

TRB FINAL PROGRAM

51ST ANNUAL WORKSHOP ON TRANSPORTATION LAW

Sunday, July 15 – Wednesday, July 18, 2012



JW Marriott
614 Canal Street
New Orleans, Louisiana

TRANSPORTATION RESEARCH BOARD
OF THE NATIONAL ACADEMIES

51st Annual Workshop on Transportation Law

SPONSORED BY

Legal Resources Group Technical Activities Division Transportation Research Board

Legal Resources Group Chair, James S. Thiel
Legal Resources Group Secretary and TRB Representative, James B. McDaniel
Committee on Transportation Law, Chair, Alla C. Shaw
Committee on Transit & Intermodal Transportation Law, Chair, Dorval R. Carter, Jr.
Committee on Contract Law, Chair, Edward S. Harris
Committee on Emerging Technology Law, Chair, Katie K. Kelly
Committee on Environmental Issues in Transportation Law, Chair, Janet L. Myers
Committee on Eminent Domain & Land Use, Chair, James H. Isonhood
Committee on Tort Liability & Risk Management, Chair, Robert J. Shea

Transportation Research Board Staff

Mark Norman, Director, Technical Activities
James B. McDaniel, Counsel for Legal Research Projects
Joanice L. Cole, Senior Program Associate
Linda Karson, Director of Meetings
Megan Burns, Meeting Coordinator

The workshop has in the past been approved for continuing legal education (CLE) credits in states requiring such credits. Rules vary from state to state, so participants needing credit should obtain necessary forms for individual applications. Inquiries about such matters should be made to James B. McDaniel, TRB Counsel for Legal Research Projects at 202-334-3209.

The registration fee covers all sessions of the workshop program and papers distributed at or following the workshop, plus the Sunday, evening reception (July 15), Tuesday evening social event (July 17), Monday through Wednesday continental breakfasts, and morning and afternoon coffee breaks. Spouses/guests and families of attendees are invited to enjoy continental breakfast in the TRB Hospitality Room Monday and Tuesday. Additional tickets for the Tuesday social event may be purchased for \$60.00 each on-site; subject to availability.



Mobile Device Manners

As a courtesy to other attendees, please observe good mobile phone manners. When attending meetings and in the public areas adjacent to these activities, please turn off your cell phones and other wireless communication devices or use the silent notification options. Thank you for your cooperation.

PROGRAM AT A GLANCE

SUNDAY, JULY 15, 2012		
3:00 pm – 6:00 pm	Registration	<i>Ile de France III Foyer</i>
6:30 pm – 8:00 pm	Reception	<i>Ile de France I</i>
MONDAY, JULY 16, 2012		
7:30 am – 5:00 pm	Registration	<i>Ile de France III Foyer</i>
7:30 am – 8:00 am	Continental Breakfast	<i>Ile de France II Foyer</i>
8:00 am – 8:15 am	Welcome	<i>Ile de France II</i>
8:15 am – 10:15 am	Session 1	<i>Ile de France II</i>
10:15 am – 10:45 am	Break	<i>Ile de France II Foyer</i>
10:45 am – Noon	Session 2	<i>Ile de France II</i>
Noon – 1:30 pm	Lunch on Your Own	
1:30 pm – 3:00 pm	Session 3	<i>Ile de France II</i>
	Session 4	<i>Ile de France III</i>
3:00 pm – 3:15 pm	Break	<i>Ile de France II Foyer</i>
3:15 pm – 4:45 pm	Session 5	<i>Ile de France II</i>
	Session 6	<i>Ile de France III</i>
TUESDAY, JULY 17, 2012		
7:30 am – 3:00 pm	Registration	<i>Ile de France III Foyer</i>
7:30 am – 8:00 am	Continental Breakfast	<i>Ile de France II Foyer</i>
8:00 am – 9:30 am	Session 7	<i>Ile de France II</i>
	Session 8	<i>Ile de France III</i>
9:30 am – 9:45 am	Break	<i>Ile de France II Foyer</i>
9:45 am – 11:30 am	Session 9	<i>Ile de France II</i>
	Session 10	<i>Ile de France III</i>
11:30 am – 12:30 pm	Lunch on Your Own	

