

**ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL**

**AUGUST 18, 2022
1:00PM**

MEMBERS PRESENT

Representative Sara Hannan, Chair
Senator Lora Reinbold, Vice Chair
Representative Matt Claman
Representative Louise Stutes
Representative Chris Tuck
Senator Click Bishop
Senator Bert Stedman
Senator Gary Stevens

MEMBERS ABSENT

Representative Bryce Edgmon
Representative Neal Foster
Representative Cathy Tilton
Senator Lyman Hoffman
Senator Shelley Hughes (alternate)
Senator Peter Micciche
Senator Mike Shower

OTHER MEMBERS PRESENT

Senator Jesse Kiehl

AGENDA

APPROVAL OF AGENDA
APPROVAL OF MINUTES
COMMITTEE BUSINESS

SPEAKER REGISTER

Jessica Geary, Executive Director, Legislative Affairs Agency
(LAA)
JC Kestel, Procurement Officer, LAA
Megan Wallace, Director, Legal Services, LAA
Emily Nauman, Deputy Director, Legal Services, LAA

[1:09:39 PM](#)

I. CALL TO ORDER

CHAIR HANNAN called the Legislative Council meeting to order. Present at the call were Representatives Claman, Hannan, Stutes, Tuck; Senators Bishop, Reinbold, Stedman, Stevens.

Eight members present.

II. APPROVAL OF AGENDA

[1:11:11 PM](#)

VICE CHAIR REINBOLD moved and asked unanimous consent that Legislative Council approve the agenda as presented.

The motion passed without objection.

III. APPROVAL OF MINUTES

[1:11:29 PM](#)

VICE CHAIR REINBOLD moved and asked unanimous consent that the Legislative Council approve the minutes dated February 23, 2022, and March 23, 2022, as presented.

The motion passed without objection.

IV. COMMITTEE BUSINESS

a. Janitorial Contract renewal

[1:12:01 PM](#)

VICE-CHAIR REINBOLD moved that Legislative Council approve renewal No. 1 of the contract for [the Anchorage Legislative Office Building] janitorial services with Q1 Services LLC in the amount not to exceed \$56,000.

CHAIR HANNAN objected for the purposes of discussion and asked JC Kestel to speak to this item.

JC KESTEL, Procurement Officer with the Legislative Affairs Agency, stated that in each member's packet was a memo regarding renewal No. 1 of the contract with Q1 Services LLC for janitorial services at the Anchorage Legislative Office Building. The one-year renewal period is September 1, 2022, through August 31, 2023, with no funding/price changes.

[1:13:20 PM](#)

There were no questions, and a roll call vote was taken.

YEAS: Representatives Claman, Hannan, Stutes, Tuck; Senators Bishop, Reinbold, Stedman, Stevens.

NAYS: None.

The motion passed 8-0.

b. Discovery Preschool Contract Assignment

[1:14:11 PM](#)

VICE CHAIR REINBOLD moved that Legislative Council approve the assignment of a contract for the operation of the childcare center in the Capitol complex from Rosemary Williams to Kristen Dutson for the duration of the contract and any optional renewal periods.

CHAIR HANNAN objected for the purposes of discussion and asked Mr. Kestel to speak to this item. She further noted that Ms. Williams and Ms. Dutson were on teleconference for questions if necessary.

MR. KESTEL stated that the Discovery Preschool contract (established by RFP 639) is before Council because the business has been sold; and, for the contract to continue with the new owner, Legislative Council must approve a contract assignment to that new owner. He noted that a detailed memo regarding this item was included in each member's packet.

[1:15:47 PM](#)

There were no questions, and a roll call vote was taken.

YEAS: Representatives Claman, Hannan, Stutes, Tuck; Senators Bishop, Reinbold, Stedman, Stevens.

NAYS: None.

The motion passed 8-0.

c. Amendment to the Alaska Legislative Procurement Procedures

[1:16:35 PM](#)

VICE CHAIR REINBOLD moved that Legislative Council adopt the amendment to the Alaska Legislative Procurement Procedures and allow Legislative Legal to make technical and conforming changes to the draft amendment.

