

**ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION COMMITTEE**

March 25, 2014

1:30 p.m.

MEMBERS PRESENT

Senator Dennis Egan, Chair
Senator Fred Dyson, Vice Chair
Senator Hollis French
Senator Anna Fairclough
Senator Click Bishop

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 211

"An Act providing for the Department of Transportation and Public Facilities to hold the surface estate of certain state land; relating to the transfer of certain state land and materials; relating to the lease, sale, or disposal by the Department of Transportation and Public Facilities of rights-of-way, property interests, or improvements; relating to the grant of certain easements over submerged state land to the federal government; relating to the conveyance of land for right-of-way purposes from the Alaska Railroad Corporation to the Department of Transportation and Public Facilities; and providing for an effective date."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 94

"An Act vacating a portion of the Copper Center - Valdez right-of-way; relating to rights-of-way acquired under former 43 U.S.C. 932 that cross land owned by a private landowner; and relating to the use of eminent domain to realign a right-of-way."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 197

"An Act extending the termination date of the Department of Transportation and Public Facilities' interim project

authorization regarding naturally occurring asbestos; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR HOUSE JOINT RESOLUTION NO. 10(FIN)
Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

-SCHEDULED BUT NOT HEARD

REVIOUS COMMITTEE ACTION

BILL: SB 211

SHORT TITLE: STATE LAND AND MATERIALS

SPONSOR(S): TRANSPORTATION

03/07/14	(S)	READ THE FIRST TIME - REFERRALS
03/07/14	(S)	TRA
03/11/14	(S)	TRA AT 1:30 PM BUTROVICH 205
03/11/14	(S)	Heard & Held
03/11/14	(S)	MINUTE(TRA)
03/18/14	(S)	TRA AT 1:30 PM BUTROVICH 205
03/18/14	(S)	-- MEETING CANCELED --
03/20/14	(S)	TRA AT 1:30 PM BUTROVICH 205
03/20/14	(S)	<Bill Hearing Canceled>
03/25/14	(S)	TRA AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

DANA OWEN

Staff to the Senate Transportation Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 211 to the committee.

SEAN LYNCH, Assistant Attorney General
Civil Division
Transportation Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered legal issue questions related to SB 211 and explained that the Amendment would conform language in the bill to language in CSHB 371(TRA).

JULIE SMITH, representing herself
Ester, Alaska

POSITION STATEMENT: Expressed concerns with SB 211.

KIM RICE, Deputy Commissioner
Department of Transportation and Public Facilities (DOTPF)
Anchorage, Alaska

POSITION STATEMENT: Supported SB 211 and said the reason for the bill is to streamline the process.

JOHN BENNETT, Right-of-Way Chief
Northern Region
Department of Transportation and Public Facilities (DOTPF)
Fairbanks, Alaska

POSITION STATEMENT: Supported SB 211.

LISA WEISSLER, representing herself
Juneau, Alaska

POSITION STATEMENT: Noted some issues of concern with SB 211.

JOHN BITNEY, State Governmental Liaison
Office of the Mayor
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Expressed concern especially with section 15 of SB 211.

ED FOGELS, Deputy Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Supported SB 211.

WYN MENEFEE, Chief of Operations
Division of Mining land and water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions relating to SB 211.

ACTION NARRATIVE

[1:30:14 PM](#)

CHAIR MIKE DUNLEAVY called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Dyson, French, Fairclough, and Chair Egan.

CHAIR EGAN announced that SB 94, SB 197, and perhaps HJR 10 would not be heard today.

SB 211-STATE LAND AND MATERIALS

[1:30:37 PM](#)

CHAIR EGAN announced SB 211 to be back up for consideration. He removed his objection and invited his staff to explain the proposed Amendment 1, labeled 28-LS1544\U.1...

DANA OWEN, staff to the Senate Transportation Committee, Alaska State Legislature, said the Department of Transportation and Public Facilities (DOTPF) suggested some language changes to Section 16 of the bill. It attempts to clarify some confusion that arose in discussing Section 16. The amendment would also bring the bill into alignment with the House companion bill that passed out of the House Transportation Committee recently. He invited Sean Lynch from the Department of Law (DOL) to explain the legal reasoning.

