

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

January 29, 2019

1:31 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Mike Shower, Vice Chair  
Senator David Wilson  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

Commissioner, Department of Transportation and Public Facilities  
John MacKinnon - Anchorage

- CONFIRMATION ADVANCED

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

JOHN MACKINNON, Commissioner Designee  
Department of Transportation and Public Facilities  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as commissioner designee of the Department of Transportation and Public Facilities.

KEN MCCARTY, President  
Birchwood Airport Association  
Eagle River, Alaska

**POSITION STATEMENT:** Commented on earthquake preparedness during the confirmation hearing for commissioner of the Department of Transportation and Public Facilities.

## **ACTION NARRATIVE**

[1:31:25 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Transportation Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Wilson, Micciche, Kiehl, and Chair Hughes. Senator Shower arrived soon thereafter.

### **CONFIRMATION HEARING(S)**

#### **Commissioner, Department of Transportation and Public Facilities**

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CHAIR HUGHES announced the the committee would consider the governor's appointment of John MacKinnon as commissioner of the Department of Transportation and Public Facilities.

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SENATOR SHOWER joined the committee.

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JOHN MACKINNON, Commissioner Designee, Department of Transportation and Public Facilities (DOTPF), thanked the committee for holding the hearing and expressed appreciation for the opportunity to once again serve the State of Alaska. He related that he was born and raised in Juneau and graduated from Huxley College of Environmental Studies [with a degree in Marine Resource Ecology.] After graduation, he worked for the National Marine Fisheries Service at the Auke Bay Lab for several years and then became a building contractor doing mostly commercial work. In 2002, he took a position as interim city manager for the City and Borough of Juneau, and in 2003 he was appointed deputy commissioner of transportation for the State of Alaska. In 2008, he assumed the role of executive director for the Associated General Contractors of Alaska (AGCA) and served in that capacity until the new administration offered the opportunity to return to DOTPF. He related that it was not a difficult transition to move from DOTPF to AGCA in 2008 because the issues are the same. "It was how do we improve what we do in the construction business." Returning to DOTPF from AGCA will be a similar transition.

He said his time at AGCA was spent advocating for the industry in support of construction and development projects, working on statute and regulation changes to improve the way business is done, and working with owner agencies on issues to the benefit of both sides.

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COMMISSIONER DESIGNEE MACKINNON said he takes public service very seriously and his philosophy is "how to get to 'Yes' when you're doing something." He shared that his belief may have been shaped by his personal experience of having government officials tell him he couldn't do something as a contractor. Some years later he was very appreciative when a government official described a path to get approval of his request. "It was refreshing to have somebody in a regulatory position tell me how to get what I needed to do instead of just the simple answer of "No."

He said DOTPF staff generally go out of their way to accommodate the wishes and needs of the public, but there are times when the needs of an individual or group do not outweigh the greater public benefit on certain transportation improvements. He reiterated that his philosophy at DOTPF will be to look for ways to serve the public by getting them to "Yes" when possible.

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SENATOR WILSON asked what DOTPF will do for the Mat-Su to ensure equitable sharing of capacity to address improvements to their safety corridor and to get relief after the earthquake.

COMMISSIONER DESIGNEE MACKINNON said Central Region personnel have identified KGB Road and the next phase of the Parks Highway as priorities one and two respectively. Both are difficult projects because of the disruption to residents and businesses along the way. He noted that he experienced the same difficulties with the first phase of the Parks Highway interchange when he joined DOTPF in 2003. He explained that increasing capacity to meet the traffic demands means limiting intersections and moving access to driveways to a frontage road. He noted that when projects are large, they are often broken into pieces to generate a little more competition in bidding and better use of the public's money.

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COMMISSIONER DESIGNEE MACKINNON related that he started work as commissioner on December 3, 2018, just after the earthquake. The first day on the job Senators Murkowski and Sullivan invited him to visit some of the damaged areas via helicopter. On one stop they looked at and took photos of the damage on Vine Road. The next day the borough manager called and asked for help to rebuild that road. Mr. MacKinnon said his staff confirmed that

the department could get the work done. "Within a couple of days, Vine Road was repaired and paved over," he said.

