

**ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL
DECEMBER 19, 2015
9:00 AM
*Approved August 3, 2016***

MEMBERS PRESENT

Senator Gary Stevens, Chair
Representative Bob Herron, Vice Chair
Senator Lyman Hoffman
Senator Charlie Huggins
Senator Kevin Meyer
Senator Peter Micciche
Representative Mike Chenault
Representative Craig Johnson
Representative Sam Kito
Representative Charisse Millett

MEMBERS ON TELECONFERENCE

Senator John Coghill
Senator Anna MacKinnon
Representative Mark Neuman

MEMBERS ABSENT

Senator Lesil McGuire, alternate member
Representative Mike Hawker
Representative Steve Thompson, alternate member

OTHER LEGISLATORS PRESENT OR ON TELECONFERENCE

Senator Costello; Representatives Drummond, Guttenberg,
LeDoux, Lynn, Stutes, Tarr, Tuck, and Vazquez

AGENDA

ANCHORAGE LIO - EXECUTIVE SESSION IF NEEDED

SPEAKER REGISTER

Pam Varni, Executive Director, Legislative Affairs Agency
Doug Gardner, Legal Services Director, LAA
Tanci Mintz, State Leasing & Facilities Manager, Div. of
General Services, Dept. of Administration
Mark Pfeffer, Real Estate Developer, Pfeffer Development,
LLC, and co-owner of 716 W Fourth Avenue, LLC
(SPEAKER REGISTER CONTINUES ON NEXT PAGE)

SPEAKER REGISTER CONTINUED

Peter Shorett, Exec. Vice President, Kidder Matthews Real Estate Appraisal

Serena Carlsen, Partner, Stoel Rives, LLC

Deven Mitchell, Debt Manager for the State of Alaska and Executive Director for the Alaska Municipal Bond Bank

Mark Davis, Chief Infrastructure Officer for the Alaska Industrial Development Export Authority (AIDEA)

Representative Bob Lynn, District 26

Representative Louise Stutes, District 32

Representative Liz Vazquez, District 22

9:04:08 AM

- I. CHAIR GARY STEVENS** called the Legislative Council meeting to order at 9:08 a.m. in the Anchorage Legislative Information Office Auditorium. Present at the call were Senators Stevens, Meyer, Hoffman, Huggins, and Micciche; Representatives Herron, Chenault, Johnson, Kito, and Millett. Participating via teleconference were Senators Coghill and MacKinnon, and Representative Neuman. Absent were Senator McGuire, alternate member; and Representatives Hawker and Thompson, alternate member.

II. ANCHORAGE LIO

CHAIR STEVENS reminded members that this was a follow-up meeting to the December 4, 2015, meeting. The goal today was to provide the committee with an update on the analysis of the Anchorage office space options as was requested. He asked that members keep in mind as they go forward the obvious fiscal problems in the state, which have been discussed in both the House and the Senate; the governor's budget has indicated a reduction last year of some nine percent, a reduction this year of two percent plus in this year's plan, as well as an income tax and use of the permanent fund; so we all know we're facing some pretty serious problems here. He said he knows the Senate is looking at additional reductions from the governor's suggested budget cuts.

Chair Stevens said that in this morning's paper there was an article about this issue and about two representatives who commented on their thoughts. There has been a consistent mistake made when we see it in the paper talking about "breaking the lease." He said that, if we do move, that we wouldn't be breaking the lease, but rather taking advantage of a negotiated clause in the lease that went through a lot of discussion as two sides negotiated a contract. He said further that members should remember that what may be done here today is advisory to the Legislature; Council doesn't have the power of funding anything and we have to make a recommendation, hopefully, one way or the other, to the entire Legislature to include whatever decision is made in the budget.

He said he also wanted to make notice of the letter sent to the Council by Senator Wielechowski and Representative Tuck. He said that what they are talking about is a concern about moving to the Atwood Building; they suggest having individual offices around Anchorage someplace within an

individual Legislator's district. That is something that can certainly be accommodated and, should it happen that we go to the Atwood, we can reduce the space that we are leasing there quite readily. He said his response to the letter is that can be taken into consideration and Legislative Council can establish smaller offices around Anchorage, for example, should they choose to.

Chair Stevens said in closing that to all Legislators in the room, he was pleased to have them here. They will be recognized and may ask any questions they want; please respond and let us know your thoughts - not only the members of Council, but any Legislators that are here. Having said that, Chair Stevens asked Pam Varni and Doug Gardner to the table to give an overview of what happened at the last meeting. He said also available on teleconference are Serena Carlsen, our attorney with Stoel Rives, LLC, and Peter Shorett from Kidder Matthews, to present the various options they have as well, talking about the discount rate and the inflation analysis.

Chair Stevens said, in response to a request by Representative Millett, that Council hear from the owner of the building, Mr. Pfeffer, that if he was willing to speak, they would find the time for him.

PAM VARNI, Executive Director of Legislative Affairs Agency, put herself on the record and noted that also with her at the table was Doug Gardner, Legal Services Director, and on teleconference was Chuck Burnham, Research Manager. She said the Agency worked on coming up with some scenarios that looked at annual cash outlays over a ten year period, from 2016-2025. We went over those scenarios last time, and for the benefit of the members that were not at the last meeting and others in the audience, she said she would briefly go over those. She noted that these scenarios do not look at inflation and do not look at net present value. Peter Shorett and Serena Carlsen will speak to that after she, Doug, and Chuck go through the five scenarios.

Ms. Varni said the first scenario was to continue the current lease at 716 W 4th Avenue. Looking at a 10 year period, the total cost is \$40,320,000; total monthly cost per usable square foot is \$7.41. The Legislature would need to fully fund the lease through the Legislature State Facilities Rent component every year for the remainder of the original 10 year lease, which expires on May 31, 2024. The cost per square foot are based on usable space of 45,371 and a total of 86 parking spots.

In response to a question by Representative Millett, Ms. Varni said the lease is based on a gross figure of 64,000 square feet and all of the other legislative leases throughout the state and also in the Executive Branch are based on usable and not on gross. Usable does not include bathrooms, the vertical penetrations, and some of the common floor areas. The square footage was double-checked by RIM Architects and asked Peter Shorett to confirm her definition of usable space.

PETER SHORETT, Exec. Vice President, Kidder Matthews Real Estate Appraisal, said that Ms. Varni had described it accurately. He said that the usable areas are those that are occupied by the Legislators or for their conference uses. It does not include the lobbies, hallways, corridors, and vertical penetrations.

REPRESENTATIVE MILLETT asked if the Auditorium and the conference rooms across the hall, as well as the conference rooms on each of the floors, would be considered usable space.

MS. VARNI AND MR. SHORETT both confirmed that they would be.

MS. VARNI continued with Scenario #2: Purchase 716 W 4th Avenue Funded by AHFC Issuing Fixed Rate Bonds. She said the total after a 10 year period is \$48,850,000; total monthly cost per usable square foot is \$8.97. The Legislature would need to pass a stand-alone bill to enable AHFC to finance the purchase of the building. This scenario shows a 10 year maturity at a fixed rate at approximately 2.16 percent.

However, Ms. Varni said that last night, Friday, December 19, 2015, Senator Stevens and Representative Herron, along with herself and Doug Gardner, met with Mark Pfeffer. She told Council members that he had agreed to come down on his price from \$37,000,000 to \$36,000,000. The new offer still includes the \$950,000 cost for the loan pre-payment fee for his \$28,000,000 loan. Due to the late hour of the meeting, she was not able to create new scenarios, but that under Scenario #2, with the new purchase price, the total after a 10 year period is now \$45,701,840.

In response to a question from Speaker Chenault, Ms. Varni said the meeting between building owner Mark Pfeffer,

Senator Stevens, Representative Herron, Doug Gardner and herself took place at 4:30pm.

CHAIR STEVENS commented that he was in his Senate Caucus meeting and received a call from Doug Gardner saying that the owner would like to meet. He said we did meet with him briefly for about 30 minutes. He wanted to make sure that Mr. Pfeffer knew that while he knew about the non-appropriation clause, the Chair was in no way meeting with him to try to get him to lower his price, but that if Mr. Pfeffer had a different offer he wanted to make, the Chair was certainly glad to listen to him.

MS. VARNI moved to Scenario #3: Purchase 716 W 4th Avenue via Issuance of Variable Rate Certificates of Participation. The total for this scenario after a 10 year period would be \$42,948,659; total monthly cost per usable square foot would be \$8.19. The Legislature would need to pass a stand-alone bill outlining the project, cost, annual payment and total payments. There being no questions, Ms. Varni moved on to the next scenario.

Scenario #4: Purchase 716 W 4th Avenue through the Capital Budget. The total after a 10 year period would be \$41,750,000; total monthly cost per usable square foot would be \$7.93. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of the building. The Legislature would not be reimbursing the landlord for property taxes or insurance once the Legislature owns the building. A building manager position was factored into this scenario. There being no questions, Ms. Varni moved on to the next scenario.

Scenario #5: Move to State-Owned Space at the Atwood Building. The action required would be a non-appropriation of the lease with 716 W 4th Avenue and to enter into a State lease with the Department of Administration for the Atwood Building. She said the Legislature would be charged for 84 parking spots based on the square footage of the proposed lease space. Actual parking would include 80 underground parking spots reserved for Legislators on a first-come, first-served basis; and an additional 266 spots available on a first-come, first-served basis located in Blocks 102 and 79. The total cost for a 10 year period would be \$6,647,760; total monthly cost per usable square foot of \$1.85. In addition, there would be tenant improvement costs for the Atwood Building of \$3,500,000.

SENATOR MICCICHE, noting the state fiscal gap and the \$7,500,000 in tenant improvements already invested in the current space, asked what was the bare minimum to spend in tenant improvement costs, even at a certain level of discomfort, to move into the Atwood Building.

MS. VARNI, after confirming that Senator Micciche was asking if the tenant improvements could be done for less than \$3.5 million, said that they would have to work with Tanci Mintz, and her architects and staff to see if that was possible. For instance, on the 19th floor, there was possible space for leadership offices with existing office walls and beautiful wood trim that could potentially work as-is. Some of the space needs new carpet for sure, but there is some room to save some money.

CHAIR STEVENS added that a lot of it is offices on the perimeter of the floor with cubicles in the center, which would not be adequate for Legislators who would need more privacy to talk to constituents. He said there wasn't really a way to just move in and make it work without some changes.

REPRESENTATIVE MILLETT said it was her understanding that Mark Davis from AIDEA was present and Deven Mitchell from the bond bank on teleconference with some other options and asked if Council would be hearing from them. She asked if there were any documents with regard to those options.

DISCUSSION FOLLOWED to confirm that there were documents available and the request was approved to hand them out to Council prior to the presentation.

SENATOR MACKINNON asked about parking at the Atwood Building. She said Legislators are in and out of meetings in the downtown area on a regular basis and asked if there were any parking spaces that would be dedicated to Legislator parking. She wanted to know if the State could accommodate some spots designated specifically for Legislators.

MS. VARNI noted that the Linny Pacillo parking facility has 838 parking spots, also Legislators and Directors and Commissioners in the Executive Branch have 80 underground parking spots at the Atwood Building. In addition, there are surface parking lots at Blocks 102 and 79 where there are 266 spots. She said it would likely be the same practice that is currently followed at 716 W 4th Avenue, where there wasn't a spot reserved for a Legislator but

there were enough open spots to accommodate parking. She said when she went through the underground parking facility recently, there were at least 25 vacant spots and she didn't think there would be a problem with parking. In response to a follow-up question by Senator MacKinnon, Tanci Mintz was asked to come forward.

TANCI MINTZ, State Leasing Facilities Manager for the Department of Administration, said that the State had not been planning to do reserved spaces for Legislators as it's not very often everyone is there at the same time and they want to try and maximize the use of the space. As Ms. Varni had said, there were plenty of spaces for everyone to park, whether it be in the Linny Pacillo Parking Garage directly across the street or in the Atwood Building underground garage.

SENATOR MACKINNON expressed her concern that there be a few spots dedicated for use by Legislators and asked that her concern be considered.

CHAIR STEVENS invited Mark Pfeffer to address Council at the request of Representative Millett, who had questions for Mr. Pfeffer who said he had not planned to be at the meeting but was asked to do so.

REPRESENTATIVE MILLETT asked Mr. Pfeffer to walk Council through how we got here. She said she was new to Legislative Council and this building had preceded her. She said she understood that at one point that we were in negotiation to purchase the building when we started doing building improvements. She said it would be helpful to walk through that history.

MARK PFEFFER said that the Legislature had occupied this building for a little over 22 years; first under an original procurement in 1992 or 93 and then a follow-on procurement in 2003 and 2004. The last procurement was for a five year lease with five one-year options to renew. He said he was not an owner of the property through all of that but was asked for help in trying to find a path forward for the Legislature by the building owner Bob Acree and he eventually became a partner with Mr. Acree in the building. Through the first five years and the five one-year options, the Legislature issued numerous RFIs (Requests for Information) that were all published in the newspapers, so like everybody else, he said he watched what was going on. There were several attempts at government-to-government procurements, there were a couple attempts to

buy buildings and renovate them. Eventually, in May 2013, the Legislature was down to one year left on the lease and after 12 procurement attempts with no resulting awardable contract, Representative Hawker, who was Chair of Legislative Council at the time, approached the building owners and asked if we could provide a proposal for how to extend the lease.

Mr. Pfeffer said that in May 2013 they gave three proposals: one was carpet and paint, with the lease rate remaining the same; the second was carpet, paint, re-do bathrooms, put in new elevator and some mechanical upgrades and the lease rate would moderately tick up; the third choice was a full modernization. At that time, the Council didn't take any action but rather said the Legislature should go out for an RFI one more time before they figured out what they wanted to do. The RFI did go out and they got two responses. In June 2013, the Council met and apparently they had considered those two options and rejected them. At that point, they passed a series of resolutions authorizing Representative Hawker to negotiate an extension of the lease based on the full modernization approach.

