

**ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL**

**DECEMBER 14, 2023
1:00 PM**

MEMBERS PRESENT

Senator Elvi Gray-Jackson, Chair
Representative Kevin McCabe, Vice Chair
Senator Click Bishop
Senator Matt Claman
Senator Lyman Hoffman
Senator Jesse Kiehl
Senator Donny Olson
Senator Bert Stedman (alternate)
Senator Gary Stevens
Representative Bryce Edgmon
Representative Sara Hannan
Representative Craig Johnson
Representative Dan Saddler
Representative Cathy Tilton

MEMBERS ABSENT

Representative George Rauscher

OTHER MEMBERS PRESENT

None

AGENDA

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

SPEAKER REGISTER

Jessica Geary, Executive Director, Legislative Affairs
Agency (LAA)
JC Kestel, Procurement Officer, LAA
Kris Curtis, Legislative Auditor
Megan Wallace, Chief Counsel, Legal Services, LAA

I. CALL TO ORDER

1:04:46 PM

CHAIR GRAY-JACKSON called the Legislative Council meeting to order at 1:04 pm on December 14, 2023, in the Anchorage Legislative Office Building. Present at the call were: Senators Bishop, Claman, Gray-Jackson, Kiehl, Olson, Stedman, Stevens; Representatives Hannan, Johnson, McCabe, Saddler, Tilton.

Twelve members present.

Representative Edgmon joined the meeting at 1:15 pm; Senator Hoffman joined the meeting at 1:58 pm.

II. APPROVAL OF AGENDA

1:06:15 PM

VICE CHAIR MCCABE moved that Legislative Council approve the agenda as presented.

The agenda was approved without objection.

III. APPROVAL OF MINUTES

1:06:34 PM

VICE CHAIR MCCABE moved that Legislative Council approve the minutes for November 17, 2023, as presented.

The minutes were approved without objection.

IV. COMMITTEE BUSINESS - EXECUTIVE SESSION

CHAIR GRAY-JACKSON stated the Council would go into Executive Session to discuss "A Special Audit of the Department of Law, Spending on Contracts related to *Janus*"; a contract for the Terry Miller Building HVAC Control System; discussion of office space in Anchorage related to the Office of Victims' Rights; and a brief discussion about the Assembly Building Apartments.

1:07:27 PM

VICE CHAIR MCCABE 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 may remain in the room or online during Executive Session:

Jessica Geary, Megan Wallace, Emily Nauman, Marie Marx, Hilary Martin, Santé Lesh, JC Kestel, Ernest Daigle, Molly Kiesel, Serge Lesh, Dottie Shook, Shay Wilson, Kris Curtis, Shane Hooten, Dylan Bratlie, any legislators not on Legislative Council, and any staff of Legislative Council members.

[1:08:23 PM](#)

A roll call vote was taken.

YEAS: Senators Bishop, Claman, Gray-Jackson, Kiehl, Olson, Stedman, Stevens; Representatives Edgmon, Hannan, Johnson, Saddler, Tilton, McCabe

NAYS: None

The motion passed 13-0.

Prior to Council going into Executive Session, at the request of Chair Gray-Jackson, Vice Chair McCabe modified the motion to allow Micheal Chadwick, Legislative Audit, to remain in the room for Executive Session. There was no objection to this modification.

[1:09:40 PM](#)

Council went into Executive Session.

[2:35:24 PM](#)

Council came out of Executive Session.

A roll call vote was taken to establish a quorum.

YEAS: Senators Bishop, Claman, Gray-Jackson, Hoffman, Kiehl, Olson, Stevens; Representatives Edgmon, Hannan, Johnson, Saddler, Tilton, McCabe

Thirteen members present.

[2:36:44 PM](#)

A. Legal update regarding "A Special Audit of the Department of Law, Spending on Contracts Related to *Janus*"

[2:37:05 P M](#)

VICE CHAIR MCCABE moved and asked Legislative Council, under the authority of AS 24.20.060(4)(F), authorize a contract for legal services, not to exceed \$100,000 to undertake litigation on behalf of the Legislature regarding matters described in 'A Special Audit of the Department of Law, Spending on Contracts related to *Janus*' dated May 19,

2023, and further moved that Legislative Council authorize the Chair to give direction to Legislative Legal Services and outside legal counsel regarding the litigation.

CHAIR GRAY-JACKSON objected for the purpose of discussion and asked Ms. Curtis, Legislative Auditor, to summarize the issue and that Legal Services be available for questions.

