

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 4, 2005

1:05 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 107

"An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or viewing of fish or game; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and amending Rule 508, Alaska Rules of Appellate Procedure."

- MOVED CSHB 107(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 175

"An Act relating to the creation of a civil legal services fund."

- MOVED CSHB 175(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 95

"An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 107

SHORT TITLE: ATTY FEES: HUNTING/FISHING INTERFERENCE

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/24/05 (H) READ THE FIRST TIME - REFERRALS  
01/24/05 (H) RES, JUD  
02/02/05 (H) RES AT 1:00 PM CAPITOL 124  
02/02/05 (H) Heard & Held  
02/02/05 (H) MINUTE(RES)  
02/09/05 (H) RES AT 1:00 PM CAPITOL 124  
02/09/05 (H) Heard & Held  
02/09/05 (H) MINUTE(RES)  
02/16/05 (H) RES AT 1:00 PM CAPITOL 124  
02/16/05 (H) Moved CSHB 107(RES) Out of Committee  
02/16/05 (H) MINUTE(RES)  
02/18/05 (H) RES RPT CS NT 3DP 1DNP 4NR  
02/18/05 (H) DP: OLSON, ELKINS, RAMRAS;  
02/18/05 (H) DNP: SEATON;  
02/18/05 (H) NR: GATTO, LEDOUX, CRAWFORD, KAPSNER  
02/18/05 (H) FIN REFERRAL ADDED AFTER JUD  
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120  
03/02/05 (H) Heard & Held  
03/02/05 (H) MINUTE(JUD)  
03/04/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 175

SHORT TITLE: CIVIL LEGAL SERVICES FUND

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

02/24/05 (H) READ THE FIRST TIME - REFERRALS  
02/24/05 (H) JUD, FIN  
03/04/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 95

SHORT TITLE: PUBLIC HEALTH DISASTERS/EMERGENCIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (H) READ THE FIRST TIME - REFERRALS  
01/21/05 (H) HES, JUD  
02/10/05 (H) HES AT 3:00 PM CAPITOL 106  
02/10/05 (H) Moved CSHB 95(HES) Out of Committee  
02/10/05 (H) MINUTE(HES)  
02/11/05 (H) HES RPT CS(HES) NT 2DP 2NR 1AM  
02/11/05 (H) DP: CISSNA, WILSON;  
02/11/05 (H) NR: GARDNER, ANDERSON;  
02/11/05 (H) AM: KOHRING  
03/04/05 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

JIM POUND, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented a proposed CS for HB 107 on behalf of the sponsor, Representative Ramras.

VANESSA TONDINI, Staff  
to Representative Lesil McGuire  
House Judiciary Standing Committee  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 175 on behalf of the sponsor, Representative McGuire.

ART PETERSON, Member  
Board of Directors  
Alaska Legal Services Corporation (ALSC)  
Juneau, Alaska  
POSITION STATEMENT: Answered questions regarding HB 175.

ANDY HARRINGTON, Executive Director  
Alaska Legal Services Corporation (ALSC)  
Fairbanks, Alaska  
POSITION STATEMENT: Testified in support of HB 175.

RUSS WEBB, Trust Program Officer  
Alaska Mental Health Trust Authority (AMHTA)  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 175.

MARIE DARLIN, Coordinator  
AARP Capital City Task Force  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 175.

CAREN ROBINSON, Vice-Chair  
Board of Trustees  
Alaska Mental Health Authority (AMHTA);  
Lobbyist for Alaska Women's Lobby and  
Alaska Network on Domestic Violence and Sexual Assault  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 175.

RICHARD MANDSAGER, M.D., Director  
Central Office  
Division of Public Health  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska  
POSITION STATEMENT: Presented HB 95 to the committee.

PATRICIA SENNER, Chair  
Legislative Committee  
Alaska Nurses Association (AaNA)  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 95.

### **ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at [1:05:07 PM](#). Representatives McGuire, Coghill, Dahlstrom, and Gara were present at the call to order. Representatives Anderson, Kott, and Gruenberg arrived as the meeting was in progress.

#### HB 107 - ATTY FEES: HUNTING/FISHING INTERFERENCE

[1:06:31 PM](#)

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 107, "An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or viewing of fish or game; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and amending Rule 508, Alaska Rules of Appellate Procedure." [Before the committee was CSHB 107(RES); in members' packets was a proposed committee substitute (CS) for HB 107, Version 24-LS0444\L, Utermohle, 3/3/05.]

JIM POUND, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, said, on behalf of Representative Ramras, that they believe they have worked out an agreement with members regarding concerns raised at the bill's last hearing. On the question of whether current statute already addresses the issue of law enforcement activities, he said, since the proposed change was essentially designed to provide for an affirmative defense, a proposed committee substitute (CS) in members' packets has moved the proposed change into AS 16.05.790(d), which already addresses affirmative defenses for law enforcement personnel. With regard to the concern that the bill will make it profitable for someone to bring a lawsuit, the proposed CS

allows the prevailing party to be awarded all costs but only 90 percent of reasonable, actual attorney fees; this latter change has allowed the sponsor to delete the proposed indirect court rule change to Rule 79 of the Alaska Rules of Civil Procedure.

