

SB

40001

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Public
Testimony
For

SB 4001

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Alaska State Legislature

Please enter into the record my testimony to the SENATE FINANCE
committee name

committee on SB 4001, dated 15 NOV 2006
bill/subject

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

PAGE 1 OF 3.

Signed: *Steve Jorgensen*
Testifier

My partner, myself, and our two children.
Representing (Optional)

5980 YUKON ROAD, ANCHORAGE, AK, 99507.
Address

907-350-2111.
Phone No.

PAGE 2 OF 3.

Steven Jacquier
PO Box 230007
Anchorage, AK 99523-0007
Steven_Jacquier@hotmail.com
15NOV2006

My name is Steven Jacquier; my partner and I have lived in Alaska for a combined total of 44 years while working as schoolteachers, University of Alaska professors, and small business owners. We have two children, one now in college and one in high school here in Anchorage. I am testifying on behalf of my children, my partner, and myself.

This is sheer wedge-issue politics targeting a small group—a group which does much good and no harm in Alaska.

Just as women should receive pay equal with that of men for performing equal work, we Alaskans in long-standing committed relationships, raising children, and contributing with our labor all while being barred from marriage absolutely have paid in equally and fully earned treatment equal with that accorded our married coworkers. This bigoted effort hurts Alaska's families and kids; like a parasite it brings more grief, expense, and suffering the bigger it is allowed to grow.

In seeking to perform an end-run on the justice of Alaska's courts—purely in order to subvert a ruling for equal treatment under the law—some members of this legislature are attempting to turn Alaskan coworkers into parasites. Yes, parasites! Parasites benefiting at the expense of others by unfairly leeching off the labor of coworkers with families. Respectable people, good neighbors, and good Christians do not embrace being like tapeworms.

Pandering to prejudice, some members of this legislature are trying to target same-sex families and our children for special discriminatory exclusion. Instead of protecting equality and citizens' rights, this effort is ultimately motivated by a desire to strip away equal treatment and unjustly target a specific group—unmarried families—for harm while creating special privileges for others—married families—thus effectively forcing married coworkers and their families to become parasites upon unmarried coworkers with families in committed same-sex relationships.

Only hypocrites who give lip service to ideals of “small government” and “equality under the law” while intruding their own personal and religious prejudices into their neighbor's lives would support this ugly effort. Hypocrites and parasites do not make for good coworkers, nor good neighbors, nor a healthy Alaska; such parasites are without any shred of fairness, honor, or dignity. Legislators and others who embrace being parasites should not even think about trying to claim the high moral ground on this issue. Alaska's courts have ruled and the Commissioner of Administration is able to implement the ruling. For shame, people! Please stop this heinous pandering, now, and let us all just live in peace.

PAGE 3 OF 3.

A senator in the Finance Committee earlier asked if arrests and handcuffs might be involved if the executive or legislative branches were to deliberately flout a direct court order requiring implementation of equal treatment under the law. In reply, not only would it be an appalling display of disrespect for the rule of law in our democracy if a court order were to be defied by another branch, but it would also be unwise in opening the door to actual physical conflict as citizens seek to take corrective action. The answer to the senator's question is "yes, there would be handcuffs and arrests" (though probably not for those who would really deserve such) as citizens come to Juneau --with handcuffs-- and attempt to place anyone necessary under citizen's arrest. The judicial branch may not have uniformed troopers for enforcement but I myself, and many others I am sure, would be entirely willing to go to jail if necessary in attempting to place whomever necessary in the administration or legislature under citizen's arrest if such a court order is defied.

Thank you.

Any questions?



Alaska State Legislature

Please enter into the record my testimony to the SFIN + HFIN
 committee name
 committee on SB 4001, dated 11-15-06
 bill/subject

Re: Bill 4001

I am opposed to legislative actions to hamper health benefits being extended to all state workers. This is a health issue. This is a civil rights issue. The court has made the remedy clear. And Alaska now is moving toward the direction reflected in the nation and the world, recognizing the need and justice of equal benefits for all. I support the judicial mandate to grant equal benefits to all workers including benefits to the families of same sex partnerships. This is ultimately for the increased health of all Alaskans. As a health care provider, I encourage you to work toward the benefit and health of ALL Alaskans and not legislate your prejudicial opinions.

Sincerely,
 Maureen Longworth, M.D.

Signed: _____
 Testifier

From:
 Maureen Longworth, M.D.
 119 Seward Street, Suite 17
 Juneau, AK 99801

 Phone No.

To: Finance Committee
Attn: Chair & Co-chair

From:
Maureen Longworth, M.D.
119 Seward Street, Suite 17
Juneau, AK 99801

Re: Bill 4001

I am opposed to legislative actions to hamper health benefits being extended to all state workers. This is a health issue. This is a civil rights issue. The court has made the remedy clear. And Alaska now is moving toward the direction reflected in the nation and the world, recognizing the need and justice of equal benefits for all. I support the judicial mandate to grant equal benefits to all workers including benefits to the families of same sex partnerships. This is ultimately for the increased health of all Alaskans. As a health care provider, I encourage you to work toward the benefit and health of ALL Alaskans and not legislate your prejudicial opinions.

Sincerely,
Maureen Longworth, M.D.

4.12.02

Alaska Academy of Family Physicians

PO Box 222665, Anchorage, AK 99522 akafp@gci.net www.alaskaafp.org 907 258-2255 office
530 326-5612 fax

March 11, 2006

Dear Legislator:

The Alaska Academy of Family Physicians strongly opposes SJR 20/HJR 32.

This proposed amendment violates a national American Academy of Family Physicians policy, established in 2002, and would have a negative impact on the health of Alaskans.

The national AAFP policy regarding children's health which the Alaska Academy of Family Physicians supports is as follows: "The American Academy of Family Physicians establishes policy and be supportive of legislation which promotes a safe and nurturing environment, including psychological and legal security, for all children, including those of adoptive parents, regardless of the parents' sexual orientation. (2002) (2003)"

We urge you to vote against SJR 20/HJR 32, as representatives and protectors of the good health of all Alaskans.

Respectfully,

Katy M. Sheridan M.D.
President

The Alaska Academy of Family Physicians represents 355 family physicians throughout the state.

Founded in 1947, the AAFP represents more than 94,000 physicians and medical students nationwide. It is the only medical society devoted solely to primary care.

Nearly one in four of all office visits are made to general and family physicians. That is 215 million office visits each year – 59 million more than to any other medical specialty. Today, family physicians provide the majority of care for America's underserved and rural populations.

In the increasingly fragmented world of health care where many medical specialties limit their practice to a particular organ, disease, age or sex, family physicians are dedicated to treating the whole person across the full spectrum of ages. Family medicine's cornerstone is an ongoing, personal patient-physician relationship focused on integrated care.

To learn more about the American Academy of Family physicians and about the specialty of family medicine, please visit <http://www.aafp.org/>.



Alaska State Legislature

Please enter into the record my testimony to the SFIN + HFIN
 committee name
 committee on SB4001, dated 11-15-06
 bill/subject

Re: Bill 4001

To Whom It May Concern;

Please register my encouragement to support same sex partner benefits for all employees. I AM AGAINST ANY LEGISLATION THAT PREVENTS SAME SEX BENEFITS. It is the right thing to do and it is time we did that right thing in this state and in the country as a whole. This is an equal rights issue, and we must in reality become a country and state of equal rights.

Sincerely,
 Darolann Gould

Signed: _____
 Testifier

From:
 Darolann Gould
 6410 E. Northern Lights Blvd. 6A
 Anchorage, AK 99504-3377
 907 337 9346
 gould_dee@hotmail.com

 Phone No.

To: Finance Committee
Attn: Chair & Co-chair

From:
Darolann Gould
Gould_dee@hotmail.com

Re: Bill 4001

Please register my encouragement to support same sex partner benefits for all employees. I AM AGAINST ANY LEGISLATION THAT PREVENTS SAME SEX BENEFITS. This is an equal rights issue.

Sincerely,
Darolann Gould

Senate Health Education and Social Services Committee
Senate Finance Committee

November 13, 2006

I am Ben Krall. I am 11-years-old, and was born and raised in Juneau. I would like to testify against giving you any more time to do what you know you need to do. You just need to give the benefits to all of the people of Alaska who deserve them for the work they do.

It does not matter whether you like them or not. It doesn't matter whether you think how they are is o.k. It doesn't even matter if you think you can afford it or not. That's not the point! It's just about it being what you owe them for the work they do.

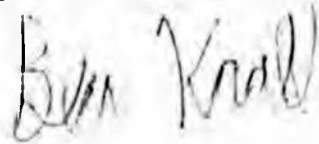
I just finished my first big paying job last week, walking my neighbor's dog for a month, and she paid me what it was worth. She wouldn't have cared if I liked girls or boys, because I don't really care about either, and because that really had nothing to do with my work or my pay. She didn't talk about whether she had enough money to do it or not, either. That would be crazy. She had asked me to work, and I had done the job.

I have good friends who are lesbians and gays. One lesbian couple has two sweet babies I've helped babysit some this summer. They are really responsible parents, and take good care of those girls. And they both are hard workers, too, but only one works for the State. They deserve to have full benefits for their work. Their kids need benefits, too. And the couple needs to be able to take care of each other, too.

My dad works for the State of Alaska and gets benefits, but my mom doesn't work enough hours with the city to get benefits. Mom had her thyroid taken out last month, so I've been hearing them talk about expensive doctors, and about insurance. What if they were a lesbian couple? Then she wouldn't have been able to use Dad's insurance, and we'd owe like \$15,000.00! We don't have that much, and I bet lots of gay and lesbians probably don't either.

I am really disgusted with the Governor for wasting all that money on flying you all down here because he and his prejudiced gang think they know better than the Supreme Court. The court thought a lot about their decision. They did their homework. They decided these people deserve the benefits because our Constitution says so. That's good enough for me, and I bet it's good enough for most people, *unless* they let their prejudice get in the way. All that needs to be done is to just give the workers their benefits. It's a no-brainer.

Sincerely,



Ben Krall
875 Basin Road



LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE INFORMATION OFFICE
201 Katlian Street, Suite 200A, Sitka, AK 99835
Phone: 747-6276 Fax: 747-5807
Email: sitka_lio@legis.state.ak.us

DATE: November 14, 2006
TO: Senate Finance
RE: SB4001 1 pages, including cover sheet

FROM: Galen Paine

Galen Paine
312 Islander Drive
Sitka, AK 99835
galenpaine@att.net

Senate Finance Committee
Alaska Legislature

Re: same sex partner benefit regulations

Please consider this email as testimony at the Senate hearing; I understand transportation difficulties caused the uncertain scheduling of this hearing.

The Lieutenant Governor has failed to adopt regulations allowing same sex partner benefits, even though the Governor and the Commissioner take the position that they have the authority to adopt the relevant regulations. I ask you to affirm the Governor's position that he has the authority to adopt regulations implementing the Supreme Court's mandate. I also ask that you encourage the executive branch to adopt the regulations.

The LG's refusal to perform his ministerial duties should not serve as the basis for the state to continue to violate the equal protection provisions of the state constitution. These regulations, as mandated by the Supreme Court, should take effect on January 1, 2007, the deadline set by the Superior Court.

Galen Paine
Sitka, Alaska

AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA FOUNDATION
P. O. Box 201844
Anchorage, AK 99520
(907) 258-0044
(907) 258-0258 (fax)
WWW.AKCLU.ORG



FAX TRANSMISSION COVER SHEET

To: Gregory W. Spu. Corp's Date: 11/15/06

Firm: _____ Fax #: 1-907-465-3805

From: Michael MacLeod-Bull, ACLU of AK.

7 Pages in Transmission (Including Cover Sheet)

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NOTES:



March 8, 2006

To: Senator Lyda Green, Senate Finance Committee

From: M. V. Lee Badgett, Ph.D.

Re: Positive effects on State of Alaska from domestic partner benefits

Including employees' domestic partners in public employers' health care and other benefits will have positive effects on state and local government employers in Alaska. The possibility of cost increases is usually high on the list of concerns, although a great deal of evidence suggests that cost increases will be small (Ash and Badgett, 2005; Badgett, 2000; Badgett, 2001; Badgett and Sears, 2005; Kohn 1999; International Society of Certified Employee Benefits Specialists, 1995). Just as important are the benefits that the State of Alaska will see if public employees' partners are eligible for benefits. Based on my own research and the research of other academics, I believe that the State of Alaska and other public employers will see the following benefits from offering benefits to same-sex and different-sex domestic partners:

1. *Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by \$0.8-1.1 million per year.*
2. *Current employees will be healthier, more satisfied, and less likely to leave their jobs.*
3. *Domestic partner benefits will increase the ability of public employers to recruit talented and committed employees.*
4. *In addition to the benefits, health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.*

Below I present some calculations and summaries of studies that support these claims.

1. Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by \$0.8-1.1 million per year.

Offering domestic partner benefits to public employees will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners—either same-sex or different-sex partners—are much more likely to be uninsured or on Medicaid than are married people (Ash and Badgett, 2005). That study finds that if employers offer domestic partner benefits, some people who are currently uninsured are likely to receive insurance. Overall, calculations using Census data and other government data suggest that the State of Alaska could save \$0.8-1.1 million dollars per year if public employers offer health care coverage to all domestic partners.

Census data show that 326 same-sex couples and 3398 different-sex unmarried couples in Alaska include one public employee (Census data analyzed by Gary Gates,

Ph.D.). Those couples have a total of 4,500 children under 18 living with them. National data suggest that 14% of the same-sex partners and 23% of the different-sex partners will be uninsured, so Alaska will cut the number of uninsured by 1,300-1,800 people by offering partner benefits, depending on how many children of these couples are uninsured. If uninsured partners of public employees sign up for an employee's health plan, then the state will save money on state-supported health care programs since uninsured people still require health care but often cannot pay for it. The state and local government contribution to uncompensated care averaged \$276 per uninsured person according to a recent study (Hadley and Holahan, 2003, in 2005 dollars). Providing insurance to 1,300-1,800 people will reduce state and local expenditures for uncompensated care by one-third to one-half million dollars.

In addition, 2% of the same-sex partners and 4% of the different-sex partners are likely to be on Medicaid, suggesting that partner benefits could cut the number of Medicaid recipients by 242-333 people. Since the State of Alaska will pay half of the average Medicaid spending of \$2,927 per child and \$3,861 per adult, partner benefits could save the state \$0.5 to 0.6 million per year. (These figures come from State Health Facts, www.kff.org, and are adjusted for inflation.)

Putting the two effects together—less uncompensated care and fewer Medicaid recipients—shows that the state could save \$0.8 to 1.1 million per year in current health care-related expenditures. If the state covers only same-sex partners, the savings will be much smaller, approximately \$50,000 per year.

2. Current employees will be healthier, more satisfied, and less likely to leave their jobs.

A growing body of research shows that offering domestic partner benefits has several positive effects on current employees. These effects on employees would likely benefit public employers in Alaska.

First, a supportive workplace climate and supportive policies, including domestic partner benefits, increase disclosure, or "coming out", of lesbian, gay, and bisexual employees. (Badgett, 2001; Button, 2001; Driscoll, Kelly, and Fassinger, 1996; Griffith & Hebl, 2002; Ragins & Cornwell, 2001; Ragins & Cornwell, forthcoming; Rostosky & Riggle, 2002)

Second, this increase in disclosure has positive benefits to worker health. Using different measures of general anxiety or anxiety in particular contexts, several studies found either that people who were more out reported lower levels of anxiety and less conflict between work and personal life, or that more closeted people reported higher levels of anxiety (Jordan & Deluty, 1998; Day & Schoenrade, 1997; Griffith & Hebl, 2002; Hall, 1989).

Third, lesbian, gay, and bisexual workers who are more out will be better workers. Several studies show that out workers report greater job satisfaction (Driscoll, Kelley, and Fassinger, 1996; Day & Schoenrade, 1997; Griffith & Hebl, 2002). In addition, Day & Schoenrade's survey participants who were more out also reported sharing their employer's values and goals more than workers who were more closeted.

However, some studies looked for but did not find this link (Ellis & Riggle, 1995; Ragins & Cornwell, 2001). A study by Ellis and Riggle (1995) shows that more out workers report higher levels of satisfaction with their co-workers. Finally, partner benefits reduce gay, lesbian, and bisexual workers' turnover and increase their commitment to firms (Ragins and Cornwell, forthcoming).

3. Domestic partner benefits will increase the competitiveness of public employers in recruiting and retaining talented and committed employees.

Many Alaskan employers already offer domestic partner benefits to employees, including Providence Health Systems Alaska, BP Exploration, Chevron, and Wells Fargo. Therefore, in order to remain attractive to employees who have or might someday have domestic partners, public employers will need to offer comparable benefits. In a national 2004 Harris Interactive/Witeck-Combs Communication poll, one third of heterosexual respondents believed that a law preventing employers from offering domestic partner benefits would have "quite a bit" or "a great deal" of an impact on employers' ability to recruit and retain the most qualified employees.

Indeed, evidence suggests that employees make decisions about job offers based on domestic partner benefits. A March 2003 poll by Harris Interactive/Witeck-Combs found that 6% of heterosexual workers reported that domestic partner benefits would be the most important factor in deciding to accept a new job—more than those who would look for on-site child care. In that study, almost half (48%) of lesbian, gay, and bisexual employees said that partner benefits would be their most important consideration if offered another job. Furthermore, 7% of heterosexual workers who actually changed jobs reported that partner benefits were the most important factor in that decision—a factor almost as common as changing jobs for better retirement benefits (12%).

Offering domestic partner benefits also sends an important positive signal to a much larger group of employees. A 2004 Harris Interactive/Witeck-Combs poll finds significant support for the principle of equal benefits for all employees: 64% of heterosexual employees agreed that "Regardless of their sexual orientation, all employees are entitled to equal benefits on the job, such as health insurance for their partners or spouses." A recent study by Richard Florida found that heterosexual employees, even those without unmarried partners, often look for domestic partner benefits as a signal of an employer that values diversity and creativity. In a follow-up study, Florida argued that regions that do not embrace the benefits of diversity-friendly policies risk alienating the creative workforce that is the key to gaining a competitive edge in the global market. Public recognition of these benefits sends a strong signal to the private sector.

This evidence suggests that partner benefits will become increasingly important in competing for talented and committed employees of all sexual orientations. Recruitment and turnover are costly for public employers, therefore offering partner benefits could lower those costs.

4. Health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.

The State of Alaska (and some local employers) provides employees with a "benefit credit" with which to pay for health insurance and other employee benefits. If an employee's benefit costs exceed the credit, then the employee pays the difference. In 2005-6, the benefit credit ranged from \$705 to \$852 per month for state employees whose benefits were administered by the state rather than a union. This benefit credit was sufficient to pay for one of the health care plans offered by the state, but at least employees would need to pay some share of the premium. Most importantly, the state's contribution (and the employee's monthly health premium) does not depend on the number of dependents that the employee has. Therefore, in the short run, the state's (and similar local employers') extra cost for domestic partner benefits would be zero.

Over time, though, as domestic partners and their children sign up for coverage, the state plan and union plans will incur additional expenses. Because the state's Select Benefits medical plan is self-insured, the state plan would be responsible for paying those costs. The costs incurred by the state will depend on whether the state pays for the added costs by increasing the benefit credit or whether those added costs are shifted to employees by keeping the benefit credit fixed while premiums rise.

To estimate the total cost of providing health insurance coverage to the domestic partners of state and local government employees in Alaska, I use the State of Alaska Group Health and Life Fund (from FY2005 financial report) as a proxy for all public employees affected. In 2005, the average annual health care expenses in this fund were \$9,945 per employee. If each employee has on average two dependents, then the health care costs per person were \$3,315. Multiplying that cost per person by the number of predicted partners gives the total cost increase to state and local employers. To calculate predicted partners we multiply the census figure for partners described earlier by the likely take-up rates for partners and children--19% - 27% for same-sex partners and 26%-35% for different-sex partners (Ash and Badgett, 2005)—since some partners will already have health insurance and others might not take up the coverage because employees will be taxed on any costs borne by employers. The number of new adults and children covered would be 2,100-2,800, adding \$7-9 million in costs to state health care plans, which corresponds to a 5-6% increase in health care costs. If public employers extended health insurance benefits to domestic partners and children of same-sex employees only, the added costs would be \$400,000 to \$550,000, or a 0.3%-0.4% increase in health care costs.

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Public Opinion Message

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301 W 121st St Anchorage AK				99515
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bobpeter@ptialaska.net			<i>Robert R Peterson</i>	11-15-06

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Committees		House members		Senate members	
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<input type="checkbox"/>		<input checked="" type="checkbox"/>	Ledoux (leu)	<input checked="" type="checkbox"/>	
<input type="checkbox"/>		<input checked="" type="checkbox"/>	Lynn (lyn)	<input checked="" type="checkbox"/>	
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<input type="checkbox"/>		<input checked="" type="checkbox"/>	Meyer (mey)	<input checked="" type="checkbox"/>	
<input type="checkbox"/>		<input checked="" type="checkbox"/>	Moses (mos)	<input checked="" type="checkbox"/>	
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<input type="checkbox"/>		<input checked="" type="checkbox"/>	Wilson (wls)	<input checked="" type="checkbox"/>	

Subject: Fill out the boxes below **OR** enter a Subject.

