

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 23, 2012

1:31 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator John Coghill

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

SENATE BILL NO. 200

"An Act establishing certain procedures related to the identification of suspects by eyewitnesses to criminal offenses."

- MOVED CSSB 200(JUD) OUT OF COMMITTEE

SENATE BILL NO. 210

"An Act relating to crimes against children; establishing a new aggravating factor at sentencing in certain crimes against children; relating to criminal nonsupport; adding to the list of crimes against children that bar the Department of Public Safety from issuing to a person a license to drive a school bus; adding an exception to a provision that requires the Department of Health and Social Services to make timely, reasonable efforts to provide family support services to prevent out-of-home placement of a child; and providing for an effective date."

- MOVED CSSB 210(JUD) OUT OF COMMITTEE

SENATE BILL NO. 212

"An Act relating to crimes of human trafficking; establishing the Human Trafficking Task Force to evaluate services available to victims of human trafficking; and relating to the recommendations and report of the task force."

- MOVED CSSB 212(JUD) OUT OF COMMITTEE

SENATE BILL NO. 180

"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

SENATE BILL NO. 138

"An Act relating to the inclusion of the charges of a vendor of goods or services on the bills of certain telecommunications carriers; and adding an unlawful act to the Alaska Unfair Trade Practices and Consumer Protection Act."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 19

Proposing amendments to the Constitution of the State of Alaska relating to the membership of the Redistricting Board.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 200

SHORT TITLE: EYEWITNESSES AND LINEUPS

SPONSOR(S): SENATOR(S) FRENCH

02/17/12	(S)	READ THE FIRST TIME - REFERRALS
02/17/12	(S)	JUD, FIN
02/27/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/27/12	(S)	Heard & Held
02/27/12	(S)	MINUTE(JUD)
03/16/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/12	(S)	Scheduled But Not Heard
03/21/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/12	(S)	Scheduled But Not Heard
03/23/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 210

SHORT TITLE: CRIMES AGAINST CHILDREN

SPONSOR(s): SENATOR(s) MCGUIRE

02/21/12 (S) READ THE FIRST TIME - REFERRALS
02/21/12 (S) JUD, FIN
02/27/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/27/12 (S) Heard & Held
02/27/12 (S) MINUTE(JUD)
03/16/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/12 (S) Scheduled But Not Heard
03/21/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/12 (S) Scheduled But Not Heard
03/23/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 212

SHORT TITLE: HUMAN TRAFFICKING TASK FORCE

SPONSOR(s): SENATOR(s) MCGUIRE

02/21/12 (S) READ THE FIRST TIME - REFERRALS
02/21/12 (S) JUD, FIN
02/29/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/29/12 (S) Heard & Held
02/29/12 (S) MINUTE(JUD)
03/16/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/12 (S) Scheduled But Not Heard
03/23/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 180

SHORT TITLE: NATURALLY OCCURRING ASBESTOS IN GRAVEL

SPONSOR(s): SENATOR(s) OLSON

01/27/12 (S) READ THE FIRST TIME - REFERRALS
01/27/12 (S) TRA, JUD
02/23/12 (S) TRA AT 1:00 PM BUTROVICH 205
02/23/12 (S) Moved CSSB 180(TRA) Out of Committee
02/23/12 (S) MINUTE(TRA)
02/24/12 (S) TRA RPT CS 3DP NEW TITLE
02/24/12 (S) DP: KOOKESH, MENARD, THOMAS
02/24/12 (S) FIN REFERRAL ADDED AFTER JUD
03/12/12 (S) JUD AT 12:30 AM BELTZ 105 (TSBldg)
03/12/12 (S) Heard & Held
03/12/12 (S) MINUTE(JUD)
03/23/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 138

