

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

April 12, 2005

3:39 p.m.

**MEMBERS PRESENT**

Senator Gene Therriault, Chair  
Senator Thomas Wagoner, Vice Chair  
Senator Charlie Huggins  
Senator Bettye Davis  
Senator Kim Elton

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 152

"An Act making a special appropriation for a survey to review pay differentials; and providing for an effective date."

MOVED CSSB 152(STA) OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 8

Encouraging the Regulatory Commission of Alaska expeditiously to complete its investigation of the Cook Inlet Gas Gathering System.

MOVED SCR 8 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 95(RLS) am

"An Act relating to the duties of the Department of Health and Social Services as those duties pertain to public health and public health emergencies and disasters; relating to medical treatment, information, isolation and quarantine for the prevention and management of conditions of public health importance; relating to duties of the public defender and office of public advocacy regarding public health emergencies and disasters; relating to liability for actions arising from public health procedures; making conforming amendments; relating to the treatment and transportation of dead bodies; amending Rules 4, 7, 8, 38, 40, 65, 72, and 77, Alaska Rules of Civil Procedure; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 152

SHORT TITLE: APPROP: COST-OF-LIVING SURVEY

SPONSOR(s): SENATOR(s) WAGONER

03/24/05 (S) READ THE FIRST TIME - REFERRALS  
03/24/05 (S) STA, FIN  
03/31/05 (S) STA AT 3:30 PM BELTZ 211  
03/31/05 (S) Heard & Held  
03/31/05 (S) MINUTE(STA)

BILL: SCR 8

SHORT TITLE: COOK INLET GAS GATHERING SYSTEM COMPLAINT

SPONSOR(s): RESOURCES

04/06/05 (S) READ THE FIRST TIME - REFERRALS  
04/06/05 (S) STA, RES  
04/12/05 (S) STA AT 3:30 PM BELTZ 211

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  
03/04/05 (H) Heard & Held  
03/04/05 (H) MINUTE(JUD)  
03/07/05 (H) JUD AT 1:00 PM CAPITOL 120  
03/07/05 (H) Moved CSHB 95(JUD) Out of Committee  
03/07/05 (H) MINUTE(JUD)  
03/09/05 (H) JUD RPT CS(JUD) NT 1DP 6NR  
03/09/05 (H) DP: ANDERSON;  
03/09/05 (H) NR: GRUENBERG, KOTT, DAHLSTROM,  
COGHILL, GARA, MCGUIRE  
03/31/05 (H) RLS AT 9:00 AM FAHRENKAMP 203  
03/31/05 (H) Moved CSHB 95(RLS) Out of Committee  
03/31/05 (H) MINUTE(RLS)

04/01/05 (H) RLS RPT CS(RLS) NT 3DP 2NR 1AM  
 04/01/05 (H) DP: HARRIS, MCGUIRE, ROKEBERG;  
 04/01/05 (H) NR: COGHILL, KOHRING;  
 04/01/05 (H) AM: BERKOWITZ  
 04/01/05 (H) RETURNED TO RLS COMMITTEE  
 04/05/05 (H) TRANSMITTED TO (S)  
 04/05/05 (H) VERSION: CSHB 95(RLS) AM  
 04/06/05 (S) READ THE FIRST TIME - REFERRALS  
 04/06/05 (S) HES, JUD  
 04/08/05 (S) STA REPLACES HES REFERRAL  
 04/12/05 (S) STA AT 3:30 PM BELTZ 211

**WITNESS REGISTER**

AMY SEITZ,  
 Staff to Senator Wagoner  
 Alaska State Capitol  
 Juneau, AK 99801-1182  
**POSITION STATEMENT:** Presented SB 152 for the sponsor

ART CHANCE, Director  
 Labor Relations  
 Department of Administration  
 PO Box 110200  
 Juneau, AK 99811-0200  
**POSITION STATEMENT:** Answered questions about SB 152

MARY JACKSON,  
 Staff to Senator Wagoner  
 Alaska State Capitol  
 Juneau, AK 99801-1182  
**POSITION STATEMENT:** Presented SCR 8 for the sponsor