HB or SB	Bill number	and check one:	<input type="checkbox"/> Support	<input type="checkbox"/> Oppose	<input type="checkbox"/> Amend	OR	enter a general Subject (LIO staff may modify):
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Message: Your PRINTED message cannot exceed 50 words or contain any vulgar language.

I	support	a	statute	or	5
resolution	which	will	stop	the	10
courts	from	dictating	same	sex	15
benefits	to	Alaskans.			20
					25
					30
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					45
					50

24-GS4033\G
Cook\Wayne
11/15/06

**CS FOR SENATE BILL NO. 4001(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FOURTH SPECIAL SESSION**

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

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

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

5 * Section 1. AS 44.21 is amended by adding a new section to read:

6 **Sec. 44.21.015. Regulations prohibited.** (a) Notwithstanding any other
7 provision of law, the commissioner of administration may not draft, adopt, file with
8 the lieutenant governor, or publish regulations granting or extending employment-
9 related benefits for same-sex partners of unmarried state employees. Employment-
10 related benefits for same-sex partners of unmarried state employees may only be
11 granted or extended by statute.

12 (b) Violation of (a) of this section is a class B misdemeanor.

13 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

1 RETROACTIVITY. AS 44.21.015(a), added by sec. 1 of this Act, is retroactive to
2 June 1, 2006.

3 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

SENATE FINANCE COMMITTEE

11 / 15 / 2006

COMMITTEE ACTION

Bill Number	SB 4001		
Amendment			
Motion	to adopt CS "G"		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	None		
Removed			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	Adopted		

SENATE FINANCE
COMMITTEE

Amendment # 1

To Bill Number: SB 4001

Sponsor: Dyson

Date: 11/13/06 Logged by: Robin

Conceptual amendment

Page 1, line 7: After "law" insert "until the adjournment of the first regular session of the 25th Alaska State Legislature"

Page 1, line 11, following "statute." Insert "(b) Any regulation adopted by the commissioner of administration to implement the Court's decision in ACLU v. State (insert citation) after adjournment of the first regular session of the 25th Alaska State Legislature shall be retroactive to January 1, 2007.

Reletter current (b) as (c).

Page 2, following line 2, add a new bill section to read:

*Sec. 3. The uncodified etc.

CONTINGENT EFFECT. AS 44.21.015(b), added by sec. 1 of this Act, takes effect only if the 25th Alaska State Legislature fails to adopt, in its first regular session a bill that becomes law, that addresses benefits for same-sex partners under ACLU v. State (add citation)

Conform effective dates to match contingent effect.

[Faint handwritten notes and signatures, possibly including names like "Dyson" and "Robin", and dates like "11/13/06".]

SENATE FINANCE COMMITTEE
11 / 15 / 2006 COMMITTEE ACTION

Bill Number	CS SB 4001		
Amendment	# 1		
Motion	to adopt		
<u>Motion by</u>	Dyson		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION			

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Conform effective dates to match contingent effect.

*Note that if regulations adopted if
never to amend constitution which
would go on to affect in 2007
This approach would work best
under law adopted before
2007 Senate session*

24-GS4033\G
Cook\Wayne
11/15/06

CS FOR SENATE BILL NO. 4001(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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2 June 1, 2006.

3 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

ACLU v. State of Alaska and MOA Same-Sex Domestic Partner Benefits

Case Timeline

- 1999: Alaska Civil Liberties Union (ACLU) and 18 individuals filed suit in Alaska Superior Court against the State of Alaska (SOA) and the Municipality of Anchorage (MOA).
- Complaint: Employee benefit programs offered to spouses of employees and retirees but not to same-sex partners of employees and retirees violated the plaintiffs' right to equal protection under the Alaska Constitution (Art. I, Sec. 1) because of prohibition on same-sex marriage (Art. I, Sec. 25).
- November 2001: Superior Court ruled in State's favor; ACLU appealed to Supreme Court.
- October 2005: Supreme Court ruled in favor of ACLU and held that "the spousal limitations are unconstitutional as applied to public employees with same-sex domestic partners." Supreme Court requested briefs on remedy.
- November 21, 2005: Remedy briefing completed by ACLU; suggested giving the legislature time to act to amend relevant statutes.
- January 5, 2006: Remedy briefing completed by State; suggested giving the legislature time to act to amend relevant statutes.
- May 24, 2006: ACLU filed supplemental brief with Supreme Court.
- June 1, 2006: Supreme Court issued its remedy order, requiring the SOA and the MOA to provide benefits complying with the Court's 2005 opinion by no later than January 1, 2007. Also:
 - Remanded the case to the Superior Court, directing that court to issue whatever orders it deems necessary to ensure that the compliance with deadline.
 - State and MOA to file statements with Superior Court, outlining the steps they plan to take to achieve compliance.
- July 3, 2006: State filed statement with Superior Court proposing regulations and a timeline for implementation, which court subsequently modified and then ordered.
- August 9, 2006: Superior Court ordered State to provide advance copy of proposed regulations to the ACLU and Court by August 22.
- August 22, 2006: State provided advance copy of draft regulations as ordered.
- September 1, 2006: Court ordered State to provide intended final regulations to the Court by October 6.
- September 1-30, 2006: Commissioner Nordstrand published draft regulations for public comment.
- September 27-28, 2006: Commissioner Nordstrand held public hearings on draft regulations in Juneau and Anchorage.
- October 10, 2006: State provided revised regulations to the Court as ordered.
- October 13, 2006: Commissioner Nordstrand adopted final regulations and sent to Department of Law and then Lt. Governor for filing.
- October 19, 2006: ACLU filed motion for emergency relief requesting Court order Commissioner Nordstrand to issue emergency regulations conforming to MOA's proposed eligibility criteria by October 27.
- October 24, 2006: State filed statement of opposition to ACLU's motion for emergency relief.
- October 25, 2006: ACLU filed reply brief.

- October 30, 2006: Superior Court ordered specific changes to State's regulations.
- October 31, 2006: Superior Court ordered State to file amended regulations by November 1.
- November 1, 2006: State filed motion for stay of Court's orders of October 30 and 31.
- November 1, 2006: State filed emergency motion in Supreme Court for stay of Superior Court's orders of October 30 and 31.
- November 1, 2006: Superior Court ordered State to notify the Court when it intends to file with the Supreme Court a petition for review and orders the State to file amended regulations in compliance with its orders of October 30 and 31.
- November 2, 2006: Superior Court granted in part State's motion for stay by not requiring the State to adopt or implement the amended regulations required by the Court.
- November 3, 2006: Supreme Court denied without prejudice State's motion for emergency stay.
- November 6, 2006: State filed with Supreme Court petition for review of Superior Court's orders.
- November 8, 2006: State filed draft regulations in compliance with Superior Court orders.
- November 8, 2006: Superior Court ordered State to file by November 9 alternative draft regulations consistent with the Court's finding of October 30 or additional argument in support of the constitutionality of the adopted regulations.
- November 9, 2006: State filed response to Court's order of November 8, citing insufficient time to propose alternative regulations and referring Court to its Petition for Review filed in Supreme Court on issues of constitutionality.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 4001
(S) Publish Date: 11/14/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to employment-related...benefits for RDU Centralized Administrative Services
the same-sex partner of a state employee/retiree... Component Retirement and Benefits
Sponsor Rules by Request of the Governor
Requester Rules by Request of the Governor Component No. 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	850.3	1,860.9	2,023.8	2,189.2	2,353.5	2,516.4
TOTAL OPERATING	850.3	1,860.9	2,023.8	2,189.2	2,353.5	2,516.4

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (
-----------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1097 Aetna Res	136.5	296.2	319.9	343.9	368.0	391.9
1142 RHF/MM	713.8	1,564.6	1,702.9	1,845.3	1,985.6	2,124.6
TOTAL	850.3	1,860.9	2,023.8	2,189.2	2,353.5	2,516.4

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary.)

This bill authorizes employment-related benefits for the same-sex domestic partner of a state employee or member of the state's retirement systems (PERS, TRS, JRS, EPORS). These benefits include health insurance coverage and the same survivor benefits that a surviving spouse would have under the retirement systems.

This bill has limited fiscal impact on the operations of the Division of Retirement and Benefits. To date, the Division has expended approximately \$35,000 in printing and mailing costs. All expenses are being absorbed, including staff time and professional services (contracted benefit consultant and actuary). The special enrollment is a one-time expenditure only and will not be necessary in subsequent fiscal years.

FY 2007 numbers on this page are 50% of the numbers discussed on page two because the benefits are not effective until January 1, 2007. Please see page two for the analysis required by AS 24.08.036.

Prepared by: Traci Carpenter, Director
Division: Retirement and Benefits
Approved by: Charisse Milet, Legislative Liaison
Agency: Department of Administration

Phone: 465-4817
Date/Time: 11/13/06 12:00 AM
Date: 11/13/2006

FISCAL NOTE NO. 1

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. SB 4001

ANALYSIS CONTINUATION

Sec. 24.08.036. Fiscal notes on bills affecting state retirement systems. *Before a bill which would have an effect on the retirement systems of the state is reported to the rules committee, there shall be attached to the bill an analysis of the long-term and short-term costs to the state if the bill is adopted, as well as the impact of the bill on the actuarial soundness of the fund. The analysis is in addition to the fiscal note requirements of AS 24.08.035.*

The additional costs of adding a same-sex domestic partner center around the active and retiree health insurance plans. Survivor benefits include death benefits *pre*-retirement and death benefits *post*-retirement. The impact of extending these survivor benefits to more people, however, is negligible. Death benefits for a non-occupational death prior to retirement for a member who is not vested consists of a payment of the member's contribution account balance and a member already may designate anyone as a beneficiary, with spousal consent if necessary. A spouse, and now a domestic partner, of a vested member may choose either a 50% joint and survivor option monthly payment or the lump sum if no other beneficiary is named. However, the joint and survivor option if chosen would not be an additional expense because the member's death reduces liabilities and the retirement plan would only be paying out half, or less, of what would have been paid out had the person reached normal retirement and met life expectancy. The plans experience so few occupational deaths that any increase by extending the benefits to additional persons is likely negligible.

The analyses provided by two health and welfare benefit consultants, Deloitte Consulting LLP and Buck Consultants, are consistent in their estimate of the number of increased covered dependents. Both consultants agree it is reasonable, given the experience of at least 11 other states and a number of other organizations, including the University of Alaska and the City and Borough of Juneau, to assume an increase of .5% in additional covered lives. (See attached letters.)

Deloitte has estimated the increased costs to the State's active and retiree health plans to be approximately .2% based upon their analysis of Alaska's health cost data, providing a low-high range for the active plan of \$84,000 - \$120,000, and a low-high range for the retiree plan of \$533,000 to \$760,000. Total low of \$617,000 to a high of \$880,000.

Until the plans have actual experience, cost estimates are very speculative. In further discussions with the current benefit consultant, Buck advised it is a reasonable approach to estimating costs to assume a .5% increase in total health claim costs (matching the expected increase in covered lives). Total FY 06 actual health claims costs for the active and retiree plans were \$340,131,451. A .5% increase would result in total increased costs of \$1.7 million to the State's active and retiree health plans. (Select Benefit plan costs of \$54.6 million x .005 = \$273,031; Retiree plan costs of \$285.5 million x .005 = \$1,427,626.)

The State does not have cost or enrollment data for the union health trusts that cover approximately 9,600 active state employees and their dependents. The ratio of dependents to employees in the State's active health plan is 1:1.5. Applying that ratio to the union covered employees yields 14,400 dependents. By increasing the number of dependents by .5% (72) and using the average health claims costs for the State's active employees (\$3789), the Division estimates an annual increased cost of \$272,842 for the union health trusts.

Alternatively, applying these same calculations to the number of dependents covered by the State's active and retiree health plans yields 160 additional covered dependents, 43 active and 117 retiree. Applying average health claims costs to each of these numbers yields increased costs of \$162,927 (43 x \$3,789) for the active plan and \$632,385 (117 x \$5,405) for the retiree plan. Total costs of \$795,312. These costs are more in line with those projected by Deloitte.

All of these calculations result in a range of cost estimates for the first fiscal year for the State's plans: a low of \$.6 million and a high of \$1.7 million, potentially covering 232 additional dependents.

Both the State's active group health insurance fund and retiree health insurance fund have reserves that are sufficient to absorb the projected costs in the first year (see attached reports from Buck Consultants). In subsequent years, the experience of the plans will be reflected in the rates developed by the state's benefit consultant. The numbers for the out years on page one of this fiscal note are based upon the most conservative (high) cost projection and inflated for the medical cost trends contained in the retirement systems' actuarial valuations ending June 30, 2005. It is not possible to project how the State's future negotiations with the unions will impact the State's budget.

As explained in the opening paragraph on this page, it is not anticipated the retirement systems will experience increased costs related to pensions.

Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/1010101.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

From: Please PRINT the information below. This form must be signed by the sender.

Mr. / Ms. / Mrs.	First name	MI	Last name	J. / Sr. / III
Mr	Robert R	R	Peterson	
Group affiliation (if applicable)				Daytime telephone number
Rep				
Mailing address				Zip code
301 W 121st St Anchorage AK				99515
Residence (street) address if different from mailing address				Zip code
301 W 121st St Anchorage AK				99515
Email address			Signature	Date
bobpeter@ptialaska.net			<i>Robert R Peterson</i>	11-15-06

To: Put a ✓ in the appropriate box(es).

Committees		House members		Senate members	
<input type="checkbox"/>	Hors	<input checked="" type="checkbox"/>	Anderson (ade)	<input checked="" type="checkbox"/>	Kelly (kol)
<input type="checkbox"/>	Community & Regional Affairs (cra)	<input checked="" type="checkbox"/>	Berkowitz (ber)	<input checked="" type="checkbox"/>	Keritula (ker)
<input type="checkbox"/>	Finance (fin)	<input checked="" type="checkbox"/>	Chenault (che)	<input checked="" type="checkbox"/>	Kohring (koh)
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<input type="checkbox"/>				<input checked="" type="checkbox"/>	Wagoner (wag)
<input type="checkbox"/>				<input checked="" type="checkbox"/>	Wiken (wik)

Subject: Fill out the boxes below **OR** enter a Subject.

HB or SB	Bill number	and check one:	<input type="checkbox"/> Support	OR	enter a general Subject (LIO staff may modify):
			<input type="checkbox"/> Oppose		
			<input type="checkbox"/> Amend		

Message: Your PRINTED message cannot exceed 50 words or contain any vulgar language.

I	support	a	statute	or	1
resolution	which	will	stop	the	10
courts	from	dictating	same	sex	18
benefits	to	Alaskans.			20
					28
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AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA FOUNDATION
P. O. Box 201644
Anchorage, AK 99520
(907) 258-0044
(907) 258-0268 (fax)
WWW.AKCLU.ORG



FAX TRANSMISSION COVER SHEET

To: George W. Spu. Greer's Date: 11/15/06

Firm: _____ Fax #: 1-907-465-3805

From: Michael MacLeod Bull, ACLU of AK.

57 Pages in Transmission (Including Cover Sheet)

THIS IS A PRIVILEGED AND CONFIDENTIAL COMMUNICATION, TRANSMITTED FOR THE EXCLUSIVE USE OF THE ADDRESSEE. SHOULD YOU RECEIVE THIS COMMUNICATION IN ERROR, PLEASE DESTROY THE COMMUNICATION AT ONCE WITHOUT RETAINING ANY COPY OR ANY PORTION OF THE ORIGINAL AND CALL THE SENDER IMMEDIATELY AT THE NUMBER NOTED ABOVE. THANK YOU.

NOTES:

March 8, 2006

To: Senator Lyda Green, Senate Finance Committee

From: M. V. Lee Badgett, Ph.D.

Re: Positive effects on State of Alaska from domestic partner benefits

Including employees' domestic partners in public employers' health care and other benefits will have positive effects on state and local government employers in Alaska. The possibility of cost increases is usually high on the list of concerns, although a great deal of evidence suggests that cost increases will be small (Ash and Badgett, 2005; Badgett, 2000; Badgett, 2001; Badgett and Sears, 2005; Kohn 1999; International Society of Certified Employee Benefits Specialists, 1995). Just as important are the benefits that the State of Alaska will see if public employees' partners are eligible for benefits. Based on my own research and the research of other academics, I believe that the State of Alaska and other public employers will see the following benefits from offering benefits to same-sex and different-sex domestic partners:

1. *Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by \$0.8-1.1 million per year.*
2. *Current employees will be healthier, more satisfied, and less likely to leave their jobs.*
3. *Domestic partner benefits will increase the ability of public employers to recruit talented and committed employees.*
4. *In addition to the benefits, health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.*

Below I present some calculations and summaries of studies that support these claims.

1. Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by \$0.8-1.1 million per year.

Offering domestic partner benefits to public employees will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners—either same-sex or different-sex partners—are much more likely to be uninsured or on Medicaid than are married people (Ash and Badgett, 2005). That study finds that if employers offer domestic partner benefits, some people who are currently uninsured are likely to receive insurance. Overall, calculations using Census data and other government data suggest that the State of Alaska could save \$0.8-1.1 million dollars per year if public employers offer health care coverage to all domestic partners.

Census data show that 326 same-sex couples and 3398 different-sex unmarried couples in Alaska include one public employee (Census data analyzed by Gary Gates,

Ph.D.). Those couples have a total of 4,500 children under 18 living with them. National data suggest that 14% of the same-sex partners and 23% of the different-sex partners will be uninsured, so Alaska will cut the number of uninsured by 1,300-1,800 people by offering partner benefits, depending on how many children of these couples are uninsured. If uninsured partners of public employees sign up for an employee's health plan, then the state will save money on state-supported health care programs since uninsured people still require health care but often cannot pay for it. The state and local government contribution to uncompensated care averaged \$276 per uninsured person according to a recent study (Hadley and Holahan, 2003, in 2005 dollars). Providing insurance to 1,300-1,800 people will reduce state and local expenditures for uncompensated care by one-third to one-half million dollars.

In addition, 2% of the same-sex partners and 4% of the different-sex partners are likely to be on Medicaid, suggesting that partner benefits could cut the number of Medicaid recipients by 242-333 people. Since the State of Alaska will pay half of the average Medicaid spending of \$2,927 per child and \$3,861 per adult, partner benefits could save the state \$0.5 to 0.6 million per year. (These figures come from State Health Facts, www.kff.org, and are adjusted for inflation.)

Putting the two effects together—less uncompensated care and fewer Medicaid recipients—shows that the state could save \$0.8 to 1.1 million per year in current health care-related expenditures. If the state covers only same-sex partners, the savings will be much smaller, approximately \$50,000 per year.

2. Current employees will be healthier, more satisfied, and less likely to leave their jobs.

A growing body of research shows that offering domestic partner benefits has several positive effects on current employees. These effects on employees would likely benefit public employers in Alaska.

First, a supportive workplace climate and supportive policies, including domestic partner benefits, increase disclosure, or "coming out", of lesbian, gay, and bisexual employees. (Badgett, 2001; Button, 2001; Driscoll, Kelly, and Fassinger, 1996; Griffith & Hebl, 2002; Ragins & Cornwell, 2001; Ragins & Cornwell, forthcoming; Rostosky & Riggle, 2002)

Second, this increase in disclosure has positive benefits to worker health. Using different measures of general anxiety or anxiety in particular contexts, several studies found either that people who were more out reported lower levels of anxiety and less conflict between work and personal life, or that more closeted people reported higher levels of anxiety (Jordan & Deluty, 1998; Day & Schoenrade, 1997; Griffith & Hebl, 2002; Hall, 1989).

Third, lesbian, gay, and bisexual workers who are more out will be better workers. Several studies show that out workers report greater job satisfaction (Driscoll, Kelley, and Fassinger, 1996; Day & Schoenrade, 1997; Griffith & Hebl, 2002). In addition, Day & Schoenrade's survey participants who were more out also reported sharing their employer's values and goals more than workers who were more closeted.

However, some studies looked for but did not find this link (Ellis & Riggle, 1995; Ragins & Cornwell, 2001). A study by Ellis and Riggle (1995) shows that more out workers report higher levels of satisfaction with their co-workers. Finally, partner benefits reduce gay, lesbian, and bisexual workers' turnover and increase their commitment to firms (Ragins and Cornwell, forthcoming).

3. Domestic partner benefits will increase the competitiveness of public employers in recruiting and retaining talented and committed employees.

Many Alaskan employers already offer domestic partner benefits to employees, including Providence Health Systems Alaska, BP Exploration, Chevron, and Wells Fargo. Therefore, in order to remain attractive to employees who have or might someday have domestic partners, public employers will need to offer comparable benefits. In a national 2004 Harris Interactive/Witeck-Combs Communication poll, one third of heterosexual respondents believed that a law preventing employers from offering domestic partner benefits would have "quite a bit" or "a great deal" of an impact on employers' ability to recruit and retain the most qualified employees.

Indeed, evidence suggests that employees make decisions about job offers based on domestic partner benefits. A March 2003 poll by Harris Interactive/Witeck-Combs found that 6% of heterosexual workers reported that domestic partner benefits would be the most important factor in deciding to accept a new job—more than those who would look for on-site child care. In that study, almost half (48%) of lesbian, gay, and bisexual employees said that partner benefits would be their most important consideration if offered another job. Furthermore, 7% of heterosexual workers who actually changed jobs reported that partner benefits were the most important factor in that decision—a factor almost as common as changing jobs for better retirement benefits (12%).

