

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 2, 2012

1:35 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

HOUSE BILL NO. 56

"An Act making arson in the first degree and arson in the second degree serious felonies for purposes of application of the crime of conspiracy."

- MOVED HB 56 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 6(JUD) am

"An Act authorizing the governor to remove or suspend a member of the Board of Regents of the University of Alaska for good cause; and establishing a procedure for the removal or suspension of a regent."

- MOVED SCS CSHB 6(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 AND 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."

- REMOVED FROM AGENDA

SENATE BILL NO. 198

"An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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)
03/23/12	(S)	Heard & Held
03/23/12	(S)	MINUTE(JUD)
04/02/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 6

SHORT TITLE: REMOVING A REGENT

SPONSOR(s): REPRESENTATIVE(s) GRUENBERG

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) EDC, JUD
02/11/11 (H) EDC AT 8:00 AM CAPITOL 106
02/11/11 (H) Heard & Held
02/11/11 (H) MINUTE(EDC)
02/21/11 (H) EDC AT 8:00 AM CAPITOL 106
02/21/11 (H) Moved CSHB 6(EDC) Out of Committee
02/21/11 (H) MINUTE(EDC)
02/23/11 (H) EDC RPT CS(EDC) 5DP
02/23/11 (H) DP: P.WILSON, SEATON, KAWASAKI, FEIGE,
DICK
03/21/11 (H) JUD AT 1:00 PM CAPITOL 120
03/21/11 (H) Heard & Held
03/21/11 (H) MINUTE(JUD)
03/23/11 (H) JUD AT 1:00 PM CAPITOL 120
03/23/11 (H) Scheduled But Not Heard
04/04/11 (H) JUD AT 1:00 PM CAPITOL 120
04/04/11 (H) Moved CSHB 6(JUD) Out of Committee
04/04/11 (H) MINUTE(JUD)
04/05/11 (H) JUD RPT CS(JUD) 3DP 1NR 1AM
04/05/11 (H) DP: GRUENBERG, HOLMES, THOMPSON
04/05/11 (H) NR: PRUITT
04/05/11 (H) AM: KELLER
04/11/11 (H) TRANSMITTED TO (S)
04/11/11 (H) VERSION: CSHB 6(JUD) AM
04/12/11 (S) READ THE FIRST TIME - REFERRALS
04/12/11 (S) JUD
03/05/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/05/12 (S) Heard & Held
03/05/12 (S) MINUTE(JUD)
03/21/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/12 (S) Scheduled But Not Heard
03/28/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/28/12 (S) Heard & Held
03/28/12 (S) MINUTE(JUD)
03/30/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/30/12 (S) Scheduled But Not Heard
04/02/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 56

SHORT TITLE: INCLUDE ARSON IN CRIMES OF CONSPIRACY

SPONSOR(s): GATTO, GRUENBERG, LYNN

01/18/11 (H) PREFILE RELEASED 1/7/11
 01/18/11 (H) READ THE FIRST TIME - REFERRALS
 01/18/11 (H) JUD, FIN
 02/18/11 (H) JUD AT 1:00 PM CAPITOL 120
 02/18/11 (H) -- MEETING CANCELED --
 02/21/11 (H) JUD AT 1:00 PM CAPITOL 120
 02/21/11 (H) Moved Out of Committee
 02/21/11 (H) MINUTE(JUD)
 02/23/11 (H) JUD RPT 3DP 2NR
 02/23/11 (H) DP: LYNN, GRUENBERG, GATTO
 02/23/11 (H) NR: KELLER, PRUITT
 02/22/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/22/12 (H) Moved Out of Committee
 02/22/12 (H) MINUTE(FIN)
 02/24/12 (H) FIN RPT 1DP 8NR
 02/24/12 (H) DP: GARA
 02/24/12 (H) NR: T.WILSON, NEUMAN, FAIRCLOUGH,
 COSTELLO, EDGMON, DOOGAN, STOLTZE,
 THOMAS

 03/06/12 (H) TRANSMITTED TO (S)
 03/06/12 (H) VERSION: HB 56
 03/12/12 (S) READ THE FIRST TIME - REFERRALS
 03/12/12 (S) JUD, FIN
 03/30/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/30/12 (S) Heard & Held
 03/30/12 (S) MINUTE(JUD)
 04/02/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

POSITION STATEMENT: Provided a sectional analysis of SB 180, version X.

