

HOUSE FINANCE COMMITTEE
November 15, 2006
4:24 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [4:24:12 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Mike Kelly
Representative Beth Kerttula

MEMBERS ABSENT

Representative Reggie Joule
Representative Carl Moses
Representative Bruce Weyhrauch

ALSO PRESENT

Representative John Coghill; Representative Norman Rokeberg;
Representative Bob Lynn; Representative Paul Seaton;
Representative Gabrielle De Roux; Representative Les Gara;
Representative Ethan Berkowitz; Scott J. Nordstrand,
Commissioner, Department of Administration; Craig Tillery,
Deputy Attorney General, Department of Law; Virginia Ragle,
Assistant Attorney General, Labor and State Affairs,
Department of Law; Barbara Belknap, Executive President,
Juneau Organization for Women, Juneau; Lin Davis, Plaintiff,
Juneau; Marsha Buck, Parents, Family and Friends of Gays
(PFLAG), Juneau; Cindy Boesser read letter (Ben Krall).

PRESENT VIA TELECONFERENCE

Jan DeYoung, Chief Assistant Attorney General, Department of
Law; Steven Jacquier, Anchorage; Michael McLeoud-Ball,
Executive Director, American Civil Liberties Union; Whitney
Brewster, (Testified via Teleconference), Director, Division
of Elections, Juneau;

SUMMARY

HB 4001 "An Act prohibiting the commissioner of
administration from drafting, adopting, filing, or
publishing regulations granting or extending
employment-related benefits for same- sex partners

of unmarried state employees; and providing for an effective date."

HB 4001 was heard and HELD in Committee for further consideration.

HB 4002 "An Act authorizing an advisory vote on employment benefits for same-sex partners of public employees; and providing for an effective date."

CSHB 4002 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with two new fiscal notes: An indeterminate and ADM zero.

#hb4001

HOUSE BILL NO. 4001

"An Act prohibiting the commissioner of administration from drafting, adopting, filing, or publishing regulations granting or extending employment-related benefits for same-sex partners of unmarried state employees; and providing for an effective date."

SCOTT J. NORDSTRAND, COMMISSIONER, DEPARTMENT OF ADMINISTRATION, provided members with backup material entitled: Same-Sex Partner Benefits dated November 13, 2006 (copy on file). He reviewed the timeline presented in Section 9 of the handout. He observed that the impetus for the meeting was to discuss the Alaska Civil Liberties Union (ACLU) case against the state of Alaska and Municipality of Anchorage. He reviewed the history and facts of the case. The case was filed in 1999 by the ACLU. The complaint alleged that the State of Alaska and the municipality violated the equal protection provisions of the Alaska Constitution by not providing same sex partners with employment related benefits. The Superior Court ruled in favor of the state in 2001. The case was appealed by ACLU. In 2005, the Court reversed the decision and found that the State and Municipality of Anchorage were discriminating against same sex partners in violation of equal protection rights. The Court stated that the 1998 marriage amendment created the opportunity for discrimination because heterosexual partners were able to marry and obtain state and municipal benefits, while same sex partners are prohibited constitutionally from the same action.

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Commissioner Nordstrand explained that the Court did not provide direction for a remedy, but retained jurisdiction for briefing on a remedy. The briefing on a remedy was completed in January 2006. The state of Alaska argued that the legislature should meet and consider ramification of the decision and if it is "in the will of the legislature" set criteria to provide benefits required by the Court, pass

legislation, meet the effective date, and provide departmental regulation for implementation; the State told the Court that it needed until January 2007 to achieve these goals. He observed that there was no remedy ordered by the Supreme Court during the regular legislative session. On June 1 2006 the Court issued their order. The Court ordered that the State must provide benefits in compliance of the Courts order no later January 1, 2007. The case was also remanded for purposes of monitoring the State's compliance with setting up a system according to deadlines for distributing forms, and enrollment. He understood that benefits needed to be provided by Jan. 2007. He noted that the Department felt it had sufficient administrative authority to provide regulations to create the criteria and provide benefits. Drafted regulations were created based on criteria of the University of Alaska. Public notices of regulations were presented on September 1, 2006: written and oral testimony was taken. On October 15, final regulations were provided. He observed that through the administrative process it become clear that the Court would be involved in the process. The Court demanded that the Department's work product be provided to it after the public comment period and before final regulations.

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Commissioner Nordstrand explained that the Court indicated on several occasions that the Department's regulations were too strict and the Constitution would not allow the level of criteria (regardless of the fact that the University had used similar criteria). As a result, the Court issued an order commenting on and editing the final regulations to change time periods and adjust the criteria that must be met. The Court ordered the State, on October 30, 2006, to immediately incorporate the court order into its regulations or otherwise modify the regulations.