KRIS CURTIS, Legislative Auditor, stated that the Division of Legislative Audit (DLA) was asked to perform an audit on the Department of Law's spending on contracts related to *Janus*. That audit was released last month and is available to the public on the DLA website. She said she would provide an overview of the audit's conclusions and the recommendation, and began by saying this audit was directed to identify all contracts entered into by the Department of Law for *Janus*-related services, report on the services provided under the contracts and the amount expended, and determine whether spending for *Janus*-related services violated State law.

The audit's opinions on whether the Legislature's restrictive Civil Division's appropriations were legally constructed and whether Department of Law's expenditures on matters related to *Janus* were allowable for State law are based on an evaluation of opposing legal arguments: one legal argument made by Legislative Legal Services and one made by the Attorney General. The basis for the audit's opinion are included in the audit report, however, a final legal determination can only be made by the appropriate court. Ms. Curtis said it was her opinion that the Legislature, through constructing the Department of Law's FY 21 and FY 22 Civil Division appropriations with specific limitations, legally restricted the Department of Law's ability to contract with outside counsel for *Janus*-related matters. She said that in other words, she believed Legislative Legal Service's arguments were stronger that the appropriations were not a violation of the Constitution's confinement clause or an improper encroachment of the separation of powers. She said she also concluded that the Department of Law's decision to pay outside counsel for services related to *Janus* from an appropriation that expressly prohibited those expenditures likely violated State law. Further, the audit concluded that the appropriation language that limited expenditures on specific legal cases was perceived by some as a legislative attempt to inappropriately influence the Attorney General's actions and, as such, it increases the risk of litigation. Ms. Curtis said that the audit had one

recommendation, which was for the Legislature to consider whether judicial review and/or ratification is necessary. Given that the audit concluded that the Civil Division's restricted appropriations were likely legally constructed and the Department of Law disregarded the legislative restrictions, the Legislature should consider whether judicial review is necessary. Given the audit concluded the related expenditures were likely unauthorized, she recommends the Legislature consider ratifying the expenditures which would put on record that the Legislature considers those expenditures as unauthorized. She ended her testimony by saying that as she understood it, those two options are mutually exclusive.

VICE CHAIR MCCABE stated his objection to the motion and expending funds on this issue as he thinks it is politically driven. He stated the easier path forward would be to ratify what the Attorney General has done. He said this proposed action would use a sledgehammer when we could be using a scalpel.

SENATE PRESIDENT STEVENS stated that while he appreciates the comments and that it will be expensive, he feels it is very important that the Legislature protect its appropriating power. He went on to say it's the Legislature's job to keep control of State spending. He said the motion stated the cost would be \$100,000, but it is possible it could be more, and if it goes to the Supreme Court it could be double. He asked Ms. Curtis to help members understand the cost of this type of litigation.

MS. CURTIS deferred the question to Megan Wallace with Legislative Legal Services.

MEGAN WALLACE, Chief Counsel with Legislative Legal Services, stated the motion before Council is for a contract not to exceed \$100,000 and, as Senate President Stevens noted, there is certainly the potential that this matter could cost more, particularly if the matter is appealed to the Alaska Supreme Court. She said should Council approve this motion, it is likely there will be the need to request additional funds depending on how the litigation progresses and the needs of outside counsel. Overall, purely legal constitutional matters that arise out of disagreements between different branches of government generally cost between \$100,000 and \$150,000 to litigate at the Superior Court level and an additional \$100,000 to \$150,000 at the Supreme Court level.

SENATE PRESIDENT STEVENS thanked Ms. Wallace for the information and said this is an important principle to uphold and also important to know that it is possible it could be more expensive than the current motion states at \$100,000.

SENATOR OLSON asked Ms. Wallace since this is a constitutional issue, what are the chances the matter will go to summary judgement and a decision will be made immediately.

MS. WALLACE stated it is very likely this matter would go to summary judgement. This is not a matter where facts will likely be disputed between the parties. She said the audit is very comprehensive, there is a record of the contracts and what money was spent, so the parties are unlikely to dispute matters of fact. These will be purely legal constitutional issues that are briefed on summary judgement to the court and the parties will have to decide whether or not this is a matter to request be expedited. She continued that if the matter is expedited, there is the potential the parties could ask for a decision before the end of session, otherwise the matter would be briefed on summary judgement based on a scheduling order entered by the court. In general, if the matter is not expedited, it could take six months to a year after the case is initiated to get that order, but it is difficult to predict the exact timing.

