

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 25, 2023

8:10 a.m.

MEMBERS PRESENT

Representative CJ McCormick, Chair
Representative Kevin McCabe, Vice Chair
Representative Tom McKay
Representative Justin Ruffridge
Representative Rebecca Himschoot
Representative Donna Mears

MEMBERS ABSENT

Representative Josiah Patkotak

OTHER LEGISLATORS PRESENT

Representative Maxine Dibert
Representative Ashley Carrick
Representative Jesse Sumner

COMMITTEE CALENDAR

HOUSE BILL NO. 99

"An Act relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

- MOVED HB 99 OUT OF COMMITTEE

PRESENTATION(S): INVESTING IN WATER/SEWER INFRASTRUCTURE IN ALASKA

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 99

SHORT TITLE: DISCRIMINATION: GENDER ID.;SEXUAL ORIENT.

SPONSOR(S): REPRESENTATIVE(S) ARMSTRONG

03/08/23	(H)	READ THE FIRST TIME - REFERRALS
03/08/23	(H)	L&C, CRA, JUD
03/15/23	(H)	L&C AT 3:15 PM BARNES 124
03/15/23	(H)	<Bill Hearing Canceled>

03/17/23	(H)	L&C AT 3:15 PM BARNES 124
03/17/23	(H)	Heard & Held
03/17/23	(H)	MINUTE(L&C)
03/20/23	(H)	L&C AT 3:15 PM BARNES 124
03/20/23	(H)	Heard & Held
03/20/23	(H)	MINUTE(L&C)
03/27/23	(H)	L&C AT 3:15 PM BARNES 124
03/27/23	(H)	Moved HB 99 Out of Committee
03/27/23	(H)	MINUTE(L&C)
03/29/23	(H)	L&C RPT 3DP 3NR 1AM
03/29/23	(H)	DP: FIELDS, CARRICK, SUMNER
03/29/23	(H)	NR: SADDLER, WRIGHT, RUFFRIDGE
03/29/23	(H)	AM: PRAX
04/11/23	(H)	CRA AT 8:00 AM BARNES 124
04/11/23	(H)	Heard & Held
04/11/23	(H)	MINUTE(CRA)
04/18/23	(H)	CRA AT 8:00 AM BARNES 124
04/18/23	(H)	Heard & Held
04/18/23	(H)	MINUTE(CRA)
04/25/23	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE JENNIE ARMSTRONG

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, recapped HB 99 and answered questions.

TRISTAN WALSH Staff

Representative Jennie Armstrong
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Armstrong, prime sponsor, answered questions on HB 99.

ROB CORBISIER, Executive Director

Alaska State Commission on Human Rights
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 99.

MARGRET BERGERUD, Legal Counsel

Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 99.

RANDY BATES, Director
Division of Water
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Introduced the PowerPoint presentation on the Village Safe Water program.

CARRIE BOHAN, Facilities Programs Manager
Division of Water
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint presentation on the Village Safe Water program.

ACTION NARRATIVE

[8:10:24 AM](#)

CHAIR CJ MCCORMICK called the House Community and Regional Affairs Standing Committee meeting to order at 8:10 a.m. Representatives McKay, Ruffridge, Mears, McCabe, and McCormick were present at the call to order. Representative Himschoot arrived as the meeting was in progress.

HB 99-DISCRIMINATION: GENDER ID.;SEXUAL ORIENT.

[8:11:37 AM](#)

CHAIR MCCORMICK announced that the first order of business would be HOUSE BILL NO. 99, "An Act relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

[8:12:31 AM](#)

REPRESENTATIVE JENNIE ARMSTRONG, Alaska State Legislature, recapped that HB 99 would give lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals the same protections as all residents of the state. This concerns the rights guaranteed by the Alaska State Commission on Human Rights (ASCHR) in relation to employment, housing, financing, governmental practices, and public accommodation. She stated that "sex" is already a protected class in the statutes governing ASCHR, and the proposed legislation would change this

definition to reflect the definition supported by the Supreme Court of the United States.

