

CS FOR SENATE BILL NO. 180(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 2/24/12

Referred: Judiciary, Finance

Sponsor(s): SENATOR OLSON

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 materials that contain a limited amount of naturally occurring**
10 **asbestos, and authorizing use on an interim basis of those materials for certain**
11 **transportation projects and public facilities; relating to certain claims arising out of or**
12 **in connection with the use of gravel or aggregate materials containing a limited amount**

1 **of naturally occurring asbestos; and providing for an effective date."**

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

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

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

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

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

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

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

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

28 (b) It is the purpose of this Act

29 (1) to authorize and direct the Department of Transportation and Public
30 Facilities to develop, implement, and, as circumstances may require or indicate, modify

standards and operating procedures to allow the use in the construction and maintenance of transportation projects and public facilities of gravel or aggregate material that contains a limited amount of naturally occurring asbestos, with the expectation that use of that material in a manner that is consistent with those standards and procedures may avoid significant risk to human health and eliminate significantly higher costs of construction and maintenance of projects and facilities associated with using only construction material that is free of asbestos;

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

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

(c) It is not the purpose of this Act to authorize or provide civil immunity for the use of gravel or other aggregate material that contains more than 0.25 percent naturally occurring asbestos by mass.

* **Sec. 2.** 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) 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 a defendant, including the state,

(1) based on the ownership of land 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 of more than zero and less than or equal to 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 when the act or omission was in compliance with the requirements of AS 18.31.250 or AS 44.42.410(b) and (d), as applicable.

(b) A civil action or claim based on noncompliance with the requirements of

AS 18.31.250 or AS 44.42.410(b) or (d) 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) and (d).

(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.

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

* **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) 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 44.42.410(b) 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 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.

* **Sec. 4.** 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. The department shall

(1) 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;

(2) maintain a database of

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

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

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

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

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

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

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

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

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

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

Sec. 44.42.410. Site-specific use plan. (a) A principal construction contractor intending to use gravel or other aggregate material that, when tested using a bulk test method prescribed by the department in 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 shall submit a site-specific use plan to the department that

(1) describes the manner in which the proposed use of gravel or other 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 how, as a component of long-term maintenance on the completed project or facility, the department may reasonably 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

1 sealed, including chip sealing or mixing with asphalt, in order to prevent asbestos
2 fibers from becoming airborne or otherwise transferred outside of the project area,
3 except as provided in (6) of this subsection; and

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

8 (b) The department, in its operating procedures applicable to a project that is a
9 transportation facility, including a public highway, airport, or pipeline or railroad track
10 bed, or a public work, as that term is defined in AS 35.95.100, and for which the
11 contractor intends to use gravel or other aggregate material that, when tested using a
12 bulk testing method prescribed by the department in regulation, is determined to have
13 a content of more than zero and less than or equal to 0.25 percent of naturally
14 occurring asbestos by mass, shall require that

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

19 (2) before the extraction of the gravel or aggregate material containing
20 naturally occurring asbestos may begin, the plan be approved and returned to the
21 principal construction contractor by the department.

22 (c) A plan for construction with gravel or other aggregate material determined
23 to have a content of more than zero percent and less than or equal to 0.25 percent of
24 naturally occurring asbestos by mass may not be approved unless the department
25 determines that it is economically unreasonable to undertake the construction project
26 with gravel or other aggregate material free from naturally occurring asbestos.

27 (d) On receiving a plan that meets the requirements of (a) and (c) of this
28 section and the regulations adopted under AS 44.42.420, the department, in
29 consultation with the Department of Environmental Conservation, the Department of
30 Health and Social Services, and the Department of Labor and Workforce
31 Development, shall develop a monitoring and mitigation plan for the project. If the

1 site-specific use plan is approved, the monitoring and mitigation plan developed by the
 2 department shall be attached to the site-specific use plan. To qualify for the immunity
 3 provided in AS 09.65.245, the party that has direct control over or responsibility for
 4 the monitoring or mitigation shall comply with the monitoring or mitigation plan
 5 developed by the department.

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

7 (1) return to the principal construction contractor, a copy of the site-
 8 specific use plan, including

9 (A) the monitoring and mitigation plan developed under (d) of
 10 this section;

11 (B) recommended methods for reducing exposure to airborne
 12 asbestos fibers; and

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

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

21 (f) The contractor shall submit to the department the results of any monitoring
 22 or testing performed in accordance with the site-specific use plan and any mitigation
 23 measures undertaken.

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

29 (b) The department, after consultation with the Department of Environmental
 30 Conservation, Department of Health and Social Services, and Department of Labor
 31 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. The standards adopted under this subsection 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 aggregate material that does not contain naturally occurring asbestos;

(3) 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;

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

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

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

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

(2) "principal construction contractor" means the person having legal authority for the design and construction of the project.

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

INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 18.31.250, added by sec. 3 of this Act, to ensure early application of the policy described in sec. 1 of this Act to a limited number of appropriate construction projects until the development and

1 implementation of initial standards under AS 44.42.420 and the administrative requirements
 2 of AS 44.42.400, added by sec. 4 of this Act, for projects not subject to AS 44.42.410(b), if,
 3 under (b) of this section, the Department of Transportation and Public Facilities prepares and
 4 adopts interim standards and requires its contractors to prepare site-specific plans for the use
 5 of gravel or other aggregate material that, when tested using the bulk method prescribed in
 6 sec. 6 of this Act, is determined to have a content of more than zero and less than or equal to
 7 0.25 percent naturally occurring asbestos by mass in transportation projects and public
 8 facilities, the department shall apply those standards to a person described in AS 18.31.250
 9 for a project that is not subject to AS 44.42.410(b).

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

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

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

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

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