The House of Representatives has approved H.R. 3246, the Advanced Vehicle Technology Act of 2009 by an overwhelming majority of 312 to 114. The bill was authored by Science and Technology Committee Member Rep. Gary Peters (D-MI).

The bill provides the most comprehensive authorization to date for long-term sustained funding of public-private vehicle research, development, demonstration and commercial application activities in the Department of Energy (DOE) Vehicle Technologies Program. The bill authorizes $550 million for FY10, and increasing by $10 million every year through FY2014, for all vehicle technology programs at DOE. Of that total, $200 million will be for medium and heavy duty commercial vehicles, $30 million will be for user facilities and $20 million will be for a non-road pilot program (e.g., construction and agricultural vehicles). The remaining $300 million will go toward diverse passenger and commercial vehicle technologies, such as the hybridization or full electrification of vehicle systems to reduce gasoline use.

The existing Vehicle Technologies program at DOE has tended to shift its focus between individual technologies, as well as between passenger and heavy duty vehicles. The result has been a winner-take-all-approach to vehicle research where one technology receives the large bulk of federal funding, only to have funding reduced before the program can reasonably be expected to develop commercially viable technologies. The bill will give long-term sustained funding on a comprehensive research and development program focusing on a broad range of areas to ensure that the U.S. can develop the new cutting-edge, commercially viable vehicle technologies of the future.

"From passenger cars to heavy duty long-haul trucks, we are all aware of the economic, environmental, and strategic importance of diversifying our nation’s vehicle sector through innovation in cleaner and more efficient technologies," said Science and Technology Committee Chairman Bart Gordon (D-TN). "However, the current economic situation has made it all the more difficult for companies to invest in the research and technology development to get us there. Department of Energy programs play an invaluable role in filling this critical gap. This bill provides a critical foundation of support to ensure U.S. leadership in developing and producing the next generation of advanced vehicle technologies."

"There is a global competition right now to determine which countries will produce the cars and trucks of the future," said Peters. "There is no doubt that in the years ahead more Americans will be driving hybrids, plug-in hybrids, battery electric vehicles, and cars and trucks powered by hydrogen fuel cells. The only question is whether these new technologies will be researched, developed, and manufactured here in the United States creating American jobs or whether this technology will be built overseas. The Advanced Vehicle Technology Act will help ensure that the American automobile industry will continue to be globally competitive, and that we as a nation will not trade our dependence on foreign oil for a dependence on foreign batteries and other emerging technology."


The bill has been endorsed by: General Motors, Ford Motor Company, Chrysler, the United Autoworkers, the National Association of Manufacturers, the Motor and Equipment Manufacturers Association, Daimler, Magna International, Delphi, ArvinMeritor, Robert Bosch LLC, Caterpillar, Dueco Odyne, Achates Power, EcoMotors, the Engine Manufacturers Association, the Connected Vehicle Trade Association, the Alliance of Automobile Manufacturers, Natural Resources Defense Council, U.S. Chamber of Commerce, the Sierra Club and the League of Conservation Voters.

The bill was marked up by the Energy and Environment Subcommittee on July 21st and the Full Committee on July 29th.

For more information, please see the Committee’s website, http://science.house.gov/.

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New Impact Factor: Journal of Intelligent Transportation Systems

Dr. Asad Khattak is editor of the Journal of Intelligent Transportation Systems (JITS). He is delighted to announce that JITS has received an impact factor of 1.031 for 2008. This places JITS as one of the highly ranked journals in the growing field of intelligent transportation systems. It is ranked 12th among Transportation Science and Technology Journals, based on 2009 Thomson Reuters, Journal Citation Reports. This result could not have come without the valuable contributions of the editors, authors, and reviewers.

Note that a high impact factor increases the visibility and awareness of journals, and it can drive up usage and increase journal distribution. An impact factor of 1 indicates that, on average, each article appearing in the journal is cited once. All papers appearing in JITS are available online at: http://www.tandf.co.uk/journals/titles/15472450.asp.

Find I-95 Corridor On Facebook

The I-95 Long Distance Trip Planning and Travel Time Web site, accessible at www.i95travelinfo.net, provides congestion maps and long distance travel times along the I-95 corridor, from New Jersey now to South Carolina. In keeping with the current trend to develop a presence online using social networking tools, the Trip Planning website now has a Facebook page. That page is available to anyone with a Facebook account.

The overall goal of creating this Facebook page is to provide an additional channel through which to disseminate information about the website. Images and project updates will be posted on this page, and feedback from interested users will be visible here as well.

UVA CTS Launches Transportation Professional Development Program

The Center for Transportation Studies at the University of Virginia is pleased to announce the launch of a new professional development training program.

