

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

February 11, 2014

1:05 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Representative Pete Higgins
Representative Shelley Hughes
Representative Max Gruenberg

MEMBERS ABSENT

Representative Lora Reinbold
Representative Dan Saddler

COMMITTEE CALENDAR

HOUSE BILL NO. 212

"An Act relating to an exemption from driver licensing requirements for spouses of members of the armed forces of the United States."

- MOVED HB 212 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 21

Opposing cuts to retirement benefits owed to members of the armed services of the United States; and urging the United States Congress to approve legislation allowing members of the armed services of the United States to receive promised retirement benefits.

- MOVED HJR 21 OUT OF COMMITTEE

HOUSE BILL NO. 286

"An Act relating to the Teachers' Retirement System, the Judicial Retirement System, and the Public Employees' Retirement System for qualified military service; relating to the definition of 'veteran' for purposes of housing, eligibility for veterans' loans, and preferences in state employment hiring; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 212

SHORT TITLE: DRIVER'S LICENSING EXEMPTION: MILITARY
SPONSOR(S): REPRESENTATIVE(S) ISAACSON, HUGHES, LEDOUX

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	MLV, STA
02/04/14	(H)	MLV AT 1:00 PM CAPITOL 120
02/04/14	(H)	Heard & Held
02/04/14	(H)	MINUTE(MLV)
02/11/14	(H)	MLV AT 1:00 PM CAPITOL 120

BILL: HJR 21

SHORT TITLE: MILITARY RETIRMENT BENEFITS
SPONSOR(S): REPRESENTATIVE(S) LYNN

01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	MLV
02/11/14	(H)	MLV AT 1:00 PM CAPITOL 120

BILL: HB 286

SHORT TITLE: VETS' RETIREMENT/LOANS/HOUSING/EMPLOYMENT
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/29/14	(H)	READ THE FIRST TIME - REFERRALS
01/29/14	(H)	MLV, L&C
02/11/14	(H)	MLV AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE DOUG ISAACSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 212, spoke in support of the bill as a prime joint sponsor.

RACHEL WITTY, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 212.

REPRESENTATIVE BOB LYNN
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HJR 21 as the prime sponsor.

CURTIS THAYER, Commissioner
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Introduced HB 286 on behalf of House Rules Committee by request of the governor and answered questions.

KATHY LEA, Deputy Director
Central Office
Division of Retirement and Benefits
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 286.

ACTION NARRATIVE

[1:05:20 PM](#)

CO-CHAIR GABRIELLE LEDOUX called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:05 p.m. Representatives Foster, Gruenberg, Higgins, Hughes, and LeDoux were present at the call to order.

[At the call to order, the date of the meeting was misstated as March 12.]

HB 212-DRIVER'S LICENSING EXEMPTION: MILITARY

[1:06:31 PM](#)

CO-CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 212, "An Act relating to an exemption from driver licensing requirements for spouses of members of the armed forces of the United States."

[1:06:49 PM](#)

The committee took an at-ease from 1:06 p.m. to 1:08 p.m.

CO-CHAIR LEDOUX recalled that public testimony on HB 212 was closed at the meeting of 2/4/14.

[1:09:04 PM](#)

REPRESENTATIVE DOUG ISAACSON, Alaska State Legislature, speaking as a prime joint sponsor, informed the committee HB 212 is another way for Alaska to support military members who are temporary residents of the state. Alaska provides a [driver's license] benefit to military members who wish to retain residency in their home state, and the bill is simply asking for the same benefit so a military member's spouse over the age of 18 can retain his/her driver's license issued by their home state. To address a concern expressed by some, he emphasized that in the bill the meaning of "spouse" is the same as the meaning currently recognized by state law. Representative Isaacson urged for HB 212 to be passed from committee.

