

**ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE TRANSPORTATION STANDING COMMITTEE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 29, 2016

3:33 p.m.

MEMBERS PRESENT

SENATE TRANSPORTATION

Senator Peter Micciche, Chair
Senator Click Bishop, Vice Chair
Senator Mike Dunleavy
Senator Bert Stedman
Senator Dennis Egan

HOUSE TRANSPORTATION

Representative Shelley Hughes, Co-Chair
Representative Neal Foster, Co-Chair
Representative Benjamin Nageak
Representative Matt Claman
Representative Dan Ortiz

MEMBERS ABSENT

SENATE TRANSPORTATION

All members present

HOUSE TRANSPORTATION

Representative Charisse Millett
Representative Louise Stutes

COMMITTEE CALENDAR

Presentation: H.R. 2029 - Consolidated Appropriations Act, 2016,
Repurposing Alaska Earmarks

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

MARK LUIKEN, Commissioner

Department of Transportation and Public Facilities (DOTPF)
Juneau, Alaska

POSITION STATEMENT: Commented on H.R. 2029 - Consolidated Appropriations Act, 2016: Repurposing Alaska's Earmarks.

MIKE VIGUE, Director

Program Development

Department of Transportation and Public Facilities (DOTPF)
Juneau, Alaska

POSITION STATEMENT: Commented on H.R. 2029 - Consolidated Appropriations Act, 2016: Repurposing Alaska's Earmarks

ACTION NARRATIVE

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CHAIR PETER MICCICHE called the joint meeting of the Senate and House Transportation Standing Committees to order at 3:33 p.m. Present at the call to order were Senators Stedman, Dunleavy, Egan, Bishop, and Chair Micciche; Representatives Ortiz, Nageak, Claman, and Co-Chair Hughes.

H.R. 2029 - Consolidated Appropriations Act, 2016 Repurposing Alaska's Earmarks

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CHAIR MICCICHE said the purpose of the meeting today is a presentation by the Department of Transportation and Public Facilities (DOTPF) on H.R. 2029, the Consolidated Appropriations Act of 2016, which addresses the Alaska earmarks.

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REPRESENTATIVE CLAMAN joined the committee.

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MARK LUIKEN, Commissioner, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, said today he would focus on DOTPF employee, Miles Brookes, who is a research analyst, but in reality he collects, analyzes and sends out data on all crashes in the state. He collaborates with department engineers to target SAFETEA-LU projects; he also partners with the State Troopers and the two major police departments so they can use that data for their safety measures.

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MIKE VIGUE, Director, Program Development, Department of Transportation and Public Facilities (DOTPF), said he would provide an overview of Congress's omnibus December appropriations bill, talk a little bit about the requirements that the Federal Highway Administration (FHWA) has put on the repurposing program, and give them a heads-up on the department's strategy in order to use that money in the most efficient way.

MR. VIGUE said the Section 125 of the omnibus bill gave all the states authority to repurpose any earmarks that were designated prior to September 30, 2005, which in essence is all the earmarks that the states have received since Congress stopped earmarks after the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) bill was passed.

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CO-CHAIR FOSTER joined the committee.

MR. VIGUE related that in order for the earmarks to be eligible for repurposing they have to meet one of two criteria. They either have to have less than 10 percent of the total amount obligated on a project or they have to have a project that has been closed and final-vouchered in the Federal Highway Administration's (FHWA) accounting system. Alaska has a mix of both.

One of the requirements for repurposed earmarks is that they have to stay within 50 miles of the original designation. The FHWA has language on how that is calculated around a 50-mile radius around some point of the project.

All of the repurposed funding is eligible under Section 133(b) of 23 United States Code, which is the Surface Transportation Program, the most flexible type of federal aid funding that the department receives. Lastly, all of the repurposed earmarks have to be identified by the end of 2016, and some of that money can be used in federal fiscal year 2016.

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MR. VIGUE explained that the state has to identify a specific amount for each project when it requests the repurposing along with the specific location and description. Once the funds are repurposed for a project, the department has no ability to change that decision once the request has been sent. This is one

of the reasons they have some time to make an informed and correct decision.