[1:07:48 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 107, Version 24-LS0444\L, Utermohle, 3/3/05, as the work draft. There being no objection, Version L was before the committee.

REPRESENTATIVE GARA commented that he appreciated the work the sponsor did to address members' concerns.

REPRESENTATIVE COGHILL said that he still had a concern regarding quantifying behavior that would result in "physically interfering or tampering with" viewing, and that he will continue to work with the sponsor on that issue.

[1:09:43 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 107, Version 24-LS0444\L, Utermohle, 3/3/05, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 107(JUD) was reported from the House Judiciary Standing Committee.

HB 175 - CIVIL LEGAL SERVICES FUND

[1:10:24 PM](#)

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 175, "An Act relating to the creation of a civil legal services fund."

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 175, Version 24-LS0656\G, Bullock, 3/3/05, as the work draft. There being no objection, Version G was before the committee.

[1:10:57 PM](#)

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, presented HB 175 on behalf of Representative McGuire, bill sponsor. She explained that the bill would provide a financial

mechanism whereby the legislature may make appropriations to organizations that provide civil legal services to low-income Alaskans. Currently AS 09.17.020(j) provides that 50 percent of punitive damages awards in tort cases go into the general fund (GF). She said that HB 175 would establish a civil legal services fund into which the legislature may appropriate these monies, and it allows the legislature to appropriate money from the fund to organizations that provide civil legal services for low-income Alaskans. This would not create a mandatory expenditure, she pointed out; each legislature would have the option to appropriate the money into the fund. Low-income would be defined as equal to or less than the maximum income levels for Alaska as determined under 45 C.F.R. Part 1611.

REPRESENTATIVE GRUENBERG asked for clarification regarding the change in Version G.

MS. TONDINI explained that one change was that low-income had been defined as previously stated, whereas the original bill stated only that low-income would be determined by the Alaska Legal Services Corporation (ALSC). The ALSC, a nonprofit entity, was created in 1966 to assist Alaskans with civil legal needs and has been funded through a combination of state, federal, and private sources; she noted that these funds have been on the decline. She said, "It makes sense that civil lawsuits, [from] which these punitive damages awards come out of can be used to fund cases which are no less important, but to help out low-income Alaskans."

MS. TONDINI asserted that HB 175 is important because low-income people have the same legal needs as everyone else, and they shouldn't have the burden of representing themselves unless they so choose. She stated that HB 175 addressed the current inadequate funding structure of organizations that provide legal services, and it would provide for the services using punitive damages awards for egregious offenses rather than draining other sources of funding.

MS. TONDINI outlined a second change in Version G, "Any costs of collection that the state [has] incurred, with respect to the punitive damages awards, should come out of the proceeds before they [are] put into the civil legal services fund, to not act as a disincentive for the Department of Law to create the fund." She referred to lines 9-10 of Version G, which read, "less the cost of collection if any incurred by the state."

[1:15:34 PM](#)

CHAIR McGUIRE pointed out:

When low-income civil litigants chose to represent themselves pro se, which is the only option you have if you don't have an attorney, it ends up costing all of us ... and so you've got judges put in ... a very awkward position of advising when they shouldn't be, you have pro se defendants trying to work their way through the legal system at great cost to the courts and so on, and so there's a fiscal note to that that we don't see. And this is one mechanism of helping to fund this organization that leads these folks into the legal process, which frankly as we all know, is very confusing, and the stakes are high for many people.

REPRESENTATIVE GRUENBERG asked if the 50 percent of the award that goes to the GF includes the award of attorney fees.

ART PETERSON, Member, Board of Directors, Alaska Legal Services Corporation (ALSC), answered that it would not.

REPRESENTATIVE GRUENBERG asked, regarding the punitive damages, if the state would normally have the plaintiff's attorney collect the portion awarded to the state, or if the state itself would do the collection. He said, "If in fact the state is not doing the cost collection in a given case, I would say it should be less the costs of collection."

CHAIR McGUIRE noted that two people from the ALSC would be available for questioning.

REPRESENTATIVE GARA said:

The amount that would be deducted would be the amount of money the state expends in going after the private council and saying "There was an [attorney fees] recovery; we should get half of it." And sometimes there are negotiations that go on in order for the state to get its share, and so the attorney general will spend some time doing that. I think the bill sponsors need to do this to make sure ... that we don't have a fiscal note.

REPRESENTATIVE GRUENBERG asked if work performed by the plaintiff's attorney, such as a writ of execution or judgment

debtor examinations, would be [paid for with] the state's half of a punitive award.

REPRESENTATIVE GARA replied negatively, and pointed out that the bill stated "costs incurred by the State".

REPRESENTATIVE GRUENBERG asked if those costs should be deducted as well.

REPRESENTATIVE GARA answered that that's a different question.

[1:20:24 PM](#)

MR. PETERSON clarified:

When the punitive damages award goes into the general fund ... that's a separate matter. Once the money is in the pot, then the only ... fiscal consideration ... is what the state has to do to get the money in the pot. And now we've created this little sub-pot that allows for the percentage to go to this public purpose. So if there is state expense in collecting that, ... then maybe it makes sense to deduct that. But any other areas outside that ... [are] not relevant to what the state is involved in putting the money in the pot or taking this percentage out and providing it for this legal services public purpose.

