

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

February 21, 2012
1:08 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Lance Pruitt, Vice Chair
Representative Eric Feige
Representative Cathy Engstrom Munoz
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

Representative Craig Johnson

COMMITTEE CALENDAR

HOUSE BILL NO. 271

"An Act relating to the state highway system and commercial motor vehicle requirements."

- MOVED CSHB 271(TRA) OUT OF COMMITTEE

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."

- HEARD & HELD

HOUSE BILL NO. 270

"An Act requiring the Department of Transportation and Public Facilities to require airports to post warning signs outside of security screening areas warning passengers that they are

subject to searches of their bodies by physical touching and by electronic devices that emit radiation."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 271

SHORT TITLE: COMMERCIAL MOTOR VEHICLE REQUIREMENTS

SPONSOR(s): REPRESENTATIVE(s) KELLER, PRUITT

01/17/12	(H)	PREFILE RELEASED 1/13/12
01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	TRA
02/21/12	(H)	TRA AT 1:00 PM CAPITOL 17

BILL: HB 258

SHORT TITLE: NATURALLY OCCURRING ASBESTOS

SPONSOR(s): REPRESENTATIVE(s) JOULE

01/17/12	(H)	PREFILE RELEASED 1/13/12
01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	TRA, FIN
02/21/12	(H)	TRA AT 1:00 PM CAPITOL 17

BILL: HB 270

SHORT TITLE: WARNING OF AIRPORT EXAMS/SCANS

SPONSOR(s): REPRESENTATIVE(s) CISSNA, GRUENBERG, TUCK

01/17/12	(H)	PREFILE RELEASED 1/13/12
01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	TRA, FIN
02/21/12	(H)	TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE WES KELLER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 271 as prime sponsor of the bill.

JIM POUND, Staff

Representative Wes Keller

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the prime sponsor of HB 271, Representative Wes Keller.

DAN BREEDEN, Director
Division of Measurement Standards & Commercial Vehicle Enforcement
Department of Transportation & Public Facilities (DOT&PF)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 271.

AVES THOMPSON, Executive Director
Alaska Trucking Association (ATA), Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 271.

REPRESENTATIVE REGGIE JOULE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 258 as the sponsor of the bill.

BRODIE ANDERSON, Staff
Representative Reggie Joule
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 258.

EMILY NAUMAN, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 258.

ALICE EDWARDS, Director
Division of Air Quality
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 258.

SCOTT JONES, Vice Mayor
City of Ambler
Ambler, Alaska

POSITION STATEMENT: Testified during the discussion of HB 258.

UKALLAYSAAQ OKLEASIK, Planning Director
Northwest Arctic Borough (NWAB)
Kotzebue, Alaska

POSITION STATEMENT: Testified during the discussion on HB 258.

ELIZABETH HENSLEY, Corporate and Public Policy Liaison
NANA Regional Corporation (NANA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 258.

LANCE MILLER, Vice President
NANA Regional Corporation (NANA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 258.

REPRESENTATIVE SHARON CISSNA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 270.

ACTION NARRATIVE

[1:08:23 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:08 p.m. Representatives Gruenberg, Petersen, Munoz, Feige, and P. Wilson were present at the call to order. Representative Pruitt arrived as the meeting was in progress.

[1:08:53 PM](#)

HB 271-COMMERCIAL MOTOR VEHICLE REQUIREMENTS

[1:09:02 PM](#)

CHAIR P. WILSON announced that the first order of business would be HOUSE BILL NO. 271, "An Act relating to the state highway system and commercial motor vehicle requirements."

[1:09:27 PM](#)

REPRESENTATIVE WES KELLER, Alaska State Legislature, stated that HB 271 will expand the gross vehicle rate (GVR) weight rating from 10,000 to 14,000 pounds to allow newer pickups to operate without being considered commercial vehicles. As an aside, he

mentioned he holds a commercial vehicle license. He pointed out that newer pickups and the GVR is over the 10,000 pound limit for noncommercial vehicles. He related that the Alaska Trucking Association (ATA) suggested these changes and the bill received favorable comments thus far. He has also worked with the Department of Transportation & Public Facilities (DOT&PF) on the matter.

[1:11:01 PM](#)

REPRESENTATIVE Munoz moved the proposed Committee Substitute (CS) for HB 271, labeled 27-LS1158\I, Martin, 2/10/12, as the work draft. There being no objection, Version I was before the committee.

[1:11:35 PM](#)

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, on behalf of Representative Keller, stated that the current law was written in 1999 at a time when pickup trucks were smaller. He related that some pickup trucks are used as pilot trucks and this bill would allow them to include a "one-ton dually," which is a vehicle with an extra set of rear tires, in a noncommercial status. These dual-wheel vehicles put more tire on the road to spread out the weight so there is less wear and tear on the roads. He admitted while he is not an expert on trucking that several testifiers are present to answer questions.

[1:12:37 PM](#)

REPRESENTATIVE MUNOZ asked him to address any cost savings.

MR. POUND deferred to the DOT&PF to address any cost savings. He reported that many individuals driving pilot cars are under 18 years of age and are not eligible for commercial drivers' licenses. This bill would allow them to drive one-ton vehicles while still working towards their commercial vehicle certification. He suggested that sometimes workers on construction sites are asked to run errands such as to pick up something at a lumber yard and this will allow them to do so.

[1:14:01 PM](#)

REPRESENTATIVE FEIGE asked for clarification on the changes contained in Version I.

