

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

January 24, 2008

1:34 p.m.

MEMBERS PRESENT

Representative Kyle Johansen, Chair
Representative Mark Neuman, Vice Chair
Representative Anna Fairclough
Representative Wes Keller
Representative Mike Doogan
Representative Woodie Salmon

MEMBERS ABSENT

Representative Craig Johnson

COMMITTEE CALENDAR

PRESENTATION: STATE TRANSPORTATION IMPROVEMENT PLAN (STIP) 101

- CONTINUED FROM 1/22/08

PREVIOUS COMMITTEE ACTION

No previous action to report

WITNESS REGISTER

JEFF OTTESEN, Director
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Explained the Statewide Transportation Improvement Plan (STIP) and answered questions.

ACTION NARRATIVE

CHAIR KYLE JOHANSEN called the House Transportation Standing Committee meeting to order at [1:34:40 PM](#). Representatives Johansen, Neuman, Fairclough, Keller, Doogan, and Salmon were present at the call to order.

PRESENTATION: STATE TRANSPORTATION IMPROVEMENT PLAN (STIP) 101

[1:34:51 PM](#)

CHAIR JOHANSEN announced that the only order of business would be the continuation of the STIP 101 presentation from the 1/22/08 House Transportation Standing Committee meeting.

CHAIR JOHANSEN began by asking Mr. Ottesen:

When we took an at-ease to take up the [Alaska] Marine Highways we were talking about records of decision and... the relevance of that trigger being met. I believe on Tuesday you testified that indeed, the record of decision [ROD] is the legal conclusion to a process.

JEFF OTTESEN, Director, Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), replied that is correct.

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CHAIR JOHANSEN continued:

So my question is once we meet that legal conclusion to the process, not to imply or say that there were any legal consequences or laws broken, by gosh, by the governor but I'm wondering if maybe it was legally challenging to basically cancel a project. Does it not - what is the step from there? Does it not go back through a process again?

MR. OTTESEN explained that the record of decision is a decision by a federal agency on an environmental impact statement (EIS) over which it has jurisdiction, in this case the Federal Highway Administration (FHA). If action on any of the build alternatives in the EIS is selected in the record of decision, DOT&PF is legally obligated to proceed with that project or pay back the expended federal funds. He elaborated:

It becomes a decision point. You step over it, you now are going to either incur the cost of building the project or the cost of paying back the funds today. I guess the third alternative, which I've seen handled in a few cases, is you change your mind and go back and redo the EIS and once again come to a new conclusion. An example of that would have been the coastal trail where we actually made a decision and then came back and undid that decision.

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CHAIR JOHANSEN asked if the record of decision was reached on the [Anchorage] coastal trail.

MR. OTTESEN said as DOT&PF got into the process, it decided [the original plan] would be very costly. The department decided to re-open the EIS and select the no-build alternative so the project was successfully terminated without repayment.

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CHAIR JOHANSEN asked whether any funds were expended on the coastal trail project.

MR. OTTESEN said the EIS and some of the preliminary engineering work were paid for with federal dollars and a state match. The preliminary engineering showed which right-of-way parcels would have to be acquired.

CHAIR JOHANSEN asked if funds were expended to begin construction after the ROD.

MR. OTTESEN said no construction occurred to his knowledge.

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CHAIR JOHANSEN asked, when an alternative is selected, whether the procedure entails a review of the preliminary EIS, the EIS and the issuance of a new ROD.

MR. OTTESEN said if a new alternative is introduced, the new alternative must be studied with the same vigor and degree of investigation as any other alternatives studied. If one of the existing alternatives is chosen, that process is "a shorter step backward."

[1:39:07 PM](#)

CHAIR JOHANSEN asked if the process goes back to the EIS or whether it just requires a new ROD.

MR. OTTESEN replied that depends upon whether a new alternative is being opened. A final EIS could be reissued for public comment for an existing alternative. From that a ROD could be issued. The process would revert to issuing a draft EIS for a new alternative.

REPRESENTATIVE FAIRCLOUGH clarified that the extension on the coastal trail was revisited, not the entire coastal trail project.

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REPRESENTATIVE SALMON informed Mr. Ottesen that he requested information on the airports in his district from the commissioner and has not yet received a response.

MR. OTTESEN said the response should arrive shortly and that he helped write part of it today.

REPRESENTATIVE SALMON said he would also like information on the dust control project in Eagle.

MR. OTTESEN said he will add that information to DOT&PF's response.

CHAIR JOHANSEN interjected to say that Representative Salmon's question was included in the memo to the commissioner that contained all of the committee's questions. He expected to receive one letter responding to all questions, which he would distribute to all members.

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REPRESENTATIVE KELLER asked how much federal money is returned and how often that occurs.

MR. OTTESEN said that DOT&PF rarely returns funds because it does a lot of negotiating to avoid that outcome. He explained:

There are actually a large number of what we call time traps on the books. Some of them we'll say okay, we promise to build that, put it in the STIP [Statewide Transportation and Improvement Plan] and get it built. We've been doing that over time. It may be past the 10 years, but as long as we can show them intent to accomplish the project, they'll kind of waive the hard rule of payback. But we have, in some cases, decided to pay back funding when we just didn't see a way out of the problem. I think what we're facing now is just a much larger number of such paybacks if we aren't careful. And that's why we shut down the projects. We shut down the project to McCarthy for this very reason. Almost a \$100 million project - we could not really fairly see a way to fund that

so we took an EIS and turned it down. We actually stopped it before it was complete.

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REPRESENTATIVE FAIRCLOUGH asked if it is fair to say that Alaska's federal income stream was drastically altered several years ago. She remarked that Anchorage had projects consisting of over \$40 million every year in the early part of this decade; however at a particular point of time, about 50 percent of those funds disappeared. She asked whether that was caused by a change in state or federal allocations.

MR. OTTESEN said the decrease was due to a change in the amount of flexible federal funds. DOT&PF received more money under SAFETEA-LU than it had previously but the state had less decision making authority over that money because of new categories of set-aside funds and earmarks. Those two changes added up to a significant reduction in flexible dollars.

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REPRESENTATIVE FAIRCLOUGH asked:

If there [are] criteria for us to return federal money, in most cases would that mean that we have a project that we don't have a way to pay for those funds? Is that one of the possibilities for turning back money? If we got a small earmark where a project could be paid for by 10 percent of an allocation coming federally, but we still needed to come up with a large percentage outside of that, would that be one reason that we turned back money?

MR. OTTESEN replied affirmatively. He said the commissioner recently talked to the committee about a new earmark policy. He thought the list of earmarks adds up to 10 percent of a total cost of about \$700 million to complete those projects. He stressed that the number of projects is small.

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CHAIR JOHANSEN said he believes the commissioner also stated that in cases in which DOT&PF receives funds that do not meet the entire cost of a project, the department actively pursues solutions with those communities before that money is returned.

MR. OTTESEN said that is correct. The department engaged with some of those communities yesterday. Some of those projects simply need a title change; about 15 projects lack the correct title to be useful to the community. John Katz of the Governor's Washington, D.C. office got those project titles added to the technical corrections bill, but that bill has been stalled for several months.

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CHAIR JOHANSEN asked who decides that a specific alternative will be chosen and how that process works.

MR. OTTESEN said that decision is usually made by the agency that is advocating the project. It is done with consideration of public input and agreement amongst the federal partners. All sorts of agencies weigh in on these projects; EPA, the Army Corps of Engineers, etcetera.

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CHAIR JOHANSEN questioned whether DOT&PF ever gets crosswise with local communities on the choice of an alternative project.

MR. OTTESEN said certainly and gave the Juneau Access project as an example. Some communities to the north are not interested in linking up while others are. He said more commonly a community will express support for a project and then change gears at a later time. That is a weakness of the system. DOT&PF has to pursue projects over a long time period during which public sentiment can change. He noted that is the case with the bridge road project to Nondalton because that community's world appears to be changed by the Pebble Mine.

