



Alaska State Legislature Legislative Council Minutes

NOVEMBER 21, 2013

10:05 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Craig Johnson
Representative Lance Pruitt
Representative Bill Stoltze
Representative Peggy Wilson
Senator John Coghill
Senator Kevin Meyer

MEMBERS ON TELECONFERENCE

Senator Peter Micciche, Vice Chair
Representative Max Gruenberg
Senator Dennis Egan
Representative Austerman, Alternate

MEMBERS ABSENT

Representative Mike Chenault
Senator Charlie Huggins
Senator Mike Dunleavy
Senator Gary Stevens

OTHER MEMBERS PRESENT

Senator Donald Olson
Representative Gara
Representative Guttenberg (via teleconference)

AGENDA

SANCTIONING OF CHARITY EVENT
CONTRACT APPROVALS
OTHER COMMITTEE BUSINESS

SPEAKER REGISTER

Bob O'Neill, Pfeffer Development
Pam Varni, Executive Director, Legislative Affairs Agency
Jessica Geary, Finance Manager, Legislative Affairs Agency
Doug Gardner, Legal Services Director, Legislative Affairs Agency
Juli Lucky, Staff to Representative Mike Hawker and Committee Aide to Legislative Council

10:05:15 AM

I. CHAIR MIKE HAWKER called the Legislative Council meeting to order at 10:05 a.m. in room 105 of the Anchorage Legislative Office Building located at 733 W 4th Avenue. He noted that since some members are on teleconference, all voting will be by roll call to demonstrate for the record that there is a quorum for all votes.

Present at the call were Representatives Hawker, Gruenberg (via teleconference), Pruitt, Stoltze, and P. Wilson; Senators Coghill, Egan (via teleconference), Meyer, and Micciche. Representative Austerman (alternate member) joined the meeting later via teleconference.

Chair Hawker said there was a quorum to conduct business, and also welcomed Senator Olson to the meeting.

II. RATIFICATION OF CHARITABLE EVENTS

a. Alaska Governors Awards for the Arts & Humanities

CHAIR HAWKER said that his staff has reviewed the organization and confirmed that they are a recognized 501(c)(3) in good standing.

10:08:23 AM

REPRESENTATIVE JOHNSON moved that Legislative Council ratify the following charity event, which was previously sanctioned by the Legislative Council Chair in accordance with AS 24.60.080(2)(b): Alaska Governors Awards for the Arts & Humanities benefitting the Alaska Arts & Culture Foundation.

CHAIR HAWKER, in response to a question by Representative P. Wilson, noted that this vote ratifies an event that the Chair had previously sanctioned in accordance with statute. It allows a Legislator to accept a ticket to attend the event as a gift from a lobbyist. Legislative Council is not in any way endorsing the organization.

A roll call vote was taken.

YEAS: Gruenberg, Johnson, Pruitt, Stoltze, P. Wilson, Coghill, Egan, Meyer, Micciche, Hawker

NAYS: None

The motion passed 10-0.

III. CONTRACT APPROVALS

a. Anchorage LIO - Furniture Integration Proposal

CHAIR HAWKER introduced Bob O'Neill, project manager for the current Anchorage LIO renovation and an employee of Pfeffer Development. He personally thanked Bob and his staff for doing an incredible job preparing the temporary space for the Anchorage office in a very short time span. He also thanked Juli Lucky of his staff for the extraordinary amount of work she has done on this project.

BOB O'NEILL made a presentation to Legislative Council that included a small number of slides providing examples of office and conference room configurations possible with their proposal. In summary, he said office furniture needs should be considered early in any new office space planning. The Legislature has a strong requirement for furniture that provides flexibility and standardization, given the number of office moves and varying staff needs. Technology needs specific to the Legislature should also be incorporated into furniture considerations. Pfeffer Development proposes a two-step process that includes providing a variety of furniture options that would be put out for a competitive bid, and then coming back before Legislative Council with a proposal and total cost for a final decision.

CHAIR HAWKER interjected during the presentation to remind members that in a previous meeting when Council moved forward with this project, furnishings were mentioned in an executive session as the last item that Council would need to address in an open session since it was a contract matter. He said that anybody that watched the furniture move out of the building might agree that much of the furniture is in the same condition as the building about to be renovated. He further commented during the presentation that the furniture and technology requirements would be determined working in coordination with LAA staff.

