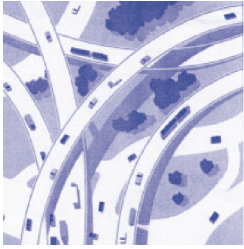


17th Annual Conference of the
National Association of State Highway
and Transportation Unions (NASHTU)



May 16-18, 2016

Washington, D.C.



WE BUILD THE ROADS

17th Annual Conference of the National Association of State Highway and Transportation Unions (NASHTU) 2016

The 17th Annual NASHTU Conference was held May 16-18, 2016 in Washington, D.C. NASHTU attendees heard remarks from **Reps. John Garamendi (D-CA) and Elizabeth Esty (D-CT)**, who are both Members of the House Transportation and Infrastructure Committee. In addition, NASHTU Members attended a fascinating panel presentation that included one of the attorneys who advised the California Teachers Association (CTA) on the Friedrichs' case, which challenged unions' rights to collect fees for representation. The U.S. Supreme Court in March affirmed the Ninth Circuit's ruling in favor of CTA by a non-precedent setting 4-4 tie vote, but the issue is expected to be raised again when a ninth Justice is confirmed to the Court. The panel also discussed ongoing threats to public sector unions, shared strategies for fighting legal challenges, and boosting union membership.

NASHTU attendees also heard more details about the Fixing America's Surface Transportation Act (FAST Act), the recently passed five-year surface transportation funding authorization. NASHTU celebrated a hard-won victory when the FAST Act was passed into law without outsourcing mandates or incentives despite repeated attempts by consulting firms and their Congressional allies to include such provisions.

On the Tuesday afternoon of the Conference, NASHTU members met with their states' Representatives and Senators in their Capitol offices to advocate safe and cost-effective transportation solutions. NASHTU also hosted a Capitol Hill Congressional Reception in the House Rayburn Building that was attended by more than a dozen Members of Congress and their staff.

Other conference speakers included representatives of the Federal Highway Administration, Transportation Trades Department, AFL-CIO, American Society of Civil Engineers, In the Public Interest, and many other public interest organizations.

NASHTU is advocating two legislative proposals that are designed to protect public safety and tax dollars as states undertake federally-funded transportation improvement programs.

The first is HR 1692 (Edwards), which would require **public employees to perform the construction inspection** on all state and local transportation projects that utilize federal funds. On transportation projects, construction inspectors are the eyes, ears, and voice of the public. Public inspectors ensure that construction standards are met, that projects meet safety requirements, and that the materials used will stand the test of time.

NASHTU's second legislative proposal would ensure taxpayers safe, high quality transportation services at the lowest cost to the taxpayers by requiring state and local transportation agencies to **prepare cost-comparison analyses prior to contracting for transportation services**. Increasingly, transportation agencies are spending hundreds of millions of federal dollars on private contracts for architectural, engineering, construction inspection and related transportation services without determining if these contracts are cost-effective, result in the construction of safe projects, or in any way serve the public interest. In state after state, independent and comparative analyses have determined that outsourcing engineering work and other transportation functions costs significantly more than doing the work with public employees.

About NASHTU

NASHTU's roots extend back to 1999 when a number of unions and employee associations representing engineers and related transportation workers employed by state transportation departments began to share information and discuss how to address common issues. NASHTU, the National Association of State Highway and Transportation Unions, has now grown into **a coalition of 38 unions and affiliates from 20 states and the District of Columbia representing hundreds of thousands of state and locally employed public transportation workers throughout the United States.**

The annual conferences have demonstrated that outsourcing for engineering, technical, and other transportation services is a problem in nearly every state. By coming together and sharing strategies and perspectives, NASHTU can help each member union be more successful in its fight to limit wasteful, overpriced outsourcing.

NASHTU Conference attendees have heard from a variety of speakers over the years including: Secretary of Transportation Ray LaHood, Former Transportation Secretary Norm Mineta, Deputy Secretary of Transportation John Porcari, Representatives John Mica, James Oberstar, Nick Rahall, Peter DeFazio, Don Young, Stephen Lynch, Elijah Cummings, Robert Filner,

Earl Blumenauer, William Pascrell, Donna Edwards, Timothy Walz, Judy Chu, John Garamendi, and Senators Amy Klobuchar, James Jeffords and Robert Menendez. Bud Wright, Executive Director of AASHTO, and Ed Wytkind, President of the AFL-CIO Transportation Trades Department have also addressed our Conference.

In 2002, NASHTU produced a highly acclaimed report, Highway Robbery, which focused on the problems of outsourcing (fraud, inefficiency, and waste) from around the country and brought them together in one document.

