                                         |            |            |            |            |            |            |
|-----------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires the Alaska Department of Fish and Game (ADF&G) to annually compile a list of land along fishing waterways where access to the waterways is impeded by private land ownership. In compiling this list, ADF&G is required to take public input and consider a number of conditions outlined in this bill. Once completed, ADF&G will submit this list to the Commissioner of the Department of Natural Resources for consideration. ADF&G is able to comply with the provisions in this legislation without additional funding and/or staff.

Prepared by: Sarah Gilbertson Phone 465-6137  
Division: Legislative Liaison Date/Time 1/28/05 8:35 a.m.  
Approved by: Acting Commissioner Wayne Regelin Date 1/28/2005  
Agency: Alaska Department of Fish & Game

# Alaska Sportfishing Association

P. O. Box 243106

Anchorage, AK 99524

Representative Les Gara  
State Capitol  
Juneau, AK 99801

Re: HB37

Dear Representative Gara,

I have presented HB37 at the latest Board of Directors meeting and the latest public membership meeting of the Alaska Sportfishing Association. After thorough discussion at both venues, I am pleased to relate that we enthusiastically support this legislation.

The Alaska Sportfishing Association has prided itself in being an organization that works to promote access to areas where sport fishing can be done in concert with sustained yield of the fishery and proper environmental safeguards. One of our longstanding concerns has been the privatization of public lands which in turn reduces or eliminates public access to some of our prized sport fishing rivers and streams.

HB37 places into statute a process that mandates that the Commissioner of Fish and Game nominate privately owned lands that might be returned to public ownership. It also makes the Commissioner of Natural Resources responsible to effecting the acquisition of the lands nominated.

Much of our discussions were centered on the methods SB37 promotes to acquire the land. Our fiscally conservative members were pleased that the bill endorsed using public easements and land trades as well as outright purchase of the land. The members were excited that your initial nominations could have a significant positive impact on sport fishing access in South-central and Interior Alaska.

We appreciate your efforts in sponsoring HB37.

Phil Cutler, President  
Alaska Sportfishing Association

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB037-DNR-Title-03-18-I  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Public Access to Fishing Streams RDU Resource Development  
 Component Title Acquisition & Defense  
 Sponsor Rep. Gara  
 Requester (H) FSH Component No. 2459

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2006     | FY 2007     | FY 2008     | FY 2009     | FY 2010     | FY 2011     |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Personal Services      | 40.2        | 40.2        | 40.2        | 40.2        | 40.2        | 40.2        |
| Travel                 | 2.0         | 2.0         | 2.0         | 2.0         | 2.0         | 2.0         |
| Contractual            | 2.0         | 2.0         | 2.0         | 2.0         | 2.0         | 2.0         |
| Supplies               | 1.0         | 1.0         | 1.0         | 1.0         | 1.0         | 1.0         |
| Equipment              |             |             |             |             |             |             |
| Land & Structures      |             |             |             |             |             |             |
| Grants & Claims        |             |             |             |             |             |             |
| Miscellaneous          |             |             |             |             |             |             |
| <b>TOTAL OPERATING</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                                         |             |             |             |             |             |             |
|-----------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts                   |             |             |             |             |             |             |
| 1003 GF Match                           |             |             |             |             |             |             |
| 1004 GF                                 | 45.2        | 45.2        | 45.2        | 45.2        | 45.2        | 45.2        |
| 1005 GF/Program Receipts                |             |             |             |             |             |             |
| 1037 GF/Mental Health                   |             |             |             |             |             |             |
| Other (Specify Type--Do not abbreviate) |             |             |             |             |             |             |
| <b>TOTAL</b>                            | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> | <b>45.2</b> |

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

**POSITIONS**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| Full-time |   |   |   |   |   |   |
| Part-time | 1 | 1 | 1 | 1 | 1 | 1 |
| Temporary |   |   |   |   |   |   |

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires DNR, working with the Alaska Department of Fish and Game (ADF&G), to identify private lands that the state should acquire to provide public access to and along popular fishing streams, and then directs DNR to pursue acquisition through purchase of easements, land exchanges, and or fee simple purchase.

Section 2 of the bill requires ADF&G to identify undeveloped land along popular fishing streams for possible acquisition. The bill identifies three areas where this process will look at first, but envisions an ongoing, statewide process. ADF&G then submits the list of parcels to DNR to acquire the land. This fiscal note does not include the actual cost to negotiate and appraise individual acquisitions, and does not include funding to pay the purchase price for acquisitions.

Prepared by: Bob Loeffler, Director Phone 269-8625  
 Division Mining, Land & Water Date/Time 3/18/2005  
 Approved by: Tom Irwin, Commissioner Date 3/18/2005  
 Agency Natural Resources

## FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. HB037-DNR-Title-03

### ANALYSIS CONTINUATION

This fiscal note assumes that ADF&G will provide DNR with a list of parcels, maps of the parcels, names and addresses of property owners, and other information about the parcels. ADF&G will submit a separate fiscal note for these costs.

Section 3 of the bill directs DNR to acquire the lands identified by ADF&G. This fiscal note only includes DNR's costs to conduct initial land title work, field inspections of parcels to be acquired, and preliminary discussions with the owners of parcels that the state desires to acquire.

After these preliminary discussions, DNR would then request appropriations from the legislature to fund work on each parcel or group of parcels, including costs for negotiation, appraisals, surveys, complete land title reviews, and purchase of the land. If the specific acquisitions are not funded, DNR would not be able to pursue the acquisitions further.

DNR's initial costs that are included in this Fiscal Note are:

#### PERSONAL SERVICES COST - \$40.2

Natural Resource Specialist (NRS) III and Land Appraiser II (range 18s) - total 2 months @ \$6.0/month = \$12.0 - to discuss acquisitions with property owners and estimate costs associated with individual parcel acquisitions.

Natural Resource Specialist (NRS) I (range 14) - 6 months @ \$4.7/month = \$28.2 - to conduct initial land title, preliminary valuation, and other research for all parcels.

TRAVEL, CONTRACTUAL, SUPPLIES - total \$5.0 - includes travel to sites (initial areas are all road accessible), research of municipal title records, office supplies, etc.

#### LONG TERM COSTS ASSOCIATED WITH ACTUAL ACQUISITIONS - Not Included in Fiscal Note.

This fiscal note does not include the cost associated with negotiating the land purchase or exchanges, land appraisals, preparing and recording title documents, any necessary survey costs, and other related costs. DNR's experience with recent land acquisitions indicates that one NRS III position can negotiate and coordinate about four acquisitions per year. Some support staff time is also needed for document preparation, record keeping, additional title research, etc. Based on this, the estimated cost for each purchase is \$40.0 (\$25.0 for personal services and \$15.0 for contractual services including appraisal and environmental audit). Land exchanges are significantly more labor intensive, based on recent experience the cost for land exchanges is \$50.0 to \$100.0 per parcel.

Actual acquisition costs will vary by area and size of parcels. DNR estimates that parcels that provide access to Montana and Willow Creeks along the Parks Highway will cost about \$7,500 per acre for 5-10 acre parcels (\$37.5 - \$75.0 per parcel). Recent ADF&G purchases of parcels for access along the Anchor River and Deep Creek on the Kenai Peninsula were higher, averaging about \$100.0 per parcel.