REPRESENTATIVE MILLETT interrupted to ask if it was a unanimous vote to go ahead with that authorization. It was confirmed that it was a unanimous vote.

MR. PFEFFER added that there were five motions needed to make it happen. One of those motions was to obtain AHFC (Alaska Housing Finance Corporation) as the Legislature's representative in the discussions. He said that AHFC had represented the Legislature in discussions when it attempted to put together a project on Block 39 with the Court System a few years earlier, so AHFC had some background with the subject and they had the expertise on staff. Those motions passed and technically at that time Representative Hawker was authorized to execute a lease amendment; that's not what he did. He said Representative Hawker then, along with his staff, had the owners, Legislative Affairs staff and AHFC staff and AHFC's third party consultants spend about 11 weeks meeting weekly to go over the details of what the scope should be - how many rooms, how many offices, how many conference rooms, what kinds of finishes, elevators, security, telecommunications, servers, all the details. He said that by the time that 11 weeks was up it was late August 2013 and by that time, the scope had been put out to bid and the numbers were back, AHFC had back-checked those numbers and Representative Hawker brought that to the Council and presented all of

that information. The Council didn't take specific action because it had already authorized Representative Hawker to execute the lease, so it was a presentation to see if there was any objection to moving forward. Mr. Pfeffer said at that time there was no objection but there was a motion to request that Representative Hawker attempt to negotiate a purchase option with the owners. After that Legislative Council vote in August 2013, it took several weeks to kind of button up the details of the lease extension and amendment. There were two key exhibits to that lease: one was a finding of the procurement officer that all of the statutes had been met and that was Exhibit C to the lease. Exhibit D to the lease was a certification by the Executive Director that the lease had been reviewed by an appraiser and the lease amount was at least 10% below market rate for a comparable product here in downtown Anchorage. He said based on that certification and the signed lease, there was then a document that was executable, which was then executed and with that they were able to secure construction financing and advance the project.

Mr. Pfeffer said a purchase option was negotiated then and that went to Legislative Council in 2014 during the last legislative session. He said on their side, they wanted to defer the income taxes that they would have to deal with if there was a sale, so they suggested that the Council buy the building for the debt amount, which was \$28,000,000 and then the \$9,000,000 they had in equity would be in the form of a ground lease. The Council didn't like the idea of a ground lease, so did not take action on that signed agreement. In response to a question by Representative Millett, Mr. Pfeffer confirmed that a "ground lease" meant they would still own the land and the Legislature would lease the land. He continued that the Legislature would buy the building and there would be a fixed price option to buy the land at a future date.

SPEAKER CHENAULT asked if what Mr. Pfeffer meant was that in 2014 at a Legislative Council meeting, a proposal was put together that Legislative Council could have bought the building for the cost of the renovations, which was \$28,000,000; and then the owners wanted to lease the land for tax purposes back to the State for approximately 10 years and then the Legislature could have bought the land at fair market value.

MR. PFEFFER said that the way the numbers really worked was that the total project cost was \$44.5 million, the Legislature put in \$7.5 million, which left \$37 million of

cost and they had \$9 million of cash that they put into it and they borrowed \$28 million. He said that's the reason that, today, they've said they'll sell it at their cost, which is \$37 million with the land. He said last year there was no action taken by Council but there was a lot of concern about buying the building without buying the land. Now, given the fiscal reality, we recognize that's important to the Legislative Council so they've agreed that they would sell the building and the land. He said they've asked to sell the building at their cost, which is \$37 million. He said there is a prepayment penalty because they are now on their long-term loan; last year, they were on their construction loan and there would have been no prepayment amount if the sale had occurred last year.

SENATE PRESIDENT MEYER thanked Mr. Pfeffer for the history because during that time period, he served off and on Legislative Council. He said that there used to be a bar here, Anchor Pub, and they were pretty anxious to get that out of the way, there'd been some problems.

MR. PFEFFER confirmed that was so and said there was literally blood on the street. He confirmed that the Auditorium used to be the Anchor Pub.

SENATE PRESIDENT MEYER said he had advocated for leasing instead of buying because his friend Charles Wohlforth and Senator MacKinnon were all on the Anchorage Assembly back in the 1990s when the State bought the Atwood Building and took that off the tax rolls, which essentially then raises the property taxes for the rest of the folks in Anchorage. He said he was not a fan of buying this building and taking it off the tax rolls. Also, he said he thought it was in the Anchorage 2020 Plan that government buildings stay downtown, so we were limited on where we could go. That's why the Courthouse, the Federal Building, the Atwood Building, City Hall, all government buildings are downtown. He said there was not much space available and some wanted to lease versus buy. Others he remembered said that if the Legislature was going to stay at this location, let's make it big enough that if a special session occurred, which happened just last year, it could be held here. He said the history of this and how it's evolved is very complex and he doesn't think it's ever been fully described, so he appreciated Mr. Pfeffer enlightening Council and the rest of the folks here. He said he appreciated everything Mr. Pfeffer has done to try to work with the Legislature and we're not an easy group to work with because we all have different opinions as you're hearing. He said he's not sure

what's going to happen here, but he wanted to thank Mr. Pfeffer for his time and patience in working with Legislative Council over all these years.

REPRESENTATIVE JOHNSON said he wanted to clarify the addendums to the lease. He said there was one where Legislative Council and the Agency, the LAA staff, got an independent appraisal that it was 10% below market value, and that was an addendum to the lease, correct?

MR. PFEFFER confirmed that was so, and went on to further explain that it was an independent appraisal that was ordered by AHFC. Under the statute under which the lease extension was done, a lease can be extended if the lease rate is at least 10% below market value. In the case of that appraisal, the question was is there 64,000 square feet downtown with parking dedicated on site. He said he believed if Council reviews that appraisal, what they'd see is that in order to accomplish that, the market comparable would have to be created. The appraisal analyzed what it would cost to do that and then it analyzed what it would cost to renovate the existing building and the difference was 13% lower to renovate. The appraisal itself was not attached to the lease, he didn't believe, but there was a certification signed by the LAA Executive Director referring to the appraisal saying that it had been reviewed, it had been back-checked and it had been certified that the lease rate was 13% below market value. In response to a follow-up question by Representative Johnson, Mr. Pfeffer said that was from AHFC and the Legislature. Mr. Pfeffer added that the owners didn't actually know what that appraisal was going to say until after they had laid out their total costs after putting the project out to bid, developed the lease rate and presented that to Legislative Council; subsequent to that, the appraisal came in, so they weren't targeting a number based on the appraisal.

SENATOR HOFFMAN asked about the provision that the Chairman talked about, a clause or an option in the lease that says that the Legislature can terminate the lease by not funding it. He asked Mr. Pfeffer to describe how that clause got in the lease and Mr. Pfeffer's interpretation of that clause.

MR. PFEFFER said that every government lease - city, state, federal - in every state has a subject to annual appropriation clause. He said he would encourage Legislative Council to talk to the investment banking community and the commercial banking community to get their

take on the importance and significance of that clause. It is a rarely, if ever, used clause because once it's used that subsequent leases have to be looked at as though they are basically only a one year lease. So, one would have to pay the full cost of whatever it is one's leasing basically in one year because the lessor cannot count on a longer term payment schedule. He said there was probably 200-300 leases around the state that are current that have that clause in it. Landlords and banks and investors invest in projects for government knowing that the clause is there but also knowing that it's virtually never used and if it is used, it's going to have a significant effect on the way one is able to do things in the future. He said he knew there was a letter out from the Alaska Bankers Association and he encouraged members to look at that carefully. He did not request that the letter be written, he said he just knew that last year when the Senate didn't appropriate the lease payments, the bankers were pretty concerned and got a letter out to Legislative Budget and Audit, and he knows there have been a few other letters from the investment banking community since then. The clause exists but it is a tricky credit issue to use that clause.

REPRESENTATIVE KITO said he understood that the clause has been used and he didn't know of detrimental impacts to the ability to enter into leases, so he said he didn't see that as being a challenge here.

CHAIR STEVENS said that he believed Ms. Mintz said the Administration has used it two or three times and, of course, the Legislative Council used it once in Juneau as well.

SENATOR MICCICHE thanked Mr. Pfeffer for being here and for all he'd put up with throughout this deal. He said people like to shoot arrows at folks for various reasons; we can't always identify what's in their hearts or in their minds. He asked if Mr. Pfeffer could list other projects he's done with municipalities and state government so Council understands he has a background in this kind of business.

MR. PFEFFER said he facilitated the Anchorage City Hall being renovated in 1992 for the then-owner Warehouse Mortgage Company; eight years later, they were ready to get out of the state, so he bought that building from them and that's a current and ongoing lease subject to annual funding clause. He said he developed the downtown fire station, he developed as a partner the convention center and the Linny Pacillo garage but those were all done with

capital budget monies, not leases. He has a lot of experience and he is working on other projects in the Lower 48 with other local governments, but again, those are capital appropriations.

SENATOR MICCICHE said that his only point was that this had been a difficult deal since long before this particular stage, when this happened and there was no space available, they went with someone with the experience in developing similar types of properties; it's not that this was a one-time deal for Mr. Pfeffer, he's got a lot of applicable experience and he thought that, with the times that we're at, this is exacerbating a difficult situation and he wanted folk to be aware of that.

VICE CHAIR HERRON said that with regard to exercising the right to termination which is in the contract, this was probably the crux of the whole decision. He said the Legislature had used it in the past, it was the Behrend's Building, and it was in the last year of the lease and the lease was \$300,000. They sued and we paid them off \$300,000, so the Legislature didn't win that legal battle. He said he spoke with Angela Rodale, the executive officer of the Permanent Fund, and her caution to the Legislative Council is, again, that if we exercise this right, members have to realize the potential problems that could come down the road. So, using the Alaska Permanent Fund as an example, in our near future, hopefully within seven years, we could ask the Permanent Fund, if they're interested in investing in it, other people would like to invest in it, but if we do exercise that right, it will always be a concern not only to the Permanent Fund but to other people that wish to invest in Alaska. He said we can talk about all these scenarios, and the history, etc., but the decision is about do we really want to exercise that right or try to figure something out, some other alternative.

MR. PFEFFER said they've gone on the record as saying that they realize that the fiscal situation is different today than when the decision to ask us to do this was made. So, their mantra has been let's find a pathway to savings. They know the Legislature needs to save money, they believe there are numerous ways to do that where we don't incur what comes from using that clause, sort of as described by Representative Herron. In a way that they're not necessarily profiting but they're also not taking a big financial hit, so he thought Council had some alternatives in front of them. He knows Mr. Mitchell from Department of Revenue is on the line and he'd seen that hand out and that

definitely looks like a pathway to savings. He said he knows that AIDEA was present and they had some ideas. He said they have put some other options on the table; their debt is fully assumable, so there are numerous ways to do it, but there just hasn't really been a robust dialogue about that. He encouraged Legislative Council to get a committee or team of folks to have that dialogue with them and they are happy to do that as soon as possible.

REPRESENTATIVE MILLETT asked Mr. Pfeffer if he felt like there had been a robust enough conversation and negotiated with him or talked to him about some of the other options. She asked if the dialogue had been back and forth or if he had just been given a set of options - scenario 1, 2, 3, and 4 - and left with no other options. She asked if she could request from him if he did have other options, she wanted to see them. She said she felt it was unfair if Council made a decision without all the information. She said she was starting to feel like she just walked in the door and she gets these options that she hasn't seen before that maybe she's not getting the full picture. She said she would hate to make a decision being new to Legislative Council and just getting involved in this. She had been on the record saying that she wanted to do the most inexpensive thing and make sure that the fiscal house is in order, but she said she also did not want to end up in continued lawsuits about things that may hurt the State's credit rating, that may make the State an unreasonable partner in business. She said protecting the State was the utmost responsibility, also managing the fiscal deficit. She repeated her question to Mr. Pfeffer about whether he felt there had been enough dialogue and was he willing to continue that dialogue if Council was to hold off on making a decision with the only scenarios that we've been presented today. She asked if there was an opportunity to still continue looking at some of these options that she just got this morning that she didn't know were out there. She said it was frustrating at best.

MR. PFEFFER said he would not characterize the conversations to date as robust and back-and-forth. He said there was one meeting in July 2015 where he offered to sell the building for the owners' cost. There was a follow-up meeting in September where he was asked if they could do it less than the owners' cost and he said he begrudgingly said no, he didn't think that was appropriate. He said he was asked to do this level of improvements, it was back-checked and certified before he spent the money, so he said he thought the number should be the cost. That was the last

thing he heard until the memo got laid on the table in November before the last Legislative Council meeting. He said he never saw that memo before it went out, he didn't know what it said, and only saw it after the fact. Since then, he knows that the sheet that Representative Millett held up he believes came from Department of Revenue, he had nothing to do with it. He said he had seen it and all it does is take the dollar amount that we said we would sell the building for and show different ways to analyze how the Legislature would deal with that dollar amount to find savings. He said he knows AIDEA has done the same thing on their own and he believed AHFC has some ideas, but all that's in that memo is the debt service schedule for how to pay off \$37,950,000 over 10 years. He said he didn't believe all the options have been looked at. He added that he was happy to meet and continue a dialogue.

SENATE PRESIDENT MEYER said that Ms. Varni shared quite a laundry list of problems with the building. He said it was certainly understandable that there's always a punch list after there's been a major renovation done. He said one of the Council's concerns was the Auditorium itself; sometimes meetings include an executive session and the noise carries over into the halls. He asked if Mr. Pfeffer had been made aware of the problems.

