



Alaska State Legislature Legislative Council Minutes

OCTOBER 30, 2013
1:00 PM

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Mike Chenault
Representative Max Gruenberg
Representative Lance Pruitt
Representative Bill Stoltze
Senator Charlie Huggins
Senator Kevin Meyer
Senator Gary Stevens
Senator Lyman Hoffman, Alternate Member

MEMBERS ON TELECONFERENCE

Senator Peter Micciche, Vice Chair
Senator John Coghill
Senator Dennis Egan

MEMBERS ABSENT

Representative Craig Johnson
Representative Peggy Wilson
Senator Mike Dunleavy

AGENDA

APPROVAL OF MINUTES
CONTRACT APPROVALS
OTHER COMMITTEE BUSINESS

SPEAKER REGISTER

Don Johnston, Outgoing Building Manager, Legislative Affairs Agency
Jeff Goodell, Incoming Building Manager, Legislative Affairs Agency
Pam Varni, Executive Director, Legislative Affairs Agency
Curtis Clothier, Manager, Information Services, Legislative Affairs Agency
Jessica Geary, Finance Manager, Legislative Affairs Agency
Juli Lucky, Staff to Representative Mike Hawker and Committee Aide to Legislative Council
Wayne Jensen, Jensen Yorba Lott, and Project Architect on the Capitol Building Restoration
Linda Lord-Jenkins, State of Alaska Ombudsman
Doug Gardner, Legal Services Director, Legislative Affairs Agency

1:00:12 PM

I. **CHAIR MIKE HAWKER** called the Legislative Council meeting to order at 1:00 p.m. in room 670 of the Anchorage Legislative Office Building. Present were Representatives Hawker, Chenault, Pruitt, and Stoltze; and Senators Huggins, Coghill (via teleconference), Egan (via teleconference), Meyer, Stevens, and Hoffman (via teleconference - alternate member). Representative Gruenberg and Senator Micciche (via teleconference) joined the meeting shortly after the call.

Chair Hawker noted for the record that Representative P. Wilson was absent due to travel; and that Senator Mike Dunleavy, was currently chairing another committee meeting. Chair Hawker also explained that Senator Dunleavy was the newest member of Legislative Council, replacing Senator McGuire who resigned to pursue other endeavors. The Chair welcomed Senator Dunleavy to Legislative Council.

Chair Hawker noted that Don Johnston, Building Manager, was retiring at the end of December after tremendous service to the State. The Chair welcomed Jeff Goodell, new Building Manager, and asked Mr. Johnston to do an introduction.

DON JOHNSTON, Building Manager for the Legislative Affairs Agency, said that Jeff Goodell was selected as the new Building Manager and that he has an extensive background in construction and construction management. Mr. Johnston said he felt the Agency had made a good selection and that the Capitol Complex buildings will be left in good hands.

CHAIR HAWKER, after a round of applause for Don Johnston, said there would be a more appropriate recognition of Mr. Johnston's service in January when the Legislature is in Juneau for session.

MR. JOHNSTON responded that it was not necessary although much appreciated, and added that the State of Alaska has been good to him and his family and he appreciates that. He appreciates the present Council's help and support that they've given him to do his job, as well as the support of past Councils. He said he couldn't have done his job without them, and that it's been an honor and a pleasure to serve as Building Manager for the Legislature.

CHAIR HAWKER formally welcomed Jeff Goodell and said the building manager is an important and often under-appreciated position that truly gets things done behind the scenes. He said Mr. Goodell, in his new job, would be spending time with Legislative Council, which is the administrative committee for the Legislature.

JEFF GOODELL, incoming Building Manager, said he is honored to follow in Don Johnston's footsteps and hopes to carry on in the same manner. He said he is honored to have been offered the job and to work for the State, the Legislature and the people of Alaska. He said he has met a lot of great people and hopes to take care of the buildings in the same way they have been cared for over the years. Don is bringing him into the fold; he's got some things to learn and is ready to rise to the occasion.

II. APPROVAL OF MINUTES
a. August 23, 2013

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SENATE PRESIDENT HUGGINS moved that the minutes from the Legislative Council meeting on August 23, 2103, be approved as presented.

CHAIR HAWKER, in response to a question by Senate President Huggins, clarified that in the minutes was an inadvertent error on page 18 where Representative Johnson said "...Second Amendment..." when he meant "First." After confirming with Representative Johnson on the intent, the correction was marked on version of the minutes presented to the members.

The minutes of August 23, 2013, were approved without objections.

III. CONTRACT APPROVALS
a. Kenai LIO Lease Renewal

PAM VARNI, Executive Director of the Legislative Affairs Agency, stated that before Council is the Kenai office space lease renewal for FY 14 for a cost of \$106,485. This item had been previously deferred to allow time research the increase of approximately \$30,000, based on the improvements to the building made by the Department of Transportation (DOT). After discussions with DOT Commissioner Kemp, the FY 15 lease price will be decreasing to \$51,982.64. The lease price fluctuation is because is no building fund, so DOT prorates costs of improvements among the different occupants.

CHAIR HAWKER noted that DOT recaptures all of its costs in a single year and that the Legislature gives them the budget authority to do that. He said that this issue has been researched for several months, and the increase reflects improvements to common areas. Improvements chargeable to entirely to another tenant are not included.

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SENATE PRESIDENT HUGGINS moved that Legislative Council authorize the chairman to approve a one-year renewal of the existing lease agreement for the Kenai Legislative Information Office and Legislators' District Office space for a cost of \$106,485.00.

The motion passed with no objections.

b. Kodiak LIO Lease Renewal

MS. VARNI said this is a five-year renewal of the current Kodiak lease for the period of November 1, 2013 - October 31, 2018, in the amount of \$69,848.64 per year, excluding the CPI-U adjustment each July.

CHAIR HAWKER, after confirmation that legislators with Kodiak offices were satisfied, asked for a motion.

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SENATE PRESIDENT HUGGINS moved that Legislative Council authorize the chairman to approve a one-year renewal of the existing lease agreement for the Kodiak Legislative Information Office and Legislators' District Office space for a cost of \$69,848.64.

The motion passed with no objections.

c. Sitka LIO Lease Transfer

MS. VARNI said this item is a lease transfer for the Sitka LIO. The building is changing ownership from Shee Atiká Management, LLC, to SCOJO, LLC, which requires Legislative Council approval for this change in ownership, as well as approval of a Subordination, Non-Disturbance and Attornment Agreement that Legal Services will prepare.

CHAIR HAWKER said that this is simply the legal work necessary to recognize that our lease is being transferred from one entity to another. The transfer has no financial consequence on the Legislature at this time.

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SENATE PRESIDENT HUGGINS moved that Legislative Council approve the name change of the landlord for the Sitka Legislative Information Office and Legislators' District Office space from Shee Atiká Management, LLC, to SCOJO, LLC and authorize the Legislative Affairs Agency to negotiate and execute a Subordination, Non-Disturbance and Attornment agreement.

The motion passed with no objections.

Vice Chair Micciche joined the meeting via teleconference at this time.