SHORT TITLE: THIRD-PARTY CHARGES ON TELEPHONE BILLS

SPONSOR(s): SENATOR(s) WIELECHOWSKI, DAVIS, EGAN

01/17/12 (S) PREFILE RELEASED 1/6/12
01/17/12 (S) READ THE FIRST TIME - REFERRALS
01/17/12 (S) L&C, JUD
02/02/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/02/12 (S) Heard & Held
02/02/12 (S) MINUTE(L&C)
02/23/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/12 (S) <Bill Hearing Postponed>
02/28/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/28/12 (S) Moved CSSB 138(L&C) Out of Committee
02/28/12 (S) MINUTE(L&C)
02/29/12 (S) L&C RPT CS 3DP 2NR SAME TITLE
02/29/12 (S) DP: EGAN, DAVIS, PASKVAN
02/29/12 (S) NR: GIESSEL, MENARD
03/23/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

AMY SALTZMAN, Staff
Senator McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: On behalf of the sponsor, explained the changes in the CS for SB 210, version D and the proposed amendment to SB 212.

DAVID SCOTT, Staff
Senator Donny Olson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented information on SB 180 on behalf of the sponsor.

ROGER HEALY, Chief Engineer
Department of Transportation and Public Facilities (DOTPF)
Juneau, AK

POSITION STATEMENT: Provided supporting testimony for SB 180.

JOE MCLAUGHLIN, MD, State Epidemiologist
Department of Health and Social Services (DHSS)
Anchorage, AK

POSITION STATEMENT: Testified on SB 180 and stated that there was no safe level of asbestos.

MORGAN JOHNSON, Mayor
City of Ambler

Ambler, AK

POSITION STATEMENT: Testified in support of SB 180.

SCOTT JONES, Vice-Mayor

City of Ambler

Ambler, AK

POSITION STATEMENT: Testified in support of SB 180.

ELIZABETH SAAGULIK HENSLEY, Corporate and Public Policy Liaison

NANA Regional Corporation

Anchorage, AK

POSITION STATEMENT: Testified in support of SB 180.

LANCE MILLER, Vice President of Resources

NANA Regional Corporation

Anchorage, AK

POSITION STATEMENT: Testified in support of SB 180.

SARITHA ANJILVEL, Assistant Attorney General

Civil Division

Department of Law (DOL)

Anchorage, AK

POSITION STATEMENT: Answered questions related to SB 180 as counsel to DOTPF.

THOMAS PRESLEY, Intern

Senator Wielechowski

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Introduced SB 138 on behalf of the sponsor.

MARIE DARLIN

AARP

Juneau, AK

POSITION STATEMENT: Testified in support of SB 138.

ACTION NARRATIVE

[1:31:51 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Paskvan, Coghill, Wielechowski and Chair French.

SB 200-EYEWITNESSES AND LINEUPS

[1:33:18 PM](#)

CHAIR FRENCH announced the consideration of SB 200, and asked for a motion to adopt the proposed committee substitute (CS), version I.

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 200, labeled 27-LS1136\I, as the working document.

CHAIR FRENCH, speaking as the sponsor of SB 200, reviewed the changes made in the current CS. Page 1, line 12, the word "relevant" was added to clarify that only information relevant to the situation should be collected in the statement. For example, the weather conditions were not relevant if the eyewitness account occurred indoors. Page 2, lines 9-11, clarify that the admissibility of eyewitness identification as evidence was not precluded by the failure of an agency to adopt procedures or satisfy the requirement under subsection (a). Finally, technical changes were made in Section 1, subsection (a)(2) on page 2, to clarify provisions about test administrators. Finding no questions about the CS, he asked for a motion.

[1:35:05 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 200, version I, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 200(JUD) moved from the Senate Judiciary Standing Committee.

SB 210-CRIMES AGAINST CHILDREN

[1:35:36 PM](#)

CHAIR FRENCH announced the consideration of SB 210, and asked for a motion to adopt the proposed committee substitute (CS), version D.

[1:35:42 PM](#)

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 210, labeled 27-LS1362\D, as the working document.

CHAIR FRENCH announced that without objection version D was before the committee.