MR. PETERSON commented that at one time the ALSC had 14 offices around the state and 93-97 employees. Now there are eight ALSC offices, one of which is open part-time. He said, "We've had to open and close offices because of the erratic state funding." In recent years, the ALSC had received about [\$125,000] from the state, but last year, even though there was no decrease in cases, the legislature cut the funding in half, and then the governor zeroed it out with a line-item veto, Mr. Peterson pointed out. He also commented:

One of the things I read that just floored me was the governor's statement to the effect that providing legal services was not a state function, as though the state were not obligated to provide equal access to all the people of the state. ... This bill will provide one little step in helping [the ALSC] secure a source of funding. My dream is to get our endowment fund up to a level that would enable us to be self-sustaining. ...

MR. PETERSON continued:

We need the regular appropriation from the state and we need this bill. [The ALSC] provides efficiency. The attorneys there work for a fraction of what they would get in the private section. We start our attorneys at something like [\$30,000]. ... One of our staff members is a Harvard ... law school graduate. ... [He could] probably be earning close to a million dollars a year in the corporate world or the banking investment world, and he's working for something like [\$50,000]. ... So it's a program that provides the biggest bang for the buck; you get more work, more service, out of any money that goes into [the ALSC] than any other program I've been aware of. ... It helps judges and helps everyone else involved with the legal system, because when judges have to try to help one side of a case because that person doesn't have enough money, doesn't know the procedure, is overwhelmed by the whole process, that slows things down enormously.

MR. PETERSON related a personal anecdote in which he represented the legislature in a suit brought by a person who was not represented by an attorney. He said that the situation was complicated until a pro bono attorney offered to represent the plaintiff, and then the proceedings moved forward smoothly.

MR. PETERSON commented that he was not intimately familiar with the accounting aspects of the bill, but he thought that Version G was reasonable and therefore he supported it.

REPRESENTATIVE COGHILL asked Mr. Peterson to explain the current AS 09.17.020(j).

[1:29:19 PM](#)

MR. PETERSON replied that he cannot. He pointed out that in his 38 years of practicing law in Alaska, he had never handled a case that involved punitive damages. He noted that Representative Gara may be more familiar with the statute.

REPRESENTATIVE COGHILL asked if Mr. Peterson was familiar with 45 C.F.R. 1611, and if it was a criteria that was already in practice.

MR. PETERSON replied affirmatively and explained that the regulation sets the level [for eligibility] at 125 percent of the U.S. Department of Health and Human Services' poverty guideline. The person then must go through the case priority screening before gaining services.

[1:31:19 PM](#)

REPRESENTATIVE GARA remarked:

I don't think that much ends up in the fund; I think it's pretty inconsistent, but it's a very small percentage of cases that ever involve punitive damages.... For those of you that don't know, you get punitive damages in a civil case if, in addition to the party that hurt you doing something wrong, they did it in a way that involved reckless disregard of your interest and safety. And so that's a high standard and it doesn't happen that often. And then often you'll get a punitive damages award and then the judge will take it away before it goes up to the appeals court. ... So I don't know what the annual average amount is that goes into that fund. I suspect it's not that much.

REPRESENTATIVE GARA asked Mr. Peterson what he thought of the idea of entitling the ALSC to 100 percent of the attorney fees when a case is won.

MR. PETERSON responded that there is now a federal prohibition on attorney fees going to legal services; the fees that the ALSC is now collecting are for cases that were started before the prohibition went into effect. He commented, "It's really outrageous because the other side, when they win, they can get [attorney fees] but if we win we can't get attorney fees anymore." He noted: "I hadn't really thought of the concept of equal access to justice as being necessarily a liberal or conservative issue. ... It's a matter of doing justice for everybody and it shouldn't be a [liberal] versus conservative issue."

[1:36:03 PM](#)

REPRESENTATIVE GARA agreed and asked whether the committee would be amenable to creating a committee letter to the finance committee stating that there should be a state role in supporting legal services.

CHAIR MCGUIRE opined that some people question whether poor people are poor for the "right" reasons. She noted that people's opinions are shaped by "the place that you come from in the world," and so "it's not necessarily about bad people with bad ideas." Many people are poor due to circumstances beyond their control, she remarked, and putting a person into the legal system without someone being on his/her side will cost everyone in the long run.

MR. PETERSON asked the committee members to remember that "many of us really lucked out" by having "good genes" as well as supportive family and friends. He noted that luck plays a huge role in whether or not someone might need assistance with legal services. He mentioned the book The Other America by Michael Harrington as an illustration of this fact, which is about poverty and "this percentage of the population that many of us never see ...." He recommended the book to the committee members and remarked, "That book had a lot of influence on why I put 31 years into Alaska Legal Services, and 38 years into public service in the State of Alaska."

[1:43:16 PM](#)

ANDY HARRINGTON, Executive Director, Alaska Legal Services Corporation (ALSC), presented some background information on the ALSC. He relayed that the ALSC is very cost effective, and that it provides legal information to the general public through a web site and through a series of clinics offered by a staff of volunteer attorneys. He pointed out that the ALSC is not a state agency, and it doesn't represent people who have been charged with a crime. He noted that the consequences in civil cases can be just as significant for a family, for example: loss of family shelter or health care coverage; garnishment of a wage earner's income; or jeopardizing the right to be free from domestic violence. He clarified that the ALSC's eligibility is set at 125 of the poverty level for Alaska, which equals about \$14,000 per year for one person.