KATE GIARD, Chair  
 Regulatory Commission of Alaska  
 701 W Eighth Ave., Suite 300  
 Anchorage, AK 99501  
**POSITION STATEMENT:** Supports SCR 8

DAN BRANCH,  
 Senior Assistant Attorney General  
 Department of Law  
 PO Box 110300  
 Juneau, AK 99811-0300  
**POSITION STATEMENT:** Answered questions about CSHB 95(RLS)am

DR. RICHARD MANDSAGER, Director

Division of Public Health  
Department of Health &  
Social Services  
PO Box 110601  
Juneau, AK 99801-0601

**POSITION STATEMENT:** Discussed House amendments to CSHB  
95(RLS)am

MR. MICHAEL MACLEOD-BALL, Executive Director  
Alaska Civil Liberties Union (AkCLU)  
Anchorage, AK

**POSITION STATEMENT:** Discussed AkCLU's concerns with CSHB  
95(RLS)am

#### **ACTION NARRATIVE**

**CHAIR GENE THERRIAULT** called the Senate State Affairs Standing Committee meeting to order at [3:39:08 PM](#). Present were Senators Davis, Huggins, Wagoner and Therriault. Senator Elton arrived momentarily.

#### **SB 152-APPROP: COST-OF-LIVING SURVEY**

CHAIR GENE THERRIAULT announced SB 152 to be the first order of business. He recognized Ms. Seitz and noted the proposed amendment.

AMY SEITZ, Staff to Senator Wagoner, reminded members that the issue of using Seattle as the out-of-state reference for the cost-of-living survey was discussed at a previous hearing on the bill. The discussion centered on the fact that the cost-of-living in Seattle has increased so much that Alaska state employees living in Seattle would get a higher pay increase than in-state employees. The proposed amendment would change the location for the cost-of-living survey to the greater Puget Sound area.

SENATOR THOMAS WAGONER motioned to adopt Amendment 1, labeled A.1.

CHAIR THERRIAULT announced that without objection, the motion carried.

[3:41:35 PM](#)

MS. SEITZ told members the cost of the study was also discussed and most members feel \$500,000 is reasonable.

CHAIR THERRIAULT said he anticipates that the Senate Finance Committee would wrap the cost into a larger appropriation bill and consider the amount at that time.

SENATOR WAGONER asked that the Administration speak to the cost of the study and how the findings would be implemented.

ART CHANCE, Director, Labor Relations, Department of Administration, felt confident the state could get a competent survey for \$500,000. He said he does not believe the implementation costs of the 1984 study were ever truly determined. Many of the findings were implemented through union negotiations and arbitrations - the process of implementation created considerable controversy. He said unless the legislation specifically says otherwise, the study's findings would just count as a suggestion for employees whose wages are established by collective bargaining. He further stated:

To the extent that we still recognize it, and we've sort of changed the way we pay those people, their contracts still reflect the old federal 25 percent differential for cost of living - never able to successfully truly change that. We were able to bargain and adjudicate implementation with all the other represented employees the results of the '84 study. It wasn't until ... the '89 round of bargaining that we actually got it all implemented, applying to all other represented employees of the executive branch. To make it apply to non-union employees, you would have to enact it in statute as a part of the 39.27.011 state pay plan.

The Administration has taken no position on this aspect of it but I can tell you that I do not relish the idea of having to bargain all of this into all of our contracts and if I were to have to bargain that, I would be over here asking you for money for the next round of bargaining to support that bargaining endeavor, particularly with those units that have interest arbitration.

For those of you who aren't intimate to the collective bargaining process, those employees who cannot strike if we do not agree with them voluntarily, they submit their proposals to an arbitrator, the state submits its and the arbitrator decides. To get such a general

state study into those contracts I would probably have to hire the contractor and maybe some other economist to come in and testify to that interest arbitrator and convince them - have the arbitrators agree with the state that the results of such a study are, in fact, the differentials that should be applied to those contracts. That's particularly important with the state troopers, since they are all over the state and tend to be in some of the higher cost areas. I'll guarantee you if a new study were to reflect a lower differential to that which they currently have, they would resist it vehemently. It's somewhat important to some institution employees. We do have correctional facilities and correctional officers, which are class 1 in Nome, Bethel, and there's long been agitation for a geographic differential for Spring Creek.

