

# ARIZONA STATE LEGISLATURE

## LEGISLATIVE COUNCIL

**Minutes of the Meeting**  
**Wednesday, November 16, 2005**  
**1:30 p.m., Senate Hearing Room 109**

### **Members Present:**

Senator Ken Bennett, Chair  
Senator Linda Gray  
Senator Richard Miranda  
Senator Harry Mitchell  
Senator Thayer Verschoor  
Senator Linda Aguirre  
Senator Marilyn Jarrett

Representative Jim Weiers, Vice Chair  
Representative Jennifer Burns  
Representative Chuck Gray  
Representative Leah Landrum Taylor  
Representative Linda Lopez  
Representative David Lujan  
Representative Bob Robson

### **Staff:**

Michael Braun, Executive Director of Legislative Council

Chairman Bennett called the meeting to order at 1:44 p.m. and attendance was noted.

**Michael Braun, Executive Director of Legislative Council**, distributed the handout *Arizona Legislative Council Memo* (Attachment A) and explained that it is a summary of the issues to be addressed in items #2 and #3 on the agenda. Item #2 is the adoption of plan for procurement method(s) for State Archives and History Building. Item #3 is the adoption of scope, purpose and estimated cost of the State Archives and History Building. In the Regular Session of 2004, the Legislature appropriated \$2 million to the Arizona Department of Administration (ADOA) for the design and site preparation of a History and Archives Building. The session law specified that the History and Archives Building shall be located on the Capitol Mall in a location depicted on the Capitol Mall Master Plan. The scope and purpose of the new building was to provide:

- Climate controlled storage of archival and historical materials.
- Secure access for researchers.

The ADOA selected DWL Architects for the project through a Request for Proposal process. ADOA then issued a Request for Proposal for a Construction Manager at Risk (CM@R). Holder Construction was selected based on best qualifications. ADOA put together a two part contract. The first part of the contract, which has been signed, brings the CM@R on board in the design phase of the project. The second part of the contract, which has not been signed, would require Holder Construction to build the building at a guaranteed maximum price. In February of 2005 the State Library, the

ADOA, and DWL Architects presented various options to the Library Board for different sizes and uses of the building. The Library Board authorized the option that would provide the storage and public use functions envisioned in the design phase. This option was estimated at \$35,700,000. In May of 2005, \$30 million was appropriated to ADOA as \$15 million in the current fiscal year and \$15 million in the next fiscal year. The session law that made those appropriations required two separate reviews by the Joint Committee on Capital Review (JCCR). According to the session law, before Legislative Council can issue any request for proposals or procure any services related to the archives project, it was to submit the plan for the procurement method to JCCR for review. In addition, according to the session law, before Legislative Council can undertake any construction activities they are to submit the scope, purpose and estimated cost of the project to JCCR for review. Mr. Braun said that summarizes the history of the project.

In response to Senator Verschoor, Mr. Braun stated that no where in statute is the new site for the Library and Archives building defined. He said that the 2004 session law specified that the building shall be located on the Capitol Mall in Phoenix, Arizona as depicted on the Capitol Mall Master Plan. He said that there is no definition in statute or session law about the Capitol Master Plan, but there is a general statute in Title 41 that gives the ADOA overall responsibility for construction and maintenance of State buildings and to do the planning. Mr. Braun stated that through his research, he has concluded that pursuant to the general responsibility for building and maintaining State buildings, ADOA has created a Capitol Mall Master Plan. Mr. Braun distributed a handout titled *Arizona State Capitol Mall Master Plan (Attachment B)* and stated that he found it while reviewing committee meeting minutes for 2001.

In response to Senator Mitchell, Mr. Braun explained that the Governmental Mall and its boundaries are defined in statute, but the Capitol Mall Master Plan is totally different and not in statute or session law. He also stated that the City of Phoenix was not involved with either plan.

Representative Robson stated that the map Mr. Braun was referring to was developed to deal with the parking issue.

