



# Alaska State Legislature Legislative Council Minutes

---

**JANUARY 17, 2012**

[5:03:19 PM](#)

The Legislative Council meeting was called to order at 5:03 p.m. by Senator Linda Menard, Chair, in the House Finance Committee Room.

## **1. ROLL CALL**

Chair Menard called the roll. In attendance were Council members: Senators Davis, Egan, Olson, Hoffman, Stevens, Menard, and alternate member Thomas; Representatives Austerman, Chenault, Herron, Holmes, Johnson, Stoltze, and P. Wilson.

Absent members: Senator Stedman and alternate member Representative Thomas

Staff present: Varni, Tilton, Clothier, Cotter, Gardner, Finley, Ibesate, Johnston, Kurtz, Lesh, Strong

## **2. APPROVAL OF AGENDA**

Representative Herron moved that Legislative Council approve the agenda as amended to include the addition of the Fahrenkamp Classic and the deletion of Item 6: Cutting Edge Snowplowing Amendment.

The motion passed with no objections.

## **3. APPROVAL OF NOVEMBER 4, 2011 MINUTES**

Representative Herron moved that Legislative Council approve the minutes of the November 4, 2011 Council meeting as presented.

The motion passed with no objections.

Speaker Chenault asked if there was a place on the agenda to discuss new business.

Chair Menard said she would add that on toward the end of the meeting.

## **4. SANCTIONING OF CHARITABLE EVENTS APPROVAL**

Chair Menard stated that this is the 12<sup>th</sup> Annual Thanksgiving in March event, which is scheduled to be held Tuesday, March 13, at 6:00 p.m. at the Imperial. Thanksgiving in March is a fundraiser in which Legislators serve a turkey dinner and bake pies for a pie auction. The proceeds that are raised go to the Southeast Alaska Food Bank.

Representative Herron moved that Legislative Council sanction the following charitable event per AS 24.60.080(a)(2)(B): Thanksgiving in March.

The motion passed with no objections.

Chair Menard stated that this is the 27<sup>th</sup> anniversary of an event known as the Sham Jam, with this year's theme being *The Big Lebowski*. The date is set for March 17, with funds being raised for the benefit of a non-profit organization known as REACH, which provides studio, pottery and gallery facilities for adults with disabilities in the Juneau arts community.

Representative Herron moved that Legislative Council sanction the following charitable event per AS 24.60.080(a)(2)(B): Sham Jam.

The motion passed with no objections.

Chair Menard stated that this is the 23<sup>rd</sup> Annual Fahrenkamp-Kelly Classic Charity Putting Tournament event that honors former Senators Betty Fahrenkamp and Tim Kelly and raises funds for the Armed Forces, YMCA, and the Bartlett Regional Hospital Foundation. This year's event will be held March 1-3, 2012.

Representative Herron moved that Legislative Council sanction the following charitable event per AS 24.60.080(a)(2)(B): Fahrenkamp-Kelly Classic Charity Putting Tournament.

The motion passed with no objections.

## **5. LATE TRAVEL AND PER DIEM CLAIM APPROVAL**

Representative Herron moved that Legislative Council approve the late travel and per diem claim for Representative Sharon Cissna.

The motion passed with no objections.

## **6. CUTTING EDGE SNOWPLOWING AMENDMENT APPROVAL**

Item removed from agenda.

## **7. ITB 558 - DOORS, WOODWORK, TRIM AND BASEBOARD APPROVAL / LEGISLATIVE FINANCE REMODEL**

Chair Menard stated that ITB 558 was issued to solicit for the outright purchase of doors, woodwork, trim, and baseboard for the Legislative Finance Building. The lowest bid price is \$34,532.10 from Valley Lumber and Building Supply. Here to answer questions are Building Manager Don Johnston and Executive Director Pam Varni.

Representative Stoltze said he has had ongoing concerns dating back a couple of years with this project. He said this is just the latest litany of that so let's just air it out. He said he's not going to do an I-told-you-so on this one from a couple years ago because that would be counter-productive.

Chair Menard asked Representative Stoltze if he'd like to put that in the form of questions so Mr. Johnston can address it.

Representative Stoltze responded that the Chair had asked if there were concerns and his concerns have been ongoing for multiple years on a bad judgment deal that transpired.

