



Alaska State Legislature Legislative Council Minutes

OCTOBER 10, 2008

The Legislative Council meeting was called to order at 9:05 a.m. by Senator Kim Elton, Chair, in the Anchorage LIO 2nd Floor Conference room and via teleconference.

1. ROLL CALL

The roll was taken. In attendance were Council members: Senators Elton, Cowdery (via teleconference), Davis, Green, Hoffman, and Stevens; Representatives Dahlstrom, Coghill, Harris (via teleconference), Stoltze, Wilson, and Guttenberg. Absent members were Senator Wilken and Representative Samuels.

Staff present: Varni, Bressette, Cook, and Lesh (via teleconference).

Others present: Stephen Branchflower, Attorney at Law; Senators Dyson, French, Stedman, Therriault, and Wielechowski; Representatives Gara and Lynn.

2. APPROVAL OF AUGUST 11, 2008 MINUTES

Representative Dahlstrom moved Legislative Council approve the minutes of the August 11, 2008 Legislative Council meeting as presented.

Representative Stoltze objected to the motion for the purpose of including a more complete record. Due to the gravity of this issue, Representative Stoltze would like the minutes updated to include more of the discussion that took place so that there is a more comprehensive record available to the public.

Senator Elton agreed to move the adoption of the minutes to the next Council meeting.

3. LEGISLATIVE COUNCIL INVESTIGATION REPORT

Senator Elton notified the Council that, prior to going into Executive Session to discuss a work product that is attorney-client privilege; he wanted to articulate the rules for the public, members of the Council, and other attending Legislators. Based on advice from Legislative Legal Services staff in an October 8, 2008 memo, no part of the report may be released without approval of the Legislative Council in keeping with the terms of the contract, Clause 1B, with the Investigator.

Legislative Legal staff advised that, after the discussion at the July 28, 2008 Legislative Council meeting, it became clear that the will of the Council was to preserve to itself alone the receipt of the report and the final decision as to whether the report or any portion of it would be released. The motion was amended to ensure this result and that was part of the information on which Legislative Legal staff predicated this opinion.

Legislative Legal added that under Uniform Rule 22, subsection D, a Legislator may not be excluded from an Executive Session whether or not the Legislator is a member of the body that is meeting. The rule does not explicitly require the committee that is meeting to provide to non-member Legislators copies of materials under consideration by that committee. However, because the clear purpose of subsection D is to allow Legislators to remain informed about legislative matters before committees the implication is that during Executive Session and only during that Executive Session materials will be available to Legislators in attendance. Senator Elton noted that this particular advice was put forth in an October 9, 2008 memo, separate from the advice given in the October 8, 2008 memo.

Senator Elton noted that the report was presented in two components. The non-confidential component has a green cover and the confidential component has a red cover. Legislators who choose to remain during Executive Session will receive the green component and some extras of the red component. There were not enough advanced copies made of the red component for all Legislators in attendance, so Senator Elton asked that Legislators share. These documents will be collected from the other Legislators who are not Council members once the committee comes out of Executive Session.

Discussion followed.

Senator Elton further stated that in the October 9, 2008 memo from Legislative Legal staff, the Legislative Council would be in breach of contract should they refuse to accept the report prepared by the investigator.

Senator Elton reminded the members of the Council that until there is a vote by the Council to release the report, the information in the green binder is confidential; the information in the red folder remains highly confidential as required by law. Both components of the report are attorney-client work product and there shall be no unauthorized release of either component under penalty of law per AS24.61.70.

Discussion followed.

Senator Elton asked staff to provide both the October 8, 2008 and October 9, 2008 memos from Legislative Legal.

Representative Dahlstrom moved that Legislative Council go into Executive Session per Alaska State Legislature Uniform Rules 22(b)(2) and (3) discussion of subjects that tend to prejudice the reputation and character of a person and discussion of a matter that may, by law, be required to be confidential. In addition to Council Members, Representative Dahlstrom asked that the following people remain in attendance during the Executive Session:

Any Alaska State Legislators
Stephen Branchflower, Attorney at Law
Tam Cook, Director of Legal & Research Services

The roll was taken.

YEAS: Elton, Cowdery, Davis, Green, Hoffman, Stevens, Dahlstrom, Coghill, Stoltze, Wilson, and Guttenberg

NAYS: None

The motion passed 11-0.

Senator Elton requested a two minute “at ease” while the room was cleared.

Legislative Council went into Executive Session (9:23:08 AM).

Legislative Council came out of Executive Session (3:45:35 PM).

The roll was taken upon the Council coming out of Executive Session to record who was present.

Present: Senators Elton, Cowdery (via teleconference), Davis, Green, Hoffman, Stevens; Representatives Dahlstrom, Coghill, Harris (via teleconference), Stoltze, Wilson, and Guttenberg.

Absent: Senator Wilken and Representative Samuels.