MR. HARRINGTON stated that the ALSC's mission is to provide equal access to justice in resolving civil legal problems of low-income clients, promote family stability, and reduce the legal consequences of poverty. He noted:

Providing representation to low-income clients helps the court system function more efficiently for everyone, including judges and other litigants. A civil case in which one or both people are

unrepresented takes more time and attention from the judge and increases the chances that the judge's decision will be based on incomplete information.

MR. HARRINGTON shared two anecdotes to illustrate how the ALSC was able to help clients. He noted that on the criminal side, the legislature has promoted equal justice for all people regardless of income restrictions; HB 175 reflects a similar approach on the civil side.

[1:50:37 PM](#)

REPRESENTATIVE COGHILL said he would be interested in Mr. Harrington's information on punitive amounts.

MR. HARRINGTON stated that according to his understanding, approximately \$150,000-175,000 had come to the state under AS 09.17.020(j) in the last fiscal year, and for the most recent fiscal year it amounted to \$300,000-400,000. He said he anticipates that the funds will fluctuate; he expects that most years little or no money will come into the fund because "neither the plaintiff nor the defendant have a particular incentive to settle for punitive damages, and most civil cases are resolved by settlements, so it will be an exception to the rule when there ... are punitive damages at all, and very much an exception when there is a large punitive damage award."

REPRESENTATIVE COGHILL asked what the cost of collection would be.

MR. HARRINGTON said that he did not know. He commented that he had posed this question to the acting attorney general, who told Mr. Harrington that he didn't think it was much, perhaps around \$10,000-20,000 worth of attorney time. Mr. Harrington noted, "We did talk about whether he would prefer ... having some sort of administrative fee of 3 percent or 4 percent, or whether he would prefer having his attorneys keep track of any time they put it on any of these particular tasks," and the attorney general had indicated that he preferred the latter, which led to the language in Version G.

REPRESENTATIVE COGHILL remarked that this would probably provide a mechanism for the attorneys to make sure that they kept track of their time.

[1:53:51 PM](#)

REPRESENTATIVE GARA again raised the issue of recovering full attorney fees, and asked Mr. Harrington if there was a potential of letting the "sort of branch-off group that legal services has that is allowed to ... work on the monetary cases," recover full attorney fees.

MR. HARRINGTON indicated that might be a possibility for such organizations such as the Alaska Pro Bono Program Incorporated (APBP). He explained that when the restrictions were put on all Legal Services Corporation funding recipients, the [ALSC] established the APBP as a separate entity so that if there were attorneys willing to volunteer to handle those cases, they wouldn't be blocked by the restrictions on the ALSC. He noted that the attorneys who volunteer their time through the APBP can recover attorney fees.

REPRESENTATIVE GARA asked Mr. Harrington to contact him with any further thoughts or information.

1:56:45 PM

RUSS WEBB, Trust Program Officer, Alaska Mental Health Trust Authority (AMHTA), testified on behalf of the AMHTA board in support of HB 175. He said that the AMHTA believed that the bill would provide the legislature with a good tool for putting to appropriate use the 50 percent of punitive damages awarded in civil suits that are deposited into the GF. He remarked that the AMHTA supports the bill because it will help ensure the availability of legal assistance to the AMHTA beneficiaries, who are people with mental disabilities and low income who are eligible for legal services from the ALSC. He noted that the AMHTA beneficiaries are particularly vulnerable and unable to advocate effectively for themselves. He said: "They are often in need of legal services to obtain federal disability benefits, VA benefits, access to housing, health, and other services. ... They are the subject of and vulnerable to discrimination and exploitation, and they're clearly less equipped to be their own advocates and to obtain justice." HB 175 would help make sure that the AMHTA beneficiaries get the assistance that is needed in order to obtain benefits which help them overcome their disabilities, he noted.

2:00:15 PM

MARIE DARLIN, Coordinator, AARP Capital City Task Force, remarked that the AARP had sent the committee a letter of support for HB 175. She stated that the bill would be one more

way of trying to solve some fiscal problems, and it would be helpful to older Alaskans.

REPRESENTATIVE GARA noted that the legislature passed a bill last year that would let the attorney general's office receive full attorney fees when it wins a consumer case, and that this year the governor's office has proposed to hire some attorneys who would represent seniors in fraud cases.

MS. DARLIN commented that the AARP is concerned about that issue and hopes that it would be addressed.

[2:02:59 PM](#)

CAREN ROBINSON, Vice-Chair, Board of Trustees, Alaska Mental Health Authority (AMHTA); Lobbyist, Alaska Women's Lobby; Lobbyist, Alaska Network on Domestic Violence and Sexual Assault, noted that all the trustees of the AMHTA support HB 175. She agreed with comments made by Chair McGuire and Mr. Peterson. She pointed out that women from domestic violence and sexual assault situations often need assistance; she offered the example of a rape victim who needs help to get out of an apartment lease so that she can move somewhere safer. She noted that in the 1980s, the ALSC was the only agency that could assist women in getting protective orders.

