



Alaska State Legislature Legislative Council Minutes

SEPTEMBER 3, 2009

[11:02:37 AM](#)

The Legislative Council meeting was called to order at 11:00 a.m. by Representative John Harris, Chairman, in the Anchorage LIO 2nd Floor Conference Room and via teleconference.

1. ROLL CALL

The roll was taken. In attendance were Council members: Representatives Harris, Chenault (via teleconference), Coghill (via teleconference), Wilson (via teleconference) and Guttenberg (via teleconference); Senators Davis, Olson (via teleconference), Stedman (via teleconference) and Stevens (via teleconference).

Absent members: Representatives Gatto and Stoltze; Senators Ellis and Hoffman.

Staff present: Bitney, Clothier, Cook, Gullufsen, Ibesate, Johnston, Lesh, Schofield, and Strong.

Others present: Representative Craig Johnson

2. APPROVAL OF AUGUST 10, 2009 MINUTES

Senator Davis moved that Legislative Council approve the minutes of the August 10, 2009 Legislative Council meeting as presented.

Senator Stedman objected to the motion.

Chairman Harris informed Council members that he and Senator Stedman discussed the August 10 minutes earlier in the day and that Senator Stedman expressed his concern about the depth of information in the minutes; the specific area of concern dealt with the Alaska House item. Chairman Harris noted that Representative Wilson asked a number of questions, and there may have been others, none of which were reflected in the minutes. He stated their concern was that the minutes needed to be more in-depth of what members actually said so that there is a record if there are issues in the future about what the intent of Legislative Council was or what the express interest of Legislative Council members were.

Senator Stedman recommended that the minutes be pulled back, re-worked and brought forward at the next meeting after they have been expanded.

Chairman Harris asked Senator Davis to withdraw her motion.

Senator Davis withdrew her motion for the minutes to be approved.

Senator Davis moved that the August 10, 2009 minutes be brought back before members for approval at the next Legislative Council meeting based on Senator Stedman's recommendation.

The motion passed with no objections.

3. RFQ 494 – CAPITOL BOILER INSTALLATION

Chairman Harris informed members that he authorized a seven day bid period because of the time sensitive nature of the issue as replacement involves shutting down the heat in the building for the period of time it takes to install the new boilers. He noted that he had hoped to have this bid out earlier but as that did not happen he agreed to a quicker-than-normal bid process. Chairman Harris stated that one bid was received.

Senator Davis moved that Legislative Council approve the award of RFQ 494 to Trucano Construction for the total price of \$458,500.00.

Representative Wilson objected for purposes of discussion.

Representative Wilson asked if any rule was violated with the shortened request period.

Chairman Harris responded that a shorter bid period was allowed under special circumstances and with the approval of the Legislative Council Chair. He further expressed his unhappiness at executing the bid process this way but felt it was necessary to ensure the installation happened as soon as possible. Chairman Harris explained that the boilers were in Juneau and ready to be installed; installation will involve shutting off the heat for an extended period of time and there is some concern about dropping temperatures and possible freezing.

Representative Wilson inquired about how the RFQ was executed and whether contractors had an opportunity to bid on such a large contract.

Don Johnston, Building Manager, explained to members that, due to a heavy workload, the mechanical engineer who put together the packages to procure and install the boilers was unable to prepare the necessary documents any earlier and, in fact, had initially refused to help at all. The mechanical engineer had other commitments he had to complete before he could finish the installation documents and that was the reason for the delay in going out to bid.

Mr. Johnston testified that there is a great deal of mechanical work going on in Southeast Alaska right now – State Office Building and the Court Building in Juneau as well as major projects in Cordova and Yakutat – so the number of mechanical contractors available to install the boilers in the desired time frame is another reason why there was only one bid for this project.

Representative Wilson expressed concern about whether the RFQ went out to all possible contractors.

Tina Strong, Procurement Officer, testified that the bid went out to all contractors listed on the State of Alaska bidders list and that we are required to send it to at least six contractors on that list which is what she did.

Senator Olson informed members that he had joined the meeting.

Representative Guttenberg asked if there was an engineer's estimate on what this project would cost and did this bid come anywhere near that estimate.

Mr. Johnston replied that there was not an engineer's estimate and that this was a streamlined bid process to get the boilers installed before winter. He went on to state that one of the boilers was condemned last winter and, even with the repairs made, it barely passed state inspection.

Discussion followed.

Representative Wilson removed her objection.

The motion passed with no objections.

4. PHONE EQUIPMENT & INSTALLATION – THOMAS STEWART LOB

Senator Davis moved that Legislative Council approve \$55,133.65 for the telephone equipment and installation for the Thomas B. Stewart Legislative Office Building.

Karla Schofield, Deputy Director for the Legislative Affairs Agency, stated that the amount requested covers all equipment, materials, personnel, installation, and deployment of telephone services for the Thomas Stewart LOB, which is scheduled to be completed by October 23.