AMY SALTZMAN, staff to Senator McGuire, sponsor of SB 210, explained that version D was the same as [version M] that was last before the committee. She summarized that the bill provides harsher penalties for anyone that causes physical injury to a

child. Section 1 increases the protection from under 10 years of age to under 12 years of age in regard to third degree assault for physical injury to a child. Section 2 provides a class C felony for anyone who withholds food or water and causes protracted harm to the child's health. Section 4 amends the definition of "serious physical injury" to include:

- (C) physical injury to a person under 12 years of age that causes
 - (i) serious disfigurement;
 - (ii) impairment of health, by serious bruising or other injury, that reasonably requires medical evaluation or treatment by a health care professional;
 - (iii) loss or impairment of the function of a body member or organ; or
 - (iv) serious impediment of blood circulation or breathing;

MS. SALTZMAN said the sponsor worked closely with the Department of Law (DOL) on the amended definition.

CHAIR FRENCH said the bill was a good idea, because kids deserve this kind of protection.

[1:38:11 PM](#)

SENATOR COGHILL referred to Section 4, page 3, lines 9-10, and said he wanted to make sure he understood the meaning of "recklessly fails to provide." He interpreted it to mean that someone purposefully withholds food or drink such that it causes physical impairment.

CHAIR FRENCH said that was his reading.

SENATOR PASKVAN said he understood "reckless" to mean a gross deviation from the normal standard of care for a child.

SENATOR COGHILL said he wanted to make sure this would not catch people that had other failures in their life, but did not intend to harm the child.

CHAIR FRENCH found no further questions and asked for a motion.

[1:39:41 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 210 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 210(JUD) moved from Senate Judiciary Standing Committee.

SB 212-HUMAN TRAFFICKING TASK FORCE

[1:40:02 PM](#)

CHAIR FRENCH announced the consideration of SB 212 and noted there was an amendment.

CHAIR FRENCH moved Amendment 1, labeled 27-LS1370\A.1, and objected for purposes of an explanation.

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR MCGUIRE

Page 1, line 10:

Delete "and"

Page 1, line 11, following "Services":

Insert ", and two members, appointed by the governor, representing nongovernmental health and social services organizations that provide services to victims of human trafficking"

Page 2, line 23, following "The":

Insert "state agency"

Page 2, line 25, following "expenses, of the":

Insert "state agency"

Page 2, line 27, following "Services.":

Insert "The nongovernmental health and social service organizations whose members are appointed by the governor shall be responsible for their members' costs in participating on the task force."

[1:40:39 PM](#)

AMY SALTZMAN, staff to Senator McGuire, sponsor of SB 212, explained that the amendment adds two state agency members to the Human Trafficking Task Force. The governor would appoint the members who would represent nongovernmental organizations that work with victims of human trafficking.

CHAIR FRENCH removed his objection and announced that Amendment 1 was adopted. Finding no further discussion, he asked for a motion.

[1:41:34 PM](#)

SENATOR WIELECHOWSKI moved report CS for 212, version A as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that CSSB 212(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 1:41 p.m. to 1:43 p.m.

SB 180-NATURALLY OCCURRING ASBESTOS IN GRAVEL

[1:43:52 PM](#)

CHAIR FRENCH announced the consideration of SB 180 and asked for a motion to adopt the proposed committee substitute (CS), version E.

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 180, labeled 27-LS1219\E, as the working document.

CHAIR FRENCH announced that without objection, version E was before the committee. He asked Mr. Scott to review the changes made in the CS.

[1:44:24 PM](#)

At ease from 1:44:53 p.m. to 1:45:00 p.m.

DAVID SCOTT, staff to Senator Donny Olson, sponsor of SB 180, explained the following changes:

Page 3, line 25, following "aggregate material." insert all language to the end of Section 1, page 4, line 4, as follows:

Health risks resulting from asbestos exposure vary according to the level, type, and duration of exposure. While exposure to very small concentrations of asbestos may pose some health risk, there is not a practical way to prevent all exposure to asbestos for residents in close proximity to deposits that contain naturally occurring asbestos. The intent of this act is to establish a sensible analytical threshold for detection of naturally occurring asbestos in gravel or other aggregate material and to establish appropriate exceptions for the use of gravel or other aggregate material that contains naturally occurring asbestos for certain public facilities and transportation projects involving unusual circumstances, including projects in remote locations or in regions where gravel or other aggregate material free from naturally occurring asbestos is not reasonably available.

