

**ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL**

**September 30, 2022
1:00 PM**

MEMBERS PRESENT

Representative Sara Hannan, Chair
Representative Matt Claman
Representative Bryce Edgmon
Representative Louise Stutes
Representative Chris Tuck
Senator Click Bishop
Senator Shelley Hughes (alternate)
Senator Peter Micciche
Senator Mike Shower
Senator Bert Stedman
Senator Gary Stevens

MEMBERS ABSENT

Senator Lora Reinbold, Co-Chair
Representative Neal Foster
Representative Cathy Tilton
Senator Lyman Hoffman

OTHER MEMBERS PRESENT

Representative David Eastman
Representative Kevin McCabe

AGENDA

APPROVAL OF AGENDA
APPROVAL OF MINUTES
COMMITTEE BUSINESS - EXECUTIVE SESSION
COMMITTEE BUSINESS

SPEAKER REGISTER

Jessica Geary, Executive Director, Legislative Affairs Agency
(LAA)
JC Kestel, Procurement Officer, LAA
Megan Wallace, Director, Legal Services
Emily Nauman, Deputy Director, Legal Services

I. CALL TO ORDER

1:04:56 PM

CHAIR HANNAN called the Legislative Council meeting to order. Present at the call were Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Hughes, Micciche, Shower, Stevens.

Ten members present.

Senator Stedman joined the meeting at 2:29pm.

II. APPROVAL OF AGENDA

1:06:39 PM

SENATOR MICCICHE moved and asked unanimous consent that Legislative Council approve the agenda as presented.

The agenda was approved without objection.

III. APPROVAL OF MINUTES

1:06:55 PM

SENATOR MICCICHE moved and asked unanimous consent that Legislative Council approve the minutes dated May 12, 2022, as presented.

The minutes were approved without objection.

IV. COMMITTEE BUSINESS - EXECUTIVE SESSION

1:07:21 PM

SENATOR MICCICHE moved that Legislative Council go into Executive Session under Uniform Rule 22(B)(1), discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit, and 22(B)(3), discussion of a matter that may, by law, be required to be confidential. The following individuals can remain in the room or online: Jessica Geary, Santé Lesh, Megan Wallace, Emily Nauman, Molly Kiesel, JC Kestel, any House Finance committee secretaries present in the room, any legislators not on Council, and any staff of Council members.

1:08:33 PM

A roll call vote was taken.

YEAS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Hughes, Micciche, Shower, Stevens.

NAYS: None.

The motion passed 10-0.

1:09:54 PM

Council went into Executive Session.

2:29:57 PM

Council came out of Executive Session.

A roll call was taken to establish a quorum.

Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Micciche, Hughes, Shower, Stedman, Stevens.

Eleven members present.

A. Request for Proposals (RFP) 653 - Remodel of the Assembly Building

SENATOR MICCICHE moved that Legislative Council approve award of the pre-construction work and services contract for RFP 653 to Dawson Construction Company for a total contract price of \$75,000.

CHAIR HANNAN objected for purposes of discussion and asked JC Kestel to speak to this item.

JC KESTEL, Procurement Officer with the Legislative Affairs Agency, said RFP 653 closed on September 9, 2022. The proposal received was evaluated by the Proposal Evaluation Committee (PEC). The PEC agreed the proposal exceeded the minimum requirements of the RFP and recommended the award of RFP 653 to Dawson Construction Company for the pre-construction work and services portion of the project.

SENATOR STEVENS requested that, for the record and public understanding, it be noted why Council was awarding this contract to the only bidder and to include some of information that was discussed in executive session.

JESSICA GEARY, Executive Director with the Legislative Affairs Agency, said just one proposal was received and that was from Dawson Construction Company. The PEC consisted of herself, Facilities Manager Serge Lesh, and Senator Jesse Kiehl; and all members independently reviewed the proposal and each agreed it exceeded the requirements of the RFP. The PEC unanimously feels it was a good offer and is comfortable moving forward with awarding Dawson Construction this contract. Acceptance of the offer allows the renovation plans to move from the current state of 65% completion to 100% completion. A complete set of plans allows the contractor to determine an overall cost for the construction project, at which point the project will be brought back before Council for consideration.

2:38:51 PM

There was no further discussion and a roll call vote was taken.

YEAS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Hughes, Micciche, Stedman, Stevens.

NAYS: Senator Shower.