Mr. Braun stated that if in fact the map was developed about 1999, some of the buildings were not in those current locations when the map was made. Mr. Braun stated that the only reference to the Capitol Mall Master Plan was a paragraph in a set of committee minutes from 2001. Mr. Braun said that the minutes stated that Tim Brand, General Manager of the Building and Planning Services Section of the DOA in 2001 explained that two years ago the DOA prepared a 10-year master plan for the Capitol Mall and one of the facilities that was incorporated in that 10-year plan was the expansion of Library and Archives. The location for that expansion is immediately adjacent and to the south of the present record retention center which is just on the west side of 19<sup>th</sup> Avenue.

In response to Representative Lujan, Mr. Braun explained that anything the Committee approved during the meeting would be submitted to JCCR for review. He said that his belief is that JCCR can either issue a favorable review or an unfavorable review, plus include their comments.

In response to Senator Miranda, Mr. Braun explained that ADOA has conducted the procurement to date. He explained that as of May 2005, procurement for this project is no longer ADOA's responsibility, but the responsibility of Legislative Council. He also said that Legislative Council can adopt the procedures to date or start with a different procurement method.

In response to President Bennett's questions concerning procurement, Mr. Braun explained that in theory the Committee could direct him to select a certain construction company and architect. He said that as a legislative entity, this Committee is exempt from formal dictates of the procurement code. Mr. Braun stated that past procurements during his time as Executive Director have been by a competitive bid process.

In response to Senator Miranda, Mr. Braun stated that Legislative Council was allowed to enter into an interagency service agreement with ADOA. ADOA handled the Council's last construction competitive bidding process, where the opportunity to submit a bid was widely broadcast.

Representative Weiers stated that somehow there has been a misunderstanding as to his position when it comes to the Library and Archives Building. He said that he never intended to give the impression that he is not for the Library and Archives Building and wanted to see the project be put on hold. He said that is not true. He said he started asking some questions pertinent to the project. He said that the only competitive bids that have been put out for the Library and Archives project have been for a project manager. He said that people tend to lose sight of how much money the appropriated \$30 million is. He gave the following examples of State projects with similar price tags:

- The Biomedical building at Arizona State University - \$30 million
- The complete State Health Lab - \$30 million
- The Department of Health Services office building and four story parking garage - \$25 million
- The ADOA office building - \$26 million
- The new Dysart High School campus- \$26 million

Representative Weiers explained that the project being discussed is a single building for Library and Archives whose price is \$30 million. He said that until four months ago, he did not even know the location that is being discussed. He said he is very supportive and is aware of the need for the new building, but he has some questions before he would feel comfortable moving forward. He asked if the location originally presented is the best. He suggested that there are potential locations not yet looked at. Representative Weiers said he thinks the building could be put to better use closer to the Capitol, to give the true experience of the Capitol visit. He explained that defining a

number and building to it is the worst thing that could be done when it comes to public trust. He said the best way is to find out what is needed and then build to the cost of that.

Senator Aguirre stated that she went to a very elaborate open meeting where the Library and Archives people discussed exactly why they wanted the building in the location noted and why it was going to cost this much. She stated that she thought it was all formalized.

Representative Weiers stated that he is not sure of the comparison of this project to its cost in relation to recent projects and what came out of similar dollar figures. He stated that he wants this project to be something to be proud of rather than have to go back and later explain doing things in haste. He said that one idea was to put the building in a parking garage where parking spaces could be leased out, but that idea was just thinking outside of the box.

Senator Aguirre said that she really wanted to hear from the Archives people who have put a great deal of thought and work into this project. She said that it is a little late in the game to start deciding to change the plans.

Representative Weiers stated that his goal and intent was not to get something for the Legislature, but one thing that is already incorporated in the plans would benefit the Legislature among others and that is a general meeting room.

Senator Aguirre asked why the Committee is talking about new plans when there is already a plan.

Representative Lopez stated that she has been following this all along and understands the comprehensiveness of this construction and the need for specialized buildings to preserve the artifacts and archives. She stated that as far as the JCCR review, her understanding is that it is just a review. She said that JCCR can give a favorable review or an unfavorable review and make recommendations, but it is not an approval, it does not necessarily change the outcome.