He explained that the obligation authority is similar to the way the State of Alaska works where Congress gives the state obligation authority in appropriation bills. When earmarks were used, obligation authority was provided in several different ways depending on whether the earmark was in the House or the Senate. The State of Alaska was given 100 percent obligation authority in only a few cases. So, in order to fully utilize the repurposed earmarks, he will have to use the state's formula obligation authority, which is what they get for their regular federal aid program that is tied to funds like the National Highways System funds and Surface Transportation funds.

MR. VIGUE said all repurposed funds must be obligated by the end of federal fiscal year 2019, September 30, 2019. Generally, federal aid projects have a lot of requirements and take a fairly long lead time to get to the point of obligating construction and this doesn't give them a whole lot of time to develop the projects, so they are looking at projects that are in the Statewide Transportation Improvement Program (STIP) and already under design or ready for construction in order to fully utilize the funds.

SENATOR MICCICHE asked if the "within 50 miles" in the original earmark designation is as the crow flies or a highway distance.

MR. VIGUE replied it's a 50-mile radius. There is a little bit of latitude as to where the spot is, but it has to be within the original scope. "So, if you had a corridor, you have to pick one end or the other."

He explained that they have two deadlines. If the state wants to use any of these funds in 2016, they have until the end of August of this year to get something to the FHWA. If they intend to use funds in 2017, 2018, or 2019, they have until the middle of September, which doesn't really play into their strategy. Their hope is to get this figured out and get something over to the Federal Highway Administration in August.

SENATOR BISHOP asked if he needed any help.

MR. VIGUE answered yes; they probably will need help since there are quite a few moving pieces.

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He explained that after the funds are repurposed, quarterly reporting is required of all the projects. When Congress passed the Stimulus Bill and gave the State of Alaska a significant amount of money for ERA, quarterly reporting had to be done on every project. So, that same requirement has been put on the repurposed earmarks. About 90 earmarks need to be repurposed and they will all require individual reports, which will significantly impact their staff time. So, they are looking at ways to package the projects for efficiency, and because some of them are small amounts that are left over after a project has been closed out, the idea would be to find a few projects that could be finished, which would lessen the burden of the reporting requirement.

CO-CHAIR HUGHES asked the typical number of projects they do quarterly reports for now - to put the 90 earmarks in context,

MR. VIGUE answered that they don't do any quarterly reporting at this point with the Federal Highway Administration (FHWA) on projects.

SENATOR DUNLEAVY asked what if a project is not in the 50-mile radius, like if it says the Richardson Highway or the Parks Highway.

MR. VIGUE replied he thinks as long as they are within 50 miles of the corridor, but they are getting clarification on that from the FHWA.

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MR. VIGUE said the history of the SAFETEA-LU earmarks was the majority of them were deducted from their program. So, when Congress created the earmarks, it went into the SAFETEA-LU formula and took money off of the top and then did the earmarks. So, the states received less formula funds. So, when SAFETEA-LU expired in 2009, there was an increase in Alaska's formula money in 2010, 2011, and 2012 because they were extensions of SAFETEA-LU, and the secretary determined that the earmark projects were sufficiently funded. So, that money went back into the formula program. That is another reason they are looking at projects that are currently in the STIP to move the money to.

Right now they are trying to identify the available obligation limitation that came with the earmarks to fully obligate all of the earmark money. After a quick run-down, they think they have between \$20 million and \$25 million of formula obligation to use.

MR. VIGUE said their plan is to finish working on their list of recommendations and present it to the commissioner, legislature and the governor for review. Then they are expecting to send out communications and letters to communities that have earmarks in and share what is on the list and what's in the STIP. The dilemma is with the short timeframe a brand new project that is not already under way poses a risk of not being able to fully obligate the funds and those will lapse if they are not obligated by the end of 2019. They don't want to be in the position of losing the money, because they can't get to the point of obligation in the proper time frame.

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MR. VIGUE noted that FHWA put out some frequently asked questions (FAQ). One question was if earmarks have to be repurposed, and the answer is that it is not a requirement. If the earmarks are repurposed and don't get obligated, they lapse in 2019. He speculated that in the 2019 federal appropriations bill if there are any unobligated balances of any earmarks, they will be put back into the Highway Trust Fund. There have been several attempts over the years by various congressmen and senators to do that and so he thinks this Congress is giving the state the ability to find homes for the projects that didn't move forward with the earmarks.