The Transportation Professional Development Program (TPDP) is a comprehensive training program offering a wide range of courses to help today’s transportation engineers enhance knowledge in fundamental areas and develop technical skills necessary to accelerate advancement in their professional careers. The program is designed for mid to high level transportation engineers with several years of experience in either the public or private sector. Courses are offered throughout the state of Virginia and taught by UVA faculty. The program provides an ideal way for professional engineers to meet the continuing education requirements of licensure, with CEUs awarded to participants upon successful completion of each course.

The course offerings are grouped in five categories; Transportation Engineering, Project Management, Information Technology, Infrastructure Engineering, and Geotechnical Engineering.

For more information, please contact Saeed Eslambolchi, CTS Director of Research and Administration, at 434-924-6362 or se5q@virginia.edu.
Dulles Corridor Metrorail Project Construction Is Underway

Dulles Corridor Metrorail Project construction is underway from the East Falls Church to Wiehle Avenue in Reston. The heaviest construction is taking place in Tysons Corner, behind a dark green fence along Route 123 from Tysons Boulevard to International Drive where tunnel construction is underway at the eastern end of a 2,400-foot long tunnel that will carry the rail line from Route 123 to Route 7. Some of the tunnel construction equipment is being compared to giant, colorful Transponders.

Along the one-mile corridor of Route 7 from the Dulles Toll Road east to Route 123, service roads will disappear soon and major lane shifts will take place.

Preliminary construction is underway for the Wiehle Avenue Metrorail Station and for the Tysons East Station, the first of four stations to be built in Tysons Corner.

Piers are in place near the Dulles Connector Route and Route 66 intersection where the Dulles extension will break away from the Orange Line and I-66 and follow the Connector Road to Route 123 in Tysons Corner. Pile driving continues near the Pimmit Run and Magarity Road bridges.

Work is also taking place in the median of the Dulles International Airport Access Highway from west of Wiehle Avenue to east of Route 7.

Here is a look at what will take place in the construction area this fall:

Route 7 Service Roads to Disappear

Along Route 7 in Tysons
Traffic patterns will change permanently between Route 123 and the Dulles Toll Road:

• Major lane shifts are expected this Fall between Tyco and Spring Hill Roads and between Westpark Drive/Gosnell Roads and Route 123 where the Tysons West and Tysons Central 7 Stations will be built.
• Service roads along the east and westbound lanes of Route 7 will disappear.
• All mid-block left turns will be eliminated. Left turns will be allowed at signalized intersections: Westpark Drive/Gosnell Road, Spring Hill Road and Tyco Road.
• The ramp from southbound Route 123 to westbound Route 7 will be shifted.
• Left turns are no longer permitted into and out of Marshalls Drive.

Along Route 123 in Tysons

• Construction begins on the Tysons East Station at the northwest corner of Route 123 and Scotts Crossing Road, causing the loss of two of the four lanes on Scotts Crossing for three years. This site is adjacent to Capital One.
• Work will begin on the 2,400-foot tunnel that will carry the rail line from the northwest side of Route 123, under the Route 7/Route 123 interchange, to the median of Route 7 near the former Merchant’s Tire building and the Marshalls (Tysons Square Shopping Center).

Dulles Connector Road (Route 267)
• Pile driving will continue east from Route 123 to the I-66 interchange.
• New bridges will be built near Magarity and Idylwood Roads and at Pimmit Run.
• Equipment staging and lane closings continue from Route 123 east to I-66.

Dulles International Airport Access Highway (DIAAH)
• Clearing and grading from Reston Parkway eastward to Route 7 in the median of the DIAAH continues.
• Caissons and preliminary foundation work for the Wiehle Avenue Metrorail Station east of Wiehle Avenue in the median of the DIAAH continues.

Access to all businesses and residential communities will be maintained throughout Dulles Corridor Metrorail construction.

For general project information, visit www.dullesmetro.com or call (703) 572-0506. For construction emergencies only, call (877) 585-6789.

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By Glenn N. Havinoviski

Imagine, if you can…

Intelligent transportation systems are on their last legs in Virginia. There is no political support for congestion reduction measures that require any kind of budgetary investment. There is no popular desire for new measures to provide more travel choices, like express buses, rapid rail, or HOT lanes. No one really cares to see travel time information along the road or any information about accidents or closures. We’d rather spend more time in traffic so we can talk and text and Tweet on our cellphones, thus causing more accidents.

And hey, now they’ve got iPhone apps for traffic information, which give you nice green, orange and red lines over Google Maps! COOL! Who needs those electronic signs and cameras and service patrols and control centers that are run by the Marxists anyway?

Hey! Let’s get rid of VDOT! And how about that big Federal bureaucracy which doesn’t do anything! We Virginians are resourceful. The roads might crumble but we can all buy big American SUV’s again and go off-roading and impress each other at church on Sundays! And they can tow boats too, for when all the bridges fall down. Look at all the American jobs this creates! We can take our kids to our private schools in the woods that don’t require state funding, which is fine since we also want to get rid of those so-called public schools anyway! All kids need to learn is the Bible and the Constitution, except for those last 15 amendments!