[1:32:51 PM](#)

SEAN LYNCH, Civil Division, Transportation Section, Department of Law (DOL), said this amendment conforms language in SB 211 to language in CSHB 371(TRA). The amendment clarifies public comment that expressed concern that Section 16 could be read as a directive to the commissioner of the Department of Natural Resources (DNR) to issue any remaining submerged land easements under the reciprocal easement agreement with the U.S. Forest Service, which was not the intent of the section. This section now clarifies that the DNR commissioner has the authority to remove the 55-year limitations on submerged land easements.

SENATOR DYSON moved to adopt Amendment 1.

28-LS1544\U.1
Bullock
3/25/14

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 211

BY SENATOR EGAN

Page 1, line 5:

Delete "**grant of certain easements over submerged state land to**"

Insert "**term for certain easements or rights-of-way that are part of a reciprocal exchange with**"

Page 8, lines 12 - 20:

Delete all material and insert:

"TERM OF CERTAIN EASEMENTS TO IMPLEMENT A RECIPROCAL EXCHANGE. The easements identified on the map numbered 92337 and dated June 15, 2005, and that are part of the reciprocal exchange of easements or rights-of-way and easements enacted into federal law under 119 Stat. 1177, may have a term of years for a period of more than 55 years if the commissioner of natural resources determines the length of the term to be in the best interest of the state."

SENATOR FRENCH objected for discussion purposes. He referenced a letter sent to this committee on 3/13 by DOTPF, signed by Kim Rice, that says Section 16 is constitutional. He questioned the need for the change in language if Section 16 is constitutional.

[1:35:08 PM](#)

SENATOR BISHOP joined the committee.

MR. LYNCH said the concern in public testimony was that the easements are "granted" to the U.S. Forest Service. That sentence in the existing bill mirrored the federal law that authorizes the reciprocal exchange of easements. The comment was that by saying the easements are hereby granted, they are granted without public notice and comment and that granting of the easements would violate the Constitution. So, the provision was rewritten to not mirror the federal provision by removing the word "grant."

SENATOR FRENCH said your position is that it is fine as written, but you are being even more careful now by using this amendment.

MR. LYNCH said that is correct.

SENATOR FRENCH removed his objection.

[1:38:10 PM](#)

JULIE SMITH, representing herself, Ester, Alaska, said she addressed this letter to the Senate Transportation Committee in the House Resources Committee. This is the third letter she has written related to SB 211. The first raised several constitutional questions and provided a list of practical implementation questions related to the bill. The second letter attempted to connect the dots of how the flow of money and management responsibility would change as a result of SB 211. In some ways this letter is a follow-up as further reflection helped her recognize that a good deal of confusion related to SB

211 results from the lack of a fiscal note that details the impacts this legislation would have on the budgets of DOTPF, DNR, and the state general fund.

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She related that the reason she cares enough about this bill to keep writing about it is that she has many friends and colleagues who work at both DOTPF and DNR in Fairbanks who have earned her respect and gratitude.

She also appreciated DNR's role in ensuring that the complex web of rights and responsibilities related to land use in Alaska is protected for the benefit of all Alaskans. In its role of land manager, DNR's mandate provides an expanded focus that looks beyond a current project and includes a wide range of multiple uses and environmental impacts.

She said she was concerned that SB 211 would upset the existing balance between DOTPF and DNR in ways that would degrade the constitutional and environmental protections currently embedded in Alaska's land management system, especially the provisions that would diminish DNR's management role or transfer title and best control of material sites to DOTPF. These provisions are in Sections 3, 5, 8, and 13.

She continued to say that well managed material sites provide a multitude of benefits to Alaskans; material sites that are not managed well can diminish private property values and cause significant economic and environmental harm. This is especially true in material sites located within rivers and flood plains. DNR plays an important role in identifying these issues and finding solutions that provide DOTPF with the gravel it needs to maintain Alaska's infrastructure while also protecting Alaska's land and resources for current and future generations.

