Sean Parnell, Governor

DEPARTMENT OF LAW

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December 17, 2012

The Honorable Mead Treadwell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: Review of "Bristol Bay Forever" Initiative Application
A.G. File No. JU2012200845

Dear Lieutenant Governor Treadwell:

You have asked us to review an application for an initiative entitled "An Act Providing for Protection of Bristol Bay Wild Salmon and Waters Within or Flowing into the Existing 1972 Bristol Bay Fisheries Reserve" ("12BBAY"). Because the application complies with the specific constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

I. SUMMARY OF THE PROPOSED BILL

A. BRIEF SUMMARY AND BACKGROUND

In 1972, the legislature enacted AS 38.05.140(f), which provides in full:

> The submerged and shoreland lying north of 57 degrees, 30 minutes, North latitude and east of 159 degrees, 49 minutes, West longitude within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay Fisheries Reserve, a surface entry permit to develop an oil or gas lease or an exploration license under AS 38.05.131 - 38.05.134 may not be issued on state owned or controlled land until the legislature by appropriate resolution specifically finds that the entry will not constitute danger to the fishery.

The bill proposed by this initiative would provide for the protection of Bristol Bay wild salmon and waters within or flowing into the designated Bristol Bay Fisheries Reserve by requiring legislative approval for certain large-scale metallic sulfide mines. This legislative approval would take the form of a duly-enacted law finding that the proposed mining operation will not constitute danger to the fishery within the Bristol Bay

Fisheries Reserve and would be in addition to other permits and authorizations already required for such mines to operate in the region. The bill would also add certain provisions to the uncodified law of the state in order to effectuate the substantive provisions of the bill.[1]

B. SECTIONAL SUMMARY

The bill proposed by this initiative is five pages long, double-spaced, and consists of five sections. The first section adds a new statutory provision to Title 38 and the remaining four sections add provisions to the uncodified law of the State of Alaska. These five provisions are summarized as follows:

- **Section 1.** This section would add a new statutory provision, AS 38.05.142, composed of three subsections, and entitled "Legislative approval required for certain large scale mines." Subsection (a) of the proposed statute provides that in addition to permits and authorizations otherwise required by law, the legislature must give final authorization for any "large-scale metallic sulfide mining operation located within the watershed of the Bristol Bay Fisheries Reserve designated in AS 38.05.140(f)." The authorization would "take the form of a duly enacted law finding that the proposed large-scale metallic sulfide mining operation will not constitute danger to the fishery within the Bristol Bay Fisheries Reserve." Subsection (b) provides that the commissioner of natural resources may adopt regulations under the Administrative Procedure Act to implement the statute. Subsection (c) defines "large-scale metallic sulfide mining operation" as a "specific mining proposal to extract metals, including gold and copper, from sulfide-bearing rock and that would directly disturb 640 or more acres of land."

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[1] We note that this initiative bill is substantially similar to SB 152, which was introduced by Senator Hollis French in the 2012 legislative session and was entitled "An act requiring legislative approval before the issuance of an authorization, license, permit, or approval of a plan of operation for a large-scale metallic sulfide mining operation that could affect water in or flowing into or over the Bristol Bay Fisheries Reserve." The language of the proposed statute in this initiative bill is nearly identical to that in SB 152. The bill remained in the Senate Community & Regional Affairs Committee and the legislature took no further action on it.

- **Section 2.** This section would add a new provision to the uncodified law of the state containing ten specified findings by the people. The findings would generally provide for recognition of the Bristol Bay Fisheries Reserve as a region of statewide significance to sport, commercial, and subsistence fisheries, Alaska's economy, the global fishing economy, and a region of cultural importance to Alaska Natives. The findings would also recognize potential adverse effects of metallic sulfide mining to the region and the need to protect the region from those effects, particularly as related to large-scale metallic sulfide mining. Accordingly, the findings would state that protective measures of the initiative bill as a whole are directed at ensuring the protection of a region that the legislature already sought to protect through creation of the Reserve in 1972. The findings state the intent of the bill: to require legislative approval of any large-scale metallic sulfide mining that could adversely impact the Bristol Bay Fisheries Reserve and anadromous waters within the reserve.

- **Section 3.** This section would add a new provision to the uncodified law of the state regarding retroactivity and scope of the bill. Specifically, this section indicates that the Act would apply "only to large-scale metallic sulfide mining operations that have not received all necessary authorizations, licenses, permits, or approved plans of operation before the effective date of this Act," and that the provisions of the Act governing legislative action do not apply to existing mining operations in the state or a mine that does not affect the watershed targeted by the bill.