And who needs to worry about oil? We’ll just drill here, drill now, on the shores of the Potomac! Heck, let’s drill off Virginia Beach! We all go to the Outer Banks and Hilton Head anyway! We can deport all the immigrants, and suddenly it won’t be so crowded on the roads! No more smelly buses either! Let the French have their trains! We won’t need any more Statist engineers and planners to tell us what to do! Problems solved! “Carry me back to old Virgininny…..”

Scary, huh? What about this scenario instead?

(Approved Press Release) The USDOT Office of Public Benefit, as directed by the President upon his signature of the Omnibus Reauthorization Welcoming Enhanced Life and Liberty in 2010 (ORWELL 2010), has suspended all transportation projects funded in part or entirely by private sector entities, except for those providing rail-based transit services to corridors of population density less than 50 persons per square mile. In all cases, maximum fares and rate of return for shall be unilaterally set by the President’s Private Sector Compensation Czar.

Under the provisions of ORWELL 2010, all road tolling in the United States shall be ceased as of March 12, 2011, at which time all state departments of transportation and public, semi-public and private transportation authorities and their assets will become subject to USDOT jurisdiction.

All traffic signals, cameras, sensors and other electronic infrastructure commonly associated with so-called “Intelligent Transportation Systems” that are not powered by recyclable farm organisms shall be removed from public right-of-way by January 1, 2011.

ORWELL 2010 has decreed that all limited-access highways which have not otherwise bio-degraded or collapsed onto themselves shall be redesignated as Advanced Non-Individual Managed Access Lanes (ANIMAL) facilities. An ANIMAL shall not permit access to individually-driven vehicles, via tolls or otherwise, but will permit properly-licensed buses, bicycles, solar powered vehicles, Harley-Davidsons, and Toyota Priuses.

Henceforth, on all non-ANIMAL facilities, all travel containing less than four passengers in (or on) a motorized vehicle will be permitted between the hours of 10 pm and 5 am Monday through Friday, and for six non-contiguous hours on Saturday and Sunday to be individually approved by someone in USDOT.

ORWELL 2010 has mandated that all residents of a State, US territory, or possession, shall reside in an urban center of 50,000 population or more unless they can demonstrate they are excluded or protected entities including organic dairy farmers, custodians of wind farms, Native Americans, Members of Congress, or mammals.

All fuel taxes will be increased to a nominal rate of $25 per gallon also effective January 1, 2011, the proceeds of which will be used to build passenger rail lines on urban streets and also to demolish any housing more than 10 miles from an urban center of more than 50,000. All families will be given 6 months to acquire dwellings within government-designated smart-growth areas, with dwelling sizes not to exceed 150 square feet per human, or 250 square feet per dog, up to a maximum of 826 square feet.

All cats shall be permitted to roam freely within the smart growth zone (please refer to ORWELL 2010’s companion legislation, “Pelosi-McCain Feline Freedom Act”).

All broadcast, satellite and cable television and radio stations along with electronic and material mailings which present viewpoints which are contrary to the regulations and mandates stipulated in ORWELL 2010 shall be reported within 4 hours to the Office of Public Benefit, under penalty of prosecution.

“Kumbaya….”

How far are we from either of these? Really!

After all, we are in a battle for hearts and minds, not to mention money. ITS and congestion management seems to be lost in the shuffle here. Take a look at what is really happening.

For example, Arlington County has recently sued the Feds and the Commonwealth over the proposed project on I-95/395 to expand and convert the existing HOV lanes to High-Occupancy Toll lanes, demanding the overturning of the project’s environmental Categorical Exclusion and suspending the project until their objections (notably not enough emphasis on transit, potential harm to air quality, concern about congested interchanges and local roads as a result of the project) were satisfied.

And, although years ago families saw that Arlington had run out of room and housing stock and had no choice but to move farther out, the County said “the project actually encourages additional sprawl, further exacerbating traffic congestion and harmful air emissions.” Chickens or eggs first?

(I can’t help but think back to that California Air Resources Board study in the 1990’s which effectively said that congestion was good because fewer cars can use the road and people travel slower. Guess we can’t win now.)

On the other hand, several freedom fighters from the “additional sprawl” in Prince William County have complained that HOT Lanes would endanger their slugslines, as people who picked up riders for their trips to the Pentagon would now selfishly pay tolls and drive by themselves, while the jilted slugs had to make do with taking the lowly bus instead.

Never mind all this counterpunching flies in the face of the HOT lane successes (from both a revenue and a congestion reduction perspective) in California, Utah, Colorado, Texas, Washington and Minnesota, a coalition of red and blue states if I’ve ever seen one. And the I-495 HOT lanes construction, which has a much larger impact on the surrounding communities than 95/395 would, is surging forward.