MR. PFEFFER said that he checked with his property management person and they are responsible for maintaining the mechanical systems in the building. There have been service calls with regard to that and his people get right on them. He asked if there was a good email record of back-and-forth call response and it was his understanding that there was although he hadn't dove into the details of that. With regard to other things, whenever a project like this is finished, he gets a one year warranty from the contractor that he hired and so there's a warranty period under which he can go to the contractor about issues and they'll take care of it. In order for him to do that he needs to know what the issues are. He said he hadn't had a lot of communication about that. He heard a list that was shared at the last Legislative Council meeting, some of the deficiencies, and said that's really the first he had heard of it other than the mechanical service calls. That one year warranty is up December 31, 2015, so two weeks; but having said that, he said they would honor an extension of that and they would get in here and take care of whatever needs to be done. In response to a follow-up question by Senate President Meyer, Mr. Pfeffer said that he thought it was possible to better sound proof the Auditorium.

REPRESENTATIVE MILLETT asked Mr. Pfeffer that when the Auditorium was built and the other conference rooms were built, was sound-proofing part of the specs he had.

MR. PFEFFER said that in the specifications that they prepared with the Legislature's consultants, there were STC ratings - Sound Transfer Coefficient ratings. He said he knows all the walls and ceilings meet and exceed STC ratings for these kinds of rooms. Where he thought it fell apart was with the glass doors and with the crack between the doors. In terms of everything else, he thought it was all workable. He said they would take a look at the glass doors because any time there is a crack, there's going to be sound through that crack. In response to a follow-up question from Representative Millett, Mr. Pfeffer said the Auditorium wasn't supposed to be sound-proof, it was supposed to be a room with the right STC ratings, which doesn't mean sound-proof. To get it sound-proof, the doors would need to be replaced.

REPRESENTATIVE JOHNSON said that just for the record his new window in his office in Juneau actually leaked and had to be fixed, so that window is considerably newer than anything in this building and it was leaking.

CHAIR STEVENS thanked Mr. Pfeffer for taking the time to be here today.

REPRESENTATIVE JOHNSON asked if Mr. Pfeffer would be able to please stick around in case there were additional questions. Mr. Pfeffer indicated he would be available.

CHAIR STEVENS asked Ms. Varni and Mr. Gardner to return to the testifier's table. He asked if there was any response to what had been discussed in the previous testimony. He said he would be particularly interested in information about exercising the right to termination or anything else they would care to speak to.

DOUG GARDNER, Director of Legal Services, said that he has discussed the termination clause language with Legislative Council on a number of occasions and it's all been within executive session. He said that present in the audience was Mr. Jim Gottstein, an opponent of the Legislature in some litigation, so he said he would tailor his comments with that in mind.

CHAIR STEVENS said that if Mr. Gardner thought Council needed to enter into an executive session because of legal issues, to please advise him. As much as possible he wanted to be on the record since this has gone on forever and it could go on forevermore; because members don't come to some meetings and when they do come, they have more questions, and this could just extend for the next 10 years as it has extended for the last 10 years.

MR. GARDNER said he would respond in a way that he thought was appropriate. The lease is public and mentions the right to termination on a number of occasions. He said he agreed with Mr. Pfeffer on a couple of points, one is that the Legislature does have the right to exercise the clause; it's in the lease, and it's in the lease in multiple places, not in some hidden fine print at the bottom. It has to be in the lease, as Mr. Pfeffer observed, it's in all the leases that the State has. It's there because future legislatures cannot be bound and it's there because long term state debt cannot be contracted. It's a vehicle that allows termination for an appropriation decision; and this is a quintessential appropriation discussion. The question is does the Legislature have the money to remain at its current Anchorage location because of changed circumstances. He said he didn't want to comment on whether it creates an issue with the State's credit rating or how it may affect other leases; those are policy decisions that the Council needs to make. He said the Legislature has the right to terminate the lease for non-appropriation. He said that as Council works through this, ultimately, if a court were to evaluate that, a court would find that the Legislature has that right to do that. He said he recognized that with Mr. Pfeffer, that's a painful process and one that likely would be avoided if possible, but it is a right the Legislature has nonetheless.

Mr. Gardner said his purpose at being at the table today was to follow on from Ms. Varni's presentation that went back over the cash flow analysis that's been presented to Council before. At the last Council meeting, several members asked questions about the scenarios that were presented and they wanted an update on net present value, some issues related to discount rates and inflation. As Council is aware, there is a contract with Serena Carlsen, who is a partner with Stoel Rives in Seattle and is online today. Stoel Rives Anchorage represents the Legislature in litigation with Mr. Gottstein. He said also available for questions is Peter Shorett, who he hired to both appraise the Anchorage LIO and to provide Council with a financial

analysis that members have in front of them. Those are the scenarios that say "Scenario Analysis for Legislative Affairs Building" with a turquoise heading at the top. He said he would like to try to efficiently ask a series of questions to Peter Shorett and, where appropriate, Ms. Carlsen, and go through these scenarios and to facilitate the conversation. He said one of the important things for the public that is watching and for the members present in evaluating this is to understand what the inputs are to these models. Financing is all about inputs and some of the assumptions that we've made, he's noticed, may be a little different than some of the assumptions that Mr. Mitchell may talk about and that is probably a result of different availability to information.

CHAIR STEVENS noted for Council members that there are two documents Mr. Gardner will be referring to in his discussion with Peter Shorett, one at 5% discount rate and one at 8.25% discount rate.

MR. GARDNER said he was going to pick the 8.5 percent discount as most of the remaining variables remain the same, so once members understand the first spreadsheet, it's simple to see what the difference in the 5 percent discount rate is to evaluate the second one.

Mr. Gardner confirmed that Mr. Shorett worked at and was a partner in Kidder Matthews in Seattle. He confirmed that Mr. Shorett has been qualified as an expert in court before on matters related to real estate appraisal and the topics that he will address this morning. He confirmed that Mr. Shorett had been listening to the discussion today and that Mr. Shorett was familiar with the numbers that Ms. Varni worked through, which Mr. Gardner described as the cash flow approach to looking at how to buy or otherwise continue to lease the 716 W 4th Avenue building. He confirmed that he had hired Mr. Shorett to do an appraisal of the building to help understand options to be used by Legislative Council to either purchase the building or address the financing of it.

Mr. Gardner confirmed that Mr. Shorett had the Scenario Analysis for Legislative Affairs Building with the note in the left that all scenario variables are at 8.25 percent. He asked Mr. Shorett to discuss what is a discount rate and why did he use 8.25 percent.

MR. SHORETT said that a discount rate is a rate of return that an investor would expect on a real estate investment.

It factors the time value of money, which basically is the theory that the value of money you have now is greater than the promise to reach or receive the same amount of money in the future. He said it's a rate that's used to basically convert the defined cash flow into a value. He confirmed that, per Mr. Gardner's comment, he assumed for purposes of both models that there would be a 3 percent annual increase in operating expenses. He confirmed, in response to a question by Mr. Gardner, that the models are based on a purchase price of \$37,950,000; he agreed to Mr. Gardner's assertion that the price, which the owner had just reduced to \$36 million, was based on an original purchase price of \$37 million plus the prepayment penalty of \$950,000.

Mr. Shorett, in response to a question by Mr. Gardner, said he would explain the term "reversion price" in the context of the analysis he did. The analysis he performed based on the direction from Mr. Gardner in terms of various assumptions is modeling a cash flow, and in looking at the present value of that cash flow over a 10 year period. The "reversion" is a word that is used to describe the sale event of a property at the end of a hold. In other words, most sophisticated investors that use discounted cash flow analysis, which is what is being done here, that make projections for rent, etc.; and then, at the end of that 10 year analysis, they assume that they will sell the property. The investors initially put the money out as a cash out flow and then, in turn, the property sells. It is the future event of the sale of the property at the end of the tenth year.

MR. GARDNER confirmed with Mr. Shorett that, in reference to Scenario #3 - purchasing with Certificates of Participation - that number, when compared to moving to the Atwood Building, those costs begin to look like there might be an advantage potentially to purchase the building, the closer those numbers come together. He confirmed with Mr. Shorett that the assumption on the purchase versus the moving to Atwood is a way of looking at this transaction but part of that analysis and that number means the Legislature sells the building at the end of 10 years. He confirmed with Mr. Shorett that if you go through the analysis with net present value, but the Legislature does not sell the building at the end of 10 years, then it's really costing the price noted in Mr. Shorett's scenario, in this case \$14,300,000, plus the amount of the value of the building at the end of the 10 year period. In response to a request for clarification by Mr. Shorett, Mr. Gardner said the assumption is that state governments don't tend to

acquire buildings and then sell them in a short time period, they tend to occupy or own buildings for the long-term. Given that assumption, Mr. Shorett agreed that the value would go up if that were the case, as described by Mr. Gardner.

MS. CARLSEN, Partner at Stoel Rives, LLC, interrupted to say that under these assumptions, the cost would go up but the value would be in the asset of the building rather than the cash from the building.

MR. GARDNER said that was a good point and that at the end of a Certificate of Participation process, if from a cash flow standpoint, you want to get to that number of \$14,300,000, the building needs to be liquidated. If the belief is that the building is an asset and the Legislative Council wants to have that asset instead of money in the bank, then the comparison that's closer to moving to the Atwood, it makes this process more competitive. If the Legislature doesn't sell the building and the primary concern is purely cash flow, then it isn't as competitive.

MS. CARLSEN said that was correct and added that you would have to remember that you do still have the value of the building and you can sell it. She said the second point is that this scenario shows the value of the building in a general market scenario rather than as a specialized building.

MR. GARDNER directed to Mr. Shorett that if the assumption that was discussed earlier on the reversion price, in other words if the amount that you get for the building at the end of 10 years, if it is just viewed as an asset on the books or if it is sold, the higher that number goes, the more competitive the purchase is with moving to Atwood. Mr. Gardner reframed his statement to say that Mr. Shorett had appraised the building without the lease and without the lease, the building is perhaps worth less than with the Legislature's lease.

MR. SHORETT confirmed that was so and offered the following explanation. The reversion price represents the value of the property that he estimated in July 2015. That appraised value was \$20 million. That appraised value assumed that the State would not be in the building but that there would be a market rent paying tenant, not the rent that the Legislature is currently paying. To further address this issue, he said that if that reversion value were higher, there would be more asset value and the occupancy cost

would become more in line with moving to the Atwood Building.

MR. GARDNER asked Mr. Shorett if there was an argument to be made that the reversion price that he had assigned to the building at the end of the 10 years may be a little on the conservative side; that the Legislature may actually have a more valuable asset at the end of the 10 years. He said perhaps that is a judgment call.

MR. SHORETT said no, it was not a judgment call. There was an answer to that and the answer was that there is value to the State because the building suits their needs, but there probably isn't value to too many other tenants in that market. The State has to look at their real estate a little bit differently than the market might because of the more unique requirements in how the space is laid out.

MR. GARDNER asked if the issue was for a higher value of a building like this. He said there are a lot of public spaces, a lot of large meeting rooms in this building; was the consideration to purchase a building like this that this kind of building might be worth more to the State than it might be to a private party. In other words, a business might not want to pay as much to be in here, but the Legislature asked for improvements and, ultimately, the building is more suited for a public use than it might be for a private space. He asked if this was a problem that municipalities and states have to deal with in terms of valuing an asset.

MR. SHORETT said it was not uncommon that there's a special purpose-type use building like the Legislature has. He said he described it as special purpose because of the Auditorium for example; that's not a common type of improvement for even a lot of other state buildings. The large lobby area is another atypical improvement but it suits the needs of the Legislature, so there's value to the State for those improvements. He said it's not uncommon for other agencies and the like to have a value premium to do their business, so it's kind of the cost of doing business.

SPEAKER CHENAULT asked Mr. Shorett if a tenant-occupied building would have the opportunity for a higher purchase price than a building that was sitting vacant.

MR. GARDNER, in response to Mr. Shorett's not understanding the Speaker's question, attempted to clarify. He said Mr. Shorett valued the building at \$20 million but if there

were tenants in the building, that amount would certainly be higher and asked Mr. Shorett if that was correct. Speaker Chenault agreed and added if the building was occupied or unoccupied, would that make a difference in the reversion price.

MR. SHORETT said it would make a difference and his appraisal was based on the assumption that the building would be occupied by a market rent paying tenant. He said he believed he assigned a rent value to the property of \$3.50 per square foot. If it was not occupied, it would probably have a lower value because of the need to lease the space, so there would be lost income and tenant improvement requirements, and the like.

MR. GARDNER said he'd like to close by requesting a summary from Mr. Shorett. He said Mr. Shorett knew that Legislative Council was looking closely at possibly moving to Atwood versus perhaps financing a purchase of this building and let's get down to the crux of it. He asked Mr. Shorett about the pros and cons of moving to the Atwood Building from both a cash flow standpoint and a purchase standpoint, and what are the pros and cons based on his analysis of purchasing the building with Scenario #3 and Certificates of Participation.