[8:14:05 AM](#)

REPRESENTATIVE MCCABE moved to adopt Amendment 1 to HB 99, labeled 33-LS0386\B.4, Bergerud, 4/17/23, which read as follows:

Page 1, line 1, following "**prohibiting**":
Insert "**employment**"

Page 1, line 2, following "**expression**":
Insert "; **and relating to blockbusting**"

Page 1, following line 3:

Insert a new bill section to read:

"* Section 1. AS 18.80.220(d) is amended to read:

(d) In this section,

(1) "dependent child" means an unmarried child, including an adopted child, who is dependent on [upon] a parent for support and who is

(A) [EITHER (1)] less than 19 years old;

(B) [(2)] less than 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education and Early Development; or

(C) [(3)] of any age and totally and permanently disabled;

(2) "sex" includes sexual orientation and gender identity or expression."

Page 1, line 4:
Delete "**Section 1**"
Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 2, line 8:
Delete "includes"
Insert "does not include"

REPRESENTATIVE MEARS objected.

[8:17:32 AM](#)

The committee took an at-ease from 8:17 a.m. to 8:44 a.m.

[8:44:00 AM](#)

CHAIR MCCORMICK announced that the meeting was back on record. He stated that because of technical difficulties the committee meeting was relocated to room 106.

[8:44:27 AM](#)

REPRESENTATIVE MCCABE, addressing Amendment 1, stated that the bill sponsor has made a very good argument for the need for HB 99 based on Bostock v. Clayton County, 590 U.S. 644 (2020). After reviewing the case, he expressed the opinion that the case had been decided under a careful and narrow scope, and it should not go beyond Title 7 to other federal and state laws. He related that the decision did not address bathrooms, locker rooms, or anything similar. He expressed the understanding that Bostock v. Clayton County was specific to employment discrimination only. He explained that this matter is not settled and still evolving in the courts, and he advised that there should be a clearer understanding of the law before making "such sweeping legislation." He cited a case in Texas and advised that the proposed legislation be tailored by the amendment to only deal with the question of employment.

[8:47:29 AM](#)

REPRESENTATIVE ARMSTRONG expressed the opinion that discrimination is happening everywhere. She stressed that it is affecting active-duty service members, and Alaska has the highest number of veterans per capita. She argued that discrimination is affecting the state's economy, and if the state wants more businesses, these businesses need to ensure their employees equal protection. She suggested that what the proposed legislation would do is not new or dramatic. She reiterated that ASCHR has taken on these cases in the past without incident, and this would simply go back to that. She argued that it is the job of the state to protect its residents, not the job of the federal government. She expressed opposition to Amendment 1.

[8:49:17 AM](#)

REPRESENTATIVE RUFFRIDGE declared a conflict of interest and requested to be recused from the conversation.

CHAIR MCCORMICK objected to the request. There being no further objections, the request was denied.

[8:49:42 AM](#)

REPRESENTATIVE MCCABE questioned why the proposed legislation is limited to gender identity and expression, as it could be expanded to political expression, for example. He suggested that this is "a hidden way of getting your definition in there by putting it into blockbusting, which is a real estate issue."

REPRESENTATIVE ARMSTRONG deferred the question.

[8:50:50 AM](#)

ROB CORBISIER, Executive Director, Alaska Commission on Human Rights, stated that political affiliation is a protected class in some jurisdictions; however, it is not in Alaska.

REPRESENTATIVE MCCABE pointed out that he had said political "expression" and not political "affiliation." He voiced the understanding that the sponsor had said that "sexual expression" was an outward expression of identity. He reiterated his question concerning political expression, and he opined that if the legislation is "all inclusive" this should be included.