But then again, we shouldn’t worry. After all, we all know that ITS and congestion management are a significant means of reducing greenhouse gases and improving our environment, right? It must be true, because we’ve been saying so for years.

Well, witness the big brouhaha over the “Moving Cooler” study for Urban Land Institute with support from USDOT, the Environmental Defense Fund, EPA, ITS America, and others, which was to provide some ammunition on projected benefits of various transportation and land use strategies in curbing greenhouse gases. The
study, to many, has left more questions than answers.

The estimates for ITS, and operations benefits were said to be a cumulative 0.3 to 0.6% reduction over 50 years for all such systems deployed together, which angered many experts, including AASHTO. But the other individual benefits for road pricing, transit and land use changes did not exceed 4.4% each, and for the most part averaged 1 to 2%.

So how, when the four areas are combined, was there a cumulative 18% to 24% reduction in GHG? And how much will individual activities cost, especially when cumulative investment would be $50 to $80 billion per year for 40 years?? The benefits, including “reduced travel and reduced fuel consumption” did not get contrasted with any opportunity costs (e.g., relocations, additional percentage of income devoted to taxes, job shifts or losses, etc) associated with redefining our life styles. So the actual personal costs may add to the already substantial investment, either by or mandated from government.

Considering Virginia legislators haven’t been willing to make the investment in even a rudimentary transportation improvement program in the state, this would mean we’re headed toward a giant Federal involvement in our society with all the attendant issues that brings, like constitutionality.

I attended the “Moving Cooler” media and political event in Washington in late July, presided over by several legislators (notably Rep. Oberstar-MN, Rep. Blumenauer-OR, and Sen. Menendez-NJ). I was also surrounded by many people in small bow ties and luminescent plastic bicycle medallions on their lapels, so we do know that land use, bicycles and transit were a big deal, and we were repeatedly told that the Dutch and the Danes do over 30% of travel by bicycle, and that the Spanish and Chinese had exemplary national rail investment programs. And we all need to be just like Portland, Oregon, OK.

So do we only have a choice between “spend no money, everyone on their own, God Bless America” and “shame on you, greedy and slothful suburbanite, come live in our dense community, ride your bikes and take the trolley powered by electricity produced by some coal plant far enough away it doesn’t impact us?” In reality, we are faced with both situations happening, depending on what state or community you live in. There may be a choice between these two. But if we are not careful, there may not be any choices in between.

This combination of willful abandonment of a public sector role in our infrastructure (right wing) and direct control of our private lives and wealth (left wing) are a scary combination, and one we have to address with reasonableness, pragmatism, and the best that technology can offer. As always, we need to push some simple facts about ITS and clear-headed transportation management strategies, which I think more than other can provide tools that keep us from descending into an abyss we cannot control. In other words, Virginia (and other states) must step up, or get stepped on.

The key words we must use are CHOICES, QUALITY, SAFETY and MOBILITY. ITS enables all of these things.

ITS provides the information so travelers can make choices on when, where and how to travel, and can achieve them through alternatives that are priced based on relative convenience and utility.

ITS improves the quality of transportation services by providing timely information about their operational status, as well as actively managing the operation of the freeway, the arterial (including the bike lane or bike path) or transit service through messaging, signals, vehicle monitoring, dynamic road pricing, etc. to reduce delays.

ITS improves safety by improving information by advising of the otherwise unexpected (incidents, delays, speed reductions needed because of weather/pavement/operational conditions, and if IntelliDrive becomes reality, various warnings of conflicts at intersections).

And finally, all of this facilitates the ability for individuals to travel when and where they want or need to, enhancing personal mobility. It also enhances interstate commerce, which is an integral purpose of our Federal government. It says so in our Constitution.

To me, mobility is an essential part of freedom, whether you are red or blue.

Some places may choose to barely maintain their overworked, underfunded transportation networks and not invest. Some others may be willing to make enormous investments which may impact the public significantly, and force them to make lifestyle changes which may or may not be in their own self-interest. Either way, we have to balance self-interest and the common good. And ITS should be a part of the overall solution.

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The ITS Virginia Journal is the official publication of ITS Virginia and is distributed on a quarterly basis to the entire membership, other industry individuals, state lawmakers, and state agency officials. Total circulation is approximately 400. Call 434-977-3716 for ad rates or email derek.breen@easterassociates.com.
Virginia Submits First High Speed Rail Application

Virginia has submitted its first high speed rail application for the Arkendale to Powell’s Creek project along I-95 High Speed Rail Corridor. The project, with a construction cost of $74.8 million, will build 11.4 miles of third track in Stafford and Prince William Counties.