MR. O'NEILL agreed, noting that they would go office-by-office with the appropriate Agency staff to identify needs, standards, and appearance. They will then put together a large bid package outlining in detail every piece and part required, in other words a specific set of standards in both graphic and written form with piece counts. Once that part of the process is complete, Pfeffer Development would come back to Council with what they have determined are the best proposals for approval or denial in a transparent process open to the public. Legislative Council is not making a commitment beyond the time put in for the design package.

CHAIR HAWKER said that at the end of the day, the Anchorage office will need to be furnished, one way or another. It became apparent during the move-out that much of the furniture was a hodge-podge assembled by various individuals; much of it fell apart when trying to move it; and about half of the furniture was really not suitable for putting back in place once the building is done. Council is being asked to authorize the Chair, on behalf of the committee and working with LAA, to negotiate with the appropriate entity under the procurement options to engage them to come back with a bid package for furnishings. The procurement of these services is estimated to be between \$75,000 and \$100,000, which is the approximate cost for the same services for the recently completed NANA building. He then opened up the item for discussion.

REPRESENTATIVE STOLTZE commented that he was satisfied with the surplus furniture available. He expressed trepidation about jumping into a furniture contract and stated he would be casting a protest vote.

PAM VARNI, Executive Director of the Legislative Affairs Agency, in response to a question by Senator Coghill about what would happen to the leftover furniture, said her staff have identified quite a bit of furniture for surplus, while some furniture will be stored. There has not been a large purchase of furniture made for probably 20 years. Should the Legislature get new furniture under this proposal, anything worth saving will be sent out to other legislative offices around the state as necessary. Those items not claimed by the Legislature and that might be of interest to other state agencies will be sent to surplus.

SENATOR COGHILL followed up to say that it is an Anchorage decision in his view, but there are a lot of Legislators that have used their office account to purchase furniture pieces.

MS. VARNI confirmed that any furniture purchased with office account funds is the property of the individual Legislator.

CHAIR HAWKER noted that, should the decision be made to go with this proposal, if an individual Legislator chooses to furnish their own office with their own furnishings, they will have the ability to do so. There would still be a kit of furnishings that can replace the personal items should that Legislator leave office.

SENATOR COGHILL said from his experience it is quite a shuffle when new Legislators come in. He added he will be watching how we navigate the used furniture removal and listening to the Anchorage Legislators on this issue.

CHAIR HAWKER said furniture is an essential part of the real estate development process and, in his experience, the biggest challenge. It's a complex process that really does require professionals to work through.

SENATOR COGHILL agreed and added that, with regard to the media, it would be in the public interest to ensure they have plenty of space to do their job.

MR. O'NEILL said that was taken into account and is reflected in the floor plans.

REPRESENTATIVE P. WILSON said that, for the benefit of those listening to the meeting, the furniture in storage is in poor condition.

REPRESENTATIVE GRUENBERG wanted clarification that the money being requested is to hire someone to advise the Legislature on obtaining furniture.

MR. O'NEILL confirmed that was the case and added that the advisory role includes putting together a procurement package so at the end of the process there would be a 30-70 page document used to go out for a competitive bid. Responding to a question by Representative Pruitt regarding a total cost estimate, he said the question was difficult to answer but based on his experience for all the furniture for this size building and all the technology components for the conference rooms and the public spaces, the cost would be in the \$1.4-1.8 million range. Responding to a question by Chair Hawker, Mr. O'Neill said the estimate is \$200,000-400,000 in technology alone.

REPRESENTATIVE JOHNSON asked if the Agency had the ability to do this work rather than outsource it.

MS. VARNI responded that a lot of the work being proposed is accomplished by architects and the Agency does not have an architect on staff. Outside architects have been brought in to do work on many previous projects. In terms of procurement, she agreed the Agency is capable of that work. She said Pfeffer Development could use the Agency's procurement officer once they have the design package if that is Council's preference.

CHAIR HAWKER, in response to a follow-up question by Representative Johnson, said that the authority being sought at this time is to negotiate and determine what would be the process forward.

REPRESENTATIVE JOHNSON said he would encourage the use of in-house people as much as possible when it comes to the evaluation portion of this process.

CHAIR HAWKER said that in speaking with Legal Services Director Doug Gardner, there is a myriad of procurement routes available and it's a matter of picking the course that allows for the best execution. He was seeking the authority to keep working with LAA to determine that route.

MR. O'NEILL said that in his experience having the same architects that are working on the building do the furniture work is an added advantage because of the coordination of the building systems, wiring, etc. The entire design team working on the building also engages in the process of the ultimate furnishing design so that it is an integrated system as well as a single point of contact and a single responsibility for that.