[8:52:37 AM](#)

REPRESENTATIVE ARMSTRONG responded that she identifies as LGBTQ, and this is why she is bringing the bill forward. She continued that she has not heard of any incidences of discrimination because of political expression; however, there are many stories of discrimination of individuals in the LGBTQ community. She voiced that there are 13,000 LGBTQ individuals in the state who "feel fear." She argued the economic impacts and stated that she supports equal protection for everyone. She stated that the proposed legislation is not adding a protected class, but only redefining "sex" in relation to this.

REPRESENTATIVE MCCABE, in a follow-up question, pointed out the many types of protections in the law. He argued that this would add "gender identity and expression" to the law; therefore, it would be a perfect place to add "political expression." He stated that he has heard many stories of people being discriminated against for their political beliefs.

REPRESENTATIVE ARMSTRONG, for the record, clarified that the proposed legislation would not be adding new words to the statute. She stated that "gender identity and expression" will not be in the statute, as the proposed legislation is only changing the definition of "sex." She stated that "political expression" does not currently fall under this definition.

REPRESENTATIVE MCCABE pointed out that on page 2, line 3 of the bill, it relates that new paragraphs are added, and he expressed concern over line 19.

[8:56:46 AM](#)

REPRESENTATIVE HIMSCHOOT questioned whether Legislative Legal Services could be consulted on the matter. She observed that the political protections being referenced are under the First Amendment to the Constitution of the United States. She expressed the understanding that the conversation is about protected classes, which is different than free speech.

[8:57:49 AM](#)

MARGARET BERGERUD, Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, responded that the First Amendment protects political expression in regard to actions the government may take. She continued that the Alaska Human Rights Act, which would be amended by the proposed legislation, extends protections past the government to private actors. She suggested that individuals could be discriminated against for political expression under the Alaska Human Rights Act.

[8:59:01 AM](#)

REPRESENTATIVE HIMSCHOOT questioned why the state would not protect these classes in the proposed legislation.

REPRESENTATIVE MCCABE responded the bill does not go far enough. He concurred with Ms. Bergerud, that the First Amendment would only protect in regards to the government. He continued that if gender expression is protected in a private place, all expressions should be included.

REPRESENTATIVE HIMSCHOOT questioned whether [the Alaska Human Rights Act and] ASCHR would protect political expression.

MS. BERGERUD responded that ASCHR does not protect political affiliation. She stated that it focuses on immutable characteristics.

REPRESENTATIVE HIMSCHOOT commented that immutable characteristics and political expression are clearly distinct from one another. She expressed opposition to the proposed amendment.

[9:01:15 AM](#)

REPRESENTATIVE MCKAY expressed support for Amendment 1. He expressed the opinion that HB 99 would only protect "going one way." He questioned who would protect his granddaughters in a locker room when a male transitioning into a female undressed in the locker room. He pointed out that the word "sex" would be redefined, and he argued that "we are not God ... and just because a man puts on a dress does not make him a woman." He continued that Amendment 1 would help the bill "survive." He expressed the opinion that by protecting one class, the entire society would be exposed.

REPRESENTATIVE ARMSTRONG responded that the majority of violence in the country is perpetrated by straight men, not the LGBTQ community. As she identifies as LGBTQ, she expressed resentment that this community is portrayed as predators. She argued that children in Anchorage are not affected, as they are already living under these regulations, along with half of the state. She stated that "God made me too and I am not trying to play God," rather she is doing her job as a legislator representing the people in Alaska.

[9:04:50 AM](#)

TRISTAN WALSH Staff, Representative Jennie Armstrong, Alaska State Legislature, commented that when the definition of "sex" is examined in the statute, it is defined to include language which is in Bostock v. Clayton County; and the intent of the proposed legislation [is to include this language].

REPRESENTATIVE ARMSTRONG pointed to the handout, titled "Sexual Violence & Transgender/Non-binary Communities" [copy included in the committee packet], which reports that it is the LGBTQ community who faces discrimination and violence, and they are not the perpetrators.

[9:05:46 AM](#)

REPRESENTATIVE MEARS spoke to her objection to Amendment 1 to HB 99. She expressed the understanding that the discussion is happening because of Bostock v. Clayton County, and the need to extend this protection of rights. She argued that the proposed legislation would not exclude anyone from criminal behavior; however, it would protect the rights of individuals to live and work in Alaska. She expressed opposition to the amendment.