MS. SMITH said she understands DOTPF's frustration with onerous levels of oversight, but she is concerned that the pendulum is swinging too far in the opposite direction. In 2009, DOTPF acquired authority to conduct its own NEPA reviews for most of its federally funded projects. In 2011, the Alaska Coastal Management Program was relieving DOTPF of significant state oversight of many material sites located in rivers and flood plains. Now DOTPF is attempting to diminish or eliminate DNR's management role and this is happening in the wake of significant statutory changes in 2012 that were specifically designed to streamline material sales in Alaska. Even with these recent

changes that reduce the role of other agencies in DOTPF's projects, it seems that SB 211 goes too far.

MS. SMITH said she expressed her concerns in her first two letters, but she is concerned about the bill itself. She realized finally that one reason it is so difficult to understand is that presentation of the bill has not included an accounting of the fiscal changes that will result to DOTPF, DNR and the general fund as a result.

For example Sections 3, 5 and 8 of the bill require surveys and title transfers of the hundreds of parcels of state land involved in airports, highways, public facilities and material sites included in the bill. She asked what the expected price is for obtaining these surveys and conveyances of title. Section 13 changes the fiscal management of material sales in Alaska so that DNR would no longer charge DOTPF or its contractors for material. "How much money are we talking about and will DOTPF simply keep these funds in its own budget, and if so, are they required to provide an accounting of how SB 211 shifts funding from DNR and the general fund to DOTPF? If there is some other fiscal impact that will result from the shift, what is it?"

AS 24.08.035 states that fiscal notes attached to bills must include, among other things, the fiscal impact on existing programs in line item details of those impacts. This is not optional; it's required, she stated.

MS. SMITH said her research related to this bill helped her glean an understanding of the fiscal impact of SB 211. But the fiscal notes attached to the bill indicate there will be no fiscal impact. So, she respectfully requested sending this bill to the Legislative Finance Division for a fiscal analysis. She also asked for an opportunity to provide comment on the bill after that analysis therefore holding the bill in committee until then.

SENATOR FRENCH said he read her first two letters, but not the third.

MS. SMITH said she just read the third one now and will send it to him.

[1:46:45 PM](#)

KIM RICE, Deputy Commissioner, Department of Transportation and Public Facilities (DOTPF), Anchorage, Alaska, said the reason for the bill is to streamline the disposal processes by reducing

bureaucracy in development of transportation projects. She explained that land and resource management goes to DNR and transportation management goes to DOTPF, but there is a great deal of overlap, because transportation has to access lands to develop transportation projects.

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MS. RICE said she would first explain transportation projects and the public process. She said the DOTPF is very focused on projects as opposed to the DNR, which is concerned with managing massive pieces of land. When DOTPF does a project, despite popular opinion, even on state-funded projects, they go through the National Environmental Policy Act (NEPA) process. It is required on every project because it's hard to miss every possible impacted resource along the way if anything more than a repave job is being done. They have check lists for repave jobs, which tell them which resources they might need and what they need to consider in getting them.

MS. RICE said they developed a flow chart showing the differences between a federal highway project and a state-funded project. NEPA can be done in conjunction with design for state-funded projects, whereas highway projects are done in a more linear fashion, which includes public notice and getting input on which resources are impacted by the project. It does not address what happens to get an infrastructure project in place in order for a community to do a project.

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State Transportation Improvement Program (STIP) projects are done first. They go through a public notice process and identify specific funding. Then, it gets down to the environmental and preliminary design phase. It's at this phase that they scope the project with all the resource agencies. This is when they determine if there are potential resource issues. It depends on what comes back as to where they go on a project. Alternatives could be anything from a spaghetti map of alternatives to a single alternative that only addresses the problem as it's been defined.