Page 6, lines 12-13, insert:

(2) coordinate with the Department of Natural Resources to establish and maintain a database of

MR. SCOTT noted that he also provided additional backup material for the bill packets.

CHAIR FRENCH expressed concern about the reference on page 4, lines 17-18, and throughout the bill, to "content equal to or greater than 0.25 percent naturally occurring asbestos by mass." Initially, the bill said, "less than or equal 0.25 percent naturally occurring asbestos by mass." He said he would look to witnesses to find out how much gravel varies in the content of naturally occurring asbestos (NOA), and if a lower-limit cap might be in order so people would know they were being directed to use gravel with the lowest possible asbestos content.

MR. SCOTT responded that discussions with other legislators and the administration indicate that 0.25 percent was "the new zero." He offered his belief that it was an issue of testing, and deferred further explanation to the representative from Department of Transportation and Public Facilities (DOTPF).

CHAIR FRENCH listed the individuals that signed up to testify and answer questions.

[1:49:21 PM](#)

ROGER HEALY, Chief Engineer, Department of Transportation and Public Facilities (DOTPF), explained that the change in definition emulates what California did in regard to the use of gravel with naturally occurring asbestos. That state set up an analytical testing method called California Air Resources Board (CARB) 435. After a number of test iterations, the board adopted a detection limit of 0.25 percent by mass, or 1 in 400. Samples are analyzed according to certain points and if 1 asbestos fiber is found in 400 points, the asbestos content is 0.25 percent. If there is not an asbestos fiber under one of those points, the material is classified as non-NOA.

[1:51:35 PM](#)

CHAIR FRENCH asked how many samples from a gravel pit would ensure a good representation.

MR. HEALY replied the follow-up regulations should address that.

CHAIR FRENCH asked for a ballpark estimate.

MR. HEALY estimated that DOTPF drilled 12 or more holes on a 3-5 acre site in the Ambler area.

[1:53:14 PM](#)

SENATOR WIELECHOWSKI asked if DOTPF takes or suggests precautions for people working with material that potentially contains asbestos.

MR. HEALY explained that working with naturally occurring asbestos was a different issue than asbestos abatement in a building. Both Occupational Safety Health Administration (OSHA) and Mining Safety Health Administration (MSHA) have a 0.1 fiber per cubic centimeter airborne standard for exposure to both NOA and asbestos in a building. If DOTPF is aware of naturally occurring asbestos in an existing project, it will meet the existing airborne standard. Drillers and anyone operating near a crusher or driving on the road should be following the laws regarding dust mitigation, he said.

[1:56:45 PM](#)

CHAIR FRENCH asked if these workers wear respirators.

MR. HEALY replied, "this would be the safety component of the contractor, but they should." He added that dust in general is a health issue and anyone on a dusty site should take precautions.

SENATOR WIELECHOWSKI asked if he was familiar with the Environmental Protection Agency (EPA) recommendations for working with naturally occurring asbestos.

MR. HEALY answered yes; the EPA has recommendations but not any true direction. For construction standards on projects, DOTPF will rely heavily on the California restrictions such as speed limits, watering, and a dust mitigation program.

CHAIR FRENCH asked if there was an upper limit beyond which NOA material should not be used.

MR. HEALY said no, but states have wrestled with the issue.

CHAIR FRENCH asked what concentrations of naturally occurring asbestos were in the gravel pits in the Ambler area.

[2:00:26 PM](#)

MR. HEALY replied the DOTPF test results were preliminary, but two sites tested below 0.25 percent by mass, and another site tested both above and below .25 percent by mass.

CHAIR FRENCH asked if in the past DOTPF had worked with the provision in subsection (d) on page 9, lines 13-17. It says the department may not use material that contains equal to or greater than 0.25 percent NOA unless it is economically unreasonable to undertake the project using material that is free from NOA.

MR. HEALY replied DOTPF balances what is economically reasonable on every project. The focus of the bill is to allow the use of NOA material within a project; it is not to say that the final exposure will be NOA material. The assumption is that the surface cap will minimize any airborne NOA.

