

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON FISHERIES**

January 31, 2017

10:01 a.m.

**MEMBERS PRESENT**

Representative Louise Stutes, Chair  
Representative Zach Fansler  
Representative Jonathan Kreiss-Tomkins  
Representative Geran Tarr  
Representative Mike Chenault  
Representative David Eastman  
Representative Mark Neuman

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATIVE MEMBERS PRESENT**

Representative Dan Ortiz

**COMMITTEE CALENDAR**

HOUSE BILL NO. 14

"An Act relating to the Bristol Bay Fisheries Reserve; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 14

SHORT TITLE: LEG. APPROVAL OF BRISTOL BAY SULFIDE MINE

SPONSOR(s): REPRESENTATIVE(s) JOSEPHSON

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	FSH, RES
01/31/17	(H)	FSH AT 10:00 AM GRUENBERG 120

**WITNESS REGISTER**

REPRESENTATIVE ANDY JOSEPHSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the proposed committee substitute (CS) for HB 14, as sponsor.

DEANTHA CROCKETT, Executive Director  
Alaska Miners Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 14.

NELLI WILLIAMS, Alaska Director  
Trout Unlimited  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 14.

ABE WILLIAMS, Representative  
Pebble Partnership  
Anchorage, Alaska

**POSITION STATEMENT:** Testified with opposition to HB 14.

MIKE HEATWOLE, Representative  
Pebble Partnership  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 14.

LISA REIMERS, Member  
Iliamna Village Corporation  
Iliamna, Alaska

**POSITION STATEMENT:** Testified with opposition to HB 14.

#### **ACTION NARRATIVE**

[10:01:32 AM](#)

**CHAIR LOUISE STUTES** called the House Special Committee on Fisheries meeting to order at 10:01 a.m. Representatives Stutes, Tarr, Chenault, Fansler, and Eastman were present at the call to order. Representatives Neuman and Kreiss-Tomkins arrived as the meeting was in progress.

#### **HB 14-LEG. APPROVAL OF BRISTOL BAY SULFIDE MINE**

[10:01:44 AM](#)

CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 14, "An Act relating to the Bristol Bay Fisheries Reserve; and providing for an effective date."

10:03:09 AM

REPRESENTATIVE FANSLER moved to adopt the proposed committee substitute (CS) for HB 14, Version 30-LS0161\D, Shutts/Bullard, 1/27/17, as the working document.

10:03:31 AM

CHAIR STUTES objected for discussion.

10:03:37 AM

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, presented the changes contained in the proposed CS for HB 14, to wit: page 1, line 11, inserted "wildlife"; page 2, line 8, inserted "modifications"; [page 2], line 22, inserted "wildlife"; and page 3, line 8 inserted "wildlife". He referred to the committee packet and the handout titled, "SUMMARY OF CHANGES," to paraphrase the statement, which read as follows [original punctuation provided with some formatting changes]:

There are three changes to the original version of the House Bill 14 that occur in the Committee Substitute. First, the original version protected the "fisheries" of the Bristol Bay Fisheries Reserve. The term 'fisheries' was defined within the bill as meaning "subsistence, personal use, sport, or commercial fisheries as (they are defined in existing statute.)" This definition read only to include those species and habitats as they relate to human use. The Committee Substitute has added in the terms 'fish' and 'wildlife' to offer more broad protections to life within the Reserve, not just those species and areas used by humans. These terms are inserted into other areas of the bill where appropriate.

Further, the geographic area described in the original bill was the Bristol Bay Fisheries Reserve which is a distinct area delineated in statute and administrative regulations. The Committee Substitute expands this area to include the entire watershed of the Reserve, a significantly larger scope. The definition of watershed can be found in state and common law jurisprudence.

Finally, the term 'modification' was inserted under the definition of 'permits and authorizations' to increase specificity.

REPRESENTATIVE JOSEPHSON pointed out that wherever Reserve appears it refers to the Bristol Bay Fisheries Reserve (BBFR) as established by Governor Jay Hammond, 1972.

[10:06:28 AM](#)

CHAIR STUTES removed her objection, and without further objection Version D was before the committee.