- **Section 4.** This section would add a new provision to the uncodified law of the state providing for severability of any provision of the law invalidated by a court.

- **Section 5.** This section would add a new provision to the uncodified law providing that the initiated act would take effect 90 days after enactment.

II. ANALYSIS

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative and within 60 calendar days of receipt either "certify it or notify the initiative committee of the grounds for denial." The application for the 12BBAY initiative was filed on October 22, 2012. The 60th calendar day after the filing date is

December 21, 2012. Under AS 15.45.080, certification shall only be denied if: the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; the application is not substantially in the required form; or there is an insufficient number of qualified sponsors.

A. FORM OF THE PROPOSED BILL

In evaluating an initiative application, you must determine whether the application is in its "proper form."[2] Specifically, you must inquire whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[3]

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires four things: that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state: "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects include the making or repealing of appropriations and the enactment of local or special legislation.[4]

This initiative bill meets the first three requirements. It is confined to one subject—the protection of Bristol Bay wild salmon and waters in a prescribed location. The subject is expressed in the title, "An Act Providing for Protection of Bristol Bay Wild Salmon and Waters Within or Flowing into the Existing 1972 Bristol Bay Fisheries Reserve." And the required enacting clause is present.

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[2] Alaska Const. art. XI, § 2.

[3] *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988) (citing *Boucher v. Engstrom*, 528 P.2d 456, 460-61 (Alaska 1974), *overruled on other grounds by McAlpine*, 762 P.2d at 85.).

[4] AS 15.45.010; Alaska Const. art. XI, § 7 (also prohibiting dedication of revenue; and the creation of courts, the definition of their jurisdiction, or prescribing rules of court).

With respect to the final requirement, in determining whether an initiative bill contains a prohibited subject, the Alaska Supreme Court has adopted a "deferential attitude toward initiatives,"[5] and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.[6] Indeed, the court has "sought to preserve the people's right to be heard through the initiative process wherever possible."[7] Accordingly, we have analyzed the bill with these principles in mind and conclude that the initiative bill contains no prohibited subject. As such, the fourth requirement relating to the form of the bill is satisfied.

1. Does the Initiative Bill Make an Appropriation or Enact Local or Special Legislation?

There are potential arguments that the bill either improperly appropriates a public asset, enacts local or special legislation, or that the bill may suffer from other constitutional infirmities.[8] While liberal access to the initiative process is required, these restrictions on that process are nevertheless important conditions requiring strict compliance.[9] Ultimately, we conclude that the bill does not violate these constitutional restrictions.

a. The Initiative Bill Does Not Make an Appropriation.

First, we conclude that the initiative bill does not make an appropriation in violation of the constitutional prohibition on appropriating by initiative. Article XI,

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5 *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

6 *McAlpine*, 762 P.2d at 91; *Yute Air*, 698 P.2d at 1181.

7 *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009) (citing *Boucher*, 528 P.2d at 462).

8 There is no evidence that this initiative bill attempts to dedicate revenue, create courts, define their jurisdiction, or prescribe rules of court. *See* AS 15.45.010; Alaska Const. art. XI, § 7 (setting out prohibited subjects).

9 *Citizens for Tort Reform v. McAlpine*, 810 P.2d 162, 168 n.14 (Alaska 1991).

section 7 of the Alaska Constitution prohibits initiatives that "make or repeal appropriations."[10] Alaska has robust case law regarding what constitutes an appropriation for purposes of the initiative process, and one recent case is highly applicable here: *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell.*[11]

In *Pebble*, mining organizations that opposed a proposed ballot initiative relating to the statewide regulation of large-scale metallic mineral mines sued to keep the initiative off the ballot, arguing in relevant part that the initiative violated the restriction against the making of an appropriation. The Alaska Supreme Court disagreed, and affirmed the Lieutenant Governor's decision to certify the initiative.

The court applied the two-part test established in *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*[12] in finding that the bill, which sought "to protect the statewide public interest in water quality by limiting the discharge or release of certain toxic pollutants on the land and waters of the state," would not make a constitutionally impermissible appropriation.[13]

The court looked first at "whether the initiative deals with a public asset."[14] The court found that the "waters of the state are public assets for the purposes of a constitutional appropriations analysis," and that the bill dealt with such assets.[15]

Under the second part of the test, the court looked at whether the initiative would appropriate the public asset.[16] In analyzing this factor, the court initially looked at the core objectives of the constitutional prohibition against appropriations by initiative: "to

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10 *See also* AS 15.45.010.