CHAIR FRENCH asked how DOTPF would apply that standard in building a road.

MR. HEALY said he and others would consider things like the daily traffic and maintenance procedures over the lifespan of the road.

CHAIR FRENCH said it sounded like capping material would be a viable option in Ambler, but he had not gotten that impression from other conversations.

MR. HEALY replied that in the case of a gravel road, he would consider the daily traffic and the maintenance requirements over a 20-50 year lifespan. If the operational intent was to do seasonal grading and the expected disturbance level was 6-9 inches, a safety factor would be added to the cap to accommodate the expected activity. A maintenance component would also be contemplated to bring in additional non-NOA material to build up the capping layer as necessary.

CHAIR FRENCH asked if the use of a capping material was a viable option in Ambler.

MR. HEALY said that from a health perspective, the acceptable level of exposure by the public on a new project was less than 0.25 percent by mass.

CHAIR FRENCH commented that for all practical purposes the acceptable exposure level for the public was zero.

MR. HEALY said yes, and DOTPF found materials in the Ambler area that were less than 0.25 percent by mass. However, an economic component of the project was that the materials were not immediately accessible by permanent road.

[2:09:06 PM](#)

MR. SCOTT added that NOA containing material or aggregate would only be used if it was economically unreasonable to do otherwise.

CHAIR FRENCH said he would like to discuss the idea further to try to give it "more teeth."

SENATOR COGHILL asked what other potentially harmful particles in dust might have a concentration of 0.25 percent by mass.

MR. HEALY deferred the question to Dr. McLaughlin.

[2:11:33 PM](#)

JOE MCLAUGHLIN, MD, state epidemiologist, Department of Health and Social Services (DHSS), said he was not aware of any other toxin with the same 0.25 percent threshold, but at certain levels dust itself was a human health concern. Available data indicates that dust that is 2.5 microns (PM 2.5) in diameter is strongly associated with adverse health events, such as coronary heart and cerebral vascular diseases. The data are less clear for dust particles that are 10 microns (PM 10) in diameter, but have been associated with adverse health effects.

CHAIR FRENCH asked if 10-micron particulate matter was actually more dangerous than 2.5-micron particulate matter.

DR. MCLAUGHLIN answered yes, because the smaller particles can travel into the alveoli in the lung. Material at the PM-10 level is courser and often works its way up the respiratory system and is swallowed or spit out.

CHAIR FRENCH asked if he was familiar with the report prepared May 20, 2005 by John P. Middaugh, M.D. and Scott Arnold, Ph.D.

DR. MCLAUGHLIN said yes.

CHAIR FRENCH asked if that was the most recent report available on asbestos-related diseases in Northwest Alaska.

DR. MCLAUGHLIN replied the agency for toxic substances and disease registry (ATSDR) published a report in June 2007. It was a report on an investigation that ATSDR conducted in August 2005 in the Ambler area looking at whether road dust from all-terrain vehicles (ATVs) exposed riders and walkers to harmful levels of asbestos. The final report concluded that: 1)the dust levels in Ambler were a public health hazard for the community; 2) asbestos levels resulting from riding an ATV on the gravel roads posed an unacceptable public health risk; and 3) most asbestos fibers found in Ambler were shorter in length. The final recommendations were to: 1) close access to the gravel pit; 2) stop using gravel from the pit; 3) place a barrier and clean fill where children may have contact with contaminated soil; and 4) educate the community about asbestos and dust.

CHAIR FRENCH asked Dr. McLaughlin to send him a copy of the report.

DR. MCLAUGHLIN agreed.

[2:16:23 PM](#)

SENATOR WIELECHOWSKI referred to the third bullet point on page 2 of the May 20, 2005 report, and asked the name of the DHSS epidemiologist who visited Maniilaq.

DR. MCLAUGHLIN recalled that it was Dr. Marc Chimonas, and offered to follow up if that was incorrect. He added that Dr. Chimonas worked with DHSS but was from the U.S. Centers for Disease Control and Prevention.

SENATOR WIELECHOWSKI reviewed the chest x-ray and pleural change data in the second bullet point and asked how it compared to national or statewide averages.