[9:06:45 AM](#)

REPRESENTATIVE RUFFRIDGE expressed the understanding that [from December 2020 to] August 2022 ASCHR was already taking cases in regard to discrimination for housing, finance, and government accommodation.

REPRESENTATIVE ARMSTRONG responded in the affirmative.

REPRESENTATIVE RUFFRIDGE questioned whether HB 99 or Amendment 1 would create a new protected class.

REPRESENTATIVE ARMSTRONG responded in the negative. She reminded the committee that there are already several protected classes, which are: race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, and parenthood. She stated that sexual orientation and gender identity would fall under the protected class of sex. She stated that this is not a request for "extra, just equal."

REPRESENTATIVE RUFFRIDGE expressed the understanding that Amendment 1 would retain the language of the currently protected class of sex and define this to include sexual orientation and gender identity and expression, similar to the bill in its original form; however, the amendment would limit protection to employment only. He questioned whether the nature of the amendment would result in codifying discrimination.

[9:09:03 AM](#)

REPRESENTATIVE MCCABE stated that this issue was reviewed during the drafting process of the amendment. He stated that the amendment would recognize Bostock v. Clayton County, and it would also recognize that President Joe Biden had issued an executive order, of which the U.S. Supreme Court placed an injunction against. He explained that this is still in the courts, with Alaska being a party to the lawsuit. He expressed

the opinion that this type of legislation should not be acted on because of [the injunction and the impending lawsuits].

[9:10:16 AM](#)

REPRESENTATIVE RUFFRIDGE expressed the understanding that the proposed legislation would only affect ASCHR.

MR. CORBISIER responded in the affirmative.

REPRESENTATIVE RUFFRIDGE clarified that ASCHR was taking these cases until a certain timeframe. He expressed the understanding that ASCHR is an organization which hears from individuals who feel they have been discriminated against, and it does not preclude criminal activity on the part of any person. The proposed legislation would not create a protected class, rather it would allow ASCHR to hear cases on all types of discrimination. He expressed concern that the amendment would narrow this view, and those being discriminated against would not have an outlet. He expressed opposition to Amendment 1 to HB 99.

REPRESENTATIVE ARMSTRONG commented that in August 2022, when the protections were lifted from ASCHR, there had not been a request to wait for interpretation of case law, and it was related that statutory action was needed to reinstate ASCHR's protections.

[9:13:47 AM](#)

REPRESENTATIVE MCKAY expressed the understanding that ASCHR has not taken a position on the proposed legislation. He expressed the understanding that during a meeting one of the commissioners had commented about the legislature politicizing the issue.

REPRESENTATIVE ARMSTRONG stated that the bill was presented to ASCHR last week, and at that time it had not taken a position.

REPRESENTATIVE MCKAY remarked that this is his understanding and reiterated that one member had related the process was being politicized by the legislature. He expressed the opinion that if these protections are already in some places in Alaska, the bill is unnecessary. He questioned the number of incidences of discrimination in other parts of the state which do not have these protections.

REPRESENTATIVE ARMSTRONG deferred the question.

MR. CORBISIER responded that ASCHR has not taken a position. He stated that the bill sponsor presented the bill during an ASCHR meeting the previous week. He stated that there were comments made by commissioners at the end of the meeting; however, the commission has not approved the minutes from this meeting.

MR. WALSH indicated that the document from the Williams Institute, titled "Employment Discrimination Based on Sexual Orientation and Gender Identity in Alaska" [copy included in the committee packet], shows on page 3 of a 2015 survey a report of evidence of discrimination in Alaska.

REPRESENTATIVE ARMSTRONG joined in to say that people across the state are facing discrimination. She reminded the committee that only first class cities are able to pass nondiscrimination ordinances; therefore, half of the state still needs protections in place.

