

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 15, 2005

8:10 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 155(JUD)

"An Act relating to funding for youth courts; and relating to separately accounting for fines imposed on and collected from defendants."

MOVED CSHB 155(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 91 am

"An Act relating to indecent exposure."

MOVED HB 91 am OUT OF COMMITTEE

SENATE BILL NO. 86

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 159

"An Act relating to indecent exposure."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 155

SHORT TITLE: YOUTH COURTS AND CRIMINAL FINES

SPONSOR(s): REPRESENTATIVE(s) SAMUELS

02/16/05 (H) READ THE FIRST TIME - REFERRALS  
02/16/05 (H) JUD, FIN  
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120  
03/02/05 (H) Moved CSHB 155(JUD) Out of Committee  
03/02/05 (H) MINUTE(JUD)  
03/03/05 (H) JUD RPT CS(JUD) NT 5DP  
03/03/05 (H) DP: ANDERSON, DAHLSTROM, GARA,  
GRUENBERG, MCGUIRE  
03/14/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/14/05 (H) Heard & Held  
03/14/05 (H) MINUTE(FIN)  
03/15/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/15/05 (H) Moved CSHB 155(JUD) Out of Committee  
03/15/05 (H) MINUTE(FIN)  
03/16/05 (H) FIN RPT CS(JUD) NT 4DP 4NR  
03/16/05 (H) DP: HAWKER, CROFT, WEYHRAUCH, FOSTER;  
03/16/05 (H) NR: STOLTZE, KELLY, MEYER, CHENAULT  
03/21/05 (H) TRANSMITTED TO (S)  
03/21/05 (H) VERSION: CSHB 155(JUD)  
03/22/05 (S) READ THE FIRST TIME - REFERRALS  
03/22/05 (S) JUD, FIN  
04/15/05 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 91

SHORT TITLE: INDECENT EXPOSURE TO MINORS

SPONSOR(s): REPRESENTATIVE(s) COGHILL

01/21/05 (H) READ THE FIRST TIME - REFERRALS  
01/21/05 (H) JUD, FIN  
03/23/05 (H) JUD AT 8:00 AM CAPITOL 120  
03/23/05 (H) Moved CSHB 91(JUD) Out of Committee  
03/23/05 (H) MINUTE(JUD)  
03/24/05 (H) JUD RPT 7DP  
03/24/05 (H) DP: GRUENBERG, KOTT, ANDERSON,  
DAHLSTROM, COGHILL, GARA, MCGUIRE  
04/11/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/11/05 (H) Moved Out of Committee  
04/11/05 (H) MINUTE(FIN)  
04/12/05 (H) FIN RPT 5DP 2NR  
04/12/05 (H) DP: HAWKER, FOSTER, MOSES, MEYER,  
CHENAULT;  
04/12/05 (H) NR: STOLTZE, KELLY  
04/13/05 (H) MOVED TO BOTTOM OF CALENDAR  
04/13/05 (H) TRANSMITTED TO (S)  
04/13/05 (H) VERSION: HB 91 AM

04/14/05 (S) READ THE FIRST TIME - REFERRALS  
04/14/05 (S) JUD, FIN  
04/15/05 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 86

SHORT TITLE: STATE/MUNI LIABILITY FOR ATTORNEY FEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/31/05 (S) READ THE FIRST TIME - REFERRALS  
01/31/05 (S) CRA, JUD  
02/09/05 (S) CRA AT 1:30 PM BELTZ 211  
02/09/05 (S) Heard & Held  
02/09/05 (S) MINUTE(CRA)  
04/04/05 (S) CRA AT 1:30 PM BELTZ 211  
04/04/05 (S) Moved CSSB 86(CRA) Out of Committee  
04/04/05 (S) MINUTE(CRA)  
04/05/05 (S) CRA RPT CS 1DP 2DNP 2NR  
04/05/05 (S) NR: STEVENS G, STEDMAN  
04/05/05 (S) DP: WAGONER  
04/05/05 (S) DNP: ELLIS, KOOKESH  
04/15/05 (S) JUD AT 8:00 AM BUTROVICH 205

**WITNESS REGISTER**

Representative Ralph Samuels  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 155

