

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 5, 2019

1:32 p.m.

MEMBERS PRESENT

Representative Louise Stutes, Co-Chair
Representative Adam Wool, Co-Chair
Representative Matt Claman
Representative Harriet Drummond
Representative Dave Talerico
Representative Sara Rasmussen

MEMBERS ABSENT

Representative Andi Story

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Board of Marine Pilots

Edward Sinclair - Juneau
- CONFIRMATION(S) ADVANCED

Department of Transportation & Public Facilities

John MacKinnon - Juneau
- CONFIRMATION(S) ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

EDWARD SINCLAIR, Appointee
Board of Marine Pilots
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during his confirmation hearing.

JOHN MACKINNON, Commissioner Designee
Department of Transportation & Public Facilities
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during his confirmation hearing.

ACTION NARRATIVE

[1:32:50 PM](#)

CO-CHAIR LOUISE STUTES called the House Transportation Standing Committee meeting to order at 1:32 p.m. Representatives Talerico, Claman, Drummond, Wool, and Stutes were present at the call to order. Representative Rasmussen arrived as the meeting was in progress.

The committee took a brief at-ease.

CONFIRMATION HEARING(S): **Board of Marine Pilots**

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CO-CHAIR STUTES announced that the first order of business would be the consideration of Edward Sinclair, Governor's Appointee, Board of Marine Pilots.

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EDWARD SINCLAIR, Appointee, Board of Marine Pilots, provided testimony to his appointment to the Board of Marine Pilots. Mr. Sinclair relayed his background as a pilot and member of the Coast Guard for 20 years, many spent in Alaska. He has been a member of the Southeast Alaska Pilot's Association Board of Directors, which he participated in as a representative and as a fellow pilot. He stated that he believes serving on the board would be an opportunity to expand his involvement in regulatory aspects of marine pilotage in Alaska. He opined that state pilotage continues to need to be recognized out of public interest in respect to safety, protection of the environment, and infrastructure. He also stated that it is a system that facilitates commerce, as pilots must negotiate shipping company schedules and pressures to "push the risk envelope." Mr. Sinclair stated that pilots' local area expertise mitigates risk and contributes to the success of the state, a philosophy he hopes to bring to the Board of Marine Pilots.

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CO-CHAIR WOOL asked if there are any specific regulatory issues that Mr. Sinclair would give attention to while on the Board.

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MR. SINCLAIR discussed his interest in and concern about the introduction of "mega" cruise ships to Alaska. He stated that Southeast pilots, in conjunction with pilots throughout the state, have been proactive in identifying the ships' special needs and the risks that they pose to the waterways. The pilots have conducted studies and evaluated the ships over the last two years. Mr. Sinclair suggested that the Board of Marine Pilots could have a role in the regulatory aspects of the cruise ships' use of waterways.

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REPRESENTATIVE CLAMAN described his impression that the Marine Pilots Association "runs pretty well" and is a generally uncontroversial group. Representative Claman asked if that was a fair description.

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MR. SINCLAIR agreed with Representative Claman's assessment. He noted that a problem for Southeast and potentially other regions is attracting strong candidates. Mr. Sinclair stated that this year's training program has quite a few strong applicants. Mr. Sinclair noted that other regions often had difficulty eliciting strong candidates; he believes that this problem has been resolved due to increased interest in the occupation.

REPRESENTATIVE CLAMAN asked if, in addition to this position, Mr. Sinclair is actively working as a marine pilot.

MR. SINCLAIR stated that yes, he intends to stay an active pilot. He described the differing work load between the winter and summer season. The winter work load is voluntary and on-call, while the majority of work occurs in the summer.

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CO-CHAIR STUTES asked for clarification on the type of licensing required to be a marine pilot.

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MR. SINCLAIR stated that a marine pilot must have a U.S. Coast Guard (USCG) mariner's license; the regulations are varied depending on sea time. He stated that a marine pilot then works

to achieve his/her federal pilotage, which requires the study of the waterways and "familiarization trips." Mr. Sinclair said that an applicant must then, under the observation of USCG, draw the charts from memory and describe the waterways and typical challenges encountered; Southeast Alaska has about 30 waterways that must be drawn. After that, an applicant must begin the state training process where he/she must complete 100 "evolutions," later referred to as maneuvers. Next, an applicant must take the state local knowledge exam, administered by the Board of Marine Pilots. After successful exam completion, a pilot gets his/her initial license. As more sea time is accrued each subsequent year, pilots can work towards an unlimited license from the state.

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CO-CHAIR STUTES asked if a pilot's licensure is limited to the specific area for which he/she is tested.