MR. SHORETT said he hadn't been prepped on this and would try to be as succinct as he could. He said he had been to the Atwood Building but had not seen the space the Legislature is considering. He said he would have to make the assumption that the comparison would be apples-to-apples with regard to how nice the space was; the space that the Legislature is currently in is very nice space. He said he can't imagine the Atwood is going to be quite as nice as that. He said that two scenarios were run - 5A and 5B. 5A was looking at 30,000 square feet that was on the table as being needed by the Legislature; and we also looked at it as though it was the same square footage of what of the current space. There is not a huge difference between those two numbers - \$8.5 million and maybe \$11 million, so a couple of million dollars difference. He said he heard the discussion about parking and there was better parking at the current location. He said at the end of the day it is clearly a lower cost to move to the Atwood Building than to stay at 716 W. 4th Avenue under the current lease. The numbers don't actually reflect what exactly is happening because the scenarios are for 10 years and the Legislature has already burned one year off the lease. If you look at the cost of staying in 716 W. 4th

Avenue, it is very significant, it's \$27 million, under the current contract. It appears that the financing options are very attractive, but there is a downside to financing although he was surprised at how close the numbers were. He said there are three main components of expenses or cash outflow. One is the debt service, the second is the operating cost, and the last is the purchase price and then the sale of the property. The Legislature has the ability to borrow at such a low rate that it makes borrowing extremely attractive. He said that the problem is that with a purchase price of \$37.9 million and the Legislature only receives a reversionary benefit at the end of something that is considerably less, then the Legislature will incur a loss. One of the things that this covers up, the purchase with fixed rate bonds or certificates of participation, is the deferral of that loss for 10 years; and that has to do with the time value of money. He said, in other words, instead of incurring that loss now and writing a check for \$37.9 million, the Legislature is deferring that.

VICE CHAIR HERRON said to Mr. Gardner, just for clarification, let's return to September 19, 2013, letter that Ms. Varni signed, and that he assumed Mr. Gardner prepared, that's certifying that the appraisal that we had was the value at that time.

MR. GARDNER said that was correct. That letter was based wholly on the appraisal done by Tim Lowe that AHFC worked through. That's a number that was delivered to both he and Ms. Varni; and they asked Mr. Lowe a number of brief questions before they worked through the September 19, 2013, letter. He said the issue with this appraisal is that's the value of the building with the Legislature occupying it with a fairly robust lease for a public space. That is not necessarily the same as the valuations that Mr. Shorett's talking about. The letter is accurate and he doesn't have a reason to believe the Lowe appraisal isn't accurate, but the appraisal views the building with the Legislature leasing it; if we leave, then there are different numbers that have to be addressed. The amount that someone would pay to lease it would be a market rate; we have a rate that includes the improvements that we asked Mr. Pfeffer to put in. He said he respected Mr. Pfeffer, he worked with him a lot and Mr. Pfeffer did what he said he was going to do. He built the building that Legislative Council asked for, but as a public space, more expensive than it would be as a law firm or a bank or something like that. He asked Ms. Carlsen if she thought that was a fair response to Vice Chair Herron's question.

MS. CARLSEN agreed that it was. Clearly, the building would not have been built at the cost that was spent if the Legislature was just going to go out and get a market rate rent.

REPRESENTATIVE JOHNSON said he is still having trouble with the apples-to-apples comparison on 10 years. If we own the building, it's a 40 year building, why aren't we amortizing it over 40 years instead of 10; what did that do to the numbers. He directed a question to Mr. Shorett about whether he had ever done something like this on a 10 year basis; is 10 years standard or is it longer term.

MR. SHORETT said that was a very good question. He said this was the term he was asked to consider; however, he did look at longer term financing and the relationship between the numbers don't change considerably. Obviously, the numbers go up is what happens. At the end of the day, the Legislature is buying a \$30+ million building and the value has to be realized over a period of time. This is a little bit different scenario because it's an occupancy cost analysis, it's not an appraisal of the property.

MS. CARLSEN interrupted to say she just wanted to make it clear that Mr. Shorett did use a 20 year amortization period in the scenarios before Council. While the cost are looked at in a 10 year period, which was chosen because the lease was for a 10 year period; but the amortization of the building has been done on 20 years, which is a market-based look at amortizing a building.

CHAIR STEVENS said as Council will recall, we have scenarios for a 20 year period and the 10 year scenarios were used because the lease was for 10 years, allowing for an apples-to-apples comparison.

REPRESENTATIVE JOHNSON said he wasn't sure he agreed with that statement. He said that comparing a 10 year lease with a 10 year purchase isn't even in the same vegetable group, much less apples-to-apples. He said we are really talking about cash flow in a time when we don't have a lot of cash, so in terms of cash flow and the price per square foot, to do a 10 year comparison with a 30 year comparison doesn't make sense. For example, a cost per square foot of \$7.41, if taken over 30 years, the cost of the building is paid for and after that it's the cost of maintenance and upkeep, so that needs to be figured on that cost per square foot if we're going to have a legitimate conversation about cost.

He said in the 20, 30, and 40 year scenarios when the Legislature is paying \$1.70 or \$1.60 per square foot, what's that going to look like. If Legislative Council in 30 years is looking at this and saying we're paying \$1.70 per square foot and you look around, that's going to be a pretty sweetheart deal. He said he thinks we need to look at cash flow and he doesn't think anything in here does that. Hopefully with Deven Mitchell and AIDEA, maybe there's an opportunity to look at those numbers and we can compare strawberries-to-apples, which is what he thinks needs to be done.

MR. GARDNER asked if Mr. Shorett could respond to Representative Johnson's point. He asked Mr. Shorett what is the impact, to the extent he knows, on cash flow over time. If the building is purchased over a 30 year period, what do the Legislators have to confront then each year in their budget from a cash flow standpoint.

MR. SHORETT confirmed that all the attachments to his spreadsheets were handed out to Council. He said that his answer is that if members look at each of those sheets, then for leasing, staying in the 716 W. 4th Avenue building is \$4,032,000 annually. In the second scenario, it's \$1.26 million; third is \$2.5 million, and you can see the numbers are there.

MR. GARDNER clarified that he believes Representative Johnson's concern is have we analyzed what a cash flow would look like if we purchased this building over a longer period of time and what does that do to the annual total cost from a cash flow perspective.

MR. SHORETT said that the longer you stretch out a loan, the lower the debt payments are. Your operating costs are consistent. It really depends upon the assumptions that are used. He said he didn't know what vehicles would be used for financing. If it was bond financing, you're paying it back in a lump sum. If it was Certificates of Participation financing, you're paying principle and interest. He said he didn't know how long those debt loads could be carried.

MS. CARLSEN asked if it was fair to say that it would depend on over what period of time do you want to pay the purchase price. Once you've paid the purchase price, obviously the cash flow price goes way down because it is just operating expenses at that point. It goes back to the discussion about deferring when the purchase price is actually paid. There was a short discussion between Ms.

Carlsen and Mr. Shorett clarifying the details. Ms. Carlsen then said that if the debt payment was stretched over a longer period of time, there is more interest, but the actual out of pocket every year goes down.

REPRESENTATIVE JOHNSON said that under any of the scenarios where the Legislature purchases the building, in year 2036, we would only be paying \$525,000 per year adjusted for inflation to be in this building. In year 2036, we would be paying under \$1 per square foot and is that or is it not a good deal.

MS. CARLSEN said in some ways it's the situation being faced in the Atwood Building right now because that building is paid for. So all you have is the operating expenses.

MR. GARDNER asked if, ultimately, under any of the purchase scenarios, the Legislature would have the value of the asset. If the Legislature sold it, there would be cash in the pocket; if they valued the asset on the State's balance sheet as the building as it is right now, that asset would be owned by the State. Under any of the purchase scenarios, the cash outlay would have to occur each year to make the purchase, so there would be a cash flow on the purchase, so you realize the gain at the end. It is either sold or it is an asset on the balance sheet. Ms. Carlsen agreed. Mr. Gardner repeated that each year, the Legislature would need to appropriate the sufficient amount to purchase it, which is in Mr. Shorett's analysis.

MS. CARLSEN said that was correct and it just depended upon how the purchase was financed. That number changes based on how it was financed and over what period of time.

MR. GARDNER said that Representative Johnson's point was that once the building was paid for, then you start reaping the kind of savings that are consistent with the Atwood Building. Ms. Carlsen agreed.

SENATOR MICCICHE said he felt that we were softening the value of ownership of the asset. Someone made the statement earlier that we do have the value in the building and we can sell it if we were to purchase this building. He said he noticed the ownership value remains at \$37,950,000 and that there is no escalation in that value over a 20 or 30 year note period. He asked how would escalation in value be applied and assume a reduced long-term per square footage cost. He further asked how that would be applied in

understanding which is the right way to go at a lowest cost per square foot basis.

Discussion followed between Mr. Gardner and Senator Micciche in an attempt to clarify Senator Micciche's question.

SENATOR MICCICHE said he wanted to know how to capture the inflation in the value of an asset as they make this analysis considering we'd be holding a real asset as a state that could be sold. There's no ownership value in the Atwood since it is already owned. There would be a substantial ownership value somewhere above \$37,950,000 at the end of a financing term, whether that be 20 or 30 years.

MR. SHORETT said it really depends upon the assumptions that are made. The assumptions that he has made, which are reflected in the reversion price, is the \$20 million escalated at three percent a year. Most investors, when they do a cash flow model, use three percent a year, it's a very common escalator factor. Now, if you're looking at it from an owner/investor prospective and you want to be in the building, then you might use a different number than \$20 million. At the \$37,950,000 price, you have a lot of ground, a lot of years to make up to get to that number if you use the \$20 million figure. He said if you're assuming that you're not in the building, then you have 25-30 years before you get there. The other thing to factor and recognize is that it's not going to be a new building anymore. Right now, it's almost a brand new building, subject to some renovation of the building; but the condition and quality of the building will be considerably less in 25-30 years than it is today.

MR. GARDNER said that in Mr. Shorett's appraisal, he also looked at the replacement costs of the building. That is a different value.

MR. SHORETT said that the building is so unique that he looked at how much it would cost to recreate that building; not rebuild it in the same site, but to find a similar site, similar land, and recreate the building there. The cost numbers when he added the cost to develop, provided a reasonable developer's profit, before assigning any depreciation to it, was somewhere around \$35 million. When he came to look at it from the prospective of the current building, recognizing that it is not a new building and that there are some dated components of the building; he

believed he took a 10 percent depreciation off and came up with a lower number. That contrast what was actually paid for the building, or reported to be paid, of \$44.5 million and the big difference there is that they were working around an existing building as opposed to starting fresh from scratch.

MR. GARDNER said if you used that number as a reversion value, if you can do so, what does that do to giving weight to the ownership of the asset at the end in terms of making this more attractive from a purchase standpoint.

MR. SHORETT said it raises it considerably. It brings the value of the property, assuming that it's going to be reverting back to you, to a price point that is more consistent to the price that you are actually paying. So if he were to put in the price that you were actually going to pay into the reversion, the cost of ownership goes down considerably and the cost of ownership then is just the cost of financing.

SENATOR MICCICHE said that was the answer he was looking for. He does think there is real value in ownership, not saying that's the way he is going, but he does think it's something Council has to carefully understand before they make the decision.

REPRESENTATIVE KITO said he thought we might be talking a little too far ahead of ourselves. The people of Alaska do own the Atwood Building. It may not be the Legislature but it is the Administration. In this time when we're asking everybody to tighten their belts, it's not well-advised for the Legislature to be looking at buying a new building when we can get past that purchase price already in the Atwood and pay basically the operating costs, post-purchase, for space in that building. We avoid the expenditure of the \$37 million for the State of Alaska and we're in a situation where we are just paying for the operating costs.

REPRESENTATIVE MILLETT asked how much money has been spent to renovate the Capitol Building in Juneau. She asked if we should we stop that renovation too because we're broke.

MS. VARNI said that money is already set aside, it is encumbered. It is a four year project for a total of \$33 million. The building needed new windows; to change from the steam heat; there were lots of problems with pieces of brick and cement falling from the building. The Legislature owns that building and we need to maintain that building.

This committee approved that project, which is going very well and is on time and on budget. It's something that will last us another 80 or 100 years.

CHAIR STEVENS, in response to Representative Millett's request for a follow-up, said he thought Council was getting too far afield and didn't know what the Capitol Building had to do with this discussion. He allowed Representative Millett to ask her question.

REPRESENTATIVE MILLETT said her question was in response to Representative Kito's comparison that we're spending money and she said we're spending lots of money in Juneau. The operating costs alone, she can't imagine the heat bill. So, if we're going to tighten our belts, we should really tighten our belts and start thinking about things that aren't necessary.

MS. VARNI said the Capitol Building Renovation and Retrofit was necessary. It was a project that needed to be done and the Legislature needs to maintain its buildings. Going back to the maintenance on the 716 W 4th Avenue building, she said that Mr. Pfeffer and his staff have been very responsive. The items that she listed were just to let people know that there is substantiation for having a building manager for this building if Council decided to purchase it, because the number of maintenance problems are ongoing. Unlike other property management companies that the Agency has had to deal with in the past 20+ years the Legislature has had offices in this building, Mr. Pfeffer and his staff respond quickly and it has been outstanding.

SENATOR MICCICHE said he normally doesn't do this but he's going to. He said he's not sure he appreciates someone advising him on what to ask. He said he has a deal with his constituents and that his vote on operating this government is going to be on the lowest cost per square foot that he can possibly find. In order to do that, he needs to understand all the aspects, not just with surface factors, but to look deeply into what the value of this decision is in the long-term. He said he's going to ask every question associated with that so that he makes the right decision. He just wanted to make sure that when we're talking to the people of Alaska, he thinks he has a record that proves that's the way he's going to go, but he wants to make sure he has the right information. He appreciated the Chair giving him the opportunity to state that.

REPRESENTATIVE JOHNSON said he wanted to go back to the value of this building in the future. He asked if Mr. Shorett had any idea what the Atwood Building is worth today. In response to Mr. Shorett saying he had not given that a thought, Representative Johnson said that he wanted to point out that the State paid \$18 million. He then asked if Mr. Shorett would agree that the Atwood Building is worth considerably more than that today.

