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SENATE CS FOR CS FOR HOUSE BILL NO. 258()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOULE, Tammie Wilson, Johnson, Pruitt

A BILL
FOR AN ACT ENTITLED

1 "An Act directing the Department of Transportation and Public Facilities to develop
2 and implement standards and operating procedures, to evaluate site-specific use plans,
3 and to designate project areas concerning gravel or other aggregate material containing
4 naturally occurring asbestos; authorizing use on an interim basis of gravel or other
5 aggregate material containing naturally occurring asbestos for certain transportation
6 projects and public facilities; providing immunity for the state and for landowners,
7 extractors, suppliers, transporters, and contractors for certain actions or claims arising
8 in connection with the use of gravel or aggregate material containing naturally
9 occurring asbestos in certain areas; requiring contractors to report certain asbestos-
10 related data to the Department of Transportation and Public Facilities; and providing
11 for an effective date."

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

* **Section 1.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.245. Immunity for certain persons supplying or using gravel or other aggregate material; limitations on asbestos-related actions against defendants. (a) Notwithstanding AS 09.50.250, a civil action or claim for damages or costs alleging a death, injury, illness, disability, property damage, or any other damages resulting from the use of gravel or other aggregate material that contains naturally occurring asbestos may not be brought against a defendant, including a contractor meeting the requirements of the program or the state and its agencies, officers, and employees,

(1) based on the ownership of land within an area designated by the Department of Transportation and Public Facilities under AS 44.42.400(b) or (c) from which gravel or other aggregate material is extracted that, when tested using a bulk method prescribed by the Department of Transportation and Public Facilities by regulation, is determined to have a content equal to or greater than 0.25 percent naturally occurring asbestos by mass; or

(2) for an act or omission occurring in the course of extracting, supplying, transporting, or using gravel or other aggregate material containing naturally occurring asbestos within an area designated by the Department of Transportation and Public Facilities under AS 44.42.400(b) or (c) when the act or omission was in compliance with the requirements of AS 18.31.250 or AS 44.42.410(b), as applicable, and AS 44.42.410(a) and (d) and applicable regulations developed under AS 44.42.420.

(b) A civil action or claim based on noncompliance with the requirements of AS 18.31.250 or AS 44.42.410(b), as applicable, and AS 44.42.410(a) and (e) and applicable regulations developed under AS 44.42.420 for damages or costs alleging an asbestos-related death, injury, illness, or disability or alleging asbestos-related property damage or any other asbestos-related damages may only be brought against a defendant that has direct control over or responsibility for compliance with the requirements of AS 18.31.250 or AS 44.42.410(b), as applicable, and AS 44.42.410(a) and (e) and applicable regulations developed under AS 44.42.420.

(c) Notwithstanding AS 09.50.250, a civil action or claim for damages or costs

alleging an asbestos-related death, injury, illness, or disability or alleging asbestos-related property damage or any other asbestos-related damages may not be brought against any state agency or officer or employee of the state for an act or omission occurring in the course of designating a project area under AS 44.42.400(a) or (b), approving a site-specific use plan, or developing or approving a monitoring plan or a mitigation plan under AS 44.42.410.

(d) In this section, "naturally occurring asbestos" has the meaning given in AS 44.42.430.

* **Sec. 2.** AS 18.31 is amended by adding new sections to read:

Article 2A. Naturally occurring asbestos.

Sec. 18.31.250. Use of materials containing naturally occurring asbestos.

(a) A principal construction contractor or, in the absence of an identified principal construction contractor, person having legal authority for the design and construction of a project may qualify for immunity in a civil action under AS 09.65.245(a)(2) for the use of gravel or other aggregate material that, when tested using a bulk test method prescribed by the Department of Transportation and Public Facilities by regulation, is determined to have a content equal to or greater than 0.25 percent of naturally occurring asbestos by mass.