MR. POUND answered the primary change made was to remove language that pertained to federal hazardous materials that the state must comply with [under the Hazardous Materials Transportation Act (HMTA)], often referred to as HAZMAT.

[1:14:40 PM](#)

REPRESENTATIVE FEIGE related his understanding one reason the HAZMAT placards are placed on vehicles is to notify first responders of the impending issue of hazardous materials. He asked for any compelling reason to remove this requirement.

MR. POUND answered that the placards are federally managed but are state inspected.

[1:15:29 PM](#)

REPRESENTATIVE FEIGE referred to page 2, which read, "(A) used to transport passengers or property for intrastate commercial purposes;" which relates to commercial vehicles. He asked how this language would apply to interstate commercial purposes and whether this vehicle would be considered a commercial vehicle.

MR. POUND offered his belief that it would not be considered a commercial vehicle if the vehicle is under 14,000 pounds. He suggested the same rules would apply to any vehicle under 14,000 pounds GVW.

REPRESENTATIVE FEIGE asked for an explanation of adding the phrase. He referred back to page 3, line 1, to the language that increases the weight from 10,000 to 14,000 pounds.

DAN BREEDEN, Director, Division of Measurement Standards & Commercial Vehicle Enforcement, Department of Transportation & Public Facilities (DOT&PF), responded that the bill would deregulate the operations in intrastate commerce under those specific rules. He said that all federal rules would apply as usual to any interstate commerce.

[1:17:17 PM](#)

REPRESENTATIVE FEIGE related his understanding that the intent of HB 271 is to allow F-350 trucks normally driven as personal vehicles to be used on construction sites. He questioned whether that goal can be accomplished simply by changing the weight requirements. He further questioned whether a vehicle

would be considered a private noncommercial vehicle based solely on the vehicle weight falling below 14,000 pounds.

MR. BREEDEN answered that the minimum weight is being raised from 10,000 to 14,000 pounds for intrastate commerce to accommodate and not regulate those vehicles. The division has previously treated commercial vehicles the same whether they were used for interstate or intrastate purposes. He explained that currently drivers under 18 years of age are not allowed to operate commercial vehicles. He added that other requirements, such as rules associated with hours of service would also apply; however, it would be unacceptable to regulate interstate commerce due to the federal requirements. He characterized the federal regulations as being overreaching ones.

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CHAIR P. WILSON paraphrased that in Alaska the state would raise the standard for younger drivers and allows them to use vehicles that weigh more than 10,000 pounds, but limited to 14,000 pounds or less; however, federal rules would continue to apply for interstate use.

MR. BREEDEN concurred.

[1:19:20 PM](#)

REPRESENTATIVE FEIGE inquired as to whether HAZMAT rules would apply to commercial vehicles used in intrastate commerce.

MR. BREEDEN answered absolutely yes. The HAZMAT rules would apply to any HAZMAT transport regardless of the size or weight of the vehicle. He stated that the federal interstate rules would also apply since HAZMAT is a federal program. He explained that the DOT&PF adopts and enforces the federal law. He reiterated that the federal law applies with respect to HAZMAT.

REPRESENTATIVE FEIGE referred to page 2, line 9, and also to page 3, lines 4-7 of the bill. He questioned the reason to include this specific language in statute.

MR. BREEDEN responded that the language is redundant. The rule applies without this added statutory language so the language was removed for clarity.

[1:20:44 PM](#)

REPRESENTATIVE PETERSEN recalled earlier testimony that people under the ages of 18 were driving pilot cars. He said based on his experience of having hired numerous drivers in his business career that the first requirement is drivers must be 18 years or older in order to obtain insurance coverage. He questioned the safety factors of using drivers under the age of 18 to operate pilot vehicles, assuming the vehicles following the pilot vehicle are carrying extremely large loads and are ones that will require oversize permits.

MR. POUND was aware some drivers under the age 18 hold a commercial driver's license (CDL) and operate pilot vehicles. He offered his belief that the CDL requirement "kicks in" at 10,000 pounds. He suggested it was possible for someone to drive a pilot vehicle, but not obtain a CDL to drive a truck.

[1:22:17 PM](#)

REPRESENTATIVE PETERSEN recalled earlier testimony with respect to less road wear by trucks. He was unsure of the context.

MR. POUND clarified that he was referring to dual-wheel trucks and not the smaller F-110 trucks.

[1:22:58 PM](#)

REPRESENTATIVE FEIGE referred to Section 3 and to the definition. He expressed concern that this language would remove the authority of the state to inspect vehicles under this section involved in interstate commerce.

MR. BREEDEN responded that the interstate regulations are adopted in 17 AAC, Chapter 25. He explained that the DOT&PF adopts these federal regulations by reference so all the rules would apply, but this section would eliminate the state's oversight of intrastate operations for vehicles weighing less than 14,000 pounds.

[1:24:07 PM](#)

REPRESENTATIVE FEIGE asked whether this section would only apply to Title 19, but would not apply to Title 17.

MR. BREEDEN asked for clarification on the question.

REPRESENTATIVE FEIGE referred to page 2, beginning on line 24, and asked whether the state has the authority to inspect interstate commerce other than in Title 19.

MR. BREEDEN answered yes. He referred to the Alaska Administrative Code (AAC) Title 17, which adopts the interstate requirements under 49 CFR 300-399, almost entirely.