Commissioner Nordstrand observed that it was unusual for the Court to require regulations to be changed before they are even in their final form. He noted that the Administrative Act does not allow the commissioner to edit regulations that have been issued. This problem was exacerbated by the fact that the ACLU asked the Court to issue an emergency regulation codifying what the Court's view of what should be the limit of the constitutional criteria. Emergency regulations are effective immediately. Retirement benefits once given can not be revoked without constitutional amendment. He expressed concerned that a new tier for benefits for same sex partners would be created, with what the Department felt would be an incorrectly low set of criteria. Regulations were issued. He explained that retirement regulations are not subject to the Administrative Procedures Act and take effect 30 days after they are signed by the commissioner. Regulations that are subject to the

Administrative Procedures Act have to go through the Department of Law for consideration, then sent to the Lieutenant Governor's Office for endorsement and filing; and become effective thirty days afterwards. The retirement portion of the benefits were scheduled to become effective on November 12, 2006. The Lieutenant Governor would not sign and file the portion that was sent to his office because he did not believe the Commissioner had the authority to promulgate regulations. The Lieutenant Governor concluded that the commissioner was rewriting statutes, since regulations were not being written to carry out statutes, which is the norm. He observed that coverage is defined by AS 39.30.090 as: Each eligible employee of the state, the spouse and the unmarried children chiefly dependent on the eligible employee for support, and each eligible employee. The Lieutenant Governor concluded that the Court asked the State to insert and define same sex partner, which would effectively amend statute. The Department of Law concluded that the court order provided the necessary authority. He noted that AS 39.20.090 does not give the commissioner authority to promulgate regulations necessary to carry out the statute. The Department of Law has noted this absence on other occasions. The Lieutenant Governor questioned the commissioner's ability to make policy calls, which should reside with the Legislature.

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Commissioner Nordstrand noted he issued emergency regulations to delay implementation, in order to assure that another Tier was not created. Meanwhile the Court demanded that the Department of Law file regulations that comport with the Court's edits. The ACLU did not except the working draft and has filed to require the State to turn in regulations to the Court that are "ready to go", which would allow regulations to be implemented immediately.

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REPRESENTATIVE JOHN COGHILL observed that HB 4001 is an attempt to address a situation where the court is intermingling with the regulation process. He opined that in order to delay action until the next legislative session, the Legislature must provide the Administration with a directive. House Bill 4001 would prohibit the Department from drafting regulations granting or extending employment benefits for same sex partners of unmarried state employees, except those passed by statute. He stressed the need to protect the integrity of the state and legislative institution. The court orders have in his view over reached the policy question. He observed that the order for review was issued in June 2006, and required implementation before the Legislature could meet in regular session. He acknowledged that the retroactivity session might not be

necessary with emergency regulations. He observed that there is national debate on the issue and that other courts have allowed legislatures to make policy decisions.

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Representative Kelly asked if there was information on the time allowed other states. Representative Coghill referred to Vermont and noted that the issue was directed to the legislature without a timeline.

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Representative Kerttula asked for more information regarding the Department of Law's response to the Court.

CRAIG TILLERY, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF LAW, observed that the Department of Law provided a briefing to the Alaska Supreme Court.

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VIRGINIA RAGLE, ASSISTANT ATTORNEY GENERAL, LABOR AND STATE AFFAIRS, DEPARTMENT OF LAW, provided information regarding steps agreed to by the Department in regards to the Superior Court. A pre-deadline statement identifying the deadlines was proposed to the Superior Court (Section 5 of the handout provided to the Committee). The Superior Court, at a hearing on August 9, 2006, ordered the State to provide a copy of proposed regulations before commissioner proposed them to the general public. The general public was notified of the regulations on September 1, 2006. The Department has complied with the order to comply with the pre-deadline statement.

Representative Kerttula noted that legislators get notice of all regulations and that some did comment on the proposed regulations. Ms. Ragle acknowledged that legislators received a copy of the proposed regulation and that some commented.

Representative Kerttula referred to an opinion by the Alaska Legal Services [by Dan Wayne to Senator Green dated November 15, 2006] (copy on file) and questioned if there were constitutional concerns regarding HB 4001. Mr. Tillery observed that HB 4001 retroactively prohibits the commissioner of Administration from a number of acts that have already occurred. He suggested that the legislation would be unconstitutional based on the Supreme Court's decision. He agreed with the Legislative Legal Services' opinion that the Supreme Court's most likely option were to take over the system if it were not found to be unconstitutional.