So these are all things that we would have to contest either through a negotiated agreement or through interest arbitration. And then the legislature to apply it to non-covered employees would have to enact it in statute and the results of the '84, despite several attempts, have never been enacted into statute.

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SENATOR WAGONER asked what would happen if the federal cost-of-living allowance (COLA) goes away, particularly with marine highway employees.

MR. CHANCE responded marine highway employees have had collective bargaining long before PERA, perhaps since 1962.

SENATOR ELTON asked if this bill obligates the DOA to contract for a study sometime in the next fiscal year. He anticipated the contract obligation to be fulfilled 18 to 24 months from now.

MR. CHANCE said it could be sooner. He thought an RFP could be out on the street by September. He thought most of the survey could be completed in that fiscal year but assumed the remote site and statistical data would be done in the second fiscal year. He noted the Division of Personnel has a good research section so it would not be starting from scratch.

SENATOR KIM ELTON said it appears the report will go to the executive branch and not to the legislature.

CHAIR THERRIAULT said the money would be appropriated to DOA, which would conduct the study.

SENATOR ELTON asked if DOA would incur any obligation to vet the study.

MR. CHANCE maintained that DOA would have an obligation to manage it. He anticipates the Division of Personnel would make a proposal to the legislature to adopt some sort of state personnel pay plan to replace the current plan. It would be his job to follow the legislative directive to achieve success in bargaining.

[3:52:48 PM](#)

CHAIR THERRIAULT informed members the bill does not have a fiscal note because it is an appropriation bill.

[3:52:55 PM](#)

SENATOR WAGONER motioned to report CSSB 152(STA) and attached fiscal notes from committee with individual recommendations. There being no objection, it was so ordered.

**SCR 8-COOK INLET GAS GATHERING SYSTEM COMPLAINT**

CHAIR GENE THERRIAULT announced SCR 8 to be up for consideration.

MARY JACKSON, Staff to Senator Wagoner, told members that the Senate and House Resources Committees met in Kenai last February and listened to industry make 8 different points. SCR 8 addresses one of those points by encouraging the Regulatory Commission of Alaska (RCA) to complete its investigation of the Cook Inlet Gas Gathering System (CIGGS). The RCA has developed an accelerated review process for the CIGGS and the complaint before it. An RCA commissioner attended the February meeting and spoke about the need to go forward with the complaint. SCR 8 is to be complementary to the RCA's efforts. Furthermore, the Senate Resources Committee chair does not intend to take sides on this issue, she said.

[3:56:24 PM](#)

KATE GIARD, Chair, Regulatory Commission of Alaska, testified via teleconference and told members she appreciates knowing that

the legislature cares enough about an issue to bring forth a resolution. That enables the RCA to keep its eyes on the "bottom line" issues that are important to the state as a whole.

She informed members that she could discuss the guidelines the RCA is using for the case.

[3:57:43 PM](#)

CHAIR THERRIAULT asked Ms. Giard if anything in SCR 8 could be used as justification for either party's argument.

MS. GIARD replied, "As long as I keep within the yellow line, I think you guys are free to wander as you will." Both parties are highly respected and have a large economic impact on Cook Inlet; so when the parties clash the issues can be quite divisive and technical in nature. She believes SCR 8, as drafted, is respectful of the complexity of the issue.

CHAIR THERRIAULT asked if anything about the issue is time sensitive or whether the legislature weighing in would benefit one party over the other.

MS. GIARD replied:

No, because we'll ignore you if we feel that what you're doing is going to put this case in a conflict with due process - respectfully so. But what I hear you saying is that you want us to expeditiously but carefully - and certainly Ms. Jackson's opening statements reiterated that - consider the matter. Don't let it sit. Too much is at stake. We hear you and we feel that ourselves.

SENATOR THOMAS WAGONER thanked Ms. Giard for her candor and desire to bring the matter to a quick conclusion.

SENATOR KIM ELTON asked whether the RCA's definition of "expeditious" is the same as the sponsor's definition.

MS. GIARD said she believes the sponsor means: do a good job, do it fast, don't let it sit, but don't put it in conflict with due process otherwise the RCA will end up in court and the issue will never get resolved.