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

POSITION STATEMENT: Answered questions and provided information related to SB 180, version X.

SARITHA ANJILVEL, Assistant Attorney General
 Civil Division
 Transportation Section
 Department of Law (DOL)

Anchorage, AK

POSITION STATEMENT: Provided information related to SB 180, version X.

SUSAN COX, Chief Assistant Attorney General
Civil Division
Torts and Workers' Compensation Section
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Answered questions related to SB 180, version X.

DR. JOE MCLAUGHLIN, State Epidemiologist
Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, AK

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

ELIZABETH HENSLEY, Corporate and Public Policy Liaison
NANA Regional Corporation
Anchorage, AK

POSITION STATEMENT: Stated support for SB 180, version X.

ACTION NARRATIVE

[1:35:07 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Coghill, Wielechowski, and Chair French.

HB 56-INCLUDE ARSON IN CRIMES OF CONSPIRACY

[1:35:39 PM](#)

CHAIR FRENCH announced the consideration of HB 56, "An Act making arson in the first degree and arson in the second degree serious felonies for purposes of application of the crime of conspiracy." Finding no questions, comments or discussion, he asked for a motion.

[1:36:10 PM](#)

SENATOR WIELECHOWSKI moved to report HB 56 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, HB 56 moved from the Senate Judiciary Standing Committee.

HB 6-REMOVING A REGENT

[1:36:31 PM](#)

CHAIR FRENCH announced the consideration of HB 6, "An Act authorizing the governor to remove or suspend a member of the Board of Regents of the University of Alaska for good cause; and establishing a procedure for the removal or suspension of a regent." He noted that Legislative Legal issued opinions in response to Senator Coghill's question about the retrospective aspects of the bill, and he was right. There was no reason for the bill to be retrospective.

[1:37:14 PM](#)

SENATOR COGHILL moved Amendment 1, which would delete Section 4, located on page 6, lines 18-21.

CHAIR FRENCH announced that without objection, Amendment 1 passed. Finding no further questions or discussion, he solicited a motion.

[1:37:55 PM](#)

SENATOR WIELECHOWSKI moved to report Senate CS for CS for HB 6, version G as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, SCS CSHB 6(JUD) moved from the Senate Judiciary Standing Committee.

[1:38:20 PM](#)

At ease from 1:38 p.m. to 1:39 p.m.

SB 180-NATURALLY OCCURRING ASBESTOS IN GRAVEL

[1:39:35 PM](#)

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

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

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

[1:40:06 PM](#)

DAVID SCOTT, staff to Senator Donny Olson, said CS for SB 180, version X, made three changes. 1) It removed immunity for the

state; 2) it removed the requirement for Department of Transportation and Public Facilities (DOTPF) and Department of Natural Resources (DNR) to maintain a database; and 3) it removed the legislative findings and purpose section.

At Senator French's request, he provided a sectional analysis.

Section 1 amends AS 09.65 by adding a new Sec. 09.65.245 - Immunity for certain persons supplying or using gravel or other aggregate material; limitations on asbestos-related actions against defendants. This would provide immunity to landowners and contractors as long as they follow the provisions of a site-specific plan, which is outlined in Section 3.

Section 2 amends AS 18.31 by adding new sections to new Article 2A - Naturally occurring asbestos. Sec. 18.31.250 tells how an entity would qualify for the immunity offered in Section 1. The contractor must submit and get DOTPF approval of a site-specific plan before gravel extraction can begin. To qualify for immunity the contractor must adhere to the plan, including monitoring and mitigation requirements. Sec. 18.31.260 defines the minimum detectable amount of asbestos as 0.25 percent by mass as the baseline for the presence of naturally occurring asbestos in gravel or aggregate material.

Section 3 amends AS 44.42 by adding four new subsections to new Article 3A - Use of Materials Containing Naturally Occurring Asbestos.

Sec. 44.42.400 - Administration and designated use areas, designates a single DOTPF employee to oversee the program. It delineates how a designated area within a municipality or community can be established and how a designated area that is not within a municipality or community can be established.