MS. ROBINSON reminded the committee of all the work that lawyers had done toward setting up [the ALSC]. She commented: "We expect sometimes that lawyers are supposed to just jump in and do the pro bono work that's needed.... Even though quite a few lawyers may be willing to put their name out there to help, they may not have the expertise." She remarked that the advantage of using people who have committed their life to this field is that they have the expertise that is truly needed to help these folks.

[2:08:26 PM](#)

REPRESENTATIVE GRUENBERG offered his understanding that before the federal prohibition, the ALSC was getting approximately several hundred thousand dollars a year in attorney fees. He asked for clarification about the prohibition.

MR. HARRINGTON related that the regulation states that the ALSC can neither collect nor retain attorney fees, and if a court were to award fees sua sponte, the ALSC would be required to

file a motion stating that the ALSC cannot collect and retain the fee.

REPRESENTATIVE GRUENBERG suggested that in any case in which the ALSC represented the prevailing party, the attorney general would have the right to seek attorney fees, which would go into the GF and then into the new fund. The legislature could then appropriate the funds to the ALSC. This way the ALSC would neither be seeking fees nor receiving them.

MR. PETERSON asked if the legal fees sought by the attorney general would be based on the attorney time put in by the ALSC attorney.

REPRESENTATIVE GRUENBERG answered affirmatively.

MR. HARRINGTON commented that this was an idea that could be explored, and offered to research that issue.

CHAIR McGUIRE suggested that the issue be explored but she did not wish to hold the bill over.

REPRESENTATIVE COGHILL noted that the bill had a finance referral and so there was time to explore the issue.

CHAIR McGUIRE stated that she thought the idea needed more work, and she preferred to pass the bill through the committee.

[2:13:37 PM](#)

REPRESENTATIVE COGHILL commented that he preferred the wording in Version G, but was reluctant to adopt federal code into statute by reference because federal code could change. He said that "equal to or less" helps to define [the poverty level], but he would research other options.

REPRESENTATIVE GARA asked if it was legal to adopt something that changes in the future.

REPRESENTATIVE COGHILL noted that the state has had to revise statutes in the past when the referenced regulations changed.

CHAIR McGUIRE said she would be amenable to going back to language in original bill. She proposed that low-income be defined as 125 percent of poverty level.

[2:17:48 PM](#)

REPRESENTATIVE COGHILL commented that he would rather the committee define it, and suggested a conceptual amendment to define low-income as 125 percent of the poverty level.

REPRESENTATIVE GRUENBERG pointed out that the reference is to the organizations that would be able to access the fund. He noted that the ALSC has federal standards that it must meet, and "to be certain that [the ALSC] can access this fund, we must reference the federal ... level it has to meet. He asked Mr. Harrington why the changes were made in the CS.

MR. HARRINGTON replied that he was told that it is more appropriate for state statute to reference an existing law or regulation, whether state or federal, than it is to make reference to a federal corporation. He pointed out that the federal government sets a different poverty ceiling for Alaska than it does for the Lower 48 states. Therefore, he opined, it would be important to reference 125 percent of the Alaska poverty level.

REPRESENTATIVE GRUENBERG asked Mr. Harrington which of the three choices he preferred.

MR. HARRINGTON stated that the language he would prefer would be the language that would be most likely to pass.

[2:22:20 PM](#)

REPRESENTATIVE COGHILL made a motion to adopt Conceptual Amendment 1, which would define low-income as 125 percent of the Alaska poverty level.

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

[2:23:18 PM](#)

REPRESENTATIVE KOTT moved to report the proposed CS for HB 175, Version 24-LS0656\G, Bullock, 3/3/05, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 175(JUD) was reported from the House Judiciary Standing Committee.

HB 95 - PUBLIC HEALTH DISASTERS/EMERGENCIES

2:23:49 PM

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 95, "An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date." [Before the committee was CSHB 95(HES).]

RICHARD MANDSAGER, M.D., Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS), presented HB 95 to the committee. He directed attention to "slides" printed in a handout available in the committee packet, and read the quote from the Institute of Medicine on page 2: "Public Health is what we, as a society, do collectively to assure the conditions in which people can be healthy." He said:

What this bill is about is the governmental part of public health; it's not about the private part, it's not about the family part.... If one thinks back over the last 150 years, what contributed to the almost doubling of life expectancy of Americans between 1900 and today is things like sewage and sewage removal ..., safe water, ... protection from vaccine-preventable diseases, ... clean indoor air, mandated removal from the environment of carcinogens, [and] removal of lead from gasoline. All of those things have contributed to improve public health and improve both quality and quantity of life of Americans.

DR. MANDSAGER asserted that public health is concerned with populations, not just poor people, and prevention, not just treatment. "Government plays a really unique role in legal obligations to prevent disease, disability, injury, and illness," he noted. Some examples of this: immunization policies in schools, PPDs [purified protein derivatives, a method of testing for tuberculosis, or TB], and injury prevention. If public health personnel do their job right, he said, they're in the background, but when there is an outbreak they need to be prepared to contain it.