[10:06:41 AM](#)

REPRESENTATIVE JOSEPHSON said the context of the bill was derived from the voter initiative passed in 2014. The intent of HB 14, he said, is to strengthen and broaden the scope of the initiative and communicate a clear message to mine developers that the tough standards, which they themselves purport to deliver, will be expected by the state and upheld in statute for the protection of fisheries by requiring best scientific practices, including peer review. The proposed standard does not yet exist, and it will provide the legislature with a degree of confidence beyond what is currently held, as the permitting process does not require a high level of scrutiny. The bill requires that the commissioners of the three land agencies, Department of Natural Resources (DNR), Department of Environmental Conservation (DEC), and the Alaska Department of Fish & Game (ADF&G), must have independently reviewed, inter-agency, peer reviewed studies prepared. The initiative focused on having the legislature be the deciding body whether or not a large-scale, metallic, sulfide mining operation should be allowed to locate within the watershed of the Bristol Bay Fisheries Reserve. By having the three department commissioners endorse the science behind the proposal, the legislature could confidently approve the operation. He expressed a definite, personal lack of confidence in the current process. As an example, he said, having posed a question to discover actionable outcomes of permit approvals and denials, the response showed that the Division of Mining, Land, and Water has only rejected 108, of 7,971 received and considered [during the ten year period of 2003-2013]. Also, criticism of the initiative and the bill has focused on a certain part of the state being targeted for this legislation. However, the Alaska Supreme Court, in Hughes v. Treadwell, No.S-15468, (2015) allows for the action,

and referred to the case law opinion to paraphrase language, which read as follows [original punctuation provided]:

According to a report prepared by the University of Alaska Anchorage's Institute of Social and Economic Research titled "The Economic Importance of Bristol Bay Salmon Industry," the Bristol Bay sockeye fishery "is the world's most valuable wild salmon fishery, and typically supplies almost half of the world's wild sockeye salmon."

We conclude that Bristol Bay's unique and significant biological and economic characteristics are of great interest not just to the Bristol Bay region but to the state as a whole. We also conclude that 12BBAY's purpose - to protect "Bristol Bay wild salmon and waters" - is legitimate. And we conclude that 12BBAY bears a fair and substantial relationship to the initiative's legitimate purpose.

The sponsors of 12BBAY certainly could have proposed an initiative of statewide application, but instead they chose to focus on a very important fishery in a single region. As we explained in Pebble Limited Partnership, however, "legislatures routinely must draw lines and create classifications."

[10:12:15 AM](#)

REPRESENTATIVE JOSEPHSON said the Supreme Court has affirmed that targeting the Bristol Bay area is a legitimate action, and applying the standard throughout the state is the legislature's prerogative. The bill lays out that the interagency, peer reviewed, reports will be conducted and if there is any significant change made to the original plan, the findings must be revisited before the matter would be presented to the legislature. He noted that the standard of reasonable doubt may seem odd, however, other states, such as Washington, have imposed this requirement in forestry laws. Also, the Commonwealth of Pennsylvania, a major mining state that hosts a high level of fracking, imposes a rigorous standard through the application of Pennsylvania Code §86.10(12), which he paraphrased in order to stress the reasonable doubt standard. He directed attention to the committee packet and the abundance of support letters for the bill. Finally, he cautioned that given the focus of the new federal administration, the

protective onus for Alaska is on the residents and the legislature.

10:16:36 AM

REPRESENTATIVE EASTMAN asked whether Bristol Bay is singled out because it merits an increased level of scrutiny or is it being used as the locale for a pilot project prior to application to the remainder of the state.

REPRESENTATIVE JOSEPHSON responded that a culture exists to make Alaska a "salmon first state." The Supreme Court has indicated that it is not unreasonable for the state to consider Bristol Bay as an area that requires extra protection. The high standard could certainly be applied to anywhere in Alaska. However, Bristol Bay hosts the greatest sockeye salmon fishery in the world and imposing a high standard is entirely appropriate, he stressed

10:18:47 AM

REPRESENTATIVE NEUMAN referred to the bill, page 2, section 2, that stipulates the role of the commissioners prior to legislative recommendations being made, and said it may require the promulgation of a tremendous number of regulations. He asked what the sponsor envisions in this regard.

REPRESENTATIVE JOSEPHSON responded that the bill requires a number of findings, and the department would need to consider any additional regulations in order to comply. He opined that this measure is the most important environmental, fisheries decision in Alaska history, and it may require some effort.