MR. SINCLAIR confirmed Co-Chair Stutes' understanding and elucidated upon a pilot's ability to work multiple regions at one time.

CO-CHAIR STUTES asked Mr. Sinclair for further explanation.

MR. SINCLAIR stated that he was unsure why there are limitations to region specific licensure. He suggested that it could be intended to ensure a pilot is specialized in a specific area.

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CO-CHAIR WOOL asked about the difficulty of the process for a pilot to change regions.

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MR. SINCLAIR stated that there is a learning curve. There are provisions in training requirements that account for the prior experience that these pilots have. They are required to go through the first steps of federal pilotage, including the drawing of charts.

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CO-CHAIR STUTES opened public testimony. After ascertaining that no one wished to testify, she closed public testimony.

The confirmation of Edward Sinclair to the Board of Marine Pilots was advanced to the joint session of the House and Senate for consideration. Although not stated on the record, signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

^Commissioner, Department of Transportation

Department of Transportation Commissioner

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JOHN MACKINNON, Commissioner Designee, Department of Transportation & Public Facilities (DOTPF), relayed his personal, professional, and public service background. Commissioner MacKinnon noted that in 2003 he was appointed by Governor Frank Murkowski to the Deputy Commissioner of DOTPF position, which he served in until 2008. He stated that after this position, he took a position with the Associated General Contractors of Alaska (AGC). Commissioner MacKinnon shared his prior experience advocating for various industries, involving the rules and regulations of infrastructure development. Commissioner MacKinnon shared his personal philosophy about the role of governmental oversight and management, summarized as "how to get the yes." He described the details of road and infrastructure management. He also provided metrics on roads, personnel, airports, number of operating ferries, et cetera, that differentiate Alaska from other states.

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CO-CHAIR STUTES asked if the 5,600 miles of roads in Alaska, mentioned by Commissioner MacKinnon in his testimony, included the Alaska Marine Highway System (AMHS).

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COMMISSIONER MACKINNON stated that no, that number included roads only located on land. He followed by stating that there are approximately 3,300 miles of ferry routes.

CO-CHAIR STUTES asked if the number of buildings mentioned in Commissioner MacKinnon's statement included ferry terminals.

COMMISSIONER MACKINNON responded affirmatively.

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REPRESENTATIVE CLAMAN asked if Commissioner MacKinnon would have difficulty separating his prior role as an advocate for the construction industry from his hypothetical role as an advocate for DOTPF.

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COMMISSIONER MACKINNON stated that he did not think so. In his prior experience, upon joining AGC, he didn't have difficulty transitioning roles. He stated that his priority is to expedite project completion, which is facilitated by strong relationships between the builders and management on the DOTPF side.

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CO-CHAIR STUTES asked if Commissioner MacKinnon supports Governor Dunleavy's proposed cuts to AMHS.

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COMMISSIONER MACKINNON stated that he works for the governor and that this budget has been prepared by the Office of Management and Budget (OMB). He relayed that he would manage the department with the resources allocated by the legislature. Commissioner MacKinnon stated that he does not agree with every administration's decisions, but that he does agree with "what...[his] employer's doing."

CO-CHAIR STUTES asked if Commissioner MacKinnon has visited the AMHS headquarters and, in conversation, asked if he had the intent to visit.

COMMISSIONER MACKINNON said that no, he has not visited. He then relayed that he planned to visit at some point in the next two weeks.

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CO-CHAIR WOOL asked if, compared to his previous tenure with DOTPF, there were any new challenges Commissioner MacKinnon could foresee.

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COMMISSIONER MACKINNON stated that the challenges are similar, with a few new elements. He noted that there is now a larger regulatory climate and that, while there's increased funding, federal requirements introduce constraints. Commissioner MacKinnon said he finds high turnover bothersome. He attributes it to demographics, the challenge of hiring qualified technicians, greater competition, and higher compensation in the private sector.

CO-CHAIR WOOL asked Commissioner McKinnon if he sees any potential issues with defined benefits or defined contributions with respect to employees holding different tiers.

COMMISSIONER MACKINNON opined that it could be an issue. He described how, while working at AGC he became a trustee on a labor union pension and health trust. The group turned the defined benefit plan into a hybrid plan, described as a partially defined benefit/partially defined contribution. Commissioner MacKinnon stated that it is not an either/or decision, but that DOTPF may be able to get the best of both options without creating risk.

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CO-CHAIR STUTES stated that the residency requirement for the Cost of Living Adjustment (COLA) is set in statute. She asked Commissioner MacKinnon if he was aware that the department uses an individual's submission of an application for the permanent fund dividend (PFD) as criteria for receipt of COLA, as opposed to residency requirements stated in statute.