Sec. 44.42.410 - Site-specific use plan, requires a contractor to submit a site-specific use plan that: (1) describes the proposed use of the gravel that has naturally occurring asbestos; (2) demonstrates compliance with the law; (3) outlines long-term maintenance of the completed project; (4) describes how the gravel with naturally occurring asbestos would be contained; (5) describes how the gravel will be

sealed if it is economically unreasonable to be contained; and (6) describes how, if the requirements under (4) and (5) are economically unreasonable, the gravel containing naturally occurring asbestos will be used in order to prevent the asbestos from becoming airborne. Consideration must be given to vehicle traffic, road maintenance, or grading. Under subsection (b), the state is required to develop a site-specific plan when it is the principal contractor for a public transportation facility. Subsection (c) requires DOTPF to review each site-specific use plan and either work toward approving or disapproving the plan. Subsection (d) prohibits DOTPF from approving a plan to use gravel that contains more than the threshold level unless it is determined to be economically unreasonable to do otherwise, and the gravel containing naturally occurring asbestos will not be used for a surface application.

Sec. 44.42.420 - Regulations, gives power to DOTPF to write regulations.

Sec. 44.42.430 - Definitions, defines naturally occurring asbestos.

Section 4 adds a new section to the uncodified law titled, Interim Project Authorization.

Section 5 adds a new section to the uncodified law of the State of Alaska titled, Interim Standards for Application of Asbestos Bulk Testing.

Section 6 is the effective date.

[1:44:13 PM](#)

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

MR. SCOTT said no, but it was addressed in the regulations section on page 9, line 23. Paragraph (8) says that DOTPF must include in regulation "guidelines for determining whether the cost associated with the use of gravel or other aggregate material free from naturally occurring asbestos under AS 44.42.410(d) is economically unreasonable."

CHAIR FRENCH asked if this CS was modeled after the bill moving through the other body.

MR. SCOTT said yes, with several differences. In SB 180, the legislative findings and purpose section was removed, the blanket immunity was limited, and gravel and other aggregate material containing naturally occurring asbestos cannot be used as a surface application. The House version did not make these changes.

CHAIR FRENCH noted that the prohibition against NOA gravel as a surface application was located in paragraph (2) on page 7, lines 3-4. He reviewed the provisions in paragraphs (4), (5), and (6) and commented that before the bill leaves, this may be one area to give guidance to the department to put sideboards on the idea of "economically unreasonable."

[1:47:01 PM](#)

SENATOR COGHILL asked if NOA gravel could be used generally to build a road as long as it was capped.

MR. SCOTT deferred to Mr. Healy.

[1:47:52 PM](#)

ROGER HEALY, Chief Engineer, Department of Transportation and Public Facilities (DOTPF), said that DOTPF would consider for surface application anything that would provide a long-term solution to preventing naturally occurring asbestos fibers in gravels from becoming airborne. Considerations would include chip sealing, dust palliatives, pavement, and overall coverage with non-asbestos material.

SENATOR COGHILL asked if gravel containing naturally occurring asbestos could be used as long as it was capped with an NOA-free material.

MR. HEALY said yes, a contractor could use NOA material for underlying courses, but the site-specific plan would require a covering material that did not contain asbestos.

SENATOR COGHILL asked if the road shoulders would have to be mitigated.

MR. HEALY said yes.

CHAIR FRENCH asked if the commissioner would be responsible for approving the site-specific plan.

MR. HEALY replied that a DOTPF employee who had expertise in determining longevity of a particular surface course for a particular use would be tasked with that responsibility.

[1:51:11 PM](#)

CHAIR FRENCH asked him to comment on the process of using gravel that contains asbestos as a base and a final layer of non-asbestos material.

MR. HEALY said DOTPF did not have any new projects where it used this type of construction, but it had been used in other states. DOTPF modeled California law, which requires the asbestos to be covered.

CHAIR FRENCH asked how long the California standards had been in place.

MR. HEALY replied the final NOA regulations were in place in early 2002. Responding to a further question, he explained that the department is always looking for ways to build roads with the best, most efficient and least expensive materials available within the area.

SENATOR COGHILL asked what parameters would be used to determine economic reasonableness.