Ms. Virginia Espenshade, Executive Director  
Kenai Peninsula Youth Courts

**POSITION STATEMENT:** Testified in support of HB 155

Mr. Jonathan Lack, Board of Directors'  
Anchorage Youth Court

**POSITION STATEMENT:** Testified in support of HB 155

Mr. Doug Wooliver, Administrative Attorney  
Alaska Court System  
Office of the Administrative Director  
820 West 4<sup>th</sup> Ave  
Anchorage, AK 99501

**POSITION STATEMENT:** Testified in support of HB 155

Karen Lidster  
Staff to Representative John Coghill  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 91

Mr. Craig Tillery, Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Introduced SB 86

Ms. Allison Mendel, Attorney  
431 W 7<sup>th</sup> Ave  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition of SB 86

Mr. Michael MacLeod-Ball, Attorney  
Alaska Civil Liberties Union  
PO Box 201844  
Anchorage, AK 99520

**POSITION STATEMENT:** Testified in opposition of SB 86

#### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:10:19 AM](#). Present were Senators French, Huggins, Therriault, and Chair Seekins.

#### **CSHB 155(JUD)-YOUTH COURTS AND CRIMINAL FINES**

CHAIR RALPH SEEKINS announced HB 155 to be up for consideration.

[8:11:03 AM](#)

REPRESENTATIVE RALPH SAMUELS introduced HB 155, which would give the Legislature the authority to appropriate up to 25 percent of the fines collected by the court system to the youth courts. Youth courts help young offenders by intervening early to set them on the right track and work to deter them from entering the corrections system. The Anchorage Youth Court is the oldest of the 14 operating youth courts in Alaska. In the first two quarters of the current fiscal year there have been 471 youth offenders referred to the programs and almost 9,000 hours of community service has been doled out.

[8:12:23 AM](#)

REPRESENTATIVE SAMUELS added a youth court is a court system for young people run by young people. Were HB 155 to pass it would provide the accounting mechanism for youth courts.

Senator Gretchen Guess joined the committee.

[8:14:18 AM](#)

MS. VIRGINIA ESPENSHADE, executive director, Kenai Peninsula Youth Courts, testified in support of HB 155. Funding for youth court programs has always been a guessing game. The Division of Juvenile Justice has always supported youth courts because they provide a crucial service to their different probation offices across the state. HB 155 would give the courts sustainability and the ability to provide direct service. Last year Kenai courts heard 146 cases. The youth courts also handle underage drinkers.

[8:15:40 AM](#)

MR. JONATHAN LACK, member, board of directors', Anchorage Youth Court, testified in support of HB 155. He said the people who run the youth courts do an excellent job. He offered to answer questions.

[8:17:24 AM](#)

SENATOR GENE THERRIAULT asked Mr. Doug Wooliver to explain Section 3 and Section 4.

MR. DOUG WOOLIVER, administrative attorney, Alaska Court System, explained there are two different computer systems, one breaks down individual fines and the other lumps fines with forfeitures. The Section 3 transition deals with getting the system to operate on one computer accounting system so they can report to the Department of Revenue the exact breakdown of fines.

[8:20:50 AM](#)

SENATOR THERRIAULT moved CSHB 155(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

Chair Seekins announced a brief recess at [8:21:03 AM](#).

Chair Seekins reconvened the meeting at [8:23:01 AM](#).

**HB 91 am -INDECENT EXPOSURE TO MINORS**

[8:23:18 AM](#)

CHAIR RALPH SEEKINS announced HB 91 to be up for consideration.

MS. KAREN LIDSTER, staff to Representative John Coghill, introduced HB 91. She testified several young girls in Delta Junction were subjected to the sight of a man exposing himself in the parking lot of a local store. He was apprehended and arrested. In a background check it was reported he had a prior

conviction of a similar incident in Arizona. In the Delta Junction incident he was charged with three felonies but because of the circumstances he could not be convicted of a felony. He plea-bargained down to one misdemeanor. HB 91 would make repeat convictions of indecent exposure within the observation of a person under the age of 16 a felony.

[8:26:02 AM](#)

MS. DEBORAH JOSLIN testified a man in Delta Junction exposed himself to her children terrifying them. He was arrested and found to have a prior conviction of stalking a six year old. He was convicted of a misdemeanor because his hand never touched his private parts. She indicated indecent exposure is treated lightly in Alaska.