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Co-Chair Meyer asked if there would be a fiscal note from Department of Law. Mr. Tillery anticipated that funds would be needed for litigation.

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Representative Kerttula observed that there were significant difference between the Municipality of Anchorage's affidavit and the draft regulations.

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Commissioner Nordstrand clarified that the Department's regulations are similar to University of Alaska's. The Municipality of Anchorage's adopted an affidavit for same sex benefit petitions (Section 8). The Municipality of Anchorage (Municipality) was also required by the Court to adopt a plan of action. The Municipality adopted an affidavit that parties would have to swear to in order to be eligible for same sex domestic partnership benefits. The affidavit requires the domestic partners to reside together in the same primary residence and that they intend to continue to do so. There is no time limit in the affidavit, while the Department of Law's regulation contains a 12 month time limit. The Municipality's affidavit would also require that there be a relationship that they intend would be permanent; and that the parties be financially interdependent. The criteria [under the affidavit] would be lenient.

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In response to a question by Co-Chair Meyer, Commissioner Nordstrand reiterated that the Court ruled that the criterion under the University was too narrowly crafted, constitutionally. He pointed out that the University's criteria had been in place for ten years, without a legal challenge. He concluded that it would not make sense to have the criteria vary widely. He noted that the Municipality was challenged to identify criteria and proposed the affidavit, which was deemed acceptable to the ACLU. The ACLU has indicated that they would like the State to adopt the Municipality's criterion. He concluded that the Court's order represents the middle ground [between the Municipality's affidavit and the Department of Law's proposed regulations]. For example, the judge changed the requirement that 5 of 8 criteria be meet to 3 out of 8. The judge amended the requirement that partners reside together for 12 months to 6 months. The judge extracted the word "exclusive" from the requirement that the relationship be exclusive. He observed that the judge made joint custody of a child a "super category"; if there is joint custody of a

child, no need for other criteria must be met. The judge also required family medical leave benefits for same sex partners, which was never part of the complaint. There is also a provision to provide to the same sex partner the last paycheck and personal leave accumulation for a deceased employee, unless there is other provision.

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Co-Chair Meyer asked what the cost differences between the three plans: Municipality of Anchorage's, the [state plan modeled after] University's and the compromised offered by the judge. Commissioner Nordstrand did not have a cost estimate difference. Advisors indicated that, on the average systems that make these changes, for just same sex partner benefits would be approximately one-half of a percent difference to the system. The state of Alaska covers approximately 44,000 employees with 45,000 dependents under their combined plans. In FY 06, self insurance costs, excluding the Union Health Trust, for current state employees and retirees was \$340 million. They have not been able to calculate a retirement cost. He commented on the criteria being significant in terms of who is eligible which impacts costs. He pointed out that it "clearly is a lot easier to get the benefit at the lower level" and observed that more people would qualify under the municipal benefit criteria than under the State's plan.

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Representative Kerttula referred to the "exclusivity" requirement. She noted that the Court recognized that being the sole domestic partner and shared obligations including the joint responsibility for basic living expenses and health care were used because the State could not define "exclusivity". Commissioner Nordstrand acknowledged that "exclusive" was not overtly defined for the Court by the State, but emphasized that other terms such as "primary residence" were defined, even though it had not been defined by the University. The State took the University language regarding exclusivity and did not think it onerous to require that there be an exclusive relationship. The State held the view that the intent was to benefit exclusive relationships. He noted the level of scrutiny by the Court *and the need to "prove up" that administrative regulations were constitutional at the outset, even though they are generally deemed to be constitutional unless found constitutionally infirmed.

Commissioner Nordstrand explained that the regulation was adopted on October 13, 2006, for purposes of the retirement plan; it would have been effective on November 12, 2006, but for the Commissioner's emergency regulation [to suspend implementation]. The Commissioner's suspension ended on

November 22, 2006, in order to allow the legislature to act. The regulation process continues and packets have been mailed to all unmarried state employees and retirees. Over 14,000 packets have been sent at a cost of \$35,000. The intent is to meet the Court's deadline and, at the same time, allow the Legislature to have input on "the best criteria".