12:30 pm – 2:00 pm	Tort Liability & Risk Management Committee	<i>Maurepas</i>
	Contract Law Committee	<i>St. Jerome</i>
	Transit and Intermodal Transportation Law Committee	<i>Conde</i>
	Environmental Issue in Transportation Law Committee	<i>Orleans</i>
2:00 pm – 2:30 pm	Break	<i>Ile de France II Foyer</i>
2:30 pm – 4:00 pm	Eminent Domain and Land Use Committee	<i>Maurepas</i>
	Transportation Law Committee	<i>Orleans</i>
	Emerging Technology Law Committee	<i>St. Jerome</i>
6:30 pm – 9:30 pm	Dinner	<i>Jax Brewery, Riverview Room, 4th Floor</i>
WEDNESDAY, JULY 18, 2012		
7:00 am – 7:45 am	Continental Breakfast	<i>Ile de France II Foyer</i>
7:45 am – 9:15 am	Session 11	<i>Ile de France II</i>
	Session 12	<i>Ile de France III</i>
9:15 am – 9:30 am	Break	<i>Ile de France II Foyer</i>
9:30 am – 11:00 am	Session 13	<i>Ile de France II</i>
11:00 am – 11:15 am	Closing Remarks and Adjournment	<i>Ile de France II</i>
11:45 am – 2:00 pm	Group Council Meeting (<i>Closed Meeting</i>)	<i>Maurepas</i>

SPOUSE AND GUEST HOSPITALITY ROOM

FRONTENAC

The spouse and guest hospitality suite is open
Monday, July 16 &
Tuesday, July 17, 2012
7:30 am – 9:30 am

Audience Etiquette

Please observe the following points of meeting etiquette:

- * Make sure all mobile devices are turned off.
- * Keep the meeting room doorways clear.
- * Find seating as far forward as possible
- * Place materials under chairs to maximize seating capacity.
- * Locate seating instead of standing in aisles or against walls.

THANK YOU FOR YOUR COOPERATION!



~ WORKSHOP AGENDA ~

SUNDAY, JULY 15, 2012

3:30 pm – 6:00 pm	REGISTRATION	<i>Ile de France III Foyer</i>
6:30 pm – 8:00 pm	RECEPTION	<i>Ile de France I</i>

MONDAY, JULY 16, 2012

7:30 am – 5:00 pm	REGISTRATION	<i>Ile de France III Foyer</i>
7:30 am – 8:00 am	CONTINENTAL BREAKFAST	<i>Ile de France II Foyer</i>
8:00 am – 8:15 am	WELCOME <ul style="list-style-type: none">• James S. Thiel, Chair, Legal Resources Executive Board, Wisconsin Department of Transportation• Mark R. Norman, Director, Technical Activities Division, Transportation Research Board	<i>Ile de France II</i>
8:15 am – 10:15 am	SESSION 1: DOT PRESENTATIONS ON REAUTHORIZATION—MAP 21 James S. Thiel, Wisconsin Department of Transportation, <i>presiding</i> <i>Sponsored by Legal Resources Group (AL000)</i> Panel Discussion Fred Wagner, Federal Highway Administration; Dorval R. Carter, Federal Transit Administration	<i>Ile de France II</i>
10:15 am – 10:45 am	BREAK	<i>Ile de France II Foyer</i>

MARK YOUR CALENDAR
TRB 92nd Annual Meeting
January 13-17, 2013 - Washington, D.C.

10:45 am – Noon

SESSION 2: RESPONSE TO NATURAL DISASTERS

Ile de France II

Edward Harris, Maryland Department of Transportation, *presiding*
Sponsored by the Contract Law and Transit and Intermodal Transportation Law Committees

Louisiana Emergency Response to Hurricane Katrina—Lessons Learned: What Happened, What We Did, How We Did It?