CHAIR HANNAN objected for the purposes of discussion and asked Mr. Kestel, Executive Director Jessica Geary, and Legal Services Director Megan Wallace to address this item.

MR. KESTEL stated that if approved, this amendment would allow the Agency, or any other subdivision of the Legislature, to solicit and contract for general contractor and construction management type contracts. This would bring Legislative Procurement Procedures in line with most common practices of government procurement and solicitation.

REPRESENTATIVE CLAMAN asked if this amendment would allow the Legislature to engage in design-build contracts where the design and build is done by the same organization.

MR. KESTEL responded yes.

REPRESENTATIVE TUCK stated that the problem he has with design-build is that once the general contractor is selected, not all the subcontractors have been pre-determined. The general contractor will then shop for subcontractor bids without Agency oversight. Under the current system, the subcontractor bids are normally included in the overall bid package or are submitted within five days of bid opening. He said it's his belief that the design-build process advantages certain contractors and doesn't allow for competition from new or smaller contractors who may not have a design team on staff. He acknowledged that the design-build model was more efficient, especially for department or Agency staff, but also meant those same staff weren't as involved in the overall process. He closed by saying he feels the design-build process was cumbersome and wasn't fair to subcontractors.

SENATOR STEVENS asked if Agency staff could respond to Representative Tuck's comment.

MS. GEARY stated that the Legislature does not undertake many construction projects. She believes this is the most efficient and economical process for getting the Legislature's projects designed and put together for a total bid package.

MR. KESTEL stated regarding the subcontractor portion, there are two types of contracts. During the preconstruction services and work contract for the design portion, subcontractors are disclosed within five days of requesting the subcontractor list. During the construction services portion of the negotiations on a project under design-build, it does allow for the contractor to use different subcontractors. Once the contract has been successfully negotiated, the Agency will have the ability to review those subcontractors before a contract is entered into.

REPRESENTATIVE TUCK shared an example of when a design-build process used by Department of Transportation and Public Facilities caused harm to an Anchorage neighborhood for which the State took

no responsibility to illustrate his frustration and lack of support for this type of procurement; however, he noted that he was not opposed to the Agency using a design-build process.

MS. GEARY clarified that this amendment allows the ability to enter into this type of contract, but it isn't a requirement. Any big contract would still need to come before Legislative Council and the use of a Proposal Evaluation Committee for award.

CHAIR HANNAN noted that Senator Kiehl has been present since the beginning of the meeting.

1:29:07 PM

There were no further comments or questions, and a roll call vote was taken.

YEAS: Representatives Claman, Hannan, Stutes, Tuck; Senators Bishop, Reinbold, Stedman, Stevens.

NAYS: None.

The motion passed 8-0.

d. Office of Victims' Rights Attorney Compensation

1:29:50 PM

VICE CHAIR REINBOLD moved that (1) Legislative Council approve a transfer of \$75,000 from Legislative Council Funds to the Office of Victims' Rights for the purpose of placing four attorneys on the new attorney salary schedule in AS 39.27.011(1); (2) that Legislative Council direct the Legislative Affairs Agency to request an FY23 supplemental to cover the transferred funds and an FY24 increment, and (3) that Legislative Council authorize legislation for consideration of the 33rd Legislature to amend AS 24.65.060 and AS 24.65.070 accordingly.

CHAIR HANNAN objected for the purposes of discussion and asked Ms. Geary speak to this item.

MS. GEARY said HB 226 was intended to give State of Alaska attorneys a 15% raise effective October 31, 2022, as a recruitment and retention tool; however, the four attorneys in the Office of Victims' Rights (OVR) were inadvertently excluded in the bill. The motion before Legislative Council would ensure OVR attorneys receive the salary increase through a FY2023 supplemental request, as well as a FY2024 increment request as a placeholder for a statutory amendment, if necessary, to make the increase permanent. Without this action, OVR is at a disadvantage in competing to fill attorney positions and being left out of the original bill was

unfortunate and demoralizing for existing staff. She noted that Katherine Hansen, the Acting Victims' Rights Advocate, is on the phone for questions as well.

