



**PRELIMINARY PROGRAM**

**53rd Annual Workshop  
on  
Transportation Law**



**Sunday, July 13 – Wednesday, July 16, 2014**

**THE FAIRMONT SAN FRANCISCO**

**950 Mason Street  
San Francisco, CA**

# 53<sup>RD</sup> 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, Frederick Schranck*  
*Committee on Transit & Intermodal Transportation Law, Chair, Dorval Carter*  
*Committee on Contract Law, Chair, Edward S. Harris*  
*Committee on Emerging Technology Law, Chair, Bryant Walker Smith*  
*Committee on Environmental Issues in Transportation Law, Chair, Janet Myers*  
*Committee on Eminent Domain & Land Use, Chair, William James*  
*Committee on Tort Liability & Risk Management, Chair, Pamela Leslie*

### **Transportation Research Board Staff**

Mark Norman, Director, Technical Activities  
James B. McDaniel, Counsel for Legal Research Projects  
Joanice L. Johnson, Associate Program Officer  
Bruce Millar, 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 13), Tuesday evening social event (July 15), Monday through Wednesday continental breakfasts, and morning and afternoon coffee breaks. Additional tickets for the Tuesday social event may be purchased for each on-site; subject to availability

#### 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](http://www.TRB.org)

**Cover Photo: James R. Browning U.S. Court of Appeals Building**

# Agenda at a Glance

	Sunday, July 13	Monday, July 14	Tuesday, July 15	Wednesday, July 16		
7:00 AM				Continental Breakfast	7:00 AM	
7:15 AM					7:15 AM	
7:30 AM					7:30 AM	
7:45 AM		Continental Breakfast	Continental Breakfast		7:45 AM	
8:00 AM		Welcome		Registration Open	8:00 AM	
8:15 AM		Session 1	Session 7		Session 8	8:15 AM
8:30 AM						Session 9
8:45 AM			Break		Break	
9:00 AM		Session 2				Break
9:15 AM			Break		Break	
9:30 AM		Session 14				Break
9:45 AM			Break		Break	
10:00 AM		Session 14				Break
10:15 AM			Closing		Break	
10:30 AM		Break				Break
10:45 AM			Break		Break	
11:00 AM		4 Concurrent Lunch Committee Meetings (AL070, AL010, AL020, AL040)				3 Concurrent Lunch Committee Meetings (AL060, AL050, AL030)
11:15 AM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	
11:30 AM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		11:30 AM
11:45 AM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	11:45 AM
Noon		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		Noon
12:15 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	12:15 PM
12:30 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		12:30 PM
12:45 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	12:45 PM
1:00 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		1:00 PM
1:15 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	1:15 PM
1:30 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		1:30 PM
1:45 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	1:45 PM
2:00 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		2:00 PM
2:15 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	2:15 PM
2:30 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		2:30 PM
2:45 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	2:45 PM
3:00 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		3:00 PM
3:15 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	3:15 PM
3:30 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		3:30 PM
3:45 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	3:45 PM
4:00 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		4:00 PM
4:15 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	4:15 PM
4:30 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		4:30 PM
4:45 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	4:45 PM
5:00 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		5:00 PM
5:15 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	5:15 PM
5:30 PM		Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)		5:30 PM
5:45 PM			Group Council Meeting (Closed Meeting)		Group Council Meeting (Closed Meeting)	5:45 PM
6:30 PM						
7:00 PM	Reception		Dinner		7:00 PM	
7:30 PM					7:30 PM	
8:00 PM					8:00 PM	
8:30 PM					8:30 PM	

## SUNDAY, JULY 13, 2014

3:30 PM – 6:00 PM  
**REGISTRATION**

6:30 PM – 8:00 PM  
**RECEPTION**

## MONDAY, JULY 14, 2014

7:30 AM – 5:00 PM  
**REGISTRATION**

7:30 AM – 8:00 AM  
**CONTINENTAL BREAKFAST**

8:00 AM – 8:15 AM  
**WELCOME**

James S. Thiel, Chair, Legal Resources Executive Board

Mark R. Norman, Director, Technical Activities Division, Transportation Research Board