DR. MANDSAGER turned to slide 4 and said that another important aspect of public health falls under the purview of the Department of Environmental Conservation (DEC), which looks at the food, water, and air safety, and at the reasons animals die. "Public health law really underpins all of our work, and the

reason that we're introducing this bill is to update that underpinning," he added.

DR. MANDSAGER explained that slide 5 speaks to the public health emergency side. He commented that prior to [the terrorist attacks of September 11, 2001] "nobody had really thought about the fact that biological or chemical agents could really be terrorist tools; so preparedness is a big part of what we are." He shared an anecdote in which a lab in Fairbanks was able to determine within a 24-hour period that a young Juneau girl had measles, and a possible outbreak was contained. "That's what we do in the background to try and contain outbreaks," he said.

DR. MANDSAGER pointed out that avian flu has been in the news lately. He explained that this flu has now been transmitted on numerous occasions in the last couple of years from birds to humans, and recently there have been indications of possible human-to-human transmission. He pointed out that avian flu has a 70 percent mortality rate, and if it mutates and becomes transmissible human to human, "containment and the ability to quarantine and isolate is going to be really important." He continued:

We learned with SARS [Severe Acute Respiratory Syndrome] a couple of years ago that we could contain a viral outbreak. Toronto proved that ... they were able to contain it - same thing in Hong Kong. ... We've learned that we can, if we have appropriate quarantine and isolation tools, contain an outbreak, because in many of these diseases, ... drugs aren't going to be very useful. We're going to have to limit exposure.... Today we don't have that authority in our state.

If I got a call from CDC [Centers for Disease Control and Prevention] that somebody was coming from Hanoi on an airplane into Anchorage tonight, and they thought this person has avian flu, we would have to try and convince a judge that our general governmental authorities were enough to quarantine that individual. And it's very unclear with current statutes whether a judge would agree.

DR. MANDSAGER pointed out some weaknesses in the current statutes, including inadequate legal authorities, and problems with the virology laboratory in Fairbanks. He then turned to

slide 7 and quickly reviewed past outbreaks: polio and tuberculosis in the 1940s.

[2:31:18 PM](#)

DR. MANDSAGER explained that slide 8 showed pictures of quarantine and isolation, which he said aren't used very often, but are tools that are important to have in the background. Slide 9 focused on concerns regarding avian flu, on which he commented: "We need to be prepared around the world. There's a lot of work going on in Southeast Asia right now to try and contain this disease, but it appears it is now endemic in birds across Southeast Asia."

DR. MANDSAGER reminded the committee that current statutes date back to territory days in the 1940s and have been updated twice: once to address tuberculosis and once for SARS. The bill would provide statutory framework to support public health missions, services, and roles, he said, it would give clear authority for control of conditions of public health importance, and would create modern due process, rights, and rules in statute. He noted:

If we tried to serve you with a quarantine or isolation order and you thought government had overreached, it's very unclear in current statutes what your rights are, what your appeal rights are, and it would be pretty much up to the judge you were dealing with as to how this would turn out for you as an individual.

DR. MANDSAGER clarified that HB 95 defines the essential public health service and the state's role. He continued:

The bill is the result of several years' worth of work. At the time of [the terrorist attacks of September 11, 2001] there was already some work going on nationally about what should be the emergency powers in a state after that; that work was rapidly accelerated, and part of that work was incorporated a couple of years ago when the legislature updated the Emergency Powers Act here in our state. The Robert Wood Johnson Foundation then, in the last several years, funded something called a [Turning Point Model State Public Health Act] process. ... It developed a model act for states to use to look at their current statutes. ... Last summer ... we started a process of

reviewing our current Alaska statutes against the model Act, and this proposal is a result of that work over the course of the summer and fall. ... This proposal also takes into context [the Alaska State Constitution] ... and other laws.

DR. MANDSAGER noted that slide 13 is an outline of HB 95, and that slide 14 explains the various authorities in the act. Slide 15 focuses on balancing the protection of the public's health against the individual's rights to due process, he said, and slide 16 addresses some of the constitutional constraints.

[2:36:46 PM](#)

DR. MANDSAGER raised the issue of Acquired Immune Deficiency Syndrome (AIDS) and the question of why individuals that have it aren't quarantined or isolated. He explained that people who are quarantined have a contagious disease that is transmissible to somebody through no act of the individual, such as via breathing or eating, whereas to contract AIDS, one ordinarily would have to engage in an unsafe practice. He said, "We in our country have decided that it wouldn't meet the test to quarantine or isolate somebody for a behavior in which there's an individual behavior that contributes to ... [contagion]."

DR. MANDSAGER pointed out that HB 95 would not add new powers, but would only put a statutory basis behind the state's current practices. He turned to slide 17, dealing with the balance between individual rights and the common good, and pointed out:

The model Act includes the fact that it's suggested that states have the ability to impose treatment. [House Bill 95] ... does not have that authority to impose treatment. ... Our thinking is that at the point treatment is a possibility, the individual has a choice: they can choose to be treated and be no longer contagious or possibly contagious, or they can go into quarantine or isolation, and the public's health is protected. The individual has an individual choice to make for themselves, and so the proposal before you does not include a mandated treatment.