Chairman Harris asked if this project was put out for bid using the standard time frame.

Ms. Schofield replied that Enterprise Technology Services, the vendor providing these services, has a contract with the Department of Administration for all telephony services on the State network and that's who we need to use; there are no bidding questions on it.

The motion passed with no objections.

5. JOINT COOK INLET SALMON TASK FORCE REPORT EXPENDITURE APPROVAL

Chairman Harris noted this item was brought before the committee by Representative Craig Johnson who is the Chair of the Joint Cook Inlet Salmon Task Force. He asked Representative Johnson to explain his request to the Committee.

Representative Johnson expressed his appreciation that this item was added to the agenda as quickly as it was as he is anxious to move forward.

Representative Johnson stated that when the Task Force met, they were inundated with testimony amounting to over 1,000 pages. The testimony was very technical and this is a controversial issue. He went on to assure members that this request is for a technical writer; no additional research will be done. The report will focus on the testimony already compiled.

Representative Johnson is requesting approval to hire a person who has a great amount of skill, was editor of his Law Review, and is a technical writer who can disseminate this information into a report of less than 100 pages so that we can move forward as policy makers to address some of the situations that exist in Cook Inlet. There will be policy calls and this is an attempt to protect the resource. He does not believe it will be a report that singles out a particular user group. He said he does not know of anyone currently on his staff or any other staff who is capable of and/or who has the time to do this, and that is why he is asking to hire an outside professional writer.

Chairman Harris requested from Representative Johnson a chronology of how this task force was initiated and the events that led us up to where we are today.

Discussion followed.

Chairman Harris asked whether, during the debate about this issue, were there any statements made about funding or fiscal notes, or cost to the Legislature or State?

Representative Johnson replied that there certainly were discussions about cost. He had anticipated that between the staff of then-President of the Senate Lyda Green and then-Speaker of the House there existed the technical expertise in-house to complete this project. He stated that he defended quite vigorously the fact that this could be done at no cost and admitted that it was naiveté on his part in not realizing the very technical nature of the data.

Chairman Harris asked if there was anyone in Legislative Legal Services or someone already employed by the State of Alaska that has the capacity both from a technical point of view and a time perspective to be able to accomplish this.

Discussion followed.

Representative Wilson asked Representative Johnson if he felt totally comfortable with his recommendation that this person could do this without bias because our number one thought has to be about the sustainability of the species; could he unequivocally recommend this person.

Representative Johnson stated that he could with the qualifier that we all bring our biases to everything we do. He stated that this person is very fair and has extensive experience with the commercial fishing industry. He also brings his law degree with him and the fairness and the facts will be borne out. Representative Johnson, as the administrator of this contract, said it will be incumbent upon him to make sure that that fairness is brought out and that it's not a one-sided report. The facts presented during the testimony and in writing will be foot-noted, documented and provided with the report.

Representative Johnson said that it is his mission to have a fair and balanced report for a controversial issue that has been going on for 100 years.

Representative Wilson expressed concern over the fact that the writer has experience with the commercial industry and wants to make sure that the sports fishing industry is given a fair hearing; wants to ensure that the report is factual and fair to both sides.

Discussion followed.

Senator Stedman said this process was initially going to be supported, according to the fiscal note, by the professional staff of the Presiding Officers. He expressed concern about whether the Presiding Officers have been briefed and have signed off on this process of selection. He stated that a resume was not included with the submission and wanted to know if there was any relationship between the proposed contractor, Mark Higgins, and any employees of the State of Alaska, in particular within the Legislature.

Representative Johnson stated that Mark Higgins is the spouse of one of his staff. He said he obtained a ruling from the Ethics committee that he would be happy to forward to members which states that as long as there is no direct supervision there is no violation; his staff member has no supervisory duties in his office.

Representative Johnson stated that he has a copy of Mr. Higgins' resume available for any interested member and apologized for not getting it out sooner. He said he requested a resume from Mr. Higgins and received it late in the afternoon the day before this meeting was scheduled which is why he had not had a chance to add it to the packet. He re-stated that he would make copies available to any member interested in looking at it.

Senator Stedman asked Representative Johnson who would be the project director.

Representative Johnson replied that he would be the project director as its stated now.

Senator Stedman stated that he had some concerns with the proximity of the relationship having the project manager director as a direct employee [Debra Higgins] as well as the contract manager Mr. Higgins. He said that he thinks that, looking back at the fiscal note, this is something that the two Presiding Officers need to sit down and decide how they want to handle this report and then bring forth a recommendation to the Committee. He said if nothing else it has the appearance of peculiar relationships; this is a sensitive issue between commercial and sports fisheries.

Chairman Harris asked to hear from the Presiding Officers starting with Senate President Gary Stevens and then from Speaker Chenault.