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Representative Kelly referred to the current unfunded liability, which the Commissioner estimated at just under \$10 billion dollars. Commissioner Nordstrand observed that the actuary concluded that the state had \$6.9 billion dollars in unfunded liability at the end of FY 05. Every five years, the actuaries prove up their assumptions against reality. When the FY 05 assumptions were "proved up" the unfunded liability increased to \$8.6 billion. He observed that the State has chosen not to pay the actuary calculated rate for the past or current year, which is the rate necessary to prevent the unfunded liability from increasing. He estimated that the unfunded liability could be as much as a billion more and is heading toward \$10 billion dollars. Representative Kelly voiced concern over the projected increases with regards to the difference of the actuaries and reality in the recent past.

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Representative Stoltze noted concern with the fiscal issues. He added concern for the entire retirement system. He asked if folks could be added [to the retirement benefit system] retroactivity. Commissioner Nordstrand affirmed and explained that the addition of same sex partners could increase the liability. He concluded that in light of the constitutional mandate, that it might be possible to deny benefits to all spouses, but not to a particular subset of spouse, but stressed that it would not be feasible to do so.

Representative Stoltze asked if the Commissioner's estimate of a billion dollars in extra costs was conservative. Commissioner Nordstrand explained that his estimate was based on the state's own health plan, which could be increased by a half percent. He added that an argument could be made that for parity the benefit should be expanded to heterosexual unmarried partners, which could further increase the cost. The city and Borough of Juneau offers benefits to heterosexual partners, which is used by two and a half percent of their membership.

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Co-Chair Meyer observed that there would be no fiscal impact to the Department of Administration. Commissioner Nordstrand replied that the note from the Department would be zero.

Representative Holm questioned how the State would sustain the benefit system as the price and production of oil declines and how it might affect future employees.

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Commissioner Nordstrand noted that he was a member of the Alaska Retirement Board (ARM), and stressed that one of the biggest issues facing the Board is the unfunded liability and how it would be covered. There are not many good solutions. He observed that retirees and current state employees have a vested right to a certain level of retirement benefits, including health benefits. The Supreme Court has ruled that health benefits cannot be diminished any more than pension benefits; they can be changed, but the net affect has to be "a wash". Right now the State is providing benefits for over 50,000 people. The benefit side cannot be changed, but the state can attempt to better manage the plan. Under a positive enrollment, the State implemented a requirement to "prove" their dependents, through such means as marriage licenses. The process resulted in a savings of \$14 million per year, out of a plan that spends \$340 million. The Department continues to address prescription drugs; a third party administrator change resulted in a \$3.3 million per year savings, which is one percent of the expense of the plan. There has been some success. Due to cost saving measures next year's rate increase would be zero. For the active plan, these same measures resulted in a raise of only two percent increase. The benefit side is not going to change; the Department can only manage the unfunded liability because the longer it is not paid, the more it will cost to pay. He observed if the State could put up a half a billion dollars more than the actuary requires it would save money in the form of interest.

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STEPHEN JACQUIER, (TESTIFIED VIA TELECONFERENCE), ANCHORAGE, testified in support for benefits for same sex benefits. He noted that he and his partner have been state employees, with two children and meet all eight of the criteria. He claimed that same sex partners has been targeted and treated unfairly. He maintained that employees with same sex partners have paid in to the system and deserve fair treatment. He stressed the unfairness of the legislation (Written testimony on file).

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MICHAEL MCLEOD-BALL, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES, ANCHORAGE, observed that the ACLU agreed with much of the information provided by the Commissioner, especially in regards to the timeline and legal proceedings leading up to the current situation. He concluded that Special Session arose from Lieutenant Governor's assertion that the statutory authority did not exist for the regulations that Commissioner Nordstrand was attempting to promulgate. He maintained that statutory authority was not really an issue. He viewed the legislation advanced by the Governor as unnecessary. He pointed out that any statute that mimicked the regulations, which the Court found to be inadequate, would be deemed to be just as unconstitutional. The intent is to create a benefit system that conforms to the constitutional mandate as defined by the Court. The Court ruled that the status quo is unconstitutional. He acknowledged that the Legislature should be involved in the policy issues regarding how the issue could be resolved, but pointed out that the Legislature has not acted.

Mr. McLeod-Ball observed that the Legislature was made aware of the implication of the original Supreme Court decision of October 2005. The Supreme Court made an active decision not to immediately impose its will upon the policy discussions, but to allow their decision to stand. Parties were asked to submit briefs as to the appropriate manner in which implement a remedy. The plaintiffs and Administration agreed with the concept that it should be addressed by the Legislature. The plaintiffs and Administration disagreed with the amount of time that should be given to address the issue. The plaintiffs felt that the Legislature should be given till the end of May, while the Administration felt they should have until the end of the year. He thought that the Court was aware of the situation and hoped that the Legislature would address the situation in the regular session. He observed that there was no interest in advancing legislation to address that issue. There was an attempt to amend the Constitution in an effort to over turn the Court's decision, but the effort did not reach fruition due to inadequate support. In that context, the Supreme Court issued their order of June 1, 2006, which required the State and City to come up with a plan that would implement a remedy by January 1, 2007. The Court did not outline the remedy.