In 2007, NASHTU released Highway Robbery II, an update of the 2002 report that highlights the enormous problems, including delays in project delivery, cost overruns, and reduced project safety that have been created in recent years when transportation agencies unnecessarily outsource design, construction management, and inspection on transportation projects.

In recent years, NASHTU has sponsored legislative proposals designed to improve safety and reduce costs of surface transportation projects throughout the nation.

For more information, please visit NASHTU's website at www.nashtu.us or call 916-446-0584.

17th Annual Conference of the National Association of State Highway and Transportation Unions (NASHTU)

Monday, May 16 through Wednesday, May 18, 2016
Hyatt Regency Washington Capitol Hill

AGENDA

Monday, May 16, 2016 – Capitol Room B

- 8:30 a.m. Breakfast
- 9:00 a.m. **Welcoming Remarks – Robert Lumahan**, President-Elect, Professional Engineers in California Government (PECG)
- 9:15 a.m. **A New, Transparent Way of Prioritizing Transportation Project Selection**
Introduction: **Del. Jimmy Tarlau**, Maryland House of Delegates
- **Del. Mark Korman**, Maryland House of Delegates
- 10:00 a.m. **Friedrichs v. CTA: What Comes Next...**
Moderator: **Gerald James**, PECG
- **Jeffrey B. Demain**, Esq., Altshuler Berzon LLP
 - **Matthew Mayers**, Assistant Director, AFSCME International Organizing and Field Services
 - **David J. Strom**, Legal Counsel – American Federation of Teachers
- 11:00 a.m. BREAK
- 11:15 a.m. **Organized Labor's Battles on the Hill**
Introduction: **Dennis Houlihan**, AFSCME
Bill Samuel, Director of Government Affairs, AFL-CIO
- 11:30 a.m. **Congressional Staff Panel: FAST Act, Outsourcing Mandates/Incentives, and the Future of Transportation Funding**
Moderator: **Jeff Pavlak**, Legislative Representative, Transportation Trades Department, AFL-CIO
- **Joe Sheehy**, Legislative Director for Rep. Grace Napolitano (D-CA)
 - **Steven Carlson**, Legislative Director for Rep. Michael Capuano (D-MA)
 - **Emily Burns**, Legislative Director for Rep. John Garamendi (D-CA)
- 12:30 p.m. Lunch (Hosted)
- 1:30 p.m. **Panel Discussion: P3s in the States**
Moderator: **Dennis Houlihan**, AFSCME
- **Jeff Pavlak**, Transportation Trades Department, AFL-CIO
 - **Ryan Endean**, PECG
 - **Ted Toppin**, PECG
- 2:30 p.m. **Ed Wytkind**, President, Transportation Trades Department, AFL-CIO
Introduction: **Del. Jimmy Tarlau**, CWA (ret.)



AGENDA

- 3:00 p.m. **The Development of a Surface Transportation Authorization: A Behind the Scenes Look**
• **Jim Kolb**, Summit Strategies
• **James O’Keeffe**, O’Keeffe Strategies
- 3:30 p.m. **Rep. Peter DeFazio (D-OR)**, Ranking Member, House Transportation and Infrastructure Committee
Introduction: **Jody Frasier**, Association of Engineering Employees of Oregon (AEEO)
- 4:00 p.m. **Rep. Elizabeth Esty (D-CT)**, Member, House Transportation and Infrastructure Committee
Introduction: **Ned Statchen**, CSEA/SEIU Local 2001
- 4:30 p.m. BREAK
- 6:30 **NASHTU Group Dinner** – *We, The Pizza* (305 Pennsylvania Avenue, SE)

Tuesday, May 17, 2016 – Capitol Room B

- 8:00 a.m. Breakfast
- 8:30 a.m. **John Porcari**, Former Deputy Secretary of U.S. DOT, Current Co-Chair of Infrastructure Group for Hillary Clinton Campaign
Introduction: **Jim Kolb**, Summit Strategies
- 9:00 a.m. **Good Government – Exposing P3 Myths**
Moderator: **Dennis Houlihan**, AFSCME
• **Shar Habibi**, In The Public Interest
• **Kevin DeGood**, Center for American Progress
- 10:00 a.m. **Rep. John Garamendi (D-CA)**, Member, House Transportation and Infrastructure Committee
Introduction: **Ted Toppin**, PECG
- 10:30 a.m. **ASCE Report – Failure to Act: Closing the Infrastructure Investment Gap for America’s Economic Future**
• **Brian Pallasch**, Managing Director of Government Relations and Infrastructure Initiatives, American Society of Civil Engineers
- 11:00 a.m. BREAK
- 11:30 a.m. **Lobbying 101: Making the Most Out of Your Capitol Hill Visits**
• **Jim Kolb**, Summit Strategies
• **Ted Toppin**, PECG
- 12:00 p.m. Lunch (On Your Own)
- 1:00-5:00 p.m. **Lobbying on Capitol Hill**
- 5:30-7:30 p.m. **Congressional Reception** – Rayburn House Office Building, Room B-354