Mr. Braun explained that the JCCR is not an approval, however, he would not be comfortable going forward with an unfavorable review.

Senator Mitchell stated that the plans in front of the Committee are not new to the Legislature. He said that these plans were brought before the Library and Archives Board several times and then approved by them and that the Board is made up of four legislators.

Representative Weiers stated that when he voted on the project his understanding was the project would not go forward due to the lack of funding.

Senator Bennett explained that the amount of \$30 million came up in budget negotiations as an amount thought to be able to get passed by the Legislature. He said that the concept of needing to build an archives building has been with the Legislature a long time. He said the Board did meet, though the Board's decision is simply a recommendation back to the Legislature. He explained that the legislation that appropriated the \$30 million obviously had some very specific sequenced conditions of what would happen after the appropriation. Senator Bennett said that the adoption of a plan for procurement is the simplest of the challenges before the Committee and that the procurement method needs to include competitive bidding. Item #2 on the Committee's agenda is deciding on and adopting a plan for procurement, which is then sent to JCCR for review. Senator Bennett stated that if it gets an unfavorable review from JCCR, then the Committee owes it to the State to go back and try to understand why it got an unfavorable review and see if there is reason to change it.

Senator Bennett said that the toughest issue on the agenda is adoption of the scope, purpose and estimated cost. He explained that the options given to the Library and Archives Board in February of 2005 were between the low \$30 million to the high \$38 million and the Board chose \$35,700,000. If the Board had chosen the lower figure, they would have had to build less of a building square footage wise. He said that it weighed heavily on his mind that they should not build three-quarters of a building to save a couple million dollars now when, given the growth rate of the State, in a few years the building would have to be renovated to expand it. He said the Board should not and did not choose an option that went below the full building of the footprint of the building. The \$35,700,000 was the lowest of the options that would still build the footprint of the building as originally proposed and the cost savings was in the area of not doing all the shelving and some other amenities. The \$30 million was literally an arbitrary number.

Senator Bennett said that he believed the session law that appropriated the money and the \$2 million that was appropriated in 2004 for the design and cost study, clearly indicated the location of the building. He said that to change the location of the building would require an act of the Legislature as a whole. He said that every month or year the Committee waits is another 20% to 30% in cost. He asked if the Committee could get the procurement method decided, at least in agreeing to competitive bidding in the process as opposed to a [CM@R](#).

Senator Miranda stated that he agrees with the competitive bidding process but also feels it is necessary to add verbiage to try to reach or match the disadvantaged business enterprise goals that the Department of Transportation uses in their bidding practices.

Senator Jarrett stated that with increasing construction costs and availability of materials any and all delays in this project can cause the cost of it to rise considerably. She said that it is very important to move forward and come to an agreement on this project to keep the costs from skyrocketing.

Representative Robson said that the plans for this project are great and they are not going anywhere and the property has been purchased, so it is not going anywhere. He said that if there is going to be an archives facility, it needs to be user friendly in many ways. He said that it should be given a greater prominence within the Capitol Mall area. He said that maybe the Committee should take another look at what other uses could be incorporated into the building in addition to its original purpose.

In response to Senator Bennett, Mr. Braun said that the Committee delegates the authority for the Executive Director to handle the day to day operations of the Legislative Council so by law the Council must retain the overall responsibility for the project. The money is actually appropriated to Legislative Council so they cannot fail to exercise that authority.

Senator Bennett said the responsibility for the adoption of the procurement method rests with Legislative Council and JCCR's review. If the Council decided to proceed with competitive bids there would be three options:

1. The Legislative Council would administer the process in-house.
2. The Legislative Council would enter into an interagency service agreement.
3. The Legislative Council would hire a private company to handle the process.

Mr. Braun said that those would be the three options, with Legislative Council retaining the responsibility, but with the ability to receive advice from outside the agency.

