

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 1, 2012

1:07 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- MOVED CSHB 258(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 128

"An Act relating to prohibiting the use of cellular telephones by minors when driving motor vehicles; and providing for an effective date."

- MOVED CSHB 128(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
02/21/12 (H) Heard & Held
02/21/12 (H) MINUTE(TRA)
03/01/12 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 128

SHORT TITLE: BAN CELL PHONE USE BY MINORS WHEN DRIVING

SPONSOR(s): REPRESENTATIVE(s) GARDNER

01/28/11 (H) READ THE FIRST TIME - REFERRALS
01/28/11 (H) TRA, JUD
03/01/11 (H) TRA AT 1:00 PM CAPITOL 17
03/01/11 (H) Heard & Held
03/01/11 (H) MINUTE(TRA)
02/16/12 (H) TRA AT 1:00 PM CAPITOL 17
02/16/12 (H) Heard & Held
02/16/12 (H) MINUTE(TRA)
03/01/12 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

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

POSITION STATEMENT: Testified during the discussion of HB 258.

SILKAURAQ WHITING, Mayor
Northwest Arctic Borough (NWAB)
Kotzebue, Alaska

POSITION STATEMENT: Testified during the discussion of HB 258.

MORGAN JOHNSON, Mayor
City of Ambler
Ambler, Alaska

POSITION STATEMENT: Testified 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 in support of HB 258.

ROGER HEALY, Chief Engineer
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion HB 258.

SARITHA ANJILVEL, Assistant Attorney General
Transportation Section
Department of Law (DOL)
Anchorage, Alaska

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

REPRESENTATIVE BERTA GARDNER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Briefly recapped HB 128 as prime sponsor.

ACTION NARRATIVE

[1:07:59 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:07 p.m. Representatives Pruitt, Feige, Johnson, Munoz, Gruenberg, and P. Wilson were present at the call to order. Representative Petersen arrived as the meeting was in progress.

HB 258-NATURALLY OCCURRING ASBESTOS

[1:08:44 PM](#)

CHAIR P. WILSON announced that the first 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."

[1:09:01 PM](#)

REPRESENTATIVE PRUITT moved to adopt the proposed committee substitute (CS), for HB 258 labeled 27-LS0400\X, Nauman, 2/28/12, as the working document. There being no objection, Version X was before the committee.

[1:09:40 PM](#)

BRODIE ANDERSON, Staff, Representative Reggie Joule, Alaska State Legislature, on behalf of the sponsor, Representative Reggie Joule, described the changes in Version X. He said that after the last hearing he met with the Department of Health and Social Services, the Department of Law, the Department of Labor & Workforce Development, the Department of Transportation & Public Facilities, and the Department of Environmental Conservation to discuss their concerns. He characterized Version X as addressing concerns of the departments and the committee.

[1:10:44 PM](#)

MR. ANDERSON detailed the changes in Version X. He referred to page 3, lines 13-16, which adds legislative intent to clarify that the program is voluntary and provides civil immunity limited to projects that comply with the site specific plan. This addressed concern that it might be interpreted HB 358 would mandate compliance every single time naturally occurring asbestos (NOA) is used.

MR. ANDERSON referred to page 3, line 27, and to page 4, line 29, which identifies NOA gravel at 0.25 percent and above, so everything at 0.24 percent and below is considered aggregate material. This language was derived from California regulations and statutes, since California has a similar NOA program in operation. The language also considered recommendations by DOT&PF on how to quantify NOA levels.

[1:12:28 PM](#)

REPRESENTATIVE MUNOZ asked for percentage of NOA in Ambler.

MR. ANDERSON answered relative to conversations with Lance Miller, Vice President of Resources, NANA Corporation, that NOA ranges as low as 0.02 along the river to considerably more up on the hills near Mount Asbestos. He said the NOA level would depend on gravel source.