Chair Menard stated that was before her time but that she appreciates the history on it.

Don Johnston, Building Manager for the Legislative Affairs Agency, testified that he acts as the general contractor for the Agency on a lot of the projects. He said there isn't an end cost for bidding on things as we would have if we went out to bid with a general contractor; we would have a known cost at the beginning. He said that the ITB before Council today was not included in previous estimates because we didn't have any costs. In the September Council meeting, we didn't have all estimates or costs or bids together. Since then, we've had a lot of other things go out to bid: door hardware, the spray foam insulation, the cabinetry and counters, suspended ceilings, etc.

Representative Herron said that we are at \$548,000 for project total, and this bid is \$34,500, so is Mr. Johnston asking that the cap be set at \$582,000.

Mr. Johnston said no, that is not correct. He said that he is asking for the cap to be removed so that he can finish this project. He said current projections show that, including this \$34,000, we could spend another \$116,433.

Chair Menard asked that at the end of the day, per square footage, how much is it going to be. She said her understanding is that it will be less than the Thomas Stewart Building. She asked for Pam Varni to address this question.

Mr. Johnston apologized that he did not come with the per square foot figure. With the current expenses at \$548,228 plus the \$116,433 for a total of \$664,661 divided by the approximate square footage of 2600 sq. ft. would give us a dollar per square foot figure.

Chair Menard said that isn't really a true figure because we still need the furnishings in. She again asked for Pam Varni to weigh in on this item.

Pam Varni, Executive Director for the Legislative Affairs Agency, testified that at a previous meeting with the Council wanting to put a cap on, the Agency is not going to be looking at doing the furnishings. There are existing funds in House and Senate Finance and Legislative Finance for them to get new chairs. She said Mr. Johnston doesn't charge when he does built-ins and we'll try and look at doing built-in desks, like we try to do throughout the Capitol.

Chair Menard said she thinks that we all understand the rub comes when this is a very small lot, we're already over a half a million dollars, but yet the location is great and she thinks when it's all done and said, it will be a nice addition to the Capitol. She said it is very painful to go through this as we've all experienced whenever we've tried to renovate any of our own personal homes, etc. She said that's the concern and that's why at the last meeting we tried to put a cap on that. Anything over that cap must come back to the Council so we could fully vet it and understand what was coming down for additional expense.

Senator Joe Thomas said that at the September 29, 2011, Legislative Council meeting we were informed that the figure would probably be between \$550,000 and \$600,000 and that's the reason to come back and get authorizations. He said with this bid, the total is close to \$600,000. He asked how much Mr. Johnston anticipated it would cost to finish the final items that are not included in the recap.

Mr. Johnston said that he included today's ITB for the \$34,532; he estimated the flooring installation at \$25,500; for wallboard installation, finishing and painting would be another \$25,000; and exterior painting estimated to be another \$25,000. He said there are some unknown costs such as the mechanical contractor needing to perform their work, and the electrical contractor to perform their work, so there's the potential for unknown change orders there as well.

Mr. Johnston stated that in 2009 he estimated the remodel cost to be between \$350,000 and \$700,000. He said Jensen Yorba Lott architects estimated the project to be at \$441,000 and they're in the business of estimating and we've well exceeded their estimate.

Senator Thomas asked about whether Mr. Johnston had a bid for the electrical and the mechanical work.

Mr. Johnston responded that we do have bids for that work that have already been approved by Legislative Council, but they have not performed any work onsite as of yet. As work progresses, there may be some unknowns that come up. He said we've tried to cover everything that we could; it's not new construction, it's renovating, and as we all know that there are things we can't design for.

Senator Thomas asked what the numbers for the mechanical and the electrical were if they weren't already included in the \$548,000 to date.

Ms. Varni responded that in the \$548,000 figure is the mechanical contract for \$111,660 and the electrical contract for \$146,460, but what might happen is that once the contractors start working onsite, they might find a discrepancy between the plans and what actually exists in the structure; for example, a difference of \$300 would mean that, with the cap in place, we have to come back to Council for a \$300 change order.

Senator Thomas noted that he understood the unexpected cost issue but just wanted to understand what had and had not been included in the \$548,000 figure. He said with the items left to go out to bid, the final estimate looks to be about \$700,000.

Discussion followed.