AGENDA

Wednesday, May 18, 2016 – Capitol Room B

- 8:00 a.m. Breakfast (Hosted)
- 8:30 a.m. **Gregory Nadeau**, Administrator, Federal Highway Administration
Introduction: **Ted Toppin**, PEGC
- 9:00 a.m. **Rep. Jared Huffman (D-CA)**, Member, House Transportation and Infrastructure Committee
Introduction: **Ted Toppin**, PEGC
- 9:30 a.m. **Workshop: What's Next for Us?**
Facilitators: **Dennis Houlihan and Jon Haines**, AFSCME
- 10:30 a.m. **Lobby Day Reports**
Moderator: **Nadine Westcott**, PEGC
- 11:00 a.m. **Action Plan for NASHTU for 2016-2017**
- **Dennis Houlihan**, AFSCME
 - **Joe Dorant**, MOSES
 - **Bill Ricci**, CWA 1032
 - **Nadine Westcott**, PEGC
- 11:30 a.m. **Adjournment**

17th Annual Conference of the National Association of State Highway and Transportation Unions (NASHTU) CONGRESSIONAL RECEPTION



Rep. Eleanor Holmes Norton (D-DC)



Rep. Rick Nolan (D-MN) with members of the Minnesota Government Engineering Council (MGEC).



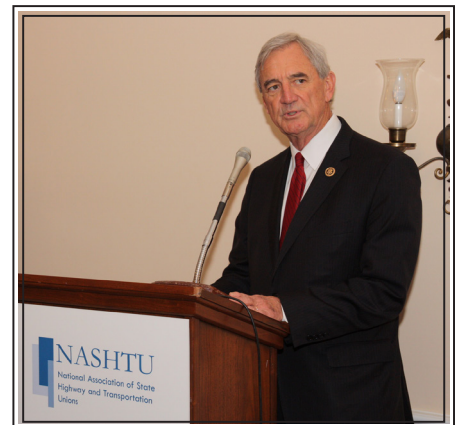
Rep. Ruben Gallego (D-AZ)



Rep. Grace Napolitano (D-CA)



Reps. Grace Napolitano, Judy Chu, and Alan Lowenthal with members of the Professional Engineers in California Government (PECG).



Rep. Rick Nolan (D-MN)

17th Annual Conference of the National Association of State Highway and Transportation Unions (NASHTU) CONGRESSIONAL RECEPTION



Rep. Alan Lowenthal (D-CA)



Rep. Derek Kilmer (D-WA) with NASHTU's Washington delegation from PTE Local 17.



Rep. Brendan Boyle (D-PA)



Congressman Ruben Gallego (D-AZ) with members of the CSEA/SEIU Local 2001.



Rep. Scott Perry (R-PA)



Rep. Bill Foster (D-IL)

2016

17th Annual Conference of the National Association of State Highway and Transportation Unions (NASHTU) PROCEEDINGS

Introductions and Welcomes

Robert Lumahan, PEGC, gave the opening remarks at the 17th Annual NASHTU Conference. NASHTU is the united voice for tens of thousands of state and local workers who provide cost-effective, safe transportation projects for taxpayers. For the first time in many years, Congress passed a long-term surface transportation authorization this past December. As we expected, there were repeated efforts to insert outsourcing mandates and incentives into the bill. NASHTU successfully fought back these efforts with help from member unions in California, Connecticut, Massachusetts, New Jersey, New York, Oregon, and Washington. In addition, NASHTU is supporting HR 1692 (Edwards), which would require construction inspection to be performed by public employees, and other good government policies that ensure that transportation projects are delivered safely and cost-effectively.



Robert Lumahan



Del. Marc Korman

Marc Korman, Maryland State Delegate, discussed a new Maryland law that requires the Department of Transportation to implement a scoring system that provides clarity in how the MDOT chooses projects to include in the six-year Consolidated Transportation Plan (CTP). Maryland has Democratic majorities in both legislative houses and, in 2014, elected a Republican Governor, Larry Hogan. In 2015, the Hogan Administration prioritized some rural projects over other projects that had long been in the CTP. The lack of transparency in the decision making process left it open to criticism that those decisions were based on political considerations rather than sound transportation policy. To counter this, the Maryland Legislature introduced the Maryland Transportation Investment Decisions Act. The bill requires the DOT to set up a transparent process to score transportation projects based on nine categories, including safety/security, system preservation, quality of service, environmental stewardship, community vitality, economic prosperity, equitable access to transportation, cost-effectiveness, and local priorities. This will allow the public to see how different projects were scored and if the DOT prioritizes a project with a lower score, they will have to provide a rationale explaining the decision. The bill passed the Maryland Legislature despite the Governor's opposition and had enough legislative support to override the Governor's veto. The DOT has until the middle of 2017 to implement the new transportation scoring system.

