

SENATE BILL NO. 299

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Introduced: 2/26/10

Referred: Transportation, Finance

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 allowing for the use in the
3 construction and maintenance of transportation projects and public facilities and in the
4 construction of projects by public and private entities of gravel or aggregate materials
5 that contain naturally occurring asbestos, and authorizing use on an interim basis of
6 those materials for certain transportation projects and public facilities; and relating to
7 certain claims arising out of or in connection with the use of gravel or aggregate
8 materials."

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

10 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

1 (1) gravel and similar aggregate material is constantly in demand for major
2 construction and maintenance of state and local transportation projects and public facilities
3 and for all types of construction by public and private entities;

4 (2) naturally occurring asbestos may be found in sources of gravel and similar
5 aggregate material throughout the state;

6 (3) while airborne asbestos fibers are a significant threat to workplace safety
7 and public health and are subject to close regulation by federal and state authorities under 42
8 U.S.C. 7401 - 7671q (Clean Air Act) and 15 U.S.C. 2601 - 2692 (Toxic Substances Control
9 Act), use of materials containing naturally occurring asbestos in construction projects may be
10 regulated by states;

11 (4) in communities that do not have sources of gravel or similar aggregate
12 material that is free of naturally occurring asbestos, costs of construction are substantially
13 increased because of the necessity of locating alternative sources of gravel or similar
14 aggregate material and transporting that material to distant construction and maintenance
15 sites; and

16 (5) a recent study suggests that, with careful use and close adherence to
17 appropriate control strategies, state and local transportation projects and public facilities may
18 be safely completed using sources of gravel or similar aggregate material containing naturally
19 occurring asbestos; the study recommends that the Department of Transportation and Public
20 Facilities establish standards and operating procedures through a statewide process that will
21 apply to all uses of gravel and aggregate material by the department and by any public or
22 private entity.

23 (b) It is the purpose of this Act

24 (1) to authorize and direct the Department of Transportation and Public
25 Facilities to develop, implement, and, as circumstances may require or indicate, modify
26 standards and operating procedures to allow the use in the construction and maintenance of
27 transportation projects and public facilities of gravel or aggregate material that is not free of
28 naturally occurring asbestos, with the expectation that use of that material in a manner that is
29 consistent with those standards and procedures may avoid significant risk to human health and
30 eliminate significantly higher costs of construction and maintenance of projects and facilities
31 associated with using only construction material that is free of asbestos; and

1 (2) to establish that a person that supplies or uses gravel that is not free of
 2 naturally occurring asbestos shall prepare specific project plans that conform to the
 3 department's standards and operating procedures.

4 * **Sec. 2.** AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.245. Immunity for persons using materials containing naturally**
 6 **occurring asbestos in compliance with state approved standards and operating**
 7 **procedures.** A civil action for damages or costs may not be brought against a
 8 defendant alleging an asbestos-related death, injury, or disability based on the
 9 defendant's use of gravel or other aggregate material that is not free of naturally
 10 occurring asbestos for an act or omission occurring in the course of use of the gravel
 11 or materials when that use complies with the requirements of AS 18.31.250 or
 12 AS 44.42.020(c), as appropriate. In this section, "gravel or other aggregate material
 13 that is not free of naturally occurring asbestos" has the meaning given in
 14 AS 18.31.250.

15 * **Sec. 3.** AS 18.31 is amended by adding a new section to read:

16 **Article 2A. Use of Materials Containing Naturally Occurring Asbestos.**

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

18 Before initiating a construction project not subject to AS 44.42.020(c) that will use
 19 gravel or other aggregate material that is not free of naturally occurring asbestos, the
 20 principal construction contractor or, in the absence of an identified principal
 21 construction contractor, the person having legal authority for the design and
 22 construction of the project, shall prepare and submit to the Department of
 23 Transportation and Public Facilities specific project plans demonstrating compliance
 24 with the standards and operating procedures adopted by the department to implement
 25 AS 44.42.020(c)(1) and (2). Before the principal construction contractor or other
 26 person responsible for the project may use gravel or other aggregate material that is
 27 not free of naturally occurring asbestos, the plan is subject to approval by the
 28 department under the standards and operating procedures adopted under
 29 AS 44.42.020(c). In this section, "gravel or other aggregate material that is not free of
 30 naturally occurring asbestos" means gravel, rock, sand, and similar materials that are
 31 appropriate to and intended for use in construction that, when tested using a bulk test

1 method prescribed by the department by regulation, are determined to have a content
2 of at least 0.25 percent asbestos by mass.