MR. SHORETT said he was not trying to avoid the question, but he really had no idea. In order to answer that question, he would need to spend a little time.

CHAIR STEVENS said Mr. Shorett was not asked to evaluate the Atwood Building.

REPRESENTATIVE JOHNSON said his point was that we bought it for \$18 million and it is worth considerably more than that now. It's a building the State has owned for 15-20 years. He wondered what this building was going to be worth in 20 years; maybe nothing if our economy continues to go down. That's the point of reference that he'd like to look at as opposed to two percent evaluation over a 30 year period divided by the sum of the square of the earth.

MR. GARDNER said he had no further questions for Mr. Shorett. His goal was to facilitate the discussion and to ensure that some of the questions that have been asked at previous meetings were answered today.

MR. SHORETT said he wished Council luck, he knows it is not an easy decision and if he can be of any help, please let him know. He agreed to stay online in case further questions arose.

SENATOR MACKINNON said the only thing that hasn't been brought out that was discussed at the previous meeting is that there is revenue that the current facility is generating that hasn't been used in any of the calculations put before the Legislature. Apparently there are some antenna rentals on the top of the building, as well as some minimal income coming from the existing parking structure. She wanted to make sure that as Council looks at the analysis on all of the components comparing the advantages and disadvantages to moving or continuing the current lease that there is a revenue structure in this current lease; as there could be at the Atwood Building if we utilized less space than what is there today. She put that forth for

consideration for those who may not have been at that earlier meeting.

CHAIR STEVENS, with agreement from Ms. Varni, said that the next step was to hear from Deven Mitchell with the Department of Revenue about his projections.

DEVEN MITCHELL, via teleconference, said he hadn't planned to make any comments. He did, at the request of Representative Johnson, put together a somewhat simplified analysis of some different cash flows related to the potential decisions before the committee. He said he understood that analysis had been distributed to the Council. He said he agreed with Mr. Shorett and the declarations he's made about the present value calculations. He said he was not an expert on real estate pricing and Mr. Shorett's expertise should be valued in that arena. He used a discount rate of five percent. He said he wasn't necessarily looking at it like Mr. Shorett would have. He was maybe looking at the expected earnings of the Permanent Fund or the Retirement Trust or the CBRF, other places that if money is spent in the future, where it might reside and where it might be invested in the interim time frame for purposes of establishing a discount rate and that's how he arrived at five percent. As far as the value of the building, he just used a very simplistic assumption that the building is worth the purchase price today or in the future; meaning that you would anticipate that the building would appreciate through time and if you bought it for a price today, that's what it's worth and you could turn around and sell it today presumably for the same price.

Mr. Mitchell said it is a difficult analysis and that is very apparent to everyone. There are two different things on the table with the move to the Atwood Building versus the options with 716 W 4th Avenue building currently occupied. One of the components that maybe hasn't been discussed as much as it could is the move to the Atwood Building is what otherwise is going to happen to that 30,000 square feet in the Atwood Building if the Legislature doesn't move in. Is there an opportunity cost, is there going to be less expensive or folks that don't need the same quality of space or don't need to be located downtown that are going to be placed in that space as an alternative to the Legislature. He said there is some additional analysis that could happen on that side to determine what the true opportunity cost of moving into the Atwood Building might be. As far as the alternatives

related to the Anchorage LIO Building, from his perspective, the alternatives seem to suggest that purchasing the building is going to be better than maintaining the status quo with the lease arrangements that the Legislature's currently in. This analysis has the same deficiency that Mr. Shorett pointed out, that it is a 10 year analysis when one year has already expired from that 10 year period, so it is off in the same fashion that Mr. Shorett discussed. He said that was really the extent of the comments he might make associated with that analysis.

Mr. Mitchell said he was here before the committee as the State's debt manager, not as the Alaska Municipal Bond Bank's executive director. With that in mind, there's been discussion about the potential of a failure to appropriate for this lease, resulting in a downgrade of the State's credit. This State's credit is somewhat tenuous at this point. We have negative outlooks from Moody's that was put in place in December 2015; we have negative outlooks from Standard and Poor's that was put in place in August 2015; and by definition those outlooks imply that there's going to be 30% chance of a ratings change within the following 12-18 months. There's already stress on the State's credit rating; as has been discussed, there is a prohibition in the constitution on dedicating revenue which results in the subject to appropriation clause in lots of different contracts, including this one. This lease wasn't a secured type lease of the State of Alaska like the Atwood Building was when it was purchased. It doesn't carry a rating based on the State of Alaska's balance sheet but it would, as Mr. Pfeffer mentioned earlier, send a negative message to the banking community as well as the underwriting community. In the national market right now, there is some stress on subject to appropriation type credits that are out there due to issuers like Puerto Rico and Detroit, Michigan, not paying on those types of obligations. So, if the State of Alaska, with some of the negative news that you see, both locally and nationally, related to the low price of oil and the correlated reduction in state revenue, if we start not paying on obligations, it's just going to be one more negative story for potential investors to consider or our credit analysts to take into consideration when they're reviewing how to evaluate our credit, which is essentially the investors' trust that we're going to repay the obligations that we say we are. Mr. Mitchell ended his testimony and made himself available for questions.

REPRESENTATIVE JOHNSON thanked Mr. Mitchell for being available on a Saturday. He said that when he looks at the

scenarios from LAA, specifically Scenario #4 to purchase, he sees a square footage of 53,479 and he noticed that Mr. Mitchell used 45,371 square feet. If Mr. Mitchell was to use the same square footage number as Scenario #4, that would basically lower the per square foot cost. Mr. Mitchell agreed. Representative Johnson asked for an updated calculation based on using 53,479. Mr. Mitchell said that in the 30 year appropriation from general funds option, it drops it to \$2.79 per square foot.

There was no further questions for Mr. Mitchell.

CHAIR STEVENS said Council would move on to the material and testimony from Mark Davis with AIDEA.

11:02:14 AM

MARK DAVIS, Chief Infrastructure Officer for the Alaska Industrial Development Export Authority (AIDEA), said that the working assumption AIDEA had was quite different from anything heard this morning. He said their assumption was Council might not want to continue with the lease, and therefore would be interested in a purchase. AIDEA is a finance organization, so we only operate on the basis of purchasing an asset. AIDEA owns assets throughout the state. Examples would be the FEDEX hangar at the airport; the risk there was that land was owned by the Department of Transportation, purpose-built building for FEDEX but they were comfortable with that and it's worked out. AIDEA also built the US Coast Guard Headquarters at JBER; that on a Department of Defense license which creates risk. They have a right to take it back in a time of warfare. The Coast Guard then pays the Department of Military Affairs and then the DMA pays AIDEA and there's risk that the Coast Guard may not have an appropriation from the federal government and there's risk that the Department of Military Affairs may not have appropriated money to pay AIDEA. He said they've worked through these kind of transactions in various things they've done.

Mr. Davis said the numbers before Council reflect a purchase/loan price of \$43 million which was in the report and that includes a maintenance figure. It results in a figure of about \$2.3 million per year. Using the purchase/loan price of \$37 million which was based on a press report of what the developer might be willing to take, the figure comes out to about \$1.9 million per year. He said the testimony this morning was that the building might be for sale for less than that and so that was another possibility.

Mr. Davis said he didn't have many facts prior to attending this meeting, but now that he does, he said a scenario could probably be developed for purchase that would deal with the different tranches of finance. That is, there is a note on this building that is \$28 million; that note is essentially equal to the capital expense lease valuation of the building. If a 35 percent assumption of cost was run in the amount of the lease agreed to by the Legislature, the value of the building would be approximately \$28 million. He said it looks like the mortgage company probably did that analysis. He said there was also testimony that there were construction loans that were taken out by EverBank; typically those construction loans will have construction loan analysis appraisals and he hasn't seen those so he doesn't know what they came up with. When AIDEA looks at a project, they like to dig up all the information. There is a process - there is a suitability committee that they take a project to and the committee has to decide that AIDEA can make a rate of return. Then there's a loan committee that changes depending on what division is doing the project. He said it could be structured in a number of ways. It could be structured at a purchase price of \$28 million for example, that would take out the note, then there would be the issue with the developer of how to pay the residual amount which sounds like it is between \$8 million and \$9 million. He said they ran it by some of their consultants and financial advisors, probably the least expensive way to purchase this building would be for AIDEA to be the owner and then it would be an asset. AIDEA is very interested in the residual value of things it finances, so that if AIDEA owned it, we would definitely run it out for 30 years. He said he ran that lease by their internal committee and they see no reason to finance a 40 year building for less than 30, which is the way they can get the best cost of money and the best return. The nominal annual rate he used of 4.11 percent came from looking at figures from one of their underwriters, Goldman Sachs. The actual bond rates now are floating between 3.5 and 3.87 percent. As Mr. Shorett said very correctly, every investor is going to want an internal rate of return and, as Council knows by statutes passed by the Legislature, AIDEA has to make a rate of return, so there's a little room for that. He said, of course, AIDEA will give some of that back via a dividend, which makes them a little unique; it will be over time, it won't be fast. It does actually reduce the costs over time.

Mr. Davis said in response to an earlier point made by Senator Meyer, if AIDEA did buy this building, and this

would have to be checked with their counsel, it would probably take the building off the tax rolls, which has been the situation with other AIDEA properties. He said there is an exemption from taxation in the AIDEA statutes although it can vary on the type of project. That doesn't preclude a PILT; they have a PILT on the Ketchikan Shipyard, for example. He said that what could be done if the Legislature wanted to save money, a private placement through AIDEA does not need legislative approval. If AIDEA was interested, there would be their own internal process. The AIDEA committees would have to vote that they're interested in owning an asset like this; that it has a rate of return risk analysis, although they are willing to take appropriation risks as illustrated by the two examples he mentioned. So, maximum flexibility is with a private placement debt obligation. The Legislature could also do a tax exempt financing with a private placement through a bank. He said this building might also be susceptible to an AIDEA loan participation depending on the valuation and the appraisal. If it was broken into tranches of 28 and 8, then one of those tranches would definitely qualify under current statutes for loan participation by AIDEA, which is currently capped at \$25 million. The current interest rate for that is about 4.16; that rate fluctuates with the Federal Home Loan Bank of Seattle and that's by statute. That is a transparent number that isn't picked out of the sky, it comes out of an index.

Mr. Davis said municipal bonds could also be used, as Mr. Mitchell has already gone very carefully through. There is less payment flexibility with those. There are multiple investors, higher issuance costs and an extended funding cycle. On the other hand, financing terms could be longer. Mr. Davis said Representative Johnson asked how come nobody had run a 40 year scenario; he said that AIDEA internally just briefly looked at going beyond 30, but this looks like a 40 year building, so you're pushing the life of the building up against the financing, so traditionally that is not done. On the other hand, if the lease was the same as the building then you can sometimes go longer. AIDEA ran 30 years thinking it's a 40 year building, with a 30 year term and a 30 year lease, which is common in commercial transactions; a 10 year residual value, which could be substantial, given inflation, but they'd have to run the numbers; and a change in location.

Mr. Davis said that the next issue is the cost to run it. He said he'd seen a figure of \$525,000 throughout the figures, which strikes him from his experience as a former

transaction lawyer, that you've owned this building for almost a year and we should be able to get actual hard figures for the operating costs. He said if AIDEA was going to look at it, what was actually paid for utilities, what is being paid for maintenance. They'd need the actual figures to run them through because that makes a big difference. Then you'd have an escalator factor as the building ages. That can be covered with a capital lease; it can be covered with a "sink and reserve fund"; or it can be covered with a capital reserve fund. He said there are various ways to structure it.

Mr. Davis said all AIDEA was trying to do was give the Legislature options on purchase. Legal structures can change. This building could also be purchased by the Department of Administration if that was a better way to go. That would make it look more like the Atwood Building. AIDEA could provide project financing for that type of scenario. That might change some of the parameters and some of the numbers, but then it could be managed under the current system and that might be what you would like. If AIDEA owns it, we would not have a project manager; we would not hire someone because we already have building managers under contract. That doesn't mean we can't do it that way. If the Legislature likes it that way and it's an important public policy to the Legislature, AIDEA could run those numbers. They're not trying to give the Legislature any advice on how to run buildings. He said the Legislature could try other legal structures that might effect that outcome of the figures and AIDEA hasn't done that. They could; it would take a little time. It would probably mean sitting down at length with the owners, which they've done many times. AIDEA sometimes buys projects that the owners want to sell. With Ketchikan Shipyard, AIDEA stepped in to deal with issues of devolving federal grants that would not be available if it was under private ownership. The legal structures on how this was approached would affect the overall financing. He said AIDEA didn't assume that the Legislature wanted to keep the current deal. They assumed that the Legislature would want to finance it using AIDEA's capabilities to its fullest to result in the lowest possible cost per month especially given the current fiscal situation.

REPRESENTATIVE MILLETT asked Mr. Davis what would happen if the Legislature does decide to get out of the lease and a lawsuit ensues. She asked him if he could give any history of any other type of lawsuits like this and what the type of costs were incurred and if the State has prevailed on

them. She asked if Mr. Davis could give some of the ramifications if the Legislature decides to move into the Atwood Building and a lawsuit does result.

MR. DAVIS said that on behalf of AIDEA he really can't give a legal opinion on litigation. As a citizen of the state, he said that Representative Herron mentioned the Behrend's Building in Juneau, which is one he is aware of as an attorney. That was settled to his understanding. In the commercial transactions he has been involved with, which are not with an appropriation risk, there have often been disputes and those can be resolved various ways, sometimes in litigation, or by cancelling the deal and trying to restructure it. Obviously, there are significant transaction costs that could ensue.