At the end of the process they publish the environmental document, called the location approval, which shows which corridor they are going to be on when they start to design a project. During this time there is a bigger emphasis on talking to the Division of Mining, Land and Water to make sure that any applications for land use they might be going across are included in the NEPA process. He commented that it's really too

late when you get to the end of a project to discover there is another alternate use suggested. They then go to final design and get local government approval.

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JOHN BENNETT, Right-of-Way Chief, Northern Region, Department of Transportation and Public Facilities (DOTPF), said he wanted to follow up more on their proposal to modify the disposal language across all three of their authorities: aviation, highways, and public facilities. He explained that they have had recurring problems with their existing disposal language. One issue they are trying to resolve is related to the Eureka Lodge on the Glenn Highway. He explained that DOTPF manages a highway easement in front of the lodge, but their authority extends only to the vacation or release of that highway easement. DNR owns the underlying fee estate. In this situation the adjoining owner has encroached in the ROW by putting in sewage lagoons, so he needs to resolve that problem because he can't operate without them working and neither can he sell the operation.

The department decided it could vacate a small amount of land that would solve his problem, but by vacating the easement, all that would happen is that it would become DNR's problem, and they couldn't solve it because it wouldn't meet the requirements for a preference right sale. Using the modified language in SB 211 would solve his problem by virtue of the fact that Sections 1, 6, and 9 would vest fee title to the surface estate for existing highway facilities in DOTPF; that would give them authority to convey fee estate. Also, language in Sections 2, 4, and 10, which relate to the disposal language would allow them to convey title to the private party without having to re-convey it back to DNR. This is one solution that could be used appropriately many times.

MR. BENNETT said the other significant problem they have had started with language in Title 35 relating to public facilities that says when the department has acquired a piece of property and then determines that it is no longer necessary to their needs, they can dispose of it, but title reverts to the persons, heirs, or successors in whom it was vested at the time of taking. That may sound like a good idea, but what happens - using Fort Yukon as an example where they acquired a parcel of land to build some trooper housing. The troopers moved out, the use changed and it was no longer necessary and the community wanted to acquire that land. But because of this restriction, there was no mechanism by which to convey it to the community and the original owners were no longer anywhere to be found. So,

that kind of restriction prevents a resolution and it can create some other unintended consequences depending on how the land was acquired - if they acquired a strip versus a total parcel, for instance. They don't want to end up land-locking someone. So, they believe this modified uniform language will go a long way to solve their problems as well as the problems of the adjoining property owners.

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SEAN LYNCH, Assistant Attorney General, Department of Law (DOL), said he wanted to address what they are trying to do in Section 13, an exemption to the Alaska Lands Act for DOTPF's use of materials owned by the state. He said that with road construction everyone has seen how you cut from the high points and fill in the low points. If additional fill is needed you open a material site. When DOTPF is done with the road construction, they have an open rock face that is the material source or site (under DNR statute). Because DOTPF's (material sources) lands are owned by the state, DNR statute directs them to issue materials sales contracts for use of its materials.

So, when DOTPF goes to either maintain a road or reconstruct their roads and they need to get back into their pits, their first step is to go into DNR under the Alaska Lands Act for a material sales contract just as if it was another third party developer. This provision is an exception that is located in AS 38.05.030, which contain the exemptions to the Alaska Lands Act. DOTPF already has an exemption for its acquisitions and disposals in subsection (b), and subsection (d) exempts DOTPF from the material sales requirements.

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LISA WEISSLER, representing herself, Juneau, Alaska, said she is a former state attorney and she believes SB 211 has some issues that are worth noting. She understands what DOTPF is trying to do and feels like the bill is written in a way that raises many questions and that may ultimately cause issues; some are constitutional questions that may work out or not. She said the bill is written broadly to solve some very specific problems identified by DOTPF and maybe there is a better way to go about it.

One constitutional issue has to do with the disposals. The state land that goes to DOTPF is still state land. Under current law, when they no longer need a part of it that goes back to DNR. In this way DNR can manage it and dispose of it as it should under the Alaska Lands Act - and of course, the Alaska Lands Act

implements Article 8 of the Constitution. SB 211 will now change this to where DOTPF "may" transfer the land back to DNR; but they don't have to.