Brandon Brown, Louisiana Department of Transportation

Transit's Role in Emergency Preparedness & Response

Bruce M. Smith, Apperson Crump PLC

State Perspective on Emergency Response

James S. Thiel, Wisconsin Department of Transportation

Noon – 1:30 pm

LUNCH ON YOUR OWN

~ 1:30 pm – 3:00 pm ~

SESSION 3: SO YOUR CLIENT WANTS A TOLL ROAD: NOW WHAT DO YOU DO?

SESSION 4: DBE REQUIREMENTS – NEW DBE REGULATIONS AND THEIR IMPACT ON TRANSPORTATION

Ile de France II

Carlos Sun, University of Missouri, *presiding*
Sponsored by Committee on Transportation Law

Federal Considerations: Overview of the Federal Tolling Programs and Requirements

Michael Harkins, Federal Highway Administration

State Considerations: Tolling Legislation, Policies, Financing, Operations, Violations, and Other Issues

Marcelle Jones, Jacobs Engineering

How the Federal and State Considerations Mesh: State and Toll Authority Perspectives

Pamela Leslie, Miami Dade Expressway Authority

Ile de France III

Edward Harris, Maryland Department of Transportation, *presiding*
Sponsored by the Contract Law Committee

Federal Perspective - New Requirements and Regulations

JoAnn Robinson, Federal Highway Administration

Transit Disadvantage Business Enterprise (DBE) Update

Nancy Ellen Zusman, Federal Transit Administration

Effect on Innovative Project Delivery

Bryce Little, Parsons Brinckerhoff, Inc.

State Perspective

James S. Thiel, Wisconsin Department of Transportation

3:00 pm – 3:15 pm

BREAK

Ile de France II Foyer

~ 3:15 pm – 4:45 pm ~

**SESSION 5: THE LATEST AND
GREATEST ENVIRONMENTAL NEWS:
UPDATE ON KEY REGULATORY
POLICIES**

Ile de France II

Jack Gilbert, Federal Highway Administration,
presiding
*Sponsored by the Committee on Environmental Issues
in Transportation Law*

Panel Discussion

Christopher Van Wyk, Federal Transit
Administration; Diane Mobley and Jim Esselman,
Federal Highway Administration; William Malley,
Perkins Coie, LLP; Robert Downie, Robert
Downie Consulting, LLC

**SESSION 6: LESSONS LEARNED FROM
MEGA PROJECTS DELIVERY SYSTEMS: DID
THEY LIVE UP TO THEIR PROMISES?**

Ile de France III

Eric M. Kerness, Kerness Consulting *presiding*
Sponsored by the Contract Law Committee

Maryland's ICC Connector

Edward Harris, Maryland Department Of
Transportation

Virginia PPP Experience

Ryan J. Pedraza, Virginia Department Of
Transportation

**Louisiana-Audubon Bridge and Other Design Build
Project**

Cheryl Duvieilh, Louisiana Department of
Transportation

Session 9 - continued

Challenges and Opportunities for Highway Authorities

Thomas J. Bamonte, North Texas Tollway Authority

Session 10 - continued

State Supported Service and Service Outcome Agreements

Jacklyn Meredith-Batchelor, Amtrak

Rail Safety Improvement Act Implementation: Shielding Safety Risk Reduction Plan Data From Discovery In Litigation—Ongoing Implementation

