

**CS FOR SENATE BILL NO. 180(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/6/12

Referred: Finance

Sponsor(s): SENATOR OLSON

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act directing the Department of Transportation and Public Facilities to develop  
2 and implement standards and operating procedures, to evaluate site-specific use plans,  
3 and to designate project areas concerning gravel or other aggregate material containing  
4 naturally occurring asbestos; authorizing use on an interim basis of gravel or other  
5 aggregate material containing naturally occurring asbestos for certain transportation  
6 projects and public facilities; providing immunity for certain landowners, extractors,  
7 suppliers, transporters, and contractors for certain actions or claims arising in  
8 connection with the use of gravel or aggregate material containing naturally occurring  
9 asbestos in certain areas; requiring reporting of certain asbestos-related data to the  
10 Department of Transportation and Public Facilities; and providing for an effective  
11 date."

12 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

1 \* **Section 1.** AS 09.65 is amended by adding a new section to read:

2           **Sec. 09.65.245. Immunity for certain persons supplying or using gravel or**  
 3 **other aggregate material; limitations on asbestos-related actions against**  
 4 **defendants.** (a) Except as provided in (b) of this section, a civil action or claim for  
 5 damages or costs alleging a death, injury, illness, disability, property damage, or any  
 6 other damages resulting from the use of gravel or other aggregate material that  
 7 contains naturally occurring asbestos may not be brought against a defendant

8                   (1) based on the ownership of land within an area designated by the  
 9 Department of Transportation and Public Facilities under AS 44.42.400(b) or (c) from  
 10 which gravel or other aggregate material is extracted that, when tested using a bulk  
 11 method prescribed by the Department of Transportation and Public Facilities by  
 12 regulation, is determined to have a content equal to or greater than 0.25 percent  
 13 naturally occurring asbestos by mass; or

14                   (2) for an act or omission occurring in the course of extracting,  
 15 supplying, transporting, or using gravel or other aggregate material containing  
 16 naturally occurring asbestos within an area designated by the Department of  
 17 Transportation and Public Facilities under AS 44.42.400(b) or (c) when the act or  
 18 omission was in compliance with the requirements of AS 18.31.250, AS 44.42.410(a)  
 19 and (d), and applicable regulations developed under AS 44.42.420.

20           (b) The immunity provided by this section does not apply to the state, but the  
 21 immunity does apply to a state employee acting within the scope of employment or by  
 22 a contractor employed by the state acting within the scope of the contract.

23           (c) In this section, "naturally occurring asbestos" has the meaning given in  
 24 AS 44.42.430.

25 \* **Sec. 2.** AS 18.31 is amended by adding new sections to read:

26                   **Article 2A. Naturally occurring asbestos.**

27           **Sec. 18.31.250. Use of materials containing naturally occurring asbestos.**

28           (a) A principal construction contractor or, in the absence of an identified principal  
 29 construction contractor, person having legal authority for the design and construction  
 30 of a project may qualify for immunity in a civil action under AS 09.65.245(a)(2) for  
 31 the use of gravel or other aggregate material that, when tested using a bulk test method

1 prescribed by the Department of Transportation and Public Facilities by regulation, is  
 2 determined to have a content equal to or greater than 0.25 percent of naturally  
 3 occurring asbestos by mass.

4 (b) To qualify for the immunity provided under AS 09.65.245(a)(2), before  
 5 initiating a construction project not subject to AS 44.42.410(b) that is within an area  
 6 designated by the Department of Transportation and Public Facilities under  
 7 AS 44.42.400(b) or (c) and that will use gravel or other aggregate material that  
 8 contains naturally occurring asbestos, the principal construction contractor or, in the  
 9 absence of an identified principal construction contractor, the person having legal  
 10 authority for the design and construction of the project, shall prepare and submit to the  
 11 Department of Transportation and Public Facilities specific project plans  
 12 demonstrating compliance with the standards adopted by the department under  
 13 AS 44.42.420 and the requirements of the site-specific use plan under AS 44.42.410.  
 14 Before extraction of gravel or other aggregate material may begin, the plan must be  
 15 approved and returned to the contractor by the department.

16 (c) To preserve the immunity provided under AS 09.65.245(a)(2), the  
 17 principal construction contractor or, in the absence of an identified principal  
 18 construction contractor, the person having legal authority for the design and  
 19 construction of the project, shall adhere to the site-specific use plan approved by the  
 20 department and the monitoring and mitigation plan created by the department.