DR. MCLAUGHLIN offered to follow up with the information.

[2:18:37 PM](#)

MORGAN JOHNSON, Mayor, City of Ambler, Ambler, AK, urged the committee to pass SB 180 with the 0.25 percent NOA threshold.

[2:20:20 PM](#)

SCOTT JONES, Vice-Mayor, City of Ambler, Ambler, AK, confirmed that dust was a problem in Ambler when conditions were dry. In fact, the 2005 report said it was difficult to measure the asbestos levels because of the dust. He described palliative measures to control dust and said masks and respirators were commonly used. Referring to the chest x-ray data in the 2005 report, he said it did not take into consideration the number of smokers. He reviewed the existing gravel pits in the Ambler area and asked the committee to set the standard so that 0.25 percent was equivalent to zero contamination.

CHAIR FRENCH asked how many of the projects that Ambler needed were roads and how many were non-roads.

MR. JONES replied most of the pending projects need gravel. These include foundations for houses, capping the road to the gravel pit, erosion control, and the Grizzly Bridge and road to the airport.

CHAIR FRENCH restated the question.

MR. JONES estimated that more than half of the projects were road-related.

SENATOR WIELECHOWSKI asked if it was typically very windy in Ambler.

MR. JONES replied it could be very windy at times.

SENATOR WIELECHOWSKI asked if it might be a problem to have a gravel pit near town that generated dust that contained asbestos.

MR. JONES replied the gravel pit caused minor problems because the area was not silty. The road to the airport was much more problematic, because the crush and fill material was mostly

silt. In conclusion, he reiterated the importance of adopting the 0.25 percent standard as equivalent to zero contamination.

CHAIR FRENCH pointed out that the original bill set the standard at equal to or less than 0.25 percent and the current version said equal to or more than 0.25 percent, which was appreciably higher.

MR. JONES said he had lived in Ambler for four years and had yet to see any asbestos-related health problems.

CHAIR FRENCH pointed out page two of the report said, "Of 28 residents of Ambler whose chest x-rays were reviewed, 2 had pleural changes that were probably caused by prior exposure to asbestos."

MAYOR JOHNSON said he would like to see more dust abatement measures to protect current and future generations. He added that Ambler had an opportunity if a nearby mine were to open.

[2:32:15 PM](#)

ELIZABETH SAAGULIK HENSLEY, Corporate and Public Policy Liaison, NANA Regional Corporation, stated support for SB 180. She highlighted that NANA closed the gravel pit after becoming aware in 2003 that the gravel contained NOA. NANA was also aware that there were ways to work with the gravel and mitigate potential risks, and they were willing to do that.

[2:33:55 PM](#)

LANCE MILLER, Vice President of Resources, NANA Regional Corporation, said that in the discussion about dust and the use of gravel that contains NOA, it was important to realize that Ambler was under snow for a significant number of months each year. He said NANA would be willing to change the upper limit and perhaps the lower percentage if that would help move the bill along. He said it was important to remember that El Dorado County California successfully addressed the issue and those asbestos levels were higher than typically found in the Ambler area. There are ways to mitigate the asbestos with SOPs and proper protections for workers and construction projects, he stated.

CHAIR FRENCH pointed out that the California Air Resources Board took steps to mitigate the use of NOA and set the allowable level at less than 0.25 percent. He said another difference was that California did not offer the immunity that SB 180 offered. The immunity provision was a central concern of the bill

proponents and that was why the committee was wrestling with it, he said.

He asked Ms. Hensley if she had considered saying that the gravel should contain no more than 0.5 percent NOA.

MS. HENSLEY replied NANA would consider a different level.

MR. MILLER said NANA would have to think hard about 0.5 percent.

CHAIR FRENCH urged them to think about some compromise because 0.25 or greater did not have an upper limit.

MR. MILLER said NANA would agree to an upper limit. He added that a lot of the material in the area was in the 0.1, 0.25, to 0.5 range, and California recognized 0.25 percent as NOA free.