Matthew Navarrete, Federal Railroad Administration

Review of Research into Parallel Agency Approaches

Roberta Stewart, Federal Railroad Administration

11:30 am – 12:30 pm **LUNCH ON YOUR OWN**

~ 12:30 pm – 2:00 pm ~

TORT LIABILITY & RISK MANAGEMENT COMMITTEE

Maurepas

CONTRACT LAW COMMITTEE

St. Jerome

TRANSIT AND INTERMODAL TRANSPORTATION LAW COMMITTEE

Conde

ENVIRONMENTAL ISSUE IN TRANSPORTATION LAW COMMITTEE

Orleans

2:00 pm - 2:30 pm **BREAK**

Ile de France II Foyer

~ 2:30 pm – 4:00 pm ~

EMINENT DOMAIN AND LAND USE COMMITTEE

Maurepas

TRANSPORTATION LAW COMMITTEE

Orleans

EMERGING TECHNOLOGY LAW COMMITTEE

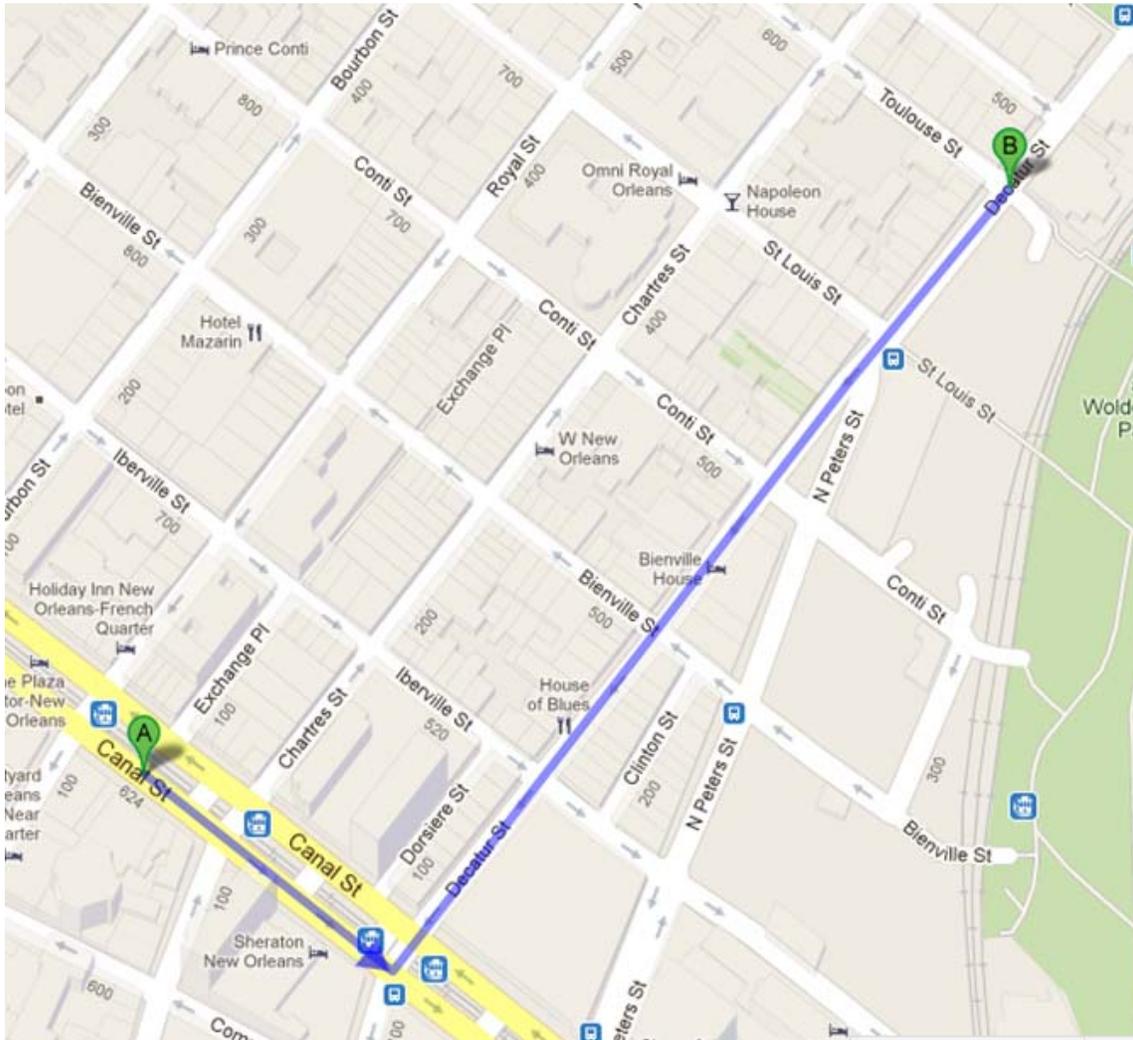
St. Jerome

6:30 pm – 9:30 pm

COOKING DEMONSTRATION AND DINNER

Jax Brewery, 600 Decatur Street, The Riverview Room, 4th Level

Meet in the Hotel Lobby by 6:15 pm to walk to dinner. Wear comfortable shoes.