SENATOR WAGONER suggested that the RCA has adopted a very aggressive schedule, which is in tune with what the resolution requests.

MS. GIARD told members the RCA adopted that schedule in early March as the result of conversations it had earlier in the year on the Kenai, but the RCA has a sense of urgency on the matter as well.

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CHAIR THERRIAULT said the legal counsel to the Legislative Budget and Audit Committee has not expressed concern that this decision would have any future impact on the gas pipeline from the North Slope and spur lines to Southcentral. He asked if any of the issues the RCA is being asked to weigh in on could apply to those lines.

MS. GIARD said she doesn't know what ramifications the final order will have on other gas lines on the North Slope. She said the RCA will make a thoughtful order that addresses in detail the statutory and decision-making process the RCA went through.

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CHAIR THERRIAULT closed public testimony and mentioned the two fiscal notes.

[4:02:52 PM](#)

SENATOR WAGONER motioned to report SCR 8 and two attached fiscal notes from committee with individual recommendations.

CHAIR THERRIAULT announced that without objection, the motion carried.

**CSHB 95(RLS)am-PUBLIC HEALTH DISASTERS/EMERGENCIES**

CHAIR GENE THERRIAULT announced CSHB 95(RLS)am to be up for consideration and informed members it is the House equivalent of SB 75, previously heard by the committee.

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DAN BRANCH, Senior Assistant Attorney General, Department of Law (DOL), said he provides legal representation to the Division of Public Health. He said DOL approves of the many changes that

were made in response to comments expressed by various entities and members of the House Judiciary and House Rules Committees.

CHAIR THERRIAULT reminded members when SB 75 was heard in the Senate State Affairs Committee, members were asked to hold it and await the House version. He asked Dr. Mandsager to bring the committee up to speed on the general issue and then discuss the changes made in the House.

DR. RICHARD MANDSAGER, Director, Division of Public Health, Department of Health and Social Services (DHSS), told members CSHB 95(RLS)am reforms Alaska's public health laws. Alaska is the only state in the country without quarantine authority in the case of a bioterrorism event. Just such an event was the major reason for the bill's introduction and another was to address the Alaska Law Review study in 2000 that found Alaska's public health laws to be antiquated. Most of those laws date to pre-territorial days with a few updates for specific epidemics. In addition to creating a statutory framework to support public health mission services and roles, the bill states clear authority for control and updates the due process provisions.

DR. MANDSAGER said the House made four categories of change to the bill. The first category pertains to the limitation on governmental powers. Clearly identifying those limits has been the focal point of discussion in committees. The second category deals with penalties for state employees for violation of statutory provisions. That was the sole focus of debate on the House floor. The third category is personal responsibility regarding issues raised by Christian Scientists and the AkCLU about both individual responsibility and choice. The fourth category addresses miscellaneous changes.

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DR. MANDSAGER detailed the specific amendments made to the bill as follows. First, the title of the bill was changed to add detail and clarity. Second, the bill was amended to allow claims for damages caused by medical treatment provided by state employees. This issue centered on state liability for a state employee who supervises medical treatment, like any other medical practitioner in the state. The decision was to hold state employees to the same standard of care as other medical practitioners. Third, the bill limits the state's immunity to \$500 per day if it isolates a person with gross negligence or intentionally violates a provision governing quarantine and isolation. The bill originally gave the state total immunity. He

pointed out a state employee can only quarantine an individual without court supervision for a maximum of 72 hours.

SENATOR KIM ELTON asked if state denial of access to legal counsel to a quarantined person would subject the state to the \$500 per day penalty.

MR. BRANCH said that would be a matter for the court to decide because the court would appoint legal counsel for the individual.

DR. MANDSAGER continued to say that the division had lengthy discussions with the AkCLU about the acquisition and use of identifiable health information. The language in the bill limits the division's access to medical information that relates directly to a public health purpose that cannot be achieved at least as well using non-identifiable health information. He said the division can accomplish a lot with non-identifiable health information.

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CHAIR THERRIAULT referred to subsection (2) on page 3 of the bill and asked how damages caused by the failure to establish a quarantine would work.