21 **Sec. 18.31.260. Presence of naturally occurring asbestos.** The state shall  
 22 consider 0.25 percent by mass, the minimum detectable amount of asbestos under the  
 23 California Air Resources Board Method 435, as the baseline for the presence of  
 24 naturally occurring asbestos in gravel or other aggregate material.

25 \* **Sec. 3.** AS 44.42 is amended by adding new sections to read:

26 **Article 3A. Use of Materials Containing Naturally Occurring Asbestos.**

27 **Sec. 44.42.400. Administration and designated use areas.** (a) The  
 28 department shall designate a single employee who reports to the commissioner to  
 29 oversee the duties assigned to the department in AS 44.42.400 - 44.42.430 and to  
 30 serve as the point of contact for inquiries related to projects using gravel or other  
 31 aggregate material containing naturally occurring asbestos.

1 (b) An area that includes land within a municipality or community may be  
2 designated by the department as an area in which certain landowners and contractors  
3 are granted immunity under AS 09.65.245(a) for causing asbestos-related injuries only  
4 if the municipality or community requests that designation. A municipality or  
5 community may request to become an area designated by the department under this  
6 subsection by submitting an application to the department. The department may  
7 approve an application received under this subsection only after reviewing tests  
8 documenting the presence of naturally occurring asbestos in that area, analyzing the  
9 effect of the presence of naturally occurring asbestos on construction projects in the  
10 area, considering the availability of gravel or other aggregate material free from  
11 naturally occurring asbestos in the area, and soliciting public input from residents in  
12 the affected municipality or community. The department may require a municipality  
13 or community that applies to become a designated area to provide the department with  
14 tests documenting the presence of naturally occurring asbestos, information related to  
15 the effect of the presence of naturally occurring asbestos on construction projects in  
16 the area, information related to availability of gravel or other aggregate material free  
17 from naturally occurring asbestos, and other information relevant to the application.  
18 After designating an area after approval of an application under this subsection, the  
19 department shall notify, including through signage, potentially affected persons that  
20 the area has been designated as an area where immunity may be granted under  
21 AS 09.65.245(a) for certain landowners and contractors causing asbestos-related  
22 injuries.

23 (c) In places that do not include a municipality or community, the department  
24 may designate an area in which certain landowners and contractors are granted  
25 immunity under AS 09.65.245(a) for causing asbestos-related injuries. Before  
26 designating an area under this subsection, the department shall document the presence  
27 of naturally occurring asbestos in that area, analyze the effect of the presence of  
28 naturally occurring asbestos on construction projects in the area, consider the  
29 availability of gravel or other aggregate material free from naturally occurring  
30 asbestos in the area, and solicit public input from potentially affected persons. After  
31 designating an area under this subsection, the department shall notify, including

1 through signage, potentially affected persons that the area has been designated as an  
 2 area where immunity may be granted under AS 09.65.245(a) for certain landowners  
 3 and contractors causing asbestos-related injuries.

4 (d) In this section, "community" means a place in the unorganized borough, in  
 5 a borough, or in a unified municipality that is not incorporated as a municipality, that  
 6 is not a reserve, and in which 25 or more individuals reside as a social unit.

7 **Sec. 44.42.410. Site-specific use plan.** (a) To qualify for the immunity  
 8 provided under AS 09.65.245(a)(2), a contractor intending to use, within an area  
 9 designated by the department under AS 44.42.400(b) or (c), gravel or other aggregate  
 10 material that, when tested using a bulk test method prescribed by the department in  
 11 regulation, is determined to have a content equal to or greater than 0.25 percent of  
 12 naturally occurring asbestos by mass, shall, after consulting with the owner of the land  
 13 on which the gravel or other aggregate material containing naturally occurring  
 14 asbestos will be placed, submit a site-specific use plan to the department that

15 (1) describes the manner in which the proposed use of gravel or other  
 16 aggregate material that contains naturally occurring asbestos conforms to the standards  
 17 adopted under AS 44.42.420(b);

18 (2) demonstrates how the proposed construction operation and  
 19 maintenance practices comply with those that are required and those that are  
 20 minimally acceptable, as described in AS 44.42.420(b)(5), and otherwise meet  
 21 requirements of law applicable to the handling of compounds that contain asbestos;