[8:29:16 AM](#)

MS. JOSLIN added there was a recent case in Fairbanks of a man exposing himself to children. He was obviously looking for little kids to scare. The man who murdered the nine-year-old girl in Florida had prior convictions of indecent exposure to children. She believes this is a gateway crime and people who seek out small children are capable of larger crimes.

[8:31:05 AM](#)

SENATOR GRETCHEN GUESS asked Ms. Lidster the number of other states or jurisdictions that have similar legislation. She wondered whether Alaska laws paralleled enough other laws in order to be used in connection.

MS. LIDSTER said she did not know but would get back to the committee with the information requested.

CHAIR SEEKINS said HB 91 would broadly construe what the elements might be and give judiciary discretion.

SENATOR HOLLIS FRENCH commented the elements would be narrowly construed. It is a current problem with driving while intoxicated (DWI) and other crimes from out of state that don't match up perfectly.

SENATOR GENE THERRIAULT read AS 11.41.460: "An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have."

SENATOR FRENCH offered that is the predicate for making it a felony.

MS. LIDSTER agreed.

[8:34:09 AM](#)

SENATOR FRENCH commented incidents such as this do not leave the minds of the victims for decades, if ever.

SENATOR THERRIAULT moved HB 91 AM from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

Chair Seekins announced a brief recess at [8:35:02 AM](#).

Chair Seekins reconvened the meeting at [8:40:45 AM](#).

**SB 86-STATE/MUNI LIABILITY FOR ATTORNEY FEES**

[8:40:45 AM](#)

CHAIR RALPH SEEKINS announced SB 86 to be up for consideration. He moved Version \G as the working document. Hearing no objections, the motion carried.

MR. CRAIG TILLERY, assistant attorney general, Department of Law (DOL) introduced the bill. SB 86 would prevent enhanced fee awards against the state or municipalities that are not authorized by statute, but leave those governments open to the standard partial fee awards called for in the Civil Rule 82 fee schedule. Enhanced fee awards cost the state approximately \$600,000 per year. SB 86 provides that, as a matter of sovereign immunity, states and municipalities are not liable for attorney's fees that are in excess of certain percentages.

[8:42:24 AM](#)

MR. TILLERY said the Governor's administration believes it is the Legislature's role to determine what litigation is to be subsidized through the use of public funds.

Section 1 states clearly that were SB 86 enacted into law, it would neither preclude nor repeal specific statutes authorizing the award of costs or fees in particular situations. Section 2 of the bill would create a new provision in the chapter of AS 09 devoted to immunities. Section 3 would make the bill applicable only to civil actions or appeals initiated after it takes effect.

[8:44:28 AM](#)

SENATOR GRETCHEN GUESS asked the definition of attorney's fee.

MR. TILLERY explained attorney's fees are the expenditures of time and the costs of travel and depositions.

SENATOR HOLLIS FRENCH asked whether the state has to pay full fees when the public interest litigant loses.

MR. TILLERY answered no.

[8:46:32 AM](#)

CHAIR SEEKINS clarified if any element of the public interest litigant's case is later enacted by legislation, they can claim the attorney's fees.

MR. TILLERY explained that would be the catalyst theory they could seek it under. If they win any part of the case, they get full fees.

CHAIR SEEKINS said it is a complex structure.

SENATOR FRENCH clarified when the public litigant loses they receive no restitution.

[8:48:40 AM](#)

SENATOR FRENCH added when the public litigant wins on all claims they are entitled to full fees. He asked whether the government has to pay to a group when a public interest litigant wins.

MR. TILLERY said yes.

SENATOR FRENCH asked whether the group receives cash or whether it is a public policy that costs the government money.

MR. TILLERY answered it is generally a public policy. The public interest litigant can't have an overriding economic incentive involved.

SENATOR FRENCH stated the public interest litigate, if he wins, gets paid for his work. The public interest litigant doesn't enrich himself.

[8:50:16 AM](#)

MR. TILLERY responded the public interest litigant works generally for public policy purposes.

SENATOR FRENCH asked Mr. Tillery to give an example of when a public litigant could enrich himself.

MR. TILLERY answered a person could have some economic incentive where the case could have larger consequences.

SENATOR FRENCH asked whether SB 86 embodies a court rule change.

MR. TILLERY responded it does not.