REPRESENTATIVE NEUMAN asked for clarity regarding the federal v. state purview for the area in question.

REPRESENTATIVE JOSEPHSON explained that the area encompasses both state and federal lands, and the proposed mining developments are located in a mixed use area.

REPRESENTATIVE NEUMAN directed attention to page 1, line 11, and noted the addition of "fisheries, fish, or wildlife," and asked whether the use of the term "fish" could be construed to mean an individual fish.

REPRESENTATIVE JOSEPHSON conjectured how the language might be read by a lawyer and the term could be considered singular or plural.

REPRESENTATIVE NEUMAN said it would be helpful to clarify the use of the term in keeping with the intent of the bill.

10:23:43 AM

REPRESENTATIVE JOSEPHSON said the bill is not just about the Pebble Partnership, and pointed out that 11 other claims exist in the region, and pointed out that the Donlin Gold mine falls outside of the area, along with other mining threats that effect the Bristol Bay area. The intent is to mirror a bill addressing sulfide mining with the law that prohibits oil exploration in the same area. At an April, 2015, meeting, the Board of Fisheries (BOF) wanted to take a precautionary approach, under Title 5, for managing sustainable salmon fisheries, and the bill safeguards that concern along with placing a burden on mining companies. The mining companies are poised to effect a permanent change to the Southwest culture of Alaska, and thus, the bill represents a reasonable standard to apply, he maintained.

10:26:09 AM

REPRESENTATIVE CHENAULT asked for a walk-through of how a proposed change to a previously approved permitting requirement might be handled. He asked: what vote requirement would be needed for approval on the floor of the legislature; will there be added costs assumed by the legislature, lacking technical staff; and whether any change to a permit would require additional legislative approval prior to a project continuing through the permitting process.

REPRESENTATIVE JOSEPHSON said changes to the permit would not create an impedance to the process, and interagency peer review would be considered dispositive; modifications as defined on page 2, lines 7-13. A permit would be brought to each body only once for a majority vote, based on the facts provided at the time. Given the rigorous standards, he maintained that the question would be one of trust. If the test applies, litigation would be dispensed with based on the standard of compliance as attained by the developers. He directed attention to the fiscal notes contained in the committee packet, several of which are zero, as some expenses are absorbed via designated departmental funds, and said developers may also be responsible for some

agency costs. He referred to, and paraphrased from, a report [Institute of Social and Economic Research (ISER) in the College of Business and Public Policy at the University of Alaska, titled, "The Economic Importance of the Bristol Bay Salmon Industry," prepared for the Bristol Bay Regional Seafood Development Association by Gunnar Knapp, Mouhcine Guetttabi, and Scott Goldsmith, Executive Summary, page 1, 4/13], which read as follows:

In 2010, harvesting, processing, and retailing Bristol Bay salmon and the multiplier effects of these activities created \$1.5 billion in output or sales value across the United States.

REPRESENTATIVE JOSEPHSON argued that given the documented, economic value of the fishery, it would be cost effective for the legislature to allocate a few hundred thousand dollars to ensure the preservation of an industry worth \$1.5 billion. Future generations, he predicted, will certainly be appreciative of the effort.

REPRESENTATIVE CHENAULT said it would be appropriate to hear directly from the departments involved in issuing permits to confirm that costs associated with HB 14 can be absorbed within budgetary constraints. Further, if funding is being set aside by any agency, it should be disclosed to the legislature.

[10:32:07 AM](#)

REPRESENTATIVE NEUMAN reiterated interest in hearing from the departments. He opined that the existing standards are considered to be highly effective, and perhaps nothing further is necessary.

[10:33:00 AM](#)

CHAIR STUTES opened public testimony.

[10:33:59 AM](#)

DEANTHA CROCKETT, Executive Director, Alaska Miners Association (AMA), commented on HB 14, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

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 HB 14, which suggests amendments to the Bristol Bay Forever ballot initiative passed by voters in 2014.

At the time the citizen's 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 "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 HB 14 proceed, I would expect to see formal legal challenges.

Amending the initiative via this bill, HB 14, 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. HB 14 is bad policy and should not be passed from this Committee.