From JW Marriott (point A), head southeast on Canal Street toward Chartres Street (about 2 minutes, 0.1 miles). Turn left onto Decatur Street. Go 0.4 miles (about 6 minutes). Jax Brewery, 600 Decatur Street (point B) will be on the right.

WEDNESDAY, JULY 18, 2012

7:00 am – 7:45 am

CONTINENTAL BREAKFAST

Ile de France II Foyer

~ 7:45 am – 9:15 am ~

SESSION 11: SOCIAL MEDIA USE AND MISUSE - HOW TO BE HIP AND COOL WHILE MANAGING EMPLOYEE AND EMPLOYER RIGHTS AND RESPONSIBILITIES

Ile de France II

Tamar Graham Scott, Oklahoma Department of Transportation, *presiding*
Sponsored by Committee on Transportation Law, and Committee on Transit Law and Intermodal Transportation Law

Creation and Effective Use of Social Media in the Delivery of Transportation Programs

Cathy St. Denis, Federal Highway Administration

Legal Implications in Developing and Operating Social Media Programs – The Federal Perspective

Adam Sleeter, Federal Highway Administration

Practical and Legal Considerations – The Local and Private Sector Perspectives

Bruce M. Smith, Apperson Crump PLC

9:15 am – 9:30 am

BREAK

Ile de France II Foyer

9:30 am – 11:00 am

SESSION 13: ORGANIZATIONAL CONFLICTS OF INTEREST AND AN ELECTION YEAR UPDATE ON THE HATCH ACT

Ile de France II

Bruce M. Smith, Apperson Crump PLC, *presiding*
Sponsored by Legal Resources Group (AL000)

Organizational Conflicts of Interest. Working with Multiple Clients -- Special Issues When Representing Government Entities

Geoffrey Petrov, Nossaman; Y. Nicole Montgomery, Metro of Harris Country, Texas

Session 13 - continued

**Hatch Act: Restrictions on Political Activity by
Employees of State and Local Transportation
Agencies during Campaign 2012**

Scott Biehl, Federal Transit Administration

**Review of Applicable Rules of Professional
Responsibility**

Bruce M. Smith, Apperson Crump PLC

11:00 am – 11:15 am

CLOSING REMARKS & ADJOURNMENT

Ile de France II

11:45 am – 2:00 pm

GROUP COUNCIL MEETING

Closed Meeting

Maurepas

**Visit the TRB Calendar to view Upcoming Conferences at
<http://www.TRB.org/Calendar/Calendar.aspx>**



Keep this Statement
for your records.

51ST Annual Workshop on Transportation Law

ATTENDANCE RECORD FORM

The attendance record form is **NOT** an official certificate of attendance and **SHOULD NOT** be submitted to the sponsor or the MCLE state board as one. This form should **ONLY** be used as a means to document your time in each workshop session. Please keep this for your records. To receive your Continuing Legal Education (CLE) Certificate of Attendance, please visit www.TRB.org/Conferences/Law2012.aspx and click on the “Request Forms” tab. If you have questions, please feel free to contact Joanice L. Cole at JCCole@NAS.edu.

***** Reminder: Introductory remarks, keynote addresses, business meetings, breaks, receptions, etc. are not to be included in the computation of credit. *****

SESSIONS					
DAY	TIME	TITLE	SESSION HOURS BASED ON 60 MINUTES	SESSIONS HOURS BASED ON 50 MINUTES	HOURS
MONDAY	8:15 AM - 10:15 AM	SESSION 1	2.00	2.40	
	10:45 AM – NOON	SESSION 2	1.25	1.50	
	1:30 PM – 3:00 PM	SESSION 3 OR 4	1.50	1.80	
	3:15 PM - 4:45 PM	SESSION 5 OR 6	1.50	1.80	
TUESDAY	8:00 AM - 9:30 AM	SESSION 7 OR 8	1.50	1.80	
	9:45 AM - 11:15 AM	SESSION 9 OR 10	1.50	1.80	
WEDNESDAY	7:45 AM - 9:15 AM	SESSION 11 OR 12	1.50	1.80	
	9:30 AM - 11:00 AM	SESSION 13 (ETHICS)	1.50	1.80	
TOTAL CREDITS					