COMMISSIONER MACKINNON stated that he was not aware that DOTPF was using submission of the PFD application to determine eligibility for COLA.

CO-CHAIR STUTES stated that it is distressing to those who choose not to apply to the PFD and are subsequently denied COLA benefits.

COMMISSIONER MACKINNON concurred.

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REPRESENTATIVE CLAMAN relayed a constituent concern about the lack of lighting on Jewel Lake Road and concern that DOTPF is not going to install additional lighting. Representative Claman

asked if DOTPF was planning to pay for that lighting and, if not, why not.

COMMISSIONER MACKINNON stated that, due to classification of the road, DOTPF did not install continuous lighting when it was rebuilt but installed lighting at accident prone intersections. Commissioner MacKinnon stated that DOTPF offered to collaborate with the municipality and "roughen the electrical" to accommodate the installation of lighting at a later date. Commissioner MacKinnon stated that to the best of his knowledge an agreement had not been maintained.

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REPRESENTATIVE CLAMAN asked if it was a matter of state or federal law that would require an agreement upon which entity would be responsible for payment. Representative Claman also asked if it could be a matter of a funding allocation made by the Legislature.

COMMISSIONER MACKINNON stated that it's not a matter of law but a matter of a mutual agreement. Commissioner MacKinnon suggested adding it to the Anchorage municipality's revenue sharing agreement. He stated that DOTPF does not want to take on any greater operating expense than necessary.

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REPRESENTATIVE DRUMMOND disclosed that she worked for AGC while Commissioner MacKinnon was the executive director. Representative Drummond asked Commissioner MacKinnon what he considered to be DOTPF's highest priority project over the next four years.

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COMMISSIONER MACKINNON answered that priorities change based on circumstances. He referenced a project on the Kenai Peninsula - the Cooper Landing Bypass - which was "on the slow roll for years" and had the longest environmental impact statement in history. Commissioner MacKinnon stated that, about a month ago, DOTPF put a special project delivery team focus on the project, which reduced the construction schedule by six years. He stated that the project wasn't a priority two years ago, but it is now. Circumstances have changed, such as rock fall on the Seward Highway. The department has responded and "put [this] in the fast lane," reallocating funds to do so. Commissioner

MacKinnon stated that priorities change depending on events and on politics.

REPRESENTATIVE DRUMMOND asked if the Cooper Landing Bypass is scheduled for construction in the future.

COMMISSIONER MACKINNON said that there is a development plan for the Cooper Landing Bypass. There is a right-of-way acquisition from the U.S. Forest Service (USFS) and from Fish and Wildlife Service. Commissioner MacKinnon noted, in reference to "the politics in D.C.," it is important to come to agreement with the previously mentioned agencies in the next 21 months.

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CO-CHAIR STUTES asked about the role of Reuben Yost in the DOTPF.

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COMMISSIONER MACKINNON answered that Reuben Yost is a former DOTPF Deputy Commissioner. He stated that Mr. Yost is under contract as a special projects manager and to provide advice for AMHS and labor contracts.

CO-CHAIR STUTES offered her understanding that Mr. Yost had been given a state office. She asked if that was correct and if Mr. Yost is giving direction to AMHS.

COMMISSIONER MACKINNON stated that any direction Mr. Yost gives to AMHS goes through himself or through Deputy Commissioner Siroky. In follow up, Commissioner MacKinnon stated that Mr. Yost's position includes contract negotiation and that he and Mr. Yost meet on a regular basis.

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REPRESENTATIVE RASMUSSEN revisited the Jewel Lake Road lighting issue previously addressed by Representative Claman. She noted that other roads might have similar lighting situations and asked if those roads also have elementary schools and pedestrian traffic of children. Representative Rasmussen also brought forward a constituent concern about the widening of the road, noting that people often travel at higher speeds on widened roads. She asked if there is a way to be proactive in ameliorating these concerns.

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COMMISSIONER MACKINNON answered that the public input process would allow for concerns and feedback to guide the design process. The department assists with the design and considers traffic counts and various variables when determining the speed limit. Commissioner MacKinnon agreed that Jewel Lake is a wider road to accommodate cars pulling over and snow pile-up in the winter, but he said he "doesn't know what to do geometry-wise" to change driver behavior.

REPRESENTATIVE RASMUSSEN asked if the department may consider installing speed bumps in the intersection closer to the school to increase safety.

COMMISSIONER MACKINNON replied that speed bumps could be an option. He qualified that by stating that once installed, speed bumps are difficult to remove. He also stated that for every single person that wants them there are five people that do not.