MR. HEALY said that the considerations include the scale, type and long term use of the project. The bill establishes that the program is voluntary and a contractor who wants immunity will be required to develop a site-specific plan and undergo some kind of economic reasonableness determination.

SENATOR COGHILL mentioned his experience with dust on the Tanana River and questioned how valuable this would be if it didn't also include some way to evaluate those health risks.

MR. HEALY conceded that health risks associated with dust did exist and deferred further response to Dr. McLaughlin.

[1:58:15 PM](#)

CHAIR FRENCH referred to paragraph (e) on page 7, lines 5-15, that discussed attachment of a monitoring and mitigation plan to the site-specific plan. He asked if the project would be monitored after it was complete and who would do the monitoring.

MR. HEALY said that DOTPF envisioned that the contractor would be responsible for monitoring in order to maintain compliance.

There would also be a provision for the contractor to provide a maintenance and operations plan to the owner.

CHAIR FRENCH asked if, in most cases, the owner would be the state.

MR. HEALY replied it could be the state, a municipality, or a private owner.

SENATOR WIELECHOWSKI asked to hear from the Department of Law (DOL) to verify that this would not exempt the use of asbestos for other purposes.

[2:03:06 PM](#)

SARITHA ANJILVEL, Assistant Attorney General, Civil Division, Transportation Section, Department of Law (DOL), said version X was drafted to provide immunity only to those persons using, transporting, or constructing anything that involved the use of naturally occurring asbestos under the auspices of a site-specific, approved DOTPF plan. The bill did not contemplate any other uses.

SENATOR WIELECHOWSKI asked, hypothetically, if the bill would immunize someone who put a fire insulator in homes in Ambler that contained naturally occurring asbestos.

MS. ANJILVEL said no. She added that while there was no law that prohibited the use of naturally occurring asbestos for other purposes, anyone who chose to do so would not be covered by any immunity.

SENATOR WIELECHOWSKI asked if the bill would provide immunity to someone who processed naturally occurring asbestos and used it in insulation, for example.

MS. ANJILVEL responded that she could not cite specific regulations, but it might fall into existing regulations regarding processed asbestos.

CHAIR FRENCH highlighted that the operative words were "gravel or other aggregate material."

MS. ANJILVEL agreed.

[2:05:47 PM](#)

SENATOR WIELECHOWSKI asked if there was a definition for "other aggregate material" or if she could state for the record what that would include.

MS. ANJILVEL deferred the question to Mr. Healy.

CHAIR FRENCH noted that Mr. Healy had stepped away from the witness chair. He asked Ms. Anjilvel if it was necessary to define "economically unreasonable" to facilitate implementing the statute.

MS. ANJILVEL opined that a definition may not be necessary within the context of the site-specific plan. The broader the mandate given to DOTPF to establish what is economically reasonable, the more flexible it will be able to be.

CHAIR FRENCH responded that before extending immunity he was looking for a minimum threshold below which the state would not go in its search for economics.

MS. ANJILVEL said she understood the concern but it put DOTPF in a difficult position with regard to upper limits, because there was testimony that no amount of exposed asbestos was safe.

CHAIR FRENCH clarified that he was looking for an economic threshold. For example, using gravel that contained naturally occurring asbestos would be 25 percent cheaper than sourcing gravel that was asbestos free.

MS. ANJILVEL suggested looking instead at the standard of care that DOTPF was required to use regarding the best interests of the state. The circumstances for evaluating each plan are unique and imposing an economic threshold may tie DOTPF's hands.

SENATOR WIELECHOWSKI asked if case law had interpreted "economically unreasonable."

MS. ANJILVEL said not in this context.

SENATOR WIELECHOWSKI asked how the decision would be made and who would make it.

MS. ANJILVEL replied it would be an agency decision and courts typically give deference to agencies in the belief that they have the expertise to make these calls. An engineer would make a call as to whether it was practically reasonable to use NOA

gravel or import clean gravel and assess the numbers against the scale of the project.

CHAIR FRENCH asked Ms. Cox to tell the committee about immunity in general.

[2:12:24 PM](#)

SUSAN COX, Chief Assistant Attorney General, Civil Division, Torts and Workers' Compensation Section, Department of Law (DOL), stated that she represented the state and state employees in tort lawsuits.