Dear Legal Workshop Participant:

Thank you for attending the 51st Annual Workshop on Transportation Law, held in New Orleans, LA, July 15-18, 2012. As a participant of this workshop, you are entitled to either a complimentary volume of Selected Studies in Transportation Law or up to three (3) Legal Research Digests. Please visit www.TRB.org/Conferences/Law2012.aspx and click on the "Request Forms" tab, to reserve your complimentary copy or copies. Please keep this form as a reference. Please **do not email, fax, or return this form to TRB, as it will be discarded**. If you have questions, please feel free to contact Joalice L. Cole at jcole@nas.edu.

PARTICIPANTS CAN ORDER UP TO THREE (3) LEGAL RESEARCH DIGESTS OR ONLY ONE (1) VOLUME OF SELECTED STUDIES IN TRANSPORTATION LAW (SSTL)

*Part A. Please only select one (1) Selected Studies in Transportation Law (SSTL) Volume
Volume 1 Construction Contract Law
Volume 3 Environmental Law & Transportation 2010 Supplement
Volume 4 Tort Liability of Highway Agencies
Volume 5 Transit Law
Volume 6 Transit Labor Decisions
Volume 7 Transit Charter Bus Service
Volume 8 Transportation Law & Government Relations

**SSTL will be provided in CD-ROM*

OR

Part B. Please select up to three (3) publications
NCHRP LRD 56 The Ramifications of Post-Kelo Legislation on State Transportation Projects
NCHRP LRD 57 Tort Liability Defense Practices for Design Flexibility
TCRP LRD 38 Legal Aspects Relevant to Outsourcing Transit Functions Not Traditionally Outsourced
TCRP LRD 39 Competition Requirements of the Design/Build, Construction Manager at Risk, and Public-Private Partnership Contracts—Seven Case Studies

If you would like to **PURCHASE** additional copies of the Selected Studies in Transportation Law Volumes and/or the Legal Research Digests, please contact the Transportation Research Board's Bookstore at <http://books.trbbookstore.org/> or call direct at (202) 334-3213 or by email TRBSales@nas.edu. Thank you.

Legal Resources Executive Board

- James S. Thiel, Chair**, *General Counsel, Wisconsin Department of Transportation, Madison, Wisconsin*
James B. McDaniel, *Legal Resources Group Secretary, Transportation Research Board*
Shelly R. Brown, *Principal, Shelly Brown Associates, Seattle, Washington*
Dorval R. Carter, Jr., *Chief Counsel, Federal Transit Administration (FTA), Washington, District of Columbia*
Edward S. Harris, *Principal Counsel and Assistant Attorney, Maryland State Highway Administration, Baltimore, Maryland*
Thomas P. Holian, III, *Deputy Chief Counsel, Federal Highway Administration (FHWA), Washington, District of Columbia*
James H. Isonhood, *Special Assistant Attorney General, Mississippi Office of the Attorney General, Jackson, Mississippi*
Katie K. Kelly, *Volpe Center Chief Counsel, Research and Innovative Technology Administration (RITA), Cambridge, Massachusetts*
Mark G. Kelsey, *Director of Public Service Department, City of Columbus, Columbus, Ohio*
Edward V.A. Kussy, *Partner, Nossaman, Guthner, Knox, and Elliott LLP, Washington, District of Columbia*
Pamela S. Leslie, *General Counsel, Miami-Dade Expressway Authority, Miami, Florida*
Janet L. Myers, *Assistant Chief Counsel, Federal Highway Administration, Washington, District of Columbia*
Robin M. Reitzes, *Deputy City Attorney, San Francisco City Attorney's Office, San Francisco, California*
Frederick H. Schranck, *Deputy Attorney General, Delaware Department of Transportation, Dover, Delaware*
Tamar Graham Scott, *Deputy General Counsel, Oklahoma Department of Transportation, Oklahoma City, Oklahoma*
Alla C. Shaw, *Special Counsel, Federal Highway Administration (FHWA), Washington, District of Columbia*
Robert J. Shea, *Assistant Chief Counsel, Pennsylvania Department of Transportation*
Bruce M. Smith, *Member, Apperson, Crump and Maxwell, PLC, Memphis, Tennessee*
Margaret N. Strand, *Partner, Venable, LLP, Washington, District of Columbia*
Carlos C. Sun, *Assistant Professor, University of Missouri, Columbia, Columbia, Missouri*
Fred R. Wagner, *Chief Counsel, Federal Highway Administration (FHWA), Washington, District of Columbia*