[1:11:07 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt [Amendment 1], labeled 28-LS0861\N.1, Strasbaugh, 2/11/14, which read:

Page 1, line 1, following "**spouses**":

Insert "**or same-sex partners**"

Page 2, line 1, following "spouse" in both places:

Insert "or same-sex partner"

Page 2, line 3:

Delete "or spouse"

Insert "or the member's spouse or same-sex partner"

Page 2, line 4, following "jurisdiction;":

Insert "to claim to an exemption under this paragraph, a member's same-sex partner shall submit an application for an exemption and, with the application for exemption, two affidavits, one from the same-sex partner and one from the member, stating that the member and the same-sex partner

(A) are at least 18 years of age and are each competent to enter into a contract;

(B) have been in an exclusive, committed, and intimate relationship with each other for the last 12 consecutive months and intend to continue that relationship indefinitely;

(C) have maintained a household together at a common primary residence for the last 12 consecutive months and intend to maintain a household together indefinitely;

(D) consider themselves to be members of each other's immediate family;

(E) are not related to each other to a degree of closeness that would preclude them from marrying each other in this state if they were of the opposite sex;

(F) are not legally married to another person;

(G) have not executed an affidavit affirming same-sex partner status with another person within the last 12 months;

(H) are each other's sole domestic partner and each is responsible for the welfare of the other; and

(I) share financial obligations, including joint responsibility for basic living expenses and health care costs;"

[1:11:28 PM](#)

CO-CHAIR LEDOUX objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that the bill grants a state benefit and therefore is governed by the Alaska Supreme Court case Alaska CLU v. State of Alaska, (ACLU) decided on 10/28/05. Commonly known as ACLU, the aforementioned case governs the question of benefits given to couples who cannot legally marry in Alaska because of Alaska's constitutional amendment that defines marriage as a union between a man and a woman. Furthermore, there is also a recent Alaska Superior Court decision and order in Julie Schmidt et. al, v. The State of Alaska and Municipality of Anchorage (Schmidt case) dated 9/19/11, which has now been argued before the Alaska Supreme Court and is awaiting decision. The holding in both cases is that programs offering valuable benefits to employees' spouses, and that are not offered to unmarried domestic partners, violate equal protection under the Alaska State Constitution. Representative Gruenberg said he offered the amendment because of his concern about the constitutionality of the bill as it is written, as well as the policy issues involved. Amendment 1 is offered on behalf of those who believe the equal protection clause protects "in this kind of a situation." He said Amendment 1 was drafted specifically following the ACLU case to assure the legislation meets the requirement of the Constitution of the United States, but does not violate the Alaska State Constitution. Representative Gruenberg urged for the adoption of Amendment 1.

1:14:41 PM

REPRESENTATIVE HUGHES referred to previous testimony given at a prior meeting.

[No specific reference was given as to the date of said meeting or the identity of the testifier.]

CO-CHAIR LEDOUX said she was unsure about previous testimony on this matter as the amendment was not before the committee until now.

CO-CHAIR FOSTER recalled there was testimony from an individual.

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REPRESENTATIVE HUGHES said the aforementioned testifier indicated there was a problem, and remarked, "I just wanted to make it clear that, so that we're all aware, that that person was representing themselves and was not representing the Department of Law."

REPRESENTATIVE GRUENBERG said he did not hear, and had not reviewed, "that person's testimony."

1:17:17 PM

RACHEL WITTY, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law, in response to Representative Gruenberg, said she did not have a copy of Amendment 1, but she had reviewed the bill. In further response to Representative Gruenberg, she opined that the bill has a potential constitutional issue depending on how the Alaska Supreme Court were to rule in the Schmidt case; however, the state has appealed the Alaska Superior Court holding on the grounds that the superior court judge was incorrect in bringing in the 2005 ACLU case because it dealt with employment benefits. The 2005 case holding made clear that the decision only applied to employment benefits. The Schmidt case dealt with property tax exemption, and the state argued that married people hold property differently than unmarried people, whether they are same-sex couples, relatives, or others. The state asked the state supreme court to limit the superior court's holding and not extend the first ACLU decision to the property tax case.

REPRESENTATIVE GRUENBERG requested that Ms. Witty review the ACLU case: the facts and legal reasoning of the case, and the holding of the state supreme court.

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MS. WITTY relayed the first ACLU case in 2005 was brought by employees of the state and the Municipality of Anchorage, challenging "the spousal limitation in the state benefits program," which did not afford them the same retirement and health benefits as the spouses of state employees. The Alaska Supreme Court found that because individuals in same-sex relationships could not get married due to the constitutional ban on gay marriage in Alaska, there was an equal protection violation. As the state was in a unique position as employer, and the employees were entitled to the fruits of their employment, the state had an obligation to treat its employees equally and extend the same benefits to same-sex partners.

