

HOUSE FINANCE COMMITTEE  
March 19, 2012  
2:09 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 2:09 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas Jr., Co-Chair  
Representative Anna Fairclough, Vice-Chair  
Representative Mia Costello  
Representative Mike Doogan  
Representative Bryce Edgmon  
Representative Les Gara  
Representative David Guttenberg  
Representative Reggie Joule  
Representative Mark Neuman  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Joe Michel, Staff, Representative Bill Stoltze; Jeff Prather, Supervisor, Gaming Group, Tax Division, Department of Revenue; Brody Anderson, Staff, Representative Reggie Joule; Paul Anderson, Staff Physician, Epidemiology, Division of Public Health, Department of Health and Social Services; Roger Healy, Chief Engineer, Division of Statewide Design and Engineering Services, Department of Transportation and Public Facilities.

PRESENT VIA TELECONFERENCE

Juli Lucky, Staff, Representative Mike Hawker; Elizabeth Hensley, Corporate and Public Policy Liaison, Nana Regional Corporation, Kotzebue; Lance Miller, Vice President of Natural Resources Nana Regional Corporation, Kotzebue.

SUMMARY

HB 245 SNOW CLASSIC

CSHB 245(FIN) was REPORTED out of committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1 (REV).

HB 258 NATURALLY OCCURRING ASBESTOS

HB 258 was HEARD and HELD in Committee for further consideration.

HB 337 BD OF ARCHITECTS, ENGINEERS, SURVEYORS

HB 337 was SCHEDULED but not HEARD.

#hb245

HOUSE BILL NO. 245

"An Act establishing a snow classic as an authorized form of charitable gaming."

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Co-Chair Stoltze discussed housekeeping.

Vice-chair Fairclough MOVED to ADOPT proposed committee substitute for HB 245, Work Draft 27-LS0862\E (Luckhaupt, 3/19/12). There being NO OBJECTION, it was so ordered.

JOE MICHEL, STAFF, REPRESENTATIVE BILL STOLTZE, explained the changes in the CS. He stated that the first three Sections of the legislation remained the same. He drew committee attention to Section 4, which had been amended to include the internet or an internet communication.

Representative Costello clarified that the use of the internet was for informational purposes only and that the sale of tickets through the internet was prohibited.

Mr. Michel replied in the affirmative. He added that rules on the federal level related to interstate commerce had necessitated the prohibition.

Co-Chair Stoltze noted that the CS had been drafted in concurrence with the bill sponsor. He furthered that the

internet had been included in the legislation in order to address the increase of internet advertising.

JULI LUCKY, STAFF, REPRESENTATIVE MIKE HAWKER (via teleconference), testified that the sponsor had no objection to the changes in the CS.

Co-Chair Stoltze noted there was not an updated fiscal note.

Vice-chair Fairclough wondered whether there was a limit on the cost of raffle tickets. She reported that the state had limited the price of raffle tickets to \$10. She believed the number was very low. She added that under current law any non-profit organization that sold tickets at a price higher than \$10 was in violation.

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Co-Chair Stoltze relayed that he had purchased raffle tickets that were over \$10. He requested that the Department of Revenue (DOR) speak to the specific regulations.

JEFF PRATHER, SUPERVISOR, GAMING GROUP, TAX DIVISION, DEPARTMENT OF REVENUE, clarified that there was a \$10 per ticket limit on special draw raffles. There was no limit on any other type of raffle ticket.

Co-Chair Stoltze asked for a definition of a special draw raffle.

Mr. Prather explained that the special draw raffle was a raffle where the winner was determined by means other than a drawing.

Vice-chair Fairclough felt that the law was currently being interpreted incorrectly. She asked if there were limits on balloon or ring draw sales.

Mr. Prather replied that the special draw permit capped the price at \$10.

Co-Chair Stoltze believed there needed to be a better education process among the non-profits conducting the raffle events.

Vice-chair Fairclough shared that the issue had troubled her for years. She stated that she had repeatedly asked DOR why the price was set at \$10 but had received no response. She furthered that charities attempting to raise money were limited by the low price.

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Vice-chair Fairclough MOVED to report CSHB 245(FIN) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 245(FIN) was REPORTED out of committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1 (REV).

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RECONVENED

#hb258

HOUSE BILL NO. 258

"An Act directing the Department of Transportation and Public Facilities to develop and implement standards and operating procedures allowing for the use in the construction and maintenance of transportation projects and public facilities and in the construction of projects by public and private entities of gravel or aggregate materials that contain a limited amount of naturally occurring asbestos, and authorizing use on an interim basis of those materials for certain transportation projects and public facilities; relating to certain claims arising out of or in connection with the use of gravel or aggregate materials containing a limited amount of naturally occurring asbestos; and providing for an effective date."