8:15 AM – 9:45 AM

### **SESSION 1: LEGAL ISSUES CONFRONTING HIGHWAYS, TRANSIT AND TRANSPORTATION**

James S. Thiel, Consultant, *presiding*

*Sponsored by the Legal Resources Group (AL000)*

#### **Panel Discussion**

Dorval R. Carter, Federal Transit Administration; Thomas P. Holian, Federal Highway Administration; James S. Thiel, Consultant; and James LaRusch, American Public Transportation Association

9:45 AM – 10:00 AM  
**BREAK**

10:00 AM – 11:30 AM

### **SESSION 2: LEGAL HIGHLIGHTS FROM TRB'S VEHICLE AUTOMATION WORKSHOP**

Ellen L. Partridge, Research and Innovative Technology Administration, *presiding*

*Sponsored by the Emerging Technology Law (AL040)*

Speakers will address the implications of their topic for different modalities of automated vehicles including public transit, commercial trucking, passenger and military vehicles if appropriate.



**Session 2 Continued...**

**Update from National Highway Traffic Safety Administration (NHTSA)**

Jesse Chang, National Highway Traffic Safety Administration

**Privacy Issues Encountered by Toll Authorities and Their Applicability to Connected/Automated Vehicles**

Thomas J. Bamonte, North Texas Tollway Authority

**Automated Vehicles Liability Issues and the RAND Report**

James M. Anderson, RAND Corporation

**Automated Vehicle Insurance Issues**

Eric Williams, Insurance Institute for Highway Safety

11:30 AM – 1:45 PM

**LUNCH COMMITTEE MEETINGS** (*lunch provided*)

**TORT LIABILITY & RISK MANAGEMENT (AL070)**

**TRANSPORTATION LAW COMMITTEE (AL010)**

**TRANSIT & INTERMODAL TRANSPORTATION LAW COMMITTEE (AL020)**

**EMERGING TECHNOLOGY LAW COMMITTEE (AL040)**

2:00 PM – 3:30 PM

**SESSION 3: THE CHANGING LANDSCAPE OF DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AND SMALL BUSINESS SET ASIDES**

Edward S. Harris, Maryland State Highway Administration, *presiding*

*Sponsored by the Contracts Law Committee (AL030)*

Speakers will address and discuss the implications of recent legal challenges, how the U.S. Department of Transportation response to the Office of Inspector General report will affect state and local agencies, narrowly tailored programs based on disparity studies, and other issues relating to the federal DBE and small business programs.

**Panel Discussion**

Colette Holt, Colette Holt & Associates; TBD, Federal Transit Administration; and Virginia Harmon, San Francisco Municipal Transportation Agency

**SESSION 4: THE STATUTES AND RULEMAKINGS—ASSET MANAGEMENT AND SAFETY IN PUBLIC TRANSPORTATION**

Scott Biehl, Federal Transit Administration, *presiding*

*Sponsored by the Transit and Intermodal Transportation Law Committee (AL020)*

**Panel Discussion**

Candace Key and Scott Biehl, Federal Transit Administration

3:30 PM – 3:45 PM

**BREAK**

3:45 PM – 5:15 PM

**SESSION 5: BUY AMERICA FOR UTILITIES**

Eric Kerness, Kerness Consulting, *presiding*

*Sponsored by the Contract Law Committee (AL030)*

Speakers from the federal, state and utility perspectives will discuss certification, problems and buy America requirements and its effect on transportation delivery.

**Federal Perspective**

Jomar Maldonado, Federal Highway Administration; and Mary Lee, Federal Transit Administration

**Utility Perspective**

Peter Ouborg, Pacific Gas and Electric

**State Perspective**

Alice Ramsey, California Department of Transportation

**SESSION 6: IDENTIFYING COST EFFECTIVE WAYS TO IMPROVE HIGHWAY SAFETY**

John M. Mason, Auburn University, *presiding*

*Sponsored by the Tort Liability and Risk Management Committee (AL070)*

This session will look at the use of modern quantitative and qualitative analytical methods by transportation agencies as an element of their enterprise risk management program with a goal toward improving highway safety and reducing exposure to tort liability.