10:36:33 AM

REPRESENTATIVE TARR asked if the constitutionality of the initiative has been challenged following the public vote.

MS. CROCKETT said no opposition campaign occurred during the initiative process; however, post vote, a group challenge was lodged, with an unsuccessful outcome. However, should the bill pass, more legal challenges may arise, she anticipated. To a follow-up question she agreed to provide further information regarding the disposition of the defeated court case.

10:39:27 AM

NELLI WILLIAMS, Alaska Director, Trout Unlimited, stated support for HB 14, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I am the Alaska Director for Trout Unlimited and here to testify in support of HB 14 on behalf of our 1,000 members and the dozens of sport fishing businesses who operate in Bristol Bay.

The threat of large scale hard-rock mines like Pebble is nothing new. Alaskans have been living in the shadow of Pebble and their empty promises for over a decade. That is a very real threat to the 14,000 jobs and \$1.6 billion economy that is currently out there.

Over the past many years Alaskans, led by local tribes and fishermen have repeatedly opposed Pebble and asked for protections for Bristol Bay. That concern grew even more when Alaskans watched the tailings dam break at the Mt. Polley mine [British Columbia] and the subsequent impact to fishery jobs and culture there. The same company who built the failed dam designed the dams in Pebbles plans.

Recently notable is that 65 percent of Alaskans (including a majority in every precinct of the state) voted for increased protections for Bristol Bay. Our current laws are not enough.

I am a mother of two young kids. Like many Alaskan families some of our happiest moments are in a boat or along a river bank.

We, all of us, have a responsibility to make sure Alaskan families now and in the future have clean fish filled rivers to use and enjoy.

We cannot afford to sit back and let a foreign mining company call the shots.

I urge our state leaders to listen to [and] stand up for Alaskan families and businesses and do everything in your power to protect Bristol Bay's salmon and jobs.

[10:41:44 AM](#)

ABE WILLIAMS, Representative, Pebble Partnership, stated opposition to HB 14 and said it politicizes an established process for permitting projects throughout Alaska. The economics of the region are reliant on the stability of the process that's in place. Separation of power issues are a concern, he said, as well as the additional layers of bureaucracy that the bill would institute. It is important to protect and support the fisheries in a meaningful manner, but resource development is also necessary.

[10:44:05 AM](#)

REPRESENTATIVE TARR questioned whether he supported the original initiative.

MR. WILLIAMS replied, "No."

[10:44:51 AM](#)

REPRESENTATIVE EASTMAN asked if he plans to continue as a fourth generation fisherman.

MR. WILLIAMS replied, "Yes." He said a large portion of the \$1.4 billion fishing industry benefits outside interests and the majority of the 14,000 reported jobs are not held by Alaskans; however, his three boys have, or are, also entering the industry.

[10:46:20 AM](#)

CHAIR STUTES asked whether he is affiliated with the Bristol Bay Fisheries Association, which has submitted a letter of support for HB 14.

MR. WILLIAMS answered, "No."

[10:47:09 AM](#)

MIKE HEATWOLE, Representative, Pebble Partnership, cited the unresolved constitutionality of the initiative and the questions that remain, as previously testified to by Ms. Crockett. He said HB 14 essentially creates a legislative veto; turning law on its head. The bill creates a bureaucratic level to the entire permitting process by requiring legislative review; inclusive of modifications and extensions. He predicted that, given the circumstances of the process, the legislature would be required to review project permits on an annual basis. Investors may find it difficult to retain confidence for supporting development in any region, as the bill politicizes the heretofore stable, predictable permit process.

REPRESENTATIVE FANSLER noted that the constitutionality questions have been taken to the Alaska Supreme Court.

MR. HEATWOLE said the issue of special or multiple legislation was addressed prior to the initiative vote, but the separation of powers was not ruled upon and remains ripe for litigation. To a follow-up question, he offered to provide further information.

[10:52:07 AM](#)

LISA REIMERS, Member, Iliamna Village Corporation, stated opposition to HB 14, and said many of the villagers sold their permits when fishing was on a downturn, and now the jobs that Pebble might provide are needed, with the families of the area being torn apart, lacking an economic base. Politicians should not be making the decisions, she stressed.

[10:54:46 AM](#)

CHAIR STUTES announced HB 14 as held.

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:55 a.m.