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CHAIR JOHANSEN asked if DOT&PF's position would override a local concern or whether DOT&PF would adjust its plan according to local input.

MR. OTTESEN replied:

... It's a tough question. When we make a decision communities like - they pat you on the back and it's all smiles. When you make a decision that communities disagree with, it can be very controversial and typically the most controversial decisions are ones where we can't go forward

because funding is not available or we ... don't have the means to accomplish it. I spent some time yesterday with mayors from the Kenai Peninsula area - very concerned about two projects in their neighborhood on the national highway system. They're state responsibility. They've been on the design boards for literally decades. In the case of Cooper Landing it started in the early '70s - a 35-year project. It's now a project that's gone on beyond the term of a young engineer who starts at 22 out of college and retires after 30 years and we still can't proceed with that project and they're upset because of that. So I see it from all sides.

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MR. OTTESEN returned to his presentation:

... I think this sort of amplifies what Representative Fairclough was speaking to. The date here is not firm. I could've picked 2003. I could have picked 2005 but clearly the kind of downhill easy trail coasting, so to speak, changed about this time period in a number of ways. We were running funding surpluses in the Highway Trust Fund and those surpluses were being shared with states and so the states had surplus money above sort of what had already been promised.

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MR. OTTESEN continued:

They were actually giving us bonus money. The money was largely directed to core needs. The state had dominion over those decisions. It was going to, you know, all the needs across the state. We were doing 10 to 12 major projects on the National Highway System last summer, almost two projects per main highway. We had more flexibility in the STIP rules than we have today and the amendments were easier and most of the earmarks at that time were additive. They were coming to us above the line, so to speak, above the money we got as formula funds. And some of the most significant earmarks of that era would be the Glenn-Parks Interchange, a \$50 million earmark that built a project that I think anyone in the state would stand up and say that was truly a very high level state need. It was fully funded and it addressed a clear state need.

It started to change. A number of things changed about that timeframe.

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We started seeing reduced funding. We went from positive funding in the Highway Trust Fund to negative funding so we weren't getting full funding, we were getting less than full funding. They passed SAFETEA-LU and gave us a number of new set asides for programs that we have to spend money on but we can't spend them on core needs. I would define core needs as basically building and maintaining roads and ferries, just the dirt and asphalt and steel type projects.

CHAIR JOHANSEN asked if that includes ferries.

MR. OTTESEN said it does. He said SHAKWAK funds were available up until 2004.

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MR. OTTESEN continued:

The limitations I'll talk about and have talked about have ramped up. The regulations have come on line. We've had a large number of deductive earmarks. It started out at the time of SAFETEA-LU the deductive earmarks were about \$600 million. After the change to the two bridges, it's a little bit more than \$300 million in deductive earmarks. That total number is pretty significant when you understand that we had only about \$1.5 billion in flexible money remaining after earmarks. So \$600 million out of \$1500 million is a pretty healthy fraction.

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And then we've had a new word that we had to learn how to spell, is rescissions. ...Rescissions are essentially an act of Congress to take back money that has already been authorized, to simply have the states give it back to them in a certain amount. We get it in the form of a notice and you have no choice. You have to send money back to the federal government.

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MR. OTTESEN continued:

At the top of page 7, I'm sure you've probably seen this slide before in previous presentations, but each one of those dots is a major federal law that has been passed or reenacted and added to and amplified. It basically says environmental issues started to grow in the '60s and they haven't slowed down and every one of those dots represents some new rule, process, activity, barrier to accomplishing our job. It makes that job a little bit more difficult each time a dot is added to that line. Of course, this presentation now is almost five years old. There have been several more dots added to the line.

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REPRESENTATIVE NEUMAN asked if the environmental concerns fall into a specific category, such as concerns about water.

MR. OTTESEN said the concerns are all over the map. Depending on the project, concerns may pertain to the Clean Water Act, wetlands, the Clean Air Act, the Endangered Species Act and historic preservation. For example, DOT&PF is currently making preparations to do safety work in downtown Anchorage, such as making changes to curb lines, changes in "channelization" for drivers, changes to signage, etcetera. He has heard that some of the buildings in downtown are historic so the safety changes may not be in keeping with the historic character of that area. He said that is an example of the tension DOT&PF faces in projects.

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REPRESENTATIVE NEUMAN asked if it is it up to the community to notify DOT&PF of its concerns about preserving the historical character of the area.

MR. OTTESEN said the State Historic Preservation Office (SHPO) is advocating for historical preservation of the area. The preservation is being done with federal and state dollars. He noted it is not uncommon for a state agency to hold up a project.

REPRESENTATIVE NEUMAN pointed out that one state agency is increasing the cost of another state agency's project.

MR. OTTESEN agreed and said the same thing happens at the federal level.

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REPRESENTATIVE NEUMAN asked Mr. Ottesen for information about the expansion project on the Parks Highway.

MR. OTTESEN said most of the Parks Highway has a very wide original right-of-way, which is advantageous. He believes the wetlands issue will be of concern on that project. He noted wetlands issues had to be considered at the Parks Glenn Interchange, which is one reason bridges were used to avoid embankment fill. DOT&PF spent more money on the design concept but was able to get the project done. He said he thought the impediment to any Parks Highway improvements is dollars, not permitting.

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REPRESENTATIVE DOOGAN asked what historic area Mr. Ottesen was referring to and what the historic concerns are.

MR. OTTESEN said he would provide that information.

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CHAIR JOHANSEN inquired:

Before we get off the top of page 7...it seems to me that folks talk about the increased cost of planning, design, engineering and litigation per...dollar spent. Obviously these must have some impact on how much we actually spend on concrete and construction, all of these hoops we jump through. I don't know what the change is and you may not have the numbers, but how do these impact that and how is spending on non-dirt moving basically per dollar changed in the last few years...?

MR. OTTESEN replied those costs have clearly increased. DOT&PF's environmental staff is doing more studies. He has seen a significant number of challenges during DOT&PF's planning sets, both in and outside of court. DOT&PF has been to federal and state court five times in the past six years. One case was taken to the Ninth Circuit Court; DOT&PF prevailed but the case was costly monetarily and time wise. He furthered, "It just seems to be our fate as a state. We have a lot of people watching us, what we do, wanting to somehow redirect those

decisions, particularly with regard to anything in the form of a new road. So that's always controversial."

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CHAIR JOHANSEN asked what DOT&PF has done to address some of the planning, design and engineering cost increases.

MR. OTTESEN said he is not the best person to address that topic. He suggested asking the regional directors for that information. He indicated in his area, staff is working with state troopers and local law enforcement to provide traffic officers with laptop computers that will allow them to issue citations and traffic accident reports electronically. That change has upfront costs but should save money in the long run and safety benefits should result as well. Currently, a traffic accident report must be made on paper. It is filed with the Division of Motor Vehicles and then moves to DOT&PF to identify safety problems. Copies are also sent to the Department of Public Safety and sometimes the Court System. Moving that data by hand takes months and is expensive; this slows the identification of safety problems. He told members he was in a traffic accident in the state of Washington recently at 9:00 a.m. By the close of business that day, the Washington Department of Transportation faxed him the accident report. DOT&PF is proposing to implement the same system.

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CHAIR JOHANSEN asked if Mr. Ottesen's area is design and engineering.

MR. OTTESEN said his focus is on the planning side. The department has made the STIP electronic and is collecting data electronically. It has been researching new data collectors that will allow DOT&PF to do intersection counts electronically. In the past, a technician would sit at an intersection for several days and count cars.

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REPRESENTATIVE NEUMAN asked how much money it will take to implement the electronic report filing system and whether DOT&PF requested funds in its budget for that project.

MR. OTTESEN said DOT&PF has a copy of the Shareware software, which was produced by the State of Iowa. The department has

implemented a trial program used by both DOT&PF commercial vehicle inspectors and by 10 to 15 law enforcement officers across the state. The trial program began January 3 and is scheduled to last 90 days. He has been told the users are so enthusiastic about the program that they don't want to wait 90 days for the program to go live.