MS. WEISSLER explained that under the Lands Act, DNR has the legislation that is needed to implement Article 8, Section 9 of the Constitution where the Legislature may provide for the sale or grant of state land and establish sales procedures. Now, when DOTPF gets this land from the state, they may dispose of it under terms and conditions established by the commissioner. That's not a law; that's just whatever terms the commissioner comes up with. She opined that the legislature still has the duty to have statutes that provide for the sale of state land. Right now, DOTPF has authority for private land, but not necessarily the state land that has been transferred from DNR.

She highlighted multiple use as the other issue, which is also in Article 8 of the Constitution. She said she was disturbed by DOTPF's negative response to public comments questioning whether material sites would be managed for public use. The response was that they wouldn't because that land use for government purposes is not included in the public domain. Article 8 says lands and interests not intended exclusively for governmental purposes constitute the public domain. The public domain is land that the state is not using for something else that can be settled. So, that doesn't let DOTPF out of the constitutional doctrine for managing for multiple use.

MS. WEISSLER said the other questions she had were in the drafting: Sections 1, 6 and 9 talk about DOTPF having primary management authority over state lands. That sounds like DNR still has the permitting authority, but DOTPF can condition that permitting authority. She suggested that wording should be clarified.

[2:05:59 PM](#)

JOHN BITNEY, State Governmental Liaison, Office of the Mayor, North Slope Borough, Barrow, Alaska, said a letter was provided to the committee expressing concerns relating to the various disposals and land use process in various sections, especially Section 15. He said the properties that are in that section are being transferred from DNR to DOTPF and have been the subject of municipal entitlement selections for approximately two decades. As they have had a good working relationship, it was a surprise that it showed up in the bill. Some aerial photographs seemed to encompass all the property at those locations and it seems to overlap with the selections they have made. The letter does

request removal of the section. He offered to answer questions.

[2:07:56 PM](#)

CHAIR EGAN asked if he was referring to Franklin Bluffs and Happy Valley.

MR. BITNEY replied yes.

CHAIR EGAN thanked him and finding no further questions, closed public testimony.

SENATOR FRENCH requested a response from DOTPF regarding Section 15.

[2:08:36 PM](#)

MR. BENNET said they had applications in on Franklin Bluffs and Happy Valley for the last 20 years. These are very important sites to be retained in state ownership and public use in anticipation of increased resource development and increased maintenance needs along the Dalton Highway.

SENATOR FRENCH asked how big a dispute there is over the lands.

MR. BENNET answered that their overlays show an area that would be appropriate to accommodate an airstrip and a building site for a maintenance station. He estimated they would not be requesting 30-50 percent of the original selected area. All of their selections for Happy Valley and Franklin Bluffs have been east of the Dalton Highway and there would still be remaining selection area for the North Slope Borough.

SENATOR FAIRCLOUGH asked him to explain the process for getting land from the feds to the state thinking in terms of the North Anchorage Land Agreement that works in conjunction with the state, the municipality and the Eklutna Corporation to try to resolve land use when land disposals become available.

MR. BENNET said these are currently state owned lands. The actual municipal entitlement process has been in process for 20 years and there are perhaps some insurmountable issues that may require legislative action.

SENATOR FAIRCLOUGH commented that the legislature eventually would have to make the decisions.

SENATOR BISHOP said it appeared that section 13 was also of concern to the North Slope Borough. Mr. Bitney nodded yes.

SENATOR FAIRCLOUGH asked what process others go through to lay claim on property in state ownership.

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ED FOGELS, Deputy Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, explained that the North Slope Borough submitted their selections and the department is adjudicating them. At some point they would be adjudicating those two parcels as an administrative action if not for the bill, and it would be up to the DNR commissioner to make the decision.

SENATOR FAIRCLOUGH asked what the fight is over and if subsurface rights go along with the allocation.