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Vice-chair Fairclough MOVED to ADOPT proposed committee substitute for HB 258, Work Draft 27-LS0400\S (Nauman, 3/16/12).

Co-Chair Stoltze OBJECTED for discussion.

JOE MICHEL, STAFF, REPRESENTATIVE BILL STOLTZE, explained that there were 14 changes in the CS before the committee. He pointed to a list of changes in members packets (copy on file). He relayed that after moving out of House Transportation Committee the legislation was reviewed by the Department of Law (LAW), Department of Transportation and Public Facilities (DOT&PF), and Department of Health and Social Services (DHSS). The CS reflected recommendations made by the departments.

Mr. Michel pointed to a change on page 3, lines 14-16. The change had been requested by LAW in order to protect agencies, officers, and state employees against certain liability. He relayed that on page 3, lines 21-31 through page 4, lines 1-4 included intent language that established an analytical threshold at .25 percent by mass volume as naturally occurring asbestos (NOA) gravel and intent language offered by DHSS on exposure to NAO and public health. Page 4, lines 8-13 had been suggested by LAW and clarified the scope of immunity provided under the bill, additionally at the bottom of section A, line 13; as well as page 5, lines 4-5, reflected that state immunity included agencies, officers and employees. Page 5, line 16 and line 21 provided separate immunity for gravel pit landowners while removing them from the immunity provided by the adherence to the site-specific plan by the contractors of the construction projects.

Co-Chair Stoltze noted that the departments made recommendations; it was the job of the legislature to make actual policy changes.

Mr. Michel continued to page 6, lines 12-13 which included DNR in the coordination of the database on mineral and gravel sources. Page 9, line 29 reflected a suggestion by LAW to include the word "approved." Page 10, line 9 included the word "may" in order to allow for the option for DOT&PF to send the copies of certain material instead of requiring DOT&PF to send material. Page 10, line 31 through page 11, line 7, provided DOT&PF the regulatory authority to write administrative regulations for the implementation of the bill. Page 11, line 25 added the requirement for DOT&PF to establish regulations that included specific components of the site-specific plan. He

related that the final change on page 12, line 28 changed the expiration date for the interim projects to December 31, 2013; this would allow DOT&PF enough time for the regulatory process.

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BRODY ANDERSON, STAFF, REPRESENTATIVE REGGIE JOULE, expressed that Mr. Michel had done an excellent job explaining the changes.

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Co-Chair Stoltze WITHDREW his OBJECTION. There being NO further OBJECTION, Work Draft 27-LS0400\S was ADOPTED.

REPRESENTATIVE REGGIE JOULE, SPONSOR, informed the committee several resource rich communities in the state had experienced delays in capital projects because of naturally occurring asbestos (NOA). He explained that projects that had been put on hold included airport extensions, bridge replacements, water and sewer work and homebuilding. He opined that several failed attempts by the legislature and state departments to address the issue had occurred over the last 10 years. He warned that as Roads to Resources projects reached the Upper Kobuk Mineral District, the price of capping NOA would increase substantially. He hoped that the rural communities could have the benefit of necessary economic growth.

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Vice-chair Fairclough queried the health issues surrounding, and the methods used to effectively cap NOA.

Mr. Anderson deferred the question to DHSS.

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PAUL ANDERSON, STAFF PHYSICIAN, EPIDEMIOLOGY, DIVISION OF PUBLIC HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, explained that undisturbed, non-airborne NOA was not a health risk. Natural weathering and human disturbance could break down NOA to the microscopic fibers that would become suspended in the air and damaging if inhaled.

Vice-chair Fairclough wondered how workers extracting gravel would be protected from airborne NOA. She queried the grade of asbestos; she understood that some asbestos types were more harmful than others.

Dr. Anderson responded that there were two different classes of asbestos fibers. The serpentine fibers had the common name chrysotile, and appeared as a snake-like asbestos mineral under a microscope. The other class was known as amphibole fibers, which were straight and needlelike. He listed the six different types of amphibole fibers: amosite, crocidolite, tremolite, anthophyllite and actinolite. He explained that the Ambler area contained the serpentine fibers. He shared that asbestos occurred naturally in the environment throughout the world and was most commonly found in ultramafic and mafic rocks. He said that there was no acceptable exposure level for humans but that established measures, like threshold limits, had been established to minimize workers exposure.