(b) To qualify for the immunity provided under AS 09.65.245(a)(2), before initiating a construction project not subject to AS 44.42.410(b) that is within an area designated by the Department of Transportation and Public Facilities under AS 44.42.400(b) or (c) and that will use gravel or other aggregate material that contains naturally occurring asbestos, the principal construction contractor or, in the absence of an identified principal construction contractor, the person having legal authority for the design and construction of the project, shall prepare and submit to the Department of Transportation and Public Facilities specific project plans demonstrating compliance with the standards adopted by the department under AS 44.42.420 and the requirements of the site-specific use plan under AS 44.42.410. Before extraction of gravel or other aggregate material may begin, the plan must be approved and returned to the contractor by the department.

(c) To preserve the immunity provided under AS 09.65.245(a)(2), the

principal construction contractor or, in the absence of an identified principal construction contractor, the person having legal authority for the design and construction of the project, shall adhere to the site-specific use plan approved by the department and the monitoring and mitigation plan created by the department.

Sec. 18.31.260. Presence of naturally occurring asbestos. The state shall consider 0.25 percent by mass, the minimum detectable amount of asbestos under the California Air Resources Board Method 435, as the baseline for the presence of naturally occurring asbestos in gravel or other aggregate material.

* **Sec. 3.** AS 44.42 is amended by adding new sections to read:

Article 3A. Use of Materials Containing Naturally Occurring Asbestos.

Sec. 44.42.400. Administration and designated areas. (a) The department shall designate a single employee who reports to the commissioner to oversee the duties assigned to the department in AS 44.42.400 - 44.42.430 and to serve as the point of contact for inquiries related to projects using gravel or other aggregate material containing naturally occurring asbestos.

(b) An area that includes land within a municipality or community may be designated by the department as an area in which certain landowners and contractors are granted immunity under AS 09.65.245(a) for causing asbestos-related injuries only if the municipality or community requests that designation. A municipality or community may request to become an area designated by the department under this subsection by submitting an application to the department. The department may approve an application received under this subsection only after reviewing tests documenting the presence of naturally occurring asbestos in that area, analyzing the effect of the presence of naturally occurring asbestos on construction projects in the area, considering the availability of gravel or other aggregate material free from naturally occurring asbestos in the area, and soliciting public input from residents in the affected municipality or community. The department may require a municipality or community that applies to become a designated area to provide the department with tests documenting the presence of naturally occurring asbestos, information related to the effect of the presence of naturally occurring asbestos on construction projects in the area, information related to availability of gravel or other aggregate material free

1 from naturally occurring asbestos, and other information relevant to the application.
2 After designating an area after approval of an application under this subsection, the
3 department shall notify, including through signage, potentially affected persons that
4 the area has been designated as an area where immunity may be granted under
5 AS 09.65.245(a) for certain landowners and contractors causing asbestos-related
6 injuries.

7 (c) In places that do not include a municipality or community, the department
8 may designate an area in which certain landowners and contractors are granted
9 immunity under AS 09.65.245(a) for causing asbestos-related injuries. Before
10 designating an area under this subsection, the department shall document the presence
11 of naturally occurring asbestos in that area, analyze the effect of the presence of
12 naturally occurring asbestos on construction projects in the area, consider the
13 availability of gravel or other aggregate material free from naturally occurring
14 asbestos in the area, and solicit public input from potentially affected persons. After
15 designating an area under this subsection, the department shall notify, including
16 through signage, potentially affected persons that the area has been designated as an
17 area where immunity may be granted under AS 09.65.245(a) for certain landowners
18 and contractors causing asbestos-related injuries.

19 (d) In this section, "community" means a place in the unorganized borough, in
20 a borough, or in a unified municipality that is not incorporated as a municipality, that
21 is not a reserve, and in which 25 or more individuals reside as a social unit.

