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HB14: An Act Relating to Bristol Bay Fisheries Reserve
Testimony by Deantha Crockett, Executive Director, Alaska Miners Association
January 31, 2017
House Fisheries Committee

Chairwoman Stutes and Members of the Committee, thank you for the opportunity to testify today.

My name is Deantha Crockett; I am Executive Director of the Alaska Miners Association. AMA is the professional trade association for Alaska's mineral industry, including small family run placer mines; large-scale mines and projects, and the contracting sector that supports Alaska's mines. We're represented in eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome.

I'm here today to provide comment on HB14, which suggests amendments to the Bristol Bay Forever ballot initiative passed by voters in 2014.

At the time the citizens initiative titled the Bristol Bay Fisheries Reserve was before voters, we heard from proponents that it would strengthen environmental protection and enhancement for the Bristol Bay region by requiring the Alaska Legislature to take action for final authorization of a mine within the watershed. The bill is written so that such action would take place after the mine had obtained the dozens of state, local, and federal permits required to move forward with mine development.

AMA didn't choose to engage in opposition to the 2014 Bristol Bay Forever initiative because the law is clearly unconstitutional. It violates the separation of powers doctrine, which specifies that the legislature enacts laws and the executive branch implements and executes laws. It created laws via ballot box resource management, and not through deliberate, technical consideration. The Legislature must now review and approve permits after they are issued by the executive branch, and after the technical experts at our regulatory permitting agencies have evaluated and approved them. This process is called a "legislative veto" and the Alaska Supreme Court has repeatedly said that a legislative veto is unconstitutional. Additionally, as lawmakers I ask you: Does the legislature have the technical staff necessary to evaluate the complexities inherent in permitting decisions? Do you even have the time, especially in a 90-day session, to thoroughly evaluate this type of decision?

To add to the flagrant legal issues, the initiative created what is clearly special and local legislation. Why single out a resource project in Bristol Bay? Why not have the same legislative authority and approval for projects located in the Cook Inlet drainage, the Yukon-Kuskokwim drainage, the North Slope, the Aleutians, and the Copper River drainage? Why would we guide permitting decisions in Alaska by making one set of rules for decisions in the Bristol Bay region while we have a different set of rules governing permitting requirements in the rest of the state? The bill sponsor notes that a legal opinion expresses no conflicts, but I caution you that should HB14 proceed, I would expect to see formal legal challenges.



Amending the initiative via this bill, HB14, is only making bad policy worse, and we urge you undergo significant legal review prior to adopting legislation. It politicizes Alaska's resource permitting process by having state agency decisions subject to review and approval by politicians rather than professional technical agency staff with the expertise to truly examine a proposed project.

Some may be surprised to learn that the law is actually *less protective* than existing statutes because it removes judicial scrutiny. Administrative actions by agencies in the permitting processes are governed by clear legal standards and subject to legal review in the court system. The judicial branch serves as an important check and balance to assure all interested parties of a lawful and careful process. In contrast, this bill requires the legislature to make a finding and pass a statute to approve a project. But any vote of the legislature is inherently a political decision, and such a vote would typically be immune from legal challenge.

To conclude, I assure you that this type of legislation sends an alarmingly negative message to the investment community that Alaska is unstable when it comes to permitting. It could impact future investment and job opportunities for all Alaskans, at a time when we so desperately need economic diversity. We urge you to consider that Alaska has a stringent, robust environmental permitting and oversight structure, and development projects in the state, no matter where they are located, should be evaluated through that process. HB14 is bad policy and should not be passed from this Committee. Thank you.