MR. BRANCH said the main concern of the House members who asked for that change was for an individual to have some recourse if the state fails to provide the rights set out in the statute. He explained if someone gets quarantined on an emergency order and the state fails to notify the court within 48 hours, that person would have recourse to get \$500 per day for that violation. He said the House felt that penalty was necessary to provide the bill with "teeth." The penalty does not apply to the failure to impose or establish quarantine; it applies when quarantine was imposed and an individual feels his/her statutory rights were violated.

CHAIR THERRIAULT clarified that subsection (2) is a limitation.

DR. MANDSAGER continued to say that a further change is that the collection of health information is limited with a higher bar under AS 18.15.355-395 than other limitations. He stated, "We're dealing with personal health problems. We don't want people to be branded with some scarlet letter that they have some bad problem and so on - that we need to achieve a very high standard if we're going to get information under this act."

The bill also says that as soon as the division is finished with medical information, the information must be confidentially expunged immediately. The last two changes pertain to misdemeanor penalties for knowingly disclosing identifiable health information or for knowingly violating a provision related to quarantine and isolation. A compromise worked out on the House floor was that intentional disclosure of information is punishable by a class A misdemeanor. That is consistent with other statutes that pertain to state employee confidentiality requirements.

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SENATOR ELTON asked what would happen if a state employee discloses information and did not know about the confidentiality requirement.

MR. BRANCH said the district attorney wouldn't prosecute such a case because the employee's mental state could not be proven.

SENATOR ELTON remarked ignorance of the law isn't an excuse.

MR. BRANCH responded the words "knowingly" and "intentionally" are terms of art defined in AS 11.81.900. His understanding is that to act knowingly means the employee was aware of the statutory requirement and acted anyway. He offered to discuss the matter further with Senator Elton's staff.

SENATOR ELTON said his concern is that a person who is given the power of quarantine should know the law.

DR. MANDSAGER agreed with Senator Elton that it is the division managers' responsibility to make sure that staff knows the law. He continued describing the next change made by the House, which provides the right to refuse treatment if the individual is willing to take steps to prevent the spread of a communicable disease. The least restrictive alternative would be used whenever possible when isolating or quarantining individuals. "Least restrictive alternative" is defined in the bill. The division's experience is that most of time the state does not have to get a court order to isolate an individual because people tend to voluntarily agree. The division always needs to pursue that route before taking court action.

DR. MANDSAGER said another issue of concern was that quarantines might be imposed on flu victims or people with ordinary

infectious diseases. For that reason, the bill said the illness must pose a significant risk to public health before isolation or quarantine can occur.

SENATOR ELTON pointed out that other provisions of the bill refer to a substantial risk to public health. He asked why "substantial" was used elsewhere.

DR. MANDSAGER noted the word "substantial" remains in two places in the bill. He asked Mr. Branch if that matters from a legal perspective.

CHAIR THERRIault suggested that for consistency the committee should make the change now, otherwise the courts would argue about it for years.

MR. BRANCH said the division worked with Legislative Legal and Research Services to try to get the same term used.

DR. MANDSAGER said the word "substantial" is used on page 13, line 19. That word is linked to risk of transmitting a contagious disease. The word "significant" is used when it poses a significant risk to public health. He again asked Mr. Branch if he thought that makes a difference from a legal standpoint.

MR. BRANCH replied there is justification for using the different terms even though they are similar. He said the statement about discussing the matter with Legislative Legal and Research Services is still accurate. He believes the bill appropriately distinguishes between the two terms.

DR. MANDSAGER said the next change states preference for home quarantine or isolation unless exceptional circumstances exist that would jeopardize public health. The House also requires on page 14 that an affidavit in a court petition must contain specific facts to support allegations. The petition must include all of the elements listed on page 14.

DR. MANDSAGER said the next change removes denial of party status to parents or guardians of a minor in isolation or quarantine proceedings. The next change adds a paragraph that says that a person exposed to hazardous materials that can cause serious illness or injury by transmission to others could be subject to quarantine or isolation. He gave two examples: severe radiation exposure and the Sarin incident in Japan, where people who were exposed to the Sarin gas could expose other people to it when exhaling. The division is also required to submit an

annual report to the legislature on its activities under this statute. Definitions of "least restrictive" and "public health purpose" were added. Indirect court rule amendments were also added to address the court changes. Last, a provision was added to the bill that urges the division to apply for appropriate funding sources related to transforming health care quality through information technology.

