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Chenoweth
3/16/10

CS FOR HOUSE BILL NO. 333()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE JOULE

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 allowing for the use in the**
3 **construction and maintenance of transportation projects and public facilities and in the**
4 **construction of projects by public and private entities of gravel or aggregate materials**
5 **that contain naturally occurring asbestos, and authorizing use on an interim basis of**
6 **those materials for certain transportation projects and public facilities; relating to**
7 **certain claims arising out of or in connection with the use of gravel or aggregate**
8 **materials containing naturally occurring asbestos; and providing for an effective date."**

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

10 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 **LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that**

1 (1) gravel and similar aggregate material is constantly in demand for major
2 construction and maintenance of state and local transportation projects and public facilities
3 and for all types of construction by public and private entities;

4 (2) naturally occurring asbestos may be found in sources of gravel and similar
5 aggregate material throughout the state;

6 (3) while airborne asbestos fibers are a significant threat to workplace safety
7 and public health and are subject to close regulation by federal and state authorities under 42
8 U.S.C. 7401 - 7671q (Clean Air Act) and 15 U.S.C. 2601 - 2692 (Toxic Substances Control
9 Act), use of materials containing naturally occurring asbestos in construction projects may be
10 regulated by states;

11 (4) in communities that do not have sources of gravel or similar aggregate
12 material that is free of naturally occurring asbestos, costs of construction are substantially
13 increased because of the necessity of locating alternative sources of gravel or similar
14 aggregate material and transporting that material to distant construction and maintenance
15 sites; and

16 (5) a recent study suggests that, with careful use and close adherence to
17 appropriate control strategies, state and local transportation projects and public facilities may
18 be safely completed using sources of gravel or similar aggregate material containing naturally
19 occurring asbestos; the study recommends that the Department of Transportation and Public
20 Facilities establish standards and operating procedures through a statewide process that will
21 apply to all uses of gravel and aggregate material by the department and by any public or
22 private entity.

23 (b) It is the purpose of this Act

24 (1) to authorize and direct the Department of Transportation and Public
25 Facilities to develop, implement, and, as circumstances may require or indicate, modify
26 standards and operating procedures to allow the use in the construction and maintenance of
27 transportation projects and public facilities of gravel or aggregate material that is not free of
28 naturally occurring asbestos, with the expectation that use of that material in a manner that is
29 consistent with those standards and procedures may avoid significant risk to human health and
30 eliminate significantly higher costs of construction and maintenance of projects and facilities
31 associated with using only construction material that is free of asbestos;

1 (2) to establish that a person that uses gravel that is not free of naturally
 2 occurring asbestos shall prepare specific project plans that conform to the department's
 3 standards and operating procedures; and

4 (3) to shield persons, under certain conditions, from liability based on
 5 exposure to naturally occurring asbestos.

6 * **Sec. 2.** AS 09.65 is amended by adding a new section to read:

7 **Sec. 09.65.245. Immunity for certain persons supplying or using gravel or**
 8 **other aggregate material; limitations on actions against defendants.** (a) A civil
 9 action or claim for damages or costs alleging an asbestos-related death, injury, illness,
 10 or disability or alleging asbestos-related property damage or any other damages

11 (1) may not be brought against a defendant based on the defendant's

12 (A) owning land from which gravel or other aggregate material
 13 containing naturally occurring asbestos is extracted, supplying gravel or other
 14 aggregate material from the defendant's land, or allowing use of gravel or other
 15 aggregate material from the defendant's land;

16 (B) supplying or using gravel or other aggregate material
 17 containing any concentration of naturally occurring asbestos for an act or
 18 omission occurring in the course of supplying or using the gravel or other
 19 aggregate material when in compliance with the requirements of AS 18.31.250
 20 or AS 44.42.020(c), as appropriate;

21 (2) based on noncompliance with the requirements of AS 18.31.250 or
 22 AS 44.42.020(c), as appropriate, may be brought only against a defendant that has
 23 direct control over or responsibility for compliance with the requirements of
 24 AS 18.31.250 or AS 44.42.020(c), as appropriate.

25 (b) In this section, "asbestos" has the meaning given in AS 18.31.500.

26 * **Sec. 3.** AS 18.31 is amended by adding a new section to read:

27 **Article 2A. Use of materials containing naturally occurring asbestos.**

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

29 Before initiating a construction project not subject to AS 44.42.020(c) that will use
 30 gravel or other aggregate material that is not free of naturally occurring asbestos, the
 31 principal construction contractor or, in the absence of an identified principal

1 construction contractor, the person having legal authority for the design and
2 construction of the project, shall prepare and submit to the Department of
3 Transportation and Public Facilities specific project plans demonstrating compliance
4 with the standards and operating procedures adopted by the department to implement
5 AS 44.42.020(c)(1) and (2). Before the principal construction contractor or other
6 person responsible for the project may use gravel or other aggregate material that is
7 not free of naturally occurring asbestos, the plan is subject to approval by the
8 department under the standards and operating procedures adopted under
9 AS 44.42.020(c). In this section, "gravel or other aggregate material that is not free of
10 naturally occurring asbestos" means gravel, rock, sand, and similar materials that are
11 appropriate to and intended for use in construction that, when tested using a bulk test
12 method prescribed by the department by regulation, are determined to have a content
13 of at least 0.25 percent asbestos by mass.