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CO-CHAIR HUGHES asked if any of the formula funding that went up in 2009 got applied to projects that otherwise would have gotten earmarks so that now those earmarks aren't needed, because that project was done with formula funding.

MR. VIGUE answered that he didn't believe so. He said the next question was if all the earmark repurposing requests have to be submitted this fiscal year, and the answer is yes, at the latest by September 12, 2016. Their goal is to get the list to the Federal Highway Administration in August.

The third question is how long the funds and associated obligation authority are available, and that answer is through 2019. If you don't obligate them, they will lapse.

Another question is if an earmark is repurposed under this provision, can it be changed? The answer is no; there is only one small area where you could actually reuse the money you repurposed and that's if you put money on a project that actually comes in under budget and there is some leftover money.

If you happen to identify another project in that same earmark, you could move the leftover funds to that other project. But you can't move them between earmarks once it has been repurposed. The idea is for the state to present the plan to the FHWA and then they keep track of it through the quarterly reporting.

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CHAIR MICCICHE asked if the reason for the strict sideboards is so that the funds can be directed to shovel-ready priorities instead a funding grab for another project or a new project.

MR. VIGUE answered yes. FHWA wants the projects to be identified and trackable, and they want to make sure the money gets spent. He added if you go back in time and look at the Stimulus Bill, shovel-ready was one of the big terms. Also, some of this money was appropriated in the late 1990s, and the purchasing power of those dollars isn't as much now. The idea of having a shovel-ready project means it's immediately going to be put into the economy.

SENATOR DUNLEAVY noted that some of this money is not for shovel-ready projects, because some of it is for a multi-media broad band project in the Valley and for a study.

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CO-CHAIR HUGHES said she noticed that some projects on the list are at the edge of land by water and with the 50-mile radius goes out into the water where there wouldn't be a project. She asked if there was any effort to adjust the land area in those instances.

MR. VIGUE answered that adjusting the radius isn't an option.

REPRESENTATIVE ORITZ asked if the first item on the list of unobligated monies for \$531,443 is leftover monies from a project in his district.

MR. VIGUE replied that he was referring to a project in Seward that has an earmark balance of \$531,000 left over from a completed project. So, now they are trying to work through the process to identify projects that will meet the 50-mile boundary around Seward.

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REPRESENTATIVE ORITZ said it sounds like potential projects are already in the pipeline and asked if he has an example of something that might work for that \$531,430 or will he have to

communicate with local community officials to look for potential projects.

MR. VIGUE replied that it may mean both of those things. The department is in the process of going through the STIP looking for projects that meet the FHWA criteria. If more than one project is found, those would be presented as options. If no project is found, that raises a different dilemma of trying to identify a new project that could actually be fully funded with that money and that could be delivered in the time frame necessary. Another dilemma is if a new project is identified in Seward that costs \$3 million where the other \$2.5 million is going to come from.

SENATOR EGAN asked if this list is by legislative district.

MR. VIGUE answered yes. The color coding coordinates with the two other lists (less than 10 percent obligated and the more than 10 percent obligated) in the other spread sheets.

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SENATOR BISHOP asked the department if they'll consider directing these funds to projects that will yield revenue.

COMMISSIONER LUIKEN answered that being a benefit to the state is a factor and why they are looking at the STIP.

CO-CHAIR HUGHES asked for clarification on what can be repurposed.

MR. VIGUE replied that all the earmark projects can be repurposed according to two FHWA criteria: less than 10 percent of the money was used - in most circumstances this means that the project it was earmarked to was not viable or ready to go - or if more than 10 percent of the money was obligated and the project was already completed and has a closed final voucher in the accounting system.

CO-CHAIR HUGHES asked if the red category ones met the second half of what he just described.

MR. VIGUE answered yes.

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SENATOR BISHOP asked about the \$40 million on the list of over 10 percent, any purpose eligible under Section 133(b) of Title 23.

CHAIR MICCICHE remarked those were the Knik Arm Bridge and the Gravina Island Bridge.

MR. VIGUE replied that Senator Bishop was looking at Demo I.D. AK074, and that is funding from the Gravina earmark. He explained that in 2006 Congress passed a technical collections bill that made money earmarked for the Gravina Bridge and the Knik Arm Bridge flexible.