Offering domestic partner benefits also sends an important positive signal to a much larger group of employees. A 2004 Harris Interactive/Witeck-Combs poll finds significant support for the principle of equal benefits for all employees: 64% of heterosexual employees agreed that "Regardless of their sexual orientation, all employees are entitled to equal benefits on the job, such as health insurance for their partners or spouses." A recent study by Richard Florida found that heterosexual employees, even those without unmarried partners, often look for domestic partner benefits as a signal of an employer that values diversity and creativity. In a follow-up study, Florida argued that regions that do not embrace the benefits of diversity-friendly policies risk alienating the creative workforce that is the key to gaining a competitive edge in the global market. Public recognition of these benefits sends a strong signal to the private sector.

This evidence suggests that partner benefits will become increasingly important in competing for talented and committed employees of all sexual orientations. Recruitment and turnover are costly for public employers, therefore offering partner benefits could lower those costs.

4. Health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.

The State of Alaska (and some local employers) provides employees with a "benefit credit" with which to pay for health insurance and other employee benefits. If an employee's benefit costs exceed the credit, then the employee pays the difference. In 2005-6, the benefit credit ranged from \$705 to \$852 per month for state employees whose benefits were administered by the state rather than a union. This benefit credit was sufficient to pay for one of the health care plans offered by the state, but at least employees would need to pay some share of the premium. Most importantly, the state's contribution (and the employee's monthly health premium) does not depend on the number of dependents that the employee has. Therefore, in the short run, the state's (and similar local employers') extra cost for domestic partner benefits would be zero.

Over time, though, as domestic partners and their children sign up for coverage, the state plan and union plans will incur additional expenses. Because the state's Select Benefits medical plan is self-insured, the state plan would be responsible for paying those costs. The costs incurred by the state will depend on whether the state pays for the added costs by increasing the benefit credit or whether those added costs are shifted to employees by keeping the benefit credit fixed while premiums rise.

To estimate the total cost of providing health insurance coverage to the domestic partners of state and local government employees in Alaska, I use the State of Alaska Group Health and Life Fund (from FY2005 financial report) as a proxy for all public employees affected. In 2005, the average annual health care expenses in this fund were \$9,945 per employee. If each employee has on average two dependents, then the health care costs per person were \$3,315. Multiplying that cost per person by the number of predicted partners gives the total cost increase to state and local employers. To calculate predicted partners we multiply the census figure for partners described earlier by the likely take-up rates for partners and children--19% - 27% for same-sex partners and 26%-35% for different-sex partners (Ash and Badgett, 2005)—since some partners will already have health insurance and others might not take up the coverage because employees will be taxed on any costs borne by employers. The number of new adults and children covered would be 2,100-2,800, adding \$7-9 million in costs to state health care plans, which corresponds to a 5-6% increase in health care costs. If public employers extended health insurance benefits to domestic partners and children of same-sex employees only, the added costs would be \$400,000 to \$550,000, or a 0.3%-0.4% increase in health care costs.

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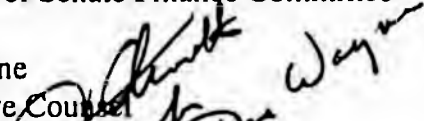
MEMORANDUM

November 15, 2006

SUBJECT: Employment-Related Same-Sex Partner Benefits
(Draft CSSB 4001(FIN); Work Order No. 24-GS4033\G)

TO: Senator Lyda Green
Co-Chair of Senate Finance Committee

FROM: Dan Wayne
Legislative Counsel



The draft CSSB 4001(FIN), prohibiting the commissioner of administration from adopting employment-related same-sex partner benefits for state employees, has potential legal problems.

1. Equal Protection Issues.

The committee substitute as drafted creates a conflict between its prohibition current statutory authorizations, and the Alaska Constitution as recently interpreted. Current statutory authorizations allow for same-sex benefit regulations, including the mandate under AS 39.28.020 to carry out equal employment opportunity responsibilities provided under state and federal laws.¹ At the same time, as you know, the Alaska Supreme Court has, in *Alaska Civil Liberties Union v. State*,² mandated the provision of same-sex

¹ In addition to AS 39.28.030, which applies to all benefits related to employment, AS 14.25.003(b), AS 14.25.005, AS 22.25.027, AS 39.35.003(b), and AS 39.35.005 confer broad regulation-making authority on the commissioner of administration with respect to retirement benefits. Regulations related to supplemental employee benefit options under AS 39.30.150 - AS 39.30.180 (supplemental benefits and supplemental health, death, disability and dependent care) may be adopted under AS 14.25.004(13), made applicable through AS 39.30.154, which allows the commissioner of administration to do *whatever is necessary* to carry out the purposes of the supplemental benefits statutes.

² 122 P.3d 781 (Alaska 2005). The case cites article I, section 1 of the Alaska State Constitution, which reads:

Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are

employment benefits by January 1, 2007, and the Alaska Superior Court Third Judicial District, in the same case³ on remand, has ordered the commissioner to provide for that. The commissioner proposed regulations as the method of compliance. Without a stay of those decisions and reconciliation of existing authority to provide for same-sex partner benefits, the commissioner may face contempt of court charges if this committee substitute passes and the commissioner complies with its prohibition.

The Supreme Court has already interpreted the state constitution's equal protection clause in art. I, sec. 1, and the employment protections under art. XII, sec. 6 to require same-sex partner benefits for state employees. If, in addition to the provisions of the committee substitute, the legislature also enacted statutes that complied with the court's decision, the prohibition against regulations would probably be upheld.

If, however, the committee substitute becomes law without statutes that comply with the court's decision, the court would probably either declare the law unconstitutional or simply order the commissioner to provide the benefits without regulations under rules the court will establish. Courts prefer to defer to statutory or regulatory methods of complying with constitutional requirements, but if the legislature does not act and the agency is prohibited from acting, courts will act, as happened in the busing cases following *Brown v. Bd. of Education*.

2. Retroactivity provision in sec. 2 of the bill draft.

The committee substitute is made retroactive to the Supreme Court's order of June 1, 2006, in the *ACLU* case. This order required the state to provide benefits, although it did not specifically require regulations. I am more than a little skeptical that the courts will accept the retroactive application of this committee substitute to invalidate valid, existing rights as of the effective date of the committee substitute for the reasons discussed below.

A. Retroactivity clause in the constitution.

The state constitution art. I, sec. 15, prohibits ex post facto laws and laws that would impair contracts. A "retrospective" or "retroactive" law is generally defined as a law that takes away or impairs vested rights acquired under existing laws, or creates new obligations, imposes a new duty or attaches a new disability in respect to transactions or considerations already past. Whether a particular provision may be applied retroactively in other than a purely procedural context without violating the constitution is a complex issue. It seems clear that this committee substitute has more than a purely procedural reach. The state constitution also expressly prohibits the impairment or reduction of

equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

³ Trial Court Case No. 3 AN-99-11179 CI.

Senator Lyda Green
November 15, 2006
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employee benefits under art. XII, sec. 6.

The regulations promulgated so far as 2 AAC 38 have been through the Department of Administration's public procedure for adoption of regulations. Regulations adopted under AS 14.25.005(g), AS 22.25.027(f), and AS 39.35.005(g) were adopted October 13, 2006, and took effect November 12, 2006. However, under an emergency order issued November 10, 2006, those regulations are applicable to members of the retirement systems on November 22, 2006, to the extent the eligibility and documentation requirements of the regulations are consistent with any legislation passed in the Fourth Special Session. The emergency regulation looks like an attempt to prevent vesting of rights on or after November 12 under the originally adopted regulations. I am not positive that it will succeed, especially if the effective date of the legislation is after November 22.⁴ It is possible, in short, that rights of some employees will have vested before legislation can be enacted to prevent that.

B. Due Process.

The retroactivity provision contained in sec. 2 of the committee substitute may also be unconstitutional as applied to vested rights under the due process clause contained in art. I, sec. 7 of the state constitution and the 14th amendment to the federal constitution. Under the state constitution, vested property rights are protected against state action by the due process clause. *See, Bidwell v. Scheele*, 355 P.2d 584 (1960). Once again, the constitutional implications depend on whether the rights have vested before the effective date of the legislation.

If I may be of further assistance, please advise.

DCW:ljw
06-368.ljw

⁴ The active employee benefits, which were adopted under AS 39.28 and AS 39.30.154 and are subject to the procedures of AS 44.62, must be filed to become effective and therefore have not created vested rights.



Special Legislative Session

Same-Sex Partner Benefits

November 13, 2006

Frank H. Murkowski, Governor

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 13, 2006

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to employment-related insurance benefits for the same-sex partner of a state employee and relating to survivor and medical benefits for the same-sex partner of a member of the state's teachers' and public employees', judicial, or elected public officers retirement systems.

The bill sets out the purpose of the Legislature to allow a public employee or retiree under the state's retirement systems, to the extent required by the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005), to have access to employment-related insurance and survivor benefits for the employee's or retiree's same-sex partner that are provided to the spouse of a state employee or retiree under AS 39.30.090 and 39.30.091, and under the statutes that provide for the state's retirement systems.

Section 5 of the bill sets out the affidavit and documentation requirements that a state employee or retiree must meet in order to enroll a same-sex partner in the health plans provided to state employees and retirees. These requirements are incorporated by reference in new sections in the statutes for the retirement systems allowing designation of same-sex partners as beneficiaries for survivor benefits (secs. 2 and 3 (teachers' retirement system), sec. 4 (judicial retirement system), secs. 7 and 8 (public employees' retirement system), and sec. 9 (elected public officers' retirement system)).

In order to provide a same-sex partner with benefits, an employee or retiree must file an affidavit with the appropriate plan administrator that includes 11 specific declarations, under penalty of perjury, by the employee or retiree and same-sex partner to establish a committed relationship, and must

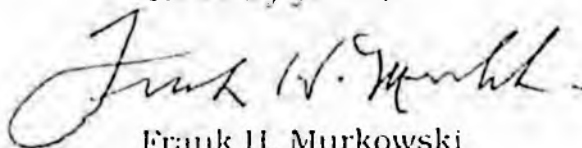
The Honorable John Harris
November 13, 2006
Page 2

also provide documentation specified by sec. 5 of the bill. The employee or retiree must notify the administrator upon termination of the relationship. In addition to potential criminal penalties, willful falsification of information in the affidavit or documentation provided to enroll a same-sex partner in health benefits or to designate the same-sex partner as a beneficiary for survivor benefits may result in termination of enrollment of the same-sex partner and termination of entitlement to survivor benefits.

The bill ratifies the open enrollment conducted under regulations adopted by the commissioner of Administration on October 13, 2006.

While Alaskans may differ on their views on the wisdom of the court's order, the state has a duty to comply with the court's order. Therefore, I urge your support of this legislation.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

**SPECIAL LEGISLATIVE SESSION:
SAME SEX PARTNER BENEFITS TABLE OF CONTENTS**

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- SECTION 2:** Proclamation.
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- SECTION 4:** Fiscal Note and Backup.
- SECTION 5:** State's Implementation Plan of Supreme Court Order through the Regulatory Process.
- SECTION 6:** State of Alaska Adopted Regulation and Emergency Regulations (delay implementation).
- SECTION 7:** Letter of Support from ASEA and LTC.
- SECTION 8:** Eligibility Criteria: UAA, NEA, CBJ, MOA.
- SECTION 9:** ACLU vs. State of Alaska and MOA Case timeline.
- SECTION 10:** Supreme Court Order June 1, 2006.
- SECTION 11:** Superior Court order to Commissioner Nordstrand ordering changes to criteria October 30, 2006.

Section 1
Governor's Bill

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to employment-related insurance benefits for the same-sex partner of a
2 state employee; relating to survivor and medical benefits for the same-sex partner of a
3 member of the state's teachers', public employees', judicial, or elected public officers
4 retirement systems; and providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 PURPOSE AND FINDINGS. (a) It is the purpose of this Act, to the extent required by
9 the decision of the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*,
10 122 P.3d 781 (Alaska 2005), to allow state employees and retirees under the state's retirement
11 systems to have access to employment-related insurance and survivor benefits for their same-
12 sex partners that are provided to spouses of state employees and retirees under AS 39.30.090
13 and 39.30.091, and under the statutes that provide for the public employees' retirement
14 system, teachers' retirement system, judicial retirement system, and elected public officers

1 retirement system.

2 (b) The legislature finds that the eligibility requirements established in this Act for
3 entitlement to enrollment of a state employee's or state retirement system member's same-sex
4 partner in employment-related insurance benefits and designation of a same-sex partner as
5 survivor under the state retirement systems are reasonable and necessary to prevent fraud. The
6 legislature also finds that the requirements are reasonable and necessary to ensure that access
7 to the insurance and survivor benefits funded by state trust funds is provided to same-sex
8 partners who are in committed relationships with public employees and retirees.

9 * Sec. 2, AS 14.25 is amended by adding a new section to read:

10 Sec. 14.25.154. Same-sex partner survivor and medical benefits. (a) A
11 member may designate the member's same-sex partner as the beneficiary to receive
12 survivor benefits that are available to a spouse of a member under the plan. The
13 designation of beneficiary is not valid unless the member files with the administrator

14 (1) with the designation of beneficiary an affidavit executed by the
15 member and the same-sex partner making the declarations, under penalty of perjury,
16 set out in AS 39.30.093(b)(1) - (11); and

17 (2) documentation establishing that the member and same-sex partner
18 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

19 (b) A member who has designated a same-sex partner as beneficiary under this
20 section shall provide written confirmation of the designation, supplementing
21 documentation provided under (a) of this section if that information has changed, upon
22 request of and in the manner requested by the administrator. Failure to provide written
23 confirmation requested by the administrator may result in ineligibility of the
24 designated same-sex partner for survivor benefits.

25 (c) A deceased member's same-sex partner whom the administrator determines
26 is validly designated under this section as the member's beneficiary to receive survivor
27 benefits has the same rights to survivor benefits that a surviving spouse would have
28 under the plan, and is subject to the same requirements that a surviving spouse would
29 be subject to relating to those benefits.

30 (d) A member may revoke a designation of beneficiary under this section at
31 any time. After the date of retirement, a member's revocation of the designation of the

1 member's same-sex partner as the beneficiary to receive survivor benefits does not
2 change the form or amount of a joint and survivor benefit payable to the member or
3 allow designation of a different beneficiary to receive the joint and survivor benefit.

4 (e) A member who is entitled to medical coverage under the plan may enroll
5 the member's same-sex partner and the same-sex partner's eligible dependent children
6 in the plan's medical coverage in accordance with AS 39.30.093.

7 * Sec. 3. AS 14.25 is amended by adding a new section to read:

8 **Sec. 14.25.462. Same-sex partner survivor and medical benefits.** (a) A
9 member may designate the member's same-sex partner as the beneficiary to receive
10 survivor benefits that are available to a spouse of a member under the plan. The
11 designation of beneficiary is not valid unless the member files with the administrator

12 (1) with the designation of beneficiary an affidavit executed by the
13 member and the same-sex partner making the declarations, under penalty of perjury,
14 set out in AS 39.30.093(b)(1) - (11); and

15 (2) documentation establishing that the member and same-sex partner
16 meet at least five of the criteria set out in AS 39.30.092(c)(1) - (8).

17 (b) A member who has designated a same-sex partner as beneficiary under this
18 section shall provide written confirmation of the designation, supplementing
19 documentation provided under (a) of this section if that information has changed, upon
20 request of and in the manner requested by the administrator. Failure to provide written
21 confirmation requested by the administrator may result in ineligibility of the
22 designated same-sex partner for survivor benefits.

23 (c) A deceased member's same-sex partner whom the administrator determines
24 is validly designated under this section as the member's beneficiary to receive survivor
25 benefits has the same rights to survivor benefits that a surviving spouse would have
26 under the plan, and is subject to the same requirements that a surviving spouse would
27 be subject to relating to those benefits.

28 (d) A member may revoke a designation of beneficiary under this section at
29 any time. After the date of retirement, a member's revocation of the designation of the
30 member's same-sex partner as the beneficiary to receive survivor benefits does not
31 change the form or amount of a joint and survivor benefit payable to the member or

1 allow designation of a different beneficiary to receive the joint and survivor benefit.

2 (e) A member who is entitled to medical coverage under the plan may enroll
3 the member's same-sex partner and the same-sex partner's eligible dependent children
4 in the plan's medical coverage in accordance with AS 39.30.093.

5 * Sec. 4. AS 22.25 is amended by adding a new section to read:

6 Sec. 22.25.036. Same-sex partner survivor and medical benefits. (a) A
7 member may designate the member's same-sex partner as the beneficiary to receive
8 survivor benefits that are available to a spouse of a member under this chapter. The
9 designation of beneficiary is not valid unless the member files with the administrator

10 (1) with the designation of beneficiary an affidavit executed by the
11 member and the same-sex partner making the declarations, under penalty of perjury,
12 set out in AS 39.30.093(b)(1) - (11); and

13 (2) documentation establishing that the member and same-sex partner
14 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

15 (b) A member who has designated a same-sex partner as beneficiary under this
16 section shall provide written confirmation of the designation, supplementing
17 documentation provided under (a) of this section if that information has changed, upon
18 request of and in the manner requested by the commissioner of administration. Failure
19 to provide written confirmation requested by the commissioner of administration may
20 result in ineligibility of the designated same-sex partner for survivor benefits.

21 (c) A deceased member's same-sex partner whom the commissioner of
22 administration determines is validly designated under this section as the member's
23 beneficiary to receive survivor benefits has the same rights to survivor benefits that a
24 surviving spouse would have under this chapter, and is subject to the same
25 requirements that a surviving spouse would be subject to relating to those benefits.

26 (d) A member may revoke a designation of beneficiary under this section at
27 any time.

28 (e) A member who is entitled to medical coverage under the plan may enroll
29 the member's same-sex partner and the same-sex partner's eligible dependent children
30 in the plan's medical coverage in accordance with AS 39.30.093.

31 * Sec. 5. AS 39.30 is amended by adding new sections to read:

1 Sec. 39.30.093. Same-sex partner insurance coverage. (a) A state employee
2 or a state retirement system member who is covered by group insurance under
3 AS 39.30.090 or 39.30.091 or by an alternative insurance program under an exemption
4 allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), may
5 enroll the employee's or state retirement system member's same-sex partner in the
6 group insurance or alternative insurance program if the employee and same-sex
7 partner or state retirement system member and same-sex partner meet the requirements
8 of this section.

9 (b) In order to enroll a same-sex partner in group insurance coverage provided
10 under AS 39.30.090 or 39.30.091 or an alternative insurance program under an
11 exemption allowed by regulations adopted by the commissioner under
12 AS 39.30.090(a)(2), the covered employee or covered member of a state retirement
13 system must file with the health plan or state retirement system administrator an
14 affidavit executed by the employee and same-sex partner or the state retirement
15 system member and same-sex partner declaring under penalty of perjury that they

16 (1) are at least 18 years old and are each competent to enter into a
17 contract;

18 (2) have been in an exclusive, committed, and intimate relationship
19 with each other for the last 12 consecutive months and intend to continue that
20 relationship indefinitely, unless the close personal relationship would have violated
21 AS 11.41.434 - 11.41.440;

22 (3) have resided together at a common primary residence for the last
23 12 consecutive months and intend to reside together indefinitely;

24 (4) consider themselves to be members of each other's immediate
25 family;

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

28 (6) are neither one of them legally married to anyone else;

29 (7) have not executed an affidavit affirming same-sex partner status
30 with anyone else within the last 12 months;

31 (8) are each other's sole domestic partner and are each responsible for

1 the common welfare of the other;

2 (9) share financial obligations, including responsibility for basic living
3 expenses and health care costs;

4 (10) understand that, under applicable federal income tax law,
5 payments for medical coverage of a same-sex partner or child of a same-sex partner
6 may not be eligible for pre-tax treatment, and coverage of a same-sex partner may
7 result in additional imputed taxable income to the covered employee, state retirement
8 system member, or survivor and related withholding for payroll, income, or pension
9 and annuity taxes; and

10 (11) understand that, in addition to requirements of this section, there
11 are terms and conditions of coverage set out in each group policy, state plan of self-
12 insurance, or alternative insurance program to which they are bound.

13 (c) In order to enroll a same-sex partner in group insurance coverage provided
14 under AS 39.30.090 or 39.30.091 or an alternative insurance program under an
15 exemption allowed by regulations adopted by the commissioner under
16 AS 39.30.090(a)(2), the covered employee or state retirement system member shall
17 provide documentation establishing that the employee and same-sex partner, or the
18 state retirement system member and same-sex partner, meet at least five of the
19 following criteria:

20 (1) joint interest in real property, as evidenced by title or mortgage,
21 lease, or rental agreement, by the employee or state retirement system member and the
22 same-sex partner;

23 (2) joint ownership or purchase of a motor vehicle by the employee or
24 state retirement system member and the same-sex partner;

25 (3) joint ownership of a checking, savings, or investment account or
26 joint liability for a loan or credit account by the employee or state retirement system
27 member and the same-sex partner;

28 (4) the same-sex partner is named as primary beneficiary for a life
29 insurance policy of the employee or state retirement system member;

30 (5) the same-sex partner is named as primary beneficiary for the
31 employee's or state retirement system member's pension or annuity plan benefits,

1 deferred compensation plan, individual retirement arrangement or account, 401(k)
2 plan, Keogh plan, or other tax-deferred or taxable plan;

3 (6) the same-sex partner is named as primary beneficiary in the
4 employee's or state retirement system member's will;

5 (7) the same-sex partner has authority to deal with property owned by
6 the employee or state retirement system member under a valid written power of
7 attorney;

8 (8) the employee or state retirement system member has given the
9 same-sex partner written authority to make decisions concerning the employee's or
10 state retirement system member's health and well being if the employee or state
11 retirement system member is unable to do so.