REPRESENTATIVE CLAMAN stated that not including the Office of Victims' Rights attorneys was a mistake and asked if there was any precedent that allowed Legislative Council to correct a legislative mistake like this and pay someone more than was authorized by legislative action.

MS. GEARY stated the Legislature can operate within existing authority and Legislative Council can approve a transfer of funds; however, a permanent fix will require action in the next legislature. This motion would be a band-aid to get through the rest of this fiscal year.

REPRESENTATIVE CLAMAN clarified that his question was whether Legislative Council has the authority to authorize a pay raise which, through a mistake, the Legislature did not authorize.

MS. GEARY responded that she worked with Legal Services Director Megan Wallace and Human Resources Manager Skiff Lobaugh on crafting this solution, and asked Ms. Wallace to speak to his question.

MS. WALLACE, Legal Services Director, stated she concurred with Ms. Geary that the proposal before Legislative Council is a temporary fix and not a long-term solution. Specific to his question, Legislative Council does not have the authority to override statutes, or to amend or change the law as was passed by the Legislature, but there is some flexibility with respect to the compensation of the attorneys at the Office of Victims' Rights. She said AS 24.65.070 relates to the compensation of OVR staff and the statutory authority governing pay is very broad and gives a lot of discretion to the Victims' Advocate and the Legislature to determine pay. The permanent solution that the motion contemplates would be to amend that statute to expressly state that OVR attorneys will be compensated at the attorney rate that was passed in HB 226. Ms. Wallace said it is her opinion that the Legislature does have some flexibility to determine compensation in this temporary manner.

REPRESENTATIVE CLAMAN asked Ms. Wallace if section 24.65.070(a) gives enough flexibility that Legislative Council can overlook the Legislature's mistake for the current fiscal year.

MS. WALLACE said that 24.65.070(a) combined with (c), which specifically says that the staff are in the exempt service and are not subject to the employment policy under AS 24.10 or 24.20 allows this action.

REPRESENTATIVE CLAMAN asked if the Legislature does not pass a statute next session, would it result in a pay cut in FY24 for the attorneys at the Office of Victims' Rights.

MS. WALLACE said that was correct. She said that since there was no permanent statutory solution available during the interim, this temporary solution before Council would allow OVR attorneys to receive the same pay raise until a statutory fix is possible in the next legislative session. Without a statutory change, it was her opinion that there was a risk to continuing this temporary solution beyond the current fiscal year.

SENATOR REINBOLD agreed with Representative Claman.

1:42:35 PM

There were no further questions or comments, and a roll call vote was taken.

CHAIR HANNAN called a brief at ease during the roll call when it appeared that Senator Stedman's call had been dropped. Senator Stedman was reconnected, and the roll call resumed.

YEAS: Representatives Claman, Hannan, Stutes, Tuck; Senators Bishop, Reinbold, Stedman, Stevens.

NAYS: None.

The motion passed 8-0.

e. Update to Legislative Council Social Media Policy

CHAIR HANNAN said that members were considering draft #2 of the Social Media Policy, asked Ms. Geary to summarize this draft, and noted that Legal Services Director Megan Wallace, Deputy Director Emily Nauman and Attorney Noah Klein were available for questions.

MS. GEARY stated the new draft social media policy would replace the 2011 policy. She said these are recommendations, not mandates. If members were to follow all the recommendations, the likelihood of a lawsuit would be very small and unlikely to have merit. This policy does not prohibit a legislator from allowing posts and self-monitoring the comments and content. It simply says that if members choose to do so and block or censor any commenters, they will be personally liable for any legal fees and no State funds will be used. This policy does not render existing platform protections useless as one can still flag inappropriate or defamatory content for review and potential removal by platform officials. She continued that using social media as a bulletin board by disabling

interaction might not be how members choose to conduct business and that is a choice each legislator must make. If a legislator is sued for deleting comments or blocking someone, they will be personally liable for their own legal defense. This policy protects the Legislature from unknown legal costs and the need for Legislative Council to make case by case decisions based on each individual social media decision.

