



Alaska State Legislature Legislative Council Minutes

MARCH 21, 2013
3:46 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Senator Peter Micciche, Vice Chair
Representative Mike Chenault
Representative Max Gruenberg
Representative Craig Johnson
Representative Lance Pruitt
Representative Bill Stoltze
Representative Peggy Wilson
Senator John Coghill
Senator Dennis Egan
Senator Charlie Huggins
Senator Lesil McGuire
Senator Kevin Meyer
Senator Gary Stevens

MEMBERS ABSENT

There were no members absent

AGENDA

APPROVAL OF MINUTES
CONTRACT APPROVALS
OTHER COMMITTEE BUSINESS
CAPITOL SECURITY

SPEAKER REGISTER

TINA STRONG, Procurement Officer, Legislative Affairs Agency
JULI LUCKY, Staff to Representative Hawker and Chair of the IT
Subcommittee
DOUG GARDNER, Legal Services Director, Legislative Affairs Agency

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I. CHAIR MIKE HAWKER called the Legislative Council meeting to order at 4:04 p.m. in room 532 of the State Capitol. Present at the call were Representatives Hawker, Chenault, Gruenberg, Johnson and Pruitt; Senators Micciche, Coghill, Egan, Huggins, McGuire, Meyer, and Stevens.

II. APPROVAL OF FEBRUARY 26, 2013 MINUTES

VICE CHAIR MICCICHE moved that the minutes from the Legislative Council meeting on February 26, 2013 be approved as presented.

The minutes were approved with no objections.

III. CONTRACT APPROVALS

a. Anchorage LIO Lease

CHAIR HAWKER noted that this facility is the Legislature's major facility, and one of the larger, used outside of Juneau during the interim.

Representative Peggy Wilson joined the meeting at this time.

TINA STRONG, Procurement Officer for the Legislative Affairs Agency, stated that the Anchorage lease is due to expire on May 31, 2013, and there is one renewal option remaining that would terminate on May 31, 2014. In response to a question by Chair Hawker, Ms. Strong stated there were no options to renewing this lease that would ensure office space for the Legislators currently located in the facility.

CHAIR HAWKER, in response to a comment by Representative Gruenberg, informed Council members that there has been a procurement process underway, including the steering committee appointed at the last meeting, to address this issue and he would provide additional comment at the end of this meeting.

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VICE CHAIR MICCICHE moved that Legislative Council authorize the chairman to approve a one-year renewal of the existing lease agreement for the Anchorage legislative office for a cost of \$681,854.16.

The lease extension was approved with no objections.

IV. SOCIAL MEDIA POLICY

CHAIR HAWKER said that in past Legislative Councils there have been extensive discussions of what the Legislature's policy is for the access and use of social media by Legislators and legislative agencies. An ancillary issue that has been considered but not resolved by Council regards access specifically to Facebook accounts.

JULI LUCKY, staff to Representative Mike Hawker-District 27, testified as Chair of the IT Subcommittee. She noted that members had several documents in their packet including the history of access issues and highlighting actions Council has taken to date. At this time, Legislators, legislative press offices, web masters and Information Services Help Desks continue to have access to Facebook from legislative computers. The crux of the matter is access from legislative computers.

In addition to the current status and question of access for Legislators and legislative staff, Council has received requests from three legislative agencies: the Ombudsman, Legislative Ethics and Legislative Audit, who believe access to Facebook from legislative computers will help further their missions. Although there is no request letter in the packet, Ms. Lucky said she spoke with the Office of Victims' Rights and they also find Facebook access to be useful in furthering their mission. For those Legislators who currently have Facebook pages, their staff must go to that Legislator's computer to log in or use a personal handheld device or computer in order to access Facebook to do what the Legislator considers to be their staff's job.

The IT Subcommittee met February 28, 2013, and identified and discussed the following three issues: (1) should the Legislature adopt a policy that would be legislature-wide to define acceptable usage, users and content; (2) who should have access and if access is restricted who should make that determination; and (3) should non-partisan agencies of the Legislature be allowed to have Facebook pages or social media accounts that are publicly visible. For research and audit purposes, most of the subcommittee felt access was above-board. A couple of agencies have requested to have a Facebook presence to do outreach or recruit for job openings, which the subcommittee felt was a distinct issue from just being able to access Facebook from a legislative computer.