[1:25:03 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association (ATA), Inc., stated the ATA is a statewide organization that represents the interests of nearly 200 member companies from Barrow to Ketchikan. He related that freight movement represents a large segment of the state's economy and affects everyone each and every day. He said, "The simple truth is that if you got it, a truck brought it." He also said that as vehicles have gotten larger they now fall under the current definition of intrastate commercial motor vehicles, which have historically not been considered commercial vehicles, such as pickup trucks, small step vans, and small trailers. Version I would change the definition of intrastate commercial vehicles to those vehicles under 14,000 pounds to reduce the regulation. This bill is aimed at small contractors, such as small delivery vehicles, vans, small step vans, and trailers. He related one of the ATA's legislative priorities is to change the definition of intrastate commercial vehicle to reduce the regulatory burden on small business. He elaborated that for purposes of commercial vehicle regulation and inspection Version I would raise the weight threshold on intrastate commercial vehicles from 10,000 to 14,000 pounds GVW rating for inspection and safety regulation purposes.

MR. THOMPSON said HB 271 would affect small contractors, such as lawn care workers, carpenters, plumbing and heating professionals, small delivery vehicles, and pilot cars who use those types of vehicles. Pickup trucks and small step-vans are getting larger and heavier and have been exceeding the current 10,000 pounds GVW rating and by definition are designated as commercial vehicles for safety and inspection purposes. Pilot cars are vehicles that accompany oversize load to serve as an extension of the warning system for oversize loads. Their work is almost always designated as intrastate commerce and would fall under the bill. He related that the "bump" over the 10,000 mark requires drivers to obtain medical certification, complete daily vehicle inspection reports, perform annual inspections, and submit several other items to DOT&PF for compliance.

Additionally, vehicles over the 10,000 pound threshold are also subject to federal regulations adopted into the DOT&PF's Alaska Administrative Code. This bill would exclude commercial vehicles no more than 14,000 pounds GVW rating from unnecessary regulation. This bill would not change the commercial status of intrastate vehicles for the purposes of registration with the Division of Motor Vehicles (DMV). Further, this bill has no fiscal impact on the state. He emphasized that these vehicles do not need this level of scrutiny since they typically operate in a limited geographical area and are not subject to the wear and tear that other larger commercial vehicles experience. He urged members to act favorably on this bill.

[1:28:43 PM](#)

CHAIR P. WILSON asked him to elaborate on any costs associated with the DOT&PF's requirements.

MR. THOMPSON acknowledged that some costs are associated with acquiring forms, but not for registering with the U.S. Department of Transportation (DOT) to obtain a DOT number. Additionally, other regulations require annual reporting on the number of vehicles, drivers, and insurance updates. These inspections can be time-consuming, taking anywhere from 5 to 15 minutes each day to inspect a vehicle, prepare and submit the necessary reports to the dispatcher or management of the company. Those forms must be held and are subject to audits. Further, annual medical certifications are also required. Each of these requirements has associated costs. The ATA finds these requirements unnecessary regulation and this bill will lighten the burden on small businesses and pilot car operators.

[1:30:25 PM](#)

REPRESENTATIVE PETERSEN asked when a commercial vehicle is required to submit to weight scales.

MR. THOMPSON answered that currently commercial vehicles weighing 10,000 pounds must submit to weigh scales. He stated that under this bill a 14,000 pound noncommercial vehicle would not be required to stop at a weigh station.

[1:31:10 PM](#)

REPRESENTATIVE PRUITT noted that having a lower weight limit for noncommercial vehicles will affect a significant number of people, including independent delivery drivers. He emphasized

that it is time consuming for these vehicles to submit to weigh stations. He related a scenario in which a small delivery van may be subjected to a 5-45 minute delay in order to stop at a weigh station. Additionally, some employees of smaller companies may only be employed for six months, but must submit to the requirements for commercial vehicle drivers. He offered his belief that this bill will help small business owners and independent operators who should not be subjected to the added requirements. He suggested improved technology of the vehicles and what they can withstand has also increased.

[1:32:49 PM](#)

REPRESENTATIVE GRUENBERG said this is a good bill and he is a cosponsor of the bill.

REPRESENTATIVE PETERSEN asked for DOT&PF's position on the bill.

MR. BREEDEN responded that the DOT&PF is very much in favor of the bill as written.

[1:33:49 PM](#)

REPRESENTATIVE GRUENBERG referred to the bill title, which relates to the state highway system. He suggested the committee may wish to tighten the title. He asked whether the sponsor would agree to an amendment.

MR. POUND answered that the sponsor would have no problem tightening the title.

[1:35:33 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 271.

[1:35:47 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt a Conceptual Amendment 1, to narrow the title as narrowly as possible.

REPRESENTATIVE MUNOZ suggested adding language to the existing title, "and the weight threshold limits for commercial motor vehicles."

REPRESENTATIVE GRUENBERG related that the specific language would suffice for the second half of the title, but he remained

concerned that the first half of the title is broad enough to allow activities such as naming bridges, which he found as acceptable language. He asked the committee to allow the bill drafters to develop language to tighten the title.

There being no objection, Conceptual Amendment 1 was adopted.

[1:37:20 PM](#)

REPRESENTATIVE MUNOZ moved to report the proposed committee substitute (CS) for HB 271, Version 27-LS1158\I, Martin, 2/10/12, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 271(TRA) was reported from the House Transportation Standing Committee.

[1:37:49 PM](#)

The committee took an at-ease from 1:37 p.m. to 1:39 p.m.

HB 258-NATURALLY OCCURRING ASBESTOS

[1:38:52 PM](#)

CHAIR P. WILSON announced that the next order of business would be 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."