MR. OTTESEN added that DOT&PF has identified highway safety money for laptops for half of the law enforcement officers. He plans to meet with Colonel Holloway of the Department of Public Safety to determine who should maintain the software and where it should be maintained. Those aspects of the project remain unfunded, as well as training of and outreach to law enforcement officials. About 17 states use this software; who is responsible for the maintenance is a mixed bag.

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REPRESENTATIVE FAIRCLOUGH questioned what the department is doing internally to speed up the planning process and to begin and complete projects. She additionally asked what recommendations DOT&PF is making to alleviate delays due to federal regulations so that state and federal processes can run simultaneously. She said in the last five years the cost of steel and other materials has doubled so delays are very costly.

MR. OTTESEN responded DOT&PF is striving to go faster but is "feeling the sand slip between its toes." The department has over \$200 million in projects that have gone through the process and are ready to go to bid but the designs are growing stale due to lack of funding. Not all projects face a funding problem and are completed quickly, but in many cases the problem is funding. The department may be making progress but sometimes STIP rules come along and gum up the process.

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REPRESENTATIVE FAIRCLOUGH said, for the record, she is inclined to support the governor's proposal to create a transportation fund or an endowment. She will be looking at the criteria DOT&PF will use to evaluate the best use of and access to federal funds on very large projects that have many hoops to jump through and on more community-based projects. She commented:

I'm wondering if the Chair or the Vice-Chair should be invited to [American Association of State Highway and

Transportation Officials] AASHTO or [Western Association of State Highway and Transportation Officials] WASHTO to listen to some of the challenges so that we have relevant information for this committee in first hand information as to the challenges that the nation is facing with the current system that they're working under to realize that it's not just specific to Alaska but Alaska has been so dependent, as has been said by other presenters in the last two weeks that maybe that recognition would allow he and the Vice Chair to disseminate to the rest of us those challenges that we're facing as a nation that we need to sing with other states to our federal delegation across borders on why projects are costing so much. We're not using the federal dollars in the way that the feds would like us to use [them]. They want us to put roads in the ground, ferries into service, bridges and infrastructure rebuilt but...it seems like a real life experience and exchange so that we understand very well how Alaska fits into this may be helpful.

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MR. OTTESEN opined that is an excellent idea and said the CEO Roundtable is scheduled around February 26 or 28. The CEOs of each state transportation agency meet with Congress and are updated on the Highway Trust Fund's status. He added the AASHTO annual meeting is typically held in the fall and lasts about four days. He said at a recent AASHTO meeting he learned that Alaska is just a microcosm of what all states are facing; all states are reeling from the high cost of construction. He said this kind of inflation is unprecedented.

[2:12:18 PM](#)

REPRESENTATIVE NEUMAN asked how DOT&PF's \$200 million worth of projects that are planned and waiting for funding are rated in importance.

MR. OTTESEN explained that DOT&PF uses a scored process for the projects done at the community level. He pointed out that DOT&PF was recently nationally recognized for having one of the best STIP scoring mechanisms in the country. The department relies on its management systems for National Highway System and Alaska Highway project systems; congestion management data, traffic safety data, condition data and the priorities of the regional directors. He said DOT&PF continues to slow down projects because of the funding dilemma. He told members:

I will just give you one current problem - cost increase in Fairbanks of about \$2 million on a project. Once the project is underway, you know, the contractor is working, you have to fund those projects. You can't change your mind. You're now in a contract. We will have to stop in that region an \$8 million project on the Dalton Highway in order to find the \$2 million to give to the project that is active. Then that project [the Dalton Highway] is effectively stalled until we can find \$2 million to backfill its need. This give and take is going on a daily basis and with high inflation; it just seems to be a new paradigm as I showed you on the slide a few pages ago.

[2:14:43 PM](#)

MR. OTTESEN said, in response to a question from Chair Johansen, that the amount of unfunded projects would be much higher than \$200 million if other modes of transportation were included, such as the ferry system.

CHAIR JOHANSEN asked if DOT&PF is planning too quickly so that plans get stale and need to be redone.

MR. OTTESEN said that is a real fear at this moment. He directed members to the bottom of page 7, which addresses the inflationary costs DOT&PF is facing. He said DOT&PF had a large number of projects moving forward earlier in the decade; 10 or 12 on the National Highway System. Only two or three can be funded now. DOT&PF and the consulting community are staffed for the previous level of activity. Projects take five or six years to get through the design process. He said the one consistent statement he hears from staff and consultants is that the number of projects on the street is not enough for those groups. That reflects how short the effective dollars are.

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CHAIR JOHANSEN commented:

It seems to me just on the broad picture, when you start doing designs and that gets out there, one, it heightens the expectation of a project getting done, you know, and you have to deal with the real funding issues. That's just something that has to happen but, again, if we're spending money on plans and the planning money goes stale, that goes to money that doesn't get on the street for actual digging

and concrete so I think that follows up with Representative Fairclough about what are you guys doing and are you doing things to adjust to that or not have \$200 million worth of plans that may end up going stale.

MR. OTTESEN replied that very fear is what is driving the earmark policy. That drove the decision to cancel several large projects that were inadequately funded, two examples being the road to McCarthy and the Baranof cross-island. The department only had enough earmark money to do about one-quarter of an EIS.

CHAIR JOHANSEN asked how DOT&PF determines which projects are ready to roll.

MR. OTTESEN said he would provide that information at a later date.

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REPRESENTATIVE DOOGAN asked about the mechanics of how the state ended up with \$200 million in project designs that are stale. He asked whether federal funds were provided for the planning phase only.

MR. OTTESEN explained that typically the first phase that gets funded is the environmental and preliminary engineering phase, which produces an engineering document. In a few cases, DOT&PF was able to take those projects one step further so they are ready to go to bid. He furthered:

I think the reason is at the bottom of page 7. Bear in mind, projects that would have been started that needed this funding got so eroded by inflation they would have been funded in some cases. They started three, four, five, six, seven years in advance of that downturn of funding. So you had a program that was delivering so many projects and you start the same number that you are delivering out the back end then all of a sudden the conveyor belt in the factory slows down but you've got starts that are already underway and consultants are already working on it and now, as we get to the point of needing construction dollars, they simply aren't there.

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REPRESENTATIVE DOOGAN asked if these projects were high up on the priority list because they got design funding under the STIP

but, when it came time to deliver them, DOT&PF found its money wasn't stretching far enough and had to decide which projects to move forward because they were deemed less meritorious than those that were funded.

MR. OTTESEN said that is correct and the problem was caused by not having sustainable, reliable funds that are indexed to the cost of construction.

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REPRESENTATIVE DOOGAN asked if this process is continuing so that more projects will be taken out of the queue.

MR. OTTESEN said that is very likely, but DOT&PF is being judicious about stopping or slowing projects. The new earmark policy will stop several projects that DOT&PF knew could not be funded. The department is in a difficult conundrum and is trying to be mindful of the implications to staff and consultants. He added:

That's the one thing under our constitution. We don't have a dedicated fund. We don't have these ... tools to adjust revenue. It's unusual. Most states have that but even the states that have it are having problems so I don't want to paint that picture too rosy. We are in a position where the only thing we have is what's appropriated to us each year and we are in an era now where even what gets appropriated to us gets taken back in some cases so you'll see some slides here a little deeper in the presentations on rescissions where, you know, next year the \$9 billion rescission at hand. It's already written in law. It will take a law to undo it.

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REPRESENTATIVE FAIRCLOUGH questioned whether contracts are let when funds are about to lapse in October with the federal fiscal year, because those funds can be spent for the planning process.