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Mr. McLeod-Ball observed that the City and State were requested to submit plans in the form of a pre-deadline statement for implementation of benefits by January 1st. The State suggested in their pre-deadline statement that it had authority to adopt regulations to implement a remedy. The pre-deadline statement included provisions for a rule making

process and public comment, which would be in place by January 1st, 2007. He observed that Superior Court Judge Stephanie Joannides recognized that the Court does not have authority to write the regulations. The Court's role is to guide the parties and explain the constitutionality of the proposed regulations. He maintained that Judge Joannides has been good at saying what would comport with the Supreme Court's mandate and interpretation of the Equal Protection Clause. He observed that the less restrictive regulations, referred to by Commissioner Nordstrand, were not mandated by Judge Joannides. The Court felt that the State's final regulations, which contained the five out of eight criteria and a 12 month waiting period, were unconstitutional and responded by providing guidelines for what would be constitutional. The order indicated that the State could adopt the guidelines provided or some other form of remedy that comports with the Constitution. The Commissioner submitted revised regulations, which mimicked the suggestions of the Court. After the revised regulations were submitted, the Court reiterated to the State that the regulations could be submitted in some other form that also comports with the Constitution and the State declined to do so. He argued that the Court did not mandate that a particular form of regulations be adopted.

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Representative Kerttula concluded that the State laid out a regulatory path of implementation in its pre-deadline statement. She summarized that the Court's order was clear that, while these were the Court's suggestions in order to comply with the constitutional requirements, the State could also look at alternatives as long as they were constitutional. Mr. McLeoud-Ball agreed and stated that these directions were given in open court and in some of the Court's written orders.

Representative Kerttula observed that the State has asked for a "stay" of the proceedings. Mr. McLeoud-Ball affirmed and explained that the stay was requested and granted in part by Judge Joannides. There are a number of things pending both at the lower court and Supreme Court levels: a petition for review filed with the Supreme Court, draft emergency regulations, less restrictive regulations that have been submitted to Judge Joannides, and the ACLU's motion to compel. He explained that the ACLU's motion to compel would assure that all the procedures that are predicated for adoption of the emergency regulations, if the Court orders them to be adopted, have taken place.

Representative Kerttula asked if the judge was being overly active in terms of ordering the State's role. Mr. McLeoud-Ball did not think the Court was being overly active. He stressed that reasonable minds can disagree on almost any

issue, but felt Judge Joannides has "leaned over backward" to make sure that the Administration, in its rule making capacity, has every opportunity to come into compliance with the Constitution. He admitted the struggle and that there are significant differences in terms of policy. He reiterated that the judge has been clear that she does not have the authority to write the regulations, but observed that she is under an obligation by the Supreme Court to have benefits in place by January 1, 2007, which comport with the Constitution as described and determined by the Supreme Court in their October 5, 2006 decision.

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BARBARA BELKNAP, EXECUTIVE PRESIDENT, JUNEAU CHAPTER, NATIONAL ORGANIZATION FOR WOMEN, JUNEAU, urged the House to reject the Administration's refusal to adhere to the Constitution and let the Alaska Supreme Court's ruling and recommendations of regulations and implementation for same sex benefits stand. She observed that South Africa has announced recognition of same sex marriage and unions, recognizing that they could not ignore discrimination based on sexual preference while they have attached discrimination based on race. She noted that, while many states have offered or passed amendments stating that marriage is between a man and a woman, cities and private entities offer benefits to same sex couples. She maintained that one of the last bastions of discrimination in the work place is slowly being eradicated across the country. She noted that Martin Luther King Jr. stated that "injustice anywhere is a threat justice everywhere". She observed that Alaska's State Constitution clearly affords justice: "all persons are equal and entitled to equal rights, opportunities, and protection under the law." The Constitution does not provide that any class of people can have their rights denied by a vote of the people. She maintained that the judicial branch is not legislating from the bench, but is doing its job in enforcing the Constitution.

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LIN DAVIS, PLAINTIFF, JUNEAU, observed that she has worked for the state of Alaska for ten years. She noted that she is a plaintiff in the case. She has been with her partner for eighteen and a half years. She is 64 years old and her partner is 54 years old. She would like to see her partner receive the same benefits as other spouses. She explained her personal need for coverage. She voiced concern that she would not receive the same kind of dedication from the State that she has provided in her state service. She maintained that much of the anti-gay sentiment is political and an undemocratic use of fear. She urged that the Committee move "boldly" forward.