3 * **Sec. 4.** AS 44.42.020 is amended by adding a new subsection to read:

4 (c) The department, after consultation with the Department of Environmental
5 Conservation, Department of Health and Social Services, and Department of Labor
6 and Workforce Development, shall develop and implement, and, from time to time,
7 revise, statewide standards and operating procedures to allow the use in the
8 construction and maintenance of transportation projects and public facilities of gravel
9 or aggregate material that is not free of naturally occurring asbestos. For purposes of
10 this subsection,

11 (1) the department's standards must set out means and measures for

12 (A) completing site investigations and characterizations of
13 proposed projects, including the development and description of appropriate
14 laboratory practices;

15 (B) reviewing design alternatives and preparing and evaluating
16 appropriate comparative cost analyses that consider the use of gravel or other
17 aggregate material that does not contain naturally occurring asbestos;

18 (C) evaluating human health concerns arising out of gravel or
19 other aggregate material that is not free of naturally occurring asbestos, and
20 documentation of methods and means to be used during periods of handling of
21 the gravel or other aggregate material to ensure compliance with appropriate
22 workplace safety and air quality standards relating to the project;

23 (D) preparing designs and design specifications for facilities
24 involving use of gravel or other aggregate material that is not free of naturally
25 occurring asbestos;

26 (E) outlining construction operation and maintenance practices
27 that are required and those that are minimally acceptable to meet requirements
28 of law applicable to the handling of compounds that contain asbestos;

29 (2) the department shall require, in its operating procedures applicable
30 to a project that is a transportation facility, including a public highway, airport, or
31 pipeline or railroad track bed, or a public work, as that term is defined in

1 AS 35.95.100, and that is subject to this subsection, that the principal contractor
 2 responsible for performance of the work under the construction contract prepare and
 3 submit a plan that addresses with specificity the use of gravel or other aggregate
 4 material in the construction or maintenance of the transportation project or public
 5 facility; the plan is subject to department approval before the contractor may use
 6 gravel or other aggregate material that is not free of naturally occurring asbestos; the
 7 contractor's site-specific plan must

8 (A) describe the manner in which the contractor's proposed use
 9 of gravel or other aggregate material that is not free of naturally occurring
 10 asbestos conforms to the standards adopted under (1) of this subsection;

11 (B) demonstrate how the contractor's proposed construction
 12 operation and maintenance practices comply with those that are required and
 13 those that are minimally acceptable, as described in (1)(E) of this subsection,
 14 and otherwise meet requirements of law applicable to the handling of
 15 compounds that contain asbestos; and

16 (C) outline how, as a component of long-term maintenance on
 17 the completed project or facility, the department may reasonably ensure that
 18 human health and air quality are not compromised by the use of the gravel or
 19 other aggregate material that is not free of naturally occurring asbestos; and

20 (3) "gravel or other aggregate material that is not free of naturally
 21 occurring asbestos" means gravel, rock, sand, and similar materials that are
 22 appropriate to and intended for use in construction of a transportation project or public
 23 facility that, when tested using a bulk test method prescribed by the department by
 24 regulation, are determined to have a content of at least 0.25 percent asbestos by mass;
 25 in this paragraph, "asbestos" has the meaning given in AS 18.31.500.

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

28 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 18.31.250, added
 29 by sec. 3 of this Act, to ensure early application of the policy described in sec. 1 of this Act to
 30 a limited number of appropriate construction projects until the development and
 31 implementation of initial standards and operating procedures under AS 44.42.020(c) for

1 projects not subject to that subsection, if, under (b) of this section, the Department of
2 Transportation and Public Facilities prepares and adopts interim standards and operating
3 procedures and requires its contractors to prepare site-specific plans for the use of gravel or
4 other aggregate material that is not free of naturally occurring asbestos in transportation
5 projects and public facilities, the department shall apply those standards and operating
6 procedures to a person described in AS 18.31.250 for a project that is not subject to
7 AS 44.42.020(c). In this subsection, "gravel or other aggregate material that is not free of
8 naturally occurring asbestos" has the meaning given in AS 18.31.250, added by sec. 3 of this
9 Act.

10 (b) Notwithstanding AS 44.42.020(c), added by sec. 4 of this Act, to ensure early
11 application of the policy described in sec. 1 of this Act to a limited number of appropriate
12 transportation projects and public facilities until the development and implementation of
13 initial standards and operating procedures under AS 44.42.020(c), after consultation with the
14 Department of Environmental Conservation, Department of Health and Social Services,
15 Department of Labor and Workforce Development, and appropriate federal agencies, the
16 Department of Transportation and Public Facilities may prepare and adopt interim standards
17 and operating procedures and may require of its contractors the preparation of site-specific
18 plans for the use of gravel or other aggregate material that is not free of naturally occurring
19 asbestos in transportation projects and public facilities. In this subsection, "gravel or other
20 aggregate material that is not free of naturally occurring asbestos" has the meaning given in
21 AS 44.42.020(c), added by sec. 4 of this Act.

22 (c) The authority granted by (a) and (b) of this section expires December 31, 2011.

23 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

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

26 Until the Department of Transportation and Public Facilities adopts and prescribes a method
27 of bulk testing under AS 44.42.020(c)(3), the department may use California Air Resources
28 Board Method 435, Determination of Asbestos Content of Serpentine Aggregate, adopted on
29 June 6, 1991, as that standard has effect on the effective date of this Act, as the basis for
30 determining the asbestos content of a bulk sample in a bulk test that is required under
31 AS 44.42.020(c), enacted by sec. 4 of this Act, or for interim use as authorized by sec. 5 of

1 this Act.