MR. OTTESEN said there used to be a scramble at the end of the fiscal year to make sure no funds lapsed. However, several years ago the federal government allowed states to do advanced construction [AC]. That is a financing technique where state dollars are used to construct projects but the state is reimbursed with federal dollars at a later date. At present, if any funds are about to lapse at year's end, DOT&PF rushes to pay

off those advanced constructions. That gives DOT&PF an infinite ability to absorb lapsing dollars. He said to his knowledge, DOT&PF has never lapsed a formula dollar.

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REPRESENTATIVE FAIRCLOUGH said she believes DOT&PF and Anchorage have done a good job of making sure that those monies are circulated inside the state. She asked Mr. Ottesen whether he believes that Congress will address the nation's aging infrastructure by appropriating funds, especially after the collapse of the Minnesota bridge.

MR. OTTESEN indicated a report issued to Congress last week recommended the Highway Trust Fund be radically overhauled and that funding be tripled and indexed to inflation. However, he said he was told that project is dead on arrival until the election is over.

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REPRESENTATIVE FAIRCLOUGH felt it is not the time to consider a gas tax in Alaska, but said Alaska has one of the lowest gas taxes in the nation. She noted Alaska has generated six federal dollars for every \$1 the state spends and Congress is aware of Alaska's low gas tax, which is one reason the federal funds are decreasing. She asked when Alaska last increased its gas tax.

MR. OTTESEN said the tax was increased to 8 cents in 1961, at which time it was the highest in the nation. The tax was decreased to 7 cents in 1964 and raised to 8 cents again in 1967.

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REPRESENTATIVE FAIRCLOUGH reiterated that Alaska's federal delegation is confronted with the fact that Alaska's gas tax has not increased since 1967 when it tries to lobby for funds for the state.

MR. OTTESEN said the 2030 report contains a lot of information on that subject and that the Administration agrees an increase to the gas tax is not the solution. He explained:

The \$50 million that would come from the proposed Alaska Transportation Fund, which is a start, not necessarily the end of that idea, it's just something that we need to grow

to really be truly meaningful, would take a 12 cent per gallon gas tax increase to achieve \$50 million per year. That would have to grow from 8 cents to 20 cents. I read just today that the average household in America is now paying almost \$1,000 more per year for gasoline so they don't need any more gas taxes.

REPRESENTATIVE FAIRCLOUGH said for the record that she is not suggesting an increase but she surmised it is a leverage point that could have been used in the past that is inaccessible now because of the cost of fuel.

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REPRESENTATIVE KELLER said the increases shown on page 7 are shocking. The cost of pavement in Alaska has doubled almost twice as much as the U.S. average. He asked what is causing that drastic increase.

MR. OTTESEN replied Alaska had a very heated construction market and the number of firms consolidated. Factors like insurance have increased the cost, as well as the sheer number of bidders. When three companies bid rather than six, the price will increase.

REPRESENTATIVE KELLER asked if there any problems with bidder qualifications.

MR. OTTESEN said other than requiring a bid bond and insurance, the bar to entry is fairly low.

MR. KELLER asked if the graph shows actual dollars.

MR. OTTESEN said no, it is indexed to 100. He explained, "So basically the costs in 2000 were indexed to 100 and so everything is relative basically as a percentage from that year." He further explained that the price of oil and construction declined for about three years throughout the decade but then it increased dramatically. He noted those numbers are not estimates; they are a sample based upon the entire spectrum of bid tabs the department opens that had two bid items: earthwork and asphalt.

[2:30:09 PM](#)

REPRESENTATIVE DOOGAN asked whether the \$200 million worth of projects now on the shelf were designed with STIP funds and

whether their inactive status could become a liability to the state.

MR. OTTESEN replied, "Representative Doogan, absolutely. That is clearly one of the implications and it is clearly one of the things we are constantly managing."

[2:30:42 PM](#)

CHAIR JOHANSEN asked the amount for which the state is "on the hook".

MR. OTTESEN said the design process typically accounts for 15 to 20 percent of the \$200 million, which would amount to \$30 or \$40 million.

[2:31:05 PM](#)

CHAIR JOHANSEN referred to the advanced construction accounting format and asked if DOT&PF is satisfied with the flexibility that provides.

MR. OTTESEN said DOT&PF routinely uses advanced construction. That tool became available in the mid-1990s. During DOT&PF's analysis of that tool, it realized the state has no law that allows or prohibits its use. The backlog of advanced construction was about \$100 million at the end of the Knowles Administration. At the end of the Murkowski Administration, the amount had increased to \$300 million. The department has been trying to slow its use and reduce the overhang. So, contractors have been paid with state dollars for a lot of work that has been done but DOT&PF is waiting on federal dollars. He said postponing payment for one or two years is not good funds management. He noted the States of New Jersey and Texas use it for all projects.

[2:33:09 PM](#)

REPRESENTATIVE NEUMAN asked the amount of advanced construction funds the state owes right now. He commented that between the amount owed and borrowing money through bonds, the state is putting a lot on its credit card.

MR. OTTESEN acknowledged that is a fear. He explained the \$300 million is similar to a line of credit so it does not mean that much cash has been expended. He provided the following example of how advanced construction can be used in a meaningful way:

The contract to re-power a ferry would require perhaps two years. One year, once you award the contract...the contractor [would] simply order the engines and wait for them to be manufactured. He wouldn't do any work. He wouldn't even put the ship in the yard until the second year when he finally had engines on hand ready to install.

But you have it under a single contract because you want a single entity to be responsible. So you AC the project, let's say, in 2006 and it's a \$20 million contract but \$2 [million] of it is for engines so he spends \$2 million buying the engines, ordering them. You reimburse him \$2 million in state funds. The other \$18 million is on the books as an AC but no money is transacted. The state hasn't put \$18 million out. We come along to the second year. The ship goes in the yard. That's the year that we've identified federal funds in the STIP to pay off that contract and so at the peak of that AC, \$2 million of state funds were put out without reimbursement, not the full \$20 million. But on the books it would read as a \$20 million AC so you have to kind of look at the second number to understand the full degree. I believe right now our second number is in the range of \$50 or \$60 million, not \$300 million.

[2:35:46 PM](#)

REPRESENTATIVE NEUMAN asked if the state is waiting for the federal government to reimburse \$50 million right now.

MR. OTTESEN affirmed it is. The Department of Revenue watches that amount and will stop DOT&PF if it believes DOT&PF is getting ahead of itself.

[2:36:10 PM](#)

REPRESENTATIVE NEUMAN asked:

That's the part that I questioned is making sure that we follow through a public process, an open transparent process that the public knows where that money is spent so, if we've got capital budget projects that we're funding, how does that look when it goes through finance and it comes through here? I mean how does the Legislature, who is in charge of spending the state's money, how do we see that?

MR. OTTESEN commented that this is where it gets very interesting. He continued:

Let me make a parallel. If you look at the federal aviation program, it's been AC'd for decades. That's just how that program works. The state is obligated to pay for everything right up until almost the end and that can take years and then finally get reimbursement. So that program has been AC'd and has been AC'd and it's just the natural course of events. That's how FAA does things. Federal Highways is willing to pay you as you go along and they don't require you to wait until certain stages of a project are completed.

So when they authorize AC, and it is authorized in federal law, like I said the state started small. We didn't even show it in the STIP. We didn't make any reflection of it. We just said we have authority to receive and expend federal funds and we always - every project on the federal highway side starts with state dollars but in some cases the state dollars are reimbursed as quickly as two or three days because now reimbursement occurs twice a week. It occurs electronically. Our computer talks to their computer and the money moves.

So...what we're doing is extending that period of time between the state expenditure and the federal reimbursement and we're doing it now probably in the most judicious manner that I'm aware of. I watched this occur as sort of a subordinate in the past and now I supervise it. Like I said, we are managing it downward. We're trying to reduce the backlog by \$10 or \$15 million each year.