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CO-CHAIR STUTES stated that the proposed Juneau access road would link to property in which Commissioner MacKinnon has ownership. The proposed road would raise the property value, lower transportation costs, and extend mining activity on Commissioner MacKinnon's property. Co-Chair Stutes stated that the lease with Kensington mine explicitly provides for royalties above the minimum payment based on a percentage of the net returns from extractions on his property. Co-Chair Stutes asked how, after taking the necessary steps to recuse himself, Commissioner MacKinnon would avoid a conflict of interest.

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COMMISSIONER MACKINNON responded that he would recuse himself from the project and the decision-making process behind the project or another project that could impact the profitability of the Kensington mine. Commissioner MacKinnon relayed that he has a 10 percent stake in the company that owns the property where the mine was built and that any royalties from the mine are not based on net profit, but on a gross return.

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REPRESENTATIVE TALERICO stated that while Commissioner MacKinnon was the deputy commissioner, he took a very active role in

engaging with the community on the State Transportation Improvement Plan. Representative Talerico stated that in the last few years, the input of the local communities has not been as welcome as it had been during Commissioner MacKinnon's tenure. Representative Talerico asked if it would be possible to return to the level of community engagement of the mid-2000s.

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COMMISSIONER MACKINNON stated that he was not aware that there had been less community involvement. He stated that he hoped to increase involvement going forward. He related that he takes an active role but does delegate some responsibility to his regional directors, on whom he relies to keep a pulse on community feedback.

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REPRESENTATIVE CLAMAN asked whether Commissioner MacKinnon would be able to serve in his role and manage AMHS consistent with the legislature's appropriation, if the legislature were to allocate the same amount of funding to AMHS as it did for the current fiscal year.

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COMMISSIONER MACKINNON confirmed that he would and added that the entity needed greater authority. He stated that AMHS needs to operate with a "business mindset." He suggested increasing fares slowly over time and the addition of dynamic pricing, i.e. increasing prices of ferry tickets at times of higher demand.

REPRESENTATIVE CLAMAN mentioned proposals to establish a marine highway fund, which would create a "mini permanent fund" with the intent of supporting AMHS. Representative Claman asked if Commissioner MacKinnon was familiar with those proposals and, if so, if he could share his perspective and describe how those funds might accommodate long-term planning for AMHS.

COMMISSIONER MACKINNON stated that the vessel replacement fund has been very successful. He stated that if AMHS is going to continue to operate, then it must be adequately supported with capital. He stated that a model under consideration involved the construction of road segments linked by ferry shuttles. Commissioner MacKinnon referenced the success of the Inter-Island Ferry Authority (IFA) in southern Southeast Alaska.

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CO-CHAIR STUTES sought clarification on the level of state subsidies that support the operating of the IFA.

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COMMISSIONER MACKINNON stated that there is, and always has been, a subsidy, but he did not know the amount of the subsidy.

CO-CHAIR STUTES stated that the IFA is hugely subsidized except for a portion of the transportation expenses, which also receives some subsidy. Co-Chair Stutes asked, on behalf of another member, if Commissioner MacKinnon has an update on the Juneau Access Road.

COMMISSIONER MACKINNON stated that he did not. He stated that he was briefed on the status a few months ago and was aware that the previous administration chose the "no-build alternative" due to cost and controversy. He stated that this option satisfied certain requirements and settled potential payback provisions with the federal government.

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CO-CHAIR WOOL revisited the freeze/thaw cycle that Commissioner MacKinnon had previously discussed. He stated that in a presentation given during a previous legislative session, the committee learned that the largest costs to the state would occur from damage to infrastructure and highways rather than the relocation of coastal communities. He asked if Commissioner MacKinnon was planning for an increased need for road maintenance, particularly in Alaska's Interior.

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COMMISSIONER MACKINNON relayed that he is familiar with the effects of permafrost on the highway system. He stated that the melting of permafrost could be happening at an increased rate but that he is not familiar with current statistics.

CO-CHAIR WOOL asked about Commissioner MacKinnon's impression of the brining project that occurred in Fairbanks.

COMMISSIONER MACKINNON described a distinction between snow removal and snow management and described how spreading of a thin layer of brine prior to snow fall facilitates snow removal.

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CO-CHAIR STUTES referenced a previous conversation with Commissioner MacKinnon about a request for proposal (RFP) for the privatization of AMHS. She asked if he was familiar with the North Wind Canal Ferry Authority or the consideration of a private group to operate the Tazlina or Hubbard ferry. Co-Chair Stutes also asked if he has been involved with the Southeast Municipal Conference League, which has pursued the previously mentioned changes to AMHS.