The Subcommittee was unanimous only on the issue that the Council needs to take some definitive action on this issue.

The Subcommittee made three recommendations.

(1) Council should consider adopting a policy to define acceptable uses and users - see current proposed draft policy dated March 20, 2013, in the packet.

(2) Council should consider providing a method for Legislators and agency directors to grant access to their employees. A previous proposal by Council was for the Legislative Council Chair to authorize use. The Subcommittee felt that it shouldn't be Legislative Council's prerogative to approve an application; it should be up to the supervisor, the Legislator or agency director.

(3) With regard to public Facebook pages for nonpartisan legislative agencies, the subcommittee had a difficult time reaching consensus and didn't understand the need. Therefore, the subcommittee recommended that each agency plead its case directly to Legislative Council because each agency's needs and what they would be putting on a Facebook page is different.

Ms. Lucky ended her testimony by making herself available for questions and noting that there were attendees who could answer technical questions about use of Facebook as well as the Legislative Auditor Kris Curtis who can answer any questions about her needs for an agency page.

CHAIR HAWKER said that Council should focus on the following two questions: (1) whether Council should adopt the draft social media policy and (2) whether Council will allow Legislators and agency directors access to Facebook in particular from legislative computers and a methodology for allowing such access.

SENATOR MCGUIRE thanked Ms. Lucky for her work on this issue and agreed it was time to address this issue in order to communicate effectively with those constituents already using Facebook. Her main concern was that any policy that may be adopted not constrain how her office is currently utilizing Facebook. She pointed first to Item III. Messaging Policy in the draft, which forbids communication via social media messaging features for official State business. She said she has had exchanges with constituents about particular legislative business through both her personal and Senate Facebook pages. She next pointed to Item I. Content Policy (b) - the part that specifically prohibits "Any action that provides benefit to any person or organization, including solicitations, endorsements, or promotions of products or services of any financial, commercial, non-profit, or non-

governmental agency." She said her office often used her Facebook page to promote the Girl Scouts or the Boys and Girls Club, for example, which are both non-profits. She said in the current form, she objects to the policy as written because it limits her First Amendment rights to communicate with her constituents.

MS. LUCKY clarified that the proposed policy is a reflection of the concerns raised at the IT Subcommittee as well as a review of relevant NCSL documents, several existing social media policies, Alaska Legislative Ethics documents, and existing Acceptable Computer Use documents that currently govern how the Legislature uses State equipment. Specific to the Messaging Policy, the concern was based on recent court cases relating to someone using a private e-mail account to hide official State business. It exists in the policy in order to bring to Council's attention all the possible concerns related to using social media with State equipment and to ensure an opportunity for a full discussion. She asked Doug Gardner to speak to potential legal issues regarding what is considered official State business by a Legislator or legislative staff.

DOUG GARDNER, Director of Legal Services, confirmed he had spoken to Ms. Lucky about this issue. He noted that there have occasionally been records requests made of legislative offices. Records maintained by a Legislator and in that Legislator's office are protected and do not need to be provided to the public, they are not considered public records based on legislative immunity. There have not been many tests of this protection. When it comes to procurement or employment issues, legislative immunity does not generally apply. The concern is that by using social media and Facebook specifically, Legislators are putting themselves out there a lot more than using traditional paper records kept in an office. There is not an easy way to deal with this when a Legislator communicates via Facebook. Another component might be that as a chair of a committee working with a contractor and communicating with that contractor, the concern is that those records are public and not covered by immunity; there may be a record keeping requirement. The way such a problem is managed is to not communicate with said contractor using social media. With regard to Senator McGuire's concern, a constituent may decide to post any response they receive from a Legislator on another website.

CHAIR HAWKER asked Mr. Gardner if it is the definition of official State business that is the crux of this situation. Mr. Gardner affirmed that it was.

MR. GARDNER said it might be possible to narrow the definition to meet Senator McGuire's concern that we're not restricting the use to deal with constituent matters; we're just trying to avoid a situation where the Legislator takes on a record keeping obligation for contracting or employment. It's a legislative immunity and records retention concern, specifically.