**Panel Discussion**

John C. Milton, Washington Department of Transportation; Erin Ferguson, Kittelson & Associates, Inc.; and Douglas Johnson, California Department of Transportation

**TUESDAY, JULY 15, 2014**

7:30 AM – 3:00 PM

**REGISTRATION**

7:30 AM – 8:00 AM

**CONTINENTAL BREAKFAST**

8:00 AM – 9:30 AM

**SESSION 7: ISSUES ASSOCIATED WITH MULTIMODAL PROJECTS, INCLUDING NEPA**

Nancy-Ellen Zusman, Federal Transit Administration, *presiding*

*Sponsored by the Transit and Intermodal Transportation Law Committee (ALO20)*

This session will address the challenges associated with multi-modal projects, especially in the environmental review process. We will use the Columbia River Crossing project in Oregon/Washington and TIGER projects, as well as the Tappan Zee Bridge in New York for the discussion. This will be a “hands-on” discussion of such issues as to whose rules apply, what are the requirements when you have different agencies funding and implementing a project, and how to meet all the requirements.

**Panel Discussion**

Lawrence P. Hanf, Ken Dymond & Jack Gilbert, Federal Highway Administration; and Ted Uyeno, & Rita Maristch, Federal Transit Administration

**SESSION 8: CURRENT LEGAL CHALLENGES WITH CARGO SIZE, WEIGHT AND SAFETY**

Tamar Graham Scott, Oklahoma Department of Transportation, *presiding*

*Sponsored by the Transportation Law Committee (AL010)*

**Railroad Industry Perspectives: Safety of Crude-By-Rail Shipments**

Allison I. Fultz, Kaplan Kirsch & Rockwell LLP

**Specialized Transportation Perspective: Legal Issues in the Permitting and Moving of Oversize and Overweight Cargo**

Ray Morgan, Perkins Specialized Transportation Contracting

**State and Local Government Perspective: Transport Control of Fracking Sand and the Heavy Impact on Highways and Communities**

James Thiel, Retired Wisconsin Department of Transportation

**PHMSA Perspective: On Transportation of Shale Oil and Other Hazardous Materials**

Vasliki Tsanganos, United States of Department of Transportation

9:30 AM – 9:45 AM

**BREAK**

9:45 AM – 11:15 AM

**SESSION 9: HOW FEDERALIST ARE WE, ANYWAY? TRANSPORTATION LAW, MARIJUANA, AND THE CHANGING DRUG ENFORCEMENT ENVIRONMENT**

Atinuke O. Diver, Volpe National Transportation Systems Center, *presiding*  
*Sponsored by the Transportation Law Committee (AL010)*

Since the enactment of the Control Substances Act in 1970, 26 states and the District of Columbia have enacted legislation to decriminalize or legalize the “medicinal” and “recreational” uses of marijuana – a Schedule I drug prohibited for use by the US Department of Transportation’s Regulated Drug and Alcohol Testing Program and federal law. The tension between state and federal laws with regard to marijuana touches on issues of civil rights/liberties as well as the need to ensure the safety of the US transportation system and its travelers and operators. This panel will provide an overview of current marijuana issues related to transportation at both the state and federal level.

**Panel Discussion**

Patrice M. Kelly, United States Department of Transportation; Peggy Fulton Hora, Retired, National Highway Traffic Safety Administration; and Kathryn Stewart, Safety and Policy Analysis International

**SESSION 10: ARE YOU READY? WHAT’S INVOLVED IN TAKING OVER FEDERAL ENVIRONMENTAL REVIEW RESPONSIBILITIES**

Brett Gainer, Federal Highway Administration, *presiding*  
*Sponsored by the Committee on Environmental Issues in Transportation Law (AL050)*

The MAP-21 removed the limitation on the number of States that can take an assignment of FHWA NEPA and other environmental review responsibilities, and more States are considering the option. This session will cover which modal responsibilities can be assigned, changes due to MAP-21, how the assignment process works, and the practical and legal considerations in taking an assignment from the perspectives of the State’s lawyers and environmental practitioners.