The motion passed 10-1.

B. Request to Intervene in Certain Litigation

SENATOR MICCICHE moved that under the power conferred under Alaska Statute 24.20.060(4)(F), Legislative Council intervene on behalf of the Legislature in the legal matter Kowalke v. Eastman, et al, and that Legislative Council authorize the Chair to give direction to the Legal Services Division and outside counsel regarding this litigation.

He further moved that Legislative Council approve a contract for legal services for outside counsel to represent Legislative Council in Kowalke v. Eastman, et al.

CHAIR HANNAN objected for purposes of discussion.

REPRESENTATIVE EASTMAN stated the request before Council today is in regard to a lawsuit he received last month. He said in this lawsuit he is not personally accused of engaging in unlawful activity. The lawsuit states that having been elected and currently serving in the Legislature is unlawful under the Alaska Constitution. This is something he believes that the Legislature would have a general concern over. Any member of the Legislature could receive the same type of lawsuit at any time which may require someone to make the argument on behalf of the Legislature.

In this lawsuit, he said he is the one by default who needs to make that argument. If the Legislature is being accused of behaving inappropriately by his membership, not only does that concern his case, but any future cases. He continued that a decision to not involve the Legislature may have unforeseen consequences.

SENATOR HUGHES said she supported the motion because it sets a precedent that the Alaska Legislature has not yet faced regarding freedom of association, which is fundamental to Americans. She said discussions are being had regarding the constitutionality, under the U.S. Constitution, of Alaska State Constitution Article XII, Section 4, commonly referred to as the Disloyalty Clause, which is what this case is based on.

Senator Hughes expressed additional concerns, such as any legislator could be at risk of similar litigation if they belong to any organization that may include members who allegedly do something unlawful; the prohibitive cost of legal defense that, if personally borne, could discourage Alaskans from running for elected office and limit the diversity of the Legislature; and claimed that if executive branch employees are questioned on the legality of their employment, the attorney general would provide legal defense to those employees at the State's cost. She deemed it neglectful to not provide a defense for a legislator experiencing litigation like this.

SPEAKER STUTES said she was opposed to the motion. She stated it is a slippery slope. In recent cases when Council was asked to provide legal services for members being sued, there were opportunities to resolve the issues without litigating. If this motion passed, Council would be relieving legislators of any responsibility and ownership of what's transpired and opening up the Legislature to constant litigation.

REPRESENTATIVE CLAMAN, addressing Senator Hughes' comments, stated he does not know everything the Oath Keepers asks of its members, and they may well advocate for supporting the Constitution; however, he knows from various news articles that one of the leaders advocates overthrowing the government.

He further noted that the motion before Council is not to pay for Representative Eastman's legal fees. The motion is whether Council should intervene in this lawsuit as the Legislature; not on behalf of Representative Eastman, but separately as the Legislature in which we would advocate whatever position we thought to be most effective for the Legislature's interests, which may or may not align with Representative Eastman's interests, and may or may not align with the arguments Representative Eastman and his counsel are going to be presenting to the court.

Representative Claman said for Council to make a decision of whether to intervene in a lawsuit in which we don't even have a recommendation of what strategy we would take seems an excessive expenditure of funds for the Legislature. The claims brought against Representative Eastman will be resolved by the courts. Given those reasons, he does not see any basis for the Legislature to intervene in the lawsuit and does not support the motion.

SENATOR SHOWER stated the Legislature spends tens of millions of dollars every day. He said he would ask the rhetorical question, what is the cost of doing nothing. He did not agree with some of Representative Claman's comments and voiced support for Senator Hughes' comments. He asked if the Legislature is supposed to judge an entire organization based on what one member said or did.

He said that this means every legislator joining the Legislature should probably not be a member of any organization just in case somebody doesn't like the organization. He asked if his preacher at church says something bad, does that mean he cannot be a member of that church? He said what is the effect on people's freedom and right to associate with people who share similar ideologies and opinions. He does not think Council should pick and choose depending on a member's popularity.

He said this is only beginning, if Council does not vote to intervene, cases like these will persist. Freedom of speech and freedom of association will be chilled.

REPRESENTATIVE TUCK said he does not support the Legislature intervening in this court case. The case involves the question whether someone can serve when they belong to an organization that may have some insurrection activities. He stated this is not about the duties legislators have, this is about their lives outside of the Legislature.