11 215 P.3d 1064 (2009).

12 151 P.3d 418, 423 (Alaska 2006).

13 *Pebble*, 215 P.3d at 1073.

14 *Id.*

15 *Id.* at 1074.

16 *Id.* at 1073.

prevent give-away programs that appeal to the self-interest of voters and endanger the state treasury" and "to preserve legislative discretion by ensuring that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs."[17] The court then considered whether the initiative "would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action."[18]

The court found that the Pebble initiative was not a give-away program and that it did not narrow the legislature's range of freedom to make allocation decisions because it was "a permissible management or regulatory policy" in furtherance of the bill's intent to protect the public from the adverse effects of new large-scale metallic mining operations, affirming prior holdings that "natural resource management is an appropriate subject for a public initiative."[19]

Like the initiative in *Pebble*, 12BBAY is a natural resources management initiative that deals with what the Alaska Supreme Court has declared is a public asset: the waters of the state. The bill is not a give-away program because it does not "target[] any particular group or person or entity . . . to receive state money or property, nor is there any indication that by passing this initiative, the voters would be voting themselves money or property"[20]—the seminal analysis for "give-away" programs. The bill also does not narrow the legislature's freedom to do anything. In fact, it expands that freedom by creating a specific (and ultimate) role for the legislature in authorizing large-scale metallic sulfide mining in the Bristol Bay Fisheries Reserve. The bill is a "permissible management or regulatory policy" under the standards enunciated in *Pebble*, because its manifest intent is to protect and preserve the fishery.

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17 *Id.* at 1075 (citing *Anchorage Citizens for Taxi Reform*, 151 P.3d at 423) (internal citations and quotations omitted).

18 *Id.* (quoting *Staudenmaier v. Municipality of Anchorage*, 139 P.3d 1259, 1262 (Alaska 2006)).

19 *Id.* at 1077 (citing *Brooks v. Wright*, 971 P.2d 1025, 1033 (Alaska 1999)).

20 *Id.* at 1075 (internal citation and quotation omitted).

12BBAY regulates a public asset—the Bristol Bay Fisheries Reserve—in an attempt to protect it from the adverse effects of certain mining activities. It does not prohibit that asset's use, and it does not state a preference among users. It leaves to the legislature the final authority to authorize large-scale metallic sulfide mining within the reserve upon a finding that the mining activity will not endanger the fishery. The commissioner of the Department of Natural Resources may adopt regulations under the initiative. In declining pre-election review of the initiative bill in *Pebble*, the court stated plainly: "[t]here is nothing clearly unconstitutional or clearly unlawful about regulating the discharge of toxic materials into state waters."[21] This bill also does not allocate the asset entirely to one group at the expense of another, does not target a specific group to receive money or property, and leaves the ultimate authorization for large-scale metallic sulfide mining in the hands of the legislature. Accordingly, we conclude that the bill does not make an unconstitutional appropriation by initiative.

b. The Initiative Bill Does Not Enact Local or Special Legislation.

Second, we conclude that this initiative bill does not enact local or special legislation. Article XI, section 7 of the Alaska Constitution provides in relevant part that "[t]he initiative shall not be used to . . . enact local or special legislation." Alaska Statute 15.45.010 echoes this provision: "The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed . . . to enact local or special legislation."

Alaska's leading case on what constitutes "local or special legislation" for purposes of the initiative process is *Boucher v. Engstrom*.[22] *Boucher* involved an initiative for relocating the capital of Alaska from Juneau to a site other than Anchorage or Fairbanks. Because of those exclusions, the trial court found the initiative to be unconstitutional special legislation. The Alaska Supreme Court reversed,[23] establishing a two-stage analysis for determining whether a proposed initiative is prohibited "local or special legislation." Under the *Boucher* test, "[t]he first stage is a threshold inquiry as to

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21 *Pebble*, 215 P.3d at 1077.

22 528 P.2d 456 (Alaska 1974), *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81, 85 (Alaska 1988).