22 **Sec. 44.42.410. Site-specific use plan.** (a) To qualify for the immunity
23 provided under AS 09.65.245(a)(2), a contractor intending to use, within an area
24 designated by the department under AS 44.42.400(b) or (c), gravel or other aggregate
25 material that, when tested using a bulk test method prescribed by the department in
26 regulation, is determined to have a content equal to or greater than 0.25 percent of
27 naturally occurring asbestos by mass, shall, after consulting with the owner of the land
28 on which the gravel or other aggregate material containing naturally occurring
29 asbestos will be placed, submit a site-specific use plan to the department that

30 (1) describes the manner in which the proposed use of gravel or other
31 aggregate material that contains naturally occurring asbestos conforms to the standards

adopted under AS 44.42.420(b);

(2) demonstrates how the proposed construction operation and maintenance practices comply with those that are required and those that are minimally acceptable, as described in AS 44.42.420(b)(5), and otherwise meet requirements of law applicable to the handling of compounds that contain asbestos;

(3) outlines the efforts that will be made, as a component of long-term maintenance on the completed project or facility, to ensure that human health and air quality are not compromised by the use of the gravel or other aggregate material that contains naturally occurring asbestos;

(4) describes how the gravel or other aggregate material to be used can be contained underneath the project or buried so that asbestos fibers cannot become airborne or otherwise transferred outside of the project area, except as provided in (5) and (6) of this subsection;

(5) if the requirements in (4) of this subsection are economically unreasonable, describes how the gravel or other aggregate material to be used will be sealed, including chip sealing or mixing with asphalt, in order to prevent asbestos fibers from becoming airborne or otherwise transferred outside of the project area, except as provided in (6) of this subsection; and

(6) if the requirements under (4) and (5) of this subsection are economically unreasonable, describes how the gravel or other aggregate material will be used in order to prevent asbestos from becoming airborne or otherwise transferred outside of the project area, including how the gravel or other aggregate material will be used in order to prevent asbestos from becoming airborne because of vehicle traffic, road maintenance, or grading, if applicable.

(b) To qualify for and preserve the immunity provided under AS 09.65.245(a)(2), the department, in its operating procedures applicable to a project that is a transportation facility, including a public highway, airport, or pipeline or railroad track bed, or a public work, as that term is defined in AS 35.95.100, and for which the contractor intends to use, within an area designated by the department under AS 44.42.400(b) or (c), gravel or other aggregate material that, when tested using a bulk testing method prescribed by the department in regulation, is determined to have

1 a content equal to or greater than 0.25 percent of naturally occurring asbestos by mass,
2 shall require that

3 (1) the contractor submit a plan that details the use of gravel or other
4 aggregate material in the construction or maintenance of the transportation project or
5 public facility in accordance with the requirements of (a) of this section and
6 regulations developed under AS 44.42.420;

7 (2) before the extraction of the gravel or aggregate material containing
8 naturally occurring asbestos may begin, the plan be approved and returned to the
9 contractor by the department;

10 (3) the contractor adhere to the monitoring, mitigation, and site-
11 specific use plans.

12 (c) The department shall review each submitted site-specific use plan and shall
13 work toward approving or disapproving the plan, taking into consideration the
14 construction season in the project location.

15 (d) The department may not approve a plan for construction with gravel or
16 other aggregate material determined to have a content equal to or greater than 0.25
17 percent of naturally occurring asbestos by mass unless

18 (1) the department determines that it is economically unreasonable to
19 undertake the construction project with gravel or other aggregate material free from
20 naturally occurring asbestos; and

21 (2) the completed project will not use gravel or other aggregate
22 material containing naturally occurring asbestos for a surface application except if the
23 material to be used for the surface application is treated or bound with a surface
24 compound, including chip seal or asphalt, approved by the department.

25 (e) On receiving a plan that meets the requirements of (a) and (d) of this
26 section and the regulations adopted under AS 44.42.420, the department, in
27 consultation with the Department of Environmental Conservation, the Department of
28 Health and Social Services, the Department of Natural Resources, the Department of
29 Law, and the Department of Labor and Workforce Development, shall develop a
30 monitoring and mitigation plan for the project. If the site-specific use plan is approved,
31 the monitoring and mitigation plan developed by the department shall be attached to

the site-specific use plan. To qualify for the immunity provided in AS 09.65.245(a)(2), the party that has direct control over or responsibility for the monitoring or mitigation shall comply with the monitoring or mitigation plan developed by the department.