REPRESENTATIVE JOHNSON said that was exactly his point. He wants someone who is accountable to the Legislature for the next 20 or 30 years, not someone that walks away when the building's done, the contract is signed and the final check is cut. He wants people that are accountable and work for the Legislature to be as involved as possible.

CHAIR HAWKER agreed. He said while the Legislature has no financial exposure on the project itself, the building has to work for us.

VICE CHAIR MICCICHE agreed that we use our internal resources whenever possible. It may be that we identify the needs for the furniture required and perhaps order some internally. He said it is worth commenting that he is sitting in his remote office with hand-me-downs, his office in Juneau is filled with hand-me-downs and he thinks it's sort of a badge of honor for folks. He said he doesn't think there should be an expectation. He's not necessarily referring to this current project, he just thinks we should get full usage out of our state resources. The idea that we have brand new shiny furniture in each office is something we need to guard against.

CHAIR HAWKER said putting this package together allows us, working with LAA, to inventory what we have and where we want to look at new furnishing and where we don't need to look at new furnishings. He reminded members that there was a recent purchase of brand new furniture for the Eagle River LIO and as soon as the furniture was installed, Information Services had to drill holes in the furniture in order to wire the computer technology. It's a no-win situation.

10:46:44 AM

REPRESENTATIVE JOHNSON moved that Legislative Council authorize the chairman to negotiate for professional design services for an integrated furnishings package for the Anchorage Legislative Information Office, not to exceed \$100,000.

A roll call vote was taken.

YEAS: Gruenberg, Johnson, Pruitt, P. Wilson, Coghill, Egan, Meyer, Micciche, Hawker

NAYS: Stoltze

The motion passed 9-1.

CHAIR HAWKER stated that any Legislator that has questions or concerns about this project is certainly more than welcome to discuss with Pfeffer Development any level of detail that is involved in this project.

REPRESENTATIVE JOHNSON said that what he likes about this is that we are integrating the furniture and the technology but he would also like to take a forward-looking approach with utility corridors, etc., so as new technology grows we're not redesigning everything, that we build into the future as much as possible.

MR. O'NEILL agreed and said that was taken into account even in the basic building design. They try to provide the most flexibility to anticipate future improvements in technology, particularly in meeting room spaces.

CHAIR HAWKER noted that while the process is just beginning to get underway, there was discussion at the last meeting concerning a lease-purchase option for some time down the line; discussions are ongoing.

IV. OTHER COMMITTEE BUSINESS

a. Legislator Allowance Accounts

CHAIR HAWKER moved down the agenda to Legislator Allowance Accounts so interested parties present in the room could address the item. He said he had spent a great deal of time on this issue after a previous Legislative Council had created a compensatory allowance system. He summarized a technical memo prepared by Deloitte Tax LLP, one of the world's leading tax and accounting firms to say that there are three options for consideration. This committee does not have authority to change Legislators' base salaries - that's a statutory matter. At this time, the Chair

noted the presence of Representatives Gara and Guttenberg (via teleconference).

He said statute authorizes the existence of expense allowance accounts. He cited from **Sec. 24.10.110 Additional allowances**, "In addition [to salary of a Legislator], each member of the legislature is entitled to an annual allowance prescribed in accordance with AS 39.23 for postage, stationery, stenographic services, and other expenses." He said it's pretty clear by that statute that the allowance was intended to be for office expenses. It was not intended to be compensation to the legislature no matter how that might be structured.

10:53:45 AM

At this time, staff informed the Chair there was a technical problem and he took a brief at ease to allow for resolution.

10:54:23 AM

CHAIR HAWKER brought the meeting back to order and noted that this meeting was the first committee meeting to be held in this temporary space. He congratulated the technical staff who made this whole thing work in the two weeks they had to do so.

Chair Hawker, continuing the discussion of options available, said again there are only three options that are legal in accordance with the Internal Revenue Service. Very clearly, there can be an allowance account that is fully accountable. There is a set amount for each office, receipts are submitted to Legislative Affairs Agency Accounting, and Accounting pays for those receipts as long as they are deemed a legitimate legislative business expense. Everyone is treated the same.

There is also an option that is a non-accountable account, which is what the Legislature was given in 2013 by the previous Legislative Council. A set amount of money is dispensed at the beginning of the year, it's treated as taxable income, it has withholding against it, it's compensation. He went on to say that whatever is done with the net amount received requires no reporting back to the state or otherwise, it may be used as the Legislator wills. Again, non-accountable account resulting in taxable income is the second option and is very clear.