MR. FOGELS answered no; the subsurface estate is not transferred. The complication is that there are a lot of existing uses on those two sites along with some fairly significant contamination issues.

SENATOR FAIRCLOUGH asked who the contamination belongs to.

WYN MENEFEE, Chief of Operations, Division of Mining land and water, Department of Natural Resources (DNR), said there is contamination on part of the Happy Valley site. He said he didn't know who is responsible for the contamination, but the state received both areas from the federal government. The issue is this bill says DOTPF should get the lands rather than conveying it to the North Slope Borough as a selection going through the normal decision process, which would consider other uses or demands on the site including DOTPF's. The use issues are that there is an airstrip and gravel material that is part of the surface estate. The material is at hand because DOTPF uses the material; they usually manage airstrips and they also can manage the incidental other permits they have on the land for commercial guide facilities there and some things like that.

SENATOR FAIRCLOUGH asked if the properties were surveyed and available for conveyance, and the amount of land that has been requested by North Slope Borough and conveyed.

MR. FOGELS answered the land has not been surveyed, but that is not required for conveyance.

SENATOR FAIRCLOUGH asked if they believe the North Slope Borough is only asserting a claim on this property because of the gravel assets or some other reason, since the Borough is somewhat surprised this is on the table and hadn't been informed that the department was going to assert before the legislature that these parcels were off the table.

MR. FOGELS answered that the intent of the municipal entitlement program is to convey lands to municipalities so they can get an economic benefit to sustain their areas and see these two parcels as important economic generators, and the department should have given them a courtesy phone call.

CHAIR EGAN said those are former pipeline construction camps and he couldn't believe they weren't surveyed.

MR. BENNET answered that virtually everything was surveyed back in the day, but their definition of the sites they would like transferred from DNR to DOTPF would be surveyed once they had a funded project and received the conveyance. They intend to construct a maintenance station at Franklin Bluffs and that would follow suit.

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SENATOR DYSON remarked that transferring land before surveying it is a very startling concept. What at first seemed like a simple issue has become more complicated and he thought they were being asked to remove some barriers so development can happen. But people were concerned about taking away a bunch of protections at the same time. He asked if there is any public process they could go through for transferring land from DNR to DOTPF without adding to the perception of diminishing rights.

MR. BENNET said the environmental reviews they go through for project development to acquire a new piece of land from DNR is far more extensive than possibly what DNR already goes through. In the sense of the acquisition of lands section, what is lost now is that DNR won't go through a decision making process and public notice that they are in fact turning the land over to DOTPF. However, this bill adds another public notice process that wasn't in the mix before. So, there is no net loss on the public involvement process, which is very extensive and their ability to convey information to the public to make sure that they are well noticed and protected is going to be well met.

[2:26:14 PM](#)

MR. FOGELS agreed that is what the bill lays out now.

SENATOR BISHOP said Section 3 talks about that public notification on transfer of lands from one department to the next as a public process, but he wanted to go back to Section 13, because it's about borrow pits that he knows something about, having once built roads for a living. He asked if this bill drills down into ROWs for DOTPF, specifically, and these borrow pits would fall within the ROW jurisdiction for highway construction.

MR. LYNCH answered that borrow pits are not always located in the ROWs, particularly the borrow pits that DOTPF utilizes.

SENATOR BISHOP said that borrow pits are usually located in close proximity to a project and asked if this bill were to become law, as written, no money would change hands on the materials. Especially in the advent of a new pipeline construction, would DNR still be in control of a new borrow pit for a pipeline contract and to make those sales and bids?

MR. MENEFFEE answered that the bill does not remove DNR's ability to do material site designations and material sale contracts. So, they still have the option - whether it's a pipeline project or a private individual that wants to go out and get materials from state land. Even when DOTPF requests the title to be conveyed over for a material site, they still have the capability of doing a third-party contract out of that pit even though DOTPF has fee simple ownership of the surface estate. DNR could still do a third-party sale as long as DOTPF concurs with it. If they need all the material, they wouldn't do the third-party sale. And DOTPF could say no because they may need it for another project in the long term, but if there was excess material they couldn't.