Senator Stevens stated that he has not been involved in this issue at all nor has he talked with Representative Johnson about the issue of staff. He said that he assumed that the original agreement with Senator Green was based on the idea that she had staff experienced in this area willing to do the work. He has never been asked for his involvement or that of his staff; he has

no staff with a lot of fisheries experience. Senator Stevens stated that it is an extremely important issue and we want to make sure it is done properly, and that we get the right person to write it. He stated that we do need to move ahead on this and that he would be glad to talk to the Speaker about it. He said he did not believe he had ever spoken of this issue with the Speaker before now.

Speaker Chenault stated that he had not spoken with Senate President Stevens about this issue. He said he has had talks with Representative Johnson about it over the last year. He brought up some of the same concerns of Senator Stedman for discussion. He said he personally feels comfortable with Mr. Higgins writing this report. Speaker Chenault said that when the resolution was passed he expressed concerns about the costs, and about how the committee was going to come up with the findings without spending some money. He stated that he is willing to work with Representative Johnson and with Senate President Stevens to come up with some kind of amicable solution to the report itself; to try and get something put together in a fashion that shows the testimony and the reports in such a way that gives us a better insight into the problems of the fisheries here, especially in the Upper Cook Inlet which are always contentious at best.

Senator Olson asked Representative Johnson what kind of time sensitivity we have related to this task force report.

Representative Johnson said that it's past due. He stated that he gets probably five calls a month asking when the report is going to be released. He said that with the nature of the report and the sensitivity he is not prepared to turn out an inferior project that reflects poorly on the committee, the effort of the Department, the commercial and sports fishing groups as well as the entire Legislature. He said he feels that it is important to have this report finished in time to take up on both sides by the beginning of the session. He said we'll have new data about the escapements and returns from this season. He stated that he thinks it's important that when we gavel in, that this be on everyone's radar and that this will be the catalyst for some important discussions on policies. He said that in terms of time sensitivity his goal is to have this report in everyone's box on the first day of session.

Senator Olson stated that in his district the sensitivity of fisheries and the management thereof is quite critical, and it has gotten to the point that there are people that have been actively fishing there in spite of regulations that are against it. The concerns stated are important but from the perspective of his district he agrees with Representative Johnson that this report is long overdue; he will defer to the consensus of the Council.

Senator Stedman said that to his recollection the report was due on the first day of the first regular session of the Twenty-sixth Legislature so that report is clearly past due. The Task Force was to terminate on the First of February 2009. Senator Stedman stated he has serious concerns with the process. Clearly the disclosure of the working relationship wasn't submitted in the document and neither was Mr. Higgins resume. Senator Stedman said it was his opinion that it was too brief of a submittal and far too critical of an issue to do that with. He said he thinks we're on the wrong track by trying to accelerate this and trying to push this through without making sure that the report, whoever writes it, when it comes out isn't automatically put on the shelf because of the process that was gone through to hire the individual to draft it.

Representative Coghill said that based on what we heard on the due date of the report we are certainly as a Legislature delinquent so he was in favor of compiling this report; but it's also true that the Presiding Officers bear some of the responsibility of supervising this. He asked whether it would be wise to assign either one of the Presiding Officers to supervise the management of this project, given that they were going to be involved in the creation of this report anyway, because the husband/wife relationship is going to bring a question mark.

Representative Johnson stated that he has no problem in not administering this. He is confident enough in the individual's fairness and knowledge that, as long as someone would maintain that mission of fairness and, as Representative Wilson said, with the eye on protecting the resource, he would have no problem with any other member of the Legislature administering this based on his confidence in the individual that has been selected. He stated that he has no pride of ownership of administering it; it is controversial and it would probably serve him well not to administer it if that is the will, and if someone else is willing to do it.

Chairman Harris asked that the Presiding Officers meet with Representative Johnson, and with any other members who have a concern about this particular issue, making sure that they understand the parameters. He stated that he, as Chairman of Legislative Council, as well as the Speaker and the President all have \$25,000 line item appropriation power and the motion for this issue would have been for \$20,000. He said that he hoped that we don't blindside either the commercial fishing or the sports fishing industry, which will both be affected by this however the report is written. The fairness of the whole report should not be taken lightly or for granted.

Chairman Harris asked that when the President and the Speaker meet with Representative Johnson, the concerns that have been raised today, all of which are valid, will be taken into consideration. At that point in time, there will be a determination of how the report will be written, by whom it's to be written, and the supervisory personnel involved. He stated that is his preference to have joint oversight by the President and the Speaker rather than an individual member who may or may not have conflicts out there.

Chairman Harris said there would not be a motion offered today but the intent was to move forward, to not slow the process down to the point it becomes irrelevant, and to ensure that the Legislature has the compiled information from the Task Force on their desks, available for action even before the session.

Chairman Harris asked if anyone had an objection to the intent. There were no objections.

There was no motion made on this item.

6. OTHER BUSINESS

There was no other business.

The meeting adjourned at 11:45 a.m.

[11:45:33 AM](#)