22 (3) outlines the efforts that will be made, as a component of long-term  
 23 maintenance on the completed project or facility, to ensure that human health and air  
 24 quality are not compromised by the use of the gravel or other aggregate material that  
 25 contains naturally occurring asbestos;

26 (4) describes how the gravel or other aggregate material to be used can  
 27 be contained underneath the project or buried so that asbestos fibers cannot become  
 28 airborne or otherwise transferred outside of the project area, except as provided in (5)  
 29 and (6) of this subsection;

30 (5) if the requirements in (4) of this subsection are economically  
 31 unreasonable, describes how the gravel or other aggregate material to be used will be

1 sealed, including chip sealing or mixing with asphalt, in order to prevent asbestos  
2 fibers from becoming airborne or otherwise transferred outside of the project area,  
3 except as provided in (6) of this subsection; and

4 (6) if the requirements under (4) and (5) of this subsection are  
5 economically unreasonable, describes how the gravel or other aggregate material will  
6 be used in order to prevent asbestos from becoming airborne or otherwise transferred  
7 outside of the project area, including how the gravel or other aggregate material will  
8 be used in order to prevent asbestos from becoming airborne because of vehicle  
9 traffic, road maintenance, or grading, if applicable.

10 (b) For a project that is a transportation facility, including a public highway,  
11 airport, or pipeline or railroad track bed, or a public work, as that term is defined in  
12 AS 35.95.100, for which the department is the principal construction contractor, and  
13 for which the department intends to use, within an area designated by the department  
14 under AS 44.42.400(b) or (c), gravel or other aggregate material that, when tested  
15 using a bulk testing method prescribed by the department in regulation, is determined  
16 to have a content equal to or greater than 0.25 percent of naturally occurring asbestos  
17 by mass, the department shall develop a site-specific use plan that details the use of  
18 gravel or other aggregate material in the construction or maintenance of the  
19 transportation project or public facility in accordance with the requirements of (a) of  
20 this section and regulations developed under AS 44.42.420. The department may not  
21 begin extraction of the gravel or aggregate material containing naturally occurring  
22 asbestos until the site-specific use plan is approved and the monitoring and mitigation  
23 plan is completed by the department. The department shall adhere to the site-specific  
24 use and monitoring and mitigation plans.

25 (c) The department shall review each site-specific use plan and shall work  
26 toward approving or disapproving the plan, taking into consideration the construction  
27 season in the project location.

28 (d) The department may not approve a plan for construction with gravel or  
29 other aggregate material determined to have a content equal to or greater than 0.25  
30 percent of naturally occurring asbestos by mass unless

31 (1) the department determines that it is economically unreasonable to

1 undertake the construction project with gravel or other aggregate material free from  
2 naturally occurring asbestos; and

3 (2) the completed project will not use gravel or other aggregate  
4 material containing naturally occurring asbestos for a surface application.

5 (e) On developing or receiving a site-specific use plan that meets the  
6 requirements of (a) and (d) of this section and the regulations adopted under  
7 AS 44.42.420, the department, in consultation with the Department of Environmental  
8 Conservation, the Department of Health and Social Services, the Department of  
9 Natural Resources, the Department of Law, and the Department of Labor and  
10 Workforce Development, shall develop a monitoring and mitigation plan for the  
11 project. If the site-specific use plan is approved, the monitoring and mitigation plan  
12 developed by the department shall be attached to the site-specific use plan. To qualify  
13 for the immunity provided in AS 09.65.245(a)(2), the person that has direct control  
14 over or responsibility for the monitoring or mitigation shall comply with the  
15 monitoring or mitigation plan developed by the department.

16 (f) On approval of a site-specific use plan, the department

17 (1) shall provide to the contractor a copy of the approved site-specific  
18 use plan that includes

19 (A) the monitoring and mitigation plan developed under (e) of  
20 this section;

21 (B) a requirement that all asbestos-related data collected by the  
22 contractor during or after construction be submitted to the department; and

23 (C) recommended methods for reducing exposure to airborne  
24 asbestos fibers;

25 (2) shall provide a copy of the site-specific use plan, including the  
26 monitoring and mitigation plan, to the mayor or manager of a municipality affected by  
27 the use of gravel or other aggregate material containing asbestos; and

28 (3) may provide to the contractor copies of the United States  
29 Occupational Safety and Health Administration, United States Mine Safety and Health  
30 Administration, and United States Environmental Protection Agency recommended  
31 practices for handling and use of gravel or other aggregate material containing

1 naturally occurring asbestos.