He said, regarding the claim that these lawsuits can happen to anyone, only those who are part of organizations that may have participated in insurrection activities may face similar litigation; this particular case is specific to that activity only. He said the chilling effect should really be that we don't have any activity like this in the future in any branch of government and does not think Council should be involved with this court case.

SENATE PRESIDENT MICCICHE stated he did not support spending money on this intervention at this time, and that Council's primary objective is to spend money on state services. If a legislator was being sued for a vote or an action in their normal course of business, he may feel differently. If he sees a constitutional break, his opinion may change. He said the right to associate comes with a certain level of personal responsibility.

He said had he been a member of the Oath Keepers, and had the founder started committing anti-constitutional insurrection actions, he would no longer be a member of that organization. He said there may, at some point, be a case for insurrection; in fact, that's how the United States government was formed, but in this case over an election, he struggles to make that connection.

Senator Micciche continued that he had been involved in a similar case with the same law firm concerning blocking someone on Twitter and he felt the buck ultimately stopped with him and that he had personal responsibility to resolve the issue. He did not consider coming to Legislative Council to cover his legal costs in that case.

He concluded by again stating that, at this time, he does not support Council intervening in this case.

3:02:59 PM

There was no further discussion and a roll call vote was taken.

YEAS: Senator Hughes.

NAYS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Micciche, Stedman, Stevens.

The motion failed 1-9.

V. Committee Business

A. Anchorage Legislative Office Building Snow Removal Contract Renewal No. 1

SENATOR MICCICHE moved that Council approve Renewal No. 1 of the contract for snow removal services with Kelly Inc., DBA A-1 Lawn and Landscaping, in the amount not to exceed sixty-five thousand dollars.

CHAIR HANNAN objected for purposes of discussion and asked Mr. Kestel to speak to this item.

MR. KESTEL, Procurement Officer with the Legislative Affairs Agency, said LAA has been satisfied with the contractor's services and requests proceeding with Renewal No. 1 for the period of October 5, 2022, through October 4, 2023. If approved, four renewal options will remain under the contract.

3:05:50 PM

There was no discussion and a roll call vote was taken.

YEAS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Hughes, Micciche, Shower, Stevens.

NAYS: None.

The motion passed 10-0.

B. Clarifying Revision to Legislative Procurement Procedures

SENATE PRESIDENT MICCICHE moved that Legislative Council adopt the amendment to the Alaska Legislative Procurement Procedures.

CHAIR HANNAN objected for purposes of discussion.

EMILY NAUMAN, Deputy Director of Legal Services, said that on December 16, 2021, Council bifurcated the minimum amount of a contract to come before committee for approval or to be subject to the procurement procedures at \$50,000 and \$40,000. It was Legal Services' understanding the intent of Council was to have contracts entered into by Council and LAA be subject to the \$50,000 threshold and the remainder of the contracts be subject to the \$40,000 threshold that was proposed by conceptual amendment.

Legal Services' initial draft of the conceptual amendment used the word "authorize" which later caused ambiguities to arise in what contracts are authorized by Council for the purposes of that specific section. Legal changed the language to clarify that the \$50,000 exception applies to Council and LAA's contracts and the remainder of the contracts are subject to the \$40,000 exception limit.

3:09:22 PM

There was no discussion and a roll call vote was taken.

YEAS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Micciche, Hughes, Shower, Stevens.

NAYS: None.

The motion passed 10-0.

C. Revised Legislative Council Social Media Policy

SENATE PRESIDENT MICCICHE moved that Legislative Council adopt the Social Media Policy dated August 22, 2022, and rescind the current Social Media Guidelines dated September 19, 2011.

CHAIR HANNAN objected for the purposes of discussion and reminded members that they have had several weeks to review and several meetings where this subject has been discussed.

MS. GEARY said the policy, which replaces the 2011 guidelines, contains recommendations and not mandates. If a legislator follows all recommendations in the proposed policy, the likelihood of a lawsuit is very small and would likely not have merit. The policy does not prohibit a legislator from allowing posts and self-monitoring comments and content. This policy stipulates that if a legislator chooses to block or censor any commentors, the legislator is personally liable for any legal fees. No state funds, including office allowance funds, may be used.