SENATOR FAIRCLOUGH asked how the money would be allocated if DOTPF chooses to sell the pit. She also asked if the purpose is to lower the cost of projects and accounting

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MR. BENNET said DOTPF doesn't have authority to sell materials to third parties and this bill doesn't grant that authority, so this bill won't bring money into the department. However, it could result in savings, because less money would be transferred to DOTPF for state-owned material that both highway funds and airport funds will then be able to be allocated for more projects.

SENATOR FAIRCLOUGH said she thought she just heard that third-party sales could happen and she could see the cost savings, but couldn't it also be said that if you have federal dollars in a project and you don't pay for that gravel with the federal dollars that DOTPF is losing money.

MR. BENNET answered he didn't think the state was losing money; it would just have more money available for projects. The question she might have over third-party sales is that DOTPF doesn't have authority to sell to ABC Construction directly; DNR retains that authority to sell.

SENATOR FAIRCLOUGH asked where the money goes if it's sold and how it is accounted for.

SENATOR DYSON said that is common for owner-supplied materials to reduce the costs.

MR. FOGELS said right now they are required to charge DOTPF 50 cents/cubic yard for gravel for state highway projects, but with this bill they won't have to charge. So, free materials would be going into state roads, which should lower the cost of road projects.

CHAIR EGAN asked if that 50 cent/yard works into their budget.

MR. FOGELS answered yes; it is an administrative fee that is far below the normal appraised fair market value they would charge anyone else. Theoretically, some of that comes back as program receipts to help pay for the cost of administering that program for DOTPF, which they would no longer have to do. That is why they have a zero fiscal note.

SENATOR DYSON voiced an ancillary concern that all the land gets transferred to DOTPF and won't revert to DNR, the land steward. And DOTPF can't be forced to go through that process.

[2:38:06 PM](#)

MR. FOGELS responded that from DNR's perspective, this allows DOTPF to be able to dispose of some sewage lagoons built on the Glenn Highway, for instance. Right now it can only deal with parcels that deal with highway projects.

MR. LYNCH added that creating a new pit under current law would be a DNR authorization in the best interest of the state finding. Under the bill, Sections 3, 5, and 8 make that a DOTPF determination, although it has to be reasonably necessary for

the project. In large part the documents given to the DNR for the state best interest finding would be much the same as the reasonably necessary ones for DOTPF.

SENATOR DYSON asked at what point do the borrow pits that belong to DOTPF revert to DNR.

MR. LYNCH answered that from the DOTPF perspective the borrow pit would become open for public use. DNR and DOTPF would have to make a best interest determination under the Alaska Lands Act to put it on their list of available pits.

SENATOR DYSON clarified his question: everything is done; no one wants gravel and there the land sits. When can title go back to DNR?

MR. MENEFEER explained that when DOTPF says they no longer need the land, they give notice to DNR. At that point, the commissioner can request that it be transferred back or not. Ultimately, DOTPF gets to decide what it wants to do per SB 211. Giving it back is optional.

SENATOR DYSON said he could imagine some folks in the region who have traditional use of the land would be more comfortable having the DOTPF land reverting automatically to DNR when they are through with it.

SENATOR FAIRCLOUGH asked how a conflicting municipal or local land use code would be affected under the bill.

[2:44:43 PM](#)

MR. BENNET said they have authorities in place, such as in AS 35, that requires the department to comply with the local government land use ordinances.

MR. FOGELS summarized that from DNR's perspective the bill tries to streamline inefficiencies and duplicative bureaucracy.

[2:46:28 PM](#)

MS. RICE opined that efficiencies will result with the improvements this bill brings.

CHAIR EGAN expressed hope that the departments could meet with the North Slope Borough before this issue comes up next time. He held SB 211 in committee.

[2:48:09 PM](#)

CHAIR EGAN found no further business to come before the committee, and adjourned the Senate Transportation Standing Committee meeting at 2:48 p.m.