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MARSHA BUCK, PARENTS, FAMILY AND FRIENDS OF GAYS (PFLAG), JUNEAU, urged the Committee members to look at the big picture. She maintained that many Alaskans would be hurt if same sex partner benefits are not implemented by January 1, 2007. She asserted that people are actually born with their sexual orientation. She urged a "no" vote on HB 4001 and HB 4002.

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CINDY BOESSER, JUNEAU, read a letter from her eleven year old son, Ben Krall. The letter urged that benefits be given to all the people of Alaska for the work done. He asserted that "it does not matter if you like them or not; it doesn't matter whether you think how they are is okay; it doesn't even matter if you think you can afford it or not, that is not the point; it is just about what you owe them for the work they do". He spoke in support of the Court's action and thought that the worker's should be given their benefits.

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Ms. Boesser spoke against HB 4001 and HB 4002. She maintained that equal benefits for all state of Alaska employees should be provided as Alaska's courts and Constitution agree. She emphasized that the issue of denying marriage rights is not the issue at hand. She felt that problem centered on prejudice and invited members to substitute a group they liked in the place in question to see if they have the same reaction. She stated that the will of the people is not always the best way to go and suggested that white spouses of black state employees would not receive benefits in southern states if it were up to a vote of the people. "When prejudice exists it is essential for courts to remind us that we live in a constitutional society not clearly one run by majorities." She argued that expense should not be the deciding factor. She echoed her son's statements that "When you ask someone to do a job in this country, you are expected to pay the same amount to anyone who does the job for you." She maintained that benefits are a huge part of the compensation for labor and should be equal. She referred to prejudice in the high school exists and noted that if students were give the right to decide that they might prevent students with a different sexual orientation from having an education. She urged the Committee to reject the proposed legislation.

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Co-Chair Meyer noted that HB 4001 would be held in order to allow time for a fiscal note from the Department of Administration.

HB 4001 was HELD in Committee for further consideration.

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#hb4002

HOUSE BILL NO. 4002

"An Act authorizing an advisory vote on employment benefits for same-sex partners of public employees; and providing for an effective date."

REPRESENTATIVE NORMAN ROKEBERG, SPONSOR, stated that the legislation was brought forward to bring public debate on the issue of same sex benefits. He pointed out that the purpose of the bill was to reassert the constitutional authority of the legislature as the voice of the people. He felt that the Judiciary had overstepped its bounds in areas that speak to public policy. He observed that the previous Legislature was involved in issues regarding changes to the oil tax structure, a gas pipeline proposal and other weighty issues. He did not think the previous Legislature had the three-fourth votes to put forward a constitutional amendment pertaining to the issue of same sex benefits before the people. The legislation would require an advisory vote of the people to have the public discussion; thereby, providing a clear understanding of the people's desire. A special advisory election would occur on April 3rd, 2007, which was selected as the municipal election date for many of the larger municipalities including Anchorage in an attempt to save the State money in putting on another election. He thought the April 3, 2007 date would allow the Legislature time to discuss the issue and act. He maintained that there deserves to be public discussion and the issue needed to be resolved. He acknowledged changing attitudes in the country regarding the issue and questioned if Alaska was ready to follow this trend or maintain the constitutionally adopted definition of marriage. He noted that he was the original sponsor, in 1996, of legislation pertaining to the definition of marriage. He pointed out that the ACLU lawsuit did not have a brief relating to the legislation passed in 1996. AS 18.80.220 (c) provides:

Notwithstanding the prohibition against employment discrimination on the basis of marital status or parenthood under (a) of this section,

(1) an employer may, without violating this chapter, provide greater health and retirement benefits to employees who have a spouse or dependent children than are provided to other employees.

Representative Rokeberg maintained that the Office of the Attorney General has failed the people of Alaska "in terms of pursuing these types of cases and, therefore, it is up to

the legislature to assert" its own power and authority to take back from the judiciary its right to make policy for the state. He referred to the ballot proposition on page 2:

Shall the legislature adopt a proposed amendment to the state constitution to be considered by the voters at the 2008 general election that would prohibit the state, or a municipality or other subdivision of the state, from providing employment benefits to same-sex partners of public employees and to same-sex partners of public employee retirees?