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CHAIR THERRIAULT asked Dr. Mandsager which areas of the bill are still contentious.

DR. MANDSAGER said the director of the AkCLU does not feel that the bill goes far enough regarding the standards the division would have to achieve before instituting a quarantine or isolation. The bill has come a long way but he would like it to be more specific.

SENATOR WAGONER asked how this legislation compares to quarantine legislation in other states.

DR. MANDSAGER said quarantine laws vary among the states. Some states have authority that can be enhanced or provide for expedited performance during an emergency. Some states updated their emergency powers after 911. He said if one compares this bill to the model act that was developed, this legislation is more restrictive regarding governmental powers and reflects Alaska's privacy standards. The quarantine and isolation provisions require more steps and court action than the model act.

MR. BRANCH told members Alaska's current statute is unique in that it does not give the division authority to quarantine or isolate for anything but SARS or TB. In general, other states have more authority because it is necessary to deal with bioterrorism.

CHAIR THERRIAULT asked if the enhanced or expedited performance authority that other states have is triggered by a declaration from the executive.

DR. MANDSAGER said that is usually the case, but in some states a commissioner of health has similar authority.

SENATOR ELTON recollected the committee discussed the definition of "condition of public health importance" (page 19, line 23)

because obesity could fall under that definition. He asked whether tightening that definition by using the word "acute" or something that more narrowly defines collection of information was considered.

DR. MANDSAGER said that definition has been discussed and the AkCLU discussed a 2 or 3-tiered system. The division struggled with that question and didn't think it could come up with language inclusive enough to do that. The division feels that definition is balanced by the other tests it must achieve before it can do work in the areas of "condition of public health importance."

CHAIR THERRIAULT asked if the House committees debated how to rein that definition in and just couldn't come up with workable language.

MR. BRANCH said it was addressed but in a different context. Using Senator Elton's example of establishing obesity as an excuse to collect private information, he noted that the language on page 9, lines 10-18, limits the division's ability to collect identifiable information.

DR. MANDSAGER said all of the amendments made in the category of limitations of governmental powers limit the division's power to collect identifiable health information, to quarantine, and to isolate. The amendments reflect the House's attempt to strike a balance rather than change the definition.

MR. BRANCH told members that on page 9 a provision was added to AS 18.15.362, which limits acquisition of information. In conjunction with AS 18.15.365, it is designed to enhance security safeguards.

DR. MANDSAGER pointed out that identifiable information wouldn't be necessary to get obesity data; that data could be obtained with non-identifiable information.

SENATOR ELTON said he was still struggling with the definition and asked that the AkCLU comment.

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CHAIR THERRIAULT asked Mr. Michael MacLeod-Ball to testify.

MICHAEL MACLEOD-BALL, Executive Director, Alaska Civil Liberties Union (AkCLU), opined that this version of the bill is

substantially better than the original version. Although he appreciates the efforts the division has made to accommodate some of the AkCLU's concerns, it still has some concern about the degree of privacy and the amount of information the division needs to do its job and the risks of limiting that information further.

MR. MACLEOD-BALL said the AkCLU continues to be concerned about the following areas. First, the "conditions of public health importance" enforcement provisions require the division to prove that a significant risk to public health exists to maintain its quarantine order on people quarantined against their will. He questioned the enforcement procedure and whether due process would be served if the state acts improperly. Adding the provisions that require the state to prove an individual poses a significant risk to public health helps protect the individual's rights. However, that does not solve the entire problem because the term "significant risk to public health" is not defined. AkCLU's concern is the shift in importance in the two definitions. The court would then decide what "significant risk to public health" means because the bill does not provide that guidance.

The AkCLU suggested including three concepts in the definition: one having to do with the degree of contagion; one having to do with the severity of the health threat; and the third having to do with the means of transmission. He said the division was not willing or able to come up with a workable definition that included the three concepts.

MR. MACLEOD-BALL told members the AkCLU believes the provision regarding access to identifiable health information remains too broad in AS 18.15.362. The AkCLU would like to see a provision included that offers protection against loss of job and loss of housing as a direct result of quarantine or isolation.