MS. LUCKY said that, with regard to the Messaging Policy, right now a Legislator or legislative staff can use a legislative computer to access a *gmail*, *hotmail* or *yahoo* free email account and that is not currently prohibited; Facebook does not necessarily open up another avenue that would otherwise not be available through a free email account. Perhaps messaging in general should be considered instead through the computer usage policy rather than the proposed Social Media Policy.

REPRESENTATIVE P. WILSON stated that she uses her Apple computer to conduct State business. She does not use the standard equipment provided. She said she is not allowed to use her Apple computer so she has her staff forward emails from her legislative account to her personal account. She wants to be able to use her Apple computer as her work computer in place of the standard equipment.

SENATOR MCGUIRE suggested that the Messaging Policy be removed from the proposed Social Media Policy in that there is no distinction between this outlet and free email and other portals that are currently available. She thought the records retention concern applies to very few lawmakers, such as the Chair of the Legislative Budget and Audit Committee or the heads of Legislative Affairs Agency who do high level contracts and/or procurement. She added that she is an Apple user herself and seconds in spirit the notion that we ask the IT Subcommittee to look at pushing Information Services into how we can get IT support for legislative Apple users.

Representative Stoltze joined the meeting at this time.

CHAIR HAWKER said that the non-standard equipment policy is very much a separate issue than the access to social media currently before Council. He noted the concern and that it is a policy point that can be referred to the IT Subcommittee for further consideration at the request of the members of this Council.

Chair Hawker asked Mr. Gardner if it would place the Legislature at unnecessary risk if Item III. Messaging Policy was deleted from the proposed Social Media Policy at this time

for further consideration. Mr. Gardner said he did not think so and that it could be placed elsewhere, as previously suggested. With regard to the second concern raised by Senator McGuire about promoting non-profit organizations, Chair Hawker said that there are some fine lines as to what a Legislator can do ethically in supporting organizations. He asked Mr. Gardner for his thoughts on that issue and whether it resolved the problem if there was a provision that said no action that violates State ethics rules to put the onus on the ethics committee to manage that aspect of this policy.

SENATOR MCGUIRE asked that Mr. Gardner look at the question of a Legislator promoting non-profit organizations through social media specifically.

MR. GARDNER said he concurred with the Chair's suggestion that an ethics reference is a way to deal with that as there are many combinations of facts that may lead to an ethics issue and no one policy can take those all into account.

REPRESENTATIVE JOHNSON, who also serves on the Ethics Committee, said the committee will take the policy or the statute that Council presents and fit the action(s) inside that policy and declare if it is or isn't an ethics violation. To say it's going to interpret this and help formulate this is a misunderstanding of how the Ethics Committee functions. A policy with vague language may lead to an unintended interpretation by the Ethics Committee. They will base their determination against the policy or statute and make a decision. He further pointed out that the Democratic and Republican Parties are non-profit organizations.

VICE CHAIR MICCICHE wanted to know who defined whether there was a financial, commercial or other sort of gain if there's a community event held on a private piece of property, which may be posted by a Legislator or their staff on a social media site.

MS. LUCKY said that this is part of the difficulty. Once it's allowable to use State resources for updating Facebook pages, such as is being proposed, then we need to comply with the ethics code. This is now saying what one can and cannot use State resources for. The non-profit wording was an amendment made at the IT Subcommittee level. Most of the language in section (b) was taken out of the Ethics handbook given out during the annual ethics training. One possible fix may be to say "Any action that would violate the ethics code..." with a statutory reference.

REPRESENTATIVE STOLTZE said that in previous conversations about this issue, there was testimony by staff of what the intent was and what was allowable including compiling campaign lists. He remains concerned about this. He said we need to rely on a combination of statutes and the best guess at the vagaries of the decisions that the committee will come up with.

MS. LUCKY, in response to a question by Representative Gruenberg, said there is no specific body created to enforce the proposed Social Media Policy although any ethics violation would fall under the purview of the Ethics Committee as happens now for any ethics complaint.