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Representative Rokeberg questioned if discussion should occur regarding prohibiting the University of Alaska from providing benefits or if Municipalities should be allowed an optional selection. He noted that the 1996 legislation was a result of the Tumeo versus the University of Alaska case. The Tumeo case gave rise to the first set of the University's regulations and eligibility requirements, which were promulgated by the University and ratified by the Court as a result of court action, not by the people of the state of Alaska. He maintained that the same situation has occurred, eleven years later. The "judges are driving and the people of Alaska are not being listened too".

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Representative Stoltze suggested the date to allow the issue to be tagged on to municipal elections. He observed that Anchorage's Superintendent Comeau had approached the Division of Election about "tagging" municipal school district issues during state elections on at least two occasions, "given that it is about 40 percent of the population." He maintained that striving to increase voter turnout is a good public policy motivation for the date. He noted that the date would also allow the Division of Elections sufficient time to prepare. He observed that, in the past, the Municipality of Anchorage's school district has compensated the state of Alaska for the cost [to add issues on to state elections] and felt that the state would "turn about" to reimburse municipalities for those costs.

Co-Chair Meyer agreed that it would be "legitimate" to tag on to the City of Anchorage's election. He questioned the sponsor's intent regarding an opt-out provision for municipalities and the University that now allows the benefits. Representative Rokeberg acknowledged that an argument could be made that the benefits achieved should not be diminished. He observed the difficulty of making

exceptions to the language. He had not reached a decision regarding an opt-out provision.

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Representative Stoltze observed that all monetary issues come before the Finance Committee. He suggested that it would be a function of the legislature to implement the will of the people, and would have until 2008 to do so. He stressed that the legislation would accomplish the goal of discovering the will of the people. The legislation provides an advisory opinion; an actual constitutional amendment would have a longer process.

Representative Rokeberg proposed that the legislation be amended with the addition of "substantially" on page 1, line 13. He suggested that the addition of "substantially" would give the legislature the right to word-smith the amendment. He noted that there would be another session in 2008 to draft the ballot amendment before it is passed.

[6:20:59 PM](#)

Representative Kerttula asked if the Supreme Court was wrong in their equal protection analysis. Representative Rokeberg noted that he disagreed with the Supreme Court's decision. He felt that legal credence was not given to the voice of the people's action in adopting a same sex prohibition in terms of the marriage definition. He acknowledged that he was not a legal expert. He thought that the privacy clause of the Alaska Constitution might give greater credence to the equal protection argument. He observed that the courts have never allowed the legislature to amend the privacy clause, when in fact the term "by law" is in the constitutional amendment. He concluded that without the full understanding of the legal issues, he would tend to agree with the Court in its analysis; however, he felt that they had wronged the Legislature with their remedy process, which he felt was the biggest problem. He maintained that the Court had reached into the policy making process and observed that the University had eligibility criteria, which was established as a result of the Court's action for 10 years. Due to the Court's action eligibility criteria [for same sex marriage benefits] were drafted by the University and ratified by the membership of the resulting beneficiaries. Now the Court has determined that these criteria, which have been in place for a decade, are inadequate. He stressed that no credence was given to the voice of the legislature in the past, and cut out the voice of the people as represented by the legislature. He concluded that a constitutional amendment discussion and vote was demanded for clarity.

[6:24:36 PM](#)

Representative Kerttula expressed respect for the Sponsor. She noted that "once you completely did not agree with the resolution for the remedy. Representative Rokeberg agreed that the issue is complex and that the goal is to find a common ground and that the "clarity of the resolution is to put it on the ballot" with a 2/3 rd vote of the legislature.

[6:25:54 PM](#)

Representative Kelly worried that the Court had a destination in mind with the decision. He expressed concern that "everything can be made to look normal by lawyers and judges that have a destination in mind." He referred to the \$10 million unfunded liability [of the cost of the additional coverage]. He maintained that it is the legislature's purview to decide whether the benefits should be offered. He asserted that the "people spoke clearly and they meant this issue to be included." The legislation would allow the legislature time to deliberate and "give the people of Alaska time to tell them, once more, what they meant in 1998.

[6:29:21 PM](#)

WHITNEY BREWSTER, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, DIVISION OF ELECTIONS, JUNEAU, addressed the costs associated with conducting an advisory vote election. She observed that an advisory vote on a long range fiscal plan cost \$939 thousand in 1999. She noted that the fiscal note assumed that the election would be conducted in person and that contractual services would include: ballot printing, election boards, advertising, shipping and postage, polling place rental and setup, forms, microfilming, \$100 thousand for the creation and mailing of an information pamphlet to each household. She observed that costs have increased since 1999; there have been increases to shipping, postage, payment to election workers, and ballot printing. She noted that there could be cost savings if the Division is able to enter into a memorandum of agreement (MOA) with the Municipality of Anchorage to utilize municipal resources during municipal elections. She observed that the Division has held special elections for the Municipal elections, and hoped that they would be willing to reciprocate.