SENATOR COGHILL said he understood the bill to say that a certified plan would be required when NOA levels were equal to or greater than 0.25 percent. He surmised that the higher the level of NOA, the tighter the plan would be.

MR. SCOTT agreed.

CHAIR FRENCH referred to page 4, line 17, and asked if the bill offered immunity when the gravel or other aggregate material had equal to or greater than 0.25 percent naturally occurring asbestos by mass.

MR. SCOTT said yes.

CHAIR FRENCH pointed out that, as written, the bill offered immunity if the level was 0.5 percent, 1.0 percent, or 5.0 percent NOA.

SENATOR COGHILL offered his understanding that the plan differed based on the level of NOA in the aggregate material.

CHAIR FRENCH asked Ms. Anjilvel to comment.

[2:41:35 PM](#)

SARITHA ANJILVEL, Assistant Attorney General, Civil Division, Department of Law (DOL), said she was advising DOTPF. She offered her understanding that regulations prescribe for each project a site-specific plan that takes into account the amounts of naturally occurring asbestos.

CHAIR FRENCH asked if the bill, as currently drafted, established an upper limit of NOA that the gravel could contain.

MS. ANJILVEL answered no.

CHAIR FRENCH observed that the bill could potentially offer immunity to people who use aggregate that had two percent naturally occurring asbestos.

MS. ANJILVEL replied that was the correct reading, but regulations could be promulgated to require the site-specific plan to balance the use of gravel that contained high concentrations of NOA against how economically reasonable it was to go elsewhere to find gravel.

CHAIR FRENCH asked if there was a definition of "economically unreasonable."

MS. ANJILVEL answered no, but DOTPF as accustomed to using the concept, as it related to doing projects in the best interest of the state. A complicating factor was that because there was no safe level of asbestos, DOTPF had to strike a balance between getting the project done and any potential risk. As Mr. Healy testified, taking proper mitigation procedures struck that balance. The more likely the asbestos was to cause a hazard, the more DOTPF would scrutinize the project to see if it was economically reasonable to use that material.

[2:45:41 PM](#)

CHAIR FRENCH commented that DOTPF would probably work harder if they were potentially liable.

MS. ANJILVEL agreed that immunity removed a protection.

SENATOR WIELECHOWSKI asked if she believed that it was possible to make the use of NOA safe for everyone involved.

MS. ANJILVEL replied she did not have the expertise to answer.

[2:46:50 PM](#)

CHAIR FRENCH closed public testimony and held SB 180 in committee.

SB 138-THIRD-PARTY CHARGES ON TELEPHONE BILLS

[2:47:12 PM](#)

CHAIR FRENCH announced the consideration of SB 138. [CSSB 138(L&C) was before the committee.]

2:47:21 PM

SENATOR WIELECHOWSKI, sponsor of SB 138, said this bill dealt with "telephone cramming," which is the practice of placing unauthorized, third-party charges on telephone bills. This was a multi-billion-dollar problem, and the federal government had started to take notice.

CHAIR FRENCH said that because of time constraints, the committee would hear most public testimony on Monday.

2:50:12 PM

THOMAS PRESLEY, intern for Senator Wielechowski, said SB 138 bans the practice of cramming, which is adding unauthorized third-party charges to consumers' telephone bills. He explained that cramming began in the 1990s, and was an unintended consequence of regulatory action that opened telephone bills to other charges. Following a spike in complaints, regulatory agencies opted for a voluntary approach to end the practice, but current evidence indicates that telecommunications companies place approximately 300 million third-party charges on customers' telephone bills, equaling over \$2 billion per year. In one example, a woman who disputed charges on her phone bill was told that her husband authorized the service, but he had been dead for 13 years.

MR. PRESLEY said that cramming occurs by never interacting with customers or by using abusive marketing techniques to get customers' telephone numbers. The consumer's phone number then becomes a form of tacit authorization.

He said that charges for satellite TV and long distance coverage are legitimate, and these services contract directly with telephone companies. The process for contracting cram services onto bills is different. Of 500 people who responded to inquiries about cramming charges, not a single person or business had authorized the charges. Unauthorized charges occur for bank vaults, elevators, 911 systems, fire alarms, governmental agencies and schools. Obvious examples are of a modem incurring charges for voice mail and of an emergency line incurring charges for online diet services.