23 *Id.* at 464.

whether the proposed legislation is of general, statewide applicability."[24] If a proposed initiative is legislation of statewide application, the initiative would not enact special legislation and no further inquiry is necessary. However, if the measure is not of statewide application, a second inquiry is necessary to "determine the relationship between the narrow focus of the proposed legislation and the purpose of the proposed legislation."[25] The court looks at whether there is a reasonable basis for the disparity in treatment,"[26] and assesses whether the initiative "bears a 'fair and substantial relationship' to legitimate purposes."[27] "Legislation, whether enacted by the legislature or the initiative, need not operate evenly on all parts of the state to avoid being classified as local or special."[28]

Applying these standards to the disputed initiative in *Pebble*, the court held that the subject matter was applicable statewide, because it regulated large scale metallic mining statewide, and defined such mining as that which "extracts metallic minerals or deposits and utilizes or disturbs in excess of 640 acres of lands or waters, either alone or in combination with adjoining, related or concurrent mining activities or operations."[29] The court found unavailing the mining companies' arguments that the initiative bill targeted only the Pebble and Donlin Creek mines, despite the fact that Pebble and Donlin Creek were the only proposed mines presently affected. The initiative was "not by its terms limited to a particular area or community of the state, but would apply to anywhere in the state."[30] Accordingly, it was of statewide application.

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24 *Pebble*, 215 P.3d at 1078 (citing *Boucher*, 528 P.2d at 461).

25 *Id.* at 1078-79.

26 *Id.*

27 *Id.* (quoting *State v. Lewis*, 559 P.2d 630, 643 and n.44 (Alaska 1977)).

28 *Id.* at 1079 (quoting *Boucher*, 528 P.2d at 463).

29 *Id.* at 1080.

30 *Id.*

Because of this finding, the court found it unnecessary to reach the second part of the inquiry: whether the bill bore a "'fair and substantial relationship' to legitimate state purposes.'"[31] However, the court "nevertheless" noted:

> [I]f the initiative were evaluated under [that] test, it would pass muster. The initiative's stated purpose is "to protect the statewide public interest in water quality by limiting the discharge or release of certain toxic pollutants on the land and waters of the state." Like the location of the state capital in *Boucher*, the issue of water quality affects all Alaskans; declines in water quality affect the availability of water for uses including human consumption, agriculture, and habitat for fish and wildlife. And there is a strong statewide interest in protecting the fishing industry . . . public land and water are public assets in which the state has an interest. And this initiative serves a much broader interest than that of the land exchange at issue in *Lewis*, which we found to be of statewide interest even though it only directly affected a particular land deal.[32]

The court agreed with the lieutenant governor that "legislatures routinely must draw lines and create classifications" for policy reasons, and concluded that the policy choice reflected in the initiative distinguishing metallic from non-metallic and large from small mines—and singling out the mining industry in general—all bore a "fair and substantial relationship to legitimate state purposes."[33]

The 12BBAY initiative is not of statewide application. By its terms, it is focused exclusively on the Bristol Bay Fisheries Reserve. The question as framed by the *Pebble* court then becomes whether the initiative "bears a fair and substantial relationship to legitimate state purposes." The answer—under the court's analysis in *Pebble*—is almost certainly yes. Indeed, *Pebble* seems to contemplate the precise situation presented here: an initiative targeted directly at the Bristol Bay Fisheries Reserve or other specific location in the state. The court went out of its way to state that even if an initiative limiting large-scale metallic mining were *not* of statewide application, it would bear a fair and substantial relationship to legitimate state purposes. Like the *Pebble* initiative, the

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31 *Id.* (quoting *Lewis*, 559 P.2d at 643 and n. 44).

32 *Id.* at 1080-81.

33 *Id.* at 1081.

stated purpose of 12BBAY is to limit the toxic effects of mining, and under *Pebble*, a decline in water quality under this bill would affect the availability of water for all of the uses enumerated in *Pebble*. The same "strong statewide interest in protecting the fishing industry" is present in 12BBAY, and the bill affects public land and water, which are public assets in which the state has an interest.

Our office has previously recommended certification of initiative bills targeted at specific locations and resources in the state. We concluded that these bills withstood the constitutional restriction against local and special legislation because they dealt with issues of statewide concern and were fairly and substantially related to legitimate state purposes. For example, we recommended certification of an initiative bill that would levy taxes on certain gas reserves and allow a conditional repeal of those taxes.[34] We recommended certification of an initiative moving the capital of Alaska from Juneau to Wasilla.[35] And we recommended certification of an initiative requiring regular legislative sessions to be held at specified locations on the road system.[36] Nothing about 12BBAY suggests that it is any more offensive to the prohibition against local or special acts.