[1:13:30 PM](#)

MR. ANDERSON referred to page 4, line 1. He said this language addresses concern related to immunity from the site-specific plan for third-party construction projects. Thus by adding a reference on line 1 to AS 44.42.410 (a) the bill directly links the immunity to the site-specific plan. He referred to page 4, lines 19-20 and on page 10, lines 23-24, which adds a definition for NOA. He reiterated that the DOT&PF suggested the California definition since the program is working in California. He read, "naturally occurring asbestos means asbestos-containing material that has not been processed in an asbestos mill." He said that wording was used since the process of scooping up gravel by an excavator does not change the raw material of the gravel; however, an asbestos mill changes the raw material into the fiber material that was once used for insulation and is considered processed asbestos, which is defined in AS 18.31.500, whereas the NOA in Ambler is the raw material.

MR. ANDERSON referred to page 5, lines 10-14, to language designed to establish the connection and need for third-party contractors to maintain the monitoring and mitigation plan if they wish to retain their civil immunity. He explained this addresses the need to maintain a monitoring and mitigation plan once the contractor has completed work at the construction site in order to retain civil immunity. This provision clearly states the need to do so.

[1:16:12 PM](#)

MR. ANDERSON referred to page 6, lines 5-6, which would require DOT&PF to maintain a list of completed projects and the data collected and submitted by the contractor.

MR. ANDERSON referred to page 6, lines 27-28, which connects the liability provisions to the site-specific plan for third parties. He explained that there was a disconnect between the immunity clauses under Alaska Statutes in chapters 9 and 18 to the site-specific plan mentioned in DOT&PF's title in AS 44. This language would thread the immunity clauses to the site-specific plans mentioned in the DOT&PF's title.

MR. ANDERSON referred to page 7, lines 27-29, to language which would similarly tie the immunity sections of the bill for DOT&PF's projects to the site-specific plan.

MR. ANDERSON referred to page 8, lines 13-15, which would add language to require DOT&PF to start the approval process once they receive a plan, but this requires them to do so.

MR. ANDERSON referred to page 8, lines 22-24, which would connect the liability provisions to the site-specific plan for DOT&PF.

MR. ANDERSON referred to page 8, lines 30-31, which would require a contractor who was required to maintain a monitoring and mitigation plan and all asbestos-related data collected would turn data over to DOT&PF.

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MR. ANDERSON referred to page 9, lines 11-19, which he characterized as the most substantive change. This provision would require a contractor to submit a document to the recording district, within 60 days of project completion, to indicate NOA was used and a brief description of the extent of the use. This notice would be attached to the property title to convey that subsequent interest holders may incur legal obligations with respect to preventing the NOA from becoming airborne or otherwise transferred. He said that mesothelioma doesn't develop in six months or a year, but in 20 years or more. He related that questions arose as to liability immunity into perpetuity. He explained that this provides the record to address this. He concluded that this represents the changes between Version E and Version X.

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CHAIR P. WILSON questioned how that provision would affect current owners. She related her understanding that current owners would already know the risks and are willing to use the NOA since they have lived with NOA in the community.

MR. ANDERSON answered that this bill envisions the site-specific plan, the mitigation plan, and the monitoring plan will identify any issues and will be approved. He offered his belief that if the community wanted to use NOA gravel as top surface on the

road, the plan would assess whether that is acceptable and will monitor any dust that occurs.

[1:21:51 PM](#)

CHAIR P. WILSON asked whether the agreements would be made in site-specific plan, which could require restrictions such as sealing the road surface within ten miles of the community.

MR. ANDERSON answered that the bill would leave up to the DOT&PF and the experts to clarify by regulation.

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REPRESENTATIVE GRUENBERG offered that this new subsection requires for the first time that notice must be recorded, which legally means that this is a notice to the world. He explained that any time property is transferred or anyone wants information for title insurance, the person will go to the recording office to record it. This will provide notice to the subsequent transferees of the property that they may have legal obligations and it also puts them on notice to check for the obligation.

MR. ANDERSON answered yes.