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CHAIR HUGHES thanked him for the response. She said she appreciates DOTPF's system, but she is not sure that people realize how much the Mat-Su has grown. She highlighted that more than 19,000 people live along the two-lane KGB Road, whereas Juneau has a population that is one-third larger and is served by a four-lane divided expressway. "It's been grievous to see the number of fatalities and serious injury along [KGB Road], so I appreciate your attentiveness to that," she said.

Chair Hughes segued to ask how he will deal with the issue of his property along the proposed Juneau access road and funding for the ferry system.

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COMMISSIONER DESIGNEE MACKINNON explained that the conflict of interest relates to the Kensington Mine. He and other family members are the primary owners of the Hyak Mining Company that owns the property on which the Kensington Mine is constructed. Kensington Mine is currently mining the ore body that belongs to Hyak Mining Company. He explained that when he joined DOTPF in 2003, he resigned as a director and officer of Hyak Mining Company. He also sought an ethics opinion from the department's ethics attorney who advised him to refrain from making any decisions related to the project because there was a conflict of interest. That opinion was reaffirmed by the current ethics attorney. "I would recuse myself from any matter that would result in either a withholding or making a decision on that particular project or any project that might reasonably benefit that Kensington Mine property," he said.

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SENATOR SHOWER asked if he had consulted the ethics attorney about any other areas that might be a conflict of interest.

COMMISSIONER DESIGNEE MACKINNON said he was waiting for an opinion as to whether being a trustee on the pension and health trust for the Alaska carpenter union might be a conflict. He explained that he became a trustee as a result of contracts that he negotiated with six trade unions while he worked for AGCA. He said he did not see it as a conflict since carpenters do not deal directly with DOTPF.

SENATOR SHOWER asked if his plan was to recuse himself should there be an ethical issue.

COMMISSIONER DESIGNEE MACKINNON said yes, "I hold the public trust very important."

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SENATOR MICCICHE asked what his management philosophy will be and the largest challenges he foresees to get the department to more adequately fulfill its mission.

COMMISSIONER DESIGNEE MACKINNON replied the largest challenge he sees is staffing because annual turnover is 10-12 percent. His goal is to hire professionals, treat them well, and help them do their job without micromanaging.

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SENATOR MICCICHE noted that in recent years the only capital budget for highway projects has relied on federal dollars. He asked Mr. MacKinnon how he proposes to manage the state's transportation needs with the \$1.6 billion budget gap.

COMMISSIONER DESIGNEE MACKINNON replied the state receives about \$500 million a year from the federal highway trust fund. The state match is about 10 percent and he could not imagine a budget scenario where the state would give up that kind of leverage. The situation is similar in aviation. About \$200 million per year comes from the federal Airport Improvement Plan. He reminded the members that there is more process associated with spending federal dollars than state dollars, but it's hard to turn those dollars down.

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SENATOR KIEHL asked what his thoughts were on how to do long-term planning for the Marine Highway System.

COMMISSIONER DESIGNEE MACKINNON said the model that works can be seen in the southern Southeast community of Metlakatla. The small ship Lituya operates 12 hours a day five days a week between Metlakatla and Ketchikan and the crew goes home at night. The model of having smaller ships that are home ported in different areas could work, but it would take consistency between administrations to carry that through. "It's hard to have a program when the wind keeps changing," he said.

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CHAIR HUGHES noted that Governor Dunleavy has talked about Alaska being open for business and that, in addition to oil and gas, he would like to see other doors opened. She asked if he and the administration were thinking about new projects and the need for new infrastructure such as airstrips or port development to accommodate new mines.

COMMISSIONER DESIGNEE MACKINNON said the Roads to Resources program under former Governor Murkowski was responsible for several small projects that resulted in access to timber sales on Gravina Island and in the Mat-Su. The Ambler Road is also on the books as a result of the program which, if completed, would access a number of mining properties in northwest Alaska. He noted that involving DOTPT in such projects can complicate the NEPA (National Environmental Policy Act) process so the department generally stays out of the way until it is asked to help.

CHAIR HUGHES asked him to talk about the proposed annual fee for Uber and Lyft to use the Anchorage International Airport and the concern that it might be more than the annual fee taxis are charged.