Further, it should be noted that the constitutional prohibition against enacting local or special legislation applies to the legislature as well as to the people enacting laws through initiative.[37] Alaska Statute 38.05.140(f)—which creates the Bristol Bay Fisheries Reserve, limits oil and gas development within its boundaries, and makes such development subject to legislative resolution—has not been challenged as a local or special act. 12BBAY is substantially similar to this existing law. The existing statute, combined with the *Pebble* decision and the general deference given to initiative applications, strongly favor a conclusion of constitutionality for purposes of certification of this initiative application.

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[34] 2008 Op. Alaska Att'y Gen. (Nov. 26).

[35] 1993 Inf. Op. Att'y Gen. (Aug. 24; 663-94-0113).

[36] 1993 Inf. Op. Att'y Gen. (Aug. 4; 663-93-0173).

[37] Alaska Const. art. II, § 19 ("The legislature shall pass no local or special act if a general act can be made applicable.").

Although 12BBAY is not of statewide application, it bears a fair and substantial relationship to legitimate state purposes. Accordingly, we conclude that the bill does not violate the prohibition against enacting local or special legislation.

2. Does the Bill Raise Any Additional Constitutional Concerns?

We note that some provisions of this bill may give rise to additional constitutional concerns. A number of these concerns were identified by the legislature's legal department in 2012 during consideration of SB 152, which, as noted above, was substantially similar to the current initiative. But absent a subject matter prohibited under the initiative process, or controlling authority directly impugning the bill's constitutionality, these concerns are insufficient to obstruct this bill at the certification stage.

a. Separation of Powers

Requiring legislative approval for executive action could potentially violate the separation of powers doctrine.[38] This bill requires legislative approval for an executive action by mandating enactment of a law before certain mines can operate in Bristol Bay. Accordingly, the nature of this bill makes it vulnerable to a separation of powers challenge, although we note that any duly-enacted law is ultimately subject to the governor's veto power.[39] We note too that AS 38.05.140(f)—requiring a legislative resolution prior to oil and gas development in Bristol Bay—could be vulnerable on the same ground, but has not been challenged since its enactment 40 years ago.

An arguable separation of powers problem is not a restriction on the initiative process. And there is no case that directly impugns the constitutionality of this bill on a separation of powers basis. A court would be unlikely to uphold denial of certification based on a separation of powers problem here because "pre-election judicial review may extend only to subject matter restrictions that arise from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or

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[38] *See* Alaska Const. art. II, § 1 and art. III, § 1 (vesting the legislative power in the legislature and the executive power in the governor, respectively).

[39] Alaska Const. art. II, § 15.

to proposals that are *clearly unlawful under controlling authority*."[40] Accordingly, such a challenge would be appropriately resolved after an election, not before certification.

b. Takings or Impairment of Contracts

Legislation enacted pursuant to this initiative could potentially prohibit the exercise of vested mineral rights. Such a prohibition could constitute a taking in violation of the takings clauses of the state and federal constitutions, and therefore require just compensation to the holder of such rights.[41] For similar reasons, such a prohibition could also constitute an unconstitutional impairment of contracts under the Alaska Constitution, to the extent mining interests had pre-existing contracts in place at the time the legislation authorized by the bill was passed.[42] Again, a court would almost certainly refuse to entertain such challenges at the certification stage.

In short, 12BBAY must be construed in favor of constitutionality.[43] Our role is not to identify every conceivable constitutional vulnerability in an initiative bill and invoke those vulnerabilities to recommend denial of certification. To the contrary, the Alaska Supreme Court has been adamant that absent a clear prohibition on the use of the initiative process or controlling authority directly on point, the bill must proceed to the ballot.[44]

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40 *State v. Trust the People*, 113 P.3d 613, 624 (Alaska 2005) (emphasis added).

41 U.S. Const. amend. V; Alaska Const. art. I, § 18.

42 Alaska Const. art. I, § 15 ("No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed.").

43 *See, e.g., Whitesides v. State, Dep't of Pub. Safety, Div. of Motor Vehicles*, 20 P.3d 1130 (Alaska 2001).