“The Federal Railroad Administration set very specific criteria for states to compete for this first round of historic federal investment in high speed rail,” said Governor Timothy M. Kaine. “Virginia has submitted a strong project application and we are ready to begin construction as soon the federal funding is awarded. This project represents our on-going commitment to delivering transportation choices, creating jobs, and sustaining our environment even when funding is limited.”

The Commonwealth worked in conjunction with partners CSX, Amtrak, and Virginia Railway Express to complete the project application. This project will improve on-time travel reliability, reduce freight and passenger rail conflicts, and help Virginia achieve 90 mph intercity passenger rail service.

“Virginia serves as a national model for public-private partnerships in both our freight and passenger rail programs. Our Congressional delegation, the General Assembly, the business community, and local governments all support our efforts to bring high speed rail to Virginia.” added Secretary of Transportation Pierce Homer.

The American Recovery and Reinvestment Act provided $8 billion in competitive funding for high speed rail corridors around the country. The first application deadline was for “ready to go” projects that were fully supported by the freight railroad who own the track (CSX) and the service provider (Amtrak). In early October, Virginia will compete for the second round of federal American Recovery and Reinvestment Act for a program of projects that extend from Washington, D.C. to Petersburg, Virginia as well as into Hampton Roads.

LaHood Announces $1.2 Billion for Transit Improvements

Transportation Secretary Ray LaHood has announced 50 grants totaling $1.2 billion in Recovery Act funds will go to improve state and local transit systems in the United States while supporting the creation of jobs and providing much needed transportation options for millions.

“The Recovery Act was put in place quickly to rescue the economy from the worst recession since the Great Depression and rebuild it for a stronger future,” said Secretary LaHood. “Rebuilding the nation’s infrastructure is a key part of that prescription for strength. It creates jobs today and builds a better, more sustainable economy moving forward.”

Funded by the American Recovery and Reinvestment Act of 2009 (ARRA), the majority of these grants will be used to purchase new vehicles, increase safety and security initiatives, construct, rehabilitate or maintain the various transit systems.

Since President Obama signed ARRA into law on Feb. 17, 2009, grants totaling more than $4.2 billion have been made available for transit improvements throughout the nation.

“These funds are creating jobs now while investing in the future of our transit systems,” said Administrator Peter Rogoff of the Federal Transit Administration (FTA). “The public’s demand for transit service continues to grow, and these dollars will help meet that need.”

The U.S. Department of Transportation has made $48.1 billion available for highway, road, transit, bridge, and airport construction and repairs nationwide. Of that, $23.9 billion already has been obligated to fund nearly 7,500 approved projects in 55 U.S. states and territories. Specific grant information can be found on FTA’s ARRA Grants Digest.
Auto Manufacturers Investing in Wireless Communications

In the midst of what could be the worst year in automobile sales in decades, telematics pioneer Steve Millstein sees a positive sign in that the automotive industry appears on the verge of dramatically re-shaping the way it listens and communicates with its customers.

Millstein, president of ATX Group, one of the world’s leading providers of customized connected vehicle (telematics) services to global automobile manufacturers, told attendees of the Center of Automotive Research’s annual Management Briefing Seminars that vehicle manufacturers representing nearly 85 percent of the U.S. market were currently investing in connected vehicles via wireless communications as a way to generate new revenue streams and pull diagnostic data in real-time. But he emphasized vehicle manufacturers need to take the next step to maximize the value in their investment, by extending the connection to include communicating and listening in real-time to their customers’ experiences with their products and in-vehicle features.

“In a world increasingly dominated by real-time dialogue - through blogs, Twitters and networked devices - customers often have control of your message, but you have the ability to compete with them in this new media environment through connectivity,” he said, noting that automakers are among only a very few manufacturers in the world with the ability to communicate with customers in real-time as their products are being used.

Millstein said customer product reviews, complaints and bad service experiences can now be addressed in real-time, and consumer perceptions shaped via the collection of real-time driver experiences through networked cars and social media. Noting the lack of differentiation in vehicle styling and performance, Millstein also saw personalization of content via connectivity as a key differentiator among automotive brands in the near future.

For vehicle manufacturers to capitalize on this positive trend in the midst of a turbulent new vehicle market and forecasts for slow growth in the coming years, Millstein said connected vehicle program deployments would have to be elevated to more strategic planning levels within vehicle manufacturers, incorporating objectives of departments across the organization and their affiliated dealerships.

“Most important, the marketing department must be brought in at the earliest planning stage,” he said. “In short, connected vehicle strategies can no longer be simply “siloed” in a single department - not if you really want to listen to your customer and want to compete in an age where the traditional sales funnel has changed, consumers expect immediate information and mass media advertising and cash incentives no longer play a dominant role.”