REPRESENTATIVE GRUENBERG said that if we are looking to the Ethics Committee to enforce a social media policy, we may have to look at amending the Ethics Act to give them jurisdiction; further, if they are tasked with enforcing it then there should be some input from the Ethics Committee on the development of any social media policy to ensure it is workable and in accord with their other duties.

MS. LUCKY responded that in talking with Joyce Anderson, Ethics Committee Administrator, any ethical violations would already be covered as they would be violations of the existing code. It is important to point out that the IT Subcommittee felt that they could only police the actions of staff when using it on State computers. There are many actions on Facebook that Legislators can do on their private time from their home computers that would not be covered by any policy as it is not enforceable. The recourse is to stop the access from any State account, which would be done through LAA Information Services. The IT Subcommittee felt that the policy should be in place prior to allowing legislative staff access from legislative computers so staff would understand that the recourse of breaking the policy would be a revocation of the privilege of accessing Facebook from a State computer; however, any ethical violation would be taken up by the Ethics Committee which would be handled under their current complaint procedure.

Ms. Lucky further noted, in response to Representative Gruenberg's suggestion that any enforcement action or consequence be explicitly stated in the policy, that said consequence was indeed included on the draft Facebook Access Request and Policy Receipt Form accompanying the policy, which an employee would have to sign in order to gain access to Facebook. It states "By signing below, I am acknowledging that I have reviewed this form, the Alaska Legislature Social Media Policy, the Computer Systems Acceptable Use Policy, and the Standards of Conduct Handbook for Legislators and Legislative

Employees. I understand that using social media websites in violation of these policies may result in suspension of access or an ethical complaint and that an ethical violation may result in the imposition of fines and/or termination from employment."

The policy was meant to govern social media as an umbrella - to give guidelines and acceptable uses. The request form is specific to Facebook, which is currently blocked from legislative computers.

The IT Subcommittee identified three separate decisions before Council: (1) allow access to Facebook for Legislators, IT staff and media staff without adopting a policy; (2) adopt a policy and still deny access to Facebook; and/or (3) set up Facebook accounts for legislative agencies. The Subcommittee further felt that if the decision was made to grant access to Facebook then Council should consider adopting a policy to put some clear guidelines in place so staff isn't unknowingly violating ethics or acceptable use policies.

CHAIR HAWKER noted this is the third meeting of the 28th Legislature's Legislative Council; while some members have great history with this topic, many do not and may need more time for consideration. This is a policy issue as discussed in detail and he would personally like to see it resolved soon, but properly and expeditiously. He proposed setting aside this item and asked the IT Subcommittee to continue working with Mr. Gardner and staff at Ethics to bring forward a revised Social Media Policy for consideration, including addressing access to Facebook, the overall policy question and the access of agencies to Facebook with a comprehensive policy structure in place.

REPRESENTATIVE JOHNSON said that if Council chooses the option to deny access to Facebook entirely, the IT Subcommittee may not need to do further work on a policy.

CHAIR HAWKER said the State currently allows access to a number of different social media sites. The proposed policy is an umbrella policy that goes beyond access to Facebook.

MS. LUCKY said that the IT Subcommittee did discuss whether a Social Media Policy was even needed given the Legislature's ethics laws since, as Senator McGuire pointed out, it is up to each individual to understand and abide by those in all forms regardless of the communications avenue used to conduct State business. At this point, access to Facebook is limited to Legislators and media staff, so the question still remains,

with or without the policy, what is the Council's decision regarding access to Facebook. There were some legitimate needs brought forward by agencies that have to go to a personal computer to conduct official investigative work when it comes to accessing Facebook.

REPRESENTATIVE JOHNSON said that in his experience attending conferences with other state Legislators, if access to Facebook is allowed, a policy is definitely necessary.

CHAIR HAWKER agreed that Council could resolve the question today of whether access to Facebook is allowed.

VICE CHAIR MICCICHE said he was convinced by the breadth of this discussion that his staff has no reason to be on Facebook and can't imagine that there is time to be on Facebook.