AN INVITATION TO BECOME INVOLVED IN ONE OF TRB'S LEGAL COMMITTEE

The Legal Resources Group consists of the Executive Board and seven committees that propose research, share research findings, sponsor special activities, and provide a forum for transportation professionals to discuss present and future legal resources-related transportation issues. The chairs of each of the committees are members of the Legal Resources Group Executive Board, who along with the group chair and other Legal Resources Group Executive Board members provide general oversight of the activities within the group.

- *AL000 Legal Resources Group
- *AL010 Transportation Law
- *AL020 Transit and Intermodal Transportation Law
- *AL030 Contract Law
- *AL040 Emerging Technology Law
- *AL050 Environmental Issues in Transportation Law
- *AL060 Eminent Domain and Land Use
- *AL070 Tort Liability and Risk Management

For information on how to join, please contact James B. McDaniel at (202) 334-3209 or by email at JMcdaniel@NAS.edu.

MARK YOUR CALENDARS



Transportation Research Board 92nd Annual Meeting

January 13–17, 2013 ■ Washington, D.C.

PLAN NOW TO ATTEND THE TRB 92ND ANNUAL MEETING!

The Transportation Research Board (TRB) 92nd Annual Meeting will be held in Washington, D.C. at the Washington Marriott Wardman Park, Omni Shoreham, and Washington Hilton hotels. The information-packed program will attract more than 11,000 transportation professionals from around the world to Washington, D.C., January 13-17, 2013.

The TRB Annual Meeting program covers all transportation modes, with more than 4,000 presentations in nearly 650 sessions and workshops addressing topics of interest to all attendees—policy makers, administrators, practitioners, researchers, and representatives of government, industry, and academic institutions. A number of sessions and workshops will address the spotlight theme for 2013: **Deploying Transportation Research - Doing Things Smarter, Better, Faster.**

Call for Papers

The standing committees have issued calls for papers for the TRB 92nd Annual Meeting and the Transportation Research Record: Journal of the Transportation Research Board. While papers addressing any relevant aspect of transportation research will be considered, some committees are soliciting papers in specific subject areas to help potential authors identify topics for their papers. Committees will be producing calls for papers through June, so authors should visit this site periodically.

Paper Submission

This site is OPEN for submission of papers for presentation at the TRB Annual Meeting and/or publication in the Transportation Research Record: Journal of the Transportation Research Board.