Millstein also cited the need for automobile manufacturers to connect their back office information technology infrastructures to their networked service providers and vehicles, to tap into data not only generated in real-time by the vehicle, but by drivers and vehicle owners. He also stressed the importance of investing in off-board communications technology rather than in-vehicle technology, thereby enabling vehicles to receive applications that don’t become obsolete early in the vehicle ownership life cycle. These applications will play a greater role in differentiating vehicles and in retaining current customers’ business.

Researchers Explore Student Pathways into Transportation Careers

The Mineta Transportation Institute (MTI) has published Report 08-03, Paving the Way: Recruiting Students into Transportation Careers. This report examines the factors that lead civil engineering undergraduates and urban planning masters’ students to specialize in transportation, as opposed to other sub-disciplines within the two fields.

The primary data collection methods were web-based surveys of 1,852 civil engineering undergraduates and 869 planning masters’ students. The study results suggest several steps the transportation industry can take to increase the number of civil engineering and planning students who wish to specialize in transportation.

Some of the report’s primary recommendations include broadening the students’ view of the transportation profession; developing course modules that highlight the interdisciplinary nature of transportation planning; providing more and better publicized scholarships and research assistantships; changing women’s perception of the transportation profession as unwelcoming to them; having women transportation planners as guest speakers and mentors; and several other recommendations.

The free document can be downloaded from www.transweb.sjsu.edu. Click “Research” and then “Publications.” Scroll down to the report.

Fall Blended ITS Course Offerings

The Consortium for ITS Training and Education (CITE) announces four new courses for the fall: Managing High Technology Projects in Transportation; Traffic Signal Timing; Principles and Tools for Road Weather Management; and Introduction to Systems Engineering.

“Managing High Technology Projects in Transportation” will be held September 11 to October 24. This course will describe the necessary steps for successful project completion, including planning, analysis, design, implementation, and testing.

“Traffic Signal Timing” will be held September 11 to October 24 and will provide an understanding of both the theory and practice of traffic signal timing and its impact on traffic operations.

“Principles and Tools for Road Weather Management” will be held October 23 to December 5 and will provide transportation professionals in highway maintenance and/or highway operations with training to develop tools and strategies for addressing road weather problems.

“Introduction to Systems Engineering” will be held October 23 to December 5 and will present system engineering tools and techniques, and cover all phases in the project life cycle from vision through development, design, operations, and maintenance.

The cost to attend each course is $250 each or $400 for two courses. Group discounts and continuing education units are available.

For more information about these courses, visit http://www.citeconsortium.org or contact Denise Twisdale, CITE Coordinator, at 301 403-4592 or mztwiz@umd.edu.
LABOR AND EMPLOYMENT LAW UPDATE: A Mixed Bag for Employers

By John G. Kruchko and Kevin B. McCoy*

With the economy still in the doldrums and Congress and the Obama Administration locked in a high-stakes battle to overhaul the healthcare system, several important but overshadowed changes in the Labor and Employment world have happened, are about to happen, or may happen in the near future. That is both good and bad news for employers. Most of the changes that are afoot are likely little more than warning shots from Congress and the Administration over the bow of America’s employers – “become more employee oriented, or else.” However, at least one change presents some (albeit, rare) good news for employers.

A. The DHS No-Match Rule Goes by the Wayside…for Now

In August 2007, the Department of Homeland Security (“DHS”) proposed a rule that revised the definition of an employer’s “constructive knowledge” of an employee’s illegal immigration status. The proposed rule eliminated the circumstance in which an employer would receive a “no match” letter from the Social Security Administration and, instead, substituted circumstances in which an employer’s “constructive knowledge” of a violation would be presumed. Those circumstances included, among other things, the employer’s failure to ensure that applicants properly complete an I-9 form. (But note, it is still ultimately the employer’s responsibility to ensure they do not employ undocumented aliens.) Not surpris-

ingly, employers everywhere “cried foul,” and a U.S. District Court in California entered a preliminary injunction staying the effective date of the proposed rule.

Now, although DHS attempted to revise the proposed “no match” rule, the Obama Administration has decided to pull the plug on the proposal and focus on other immigration-related issues, such as the new E-Verify program and increased worksite enforcement. While the decision to abandon the proposed “no-match” rule is good news for employers, the battle over illegal workers is far from over.

The Obama administration and DHS have made it abundantly clear that they intend to strengthen enforcement efforts against employers who are employing unauthorized workers. Any such enforcement effort inevitably begins with a review of the employers’ I-9 forms. Accordingly, employers are strongly advised to evaluate your completed I-9 forms to ensure proper compliance – preferably before the DHS comes knocking at your office door.

B. Personal, Individual Liability of Managers Rears its Head

One “safe harbor” (so to speak) in Labor and Employment law for individual managers and corporate decision makers has been the comforting realization that employment-related decisions at work may expose the company to liability, but generally cannot expose the individual to liability. Managers, supervisors, corporate executives,

(Continued on next page)

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etc. are all agents of the company acting in their capacity as such and are, as the theory goes, not personally liable for the decisions they make at work. In other words, a manager’s discriminatory decision to fire an employee may implicate the company’s savings account, but it does not implicate his personal account…that is, until recently.