[8:52:01 AM](#)

SENATOR GENE THERRIAULT asked whether the attorney fees were calculated on a standard hourly rate.

MR. TILLERY responded they were calculated at the hourly rate of the attorney. In the instance where an attorney does not have an hourly rate, they get a standard rate of \$150 an hour.

SENATOR THERRIAULT speculated attorneys' work under a salary knowing the hourly rate the court would pay covers more than their salary and so the entity they represent does make money.

MR. TILLERY stated correct. The money would go to the entity and then it is between the entity and the public interest law firm. He stated there is potential for profit.

[8:53:45 AM](#)

SENATOR THERRIAULT asked Mr. Tillery whether he thought the Alaska Supreme Court was extremely liberal in construing due process.

MR. TILLERY said the Alaska Supreme Court has zealously protected due process rights.

SENATOR GUESS asked Mr. Tillery to explain whether SB 86 would save money. She also asked him the reason for zero fiscal notes.

MR. TILLERY answered the zero fiscal note from the DOL is because they don't pay the money, it comes out of the general fund.

SENATOR GUESS stated it was odd that testimony claimed SB 86 would save the state money and yet there are no fiscal notes to support the claim.

[8:55:48 AM](#)

SENATOR GUESS inquired as to why the state does not proportion attorney fees but is instead attempting to limit them all.

MR. TILLERY answered SB 86 has proportion in it. Section 2 breaks it down. The Legislature needs to make the decision as to where the attorney fees come from. He said SB 86 treats apportionment but it is really about restoring to the Legislature the power to control when public funds are going to be used to subsidize litigation.

[9:00:37 AM](#)

SENATOR FRENCH explained the chances are a person would sue for a money reason; for example, wrongful discharge. If they win, they are awarded 20 percent of the attorney's fees as well as the monetary damage claimed. Out of the awarded money, the person would pay the balance of the attorney's fees. The difference in these situations is there typically isn't any money involved, its on principle or enforcement of the law. There is no deep economic stake in the case.

[9:02:18 AM](#)

SENATOR THERRIault commented in the instance where there are multiple allegations, the court only has to find one instance of violation and the public interest litigant would win the entire case.

SENATOR GUESS asked the reason public interest litigant cases aren't structured to award fees that are proportionate to the win. She said it seems to be better public policy to do some type of apportionment.

[9:04:20 AM](#)

CHAIR SEEKINS said there is also a provision under the rules where a defendant can prove the case is frivolous and petition the court for 100 percent of the attorney's fees. When a public interest litigant brings a frivolous case against the state or municipality, the state or municipality has to defend it yet can never recover the fees. He said the people's money is being spent to defend against someone else's frivolity.

[9:05:50 AM](#)

SENATOR FRENCH asserted there is a protection and that is there must be a finding that the individual who brought the suit was seeking to vindicate strong public policy.

SENATOR CHARLIE HUGGINS asked Mr. Tillery to give an example of litigation brought against the state by a public interest law firm.

MR. TILLERY answered there was litigation over HB 145 two years ago.

SENATOR HUGGINS asked the timeframe of resolution.

MR. TILLERY answered several years from start to finish.

SENATOR HUGGINS asked the issue.

MR. TILLERY answered it was the constitutionality of HB 145.

[9:08:10 AM](#)

MR. TILLERY added another example is a number of lawsuits against the Prince William Sound contingency plans where the state is defending the Department of Economic Development's contingency plans. Judges have awarded up to \$250 an hour for attorney's costs. He said the point of SB 86 is if the people are going to expend their money in this manner, the Legislature should make that decision.

SENATOR HUGGINS commented SB 86 potentially has a restraining effect on spending the people's money.

SENATOR FRENCH clarified it would be the laws that Alaska has passed that are being vindicated. The state sets out rules and if someone finds the state has broken it's own rules, the state is forced to pay.

[9:10:42 AM](#)

CHAIR SEEKINS suggested many public interest lawsuits are brought for philosophical reasons such as water quality issues, watershed issues, and environmental impact issues. Groups that have a philosophical interest in stopping development bring lawsuits. The court rule the committee is looking at is not a rule established by the Legislature.

[9:15:28 AM](#)

SENATOR FRENCH asserted it is important for people to be able to challenge the government to abide by it's own rules. He agreed with Senator Guess's suggestion to modify the attorney fee schedules.