REPRESENTATIVE GRUENBERG asked for the facts, reasoning, and decision of the superior court judge in the Schmidt case.

MS. WITTY said the Schmidt case involved challenges by same-sex property owners in the Municipality of Anchorage to the property tax exemption statute giving exemptions to senior citizens and disabled veterans. There is also a provision in the statute for widows and widowers that was not challenged by the plaintiffs. The plaintiffs argued that they were not given the full value of the exemption but were treated as roommates, whereas married couples receive the full exemption instead of half. The superior court judge held - applying the ACLU decision in 2005 to the Schmidt case - that any time there was the use of the word spouse in a statute or regulation, there was an equal protection violation. In response to Representative Gruenberg, Ms. Witty said she represented the state before the superior court and assisted with the appeal, but did not argue the case before the Alaska Supreme Court.

[1:22:29 PM](#)

REPRESENTATIVE GRUENBERG asked, "As I understand it, no court in this state has adopted the state's reasoning on this issue. The only two cases are the cases we have discussed, correct?"

[1:22:34 PM](#)

MS. WITTY was unaware of any other cases before courts in Alaska dealing with this issue. In further response to Representative Gruenberg, she agreed that both cases are based upon the state constitution and not the federal constitution equal protection clause.

[1:23:01 PM](#)

REPRESENTATIVE HIGGINS asked Ms. Witty whether HB 212, as written, legally meets the standards of the state constitution.

MS. WITTY stated that the bill does not clearly violate equal protection under the ruling in 2005 as it currently stands; however, if the state supreme court "widens that holding to extend to other spousal classifications, then there might be an equal protection issue." In further response to Representative Higgins, she advised that a "wait and see approach" would not be unreasonable because a number of laws would need to be changed, perhaps even by regulation.

[1:25:18 PM](#)

CO-CHAIR LEDOUX expressed her preference for a wait and see approach due to the pending court cases. She maintained her objection to Amendment 1.

REPRESENTATIVE GRUENBERG observed that Ms. Witty limited her answer to Representative Higgins to the state supreme court decision in the ACLU case. He asked for the precedential effect that can be set by the decision of the superior court in the Schmidt case; although not binding on the Alaska Supreme Court, this decision should be important to the legislature.

[1:27:31 PM](#)

MS. WITTY said:

Although the judge in the Schmidt case did use quite expansive language to describe the holding and the use of the word spouse, or widow, and widower, the facts of that case were limited to a property tax exemption challenge and whether the state had a reasonable basis for the classification made in that statute. And so, I think with any statute, you would have to look at the circumstances of that particular statute and whether or not there's a reasonable basis for the classification in that statute.

[1:28:13 PM](#)

CO-CHAIR LEDOUX surmised that superior court cases are not considered precedent by the state supreme court; in fact, in some courtrooms, superior court cases are not to be cited as precedent.

MS. WITTY affirmed that superior court cases are not binding on the state supreme court, or on the legislature, as it is dealing with different statutes. In further response to Co-Chair LeDoux, she agreed the case is not binding on another superior court, and has no precedential value.

REPRESENTATIVE GRUENBERG opined that the case is precedent, but is not binding precedence because precedence means "there is a holding and reasoning, that either the court or the legislature may look to"

MS. WITTY stated it is not precedential for the legislature in this case.

REPRESENTATIVE GRUENBERG inquired as to the authority for Ms. Witty's last statement because he had never heard whether a superior court decision is, or is not, precedent for the legislature to use. He said he would research that matter. Returning to the Schmidt case, Representative Gruenberg pointed out that the Schmidt case was decided 9/16/11, which is over two years ago, and the case was argued in the state supreme court almost one and one-half years ago. He asked when a decision is expected.

MS. WITTY was unsure if there is a requirement for a certain date.

CO-CHAIR LEDOUX suggested that if an opinion affirming the Schmidt case is issued, the bill could still be under consideration in the legislature.

REPRESENTATIVE HUGHES commented that without binding precedent, and with a pending court case, she would not support the amendment.

CO-CHAIR FOSTER said he would support the amendment because the duty of the legislature is to direct good public policy.