REPRESENTATIVE MUNOZ made a motion to adopt the proposed committee substitute (CS) for HB 258, Version 27-LS0400\E, Nauman, 2/19/12, as the work draft.

REPRESENTATIVE GRUENBERG objected for purpose of discussion.

[1:39:05 PM](#)

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, stated that naturally occurring asbestos (NOA) is found in several areas of the state. He related that while ways to mitigate the problems exist, NOA has been a recurring problem in the upper Kobuk communities of Ambler and Kobuk. He referred to a notice in committee members' packets from the Federal Aviation Administration, Airports Division, Alaska region (FAA), dated August, 15, 2011. A sentence under an Ambler airport project read, as follows, "Project delayed until a suitable material source can be found that does not contain asbestos." The letter refers to the Ambler Airport, and the communities have not been able to "turn a shovel" on capital projects for several years. He explained that a draft bill sought to rectify this, but unfortunately the issues were not resolved. He further explained that he has worked with DOT&PF and Legislative Legal in hopes to remedy the situation. He highlighted that some land ownership issues make this problem unique, but the issue is that asbestos is found in its naturally occurring state and dust is kicked up every time an airplane lands or takes off. Thus communities cannot fix water and sewer systems, build housing projects, remedy school playground issues, repair a bridge that is close to collapse, or repair their airport. Normally, obtaining capital projects for the community means people can work and provide for their families, which has not been the case in Ambler. Additionally, a school construction project in Kobuk has been hampered. He concluded that he has worked with the administration to find remedies for the issue of using NOA.

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CHAIR P. WILSON asked whether the NOA is causing health problems in the community.

REPRESENTATIVE JOULE answered he was unaware of any health related impacts that have occurred. He recalled some people were surveyed several years ago. He further recalled the results were "fairly clean" except for people with issues such as tobacco use. He indicated that NOA use has become problematic in terms of how it is regulated by the state.

[1:44:23 PM](#)

REPRESENTATIVE GRUENBERG stated that this bill does not have a further referral to the House Judiciary Standing Committee. He said the bill contains extensive tort immunity sections. He expressed concern that the immunity granted may be broader than

necessary. He recalled a case in which a man lost his thumb. He referred generally to page 3, line 15, through page 4, line 11, to Section 2. He then referred more specifically to page 3, line 27, and read, "for an act or omission occurring in the course of extracting, supplying, transporting, or using gravel..." He related a scenario in which a person employed by a trucking company drives drunk and hits someone. He expressed concern that this language may immunize the driver. He asked to consider this matter further.

REPRESENTATIVE JOULE offered his belief this specific section has been thoroughly reviewed.

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REPRESENTATIVE GRUENBERG removed his objection. Version E was before the committee.

[1:47:54 PM](#)

BRODIE ANDERSON, Staff, Representative Reggie Joule, Alaska State Legislature, introduced himself.

EMILY NAUMAN, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, introduced herself.

[1:48:44 PM](#)

REPRESENTATIVE GRUENBERG asked for details on the immunity section and expressed his concerned about potential overreach of immunity.

MS. NAUMAN offered a sectional analysis and explained that Section 1 of the bill contains legislative findings and purpose statements to explain and support the measure.

MS. NAUMAN related that Section 2 of the bill creates immunity sections that Representative Gruenberg previously mentioned

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REPRESENTATIVE GRUENBERG asked for further discussion on the immunity section.

MS. NAUMAN explained that the immunity section basically forecloses a suit against a defendant on the basis of ownership of land or in the course of extracting or supplying,

transporting or using gravel or other aggregate material containing NOA less than .025 percent as long as those actions or omissions are within the requirements of AS 18.31.250, the section for private contractors, and AS 44.42.410(b), which pertains to the requirements for public construction.

REPRESENTATIVE GRUENBERG offered to reserve his questions on immunity.

[1:51:54 PM](#)

MS. NAUMAN referred to subsection (c), which would foreclose a suit against the state in the course of approving or creating the monitoring and mitigating plan developed under this bill.

[1:52:13 PM](#)

REPRESENTATIVE GRUENBERG referred to page 4, line 4, of Version E, to subsection (b). He said the key phrase is "direct control or responsibility." He commented that this would seem to limit possible defendants. He asked for clarification of who would be the possible defendants with direct control and those without direct control. He further asked which class of people would be eliminated by the term "direct control." He recalled a bill he currently has before the legislature that pertains to anti-trust and to those directly and indirectly damaged. He characterized this area as a big issue. He explained that his bill pertains to classes of plaintiffs while HB 258 pertains to classes of defendants.

MS. NAUMAN answered that subsection (b) describes who can be sued over non-compliance of land for both the site use plan and the monitoring mitigation plans. She said a suit can only be brought for noncompliance against essentially the person who has primary control over that plan and some control over construction site.

[1:54:40 PM](#)

MR. ANDERSON explained that the site-specific plan identifies actions from the extraction to the construction plan, chain of the construction project and applies to extractors, transporters, drivers, and construction workers for the project. This subsection was developed in order to preserve immunity for extractors and transporters who performed adequately, even when a construction contractor did not. Thus, if he is correct, the

immunity would not apply to anyone in noncompliance, or anyone who doesn't follow the rules.

MS. NAUMAN agreed.

[1:55:54 PM](#)

REPRESENTATIVE GRUENBERG related a scenario in which someone knowingly and recklessly is aware that the rules are not being followed, which creates a hazardous condition and causes an injury. He questioned whether the specific person, who would normally quite culpable, is also being immunized.