[1:23:37 PM](#)

REPRESENTATIVE PRUITT asked for clarification on whether this attachment to the deed would affect the ability of someone to obtain a loan on a property and if it would prevent property sales.

REPRESENTATIVE GRUENBERG stated that person either has or does not have a legal obligation. This simply puts the person and the world on notice. He related a scenario in which in which person "A" gives person "B" a deed, who transfers the deed to person "C," who then records it. He said person "C" may be the legal owner and that it may relate to a loan. He did not think this bill would affect loans since it simply puts people on notice. He was unsure of the legal obligation if a contractor failed to record the property, whether the failure to record would give cause of action against the contractor simply for the failure to provide notice. He said he was unsure.

The committee took a brief at-ease.

1:26:59 PM

CHAIR P. WILSON related a scenario in which a person sells property to his/her uncle. She asked whether the bank would decline to loan money due to a liability issue.

MR. ANDERSON deferred to DEC to answer. He suggested that a similar notification process exists for contaminated sites.

CHAIR P. WILSON suggested that the sponsor report back to the committee on this.

REPRESENTATIVE GRUENBERG noted an aside, that there is a legal obligation to abate asbestos.

CHAIR P. WILSON pointed out that if the house wasn't built with asbestos, that builder could likely dismantle and rebuild the house.

REPRESENTATIVE PRUITT related his understanding that the problem is not that asbestos would be used in construction of the house. Instead, the issue would relate to what is underneath the house. He did not think it was worth holding up the bill, but he did want to clarify this point. He suggested that this bill not intended to pertain to one home in a subdivision, but is to allow large projects to move forward. He characterized this bill as a good bill.

1:30:20 PM

SILKAURAQ WHITING, Mayor, Northwest Arctic Borough (NWAB), stated that she would like to speak on behalf of HB 258. She said many projects are currently on hold, including big homebuilding projects, an airport runway, a bridge to the airport, and the Kobuk school project. She expressed gratitude that the questions were asked about home loans since some projects do involve homes. Additionally, she anticipated erosion will occur this spring and the community will need emergency access to gravel during spring break up since it is compromising power and phone lines in Ambler. Additionally, these issues will also affect upper Kobuk and Shungnak. She reported that this past week the NWAB passed Resolution 12-05 to facilitate the use of gravel or aggregate that contains low levels of NOA. Additionally the NWAB also supports NANA and the City of Ambler's extraction and use of gravel for future projects. She anticipated that substantial mining will occur in the upper Kobuk mining district, noting the governor submitted

\$6 million for a transportation study in the upper Kobuk mining district. She said it is imperative to review the bill to prepare for the activity that will happen in the Northwest Arctic. She pointed out gas and oil prices are extremely high in the upper Kobuk with the highest price for gas at \$10.46 per gallon and \$9.46 per gallon for stove oil. All the fuel has been flown into the community. She heard that the Anchorage is appalled at the \$4 per gallon it must pay at the pump, but the prices are double that price in the smaller communities. She emphasized that the economy of the region in the upper Kobuk is at a standstill until HB 258 is passed. She urged members to pass this bill to help the economy of small communities because when small communities thrive all of Alaska thrives. She offered support for the bill so the communities can build projects that have been on hold for many years.

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MORGAN JOHNSON, City of Ambler, Ambler, Alaska, noted the vice mayor is also present. He said it is great to have the committee tackling this problem and that he hopes the committee will resolve the issue - the sooner the better. He recalled hearing that new illnesses may occur in 20-30 years. He suggested that it may be best to cover the asbestos up and protect the community members that live in the area.

[1:36:17 PM](#)

SCOTT JONES, Vice Mayor, City of Ambler, thanked members for their hard work. He commented that if Alaska accepts California standards and their figures for clean gravel it is also important to not restrict use of the NOA based on borderline numbers. He said the community is located on the south side of the Brooks Range, with substantial gravel. He recalled earlier testimony set the level at 0.25 for clean gravel. He hoped that the community would not be restricted to only using gravel that meets those standards since the record does not show any incidence of mesothelioma. He related that this region has the least invasive type of asbestos. He stated that California has seven types of asbestos, which are more toxic than Ambler's asbestos. He related his understanding that California is using this standard. He did not want to be so close to resolution and advised proceeding with proceed with caution.