In working with Deloitte Tax, it took some time to determine if there were any other viable options. He wanted to see how much latitude there was to give individual Legislators the ability to choose between a fully accountable and non-accountable plan, which was a little bit more like what existed before the universal rule took effect for 2013. The concept is called a 'cafeteria' benefits plan. In this case, after much professional

research by some of the best people in the nation, they've concluded that the IRS hasn't ruled if a cafeteria plan could be used. The IRS has not issued the regulations that they proposed to deal with the cafeteria concept. Those regulations, if finalized, would probably be construed to preclude the ability of individual Legislators to choose between accountable and non-accountable. At best, it would be an uphill battle and probably unworkable in the long range, particularly when cast in the light of Alaska's statutory authority to have allowance accounts. He doesn't personally see anywhere in that statute that really allows any form of compensatory allowance account. The fully accountable plan is, in fact, the only viable route forward for proper implementation of that statute. It provides accountability, transparency, and reportability for state funds.

Chair Hawker said he intended today to put a motion on the floor that would direct LAA to re-write the Allowance Policy as a fully accountable policy. He then opened the issue to discussion. He invited Representative Gara to testify.

REPRESENTATIVE GARA said he hoped that the Legislature changes the Allowance Account Policy to one that our accountants and attorneys have said is legal. The problem with the current policy is that roughly \$1,000 goes into the Legislator's retirement account out of the office account. There is an office account statute that money should be spent on office expenses. Part of the current policy says one-third of the money goes to the federal government; that's \$300,000 that gets sent to the federal government because it's taxable. That doesn't seem smart. The public should have a right to know what office account monies are spent on. That's not the policy under the current system. At the end of the year, if there is money left over, it should lapse to the general fund. He thinks that's something the Legislature has made a mistake on over the years. He hopes the committee will adopt a policy that says Legislators will report their expenses to the Legislative Affairs Agency so the public can see what they are; that whatever money is not spent goes back to the general fund; and that none of the money goes into retirement accounts.

CHAIR HAWKER interrupted to ask if Representative Gara agreed with the motion about to be put forward. Representative Gara confirmed that was so. Chair Hawker repeated that the current policy was established by a previous Legislative Council, not the people seated here today. That policy, as it was put in place, necessarily lasted one year and Council is taking action today as soon as it's practicable in time to make sure the new policy is implemented as soon as it's possible to implement a new policy.

REPRESENTATIVE JOHNSON thanked the Chair for getting some assistance from some professional tax people. He said he thought the decision that was made in the previous Council was made somewhat without appropriate information. He said he didn't think Council had everything they needed to make the right decision. The decision then was to offer flexibility to a Legislator and let them do it on their own. With this newfound information, he has no doubt that the direction Council is going is appropriate. He asked if new staff would be necessary to administer 60 accounts.

JESSICA GEARY, Finance Manager for the Legislative Affairs Agency, responded that extra staff would not be needed. She said there were four people working in the Accounting office. They have handled accountable plans in the past and they can do it again.

SENATOR MEYER said he didn't care either way because he's always exceeded the allotment that he's been given. He asked whether the Senate shouldn't be given twice as much as the House since the Senate districts are twice as large. He said he has found that doing a mailing as a Senator means there are twice as many constituents to reach and it's going to cost twice as much. He said that's how he usually exceeds his allotment. Doing a mailing in a Senate district is \$7,000-8,000; two mailings generally uses up the whole allotment. He said he sees some savings by having the House be \$10,000 and the Senate be \$20,000 and is curious how it ended up being \$16,000 for the House and \$20,000 for the Senate. He acknowledged there would be some disagreement on that issue. He said if you do take the lump sum, you keep track of your own expenses and can claim it on income tax to get the money back anyway. In a way, one is still tax-protected. An accountable plan requires an extra step, so it isn't quite as efficient although he has no problem doing that.

CHAIR HAWKER, speaking to both points, responded that he wasn't part of this Council when the rates were established and that the issue can be revisited at any time. It's not something he was prepared to bring up today, but could be an item in the future. The point on the financial efficiency, however, is that even when taken as a non-accountable plan as personal income then spent and arguably getting a tax deduction on your form 2106 (Employee Business Expenses), there's an adjusted gross income hurdle before one can get any claim of those Employee Business Expenses; a built-in inefficiency there that you completely lose a portion of that allowance account depending upon one's personal adjusted gross income.

SENATOR MEYER said he agreed the cafeteria option should be off the table. He then asked why Legislators couldn't be given a choice to go accountable or non-accountable.