MS. NAUMAN related her understanding that is how this bill functions. She explained the person held responsible is the person who has responsibility over the compliance requirements set out in the permitting sections of the bill.

REPRESENTATIVE GRUENBERG related his understanding that AS 18.31.250 and AS 44.42.410(b) pertains to permitting statutes. He referred to page 3, lines 27-28, "...occurring in the course of extracting, supplying, transporting, or using gravel..." He related a scenario in which someone negligently manufactures earth moving equipment without providing adequate safety mechanisms so subsequently someone is injured. He questioned whether this provision would also immunize the caterpillar company or the company that manufactured the equipment.

MS. NAUMAN said her interpretation is different. She explained that an act or omission must be in compliance with the permitting requirements.

REPRESENTATIVE GRUENBERG pointed out his scenario, assumes that the permitting was done properly, but the earth moving equipment had a bolt loose and someone lost his/her hand. He said it seemed that this provision would provide immunity even if everyone operated in good faith. He further asked whether the language would also provide immunity to the manufacturer.

MS. NAUMAN said she does not believe that immunity would be extended in that circumstance because the action must be an act or omission in compliance with the requirements of the permitting section.

REPRESENTATIVE GRUENBERG offered to hold further questions until those sections were covered.

[1:59:42 PM](#)

MS. NAUMAN turned to the sectional analysis and related that Section 3 adds AS 18.31.250 to describe how a private person may qualify for immunity through the permitting requirement.

MS. NAUMAN stated that Section 4 adds many new sections to AS 44.42.400, which is the DOT&PF section.

MR. ANDERSON remarked that the sponsor has worked with the administration and in doing so has strengthened the proposed program. Initially, the program was open-ended and would have required each region to create its own program. This bill would create one position in the DOT&PF Commissioner's office that will perform preliminary work, create a database for known NOA sites, and identify gravel near NOA sites. He commented that the NOA sites could include communities such as Juneau, which has many sources of clean gravel, but also has NOA.

MR. ANDERSON explained the process, including that posting the NOA sites in the database allows the DOT&PF to identify NOA sites for planning purposes, and would anticipate projects in those regions to allow communities to stockpile clean gravel. The sites would be published on the DOT&PF's website. Additionally, the DOT&PF would work in conjunction with other departments to cover any human health concerns. He related the administration suggested this approach to consolidate and catalog.

[2:03:18 PM](#)

REPRESENTATIVE GRUENBERG stated that he did not see any cause of action against the entity that owned the property or against the entity doing extraction; however, he could envision some organization sued in direct compliance and under the immunity section could not take action against the equipment manufacturer for indemnification or third party liability. He stressed that not only would the plaintiff be prevented, but the defendant would also be prevented from seeking reimbursement for the person who is truly at fault.

CHAIR P. WILSON related her understanding that his issue was a legal issue separate from the NOA issue.

[2:04:43 PM](#)

REPRESENTATIVE FEIGE referred to page 3, line 18, of Version E, to subsection (a), and read, "A civil action or claim for damages or costs alleging as asbestos-related death, injury, illness, or disability or alleging asbestos-related property damage...." He related his understanding that the intent is to prevent the company using NOA on projects from being held liable if someone has an asbestos-related illness. He questioned how someone losing a thumb or other injury, resulting from carelessness or not following a procedure or the design of the equipment would have anything to do with asbestos. He inquired as to whether this subsection would address the issue.

[2:06:02 PM](#)

REPRESENTATIVE GRUENBERG acknowledged that Representative Feige made an excellent point, but the term "asbestos related" is not defined. He said that a lawyer would try to make that as broad as possible. He suggested defining the term so that not all asbestos related illnesses are exempted. He related a scenario in which workers must wear protective masks, but the masks are defectively manufactured so the workers develop mesothelioma cancer. He said he was unsure that immunity should cover these types of problems. He characterized the bill as a good bill, which could get delayed due to difficult policy legal questions related to immunity.

CHAIR P. WILSON suggested he may wish to work on the immunity issues with Mr. Anderson.

MR. ANDERSON mentioned that the companion bill to HB 258 also has a referral to the Senate Judiciary Standing Committee. He stressed that immunity has been an issue from the start and the sponsor shares his concern.

REPRESENTATIVE PRUITT agreed he also shares the concern.

[2:08:58 PM](#)

REPRESENTATIVE FEIGE understood several types of asbestos and forms exist, including long and short fiber asbestos. He said that one type causes mesothelioma. He offered his belief that the definition of NOA refers to different mineral types. He identified part of issue as the loose definition of asbestos that is damaging. He asked whether the definition for the asbestos of the type that is problematic to health could be tightened up.

MR. ANDERSON responded that he has held discussions with DOT&PF today on the definition of asbestos and the sponsor has been considering adding a second definition for asbestos. He agreed the definitions could be tightened up.

[2:10:42 PM](#)

REPRESENTATIVE PETERSEN wondered if Alaska is only place that has NOA, and if not, how other states and municipalities have addressed the issue.

CHAIR P. WILSON remarked that other jurisdictions already have built their roads.

MR. ANDERSON answered that California and Virginia have NOA programs including regulations to monitor use of any NOA. He recalled that 12 other states are currently considering adopting similar regulations.

[2:11:39 PM](#)

REPRESENTATIVE PETERSEN asked if possible to look at other legislatures' models in terms of culpability and perhaps not have to reinvent the wheel.