12 (d) An employee or a state retirement system member who enrolls a same-sex
13 partner in coverage under this section may also enroll the child of the same-sex partner
14 if the child is unmarried, is dependent on the employee or state retirement system
15 member for support, and meets other requirements set out in the group policy, state
16 plan of self-insurance, or alternative insurance program, and applicable statute
17 governing the state retirement system, including age and applicable school enrollment
18 requirements.

19 (e) An employee or a state retirement system member who has enrolled a
20 same-sex partner, or a same-sex partner and child, in coverage under this section shall
21 provide written confirmation of eligibility of the enrolled person, supplementing
22 documentation provided under (c) of this section if that information has changed, upon
23 request of and in the manner requested by the plan administrator. Failure to provide
24 written confirmation requested by the plan administrator may result in suspension of
25 coverage of the enrolled person.

26 (f) An employee or a state retirement system member who enrolls a same-sex
27 partner in coverage under this section shall agree that, if the employee or state
28 retirement system member and same-sex partner no longer meet the requirements of
29 this section, the employee or state retirement system member will file with the
30 administrator of each plan in which the same-sex partner is enrolled a statement of
31 termination of eligibility within 30 days of the date eligibility ends. Eligibility of the

1 same-sex partner for benefits of a plan terminates on midnight of the date eligibility
2 ends as declared in writing by the employee or state retirement system member.
3 Failure to notify the plan administrator of termination of eligibility will result in
4 liability of the employee or state retirement system member for any resulting
5 overpayment of benefits under the plan. Continuation of coverage will be offered to
6 the former same-sex partner of the employee or state retirement system member as if a
7 divorce had occurred.

8 (g) An employee or a state retirement system member who enrolls a same-sex
9 partner, or same-sex partner and eligible child under (d) of this section, in coverage
10 under this section shall pay any premium established by the plan that an employee or
11 state retirement system member is required to pay for comparable coverage for a
12 spouse or spouse and dependent child.

13 (h) To be considered as having resided together at a common primary
14 residence under (b)(3) of this section, the employee or a state retirement system
15 member and the employee's or member's same-sex partner must share the same home.
16 The common primary residence can change during the 12-month period described in
17 (b)(3) of this section. Once an employee or a state retirement system member and
18 same-sex partner have begun to reside together at a common primary residence,
19 absence by the employee or a state retirement system member or of the same-sex
20 partner required for employment that requires periodic absence from the common
21 primary residence, education, medical care or services, military service, or other
22 reasons determined by the plan administrator does not result in a break in eligibility, as
23 long as the absent person intends to return to the common primary residence.

24 (i) In addition to any other action or remedy provided by law, willful
25 falsification of information in an affidavit under (b) of this section or provided under
26 (c) of this section may result in termination of enrollment of the same-sex partner and
27 any child of the same-sex partner and termination of entitlement to survivor benefits.

28 **Sec. 39.30.094. Enrollment of same-sex partner and same-sex partner's**
29 **eligible child.** (a) Enrollment of a same-sex partner or child of a same-sex partner may
30 occur only at an open enrollment or upon the occurrence of a qualifying status change
31 and in accordance with the terms of the plan. For purposes of a plan described in

1 AS 39.30.093(a) that allows an employee or a state retirement system member to
2 enroll a spouse or dependent child within a period of time after a qualifying status
3 change occurs, such as a change in family structure, ineligibility for other coverage, or
4 a change in insurance coverage, a qualifying status change for enrollment of the
5 employee's or state retirement system member's same-sex partner or eligible children
6 of a same-sex partner occurs on the date upon which

7 (1) the employee or state retirement system member is first able to
8 meet the requirements of AS 39.30.093(b) and (c), if the plan allows enrollment of a
9 spouse and eligible dependent children when a plan member marries; or

10 (2) a status change occurs related to the same-sex partner that would
11 constitute a qualifying status change event under the terms of the plan if the status
12 change related to the spouse of the employee or state retirement system member.

13 (b) Except as provided in this section or under the terms of the applicable
14 plan, once sufficient documentation required under AS 39.30.093(c) is received and
15 verified by the administrator of a plan under AS 39.30.090 or 39.30.091 or an
16 alternative insurance program under an exemption allowed by regulations adopted by
17 the commissioner under AS 39.30.090(a)(2), coverage of the eligible same-sex partner
18 is effective on the latest of the first day of the month after the enrollment form is
19 received by the plan administrator, the date of the employee's appointment to receive
20 retirement or disability benefits if the enrollment is for a retiree insurance plan, the
21 date that coverage is allowed under the terms of an open enrollment if the enrollment
22 is filed under the open enrollment, or January 1, 2007. Payment will not be made on
23 covered claims until eligibility is established under AS 39.30.093. Payment will not be
24 made on claims arising more than 12 months before eligibility is established under
25 AS 39.30.093.

26 * Sec. 6. AS 39.30.400(b) is amended to read:

27 (b) Upon application of an eligible person, the administrator shall reimburse to
28 the eligible person the costs for medical care expenses as defined in 26 U.S.C. 213(d).
29 Reimbursement is limited to the medical expenses of

30 (i) an eligible member, the spouse of an eligible member, and the
31 dependent children of an eligible member; [OR]

1 (2) a surviving spouse and the dependent children of an eligible
2 member dependent on the surviving spouse; or

3 (3) to the extent allowed by federal law, the same-sex partner of
4 the eligible member whom the eligible member has enrolled in health coverage
5 under AS 39.30.093 or whom the eligible member has designated as a beneficiary
6 under AS 14.25.154, 14.25.462; AS 22.25.036; AS 39.35.456, or 39.35.861, and the
7 dependent children of the same-sex partner who are dependent on the member.

8 * Sec. 7. AS 39.35 is amended by adding a new section to read:

9 Sec. 39.35.456. Same-sex partner survivor and medical benefits. (a) An
10 employee may designate the employee's same-sex partner as the beneficiary to receive
11 survivor benefits that are available to a spouse of an employee under the plan. The
12 designation of beneficiary is not valid unless the employee files with the administrator

13 (1) with the designation of beneficiary an affidavit executed by the
14 employee and the same-sex partner making the declarations, under penalty of perjury,
15 set out in AS 39.30.093(b)(1) - (11); and

16 (2) documentation establishing that the employee and same-sex partner
17 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

18 (b) An employee who has designated a same-sex partner as beneficiary under
19 this section shall provide written confirmation of the designation, supplementing
20 documentation provided under (a) of this section if that information has changed, upon
21 request of and in the manner requested by the administrator. Failure to provide written
22 confirmation requested by the administrator may result in ineligibility of the
23 designated same-sex partner for survivor benefits.

24 (c) A deceased employee's same-sex partner whom the administrator
25 determines is validly designated under this section as the employee's beneficiary to
26 receive survivor benefits has the same rights to survivor benefits that a surviving
27 spouse would have under the plan, and is subject to the same requirements that a
28 surviving spouse would be subject to relating to those benefits.

29 (d) An employee may revoke a designation of beneficiary under this section at
30 any time. After the date of retirement, an employee's revocation of the designation of
31 the employee's same-sex partner as the beneficiary to receive survivor benefits does

1 not change the form or amount of a joint and survivor benefit payable to the employee
2 or allow designation of a different beneficiary to receive the joint and survivor benefit.

3 (e) An employee who is entitled to medical coverage under the plan may
4 enroll the employee's same-sex partner and the same-sex partner's eligible dependent
5 children in the plan's medical coverage in accordance with AS 39.30.093.

6 * Sec. 8. AS 39.35 is amended by adding a new section to read:

7 **Sec. 39.35.861. Same-sex partner survivor and medical benefits.** (a) An
8 employee may designate the employee's same-sex partner as the beneficiary to receive
9 survivor benefits that are available to a spouse of an employee under the plan. The
10 designation of beneficiary is not valid unless it is made before the employee is
11 appointed to retirement and the employee files with the administrator

12 (1) with the designation of beneficiary an affidavit executed by the
13 employee and the same-sex partner making the declarations, under penalty of perjury,
14 set out in AS 39.30.093(b)(1) - (11); and

15 (2) documentation establishing that the employee and same-sex partner
16 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

17 (b) An employee who has designated a same-sex partner as beneficiary under
18 this section shall provide written confirmation of the designation, supplementing
19 documentation provided under (a) of this section if that information has changed, upon
20 request of and in the manner requested by the administrator. Failure to provide written
21 confirmation requested by the administrator may result in ineligibility of the
22 designated same-sex partner for survivor benefits.

23 (c) A deceased employee's same-sex partner whom the administrator
24 determines is validly designated under this section as the employee's beneficiary to
25 receive survivor benefits has the same rights to survivor benefits that a surviving
26 spouse would have under the plan, and is subject to the same requirements that a
27 surviving spouse would be subject to relating to those benefits.

28 (d) An employee may revoke a designation of beneficiary under this section at
29 any time. After the date of retirement, an employee's revocation of the designation of
30 the employee's same-sex partner as the beneficiary to receive survivor benefits does
31 not change the form or amount of a joint and survivor benefit payable to the employee

1 or allow designation of a different beneficiary to receive the joint and survivor benefit.

2 (e) An employee who is entitled to medical coverage under the plan may
3 enroll the employee's same-sex partner and the same-sex partner's eligible dependent
4 children in the plan's medical coverage in accordance with AS 39.30.093.

5 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 ELECTED PUBLIC OFFICERS RETIREMENT SYSTEM MEMBERS' SAME-SEX
8 PARTNER SURVIVOR AND MEDICAL BENEFITS. (a) A member of the elected public
9 officers retirement system may designate the member's same-sex partner as the beneficiary to
10 receive survivor benefits that are available to a spouse of a member under former AS 39.37,
11 as modified by sec. 51, ch. 117, SLA 1986; sec. 5, ch. 89, SLA 1988; sec. 35, ch. 106, SLA
12 1988; and sec. 1, ch. 91, SLA 2001. The designation of beneficiary is not valid unless the
13 member files with the administrator

14 (1) with the designation of beneficiary an affidavit executed by the member
15 and the same-sex partner making the declarations, under penalty of perjury, set out in
16 AS 39.30.093(b)(1) - (11), enacted by sec. 5 of this Act; and

17 (2) documentation establishing that the member and same-sex partner meet at
18 least five of the criteria set out in AS 39.30.093(c)(1) - (8), enacted by sec. 5 of this Act.

19 (b) A member who has designated a same-sex partner as beneficiary under this
20 section shall provide written confirmation of the designation, supplementing documentation
21 provided under (a) of this section if that information has changed, upon request of and in the
22 manner requested by the administrator. Failure to provide written confirmation requested by
23 the administrator may result in ineligibility of the designated same-sex partner for survivor
24 benefits.

25 (c) A deceased member's same-sex partner whom the administrator determines is
26 validly designated under this section as the member's beneficiary to receive survivor benefits
27 has the same rights to survivor benefits, including that a surviving spouse would have under
28 former AS 39.37, as modified by sec. 51, ch. 117, SLA 1986; sec. 5, ch. 89, SLA 1988; sec.
29 35, ch. 106, SLA 1988; and sec. 1, ch. 91, SLA 2001, and is subject to the same requirements
30 that a surviving spouse would be subject to relating to those benefits.

31 (d) A member may revoke a designation of beneficiary under this section at any time.

1 (e) A member who is entitled to medical coverage under former AS 39.37.145 may
2 enroll the member's same-sex partner and the same-sex partner's eligible dependent children
3 in the plan's medical coverage in accordance with AS 39.30.093, enacted by sec. 7 of this Act.

4 (f) In this section,

5 (1) "administrator" means the commissioner of administration or the
6 commissioner's designee;

7 (2) "member" means a member of the elected public officers retirement
8 system under former AS 39.37, as modified by sec. 51, ch. 117, SLA 1986; sec. 5, ch. 89,
9 SLA 1988; sec. 35, ch. 106, SLA 1988; and sec. 1, ch. 91, SLA 2001.

10 * Sec. 10. The uncoded law of the State of Alaska is amended by adding a new section to
11 read:

12 RATIFICATION OF SPECIAL ENROLLMENT FOR INSURANCE BENEFITS
13 FOR SAME-SEX PARTNERS OF EMPLOYEES AND RETIREES. The special enrollment
14 conducted in accordance with regulations adopted by the commissioner of administration on
15 October 13, 2006, 2 AAC 38, by the state of Alaska's insurance plans and by alternative
16 insurance programs under an exemption allowed by regulations adopted by the commissioner
17 under AS 39.30.090(a)(2), is ratified.

18 * Sec. 11. Section 10 of this Act takes effect immediately under AS 01.10.070(c).

19 * Sec. 12. Except as provided in sec. 11 of this Act, this Act takes effect January 1, 2007.

Section 2
Proclamation

STATE OF ALASKA



Executive Proclamation
by
Frank H. Murkowski, Governor

Under the authority of art. II, sec. 9, and art. III, sec. 17, of the Alaska Constitution, and in the public interest, I call the Twenty-Fourth Legislature of the State of Alaska into its fourth special session at Juneau, Alaska in the legislative chambers on November 13, 2006, at 11:00 a.m., to consider the subject of employment-related benefits for same-sex domestic partners of state employees and retirees under the state's retirement systems.

Dated this 27th day of October, 2006.

Done by



Frank H. Murkowski
Frank H. Murkowski, Governor
who has also authorized the seal
of the State of Alaska
to be affixed to this proclamation

Section 3

**Letter from Commissioner
Nordstrand to Governor
Murkowski, October 27,
2006**

**Lt. Governor's letter to
Governor
Delegation of Authority**

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE (907) 465-2200
FAX (907) 465-2135

October 27, 2006

Hon. Frank H. Murkowski, Governor
State of Alaska
State Capitol
Juneau, Alaska 99801

Dear Governor Murkowski:

Re: ACLU v. State of Alaska and Implementation of Same-Sex Partner Benefits for State Employees and Retirees

On October 28, 2005 the Alaska Supreme Court issued a decision in *Alaska Civil Liberties Union ("ACLU") v. State of Alaska ("State") and Municipality of Anchorage ("MOA")*, 122 P.3d 781 (Alaska 2005), in which it concluded the failure to provide certain benefits to same-sex partners of State and MOA employees and retirees violated the equal protection clause in the Alaska Constitution. The Court retained jurisdiction over the case to consider the "issue of remedy." The parties completed briefing that matter before the Court in January 2006. More than four months later and after the legislature had adjourned its regular session, the Court ordered that the State and MOA "must provide, no later than January 1, 2007, benefits complying" with its 2005 decision.

In order to implement the Supreme Court's decision, Alaska statutes and regulations should be modified and supplemented to address the issue of same-sex partners. As the legislature was not informed of the remedy ordered until after it adjourned and its next regular session would not occur until after the Court-ordered deadline, the State proposed to establish a system of same-sex partner benefits by regulation. The Superior Court, which was ordered to monitor compliance on remand, accepted this method of implementation.

With the assistance of the Department of Law, the Department of Administration undertook to draft the necessary regulations to comply with the Supreme Court's order. Draft regulations were published on September 1, 2006 and available for public comment throughout September. Having modified the regulations based upon those comments and further departmental review, I adopted final regulations on October 13, 2006. The regulations were forwarded to the Department of Law for review and ultimately arrived in the office of the Lieutenant Governor for filing. Two circumstances have arisen that warrant taking additional steps to ensure orderly compliance with the Supreme Court's mandate.

First, the Superior Court has repeatedly intervened in the process of developing the regulations. It has gone so far as to require me to provide advance notice of regulations that are not yet final, arguably infringing on the powers of the Executive Branch and your prerogatives. The Superior Court has already suggested in a lengthy written order and oral comments on the record that the criteria we have adopted are likely constitutionally infirm. On the heels of these forewarnings—all given before the regulations are even effective—the ACLU moved for an order requiring me essentially to adopt the regulations proposed by the MOA. Those regulations



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provide little or no safeguards against fraud on the State health and retirement systems. They do not ensure that only those persons that the Supreme Court intended to receive the benefits at issue do so. In essence, a mere roommate relationship could suffice for entitlement to State health and retirement benefits.

Furthermore, since retirement rights (both health and survivorship) once given cannot be constitutionally rescinded, imposition of the MOA's criteria arguably create an irrevocable liability to the State of unknown financial consequences. I am deeply concerned that the State is but one court order away from a new and expensive retirement tier for thousands of State employees and PERS/TRS retirees.

The second circumstance suggesting supplemental action to implement the Supreme Court order is the October 23, 2006 letter to you from the Lieutenant Governor in which he challenges my authority to adopt the proposed regulations. First he argues that I have no authority to issue any regulation regarding the active health care plan. Next he claims that regulations cannot be adopted that have the effect of contravening the specific language of a statute (i.e. who can be provided health and retirement benefits under the State plans). Finally, he asserts that a policy matter of this significance should be addressed by the legislature, not imposed by departmental regulation. Consequently he has refused to file the regulations. While the Department of Law has concluded that I do have the authority to adopt the regulations, the Lieutenant Governor raises serious "separation of powers" concerns that deserve careful consideration. Caution and good public policy demand that I recommend the legislature be given the opportunity to address this matter.

Therefore, I believe that it is in the State's best interest for you to issue a proclamation calling the Alaska Legislature into special session as soon as possible to consider how to implement the Supreme Court's order of June 1, 2006. A policy matter of this import is best addressed by the legislature and governor. In the interim we will continue down the regulatory path, but to be absolutely certain that these benefits can lawfully be provided I recommend that a special session be called for November 13, 2006.

Sincerely,



Scott J. Nordstrand
Commissioner

State Capitol
Juneau, Alaska 99801
907-465-3520 465-5400 fax
www.ligov.state.ak.us



550 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907-265-7160 269-0263 fax
LL.Governor@gov.state.ak.us

Lieutenant Governor Loren Leman

October 23, 2006

Governor Frank Murkowski
State Capitol
Juneau, AK 99801

Hand-delivered to Arwood Office
Faxed to State Capitol Office at 465-3532

Dear Governor Murkowski:

Re: 2 AAC 38, Employment-Related Benefits for Same-Sex Partners of State Employees and Retirees Under the State's Retirement Systems

On Wednesday, October 18, I received regulations adopted by the Department of Administration in response to the ruling by the Alaska Supreme Court a year ago regarding the extension of employment benefits to co-habiting, economically intertwined homosexuals, referred to by the Court and Department as "same-sex partners." I promptly began my review of the regulations and the procedures under which they were adopted.

The next day I met with Commissioner Scott Nordstrand at his request. He briefed me on the contents of the regulations; the history of the demands by the Alaska Supreme Court that certain employment-related benefits be extended to a select set of homosexual partners of State employees and retirees; and his assessment of the likelihood of Court approval of the State's plan. This was the first official communication I have had on this project with any member of your Administration. I have responded expeditiously, yet carefully, while meeting my responsibilities under the law.

AS 44 62.030 provides that a regulation adopted is not valid or effective unless consistent with and reasonably necessary to carry out the purpose of the statute. Under AS 44 62.060 (c), the Lieutenant Governor is not permitted to accept a regulation for filing unless it is accompanied by a written statement of approval or disapproval prepared by the Department of Law following its review of the regulation. The Department of Law's review must determine, among other things, "the existence of statutory authority and the correctness of the required citation of statutory authority following each section" (AS 44 62.060 (b) (2)).

The cover memos from the Department of Law for the non-Administrative Procedures Act (APA) and APA provisions ostensibly constitute the statement of approval required by AS 44 62.060 (b) and (c). However, I disagree with the Department's legal analysis regarding authority. I conclude instead that the regulations are deficient for at least two reasons.

Governor Frank Murkowski

October 23, 2006

Page 2

First, they are not based on statutory authority. In fact, if enacted, they would have the effect of amending statutes. Statute changes are appropriately the responsibility of the Legislature, which should be given the opportunity to provide a remedy to the "problem" the Court found in the State's active and retired employee benefit plans. The approach provided in the Department's regulations is just one of several possible remedies to remove what the Supreme Court believes is an infirmity.

Second, based on my reading of the law, the Legislature has not granted the Commissioner of Administration the authority to adopt regulations for the active employee benefit plan. This is a most unusual set of regulations in its complete lack of statutory authority. In my nearly four-year term as Lieutenant Governor, I have not seen anything like this.

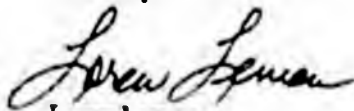
Under AS 44.62.100, the filing by the Lieutenant Governor of a certified copy of a regulation has the effect of creating a "rebuttable presumption" that the regulation was duly adopted and that it complies with all the requirements of the APA. I do not concur that this is true.

