

CS FOR HOUSE BILL NO. 258(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 3/2/12

Referred: Finance

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 the state and for landowners, extractors, suppliers,
12 transporters, and contractors for certain actions or claims arising in connection with the

1 **use of gravel or aggregate material containing naturally occurring asbestos; requiring**
 2 **contractors to report certain asbestos-related data to the Department of Transportation**
 3 **and Public Facilities; and providing for an effective date."**

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

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

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

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

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

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

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

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

30 (b) It is the purpose of this Act

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

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

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

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

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

19 **Sec. 09.65.245. Immunity for certain persons supplying or using gravel or**
 20 **other aggregate material; limitations on asbestos-related actions against**
 21 **defendants.** (a) A civil action or claim for damages or costs alleging a death, injury,
 22 illness, disability, property damage, or any other damages resulting from the use of
 23 gravel or other aggregate material that contains naturally occurring asbestos may not
 24 be brought against a defendant, including a contractor meeting the requirements of the
 25 program or the state,

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

31 (2) for an act or omission occurring in the course of extracting,

1 supplying, transporting, or using gravel or other aggregate material containing
 2 naturally occurring asbestos when the act or omission was in compliance with the
 3 requirements of AS 18.31.250 or AS 44.42.410(b), as applicable, and AS 44.42.410(a)
 4 and (d) and applicable regulations developed under AS 44.42.420.

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

13 (c) A civil action or claim for damages or costs alleging an asbestos-related
 14 death, injury, illness, or disability or alleging asbestos-related property damage or any
 15 other asbestos-related damages may not be brought against any state agency for an act
 16 or omission occurring in the course of approving a site-specific use plan or in the
 17 course of developing or approving a monitoring plan or a mitigation plan under
 18 AS 44.42.410.

19 (d) In this section,

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

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

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

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

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

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

1 occurring asbestos by mass.

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

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

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

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

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

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

24 (2) maintain a database of

25 (A) sites in the state known to contain naturally occurring
26 asbestos;

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

30 (C) known sources of gravel or other aggregate material free
31 from naturally occurring asbestos within 25 miles of a community for all

1 known projects the state or a municipality intends to undertake within 25 miles
 2 of the community in the next five years where the state or municipality intends
 3 to use gravel or other aggregate material containing naturally occurring
 4 asbestos;

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

7 (E) all data collected under the requirements of
 8 AS 44.42.410(f)(1)(B), by project;

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

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

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

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

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

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

29 **Sec. 44.42.410. Site-specific use plan.** (a) To qualify for the immunity
 30 provided under AS 09.65.245, a contractor intending to use gravel or other aggregate
 31 material that, when tested using a bulk test method prescribed by the department in

1 regulation, is determined to have a content equal to or greater than 0.25 percent of
2 naturally occurring asbestos by mass shall, after consulting with the owner of the land
3 on which the gravel containing naturally occurring asbestos will be placed, submit a
4 site-specific use plan to the department that

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

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

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

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

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

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

29 (b) To qualify for and preserve the immunity provided under AS 09.65.245,
30 the department, in its operating procedures applicable to a project that is a
31 transportation facility, including a public highway, airport, or pipeline or railroad track

1 bed, or a public work, as that term is defined in AS 35.95.100, and for which the
2 contractor intends to use gravel or other aggregate material that, when tested using a
3 bulk testing method prescribed by the department in regulation, is determined to have
4 a content equal to or greater than 0.25 percent of naturally occurring asbestos by mass,
5 shall require that

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

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

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

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

18 (d) The department may not approve a plan for construction with gravel or
19 other aggregate material determined to have a content equal to or greater than 0.25
20 percent of naturally occurring asbestos by mass unless the department determines that
21 it is economically unreasonable to undertake the construction project with gravel or
22 other aggregate material free from naturally occurring asbestos.

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

1 developed by the department.

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

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

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

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

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

11 (D) copies of the United States Occupational Safety and Health
12 Administration, United States Mine Safety and Health Administration, and
13 United States Environmental Protection Agency recommended practices for
14 handling and use of gravel or other aggregate material containing naturally
15 occurring asbestos;

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

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

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

31 **Sec. 44.42.420. Regulations.** (a) The department, after consultation with the

1 Department of Environmental Conservation, Department of Health and Social
2 Services, and Department of Labor and Workforce Development, shall prescribe in
3 regulation a bulk testing method for gravel or other aggregate material containing
4 naturally occurring asbestos.

5 (b) The department, after consultation with the Department of Environmental
6 Conservation, Department of Health and Social Services, and Department of Labor
7 and Workforce Development, shall develop, implement, and revise statewide
8 standards to regulate the use in the construction and maintenance of transportation
9 projects and public facilities of gravel or aggregate material that, when tested using a
10 bulk test method prescribed by the department by regulation, is determined to have a
11 content equal to or greater than 0.25 percent of naturally occurring asbestos by mass.
12 The standards adopted under this subsection must include procedures for

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

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

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

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

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

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

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

31 (2) "contractor" means the principal construction contractor, or in

1 absence of an identified principal construction contractor, the person having legal
2 authority for the design and construction of the project;

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

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 44.42.420 and the administrative requirements
11 of AS 44.42.400, added by sec. 4 of this Act, for projects not subject to AS 44.42.410(b), if,
12 under (b) of this section, the Department of Transportation and Public Facilities prepares and
13 adopts interim standards and requires its contractors to prepare site-specific plans for the use
14 of gravel or other aggregate material that, when tested using the bulk method prescribed in
15 sec. 6 of this Act, is determined to have a content equal to or greater than 0.25 percent
16 naturally occurring asbestos by mass in transportation projects and public facilities, the
17 department shall apply those standards to a person described in AS 18.31.250 for a project
18 that is not subject to AS 44.42.410(b).

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

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

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

1 read:

2 INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.

3 Until the Department of Transportation and Public Facilities adopts and prescribes a method
4 of bulk testing under AS 44.42.420(a), added by sec. 4 of this Act, the department shall use
5 California Air Resources Board Method 435, Determination of Asbestos Content of
6 Serpentine Aggregate, adopted on June 6, 1991, as that standard has effect on the effective
7 date of this Act, as the basis for determining the asbestos content of a bulk sample or for
8 interim use as authorized by sec. 5 of this Act.

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