REPRESENTATIVE PRUITT said Facebook can be and is in many cases a means of communication with constituents, friends and neighbors. Recognizing the concern with potentially allowing, as mentioned, a limited or incidental usage, he suggested that perhaps access could be limited from State computers to a specific Facebook page related to a specific office.

SENATOR MCGUIRE stated she was more concerned about the limitation placed on, for instance, the Office of Victims' Rights in being able to conduct their investigative work. The issue of the Legislature accessing Facebook is not as big of a concern and she would be comfortable voting it down at this point. She and her office have found a way to access Facebook without using a State computer and she doesn't want to unintentionally find herself limited in her ability to communicate with her constituents. She supports carving out an exception for those agencies that need access to conduct investigatory work with the caveat that we don't want to encourage the public to communicate primarily through Facebook with those agencies.

MS. LUCKY confirmed that most agencies have not requested to have a page on Facebook for communication, but rather to be able to access Facebook if a complaint is made involving a posting on a Facebook page, for example, so they can confirm the complaint; however, Legislative Audit has asked to have a presence as well as the Office of the Ombudsman for the purposes of recruitment and outreach. With regard to the comment made about limited and incidental use, the IT Subcommittee put in specific language that such use would be at the discretion of the supervisor. Further, the IT Subcommittee felt that any access or action by staff would be at the

discretion of their supervisor and that the supervisor would have to approve each staff's access and usage request and could set whatever policy they wanted for their individual office. Policing would be difficult in general, but each supervisor is better able to assess their staff needs and behaviors.

Facebook can be a useful tool for staff to keep abreast of breaking news. There was an instance where a city that had a Legislative Information Office was only issuing weather alerts on Facebook and the LIO was unable to access the page to be aware.

CHAIR HAWKER reiterated the suggestion that this item be set aside to give members time for additional consideration as well as to give agency staff time to communicate their needs to individual members.

REPRESENTATIVE STOLTZE reminded Council members that the Legislature is currently operating under an expired policy put forth by a previous Legislative Council. He asked for confirmation that one of the options is to eliminate access to Facebook altogether when the item comes back.

CHAIR HAWKER said that any existing policy set forth by a previous Council is in effect until and unless changed by Legislative Council.

REPRESENTATIVE STOLTZE said he is encouraged by what other members have said about the possibility of eliminating Facebook altogether. He said there is a possibility of deleting a lot of this debate by having a motion to eliminate interaction with Facebook.

CHAIR HAWKER said he would entertain such a motion.

REPRESENTATIVE STOLTZE, in response to those members who said they didn't hear his comment, said he wasn't sure he wanted to make a motion today without further consideration, but reiterated he would support a motion today to eliminate involvement with social media in this business/work environment.

CHAIR HAWKER repeated that he would be happy to entertain such a motion today.

REPRESENTATIVE STOLTZE moved that Legislative Council rescind the previous action that provided for legislative access to the use of Facebook using State resources.

REPRESENTATIVE P. WILSON objected to the motion.

CHAIR HAWKER clarified the motion for members saying that it is to prohibit Facebook access by either Legislators or legislative agencies from legislative computers.

REPRESENTATIVE STOLTZE concurred and further clarified that the term "for Legislators" would cover the whole legislative office, by definition.

CHAIR HAWKER said it meant the entire legislative branch of government.

VICE CHAIR MICCICHE, speaking out of courtesy for how folks are currently doing things, asked if the person making the motion would consider a friendly amendment of setting an effective date for the end of the 2013 session.

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CHAIR HAWKER called an at-ease.

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CHAIR HAWKER called the meeting back to order after allowing for informal discussion between members about the proposed motion and amendment and the history behind it.

REPRESENTATIVE STOLTZE, with no dimming of his ongoing concerns with Facebook and potential misuses, withdrew his motion for more thoughtful consideration of the issue.

CHAIR HAWKER offered a statement of historical perspective for new members noting that the issue of a social media policy and specifically Facebook goes back to a prior Legislative Council meeting, February 3, 2011, where there was a motion that carried approving a one year trial period allowing each Legislator, legislative press offices, webmasters, and the Information Services Help Desks access to Facebook for legislative business only.

Chair Hawker asked unanimous consent of the committee to allow him as Chair to extend that trial period for the amount of time it takes to bring back to Council a more formal policy and discussion and a full resolution of this issue.