In late July 2009, the U.S. Court of Appeals for the Ninth Circuit (Boucher v. Shaw) held that the CEO, CFO, and a manager responsible for labor and employment matters could be held personally responsible under the Fair Labor Standards Act (“FLSA”) for unpaid wages to several former employees. At issue was the definition and meaning of the term “employer” within the text of the FLSA. “Employer” is defined to include “any person acting directly or indirectly in the interest of an employer in relation to an employee.” 29 U.S.C. § 203(d). In evaluating whether the company officials met this definition, the court explored the “economic reality” of the officials’ relationship to the employees and cautioned that when an individual or a group of individuals exerts “economic control” over the relationship or exercises control with regards to the “structure of the employment relationship,” that individual or group is an employer for purposes of the FLSA.

This decision is particularly worrisome for employers because the company was in Chapter 7 (dissolution) bankruptcy proceedings at the time. The individual managers argued their potential liability ended when the company was dissolved. The court did not agree, finding that the bankruptcy proceedings had, essentially, no effect on the individuals’ potential liability for unpaid wages.

This case should serve as a warning to all employers and their managers and officers regarding pay practices. Courts are becoming more willing to look beyond the traditional employee-employer boundaries and find ways to compensate employees who have credible claims…even if it means holding the individual managers personally responsible.

Plus, the DOL released a report on September 1st stating its view that FLSA violations are commonplace, and that it was hiring 250 new investigators to try and crack down on corporate violators. In light of these developments, employers should, in conjunction with their employment counsel, conduct a wage and hour audit of their pay policies and practices to ensure compliance with all applicable wage and hour laws.

C. “Direct Observation Requirement” for DOT Drug Tests Becomes Effective

On August 31, 2009, the U.S. Department of Transportation (“DOT”) reinstated a rule requiring direct observation of employees providing urine specimens for certain drug tests. Specifically, return-to-duty and follow-up drug tests of employees that fall under the DOT’s guidelines will now have to be conducted by “direct observation.” Direct observation includes requiring the employee to raise his shirt above the waist and lower his pants (including underwear) to demonstrate to the test collector that the employee is not wearing a device designed to “cheat the system” or employing any other means designed to skew the results of the urine sample. These requirements apply equally to both men and women.

DOT’s testing regulations apply to vehicle drivers in certain transportation-related industries. Commercial drivers regulated by the Federal Motor Carrier Safety Administration, transit employees that fall under the auspices of the Federal Transit Administration, pipeline employees, and airline employees are all examples of some of the employees covered by the DOT’s new “direct observation” testing rule.

Companies that follow the DOT testing program should make note of the new rule changes and implement them accordingly.

D. Proposed FMLA Changes: Here We Go Again

For those of you who are keeping score at home, Congress is again threatening (for about the third or fourth time this year) to revise the Family and Medical Leave Act (“FMLA”). If the current proposal passes, it will be the second time this year that substantive changes to the FMLA have come to fruition (you may recall the earlier FMLA amendments expanded the FMLA to include “exigency leave” related to a family member’s active duty military status and up to 26 weeks of leave to care for an injured service member).

On July 25th, Representative Woolsey (D. Cal.) introduced The Balancing Act of 2009 – a Bill that incorporates several ideas for expanding the law and, in the process, causing countless headaches for employers. Among the proposed items is a provision converting now unpaid FMLA leave to paid leave. That’s right, under this plan employees would get upwards of twelve (12) weeks of paid leave for qualifying circumstances. To help pay for this feature, the Bill establishes a “Family and Medical Leave Insurance Fund” that would be subsidized by small contributions from both the employer and the employee totaling 0.2 percent of an employee’s earnings. This amounts to a contribution of about $100 per year, based on the average household income of just under $50k per year.

In addition, the Bill seeks to expand the number of employers covered by the FMLA. At present, only those employers who have fifty (50) or more employees are subject to the FMLA’s requirements. Under the new Bill, employers with fifteen (15) employees would be covered. Likewise, the Bill seeks to gain coverage for some part-time employees by lowering the eligibility threshold from 1,250 hours worked per year to 1,050 hours per year.

The proposed legislation also seeks to require covered employers to (a) provide at least seven (7) days of paid sick leave per year; and (b) cover leave for a broader category of family members, including same-sex spouses and domestic partners. And the proposal creates new categories of leave for “parental involvement” and “family wellness.”

Whether The Balancing Act of 2009 gets enacted into law is still up in the air. With the healthcare debate consuming Congress’ attention, this Bill may get put on the back burner. However, employers should take note of where Congress and the Administration are headed, because once the healthcare debate subsides and the economy begins to recover in earnest, they will refocus their legislative attention on this and other matters that are likely to make most employers very nervous.