Representative Weiers said that he is not very comfortable with some of the recent projects overseen by ADOA. He said that the Committee should try to get everything possible for the money being put out. He pointed out some recent projects where buildings intended for one agency are now being utilized for more purposes, which gives the taxpayers the biggest benefit for what they pay.

Senator Gray said that she would like to see the Library and Archives Building at the Capitol Complex, near the House of Representatives, the Senate and the Governor's Office. She said it would be the most appropriate place to showcase Arizona's history.

Senator Mitchell said that he fears this project getting delayed and a decision never made. He asked at what point is everyone satisfied that all the questions are answered. He said that there are important things exclusive to the Library and Archives Building that have already been decided.

Representative Gray said that it is not good to single out and put one entity in a building and then refuse to use it for anything other than that and then put it in a location not easily accessible. He asked, according to session laws and legislation, what authorization does the Committee have to decide they want a new location or to review the prospect of a location other than what the previous board has set.

Senator Bennett said that he thinks it would take an act of the Legislature as a whole with agreement of the Governor to change the location at this time. He said that at any time during the process, if there was evidence that a majority of this body or JCCR or eventually the Legislature as a whole wanted to change the location, the process could be stopped.

In response to Senator Verschoor, Senator Bennett said that there is nothing in statute that says the location of the building is on the Capitol Mall Master Plan. He said that session law of 2004, which appropriated \$2 million for design and site preparation, which is also connected to a specific location was an act of the Legislature did specifically reference the facility at this location and appropriated in part \$2 million for site preparation at that location.

In response to Senator Bennett, Mr. Braun said that about \$250,000 is left from the \$2 million, but he could not say how much was for site preparation and how much for design.

Senator Jarrett stated that she had a drawing from the architect of the building and there is no way that the building would fit on the newly suggested property.

Representative Weiers stated that there has been no thought put into any alternatives.

Senator Bennett said there was an idea discussed of building the new building on stilts above the parking area and of the landscaping that is west of the House of Representatives so that there might be the Archives Building and covered parking and a closer proximity to the public meeting room. It was an idea that never made it to the form of a formal proposal.

Senator Jarrett said that any new site is going to require the architects to start all over again in the planning. She said that she has heard two propositions today, one on stilts by the House of Representatives and one across the street where the Joint Legislative Budget Committee (JLBC) is located. She said that before they consider a change, the Committee should come up with something that makes sense. She stated that one of her fears is that the Committee will wait around and end up passing the project onto the next generation.

Representative Weiers said that thinking that the project is going to be withheld is not reality. He said he is committed to this project and would like to see it done within the next year and a half to two years.

Senator Jarrett said that she was not saying anyone was purposefully putting it off, but she recalls coming in as a freshman, and the House Speaker saying they need to add onto the House of Representatives and have covered parking.

Representative Weiers said that unlike many projects that have been put off in the past, this project has the allocation of money. He said the project is not going away because the money is there. He emphasized the importance of spending the money wisely.

Senator Verschoor asked if \$2 million has been spent on site prep and design for this site, then would another \$2 million have to come out of the \$30 million for another site prep and design.

Senator Bennett said that he would speculate that \$1.5 million has gone towards design and maybe \$200,000 is site prep. He said he did not think too much would be spent on site prep should a different location be chosen.

Senator Miranda asked why the original site was chosen.

**GladysAnn Wells, Director and State Librarian, Arizona State Library Archives and Public Records**, said it is her belief that the site was chosen because of its proximity to the current records management center. She said also that the facility was envisioned as a storage facility not a showcase. Ms. Wells said that other reasons were the size of the property, easy access from the major highway system for bringing in records and disbursing records and it might be an anchor point for economic development for that area. Ms. Wells apologized to Representative Weiers for not sufficiently briefing him on the whole project.

In response to Senator Verschoor, Ms. Wells said that the site is not only close to the current facility but also to state government buildings, because the Library and Archives works with all the agencies picking up records and helping with retrievals.

Representative Landrum Taylor said for comparison purposes, a good set of plans is needed.