Vice-chair Fairclough pointed out that the legislation did not distinguish between the serpentine and amphibole fibers. Dr. Anderson replied in the affirmative. He added that all varieties of asbestos fibers were considered to be harmful; particularly crocidolite fibers.

Vice-chair Fairclough asked about any steps that could be taken to make the NOA extraction safer for workers and community members.

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Dr. Anderson replied that there were regulations for the exposure of workers. An analytical threshold had been established in the bill; a test used to examine samples in order to establish harmful fiber content. He shared that if no fibers were visible the best that could be established would be that the asbestos content was less than .25 percent by weight. If there was a higher amount of asbestos found then mitigation, plans would be employed to limit exposure.

Vice-chair Fairclough noted that the bill dealt with a content equal or greater than the 0.25 percent NOA mass.

Mr. Anderson responded in the affirmative. He relayed that the components of the site-specific plan and the mitigation

of the monitoring plan would begin at the point of the desire to use the gravel that was .25 percent or greater.

Vice-chair Fairclough maintained her concerns about worker's health.

Representative Gara echoed the health concerns raised by the Vice-Chair. He wondered whether workers compensation was available for people who were diagnosed with lung cancer as a result of NOA exposure.

Mr. Anderson replied that LAW had been contacted concerning worker's compensation and would follow up with an answer.

Representative Gara understood that workers compensation would help exposed workers but not the people who lived in the areas where the work was being performed. He probed the health concerns associated with NOA.

Dr. Anderson replied that asbestos exposure was most commonly associated with mesothelioma, a cancer that occurred in the lining of the lungs. He added that asbestosis was a non-cancerous, chronic lung condition that caused scar tissue to build on the lungs, which could be caused by long-term exposure to NOA.

Representative Gara understood that one of the difficulties of treating mesothelioma was that it often went undiagnosed until it was terminal.

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Dr. Anderson replied that the lengthy latency period after exposure to NOA before a diagnosis made mesothelioma difficult to study. Often the disease would have a substantial amount of time to develop before it was diagnosed.

Representative Gara understood that the legislation did not regulate NOA that was below .25 percent by weight; only higher percentages by weight triggered the site-specific plans.

Mr. Anderson replied in the affirmative. Representative Gara asked whether there was any established safe level of asbestos exposure.

Mr. Anderson referred members to a handout from DHSS titled "Asbestos Exposure - Ambler, Public Health and Assessment, Interim Report, May 20, 2005" He stated that NOA had been found in Ambler for 100s of years. He shared that riverbanks in Ambler showed levels as low as .2 percent by weight; other portions of the town had showed full percentages.

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Dr. Anderson offered a brief synopsis of the DHSS report. He stated that there was a long history of investigation into Ambler and public health. He said that no cases of malignant mesothelioma had been documented in the area. He communicated that the cases that had been found in the state could be attributed to occupational exposure.

Representative Gara restated the question concerning acceptable levels of NOA exposure.

Dr. Anderson reiterated that there was no acceptable level of exposure for human health.

Representative Gara expressed concern that allowing the use of the gravel in one area could lead to its use in other, unnecessary areas. He wondered if signs could be used to warn people of asbestos levels in areas.

Representative Joule responded that signage would not be a problem. He reminded the committee that residents of Ambler were acutely aware of the asbestos issue because it was hindering any infrastructure projects from occurring, including the building of homes in the area. He shared that the legislation was the result of efforts made by the Ambler community. He clarified that he had no intention of forwarding legislation that would put people's health at risk. He shared that there had been an extensive search for clean sites near the area and that there had been some success in locating clean sources of gravel; however, it would take the installation of roads to access the areas. He stressed that clean sources of gravel would continue to be sought out.

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Mr. Anderson added that regulation authority had been a reoccurring issue in constructing the legislation. He

explained that public notification had been a reoccurring issue. Discussions had included what should be directly spelled out in statute, versus what should be included in regulations. He said that the conversation was ongoing.

Representative Gara thought it could be possible to follow a site-specific plan without allowing punitive damages or class action lawsuits; however, he believed that the possibility for workers compensation should remain. He contended that if the Ambler area was safe enough there would never be a lawsuit. He stated that the signage should be for area residents as well as workers. He asked if sealing of the ground would be required in areas that had levels below .25 percent NOA by weight.