[1:38:34 PM](#)

UKALLAYSAAQ OKLEASIK, Planning Director, stated that the NWAB supports passage of HB 258. The NWAB passed a resolution supporting it. He offered his belief that the committee is headed in the right direction to address the public health concerns while still holding the acceptable asbestos level to the level that meets community development needs. He agreed the discussion on homes is relevant since the ability to build homes in Ambler requires them to be built on gravel pads. The community development projects have been placed on hold since the use of the gravel needs standards to be set - as provided by this bill - so the NOA can be safely used. He suggested that as long as the standards are put in place and the NOA gravel is contained in some way through the construction process that it will be safe for the community. He offered his belief that as we move forward advances will help with safe use of a known resource, asbestos, found in the gravel.

[1:40:34 PM](#)

ROGER HEALY, Chief Engineer, Department of Transportation & Public Facilities (DOT&PF), clarified the 0.25 standard is an analytical standard adopted by California. He explained that this is a test in which asbestos material is ground and viewed on a slide. The technicians view 400 points on the slide and if one fiber is located under one of those points it equates to a 0.25 percent asbestos. He emphasized that this is not a health standard, but is an analytical standard. He pointed out that it only means that if there is a "hit" on the sample it is considered NOA under this bill and if there is not one it is not considered NOA. The accuracy that has been implied between 0.24 and 0.25 is not recognized in the test. He reiterated that he would like to be clear that this test is an analytical test.

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CHAIR P. WILSON related her understanding any hits were discovered the NOA cannot be used.

MR. HEALY further explained the lab process. He indicated a grid pattern is laid on the sample and the lab procedure identifies any fibers it registers as 1 in 400 or 5 in 400, or whatever the case might be, but the lab only records fibers under those points.

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CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 258.

[1:43:57 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt [Conceptual] Amendment 1, which read, as follows [original punctuation provided]:

Page 3, line 20, following "defendants."

Delete "(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,"

Insert "(a) A civil action or claim for damages or costs alleging a death, injury, illness, disability, property damage, or any other damages resulting from the use of gravel or other aggregate material that contains naturally occurring asbestos may not be brought against a defendant, including contractors meeting the requirements of the program or the state,"

REPRESENTATIVE PRUITT objected for the purpose of discussion.

MR. ANDERSON commented that the sponsor agrees with the conceptual amendments that will be offered today.

[1:45:13 PM](#)

REPRESENTATIVE GRUENBERG referred to page 3, lines 13-16 of Version X. He suggested that this language clarifies the types of asbestos-related issues. The committee discussed asbestos removal and a truck going through the construction site causing an accident, but these illustrations are not the purpose of this bill. The purpose of the bill is to immunize the use of gravel or other aggregate material that contains NOA. This language refers to contractors meeting the requirements of the program and the program also includes the state. This simply would describe types of actions that are being immunized against. He commented that this language is acceptable.

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REPRESENTATIVE GRUENBERG restated his motion to adopt Conceptual Amendment 1, as follows [original punctuation provided]:

Delete "(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,"

Insert "(a) A civil action or claim for damages or costs alleging a death, injury, illness, disability, property damage, or any other damages resulting from the use of gravel or other aggregate material that contains naturally occurring asbestos may not be brought against a defendant, including contractors meeting the requirements of the program or the state,"

REPRESENTATIVE PRUITT again objected for the purpose of discussion.

[1:47:17 PM](#)

CHAIR P. WILSON related her understanding that Conceptual Amendment 1 would delete subsection (a) on page 3 line 20, and inserts the language to better address the intentions.

REPRESENTATIVE GRUENBERG explained that the intentions are to identify the types of actions that would be covered are civil actions resulting from the use of the gravel or other aggregate material that obtain asbestos. He stressed that this absolutely follows the language in the intent.