[6:32:13 PM](#)

Co-Chair Meyer questioned if it were a reasonable request to ask the City of Anchorage to allow the State to "piggy-back" on the municipal elections. Ms. Brewster felt that it would be a reasonable request and pointed out that the State held a special election for the Municipality of Anchorage in 2004 and noted that the Municipality assumed some of the costs associated with that election.

Co-Chair Meyer proposed that the bill be moved from Committee with an indeterminate fiscal note. Ms. Brewster was comfortable with that idea.

[6:33:44 PM](#)

STEVEN JACQUIER, ANCHORAGE, testified via teleconference, spoke against the legislation. He felt the legislation expressed anti-gay sentiment. He maintained that the Constitution requires equal treatment.

[6:37:17 PM](#)

In response to a question by Co-Chair Chenault, Mr. Jacquier clarified that his children were currently covered through his partner's benefit program.

[6:39:11 PM](#)

REPRESENTATIVE SEATON, spoke to the case of a Supreme Court's expansion of class of people eligible for benefits under equal protection. He noted that the Alaska Cost of Living Allowance (COLA) gives an additional 10 percent retirement benefit to those residing in Alaska. The Court and Court of Appeals have determined that, based on the equal protection clause, anyone living outside of Alaska can qualify for the Alaska COLA if they have a cost of living equal to Anchorage. There are two paralleled situations in which the Courts are making a decision based on equal protection to expand the class of people that would receive benefits. He questioned if the advisory vote should address all situations regarding the expansion of benefits under equal. He observed that the Supreme Court has not yet ruled on the COLA issue.

[6:42:08 PM](#)

Representative Rokeberg suggested that "and retirees" be added to page 2, line 5, since there are two different groups that would be affected. He observed that the Commissioner supports the change.

[6:43:01 PM](#)

Representative Hawker MOVED to AMEND: insert "and retirees" on page 2, line 5.

[6:43:41 PM](#)

Representative Kerttula OBJECTED. She indicated that her objection pertained to the entire legislation.

Representative Stoltze stressed that the legislation would not restrict any broad retiree benefits and is only in regards to same sex benefit retirees.

Representative Kerttula pointed out that it would affect retirees with same sex partners.

A roll call vote was taken on the motion.

IN FAVOR: Stoltze, Foster, Hawker, Holm, Kelly, Meyer,
Chenault
OPPOSED: Kerttula

Representatives Moses, Joule and Weyhrauch were absent from the vote.

The MOTION PASSED (7-1).

Representative Hawker MOVED to AMEND: insert "substantially" on page 1, line 13 after "ballot".

[6:45:26 PM](#)

Representative Kerttula OBJECTED. She explained that she was not comfortable without knowing the exact language.

Representative Hawker argued that the language would be crafted in the next legislature in a full and open process.

A roll call vote was taken on the motion.

IN FAVOR: Stoltze, Foster, Hawker, Holm, Kelly, Meyer,
Chenault
OPPOSED: Kerttula

Representatives Moses, Joule and Weyhrauch were absent from the vote.

The MOTION PASSED (7-1).

Vice-Chair Meyer observed that the fiscal note would be forthcoming from Division of Elections.

Representative Foster MOVED to report CSHB 4002 (FIN) out of Committee with the accompanying fiscal note.

Representative Kerttula OBJECTED. She observed that rather than identifying the right determination of what makes sense across the board for Alaskans that the legislation would prohibit something. She argued that was the wrong way to approach the issue.

[6:49:15 PM](#)

Representative Hawker referred to the sentiment of "trusting" the people on issues. He felt that it was appropriate to trust the people to guide the legislature on this very controversial issue, without an empirical answer.

Representative Kerttula noted that she took an oath to uphold the Constitution and felt that it was clear on the issue.

6:50:36 PM

A roll call vote was taken on the motion to pass the bill from Committee.

IN FAVOR: Stoltze, Foster, Hawker, Holm, Kelly, Meyer,
Chenault
OPPOSED: Kerttula

Representatives Moses, Joule and Weyhrauch were absent from the vote.

The MOTION PASSED (7-1).

CSHB 4002 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with two new fiscal notes: An indeterminate and ADM zero.

#

ADJOURNMENT

The meeting was adjourned at 6:50 PM