IV. OTHER COMMITTEE BUSINESS

a. Late Travel Reimbursement Requests

- i. Rep. Saddler**
- ii. Rep. Kerttula**

JESSICA GEARY, Finance Manager for Legislative Affairs, in response to a request by Chair Hawker, stated that this is a revised travel and per diem request for Rep. Saddler that was turned in more than 60 days late, and two late travel and per diem requests from Representative Kerttula. Ms. Geary said she has reviewed all three of the claims and they are all accurate.

CHAIR HAWKER said it was fair to note that Representative Saddler's claim was previously discussed in this committee. It has since been adjusted and he asked Ms. Geary to briefly explain the adjustment.

MS. GEARY said that the original claim included a lodging reimbursement request and meal per diem that are not in the revised claim. Per Council policy, Rep. Saddler was not eligible for the meal per diem as it was during session. There was also a rental car request on the claim, although further research did not find a charge for a rental car. Representative Saddler revised his original request to ask only for air fare reimbursement in the amount of \$525.30.

CHAIR HAWKER noted that present in the room to answer questions if necessary were Representative Saddler and staff for Representative Kerttula.

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SENATE PRESIDENT HUGGINS moved that Legislative Council approve the following late travel and per diem claims:

- Representative Dan Saddler for travel commencing on March 22, 2013
- Representative Beth Kerttula for travel commencing on March 7, 2013 and May 17, 2013

The late travel and per diem claims were approved with no objections.

b. Capitol Restoration Update

CHAIR HAWKER introduced Wayne Jensen, the project architect, to present a status report on the Capitol Seismic Retrofit and

Exterior Renovation, Phase I. Chair Hawker reminded members that this project has been underway for some time; it was originally a three-phase project, but the last two phases will likely be incorporated into one. Phase I is now complete and Mr. Jensen will present an update to the Council and discuss the final accounting.

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WAYNE JENSEN, Jensen Yorba Lott, said he had a brief PowerPoint presentation showing some photographs of the Phase I construction as well as an update of the status of Phase II.

Mr. Jensen delivered the PowerPoint presentation on Phase I of the Alaska State Capitol Seismic Retrofit and Exterior Renovation.

NOTE: The PowerPoint of Phase I is available on BASIS.

1:48:45 PM

CHAIR HAWKER, following the Phase I presentation, brought up the change order for Phase I work. He noted that this item was going to be on the November agenda, but was ready in time for this meeting. The contractor's final billing exceeds the approved contract amount by \$43,276.02. He asked Mr. Jensen to explain the overage.

MR. JENSEN said there were three components to the contract. The first one was the lump sum base bid, which, as a hard bid item, did not change. The second component was a unit price for repairing the joists in the crawlspace. The contract assumed 100 joists, and the bidder provided a unit price for each. Once the contractor was able to access and test the joists, they determined 132 joists required replacement. Although the amount per joist was fixed in the contract, the quantity of joists increased, resulting in an overage of \$18,072.00. The final component was the contingency allowance for the work under the portico, the extent of which could not be known with certainty until contractors could access the area. Once the portico was open, the contractors were able to develop a series of steps to repair the portico and determine that the work required would likely exceed the original bid amount. Costs were monitored on a weekly basis, with the contractor providing information to building manager Don Johnston and to Mr. Jensen. In the past couple weeks, the costs ran up against the contract amount. The contract contingency for unknown conditions underneath the portico ended up costing \$25,204.02 more than budgeted.

Mr. Jensen, at the request of Chair Hawker, confirmed for the record that this is the final billing for Phase I of the project.

VICE CHAIR MICCICHE noted for the record that although he is not in the committee room presently, he went through a detailed review in person yesterday with LAA staff.

SENATOR EGAN noted for the record that he also has been briefed about this project from his location in a hotel room across from Virginia Mason. He said he thinks Wayne Jensen, Paul Lukes and the current contractor on Phase I should be commended. They went into this project totally blind and now the cost overrun to complete Phase I is \$43,276.02. To him, it is incredible. In his short time in the Senate he has seen many state projects with horrendous cost overruns. He has been involved in city politics for years and they've had cost overruns. This one is miniscule. He said if Council can approve the \$43,276, he'd even chip in the \$0.02.

CHAIR HAWKER said, as an ad-hoc observer, his office participated in the weekly project management briefings in Juneau. He said he's watched this develop and tends to share the sentiments of Senator Egan that it's basically a well-managed project. The overrun involved things the contractor simply couldn't have known until they opened up the can.

MR. JENSEN said he was just reminded that even though they added quite a bit of work underneath the portico, the project was still done on time. Today is the contract completion date and the doors will be open in the front of the Capitol tomorrow. He said that was a credit to the contractors that worked diligently, bringing on extra staff in order stay on schedule: getting the first phase complete by the start of the session.

REPRESENTATIVE STOLTZE, noting there should be a process whereby extra costs are submitted and approved, asked if that process had been followed.

CHAIR HAWKER responded that the request for a change order is being brought to Council for approval in the form of a motion approving the change order. This is based upon the costs that were necessarily incurred for the contractors to complete the work. He said further that he has been apprised along the way of the approaching change order, and asked Mr. Jensen to put on the record how thorough the Chair has been in doing due diligence and minimizing the change order. He said he was informed of the process along the way.

MR. JENSEN said that there were 20 reports on a weekly basis to monitor and approve these costs. It wasn't until the last few weeks that they realized they were running up against the contingency amount.

VICE CHAIR MICCICHE added that there had been a request for him to bring a report back of the history and nature of change orders for the last few projects, which he plans to do at the November meeting. In that report, he'll be talking about the change order for the Legislative Finance remodel, the Thomas Stewart Building, and the Capitol Restoration Project. He said this illustrates the sort of thing one may run into with a lot of experience in large projects. He thinks you'll see the trend on a lot of the change orders are just similar due to the fact that we're digging into much older buildings without a substantial history of what you're going to find. The as-builts and the known conditions before the project begins are limited. Although he is someone who doesn't like to spend money or like surprises, he thinks the report will clarify some of the conditions that caused a lot of the changes in the three projects he's looking over.

CHAIR HAWKER noted that the change order being brought forward today of \$43,276.02 allows Council to pay the project to completion and the project has, in fact, been completed on its scheduled date.

SENATE PRESIDENT HUGGINS said that before he makes the motion, procedurally, he agrees with Representative Stoltze in that bad news doesn't get better with time and if we have a process for addressing changes it's much better for all of us and easier to defend. How much money we spend may end up being the same but he would encourage us to try to observe that protocol.

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SENATE PRESIDENT HUGGINS moved that Legislative Council approve a change order the amount of \$43,276.02 for costs to complete Alaska State Capitol Seismic Retrofit and Exterior Renovation, Phase I, from existing legislative funds authorized by the Council Chair.

The change order was approved with no objections.

CHAIR HAWKER said that with respect he believes protocol was followed. If someone on Council wants to be more involved in any project, it's a matter of talking to the Chair and they can certainly be added to the project management meetings that occur in Juneau every Monday morning.