[9:16:59 AM](#)

REPRESENTATIVE MEARS maintained her objection.

[9:17:08 AM](#)

A roll call vote was taken. Representatives McCabe and McKay voted in favor of Amendment 1 to HB 99. Representatives Mears, Ruffridge, Himschoot, and McCormick voted against it. Therefore, Amendment 1 failed to be adopted by a vote of 2-4.

[9:17:51 AM](#)

The committee took a brief at-ease.

[9:17:55 AM](#)

REPRESENTATIVE MCCABE moved to report HB 99 out of committee with individual recommendations and the attached zero fiscal note.

[9:18:42 AM](#)

REPRESENTATIVE MCKAY objected.

[9:19:07 AM](#)

A roll call vote was taken. Representatives Himschoot, Mears, Ruffridge, and McCormick voted in favor of the motion to move HB

99 out of committee with individual recommendations and the attached zero fiscal note. Representatives McCabe and McKay voted against it. Therefore, HB 99 was reported out of the House Community and Regional Affairs Standing Committee by a vote of 4-2.

[9:19:48 AM](#)

The committee took an at-ease from 9:19 a.m. to 9:23 a.m.

PRESENTATION(s): Investing in Water/Sewer Infrastructure in Alaska

[9:23:47 AM](#)

CHAIR MCCORMICK announced that the final order of business would be a presentation on investing in the water and sewer infrastructure in Alaska. [The presentation is a continuation from the meeting on April 20, 2023.]

[9:24:20 AM](#)

RANDY BATES, Director, Division of Water, Department of Environmental Conservation (DEC), provided an introduction.

[9:25:09 AM](#)

CARRIE BOHAN, Facilities Programs Manager, Division of Water, resumed the PowerPoint presentation on the Village Safe Water program. She noted that the committee has already seen the first few slides, and she provided a brief refresher. She reiterated that the need for sanitation improvements [in remote Alaska] has become exponentially greater than the available funding. She suggested that because of the federal Infrastructure Investment and Jobs Act (IIJA) there is currently funding. She stated that Alaska can expect around \$2 billion to meet these needs. She noted the funding partners, as seen on slide 3. She moved to slide 4, which showed the two major funding mechanisms, which are the Alaska Native Tribal Health Consortium (ANTHC) and Village Save Water (VSW). Slide 5 featured a bar graph showing the funding sources for infrastructure projects for the past eight years. She noted the large amount of IIJA funding for 2023. She also noted that of all the sources only the Indian Health Service (IHS) and U.S. Environmental Protection Agency (EPA) are used to determine eligibility for projects. She moved to slide 6, which identified the underserved and unserved communities. She

explained the meaning of "underserved." She then pointed out the communities which remain unserved. She proceeded to slide 7, which explained the average Village Safe Water project.

[9:31:45 AM](#)

REPRESENTATIVE MEARS requested clarification on the current funding situation.

MS. BOHAN expressed the understanding that the \$1 million estimate is higher than it has been in the past because of the difficulty in serving certain system locales [seen on slide 6] and inflation.

REPRESENTATIVE MEARS stated she had worked for ANTHC in the past, and it had not spent this amount of funding per home.

REPRESENTATIVE MCCABE stated that he disagreed. He discussed the high expenses he saw 27 years ago when aircraft were required to transport the material to build the infrastructure. If a community is not on the road system, he suggested that transportation is the majority of the cost.

[9:34:17 AM](#)

MS. BOHAN continued the presentation and addressed the eligibility requirement for villages to receive funding. She reiterated that the need is "great" while the funding is "not so great." She stated that every project has a direct health benefit to the community, so every need is compelling; however, meeting all the needs is not possible. She addressed the tools used to assess which project will receive funding and explained that historically the RUBA assessment tool has been used, which relied on communities meeting certain metrics. She explained that because using this tool was very time consuming, and federal funding usually has a five-year life span, the process had to be changed. She explained that the RUBA tool was modified into the Operations and Maintenance Best Practices tool. She discussed the reasoning and benefit concerning this tool, as seen on slide 8. She emphasized that this tool offers opportunities for incremental improvements, as opposed to an all or none opportunity for a project. She discussed the capacity assessment for drinking water, which is based on the Safe Drinking Water Act. She added that there has been an awareness on not creating new burdens of requirements for communities, so many of the criteria are based on things the communities are already required to do.