44 *See, e.g., Trust the People*, 113 P.3d at 613. *See also, Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004) ("The executive officer may only reject the measure if controlling authority leaves no room for argument about its unconstitutionality. The initiative's substance must be on the order of a proposal that would mandate local school segregation based on race in violation of *Brown v. Board of Education* before the clerk may reject it on constitutional grounds. And absent controlling authority, the court should not decide this type of challenge until the initiative

You have the authority to deny certification only if you determine that the measure violates any of the liberally construed constitutional and statutory provisions regulating initiatives.[45] As discussed above, we do not believe such violations exist. With respect to other constitutional challenges "grounded in general contentions that the provisions of an initiative are unconstitutional," you may deny certification only if "controlling authority leaves *no room for argument* about its unconstitutionality."[46] We find no such authority, and so we cannot say that this initiative bill is clearly unconstitutional on its face, or that the people should be denied access to the initiative process on that basis.

B. FORM OF THE APPLICATION

The form of an initiative application is prescribed in AS 15.45.030, which provides as follows:

> The application must include the
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> (1) proposed bill;
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> (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
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> (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the

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has been enacted by the voters.") (internal citations and quotations omitted). The roles of the lieutenant governor and a municipal clerk are analogous in the statewide and municipal initiative certification context, respectively. *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 898 (Alaska 2003).

45 *Alaska Action Ctr.*, 84 P.3d at 992.

46 *Id.* (internal citations and quotations omitted) (emphasis added).

designation must include the name, mailing address, and signature of each committee member.

The application meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

C. NUMBER OF QUALIFIED SPONSORS

As noted above, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

III. PROPOSED BALLOT AND PETITION SUMMARY

We have prepared a ballot-ready petition summary and title for your consideration. It is our practice to provide you with a summary and title to assist you in compliance with AS 15.45.090(2) and AS 15.45.180. Under AS 15.45.180, the title of an initiative is limited to 25 words and the body of the summary is limited to the number of sections in the proposed law multiplied by 50. "Section" in AS 15.45.180 is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter." Alaska Statute 15.45.180 requires that the ballot proposition "give a true and impartial summary" of an initiative bill.

This bill has five sections. Therefore the maximum number of words for the summary may not exceed 250. We have used 217 words in the summary and 23 words in the title of the following proposed summary, which we submit for your review:

An Act Providing for Protection of Bristol Bay Wild Salmon and Waters Within or Flowing Into the Existing 1972 Bristol Bay Fisheries Reserve

This bill would require the legislature to approve future large-scale metallic sulfide mines in the Bristol Bay Fisheries Reserve (BBFR) by passing a law. The law would have to find that any proposed mine would not endanger the BBFR fishery. The approval would be in addition to any other required permits or authorizations. The bill defines "large-scale metallic sulfide mining operation" as "a specific mining proposal to

extract metals, including gold and copper, from sulfide-bearing rock and that would directly disturb 640 or more acres of land." The bill lets the Department of Natural Resources adopt regulations.

The bill would make findings. The bill's findings would be that the legislature found the BBFR important by creating it in 1972; that the bill's protections are necessary; that protecting the waters and wild salmon of the BBFR is of statewide interest based on the region's fisheries, economic benefits, cultural heritage, and unique wild salmon resources; and that metallic sulfide mining may harm these interests because mines can produce toxins and pollutants. The bill intends the legislature to approve any large-scale metallic sulfide mine in the BBFR or which could adversely affect its watershed.

The bill would apply only to large-scale metallic sulfide mines in the BBFR that lack all required permits, licenses, or approvals before the bill's effective date.

Should this initiative become law?

This summary has a Flesch test score of 41.5. Although this figure is somewhat short of the target readability score of 60 set out in AS 15.80.005, the nature of the bill makes it difficult to provide a summary with a higher readability score. This is likely due to the use of long, complicated terms in the bill such as "large-scale metallic sulfide mining operation." The use of these terms cannot be avoided without compromising the accuracy of the summary. We have otherwise tried to use simple words in the summary. We note that this office recommended a proposed ballot summary with a Flesch test score of 33.8 for the initiative at issue in *Pebble*, applying a similar analysis.[47] Our recommended summary went to the ballot verbatim, and the court upheld it.[48] We therefore believe a court would uphold this summary as well.

IV. CONCLUSION

For the foregoing reasons, we find that the proposed bill and application are in the proper form and that the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify

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47 2007 Op. Alaska Att'y Gen. (Oct. 17).

48 *Pebble*, 215 P.3d at 1082-84.

the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact me if we can be of further assistance in this matter.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:

Elizabeth M. Bakalar
Assistant Attorney General