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COMMISSIONER DESIGNEE MACKINNON said that internal discussions are ongoing, and the public comment period is open on the proposal to charge transportation network companies (TNCs) up to but not more than \$2.50 to pickup and drop-off riders. He noted that the costs associated with having Uber and Lyft conduct business at the airport include putting in porta pottys and trash barrels at the cellphone lot where the drivers spend time. He further noted that airport activity is increasing and over the long term there will be a large capital expense to accommodate the additional cabs, buses, and TNCs.

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CHAIR HUGHES asked if the fees for TNCs and taxis would be equitable. She pointed out that if a taxi permit is \$75 per year and a TNC driver is charged \$2.50 per pickup or drop off, that's equivalent to just 30 trips.

COMMISSIONER DESIGNEE MACKINNON said both equity and parity are considered in the ongoing conversations.

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SENATOR WILSON commented that the leases at the airport aren't equitable either. He asked Mr. MacKinnon his philosophy and

DOTPF's direction on the public-private partnerships to build new projects around the state.

COMMISSIONER DESIGNEE MACKINNON said the traditional model for construction has been design, bid, build, but the design build model has been used successfully in recent years. The Alaska Psychiatric Institute (API), Glenn Parks Interchange, and Whittier Tunnel are examples. The Construction Manager/General Contractor (CMGC) model has been used for facilities for several years and is starting to be used for highways. Through an RFP process the most qualified contractor is selected to work with the department and designers early in the process. After the design process, the maximum price on the construction contract is negotiated. DOTPF has used that model on three bridge projects and the Federal Highway Administration has been promoting it. The benefit is that the guaranteed maximum price is established when the construction contract is negotiated. By contrast, the design, bid, build contract establishes the guaranteed minimum price of a project.

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SENATOR SHOWER mentioned the damage associated with the recent earthquake and asked if he would support establishing a statewide building code for triplexes and smaller buildings.

COMMISSIONER DESIGNEE MACKINNON said most municipalities have adopted building codes that are for single family homes as well as larger facilities. With budget cuts to state agencies the last several years, the Fairbanks and Juneau fire marshal offices were consolidated in Anchorage and the net effect is that in outlying areas it takes longer to get plans approved to build anything.

CHAIR HUGHES asked if public facilities are designed to current earthquake standards.

COMMISSIONER DESIGNEE MACKINNON said the new facilities are built to current codes but the buildings that had failures - such as the schools in Eagle River and Houston, were built in the 1980s under a different set of codes.

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SENATOR SHOWER related that after the earthquake his cardiologist asked if he could fly a heart attack victim to the hospital in Anchorage because the roads and bridges were unusable. He asked Mr. MacKinnon his thoughts on building alternate routes to accommodate that sort of situation.

COMMISSIONER DESIGNEE MACKINNON said the legislature asked for a study last year of the Glenn Highway corridor and alternate routes, and the department will present the report to the committee later this week. He explained that if there is another bridge event on the Glenn Highway corridor like last spring, DOTPF can handle the connectivity, but the volume of traffic is a challenge. The situation was the same after the earthquake. The southbound lane to Mirror Lake was closed for 4-5 days and the bypass worked well but it could not handle the volume of traffic. That corridor has 40,000-50,000 cars a day and it takes at least 4 lanes to handle that.

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SENATOR KIEHL highlighted that the state library and museum in Juneau is another example of a Construction Manager/General Contractor (CMGC) project success. He recalled that DOTPF brought it in about \$7.5 million under budget.

He noted the shift in approach in the department's public facilities section over the years; certain people build the facilities and others manage them. He asked if consolidation would be more efficient and effective.

COMMISSIONER DESIGNEE MACKINNON replied that is happening. In 2015 the state recreated the Division of Facilities Services within DOTPF and over time all public buildings will migrate back under that division. So far, that model is working, he said.

SENATOR KIEHL asked if that is helping to get a handle on the deferred maintenance issues in state facilities.

COMMISSIONER DESIGNEE MACKINNON replied it has made it clear what the deferred maintenance needs are, but there hasn't been any funding. "We're getting woefully behind on things," he said.