Panel Discussion: Friedrichs v. CTA: What Comes Next...

The panel was moderated by Gerald James, who is Legal Counsel for the Professional Engineers in California Government (PEGC).

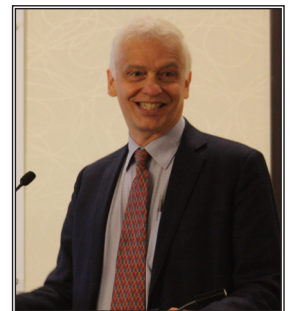
Jeffrey Demain, Esq., Altshuler Berzon LLP, was part of the legal team that represented union defendants California Teachers Association, et al., (CTA), in the Friedrichs case. He discussed fair share fees and the difference between an "opt-out" system, where bargaining unit members who choose not to join the union pay the full fair share fee unless they opt out, and an "opt-in" system, where they are charged only for expenses that are germane to collective bargaining unless



Jeffrey Demain

they opt in to paying for non-germane expenses. Most states that permit the collection of fair share fees allow an opt-out system. Demain also discussed the legal history of fair share fee challenges, including the Abood case in 1977. In essence, the decision in Abood recognized that unions represent all employees in the bargaining unit, not just their own members, and that in fairness, all who benefit from the services of a union should pay for that representation. In the recent Friedrichs case, CTA had won in the lower courts, and the case was ultimately appealed to the Supreme Court. Oral argument was presented earlier this year and, on the basis of that argument, the speculation among Court-watchers was that the Court was leaning against the unions' argument by a 5-4 vote. With the unexpected passing of Justice Scalia, however, the Court ended up affirming the Ninth Circuit's decision in favor of CTA by a non-precedent setting 4-4 tie vote. Friedrichs subsequently petitioned the Supreme court to hold the case for a rehearing until a ninth Justice could be confirmed, but that petition was ultimately denied, after the NASHTU Conference, on June 28, 2016.

David Strom, General Counsel for the American Federation of Teachers (AFT), explained the relevance of the U.S. Supreme Court decision. Essentially, the tie decision in the Friedrichs' case means that the lower court's decision in favor of CTA is affirmed without judgement. In other words, it is non precedential. Currently, there are over 30 cases in lower courts that challenge – based on first amendment issues – unions' rights over exclusive representation and the collection of fair share fees. It is important to remember that the U.S. Supreme Court can accept a case with a minimum of four votes so any of these cases can be accepted for review based on the makeup of the current U.S. Supreme Court. If these cases are accepted and ultimately decided in favor of those challenges to unions' collection of fair-share fees, then there is the question of how it is implemented. There is concern over possible retroactive claims for past fees for nonmembers up to the current statute of limitations, which in most states is two-three years. Strom also discussed the many anti-union organizations and their tactics to destroy unions. He mentioned the Freedom Foundation that is actually running an anti-organizing campaign against AFT in Portland, Oregon. In this case, the organization is contacting union members and asking them to drop their membership. They characterize dropping union membership as akin to getting a pay raise (due to the member no longer paying union membership dues). The solutions to these efforts are that unions need to have programs in place that facilitate member engagement, convert fee-payers to members, and increase the number of activists in the union. Unions should also be negotiating better contract language, including requiring union access to new hires, limiting the member drop period, requiring membership drops occur through the union and not the employer, and notification from employers of third party requests for employee lists. The biggest take away for unions is the realization that elections matter – perhaps 2016 more than ever.



David Strom



Matthew Mayers

Matthew Mayers, Assistant Director for AFSCME International Organizing and Field Services, spoke about AFSCME's recent membership drives and membership engagement. In 2014, AFSCME embarked on a successful membership drive that signed up over one hundred thousand new members over the course of the year. Building off of that challenge, AFSCME launched a new program called AFSCME Strong. In light of Friedrichs and other fair share fee challenges, AFSCME needed a strategy to convince people who have the option of representation while paying nothing (if fair share fees are abolished) to pay, or continue to pay, full membership dues. AFSCME Strong is about member engagement. It is about personal one-on-one conversations with AFSCME members to assess their commitment to the union and to explain how AFSCME is stronger with everyone together. AFSCME set a goal to reach most of its members over the next year. This is something that cannot be handled by staff alone so AFSCME has developed a program to train members to be member activists to talk to other members on behalf of the union. As of today, the effort has resulted in hundreds of thousands of conversations with AFSCME members and an overwhelming recommitment rate among members.

