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**CS FOR HOUSE BILL NO. 258( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SEVENTH 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, evaluate site-specific use plans,  
3 develop and maintain an information database that includes locations of gravel or other  
4 aggregate material that contains naturally occurring asbestos, gravel or other aggregate  
5 material free from naturally occurring asbestos, and suggests locations to stockpile  
6 gravel or other aggregate material free from naturally occurring asbestos, and transmit  
7 reports related to the use in the construction and maintenance of transportation projects  
8 and public facilities and in the construction of projects by public and private entities of  
9 gravel or aggregate material that contains naturally occurring asbestos, and authorizing  
10 use on an interim basis of that material for certain transportation projects and public  
11 facilities; providing immunity for landowners, extractors, suppliers, transporters, and  
12 contractors for certain actions or claims arising in connection with the use of gravel or

1 aggregate material containing naturally occurring asbestos; and providing for an  
2 effective date."

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

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

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

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

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

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

17 (4) in communities that do not have sources of gravel or similar aggregate  
18 material that is free of naturally occurring asbestos, costs of construction are substantially  
19 increased because of the necessity of locating alternative sources of gravel or similar  
20 aggregate material and transporting that material to distant construction and maintenance  
21 sites; and

22 (5) a recent study suggests that, with careful use and close adherence to  
23 appropriate control strategies, state and local transportation projects and public facilities may  
24 be safely completed using sources of gravel or similar aggregate material that contains  
25 naturally occurring asbestos; the study recommends that the Department of Transportation  
26 and Public Facilities establish standards and operating procedures through a statewide process  
27 that will apply to the use of gravel and aggregate material that contains asbestos by the  
28 department and by any public or private entity.

29 (b) It is the purpose of this Act

30 (1) to authorize and direct the Department of Transportation and Public

1 Facilities to develop, implement, and, as circumstances may require or indicate, modify  
2 standards and operating procedures to allow the use in the construction and maintenance of  
3 transportation projects and public facilities of gravel or aggregate material that contains  
4 naturally occurring asbestos, with the expectation that use of that material in a manner that is  
5 consistent with those standards and procedures may avoid significant risk to human health and  
6 eliminate significantly higher costs of construction and maintenance of projects and facilities  
7 associated with using only construction material that is free of asbestos;

8 (2) to establish that a person that uses gravel that contains naturally occurring  
9 asbestos may prepare specific project plans that conform to the requirements of this Act and  
10 the department's standards and operating procedures; and

11 (3) to shield persons and the state, under certain conditions, from liability  
12 based on exposure to naturally occurring asbestos.

13 (c) This Act creates a voluntary program and provides civil immunity for the use of  
14 gravel or other aggregate material that contains naturally occurring asbestos for contractors  
15 meeting the requirements of the program; nothing in this Act mandates a contractor to submit  
16 a site-specific plan or to adhere to the requirements of a plan approved by the department.

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

18 **Sec. 09.65.245. Immunity for certain persons supplying or using gravel or**  
19 **other aggregate material; limitations on asbestos-related actions against**  
20 **defendants.** (a) A civil action or claim for damages or costs alleging an asbestos-  
21 related death, injury, illness, or disability or alleging asbestos-related property damage  
22 or any other asbestos-related damages may not be brought against a defendant,  
23 including the state,

24 (1) based on the ownership of land from which gravel or other  
25 aggregate material is extracted that, when tested using a bulk method prescribed by the  
26 Department of Transportation and Public Facilities by regulation, is determined to  
27 have a content equal to or greater than 0.25 percent naturally occurring asbestos by  
28 mass; or

29 (2) for an act or omission occurring in the course of extracting,  
30 supplying, transporting, or using gravel or other aggregate material containing  
31 naturally occurring asbestos 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 (d) 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 (d) and applicable regulations developed under AS 44.42.420.

(c) 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 for an act or omission occurring in the course of approving a site-specific use plan or in the course of developing or approving a monitoring plan or a mitigation plan under AS 44.42.410.

(d) In this section,

(1) "asbestos" has the meaning given in AS 18.31.500;

(2) "naturally occurring asbestos" means asbestos-containing material that has not been processed in an asbestos mill.

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

**Article 2A. Use of materials containing 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 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 of 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, before

1 initiating a construction project not subject to AS 44.42.410(b) that will use gravel or  
2 other aggregate material that contains naturally occurring asbestos, the principal  
3 construction contractor or, in the absence of an identified principal construction  
4 contractor, the person having legal authority for the design and construction of the  
5 project, shall prepare and submit to the Department of Transportation and Public  
6 Facilities specific project plans demonstrating compliance with the standards adopted  
7 by the department under AS 44.42.420 and the requirements of the site-specific use  
8 plan under AS 44.42.410. Before extraction of gravel or other aggregate material may  
9 begin, the plan must be approved and returned to the contractor by the department.