MR. JENSEN, at request of the Chair, resumed his presentation by taking up Phase II, the components of which are the CM/GC construction contract, the seismic retrofit of the rest of the building, the renovation and energy upgrade of the exterior walls, and the heating system replacement.

Mr. Jensen said that there will be a construction manager/general contractor type of approach to the next phase of construction contracts. In essence, a contractor will be selected based on qualifications and experience as well as some price information, but it won't necessarily be the low bidder. Rather, the selection committee will choose the candidate it feels is the most qualified. The next step will be to work with that contractor for the next couple of months to complete the documents, work on the project phasing - which is a critical issue with work ongoing for potentially the next three construction seasons. The selected contractor will need to consider and relate how the constructability works; and how much work can be done in each construction season. It will be a contract very similar to what a lot of other State agencies are using. It is used frequently and successfully on very large projects.

Mr. Jensen, in response to a request by Chair Hawker, said they are just completing a cost estimate based on the current status of the drawings and are reconciling that amongst the design team. They are working with an independent cost estimator, HMS from Anchorage, on that work. HMS has been doing this for 40 years in Alaska. That will give a negotiating point from which to start. They will have an estimate of construction costs based on the current scope of work.

NOTE: Please refer to the PowerPoint presentation on BASIS for more details on Phase II.

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MR. JOHNSTON reminded committee members of the Legislative Council website which details project progress weekly.

SENATOR EGAN, after further discussion, thanked everyone involved in this project. Nobody knew what they were getting into and it came out positive. He commended Don Johnston, Wayne Jensen and Jensen Yorba Lott, Paul Lukes and the contractor.

MR. JOHNSTON added that the structural engineer who is part of the design team and is working on this project is the structural engineer that worked on the seismic retrofit of the Washington State Capitol as well. He feels there is a really good team to address this project.

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CHAIR HAWKER called an at-ease for a five minute break.

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CHAIR HAWKER called the meeting back to order. He said the next item on the agenda is legislative access to Facebook. He noted

for the record those members present after the break: Senators Hoffman, Meyer, and Stevens, Representative Chenault, Chair Hawker, Senator Huggins, and Representatives Pruitt, Gruenberg, and Stoltze were in the room. On teleconference, Senators Micciche, Coghill and Egan confirmed their participation. Chair Hawker further noted that Senator Hoffman, as an alternate, was not required for a vote although he was welcomed to participate in the conversation.

c. Facebook Access

Chair Hawker said that the issue before Council is how much access will be allowed for Facebook on legislative computers. This issue has been long discussed in this committee over many years prior to his chairmanship. It is time to bring some finality to this issue with up or down votes. He noted for the record that at least one person was on teleconference who wished to offer testimony, Linda Lord-Jenkins from the Ombudsman's office. Also available for questions was Linda Day from Legislative Audit (via teleconference), Carolyn Kuckertz from Senate Majority Press Office and Curtis Clothier, Information Services Manager (via teleconference).

LINDA LORD-JENKINS, State of Alaska Ombudsman, said her purpose was to speak to the Council about the question of Facebook access for the Ombudsman's Office. She said she will restate the information provided in her letter of January 10, 2013. All of the reasons that she cited in her letter are already on the record and she would agree with those again and call Council's attention to them. The State has changed somewhat in Facebook usage. A quick inventory by her office of Facebook usage by State of Alaska agencies showed there were more than 38 agencies with Facebook pages. Many are agencies that are among those for which her office receives the most complaints: Division of Motor Vehicles, Alaska State Troopers, Child Support Enforcement, and Child Protective Services. As it stands right now, she cannot access a State of Alaska Facebook page that provides information to Alaska citizens. Frequently, that information is relied upon by the public in making decisions, so the Facebook page information would be pertinent to any investigation that her office has. The reality is that those of the "Millennial Generation," ages 18-24 and up, are living their lives on social media and they use that media as a source of information. It's an informational tool about the news, about how to contact state government. It can be a very helpful tool for outreach for citizens to let them know the services offered by the Ombudsman. It is a very useful investigative tool, as cited in her January letter; cases pivot on what has been on Facebook. Again, her office cannot access it using State equipment, so their

workaround has been that she brings a personal iPad to work and occasionally has to check things related to investigations on that iPad. Other Ombudsman offices that frequently use Facebook include the Ontario Ombudsman and the Dayton, Ohio Ombudsman; they use it for investigations and outreach and to highlight concerns. It's a very easy and quick way to get information to the public. She believes it would be an excellent investigative tool for the Alaska Ombudsman to use. She further noted that she would require her staff to log any Facebook use to maintain a usage record, and she will prohibit personal use.

CHAIR HAWKER asked if anyone else wanted to testify on this issue. No one stepped forward, which brought this issue back before Council. He reiterated that this committee had a lot of conversation about policing Facebook use. His personal sense and opinion is that there are ethics policies in the State and universal legislative policies regarding personal computer use, all of which will apply to using Facebook. His intention as we bring these motions forward would be a first motion which would allow Facebook access from all legislative computers for legislative business only. Should that motion fail, it is appropriate to take a look at the major user groups within the Legislature, as there may well be different opinions based on the different user groups.

The second motion would be allowing access for the nonpartisan legislative agencies and their staff for legislative business only. That would include LAA, Ethics, Ombudsman, etc. These are specifically identified in that motion. The third motion would ask whether to allow Facebook for legislative press and webmasters, who may have certain needs that are different from the non-partisan agencies. The last motion would be to allow access for Legislators and staff. The current policy, which has officially expired but has continued because it has not been addressed by Council, allows access for the press offices and webmasters, as well as individual Legislators. Nothing in the current policy prevents a Legislator from logging on to Facebook from every computer in his office. It is not easily policed.

Before bringing any of the four motions forward, Chair Hawker opened up the issue for conversation.

Chair Hawker, in response to a question from Representative Pruitt, confirmed that if motions 2-4 passed, it would be the same as passing motion 1.

SENATOR COGHILL asked if it would be wise to use the term "social media" rather than Facebook.

CHAIR HAWKER responded that addressing Facebook is appropriate as it has been the only social media outlet that has been addressed by this committee and isolated from the universal policy for computer access. The other social media outlets have no restricted access at this time.

CURTIS CLOTHIER, Information Services Manager for Legislative Affairs Agency, in response to a question by Senator Meyer and at the request of Ms. Juli Lucky, staff to Representative Hawker, said that while he doesn't have exact figures, working with NCSL and his colleagues in other states, he doesn't know of any other states that are actively blocking access to Facebook at this point. He said most of them never did block it. Other states may have some social media policies similar to the Alaska Legislature's, but at this point, other state government agencies and legislatures are pretty much going with it for a number of reasons, including some mentioned by Ms. Lord-Jenkins. They need to work with other state agencies, local governments, businesses and news outlets, which are all now using Facebook.