[1:33:36 PM](#)

A roll call vote was taken. Representatives Gruenberg and Foster voted in favor of Amendment 1. Representatives Higgins, Hughes, and LeDoux voted against it. Therefore, Amendment 1 failed by a vote of 2-3.

REPRESENTATIVE GRUENBERG said he supports the bill; it just happened to be a piece of legislation that presented the issue he addressed in the proposed amendment.

CO-CHAIR FOSTER stated his support for the bill.

[1:35:43 PM](#)

CO-CHAIR FOSTER moved to report HB 212 out of committee with individual recommendations and the accompanying fiscal notes. Without objection, HB 212 was moved from the House Special Committee on Military and Veterans' Affairs.

[1:36:23 PM](#)

The committee took an at-ease from 1:36 p.m. to 1:39 p.m.

HJR 21-MILITARY RETIRMENT BENEFITS

[1:39:18 PM](#)

CO-CHAIR LEDOUX announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 21, Opposing cuts to retirement benefits owed to members of the armed services of the United States; and urging the United States Congress to approve legislation allowing members of the armed services of the United States to receive promised retirement benefits.

[1:39:45 PM](#)

REPRESENTATIVE BOB LYNN, Alaska State Legislature, prime sponsor, introduced HJR 21. He paraphrased from a prepared statement as follows:

I believe our troops expect an attack on a military battlefield. Our troops, active and retired, shouldn't have to suffer an attack by Congress on our military. I'm sorry to say that Congress has enacted legislation - signed by the President - that will cut the cost of the living allowances - or COLA - to military retirees, retirees that include wounded

veterans and disabled veterans. It was a bipartisan outrage in the name of compromise. ... Everybody knows there is no shortage of places where Congress should, and could, cut spending. There is simply no excuse for our government to breaking the de facto contract between the USA and our wonderful warriors. So that's why I sponsored this joint house resolution

[1:42:16 PM](#)

CO-CHAIR LEDOUX opened public testimony on HJR 21. There being no one who wished to testify, public testimony was closed.

[1:42:58 PM](#)

REPRESENTATIVE HIGGINS related his personal experience is that the government has whittled down benefits to military members and retirees, especially medical benefits. The government spends money on frivolous issues and he agreed that the contract with those who serve should be honored.

REPRESENTATIVE HUGHES noticed [from supporting documents found in the committee packet] the amount of savings to [the government] is \$6 billion, but the impact on individuals is between \$70,000 and \$80,000. She agreed with the previous speaker and expressed her support for the resolution.

CO-CHAIR FOSTER added that military members do not make high wages, and he expressed his support for the resolution.

REPRESENTATIVE GRUENBERG expressed his support and thanked all those who have served in the military.

CO-CHAIR LEDOUX expressed her support for the resolution.

[1:46:17 PM](#)

REPRESENTATIVE HUGHES declared a conflict of interest.

REPRESENTATIVE GRUENBERG objected for the record. He pointed out - according to [supporting documents found in the committee packet] - that the term "veteran" in the resolution is limited to those who have been disabled or who have served more than 20 years, thus for those who served less, there is no conflict. He asked the sponsor for clarification.

REPRESENTATIVE LYNN said [HJR 21] is for retirees and those with a medical retirement.

[1:47:27 PM](#)

CO-CHAIR FOSTER moved to report HJR 21 out of committee with [individual] recommendations and no attached fiscal notes. There being no objection, HJR 21 was reported from the House Special Committee on Military and Veterans' Affairs.

[1:48:01 PM](#)

The committee took an at-ease from 1:48 p.m. to 1:50 p.m.

HB 286-VETS' RETIREMENT/LOANS/HOUSING/EMPLOYMENT

[1:50:00 PM](#)

CO-CHAIR LEDOUX announced that the final order of business would be HOUSE BILL NO. 286, "An Act relating to the Teachers' Retirement System, the Judicial Retirement System, and the Public Employees' Retirement System for qualified military service; relating to the definition of 'veteran' for purposes of housing, eligibility for veterans' loans, and preferences in state employment hiring; and providing for an effective date."