Eleven members present.

Senator Elton noted that the following Alaska Legislators were present in the audience: Senators Dyson, French, Stedman, Therriault, and Wielechowski; Representatives Gara and Lynn.

Senator Green moved that the Legislative Council approve the release of the public portion of the investigation report and direct the Legislative Affairs Agency to make the public portion of the investigation report available on request to any person but not to release any part of the confidential portion of the report to any person.

Prior to opening the floor to discussion, Senator Elton noted that, if the motion is successful, there are 50 copies available of the public portion of the report and the distribution will be as follows: Legislators in attendance; one copy will be made available to the Governor’s Office; the press in attendance; anyone else. Senator Elton noted that the public component of this report will be available on the Legislature’s website at www.legis.state.ak.us

Representative Stoltze objected to the motion for purposes of discussion.

Discussion followed.

Representative Stoltze formally removed his objection to the motion.

Senator Elton expressed his appreciation to every member of the Legislative Council who has had to deal with 1300 pages of public and confidential information; to Senator French as the

project director and to his staff in dealing with the mechanics of what has happened over the last several weeks; to Legislative Affairs Agency staff, especially Legislative Legal under the direction of Tam Cook for the assistance they provided to him as the Chair and to the Committee as a whole; to his own staff; and finally to a certain superior court judge and four justices of the Alaska Supreme Court who allowed the Council to get to this point also.

Roll call was taken on the motion.

YEAS: Elton, Cowdery, Davis, Green, Hoffman, Stevens, Dahlstrom, Coghill, Harris, Stoltze, Wilson, and Guttenberg

NAYS: None

The motion passed 12-0.

Senator Elton noted that Representative Holmes joined the meeting. He stated that there is a further motion that is much more of an informational point. He noted prior to the motion being read that the public reports will not be distributed in the conference room because there are additional items on the agenda; there will be a staff member outside the room to distribute the reports.

Representative Dahlstrom moved that the Legislative Council find that the following individuals have submitted responses to interrogatories thereby aiding the investigation conducted by Mr. Branchflower. They include Dianne Kiesel, Annette Kreitzer, Janice Mason, Nikki Neal, Michael Nizich, Christina Perry, Brad Thompson, Ivy Frye, Todd Palin, and Randy Ruaro.

Senator Elton asked that this motion be read so that the public understands that the above-named people responded after the public component was written and, while their responses did not show up in that public component, Senator Elton wanted it noted that they were responsive to the investigator's inquiries.

Representative Coghill noted that the interrogatories will remain confidential. Senator Elton confirmed that was so.

The roll was taken.

YEAS: Elton, Cowdery, Davis, Green, Hoffman, Stevens, Dahlstrom, Coghill, Harris, Stoltze, Wilson, and Guttenberg

NAYS: None

The motion passed 12-0.

Senator Elton requested an "at ease" in order to allow attendees to leave should they so choose.

The Council resumed their meeting.

4. KENAI LEASE RENEWAL APPROVAL

Executive Director Pam Varni stated that some Legislators had expressed interest in relocating to other office space. She noted it would take some time to go out to bid and check with the Presiding Officers as well as the Council Chair. The current space renewal has been occupied since July 1, 2008 and the Agency recommends the lease amendment be approved.

Ms. Varni will work with Senator Wagoner and Representatives Chenault and Olson on boundaries and requirements for the other space.

Representative Dahlstrom moved that Legislative Council approve the FY09 lease renewal for the existing state lease space in Kenai for \$41,810.80.

Discussion followed.

The roll was taken.

YEAS: Elton, Cowdery, Davis, Green, Hoffman, Stevens, Dahlstrom, Coghill, Stoltze, and Wilson

NAYS: None

The motion passed 10-0.

5. KETCHIKAN LEASE RENEWAL APPROVAL

Representative Dahlstrom moved that Legislative Council approve the first renewal option between 50 FS, LLC in Ketchikan and the Agency with the yearly total of \$33,555.36.

YEAS: Elton, Cowdery, Davis, Green, Hoffman, Stevens, Dahlstrom, Coghill, Stoltze, and Wilson

NAYS: None

The motion passed 10-0.

6. AUTHORIZE LEGAL SERVICES TO HANDLE TONY HALFORD V HICKEL LAWSUIT

Representative Dahlstrom moved that Legislative Council direct the Legal and Research Division of the Legislative Affairs Agency to provide legal representation to those Legislators who request that representation and who are named as Defendants in Halford v. Hickel, IJU-08-806 Civil filed on August 26, 2008 and ratify past representation in that case.

Discussion followed.

The roll was taken.

YEAS: Elton, Cowdery, Davis, Green, Hoffman, Stevens, Dahlstrom, Coghill, Stoltze,
and Wilson

NAYS: None

The motion passed 10-0.

Legislative Council adjourned at 3:45 p.m.