REPRESENTATIVE STOLTZE said that he has ongoing concerns that Facebook is social media. He views the Legislature as a business environment and social media has a lot of connotations. He said he appreciates it being confined to Facebook as he doesn't know all the permutations of different types of social media. He said there are probably some that his good friend, the Senator from North Pole, would find pretty unsavory through a broader application and unintentionally so. He said he appreciates that it is confined to something that we know what it is and is pretty broadly accepted. He has an ongoing concern about the acknowledged use for political purposes. It is the nature of the beast; you collect data, names and it was acknowledged that information can go right to your campaign chairman or your campaign. He said he would be a gentle opposition to bringing a social activity and expanding that into the workplace and the potential political use.

CHAIR HAWKER, in response to a comment by Representative Gruenberg, restated that the only social media venue that is currently being restricted by action of this committee is the software program known as Facebook. All other forms of the generic term 'social media' are currently being regulated in accordance with the overall policies and procedures for the use of computers and other technology by legislative staff and legislative agency employees. The point of these motions would be to definitively remove a proscription that Council has established previously and that has actually expired, leaving the State without a specific policy on this issue. The absolute point is that it is for legislative business only. Legislative business

is intended to mean in compliance with all of the statutes, ethics and procedures and policies established for the operations of the Legislative Branch.

Chair Hawker, in response to a question by Senate President Huggins about the term "nonpartisan" in one of the motions, noted that staff, such as the press and the webmasters are people who work in the partisan branch of the Legislature. They work for the majority and the minority in the Legislature who have partisan, dialectic interests. Likewise, individual Legislators are viewed as partisan in that they are political. The use of the word "nonpartisan" defines the agencies which are common agencies and by statute are not allowed to engage in partisan activities.

SENATOR STEVENS said that, with the understanding that it is very clear that use is for legislative business only, with regard to email and cell phones there is a de minimus clause that says if it doesn't cost the State any more, one can use a cell phone or email for personal use. He asked if this is stricter than the current policy regarding email and cell phones or is it simply complying with the current policy.

CHAIR HAWKER noted that there is a universal policy that is "thou shalt not use legislative assets for personal business." Any de minimus standard is one of the Legislature's own creation, but the policy is still you can't do it. There is an element of forgiveness within the policies and procedures. Facebook would be treated no differently than any other technology or software or communications activity that is available to the Legislature. That type of thing ultimately gets adjudicated as to what constitutes an unavoidable and de minimus activity. The intent is that should the motions pass, Facebook itself will be allowed for business purposes. It is bringing Facebook into the fold of activities that will be managed under the existing global umbrella for managing technology within the Legislature.

Chair Hawker, in response to a follow-up question by Senator Stevens, asked Joyce Anderson to speak to the de minimus use issue.

JOYCE ANDERSON, Administrator for Select Committee on Legislative Ethics, said there is a part of a statute that addresses de minimus use of state resources. The term "de minimus" isn't used, but basically that's what it means and it allows Legislators, staff and those working for a legislative agency to use State resources for de minimus use. Some examples she has used in her ethics training is that we all call home every once in a while or we might send an email to a friend during the day. Responding directly to the question asked by Senator Stevens, based on

previous advice that's been given in discussion in the Ethics Committee, without having a ruling from them, she would say that yes, Facebook could be used in a de minimus way.

Ms. Anderson, in response to a follow-up question by Chair Hawker, said that the only complaint that the Ethics Committee has ever had regarding de minimus use was about staff forwarding personal mail to the Capitol. The committee determined that two or three pieces of mail per week would be considered de minimus. In another ruling regarding de minimus use involving mailings outside of one's legislative district, the committee decided not to come up with a piece amount.

CHAIR HAWKER confirmed that the de minimus rules in existing statute and policies would apply to Facebook as they do to all other use of state computers. He noted that it is not an official opinion of the Ethics Committee, but guidance based on Ms. Anderson's experience.

REPRESENTATIVE PRUITT asked Doug Gardner, Legal Services Director, if someone is monitoring his Representative Facebook page and deleting stuff that he doesn't agree with or being a little bit more involved with it, does that create a legal concern because they are utilizing State resources to operate something as a Representative and potentially monitoring someone's First Amendment opportunities.

DOUG GARDNER, Director of Legal Services, after confirming the Facebook page in the example is one used to communicate with constituents, said that he wasn't sure one was required to agree with everything and needed to allow it all to be posted, but he didn't know the answer. It is a State-sponsored page, running off a State computer. He said he thinks that if a Legislator didn't like something that was posted and their response went beyond the scope of their legislative duties, they may have some liability if it was something derogatory. He said he just doesn't know the answer about how the First Amendment might affect a Facebook page being run off a State computer. These are emerging issues.

CHAIR HAWKER said we can play lawyer, and he's not one, but if someone comes by and puts a sticky note on your office door, can you take the sticky note off your door.

SPEAKER CHENAULT said this brings up his concerns about FOIA requests with regard to one's email and the possibility that someone might request to try to capture all of one's Facebook postings. He said he's not afraid of the technology but rather of how once it gets out there, it doesn't come back.

MR. GARDNER, in response to a clarification question from Chair Hawker, said that the first question would be whether one has legislative immunity through the records policy and it may be that those are records that may be in control of your office, albeit computer, and he does not know if an office would have to produce those things if requested.

Mr. Gardner, responding to a question by Representative Gruenberg, said legislative immunity applies throughout the year. There is a statute that makes it clear the legislative immunity applies during the interim as well as during session. If you generate a record, it's in your office and in your possession as a Legislator; you do not have to produce that if it's within the scope of your legislative duties. Certainly, communicating with constituents and otherwise doing some of the things you could do on Facebook could be considered within legislative immunity. He agreed with Representative Gruenberg's comment that the issue is not when it's done, but rather the purpose.

Mr. Gardner further stated, in response to a follow-up comment by Representative Gruenberg, that there could not be a policy that defines the scope of the privilege. He said he thinks that, as Representative Hawker mentioned, there are so many facets to legislative immunity that it would be very difficult to fashion a policy to cover everything. He said it would be dangerous to try in the sense that if something wasn't covered, there would be other arguments about why it wasn't covered. He said it was better to rely on the common law and Constitution, and cases in Alaska.

Mr. Gardner said, in response to another follow-up question by Representative Gruenberg, that we should rely on the analysis in the common law throughout the United States. It is certainly the case law that we've gotten from the Alaska Supreme Court on this point, which is that legislative immunity is considered very broadly when any legislative purpose, however tangential, is present before the Court.

REPRESENTATIVE GRUENBERG said he thought it was important to put on the record that if it is Council's intent that we be following the common law here and that contours should be as broadly interpreted as it can be under the common law. If we have some legislative record, some legislative history, something in here, that may help it. There may be a discovery motion to get into your Facebook or whatever it is and that's where the real litigation may probably occur.

MR. GARDNER said he wasn't prepared to get very technical regarding Facebook but one thing he doesn't know is whether

Facebook communications between a Legislator and a constituent are maintained on a State computer or maintained on Facebook's mainframe somewhere in the world. That might also factor into the discussion in terms of possession of those records.

He added that Legislative Legal Services has always been committed to all 60 clients. They argue and assert legislative immunity as broadly as possible. As long as there is a good faith, factual argument and the case law and the Constitution support it, legal services will always defend our legislative clients to the maximum.