In response to Senator Bennett's questions, Ms. Wells said that the facility would be available to people who want to do research on historical documents and things of that nature. She said that there is a secure reading room and a meeting room because it is hoped to be able to do classroom experiences. She said that great care has to be taken with the climate control as this is serious storage.

In response to Representative Landrum Taylor, Ms. Wells said that the footprint for this lot is most economical if you have that much heavy stuff. She said that what would be stored is very heavy which requires special construction to properly house.

Senator Bennett said that he would like to recommend that the Committee adopt a plan for the procurement method so the plan can go to JCCR and he would like to suggest an executive subcommittee representing all of the view points, to meet within the next week or two, then have another Legislative Council meeting to move forward with the scope, purpose and estimated cost. Senator Bennett said that in his opinion item #2 on

the agenda is simply saying that the Committee is going to move forward with the competitive bid process for the procurement method.

Senator Verschoor said that without a plan in writing in front of him, he does not know what plan would be voted on.

Senator Bennett explained that the procurement method is simply a decision on how to procure the building. Then the Committee will make a decision as to who is going to manage the project.

Representative Robson suggested that the Committee should keep items #2 and #3 together as a package deal rather than go piecemeal and then take the package to the subcommittee.

Senator Bennett was informed by Mr. Braun that the next JCCR meeting is November 29 and the next meeting would be December 20. He said that if the Committee could decide on the procurement process using the competitive bid method then the Committee could immediately begin the process with the subcommittee dealing with the scope and other issues.

Representative Robson said that he heard early on that there are two competitive bid methods. He said he is not sure which would be best.

Mr. Braun stated that before he went to the next JCCR meeting he would need to know how the Council wants to handle the architectural issues. He said he needs to know if the Council wants to continue using the current architect or would want to competitively bid that part. He said he also needs to know if the Council wants to supplement a Legislative Council Staff effort through some sort of project management. He said that a general statement would be for any construction project you need competitive bidding.

Representative Lujan asked if the Committee would be locking in a price with a CM@R and if that is not some form of competitive bidding.

Mr. Braun said that he has done some research to see if there is a common understanding of CM@R and to his knowledge there are various understandings of the role of a CM@R.

In response to Representative Burns, Senator Bennett said that eventually items #2 and #3 have to go to JCCR for review. He said it can either be sent piecemeal or a subcommittee can work through the scope and purpose.

Representative Gray said he would not have a problem voting on the items if he had something in front of him to know what exactly he is voting on.

Senator Bennett said that the procurement method needs a decision to include how to proceed with the architect and the project management contract. He said since these

items are something the Committee needs to think about, be prepared for another meeting as soon as possible.

In response to Senator Miranda, Mr. Braun said that if the Council voted on the competitive bid process and made an agreement with ADOA to handle the process, ADOA would need instruction on which competitive bid process and which way to direct ADOA on the Council's behalf to conduct the bidding.

### **APPOINTMENT OF EXECUTIVE DIRECTOR**

Mr. Braun said he would like to remind the Council of Legislative Council Rule #17: The Executive Director serves for a term. The term ends at the first Council meeting of the new Legislature. He said that the current meeting is actually the first Council meeting of the new Legislature, so the Council needed to appoint a new Executive Director and whoever is appointed serves for the rest of the current Legislature, but only during satisfactory service.

Senator Bennett asked Mr. Braun if he would be interested in continuing as Executive Director. To which Mr. Braun said he would be honored.

Senator Bennett asked for a motion to that effect.

**Representative Robson moved that Legislative Council reappoint Mike Braun as the Executive Director of Legislative Council. The motion CARRIED by a voice vote.**

Senator Bennett stated that he will appoint a subcommittee of the Legislative Council to represent and address the matters of items #2 and #3 on the agenda. He said he wants to meet with the full Committee in a couple weeks to move forward on both items.

Representative Robson asked if the Executive Director could prepare for the Committee, written options on items #2 and #3 from the agenda. He said that way the members could be more prepared at the next meeting. Mr. Braun agreed to the request.

There being no further business, the meeting was adjourned at 3:37 p.m.

Respectfully submitted,

Shelley Ponce  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)