REPRESENTATIVE MILLETT said maybe the lawsuit question is better directed to Mr. Gardner. She then asked Mr. Davis if this was something that AIDEA would be interested in pursuing on its own without the Legislature's involvement in it and leasing it back to the Legislature. Much like the Atwood Building, government exists, and the Legislature would obviously be a long-term tenant; AIDEA wouldn't have to worry about who would occupy the building. She asked if the Legislature could request that AIDEA do all the due diligence of the process so they could at least have come up with some of the other options so the Legislature is not exposed to litigation and we can find a way that preserves the State's bond and credit rating. She said she is looking for solutions, especially because of the fiscal situation. She said she wanted to be very prudent and make sure that Legislative Council was doing what was best for the State of Alaska. If we end up getting in a lawsuit and owe \$20 million; we need to be fully aware of what we are doing. She said she doesn't think they have gone deep enough and looked at and reviewed all of the options to make a decision today.

MR. DAVIS said that if the Legislative Council wanted AIDEA to, we could take it to our committees. He said he is in charge of what's called Unconventional Finance at AIDEA. An example would be that they recently lent the Bond Bank some money as they were a little short at the end of their fundraising and they stepped in to do that. They also recently did a loan for Alaska Pacific University, which was not a typical loan because they have unplatted land, so they had to take security against the entire University; which is not typical in commercial lending. If there was a request, he thought AIDEA would look at it. It's going to

take time, they would definitely have to talk to go through the record, which they haven't done yet. They would probably want to talk to the Legislature's counsel to see what he has done previously and then they'd want to talk to the developer.

SPEAKE CHENAULT thanked Mr. Davis for putting together the numbers on short notice. He asked Mr. Davis to confirm that the State of Alaska would actually finance a building built on anyone else's property other than the State of Alaska.

MR. DAVIS confirmed that AIDEA has done that before. He said that AIDEA financed JBER-U.S. Coast Guard; that was through a legislative change and the Legislature let them invest in what's called Federal Facilities. Once AIDEA had that legislative change, they worked with the Department of Defense; they have a license, which is essentially a lease and then AIDEA did the transaction. They brought that building in under budget from the estimates and it saved a substantial number of jobs in the U.S. Coast Guard that were perhaps going to move to Seattle. That was AIDEA's emphasis in doing that. He said AIDEA assessed risk based on how they think they are going to get paid, how much they are going to get paid, and that one did involve appropriation risk.

SPEAKER CHENAULT said he was actually being facetious; he knows that the Legislature does it, the Alaska Railroad does it and numerous other things. He said sometimes when we talk about the history, as Mr. Pfeffer did earlier, he remembers all those reasons why we're in this position that we are today. Maybe it wasn't being built in the right place; maybe it took the building off the tax rolls; maybe it wasn't in the right part of town; maybe the building's old. As we've heard today is all that we really did was update this building, we're certainly doing that in other parts of the state; our Capitol being one on a building that was built in 1928. We're certainly putting a lot of money into the Capitol. We might argue whether that is the right expenditure of funds; we're going to argue about what this building's worth or even maybe what the Capitol Building is worth. Maybe if we would have bought this building 20 years ago, maybe we would be remodeling it today and owning an asset instead of talking about either still leasing an asset or actually buying the asset. He said there are lots of questions, lots of concerns and he does appreciate the information the Mr. Davis brought up. He liked the idea of it. He said he doesn't really have a dog in this fight in all reality. He comes from Kenai and

while he has an office here, it's out of convenience, not out of necessity. Anchorage's Legislators have needed for years and have had a place in Anchorage to be able to meet and have meetings and be able to do the work that they're required to do. He represents nine communities in his district. He has an LIO in his district and it's actually 120 miles from where he lives. There is an LIO in the next district over. Anchorage is a big area. We did receive a letter from a Senator and a Representative about having individual offices in their district, in their community, so they can talk to the people that live in their community. He said he wouldn't even propose that he have nine LIO's in his district so he can go to the people in his area that he represents and be able to meet with them for coffee every day or every other day. There are other people sitting at this table who have a lot more communities than he does in their districts, but we find ways to get to those communities. He said this is a central place. Anchorage is the biggest city in the state of Alaska; there should be a place for out-of-town Legislators to meet. We've had a gentleman that is a member of the House that has been crucified over this building. He said that what he can tell people is that it's not this gentleman's fault. He said he would take as much or more blame for this building because of the inactions of Legislative Council. We have thrown this project under the bus for the last 12 years that he has been on Legislative Council. It's unfortunate that we actually have a lease, a lease that we agreed to, that we've signed, and that we knew the cost of before it was signed. We've had many opportunities to buy; we've had many opportunities to lease; but Council has always found a reason, whether that was that we didn't want to take it off the tax rolls, or it has to be downtown - we can't move to midtown or uptown. Whether it was perceived as a threat whether we build a building or we buy a building that's big enough, maybe we'll move the Capitol out of Juneau or maybe we'll move the Legislature out of Juneau, or maybe we will have special sessions some place other than the Capitol. Maybe we haven't done it because maybe we'll move the Capitol to Willow or some other place in the state. There's always been a reason, there's always been a catch. Unfortunately, there have been many people thrown under the bus and he told the Chair he may not probably be one of them but he could be. He said he doesn't have the answer. He's been looking for information; how could it be put together so that it benefits all Alaskans and not just those in Anchorage. Legislative Council has had to deal with this for the last 10-12 years and we need to make a permanent

decision, not one that just gets us out of hot water with the voters right now, but one that makes actual business sense. He said in order to get to that point, we have to have the information that we need and the options that are available. He again thanked Mr. Davis for the work he and his folks have done. He also thanked everyone else for the opportunities that they've given Council. Even in these sheets, he sees ulterior motives as to why those numbers are how they are. He would never have looked at buying a building of this magnitude on a 10 year loan and he can't think of any other business that probably would have. Why was that number picked, because it was the term of the lease, he assumed. As Council continues to dig down through this thing, they keep seeing new numbers that drive those costs down for not only the Legislature but for the State of Alaska. He said he does believe in owning, he doesn't believe that leasing the majority of the time is of good benefit for the State of Alaska. He thinks we ought to own the assets. If we don't believe that we ought to own assets, than why does that State own the LIO building in Kenai and many, many other buildings around the state? If there's an advantage to leasing, we ought to just be leasing them all and just pay someone else. He said he thought it behooved the Legislature to look at how we invest our money and make those decisions wisely.

REPRESENTATIVE JOHNSON directed to Deven Mitchell asking about exposure costs and whether Mr. Mitchell had any insights into if the Legislature does exercise the option of the lease, what the repercussions would be from a bond aspect.

MR. MITCHELL said that failure to appropriate for this type of lease wouldn't necessarily result in a rating action against the State because it's not a securitization of a subject to appropriation pledge that the State of Alaska authorized by law or where the State's credit was actually pledged. So there's a distinction there, but it would be another negative story in a recent history of negative stories about our state. He said we are talking about other subject to appropriation pledge credits right now, including pension obligation bonds, and future potential undertakings for large infrastructure projects in the state, that if you were an investor, you're going to say, well, they started down a path of not paying when they said they were going to pay. He said the investor understood it was not the same obligation that the investor was buying, but it would make them a little more hesitant to lend them money because they can't be trusted as much as they were

the day before they didn't appropriate for that lease in this circumstance; where you're at the beginning of a lease, you have asked the developer to do something and they've performed and provided a facility that was requested and then we have an alternative that's less expensive and, granted, the times are more difficult now, but from the investor prospective, they're going to potentially use that as a means from extracting more value out of the state.

REPRESENTATIVE JOHNSON followed up to ask about Mr. Mitchell's spreadsheet and asked if it was his building, what would he do.

CHAIR STEVENS interrupted to allow Mr. Davis to leave the testifier's table and thanked him for his time.

MR. MITCHELL responded that on his spreadsheets, the yellow across the page has the present value of the cash flows. For nominal cash flows, go to the bottom of the spreadsheet. He said he didn't inflation proof operating costs, he just used the same information that was in the November 24 memorandum analysis, just flat numbers. For example, the 10 year appropriation, the total cash flows, which is the purchase plus the operating costs comes to a nominal dollar cost of \$43,200,000. If you present value those cash flows of the future, which are really just the operating cash flows, it diminishes to \$42,488,799 that is shown in the yellow box. The ownership value is assumed to be \$37,950,000 either today or the future value of that \$37,950,000. Even though that's a static amount, this analysis assumes you're not discounting that \$37 million, you're in fact doing the opposite by leaving it static when you're comparing it to otherwise present valued numbers. The real cost would be the differential, so \$4,538,799 would be today's cost of buying the building if you were just looking at cash flows. A greater amount for the 20 year option at \$8 million and then \$11 million for the 30 year option. He said for the COP option, it's the same thing essentially. Mr. Davis described different scenarios under which AIDEA might be able to help facilitate the financing of the building or AHFC might under a different circumstance be able to finance the building. He said those alternatives and the COP alternative are all, at the end of the day, going to be fairly similar. The reason why in the 10 year scenario the real cost is actually negative is because the cost to capital for the COP's is 1.94 percent and the discount rate is 5 percent so on those future cash flows you're going to make more money on the money being

retained than you're going to be paying on your annual interest expense and that overcomes that and the operating costs during that 10 year period. He said, theoretically, if you could sell the building at the 10 year term for the future value of the purchase price, you would be able to save \$1 million in real dollar cash flows, so you're theoretically creating money in that scenario. The 20 year option has more operating costs incorporated into it and there's more interest expense as the financing is stretched out for a longer period of time. Your annual cost goes down and your present value cash flows go up and the real costs go up over the value of the building, so if you sold it at the 20 year period - and that same relationship holds true for the 30 year analysis for the real costs goes up to \$3,168,000 - at some point, he said you reach equilibrium where the annual operating costs, the increment of the cost of the real property would be minimized by the number of years in the analysis due to that annual operating expense incorporation. He said for the lease options, the cash flows are pretty self-explanatory. There's not an ownership value at the end and so you just have the annual cash flows present valued for the three lease options within the current Anchorage LIO and then the three options within the Atwood Building, and those have a correlated real cost today.

Mr. Mitchell said in the first six columns, this was really an attempt to do what Mr. Shorett was talking about as well, incorporating some concept that if you buy a building, if you buy an asset, well, there's a value to that. This might not be the right value, it maybe should be a different number. For the information he had, this was the best number that he had to use. He said Council needed to take that into consideration when you're considering your cash flows because after you own the building, there's going to be a benefit. Whether you sold it or whether you had a diminished operating cost; and that's all relative to staying in the LIO. The Atwood Building, as has been pointed out, the final payment is in fiscal year 2017 on the \$40 million of bonds that were issued back in 1997 and so, at this point, you're just paying the operating costs and that's all that the \$664,776 incorporates. So the benefit of that purchase road is already being realized in those three columns.

REPRESENTATIVE JOHNSON said it did answer his question. He then asked Mr. Mitchell that in looking at the columns, which is the best value for the State, in his opinion.

MR. MITCHELL said, of course, like everybody, he's going to say it depends. He said you stay in the Anchorage LIO or you don't and he doesn't know how you make staying in the LIO versus you don't apples-to-apples because they are very different options. He said if you're staying in the LIO, in this environment, you would be considering the use of debt and probably the 30 year debt option because you're going to have the benefit of right out of the gate reducing the annual cash flow by \$1.4 million or thereabouts and so you've got a reduction to the budget; you're going to own the building at the term of the financing; and after that you know you have an expectation of just paying operating costs for some period of time and recognizing that there will be maintenance at some point in the future. He said if you're going to move into the Atwood Building, he said there's a different analysis, although it's difficult to compare the two. There's a different number of square feet, he doesn't know what that space is otherwise going to facilitate if it doesn't facilitate the Legislature; and he doesn't know if that value is comparable to the Legislature moving in there, if it's less or more. Once you start saying what's the best choice, you're jumping across those two different options. He said the lowest total cash flow at this point, just in isolation, is of course going to be the Atwood Building. Going across the bottom lines, you're looking at the 10 year \$10,147,000 in nominal dollars; \$16.8 million for the 20 year and \$24.1 for the 30 year option, with these assumptions that you just have static operating costs and those are more than these other alternatives but you don't own a building at the end.

SENATE PRESIDENT MEYER asked that Mr. Mitchell give his title on the record for the general public and what he does for the state.

MR. MITCHELL said he is the Debt Manager for the State of Alaska and he is also the Executive Director for the Alaska Municipal Bond Bank. As the Debt Manager, he works with the State Bond Committee for issuance of State of Alaska obligations, which would include general obligation bonds; revenue bonds with the State including airport system revenue bonds; Certificates of Participation of the State, which are subject-to-appropriation lease transactions of the State, as well as operating lease securitizations or other special projects including working on things like the pension obligation bond issuance that's contemplated. He said he had been doing this since around 1997. As the Bond Bank's Executive Director, he works with municipalities around the state to issue debt to fund anything that

municipalities fund, from community buildings, ports, harbors, schools, roads, airports, you name it.

SENATE PRESIDENT MEYER said that in the six years that he was co-chair of Finance, he and Mr. Mitchell worked together on a lot of debt issues. He said he knew Mr. Mitchell was in constant contact with the credit agencies and bankers back in New York and back east. He said he was concerned that Mr. Mitchell had mentioned that Standard and Poor's and Moody's, which we've all seen in the media, are concerned about our future outlook. He is concerned about Mr. Mitchell's comments that if we don't appropriate the money to stay in the LIIO, then that's just another negative story that they're going to look at and perhaps use against us in the future as to when we get ready to borrow money. He said he would imagine the risk will be greater and we'll have to pay more. So, for potentially looking at and wanting to borrow billions on a gas pipeline in the near future, how much value should be put on this being another negative story.