REPRESENTATIVE STOLTZE said he was a little confused about why there would be a need to do a FOIA or any kind of search. Facebook by its nature, you're throwing your life out there for everybody to see. You've already done that in advance, you don't need to do a search. You've already revealed everything you care to share and sometimes more as people find out.

CHAIR HAWKER pointed out that passing any of these motions does not mandate or require anyone to set up an account acceptable under state policy here by any individual Legislator or agency. That is purely a voluntary thing to begin with. We are not mandating or creating anything, which he agreed makes it a completely voluntary exposure. He said for the record that no matter how he votes on this he has no intention personally of using Facebook for legislative business. None whatsoever. Other folks have expressed a significant desire to.

REPRESENTATIVE PRUITT said that you can have private conversations amongst individuals on Facebook and he thought the conversation related to deleting information can play into the FOIA request discussion we were just having. He thought that was probably an important point to put out there.

MR. GARDNER added that when he was prefacing his remarks about public records he was trying to respond to the Speaker's question about his interpretation which was, can somebody get his records. He is aware that there is a private chat function which adds another dimension. He said Representative Stoltze makes a good point that much of what happens on Facebook is out there for the world to see. He's not sure it all is though, and there is that private chat function which may get back into the records issue. He said that if a person were to stray, perhaps, from legislative purpose such as constituent contact into something like personnel work or contracting or other areas where legislative immunity hasn't been extended, those are the things that probably wouldn't be covered by immunity and could be subject to some type of a record request if they were in a private chat.

SPEAKER CHENAULT said he would just make the comment as it was just stated that you can go private but at what point does that private conversation change. There is a Facebook program that we're using on State time to do State business and you're going to go private with it; he doesn't know if there can be a FOIA request or not on that. It just causes him concern.

REPRESENTATIVE GRUENBERG said he can see a situation where people are on Facebook for some reason contacting your office as to a potential course of action the Legislature may be taking. That may very well be intended to be private and privileged, and the question would be, since it's on Facebook, in some manner has the privilege been waived. He said he was asking how we can protect ourselves in advance. He said he thinks we're trying to make certain we can retain our privacy.

CHAIR HAWKER said that is exactly why, at this juncture, the committee has had this debate for ongoing years with a long history of the same questions being raised, asked, answered, not answered. It's why right now we are bringing these up as up or down votes and if anyone for whatever reason is uncomfortable with allowing access in accordance with the motions being made, it would be the reason why one would vote no. No one questions motive on this committee. If one's got a concern in one's own heart, that's why one votes either in the affirmative or the negative. He said his hope is that, with this 28th Legislature here, we would bring some finality to this issue. We have been operating under a temporary policy that actually expired quite a while ago. This committee should have taken action in the 27th Legislature to resolve this and it did not.

SENATE PRESIDENT HUGGINS said he was going to be charging out of here in a few moments. He came here prepared to vote this and he is not dodging any votes. If he were here, he would vote no on motion #1. He would support motion #3 on press and webmasters. He said to take it one step further, if it keeps you from running for the Legislature because you can't have Facebook in your office, then don't run; or buy your own computer and do it on your own time. Same thing for staff. If we don't get to the vote, you heard what his vote would be.

CHAIR HAWKER said Senator Huggins has very clearly stated there are no right answers to this question; it is a pure policy call.

3:19:26 PM

SENATE PRESIDENT HUGGINS moved that Legislative Council allow access to Facebook from all legislative computers for legislative business only.

A roll call vote was taken.

YEAS: Micciche

NAYS: Chenault, Gruenberg, Pruitt, Stoltze, Huggins,
Coghill, Egan, Meyer, Stevens, Hawker

The first Facebook motion failed 1-10.

3:20:36 PM

SENATE PRESIDENT HUGGINS moved that Legislative Council allow access to Facebook for nonpartisan legislative agencies and their staff for legislative business only.

CHAIR HAWKER objected to comment that Representative Gruenberg was concerned with the language in this motion because it states the Legislative Affairs Agency, it did not state what sub-agencies comprise the Legislative Affairs Agency. He said he would like to place on the record and a written copy will be provided to members that for the purposes of this motion, "nonpartisan legislative agencies" means (1) the Legislative Affairs Agency, comprised of the Office of the Executive Director, Legislative Administrative Services, Information and Teleconferencing, and Legislative Legal and Research Services; (2) the Select Committee on Legislative Ethics; (3) the Legislative Finance Division; (4) the Legislative Audit Division; (5) the Office of the Ombudsman; and (6) the Office of Victims' Rights."

Chair Hawker, in response to a request by Representative Gruenberg, agreed to make part of the record the Doug Gardner memo of October 28, 2013 (full text of memo may be found in committee documents on BASIS).

A roll call vote was taken.

YEAS: Pruitt, Stoltze, Coghill, Egan, Meyer, Stevens,
Micciche, Hawker

NAYS: Chenault, Gruenberg, Huggins

The second Facebook motion passed 8-3.

3:23:29 PM

SENATE PRESIDENT HUGGINS moved that Legislative Council allow access to Facebook for legislative press offices and webmasters for legislative business only.

CHAIR HAWKER objected for the purpose of a roll call vote.

A roll call vote was taken.

YEAS: Gruenberg, Pruitt, Huggins, Coghill, Egan, Meyer, Stevens, Micciche, Hawker

NAYS: Chenault, Stoltze

The third Facebook motion passed 9-2.

3:24:45 PM

SENATE PRESIDENT HUGGINS moved that Legislative Council allow access to Facebook for legislators and their staff for legislative business only.

CHAIR HAWKER objected for discussion.

REPRESENTATIVE PRUITT asked if Council failed to pass this motion would that remove the current policy that allows Legislators to use their logins to access the State's computer system for Facebook.

CHAIR HAWKER confirmed that was so.

REPRESENTATIVE STOLTZE noted that if motion #4 is adopted, it would essentially be adopting motion #1 given the other motions have been adopted.

CHAIR HAWKER agreed and said it was another way of allowing everyone to express specifically their position on each of the three components of the Legislative Branch.

VICE CHAIR MICCICHE said that we can make the statements we want to, with all due respect to some of the folks that he respects most in the Legislature, but the world changes. There is a whole demographic of folks that he communicates with about legislative affairs and legislative issues, community meetings, and committee meetings on Facebook that often don't communicate any other way. His goal is to get the folks in that demographic engaged any way he possibly can. He said he did not have a Facebook account until serving in the Legislature became a very high probability. He said he finds it to be an incredible tool, a very effective way to communicate with younger folks in his district that maybe

don't read the news and maybe normally aren't engaged; who nonetheless are a very important part of his constituency. If it turns out that he has to communicate with them on Facebook by bringing in a personal computer, so be it. He said he strongly suggests that folks think about a changing world and make sure that our Legislature communicates effectively in that world as it changes.

CHAIR HAWKER, in response to a request for clarification from Senator Meyer, said that if motion #4 passes, there has been the same substantial effect of passing #1 without motions #2 and #3.