Speaker Chenault said he certainly doesn't want Mr. Johnston and Ms. Varni to think that we're pointing any of the issues at them personally because his concerns are not toward either of them personally. He said his total estimation, as best as he can figure, at the completion, we will have about \$914,000 tied up in this building, if one takes into consideration the cost of the building at \$250,000, which comes to about \$352 per square foot. He said his concern is that we keep adding to it. He asked if it was 2600 square feet of usable space.

Mr. Johnston said that it is his understanding that it is 2600 square feet of usable space. He said during the construction and the design, we reclaimed some of the below grade area and expanded the basement.

Speaker Chenault said that he sees that we spent \$9,000 for a sprinkler on the wall between this building and the Capital Inn next door. He said that for the life of him, he cannot figure out why we would spend money on this item. He said if they're concerned about our building burning down, he'd be concerned about their building burning down probably more since we're basically building a brand new building. He said just to spend that money and here we are talking about furniture – what's the difference between \$914,000 and \$925,000 for new furniture. He said why you would ever put junky furniture in a brand new building that you just spent \$1M on makes no sense to him. He said what the Council needs to decide is how much this is actually going to cost us and get the thing built.

Representative Herron said that in just discussing the numbers we're talking about today, we have the \$548,000 as what we've spent so far, setting aside the cost of the structure; \$34,000 for this newest bid and; then this estimate for \$116,000 more to complete the project, so approximately \$700,000 for a 2600 square foot building, which is approximately \$270 per square foot. He referred back to Mr. Johnston's memo and asked if he was requesting that Council put the cap at \$700,000.

Mr. Johnston responded no. He said he firmly believes we could meet or exceed that very easily as just the costs he knows about is near the \$700,000 figure. If the cap is at \$700,000, it is entirely possible that we will be back before Council again.

Chair Menard stated that the directive was to come back because Council wanted to put it at \$550,000 and that's what we're doing. Unfortunately, we're probably going to have to revisit this until that building gets done. She said we can't mothball it; it's an important piece of property right now, we've got a lot invested in it and we have to see it through.

Representative Austerman asked for information sake when was the building purchased.

Ms. Varni said she could get him that exact date but she doesn't have it off the top of her head.

Chair Menard asked if she could have a motion to award ITB 558 to Valley Building Supply.

Representative Herron said that just for clarification, he thought Legislative Council took action in 2009 for the purchase of the old church.

Representative Johnson asked if Council approves this motion to award the ITB, is the cap also removed.

Chair Menard responded no, we are not removing the cap.

Discussion followed.

Senator Egan said that he wanted to remind the other members that we did approve the sprinklers and it was at the request of the Capital Inn because their building is sprinkled. He said they were concerned that our new Legislative Finance Building wasn't sprinkled, so we agreed to install a sprinkler on the outer wall next to the Capital Inn.

Chair Menard added that the owners wanted the whole building sprinkled and we chipped away until we got it to something reasonable (cost) and safety for the neighbor as well as for us.

Speaker Chenault asked if he was correct in his understanding that we have a dry sprinkler system outside because we're concerned about burning down the Capital Inn but we're not equipping the whole building with sprinklers so we don't burn up our own building.

Senators Egan and Menard stated that was correct and that it was a matter of the cost being \$9,400 for one wall versus \$30,000 to sprinkle the whole building.

Chair Menard asked for a motion.

Representative Herron moved that Legislative Council approve ITB 558 to Valley Lumber & Building Supply in the amount of \$34,532.10 for the Legislative Finance Building Project.

Representative Austerman objected to the motion.

Chair Menard called the roll.

YEAS: Davis, Egan, Hoffman, Menard, Stevens, J. Thomas, Holmes, P. Wilson

NAYS: Olson, Austerman, Chenault, Herron, Johnson, Stoltze

The motion passed 8-6.

Representative Austerman said we didn't remove the cap of \$550,000 but we've approved above that, so is the cap of \$550,000 automatically void with this approval.

Chair Menard stated that the cap stays in place and the Agency will need to come back for approval of additional fund requests.

Representative Herron moved that the new cap be \$548,228 plus the \$34,532 for a new cap of \$582,760.

Discussion followed.

Chair Menard called the roll.

YEAS: Davis, Egan, Olson, Hoffman, Stevens, Menard, J. Thomas, Chenault, Herron, Holmes, Johnson, Stoltze, P. Wilson

NAYS: Austerman

The motion passed 13-1.