[1:48:01 PM](#)

CHAIR P. WILSON clarified that the language follows page 3, lines 13-16.

REPRESENTATIVE GRUENBERG answered yes.

REPRESENTATIVE PRUITT removed his objection.

There being no further objection, Conceptual Amendment 1 was adopted.

[1:48:29 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, which read [original punctuation provided]:

Page 8, line 15 after "location."

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

REPRESENTATIVE PRUITT objected for the purpose of discussion.

[1:49:03 PM](#)

REPRESENTATIVE GRUENBERG referred to page 8, line 15, to subsection (c), and compared it to the previous language on page 7, lines 22-25, of Version E. The new language requires the department to review plans and make sure they could not just sit on the plan. The previous language stated that if material had zero percent or less than 0.25 percent they might not be approved unless the DOT&PF determined it was economically unreasonable to undertake a construction project with gravel or other aggregate material free from naturally occurring asbestos. He said the language speaks for itself. He concluded from discussions with Mr. Anderson that the sponsor's intent was not to eliminate the language, but to add the new language in addition to the old language. Conceptual Amendment 2 would do just that.

[1:50:30 PM](#)

MR. ANDERSON answered yes; however, he just now noticed the old language had a phrase, "more than zero percent and less than or equal to .025..." He asked to change that to the new language in Version X. He referred to the language on page 3, line 27, "having a content equal to or greater than 0.25 percent of naturally occurring asbestos..." He stated that if it is economical to continue to use clean this section would clarify the department will only move forward if it is economically reasonable to do so.

[1:51:33 PM](#)

REPRESENTATIVE GRUENBERG offered a conceptual amendment to Conceptual Amendment 2, on line 2, to strike the phrase "...of more than zero percent and less than..." and insert after equal to, "or greater than." He then read the line, which read, "...content equal to or greater than 0.25 percent...."

REPRESENTATIVE MUNOZ asked for clarification that the specific language removed by the conceptual amendment to Conceptual Amendment 2 is, "...zero percent and less than..."

REPRESENTATIVE GRUENBERG said the phrase removed would be, "...of more than zero percent and less than or..." Thus it would then read, "... content equal to or greater than 0.25 percent..."

[1:53:33 PM](#)

REPRESENTATIVE JOHNSON asked for clarification on the effect if the level were 0.01. He wondered if the asbestos fell under that amount if the project would not be approved.

REPRESENTATIVE MUNOZ recalled that Mr. Healy indicated that a single fiber would register as 0.25. She related her understanding there were zero fibers it would register below 0.25 and would not be considered NOA.

REPRESENTATIVE JOHNSON agreed with the explanation.

[1:54:48 PM](#)

CHAIR P. WILSON stated that the conceptual amendment to Conceptual Amendment 2 has been adopted.

[1:55:17 PM](#)

REPRESENTATIVE JOHNSON asked for definition of economically unreasonable.

CHAIR P. WILSON suggested it would mean cost prohibitive.

REPRESENTATIVE JOHNSON countered that some groups might say that no matter how much one has to spend asbestos could not be used, so spending \$100 million is not unreasonable even though it may require shipping in clean gravel. He questioned whether a definition of what economically unreasonable exists. He pointed out that some people like to prevent projects from moving forward. He asked to clarify the intention of this bill is not

to stop projects. He questioned whether there is any way to address the definition of economically unreasonable.

MR. ANDERSON offered to address this, noting that DOT&PF could assist. He stated that considering using the term economically unreasonable arose during discussions with the administration over determining at what point these phases begin and how to move forward. The DOT&PF's Road to Resources executive summary for the road to Ambler project establishes criteria for evaluating that specific project, including one to evaluate the available material. He explained the criteria used included evaluating the availability of the material, the cost to transport the material to the road location, and the distance necessary. He acknowledged that the term economic unreasonable was not used, but the criteria was rated higher for material located within five miles than material located 50 miles or more from the construction site. He reiterated that since the department has already developed some criteria rating for the economic impact that the sponsor left it to DOT&PF to define economically unreasonable by regulation.