SENATOR STEVENS said he thought the Chair should rule this motion out of order. He said the basic rules say that you can't keep making the same motion over and over again unless there has been progress. He said there has been no progress. He said it seems to him this is just restating motion #1.

CHAIR HAWKER said, respectfully, it is not out of order. He said if Council fails to pass motion #4, we have not made the same motion as #1 and we don't know what the outcome of motion #4 is going to be. It is not the same as motion #1; it would be the suite of motions that would be the same as #1, not the individual motions.

A roll call vote was taken.

YEAS: Gruenberg, Pruitt, Egan, Meyer, Stevens, Micciche, Hawker

NAYS: Chenault, Stoltze, Huggins, Coghill,

The fourth Facebook motion failed to pass 7-4

CHAIR HAWKER noted that due to the operating policy of Legislative Council which requires eight (8) votes to approve a motion, the fourth Facebook motion failed to pass.

3:31:20 PM

REPRESENTATIVE PRUITT moved that Legislative Council allow access to Facebook for Legislators for legislative business only.

CHAIR HAWKER objected for a question to ask if it allows a Legislator to allow their staff to utilize their login to access Facebook.

REPRESENTATIVE STOLTZE objected to the motion, opining that it was the same motion as one previously voted on.

CHAIR HAWKER ruled that it was not the same motion and that it was a fair motion to put before the committee. He further stated, in response to a question by Representative Gruenberg, that he wanted to resolve this issue here and now. He said all parliamentary motions are available to every member of this committee.

[3:33:42 PM](#)

REPRESENTATIVE GRUENBERG moved that Legislative Council postpone this motion until the next meeting.

CHAIR HAWKER objected for a roll call vote and recommended a no vote.

A roll call vote was taken.

YEAS: Gruenberg, Egan

NAYS: Chenault, Pruitt, Stoltze, Huggins, Coghill, Meyer, Stevens, Micciche, Hawker

The motion to postpone failed to pass 2-8.

CHAIR HAWKER asked Representative Pruitt to please very clearly restate his motion.

VICE CHAIR MICCICHE, prior to Representative Pruitt restating his motion, said he wanted to clarify that he does not allow use of his login for his Facebook page in his office by his staff. He thought the prior policy was for legislative use only, for legislative business only. He said folks might find that motion more tenable.

CHAIR HAWKER, in response to discussion between Senator Meyer and Representative Pruitt regarding adding a sunset date to the motion, said that with all due respect, that is what we have been doing, kicking the can down the road. He said that the current Computer Systems Use Policy as adopted by Legislative Council provides that users shall not represent themselves as another user unless authorized to do so by that user. Thus, passing the motion Representative Pruitt has placed on the table allowing Legislators to access Facebook, period, would have the effect of authorizing staff, if they are specifically authorized by a Legislator to authorize that staff; which, quite frankly, is the motion that was before us. The wording is sufficiently different. He said he believes it's a subtle difference. Each office would then be able to make a policy regarding that issue.

Chair Hawker, in response to a comment by Representative Gruenberg, said the ruling of the Chair is that the motion is in order and can be voted on its own merits.

Chair Hawker, in response to Ms. Lucky's request for clarification, said the motion before Council is to allow Facebook access by Legislators only in accordance with the state Computer Systems Acceptable Use Policy adopted by Legislative Council updated January 2013. He then asked if there was an amendment to the motion.

SENATOR MEYER explained his offer of a possible amendment that placed a sunset date on the motion. He said if some folks were uncomfortable in voting for this, if they knew that we would take a look at it in one year, it might be better. In his opinion, we've had this policy in place, as far as he knows there hasn't been any mischief done and so he is comfortable with it.

REPRESENTATIVE STOLTZE said that the motion is almost the same as #1 and that 10 people were pretty resolute maybe an hour ago. He said he is going to keep his same position throughout the meeting.

SENATOR COGHILL said that the question Council is trying to grapple with is what Facebook really means to communicate. Part of the problem is that Facebook changes the underlying privacy policies and there's all kind of issues like that. Secondly, we're going into a campaign season. We don't know really how to define legislative use without getting into some heavy minutiae, so it creates a cloud that we're going to have an awful hard time defining. If people want to use their own personal computers to do Facebook, it's much clearer; they can wander into State business but they can also do their private business and it just seems cleaner that way to him. He said he is going to stay with no and not kick the can down the road.

CHAIR HAWKER noted that there hasn't yet been a motion to amend the motion.

REPRESENTATIVE GRUENBERG said his thinking has evolved in the last half hour. He said as we parse this out and essentially divided motion #1, that focused his thinking. He restated motions #2 and #3, and said what we're going to be debating now is whether the Legislators themselves can use Facebook and then, ultimately, whether the staff can use Facebook and the question really is, does it make sense to divide these people up, particularly, if whether we ourselves should be banned, even for legislative business, from using Facebook. We are at the core of this and if we allow these other people to use it, it doesn't

make a lot of sense to him that we can't use it ourselves. It doesn't make sense to parse it out by category.

3:47:14 PM

SENATOR MEYER, after some discussion between Chair Hawker and Representative Gruenberg about the process, moved to amend the motion on the floor to add a sunset of January 15, 2015.

VICE CHAIR MICCICHE, after a comment by Representative Stoltze, said that in his view, this motion does not provide unlimited access to staff. He said it means that he can continue to directly communicate with his constituents. Personally, for him, it says that his staff will not be posting pictures of their cats on state time. He said he thinks there is a difference between this motion and motion #1.

3:48:38 PM

CHAIR HAWKER noted for the record that he did object to the motion to amend for purposes of discussion.

Chair Hawker called Council's attention to a technical issue with the motion that needs to be addressed. He said that if Senator Meyer put a date specific or even to use the end of the 28th Legislature, means that this authorization expires so that we go into the legislative session with no authority for Legislators or staff to access Facebook until Legislative Council comes into effect and has a meeting in the next session. As a practical matter, the date needs to be extended long enough for the next Legislative Council to take this up and start the process all over again. He suggested withdrawing the motion to amend and making a new motion to amend with a date of, perhaps, March 1.

3:50:32 PM

SENATOR MEYER withdrew his motion to amend.

3:50:48 PM

SENATOR MEYER moved to amend the motion on the floor to add a sunset of March 1, 2015.

CHAIR HAWKER noted that the motion to amend is to amend Representative Pruitt's motion allowing Legislators only access to Facebook in accordance with the established policy through March 1, 2015. He then objected for further discussion.

SENATOR MEYER said he is new to Legislative Council and the reason he is doing this is that it seems the policy was working. There is some concern with the campaign election season coming up. Maybe there will be some mischief going on, in which case we'll review it shortly thereafter and say no more and we'll get

rid of it. He said we may see that it works just fine and it's a very effective tool to work with our constituents and we'll just simply keep it going.

CHAIR HAWKER, in response to a question by Senator Egan, said that the way the rule reads now, and this rule will not change, is that users shall not represent themselves as another user unless authorized to do so.

Chair Hawker, in response to a request for clarification by Ms. Lucky, noted that Council is debating the motion to amend.