**Panel Discussion**

Jomar Maldonado, Federal Highway Administration; David McCray & Dale Jones, California Department of Transportation; and Christopher Van Wyk, Federal Transit Administration

11:15 AM – 1:45 PM

**LUNCH COMMITTEE MEETINGS** *(lunch provided)*

**EMINENT DOMAIN & LAND USE COMMITTEE (AL060)**

**ENVIRONMENTAL ISSUES IN TRANSPORTATION LAW COMMITTEE (AL050)**

**CONTRACT LAW COMMITTEE (AL030)**



2:00 PM – 3:30 PM

**SESSION 11: WHAT'S NEW SINCE NASHVILLE? IMPLEMENTATION OF MAP-21 AND OTHER PROJECT DELIVERY EFFICIENCY INITIATIVES**

Fred R. Wagner, Beveridge & Diamond, *presiding*

*Sponsored by the Committee on Environmental Issues in Transportation Law (AL050)*

This session will cover FHWA, FTA, and CEQ regulations and guidance issued since July 2013. Topics will include the use of the new NEPA categorical exclusions for operational right-of-way and limited Federal assistance, the combined FEIS/ROD, programmatic agreements, efforts to better coordinate permit reviews, NEPA, and early acquisition options.

**Panel Discussion**

David McCray, California Department of Transportation; Janet Myers, Federal Highway Administration; Dana Nifosi, Federal Transit Administration; and Shannon Eggleston, American Association of State Highway and Transportation Officials

**SESSION 12: TRANSIT LAW UPDATE, BUS RAPID TRANSIT, AND STREETCARS**

Bruce M. Smith, Apperson Crump PLC and Shelly Brown, Brown & Associates, *presiding*

*Sponsored by the Transit & Intermodal Transportation Law Committee (AL020)*

**Bus Axle Weights -- When the Rubber Meets the Road**

Robin Reitzes, San Francisco City Attorney's Office

**Bus Rapid Transit (BRT) & Small Starts RTA Health Line**

Sheryl King-Benford, Greater Cleveland Regional Transit Authority

**Joint Development and Real Property—Recent Developments**

Christopher Hall, Federal Transit Administration

**Title VI Update**

Minming Wu Morri, San Francisco Bay Area Rapid Transit District

6:30 PM – 9:00 PM

**DINNER**

**WEDNESDAY, JULY 16, 2014**

7:00 AM – 7:45 AM

**CONTINENTAL BREAKFAST**

7:45 AM – 9:15 AM

**SESSION 13: IMPROVED BUSINESS PRACTICES FOR REAL PROPERTY ACQUISITION AND MANAGEMENT**

James H. Isonhood, Mississippi Office of Attorney General, *presiding*  
*Sponsored by the Eminent Domain and Land Use Committee (AL060)*

**Overview of NCHRP Project 20-84: Improved Business Practices For Real Property Acquisition and Management Under the Uniform Act**

Cesar A. Quiroga, Texas A&M Transportation Institute

**State Considerations for Changes to Real Property Acquisition and Management Practices**

James Kirk, Texas Department of Transportation

**Federal Perspective on Recommendations Provided in NCHRP Project 20-84**

Arnold Feldman, Federal Highway Administration

9:15 AM – 9:30 AM

**BREAK**

9:30 AM – 11:00 AM

**ETHICS SESSION**

**SESSION 14: THE ATTORNEY'S DUTY OF CONFIDENTIALITY**

Edward V.A. Kussy, Nossaman LLP, *presiding*  
*Sponsored by the Legal Resources Group (AL000)*

This session will explore the duty of confidentiality in the attorney client - relationship. Government agencies are pressed to operate transparently. New technology makes the creation and maintenance of important records much easier, but at the same time, the risk of both deliberate and accidental disclosures increases. We will consider such questions as: What is the scope of the duty of confidentiality? How does confidentiality differ from the attorney client and attorney work product privileges?

**Panel Discussion**

Bruce Smith, Apperson Crump PLC; Pamela Leslie, Transportation Management and Policy Consultants, and Thomas P. Holian, Federal Highway Administration



11:00 AM – 11:15 AM

**CLOSING REMARKS & ADJOURNMENT**

11:45 AM – 2:00 PM

**GROUP COUNCIL MEETING** (*Closed Meeting*)