MR. MACLEOD-BALL said the ex parte language is still an area of concern because the division could get an order from the court without the presence of or representation for the other party. Because the party would already know about the hearings going forward, the AkCLU doesn't see the need for ex parte proceedings.

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SENATOR ELTON thanked all participants for the effort they expended on the legislation. He then asked Mr. MacLeod-Ball if

he was suggesting that the lack of a definition for "significant public risk" could be a complicating factor because the state could end up in court with a judge who is not a health care professional deciding what constitutes a significant public health risk.

MR. MACLEOD-BALL said he believes it would be preferable that medical experts find the parameters of where the court can operate in this area. From the AkCLU's perspective, it is more of a question of making sure the person with AIDS is not isolated. Without a definition, an activist judge or public health official could use the relative ambiguity of that definition and apply it to circumstances other than what it is intended for. He emphasized that tightening the definition now will prevent ambiguity later.

SENATOR ELTON asked Mr. MacLeod-Ball if he sees anything in the bill that would allow the state to prevent access to legal counsel.

MR. MACLEOD-BALL said he believes the Office of Public Advocacy (OPA) is given authority to represent individuals under both the testing order and the quarantine order section. He said how OPA would do that in remote areas is questionable.

CHAIR THERRIAULT asked Dr. Mandsager how much discussion took place about the possibility of an individual losing a job or housing while in isolation.

DR. MANDSAGER said the division has had a fair amount of discussion with the Department of Law and the AkCLU about that issue. He said the division's primary job is to protect the public's health. The number of days a person can be isolated without court involvement is very limited and the division can only isolate an individual without court involvement in an emergency. Also, if isolation is imposed and a person is unable to work, the question is whether the state should be liable for damages. The judgment to date is that the state should not be liable.

CHAIR THERRIAULT asked about the AkCLU's concern about the loss of housing and whether that should be addressed in this legislation. He questioned whether the issue centers on a person being evicted by a landlord.

MR. MACLEOD-BALL said AkCLU's concern is that discrimination might befall people who are in isolation or quarantine. He said

it might be better to have that issue be the subject of other legislation but this legislation is available now.

CHAIR THERRIAULT said the potential for those problems exist now.

MR. MACLEOD-BALL agreed.

SENATOR ELTON said with regard to the definition of significant public health risk, it makes sense to have some kind of a recipe for the court to follow so that judges make consistent decisions.

DR. MANDSAGER asked Senator Elton if his concern is mostly about the significant risk to public health in the isolation and quarantine section, and not as much about the tests required before the division can collect identifiable health information.

SENATOR ELTON said he is concerned about both but the bigger issue is the quarantine issue.

DR. MANDSAGER asked if the tests for acquisition of identifiable public health information on page 9, lines 13-18, make sense.

SENATOR ELTON replied, "It seems to me that number 3 would be the squishy one. You might have more knowledge about that than a judge would - about what processes otherwise could be used."

DR. MANDSAGER said this bill has a much better definition and better restriction on the collection and use of identifiable health information than the current statute. Although it may not be perfect, the division believes its practices would hold up to scrutiny. He referred to page 13, line 6, and said with regard to isolation and quarantine, the division has not been able to come up with a definition of significant risk to public health yet.

[4:54:18 PM](#)

CHAIR THERRIAULT said he did not intend to move the bill today.

MR. MACLEOD-BALL pointed out the phrase "substantial risk to public health" is on page 14, line 5 and is in the section about allegations that must be included in the petition. He said use of "significant risk to public health" on page 16, line 2 is of most concern to AkCLU because that is what the court needs to find.

CHAIR THERRIAULT asked members if they are satisfied with the explanation that "substantial" is tied to the transmission of a disease on page 13, but it is not tied to transmission on the next page. He suggested that staff discuss with the legal drafters the need to use a consistent phrase.

[4:56:28 PM](#)

CHAIR THERRIAULT stated that the committee would likely take final action on CSHB 95(RLS)am on Thursday.

There being no further business to come before the committee, Chair Therriault adjourned the meeting at [4:56:38 PM](#).