For these reasons I cannot file these regulations. Because you have retained the HB130 review authority provided to the Governor by the Legislature in AS 44.62.040 (c), I am forwarding them to you for your review and action. The original regulations are being hand-delivered to your Anchorage office today.

I recommend that you review these regulations to determine if they are, as I conclude, "inconsistent with the faithful execution of the laws." I further recommend that if you so conclude, you return the regulations to the Department of Administration and provide an opportunity for the Legislature to address this issue, perhaps by granting statutory authority—or perhaps by another remedy of its choice.

If, however, you conclude following your review that the regulations are consistent with the faithful execution of the laws, I delegate to you the authority to file them. I am enclosing a fully executed delegation form in case you will need it.

Sincerely,



Loren Leman
Lieutenant Governor

Cc: Scott Nordstrand, Commissioner, Department of Administration
Deborah Behr, Regulations Attorney, Department of Law

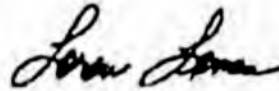
FOR DELEGATION OF LIEUTENANT GOVERNOR'S AUTHORITY

I, LOREN LEMAN, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.026, designate the following State official to perform the Administrative Procedures Act filing functions for a specific regulations project, that being Department of Law file 993-07-004.

Frank H. Murkowski, Governor

This delegation is effective at 8:00 a.m. on October 23, 2006 and expires at 4:59 p.m. on November 12, 2006.

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, at Anchorage, on October 23, 2006.



.....
LOREN LEMAN
LIEUTENANT GOVERNOR



Section 4
Fiscal Note and Backup

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: _____
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to employment-related...benefits for RDU Centralized Administrative Services
the same-sex partner of a state employee/retiree... Component: Retirement and Benefits
Sponsor Rules by Request of the Governor
Requester Rules by Request of the Governor Component No. 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURE:	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	850.3	1,860.9	2,023.8	2,189.2	2,353.5	2,516.4
TOTAL OPERATING	850.3	1,860.9	2,023.8	2,189.2	2,353.5	2,516.4

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (
-----------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1097 Aetna Res	136.5	296.2	319.9	343.9	368.0	391.9
1142 RHF/MM	713.8	1,564.6	1,703.9	1,845.3	1,985.6	2,124.6
TOTAL	850.3	1,860.9	2,023.8	2,189.2	2,353.5	2,516.4

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill authorizes employment-related benefits for the same-sex domestic partner of a state employee or member of the state's retirement systems (PERS, TRS, JRS, EPORS). These benefits include health insurance coverage and the same survivor benefits that a surviving spouse would have under the retirement systems.

This bill has limited fiscal impact on the operations of the Division of Retirement and Benefits. To date, the Division has expended approximately \$35,000 in printing and mailing costs. All expenses are being absorbed, including staff time and professional services (contracted benefit consultant and actuary). The special enrollment is a one-time expenditure only and will not be necessary in subsequent fiscal years.

FY 2007 numbers on this page are 50% of the numbers discussed on page two because the benefits are not effective until January 1, 2007. Please see page two for the analysis required by AS 24.08.036.

Prepared by Traci Carpenter, Director
Division Retirement and Benefits
Approved by Charisse Millett, Legislative Liaison
Agency Department of Administration

Phone 465-4817
Date/Time 11/13/06 12:00 AM
Date 11/13/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. 

ANALYSIS CONTINUATION

Sec. 24.08.036. Fiscal notes on bills affecting state retirement systems. *Before a bill which would have an effect on the retirement systems of the state is reported to the rules committee, there shall be attached to the bill an analysis of the long-term and short-term costs to the state if the bill is adopted, as well as the impact of the bill on the actuarial soundness of the fund. The analysis is in addition to the fiscal note requirements of AS 24.08.035.*

The additional costs of adding a same-sex domestic partner center around the active and retiree health insurance plans. Survivor benefits include death benefits *pre*-retirement and death benefits *post*-retirement. The impact of extending these survivor benefits to more people, however, is negligible. Death benefits for a non-occupational death prior to retirement for a member who is not vested consists of a payment of the member's contribution account balance and a member already may designate anyone as a beneficiary, with spousal consent if necessary. A spouse, and now a domestic partner, of a vested member may choose either a 50% joint and survivor option monthly payment or the lump sum if no other beneficiary is named. However, the joint and survivor option if chosen would not be an additional expense because the member's death reduces liabilities and the retirement plan would only be paying out half, or less, of what would have been paid out had the person reached normal retirement and met life expectancy. The plans experience so few occupational deaths that any increase by extending the benefits to additional persons is likely negligible.

The analyses provided by two health and welfare benefit consultants, Deloitte Consulting LLP and Buck Consultants, are consistent in their estimate of the number of increased covered dependents. Both consultants agree it is reasonable, given the experience of at least 11 other states and a number of other organizations, including the University of Alaska and the City and Borough of Juneau, to assume an increase of .5% in additional covered lives. (See attached letters.)

Deloitte has estimated the increased costs to the State's active and retiree health plans to be approximately .2% based upon their analysis of Alaska's health cost data, providing a low-high range for the active plan of \$84,000 - \$120,000, and a low-high range for the retiree plan of \$533,000 to \$760,000. Total low of \$617,000 to a high of \$880,000.

Until the plans have actual experience, cost estimates are very speculative. In further discussions with the current benefit consultant, Buck advised it is a reasonable approach to estimating costs to assume a .5% increase in total health claim costs (matching the expected increase in covered lives). Total FY 06 actual health claims costs for the active and retiree plans were \$340,131,451. A .5% increase would result in total increased costs of \$1.7 million to the State's active and retiree health plans. (Select Benefit plan costs of \$54.6 million x .005 = \$273,031; Retiree plan costs of \$285.5 million x .005 = \$1,427,626.)

The State does not have cost or enrollment data for the union health trusts that cover approximately 9,600 active state employees and their dependents. The ratio of dependents to employees in the State's active health plan is 1:1.5. Applying that ratio to the union covered employees yields 14,400 dependents. By increasing the number of dependents by .5% (72) and using the average health claims costs for the State's active employees (\$3789), the Division estimates an annual increased cost of \$272,842 for the union health trusts.

Alternatively, applying these same calculations to the number of dependents covered by the State's active and retiree health plans yields 160 additional covered dependents, 43 active and 117 retiree. Applying average health claims costs to each of these numbers yields increased costs of \$162,927 (43 x \$3,789) for the active plan and \$632,385 (117 x \$5,405) for the retiree plan. Total costs of \$795,312. These costs are more in line with those projected by Deloitte.

All of these calculations result in a range of cost estimates for the first fiscal year for the State's plans: a low of \$.6 million and a high of \$1.7 million, potentially covering 232 additional dependents.

Both the State's active group health insurance fund and retiree health insurance fund have reserves that are sufficient to absorb the projected costs in the first year (see attached reports from Buck Consultants). In subsequent years, the experience of the plans will be reflected in the rates developed by the state's benefit consultant. The numbers for the out years on page one of this fiscal note are based upon the most conservative (high) cost projection and inflated for the medical cost trends contained in the retirement systems' actuarial valuations ending June 30, 2005. It is not possible to project how the State's future negotiations with the unions will impact the State's budget.

As explained in the opening paragraph on this page, it is not anticipated the retirement systems will experience increased costs related to pensions.

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Administration, Division of Retirement and Benefits
2. General subject of regulation: Same Gender Benefits
3. Citation of regulation (may be grouped): _____
4. Reason for the proposed action:
 - compliance with federal law
 - compliance with new or changed state statute
 - compliance with court order
 - development of program standards
 - other: (please list) _____
5. RDU/component affected: _____

6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 07	Subsequent Years	Medical Costs may increase as follows:		
			Low	—	High
Operating Cost	\$0.0	\$0.0	FY 07:	464.0	1,221.0
Capital Cost	\$0.0	\$0.0	FY 08:	1,020.5	2,685.5
Federal receipts	\$0.0	\$0.0	FY 09:	1,122.5	2,954.0
General fund match	\$0.0	\$0.0	FY10:	1,235.0	3,249.5
General fund	\$0.0	\$0.0			
General fund/ program receipts	\$0.0	\$0.0			
General fund/ mental health	\$0.0	\$0.0			
Other funds (specify)	\$0.0	\$0.0			

(11/7/06 - Corrected to represent dollars in thousands)

7. The name of the contact person for the regulations:

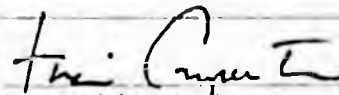
Name: Anna Kirsanova
 Title: Secretary
 Address: PO Box 110203
 Juneau, AK 99811-0203
 Telephone: 1-800-821-2251 or 1-907-465-3597
 E-mail address: Anna_Kirsanova@admin.state.ak.us

8. The origin of the proposed action:

- staff of state agency
- federal government
- general public
- petition for regulation change
- other (please list) _____

9. Date: 8/31/2006

Prepared by:


[signature]

Name (typed)

Traci Carpenter

Title (typed)

Plan Administrator

Telephone:

907-465-4460

May 3, 2006

Virginia B. Ragle
 Assistant Attorney General
 Labor & State Affairs Section – Juneau
 123 4th Street, 6th Floor
 Juneau, AK 99811

Re: Domestic Partner Draft Health Plan and Survivor Benefit Cost Analysis – Employer Contribution Rates

Dear Virginia:

As follow-up to our April 12, 2006 review of domestic partner coverage costs developed by Deloitte Consulting, the table below illustrates expected employer funding rate increases for the PERS and TRS retiree medical plans should the State adopt same-gender only or same- and opposite-gender domestic partner coverage. As discussed earlier, standard estimates of the cost for extending health care coverage to domestic partners of active employees assume a 0.5% enrollment increase for same-gender only coverage and a 2.0% enrollment increase for same- and opposite-gender domestic partner coverage. Alaska's rate structure may be an incentive for greater domestic partner enrollment, but there are also likely fewer domestic partners of retirees. The following table derives from standard assumptions and is likely a conservative estimate (note **revised base contribution rates**):

7/1/2005 Composite Employer Contribution Rates as a Percentage of Payroll	Extension to Same-Gender Domestic Partners Only		Extension to Same- and Opposite-Gender Domestic Partners	
	PERS	TRS	PERS	TRS
Enrollment Increase	0.50%	0.50%	2.00%	2.00%
Base Rate	32.51%	42.26%	32.51%	42.26%
Survivor Pension Increase	0.00%	0.00%	0.01%	0.01%
Healthcare Enrollment Increase	0.16%	0.17%	0.65%	0.65%
Revised Rate	32.67%	42.43%	33.17%	42.92%

Ms. Virginia B. Ragle
Page 2
May 3, 2006

CONFIDENTIAL

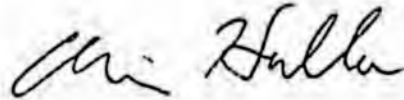
Actual enrollment increases may well be higher during the first few years that domestic partner coverage is made available but should then moderate to the assumed rates shown, or to even lower levels. In addition to base rate revisions attributable to modified amortization calculations, the impact of domestic partner coverage shown above reflects both increased health plan enrollment and increased exposure to survivor pension benefits payable upon death in active service.

Please call if you want to discuss our analysis further.

Sincerely,



David H. Slisinsky
Principal and Consulting Actuary



Christopher R. Hulla
Principal, Health & Welfare

/aes

P:\Admin\Alaska\2006\tr050361dhs-crh.doc

April 12, 2006

Virginia B. Ragle
Assistant Attorney General
Labor & State Affairs Section – Juneau
123 4th Street, 6th Floor
Juneau, AK 99811

Re: Domestic Partner Draft Health Plan Cost Analysis

Dear Virginia:

We reviewed the draft analysis of potential active employee and retiree health plan costs to the State should domestic partner coverage be offered, as prepared by Deloitte Consulting. As regards potential additional cost under active and retired employee healthcare plans, we concur with Deloitte's following key observations:

- Large plan sponsor experience shows that average per-employee costs do not measurably increase solely because domestic partnership coverage is added.
- Alaska can expect additional costs attributable to the number of newly covered dependents once domestic partnership coverage is added.
- An offer of same gender domestic partner coverage can be expected to increase overall enrollment by 0.5% or less.
- An offer of same and opposite gender domestic partner coverage can be expected to increase overall enrollment by 2.0% or less.
- The State may want to conservatively anticipate slightly higher than average domestic partner coverage because the State's composite premium approach means that an employee or retiree does not pay any extra premium to add dependents.
- Net cost increases to the State depend on the portion of newly covered dependent premium subsidized by the State, which varies by plan and by employee versus retiree status.

We do not have current fiscal 2007 projections for active and retiree total plan costs, so we cannot comment on the actual dollar estimates produced by Deloitte using the assumptions summarized above. Based on our knowledge of per-employee and per-retiree costs for fiscal 2005, it appears Deloitte's fiscal 2007

Ms. Virginia B. Ragle
Page 2
April 12, 2006

CONFIDENTIAL

dollar estimates of active plan costs attributable to same gender only and same and opposite gender domestic partner coverage are reasonable.

Like estimates for the retiree plan should be greater since retiree dependents incur greater medical costs on average, and since the State subsidizes a greater portion of premium for retirees than for active employees. Conversely, retiree domestic partner costs should be offset a bit compared to active employee costs because incidence of domestic partnership can be expected to be relatively lower among retirees. Considering these factors, it appears to us that Deloitte's fiscal 2007 dollar estimates of retiree plan costs attributable to same gender only and same and opposite gender domestic partner coverage may be high.

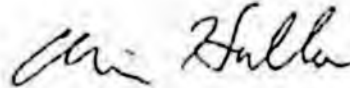
We can refine our analysis if we obtain greater detail on fiscal 2007 active and retiree plan costs, including gross costs and the State's share.

Please call if you want to discuss our analysis further.

Sincerely,



David H. Slisinsky
Principal and Consulting Actuary



Christopher R. Hulla
Principal, Health & Welfare

/aes



Deloitte Consulting LLP
400 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
USA

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www.deloitte.com

PRIVILEGED & CONFIDENTIAL
DRAFT WORK PRODUCT PREPARED
FOR COUNSEL

February 10, 2006

Virginia B. Ragle
Assistant Attorney General
Labor and State Affairs Section Juneau
123 4th Street, 6th Floor
Juneau, AK 99811

Dear Virginia:

On October 28, 2005 the Supreme Court of the State of Alaska released Supreme Court No. S-10459 opinion relating to the availability of domestic partner benefits for same-sex couples in the public employees health plans for the State of Alaska and the Municipality of Anchorage.

The Supreme Court of the State of Alaska concluded that the public employers' spousal limitations violate the Alaska Constitution's equal protection clause. They vacated the judgments and stated until they can resolve the issue of remedies, the disputed benefits programs remain in effect.

The State of Alaska has requested that Deloitte Consulting provide an estimate of the cost of adding same-sex domestic partner coverage to the State of Alaska active and retiree plans.

Current Environment

Same-sex domestic partner coverage is becoming increasingly common among private and public sector employers up from 6% in 1996 to 32% in 2005 as cited in the Human Resources Management Benefits Survey 2005. The most frequently offered benefit is health insurance coverage.

Eleven states have implemented domestic partner benefits for their own employees.

State	Same sex?	Opposite sex?	Effective date
California	Yes	No	1999
Connecticut	Yes	No	2000
Illinois	Yes	No	2004
Iowa	Yes	Yes	2003
New Jersey	Yes	No	2004
New Mexico	Yes	Yes	2003
New York	Yes	Yes	1995
Oregon	Yes	Yes	1998
Rhode Island	Yes	Yes	2001
Vermont	Yes	Yes	1994
Washington	Yes	No	2001

Cost Issues and Experience Relating to Additional Covered lives

Cost components include the number of new enrollees the plan may receive as a result of offering the benefit as well as any risk that may be associated with those individuals. It is estimated that when domestic partner benefits covering both same-sex and opposite-sex couples are offered, as much as 10% of an employee population would be eligible for such benefits. However, publicly available experience indicates that only 1% to 3% of employees actually utilize such benefits.

Based upon a wide range of publicly reported sources, when extended to same-sex only partners the increase in cost is typically less than 1.0%. When extended to opposite sex partners as well, the increase in cost typically ranges from 1% to 2%. In addition, benefit costs for non-traditional dependents are generally subject to imputed income and therefore the full Social Security tax rate is loaded into the cost.

There are many potential reasons for lower than expected utilization of domestic partner benefits. Privacy issues in the case of same-sex couples as employees may not wish to disclose their relationship to their employer. Also, same-sex couples have a higher instance of dual incomes and therefore partners often have their own health care coverage. Another deterrent for employees considering enrolling in domestic partnership coverage is benefits paid under a self-insured plan could become taxable to the employee.

Comparable Public Sector Experience

As a point of reference, Deloitte contacted the University of Alaska and the City and Borough of Juneau which currently offer both same-sex and opposite-sex coverage to their employees. Both employers require employees electing domestic partnership coverage to complete an affidavit statement of financial interdependence in order for dependents to be eligible.

Mike Humphrey, Director of Benefits at the University of Alaska informed us that domestic partnership coverage was implemented due to a decision by the Supreme Court of the State of Alaska in 1995. Since then the plan has enrolled 50 employees (approximately a third of which are same-sex partnerships) out of a total of 4,000 enrolled employees. Of these 50 enrollees, 40 were enrolled within the year following implementation. He also noted that the University of Alaska does not perform an annual verification of financial interdependence. He has not seen a material change in experience which could be attributed to this addition of members.

We also spoke with the Risk & Benefits Specialist, Beth Mow, at the City and Borough of Juneau who echoed the findings of the University of Alaska experience. The City and Borough of Juneau is self-funded and approximately 2.5% of their total group is enrolled in domestic partner coverage with the majority being in opposite-sex partnerships. Their total group consists of approximately 760 enrollees. She also indicated that there is no evidence to suggest that individuals are any more costly than their average population.

Lastly Deloitte has reviewed enrollment benchmarks from some other organizations that have implemented domestic partner coverage and found the following:

	Same-Sex DP	Same and Opposite Sex DP - Standard
Local Organizations		
City and Borough of Juneau	N/A	2.5 %
University of Alaska	N/A	1.25 %
National Organizations		
Coors Brewing Company	< 1 %	N/A
Deloitte & Touche	N/A	1.1 %
Minneapolis Star Tribune	< 0.5 %	N/A
Tower Records	0.5 %	N/A
Tucson, AZ	0.5 %	N/A
State of Connecticut	0.5 %	N/A
State of Iowa	N/A	< 0.5%
Michigan State College	0.4%	N/A
Princeton	0.4%	N/A
University of Pennsylvania	0.21%	N/A

Domestic Partnership Assumptions and Pricing

When estimating the additional cost impact to the State of offering health insurance to domestic partners we have multiple influencing factors:

- Same sex or same and opposite sex coverage
- Length of verification process
- Claims cost of new enrollees
- Number of new enrollees
- Premiums paid by State versus Employee
- Employer taxes such as Social Security (FICA)

The estimates outlined below show the cost impact to the State for offering either same sex or same and opposite sex domestic partner coverage.

The level of verification required will have an impact on claims costs of new enrollees. Most employers (like the University of Alaska and City and Borough of Juneau) require an affidavit that indicates an exclusive, committed relationship and financial interdependence for at least 12 months. This requirement significantly reduces the potential for anti-selection and the need for a selection lead.

When domestic partner coverage was first offered, many employers anticipated higher than average costs for these individuals due to anti-selection and diseases such as AIDS. However, publicly available experience has not supported this concern. In developing our cost estimate we have assumed domestic partners and their dependents will experience average costs as dictated by the overall State of Alaska experience.

Our research and experience has shown that an employer will experience approximately a 0.5% increase in dependent coverage enrollment when same sex domestic partners are offered

coverage. If same and opposite domestic partner coverage is offered, employers experience about a 2% increase in enrollment.

The State currently pays 100% of the Economy Plan coverage for active members and employees may pay the difference to purchase Standard or Premium Plan coverage. As such, the State currently pays 84.5% of the overall active medical, prescription drug, and dental premium. Our estimates reflect the impact of this premium sharing. In other words, the estimates reflect the State's portion of the active premiums. The State also pays 100% of the major medical plan for most retirees.

Most employers do not utilize composite premium rates like the State of Alaska (same cost for employee only or employee with dependents), but offer differing rates. In the State's case an employee could add a dependent without increasing the premium rate. As a result, Alaska could experience slightly higher enrollment results.

The Internal Revenue Service indicates that employment-based health benefits for domestic partners "are excludable from taxable income only if the recipients are legal spouses or legal dependents". As such we have built in the 7.65% FICA tax into our cost estimates.

Analysis Results

We examined a number of potential scenarios based upon the assumptions outlined earlier in this letter varied by expected enrollment rates. Our projections are provided separately for the Select Benefits (active employees) and Retiree Medical Plans. We have assumed that an affidavit of financial interdependence will be required.

In absence of a strong affidavit and a monitoring practice the State could potentially be exposed to anti-selection. Since attesting to be in a domestic partnership does not have a significant life event associated with it in the State of Alaska, such as a legal marriage, an employee could select against the State plan by potentially waiting until it is advantageous to enroll their domestic partner for health benefits. This could increase our estimates dramatically.