[2:38:10 PM](#)

One of the things that got us into the AC kind of deep in the barrel was in '05, when our federal funds hit one of those hiccups in the road, we thought we were getting so much money. If you remember that year, that was the year that Congress issued I think it was 7 or 8 continuing resolutions. They were giving us money in dribs and drabs and we'd gotten to the tenth month and we had gotten 10/12ths of our money and it's pretty easy to calculate. If you've gotten 10/12ths, well you're going to get 2 more 12ths. That's what we thought. We were sort of fat, dumb and happy. Then bingo, we got a notice that said you're

not only not getting the last 2/12ths, pay back a good chunk of some of that 10/12ths. We owed money back at that point. We had about, if I recall right, about \$55 million in projects that were bid-ready, ready to go, the public wanted, we AC'd them. That was when we kind of got deep into it at that moment in time.

So we did that for the greater good to keep the contractor community happy, to meet expectations of the public, and we knew we would have to manage our way back down. We'd have to lower that.

2:39:18 PM

We also have AC'd - the other category of AC that I think is probably there's no way out of it is there has been an awful lot of ER work, emergency relief work. That, by its nature, has to be done AC. The state goes out and responds to that emergency, puts up state dollars and gets reimbursed with emergency relief dollars. Those emergency relief dollars have been very scarce at the federal level because of Katrina and other hurricanes and floods around the country. There's only been so much to go around so you're sort of on a list and you wait your turn to get reimbursed. So ER work, by its very nature, is also AC'd.

2:40:13 PM

MR. OTTESEN continued his presentation, as follows:

... This is where we get into some of the nitty gritty. I want to talk about the two kinds of funding terms in the federal highway world, known as apportionments and obligation limit. I apologize for bringing you down into this technical detail but if you want to understand our world, this is where it begins. This is where the management of the STIP is really taking place.

Apportionment is essentially a promise. It's given to us in a series of different categories. It has a shelf life of four years - that is you don't have to spend it right away. As you'll see in a minute, you can't spend it by itself anyway. It's sort of a 1 plus 1 equals 1 formula. One dollar of apportionment [plus] one dollar of obligation limit actually yields one real dollar of spendable cash.

Apportionment is determined in the authorization bill, which occurs every five or six years. It is spendable only with obligation limit, or OL, and having some surplus. I should say Congress has historically given us more apportionment than they give [obligation] limit. The ratio has varied year by year. In the last few years it's between 85 and 90 percent. You're going to, by definition, you're going to build up a surplus of apportionment because you just simply don't have enough obligation limit to use it all. I should add right now surplus apportionment not only provides flexibility, as I'll explain a little further in, it has also been the raw material that creates SHAKWAK funds. So we'll talk about that with SHAKWAK but apportionment is essentially the input to a SHAKWAK dollar.

Obligation limit is what sets the cap on total spending. You get to spend up to your obligation limit, hence the name. So this is when Congress, you know, the green eye shades part of Congress, the Finance Committees, get together and they set the obligation limit on an annual basis whereas apportionment could have been decided six years in the past. Obligation limit has a shelf life of one year. This is what lapses so when we talk about lapsing federal money, it's [the] obligation limit that's lapsing. It's use it or lose it.

[2:42:34 PM](#)

MR. OTTESEN continued:

There literally is a process in August two months before the end of the federal fiscal year where we're asked can you spend all your obligation and, if so, could you spend more and how much. That's when we actually end up and historically have always gotten plus obligation limit from other states, typically in the range of \$3 to \$5 million.

It is spendable only with a dollar of apportionment so, it's like I said, a ratio. You've got to match one to one to get one. It usually, historically, has been smaller in total amount and let me also add what I said earlier in my presentation. There are a lot of generalities here. There are dozens of exceptions to these rules so the money has gotten very complex. Some of the apportionment comes with its own "ob" limit and it's one to one already. You don't move it around but those tend to be the minority of the

program. The vast majority of it follows these rules that I've laid out here.

So at the bottom of page 8 I talk about the types of apportionment. Depending upon how you count these categories, there [are] as many as 20, there may even be more than that. You have to consider the transit program. That's because there are categories and subcategories and, in some cases, two or three subcategories to a main category. But the core apportionments, the one where most of our work gets done, is the National Highway System, Surface Transportation Program, Interstate Maintenance, the Congestion Mitigation or Air Quality, sometimes called CMAC, and the bridge apportionment, so those are known as the five core apportionments. If you look at our funding, that's where most of the money comes to us is in those categories.

[2:44:26 PM](#)

A couple of key points. The Surface Transportation Program category is the one that we share with the MPOs. By law that is the one that goes to MPOs. The equity bonus category is in the arcane formulas found in federal law. We earn these dollars through a formula. Each number of miles, amount of traffic, you know blah, blah, blah - all these sort of metrics. If we only got our dollars under those formulas right there, we wouldn't get very many dollars. There's then this category known as equity bonus, which is actually our largest category by a large degree and equity bonus is how Congress makes up for states like Alaska that would otherwise be shortchanged from the strict adherence to the latest formula they've drawn.

Prior to this bill, equity bonus was called minimum guarantee. Prior to minimum guarantee it had a different name so it's a category that changes names.

[2:45:22 PM](#)

The equity bonus money gets distributed to those other five categories in the same proportion that you received that money to begin with so if you got 20 percent of it in National Highway System, 20 percent of equity bonus would be converted to National Highway System. So equity bonus, before it's all said and done, it gets changed and we treat it like one of the other categories.

What apportionment does, and this is something I haven't said yet, is define how you can use the money, the rules that govern the money, the eligibility of the money. You can't spend bridge money on a ferry. You can't spend safety money on a defective ferry that has a safety problem. You can only spend it on a defective road that has a documented safety problem. If I'm getting my point [across], every one of these categories has an arcane set of rules and eligibility. As we get into the other apportionments at the bottom of the list, there's safety, transportation enhancement, metropolitan planning, a statewide planning and research category, a safe routes to school category, recreational trails, a category for a rail highway crossing, a category for border infrastructure, and then several transit categories of funding as well coming out of the transit side.

So when we write a STIP we're not writing it to a single flavor of money and one size fits all. We have to write a STIP that also meets all of the different funding rules associated with the amount of funding each category has received. I'll stop there. I think that's probably....

[2:46:58 PM](#)

REPRESENTATIVE NEUMAN asked what apportionment means when he tries to add that to obligations to get actual spendable cash.

MR. OTTESEN said that question can probably be best answered by explaining the reason for this system. The question has two answers. Most federal agencies do not use this system; it is unique to the Federal Highway Program. He said the FAA or Army Corps of Engineers appropriates money one year at a time. He continued:

At the time in '56 when they said let's build the interstate, they knew they were into a long year multi-decade program to achieve that interstate. They had to give states some degree of certainty so that they could build a long term program and accomplish a series of projects and know that future funding would be there because if you are going to build a 100-mile chunk of highway, you don't build it in one contract. You might build it in 10 contracts. So you better have confidence that you aren't going to get about 50 miles into that highway and have the money to stop.

So the authorizing committees in Congress who authorize these bills, they used to be four-year bills, then they slowly blossomed to be six-year bills, authorizations as we call them, and now SAFETEA-LU was a five-year bill but that's only because it was a year late getting out of the Congress. It was intended to be six years.

The authorizing committees, which are the subject matter committees, the Transportation Committees, if you would, in Congress, they do the authorization. They're trying to see as far as six years into the future how much funding will there be, and so they're sort of setting a plan, setting a target. But the appropriation committees in Congress, they're the ones that year-to-year have to look at that Highway Trust Fund and say well, there's really only this much cash so we've got to slow you down a little bit and they'll set a spending cap, the obligation limit. That's why you've got this hybrid system. It's like a proxy. You need two parts to have a useful thing. We need one of each to get a dollar of expendable money.

One is I think of obligation limit in my mind as the money and I think of apportionment as the rules. Only when I couple the two together is there something useful.

[2:50:02 PM](#)

REPRESENTATIVE FAIRCLOUGH asked whether DOT&PF is working with the federal delegation on border responsibilities when it comes to safety and border control.