Bill Samuel, Director of Government Affairs, AFL-CIO, talked about recent legislative challenges facing the labor movement. While it is true that Congress is largely dysfunctional, they are still very capable of inflicting damage to both private and public sector labor unions. The AFL-CIO prioritizes jobs – protecting them, raising wages, benefits, and working conditions for workers. Labor is very concerned about the Trans Pacific Partnership (TPP). Trade is one of their only disagreements with the Obama Administration. President Obama has urged Congress to approve TPP. Currently, labor is concerned that Congress will take up the matter during the lame duck session, which occurs after the November election and prior to the new Congressional Session starting in January.



Bill Samuel

Another item of concern for labor currently is that Congress can affect the ways rules and regulations are implemented. They can do this through the annual appropriations bills that contain language prohibiting funding from being used to implement or enforce a regulation or using a Congressional Review Act, which is legislation that disapproves a rule or regulation. The legislation needs to be voted on within 60 session days of the rule or regulation being issued and is subject to a Presidential signature or veto. It is rarely successful. The last time it was used successfully was after OSHA promulgated a regulation dealing with ergonomic standards in November of 2000. With the 60 session day clock still ticking, Congress voted to disapprove the regulation in early 2001 and the new President George W. Bush, signed it into law. Labor is currently concerned about the usage of a Congressional review for the four upcoming rules and regulations including a silica dust standard, raising the salary cap within overtime rules, eliminating the potential for investment advisors giving workers conflicted advice about their retirement accounts, and a regulation that would close a loophole that allows employers to skirt disclosure requirements.

Congressional Staff Panel: FAST Act, Outsourcing Mandates/Incentives, and the Future of Transportation Funding

The panel was moderated by **Jeff Pavlak, Legislative Representative for the Transportation Trades Department, AFL-CIO**. Panel participants included **Joe Sheehy, Legislative Director for Rep. Grace Napolitano (D-CA)**, **Steven Carlson, Legislative Director for Rep. Michael Capuano (D-MA)**, and **Emily Burns, Legislative Director for Rep. John Garamendi (D-CA)**. Jeff started the panel discussion by giving a brief history of past battles involving outsourcing mandates and incentives.

Joe Sheehy, Steven Carlson, and Emily Burns discussed the many attempts by consulting engineers and their Congressional allies to insert the outsourcing incentive language in the bill. Once it became clear that the incentive would not make it into the bill, they instead pushed for a Sense of Congress provision that encourages states to use private engineers for services instead of public engineers. A Sense of Congress is simply a Congressional opinion on a policy matter and carries no weight of law. However, having a Congressional opinion encouraging the outsourcing of engineering work on transportation projects would not be good for NASHTU and the public sector workforce. That effort was defeated. The consulting engineers finally settled on a Sense of Congress that states the engineering industry exists and is available to work with States and local government agencies for the delivery of transportation programs. While this third attempt was more benign, NASHTU and our Congressional champions (including Reps. Grace Napolitano, Michael Capuano and John Garamendi) opposed the language on the floor. Nevertheless, the language was adopted into the House Surface Transportation Authorization.



Emily Burns, Steven Carlson and Joe Sheehy

Steven Carlson thanked NASHTU's Massachusetts affiliate, the Massachusetts Organization of State Engineers and Scientists (MOSES) for keeping their office apprised of the efforts to mandate or incentivize outsourcing and said that coordination was key to being able to keep the language as benign as it turned out.



Emily Burns

Emily Burns echoed Steven's comments and touched on the policy proposals that NASHTU had raised as counterpoints to the attempts to increase outsourcing. NASHTU had offered three proposals (cost comparison prior to outsourcing, public inspection, and competitive bidding for engineering contracts) which all ended up as proposed amendments to the surface bill.

Jeff Pavlak concluded the panel by discussing how those counterproposals went a long way to getting the consulting engineers' Congressional allies to back off of the outsourcing incentive language.

P3s in the States

Jeff Pavlak, Transportation Trades Department AFL-CIO, discussed the latest surface transportation bill and its limited impact on P3s. There were some positive changes in the law. The FAST Act requires public disclosure of the terms of the agreement and the value for money analysis, a post P3 analysis of whether the P3 delivered as promised, and disclosure to the federal government the public and private investment levels.



Jeff Pavlak

The Obama Administration has been very active on the P3 front. The Administration started the Build America Institute, which functions like a clearinghouse on P3s. TTD and other labor allies urged the Administration to acknowledge the workers involved with P3s. The Administration listened and created labor standards for P3s through the regulatory process. These standards include recommendations of protections for current workers and displacement remedies for workers.

Ryan Endean, Professional Engineers in California Government (PECG), said that PECG has started to study P3 projects that have received federal money all around the country. It is an effort to get to the "real" story of public-private partnerships, rather than the slanted positive spin by P3 proponents and state/federal DOTs.