She said the policy does not render existing platform protections useless; legislators can still flag and report inappropriate or defamatory content for review and potential removal by platform

officials. Using social media as a bulletin board by disabling interaction may not be how a legislator chooses to conduct business, and that is a choice each legislator must make. She repeated that if a legislator is sued for deleting comments or blocking someone, the legislator will be personally liable for any legal defense. Finally, this policy protects the State from unknown legal costs and the need for Council to make case-by-case decisions based on each individual social media decision.

SENATOR HUGHES said she understands the policy does not force a legislator to do one thing or the other, however if they turn off the ability to give input, it will turn a page into an informational webpage. She said this defeats the purpose of what social media is for and people would be upset if a legislator cut off their freedom of speech. If this policy were adopted, the Legislature would be liable for what could be tens of thousands of people banned from commenting on their legislator's page.

Senator Hughes continued that the timing on this policy is a mistake. Council's scheduling has been chaotic, despite the Chair's best efforts, and the sporadic schedule conflicts with many of the members' busy schedules which results in low meeting attendance. This Council should not decide at the tail end of the 32nd Legislature, as many of the current legislators are leaving after interim and felt this topic should be dealt with in a bill and go through the committee process. She then moved to table the motion.

3:18:30 PM

A roll call vote was taken.

YEAS: Senators Hughes, Shower.

NAYS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Micciche, Stevens.

The motion to table failed 2-8.

CHAIR HANNAN said that the motion to approve the Social Media Policy remains before members, which they've had in its final form since August 22, 2022. She continued that all members on Council remain elected legal representatives until the swearing in of the next Legislature and have all the responsibilities of those duties, including serving on Legislative Council.

SPEAKER STUTES said she believes this Council should be the one to vote on this policy. Current Council members have had firsthand experience with the ramifications of social media and how much of Council's time it has taken to deal with several related issues for members. She said the claim that this is cutting off constituent

access doesn't make sense to her. All legislators have the opportunity for constituents to communicate with them by providing their contact information on their Facebook pages. She said she supported the new policy.

SENATE PRESIDENT MICCICHE said that he appreciated the discussion and the work that went into the new policy; however, he does not support this policy because he believes there should be case by case discussions. The Legislature should support legislators who have taken appropriate action if controversy arises. He said this is about the personal responsibility of the individual operator of the page and thinks there are better options for legislators to manage their social media accounts. He said this will not solve the challenges with social media.

SENATOR HUGHES said an executive branch employee would be protected by the State for using social media as part of their job; that there is an equal protection issue in that she can't meet face-to-face with her constituents during session, so needs two-way communication through social media; and said she agreed with Senator Micciche and would be opposing this motion.

SENATOR SHOWER agreed with Senate President Micciche's position that Council should address individual issues on a case-by-case basis. He disagreed with a member's previous statement that an email and phone number are enough, which does not recognize the current preferred communication methods. He said anyone younger than forty mostly communicates through social media and legislators need to be respondent to that reality. He said he uses social media every day and it is a significant tool for legislators to quickly send out information for constituents on a large scale. He agreed with Senator Micciche's position and opposes this policy.

REPRESENTATIVE CLAMAN said he supported the policy because it does not prohibit legislators from choosing to have exchanges on social media. It simply takes a position that should a legislator choose to engage and then run afoul of best practices for managing social media, the Legislature will not be put in the position of having to determine if the legislator acted correctly nor direct an individual legislator in how to handle their individual social media accounts. The policy establishes that the Legislature is not going to dictate how legislators respond to controversy on their social media nor be responsible for those individual decisions; he reiterated his support for the new policy.

MEGAN WALLACE, Legal Services Director, in response to a question from Senator Bishop, confirmed that the policy only makes recommendations for how legislators should manage their social media. It gives Council guidance on whether the Legislature is responsible

for providing legal representation in the event that a member is sued for actions taken on social media.

SENATOR BISHOP said that, with respect for his colleagues, the policy is not written in stone and can be reviewed by the 33rd Legislature.

3:30:50 PM

There was no further discussion and roll call vote was taken.

YEAS: Representatives Claman, Edgmon, Hannan, Stutes, Tuck; Senators Bishop, Stedman, Stevens.

NAYS: Senators Hughes, Micciche, Shower.

The motion passed 8-3.

Brief discussion followed regarding scheduling the next Legislative Council meeting and in-person attendance.

VI. ADJOURN

There being no further business before the committee, the meeting was adjourned at 3:35 PM.

3:35:12 PM