CHAIR HAWKER said he was responding as an individual Legislator who doesn't see how Council has the authority to create allowance accounts that are, in fact, compensatory. There is no clear authority in statute; the statute discusses an expense allowance account for specific things. It's silent on that being administrated through additional compensation when there is no accountability requirement. There is also a separate legal statute that defines legislator compensation that does not speak to the fact that your compensation is your salary plus an allowance account. He noted that Legal Services has said that it's "squishy" at best. He said he personally does not want to go that way. He wants to be crystal clear, absolutely accountable and within the letter of the law. If Legislator salaries need to be adjusted, we have a salary commission; we have handed off that responsibility to an outside party.

REPRESENTATIVE P. WILSON supported the fully accountable plan as the money goes further and she is already in the practice of keeping all her receipts.

REPRESENTATIVE JOHNSON said he has opted for a split between accountable and non-accountable as that provided the most flexibility, as well as he was initially concerned about the responsiveness of the Accounting system for reimbursing vendors. He found the response of the Accounting office to be very quick; vendors receive payment in a very timely manner with no complaints about late payments. He complimented Ms. Geary and her department for their efficient performance. He is really comfortable now with the way it is.

CHAIR HAWKER agreed that he was also a big fan of Accounting. He said that in implementing this policy, to please keep in mind that Legislators will occasionally have to pay for something out of pocket and submit the receipt for reimbursement; not every transaction can be billed to a vendor.

Chair Hawker, in response to Ms. Geary's assurance that Accounting tries to get reimbursement checks out as soon as possible, said they did an extraordinary job considering the number of folks they are working with.

REPRESENTATIVE JOHNSON followed up to say that most vendors will direct bill the state, so one doesn't necessarily have to pay out of pocket. Further, if a vendor does not currently have an account with the state, Accounting can assist in remedying that.

CHAIR HAWKER noted Representative Austerman had joined the meeting via teleconference.

MS. VARNI, responding to a question about the history of legislative allowance accounts and any legal opinions on the subject, said she did have a legal opinion from Doug Gardner, Legal Services Director, and Emily Nauman, Legal Services Staff Attorney. The allowance has gone through many different changes over the years. Accounting used to just cut the check without any deductions; then it went to an accountable/non-accountable plan and she'd be glad to share the legal opinion with Council members. She said maybe Doug or Emily would like to comment.

REPRESENTATIVE GRUENBERG, responding to a request by Doug Gardner to repeat his question with regard to the legal opinion, said that he was specifically interested in whether the statutes, under the current wording and Agency interpretation, would allow the balance of the unexpended account to be paid directly to the Legislator as taxable income.

CHAIR HAWKER said he could answer that question and the answer was absolutely not. That would cause every payment made to every Legislator to be re-characterized by the IRS as taxable income. It exposes the Legislature having all that income over many years past re-characterized for the fact that we have not been doing this right. It's a bit of a gray area, but as soon as Legislative Council became aware of the circumstance, they changed it to something fully allowable under the IRS statutes and in full compliance with the Internal Revenue Service code, regulations and procedures. We cannot go back to that residuary concept.

REPRESENTATIVE PRUITT said, in going back to the comment made by Senator Meyer, that if anyone needs more money it's the newer Legislators. The expenses of just getting an office up and running were rather high. He said he spent way more than his allotment that first year to try and communicate with items such as letterhead and appropriate TVs to watch Gavel-to-Gavel for instance.

MS. GEARY, in response to further questioning by Representative Pruitt, said food was reimbursed at 50% because that is what is deductible for business expenses on one's income tax return.

CHAIR HAWKER, in response to follow-up questioning by Representative Pruitt regarding allowable business expenses, said that he had established a working relationship with Deloitte Tax on an ongoing basis to be able to take these sorts of detailed

questions to one of the leading tax accounting firms in the world.

MS. GEARY, in response to a question by Representative Pruitt, said donations are not allowable business expenses with the exception of advertising. If an organization was going to advertise on behalf of a Legislator, that was not considered a donation.

CHAIR HAWKER said these issues could be further clarified by an amendment of statute if we chose to. Referring back to the existing statute, he doesn't know of anyone who spends funds on stenographic services. During the discussion, Ms. Varni indicated the statute came into existence in 1959. He said perhaps it is time to review the overall substantive elements of the statute which is separate from the compliance elements being discussed today. In further discussion, he said that his intent is to establish a policy that is durable. There are so many areas within state statute that become arcane and this may be one of those areas that need to be revisited.