MR. OTTESEN said a lot of border state activity has taken place. The department has participated in a northern border state consortium. He pointed out that Alaska has a relatively small number of people crossing its border.

[2:51:11 PM](#)

REPRESENTATIVE FAIRCLOUGH asked if Pacific NorthWest Economic Region (PNWER) or other agencies offer grants or pilot programs to address border issues.

MR. OTTESEN said he has not heard of any. He said Alaska's border program is relatively small. Last year funds were spent on a 10-mile stretch of highway from the ferry terminal. Alaska does not have that much infrastructure close to the border.

[2:52:19 PM](#)

REPRESENTATIVE DOOGAN asked for further clarification on the relationship between apportionment and obligation limit. He asked whether apportionment is the amount of money the State of Alaska can receive from each program over a six-year period.

MR. OTTESEN explained apportionment is authorized annually so DOT&PF gets a spreadsheet showing the amount by category and year.

REPRESENTATIVE DOOGAN asked if it is money.

MR. OTTESEN said not without the obligation limit. He explained:

One of the best analogies I've heard is you could actually do it with props but I'll just explain it. If you imagine I had several different shaped glasses here, some large ones and some small ones and some in between ones, and each one of those was a kind of apportionment and its size represented how much money we could spend in that category. And then I had a pitcher of money known as obligation limit that the sum of the fluid in that picture equaled about 85 percent of the capacity of all the glasses. I can pour that any way we want but at some point I run out so if I poured into NHS and STP dollars, I can do those kinds of projects to the maximum extent they are available. Now I'll leave some of that other apportionment on the table unused or unfilled because we didn't have enough in the pitcher, the obligation limit.

[2:53:54 PM](#)

REPRESENTATIVE DOOGAN asked if the obligation limit could be lower than the apportionment but not higher.

MR. OTTESEN said it can be higher and has been in a few rare cases but, "you manage that because you had surplus apportionment from prior years, apportionment having the four-year shelf life lasting year-to-year and the obligation limit having a one-year shelf life."

[2:54:21 PM](#)

MR. OTTESEN continued:

This is the arcane detail of managing the STIP. This is what my staff deals with. If you look at our STIP you'll see we reflect the type of apportionment going to every project with a series of codes. When you actually get into managing it on the accounting side, it gets even more detailed. It's not only bridge funds, it is bridge funds from the year 2007 or it's bridge funds from the year 2005. Our general management of the STIP has done two things: always use old apportionment first so you don't lapse it, always use the most inflexible first so you preserve the most flexible. That's important in a number of ways.

I'll give you an example of that. We could be building the reconstruction of the Parks Highway. It has a bridge in it and it has a realignment of a curve where there have been several deaths and so, when we look at that, say, \$20 million project, the bridge costs \$5 million, the curve work costs \$3 million, and the rest of it was \$12 million. We can allocate bridge money to the bridge, safety money to the curve reconstruction, and NHS money to the rest of it. We would do that based upon the bid tabs right down to the dollar at the time we processed the federal paperwork. So we do it in the STIP as a planning number. We do it in the accounting documents right down to the penny literally. I've got a couple of staff that do this. They are absolutely top notch and, I'll tell you, when those people get sick, DOT sneezes.

[2:56:04 PM](#)

REPRESENTATIVE KELLER asked if it is safe to say the difference between the apportionment and the obligation limit is set by the politics between the Transportation Committee and the Ways and Means Committee at the federal level.

MR. OTTESEN said he believes it has more to do with the functions of the committees rather than politics. The authorization committee is two to five years ahead of the individual appropriations committees. The appropriations committees look at the amount in the Highway Trust Fund.

[2:56:58 PM](#)

REPRESENTATIVE KELLER asked about the reliability.

MR. OTTESEN pointed out when DOT&PF received its SAFETEA-LU funds during the first year of its implementation, it received 80 percent of its fund in some categories and 85 percent in others. DOT&PF used 85 percent to plan for future years and set the STIP at that point. He noted the amount has increased to 90 percent in the last few years, which has allowed DOT&PF to cover a few cost overruns without having to stop another project. He stated the STIP must be based on a reasonable estimate of future revenue but DOT&PF doesn't receive notices in a timely manner.

[2:58:08 PM](#)

MR. OTTESEN continued his presentation:

Let's move to page 9. You're going to hear me talk a lot about apportionment because it really has become an issue. The 2008 balances of apportionment are at historic lows, certainly the lowest I've seen in my career. We only had about \$40 million left of surplus apportionment. About \$7 million of that was in our most flexible categories, the kind of categories we really want to hang on to. \$33 million of it was in the more restricted categories. Just to give you one balance, the balance of any trust funds, the kind of dollars that would work on the Parks Highway, for example, 45 cents. I could dive into the couch cushions and double the amount of money going to the NHS at the start of the year, just from my own little personal contribution. 45 cents - that's the kind of money that would build a ferry, for example. If we want to build a ferry, we have 45 cents on the books at the start of the year. It kind of speaks to the problem we're facing.

[2:59:11 PM](#)

We also learned with the 2008 fund notices that we're going to get less apportionment this year than obligation limit, the very issue that you raise, Representative Keller. What that means is not only do we have to use all that apportionment that we're going to get in precisely the same ratio that we receive it, we're going to have to use most of this \$40 million of surplus apportionment to use all the obligation limit. It basically turns our world upside down. Where before we had flexibility and we could make last minute adjustments because we had ample surplus apportionment...if a bridge project stalled for a permit, we could move in a highway reconstruction project. We can't do that under this new scenario. We've spent the

better part of the last six weeks talking to staff about this, going to the regions, trying to explain to them, because a lot of our regions don't want to deal with this. To them this is just gobbledy gook and just tell me how much money I've got and let me do my job. That's their job is to engineer and build projects.

Unfortunately, with these changes that have come out of decision makers inside the Beltway, we've lost that flexibility. We're going to have a \$6 million balance in surplus apportionment at the end of '08. You'll see later on why that's happened. It's happening because of rescissions. There's been a pattern of rescissions that began about three years ago where they take back surplus apportionment. They're doing that to show budget savings at the national level. It's essentially a direct result of the Iraq war. They need to find a way to not make the budget look like its gone so deep in red ink, so by taking back apportionment, they can show a savings. Never mind that apportionment without obligation limit is not money. It's just a promise that has never been fulfilled.

[3:00:56 PM](#)

REPRESENTATIVE NEUMAN asked Mr. Ottesen how he thinks this will play out in the next five years.

MR. OTTESEN said a "perfect storm" is building. He stated:

We have a lot coming. We have a 2010 reauthorization coming. You have a commission that's proposing a dramatic and complete rewrite of the rules, top to bottom, throw the whole thing out. It's been 50 years of this. Let's start with a fresh idea. Unfortunately the fresh ideas are, just to give you a taste of it, none of them look good for Alaska. They would focus on the 50 largest metropolitan areas, for example. Anchorage doesn't rise to 51 nationally, just for example. That's just one example. They would focus on high speed rail and freight corridors. None of that solves our transportation needs at the road level.

I think perhaps the biggest fear of the future is an awful lot of talk about greenhouse gases, carbon footprint and those kinds of rules coming to be tied to the transportation program. In fact the advocates of that have already got a name for the new T, it will be Green T. It's

got traction, I can tell you this right now, in the halls of Congress. Green T could start to talk about more transit, more walking, more bicycles, less cars, and, if you think about it, Congress has used the transportation program over the decades to influence the policies they want to see happen, whether it be clean air or drunken driving, they attach rules to transportation money. You can almost bet this will happen.

[3:02:48 PM](#)

MR. OTTESEN continued:

So while you were out, Mr. Chairman, I talked about this fact that we are going to see our apportionment balances drive to historic lows. They are already at historic lows at \$40 million starting this year. If we use our obligation limit, they'll be at about \$6 million at the end of the year.