CHAIR P. WILSON remarked of the importance of having the definition addressed at the time the department develops its regulations.

REPRESENTATIVE JOHNSON agreed. He asked to clarify for the record that HB 358 is a bill intended to assist in projects being developed and terms like economically unreasonable are not to be used to stop projects from being developed. He reiterated his concern about the term economically unreasonable being used to halt projects.

CHAIR P. WILSON acknowledged that this is a good point to clarify for the record. This is a bill intended to help with projects that currently cannot go forward but not to stop projects.

[1:59:03 PM](#)

REPRESENTATIVE GRUENBERG related his understanding that when considering Sutherland statutory construction that the committee debate is not always considered, but the reviewers often consider sponsor statements. Therefore, as sponsor of Conceptual Amendment 2, he would like to make it clear for the record that any prior statements made today about the intent of Conceptual Amendment 2 also represent his intention.

[1:59:22 PM](#)

REPRESENTATIVE MUNOZ referred to the language in Conceptual Amendment 2, which read, "...equal to 0.25 percent of naturally occurring asbestos by mass may not be approved unless the department determines that it is economically unreasonable..." She pointed out that this is a double negative and asked for clarification on the intent.

REPRESENTATIVE GRUENBERG pointed out that his amendment is conceptual. He asked the committee's staff to check with bill drafter to determine the most elegant way to state the intent that in the event that there is additional asbestos that asbestos cannot be approved unless the department determines it is economical unreasonable not to do so. In other words if the asbestos is the only source of material that is economically available the department has the authority to approve it.

[2:00:34 PM](#)

REPRESENTATIVE MUNOZ suggested it should be restated in the positive.

REPRESENTATIVE GRUENBERG preferred to leave the final language to the bill drafter.

CHAIR P. WILSON concurred that the Conceptual Amendment 2 is specifically a conceptual amendment in order to allow the bill drafter the flexibility to decide the best way to incorporate the intent of the language into the bill.

REPRESENTATIVE GRUENBERG remarked that this language was taken from the Version E. He acknowledged that it is confusing and he agreed it could likely be put in the positive.

[2:01:05 PM](#)

REPRESENTATIVE PETERSEN related his understanding that economically unreasonable means cost prohibitive.

REPRESENTATIVE GRUENBERG interpreted that he is correct.

REPRESENTATIVE JOHNSON agreed, but noted that reasonable has different definitions. He wanted to ensure that it is clear that the committee's intent is to advance projects and not slow them down. He offered his belief that some people may believe it is reasonable to fly in gravel for projects.

REPRESENTATIVES GRUENBERG and PETERSEN agreed with Representative Johnson.

[2:02:23 PM](#)

MR. ANDERSON pointed out the legislative intent on page 2, lines 17-21 of Version X. He stated that while this language does not specifically address Representative Johnson's direct concern it reads, "...in communities that do not have sources of gravel or similar aggregate material that is free of naturally occurring asbestos, costs of construction are substantially increased because of the necessity of locating alternative sources of gravel or similar aggregate material..." He referred, similarly, to page 3, line 6, which reads, "...eliminates significantly higher costs of construction and maintenance of projects..." Thus these provisions establish the legislative intent is to reduce those specific costs. He offered his belief that the legislative intent and the suggestion from Representative Johnson will help ensure the regulations are clear.

[2:03:23 PM](#)

REPRESENTATIVE JOHNSON asked whether the term significant health risk can be defined. He stated that he did not want any answers, but advised caution since the language leaves room for interpretation.

CHAIR P. WILSON agreed that the committee does not want to leave areas wide open.

[2:03:59 PM](#)

REPRESENTATIVE GRUENBERG further commented he was unsure that to be economically unreasonable the cost would have to be cost prohibitive, but if it were significantly higher it could make it very difficult economically; however, to make it cost prohibitive could stop a project. He asked to clarify that the test of reasonableness is what a reasonable person would be able to pay.