In response to a question by Representative Stoltze regarding the time frame for bringing the issue back to Council and noting that it a busy time for everyone, Chair Hawker said he was careful to state that the trial period be extended until such time as a more formal policy and discussion can occur.

Those agencies requesting access will have to wait until such time. In response to Representative Gruenberg, the Chair reiterated the question asking the concurrence of the entire Council to continue to operate under the previously approved trial guidelines.

There was no objection to continuing the trial period until further notice.

V. CAPITOL SECURITY

SENATOR STEVENS said that although most people want to keep access to the Capitol Building as open as possible, there have been some concerns expressed about security in general, and specifically the quality of the existing security cameras as an example. Juneau is a fairly safe place and that has perhaps led to a more relaxed approach to security; there are a variety of options worth considering and he asked that the Chair appoint a subcommittee to discuss them and report back to the full Council with recommendations by the end of session, even if the final recommendation is to take no action.

CHAIR HAWKER asked that any Legislator, in addition to appropriate security personnel, with a desire to serve on that subcommittee to please contact his office.

REPRESENTATIVE STOLTZE said the definition of security can take on a lot of permutations of how we can allow employees to better defend themselves and that would be a worthy discussion for the subcommittee to have.

CHAIR HAWKER remarked that security matters within the State facility system do qualify for discussing in executive session by statute specifically because this is such a sensitive issue. As this issue is brought back before Council, the definition of security and the scope of consideration and concern will happen in executive session.

Chair Hawker said, in response to a question about whether subcommittees formed by previous Legislative Council's continued in force, that they do not; like all committees in the Legislature, unless reappointed, they are no longer in force or in effect under a new legislature.

He notified members that there is now a Legislative Council link on the Legislature's website to ensure access to information regarding complex issues and projects before Council are available and easy to find. In particular, the

status of the restoration of the envelope of the Capitol and the reports produced to date may be found on this site.

He reminded members that, in August 2012, Legislative Council approved a contract with Paul Lukes for an evaluation study of the Capitol exterior/envelope. That report is complete and copies are available for every member as well as on the Legislative Council website. At the December 2012 Legislative Council meeting, a project design services contract based on the Paul Lukes evaluation study was approved to be completed and brought to bid. Phase I was issued as an intent to bid on March 14, 2013, which is the work to be completed this summer on the portico of the Capitol. The due date is April 5, 2013, and in order to keep that project moving forward, there will be a Legislative Council meeting on or around April 9, 2013, to bring forward a proposal to approve a selection of a bidder under that ITB. Jensen, Yorba, Lott is following through on their contract to develop the second ITB for the greater design for the rest of the Capitol envelope restoration. The Paul Lukes study identified three options, which the Chair took to the steering committee established at the last Legislative Council meeting. They agreed with both the structural and the restoration architects that there was a clear and efficacious choice of those three. Option 2 had the most long-term benefit and greatest bang for the money route forward. At this time, Jensen, Yorba, Lott is moving forward to develop an ITB for the full restoration of the exterior of this Capitol using Option 2 of the Paul Lukes evaluation study being distributed to members now.

Chair Hawker said that the Anchorage LIO extension/lease issue is being considered by the subcommittee tasked with that. There will be some informal discussions taking place with those who responded to a prior request for information on that project. He said the subcommittee hopes to bring forward in the very near future some concrete thoughts and proposals regarding the Anchorage LIO building.

Chair Hawker said that the Legislature's budget brought forward by Legislative Council has passed out of the House with some additional monies removed and has passed out of the Senate so will move on to conference committee for resolution in the greater budget process.

Chair Hawker asked Ms. Varni if she would please come forward in order that she be at the table when he notified everyone in the room of the momentous occasion that marked her 35th year of State service. In the midst of much applause and on behalf of the entire Legislature, Chair Hawker, noting the daunting task

of ensuring the efficient and high level functioning of the Legislature, congratulated Ms. Varni on 35 years of service and sincerely thanked her for all she has given to the Legislature.

There being no further business before the committee, the Legislative Council meeting was adjourned at 5:32 p.m.

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