MS. VARNI, in response to a request by Representative Johnson for a formalized approach to ensuring clear communication of this new policy, said she and Ms. Geary would work with Representative Hawker's office and the tax accountants to ensure the necessary information was imparted to all 60 members.

SENATOR MEYER added his support to ensuring detailed communication on how an accountable plan would work, especially for those that aren't familiar with tracking business expenses.

SENATOR OLSON opined that Legislators should be able to choose between accountable or non-accountable as only having an accountable plan causes undue hardships to certain Legislators; those Legislators with a district that includes several Alaska Bush communities in a remote location have trouble getting legitimate receipts and/or submitting and receiving reimbursements in a timely manner. Many of these communities deal on a cash basis only and he feels he is being put at a disadvantage by having to operate under an accountable plan. The allowance account does not cover the costs of mailings or traveling around such a large and remote district. His tax accountant does taxes for both rural and urban Legislators and has trouble figuring out what can or can't be claimed. He respectfully recommended there be an option to choose between an accountable and non-accountable plan, and said that was in place for several years, approved by a previous Legislative Council likely for the reasons he cited above.

CHAIR HAWKER responded that the decision is constrained by the statute. If the statute, which is obviously arcane, was modified to recognize contemporary legislative life, including the realities of Alaska, and it was modified in a manner to recognize that it could be a compensatory expense allowance structure, then allowing individual Legislators their own choice would be a very good option. He does not see that there's a sufficiently clear legal authority for Legislators to have any level of compensatory allowance at this time. It is a policy call, however.

SENATOR OLSON followed up to say that it is his understanding that there has not been a legal opinion that has given the same weight to the Chair's interpretation of the statute. It certainly has not been challenged as far as he knows. He believes Council is premature in trying to make a decision at this point.

REPRESENTATIVE P. WILSON said given the discussion it would be wise to look at the statute and see how it can be tweaked so that it will reach everybody. It would have to be taken care of right away at the beginning of session.

CHAIR HAWKER interrupted to say that for tax purposes, a decision needs to be made before the end of the calendar year. He then addressed Ms. Varni to say it was his understanding that there was some level of legal involvement on this issue under a previous Legislative Council that concluded it is legally unclear.

MS. VARNI said that the problem in previous years with the accountable plan was that the excess of one's allowance was not returned to the general fund and Council is fixing that today.

CHAIR HAWKER, noting that participants had other meetings they needed to get to, asked for a motion.

11:36:16 AM

REPRESENTATIVE JOHNSON moved that the Allowance Policy adopted by Legislative Council on December 13, 2012 be amended to be administered as a fully accountable plan for all legislators, with any balance remaining at the end of the calendar year lapsing.

A roll call vote was taken.

YEAS: Gruenberg, Johnson, Pruitt, Stoltze, P. Wilson, Coghill, Egan, Meyer, Micciche, Hawker

NAYS: None

The motion passed 10-0.

VICE CHAIR MICCICHE noted for the record that some Legislators kept an accountable plan individually because of constituent questions about the previous system. For those Legislators with challenging districts - for instance two of his communities require a boat ride - coupled with being a new Legislator, he wanted to assure the public that \$20,000 is not an adequate sum of money to cover those expenses. It's expensive to do legislative business in the state of Alaska and it's not a large sum of money even though it may sound that way to some.

CHAIR HAWKER, responding to a question by Representative Gruenberg, said the policy just passed will be effective for the coming calendar year (2014) and subsequent years, which is how the account is administered.

III. CONTRACT APPROVALS (CONTINUED)

b. Barrow Lease

CHAIR HAWKER, noting the absence of Representative Johnson, asked Representative Pruitt to please read the motions.

MS. VARNI said that before members is Barrow sublease extension renewal #3 in the amount of \$33,124.68 excluding CPI-U adjustments. Senator Olson and Representative Nageak use the Barrow LIO although it is her understanding that Representative Nageak has office space at a different location, but does use the services at the Barrow LIO.

SENATOR OLSON said his office is part of the LIO conference room due to limited office space in Barrow and he is in favor of continuing the lease at this location.

11:42:05 AM

REPRESENTATIVE PRUITT moved that Legislative Council authorize the chairman to approve a one-year renewal of the existing sublease agreement with Arctic Slope Telephone Association Cooperative, Inc. for the Barrow Legislative Information Office for a cost of \$33,124.68.

A roll call vote was taken.