(f) On approval of a site-specific use plan, the department

(1) shall provide to the contractor a copy of the approved site-specific use plan that includes

(A) the monitoring and mitigation plan developed under (e) of this section;

(B) a requirement that all asbestos-related data collected by the contractor during or after construction be submitted to the department; and

(C) recommended methods for reducing exposure to airborne asbestos fibers;

(2) shall provide a copy of the site-specific use plan, including the monitoring and mitigation plan, to the mayor or manager of a municipality affected by the use of gravel or other aggregate material containing asbestos; and

(3) may provide to the contractor copies of the United States Occupational Safety and Health Administration, United States Mine Safety and Health Administration, and United States Environmental Protection Agency recommended practices for handling and use of gravel or other aggregate material containing naturally occurring asbestos.

(g) Within 60 days after completing a project in accordance with a site-specific plan approved by the department, the contractor shall record in the recording district where the property is located a document that includes a description of the affected property, a reference to the most recent recorded conveyance of that property, and a notice indicating the presence of naturally occurring asbestos, and stating that subsequent interest holders may have legal obligations with respect to preventing the naturally occurring asbestos from becoming airborne or otherwise transferred outside of the project area. The contractor shall provide written notification to the department and the landowner that the document has been recorded.

(h) The contractor shall submit to the department the results of any monitoring or testing performed in accordance with the site-specific use plan and any mitigation

measures undertaken.

Sec. 44.42.420. Regulations. (a) The department, after consultation with the Department of Environmental Conservation, the Department of Health and Social Services, the Department of Natural Resources, the Department of Law, and the Department of Labor and Workforce Development, shall prescribe in regulation a bulk testing method for gravel or other aggregate material containing naturally occurring asbestos.

(b) The department, after consultation with the Department of Environmental Conservation, the Department of Health and Social Services, the Department of Natural Resources, the Department of Law, and the Department of Labor and Workforce Development, may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement AS 44.42.400 - 44.42.430, including regulations revising statewide standards on the use in the construction and maintenance of transportation projects and public facilities of gravel or aggregate material that, when tested using a bulk test method prescribed by the department by regulation, is determined to have a content equal to or greater than 0.25 percent of naturally occurring asbestos by mass. The regulations adopted under this subsection must include

(1) procedures for completing site investigations and characterizations of proposed projects, including the development and description of appropriate laboratory practices;

(2) procedures for reviewing design alternatives and preparing and evaluating appropriate comparative cost analyses that consider the use of gravel or other aggregate material that does not contain naturally occurring asbestos;

(3) procedures for evaluating human health concerns arising out of gravel or other aggregate material that contains naturally occurring asbestos and documentation of methods and means to be used during periods of handling of the gravel or other aggregate material to ensure compliance with appropriate workplace safety and air quality standards relating to the project and to ensure the health and safety of communities affected by construction projects that use gravel or other aggregate material containing naturally occurring asbestos;

(4) procedures for preparing designs and design specifications for

1 facilities involving use of gravel or other aggregate material that contains naturally
2 occurring asbestos;

3 (5) procedures for outlining construction operation and maintenance
4 practices that are required and those that are minimally acceptable to meet
5 requirements of law applicable to the handling of compounds that contain asbestos;

6 (6) procedures for processing, reviewing, and approving or
7 disapproving site-specific use plans and area designation requests received under
8 AS 44.42.400(b) in a uniform manner;

9 (7) guidelines to analyze the cost of a project;

10 (8) guidelines for determining whether the cost associated with the use
11 of gravel or other aggregate material free from naturally occurring asbestos under
12 AS 44.42.410(d) is economically unreasonable;

13 (9) guidelines for determining whether the cost associated with
14 burying or sealing gravel or other aggregate material containing naturally occurring
15 asbestos under AS 44.42.410(a)(2) and (3) is economically unreasonable;

16 (10) guidelines for establishing areas designated under
17 AS 44.42.400(b) or (c) that take into account the effect on human health in and around
18 the designated area and environmental factors affecting the transfer of asbestos fibers
19 within and outside of a designated area.