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SENATOR MICCICHE commented that part of managing deferred maintenance is having a surplus asset disposal plan, which the state has never had. He asked if he foresees a comprehensive plan to evaluate the inventory and dispose of the surplus assets.

COMMISSIONER DESIGNEE MACKINNON said the department has discussed that with the Office of Management and Budget (OMB) and is looking at the potential to dispose of some surplus

assets. He cited the examples of a partially occupied state-owned building on Tudor Road that was earthquake damaged and several state-owned buildings that were left vacant when the Kulis Air National Guard Base moved off the Anchorage International Airport property to JBER.

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SENATOR MICCICHE asked about the potential to streamline the department by privatizing certain services to take advantage of good and poor business cycles in the construction industry.

COMMISSIONER DESIGNEE MACKINNON said his answer would focus on the part of the department that does the construction projects. There's the design section called preconstruction and another called construction. About 50 percent of design for DOTPF projects is done in-house on an availability basis. Over the years the department has found that 40-60 percent in-house works well. There is also the federal requirement that when a project goes to construction, someone from DOTPF has to oversee the project and make certain decisions. He added that things are contracted out when it is a benefit to both sides.

SENATOR MICCICHE said he would submit a series of questions on that issue to the chair to relay to the department. "I just want to make sure we're evaluating all of the potential for bringing the cost down," he said.

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CHAIR HUGHES asked if the economics are about the same for in-house design versus contracting out or if one is generally more economical.

COMMISSIONER DESIGNEE MACKINNON said it depends on the availability of resources within the department and the region. The northern region has greater capacity to take on these projects and the central region tends to have larger projects such as Cooper Landing. It's important to have in-house capabilities for projects but it's also important to take advantage of consultants if that makes the most sense economically.

CHAIR HUGHES said she hopes to continue the conversation on using the most economical approach to projects in the transportation finance subcommittee.

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SENATOR SHOWER mentioned the earthquake damage to the Port of Anchorage, the ongoing repairs, and the most recent \$2 billion estimate for repairs. He asked what has to happen strategically to make sure that critical piece of infrastructure is repaired appropriately.

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COMMISSIONER DESIGNEE MACKINNON said he'd like DOTPF to have control, but the Municipality of Anchorage owns the Port of Anchorage and is very territorial. He noted that he met with Railroad officials and they are very aware of the vulnerability of the port and what could be done. There are alternate ports in Whittier and Seward connected by road and railroad, but those would both require substantial investment. Port MacKinzie is another alternative but it isn't built to take the volume of freight that comes into Anchorage. It's designed to take conveyors to load natural resources onto ships.

CHAIR HUGHES related that she was exploring the possibility of having a hearing on that topic.

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SENATOR SHOWER explained that he raised the question because he wants the public to know that alternate methods of bringing supplies into the state are being discussed.

COMMISSIONER DESIGNEE MACKINNON confirmed that the topic of conversation with the Alaska Railroad was that freight could be delivered by truck, through the ports of Whittier and Seward, via barge, and air freight. It would cost more but there would be food on the shelves in grocery stores.

CHAIR HUGHES advised that the committee would have a hearing on the recent earthquake and the disruptions that occurred.

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CHAIR HUGHES opened public testimony.

[2:30:26 PM](#)

KEN MCCARTY, President, Birchwood Airport Association, Eagle River, highlighted that if the roads and bridges are damaged, the airport would be the center for moving supplies.

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CHAIR HUGHES closed public testimony.

[2:31:57 PM](#)

Chair Hughes stated that in accordance with AS 39.05.080, the Senate Transportation Committee reviewed the following and recommends the appointment(s) be forwarded to a joint session for consideration:

Commissioner, Department of Transportation and Public Facilities  
John MacKinnon - Anchorage

CHAIR HUGHES clarified that the committee is not voting on the nomination at this point and the vetting will continue in subsequent committees. The only vote that will take place will be on the floor.

SENATOR MICCICHE assured the public that earthquake plans were in place. He added that it is always a good idea look them over with an eye for improvement.

2:34:56 PM

There being no further business to come before the committee, Chair Hughes adjourned the Senate Transportation Standing Committee meeting at 2:34 p.m.