MR. PRESLEY said a telephone auditing company found more than 800 third-party vendors placed unauthorized charges on their

clients' telephone bills. Consumers described their experience using words like fraud, theft and stealing. A Federal Communications Commission (FCC) graphic indicated that 15 to 20 million American households receive cram charges on their landline bills each year, but only 1 in 20 customers are aware of the charges.

MR. PRESLEY presented a graphic to illustrate the complexity of cramming charges. One third-party vendor, My S&S, showed only 975 unique numbers dialed into its voice mail service, yet it was charging at least 97,000 customers for the service. Another third-party vendor enrolled 64,000 telephone customers in an on-line photo storage service, yet less than 2 percent of the customers took advantage of the service. In another instance, U.S. Senate committee staff was the first to log onto a casual gaming service offered by Easy Phone Bill, despite its having enrolled more than 20,000 customers and having earned almost \$1 million.

He explained that hub companies subcontract enrollment and authorizations. The hub companies receive the phone numbers and pass them along to billing aggregators through third-party vendors, and the charges are forwarded to telephone bills. Third-party vendors offer services like electronic fax, photo storage, and online backup. To gain access to bills, they contract with billing aggregators. Despite their offers, many third-party vendors are actually front companies. This relationship allows hub companies to shift enrollments to other vendors to mask large numbers of complaints. Billing aggregators act as intermediaries between phone companies and third-party vendors.

A hub company called DaData claimed to provide support services to 40 third-party vendors, but eventually admitted that it controlled the actual electronic fax service offered by 25 clients. He provided a list of the 45 companies that offer electronic fax service yet appear to be operated exclusively by DaData.

He said the U.S. Senate staff interviewed the president of WVM Network who admitted that he "only signed his name to documents and knew nothing about the company." Having a hub company with smaller entities beneath it makes it easy to shift the complaint threshold and difficult to track, dispute and remove charges.

MR. PRESLEY reiterated that disputing cram charges is difficult and costly. One retail chain reported \$550,000 in unauthorized

charges on its telephone bills over the past decade and another estimated it spent \$400,000 battling unauthorized third-party charges. One customer said each of the five times that charges were added to his bill it took at least a half hour to get the services removed.

MR. PRESLEY said Section 1 of SB 138 enforces truth in billing guidelines. It requires carriers to disclose detailed information on bills, precludes carriers from billing customers without including details of third-party services, and forbids a carrier from discontinuing service to customers that use the contact information to dispute or contest a charge. Section 2 adds a paragraph to the list of unlawful acts and practices under the Consumer Protection statutes. Section 3 creates a new section that precludes a carrier from billing for another vendor without express authorization. Section 4 adds the new unlawful act or practice from Section 2 to the exclusive jurisdiction of the state, a regulatory board or a commission.

MR. PRESLEY said recent events include that Verizon two days ago announced it would discontinue charging third-party enhanced billing services to phone bills. Senator Rockefeller from West Virginia said he would introduce federal legislation to ban all third-party billing on phone bills. Illinois two days ago unanimously passed a total ban on third-party billing. He said this is different from SB 138, which allows express authorization of third-party services.

MR. PRESLEY said that the recent opposition letter from Alaska Communication Services (ACS) specifically complains about the possibility of customers short paying disputed charges. However, all local exchange carriers operate under truth in billing guidelines so there is no opportunity to shortchange a local carrier by not paying an unauthorized charge.

[3:00:30 PM](#)

MARIE DARLIN, AARP, stated that AARP supports SB 138, a consumer protection bill that addresses the deceptive marketing practice of cramming. She noted that AARP submitted written testimony to the previous committee and a letter would be forthcoming to this committee.

[3:02:09 PM](#)

CHAIR FRENCH announced he would hold SB 138 in committee.

[3:02:15 PM](#)

There being no further business to come before the committee,
Chair French adjourned the Senate Judiciary Standing Committee
meeting at 3:02 p.m.