There are four consequences to this change in our world. One, STIP projects will now be restricted to whatever kind of apportionment we have on hand. I talked to you I think on Saturday. The STIP is losing flexibility to build the - kind of our core mission, building roads, rebuilding roads, that kind of thing. What we're losing is that kind of money. What we're gaining in its stead is the more restricted money. We will gain those dollars back and be spendable in bridge and safety in particular. Those are two categories that are really very well supplied with apportionment. We will have about a \$45 million bridge program this year and about a \$40 million highway safety program. What's especially critical is we have to deliver those projects and not have hiccups, not have permit slips, not have other slips, or those dollars will simply vanish and leave the state. That's a first. It never happened before.

[3:04:24 PM](#)

REPRESENTATIVE DOOGAN asked if those funds will automatically vanish or vanish due to rescission.

MR. OTTESEN clarified that every August the state must certify that it is going to use the obligation limit. If it does not, it must give those funds up. That is known as the August redistribution. He said DOT&PF's 2030 plan is out for comment.

He must wrap that up and begin a STIP amendment to reflect all of the changes that have occurred in the 2008 funding notices. That process will take close to four months. Once that is complete, DOT&PF can begin the work to make sure those funds are not lost. Essentially, that is squeezing one year's worth of work into two and a half months. His staff will probably have to work on weekends.

[3:05:32 PM](#)

REPRESENTATIVE DOOGAN asked whether DOT&PF needs to make structural changes to address the new reality of federal funding.

MR. OTTESEN said the structural change that needs to be made is state recognition that this program that has served it so well for 50 years is at a crossroads. He told members:

And for us to have a successful transportation program going forward, we will desperately need to have a state funded program to come up to. If I have one message in my long range plan in looking at all of this, this program is not going to meet all our needs. We're not going to build the ferries we need to build. We're not going to build the bridges and roads we need to build or even keep up - and I would encourage you if you haven't read it, to read 2030 because it paints this picture pretty well.

[3:06:33 PM](#)

REPRESENTATIVE DOOGAN questioned whether the problem is a matter of making changes in order to manipulate or meet the federal rules or that Alaska is just not going to get the money.

MR. OTTESEN said he believes the state isn't going to get the money. At the AASHTO meeting last fall, its staff said the federal legislation is going to be focused on strategies to reduce greenhouse gases. It will focus on "complete streets." He repeated that a lot of policy shifts are occurring at the national level. He pointed out if the Highway Trust Fund is opened up to high speed rail, 15 systems are ready to be built. The trust fund delivers about \$40 billion per year when the highway system needs about \$190 billion per year to deal with population growth.

[3:07:48 PM](#)

REPRESENTATIVE DOOGAN said although the new system may fit the Lower 48's needs better, it will be worse for Alaska's needs.

MR. OTTESEN agreed with that scenario and characterized Alaska is an outlier compared to other states.

[3:08:02 PM](#)

REPRESENTATIVE SALMON asked if Mr. Ottesen is talking about real time and real money when he refers to the obligation limit and apportionment or whether that is the predicted amount the state will get.

MR. OTTESEN said the obligation limit is real money. Once notified, DOT&PF must spend those funds within a year or lose them. The apportionment must be matched to the obligation limit but it has a four-year shelf life and then expires.

[3:08:30 PM](#)

REPRESENTATIVE SALMON asked if DOT&PF could collect interest on some of the funds.

MR. OTTESEN explained the apportionment is hollow. In addition, interest cannot be collected on federal money. DOT&PF receives federal money after it spends state dollars on the work.

[3:08:52 PM](#)

MR. OTTESEN continued his presentation:

So, I've already spoken to the bottom of page 9 that we have less flexibility, we have to shift projects to meet the apportionment notices and there's a chance these dollars could leave the state if we don't act with great haste.

At the top of page 10 we talk about SHAKWAK and I want to focus on you that SHAKWAK is probably the least understood part of our business. SHAKWAK is a geological term - the SHAKWAK trench is where the Alaska Highway runs up at Big Lake and Lake Kluane. It comes from the fact that going back to the 1970s, the federal government saw the wisdom of helping pay for the road between Haines and the Alaska Highway just near Tok there and Northway.

We've been given different amounts of money. It has grown over time. The latest number is around \$30 million a year to the Canadians to work on that Canadian portion of those highways, of the Haines highway and the Alaska Highway but, again, only in Canada. That program was known in law as the Alaska Highway, Section 218 of Title 23, but in the Canadian they called in the SHAKWAK program. They've called it that for decades so they've been building pieces of the road, rebuilding pieces of the road, replacing bridges and they call it the SHAKWAK program, named after that geological figure.

Well about a dozen years ago, Senator Stevens modified some words in Section 218 and it was very, very creative language and it allowed the state to turn in unused apportionment and have it converted into this thing known as SHAKWAK. To this day I don't entirely understand it, although that I know it worked and it was spendable. Money never got appropriated. It never got authorized by Congress in the form of an authorization bill that you could see a number or in an appropriation bill.

We essentially said we have this unused apportionment, we don't have enough obligation limit to use it, we want to convert it to SHAKWAK and they would do something back in D.C. and put it on our computer system where we can see it, which is much like going to your own on-line banking system. There it was - millions and tens of millions of dollars of SHAKWAK funds spendable originally on the Alaska Marine Highway System and more recently on roads that lead to the Alaska Marine Highway System and the Marine Highway System itself. So the eligibility has changed a little bit but the last time we were able to convert apportionment into SHAKWAK was 2004 and, with these rescissions that you'll see here in a minute, we have not been able to convert any further unused apportionment. We haven't had any and we're now out of SHAKWAK. The last SHAKWAK dollar was spent last summer. There's a reason for that. SHAKWAK, we always believed, lasted until spent. In other words, it had no end date. A grammarian at Federal Highways looked at a sentence and said you know, this word is right here and that means that the "does not expire" applies only to the Canadian money and not to the Alaskan SHAKWAK money. They gave us until the end of the federal fiscal year '07, which was last September, to spend it or lose it so there was a rush last summer to find projects to

put all that SHAKWAK money to use and we got it spent. Every dollar of that went to Marine Highways.

3:12:24 PM

CHAIR JOHANSEN asked whether DOT&PF challenged that federal decision.

MR. OTTESEN said DOT&PF thought about it, but DOT&PF had good projects to spend it on. The amount was \$25 million and DOT&PF was notified in June.

3:12:55 PM

CHAIR JOHANSEN asked for a list of how that money was spent.

MR. OTTESEN said he would be happy to provide one.

CHAIR JOHANSEN asked Mr. Ottesen if he recalled how much was spent on vessels and terminals.

MR. OTTESEN said he did not, but recalled that the majority went to vessels.

3:13:19 PM

CHAIR JOHANSEN pointed out those funds were not used for vessel replacement because none was planned.

MR. OTTESEN said that is correct, but DOT&PF could not put the money toward a vessel without full funding.

CHAIR JOHANSEN asked what year the road language was added.

MR. OTTESEN said that occurred at the time of SAFETEA-LU. He told members:

There was an interesting history there. The SHAKWAK language was originally intended to build Juneau access. It was actually created by Pat Kemp (ph) at Southeast Region. The Knowles Administration, when it went forward to Congress, changed it to be for the Marine Highway System so it started as a road tool and became a ferry tool. Now it's sort of both but it's moot because there are no dollars behind it.

3:14:24 PM

CHAIR JOHANSEN asked how long the money was spent specifically on the Alaska Marine Highway System.

MR. OTTESEN said the vast majority was spent on the marine highways; a small amount was spent on the Alaska portion of the Haines highway.

[3:14:47 PM](#)

CHAIR JOHANSEN questioned whether the federal language specified those funds were for Juneau access or for marine highways and facilities.

MR. OTTESEN said the language was originally envisioned to fund Juneau access. Pat Kemp originated the idea and language suggestion.