MR. ANDERSON agreed. He offered that a substantial amount of the language in the bill comes from California's regulations. He acknowledged that HB 258 contains an expanded immunity section. He pointed out that Ambler has some gravel which may contain NOA. The sponsor also encourages the proper use of gravel containing NOA. He offered to research how other states handle NOA.

[2:13:05 PM](#)

REPRESENTATIVE GRUENBERG said it would truncate his questions, if the bill had a House Judiciary Committee referral. He related his understanding that this bill seems like good idea, but the bill raises issues not normally considered in this committee. He reiterated that he did not have problems with the concept of the bill.

CHAIR P. WILSON agreed that the liability issues are not usually discussed in this committee.

[2:14:04 PM](#)

REPRESENTATIVE MUNOZ asked whether NOA is in the dust in the region and for any health issues identified in the community.

MR. ANDERSON answered that NOA exists in Ambler, and gravel has been used in prior construction projects, but at the time the projects were developed testing was not being conducted and regulations did not exist. He offered his belief that since NOA exists he assumes NOA also existed when the projects were built. He referenced the public health study Representative Joule mentioned earlier.

[2:15:31 PM](#)

REPRESENTATIVE MUNOZ questioned whether the changes that make the materials unacceptable were due to federal or state law.

MR. ANDERSON responded that he was unsure, but now that testing can be done and NOA has been discovered in the communities that they are prohibited from using it.

[2:16:15 PM](#)

MS. NAUMAN pointed out that gravel containing NOA can be used, but it creates open liability for suits related to people contracting diseases such as mesothelioma. This bill would prevent that risk by foreclosing the suit on the basis of asbestos related illness.

CHAIR P. WILSON asked for clarification on whether lawsuits would be prevented if everyone in the community contracted mesothelioma.

MS. NAUMAN offered her belief if all of the actions were in compliance with the permitting requirements that would be the case.

[2:17:47 PM](#)

ALICE EDWARDS, Director, Division of Air Quality, Department of Environmental Conservation (DEC), stated that the department has coordinated with other agencies and the sponsor on HB 258. She highlighted that the department's primary concern is to try to mitigate any public health hazards which result from being exposed to the NOA materials used in these projects. She acknowledged that lots of NOA exists and has been used in these communities. The Department of Health and Social Services (DHSS) has conducted studies and can better address the issues.

MS. EDWARDS said that the primary health impacts are those from exposure to inhaled asbestos fibers. She explained that when asbestos materials are used on road surfaces, dust is kicked up, and people can inhale it. She related her understanding there is no safe level for contact with asbestos so people in these communities are being exposed to it from dust and use of NOA gravel.

[2:19:41 PM](#)

MS. EDWARDS deferred to public health, but said she was not aware of any actual cases of health concerns that have occurred as a result of the exposures; however, impacts that may occur over a lifetime so some cancers or diseases may not show up for a long time.

CHAIR P. WILSON asked how long the community has been there.

MS. EDWARDS said she did not know.

[2:20:20 PM](#)

CHAIR P. WILSON surmised that if it were harmful that the health concerns should have been found in the elderly.

MS. EDWARDS pointed out that some populations are small, but deferred to DHSS to better answer exposure risks. She related her understanding that very small exposures can lead to asbestos-related diseases as well as high exposures for people who have worked in industries that have been exposed to asbestos-related materials. In response to a question, she answered she believed there are differences in the types and forms of asbestos, such as short versus long fibers in terms of health risks they pose.

[2:21:19 PM](#)

REPRESENTATIVE PETERSEN related his understanding that the division has performed air quality testing and has developed baseline data. He suggested if this bill passed and NOA was used and suddenly breathing problems or other health issues arose that the department would know how much additional asbestos was added.

MS. EDWARDS agreed air monitoring was done but she was uncertain whether the division could detect changes. She acknowledged some baseline work has been performed, including the EPA

conducting air sampling. The DEC has looked at dust and particulate matter for asbestos and prior health studies, which provide a baseline. However, she was unsure whether the division would be able to distinguish between new or old asbestos sources, and if it would be possible to separate them.

CHAIR P. WILSON remarked that the exposure would be higher during construction.

[2:22:47 PM](#)

REPRESENTATIVE GRUENBERG referred to page 2, lines 11-15, related to federal preemption. He read, "...fibers are a significant threat...and are subject to close regulations by federal and state authorities...." He referred to the federal sites Clean Air Act (CAA) and Toxic Substances Control Act (TSCA). He related his understanding that these laws pertain to one issue, which is use of materials containing NOA in construction projects. He asked whether Ms. Nauman has researched the federal regulations to the extent that she could answer whether any constitutional issues exist with respect to the indirect violations of the interstate commerce clause or the supremacy clause due to the close regulation by federal authority.

MS. NAUMAN offered to further research this. She related her understanding is that the aforementioned acts refer to asbestos which is not naturally occurring. She said that would explain the second clause, which read "...use of materials containing naturally occurring asbestos in construction projects may be regulated by states;".

REPRESENTATIVE GRUENBERG, assuming she was correct, inquired as to whether any other federal regulations that may be involved. He asked to hear from any of the departments if they were aware of any federal issues.

[2:26:04 PM](#)

MS. NAUMAN turned to the sectional analysis. She related that Sections 5 and 6 are temporary provisions to help bridge the gap since this bill has an immediate effective date. She stated that Section 6 outlines the testing method.