Mr. Anderson responded that the site-specific plan would require the determination the most economically feasible plan for the project to move forward. If clean gravel could be found it had to be used; however, if it was economically unreasonable for clean gravel to be found then the gravel containing NOA could be used but had to be sealed or buried. The final solution would be to leave the gravel on top as top surface material.

Representative Gara asked whether the asbestos would be loose if left on top, or would it need to be sealed.

Mr. Anderson deferred the question to DOT.

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ROGER HEALY, CHIEF ENGINEER, DIVISION OF STATEWIDE DESIGN AND ENGINEERING SERVICES, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES responded that under the regulations in the bill the layer exposed to the public could not contain NOA that could become airborne. He said that if the economically reasonable material proved to be the gravel containing NOA some form of cap would be needed to seal the material. Some cap alternatives included 12 inches of clean gravel, a pavement layer, a chip seal, or other project dependent alternative. He stated that an operation and maintenance plan would be required to ensure that the surface was maintained.

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Representative Edgmon wondered would the problem of NOA become a larger issue as development and extraction throughout the state increased

Mr. Healy replied that the state was large and that maps of Alaska were not as detailed as those of other states. He relayed that it had been documented that NOA was typically present in ultramafic rocks, which could be found throughout the state. He believed that the issue would be faced by many Roads to Resources projects.

Representative Edgmon understood that the issue had been highly important in Ambler for many years.

Representative Joule replied that the issue had been ongoing for many years.

Representative Edgmon wondered if Juneau projects would be impacted by the legislation.

Mr. Healy offered that one project could potentially be impacted. He explained that NOA had been found in small veins out near the ferry terminal in Juneau. He explained that the site had been contained. He said that the operators were working within workplace safety requirements. He stated that he did not know if the material at the site had tested below or above the .25 percent limit.

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Representative Costello wondered whether the bill could include exemptions for specific communities rather than putting the provisions in state statute.

Mr. Anderson referred to a bill that had been unsuccessfully introduced in a prior session. He understood that DOT needed certain statutory requirements in order to move forward on the issue.

Representative Costello wondered whether the sponsor had considered providing a sunset date for the legislation.

Mr. Anderson replied that the idea had not been discussed.

Representative Costello discussed the possibility of the state working with the Federal Aviation Administration (FAA) to post notices of possible NOA exposure at airports.

Mr. Healy answered that the bill would cover new projects and would provide a mechanism to do the work in areas of NOA. He reiterated that the final top layer could not exceed .25 percent NOA mass per the analytical measuring method written into the bill.

Representative Costello stated that her concern was to protect air carriers should they come in contact with contaminated areas.

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Representative Neuman cited page 3, lines 23 and 24. He noted that California had the most restrictive regulations in the country and wondered if those regulations had been considered when drafting the bill.

Mr. Anderson replied that Virginia and California were the two states with viable working NOA programs. He stated that many examples had been taken from the California regulations and statute. He detailed that California had started out with a 5 percent threshold in 1996, which was reduced to 3 percent, and in 2002 and it had been reduced to .25 percent. He added that the method of testing under discussion had been developed for California.

Representative Neuman discussed signage. He looked at Section 1, page 3 and asked if it was standard operating procedure for DOT to post warning signs for employees. Mr. Healy responded in the affirmative.

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Representative Neuman wondered how it would be possible to determine whether a certain lung cancer had been caused by asbestos that could be traced to a specific area.

Mr. Anderson deferred the question to DHSS.

Representative Neuman quoted page 9. He wondered whom "the party" referred to in the language of the bill.

Mr. Anderson replied that "the party" was the person that would be submitting the site-specific plan, which could be the state or a third party private contractor.

Representative Neuman queried how the air safety would be ensured for individuals working in gravel pits containing freshly ground rock dust.

Mr. Healy pointed out to the committee that there were existing regulations under the Mining Safety and Health Administration (MSHA) and Occupational Safety and Health Administration (OSHA) regarding airborne asbestos. There were requirements for dust mass or air particle mass that should be part of the daily regimen for the contractor. He continued that the bill would require airborne testing for existing regulation requirements. He referred to a daily monitoring program that would ensure that the asbestos was not exposing workers hazardous levels of asbestos.

Representative Neuman asked whether regulations on the federal level would increase for future projects.

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Mr. Healy responded that the Environmental Protection Agency (EPA) had not provided additional specific rules other than those existing in OSHA and MSHA. He furthered that there was an airborne level for asbestos in terms of workers safety. He shared that the California model, which Alaska was using as a guideline, tested the soil with an assumption of what was safe by airborne standard. The EPA had not yet come out with a guideline of what could be considered safe soil asbestos levels.