14 * **Sec. 4.** AS 44.42.020 is amended by adding a new subsection to read:

15 (c) The department, after consultation with the Department of Environmental
16 Conservation, Department of Health and Social Services, and Department of Labor
17 and Workforce Development, shall develop and implement, and, from time to time,
18 revise, statewide standards and operating procedures to allow the use in the
19 construction and maintenance of transportation projects and public facilities of gravel
20 or aggregate material that is not free of naturally occurring asbestos. For purposes of
21 this subsection,

22 (1) the department's standards must set out means and measures for

23 (A) completing site investigations and characterizations of
24 proposed projects, including the development and description of appropriate
25 laboratory practices;

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

29 (C) evaluating human health concerns arising out of gravel or
30 other aggregate material that is not free of naturally occurring asbestos, and
31 documentation of methods and means to be used during periods of handling of

1 the gravel or other aggregate material to ensure compliance with appropriate
2 workplace safety and air quality standards relating to the project;

3 (D) preparing designs and design specifications for facilities
4 involving use of gravel or other aggregate material that is not free of naturally
5 occurring asbestos;

6 (E) outlining construction operation and maintenance practices
7 that are required and those that are minimally acceptable to meet requirements
8 of law applicable to the handling of compounds that contain asbestos;

9 (2) the department shall require, in its operating procedures applicable
10 to a project that is a transportation facility, including a public highway, airport, or
11 pipeline or railroad track bed, or a public work, as that term is defined in
12 AS 35.95.100, and that is subject to this subsection, that the principal contractor
13 responsible for performance of the work under the construction contract prepare and
14 submit a plan that addresses with specificity the use of gravel or other aggregate
15 material in the construction or maintenance of the transportation project or public
16 facility; the plan is subject to department approval before the contractor may use
17 gravel or other aggregate material that is not free of naturally occurring asbestos; the
18 contractor's site-specific plan must

19 (A) describe the manner in which the contractor's proposed use
20 of gravel or other aggregate material that is not free of naturally occurring
21 asbestos conforms to the standards adopted under (1) of this subsection;

22 (B) demonstrate how the contractor's proposed construction
23 operation and maintenance practices comply with those that are required and
24 those that are minimally acceptable, as described in (1)(E) of this subsection,
25 and otherwise meet requirements of law applicable to the handling of
26 compounds that contain asbestos; and

27 (C) outline how, as a component of long-term maintenance on
28 the completed project or facility, the department may reasonably ensure that
29 human health and air quality are not compromised by the use of the gravel or
30 other aggregate material that is not free of naturally occurring asbestos; and

31 (3) "gravel or other aggregate material that is not free of naturally

1 occurring asbestos" means gravel, rock, sand, and similar materials that are
2 appropriate to and intended for use in construction of a transportation project or public
3 facility that, when tested using a bulk test method prescribed by the department by
4 regulation, are determined to have a content of at least 0.25 percent asbestos by mass;
5 in this paragraph, "asbestos" has the meaning given in AS 18.31.500.

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

8 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 18.31.250, added
9 by sec. 3 of this Act, to ensure early application of the policy described in sec. 1 of this Act to
10 a limited number of appropriate construction projects until the development and
11 implementation of initial standards and operating procedures under AS 44.42.020(c) for
12 projects not subject to that subsection, if, under (b) of this section, the Department of
13 Transportation and Public Facilities prepares and adopts interim standards and operating
14 procedures and requires its contractors to prepare site-specific plans for the use of gravel or
15 other aggregate material that is not free of naturally occurring asbestos in transportation
16 projects and public facilities, the department shall apply those standards and operating
17 procedures to a person described in AS 18.31.250 for a project that is not subject to
18 AS 44.42.020(c). In this subsection, "gravel or other aggregate material that is not free of
19 naturally occurring asbestos" has the meaning given in AS 18.31.250, added by sec. 3 of this
20 Act.

21 (b) Notwithstanding AS 44.42.020(c), added by sec. 4 of this Act, to ensure early
22 application of the policy described in sec. 1 of this Act to a limited number of appropriate
23 transportation projects and public facilities until the development and implementation of
24 initial standards and operating procedures under AS 44.42.020(c), after consultation with the
25 Department of Environmental Conservation, Department of Health and Social Services,
26 Department of Labor and Workforce Development, and appropriate federal agencies, the
27 Department of Transportation and Public Facilities may prepare and adopt interim standards
28 and operating procedures and may require of its contractors the preparation of site-specific
29 plans for the use of gravel or other aggregate material that is not free of naturally occurring
30 asbestos in transportation projects and public facilities. In this subsection, "gravel or other
31 aggregate material that is not free of naturally occurring asbestos" has the meaning given in

1 AS 44.42.020(c), added by sec. 4 of this Act.

2 (c) The authority granted by (a) and (b) of this section expires December 31, 2011.

3 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.**

6 Until the Department of Transportation and Public Facilities adopts and prescribes a method
7 of bulk testing under AS 44.42.020(c)(3), the department may use California Air Resources
8 Board Method 435, Determination of Asbestos Content of Serpentine Aggregate, adopted on
9 June 6, 1991, as that standard has effect on the effective date of this Act, as the basis for
10 determining the asbestos content of a bulk sample in a bulk test that is required under
11 AS 44.42.020(c), enacted by sec. 4 of this Act, or for interim use as authorized by sec. 5 of
12 this Act.

13 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).