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COMMISSIONER MACKINNON stated that the RFP was in response to the Governor's directive to do a two-part analysis of AMHS. He stated that the purpose of the RFP is to consider options for reshaping AMHS, not to privatize the whole system. Commissioner MacKinnon stated that one option is a public/private partnership. He offered to send the RFP to Representative Stutes. He referenced Southeast Conference's plan and noted that AMHS would, under the proposal, require a "considerable" state subsidy.

CO-CHAIR STUTES asked Commissioner MacKinnon if he believed if AMHS could operate without a state subsidy.

COMMISSIONER MACKINNON answered no.

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REPRESENTATIVE RASMUSSEN asked Commissioner MacKinnon to describe his impression of the Port of Anchorage infrastructure.

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COMMISSIONER MACKINNON stated that DOTPF is charged with maintaining, owning, and operating transportation infrastructure. He said that the state owns a lot of roads within the municipality, more than is customary. Commissioner MacKinnon suggested that, considering the other facilities under DOTPF's ownership, it is odd that the department does not own the port. He then relayed that those were his personal thoughts.

REPRESENTATIVE RASMUSSEN asked how the State of Alaska would pay for the estimated \$2,000,000,000 in damage.

COMMISSIONER MACKINNON stated that he had not read the report that Representative Rasmussen was referencing. He suggested that there are likely alternative methods for repair that are less expensive. He stated that funding to fix the port could be generated through user fees.

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CO-CHAIR STUTES asked if Commissioner MacKinnon or the administration has had any discussion with the federal government as to the possibility of repercussions to the state for closing AMHS.

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COMMISSIONER MACKINNON stated that there have been conversations but that they have not received any definitive answers.

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CO-CHAIR WOOL sought clarification as to DOTPF's potential acquisition of ports around the state or if port ownership and operation is delegated to the municipality.

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COMMISSIONER MACKINNON clarified that the state does have an interest in the Alaska railroad and that, through this entity, the state owns pieces of the Seward dock, 30-plus ferry facilities, and portions of the Whittier [tunnel].

CO-CHAIR WOOL revisited Commissioner MacKinnon's comparison of Alaska to Vermont as having roughly the same amount of road miles and population. He asked if Commissioner MacKinnon knew the cost per road mile per capita for Vermont.

COMMISSIONER MACKINNON stated that he did not know. He said that the metric depends on which highway is used due to differences in the level of traffic.

CO-CHAIR WOOL sought greater clarity on the cost per road mile per capita.

COMMISSIONER MACKINNON reiterated that he did not know.

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CO-CHAIR STUTES asked if Commissioner MacKinnon supports the Alaska Port and Harbor grant program.

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COMMISSIONER MACKINNON confirmed his support of the program and stated that it was developed during his previous tenure.

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REPRESENTATIVE DRUMMOND referenced HB61, filed by the governor, and stated that it would repeal many projects for which the DOTPF is responsible. She asked Commissioner MacKinnon to explain the department's obligations under the bill and provide background and justification for its proposed repeals. Representative Drummond followed by stating that the bill would repeal statutes that provide for reimbursement for the cost of the University of Alaska's capital projects, municipal projects, and power projects.

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COMMISSIONER MACKINNON stated that there are a couple projects that DOTPF has an obligation or agreement to reimburse.

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CO-CHAIR STUTES read the following paragraphs of AS 19.65.050: (a)(1) the Alaska marine highway system is an essential part of the state transportation system, and that it warrants continued and predictable state support; (a)(4) efficient and prudent management of the system will benefit the state's economy and foster economic development; (b)(4) provide for predictability and stability in the service level furnished to communities served by the system. Co-Chair Stutes then emphasized the imperative nature of AMHS to Commissioner MacKinnon.

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CO-CHAIR STUTES opened public testimony on the confirmation hearing for John MacKinnon, Commissioner-Designee to DOTPF. After ascertaining that no one wished to testify, she closed public testimony.

[2:38:52 PM](#)

The confirmation of John MacKinnon as Commissioner to the Department of Transportation & Public Facilities was advanced to the joint session of the House and Senate for consideration. Although not stated on the record, signing the reports regarding the appointment of the Commissioner to DOTPF in no way reflects individual members' approval or disapproval of the appointee, and the nomination is merely forwarded to the full legislature for confirmation or rejection.

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The committee took an at-ease from 2:39 p.m. to 2:41 p.m.

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ADJOURNMENT

There being no further business before the committee, the House Transportation Committee meeting was adjourned at 2:42 p.m.