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Even Electronic Communication Can Still Create Nightmares For Human Resources

By John G. Kruchko and Kathleen A. Talty*

Electronic communication systems are an integral part of the workplace. The inclusion of these systems has facilitated and streamlined both internal and external communication networks. However, the improper utilization of these communication systems continues to pose substantial difficulties for human resource personnel.

The majority of employers have personnel policies dealing with employee use of the company’s electronic communication systems. Those policies usually contain broad prohibitions on such matters as the transmission of racist or sexist jokes or pictures and include specific notice to employees that disciplinary action, including termination, will result for violations. Despite these prohibitions, situations still arise where an employee’s casual use of the company’s e-mail system can result in situations where an employer’s defenses to employment discrimination claims can be greatly minimized, if not completely lost. A recent federal court case illustrates the consequences when an e-mail was inadvertently sent to an unintended recipient, i.e., the rejected job applicant, and the contents of the e-mail included inappropriate comments that were found to be evidence of age discrimination.

In the recent court case, Wold v. El Centro Fin., Inc., the Plaintiff, Kenneth Wold, applied for a position as an Operations Manager with Defendant’s company. In the course of the internal processing of Mr. Wold’s application for the Manager position, his resume was e-mailed to the company’s Chief Executive Officer for consideration. The CEO’s review of Mr. Wold’s resume included the following comments: “He [Mr. Wold] must be old….and just looking for something to do.” Mr. Wold probably would never have learned about the CEO’s comments except for the fact that the CEO did not look at the e-mail addresses, which included Mr. Wold’s, before he hit the reply button. Because of the CEO’s action, Mr. Wold became the unintended recipient of the CEO’s e-mail which contained the above-noted comments.

When Mr. Wold did not hear anything from the company about his application, other than the e-mail from the CEO, he filed an employment discrimination charge with the state fair employment practice agency and alleged age discrimination. In presenting its case to the state agency, the company, apparently unaware that Mr. Wold had received the e-mail from the company’s CEO, argued that Mr. Wold was not hired because his application showed “aggressiveness”, because he was unqualified for the position, because there were more qualified applicants and because Mr. Wold’s past security and military work led the company to believe that his interest in the position was “odd.”

After the state agency issued a right to sue letter and the matter progressed into federal court, the existence of Mr. Wold’s receipt of the CEO’s e-mail became known to the company. At that point, the company sought to distance itself from the earlier reasons that had been proffered for its non-selection of Mr. Wold. Instead, during the court proceeding, the company argued that Mr. Wold was never rejected for employment because his application was never forwarded internally to the person in charge of the hiring process. According to the company, when the CEO mistakenly “returned” the application to Mr. Wold via the e-mail, rather than to the hiring official, Mr. Wold was accidentally omitted from the selection process. The accidental omission from the hiring process, according to the company, was not evidence of age discrimination.

The court was not persuaded by the company’s argument on that point. Nor was the court persuaded when the company argued that the comments about the Plaintiff in the CEO’s e-mail that “he must be old….and just looking for something to do” represented mere colloquialisms that failed to give rise to an inference of discrimination.

The Wold court noted that some courts have found that where certain comments were made in an off-handed manner and not in respect to a particular individual or are colloquialisms, the comments were not evidence of discrimination. Conversely, courts have found that when the comments in question specifically reference the plaintiff, the comments can constitute evidence of discrimination.

The comments in the Wold case were, according to the court, neither off-hand remarks nor colloquialisms. Rather, the comments referred directly to the Plaintiff, Mr. Wold. The court further noted that the “just looking for something to do” comment particularly indicated discriminatory animus because it ran afoul of prohibited stereotypes. Namely, that older employees are likely to be looking for work to just keep themselves busy, rather than looking for work with the more desirable motivation of working hard and advancing their careers. According to the Wold court, such “broad, negative characterization of older employees is precisely the type of prohibited stereotype the ADEA seeks to remedy and gives rise to an inference of discrimination.”

The court also found that the company’s shifting and directly contradictory explanations for Mr. Wold’s non-selection were not worthy of any credibility. Before the state agency, the company had stated that Mr. Wold’s non-selection was the result of a careful analysis of his resume and then a determination, based on several factors, that he was not the most qualified candidate. At the court level, the company completely rejected that line of argument. Instead, the company claimed that it never rejected Mr. Wold for employment because his resume was never forwarded internally to the actual hiring official. The court found the company’s contradictory positions were not valid defenses.

The Wold case highlights the need for care when writing e-mails that involve personnel or related matters. Comments that may be considered to be glib or funny at the time of writing the e-mail will not necessarily be viewed in the same light by a fair employment practice agency or a federal court.

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