2 (g) Within 60 days after completing a project in accordance with a site-  
3 specific plan approved by the department, the person responsible for compliance with  
4 the site-specific use plan shall record in the recording district where the property is  
5 located a document that includes a description of the affected property, a reference to  
6 the most recent recorded conveyance of that property, and a notice indicating the  
7 presence of naturally occurring asbestos, and stating that subsequent interest holders  
8 may have legal obligations with respect to preventing the naturally occurring asbestos  
9 from becoming airborne or otherwise transferred outside of the project area. The  
10 person that records a document required under this section shall provide written  
11 notification to the department and the landowner that the document has been recorded.

12 (h) The person responsible for compliance with the site-specific use plan shall  
13 submit to the department the results of any monitoring or testing performed in  
14 accordance with the site-specific use plan and any mitigation measures undertaken.

15 **Sec. 44.42.420. Regulations.** (a) The department, after consultation with the  
16 Department of Environmental Conservation, the Department of Health and Social  
17 Services, the Department of Natural Resources, the Department of Law, and the  
18 Department of Labor and Workforce Development, shall prescribe in regulation a bulk  
19 testing method for gravel or other aggregate material containing naturally occurring  
20 asbestos.

21 (b) The department, after consultation with the Department of Environmental  
22 Conservation, the Department of Health and Social Services, the Department of  
23 Natural Resources, the Department of Law, and the Department of Labor and  
24 Workforce Development, may adopt regulations under AS 44.62 (Administrative  
25 Procedure Act) to implement AS 44.42.400 - 44.42.430, including regulations revising  
26 statewide standards on the use in the construction and maintenance of transportation  
27 projects and public facilities of gravel or aggregate material that, when tested using a  
28 bulk test method prescribed by the department by regulation, is determined to have a  
29 content equal to or greater than 0.25 percent of naturally occurring asbestos by mass.  
30 The regulations adopted under this subsection must include

31 (1) procedures for completing site investigations and characterizations



1 of proposed projects, including the development and description of appropriate  
2 laboratory practices;

3 (2) procedures for reviewing design alternatives and preparing and  
4 evaluating appropriate comparative cost analyses that consider the use of gravel or  
5 other aggregate material that does not contain naturally occurring asbestos;

6 (3) procedures for evaluating human health concerns arising out of  
7 gravel or other aggregate material that contains naturally occurring asbestos and  
8 documentation of methods and means to be used during periods of handling of the  
9 gravel or other aggregate material to ensure compliance with appropriate workplace  
10 safety and air quality standards relating to the project and to ensure the health and  
11 safety of communities affected by construction projects that use gravel or other  
12 aggregate material containing naturally occurring asbestos;

13 (4) procedures for preparing designs and design specifications for  
14 facilities involving use of gravel or other aggregate material that contains naturally  
15 occurring asbestos;

16 (5) procedures for outlining construction operation and maintenance  
17 practices that are required and those that are minimally acceptable to meet  
18 requirements of law applicable to the handling of compounds that contain asbestos;

19 (6) procedures for processing, reviewing, and approving or  
20 disapproving site-specific use plans and area designation requests received under  
21 AS 44.42.400(b) in a uniform manner;

22 (7) guidelines to analyze the cost of a project;

23 (8) guidelines for determining whether the cost associated with the use  
24 of gravel or other aggregate material free from naturally occurring asbestos under  
25 AS 44.42.410(d) is economically unreasonable;

26 (9) guidelines for determining whether the cost associated with  
27 burying or sealing gravel or other aggregate material containing naturally occurring  
28 asbestos under AS 44.42.410(a)(2) and (3) is economically unreasonable;

29 (10) guidelines for establishing areas designated under  
30 AS 44.42.400(b) or (c) that take into account the effect on human health in and around  
31 the designated area and environmental factors affecting the transfer of asbestos fibers

1 within and outside of a designated area.