PECG examined 30 P3 projects listed on the FHWA website. Of those 30 projects, 26 had significant problems ranging from excessive costs, extremely long concession terms, availability payments that transfer private risk, bankruptcies, and other issues.

Ted Toppin, PECG, discussed California's experience with P3s. A typical P3 consortium includes the design, build, finance, operation and maintenance of a project. Of those functions, the public sector – and public sector workers – usually perform design, finance through the issuance of public bonds, and the operations and maintenance under a traditional project delivery and maintenance mechanisms. P3s take those public functions and transfers them to the private sector.

California has had a checkered past with P3s, which were first authorized in 1989. Two examples of unsuccessful P3s in California include SR 91, which failed due to a non-compete clause, and SR 125, which failed because of less-than-expected toll revenue due to faulty traffic projections.

One important point to highlight is that the big companies who are capable of delivering P3s employ union labor in the building trades. This has the effect of splitting labor, whereby the public sector and private sector labor unions are advocating on opposite sides of P3s.

After the first P3 authorization expired, PEGC and its public sector allies were able to successfully beat back additional P3 authorization from 2000-2009. In 2009, at the height of the recession that left California with a \$40 billion budget deficit, Republican Governor Arnold Schwarzenegger was very motivated to authorize P3s as a project delivery method in California. He used the budget bill, which at the time required a two-thirds vote to pass, to force P3 authorization through the Legislature. It wasn't all bad news for PEGC and its allies. Working with California Legislative Leadership, PEGC was able to include provisions in the authorizing legislation that said Caltrans was responsible for preliminary design, environmental documents and construction inspection of P3s.



Ted Toppin

Under the 2009 authorization, the Presidio Parkway project was proposed as California's first P3 in decades. It used availability payments, rather than toll revenue, which is less risky because it provides the P3 consortium with a guaranteed payment structure. Presidio Parkway's contract guarantees annual \$35 million payments for 30 years, as a line item in California's budget.

When the Presidio Parkway project got underway, the project sponsor declined to follow the language in the 2009 authorization that directed Caltrans to be responsible for the construction inspection and other functions. PEGC sued and lost because the court reasoned that "responsible for performing" construction inspection does not necessarily mean actually "performing the work."

Since the Presidio Parkway, there have not been any P3 projects authorized in California. Currently, there is an authorization bill circulating through the California Legislature. PEGC is not opposed to a P3 renewal, but is seeking to fix the 2009 authorization's language so it can be enforced as intended. PEGC's language fix is heavily opposed by P3 proponents.



Ed Wytkind

Ed Wytkind, President of the Transportation Trades Department, AFL-CIO, praised NASHTU for its effective representation of state and local DOT workers. NASHTU started out as an idea and has now become a very well organized operation – as demonstrated during the FAST Act negotiations. There is a prevalence of anti-government ideology right now – from Scott Walker (Governor of Wisconsin) to other governors who seem to relish in the opportunity to destroy the middle class by promoting Right to Work and other tactics that make it harder for unions to collectively bargain on behalf of their members. There is also a lack of investment in transportation and other infrastructure. The Highway Trust Fund is essentially bankrupt. While the FAST Act was an improvement over previous spending levels, it was paid for by budgetary gimmicks rather than new revenue. Labor – TTD represents 32 labor organizations covering both public sector and private sector employees – needs to stick together and not allow the opposition to divide us to get victories. We saw this political ploy at work actively in the FAST Act. When people would ask TTD's

position about a certain provision that may negatively affect some non-affiliated unions, Wytkind told them that not only would TTD oppose the provision but that they would lead the charge in opposing the language. This is the way it has got to be. This is how labor wins.

What we have currently in transportation is a crisis – an investment crisis. A crisis always presents opportunities for bad policy provisions to advance. In the case of transportation, bad public-private partnerships are an example of this crisis governance. Surface transportation has always been a mixture of public and private sectors coming together to provide a public service. But some P3s attempt to take over some of the public functions in a way that is not in the public interest and destroys the workers who have traditionally performed those functions. Through labor's unified front, we were able to input some public interest P3 provisions in the FAST Act.

Ed concluded his remarks by giving a general overview of the Presidential election and candidates.

Panel Discussion: The Development of a Surface Transportation Authorization: A Behind the Scenes Look

Panel participants include **James O’Keeffe, who used to work for the Senate Environment and Public Works Committee under Senator James Inhofe (R-OK)** and now owns his own consulting firm, and **Jim Kolb, who worked for the House Transportation and Infrastructure Committee under both Representatives Jim Oberstar (D-MN) and Nick Rahall (D-WV)** and now works as a lobbyist for Summit Strategies.