[2:26:35 PM](#)

REPRESENTATIVE GRUENBERG pointed out that he serves on a Council of State Governments' committee on suggested legislation. He referred to Section 6 of Version E, to page 10, lines 22-30. He explained that this establishes that until DOT&PF adopts the method of bulk testing that the department shall use California Air Resources Board Method 435 as the basis for determining the asbestos content. He was aware some people expressed concern that Alaska may be deferring its regulatory authority. He recalled that other states expressed similar concerns. He merely pointed out that the deferral authority is in this bill.

CHAIR P. WILSON acknowledged that this provision would be temporary so she said she was not concerned.

[2:28:42 PM](#)

SCOTT JONES, Vice Mayor, City of Ambler, stated that he has been the mayor for five or six years. He has lived in Ambler since the 1970s. He said he has heard so many questions on the asbestos issue today. He related his understanding that it takes 25-40 years for asbestos to affect health. He reported that about 20 people in past 20-25 years have had respiratory issues, but these people did not specify whether they were smokers. He pointed out that smokers are 80-100 times more susceptible to respiratory problems than anyone exposed to NOA.

MR. JONES said he was involved in August 2007 with an airport rehabilitation during which Nortech Environmental Engineering, Health and Safety (NORTECH) tested operators and airport workers involved with handling NOA, but the results did not show any significant impact. He recalled other testing has been done by the Alaska Native Tribal Health Consortium (ANTHC). He detailed the monitoring and protective measures taken during airport rehabilitation. He reported that there are seven types of asbestos consisting of short and long fiber materials. The long fiber asbestos does not pose a problem until it is crushed or ground and becomes airborne. He also recalled comments made by one tester during the mid-1990s that there was so much dust in Ambler the equipment could not get a reading on the asbestos. He further recalled the findings were that the silt dust constituted more of a health risk than NOA. He expressed concern over the committee's discussions to get the details right while nine people live in 2-bedroom houses in Ambler. He stated that no new houses have been built since the 1990s due to the asbestos and requirements of all federal monies.

[2:33:27 PM](#)

MR. JONES related that Ambler obtained a special waiver from the Federal Aviation Administration (FAA) due to the dust problem in Ambler. He reported that it took a coordinated effort between NANA Regional Corporation, the DOT&PF, and Ambler to make the airport project happen. He identified the biggest problem has been a lack of regulations. He said California has all seven types of asbestos, but has developed regulations to allow them to use the material and mitigate the dust problems. He urged people to adopt rules, regulations, and procedures. He described the worst of the dust occurs during June, July, August, and September, but dust is less of a problem the rest of the year and it is not an issue when it rains or snows.

[2:35:25 PM](#)

CHAIR P. WILSON asked for the most recent census figures.

MR. JONES answered the population is 266.

CHAIR P. WILSON inquired as to the percentage of smokers.

MR. JONES answered that smoking is still pretty common. He estimated about 25 percent of the population are smokers.

[2:36:17 PM](#)

CHAIR P. WILSON asked if he has ever considered moving.

MR. JONES answered no.

[2:36:33 PM](#)

REPRESENTATIVE GRUENBERG recalled that the 14th Alaska State Legislature adopted statutes related to removing asbestos from schools, including a training program. He suggested the community may wish to look at the training aspects of that specific program.

MR. ANDERSON admitted he was not aware of the statute, will look into the program. He offered to report back to the committee.

REPRESENTATIVE GRUENBERG recalled that the program was not done at state expense.

[2:37:49 PM](#)

UKALLAYSAAQ OKLEASIK, Planning Director, City of Ambler stated that Ambler is a very beautiful community south of Brooks Range and Noatak National Preserve along the Kobuk River. He characterized it as a wonderful place to live. Historically, the area was identified as an asbestos resource and in the 1940s the Arctic Circle Exploration Company mined. Mining was discontinued during WWII and due to a decline in asbestos uses. He related that asbestos is a high quality resource associated with jade and two local mountains are called Jade and Asbestos Mountains. In 2003, concerns were raised by the community and the Maniiliq Association due to the dust. The Agency for Toxic Substances and Disease Registry conducted an investigation and published a report in 2007 which confirmed NOA was found in the gravel. The NWAB supports HB 258. He explained that the assembly will hear a resolution later this month. He said a lot is at stake for the villages along the Kobuk River, not just Ambler, but potentially in Kobuk village with new school construction and NOA issues. Other communities such as Shungnak, Juneau, and Fairbanks in Alaska also have NOA issues. He explained that lots of studies have been conducted including studies performed by the DOT&PF since 2003, which identified problems and recommendations to use NOA safely. He referred to a September 2009 Nortech report that outlined recommendations based on the experience and policies of other states including California and Virginia.

[2:41:05 PM](#)

MR. OKLEASIK stated that the issue is holding up community development at the airport, road maintenance, new housing, water and sewer. He pointed out the necessity to replace gravel just to maintain their system. He highlighted that beach and river erosion projects have also been put on hold. He concluded that the community is really suffering since its infrastructure is on hold. He offered his belief that the bill provides a very easy solution to allow work with NOA and would allow community development to happen.

[2:42:21 PM](#)

ELIZABETH HENSLEY, Corporate and Public Policy Liaison, NANA Regional Corporation (NANA), stated that NANA supports this bill. She explained that about \$10 million in projects are on hold due to NOA issues, but the projects need to move forward. She offered that the Northwest Arctic Leadership Team, consisting of leadership of the Northwest Arctic Borough (NWAB), the NWAB School District, Maniilaq Association, which is the

tribal organization, and NANA all support the bill. She reiterated that the bill has widespread community support, including Ambler. She reported that NANA is a large land owner in the region and owns about 38,000 square miles including gravel resources.