10 (c) To preserve the immunity provided under AS 09.65.245, the principal  
11 construction contractor or, in the absence of an identified principal construction  
12 contractor, the person having legal authority for the design and construction of the  
13 project, shall adhere to the site-specific use plan approved by the department and the  
14 monitoring and mitigation plan created by the department.

15 \* **Sec. 4.** AS 44.42 is amended by adding new sections to read:

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

17 **Sec. 44.42.400. Administration.** The department shall

18 (1) designate a single employee who reports to the commissioner to  
19 oversee the duties assigned to the department in AS 44.42.400 - 44.42.430 and to  
20 serve as the point of contact for inquiries related to projects using gravel or other  
21 aggregate material containing naturally occurring asbestos;

22 (2) maintain a database of

23 (A) sites in the state known to contain naturally occurring  
24 asbestos;

25 (B) known sources of gravel or other aggregate material free  
26 from naturally occurring asbestos within reasonable proximity to known sites  
27 of naturally occurring asbestos;

28 (C) known sources of gravel or other aggregate material free  
29 from naturally occurring asbestos within 25 miles of a community for all  
30 known projects the state or a municipality intends to undertake within 25 miles  
31 of the community in the next five years where the state or municipality intends

1 to use gravel or other aggregate material containing naturally occurring  
2 asbestos;

3 (D) known communities that do not have reasonable access to  
4 gravel or other aggregate material free from naturally occurring asbestos; and

5 (E) all data collected under the requirements of  
6 AS 44.42.410(e)(1)(B), by project;

7 (3) annually transmit to the commissioner and publish on the  
8 department's Internet website a report containing

9 (A) a listing of all current projects for which a plan has been  
10 submitted under AS 18.31.250 or AS 44.42.410(b);

11 (B) a listing of all known projects intended to be undertaken by  
12 the state or a municipality in the next five years where the state or municipality  
13 intends to use gravel or aggregate material containing naturally occurring  
14 asbestos;

15 (C) suggestions for potential locations to stockpile gravel or  
16 other aggregate material free from naturally occurring asbestos for use in  
17 future projects and an estimate of the cost of stockpiling that gravel; and

18 (D) suggestions for potential locations, in coordination with  
19 ongoing state and municipal construction projects, to stockpile gravel or other  
20 aggregate material free from naturally occurring asbestos for future projects  
21 and an estimate of the cost of stockpiling that gravel; and

22 (4) annually provide a report on the monitoring and mitigation data  
23 transmitted by contractors to the department under AS 44.42.410(e)(1)(B) and the  
24 results of site monitoring performed by the department to the Department of  
25 Environmental Conservation, the Department of Health and Social Services, and the  
26 Department of Labor and Workforce Development.

27 **Sec. 44.42.410. Site-specific use plan.** (a) To qualify for the immunity  
28 provided under AS 09.65.245, a contractor intending to use gravel or other aggregate  
29 material that, when tested using a bulk test method prescribed by the department in  
30 regulation, is determined to have a content of equal to or greater than 0.25 percent of  
31 naturally occurring asbestos by mass shall, after consulting with the owner of the land

1 on which the gravel containing naturally occurring asbestos will be placed, submit a  
2 site-specific use plan to the department that

3 (1) describes the manner in which the proposed use of gravel or other  
4 aggregate material that contains naturally occurring asbestos conforms to the standards  
5 adopted under AS 44.42.420(b);

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

10 (3) outlines how, as a component of long-term maintenance on the  
11 completed project or facility, the department may reasonably ensure that human health  
12 and air quality are not compromised by the use of the gravel or other aggregate  
13 material that contains naturally occurring asbestos;

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

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

23 (6) if the requirements under (4) and (5) of this subsection are  
24 economically unreasonable, describes how the gravel or other aggregate material will  
25 be used in order to prevent asbestos from becoming airborne or otherwise transferred  
26 outside of the project area.

27 (b) To qualify for and preserve the immunity provided under AS 09.65.245,  
28 the department, in its operating procedures applicable to a project that is a  
29 transportation facility, including a public highway, airport, or pipeline or railroad track  
30 bed, or a public work, as that term is defined in AS 35.95.100, and for which the  
31 contractor intends to use gravel or other aggregate material that, when tested using a

1 bulk testing method prescribed by the department in regulation, is determined to have  
2 a content equal to or greater than 0.25 percent of naturally occurring asbestos by mass,  
3 shall require that

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

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

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

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

16 (d) On receiving a plan that meets the requirements of (a) of this section and  
17 the regulations adopted under AS 44.42.420, the department, in consultation with the  
18 Department of Environmental Conservation, the Department of Health and Social  
19 Services, and the Department of Labor and Workforce Development, shall develop a  
20 monitoring and mitigation plan for the project. If the site-specific use plan is approved,  
21 the monitoring and mitigation plan developed by the department shall be attached to  
22 the site-specific use plan. To qualify for the immunity provided in AS 09.65.245, the  
23 party that has direct control over or responsibility for the monitoring or mitigation  
24 shall comply with the monitoring or mitigation plan developed by the department.