CHAIR JOHANSEN asked what the actual law said.

MR. OTTESEN said the language was changed to the marine highways.

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CHAIR JOHANSEN asked if, until the bill was amended with three or four words, the fund was always to be used for the marine highways.

MR. OTTESEN said that is correct with the exception of the Haines highway.

CHAIR JOHANSEN commented:

I'd like to see a breakout of how the funds from the time that new language was enacted that added the roads section, how much money was moved over to the Juneau access and not spent on ferries.

MR. OTTESEN said he didn't believe any was but would get that information. For most of 2005, DOT&PF did not have any eligible work to spend it on.

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CHAIR JOHANSEN asked if, after that bill was amended, the Murkowski Administration focused on using the funds on Juneau

access. He asked, "In the time that we waited for that project to be eligible for the money, was money spent on marine highways, ferries, or facilities or were we just holding the money waiting until we could put the whole package together and build the road?"

MR. OTTESEN said the last time DOT&PF actually created a new SHAKWAK dollar was in 2004. Those dollars were slowly used, some on fast ferries and other projects, but everyone was trying to preserve it. He furthered:

... I remember talking to then Deputy Commissioner Taylor, Robin Taylor, about - was look, we predicted at the time SAFETEA-LU got passed we would be able to convert \$45 million per year of SHAKWAK. We said we want 15 for Juneau access and 30 for the marine highways. We kind of had an agreement that that was the right split and it never happened because we never converted any more dollars. We always told them that the old dollars were yours. We're not going to do this until we get new SHAKWAK dollars but, as the rescissions came on line, that whole plan sort of collapsed. We just lost the ability to create SHAKWAK. So all of this was in the talking stage but none of it ever got into the action stage.

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CHAIR JOHANSEN asked at what point the grammarian reinterpreted the language.

MR. OTTESEN said the grammarians found their voice last spring.

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MR. OTTESEN continued his presentation:

So I think I've talked - at the top of page of 11, I've talked pretty much about everything at the top of the slide. There is a zero balance in SHAKWAK. All the funds that were available as of last summer went to marine highways for certain. I know that to be a fact.

I think at the bottom of page 11 you see the pattern of rescissions. This is annual amounts, not cumulative but annual amounts. In 2004 there really had been only small rescissions and then 2005 they started taking much larger rescissions. It grew - 2006, 2007, and now 2008 they've

all been running at about \$4 billion. That is about 10 percent of the original apportionment. If you just kind of do the math, you have had roughly 90 percent obligation limit per year and about 10 percent rescissions now so we're losing ground on apportionment. There is a planned rescission in 2009 of almost \$9 billion. Alaska's share of that rescission is either \$55 million to give back or 86. Why the difference? I think that's on the top of page, I believe we're coming up here, I'm not sure I gave you that number but let me just talk about it.

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MR. OTTESEN continued:

There [are] two interpretations of what Congress did and ... the legal beagles in Federal Highways and in Congress are looking at how to interpret the words and, depending upon the interpretation, it's either 55 or 86 billion to Alaska. We're not well prepared to handle that. We're going to end 2008 with a \$6 billion surplus of apportionment. This actually means our STIP could go upside down and by that I mean we could end up having more obligation limit than we have apportionment, which doesn't do anyone any good. You can't spend obligation limit without apportionment and you have to give it up to another state by the end of the year. That's kind of where we're at and when I talk to other states, they're in the same predicament. I used to think we'd be in a little worse shape because, you know, Alaska is the only state that can do SHAKWAK and the only state that can turn apportionment, which is hollow, into real money. But since apportionment expires after four years and we haven't done a SHAKWAK conversion since 2004, enough years have transpired that all our old apportionment that we had transpired would have gone off the shelf anyway. So I think this is a problem facing all of the states.

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MR. OTTESEN continued:

You might ask why did the Congress plan this rescission of \$9 billion. It's because the bill was imbalanced when it passed. SAFETEA-LU was trying to be very large and very beneficial to all the states. You had a president saying no new taxes. I will not let you raise the gas taxes. So

they did all sorts of, you know, you'd have to call them tricks in the budgeting process to add up to the dollars that they thought would be available so the Highway Trust Fund would be whole. They did things with ethanol. They did things with how money in the Highway Trust Fund is accounted for. They could rely upon estimates a little bit more than actual hard cash. They did a lot of things that I think most of us will never understand but the whole purpose behind those things was to try to demonstrate there was more money. Even at the end of the day they said there is not going to be enough money so what we'll do is we'll postpone this problem for two election cycles that are in the House, five years away. We'll just make all of the states give back some of the money we gave them and Congress in the future will have to solve that problem.

And so you have, this is written into SAFETEA-LU, it's in the law. It's actually been enlarged last year. They actually enlarged it a little bit so it's not like they're getting ready to make it smaller. They've enlarged it. I don't have a good thing to say about it. I just tell you that when you write a STIP that has to be constrained, when you look into the future about your future funding, these are some of the problems that we're facing just in doing our daily job and, from the state's standpoint, it means there is less money to get things done.

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REPRESENTATIVE DOOGAN asked if there haven't been any SHAKWAK conversions because rescission gets to the money first.

MR. OTTESEN affirmed that is correct. He added that a certain amount of surplus must be left on the shelf to manage the program. National estimates are that 30 percent of transportation projects get delayed for some reason. Because the obligation limit will lapse, there must be some way to recycle that money to another project or the state will lose those dollars. DOT&PF has to have one program ready to substitute for another in case the first project is delayed. DOT&PF is now delivering a program that is slavish to the apportionment on the shelf because DOT&PF has no surplus. He concluded, "This is no way to run a railroad, to be frank."

REPRESENTATIVE DOOGAN jested that he has more questions but should probably direct them to a congressman.

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MR. OTTESEN continued his presentation:

If you recall what I said at the start of the presentation I started two days ago, this is a program that has been amended over 50 years. It has had a lot of amendments. The one thing I haven't told you is the new law of the land, passed in the energy bill at the end of 2007, is that we now have to give up rescissions in the same proportion that we received them. We no longer can decide which apportionment to give back because we have a little too much of that and we want to preserve this one over here. We have to give them back. If we got 10 percent in a category, 10 percent of our rescission has to go back to them in our same category. The driver of this is two things. It's the I-35 bridge collapse where some states were found to have used their bridge money, some states were found to have not. It's trail advocates that are upset because some states have not used their transportation enhancement apportionment, the State of Texas being the prime example. They refused over the years to use TE, as it is called, and have just let it lapse and have given it back under the rescissions. The trails advocates in that state have cried foul and gone to Congress.

So the new law of the land is proportional rescissions. All that means is we have to give - we're going to start giving back NHS, STP, IM, the very three categories that build roads and build ferries. That wouldn't be our choice. In our state, just to give you an example of why we might want to manage apportionment, bridge apportionment has historically been one of our surplus categories. We've had a lot of bridge apportionment. We have historically chosen not to use it for one simple reason.

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It required a 20 percent match when all the other categories required either 6 or 9 percent match. Those categories, like NHS and STP, were eligible to build bridges so why would I want to spend 80 percent federal money when I can spend 94 percent federal money on a bridge? But, you know, now that the I-35 collapse has happened, and you get asked why you haven't spent that bridge money, it's pretty hard to explain these arcane

details to a reporter calling about why did you give up bridge money back in 2004. A lot of bridge money went into SHAKWAK money. It wasn't because we didn't want to build bridges. It was because we didn't want to build bridges at 80 percent when we could build them at 94 percent.

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MR. OTTESEN said he was ready to move on to another subject.

[3:27:03 PM](#)

CHAIR JOHANSEN announced a brief at-ease.

[3:27:35 PM](#)

CHAIR JOHANSEN called the meeting back to order and announced he would resume the meeting on Tuesday for an overview of the 2030 long range plan. On Thursday, Mr. Ottesen would finish the STIP presentation.

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 3:28 p.m.