MR. MITCHELL said that's more of an art than a science. There is a lot going on when they pull the ratings together. Of course, they are looking at a variety of factors and they try to make it scientific, but at the end of the day, there is a certain amount of art that goes into it. He said that he would expect that this, by itself, would be an action that wouldn't have any ratings impact. He said in the broader context right now, it could get more attention than he would suggest that it maybe is warranted from a ratings perspective. What exactly that is, he does not know. He said the real concern that he has would be that a potential investor would see this story and, if we're selling subject-to-appropriation bonds, say well the state failed to appropriate on that operating lease, are they in such bad shape that they can't afford to pay their commitments anymore and where is that likely to waterfall to; maybe this credit is what they say in their minds, whether they truly believe that or they see it as an opportunity to say they need a 3-5 basis point increase in yield, so that's where he sees the real risk. He said there could be some increase in a future issue based on an investor's reluctance to continue to trust the State as much as they might have otherwise.

SENATE PRESIDENT MEYER followed up to say that if Council tried to compare numbers and numbers, should that be a factor we should also consider.

MR. MITCHELL said it was very difficult to say what the impact would be. It would depend on when we were going to issue debt, and of what size, and how recent this story was, and how it was picked up by national media. He said there would be a lot of variables that would go into that. He said it's certainly something that Council should be aware of as you make your decision, that there is a potential that it could have some impact on a future bond issue. He said he cannot define that and the impact could be zero or it could be 5 basis points that we wind up paying in extra yield on a particular sale.

CHAIR STEVENS noted that Representatives Millet and Johnson were in the queue to speak, but before that happened, he invited any other Legislators that are present in the room or are online to address this issue before Council. Mr. Mitchell was requested to stay online by Representative Johnson who had a follow-up question.

REPRESENTATIVE BOB LYNN, District 26 in South Anchorage, said that everyone knows that we have a big problem with this LIO situation. Whatever we do, he thinks should be done expeditiously. He said he knows Council was considering moving out the LIO to perhaps the State-owned Atwood Building and, if we move, that might work out okay and he would certainly hope so. He said perhaps there were some better alternatives; alternatives that would be more practical for Legislators, less expensive and more constituent-friendly. He said the current LIO is underutilized by Legislators, though staff are here of course. He thought it would likely be the same in the Atwood Building. There's a reason you don't find that many Legislators in the building, except during special occasions such as we're going through today. He said he does what most other Legislators do; when he meets with a constituent or some other person, his first choice for the meeting is coffee at a place near his home or near his district. His favorite meeting place for constituents and others is a coffee shop down on Huffman; he calls it his "branch office." He said it works well and it brings the government closer to the people. Most constituents like it better than the formality of a big, fancy building such as this one and maybe a steel office downtown. He said it puts constituents more at ease, especially people that have never met with a Legislator before and there are a lot of them. He suggested that if, in fact, the Legislature vacates the building, put some mini-LIO's in the east, north and west parts of town. There are strip malls and small professional buildings all over the place with space

that could work as mini-LIO's, and the rent would surely be less than it is at the current location. If, by chance, we got into some problems with some future mini-LIO landlord, the scale of the problem would be far, far less than here. We can put a north side mini-LIO for staff in the Atwood Building; that should drastically reduce the cost of renovating the Atwood, as well as the hassle of moving the current occupants all of the Atwood Building to make room for the Legislature. He said he was asking Council to consider the mini-LIO concept and asking Council to have someone pencil out the estimated cost of the mini-LIO such as we've been hearing for staying here in the lease, or buying here, or going to the Atwood Building. He said he thinks that trying to put the whole kit-and-caboodle of the Legislature in the Atwood is going to be interesting. He said he didn't have and doesn't have now, a vote on any of this LIO stuff. He is not on Legislative Council and doesn't plan to apply any time soon, at least until this is over. He said he doesn't envy Council's job, but does appreciate Council's willingness to make tough decisions such as this will be. None of us are going to be able to make everybody happy. He said he really enjoyed listening to what folks have been having to say this morning and thanked Council for listening to his testimony.

CHAIR STEVENS said he appreciated Representative's Lynn's comments and referred members to a document in their packet titled a "Legislator Statewide Office Space Lease Expense," which is exactly what Representative Lynn was talking about. It's all there, and those Legislators in Anchorage are at \$7.41 per square foot. The Chair said for his LIO in Kodiak, it's \$2.29 per square foot; and he has one with Representative Seaton which is \$1.69 per square foot. He said for Senator Micciche, it's \$1.87 per square foot, so it's all over the place. In some places, like Bethel, it is more expensive because of the cost of doing business there.

REPRESENTATIVE LYNN said he assumed that the cost of the Anchorage area would be a little less than someone that is out in the villages. Rent is cheaper here.

CHAIR STEVENS said he didn't think there were any Anchorage Legislators that had offices outside of the Anchorage LIO. He said that was certainly something the Legislative Council would consider and would be glad to work with folks on, particularly if we were in the Atwood Building, we could reduce the space we are leasing from the State there. He said he didn't think we could reduce the space in the

current LIO location but we could sublet, that's always a possibility.

REPRESENTATIVE LYNN said he wanted to point out that he wasn't the only one thinking about this. He said there were several in the majority as well as in the minority who are considering some concept of this mini-LIO idea.

CHAIR STEVENS noted there was also the letter from Senator Wielechowski and Representative Tuck as well, referring to a similar idea of small offices located in each Anchorage district.

REPRESENTATIVE LOUISE STUTES, House District 32, representing Kodiak, Cordova, Yakutat, and several small villages along coastal Alaska, said, unlike the Speaker, she does feel like she has a dog in this fight. She said there is an LIO in Kodiak and there is also one in Cordova that has been reduced to session-only at this point. Kodiak's LIO is a very, very, very active LIO; in the short time that she has been there, there's nary a day that goes by that we don't have a constituent in and out of their office. It is very well-utilized. She said it is very difficult for her to explain to her constituents, as well as for her to understand, when we have urban Legislators that have two and three offices, and we as rural Legislators are being threatened with having their LIO's closed. Her constituents just don't understand that and neither does she. She said she hopes that Council will take that into consideration in making that decision, because it's very important to rural Legislators to have that contact with their constituents; they know where we are, they utilize us, and they are grateful the Legislators are there, just as we appreciate the constituents. She thanked Council and said she appreciated the opportunity to testify.

REPRESENTATIVE LIZ VAZQUEZ, House District 22, representing West Anchorage, Sandlake, Jewel Lake and Northern Campbell Lake, said she wished other Legislators could have had the packet to review previously, she would have loved to have really studied all of the documents. She said it was a very important decision. She said all of the options need to be explored, we need to do our due diligence, because we are talking about facing litigation. She said if we break the lease, assuredly we will be in litigation, either from the parties that we owe the money or, if they go into bankruptcy, we will then deal with a very aggressive trustee. Trustees will go after deep pockets and everybody

knows the State of Alaska has deep pockets. We do have a fiscal crisis in that our income doesn't equal our expenditures, but we do have savings and we do have a Permanent Fund and everyone knows that. She said that, for the record, she did commercial litigation in her previous lives; she has done bankruptcy litigation. She said the judge, the court, the trustee will look at the Legislature's due diligence, what exactly we looked at, did we do our homework properly. She said it appears to her, and she hasn't been involved as she just got elected last fall, from a 40,000 foot level, that we have not done our due diligence and we're going to pay for it if we get into litigation. The bottom line is that it's going to cost us a lot more money. We are talking about paying attorney's fees; we are not talking about \$50,000 attorney's fees and this type of litigation is going to drag on for years, you're talking about millions of dollars. You're going to see probably litigation fees upwards of a half a million dollars if not over a million dollars; and we're probably going to pay damages; and we're going to get bad press. There's water under the bridge what happened previously. She said she thinks we need to do our due diligence, we need to look at the numbers, to look at the facts, and make a decision based on that. She said, by the way, we are spending lots of money in Juneau and she knows the delegation in Juneau harps about we don't need this LIO, whatever, but we are spending \$33 million renovating the Capitol in Juneau. Doing the math here, this is not really accurate because the Juneau delegation would be paying a lot more in rent. She said to the Chair that in the future it would be good to identify all the documents, who prepared them and the exhibit number so that for future reference and even litigation, parties would know.

CHAIR STEVENS noted that the document Representative Vazquez was referring to was prepared by the LAA at the request of Council at the last meeting for that information.

REPRESENTATIVE VAZQUEZ repeated that it would be very useful if that information was contained within the document; the name of the person that prepared it and the date of preparation. She said that in looking at this whole process, it looks like we haven't done our homework. It's very dangerous in light of the litigation and the litigation will come; either through the parties themselves or through a trustee. She said from her experience, her observation, in litigating in bankruptcy and litigating in commercial court, trustees are very aggressive. They take a

percentage of what they collect, so they are very incentivized to collect as much as they can. She said we will have to pause, we will have to take a "patience pill," but we'd better do our due diligence before we proceed to break a lease. She reminded Council about the older case in 1987 that the Legislative Council lost; they broke a lease and they had to settle. She also mentioned an article in the *Alaska Journal of Commerce* that said there may be a negative impact on the State's credit rating. She shared her experience with credit rating agencies. She told Council that while she is not on the committee, she is going to get tagged with whatever reckless actions Legislative Council makes or whatever responsible actions made. She said she is requesting that Council does their due diligence, she's sorry that it is a difficult job and she's sorry that there's a lot of water under the bridge but we need to move on and do our work well.

CHAIR STEVENS noted that the Legislative Council's vote is simply advisory. Whatever Council decides to do is a recommendation to the Legislature. The Legislature makes every decision on any funding; that will be in the budget, worked out in Finance and will be voted on the floor of the House and the Senate.

REPRESENTATIVE TARR said she wanted to be on the record as being present.

REPRESENTATIVE MILLETT requested to AIDEA and to Mr. Pfeffer for them to get together and have a conversation. She said she would like to put politics and emotion aside and actually have an honest conversation about what it means to the State of Alaska if we break our lease; what it looks like if we buy the building; and she said she would like some true costs of moving into the Atwood Building. She said she would like the true costs of when we would be leaving the current building and leasing another building. She said she heard rumors that we're looking at the McKinley Building already and she didn't know who authorized that. She said she would like to know an actual cost of all of this on every option that we have. Right now she doesn't feel like we have. She said she'd like litigation to be equated into that cost also because nobody's talked about the option if we break the lease, what litigation looks like and what we could be possibly losing. Talk about saving money, these are the things that we should be doing. We shouldn't have half of the information that may be slanted one way or another. We need someone independent that doesn't have politics in the back

of their mind looking at this instead of a group of Legislators that are not real estate brokers, that are not attorneys, and that do not do leases every day. We're trying to learn lease issues on a committee on a Saturday afternoon. She said PFD and LIO are all people know and it's going to continue that way if we get ourselves into a piece of litigation, it's never going to end. She said she'd like to put this to bed but she'd like to do it in the right way. She said she'd like to do it with accurate, unbiased, non-political, factual information. She said if she could request that, maybe they could put together at some point, some type of committee outside the Legislature that can give Council a true evaluation; it's not the Legislature's attorney; not Pfeffer's attorney. Maybe AIDEA is the right person, maybe AHFC, people that do it all the time. She said right now she feels like we brought AIDEA in at the last minute and he's giving us new information that she didn't know about. She said she'd be very interested to know if AIDEA would be interested in buying the building. Making us take a vote today on information that is imperfect and incomplete would be a sad state. Like the Speaker, she's been getting beaten up right and left on this issue but she doesn't want to continue to make poor decisions and continue to get beat up. At some point, we have to try to restore public confidence in the committees that we have.

CHAIR STEVENS said that one of the problems he had as Chair was that people don't show up for the meetings. We had a meeting last time in which we went into Executive Session and we heard information on what litigation may cost. He told Representative Millett that he was sorry she missed that.

REPRESENTATIVE MILLETT said she was on the phone listening to that.

CHAIR STEVENS said then you heard the potential costs of litigation. That was in Executive Session.

REPRESENTATIVE JOHNSON directed his question to Deven Mitchell. He said we're looking at bonding for over \$100 million for capital in the next cycle and every two years after that. He said if we lost and went up three to five basis points, what the additional costs on that \$100 million a year be.

MR. MITCHELL said he would be a little reluctant to try and put a dollar figure on it. Three basis points is three

hundredths of one percent, so when you start doing larger issues, it starts adding up and it's money but it's not going to be millions and millions of dollars at the end of the day until you start doing very large deals.

CHAIR STEVENS asked Tanci Mintz to come forward to answer some questions.

TANCI MINTZ, State Leasing Facilities Manager, Department of Administration, put herself on record.

SENATE PRESIDENT MEYER, on behalf of Council and the general public, asked Ms. Mintz why we didn't do this three or four years ago when we were trying to make a decision on whether to stay in the current building or move. He said as he recalled the Atwood was not an option at that time and asked Ms. Mintz what had changed to make space in the Atwood now that wasn't available before.

MS. MINTZ said that three or four years ago is approximately when they started the new universal space standards that were put in place by the previous administration. Through that process, they were able to identify more efficiencies within the building and we had more space available. As time passed, they started working with the Legislature to offer space in the Atwood and the other process was put on pause as to who was going to be backfilling the space until a decision was made; knowing that the potential savings that the State could have in its entirety, between the Legislature and the Executive Branches, would be substantial as compared to the rate that is currently being paid to lease the current space.

SENATE PRESIDENT MEYER asked that wasn't the thought too, that two or three years ago, we could get out of some of the leases we have city-wide. By consolidating state employees into one building, there would be some cost savings there. He said he thought that was why the Legislature felt that wasn't an option because it was going to be either filled with other state employees or leased out to law firms at a higher rate. He said he thought that information was important if we're going to do additional analysis so they can determine what the opportunity costs are that we either lose or gain by moving into the Atwood Building.