25 (e) On approval of a site-specific use plan, the department shall

26 (1) return to the contractor, a copy of the site-specific use plan,  
27 including

28 (A) the monitoring and mitigation plan developed under (d) of  
29 this section;

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



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

3 (D) copies of the United States Occupational Safety and Health  
4 Administration, United States Mine Safety and Health Administration, and  
5 United States Environmental Protection Agency recommended practices for  
6 handling and use of gravel or other aggregate material containing naturally  
7 occurring asbestos;

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

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

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

25 (b) The department, after consultation with the Department of Environmental  
26 Conservation, Department of Health and Social Services, and Department of Labor  
27 and Workforce Development, shall develop, implement, and revise statewide  
28 standards to regulate the use in the construction and maintenance of transportation  
29 projects and public facilities of gravel or aggregate material that, when tested using a  
30 bulk test method prescribed by the department by regulation, is determined to have a  
31 content equal to or greater than 0.25 percent of naturally occurring asbestos by mass.

1 The standards adopted under this subsection must include procedures for

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

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

8 (3) evaluating human health concerns arising out of gravel or other  
9 aggregate material that contains naturally occurring asbestos and documentation of  
10 methods and means to be used during periods of handling of the gravel or other  
11 aggregate material to ensure compliance with appropriate workplace safety and air  
12 quality standards relating to the project;

13 (4) preparing designs and design specifications for facilities involving  
14 use of gravel or other aggregate material that contains naturally occurring asbestos;

15 (5) outlining construction operation and maintenance practices that are  
16 required and those that are minimally acceptable to meet requirements of law  
17 applicable to the handling of compounds that contain asbestos.

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

19 (1) "asbestos" has the meaning given in AS 18.31.500;

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

23 (3) "naturally occurring asbestos" means asbestos-containing material  
24 that has not been processed in an asbestos mill.

25 \* **Sec. 5.** The uncoded law of the State of Alaska is amended by adding a new section to  
26 read:

27 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 18.31.250, added  
28 by sec. 3 of this Act, to ensure early application of the policy described in sec. 1 of this Act to  
29 a limited number of appropriate construction projects until the development and  
30 implementation of initial standards under AS 44.42.420 and the administrative requirements  
31 of AS 44.42.400, added by sec. 4 of this Act, for projects not subject to AS 44.42.410(b), if,

1 under (b) of this section, the Department of Transportation and Public Facilities prepares and  
2 adopts interim standards and requires its contractors to prepare site-specific plans for the use  
3 of gravel or other aggregate material that, when tested using the bulk method prescribed in  
4 sec. 6 of this Act, is determined to have a content equal to or greater than 0.25 percent  
5 naturally occurring asbestos by mass in transportation projects and public facilities, the  
6 department shall apply those standards to a person described in AS 18.31.250 for a project  
7 that is not subject to AS 44.42.410(b).

8 (b) Notwithstanding AS 44.42.410(b), added by sec. 4 of this Act, to ensure early  
9 application of the policy described in sec. 1 of this Act to a limited number of appropriate  
10 transportation projects and public facilities until the development and implementation of  
11 initial standards under AS 44.42.420 and the administrative requirements of AS 44.42.400,  
12 after consultation with the Department of Environmental Conservation, Department of Health  
13 and Social Services, Department of Labor and Workforce Development, and appropriate  
14 federal agencies, the Department of Transportation and Public Facilities may prepare and  
15 adopt interim standards and operating procedures and may require of its contractors the  
16 preparation of site-specific plans for the use of gravel or other aggregate material that when  
17 tested using the bulk method prescribed in sec. 6 of this Act, is determined to have a content  
18 equal to or greater than 0.25 percent naturally occurring asbestos by mass.

19 (c) The authority granted by (a) and (b) of this section expires December 31, 2012.

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

22 INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.  
23 Until the Department of Transportation and Public Facilities adopts and prescribes a method  
24 of bulk testing under AS 44.42.420(a), added by sec. 4 of this Act, the department shall use  
25 California Air Resources Board Method 435, Determination of Asbestos Content of  
26 Serpentine Aggregate, adopted on June 6, 1991, as that standard has effect on the effective  
27 date of this Act, as the basis for determining the asbestos content of a bulk sample or for  
28 interim use as authorized by sec. 5 of this Act.

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