The following table displays our estimates for period 7/1/2006 - 6/30/2007 assuming the State of Alaska implements a strong affidavit and has a monitoring procedure in place.

7/1/2006 - 6/30/2007 Estimated Cost		
Domestic Partnership Definition	Active Plan	Retiree Plan
Same-sex Only	\$84,000 - \$120,000	\$533,000 - 760,000
Same-sex and Opposite-sex	\$390,000 - \$554,000	\$2,226,000 - \$3,181,000

Virginia B. Ragle
February 10, 2006
Page 5

If you have any questions, please call Steve Wander at (612) 397-4312 or Pat Pechacek at (612) 397-4033.

Sincerely,

Patrick Pechacek
Deloitte Consulting LLP

Steven Wander, FSA
Deloitte Consulting LLP

cc:
Melanie Millhorn, Division of Retirement and Benefits
Peter Roverud, Deloitte Consulting LLP
Julie Maendel, Deloitte Consulting LLP

Section 5
State Implementation of
Supreme Court Order
Through Regulatory
Process

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

1
2
3
4 THE ALASKA CIVIL LIBERTIES UNION;)
5 DAN CARTER and AL. INCONTRO; LIN)
6 DAVIS and MAUREEN LONGWORTH;)
7 SHIRLEY DEAN and CARLA TIMPONE;)
8 DARLA MADDEN and KAREN WOOD;)
9 AIMEE OLEJASZ and FABIENNE PETER-)
10 CONTESSE; KAREN STURNICK and)
11 ELIZABETH ANDREWS; THERESA)
12 TAVEL and KAREN WALTER; CORIN)
13 WHITTEMORE and GANI RUTHELLEN;)
14 and ESTRA BENSUSSEN and CAROL ROSE)
15 GACKOWSKI;)

11 Plaintiffs,)

12 v.)

13 STATE OF ALASKA, and)
14 MUNICIPALITY OF ANCHORAGE,)

14 Defendants.)

COPY
Original Receiver

JUL 03 2006

Clerk of the Trial Court

Case No. 3AN-99-11179 CI

On remand from the
Alaska Supreme Court
No. S-10459

16 STATE OF ALASKA'S PRE-DEADLINE STATEMENT

17 In accordance with the Order of the Alaska Supreme Court dated June 1,
18 2006, defendant/appellee State of Alaska (state) hereby provides the outline of the steps
19 the state plans to take to achieve compliance with the Alaska Supreme Court's October
20 28, 2005, Opinion in the above case by the deadline of January 1, 2007. The state plans
21 to provide for provision of health and survivor benefits to same-sex partners of active
22 state employees and of retirees under the state's retirement systems by regulations
23 adopted by the Commissioner of Administration under AS 14.25.005, AS 23.25.027,
24 AS 39.30.090-39.35.095, and AS 39.35.005. The state also plans to amend the state's
25
26

ATTORNEY GENERAL, STATE OF ALASKA
DIAMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE 465-3600

1
2 Select Benefits and retiree health plan documents to reflect the new eligibility
3 provisions of the regulations.

4 The state plans to provide early notice of the regulation process, and of the
5 opportunity for affected teachers, employees, and retirees to participate in the process,
6 by publication in the Teachers' Retirement System (TRS) and Public Employees'
7 Retirement System (PERS) *Newsbreaks* and by a special mailing to Judicial Retirement
8 System (JRS) members, Elected Public Officers Retirement (EPORS) members, and
9 state employees who are members of the Marine Engineers Beneficial Association. The
10 *Newsbreaks* are mailed to all TRS and PERS members, including active employees and
11 teachers, employees and teachers who have terminated employment but who have left
12 contributions in the systems, and retirees under the systems.

13
14 The steps set out below are based on the understanding that the
15 commissioner has authority to implement the benefits under the commissioner's
16 existing regulatory authority and under the Alaska Supreme Court's October 28, 2005,
17 Opinion that invalidates statutes insofar as they deny employment-related benefits to
18 same-sex partners of state employees and of retirees under the state's retirement
19 systems. If the court determines that statutory changes are needed instead, the timeline
20 will have to be revised, and additional time may be requested of this court and, if
21 necessary, the Alaska Supreme Court.

22
23 The times set out relating to benefits provided by the union health trusts
24 under collective bargaining agreements with the state are based on the belief that
25
26

1
2 agreement pertaining to the benefits will be achieved expeditiously, without the need for
3 intervention by the court.

4 The specific steps the state plans to take, including steps in the adoption of
5 regulations and descriptions of administrative activities that will be begun or underway
6 during the stages of the regulation adoption process, are set out below.

7
8 1. June 23, 2006 – Unions representing state employees in collective bargaining
9 notified (see Exhibit 1).

10 2. July 1-31, 2006 – Regulations drafted for inclusion in 2 AAC.

11 ▪ Develop specific criteria for same-sex partner eligibility for health
12 and survivor benefits, including affidavit declarations and
13 documentation requirements.

14 ▪ Health premium cost increases verified by actuary/benefits
15 consultant.

16 ▪ Notify Union Health Trusts of verified cost increases to state's
17 Select Benefits economy plan.
18

19 3. August 1-31, 2006 – Regulations reviewed and prepared for public notice.

20 ▪ *Newsbreak* notice mailed to TRS and PERS membership regarding
21 regulations and opportunity to participate in regulation process; special
22 mailing of notice to JRS, EPORS, and Marine Engineers Beneficial
23 Association members.

24 ▪ Develop and/or revise draft forms: affidavit (affirming and
25 terminating relationship), application, transmittal letter.
26

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- Develop process for identifying value of health benefits for imputation of taxable income and method of taxing or reporting (report on annual W2, or add to paycheck and deduct taxes).
 - Draft addenda to health insurance plan booklets (Select Benefits and Retiree Health).
 - Begin computer systems analysis: health benefit systems, AKPAY, CRS.
4. September 1, 2006 – Public comment period opens.
5. September 30, 2006 – Close public comment period.
6. October 1-14, 2006 – Incorporate public comments.
- Computer systems reconfiguration: new dependent indicator(s); taxable income.
7. October 15, 2006 – Commissioner adopts regulations.
- Amend Health Plan Document: form of addenda to existing Health Plan Document for Select Benefits, for PERS, TRS, JRS and EPORS defined benefit plans and PERS and TRS defined contribution retirement plan summaries.
 - Forms/materials/addenda finalized and sent to printer.
 - Verification documentation matrix developed (use existing process for dependent eligibility verification).
 - Staff training.

ATTORNEY GENERAL, STATE OF ALASKA
5100 10 COURT HOUSE
PO BOX 110300, JUNEAU, ALASKA 99811
PHONE 465-3600

1
2
3 8. November 6, 2006 – Enrollment packets (health coverage and survivor
4 beneficiary designation) and health booklet addenda mailed (coordinate with regular
5 retiree open enrollment).

6
7 9. November 15, 2006 – Regulations effective.

- 8 ▪ Unions health trust negotiations completed.
- 9 ▪ Supplemental budget request identified for FY 2007.

10 10. November 20, 2006 – Special online open enrollment for active employees'
11 same-sex partners and dependents in health plans begins.

12 11. December 8, 2006 – End open enrollment for health plan coverage.

13 12. December 31, 2006 – All same-sex partner and dependent eligibility
14 verified; health plan enrollment data reported to Third Party Administrator.

15 13. January 1, 2007 – Health benefits effective for eligible same-sex partners of
16 state employees and retirees under the state's retirement systems; designations of same-
17 sex partners as beneficiaries for survivor benefits effective.

18 Dated this 3rd day of July, 2006.

19 DAVID MÁRQUEZ
20 ATTORNEY GENERAL

21 By: *Virginia B. Ragle*
22 Virginia B. Ragle
23 Assistant Attorney General
24 Alaska Bar No. 8311169

Section 6
State of Alaska Adopted
Regulations
Emergency Regulations
(delay implementation)

Title 2 of the AAC is amended by adding a new chapter 38 to read:

Chapter 38. Employment-Related Benefits for Same-Sex Partners of State Employees and Retirees Under the State's Retirement Systems.

2 AAC 38.010. Same-sex partner insurance coverage. (a) A state employee or member of a state retirement system who is covered by group insurance under AS 39.30.090 or 39.30.091, such as the state's retiree medical, Select Benefits, or Supplemental Benefits plans, or by an alternative insurance program, such as a union health trust, under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), may enroll the employee's or retirement system member's same-sex partner in the group insurance or alternative insurance program if the employee and same-sex partner, or retirement system member and same-sex partner, meet the requirements of this section.

(b) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), the covered employee or covered member of a state retirement system shall file with the administrator of the health plan or retirement system an affidavit executed by the employee and same-sex partner or the retirement system member and same-sex partner declaring under penalty of perjury that they

(1) are at least 18 years old and are each competent to enter into a contract;

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

(3) have resided together at a common primary residence for the last 12 consecutive months and intend to reside together indefinitely;

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

(5) 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 from each other;

(6) are neither one of them legally married to anyone else;

(7) have not executed an affidavit affirming same-sex partner status with anyone else within the last 12 months;

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

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

(10) understand that, under applicable federal income tax law, payments for medical coverage of a same-sex partner or child of a same-sex partner may not be eligible for pre-tax treatment, and coverage of a same-sex partner may result in additional imputed taxable income to the covered employee, retirement system member, or survivor and related withholding for payroll, income, or pension and annuity taxes; and

(11) understand that, in addition to requirements of this section, there are terms and conditions of coverage set out in each group policy, state plan of self-insurance, or alternative insurance program to which they are bound.

(c) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), and upon request of the health plan or retirement system administrator after enrollment, the covered state employee or member of a state retirement system shall provide documentation establishing that the employee and same-sex partner, or retirement system member and same-sex partner, meet at least five of the following criteria:

(1) joint interest in real property, as evidenced by title or mortgage, lease, or rental agreement, by the employee or retirement system member and the same-sex partner;

(2) joint ownership or purchase of a motor vehicle by the employee or retirement system member and the same-sex partner;

(3) joint ownership of a checking, savings, or investment account or joint liability for a loan or credit account by the employee or retirement system member and the same-sex partner;

(4) the same-sex partner is named as primary beneficiary for a life insurance policy of the employee or retirement system member;

(5) the same-sex partner is named as primary beneficiary for the employee's or retirement system member's pension or annuity plan benefits, deferred compensation plan, Individual Retirement Arrangement or Account, 401(k) plan, Keogh plan, or other tax-deferred or taxable plan;

(6) the same-sex partner is named as primary beneficiary in the employee's or retirement system member's will;

(7) the same-sex partner has authority to deal with property owned by the employee or retirement system member under a valid written power of attorney;

(8) the employee or retirement system member has given the same-sex partner written authority to make decisions concerning the employee's or retirement system member's health and well being if the employee or retirement system member is unable to do so.

(d) An employee or member of a state retirement system who enrolls a same-sex partner in coverage under this section may also enroll the child of the same-sex partner if the child is unmarried, is dependent on the employee or retirement system member for support, and meets other requirements set out in the group policy, state plan of self-insurance, or alternative insurance program, and applicable statute governing the retirement system, including age and applicable school enrollment requirements.

(e) An employee or member of a state retirement system who has enrolled a same-sex partner, or a same-sex partner and child, in coverage under this section shall provide written confirmation of eligibility of the enrolled person, supplementing

documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in suspension of coverage of the enrolled person.

(f) An employee or retirement system member who enrolls a same-sex partner in coverage under this section must agree that, if the employee or retirement system member and same-sex partner no longer meet the requirements of this section, the employee or retirement system member will file with the administrator of each plan in which the same-sex partner is enrolled a written statement of termination of eligibility within 30 days of the date that eligibility ends. Eligibility of the same-sex partner for benefits of a plan terminates on midnight of the date that eligibility ends as declared in writing by the employee or retirement system member. Failure to notify the plan administrator of termination of eligibility results in liability of the employee or retirement system member for any resulting repayment of benefits under the plan. Continuation of coverage will be offered to the former same-sex partner of the employee or retirement system member as if a divorce had occurred.

(g) An employee or retirement system member who enrolls a same-sex partner, or same-sex partner and eligible child under (d) of this section, in coverage under this section shall pay any premium established by the plan that an employee or retirement system member is required to pay for comparable coverage for a spouse or spouse and dependent child.

(h) In this section, "resided together at a common primary residence" requires the employee or member of a state retirement system and the employee's or member's same-sex partner to share the same domicile. The common primary residence can change during the 12-month period set out in (b) of this section. Once an employee or member of a state retirement system and same-sex partner have begun to reside together at a common primary residence, absence by the employee or retirement system member or the same-sex partner required for employment that requires periodic absence from the common primary residence, education, medical reasons, military service, or other reasons determined by the plan administrator will not result in a break in eligibility, as long as the absent employee, retirement system member, or same-sex partner intends to return to common primary residence. (Eff. 11/12/2006, Register _____; am ____/____/____, Register _____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

2 AAC 38.030. Enrollment of same-sex partner and same-sex partner's eligible child. (a) After November 12, 2006, a special enrollment will be conducted to allow enrollment of eligible same-sex partners and eligible children of same-sex partners in group insurance plans described in 2 AAC 38.010(a). If the terms of a group insurance plan described in 2 AAC 38.010(a) allow enrollment of a spouse or family at only a specific time, such as the date of retirement of a member of the retirement system, in

order to enroll a same-sex partner or child of a same-sex partner in the plan during the special enrollment, the employee or member of a state retirement system must establish that the requirements of 2 AAC 38.010(b) and (c) were met at the time specified by the terms of the plan.

(b) Following the special enrollment, enrollment of a same-sex partner or child of a same-sex partner may occur only at a subsequent open enrollment or upon the occurrence of a qualifying status change and in accordance with the terms of the plan. For purposes of a plan described in 2 AAC 38.010(a) that allows an employee or member of a state retirement system to enroll a spouse or dependent child within a period of time after a qualifying status change occurs, such as a change in family structure, ineligibility for other coverage or change in insurance coverage, a qualifying status change for enrollment of the employee's or retirement system member's same-sex partner or eligible children of a same-sex partner occurs on the date upon which

(1) the employee or retirement system member is first able to meet the requirements of 2 AAC 38.010(b) and (c), if the plan allows enrollment of a spouse and eligible dependent children when a plan member marries;

(2) a status change occurs related to the same-sex partner that would constitute a qualifying status change event under the terms of the plan if the status change related to the spouse of the employee or retirement system member.

(c) The employee or retirement system member should provide the documentation required by 2 AAC 38.010(c) within 90 days of filing an enrollment form with the

administrator of a plan under AS 39.30.090 or 39.30.091, or if the enrollment is filed with the administrator of an alternative insurance program under AS 39.30.090(a)(2), within the time provided by the alternative insurance program plan. Once the documentation required under 2 AAC 38.010(c) is received by the administrator of a plan under AS 39.30.090 or 39.30.091, coverage of the eligible same-sex partner is effective on the latest of the first day of the month after the enrollment form is received by the plan administrator, the date of the employee's appointment to receive retirement or disability benefits if the enrollment is for a retiree insurance plan, the date coverage is allowed under the terms of an open enrollment if the enrollment is filed under the open enrollment, or January 1, 2007. Payment will not be made on covered claims until eligibility is established under 2 AAC 38.010. Payment will not be made on claims arising more than 12 months before eligibility is established under 2 AAC 38.010.

(d) This section does not authorize or require a change in type or level of coverage if such a change is not allowed by federal regulations governing mid-year changes in coverage or under the provisions of the plan, nor does this section prohibit mid-year changes in the type or level of coverage if such change is required by federal regulations or permitted under the provisions of the plan. Changes in the type or level of coverage may be made during any regular open enrollment period of the plan, if allowed by federal regulations governing the plan.

(e) To the extent permitted by federal regulations, a same-sex partner and an eligible child of a same-sex partner will be considered dependents under the plan for

purposes of eligibility, including continuation of coverage and 29 U.S.C. 1182 (Health Care Portability and Accountability Act of 1996) (HIPAA) portability rights, even if the individual does not qualify as a dependent for federal tax purposes. (Eff. 11/12/2006, Register _____; am ____/____/____, Register _____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.050. Imputation of income and effect on pre-tax premiums. (a)

Income will be imputed for federal tax purposes to

(1) an employee or member of a state retirement system who enrolls a same-sex partner or child of a same-sex partner who is not an eligible dependent under 26 U.S.C. 152, without regard to 26 U.S.C. 152(b)(1), (b)(2) and (d)(1)(B), in group insurance coverage under 2 AAC 38.010;

(2) a same-sex partner of a member of a state retirement system if the same-sex partner was not an eligible dependent of the member under 26 U.S.C. 152, without regard to 26 U.S.C. 152(b)(1), (b)(2), and (d)(1)(B), at the time of the member's death and if the same-sex partner is enrolled in group insurance coverage as a survivor of the member under 2 AAC 38.010.

(b) The amount of income imputed to an employee, retirement system member, or survivor under this section will be based on the fair market value of the coverage provided to the non-dependent same-sex partner as established by the administrator of the

state's employee and retiree health plans. The fair market value of coverage provided by a union health trust under an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2) will be established in consultation with the applicable trust.

(c) If an employee's premium payment for group insurance coverage of a same-sex partner or child of a same-sex partner is not eligible for pre-tax treatment, the premium payment will be deducted on a post-tax basis in the amount established by the administrator of the applicable plan.

(d) Income imputed under this section does not constitute compensation for purposes of determining employer or employee contributions or computation of benefits under the state's retirement systems or Alaska Supplemental Annuity Plan.

(Eff. 11/12/2006, Register ____; am ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

2 AAC 38.070. Same-sex partner survivor benefits. (a) A state employee or member of a state retirement system may designate the employee's or retirement system member's same-sex partner as the beneficiary to receive survivor benefits that are available to an employee's or retirement system member's surviving spouse in accordance with this section. Survivor benefits are payable to a same-sex partner

designated under this section to the extent the benefits are not payable to a former spouse under the terms of a qualified domestic relations order.

(b) A designation of a same-sex partner to receive survivor benefits that may be paid to a person other than a spouse under applicable statute is valid to the same extent the designation of any other non-spouse beneficiary is valid under the statute.

(c) A designation by a member of a state retirement system of a same-sex partner as beneficiary to receive survivor benefits that are available to a surviving spouse under AS 14.25.155, 14.25.157, 14.25.160, 14.25.162, 14.25.164, 14.25.167, 14.25.420, 14.25.485, 14.25.487; AS 22.25.030; AS 39.35.420, 39.35.430, 39.35.440, 39.35.450, 39.35.890, 39.35.892; or former AS 39.37.060 is not valid unless the member files with the administrator

(1) with the designation of beneficiary an affidavit executed by the member and the same-sex partner making the declarations, under penalty of perjury, set out in 2 AAC 38.010(b); and

(2) documentation establishing that the member and same-sex partner meet at least five of the criteria set out in 2 AAC 38.010(c).

(d) A deceased employee's or retirement system member's same-sex partner whom the administrator determines is validly designated as the employee's or member's beneficiary to receive survivor benefits has the same rights to survivor benefits, including group insurance and alternative insurance benefits available under the applicable plan.

that a surviving spouse would have, and is subject to the same requirements that a surviving spouse would be subject to relating to those benefits.

(e) An employee or member of a state retirement system may revoke a designation of beneficiary under this section at any time. After the date of retirement, a member's revocation of the designation of the member's same-sex partner as the beneficiary to receive survivor benefits does not change the form or amount of a joint and survivor benefit payable to the member or allow designation of a different beneficiary to receive the joint and survivor benefit.

(f) An employee or member of a state retirement system who has designated a same-sex partner as beneficiary under this section shall provide written confirmation of the designation, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in ineligibility of the designated same-sex partner for survivor benefits. (Eff. 11/12/2006, Register _____; am ____/____/____, Register _____)

Authority: AS 14.25.005 AS 39.35.005 Former AS 39.37.090
AS 22.25.027

2 AAC 38.100. Responsibilities and rights of a state employee or member of a state retirement system and same-sex partner. (a) It is the responsibility of a state

employee or member of a state retirement system to comply with all requirements of an insurance, retirement, or benefit plan or program, including all application, designation, affidavit, and documentation requirements, in order to provide or allow provision of benefits to the employee's or retirement system member's same-sex partner. Except when specifically provided by this chapter or the terms of an insurance, retirement, or benefit plan or program, an employee's or retirement system member's compliance with the application, affidavit, and documentation requirements of a plan or program does not entitle the employee's or retirement system member's same-sex partner to rights or benefits under a different plan or program.

(b) Nothing in this chapter supersedes the requirements of a court order regarding rights or benefits of a former spouse or dependents of an employee or retirement system member.