[2:44:14 PM](#)

LANCE MILLER, Vice President, NANA Regional Corporation (NANA) stated that the iron rich rocks have existed for quite a while. He related that these rocks contain various asbestos minerals found throughout the Brooks Range and Southeast Alaska. In response to Representative Feige, he reported that the NOA type is chrysotile, which is the least toxic type of asbestos. However, from the perspective of the Environmental Protection Agency (EPA), it doesn't matter since it is an asbestos form of mineral. He reiterated that about \$10 million in projects are on hold. He said Ambler is relatively new village, but people have been up along the river for upwards of 10,000 years. Some of the highest concentrations of asbestos are in the gravel bars right in front of Ambler since asbestos is deposited as part of a winnowing effect. He recalled a reference to a health study which did not find any evidence of mesothelioma. He agreed exposure presents a good question, but pointed out that NOA has been around for a long time and people have been breathing it. He asked to have NANA on record as supporting the bill to move the projects forward. He emphasized that a lack of legislation presents an issue for landowners. He acknowledged some critical airport emergency issues need to move forward. In response to a question, he agreed he would be available to answer questions.

[HB 258 was held over.]

[2:48:09 PM](#)

HB 270-WARNING OF AIRPORT EXAMS/SCANS

[2:48:18 PM](#)

CHAIR P. WILSON announced that the final order of business would be, HOUSE BILL NO. 270, "An Act requiring the Department of Transportation and Public Facilities to require airports to post warning signs outside of security screening areas warning passengers that they are subject to searches of their bodies by physical touching and by electronic devices that emit radiation."

[2:48:44 PM](#)

REPRESENTATIVE SHARON CISSNA, Alaska State Legislature, stated that HB 270 is an important bill in terms of screening processes at Alaska's airports. In December 2011, Alaska used a system of procedures without using a scanner, which included performing invasive examinations to ensure public safety on flights. Prior to the physical screening procedures, the airports used metal detectors, which were less effective in detecting items not allowed on airplanes. She related her understanding that the new scanner does not view the body as a naked body, since the device shows a symbol and the location of something that needs further investigation.

[2:50:38 PM](#)

REPRESENTATIVE CISSNA said an item identified by the new scanner could be a bomb; however, given the aging population it is more likely to be a medical implant, a missing body part as a result of war, cancer, or even something natural. She explained that once the new scanner identifies a problem, the Transportation Security Administration (TSA) agent will use a more invasive procedure. She reported that beginning in February 2011 until the end of the legislative session she received over 1,000 e-mails and letters from people all over the country, of which approximately 300 were from Alaskans. She said that people also stop her on the street and come into her office to tell their stories. She offered her belief that the type of reaction they have exhibited is typical of someone who has been traumatized. She related that children or elderly parents have been subjected to the procedures. She acknowledged that the measures have been put in place as a reaction to 9/11.

[2:53:06 PM](#)

REPRESENTATIVE CISSNA pointed out that she has served for ten years on the Special Committee of Military and Veterans Affairs so she shares security concerns, but she also is concerned about the loss of independence people feel when subjected to these invasive devices.

[2:53:57 PM](#)

CHAIR P. WILSON turned the gavel over to Vice Chair Pruitt.

[2:54:13 PM](#)

REPRESENTATIVE CISSNA explained that this bill would require the Department of Transportation & Public Facilities (DOT&PF) to post an informational sign in each Alaska airport where TSA screening takes place. The sign's wording would warn passengers of the potentially dangerous screening procedures before they enter the TSA controlled screening area. She pointed out that the notices would be at larger airports flying to Lower 48, not at smaller airports since the type of screening required is linked to size of airport. She started to explain a TSA opt-out form, but realized the form did not apply. She explained that each airport will be required to post a sign at least 11 inches by 14 inches outside the security area to identify the screening procedures so each passenger is forewarned about the body scanning device.

REPRESENTATIVE CISSNA explained that some people have reported they did not realize the manner in which the TSA people would talk to them. This posting would help since it will give consumers a warning to be aware that by walking into the TSA area they are consenting to abide by the screening.

REPRESENTATIVE CISSNA said the state has a huge number of airports owned by the DOT&PF. She identified the Juneau and Ketchikan airports as municipal airports. The bill would notify the governmental agency that owns the airports and leases about the requirement to post the small sign. She asked to have additional time to check with the leased land proprietors to ascertain whether the requirement for signage would mesh with their procedures. She reiterated that this bill will help prepare people and give them informed consent.

[3:00:31 PM](#)

REPRESENTATIVE MUNOZ thanked her for her courage on this issue. She asked for clarification on radiation issues. She related her understanding that the devices have greater radiation and asked how the new scanner compares to the more traditional screening devices.

REPRESENTATIVE CISSNA answered that she did not know. She expressed concern over the absence of third-party oversight on any of the Transportation Security Administration (TSA) measures. The Congress gave TSA the right to write regulations. She explained there is not any way to determine that the equipment is safe. She recalled viewing forms and numerous cautions from the manufacturers that if the scanner equipment is not properly installed, calibrated, and regularly checked that

it will not be safe. She stressed that the state should be extremely careful to ensure public health and safety.

3:03:13 PM

REPRESENTATIVE FEIGE asked whether the devices emit radiation, the quantity, or if it is electromagnetic.

REPRESENTATIVE CISSNA said she did not know. She related her understanding that the scanners use a type of radiation that is a slower traveling radiation, which is of concern.

[HB 270 was held over.]

3:04:19 PM

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 3:04 p.m.