## **8. 2012 REVISOR'S BILL INTRODUCTION APPROVAL**

Chair Menard said this item for introduction approval is a 2012 Revisor's Bill and a Special Revisor's Bill that relates to notices being posted at the United States Postal Service. Kathryn Kurtz and Pam Finley are here to answer questions and provide information.

Representative Herron moved that Legislative Council approve the 2012 Revisor's bills and have the Rules Committee by Request of the Legislative Council introduce it.

Pam Finley, Revisor of Statutes, testified that Revisor's Bills are prepared pursuant to AS 01.05.036. They are also mentioned in the Constitution as an exception to the single subject rule. The purpose is to cure deficiencies in the statutes, get rid of conflicts, obsolete provisions, suggest improvements, etc., and include only things that are policy-neutral, where the problem is clear and there is no question about it being political. A Special Revisor's Bill is used when an error needs to be fixed but where there are several possible ways of fixing it.

Ms. Finley said today's Special Revisor's Bill relates to posting of notices at U.S. Post Offices. There are four statutes that require this concerning: controlled livestock districts, personal property lien sales, consignee and bailee lien sales and tax lien sales; all of which require posting notices of sales at a U.S. Post Office. Since 2007, the U.S.

Government does not want anything posted at a Post Office that is not a governmental notice. This Special Revisor's Bill removes the requirement to post the notice at a U.S. Post Office but leaves in the requirement that the notice be posted in public places. She recommends this go through the normal committee process.

Kathryn Kurtz, Assistant Revisor of Statutes, testified that she attended a conference that reminded her of how much work Alaska does up front before bills are even enacted. She is bringing to Council minor recommended changes in this Revisor's Bill. Ms. Kurtz summarized what was included in the Bill.

There were no questions.

The motion passed with no objections.

## **9. LEGISLATIVE PROCUREMENT AMENDMENTS APPROVAL**

Chair Menard stated this item is a question to amend the Legislative Branch Procurement Policy to update it either because of changes in state law or because clarification is needed for practical application by the Procurement Officer. There are two amendments proposed at this time. The first proposed amendment would bring the policy into line with the State Procurement Code and would provide for a veteran's preference and a disabled persons preference in competitive sealed bidding. The second amendment concerns human trafficking. Doug Gardner is here to answer questions.

Doug Gardner, Director of Legal Services, stated that issues occasionally arise in the context of procurement or we see things that are missing. He said we have a number of different proposed amendments we've been holding, most of those are technical and would aid the Procurement Officer in administering contracts. Two of those have risen to the level of asking Council to at least consider addressing them now. The first one is an inconsistency with Alaska law. AS 36.30 was amended in 2006 to require a human trafficking provision go into the Legislative Procurement Policies. Ironically, the statute was passed but the policies were never changed. The Agency has been dealing with that issue by putting into contracts a requirement that a person certify that they have complied with the human trafficking provision because the policies are out of step with Alaska law. Mr. Gardner wanted to call it to Council's attention so that issue could be remedied.

Mr. Gardner said that in the context of a recent ITB, we weren't able to honor a veteran's preference. The Legislative Procurement Policies don't acknowledge a veteran's preference; so if a person was bidding on a project with the Executive Branch they would have eligible for a veteran's preference and they're not in the legislative procurement process. Mr. Gardner wanted to call that to the Council's attention because he wasn't certain whether that had been the intention in the Procurement Policies when they were adopted. Under AS 36.30, a veteran's preference would be a 5% preference up to \$5,000. Also in AS 36.30 are preferences relating to persons with disabilities and other bidders that include employment programs in the course of their business; and these would be things included in this proposed amendment.

Discussion followed.

Representative Stoltze asked why it is before Council in this manner. He said he thinks procurement issues ought to be the domain of the political process as it's known through the legislative committees and open hearings. It's just a very complicated and often controversial thing.

Mr. Gardner responded that AS 36.30.020 requires Legislative Council to adopt and publish procedures that govern procurement of supplies and professional services to the Legislative Branch. The Legislative Council adopted procurement policies, many of those track AS 36.30 as they're required to do, so it is up to this body to make those determinations. These proposed changes are not to AS 36.30, they're to Legislative Council's procurement policies. These issues could not be solved through the process of a bill considering AS 36.30.