YEAS: Gruenberg, Pruitt, Stoltze, P. Wilson, Coghill, Egan, Meyer, Micciche, Hawker

NAYS: None

The motion passed 9-0.

c. Discovery Preschool

MS. VARNI said the Discovery Preschool LLC contract is in its third and final one year renewal. They have 39 spaces for childcare and it serves year-round legislative, state and city employees, as well as nine childcare slots for Legislators and legislative staff who relocate to Juneau for session. The Director has received six applications so far for those nine spaces. In response to a question by Chair Hawker, Ms. Varni confirmed there was no money associated with this renewal. She said the legislature provides the office space but the financial arrangements are between Discovery Preschool and the parents who use those services and not the Legislative Affairs Agency.

Ms. Varni, responding to a question by Senator Meyer, said that Discovery Preschool does not pay the Legislature rent for that space; they have the same arrangement at the Federal Building in that the space is provided to the contracted childcare services. In follow-up, she confirmed that Discovery Preschool is not a non-profit at this time. In the years that they have been in that space, there have been no problems; they have provided a great service not only to the parents coming to Juneau for session that need childcare but for the community that has gone through a childcare provider shortage.

SENATOR MEYER questioned whether that space would be better used in another way. He noted that he was sympathetic as he had to go all the way to the valley to find childcare when his children were young. Having onsite childcare is convenient but said he was bothered that we are out of space and we're buying up additional buildings when that area is available. He further noted that there have been questions about compatibility in locating a childcare center close to a place that sees demonstrations which may not be appropriate for children to see. He said he wants to be sure that everyone's rights are protected while also providing this important daycare service and, as the Legislature runs out of space, all the alternatives are considered.

CHAIR HAWKER, noting that the issues raised by Senator Meyer may warrant further debate, asked what the consequences would be if this item was pulled from the agenda for additional consideration.

MS. VARNI said the contract would expire at the end of December, which would mean that 40 parents would need to find a place for their children to have childcare provided.

MS. LUCKY, staff to Representative Mike Hawker, said she was aware and sensitive to the issues that Senator Meyer has brought

up, and pointed out to members that this is the last year of the contract. Regardless of any action taken by the Council today, in the upcoming year, we will either be going out for RFP or the contract will be expiring. As a parent who has counted on this service before, and knowing many parents who have already put their names in and are looking for that childcare now, she urged Council to approve this renewal today. The contract will naturally expire next year if no further action is taken.

SENATOR COGHILL, agreeing with Senator Meyer, said that in the upcoming year, it might be a good idea to look at the appropriateness of the use of that space. It created an untenable situation where people's freedom of speech was blocked in a significant way. He said he did not come to this meeting with the intent to stop it but the point was well brought up.

REPRESENTATIVE PRUITT said it wasn't a good idea to stop it this coming year, that there was an implied commitment that there would be space available for children. He suggested that Discovery Preschool make sure it is very clear to the parents that are there that they recognize that because of the location, there could be certain protests or things they don't agree with, but by having their children at the daycare, they are expecting whatever possible adverse conditions may come up. He agreed it warrants a conversation in the upcoming year.

MS. LUCKY pointed out that Legislative Council did not get any comments or complaints from the Director of the preschool or parents of the children there. She said she is fairly sure that they are aware of the fact that there will be protests in front of the Capitol. They all are Juneau residents. She said approving the contract to go through this year and allowing the parents who already are counting on that childcare to be there is a good route forward. Since this is the last renewal, this will be a topic of discussion regardless of what is done today.

CHAIR HAWKER, presuming that the one year renewal is approved, directed Ms. Varni to have LAA take the initiative and responsibility of coming back early in the next year to put this before Council as a discussion item.

SENATOR MEYER agreed it should come before Council in a timely manner and added that traffic is also a concern. There are a lot of cars coming and going during the three months of session and he doesn't know what the State's liability is if a child gets hurt. Such items warrant more discussion if it's going to be done on a long-term basis.

SENATOR COGHILL said, logistically, the traffic on Seward Street is really difficult and wanted to know if there had been any accidents given parking and the slippery hill.

MS. VARNI said the Agency, in an attempt to alleviate the risks of children crossing the street, asked the City to switch the current loading zone to the other side of the street, but it was not allowed.

11:56:36 AM

REPRESENTATIVE PRUITT moved that Legislative Council authorize the chairman to approve a one-year renewal of the existing professional service contract with Discovery Preschool LLC.

A roll call vote was taken.

YEAS: Gruenberg, Pruitt, Stoltze, P. Wilson, Coghill, Egan, Meyer, Micciche, Hawker

NAYS: None

The motion passed 9-0.

