

**ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL
AUGUST 18, 2015
11:04 AM
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MEMBERS PRESENT

Representative Bob Herron, Vice Chair
Senator John Coghill
Senator Charlie Huggins
Senator Kevin Meyer
Representative Mike Chenault
Representative Craig Johnson
Representative Sam Kito
Representative Charisse Millett

MEMBERS ON TELECONFERENCE

Senator Anna MacKinnon
Representative Mark Neuman
Representative Steve Thompson, Alternate

MEMBERS ABSENT

Senator Gary Stevens, Chair
Senator Lyman Hoffman
Senator Peter Micciche
Senator Lesil McGuire, Alternate
Representative Mike Hawker

OTHER MEMBERS PRESENT OR VIA TELECONFERENCE

Representatives Drummond, Gattis, Gruenberg, Hughes,
Josephson, Keller, Pruitt, Reinbold, Saddler, Tarr, and
Wilson.

AGENDA

LEGAL ISSUES ON MEDICAID EXPANSION

SPEAKER REGISTER

11:04:27 AM

I. **VICE CHAIR BOB HERRON** called the Legislative Council meeting to order at 11:04 a.m. in the Anchorage LIO Auditorium. Present at the call were Senators Meyer, Coghill, and Huggins; Representatives Chenault, Johnson, Kito, Millett. Participating via teleconference were Senator MacKinnon, and Representatives Neuman and Thompson, alternate member. Representative Johnson joined the meeting after the roll call. Absent were Senators Stevens, Hoffman, Micciche, and McGuire, alternate member; and Representative Hawker.

II. **LEGAL ISSUES ON MEDICAID EXPANSION - EXECUTIVE SESSION**

VICE CHAIR HERRON called for a motion to go into Executive Session.

11:05:45 AM

SENATOR MEYER moved that Legislative Council go into executive session under Uniform Rule 22 (b) (3) to discuss a matter that may, by law, be required to be confidential, to allow Council to receive legal advice in the form of Attorney-Client communications from legal counsel. I would ask that the following individuals remain in the room; Pam Varni, Katrina Matheny, Doug Gardner, Suzanne Armstrong, Chad Hutchinson, Mark Higgins, Chuck Kopp, Jeff Turner, Juli Lucky, and Stacey Stone with Holmes, Weddle & Barcott. In addition, the following individuals can remain on line via teleconference, Linda Hay, Bianca Carpeneti, Laura Pierre and Erin Murphy with Bancroft, PLLC. We also welcome any legislators who are not on Legislative Council to remain with us.

REPRESENTATIVE KITO objected for clarification/comment. He said he just wanted to make sure that what happens in executive session is required to be confidential and privileged and that we don't get into a policy discussion that goes beyond receiving the legal advice and discussing the legal aspects or strategy that might be considered during some action.

VICE CHAIR HERRON thanked Representative Kito for his comments.

REPRESENTATIVE KITO removed his objection.

VICE CHAIR HERRON, in response to Senator MacKinnon stating she was present on teleconference, noted that

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Representative Johnson had joined the meeting and Representative Wilson was also online.

11:07:57 AM

Council went into executive session.

12:27:20 PM

Council came out of executive session.

SENATOR MEYER moved that, in accordance with the power vested in Legislative Council, under AS 24.20.060(4)(F), to sue during the interim between sessions that Council authorize the following contracts in the following amounts:

1. A contract in an amount not to exceed \$400,000 to pay Bancroft, PLLC, and;
2. A contract in an amount not to exceed \$50,000 to pay Holmes, Weddle & Barcott.

As private counsel to bring suit against the Governor of the State of Alaska by the Alaska Legislative Council on behalf of the Alaska State Legislature, regarding issues related to Medicaid. Invoices will be split as follows: 50% from Legislative Council Chair Budget, 25% from the Senate Operating Budget and 25% from the House Operating Budget.

VICE CHAIR HERRON objected for discussion.

REPRESENTATIVE KITO stated that he had a concern about moving forward with this action. As has been portrayed in the opinion pages of our papers, he said that there were legal opinions from Legislative Legal Counsel and from the Attorney General all basically saying that the Governor has the ability and the authority to take the actions that he has taken and he was concerned about spending money in our current budget times to actually perform an action that could cost the State money, as opposed to taking an action that might result in savings of money. He went on to say that he recognized that while some states may have not expanded Medicaid, there are over 30 states that have, so there are a lot of states, a majority, that have started working with the Affordable Care Act accepting Medicaid. Legal Counsel indicates that what the Governor has done is a defensible action and he had a concern about going to outside counsel with an argument contrary to that.

SENATOR COGHILL said that a lot of that goes to the questions that have been asked of the Legal Counsel and Supreme Court case that has come to light, so he thought

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that the Legislative Council has pretty solid footing to defend its right to make that policy call and add a whole new group to a category of Medicaid that under the U.S. Supreme Court has been determined as optional and any optional group has to be brought in by the Legislature instead of unilateral action from the Governor. He said there were dueling legal opinions and thought it was sufficient to challenge the Governor in adding a new Medicaid group without the Legislative authority. He said it was unfortunate that the test has come to this level, but that it was important for the Legislature to back up the statutes and make the case.

SENATOR HUGGINS said that, unfortunately, at the national level we've seen the precedence of what's happening and maybe the Congress being a bit timid. This is not the time for the Alaska State Legislature to be timid. He said it's not about the issue, it's about the separation of powers. He firmly urged members of the committee to support the motion.

REPRESENTATIVE JOHNSON said he wanted to echo what the Senator said. He said it was about the future. He took an oath to defend the Constitution and he thinks that's what he's doing; that it is a separation of powers issue. Were it a different issue he'd still have the same vote, whether he supports or doesn't support this particular issue was not as important as upholding the Constitution and maintaining the separation of powers and understanding what the Legislature's role is, the Governor's role, and we're about to find out what the judiciary's role is.

VICE CHAIR HERRON removed his objection and a roll call vote was taken.

YEAS: Meyer, Coghill, Huggins, MacKinnon, Chenault,
Johnson, Millett, Neuman, Thompson, Herron

NAYS: Kito

The motion passed 10-1.

There being no further business before the committee, the Legislative Council Meeting was adjourned at 12:33pm.

12:33:23 PM