MS. MINTZ said one of the points of the universal space standards was to help identify who could be brought in and provide the best value and be the best fit within the

Atwood Building. She said they had started that process and got out of some leases that naturally expired in the Bayview Building, by bringing in a couple of different agencies there. She said that process had started and then it was put on pause to wait for a decision by the Legislature. If the Legislature decides not to move into the Atwood Building, they have a list of potential agencies that would move in to backfill the vacancy to bring the cost down as compared to where they are at now.

SENATE PRESIDENT MEYER asked if that comparison had been done. If the Legislature buys the current building versus getting out of our other leases and moving various employees into the Atwood Building - has that analysis been done.

MS. MINTZ said it has not been done. She said she could only go by the square footage of what the Legislature is paying currently versus the agency that is first on the list, what they would probably be paying at their existing location.

REPRESENTATIVE JOHNSON said that he knows that there has been some discussion of litigation in Executive Session and asked if that was something that should be made public or something that should remain confidential. Does that fall under the category of potentially detrimental to the state?

CHAIR STEVENS said he is in favor of making everything public that we possibly can but the Legislature's attorney, Doug Gardner, may have other ideas. He asked Mr. Gardner to address that issue.

MR. GARDNER said it is hard to have that kind of conversation in public. He said it is fair comment on those who have touched on it, that nobody wants to get into any kind of litigation. Why would we want a court making decisions about the Legislature; he said that everything he does for the Legislature is in effort to try and avoid litigation. Litigation is expensive and the issues related to this case, if we did get into litigation regarding the non-appropriation, could be complicated. Certainly would raise issues of constitutional law; it's undesirable for the Legislature, in his opinion, to ever get into court if it can be avoided, on constitutional issues. Litigation is expensive and it is a valid cost to crank into whether or not the Legislature buys the building or moves to Atwood. He said if the Legislature goes to Atwood, a fairly large number would need to be put on litigation expense. In

response to a request for clarification by Representative Johnson, Mr. Gardner said if you want the public to have this information, it wouldn't surprise him that the Legislature could spend \$1 million to \$2 million litigating the case. He said that he thinks that the Legislature has a right constitutionally not to appropriate if you determine that we can't spend our dollars on this. He said he believes the Legislature will ultimately prevail, but it's going to cost a lot of money. Litigation is just money out of pocket no matter what. It's not unreasonable to add \$1 million to \$2 million to this project analysis. Those numbers may be high, but by putting the numbers high, he's trying to be conservative so nobody gets a surprise. He said he would not talk about a losing scenario at this point, in response to a question by Representative Johnson, and said he wasn't trying to be cavalier with his answer.

REPRESENTATIVE JOHNSON said he didn't want to do or say anything on the record that would jeopardize anything in the future, but it was something Council needed to think about.

MR. GARDNER said he believed the Legislature's position to be superior in this regard, but he's not unwise enough to think that until it's litigated and until we see what the other person's arguments were, he's just on a pull and shoot in a vacuum.

REPRESENTATIVE MILLETT said the reason that she wanted to have this conversation out of Executive Session is because there are a lot of reporters here and this is one issue that has not been out in the press; the cost of litigation and breaking the lease. We hear a lot about how much the building costs, how much it costs to buy, how much it costs to lease, but we don't hear the other side of the story and what's at risk for the State, the bond rating, litigation. Speaking to Mr. Gardner, she said he was optimistic in that he thinks that the Legislature would win but we've seen in the past in the '80s, we lost and had to pay the full price. She said she wants the full story to be out there because we've been demonized an awful lot about this building but we also have to make very, very wise decisions in the future especially because of the fiscal situation. She said she just wants accurate information out there so the public understands the gravity of the situation. It's not just a move to the Atwood Building, there's much more moving parts. It could be a very expensive option, it's not just this cheap idea of spending \$1.00 per square foot at the Atwood Building, it's much more involved. It's been

very simplified in the press and with the public. She said she wanted to emphasize that there's much more at risk than just taking a cheaper lease. She appreciates the Chair's commitment to being as transparent as possible because that's the way they keep their constituents informed. Legislators are obligated not to talk about what is discussed in Executive Session.

SENATOR MICCICHE said it's difficult to quantify the potential liability. We've heard about a couple of instances where we've exercised that option to not appropriate. He said he only knows of one that's been sort of concrete and we lost it. What he doesn't know if they were rewarded the remainder of the term or if they were rewarded a year of the lease fees.

CHAIR STEVENS interrupted to say he wasn't sure we lost the case, it was settled out of court.

MR. GARDNER said there was litigation surrounding a non-appropriation scenario regarding the Behrend's Building in Juneau. He said that case was not particularly relevant or helpful to this, and said he didn't think he had ever provided the Senator with the briefing, so he wouldn't know that. It was a non-appropriation that happened in the last year of the lease. The way that the appropriation bill was drafted was a bit murky, it left arguments that probably wouldn't exist in this situation. He said Senator Micciche was right, the Legislature did pay what he believes was the very last year of the lease, we paid out the last piece of the lease in some settlement. He said it is a case worth noting and the answer is there are risks involved if the Legislature non-appropriates; there are also ways to protect the Legislature.

SENATOR MICCICHE said his point was making an assumption of cost that could be applied to the value of whether the Legislature moves or not. So, we think that there's a between \$1 million and \$2 million in legal fees alone, potentially if we were to not be successful. If we're not successful, there's likely some settlement and he's not sure what number to use. If we use a year, because that's the only model, even if it's not apples-to-apples, it's a \$6 million settlement. He's applying a number in his mind, he doesn't like risk and wants to protect the people of Alaska as much as possible, and if you apply that number, it reduces the value of moving on a square footage basis.

CHAIR STEVENS reminded Council that we're discussing a lot of things that were discussed in a confidential session, but to clarify, the range we heard was \$200,000 to \$2 million was the range of litigation.

MR. GARDNER said that it was possible to spend \$30,000 per month for two years and he came up with a number of about \$1.7 million and he added another \$250,000 on to that as a cushion and as a cost for some experts which could be very expensive in a case like this. Directing this comment to Senator Micciche, he said that we have not ever tried to bake those numbers into any of the project costs because he didn't think that was traditionally done with project costs, but he didn't think it was unreasonable and was glad the Senator had brought it up. It is not unreasonable for the Legislature to be looking at a litigation scenario and how negative that could be, both from a fiscal standpoint and from a legal standpoint.

SENATOR COGHILL said the way he had to consider this was like many others. When we made a lease, was the non-appropriation clause an option to exit or was it a safety valve based on, for example, the fiscal time we are in, which is catastrophic. If it's not an option similar to an option to purchase, then exercising it seems like one of the last resorts we'd want to do. The economics of the Atwood Building make it very, very attractive, but generally speaking, a deal is a deal and he'd like to stick with that deal as much as possible. If there is some willingness to go back and negotiate and re-negotiate the cost of the current building or if there are any offers that will come this way, before he'd be willing to use the non-appropriation clause that is legal, that it may not be the wisest thing to do. He said that's where the balance of his struggle was. He said he tries to listen to the Legislators from the Anchorage area the most because they're the ones who will be impacted the most. For him, the temptation to move to the Atwood Building is huge with a couple of exceptions. He does not have a comfort level with the non-appropriation clause that it's an option that should be exercised until we absolutely have no other option. The Legislature is probably not going to go away any time in the near future unless the whole government collapses. He said he thinks the Legislature should have a house that people can go to that is the Legislature; and the identity of the Atwood Building could be made that way, but it is not that way right now, as the current LIO is. So, there's the legal and political ramifications that he struggles with; that he can tell you that \$5 per square

foot or somewhere in that neighborhood sure makes it attractive to move on. He said it may be AIDEA may have some ways to help us navigate through financing but he didn't hear anything in the numbers that would help us get there. In any case, a 30 year loan doesn't seem to get anywhere close to the Atwood Building. So, then it's just a matter of the cost of breaking the lease, which is both a bond and legal, and then the value to the Legislature to have a separate place along the way. He said he has tried to weigh that as much as he can. He said listening to the legal discussion on the non-appropriation clause, it doesn't look like it's as much of an option as it is a last resort exit clause. He said he would probably like to see us head in the direction of getting better numbers to see if we can buy the building and land; and make a little progress on the value of this building. He said he wanted to let people know that he had been listening and really struggling between our legal responsibility and the poor budgeting that we've found ourselves in.

CHAIR STEVENS said that if Council is amenable, it would be best to take a 15 minute break to let the House and Senate members talk to each other and see if there's any reason to carry on this meeting. Council will take a brief 15 minute break and return at 12:45pm.

12:28:05 PM Legislative Council took an "at ease."

NOTE: Vice Chair Herron left the meeting prior to the "at ease."

1:32:25 PM Legislative Council returned from the "at ease."

CHAIR STEVENS brought the meeting back to order.

SENATOR MICCICHE moved that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the outcome of the currently pending legislation or unless negotiations between counsel for the Legislature and a State entity within the next 30 days result in a competitive cost on a per square foot of usable space basis.

SPEAKER CHENAULT clarified to ask if Senator Micciche had used the word "litigation" or "legislation."

SENATOR MICCICHE restated the motion. He moved that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the

outcome of the currently pending litigation or unless negotiations between counsel for the Legislature and a State entity within the next 30 days result in a competitive cost on a per square foot of usable space basis.

CHAIR STEVENS said we are expecting some serious negotiations. We expect to have our attorney Serena Carlsen involved in this and a State agency in the hopes of winding up with a contract that we can agree to on this building.

SENATE PRESIDENT MEYER asked Doug Gardner if he had any comments or thoughts on the motion made by Senator Micciche. He said was it a legitimate motion or one that was going to get us in trouble if we vote one way or another.

MR. GARDNER said he didn't think the motion was going to get Council members into any trouble. He said during the stating and restating of the motion, he spoke briefly with Mr. Davis from AIDEA and he was concerned about the 30 day timeline, especially with the upcoming holidays, to the extent that he's an entity that might work on this. Mr. Davis respectfully was hoping he might get 45 days and authorized Mr. Gardner to mention that. He said he did not think there was a problem with the motion. As he understood Chair Stevens' comment, the idea was that within that period of time, however, that period of time was defined - 30 or 45 days - the Council's expectation was that Stoel Rives' Serena Carlsen and others would work with the owners to try to bring back a proposal that Council can evaluate and he thought that could be done.

CHAIR STEVENS said Council is under the gun to a certain extent in that they have asked for some time Tanci Mintz and the Department of Administration to not lease the space to others in the Atwood Building and we want to make sure that we don't dawdle too long, as has happened in past years, to the point that we lose that as an opportunity. Ms. Mintz said 30 days was acceptable and he thought more would be problematic with the Department of Administration. At this point, he would like to stick with the 30 days and ensure progress is being made. It was possible that if progress is being made, we can work with the Department to try and get that extended; but he thought a 30 day period was pretty crucial so we don't lose that facility.

MR. GARDNER said that as counsel for the Legislature and in working with Stoel Rives, they'd do everything they can to

provide all the documents to whatever entity is trying to price this for Council.

SENATOR MACKINNON asked if Ms. Mintz could come forward to ask about the 45 days. One of the reasons that she believed she would be supporting the motion that is before Council is so that there can be an opportunity for some additional price comparison on that square footage or the overall investment opportunity or challenge that the State faces.

MS. MINTZ again put herself on the record again as the State Leasing Facilities Manager for the Department of Administration. In response to the question from Senator MacKinnon about the possibility of extending the timeline to 45 days, because of the Christmas and New Year's holidays making it difficult to get the work done by the 30 day timeline, Ms. Mintz said she believed 45 days would be acceptable.

SENATOR MACKINNON asked Senator Micciche to consider a friendly amendment changing the timeline from 30 to 45 days to ensure Council can get the results that we want.

SENATE PRESIDENT MEYER said that since Council's vote is only advisory, the ultimate decision is still going to be done during session in Juneau. He asked Senator Micciche to withdraw his original motion and bring forward a new motion with the 45 days.

SENATOR MICCICHE withdrew his original motion.

1:40:53 PM

SENATOR MICCICHE moved that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the outcome of the currently pending litigation or unless negotiations between counsel for the Legislature and a State entity within the next 45 days result in a competitive cost on a per square foot of usable space basis.

CHAIR STEVENS, in response to a request by Representative Neuman for clarification of the motion, said the motion was to not appropriate, to await the litigation that is now in place; to negotiate a price with a State agency and Mr. Pfeffer; and to give 45 days to do that. He explained further that if, after the 45 day time period, there was no agreement, then Council would recommend to the Legislature that the funds not be appropriated for the lease.

SENATOR MICCICHE said that clearly the people of Alaska are paying attention to this issue and we owe it to them to operate at the lowest cost possible. He said the Legislature is moving, unless the pending litigation results in a null and void lease or negotiations result in a cost that competes with other space that we are currently leasing. That way, we would be operating here at the lowest cost. If that doesn't happen, our recommendation is that we simply move on.

CHAIR STEVENS asked for a roll call on the motion and repeated that a "yes" vote would be a non-appropriation, wait for litigation 45 days, and negotiate a price.

A roll call vote was taken.

YEAS: Stevens, Meyer, Coghill, Huggins, MacKinnon,
Micciche, Chenault, Johnson, Kito, Millett, Neuman,
Herron

NAYS: None

The motion passed 12-0.

NOTE: Representative Herron participated in the roll call vote via teleconference.

There being no further business before the committee, the Legislative Council meeting was adjourned at 1:45 p.m.

[1:45:09 PM](#)