SENATOR REINBOLD cited sections of the Alaska and U.S. Constitution and stated that she believed the draft policy violated those sections and restricted legislators unconstitutionally. She said a First Amendment lawyer should be at this meeting.

SENATOR STEVENS asked if an attorney could speak on the subject.

MS. WALLACE stated that, in her opinion, the draft policy does not present any First Amendment concerns by means of restricting the freedom of speech of legislators because the information set out in the policy are a best practices guide. This gives legislators some guidelines to follow for the least amount of risk of the individual legislator being challenged for infringing on the free speech of someone who is interacting on the legislator's social media page. These guidelines as drafted do not mandate any action, do not mandate that legislators have a social media account, and do not mandate what type of account a legislator decides to maintain. It sets expectations that if a legislator creates a public forum and allows interaction (comments and posts) to be made by the public, then subsequently blocks, deletes, or takes some other action that potentially gives rise to a claim of infringement of free speech or some other claim, that legislator will bear all the risk of that action.

SENATOR STEVENS agreed that the policy does not restrict the rights of legislators, but rather protects the State by noting that the legislator bears all the risk by blocking a commenter. He said he was comfortable with the draft as written.

SENATOR REINBOLD disagreed with Ms. Wallace and, pointing to portions of the draft policy, asked what defines a personal and official social media account.

MS. GEARY responded that an official legislative account would not be managed by the State. Those designations are simply suggesting that a legislator's personal account, which is for family and friends, should be kept separate from an account that would be considered official which would be used to post about constituent gatherings, legislation, etc. - those things pertaining to one's duties as a legislator. She said she recognizes sometimes these areas blend and restated that these are just recommendations for

the lowest risk of litigation possible and based on past court cases where courts have determined what constitutes an official account versus a personal account.

SENATOR REINBOLD asked what an official legislative account is.

MS. GEARY stated that what this policy is contemplating is that an official account would be one where members post about legislative business. The format would depend on the social media platform structure; and this policy recommends that you designate or create an account or page that specifies that you are a public official, and that account or page should be kept separate from an account or page for personal matters on the same platform.

SENATOR REINBOLD stated that the wording for an official account is wrong and that there is no such thing as an official legislative account.

MS. GEARY asked Senator Reinbold for a recommendation for an amendment to clarify the policy language.

SENATOR REINBOLD stated that she fundamentally disagrees with the policy.

CHAIR HANNAN reminded members that she, as Chair, directed staff to provide a draft policy based on emerging knowledge, discussion at several meetings, and members' concerns and input as to what they would like to see in such a policy. This area continues to be concerning and the current social media guidelines are not adequate, and the goal of Legislative Council policies is to provide members of the Legislature guidance and direction as needed. This document remains a draft that Legislative Council continues to craft and there is no anticipated motion to adopt it at this meeting.

REPRESENTATIVE CLAMAN asked, other than Colorado, what other state policies have been reviewed and how does this draft compare to Colorado's policy.

EMILY NAUMAN, Deputy Director of Legal Services, stated that this draft was very similar to the Colorado policy.

MS. GEARY stated that Colorado took a more restrictive approach because they had to pay for several lawsuits. How states choose to handle social media is very different, but broadly it seemed that if a legislator has a social media account to interact with constituents, which creates a public forum, then they cannot block people from doing so. Other state policies and approaches were considered when crafting the draft before members.

REPRESENTATIVE CLAMAN followed up to ask whether this draft policy, which is similar to Colorado's, was recommended in order to protect the Alaska Legislature from being financially responsible for the actions of individual legislators.

MS. GEARY confirmed that was correct.

SENATOR STEVENS agreed with the policy but acknowledged that there were not enough votes present for it to pass. With agreement of the Chair, he moved to table the discussion until the next meeting.

2:10:08 PM

The discussion was tabled without objection.

CHAIR HANNAN requested that any specific comments members would like integrated into the Social Media Policy prior to the next meeting be sent in writing to her staff Tim Clark or Executive Director Jessica Geary. She noted that in the absence of hearing any feedback, there was an assumption that the draft was acceptable.

V. ADJOURN

2:12:01 PM

There being no further business before the committee, the meeting was adjourned at 2:12 PM.