Representative Guttenberg wondered whether there had been any encapsulation studies conducted.

Mr. Healy replied that many variables were considered in determining how to encapsulate individual areas. He explained that the objective would be to prevent public inhalation of NOA by the best means available.

Representative Guttenberg suggested that most construction projects required subsequent work. He understood that the OSHA standards would protect workers, but the goal was also to protect the public. He pointed out that most roads were

manufactured. He understood that the term "soil" meant "fill" for the purpose of discussion.

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Mr. Healy responded in the affirmative.

Mr. Anderson directed attention to page 10 of the bill, which listed a requirement that the contractor submit documentation that NOA gravel had been used on the property upon completion of a project. A marker would be placed as a warning for any future digging.

Representative Guttenberg discussed the efficiency of stockpiling of material. He expressed concern that the public could liberate quantities of stockpiled material. He wondered outside of signage what would be done to protect the public.

Mr. Healy replied that the specifics had not been worked out at the present time. He said that in terms of the construction process there were established best management practices that California had adopted on its projects related to laying down asbestos material while keeping the dust level down.

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ELIZABETH HENSLEY, CORPORATE AND PUBLIC POLICY LIAISON, NANA REGIONAL CORPORATION, KOTZEBUE (via teleconference), thanked the sponsor for introducing the legislation. She testified that there were numerous projects that had been put on hold in the affected communities. She added that the entire Northwest Arctic Leadership Team was in favor of the legislation.

LANCE MILLER, VICE PRESIDENT OF NATURAL RESOURCES NANA REGIONAL CORPORATION, KOTZEBUE (via teleconference), supported the legislation. He relayed that the gravel bars below Ambler were made from eroded rock from various ultramafic rock. He stated that some of the highest levels of asbestos could be found in naturally occurring gravel bars. He pointed out to the committee that area residents in the region had been living with the substance for thousands of years.

Co-Chair Stoltze interjected that in the Knik Arm area fine gravel clay, blown in on the wind, sometimes made its way indoors. He wondered whether particles carried on the wind was an issue in the Ambler and Kotzebue area.

Mr. Miller replied that the dust in the Kotzebue area was different than in the Knik Arm area. Much of the area was covered in snow for most of the year, which offered a natural sealant.

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Co-Chair Stoltze CLOSED public testimony with the intent to reopen it if necessary.

Vice-chair Fairclough wondered whether the extraction or storage of NOA gravel would occur on privately owned land.

Representative Joule responded that most villages that were part of the Alaska National Interest Lands Conservation Act (ANILCA) had either subsurface or surface issues. He stated that the land was native allotments or privately owned.

Vice-chair Fairclough referred to language in the legislation that DOT would map out where projects would be placed inside the communities, and would keep a recording of the specific projects.

Mr. Anderson responded in the affirmative.

Vice-chair Fairclough expounded on the hazards of not making public where all NOA lands were located throughout the state. She thought mapping could help to identify the areas for future users.

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Mr. Healy explained that once NOA levels were determined on a private site it would be incumbent upon the owner to inform the public.

Vice-chair Fairclough maintained that a mined pit still posed a health risk, and that the bill did not require a plat note to protect against future remediation. She wondered what responsibility the private owner had to the protection of the public health. She added that bidding for

projects could be skewed due to an imbalance of information concerning areas containing NOA.

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Mr. Healy answered that bill would cover existing projects. Requirements to the public health could be found under current DNR Statute 27 requirements. If the site was new, the issue of notification to users would be covered in regulation. In order to seek immunity under the legislation the owner or contractor would need to submit plan approval. The plan approval was incumbent upon the material being sealed.

Vice-chair Fairclough maintained that there was nothing in the bill that required the mapping of the NOA areas. She argued that there could be corridors or pits that were already established that the public was unaware of. She requested a description of the term "reasonably uneconomical".

Mr. Healy answered that the equation involved the type, size, and final usage of the land were all factors in deciding whether a project was uneconomic. He believed the bill provided the ground rules for the determination in statute.

HB 258 was HEARD and HELD in Committee for further consideration.

Co-Chair Stoltze discussed housekeeping.

#hb337

HOUSE BILL NO. 337

"An Act relating to the Board of Registration for Architects, Engineers, and Land Surveyors and to the Department of Commerce, Community, and Economic Development."

HB 337 was SCHEDULED but not HEARD.

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ADJOURNMENT

[3:49:38 PM](#)

The meeting was adjourned at 3:49 PM.