CHAIR FRENCH asked if there were other grants of immunity in state law.

MS. COX said yes and specifically cited the immunities in AS 09.50.250 and AS 09.65.

CHAIR FRENCH noted that the current CS immunized the people that do the work but not the state. He asked the pros and cons of that idea.

MS. COX confirmed that the current draft did not provide DOTPF with the specific immunity that the House Finance version provided. That did not mean that DOTPF would not have immunity under other provisions of state law, she said.

CHAIR FRENCH asked if it was accurate to say that the bill offered immunity for the execution phase, but not the planning phase of a project.

MS. COX responded that the execution would not be on DOTPF.

CHAIR FRENCH summarized that the contractor would execute the site-specific plan that the state developed. The state could potentially be liable for the having developed a bad plan, but the contractor would not be liable for executing that plan.

MS. COX said the immunity required compliance with the site-specific plan as well as compliance with the monitoring and mitigation. She added that DOTPF would not have a specific immunity created by this committee substitute for developing the plan. However, it was more than possible that DOTPF would be subject to immunity under some other provision of state law. The discretionary function immunity in AS 09.50.250 would likely cover the development of the site-specific plan and adoption of

the regulations. Policy making operations were a classic example of things for which the state cannot be sued, she said.

[2:19:31 PM](#)

CHAIR FRENCH asked if any other state enjoyed immunity for using gravel that contained naturally occurring asbestos in its road projects.

MS. COX replied she was aware that California had standards regarding naturally occurring asbestos that were utilized in developing this legislation, but she was not familiar with the state law in that regard.

CHAIR FRENCH said his understanding was that Alaska would be the only state to grant any immunity in this area. He asked to be notified if she learned anything to the contrary.

He asked if she would agree or disagree that the immunity for landowners did not appear to be tied to any site-specific plan use.

MS. COX said the immunity in Section 1, subsection (a)(1), appeared to be based solely on ownership of land, within an area designated by DOTPF, that had naturally occurring asbestos exceeding 0.25 percent. She added that there may be some overlap with the existing immunity in state law for personal injury or death occurring on unimproved land.

CHAIR FRENCH asked if there were other immunities in state law related to construction projects and materials.

MS. COX said she was not familiar with any immunity that specifically related to the use of materials for construction.

CHAIR FRENCH questioned whether there was a way to ensure, now, in the law that future maintenance would take place.

MS. COX replied that was not her expertise.

CHAIR FRENCH mused that the answer was probably no. It would probably be necessary to set maintenance funds aside initially to ensure a particular maintenance schedule, because a future legislature may not appropriate the funds.

[2:23:25 PM](#)

SENATOR PASKVAN joined the committee.

MS. COX said that to preserve the immunity it would be in the contractor's best interest to follow the monitoring and maintenance schedule.

CHAIR FRENCH asked if she had any input with regard to putting sideboards on the term "economically unreasonable."

MS. COX replied she did not deal with the development of policy.

[2:25:32 PM](#)

DR. JOE MCLAUGHLIN, State Epidemiologist, Division of Public Health, Department of Health and Social Services (DHSS), introduced himself.

CHAIR FRENCH recalled that his previous testimony was that there was no safe level of asbestos.

DR. MCLAUGHLIN confirmed that there was no safe threshold for airborne exposure to asbestos.

CHAIR FRENCH asked if the relationship was linear. Greater exposure would increase the health risks, whereas less exposure would decrease the likelihood of getting sick.

DR. MCLAUGHLIN said that was correct.

[2:26:40 PM](#)

SENATOR WIELECHOWSKI referred to the public health report of pleural changes in residents of Ambler, Kobuk, Shungnak, and Kiana, based on a review of their chest x-rays. He asked how that data might extrapolate to the population as a whole.

DR. MCLAUGHLIN noted that he sent a written response to the question. He summarized that his research found that there was no formal surveillance system for pleural changes among the general state or U.S. populations. An expert in the field, Dr. Al Franzblau with the University of Michigan School of Public Health, stated that an accurate estimate was very difficult to make because of the wide variability in the sensitivity and specificity of diagnosing pleural changes from x-rays. Dr. Franzblau further stated that he had seen papers that estimated from 1-10 percent variability in the prevalence of pleural abnormalities among people with no known exposure to asbestos. The variation depended on the population being studied, the methodology employed by the researchers, and the experience and training of the individuals reading the x-rays.