[1:50:34 PM](#)

CURTIS THAYER, Commissioner, Department of Administration (DOA), introduced HB 286 on behalf of the House Rules Committee by request of the governor. Commissioner Thayer informed the committee that the governor's administration has recently found items in statute that are not current. For example, there are over 64,000 veterans living in Alaska and 25,000 military members and their families "call Alaska home." Under Alaska law, veterans are eligible for special loan, housing, and employment preferences; however, current statutory language limits preferences to veterans of foreign wars up to and including the Vietnam War. The state is currently unable to extend these preferences to veterans of recent conflicts. In recognition of our service men and women, the bill amends the preference eligibility statutes by updating the periods of service to include the veterans of the most recent wars and conflicts and extending eligibility for veterans' preferences to veterans of the 1991 Gulf War, and veterans who have served under Operation Iraqi Freedom and includes provisions should future conflicts arise. The bill also ensures military families

receive full survivor benefits for fallen soldiers implemented under the Heroes Earning Assistance and Relief Tax Act (HEART Act) enacted by Congress in 2008. The HEART Act also addresses differential wage payments - compensation for service members that they would have received from the employer during the service member's period of active duty had the employee been called up to active duty. Commissioner Thayer further explained that when a state employee reservist is called to active duty and is killed in action, their employment with the state will revert back to the day before they died, thus they would receive the same death benefit as a current state employee, and vesting, if any, would be credited to them for their families. Also, there is a provision for the definition of veteran for the purposes of Alaska Housing Finance Corporation (AHFC). Attached to HB 286 is a zero fiscal note. Commissioner Thayer observed that the state has been very lucky that no reservists that have been called for active duty have been killed; however, the administration seeks to bring the state law up to date with federal law.

[1:54:07 PM](#)

CO-CHAIR LEDOUX opened public testimony on HB 286.

REPRESENTATIVE GRUENBERG surmised the bill extends private benefits, but not governmental benefits.

COMMISSIONER THAYER responded that the bill extends state benefits, such as state death benefits.

REPRESENTATIVE GRUENBERG asked why there is no fiscal note to reflect that.

[1:55:11 PM](#)

KATHY LEA, Deputy Director, Central Office, Division of Retirement and Benefits, Department of Administration, responded that her division requested its plan actuary to value the effect of the bill on the Public Employees' Retirement System (PERS), the Teachers' Retirement System (TRS), and the Judicial Retirement System (JRS) [plan]. The actuary determined that since there have been no such deaths since [2009], the bill has a de minimis effect on the plan, thus there is a zero fiscal note. In further response to Representative Gruenberg, she said the state does not expect no one will be affected, but it does not expect to see large numbers affected, that would influence the liabilities of the plan.

REPRESENTATIVE GRUENBERG stated that he and especially the House Special Committee on Military and Veteran's Affairs need to know an estimate on how many would be affected.

COMMISSIONER THAYER pointed out, thankfully, in six years no one has been killed under these circumstances. In further response to Representative Gruenberg, he agreed that the bill is prophylactic because the federal law changed in 2008, and the state is currently out of compliance. He said, "This is for audit purposes ... we're expecting a 2015 audit."

REPRESENTATIVE GRUENBERG inquired as to whether the state will face potential sanctions for being out of compliance.

MS. LEA said at this point her division does not anticipate any sanctions from the federal government; if the bill passes as anticipated, the state will be "in good qualification status" in a timely manner. In further response to Representative Gruenberg, she deferred the question of potential sanctions to tax counsel, but added her understanding is that the division will not face sanctions if the bill is passed prior to qualification time.

REPRESENTATIVE GRUENBERG restated his question: "Any idea, if we don't pass it, what we might face?"

[2:00:03 PM](#)

MS. LEA acknowledged that if the bill is not passed, when the state seeks qualifications of PERS, TRS, and JRS, the most dire consequence would be the loss of tax qualification status and, at the least, the state could face fines.

REPRESENTATIVE GRUENBERG requested that the division forward to him any further information on this matter.

REPRESENTATIVE HUGHES asked for confirmation that the definition of "employer" referred to in the bill is the State of Alaska.

COMMISSIONER THAYER said correct. The bill applies to State of Alaska employees, retirees, and political subdivisions.

[2:02:10 PM](#)

CO-CHAIR LEDOUX, after ascertaining that no members of the public wished to testify, closed public testimony.

2:02:35 PM

HB 286 was held over.

2:02:54 PM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:02 p.m.