[2:04:40 PM](#)

REPRESENTATIVE PRUITT removed his objection.

There being no objection, Conceptual Amendment 2, as amended, was adopted.

[2:04:58 PM](#)

REPRESENTATIVE GRUENBERG referred to Conceptual Amendment 3, pointing out the pen and ink correction of "nay" to "any," on the written amendment. He then made a motion to adopt Conceptual Amendment 3, which read, as follows [original punctuation provided]:

Page 9, line 19 after "recorded."

Add "The contractor shall submit to the department the results of any monitoring or testing performed in accordance with the site-specific use plan and any mitigation measures undertaken."

REPRESENTATIVE PRUITT objected for the purpose of discussion.

[2:05:39 PM](#)

REPRESENTATIVE GRUENBERG referred to page 9, line 19, to subsection (f) in Version X and contrasted it to the language on page 8, lines 21-23 in subsection (f) of E version. He related his understanding that the sponsor's intention is not to substitute the new language, but is to add additional language in this subsection. The old language required contractors to submit to the department the results of any monitoring or testing performed in accordance with the site-specific use plan and any mitigation measures undertaken. He explained that Conceptual Amendment 3 would add a provision at the end of the new language. He said this language was taken word for word from Version E.

[2:06:58 PM](#)

REPRESENTATIVE JOHNSON asked the sponsor if any current requirements for testing or if this bill would add additional requirements for testing.

MR. ANDERSON related his understanding that Conceptual Amendment 3 would not add any additional testing.

REPRESENTATIVE JOHNSON questioned whether any tests will be requirement to use the aggregate material.

MR. ANDERSON deferred to the DOT&PF.

[2:07:58 PM](#)

REPRESENTATIVE JOHNSON pointed out that results are required to be submitted, but he was unsure if this language would also require additional testing.

CHAIR P. WILSON related her understanding that the results of DOT&PF's monitoring must be submitted; however, the language did not require the contractor do anything to mitigate the plan.

REPRESENTATIVE JOHNSON disagreed.

REPRESENTATIVE GRUENBERG said yes.

[2:08:32 PM](#)

REPRESENTATIVE JOHNSON pointed out the language requires the contractor to test.

CHAIR P. WILSON answered that the contractor must submit the results. She pointed out that the DOT&PF may require the contractor to seal the roadway within 10 miles of a village due to the presence of naturally occurring asbestos. The contractor would need to report the actions taken.

[2:09:21 PM](#)

REPRESENTATIVE JOHNSON read, "The contractor shall submit to the department the results of any monitoring or testing...." He questioned whether it is consistent with the site plan to require testing.

MR. HEALY answered yes. He related that if an entity seeks immunity under the bill and submits a plan that a variety of tests will be required. He pointed out some prior testing may have been performed.

[2:10:41 PM](#)

CHAIR P. WILSON asked for clarification on who performed the prior testing.

MR. HEALY answered that the prior testing would be specific to the materials site and it may have been performed by private parties or the DOT&PF, but the department will view it in terms of the ultimate goal, which is public health. He clarified that the use of NOA material would be allowed under the bill.

CHAIR P. WILSON asked whether the department would do testing to determine if the NOA can be used or if the contractor will do the testing.

MR. HEALY explained that if it a third-party construction and not the department's project, the department will rely on tests by the contractor, the material site owner, or other party to identify whether the material is NOA or not NOA material. He related that the tests referred to in the mitigation plan are due to the federal requirement for air quality for workplace safety and mining safety to determine if it meets the airborne standard. He commented that the Department of Environmental Conservation (DEC) would be more familiar with the requirement since it is also used in buildings to collect fibers in the air. He pointed out that it would be incumbent on contractor to take the tests and submit them as evidence to prove workplace standards were not exceeded.

[2:13:05 PM](#)

REPRESENTATIVE JOHNSON related his understanding this would require the tests to be submitted to the department.

MR. HEALY answered yes.