20 **Sec. 44.42.430. Definitions.** In AS 44.42.400 - 44.42.430,

21 (1) "contractor" means the principal construction contractor, or in
22 absence of an identified principal construction contractor, the person having legal
23 authority for the design and construction of the project;

24 (2) "naturally occurring asbestos" means chrysotile, amosite,
25 crocidolite, fibrous tremolite, fibrous anthophyllite, and fibrous actinolite asbestos-
26 containing material that has not been processed in an asbestos mill and that, when
27 tested using a bulk method prescribed by the Department of Transportation and Public
28 Facilities by regulation, is determined to have a content equal to or greater than 0.25
29 percent naturally occurring asbestos by mass.

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

1 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 44.42.400(a) and
2 (b), added by sec. 3 of this Act, the Department of Transportation and Public Facilities may,
3 on a temporary basis, designate a limited number of areas in the state in which certain
4 landowners and contractors are granted immunity under AS 09.65.245(a) for causing
5 asbestos-related injuries where an inability to complete construction projects has been
6 demonstrated because of lack of gravel or other aggregate material free from naturally
7 occurring asbestos. After designating an area on a temporary basis, the department shall
8 notify, including through signage, potentially affected persons that the area has been
9 designated as an area in which immunity may be granted under AS 09.65.245(a) for certain
10 landowners and contractors causing asbestos-related injuries. Notwithstanding AS 18.31.250,
11 added by sec. 2 of this Act, the Department of Transportation and Public Facilities may
12 approve a limited number of appropriate construction projects until the development and
13 implementation of initial standards under AS 44.42.420 and the administrative requirements
14 of AS 44.42.400, added by sec. 3 of this Act, for projects not subject to AS 44.42.410(b), if,
15 under (b) of this section, the Department of Transportation and Public Facilities prepares and
16 adopts interim standards and requires its contractors to prepare site-specific plans for the use
17 of gravel or other aggregate material that, when tested using the bulk method prescribed in
18 sec. 5 of this Act, is determined to have a content equal to or greater than 0.25 percent
19 naturally occurring asbestos by mass in transportation projects and public facilities. The
20 department shall apply the standards developed under (b) of this section to a person described
21 in AS 18.31.250 for a project that is not subject to AS 44.42.410(b).

22 (b) Notwithstanding AS 44.42.400(a) and (b), added by sec. 3 of this Act, the
23 Department of Transportation and Public Facilities may, on a temporary basis, designate a
24 limited number of areas in the state in which certain landowners and contractors are granted
25 immunity under AS 09.65.245(a) for causing asbestos-related injuries where an inability to
26 complete construction projects has been demonstrated because of lack of gravel or other
27 aggregate material free from naturally occurring asbestos. After designating an area on a
28 temporary basis, the department shall notify, including through signage, potentially affected
29 persons that the area has been designated as an area where immunity may be granted under
30 AS 09.65.245(a) for certain landowners and contractors causing asbestos-related injuries.
31 Notwithstanding AS 44.42.410(b), added by sec. 3 of this Act, the Department of

1 Transportation and Public Facilities may approve a limited number of appropriate
2 transportation projects and public facilities until the development and implementation of
3 initial standards under AS 44.42.420 and the administrative requirements of AS 44.42.400,
4 after consultation with the Department of Environmental Conservation, the Department of
5 Health and Social Services, the Department of Labor and Workforce Development, and
6 appropriate federal agencies. The Department of Transportation and Public Facilities may
7 prepare and adopt interim standards and operating procedures and may require of its
8 contractors the preparation of site-specific plans for the use of gravel or other aggregate
9 material that when tested using the bulk method prescribed in sec. 5 of this Act, is determined
10 to have a content equal to or greater than 0.25 percent naturally occurring asbestos by mass.

11 (c) The authority granted by (a) and (b) of this section expires December 31, 2013.

12 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.

15 Until the Department of Transportation and Public Facilities adopts and prescribes a method
16 of bulk testing under AS 44.42.420(a), added by sec. 3 of this Act, the department shall use
17 California Air Resources Board Method 435, Determination of Asbestos Content of
18 Serpentine Aggregate, adopted on June 6, 1991, as that standard has effect on the effective
19 date of this Act, as the basis for determining the asbestos content of a bulk sample or for
20 interim use as authorized by sec. 4 of this Act.

21 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).