[9:38:12 AM](#)

MS. BOHAN, in response to a committee question, stated that the letter referenced was from St. Paul. She stated that DEC has had several conversations on the concerns voiced in the letter, and modifications have been made over time. She offered to provide more information on this topic. In order to evaluate the effectiveness of the tool, she expressed interest in hearing from communities. She stated that a program to receive community input will be launched in the very near future.

MS. BOHAN pointed out that communities are not only given their eligibility score, but also, they are provided information on what can be done to meet the eligibility requirements to receive funding. She continued speaking about the details of community scoring for eligibility. Further addressing the scoring, she pointed out the scoring matrix on slide 9. She added that prior to project funding, a community must have an approved planning document. The document must provide all the alternatives to solving the identified problem. She further discussed the requirements for this document and added that communities are given help in developing a plan.

MS. BOHAN, in response to a committee question, stated that "sustainability" means a community's ability to continue to operate any new sewage plant or wellhouse into the future.

MS. BOHAN continued the slide and discussed the tool which assesses the current burden of the user rate on homeowners, as well as the socio-economic factors; in other words, what will community members "have to give up in order to pay for their user rates."

[9:46:50 AM](#)

MS. BOHAN, in response to a committee question, expressed uncertainty on any way to share the burden across the state for the exorbitant prices of the water systems in rural communities. She expressed the understanding that some communities provide a different rate for the Tribal Elders; therefore, each community has the ability to set its own rate.

MR. BATES, in response to a committee question concerning DEC's goal on water systems in rural communities, stated that specific to the Safe Drinking Water Act, DEC has the obligation to evaluate the capacity of a community. He pointed out that the

[Operations and Maintenance Best Practices] capacity assessment tool is the predictor of a community's ability to operate the infrastructure safely and sustainably. He explained that if billions of dollars in federal funding with a state match are going to be spent to build a treatment facility and pipe service, at the point construction is completed, then the community is responsible as the owner and operator of the facility. He stated that the community must be able to operate the system safely, delivering drinking water and treating sewage for the residents. He advised that communities need to be able to maintain this for decades, and this is the connection with DEC, [and why it supplies the capacity assessment tool]. He added that there are certain federal programs pertaining to this the DEC implements. In response to a follow-up question, he expressed some disagreement on why DEC should not be responsible for water management systems. He argued that clean drinking water is paramount to all residents of the state, and this is DEC's mission, to protect human health and the environment. He stated that DEC is implementing the federal law to do this, and the assessment of doing this with the scoring tool is crucial. He discussed this in further detail, and he offered to report back to the legislature the results of the tools used.

[9:56:57 AM](#)

MS. BOHAN, in response to a committee question, stated that the 47 communities in the state who do not have safe drinking water were identified on slide 6. She stated that presently ASTHC is using IHS funding to look at piped services to each of these communities. She added that IIJA funding is going through IHS, so there is funding for this without considering a community's future capacity. She stated that VSW did not receive any funding through IIJA, but it will help administer the projects. In response to a follow-up question, she replied that all of these communities have at least a washeteria and some treated water which can be hauled to homes. There is also a place to dispose of waste. She added that these 47 communities lack full service for both drinking and waste water. In response to a committee comment, she stated that the Village Safe Water statute defines eligibility, so there are communities that are not eligible for VSW funding; however, many of these would be eligible for the VSW's revolving loan fund, which is also receiving IIJA funding. She added that there are also communities who may be eligible but have never pursued funding.

[10:00:38 AM](#)

CHAIR MCCORMICK stated that the presentation will be continued at a future date.

[10:01:21 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 10:01 a.m.