SENATOR STEDMAN pointed out that the Gravina Bridge money was in addition to the regular highway money.

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CHAIR MICCICHE asked how legislators can engage in the process and if Mr. Vigue will reach out to some or all of them.

MR. VIGUE replied that their plan is to work through the list of earmarks looking for candidate projects that are in the STIP. They would make it available for the commissioner, the governor and the legislature to look at prior to sending anything out to the communities, and he hoped to have a draft within the next couple of weeks.

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CHAIR MICCICHE said one thing is not clear to him: if the \$30 million earmark was part of the discussion on the recent Infrastructure Finance and Innovation Act (TIFIA) loan denial for the Knik Arm Bridge.

COMMISSIONER LUIKEN replied that \$30 million is part of that project. It is a known quantity of funding that is dedicated to that project. It does calculate in the TIFIA consideration and is still in play.

CHAIR MICCICHE said his concern is whether or not that can be encumbered and qualified under this program with the current stage of the bridge. Is there a way it can be counted as being repurposed if the project is further along?

COMMISSIONER LUIKEN responded that the thing to recognize is that these all have the opportunity to be repurposed, but they don't have to be. However, they have to be obligated by 2019.

CHAIR MICCICHE said he was looking for a definition of "obligated."

MR. VIGUE answered that in order for the funding to be obligated, a project agreement would be put in place and sent over to the Federal Highway Administration for approval. It is basically a contract between the Alaska Department of Transportation and Public Facilities (DOTPF) and the FHWA that commits funding to a project.

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SENATOR BISHOP asked if the repurposed project has to be 100 percent permitted. Could the money be obligated by 2019 but yet still be waiting on a few permits to come in?

MR. VIGUE answered that it depends on what phase of work is being obligated. If one is obligating construction money, then all of the permits must be in place. A Project Specifications and Estimates (PSE) package is needed. An estimate must be done, right-of-way certified, and utilities squared away.

SENATOR BISHOP asked if one wants to obligate to a project, but is on the front end of the permitting, could the funds still be obligated to it. And what if you identify a project in 2019, but won't receive all the permits until 2026, could you theoretically obligate that money to the project?

MR. VIGUE answered you wouldn't be able to obligate the funds for construction, but it depends on how much money you have already. If you had \$2 million available and a design estimate of \$4 million, and the EIS is done, you could obligate the money for final design. It depends on what phase the project is in when the money is being obligated. The typical stages where money is obligated is by starting the project and obligating funds through the environmental document (EIS). Once the EIS is complete, then funds can be obligated for the right-of-way phase or for final design. Once those are complete, funds can be obligated for construction. You can't obligate funds ahead of time to hold it for the project later on.

SENATOR BISHOP asked if having an EIS in hand changes the picture on obligating the funds 100 percent to the project.

MR. VIGUE answered not really, because if you want to obligate money for the construction phase, which is where most of the large sums are, you still have to have a PSE package in order for the FHWA to approve the obligation. If you have your environmental document in hand, you could obligate right-of-way acquisition phase or final design phase, but it must be in sequence.

CHAIR MICCICHE asked if obligated earmarked federal dollars could be used as a federal match.

MR. VIGUE answered no.

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CO-CHAIR HUGHES asked when legislators might see the draft list of projects and if it would then go out for public comment.

MR. VIGUE answered that a project is already in the STIP, it doesn't have to go out for public comment. They are going out to the communities and asking for their input, because some of these earmarks were asked for by the communities and not by DOTPF. The idea is that the department will come up with their best recommendation based on what is shovel-ready and present that to the various stakeholders where the earmark resides and get some feedback.

CO-CHAIR HUGHES asked when legislators would see the list.

MR. VIGUE replied in a couple of weeks. They still need clarification from FHWA and internal review.

CHAIR MICCICHE said he assumed the money is useful on a lower dollar project that can be funded with the repurposed earmark that can't be used as a federal match and wouldn't save the state in general fund matching dollars on a larger project.

MR. VIGUE said that was correct.

CO-CHAIR HUGHES thanked the chair for accommodating the House Transportation Committee.

CHAIR MICCICHE thanked Mr. Vigue and Commissioner Luiken.

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CHAIR MICCICHE, finding no other business to come before the committee, adjourned the Senate Transportation Committee meeting at 4:15 p.m.