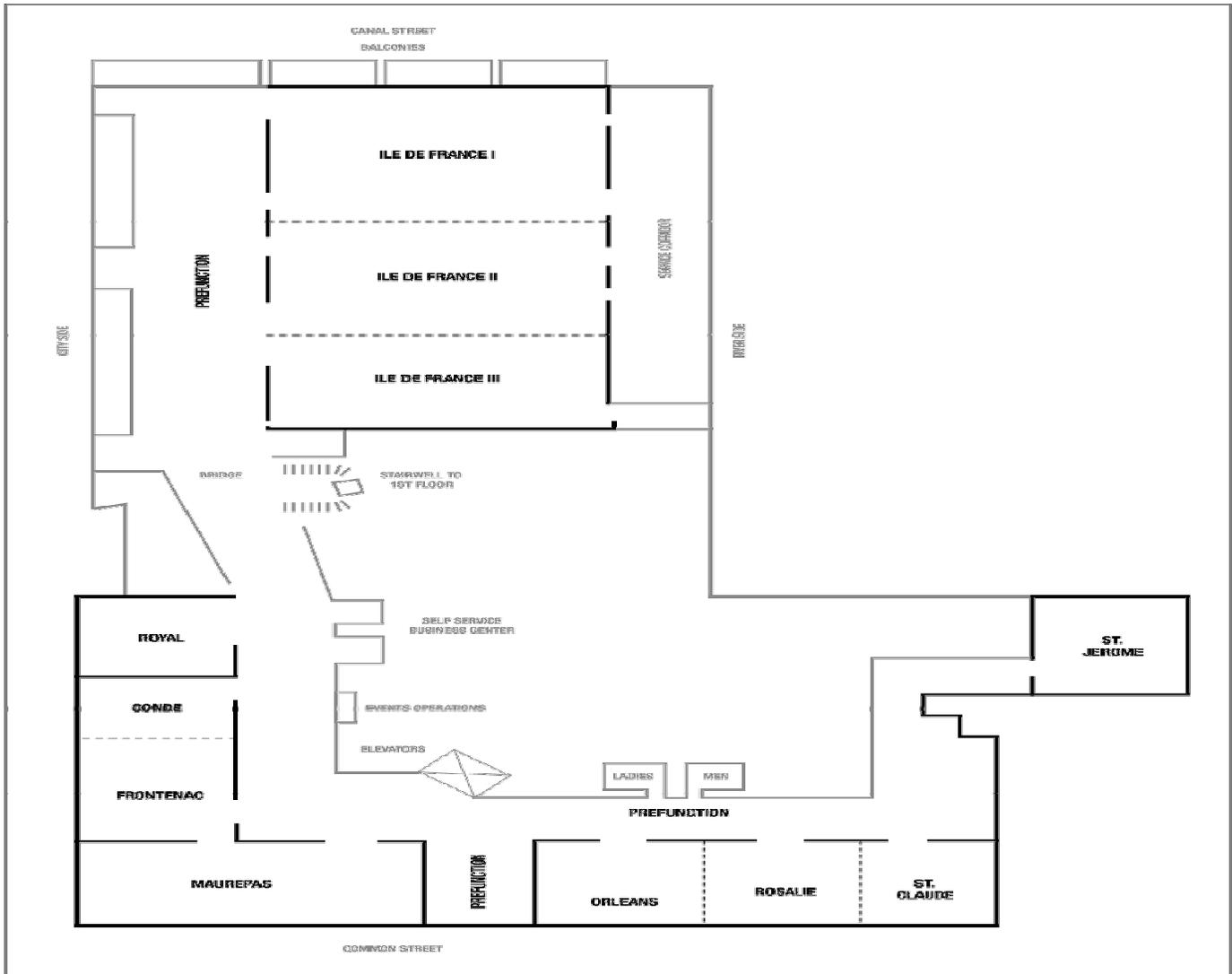
Registration

Registration fees are now posted, which you can use to budget for your participation. Be sure to mark your calendar to visit this website in September when registration opens.

Registration is required for all Annual Meeting attendees, including those who register to attend any workshop, visit the exhibits, or take advantage of services provided onsite such as the shuttle and the Employment Opportunities room.

www.TRB.org/AnnualMeeting

JW MARRIOTT NEW ORLEANS



TRANSPORTATION RESEARCH BOARD OF THE NATIONAL ACADEMIES

The **Transportation Research Board** is one of six major divisions of the National Research Council, which serves as an independent adviser to the federal government and others on scientific and technical questions of national importance. The National Research Council is jointly administered by the National Academy of Sciences, the National Academy of Engineering and the Institute of Medicine. The mission of the Transportation Research Board is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal. The Board's varied activities annually engage about 7,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation.

www.TRB.org

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TRANSPORTATION RESEARCH BOARD *OF THE NATIONAL ACADEMIES*

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www.TRB.org