IV. OTHER COMMITTEE BUSINESS (CONTINUED)

a. Legislative Procurement Procedure Amendments

CHAIR HAWKER said that at the last Legislative Council meeting, members approved a suite of amendments to the Legislature's Procurement Policy, which had been brought forward by Legal Services and procurement folks. Two of those amendments, numbers 7 and 10, were withheld at the request of Representative Gruenberg for additional consideration. He asked Mr. Gardner to briefly explain the two amendments.

MR. GARDNER said the two remaining amendments that were held over from the last meeting were part of a package of amendments that Legal Services has collected over a period of time, noticing issues such as changes in the law or areas where the procurement procedures are working less well than they could be. With regard to amendment number 7, after comments at the last committee meeting, he narrowed the amendment language. In those instances where there is a change in ownership for the lease of a legislative space that does not include a subordination agreement, this amendment allows the approval by the Chair of a simple assignment without a committee meeting. Where there is a subordination agreement, full Legislative Council approval is still required; the Chair alone cannot approve.

With regard to amendment number 10, Mr. Gardner directed members to the footnote included on the proposed amendment language, saying much of it had been added as an explanation since the last meeting. Right now, the Legislative Procurement Procedures don't limit a potentially successful bid protestor to their bid preparation costs. AS 36.30, which addresses procurement for the Executive Branch, does have that limitation. Like AS 36.30, this amendment is designed to protect the Legislature from a large damage claim that goes beyond bid preparation. This is one area where it seems reasonable for the Legislature to treat its procurement procedure the same as the Executive Branch and limit the compensation for someone who does present a successful bid protest to the costs of applying for a particular contract.

CHAIR HAWKER summarized that this is conforming the Legislative Procurement Policy to that established by statute for the Administrative Branch; the Legislative Procurement Policy is established under a separate statute but that statute really directs the Legislature to be consistent with the statutory policy established for the Executive Branch. Mr. Gardner agreed.

REPRESENTATIVE GRUENBERG said he appreciated the additional time to review the two amendments and was satisfied that they were good amendments for the reasons Mr. Gardner has stated. Representative Gruenberg also detailed some history about what constitutes damages and why Title 36 was limited.

[12:06:32 PM](#)

REPRESENTATIVE PRUITT moved that Legislative Council adopt proposed amendments 7 and 10 to the Legislative Procurement Procedure as presented.

A roll call vote was taken.

YEAS: Gruenberg, Pruitt, Stoltze, P. Wilson, Coghill, Egan, Micciche, Hawker

NAYS: None

The motion passed 8-0.

c. Change Order Analysis

CHAIR HAWKER noted this item did not require a quorum. Senator Micciche had requested a history of change orders on Legislative Council remodel projects due to concerns he heard expressed in previous meetings. Senator Micciche had completed his analysis, provided a written report to the committee and was given the floor.

VICE CHAIR MICCICHE summarized his written report for members, saying that his analysis showed that the three large scale remodel projects administered by the Legislative Affairs Agency (Terry Miller LOB, Thomas Stewart LOB and Legislative Finance LOB) were completed strictly following the Legislative Procurement Policies and the direction of Legislative Council. The first two projects (Terry Miller and Thomas Stewart LOBs) were completed using an up-front approval of the solicitation, award and expenditure designating a sum of money intended to cover the entire project with the exception of required change orders; on the third project (Legislative Finance LOB), expenditures went before Council each time an individual expenditure or change order exceeded \$25,000.

He further noted that Legislative Council is charged with the responsible fiscal management of legislative projects. Unless Council chose to look at approving project costs up-front or putting additional contingency funds into the contract structure in strict accordance with procurement procedures, Legislative Council responsibilities will continue to include approving each change order item that exceeds \$25,000 or 10% of the original amount of the construction contract, whichever is more. He said he personally feels that a second set of watchful eyes is imperative to a robust and transparent public process, but that he doesn't feel Council should rake LAA over the coals every time there is a change order. He said he enjoyed the process of completing his report and has background information of the change orders attached to the packet. He said he investigated other states and of those that responded, found that most states generally have a higher amount of change order that needs approval by a Legislative Council; for example, Idaho's limit is \$100,000.

CHAIR HAWKER thanked Vice Chair Micciche for the substantial time and effort he put into the report and Senator Coghill added that it was very well done and he appreciated Senator Micciche digging into it.

There being no further business before the committee, the Legislative Council meeting was adjourned at 12:13 p.m.

[12:13:58 PM](#)