Another thing that has come up in previous hearings has been the suggestion that for religious reasons, a person should be able to exempt themselves from screening or testing. ... We don't think that's a good idea ... [because] in an emergency situation where you

have an epidemic that's short-lived, if one or two people were to exempt themselves for religious reasons, it probably doesn't matter. There will be enough other people who will voluntarily agree to testing and we could figure out what's going on, and very shortly the individual's either going to be better, get cured, or, unfortunately, [die].

In a chronic situation, which is much more [of the] Alaska experience with tuberculosis [TB], if somebody's exposed to TB and chooses not to get tested, we then are left with somebody that may or may not have TB, and it seems to me that we would then have the administrative burden of monitoring that person forever and putting that person into quarantine whenever they cough. And that doesn't seem to me to be a reasonable thing to do.

DR. MANDSAGER explained that slide 18 spoke to limitations, and slide 19 again addressed the balance that must be found between individual rights and the common good. He noted that the American Civil Liberties Union (ACLU) had proposed that there shouldn't be any ex parte process in any of the authorities, and he said, "If we give somebody a treatment order and they were to refuse, and we think that this person is a risk to somebody, we want to be able to have somebody else besides a state medical officer ... say to a judge, 'This person needs to be ... isolated or quarantined in order to protect the public health.'"

DR. MANDSAGER explained that if this were to occur on a Thursday or Friday afternoon, this process could be completed quickly via a district judge through an ex parte process; the department can get an order that same day and "the public can be protected that weekend." The person is entitled to a hearing, and yet the public's health is protected over the weekend, he said. If there was no ex parte process, he noted, there would need to be a hearing before there could be a court order, and then the department's only "tool" would be to obtain an emergency order, which isn't as quick a process.

DR. MANDSAGER turned attention to slides 20 and 21, which addressed the proposed amendments. He explained that one of the proposed amendments would add some new standards to the department's ability to acquire and use identifiable health information. He said:

Obviously a concern of the public is: when does government have the right to get to identifiable health information. Last summer, in July, people started coming off cruise ships in Whittier with what looked like gastroenteritis. It looked like it was probably going to be a norovirus (ph) outbreak, which we've had every summer for the last several summers, but by talking to individuals, getting samples and so on, and getting a history, it quickly became apparent that this was an "oyster story". And it turned out that what we had was an organism called *Vibrio parahaemolyticus* both in Prince William Sound and in Kachemak Bay, [that] had never been cultured north of 61 degrees North latitude before anywhere in the world, and it wasn't thought that you had to have a process in place before oysters went to market to assure their safety.

A lot of people got sick. We would [have] never ... known it if we hadn't been able to, one, do an outbreak investigation and, two, be able to go into identifiable health information. Now the report that comes out the other side, that is used for policy that DEC is implementing for this coming summer's oyster season, has no identifiable health information; people's ... identifiers are stripped off of it and we have a report that has numbers of people who got sick and where they got sick and what farms were involved and that kind of thing. But that's an example of the kind of work and the balance that's important in public health that we be able to do.

DR. MANDSAGER shared another anecdote:

[There are] several villages up on one river in the Interior that all construction was stopped last summer because asbestos was found in the gravel. So there are no standards to know how much of a risk is asbestos in gravel for outdoor construction - what kind of protection is necessary, can you use that gravel. So we've been working with ... those villages over the last six months to try and figure out a plan so [the Department of Transportation (DOT)] and others can resume construction this coming summer. ... [We] have looked at x-rays of everybody over age 50 who's been willing to give us their x-rays, and have sent those x-rays to an outside expert that's an expert in

asbestosis. And it's not reported yet, but unofficially I can tell you about 5 percent of the people over age 50 have signs of asbestosis in those villages. So now we need to go back to those individuals, get a work history, ... and try and figure out a protection plan for those villages as to how they're going to do construction.

DR. MANDSAGER pointed out that the DHSS and the DEC have been working in partnership with Native organizations and people in the coastal villages to look at mercury levels in people and in fish. He noted that the departments have issued policy statements to say that from the data they have, it is safe to eat fish in Alaska because the mercury levels are very low. He said, "If we ... aren't able to do that kind of work, we can't contribute to that kind of policy discussion." He then related a story from last fall in which the citizens of Kivalina had their blood tested for possible lead contamination. He concluded: "Those are examples of ... where we work in the background to contribute to community discussion. ... My hope is, by the time the legislature goes home in May, Alaska isn't the only state in the country ... without quarantine and isolation authority."

[2:48:05 PM](#)

REPRESENTATIVE DAHLSTROM asked Dr. Mandsager to address the issue of monitoring water standards, and the fact that the state only has one medical examiner. She commented that she is concerned about the rights and responsibilities of an employer while someone is in isolation, as well as the potential liability that a person would face if he/she chose not to go into isolation. She also asked for clarification regarding who would take responsibility for children if both parents were in isolation. She commented that it would be fine to address these concerns [at the bill's next hearing].

REPRESENTATIVE GARA relayed his concern that the statute will "allow the state to quarantine people we don't intend to quarantine", such as people with AIDS. He said that he was not comfortable with the argument that the committee shouldn't worry about the language because the courts wouldn't enforce it that far; he stated that he wanted the language to exclude those diseases that [the committee] doesn't want the law to apply to. He pointed out that the bill says that the department may quarantine people in their own home; he said that if people were willing to be quarantined in their own home, that should be

their absolute right and the state shouldn't have the discretion to quarantine them somewhere else.