Jim Kolb led off with a brief discussion of how bills get developed on the House side. The committee staff works for the Chair of the committee and the Chair, of course, has both constituent and policy interests. In addition to the Chair, the committee members and subcommittee members have their interests that they want drafted into a reauthorization. Interest groups and stakeholders from all political stripes also have their priorities that they want to see inserted into a surface reauthorization. It is the committee staff’s job to work through all of the priorities and come up with a draft bill. In the House, while the Transportation & Infrastructure Committee has traditionally been very bipartisan, ultimately the majority party rules and the minority party has very little influence or ability to stop provisions they don’t like. That being said, a majority vote requires 218 votes and just because you have one party in control of 218 House districts, doesn’t mean you will automatically have 218 yes or no votes. House T&I staff found that out the hard way when Democrats were in charge of the House. Under T&I Chairman James Oberstar, Democrats pushed a transportation authorization that would have required a gas tax increase. The tax increase was opposed by the Obama Administration and nearly all House Republicans, and the bill could not get the support of enough House Democratic members to push the House leadership to schedule the bill for floor consideration. After 2010 when Democrats lost the House, Chairman John Mica (R-FL) drafted a bill with no Democratic input or support but also lost support of a large number of Republicans and the House never considered a long-term reauthorization in the lead up to MAP-21. In the FAST Act, the new Chairman, Rep. Bill Shuster (R-PA), had the process work in a more bipartisan and collaborative way that allowed committee Democrats and Republicans to work together and compromise on the surface transportation authorization, and the bill passed the House by an overwhelming majority.



James O’Keeffe and Jim Kolb

James O’Keeffe detailed how surface bills get drafted in the Senate. In contrast to the House, the minority party in the Senate has considerable power due to the Senate rule that requires 60 votes for most bills to advance. While EPW committee members do have a say in drafting the surface bill, the Big Four – that is the Chair and Ranking Members of the committee and subcommittee – have all of the power in determining what goes in the final bill. It is their responsibility to build coalitions so they can get to a passable version of the bill. At the drafting stages, committee staff from both the majority and minority work to create compromises that each side can support. Similarly, once the bill gets to the Senate floor, the Chairman and ranking member have to work closely with the majority and minority leaders to ensure that the bill can receive the 60 votes necessary to overcome any potential filibusters to the bill or individual amendments. This gives individual Senators the ability to ensure that their priorities are considered and included in the bill.

Rep. Elizabeth Esty (D-CT) was elected in 2012 and pushed for a spot on the House Transportation and Infrastructure Committee. She spoke about the effectiveness of the committee and said it was primarily due to the bipartisan cooperation between members of the committee, starting with the Chair and Ranking Member. Under this bipartisan process, the House T&I Committee was able to successfully advance a Water Resources Reauthorization



Rep. Elizabeth Esty (D-CT)

in 2014 and the five-year FAST Act in late 2015. Rep. Esty also spoke about the urgent need for increased transportation investment. She asked NASHTU attendees to lobby their Members of Congress by using stories of what is going on in their states.

John Porcari, Former Deputy Secretary of U.S. DOT, Current Co-Chair of Infrastructure Group for Hillary Clinton Campaign, spoke in an unofficial capacity from the Hillary Clinton Infrastructure Team. Porcari gave a brief overview of Hillary Clinton's Infrastructure plan, which includes an additional \$275 billion in investment (for all infrastructure) over the current spending levels in the FAST Act, and the creation of a National Infrastructure Bank. The plan also builds on President Obama's permitting reform and Building America's Investment Center, and includes transparency and accountability provisions to protect the public interest.



John Porcari



Shar Habibi

Shar Habibi, In the Public Interest (ITPI), said that ITPI is a non-profit, research, policy and resource center focused on the issue of privatization of public services and assets. Its body of work covers all sectors including infrastructure, education, criminal justice, etc. Shar's presentation focused on P3s and the inherent problems with Value-for-Money (VfM) analyses. VfM is an analysis that project sponsors use to determine which procurement option is most cost-effective for the project's delivery. It compares the project costs, transaction costs and the quantification of risk-transfer of different procurement options (DBB, DB, P3, etc.) and results in a recommendation for the project's delivery. Several reviews of project VfM analyses showed that overwhelmingly, the project costs and transaction costs for P3s were much higher than the publicly-financed procurement option. However, by assigning value to the risk-transfer, P3s were almost always ruled the more cost-effective option. This is problematic because the quantification of risk is always an assumption. It is incredibly hard to predict costs for the duration of a 30-50 year contract. In addition, a review of VfM in Ontario Canada found no empirical data that would support the assigned value of risk. The same study in Ontario also found that the contracts governing these P3s prevented the risk from being transferred away from the public sector. VfMs also fail to take into account regional economic impacts, affordability and accessibility of the infrastructure, environmental impacts, and have no accountability or transparency measures.

