

HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE JOULE

Introduced: 1/17/12

Referred: Transportation, Finance

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 a limited amount of naturally occurring asbestos, and authorizing use on an
6 interim basis of those materials for certain transportation projects and public facilities;
7 relating to certain claims arising out of or in connection with the use of gravel or
8 aggregate materials containing a limited amount of naturally occurring asbestos; and
9 providing for an effective date."

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

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

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

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

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

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

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

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

24 (b) It is the purpose of this Act

25 (1) to authorize and direct the Department of Transportation and Public
26 Facilities to develop, implement, and, as circumstances may require or indicate, modify
27 standards and operating procedures to allow the use in the construction and maintenance of
28 transportation projects and public facilities of gravel or aggregate material that contains a
29 limited amount of naturally occurring asbestos, with the expectation that use of that material
30 in a manner that is consistent with those standards and procedures may avoid significant risk
31 to human health and eliminate significantly higher costs of construction and maintenance of

1 projects and facilities associated with using only construction material that is free of asbestos;
 2 (2) to establish that a person that uses gravel that contains a limited amount of
 3 naturally occurring asbestos shall prepare specific project plans that conform to the
 4 department's standards and operating procedures; and

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

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

8 **Sec. 09.65.245. Immunity for certain persons supplying or using gravel or**
 9 **other aggregate material; limitations on asbestos-related actions against**
 10 **defendants.** (a) A civil action or claim for damages or costs alleging an asbestos-
 11 related death, injury, illness, or disability or alleging asbestos-related property damage
 12 or any other asbestos-related damages may not be brought against a defendant

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

17 (2) for an act or omission occurring in the course of extracting,
 18 supplying, transporting, or using gravel or other aggregate material containing
 19 naturally occurring asbestos when the act or omission was in compliance with the
 20 requirements of AS 18.31.250 or AS 44.42.022, as applicable.

21 (b) A civil action or claim based on noncompliance with the requirements of
 22 AS 18.31.250 or AS 44.42.022 for damages or costs alleging an asbestos-related
 23 death, injury, illness, or disability or alleging asbestos-related property damage or any
 24 other asbestos-related damages may only be brought against a defendant that has
 25 direct control over or responsibility for compliance with the requirements of
 26 AS 18.31.250 or AS 44.42.022.

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

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

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

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

31 (a) 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 more than zero percent and less than or equal to 0.25 percent of naturally occurring asbestos by mass, may qualify for immunity in a civil action under AS 09.65.245.

(b) To qualify for the immunity provided under AS 09.65.245, before initiating a construction project not subject to AS 44.42.022 that will use gravel or other aggregate material that contains naturally occurring asbestos within the limits of (a) of this section, 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 to implement AS 44.42.022. Before the principal construction contractor or other person responsible for the project may use the gravel or other aggregate material, the plan must be approved by the department.

* **Sec. 4.** AS 44.42 is amended by adding a new section to read:

Sec. 44.42.022. Use of materials containing naturally occurring asbestos.

(a) The department, after consultation with the Department of Environmental Conservation, Department of Health and Social Services, and Department of Labor and Workforce Development, shall develop, implement, and revise statewide standards to regulate 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 of more than zero percent and less than or equal to 0.25 percent of naturally occurring asbestos by mass.

(b) The standards adopted under (a) of this section must include procedures for

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

(2) reviewing design alternatives and preparing and evaluating appropriate comparative cost analyses that consider the use of gravel or other

1 aggregate material that does not contain naturally occurring asbestos;

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

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

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

12 (c) The department, in its operating procedures applicable to a project that is a
13 transportation facility, including a public highway, airport, or pipeline or railroad track
14 bed, or a public work, as that term is defined in AS 35.95.100 and that is subject to
15 this section, shall require that

16 (1) the principal contractor responsible for performance of the work
17 under the construction contract prepare and submit a plan that details the use of gravel
18 or other aggregate material in the construction or maintenance of the transportation
19 project or public facility;

20 (2) the plan be approved by the department before the contractor may
21 use the gravel or aggregate material.

22 (d) The contractor's site-specific plan required under (c) of this section shall

23 (1) describe the manner in which the contractor's proposed use of
24 gravel or other aggregate material that contains naturally occurring asbestos conforms
25 to the standards adopted under (a) of this section;

26 (2) demonstrate how the contractor's proposed construction operation
27 and maintenance practices comply with those that are required and those that are
28 minimally acceptable, as described in (b)(5) of this section, and otherwise meet
29 requirements of law applicable to the handling of compounds that contain asbestos;
30 and

31 (3) outline how, as a component of long-term maintenance on the

1 completed project or facility, the department may reasonably ensure that human health
 2 and air quality are not compromised by the use of the gravel or other aggregate
 3 material that contains naturally occurring asbestos.

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

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

7 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 18.31.250, added
 8 by sec. 3 of this Act, to ensure early application of the policy described in sec. 1 of this Act to
 9 a limited number of appropriate construction projects until the development and
 10 implementation of initial standards under AS 44.42.022, added by sec. 4 of this Act, for
 11 projects not subject to that section, if, under (b) of this section, the Department of
 12 Transportation and Public Facilities prepares and adopts interim standards and requires its
 13 contractors to prepare site-specific plans for the use of gravel or other aggregate material that
 14 contains naturally occurring asbestos within the limits set out in AS 18.31.250(a), added by
 15 sec. 3 of this Act, in transportation projects and public facilities, the department shall apply
 16 those standards to a person described in AS 18.31.250 for a project that is not subject to
 17 AS 44.42.022.

18 (b) Notwithstanding AS 44.42.022, added by sec. 4 of this Act, to ensure early
 19 application of the policy described in sec. 1 of this Act to a limited number of appropriate
 20 transportation projects and public facilities until the development and implementation of
 21 initial standards under AS 44.42.022, after consultation with the Department of
 22 Environmental Conservation, Department of Health and Social Services, Department of Labor
 23 and Workforce Development, and appropriate federal agencies, the Department of
 24 Transportation and Public Facilities may prepare and adopt interim standards and operating
 25 procedures and may require of its contractors the preparation of site-specific plans for the use
 26 of gravel or other aggregate material that contains naturally occurring asbestos within the
 27 limits set out in AS 44.42.022, added by sec. 4 of this Act.

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

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

31 INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.

1 Until the Department of Transportation and Public Facilities adopts and prescribes a method
2 of bulk testing under AS 44.42.022, added by sec. 4 of this Act, the department may use
3 California Air Resources Board Method 435, Determination of Asbestos Content of
4 Serpentine Aggregate, adopted on June 6, 1991, as that standard has effect on the effective
5 date of this Act, as the basis for determining the asbestos content of a bulk sample in a bulk
6 test that is required under AS 44.42.022, enacted by sec. 4 of this Act, or for interim use as
7 authorized by sec. 5 of this Act.

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