[9:17:14 AM](#)

CHAIR SEEKINS responded many organizations that bring public interest lawsuits are multi-million dollar corporations.

SENATOR GUESS asked Mr. Tillery the reason the administration isn't addressing the compensation issues and the attorney fee schedule issues.

[9:20:09 AM](#)

MR. TILLERY said the point of SB 86 is an attempt to protect the state's fiscal purse and also to restore to the Legislature the control over which type of litigation it wishes to subsidize with public monies.

SENATOR HUGGINS speculated the majority of Alaskans are supportive of drilling for oil in the Alaska National Wildlife Refuge (ANWR) and are supportive of a natural gas pipeline. He expressed concern over public interest litigation in those areas.

[9:22:28 AM](#)

CHAIR SEEKINS referred to Page 2, line 9 and asked Mr. Tillery to give an example of an award by a court of a sanction.

MR. TILLERY explained the court might find the actions of an attorney were out of bounds.

[9:24:22 AM](#)

SENATOR GUESS asked Mr. Tillery to describe a sanction-able action of conduct in a case.

MR. TILLERY explained the most typical sanction would be where somebody refuses to provide discovery or goes against court rules.

[9:26:09 AM](#)

MICHAEL MCCLOUD-BALL, executive director, Alaska Civil Liberties Union (ACLU), testified the ACLU opposes SB 86 on the grounds that it will to widen the legal advantage currently held by governmental litigants over private individuals. The typical plaintiff in a public interest lawsuit is an individual, a non-profit agency, or a charitable organization. The typical defendant is a governmental entity. The typical suit is a party with limited financial resources who needs to hire outside counsel against a governmental entity with access to substantially greater financial and legal resources. The dispute is usually over principle and rarely over money.

[9:27:09 AM](#)

The public interest litigant only receives reimbursement if they are acting in the public interest and if they are successful in

showing that the government acted wrongly. The government gets its subsidies from the taxpayers whether it wins or not. The individual within the government who caused the government to violate the victim's rights is not made to reimburse the taxpayers for the internal cost of running the government in a manner that violates the public interest. SB 86 will discourage normal everyday people from trying to make a difference when they see the government failing to do its job.

[9:29:40 AM](#)

MR. MACLEOD-BALL continued most of the actions are brought by relatively small organizations. One thing missing from the discussion is the amount of overhead involved in the public interest law firms, not just the attorney's fees.

[9:31:00 AM](#)

MR. MACLEOD-BALL added when a public interest litigant brings a suit in a frivolous manner, they are subject to the same penalty as any other party.

[9:31:54 AM](#)

CHAIR SEEKINS asked Mr. Ball to give some examples of public interest litigation brought by the poor, uneducated, or elderly public.

MR. MACLEOD-BALL offered to prepare a list and submit it to the committee.

CHAIR SEEKINS asked Mr. Ball the reason SB 86 would make it harder for the public to bring lawsuits against the state.

MR. MACLEOD-BALL explained when a person is fighting over something other than money; it is hard to find legal representation. A wealthy individual has the advantage over an average citizen.

[9:35:47 AM](#)

MS. ALLISON MENDEL, attorney, testified in opposition of SB 86. She said access to justice is almost synonymous with access to lawyers. There is no reasonable possibility of litigating any complex issue without the help of an attorney. The private individual has to have access to a lawyer but no lawyer will take a case where there is no prospect of being paid unless it is pro-bono. If the government adopts an illegal policy the only way a private citizen will be able to challenge it is if the private individual can find legal counsel. The people who bring these lawsuits are not exclusively public interest law firms.

[9:37:52 AM](#)

People from all parts of the political spectrum have brought public interest lawsuits and have won them justifiably. The only people who receive payment are those who win in their claim against the government.

[9:39:38 AM](#)

MS. MENDEL continued there has been much testimony about people winning insignificant parts of a lawsuit and receiving large sums for fees, which is unrealistic. The court always has the discretion to pare down the fees.

[9:41:14 AM](#)

CHAIR SEEKINS asked for an example of a public interest case where the litigants received nothing.

MS. MENDEL said cases such as that would not be reported.

[9:43:37 AM](#)

CHAIR SEEKINS closed public testimony on SB 86. He recessed the meeting subject to the call of the chair at [9:48:21 AM](#).