SENATOR KIEHL stated he appreciated the motion and will support it. He said he read the audit and thought it was extremely thorough and wanted to stress that this is not an angry lawsuit, just a situation where the Legislature and the governor have a difference of opinion on where the constitutional line is, and the Legislature needs to submit it to the third branch of government. He provided an example of a past lawsuit (*Knowles v. Legislative Council*) that determined, in part, what an Alaska governor may veto and how that determination has impacted future Alaska governors. He said this issue is another point of dispute between the branches and he believes it is appropriate to take the good faith opinion of Legislative Legal Services and outside counsel hired by the auditor and the good faith opinion of the attorney general and send them to the Courts for a ruling on what the constitution does or does not allow in what he called a genuine dispute between the branches of government. He ended by reiterating his support for the motion.

REPRESENTATIVE EDGMON stated he had given this a lot of thought, listened to the discussion, reviewed the audit, and thought the matter was extremely important. He said having been in the Legislature during previous battles with the Executive Branch over forward funding of education and powers of appropriation, while not a lawyer he knows enough to know there is ambiguity between what is constitutionally permissible for the Legislature in terms of its appropriation powers and that precedence is pretty important in terms of what can happen, not just with the current governor and administration but future governors and future administrations. He said the one power the Legislature has that should be unassailable is the power to appropriate. He said there are three options: this first is to do nothing. He said the second option is to wait for a future budget action to take place that had some unpredictability tied to it. He then interrupted his statement to ask if the Legislature did take the ratification option whether the governor could then veto that.

MS. WALLACE stated some of the case law on appropriations is from an old case that attempted to look at what items are eligible for the governor to veto. We know the governor cannot strike words to achieve a different purpose and the governor can only veto an appropriation which is a sum of money for a particular purpose. This ratification appropriation alternative that has been discussed would be an appropriation item that ratifies expenditures that have already taken place. In her opinion, it would not be eligible for veto, but we may find ourselves in another dispute if the governor or the attorney general had a different opinion.

REPRESENTATIVE EDGMON thanked Ms. Wallace for the clarification. He said the central question is how to protect the right of the Legislature to appropriate. The underlying issue in the *Janus* decision is separate in this matter. He said he worries about what future governors can do and future attempts to take advantage of any sort of "wiggle room" in whatever appropriation or allocation. He also thinks about the cost of doing this, which could be several hundreds of thousands of dollars, potentially; and then he thinks about statehood defense and how many *millions* that have been spent: five million last year, two million in his (the Governor's) proposed budget, six million in the coffers before that as he understands it. He continued that many past governors have requested millions to protect Alaska in terms of statehood defense and some of

that has also been politically driven and some of that defense has not reflected the will of the Legislature and it goes both ways. He said he doesn't see any way he couldn't support this; that he has to support it to protect the legislative institution so he will be a yes vote.

VICE CHAIR MCCABE asked what happens if the judge rules against the Legislature, what happens to the legislative power of appropriation. Everyone seems certain, based on a couple of opinions and an audit that the judge is going to rule that the Legislature has the power of the purse and what the attorney general did was wrong. What if the judge doesn't say that? What if the Supreme Court doesn't say that? He said if that happened would we have given up some of the power that we have?

SENATOR CLAMAN stated he had the privilege to hear Chief Justice Roberts speak about the typical case that appears before the U.S. Supreme Court and observed that almost all of them involved separation of powers and questions of powers of the three branches. This lawsuit is quintessentially a question about the powers of two of the branches and he thinks it's a good lawsuit to bring to get a better idea of the parameters of those powers.

There were no additional questions, and the Chair removed her objection to ask for a roll call vote.

[2:54:35 PM](#)

A roll call vote was taken.

YEAS: Senators Bishop, Claman, Gray-Jackson, Hoffman, Kiehl, Olson, Stevens; Representatives Edgmon, Hannan, Saddler

NAYS: Representatives Johnson, Tilton, McCabe

The motion passed 10-3.

C. Approval of Terry Miller Building, HVAC Controls

[2:55:39 PM](#)

VICE CHAIR MCCABE moved that Legislative Council approve award of RFP 660 Terry Miller Building HVAC Controls to Long Building Technologies, Inc., with a not to exceed contract value of \$775,931.00.

CHAIR GRAY-JACKSON objected for the purpose of discussion and asked Mr. Kestel to speak to the item and answer questions.

JC KESTEL, Procurement Officer (LAA), said the agency conducted RFP 660 to solicit qualified proposals for replacement of the Terry Miller Building HVAC control system. Two offers were received, the Proposal Evaluation Committee evaluated the offers and recommended that Long Building Technologies be awarded the contract.

There was no discussion and Chair Gray-Jackson removed her objection.

[2:57:05 PM](#)

A roll call vote was taken.

YEAS: Senators Bishop, Claman, Gray-Jackson, Hoffman, Kiehl, Olson, Stevens; Representative Edgmon, Hannan, Saddler, Tilton, McCabe

NAYS: None

The motion passed 12-0.