SENATOR STEVENS said that should this amendment pass, it doesn't preclude Legislative Council from dealing with this before March 1, 2015; they can deal with it at any time.

CHAIR HAWKER, in response to a question by Representative Stoltze, said that this is an amendment to the main motion and that he would repeat the question before calling for the vote.

Chair Hawker said the question before this committee is Senator Meyer's motion to amend the main motion made by Representative Pruitt to allow individual Legislators access to Facebook in accordance with our established procedure. Senator Meyer's amendment would add to that motion effectively a sunset date of March 1, 2015, and by that time Council would have to readdress the issue.

[3:55:19 PM](#)

A roll call vote on the motion to amend was taken.

YEAS: Chenault, Gruenberg, Pruitt, Egan, Meyer, Stevens,
 Micciche

NAYS: Stoltze, Coghill, Hawker

The motion to amend failed to pass 7-3.

CHAIR HAWKER noted that the motion on the table is durable, permanent allowing of Facebook for Legislators only in accordance with existing policy. He further stated as a caveat that implicit in any decision made by the Legislature at any time can always be revisited as long as there is a venue to do so.

VICE CHAIR MICCICHE said there was a comment made earlier about going into election season. He said he just wanted to remind this committee that however you communicate with constituents, it must be free of ethics issues associated with campaign season. So, we continue to send newsletters, we continue to communicate with our

constituents as usual. If we have some other sort of Facebook page or other campaign activity, it must be in accordance with our ethics standards and separate from all legislative duties. He said it is Alaska state law. He said to think about this, if we had this discussion when email became a way to communicate with constituents and folks were struggling with that transformation. Clearly, that was a right decision, we ironed out those issues, we attached some requirements to email and it's a very effective way to communicate. It brought in a new generation of folks and, in his view, we are always trying to get the younger generation engaged. He said he strongly asks members to think about that before we vote. In his view, it's very important for the way we communicate and if you're not communicating that way, run a poll in your district; find out how many folks are using Facebook to learn about things and he thinks you'll find it's a surprising proportion of the folks you represent.

[3:58:52 PM](#)

CHAIR HAWKER, with concurrence by Representative Pruitt as the maker of the motion, said he was bringing the main motion to a vote. He said the motion before this committee is that the Legislative Council allows access to Facebook for individual Legislators only for legislative business only in conformance with our established Computer Systems Acceptable Use Policy adopted by the Legislative Council and the most recent he has was updated January 2013.

A roll call vote was taken.

YEAS: Chenault, Gruenberg, Pruitt, Egan, Meyer, Stevens, Micciche, Hawker

NAYS: Stoltze, Coghill

The motion passed 8-2.

CHAIR HAWKER noted for the record that serious business has been conducted as we have parsed out what our options are. What we have in fact done today is affirm by a lengthy series of votes and debate the policy that is currently in place with the exception of adding to it our nonpartisan agencies. As far as it relates to our partisan press offices and webmasters and Legislators, our policy remains unchanged. What we have done is formalize a policy that was previously out as a trial balloon that had expired and needed to be resolved. We now have a long and durable policy. He said for the record that, as Chair of this committee through the end of the 28th Alaska State Legislature, he does not intend to revisit this policy at any time during his remaining tenure.

d. Procurement Procedure Update

CHAIR HAWKER noted that members had received a packet of the proposed amendments to the legislative procurement manual. He asked Mr. Gardner to define a durable record of what we're doing here and asked him to explain why there is this package of amendments and provide a brief description of each amendment. He said that there is a motion drafted that would adopt all of the amendments en bloc; if during the presentation a Legislator wants to separate a single amendment for a separate vote, he will remove it from the package and we will have a separate vote on that individual amendment.

MR. GARDNER, after confirmation that there would be a quorum for voting, stated that there was a significant change to the State's procurement code in 2013, Chapter 19, SLA 2013. He said these proposed amendments identify areas where there might be some uncertainty or legal changes that might make it hard for us to go forward with Legislative Procurement Procedures (LPP) as they are written without some guidance from Council.

In section 1, there are two changes that are proposed to LPP section 020(a). The first one is in (a)(2), which is a passage of time issue and it's also got a nexus in some of the changes in dollar amounts that were made at the request of the Executive Branch in AS 36.30. This particular procurement procedure and exemption like this could be described as unique to the Legislative Branch. The proposal would be to raise the current ceiling of \$25,000 to \$35,000.

CHAIR HAWKER interrupted to say that the change would take the signature authority from \$25,000 to \$35,000.

MR. GARDNER said that was an accurate statement. He said the second part of the first proposed amendment was to clarify LPP section 020 (a) (4) by adding the language "with a state agency, including a department, the University of Alaska, and a public corporation." This clarification would be consistent with AS 36.30.700; it would make it easier for them to apply. LAA is considering more contracting with State agencies at the University and other public corporations than in the past. In his view, it would bring LPP section 020(a) in line with AS 36.30.700, with a more frequent practice by the Legislature to do business with other State entities listed and described.

Mr. Gardner, in response to a question by Senator Stevens, confirmed that when contracting with a State agency, there will

not be a \$35,000 cap. He said there is also a conforming change that addresses LPP section 020 (a)(4).

CHAIR HAWKER, in response to a question by Representative Gruenberg, confirmed that he would like Mr. Gardner to proceed with reading through the amendments and take one up or down vote on the package. If anyone objects to an amendment, it will be pulled aside for a separate vote.

MR. GARDNER said amendment #2 continues the process of taking the small procurement procedure the Executive Branch uses and updating the dollar amounts as reflected in this amendment. He said they looked at the LPP and suggested similar changes. One tension they were trying to address and bring to the Legislature's attention was, for example, a contractor installing carpet for the Executive Branch would do that under one set of standards; does Legislative Council want a separate set of dollar amounts to apply when dealing with competitive sealed bidding for a legislative project putting the same carpet down?

CHAIR HAWKER summed up the amendment to say that it conforms the amounts in the legislative procurement procedures to the current executive procurement code.

MR. GARDNER said regarding proposed amendment #3 that this is an amendment that Legal has been holding for a period of time to get on Legislative Council's agenda. It specifically adds "leased space" to the exemption in LPP section 040 (a) (2). Leased space is already included in Executive Branch code and this is an existing interpretation that they'd like memorialized so there is no controversy about it. He said that LPP section 040 was amended by adding a subsection (d) earlier this year and they wanted to clarify in subsection (b) that for a procurement officer, a written justification is only relevant to (a)(1) of the section; (d) also has its own written procurement officer finding. For existing sections (2) and (3), those are simply exemptions and they don't require a written justification by the procurement officer. These changes are for consistency.

Proposed amendment #4 changes the term "sole source," which isn't used by the State of Alaska, to "noncompetitive" bringing the LPP into alignment with the other procurement procedures.

Proposed amendment #5 addresses a criticism by a bidder that the language in LPP section 070 could be construed as stating that the Legislative Branch only required a bid and performance bond, eliminating all other bond requirements required in Alaska Statutes. The amendment would clarify that Council didn't intend,

by providing for bid and performance bonds, to eliminate any other bond that is currently required by law.