2 **Sec. 44.42.430. Definitions.** In AS 44.42.400 - 44.42.430,

3 (1) "contractor" means the principal construction contractor, or in  
4 absence of an identified principal construction contractor, the person having legal  
5 authority for the design and construction of the project and includes the department;

6 (2) "naturally occurring asbestos" means chrysotile, amosite,  
7 crocidolite, fibrous tremolite, fibrous anthophyllite, and fibrous actinolite asbestos-  
8 containing material that has not been processed in an asbestos mill and that, when  
9 tested using a bulk method prescribed by the Department of Transportation and Public  
10 Facilities by regulation, is determined to have a content equal to or greater than 0.25  
11 percent naturally occurring asbestos by mass.

12 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 44.42.400(a) and  
15 (b), added by sec. 2 of this Act, the Department of Transportation and Public Facilities may,  
16 on a temporary basis, designate a limited number of areas in the state in which certain  
17 landowners and contractors are granted immunity under AS 09.65.245(a) for causing  
18 asbestos-related injuries where an inability to complete construction projects has been  
19 demonstrated because of lack of gravel or other aggregate material free from naturally  
20 occurring asbestos. After designating an area on a temporary basis, the department shall  
21 notify, including through signage, potentially affected persons that the area has been  
22 designated as an area in which immunity may be granted under AS 09.65.245(a) for certain  
23 landowners and contractors causing asbestos-related injuries. Notwithstanding AS 18.31.250,  
24 added by sec. 2 of this Act, the Department of Transportation and Public Facilities may  
25 approve a limited number of appropriate construction projects until the development and  
26 implementation of initial standards under AS 44.42.420, added by sec. 3 of this Act, for  
27 projects not subject to AS 44.42.410(b), if, under (b) of this section, the Department of  
28 Transportation and Public Facilities prepares and adopts interim standards and requires its  
29 contractors to prepare site-specific plans for the use of gravel or other aggregate material that,  
30 when tested using the bulk method prescribed in sec. 5 of this Act, is determined to have a  
31 content equal to or greater than 0.25 percent naturally occurring asbestos by mass in

1 transportation projects and public facilities. The department shall apply the standards  
 2 developed under (b) of this section to a person described in AS 18.31.250 for a project that is  
 3 not subject to AS 44.42.410(b).

4 (b) Notwithstanding AS 44.42.400(a) and (b), added by sec. 2 of this Act, the  
 5 Department of Transportation and Public Facilities may, on a temporary basis, designate a  
 6 limited number of areas in the state in which certain landowners and contractors are granted  
 7 immunity under AS 09.65.245(a) for causing asbestos-related injuries where an inability to  
 8 complete construction projects has been demonstrated because of lack of gravel or other  
 9 aggregate material free from naturally occurring asbestos. After designating an area on a  
 10 temporary basis, the department shall notify, including through signage, potentially affected  
 11 persons that the area has been designated as an area where immunity may be granted under  
 12 AS 09.65.245(a) for certain landowners and contractors causing asbestos-related injuries.  
 13 Notwithstanding AS 44.42.410(b), added by sec. 3 of this Act, the Department of  
 14 Transportation and Public Facilities may approve a limited number of appropriate  
 15 transportation projects and public facilities until the development and implementation of  
 16 initial standards under AS 44.42.420, added by sec. 3 of this Act, after consultation with the  
 17 Department of Environmental Conservation, the Department of Health and Social Services,  
 18 the Department of Labor and Workforce Development, and appropriate federal agencies. The  
 19 Department of Transportation and Public Facilities may prepare and adopt interim standards  
 20 and operating procedures and may require of its contractors the preparation of site-specific  
 21 plans for the use of gravel or other aggregate material that when tested using the bulk method  
 22 prescribed in sec. 5 of this Act, is determined to have a content equal to or greater than 0.25  
 23 percent naturally occurring asbestos by mass.

24 (c) The authority granted by (a) and (b) of this section expires December 31, 2013.

25 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
 26 read:

27 **INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.**

28 Until the Department of Transportation and Public Facilities adopts and prescribes a method  
 29 of bulk testing under AS 44.42.420(a), added by sec. 3 of this Act, the department shall use  
 30 California Air Resources Board Method 435, Determination of Asbestos Content of  
 31 Serpentine Aggregate, adopted on June 6, 1991, as that standard has effect on the effective

1 date of this Act, as the basis for determining the asbestos content of a bulk sample or for  
2 interim use as authorized by sec. 4 of this Act.

3 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).