Discussion followed.

Chair Menard asked for a motion.

Representative Herron moved that Legislative Council approve two amendments updating our Legislative Procurement Procedures concerning Alaska veterans' preference and restrictions on procurement relating to human trafficking.

Discussion followed.

The motion passed with no objections.

## **10. LEGAL REPRESENTATION APPROVAL**

Chair Menard said she respectfully requests the concurrence with her approval that was given to Doug Gardner, Legal Services Director, for the representation of Senator Joe Thomas and a member of his staff, Joe Hardenbrook, and Representative Kawasaki in the re-districting cases that were filed in the Superior Court in Fairbanks. As time was of the essence with depositions scheduled for December 13, 2011, approval was granted.

Chair Menard asked for a motion.

Representative Herron moved that Legislative Council authorize the Division of Legal and Research Services' representation of Senator Joe Thomas, Representative Scott Kawasaki and staff to Senator Joe Thomas, Joe Hardenbrook, in connection with litigation involving the reapportionment board.

Representatives Johnson and Stoltze objected for the purpose of discussion.

Discussion followed.

Representative Johnson removed his objection.

Representative Stoltze said if the witnesses were dragged in kicking and screaming or if they were there as advocate witnesses would certainly color whether he felt this was appropriate or not.

Mr. Gardner said that he does not know whether any of the witnesses requested to be on the list; he assumed that if a third party is listing someone as a witness, that's not necessarily by the choice of the person being listed.

Representative Stoltze said that in a political process such as reapportionment this is shaky ground to embark upon. He said he is not casting aspersions but as a general policy matter he thinks that it is bad policy to get involved at this level in reapportionment process, the redistricting process. He said he is maintaining his objection just to say he has policy concerns through a gentle objection.

Mr. Gardner said that if a member who was listed on the witness list contacted him or Mr. Luckhaupt of Legal Services who ended up handling a lot of immunity issues and said something about whether or not they were willing or not willing, he doesn't think he could reveal that to Council. The fact that they were on a witness list and asked to attend by a third party was his main consideration and, being nonpolitical, he wasn't concerned at all about motivation. He was more concerned about protecting the body and other members who might indirectly be discussed in those proceedings because someone wasn't necessarily aware of the scope of immunity, especially when it comes to the work of aides or discussions between aides and members. He said he felt with the looming depositions, he needed to act and contact Senator Menard. He said this by way of explaining his motivation for doing what he did. He said even if he was aware of their willingness or not, he doesn't think he could reveal that.

Representative Peggy Wilson stated that she was on the witness list and didn't know it. She said when she got the letter from Mr. Gardner, she called him and was very appreciative of the information he and/or Mr. Luckhaupt provided. She said she really appreciated knowing there was someone there to help her through the process should it be necessary. She felt his concern was to protect her.

Chair Menard called the roll.

Senator Thomas asked if he should abstain from the vote since this motion involves him.

Chair Menard stated that since he identified his conflict, he should vote.

YEAS: Davis, Egan, Olson, Hoffman, Stevens, Menard, J. Thomas, Austerman, Chenault, Herron, Holmes, Johnson, P. Wilson

NAYS: Stoltze

The motion passed 13-1.

## **11. NEW BUSINESS**

Speaker Chenault said the Alaska State Legislature Directory, also known as the “pocket directory,” for the First Session of the 27<sup>th</sup> Legislature included the second verse of the Alaska State Flag song. He said it was his understanding that everything in this book was legal and real; however, the second verse of the song, which the Legislature has never passed, was included and he does not feel it is appropriate that it is in this book.

Discussion followed.

Representative Austerman, referencing the minutes of November 4, 2011, said that there was a motion to make an offer on the 909 W. 9<sup>th</sup> Avenue property and it passed 10-2. He asked if there was an update on this item.

Chair Menard responded that we won't know for two more days and Council will get an update at the next meeting.

Discussion followed.

Speaker Chenault also commented that he is frustrated with the cross gulf ferry schedule for getting members to Juneau for session. He said his staff suggested a list of dates that would work for the Legislature and none of those his office identified were the dates of the two ferries leaving from Whittier traveling to Juneau.

Discussion followed.

The meeting was adjourned at 6:30 p.m.

[6:30:20 PM](#)