[2:51:21 PM](#)

PATRICIA SENNER, Chair, Legislative Committee, Alaska Nurses Association (AaNA), relayed that since [the terrorist attacks of September 11, 2001] and the SARS outbreak in Asia, the Association has been involved in advocating for better disaster-disease outbreak planning. She commented:

We were very pleased the Department of Health and Social Services has taken steps in strengthening their legal authority to respond to these types of public health emergencies. It is imperative that the state's health authorities have in place a mechanism to respond quickly to an infectious disease outbreak. We have read this bill from two perspectives: that of the health care provider and that of the affected individuals. We feel that this bill adequately addresses the needs of both these [perspectives], with a few concerns. Our first concern has to do with [proposed AS 18.15.387 on page 15, line 19], which refers to being able to quarantine and isolate only due to disease outbreaks. There's also a mention in there ... of decontamination efforts.

We have suggested to the department that they expand this section to refer to situations where individuals are exposed to highly toxic substances that might be transmitted from one individual to another. In this latter case, such as an incident where individuals are exposed to radioactive materials, the department may want to quarantine or isolate individuals, just as they would in the case of a disease outbreak. Now, the department has come back to us and said, "Well that's under DEC," but I think in a crisis situation, the local officials are going to grab on [to] whoever's there, and if the health department is the one that's there, I'd rather have duplicate lines of authority and not just [rely] on one agency for that.

MS. SENNER continued:

[Proposed AS 18.15.360 on page 8, line 23] states, "The department may request information from and inspect health care records maintained by health care

providers that identify individuals or characteristics of individuals with reportable diseases or other conditions of public health importance". ... This section probably concerns us the most because of experiences of health care providers in other states where public health officials have been asking and requesting large numbers of private health care records on individuals, and it seems to be mostly to advance their own personal political status and not really for public health purposes. We don't have questions about the current people in place in the health department, but certainly because there's a lot of concern in the health care community as a whole about what's going on in other states, we would like ... the criteria for this to be spelled out as much as possible.

REPRESENTATIVE GRUENBERG asked Ms. Senner if she had read the packet of proposed amendments.

MS. SENNER replied that she had seen an earlier amendment.

REPRESENTATIVE GRUENBERG asked Ms. Senner if she supported the amendment labeled [24-GH1002\G.1, Mischel, 3/3/05], which read:

Page 8, line 29, following "information":  
Insert "under this section"

Page 8, following line 31:  
Insert a new section to read:  
**"Sec. 18.15.362. Acquisition and use of identifiable health information; public health purpose.** The department may acquire and use identifiable health information collected under AS 18.15.355 - 18.15.390 only if the  
(1) acquisition and use of the information relates directly to a public health purpose;  
(2) acquisition and use of the information is reasonably likely to contribute to the achievement of a public health purpose; and  
(3) public health purpose cannot otherwise be achieved at least as well with nonidentifiable health information."

Page 20, following line 24:  
Insert a new paragraph to read:

"(18) "public health purpose" means the prevention, control, or amelioration of a condition of public health importance, including an analysis or evaluation of a condition of public health importance and an evaluation of a public health program;"

Renumber the following paragraphs accordingly.

REPRESENTATIVE GRUENBERG also asked if Ms. Senner would draft an amendment for [proposed AS 18.15.387].

MS. SENNER, in referring to the amendment labeled G.1, pointed out the phrase "public health purpose" [page 1, line 9] and said that she would add a few more adjectives to it.

CHAIR McGUIRE requested that Ms. Senner submit her preferred changes in writing.

MS. SENNER commented:

There is also a proposed amendment for [proposed AS 18.15.385, page 11, line 16] about the right of the individual to refuse treatment. ... As nurses, we deal a lot with individuals that don't want to take responsibilities for their personal acts. ... So we had recommended to the department ... that they add a qualifier, and I think that's one of your amendments to this section, that if an individual does refuse treatment, then they also need to take on the responsibility of taking those measures to prevent the transmission of whatever infectious disease they are exposed to. And the department has added in there that they should go into quarantine or isolation at their own expense. So we would support that amendment.

REPRESENTATIVE GRUENBERG commented that there were two amendments that refer to page 11 of HB 95; he asked Ms. Senner if she was referring to both of those amendments.

MS. SENNER replied that she was referring to the amendment labeled [24-GH1002\G.5, Mischel, 3/3/05], which read:

Page 11, line 20, following "treatment.":

Insert "However, an individual who exercises the right to refuse treatment under this subsection is responsible for paying all costs incurred by the state

in seeking and implementing a quarantine or isolation order made necessary by a refusal of treatment by the individual. The department shall notify an individual who refuses treatment under this subsection that the refusal may result in an indefinite period of quarantine or isolation and that the individual will be responsible for payment of the costs of the quarantine or isolation."

REPRESENTATIVE GRUENBERG asked for further clarification.

MS. SENNER commented that she would look over the amendments and get back to the committee later.

CHAIR McGUIRE indicated that HB 95 would be held over.

[2:59:20 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:59 PM.