

HOUSE CONCURRENT RESOLUTION NO. 401

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE

Introduced: 11/13/06

Referred:

A RESOLUTION

1 **Relating to legislative powers over same-sex partner employment benefits and urging**
2 **the courts to delay action until the legislature has sufficient time to act in the next**
3 **regular session of the legislature.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** Governor Frank Murkowski has called the Twenty-Fourth Alaska State
6 Legislature into special session November 13, 2006, to consider the subject of employment-
7 related benefits for same-sex partners of state employees and retirees; and

8 **WHEREAS** the convening of the special session follows elections that resulted in the
9 selection of a new governor and the establishment of the membership of the Twenty-Fifth
10 Alaska State Legislature; and

11 **WHEREAS** expansion of employment-related benefits is a critical state policy
12 decision that will result in a need for additional appropriations and that requires legislative
13 action; and

14 **WHEREAS** the timing of the special session prevents the necessary and desirable
15 involvement of the new governor and legislature in this critical state policy decision and

1 related appropriation; and

2 **WHEREAS** a belated special session requires a rushed and politicized review of
3 employee benefits without adequate public participation; and

4 **WHEREAS** the legislature finds that a court's engaging in administrative rulemaking
5 to establish same-sex employment benefits, as done by the Alaska Superior Court, Third
6 Judicial District, in Alaska Civil Liberties Union, et. al., v. State of Alaska, et. al (Case No. 3
7 AN-99-11179CI) is an improper exercise of judicial power; and

8 **WHEREAS** there are multiple avenues that the legislature may pursue to remedy the
9 constitutional defect that the Alaska Supreme Court has identified in the state employment
10 benefits program, including (1) withdrawal of spousal benefits for all newly hired married
11 state employees; (2) moving away from the issue of sexual orientation altogether and focusing
12 instead on granting benefits to dependents; and (3) adoption of legislation that authorizes
13 regulations along the lines currently proposed by the Department of Administration; and

14 **WHEREAS** selection of the appropriate remedy to the benefits program requires and
15 deserves the legislature's careful consideration and can be achieved best in the Twenty-Fifth
16 Alaska State Legislature's regular session; and

17 **WHEREAS** the legislative power of the state is vested in the legislature by art. II, sec.
18 1, Constitution of the State of Alaska; and

19 **WHEREAS** appropriations must be made by legislative act as provided under art. II,
20 sec. 13, and art. IX, sec. 13, Constitution of the State of Alaska;

21 **BE IT RESOLVED** that the Alaska State Legislature disagrees with the assumption
22 that regulations may be drafted and mandated by the courts; and be it

23 **FURTHER RESOLVED** that the legislature reserves its authority to make policy
24 decisions and will not surrender that authority to the courts; and be it

25 **FURTHER RESOLVED** that the legislature reserves its constitutional authority to
26 appropriate state funds and will not surrender that authority to the courts; and be it

27 **FURTHER RESOLVED** that the legislature reserves its authority and power to enact
28 legislation granting employment benefits to state employees and defining how and to whom
29 those employment benefits may be extended for dependents and employees; and be it

30 **FURTHER RESOLVED** the Twenty-Fourth Alaska State Legislature respectfully
31 urges the court to honor the constitutional authorities of the legislature and to delay the

1 adoption of regulations until the Twenty-Fifth Alaska State Legislature has had the
2 opportunity to deliberate with due legislative and public process.

3 **COPIES** of this resolution shall be sent to the clerks of the Alaska Supreme Court and
4 Alaska Superior Court, Third Judicial District.