REPRESENTATIVE JOHNSON asked whether any situation occurs in which someone will do a test, not get the preferred result and retest, but only submit the retest results. He asked whether it would require all monitoring results be submitted or some of it.

MR. HEALY answered that the testing procedures to identify the level of NOA typically require a chain of custody. He suggested that it might be possible for someone to break that chain of custody since the department may not catch everything.

REPRESENTATIVE JOHNSON thanked him.

[2:14:25 PM](#)

CHAIR P. WILSON was uncertain if "any" or "all" should be used. She asked for clarification on the best choice of words.

[2:15:39 PM](#)

SARITHA ANJILVEL, Assistant Attorney General, Transportation Section, Department of Law (DOL), introduced herself.

[2:16:01 PM](#)

CHAIR P. WILSON read Conceptual Amendment 3, "The contractor shall submit to the department the results of any monitoring or testing performed in accordance with the site-specific use plan and any mitigation measures undertaken." She asked whether that meant all the mitigation measures undertaken must be submitted.

MS. ANJILVEL answered that inclusive of "any" and "all." She explained that the word "any" means that there may be a mitigation plan that doesn't require any testing at all, so basically, the contractor shall submit all plans, if any exist.

[2:17:34 PM](#)

REPRESENTATIVE PRUITT removed his objection. There being no further object, Conceptual Amendment 3 was adopted.

[2:17:52 PM](#)

REPRESENTATIVE PRUITT moved to report the proposed committee substitute (CS) for HB 258, labeled 27-LS0400\X, Nauman, 2/28/12, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE JOHNSON objected. He remarked that HB 258 represents an example of problem solving by the community, state, and departments. He further remarked that this is an outstanding example to demonstrate that when communities get involved and work with the administration and the legislature, solutions can happen that benefit everyone. He complimented the sponsor addressing this long-standing problem. He said he was glad to have resolution and wholeheartedly endorse the bill. He then removed his objection.

There being no further objection, CSHB 258(TRA) was reported from the House Transportation Standing Committee.

[2:20:07 PM](#)

The committee took an at-ease from 2:20 p.m. to 2:21 p.m.

HB 128-BAN CELL PHONE USE BY MINORS WHEN DRIVING

[2:21:21 PM](#)

CHAIR P. WILSON announced that the final order of business would be HOUSE BILL NO. 128, "An Act relating to prohibiting the use of cellular telephones by minors when driving motor vehicles; and providing for an effective date."

[2:21:33 PM](#)

REPRESENTATIVE BERTA GARDNER, Alaska State Legislature, speaking as the sponsor of HB 128, briefly recapped HB 128. She stated that this bill pertains to cell phones and is as simple as possible. The ban on cell phone usage only applies to minors, who are the most vulnerable, impulsive, and the least experienced drivers. It does not make any provision or exception for hands-free use and cell phone use under the bill is a secondary offense, meaning that there would be a potential fine for someone who is stopped for a reason unrelated to cell phone use. She offered that the committee is familiar with the issues surrounding cell phone use.

[2:22:35 PM](#)

CHAIR P. WILSON commented that she takes issue with bills that cannot be enforced. She did not think the legislature should adopt unenforceable laws.

REPRESENTATIVE GARDNER responded the law is based on age and it is difficult to determine age which is why cell phone use by teenagers in HB 128 is not a primary offense.

[2:23:48 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1 to change 2011 to 2012. There being no objection, Amendment 1 was adopted to change the last line from 2011 to 2012.

[2:24:34 PM](#)

REPRESENTATIVE MUNOZ moved to report HB 128, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE JOHNSON objected. He stated that he has made his position clear.

A roll call vote was taken. Representatives Munoz, Gruenberg, Petersen, and Wilson voted in favor of reporting HB 128, as amended, from the House Transportation Standing Committee.

Representatives Johnson and Pruitt voted against it. Therefore, CSHB 128(TRA) was reported from the House Transportation Standing Committee by a vote of 4-2.

[2:27:02 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:27 p.m.