(c) Nothing in this chapter provides, or allows the provision of, any right or benefit to the same-sex partner of an employee or retirement system member that would not be available to the spouse of the employee or retirement system member. (Eff. 11/12/2006, Register ____; am ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

FINDING OF EMERGENCY

The Department of Administration finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the orderly operation of the Public Employees' Retirement System, Teachers' Retirement System, Judicial Retirement System, and Elected Public Officers Retirement System. The facts constituting the emergency include the following:

The commissioner finds that, with a special session of the legislature scheduled to convene on November 13, 2006, during which the legislature will have the opportunity to pass legislation to address the court's decision in *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005) ordering provision of employment-related insurance and survivor benefits to same-sex partners of state employees and retirees, there is a substantial possibility that eligibility and documentation criteria ultimately enacted may be different from the eligibility and documentation criteria set out in the regulations adopted by the commissioner of administration on October 13, 2006. This creates a substantial risk of creation of different tiers of employees regarding eligibility and documentation criteria for medical and survivor benefits for same-sex partners under the Public Employees' Retirement System, Teachers' Retirement System, Judicial Retirement System, and Elected Public Officers Retirement System under art. XII, sec. 7 of the Alaska Constitution. In order to ensure the immediate preservation of the orderly operation of these retirement systems, it is necessary to adopt an emergency regulation that establishes an applicability date for the eligibility and documentation criteria of 2 AAC 38.010 that will prevent creation of separate tiers under those retirement systems.

ADOPTION ORDER

Under the authority of AS 14.25.003, 14.25.005; AS 22.25.027; AS 39.35.003, 39.35.005, and AS 39.37.090, the attached one page of regulation changes is therefore adopted as emergency regulations to take effect immediately.

This action is not expected to require an increased appropriation.

DATE: _____
Anchorage, Alaska

Scott J. Nordstrand, Commissioner
Department of Administration

FILING CERTIFICATION

I, Loren Lemman, Lieutenant Governor for the State of Alaska, certify that on _____, 2006, at _____ m., I filed the attached regulations to be published in the Alaska Administrative Register and Code for informational purposes in accordance with AS 14.25.005(b), AS 22.25.027(b), and AS 39.35.005(b).

Loren Lemman, Lieutenant Governor

Effective: _____

Register: _____

EMERGENCY REGULATION

Register ____, _____ 2007

ADMINISTRATION

2 AAC 38 is amended by adding a new section to read:

2 AAC 38.005. Applicability of eligibility criteria. For purposes of enrolling same-sex partners and eligible children of same-sex partners in retiree medical coverage, and designating same-sex partners as beneficiaries for survivor benefits identified in 2 AAC 38.070(c), the eligibility and documentation criteria of 2 AAC 38.010 are applicable to members of the state's retirement systems on November 22, 2006, to the extent the eligibility and documentation criteria of 2 AAC 38.010 are not inconsistent with eligibility and documentation criteria set out in a bill passed by the legislature in the Fourth Special Session of the Twenty-Fourth Alaska State Legislature to address the decision of the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005). (Eff. __/__/__, Register __)

Authority: AS 14.25.003 AS 39.30.090 AS 39.35.005
AS 14.25.005 AS 39.35.003 Former AS 39.37.090
AS 22.25.027

Section 7
Letter of Support from
ASEA & LTC

LAW OFFICES OF
MARY L. STOLL

2033 Sixth Avenue – Suite 815
Seattle, WA 98121-2573

Telephone 206-623-2855 – Fax 206-667-9805 – Email info@mlstoll-law.com

September 29, 2006

*Via Email anna_kirsanova@admin.state.ak.us
and U.S. Mail*

Ms. Anna Kirsanova
State of Alaska, Department of Administration
Division of Retirement and Benefits
PO Box 110203
Juneau, AK 99811-0203

Re: Proposed Regulation in Regard to Employment-Related Benefits for Same-Sex
Partners of State Employees and Retirees under the State's Retirement System

Dear Ms. Kirsanova:

I am writing on behalf of ASE/AFSCME Local 52 Health Benefits Trust and Public
Employees Local 71 Trust Fund, which are both unilateral trust funds that provide health
benefits to employees of the State of Alaska.

Both Trusts will be impacted by the proposed regulation, and would like to make the
following comments:

1. The Trusts do not object to the eligibility or documentation requirements described
2AAC 38.010 (b) and (c). We believe they are reasonable and appropriate.
2. 2AAC 38.030 (b) specifies that a change in coverage is allowed when the employee
or retirement system member is first able to meet the requirements of 2AAC
38.010(b) and (c), as well as when an event occurs related to the same-sex partner
that would constitute a qualifying event under the terms of the plan if the event
related to the spouse of the employee or retirement system member. Both Trusts
provide cafeteria plan options on a tax-qualified basis under Section 125 of the
Internal Revenue Code. The Code limits the circumstances under which a
participant may make a mid-year election change. Although a change in the
employee's legal marital status (marriage, divorce, annulment, legal separation, or
spouse's death) constitutes a permissible change-in-status event, the employee first
meeting the dependent partner criteria, or subsequently failing to meet that criteria,
does not constitute a qualifying change-in-status event. Therefore, although the
Trust Plans may permit a participant to enroll the domestic partner or terminate the

Ms. Anna Kirsanova
State of Alaska, Department of Administration
Division of Retirement and Benefits
September 29, 2006
Page 2

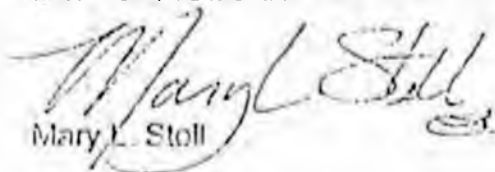
domestic partner's coverage, the participant will not be allowed to change from an employee-only plan to a family plan or vice versa.

3. 2AAC 38.050 (b) describes the calculation of the imputed income, and specifies it will be established by the administrator of the state's employee and retiree health plans. We believe the imputed income for each Trust's benefit plan should be established in consultation with the applicable Trust.
4. We suggest that the proposed regulation clarify that same-sex domestic partners and the children of same-sex partners shall not be granted "dependent" status, except as specifically determined by the benefit plans and described in the benefit plan documents.
5. 2AAC 38.010 (e) requires that the employee or member notify the administrator of the plan upon termination of eligibility within 30 days of the date eligibility ends. We suggest adding a statement which would clarify that if the employee or member fails to provide this notification within the time frame specified, each plan in which the participant is enrolled is authorized to recover any overpayments made as a result of eligibility granted in error.
6. The Notice of Proposed Regulations requested comments on the potential costs of complying with the proposed changes. Like the State, the Trusts anticipate increased medical costs as a result of offering coverage to same-sex domestic partners and the children of same-sex domestic partners.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

LAW OFFICES OF MARY L. STOLL



Mary L. Stoll

MLS:let

cc: Ms. Traci Carpenter, Department of Administration, State of Alaska (via email)
Ms. Colleen Savoie, Willis
ASENAFSCME Local 52 Health Benefits Trust
Public Employees Local 71 Trust Fund

Section 8
University of AK, NEA,
CBJ & MOA Eligibility
Criteria



University of Alaska

Explanation of Availability of Benefits Based on Financially Interdependent Relationship

Benefit Coverage

Upon request, qualified financially interdependent partners and their dependent children will be provided the same benefits as those provided to married spouses and their dependent children, except where expressly prohibited by law. All University of Alaska Policies and Regulations and benefit plan documents that affect employees, spouses and their families also apply to employees and their financially interdependent partner and dependent children.

Taxability

In many cases, the value of benefits such as health care, tuition waiver, life insurance etc., provided to the non-married financially interdependent partner and/or the partner's children are considered taxable income to the employee by the Internal Revenue Service and will be reported as income on the employee's W2 form. Generally, the determination of whether a particular coverage or reimbursement is taxable will be based on whether the individual being covered qualifies as a "dependent" under Section 152 of the Internal Revenue Code.

If a financially interdependent partner and/or child(ren) of such partner does not meet the Section 152 "dependent" definition, employees will be taxed on the value of coverage provided to such individual(s). Each pay period, employees will be taxed on the value of coverage; as a result, employees who elect coverage for non-Section 152 "dependents" will see increased taxes withheld.

Qualified Dependent Children of a Financially Interdependent Partnership

The children of a financially interdependent partner are qualified to receive benefits if one of the following are true:

- either or both partners are the biological parent(s) of the child;
- either or both partners are adoptive parent(s) of the child; or,
- the child has been placed in the partners' household as part of an adoptive placement or foster child placement.

In addition, in order to receive benefits, the child(ren) must meet all applicable benefit plan eligibility criteria.

Loss of Benefits

Eligibility for benefits based on financial interdependency ends when any applicable criterion ceases to be met, (e.g. the relationship ends; one partner dies; one of the partners marries, the employee and partner no longer reside together at the same primary residence).

Otherwise, coverage may be changed only if the employee and/or partner suffers a "life event". For this purpose, dissolution of the financial interdependency partnership will be considered a "life event" in the same way that a divorce would qualify. Financially interdependent partners and/or their child(ren) may only be added at open enrollment or following an appropriate "life event". Once a financial interdependency partnership has dissolved, a new partnership will not be eligible for recognition (and, therefore, partners and/or child(ren) cannot be covered) for at least twelve months following dissolution of the prior partnership.

The employee and/or the partner are obligated to notify the local University personnel office in writing within thirty days of a change in their status which would make them no longer eligible for benefit coverage based on being financially interdependent.

(continued on back)

Qualifying Criteria

To be recognized as a financially interdependent partner of a University of Alaska employee and qualified to receive benefit coverage by the University, both individuals must meet all of the following criteria:

- They have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- They have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- They consider themselves to be members of each other's immediate family; and,
- They are not related to a degree of closeness such that Alaska law would preclude them from being married to each other; and,
- Neither of them is married or a member of another University qualified financially interdependent relationship; and,
- They are each at least 18 years old and are each competent to enter into a contract; and,
- They are each responsible for the common welfare of the other; and,
- They share financial obligations including responsibility for each other's health care costs.

In addition, they meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance provided through the University of Alaska;
- the partner is named as primary beneficiary for the TRS, PERS, or ORP and the University's Pension Plan in the event of the employee's death;
- the partner is named as primary beneficiary in the employee's will and/or the employee is named as the primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney the partner has authority to deal with property owned by the employee,
- the employee has given written authority to the partner to make decisions concerning the employee's health and well being in the event of the employee's inability to do so.

The employee and/or partner may be required to provide evidence of financial interdependency. This could include copies of contracts, bank account statements, joint property agreements or other documents as determined by the University.



University of Alaska
Statement of Financial
Interdependence

MAU/Major Administrative Unit (circle one)				Department
UAA	UAF	UAS	SW	
Last Name		First	M.	
Employee ID			Work Phone	

Before completing this Statement, the employee and the partner should consult an attorney and tax advisor with regard to the possible legal and tax consequences of signing this statement. To enroll FIPs and/or dependents on the health care plan and family AD&D, you must also complete the dependent enrollment form and Employee Selected Deduction form.

I. Request for Benefits and Declaration of Eligibility

We, _____ and _____
(Please print or type names)

request University of Alaska benefit coverage based on financial interdependency and declare that we meet all the following criteria:

- We have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- We have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- We consider ourselves to be members of each other's immediate family; and,
- We are not related to a degree of closeness such that Alaska law would preclude us from being married to each other, and,
- Neither of us are married or a member of another University qualified financially interdependent relationship; and,
- We are each at least 18 years old and are competent to enter into a contract; and,
- We are each responsible for the common welfare of the other; and,
- We share financial obligations including responsibility for each other's health care costs.

In addition, we meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance provided through the University of Alaska;
- the partner is named as primary beneficiary for the TRS, PERS, or ORP and the University's Pension Plan in the event of the employee's death;
- the partner is named as primary beneficiary in the employee's will and/or the employee is named as the primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has authority to deal with property owned by the employee;
- the employee has given written authority to the partner to make decisions concerning the employee's health and well being in the event of the employee's inability to do so

Note: You may be required to provide evidence of financial interdependency. This could include copies of contracts, bank account statements, joint property agreements or other documents as determined by the University

II. Change in Financially Interdependent Relationship

We agree to notify the local University personnel office in writing within 30 days of any change in our status which would make us no longer eligible for benefit coverage based on being financially interdependent (for example, if we no longer share the same principle residence)

III. Partner Tax Status

Last First Date of Birth IRS Dependent YES:NO

IV. Dependent Children of Financially Interdependent Relationships

We declare the following to be our dependent children:

_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Employee and Partner	_____ IRS Dependent Yes/No
_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Employee and Partner	_____ IRS Dependent Yes/No
_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Employee and Partner	_____ IRS Dependent Yes/No
_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Employee and Partner	_____ IRS Dependent Yes/No

V. Acknowledgments

We acknowledge receipt of the Explanation of Availability of Benefits Based on Financially Interdependent Relationship and understand the program, including eligibility criteria.

We understand that the value of benefits such as health care, tuition waiver, life insurance etc., provided to the non-married financially interdependent partner and/or the partner's child(ren) will be considered and reported as taxable income to the employee in most circumstances unless the financially interdependent partner and/or child(ren) also qualify as a "dependent" under Internal Revenue Code Section 152.

We acknowledge the University of Alaska advised that we consult an attorney and tax advisor before completing this statement.

VI. Affirmation; Penalties of Misrepresentation

We affirm that the declarations and representations stated in this two-page document are true and correct. We understand that any misrepresentation or failure to report a change in our financially interdependent relationship may result in the loss of benefits and disciplinary action to the employee up to and including termination of employment, and that the employee and partner would be responsible for reimbursement to the University for any costs involved in providing benefit coverage when all applicable criteria have not been met. We understand that any misrepresentation made by us in this two-page document may also subject us to criminal prosecution under AS 11.56.200- 210.

Employee _____ Date _____ Partner _____ Date _____

State of Alaska _____ Judicial District

Subscribed to and sworn before me this _____ day of _____, 20 _____

Notary Public, State of Alaska

My Commission expires: _____

For University of Alaska use

Accepted by _____

Name:

Date

Title



NEA-Alaska Health Plan
Statement of Financial
Interdependence

4003 Iowa, Anchorage, AK 99517
 Phone 907-274-7526 Fax 907-222-2556

Last Name	First	M
Social Security Number		Work Phone

Before completing this Statement, the member and the partner should consult an attorney and tax advisor with regard to the possible legal and tax consequences of signing this statement. To enroll FIPs and/or dependents on the health care plan, you must also complete the dependent enrollment form,

I. Request for Benefits and Declaration of Eligibility

We, _____ and _____
 (Please print or type names)

request NEA-Alaska Health Plan benefit coverage based on financial interdependency and declare that we meet all the following criteria:

- We have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- We have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- We consider ourselves to be members of each other's immediate family; and,
- We are not related to a degree of closeness such that Alaska law would preclude us from being married to each other; and,
- Neither of us are married or a member of another qualified financially interdependent relationship; and,
- We are each at least 18 years old and are competent to enter into a contracts; and,
- We are each responsible for the common welfare of the other; and,
- We share financial obligations including responsibility for each other's health care costs.

In addition, we meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance;
- the partner is named as primary beneficiary for the TRS or PERS in the event of the member's death;
- the partner is named as primary beneficiary in the employee's will and/or the member is named as primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has the authority to deal with property owned by the member;
- the member has given written authority to the partner to make decisions concerning the member's health and well being in the event of the member's inability to do so.

Note: The Plan requires documentation of financial interdependency. Attach copies of documents verifying the five criteria met above; one of the documents must establish the relationship has been in existence for at least 12 months. This could include copies of contracts, bank account statements, joint property agreements or other documents providing verification of above statements.

II. Changes in Financially Interdependent Relationship

We agree to notify the Plan in writing within 30 days of any change in our status which would make us no longer eligible for benefit coverage based on being financially interdependent (for example, if we no longer share the same principle residence).

III. Partner Tax Status

 Last First Date of Birth

IV. Dependent Children of Financially Interdependent Relationships

We declare the following to be our dependent children:

_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Member and Partner
_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Member and Partner
_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Member and Partner
_____ Last	_____ First	_____ Date of Birth	_____ Relationship to Member and Partner

V. Acknowledgments

We acknowledge receipt of the Explanation of Availability of Benefits Based on Financially Interdependent Relationships and understand the program, including the eligibility criteria.

We understand that the value of benefits such as health care provided to the non-married financially interdependent partner and/or the partner's child(ren) may be considered and reported as taxable income to the member in most circumstances unless the financially interdependent partner and/or child(ren) also qualify as a "dependent" under Internal Revenue Code Section 152.

We acknowledge the NEA-Alaska Health Plan advised that we consult an attorney and tax advisor before completing this statement.

VI. Affirmation; Penalties of Misrepresentation

We affirm that the declarations and representations stated in this two-page document are true and correct. We understand that any misrepresentation or failure to report a change in our financially interdependent relationship may result in the loss of benefits to the member and that the member and the partner would be responsible for reimbursement to the Plan for any costs involved in providing benefit coverage when all applicable criteria have not been met. We understand that any misrepresentation made by us in this two-page document may also subject us to criminal prosecution under AS 11.56.200-.210.

Member _____ Date _____ Partner _____ Date _____

State of Alaska _____ Judicial District _____

Subscribed to and sworn before me this _____ day of _____, 20 _____.

Notary Public, State of Alaska

My Commission expires: _____

For NEA-Alaska Health Plan use

Accepted by:

Name

Date

Title



NEA-Alaska Health Plan

Explanation of Availability of Benefits Based on Financially Interdependent Relationship

Benefit Coverage

Upon request, qualified financially interdependent partners and their dependent children will be provided the same benefits as those provided to married spouses and their dependent children, except where expressly prohibited by law. All NEA-Alaska Health Plan Policies and Regulations and benefit plan documents that affect members, spouses and their families also apply to employees and their financially interdependent partner and dependent children.

Taxability

The member and the partner should consult with an attorney and tax advisor with regard to the possible legal and tax consequences of entering into a signed Financially Interdependent Relationship Statement. The employing school district should also be informed of this relationship for proper tax treatment and W-2 reporting.

In many cases, the value of benefits such as health provided to the non-married financially interdependent partner and/or the partner's children are considered taxable income to the employee by the Internal Revenue Service. Generally, the determination of whether a particular coverage or reimbursement is taxable will be based on whether the individual being covered qualifies as a "dependent" under Section 152 of the Internal Revenue Code.

If a financially interdependent partner and/or child(ren) of such partner does not meet the Section 152 "dependent" definition, members could be taxed on the value of coverage provided to such individual(s).

Qualified Dependent Children of a Financially Interdependent Partnership

The children of a financially interdependent partner are qualified to receive benefits if one of the following are true:

- either or both partners are the biological parent(s) of the child;
- either or both partners are adoptive parent(s) of the child; or,
- the child has been placed in the partner's household as part of an adoptive placement or legal guardianship arrangement

In addition, in order to receive benefits, the child(ren) must meet all applicable benefit plan eligibility criteria. Please see your plan document for eligibility criteria on dependent children.

Loss of Benefits

Eligibility for benefits based on financial interdependency ends when any applicable criterion ceases to be met. (e.g. the relationship ends; one partner dies; one of the partners marries; the member and partner no longer reside together at the same primary residence)

Otherwise, coverage may be changed only if the member and/or partner suffers a "life event". For this purpose, dissolution of the financial interdependency partnership will be considered a "life event" in the same way that a divorce would qualify. Financially interdependent partners and/or their child(ren) may only be added at open enrollment or following an appropriate "life event". Once a financial interdependency partnership has dissolved, a new partnership will not be eligible for recognition (and, therefore, partner and/or child(ren) cannot be covered) for at least twelve months following notification to the Plan of the dissolution of the prior partnership.

The employee and/or the partner are obligated to notify the Plan's office in writing within thirty days of a change in their status which would make them no longer eligible for benefit coverage based on being financially interdependent.

(continued on back)

Qualifying Criteria

To be recognized as a financially interdependent partner of a NEA-Alaska Health Plan member and qualified to receive benefit coverage by the Plan, both individuals must meet all of the following criteria:

- They have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- They have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- They consider themselves to be members of each other's immediate family, and,
- They are not related to a degree of closeness such that Alaska law would preclude them from being married to each other; and,
- Neither of them are married or a member of another qualified financially interdependent relationship; and,
- They are each at least 18 years old and are competent to enter into a contracts; and,
- They are each responsible for the common welfare of the other; and,
- They share financial obligations including responsibility for each other's health care costs.

In addition, they meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance;
- the partner is named as primary beneficiary for the TRS or PERS in the event of the member's death;
- the partner is named as primary beneficiary in the employee's will and/or the member is named as primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has the authority to deal with property owned by the member;
- the member has given written authority to the partner to make decisions concerning the member's health and well being in the event of the member's inability to do so.

The employee and/or partner will be required to provide evidence of financial interdependency; one of the documents must establish the relationship has been in existence for at least 12 months. This could include copies of contracts, bank account statements, joint property agreements or other documents as determined by the Plan.

**CITY AND BOROUGH OF JUNEAU
AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP**

SECTION I

I, _____, being duly sworn on oath, certify that:

Complete Either "A" or "B"

A. I, and _____ are legally married. Marriage date: _____

OR

B. I, and _____ are domestic partners, and we:

1. have resided together at the same primary residence for at least the last 12 months and intend to share the same regular and permanent residence; and
2. have a close personal relationship intended to be permanent; and
3. are financially interdependent, as defined below; and
4. are not married to anyone; and
5. are each eighteen (18) years of age or older; and
6. are not related by blood closer than would bar marriage in the State of Alaska; and
7. were mentally competent to consent to contract when our domestic partnership began; and
8. are each other's sole domestic partner, intend to remain so indefinitely, and are responsible for each other's common welfare.