CHAIR FRENCH confirmed that Dr. McLaughlin's report arrived that day and relayed that the members probably had not had time to review it carefully.

He asked Ms. Hensley if the current CS satisfied NANA's concerns and if the corporation would go forward with road projects if the bill were to pass.

ELIZABETH HENSLEY, Corporate and Public Policy Liaison, NANA Regional Corporation, Anchorage, AK, said yes; NANA would do what it could to make gravel available so that the nearly \$10 million in projects could be completed, thereby improving the quality of life in Ambler.

CHAIR FRENCH asked if she had any thoughts regarding a definition for "economically unreasonable" and if she thought that use of gravel containing naturally occurring asbestos should be at least 25 percent cheaper than the use of asbestos-free gravel.

MS. HENSLEY deferred to the sponsor and the administration who would draft the regulations.

CHAIR FRENCH asked if NANA had considered the provision in paragraph (2) on page 7, lines 3-4. It prohibits in a completed project the use of gravel or other aggregate material containing naturally occurring asbestos for a surface application.

MS. HENSLEY said she was aware of the change and it would not be an obstacle.

[2:32:15 PM](#)

CHAIR FRENCH asked Mr. Healy what percentage of a road was the surface and, by extrapolation, how much asbestos-free gravel would be required to build a road under the bill.

MR. HEALY discussed alignment, terrain, embankment height, availability of non-NOA material, typical road materials such as D-1 gravel and concluded that he could not give a specific answer.

[2:34:14 PM](#)

SENATOR PASKVAN asked if the Nome projects were delayed because clean gravel was not available locally.

MR. HEALY clarified that the projects that were most affected were in the communities of Ambler and Kobuk. The delayed DOTPF

projects were the runway extension at Ambler and a road to the sewage lagoon. He relayed that the preliminary results from an extensive testing program in the area indicated that some sources of NOA gravel had very low concentrations of asbestos. Some of those sources were not accessible by road so there was a cost associated with getting the material to the projects.

CHAIR FRENCH asked him to consider whether it would be workable to set an economic threshold and say it had to be 25 percent cheaper to use NOA gravel than asbestos free gravel.

MR. HEALY replied he would not recommend confining DOTPF to a percentage of overall construction cost. He stated a preference for having flexibility within the regulations to identify what was economically reasonable.

CHAIR FRENCH asked what the estimated cost of the runway extension was.

MR. HEALY said the current construction funding was between \$13 million and \$15 million.

CHAIR FRENCH asked what the estimated cost of the sewage lagoon road was.

MR. HEALY estimated it was less than \$10 million.

CHAIR FRENCH asked what it would cost to build a road to the identified clean gravel sources.

MR. HEALY offered to follow up with the information.

SENATOR PASKVAN asked if the runway extension would have a finish surface of asphalt or gravel.

MR. HEALY replied the original intent was non-pavement, but the final decision would balance the availability, applicability, and cost of non-NOA material.

SENATOR COGHILL expressed a desire for more information on the general immunity.

CHAIR FRENCH clarified that the current version gave immunity to the contractor, not the state.

SENATOR COGHILL said that today he heard that immunity applied generally in other areas of the state law.

CHAIR FRENCH asked Ms. Cox to address the question.

[2:42:17 PM](#)

MS. COX explained that what she was referring to earlier was that there are other provisions in state law that may provide immunity for at least some of the functions that DOTPF would carry out in fulfilling the requirements under this law, just as it would in other aspects of implementing state law. The current bill did not offer immunity with regard to the regulations that DOTPF would implement, but immunity elsewhere in the statutes would probably apply.

SENATOR COGHILL said his reading was that the state could be liable because of its planning, but he was hearing that it may not be true.

MS. COX agreed that nothing in the current bill said a person could not sue the state. If that happened, state would use other provision in state law to defend itself.

CHAIR FRENCH announced he would hold SB 180 in committee.

[2:45:01 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:45 p.m.