[2:58:14 PM](#)

Council took a brief at-ease.

[2:59:04 PM](#)

Council returned from brief at-ease.

CHAIR GRAY-JACKSON asked if the Council objected to skipping item V(a) Print Shop Policy, as well as item IV(b) RFP 664 - Lease Office Space in Anchorage.

There were no objections and items V(a) and IV(b) were set aside.

V. OTHER COMMITTEE BUSINESS

B. Intranet Photo Requirement

[2:59:36 PM](#)

VICE CHAIR MCCABE moved Legislative Council approve the Intranet Photo Policy as presented.

CHAIR GRAY-JACKSON objected for the purpose of discussion and asked Ms. Geary to speak to the item.

JESSICA GEARY, Executive Director (LAA), said before members is the Intranet Photo Policy with two proposed minor changes. The first changes "Media Services" to "LAA" in general in the policy language, and the second change is to have Media Services "accept" the photo prior to posting on the intranet to ensure the photo clearly shows the individual's face. This policy is before the committee because of a request made by the Security Subcommittee and Chief of Security Rayme Vinson. This simple security measure would require staff and interns have their photos on the intranet so they can be easily identified by Security. She said this is a simple policy that states that if staff do not have their photo taken within five days of employment or session start, whichever is earlier, their key card will be revoked. There is also the ability to submit a recent (within three years) photo instead of having LAA staff take the photo.

CHAIR GRAY-JACKSON asked for a roll call vote.

[3:02:02 PM](#)

A roll call vote was taken.

YEAS: Senators Bishop, Claman, Gray-Jackson, Hoffman, Kiehl, Olson, Stevens; Representatives Edgmon, Hannan, Johnson, Saddler, Tilton, McCabe

NAYS: None

The motion passed 13-0.

C. LAA Van Purchase

[3:02:57 PM](#)

VICE CHAIR MCCABE moved that Legislative Council authorize Legislative Affairs to purchase a new van under the State of Alaska contract with Kendall Ford of Anchorage, with a not-to-exceed purchase limit of fifty-five thousand dollars.

CHAIR GRAY-JACKSON objected for the purpose of discussion and asked Mr. Kestel to speak to the item and answer questions.

MR. KESTEL, Procurement Officer (LAA), said before members is a memo requesting to replace a seventeen-year-old van used for LAA daily operations in Juneau. LAA conducted a simple RFQ to seek quotes from various dealerships throughout Alaska as well as out of state. Kendall Ford of

Anchorage, the State of Alaska contracted dealer for the State equipment fleet, had the lowest quoted price.

CHAIR GRAY-JACKSON removed her objection and asked for a roll call vote.

[3:04:22 PM](#)

A roll call vote was taken.

YEAS: Senators Bishop, Claman, Gray-Jackson, Kiehl, Olson, Stevens; Representatives Edgmon, Hannan, Johnson, Saddler, Tilton, McCabe

NAYS: None

The motion passed 12-0.

D. Assembly Building Apartments Update

CHAIR GRAY-JACKSON asked Ms. Geary to update members on the Assembly Building Apartments and answer any questions.

MS. GEARY reported the Assembly Building Apartments project is on time and on budget, and there is projected to be additional savings at the end of the project which would be used for exterior work next interim; among other things, the building has concrete windowsills that are in poor shape and the exterior of the building needs to be repainted. Capital Office Supply is installing furniture, and blinds have been installed on the third floor and will soon be installed on the two remaining floors. LAA has been busy placing other furnishings and artwork in the apartments. Juneau Real Estate has been contacting tenants and offering apartments to nine legislators and twenty staff. Several prospective tenants dropped off the list, and four apartments remain to be rented, which she did not think would be a problem to fill. Tenants should be able to move in on January 9 because the project is to be completed and the final inspection is scheduled on January 8.

CHAIR GRAY-JACKSON thanked Ms. Geary and the LAA staff for all the work that went into completing the Assembly Building Apartments.

VI. Adjournment

CHAIR GRAY-JACKSON asked members if there were any questions or comments prior to adjournment.

REPRESENTATIVE EDGMON commented on the requirement for Multi-Factor Authentication (MFA) on all legislative devices.

CHAIR GRAY-JACKSON thanked members for attending this Legislative Council meeting and making meetings a priority. She also thanked LAA, the Anchorage LIO, the auditors, the attorney, and her staff, and anyone she may have missed that contributed to the success of this meeting.

[3:08:52 PM](#)

With no further business before the committee, the meeting was adjourned at 3:08 PM.