Mr. Gardner, after a clarification for Representative Gruenberg, continued with proposed amendment #6. Starting with LPP section 145 (b)(4) - this is a technical change to reflect that AS 32.05 has been repealed. He said all of these amendments are technical changes. They do not change any preferences, such as Alaska bidder preferences, or anything this Council has directed the Agency and committees to apply. All it does is correct or repeal statutory references. He said he would describe this as a technical amendment to LPP section 145(b).

Amendment #7 probably ties in effectively with a motion that Council addressed earlier today, which was the Sitka lease extension. Sometimes, when a lease or a contract is transferred, it's very simple. From a legal standpoint, that type of assignment is a true assignment. Had there not been a subordination agreement required by the lender, with amendment #7, Representative Hawker or a procurement officer in a committee could simply have agreed to that assignment. Because there was subordination agreement, that is considered a separate contract and that is why we wanted to have Legislative Council address it. He said he wanted to draw a line between an assignment that doesn't have a subordination agreement and one that does have a subordination agreement, which would still be required to come before Council. This does not affect the Sitka situation but would allow a simple assignment to be addressed by the Chair. The purpose is that sometimes it is very difficult to have the Agency be able to act in a business-like way and get back to people if it's hard for committee members to get together during the interim to approve an assignment.

[4:16:52 PM](#)

CHAIR HAWKER, in response to some discussion about amendment #7 between Mr. Gardner and Representative Gruenberg, noted that the course of action if a member wishes for an amendment to be voted on separately is to recommend that it be voted on separately and he will remove it from the vote. At the request of Representative Gruenberg, the Chair removed amendment #7 from the suite of amendments for approval.

MR. GARDNER continued with amendment #8, which repeals LPP section 190. He said this proposed amendment does not mean that some staff and some committee members are not doing contract evaluations, but it is not being done consistently, does not add value to the process, and opens up the Legislature to unnecessary liability. Because this section is not being uniformly followed and doesn't add value to the process, they propose deleting it.

Amendment #9 addresses an issue with Kris Curtis, Legislative Auditor, which came up last session. Right now, a contract that the division enters into to prepare an audit report does not have to be made public until after the audit is done. The theory is that Legislative Audit would not want the person being audited to know all of the objectives and goals of the contract and the candid conversations that Legislative Audit would have with the contractor. When that bill passed last session, it did not address performance review reports, which are new to Legislative Audit. This proposed amendment addresses just the contract and the communications between Legislative Audit and the contractor. Those reports would eventually be made public but not until the performance review in this case is complete. It's an incongruity right now that Ms. Curtis is dealing with. Legal prepared this amendment to make Legislative Audit performance review contracts consistent with audit report contracts.

CHAIR HAWKER summarized that this is applying a universal standard observed by Legislative Audit regarding confidentiality both to our regular audit process and to the new performance review process established under Representative Chenault's bill.

MR. GARDNER agreed with the summary, adding only that it is as it relates to the contract for those services for that contractor.

Moving on to proposed amendment #10, Mr. Gardner said that it is Legislative Legal's judgment that right now, this is unclear. There hasn't been a bid protest in some considerable period of time so we haven't had to address what would happen if a protest is sustained in whole or part in terms of a protestor's damages. Right now, the Legislature has far more exposure than the Executive Branch does. AS 36.30, as you can see from the footnote, limits damages that a protestor might have to reasonable bid or proposal preparation costs. For example, it wouldn't allow for a contractor to claim for some anticipated mobilization or consequential damages as a result of not bidding, perhaps, on another project, hoping they were going to get this one. This proposed amendment brings our procurement procedures in line in terms of damages with the Executive Branch 36.30.

CHAIR HAWKER, at the request of Representative Gruenberg, removed proposed amendment #10 from the suite of amendments for approval.

MR. GARDNER said that proposed amendment #11 includes a definition that "supplies" has the same definition that it has in AS 36.30.990. If Legislative Council approves this, this would be approving Legislative Legal's longstanding interpretation and practice. They're using this opportunity to put it in writing.

This amendment would mean that "supplies" would include leases. This is an effort to conform Legal's interpretation to the written word.

CHAIR HAWKER said that was a very excellent presentation of these proposed amendments. After reviewing his staff's updated written motion, he asked Speaker Chenault to please make the motion.

4:27:13 PM

SPEAKER CHENAULT moved that Legislative Council adopt proposed amendments numbers 1-6, 8, 9 and 11 to the Legislative Procurement Procedure as presented.

The motion passed with no objections.

CHAIR HAWKER said Council would set aside amendments #7 and #10 and take them up at a later meeting.

Chair Hawker updated Council on items slated for future Council meetings. The first was regarding the Anchorage LIO project, saying it was on time and on budget. A policy on furnishings for the LIO will be brought up at a future meeting. He said they will be looking at a proposal to consider the degree of standardization and modularization. Another item that has been languishing and personally frustrating is the allowance account policy. He said he intends at the next meeting, after having completed the necessary research, to truly define what Council's options are and bring back a vote on allowance accounts to be effective for the coming tax year.

CHAIR HAWKER, in response to a question from Senator Meyer, said that proposing expanded parking for the Anchorage LIO was looked at and it was determined that it was an inappropriate item for consideration as it is a leased facility. The Legislature wouldn't want to pay for improvements to parking for a long-term lease and, likewise, the landlords had no interest in improving parking without a longer-term lease to support it. He said as far as parking policy goes, they are continuing to look administratively at parking policy to improve the utilization of the existing lot as well as to make space available in other lots in town to improve the overall parking access to this facility as needed.

Chair Hawker, in response to a comment by Representative Stoltze, said that the policy that had been followed prior to the vote on office allowance accounts in the previous Legislative Council definitely was not acceptable in accordance with the Internal Revenue Service standards of maintaining tax exemption elements of any form of reimbursement. He said he continues to research

how far we can push the envelope and maintain tax exempt status for the reimbursement and maintenance of office allowance accounts. He said he will be bringing that forward one way or another at the next meeting.

REPRESENTATIVE GRUENBERG, with regard to office furniture, requested that the Chair let the members know what the possible choices are and seek their input.

SENATOR STEVENS asked whether Council was going to address security in the Capitol.

CHAIR HAWKER said a new security station has been created. He asked Ms. Varni to address anything beyond the security station and improving the front end review of folks coming into the Capitol.

MS. VARNI, Executive Director of Legislative Affairs Agency, said that Don Johnston is in the process of having the security desk moved forward in the Capitol. Steve Daigle has hired an ex-police officer from the Juneau Police Department; so in addition to having Mel Personette and Steve Daigle as armed security out of uniform, the front desk person will also be armed personnel.

CHAIR HAKWER interrupted to say that the discussion may be crossing a line into security matters that should be discussed in executive session. He then ascertained, and Senator Stevens agreed, that there were no additional security updates which might necessitate an executive session.

There being no further business before the committee, the Legislative Council meeting was adjourned at 4:35 p.m.

[4:34:59 PM](#)