Rep. John Garamendi, Member, House Transportation and Infrastructure Committee, said that in decades past, the role of government was seen as important. Government was viewed as a powerful tool to create future economic development and opportunities. Since the late 1970's, Republicans have started to adopt the view that government is bad and needs to be smaller. Congressman Garamendi believes that we need a strong government. He understands the importance of government employees and this view of "bad government" has a direct impact on the transportation community. Our infrastructure programs have been significantly diminished. Even when Congress is able to pass a long-term surface transportation bill, like the recently passed five-year FAST Act, it is not nearly enough money to even repair or maintain the current system much less expand it. What Congress should have done was take up for consideration the President's GROW America Act. President Obama's six-year, \$375 billion surface transportation proposal would have been a better outcome for the transportation industry. More revenue for transportation is definitely needed but we also need a different system to bring in the revenue. Raising the gas tax without an accompanying transition to a more fair way of collecting transportation fees from users is short-sighted. Rep. Garamendi concluded his remarks by stating that we need to shift the political narrative and that government/government workers are good, effective, efficient and foundational.



Rep. John Garamendi (D-CA)

Brian Pallasch, Managing Director of Government Relations and Infrastructure Initiatives, American Society of Civil Engineers (ASCE), spoke about ASCE's newest report, "Failure to

Act – Closing the Infrastructure Gap for America's Economic Future." ASCE rated America's infrastructure a D+ in its Infrastructure Report Card in 2013. The *Failure to Act* report explains what the D+ means to our economy. The report studied the impact in ten infrastructure sectors that are critical to economic prosperity. The report found that poor infrastructure affects businesses and productivity in every single sector of the economy and every region of the United States. Specifically, poor infrastructure can cause rising costs for business, a drop in business productivity, a drop in the U.S. GDP, a loss of jobs, and lost disposable income for families. The infrastructure gap – that is the gap between the investment infrastructure needs compared to current investment levels – has grown from \$1.2 trillion to \$1.4 trillion in the last few years. The report estimates that, through 2025, failing to close the infrastructure gap will cost the economy \$3.9 trillion as measured by GDP, cost businesses \$7 trillion in lost sales, and the loss of 2.5 million jobs in 2025. ASCE's report calls on Congress to invest an additional \$144 billion per year to prevent the economic consequences to families, business, and the economy.



Brian Pallasch



Greg Nadeau

Greg Nadeau, FHWA Administrator, began his remarks with a quote to put things in context.

"Our system of transportation is the greatest of any country in the world. But we must face facts. We must be realistic. We must know – and we must have the courage to let our people know – that our system is no longer adequate. During the next two decades, the demand for transportation in this country is going to more than double. But we are already falling far behind with the demand as it is. Our lifeline is tangled."

Nadeau said that while the quote is certainly applicable today, it was actually said 50 years ago by President Lyndon Johnson during the signing ceremony for the legislation that created the U.S. Department of Transportation. Once again we are finding ourselves in the same situation. The department has recently released a report entitled, *Beyond Traffic*, which looks at the forecasted population changes – estimated to increase by 70 million people – through 2045 and tries to anticipate what the transportation needs will be. It is critical that we start preparing for the future now so the U.S. can remain economically competitive.

In late 2015, Congress passed and President Obama signed the FAST Act. The FAST Act is the first long-term surface transportation authorization in 10 years. The five-year authorization has brought much needed stability to the transportation system and departments can plan longer term projects with some level of certainty. Now that the FAST Act has been enacted, it is time for Congress to focus on developing sustainable funding solutions for transportation. In the last couple of years, both the President and Congress have floated the idea of tax reform to sustainably fund transportation programs. However transportation is funded, it is important that these conversations are happening now and not waiting for the current surface transportation authorization to run its course.

Administrator Nadeau concluded his remarks with a brief description of the Every Day Counts Initiative. He described it as partnership with and between states to disseminate information about innovative solutions to help efficiently deliver transportation projects. He pointed to one example in the environmental documents and permitting. Through the use of Every Day Counts, the average time between the Environmental Impact Statement and the record decision dropped from 72 months to 42 months. He asked NASHTU attendees to think of the dollars saved by cutting project delivery times so significantly. Everyday Counts has proven the value of shared communication and strategy.

The 17th Annual NASHTU Conference closed with NASHTU attendees reporting on their Tuesday afternoon meetings on Capitol Hill. Dennis Houlihan, AFSCME, Bill Ricci, CWA 1032, Joe Dorant, MOSES, and Nadine Westcott, PECG, moderated a discussion with the group about the 2016-2017 NASHTU Action Plan.



Joe Dorant, Bill Ricci, and Dennis Houlihan