"Financially interdependent" is defined as jointly responsible for "basic living expenses." "Basic living expenses" means the cost of basic food, shelter, transportation, and other household expenses. The individual need not contribute equally or jointly to the cost of these expenses, as long as they agree that both are responsible for the cost. Financial interdependence is further defined as including but not limited to joint ownership of land; joint banking accounts; joint credit card accounts; property powers of attorney; primary beneficiaries of each other's life insurance policies.

The CBJ may require documentation supporting financial interdependence, or the other items in this affidavit, at any time.

For tax reporting purposes, does the non-employee domestic partner receive more than half of his or her financial support from the employee domestic partner? Yes _____ No _____

Note: If the answer to this question is "No," a portion of the value of health care benefits may be reported as income to the employee, based on an IRS formula.

SECTION II

A. I understand that this affidavit shall be terminated upon the death of my spouse or domestic partner or by a change of circumstances attested to in this affidavit.

I agree to notify CBJ Risk Management within thirty days if there is any change in the circumstances attested to in this affidavit, by filing a Statement of Termination of Marriage/Domestic Partnership.

AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP
Page 2

SECTION III

We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization or if otherwise required by law.

We understand that accepting benefits as a domestic partner may have tax consequences: the benefit may be taxable income.

We understand that a civil action may be brought against us for any losses, including reasonable attorney's fees, because of a false statement contained in this Affidavit of Marriage/Domestic Partnership.

We certify under penalty of perjury, a felony offense under the laws of the State of Alaska, or unsworn falsification a misdemeanor offense, that the foregoing is true and correct.

I, the undersigned City and Borough of Juneau employee, understand that falsification of information on this affidavit, or failure to notify Risk Management of a material change in the circumstances attested to on this form, may lead to disciplinary action against me, up to and including discharge from employment.

Signature of Employee (Principal)

Signature of Spouse/Domestic Partner

Address

Address

Department

Date: _____

Date: _____

ACKNOWLEDGMENT

State of Alaska
City and Borough of Juneau

THIS IS TO CERTIFY that on this _____ day of _____, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____ (Principal) personally known to me to be the person described in and who executed this Affidavit, and acknowledged to me that he/she subscribed and swore to the contents of this Affidavit, and signed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

(Seal)

Notary Public in and for the State of Alaska

My Commission expires _____

AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP

Page 3

ACKNOWLEDGMENT

State of Alaska
City and Borough of Juneau

THIS IS TO CERTIFY that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____ (Spouse/Domestic Partner of Principal) personally known to me to be the person described in and who executed this Affidavit, and acknowledged to me that he/she subscribed and swore to the contents of this Affidavit, and signed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

(Seal)

Notary Public in and for the State of Alaska

My Commission expires _____

**MUNICIPALITY OF ANCHORAGE
AFFIDAVIT OF SAME SEX DOMESTIC PARTNERSHIP**

Section 1.

I, _____, an employee of the Municipality of Anchorage, certify that

I, and _____ are same sex domestic partners, and we:

1. Reside together in the same primary residence and intend to continue to share the same primary residence; and

2. Have a relationship intended to be permanent; and

3. Are financially interdependent according to the following definition:

(a) we share responsibility for our common household by contributing to household expenses including but not limited to the cost of food, shelter, transportation or other living expenses; OR

(b) we have joint ownership of one or more of the following: a residence; land; banking account; credit card account; leasehold; or other similar property interest;
OR

(c) we are primary beneficiaries of one another's life insurance policies, or executor's of one another's wills; or have power of attorney over one another's property in the event of death or disability; or similar authority over one another's executory affairs.

and;

4. are not married; and

5. are each eighteen (18) years of age or older; and

6. are not related by blood to the degree which would bar marriage in the State of Alaska; and

7. are mentally competent to consent to contract; and

8. are one another's sole domestic partner.

Section II.

The undersigned employee understands that his/her rights to domestic partner benefits for _____ shall be terminated upon the death of the domestic partner or if the domestic partnership no longer qualifies under the definition of Section I.

The undersigned employee agrees to notify the Municipality within thirty (30) days by filing a Statement of Termination of Same Sex Domestic Partnership if the domestic partnership no longer qualifies under the definition in Section I.

Section III.

We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization unless otherwise required by law.

We understand that accepting benefits as a same sex domestic partner may have federal income tax consequences and that the benefit will be valued and included as taxable income to the employee.

We understand that a civil action may be brought against us for any losses, including reasonable attorney's fees, for any false statement contained in this Affidavit of Same Sex Domestic Partnership.

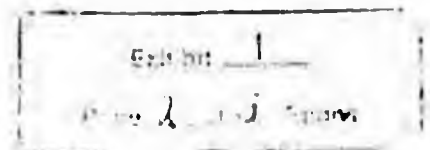
We certify under penalty of perjury that the foregoing is true and correct.

I, the undersigned Anchorage Municipal employee understand that falsification of information on this affidavit, or failure to notify the Municipality of the termination of a domestic partner relationship may lead to disciplinary action against me, including termination of employment.

Signature of Employee

SUBSCRIBED and SWORN TO before me this ____ day of _____, 200__.

Notary Public in and for Alaska
My Commission Expires: _____



Signature of Domestic Partner

SUBSCRIBED and SWORN TO before me this ____ day of _____, 200__.

Notary Public in and for Alaska
My Commission Expires: _____

Section 9
ACLU Case Timeline

ACLU v. State of Alaska and MOA Same-Sex Domestic Partner Benefits

Case Timeline

- 1999: Alaska Civil Liberties Union (ACLU) and 18 individuals filed suit in Alaska Superior Court against the State of Alaska (SOA) and the Municipality of Anchorage (MOA).
- Complaint: Employee benefit programs offered to spouses of employees and retirees but not to same-sex partners of employees and retirees violated the plaintiffs' right to equal protection under the Alaska Constitution (Art. I, Sec. 1) because of prohibition on same-sex marriage (Art. I, Sec. 25).
- November 2001: Superior Court ruled in State's favor; ACLU appealed to Supreme Court.
- October 2005: Supreme Court ruled in favor of ACLU and held that "the spousal limitations are unconstitutional as applied to public employees with same-sex domestic partners." Supreme Court requested briefs on remedy.
- November 21, 2005: Remedy briefing completed by ACLU; suggested giving the legislature time to act to amend relevant statutes.
- January 5, 2006: Remedy briefing completed by State; suggested giving the legislature time to act to amend relevant statutes.
- May 24, 2006: ACLU filed supplemental brief with Supreme Court.
- June 1, 2006: Supreme Court issued its remedy order, requiring the SOA and the MOA to provide benefits complying with the Court's 2005 opinion by no later than January 1, 2007. Also:
 - Remanded the case to the Superior Court, directing that court to issue whatever orders it deems necessary to ensure that the compliance with deadline.
 - State and MOA to file statements with Superior Court, outlining the steps they plan to take to achieve compliance.
- July 3, 2006: State filed statement with Superior Court proposing regulations and a timeline for implementation, which court subsequently modified and then ordered.
- August 9, 2006: Superior Court ordered State to provide advance copy of proposed regulations to the ACLU and Court by August 22.
- August 22, 2006: State provided advance copy of draft regulations as ordered.
- September 1, 2006: Court ordered State to provide intended final regulations to the Court by October 6.
- September 1-30, 2006: Commissioner Nordstrand published draft regulations for public comment.
- September 27-28, 2006: Commissioner Nordstrand held public hearings on draft regulations in Juneau and Anchorage.
- October 10, 2006: State provided revised regulations to the Court as ordered.
- October 13, 2006: Commissioner Nordstrand adopted final regulations and sent to Department of Law and then Lt. Governor for filing.
- October 19, 2006: ACLU filed motion for emergency relief requesting Court order Commissioner Nordstrand to issue emergency regulations conforming to MOA's proposed eligibility criteria by October 27.
- October 24, 2006: State filed statement of opposition to ACLU's motion for emergency relief.
- October 25, 2006: ACLU filed reply brief.

- October 30, 2006: Superior Court ordered specific changes to State's regulations.
- October 31, 2006: Superior Court ordered State to file amended regulations by November 1.
- November 1, 2006: State filed motion for stay of Court's orders of October 30 and 31.
- November 1, 2006: State filed emergency motion in Supreme Court for stay of Superior Court's orders of October 30 and 31.
- November 1, 2006: Superior Court ordered State to notify the Court when it intends to file with the Supreme Court a petition for review and orders the State to file amended regulations in compliance with its orders of October 30 and 31.
- November 2, 2006: Superior Court granted in part State's motion for stay by not requiring the State to adopt or implement the amended regulations required by the Court.
- November 3, 2006: Supreme Court denied without prejudice State's motion for emergency stay.
- November 6, 2006: State filed with Supreme Court petition for review of Superior Court's orders.
- November 8, 2006: State filed draft regulations in compliance with Superior Court orders.
- November 8, 2006: Superior Court ordered State to file by November 9 alternative draft regulations consistent with the Court's finding of October 30 or additional argument in support of the constitutionality of the adopted regulations.
- November 9, 2006: State filed response to Court's order of November 8, citing insufficient time to propose alternative regulations and referring Court to its Petition for Review filed in Supreme Court on issues of constitutionality.

**Section 10
Supreme Court Order,
June 1, 2006**

**Additional Court Filings
and Materials Available
Upon Request to Legislative
Printshop**

and

**Also Available Online at
www.state.ak.us/drb.**

In the Supreme Court of the State of Alaska

Alaska Civil Liberties Union, et al.,)
)
 Appellants,)
 v.)
)
 State of Alaska & Municipality of)
 Anchorage,)
 Appellees.)

Supreme Court No. S-10459

Order RECEIVED

JUN 05 2006

Attorney General's Office

Date of Order: 06/01/06

Trial Court Case # 3AN-99-11179CI

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

Upon consideration of the parties' supplemental briefs on remedy issues,

IT IS ORDERED:

1. Appellees must provide, no later than January 1, 2007, benefits complying with this court's opinion issued 10/28/05.
2. Appellants' request for interim benefits is DENIED.
3. This case is REMANDED to the superior court for further proceedings.

The superior court shall enter such orders as may in the judgment of the superior court be necessary to ensure the appellees' expeditious compliance with this court's opinion by the deadline set in Paragraph 1 of this order. Appellees must file pre-deadline statements outlining the steps they plan to take to achieve such compliance; those statements must be filed in the superior court within thirty days of this order. The superior court may also adopt interim deadlines for the pre-implementation process, including, but not limited to:

- a. Early deadlines for adopting and publicizing criteria for qualifying domestic relationships;

AkCLU v. State and MOA
Remedy Order, Page 2
June 1, 2006

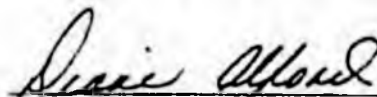
- b. A deadline for distributing forms on which employees may apply for the benefits;
- c. A deadline for completing the initial enrollment of employees in qualifying domestic relationships.

4. This order is the final judgment of this court. This court is not retaining jurisdiction of this case.

5. The disputed benefit program of each appellee remains in effect until that appellee begins providing benefits complying with the 10/28/05 opinion, with Paragraph 1 of this order, and with any order entered by the superior court on remand.

6. The parties are to bear their own costs and attorney's fees with respect to the supplemental briefing on remedy issues.

Clerk of the Appellate Courts



Diane Alford, Deputy Clerk

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AkCLU v. State and MOA
Remedy Order, Page 3
June 1, 2006

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Section 11
Superior Court
Ordering changes to
criteria October 30, 2006

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA CIVIL LIBERTIES UNION;)
DAN CARTER and AL INCONTRO;)
LIN DAVIS and MAUREEN LONGWORTH;)
SHIRLEY DEAN and CARLA TIMPONE;)
DARLA MADDEN and KAREN WOOD;)
AIMEE OLEJASZ and)
FABIENNE PETER-CONTESSÉ;)
KAREN STURNICK and)
ELIZABETH ANDREWS;)
THERESA TAVEL and KAREN WALTER;)
CORIN WHITTEMORE, GANI RUTHELLEN;)
and ESTRA BENSUSSEN and CAROL ROSE)
GACFOWSKI,)

Plaintiffs,)

v.)

THE STATE OF ALASKA, and)
THE MUNICIPALITY OF ANCHORAGE,)

Defendants.)

Case No. 3AN-99-11179 CI

On remand from the
Alaska Supreme Court
No. S-10459

ORDER

On June 1, 2006, the Alaska Supreme Court ordered the State of Alaska and the Municipality of Anchorage¹ to provide employment benefits for same sex domestic partners of state employees and retirees by January 1, 2007. This case was then remanded to the trial court to monitor the implementation of the Alaska Supreme Court's order.

On October 17, 2006, the Commissioner of Administration adopted regulations that are designed to provide employment benefits for same sex domestic partners. Plaintiffs requested emergency relief, claiming that the State's regulations are not consistent with

¹ The Plaintiffs do not have any objection to the Municipality of Anchorage's implementation of the Supreme Court's order. Should the State decide to adopt the MOA's required domestic partner criteria, this court would find them to be constitutional.

either the Supreme Court's ruling or the equal protection guarantee of the Alaska Constitution because (1) the State's qualifying criteria are too burdensome and (2) the State has failed to propose regulations providing state employees and their same-sex partners all the same benefits that state employees and their spouses receive. Plaintiffs urge this court to order the State to promulgate, by emergency regulation, the regulations adopted by the Municipality of Anchorage and to order the State to fully comply with the Alaska Supreme Court's ruling.

When examining whether same-sex domestic partners of state employees are entitled to certain state benefits, the Alaska Supreme Court described the relationships at issue as relationships "between adult couples who reside together in long-term interdependent, intimate associations."² It observed that many same-sex domestic partners are in "committed domestic relationships"³ and are "closely connected as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples."⁴

Despite the language of the Alaska Supreme Court indicating that same-sex domestic partners with the same "truly close relationship"⁵ as married couples are entitled to the same state benefits, the regulations proposed by the State impose criteria that many married individuals would not satisfy, either by choice or because of factors related to their economic status.⁶ This results in "disparate treatment of similarly situated persons" in

² *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 791 (Alaska 2005).

³ *Id.* at 783.

⁴ *Id.* at 784 n.5.

⁵ *Id.* at 791.

⁶ See this court's discussion of the disparities in its Appendix to Court's Order Mandating a Broad Public Notice at § I.A (September 7, 2006).

violation of the state guarantee of equal protection.⁷ Although the Alaska Supreme Court assumed that the State has a legitimate interest in restricting benefits to individuals in truly close relationships, it mandated that the State's restrictions treat those similarly situated in a similar manner. Requiring same-sex couples to meet criteria that many married couples do not have to meet does not comply with this mandate.

Plaintiff's request for emergency relief is granted in part. The State of Alaska is ordered to modify its October 17, 2006 regulations so that they comply with the Alaska Supreme Court's order and the Equal Protection Clause of the Alaska Constitution. In an effort to preserve, as much as possible, the proposed regulations that do meet the Alaska Supreme Court's mandate, I am ordering only a partial revision of these regulations. At a minimum, this court orders the State to revise the draft regulations as follows:

1. The exclusivity requirement in 2 AAC 38.010(b)(2) shall be deleted. In response to the court's inquiry as to the definition of exclusive, the State was unable to provide a definition or guidance as to the intended use of this term. I recognize that the State has a legitimate interest in not providing benefits to partners who are in other long-term relationships. 2 AAC 38.010(b)(8) and (9) ensure that that concern will be met.⁸
2. The twelve-month provisions in 2 AAC 38.010(b)(2), (3), and (7) shall be amended to reflect a six-month period. I recognize the State's interest in making sure that the same-sex partnership is a long-term relationship. In Alaska, a six-month period is sufficient to meet the requirements of AS 25.23.050 (no parental consent

⁷ *Alaska Civil Liberties Union*, 122 P.3d at 787.

⁸ See Appendix to Court's Order Mandating a Broad Public Notice at § II (September 7, 2006) for additional analysis of the exclusivity provision.

required in adoption cases when parent has abandoned child for at least six months); AS 25.25.101 and AS 25.30.300(a)(2) (Alaska is child's "home state" for the purpose of asserting jurisdiction over a child custody matter when the child has resided in Alaska for at least six months); and AS 43.23.008 (a person must have resided in Alaska for at least six-months before a temporary absence in order to remain eligible for the Permanent Fund Dividend). I find that a six-month period is also sufficient to meet the State's interest in ensuring that only domestic partners in long-term relationships are eligible for state benefits.⁹

3. The deleted subsection (9) of 2 AAC 38.010(c) shall be reinserted to the draft regulations, allowing same-sex domestic partners who are "jointly responsible for a child through adoption or guardianship" to rely on this status as one of the required criteria. In addition, the language set out in 2 AAC 38.010(c) shall be revised to allow for benefits to be available to domestic partners who satisfy 2 AAC 38.010(b) and the reinserted subsection (9), or who satisfy 2 AAC 38.010(b) and three criteria in subsections (2) through (8).¹⁰

In addition, the State is ordered to provide the following benefits, already provided to state employees and their spouses, to state employees and their same-sex domestic partners:

1. The right of a state employee to take personal leave upon the medical disability or death of his or her spouse (per AS 39.20.225(b)(2) and (b)(5) and AS 39.20.305(a)(2)), and

⁹ See *Id.* at § I.A for additional analysis of the durational provision

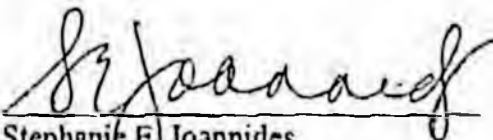
¹⁰ See *Id.* at § II for analysis of the type and number of criteria used to define "domestic partnership." See also this court's discussion in its Order dated September 1, 2006, at 8

2. The right of a state employee's spouse, as the first person on a statutory list of "default" recipients, to receive unpaid compensation of a deceased employee who failed to designate anyone to receive that payment (AS 39.20.360(2)).

These qualify as employment benefits akin to the benefits at issue in *Alaska Civil Liberties Union v. Alaska*.¹¹ Because denying these benefits to state employees and their same-sex domestic partners does not bear a substantial relationship to the stated governmental interests, they must be provided to state employees in domestic partnerships in the same manner they are provided to state employees with spouses. The State's interests in cost control, administrative efficiency, and promotion of marriage are legitimate, but the absolute denial of benefits to public employees with same-sex domestic partners is not substantially related to these governmental interests.¹²

As the Alaska Supreme Court observed, "Article I, section 1 of the Alaska Constitution mandates equal treatment of those similarly situated."¹³ Therefore, the State is ordered to immediately incorporate this court's order into its regulations or otherwise modify its regulations so that they comply with the Alaska Supreme Court's mandate.

DONE this 25 day of October 2006, at Anchorage, Alaska.


Stephanie E. Joannides
Superior Court Judge

¹¹ See *Alaska Civil Liberties Union*, 122 P.3d at 783-1 n.4.

¹² This court also addressed the issue of additional state benefits in its Appendix to Court's Order Mandating a Broad Public Notice at § III (September 7, 2006). See also this court's Order dated September 1, 2006, at 8.

¹³ *Alaska Civil Liberties Union*, 122 P.3d at 787.

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 13, 2006

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to employment-related insurance benefits for the same-sex partner of a state employee and relating to survivor and medical benefits for the same-sex partner of a member of the state's teachers' and public employees', judicial, or elected public officers retirement systems.

The bill sets out the purpose of the Legislature to allow a public employee or retiree under the state's retirement systems, to the extent required by the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005), to have access to employment-related insurance and survivor benefits for the employee's or retiree's same-sex partner that are provided to the spouse of a state employee or retiree under AS 39.30.090 and 39.30.091, and under the statutes that provide for the state's retirement systems.

Section 5 of the bill sets out the affidavit and documentation requirements that a state employee or retiree must meet in order to enroll a same-sex partner in the health plans provided to state employees and retirees. These requirements are incorporated by reference in new sections in the statutes for the retirement systems allowing designation of same-sex partners as beneficiaries for survivor benefits (secs. 2 and 3 (teachers' retirement system), sec. 4 (judicial retirement system), secs. 7 and 8 (public employees' retirement system), and sec. 9 (elected public officers' retirement system)).

In order to provide a same-sex partner with benefits, an employee or retiree must file an affidavit with the appropriate plan administrator that includes 11 specific declarations, under penalty of perjury, by the employee or retiree and same-sex partner to establish a committed relationship, and must

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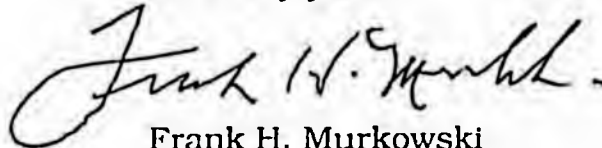
The Honorable Ben Stevens
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also provide documentation specified by sec. 5 of the bill. The employee or retiree must notify the administrator upon termination of the relationship. In addition to potential criminal penalties, willful falsification of information in the affidavit or documentation provided to enroll a same-sex partner in health benefits or to designate the same-sex partner as a beneficiary for survivor benefits may result in termination of enrollment of the same-sex partner and termination of entitlement to survivor benefits.

The bill ratifies the open enrollment conducted under regulations adopted by the commissioner of Administration on October 13, 2006.

While Alaskans may differ on their views on the wisdom of the court's order, the state has a duty to comply with the court's order. Therefore, I urge your support of this legislation.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure