INTRODUCTION TO TRANSPORTATION PLANNING LAW
CIVIL ENGINEERING 579 (CE 579)
Fridays 5:10 – 7:30 PM
OHE (Olin Hall) 100D
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Purpose: The course is intended to introduce students to basic Federal and California laws relating to the planning, funding and competitive bidding and award of contracts for the construction of transportation-related public works projects. Main objectives of the course include:

1. Providing an overview of the major Federal, State, regional and local agencies involved in the planning, funding, and award of transportation-related public works contracts and grants.

2. Summarizing the major Federal and State schemes of laws and regulations governing transportation planning and finance and the award of transportation-related public works contracts and grants.

3. Explaining the requirements imposed on transportation planning and the construction of transportation-related public works projects by competitive bidding laws, the State and Federal Clean Air Acts, other major environmental laws, civil rights laws, and labor laws.

4. Imparting a practical overview of the Federal and State laws prohibiting and penalizing corruption in the government contracting process and protecting whistleblowers.


Assigned Reading:


Other individual articles and materials may be assigned to students for reading over the course of the semester, in which case I will make copies of all such materials available to you beforehand.

Prerequisites: I assume that each student has (1) a working knowledge of the Internet, specifically with respect to finding materials on the World Wide Web; and (2) an E-mail address.

Topics: The following general topics will be covered over the semester, according to roughly the following schedule:
I. Introduction
   A. The significance of transportation law
   B. Basics of administrative law : Statutes and administrative agency rules
   C. Conducting legal research on the Internet

II. The players : Major governmental agencies and private interest groups and parties involved in California transportation planning.

III. Accountability of public agencies : Open meetings, decisionmaking and records

IV. Setting policy : Federal and State transportation planning law
A. The Statewide Transportation Plan
B. Regional Transportation Planning

V. Transportation funding: Federal and State sources, accounts, flow, and restrictions on use

VI. The Nitty-Gritty: Federal and State transportation programming law
   A. The State Transportation Improvement Program (STIP)
   B. Regional and County Transportation Improvement Programs

VII. Contracting: Consulting, construction, and corruption: Federal and State competitive bidding and conflict-of-interest laws

VIII. Environmental laws applicable to transportation planning
   A. The Federal and State Clean Air Acts
   B. The National Environmental Policy Act and the California Environmental Quality Act

IX. Civil Rights laws
   A. Title VI of the 1964 Civil Rights Act
   B. The status of affirmative action in public contracting requirements
   C. Environmental Justice and Executive Order 12,898
   D. Property rights and Takings issues

X. Federal and State labor laws

**Course grade:** The student’s grade will be based on the following three factors:

1. **Class participation.** Students must attend all lectures, and will be expected to engage in class discussions of lecture topics. Additionally, I reserve the right to call on any student during any lecture. Students providing especially insightful answers or observations will receive extra credit. Students correcting me when I make a mistake will receive a lump of coal. (15 percent)

2. **Internet legal research assignments,** due every two or three weeks. In each of these assignments, students will be given a set of brief questions or fact patterns regarding transportation law. They will be required to use the Internet and the Internet legal research techniques taught them in the class to find the relevant statutes or regulations and to summarize them in brief answers. (5 assignments altogether, counting for 10 percent each, for a total of 50 percent)

3. A take-home final examination, due by 5 PM on Wednesday of Finals Week. The examination will essentially be in the same format as the homework assignments (i.e., a set of questions for which you are to provide brief answers), but it will be longer and more complicated than any of the individual homework assignments. The questions will cover all topics addressed during the semester. (35 percent).

**Grading policy.** Students will receive one of the following grades, based on the following levels of effort and initiative:

A: 95-100% of total points available in the class are attained. In addition to providing correct or defensibly correct answers to the assigned questions and projects, all or almost all completed assignments must show intellectual and practical initiative (i.e., additional legal research to buttress your own arguments, analysis and refutation of counter-arguments, advancement and defense of “novel” arguments. Comments made in class should reflect similar preparation.

A-: 90-94.9% of total points available in the class are attained. The intellectual and practical initiative described in the above paragraph is present in most of the student’s work and comments.
B: 85-89.9% of total points available in the class are attained. The required intellectual and practical initiative described above is present in some, but not most, of the student’s work and comments.

B-: 80-84.9% of total points available in the class are attained. The intellectual and practical initiative described above is present in only a small portion of the student’s work and comments. The student’s work appears to have been hastily done or is otherwise poor. Several assignments are turned in late.

C: 75-79.9% of total points available in the class are attained. Work completed by the student does not show any special intellectual or practical effort. Work is turned in late, hastily done, or is otherwise poor. On several occasions, student has failed to attend class or, while in class, failed to participate constructively in the class discussions.

C-: 70-74.9% of total points available in the class are attained. Intellectual and practical effort by the student appears to be minimal. In addition to turning in late or sloppily done assignments, student has failed to turn in a number of assignments altogether. Student usually does not participate constructively in class discussions.

D: 65-69.9% of total points available in class are attained. Students’ work and class participation bespeaks no intellectual or practical effort. Several assignments have not been turned in. Student is non-responsive, or actually disruptive, during class discussions.

F: Less than 65% of total points in class are attained, or student has violated the academic integrity provisions described below.

Assignments are due at the point in the class period where I ask to collect them. An assignment turned in after this point, but before midnight of that day, is considered one day late. An assignment turned in after midnight of that day is considered two days late, and so forth. Your assignment will lose five points for every day that it is turned in late (for example, if you had written a paper merits a score of 90, and it is turned in two days late, it will be downgraded to 80).

**Academic integrity.** Integrity and honesty are fundamental to the pursuit of truth and knowledge at any academic institution. These core values are essential to the function of the academic community at a research institution such as USC. Only by maintaining the highest standards of integrity are the conducting of research, the evaluation of students’ academic performance, and the ultimate awarding of degrees meaningful and representative of reality. All students are expected to abide by the principles of academic honesty set forth in Section 11 and Appendix A of the Student Conduct Code. The text of these sections is available in the Scampus student handbook.

Engaging in any of the following activities will result in the student receiving an "F" in my course and being reported to the Office for Student Conduct:

1. Plagiarism, which is defined in Section 11.11 as:
   a. The submission of material authored by another person but represented as the student’s own work, whether that material is paraphrased or copied in verbatim or near-verbatim form;
   b. The submission of material subjected to editorial revision by another person that results in substantive changes in content or major alteration of writing style, and as
   c. Improper acknowledgment of sources in essays or papers.

2. Unauthorized collaboration on assignments. Unless you are given express direction or permission by me to work collaboratively on assignments, I expect that you will have accomplished your work entirely independent of assistance from (or to) fellow students or other persons.

Please do not jeopardize your grade and academic career by engaging in these activities.

Please do not put me in a position where I must fail or report one of my own students.
SCHEDULE OF TOPICS AND ASSIGNED READINGS

(NOTE: Readings and assignments are due on the day under which they are listed)

1. August 27: Overview
   a. Introduction and course summary
   b. The importance of planning and funding transportation public works projects: From the 1930’s to the Cold War to the current proposed economic stimulus
   c. The players: Major governmental agencies and private interest groups and parties involved in transportation planning and finance.

2. September 3: A brief introduction to law and legal research
   a. Tools of the Trade: Statutes, administrative agency rules, interpretive guidance, and case law (judicial and administrative)
   b. Conducting legal research on the Internet: Internet demonstration
   c. In-class exercise: Using the Internet to find laws dealing with the accountability of public agencies
      1. Public meetings: The Ralph M. Brown, Bagley-Keene, and Grunsky-Burton Open Meeting Acts
   Readings: California Transportation Law, 453-458; 1-56.

3. September 10: Setting transportation policy: Federal and State transportation planning law
   a. Statewide transportation planning: Federal and State law
      (Readings: California Transportation Law, 57-70)
   b. Regional Transportation Planning (I): Federal law requirements
      (Readings: California Transportation Law, 71-113)
   c. Regional Transportation Planning (II): State law requirements
      (Readings: California Transportation Law, 113-149)
   Homework Assignment #1 due at beginning of class

4. September 17: Transportation funding (I): Background and elements
   a. Federal and State funding sources, accounts, flow, and restrictions on use
      1) Funding in proposed Federal economic stimulus package
      2) Limitations on state funding and their loopholes: Propositions 13, 62 and 218
   Readings: California Transportation Law, 151-160

5. September 24: Transportation funding (II): Programming (allocation) of funds at the regional level
   a. County and Regional Transportation Improvement Programs
   Readings: California Transportation Law, 185-202
   Homework Assignment #2 due at beginning of class

6. October 1: Transportation funding (III and IV): Statewide programming of funds / “Alternative” funding
   a. The State Transportation Improvement Program (STIP) process
      Readings: California Transportation Law, 161-183
   b. Alternative sources of and approaches to transportation funding
      1) Innovative transportation finance
         a) Programs in SAFETEA-LU
            (1) State Infrastructure Bank
            (2) TIFIA
         b) Other proposed techniques

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2) Public-private partnerships
   a) Potential problems
      (1) Cultural differences between public and private organizations
      (2) Legal restrictions on delegating public authority to private party
      [a] California Const., Article XI, Sec. 11(a).

Readings: California Public Contract Law, pp. 83-84

7. October 8: Contracts for transportation related plans and projects : Introduction to the public contracting process ("Public Contracting I"):
   a. Basic principles of contract law :
      1) Parties
      2) Contract formation
      3) Consideration
      4) Writing
      5) Amendment
      6) Breach
      7) Remedies

   b. Public versus private contracts : Some differences
      1) Differences between private businesses and public agencies:
         a) Profit motive versus providing goods/services to public at cost.
         b) Spending private investors' money versus spending public's money.
         c) Accountability to investors versus accountability to the public.
      2) Award and content of public contracts are matter of public record
         a) Open meetings laws:
            (1) Federal Sunshine Act (5 USC Sec. 552b)
            (2) Ralph M. Brown Act (Cal. Gov't. Code Sec. 6250 et seq.)
            (3) Bagley-Keene Open Meetings Act (Cal. Gov't. Code Sec. 11120 et seq.)
            (4) Grunsky-Burton Open Meetings Act (Cal. Gov't. Code Sec. 9027 et seq.)
            (5) Consequences of violation
         b) Public records laws:
            (1) Federal Freedom of Information Act (5 U.S.C. Sec. 552)
            (2) California Public Records Act (Cal. Government Code Secs. 6250 et seq.)
            (3) Enforcement actions
      3) Funding agency oversight
      4) Subject to special laws

   c. Sources of public contract law in California:
      1) Federal laws and regulations:
         a) Armed Services Procurement Act of 1947 (10 USC Secs. 2301 et seq.)
         b) Federal Property and Administrative Services Act of 1949 (40 USC Secs. 471 et seq.)
         c) Competition in Contracting Act (10 USC Secs. 2301 et seq. and 41 USC Sec. 430)
         d) Office of Federal Procurement Policy Act (41 USC Secs. 401 et seq.)
         e) Contract Disputes Act of 1978 (41 USC Secs. 401-613)
         f) Federal Acquisition Regulations (48 CFR Chapter 1)
      2) State laws and regulations:
         a) California Public Contract Code
         b) State Administrative Manual (unofficial)
         c) State Contracting Manual

Readings: California Public Contract Law, pp. 1-22
Homework Assignment #3 due at the beginning of class.
8. October 15 : Public Contracting (II) : The competitive bidding process under Federal and State law
   a. When is competitive bidding necessary?
   b. Drafting and Publication of Requests for Proposals (RFPs) / Requests for Qualifications (RFQs) by
      public agency
   c. Responses to RFPs/RFQs by interested contractors
   d. Review of proposals by public agency
      1) Criteria used to rate proposals
   e. Award of contract
   f. Bid protest procedures

Readings: California Public Contract Law, pp. 23-84

9. October 22 : Public Contracting (III) : Elements of a public contract
   a. Agency funding agreements
   b. Master agreement
      1) Parties
      2) Term
      3) "Entire agreement" language
      4) Assignment and subcontracting
      5) Staffing
      6) Contract costs and reimbursement
         a) Invoicing
      7) Allowable costs and documentation
         a) Detailed documentation of costs required
         b) Costs submitted must be costs allowable as determined by Title 48 (Code of Federal
            Regulations), Chapter 1, Part 31 (Contract Cost Principles and Procedures), Subpart 31.2
            (Contracts With Commercial Organizations), as modified by Subpart 31.103.
            c) Contractor must comply with Title 49, Code of Federal Regulations, Part 18, "Uniform
               Administrative Requirements for Grants and Cooperative Agreements to State and Local
               Governments" in the procurement of services, supplies, or equipment.
            d) Any costs for which payment has been made to the contractor that are determined by
               subsequent audits to be unallowable under 48 CFR Chapter 1, Part 31 et seq., or 49 CFR
               Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to
               State and Local Governments, are subject to repayment by Contractor to State.
   8) Consent to audits and inspections of work and records
   9) Progress reports
   10) Contract completion retainer
   11) Satisfaction clauses
   12) Penalty clauses
   13) Ownership of intellectual and other property
   14) Termination provisions
      a) Termination for convenience
      b) Termination for cause
      c) Notice of termination
   15) Compliance with laws
   16) Incorporation by reference of funding agency regulations and boilerplate
   17) Arbitration or mediation of disputes
   18) Indemnity / "Hold Harmless" language
   19) "Buy America" provisions
   20) Notice

   c. Certifications
      1) Debarment and suspension (45 CFR 1169)
2) Civil rights compliance with:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) : No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant received federal financial assistance;

(b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) : prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance;

(c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.): Prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; and

(d) Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) : Prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance, except that actions which reasonably take age into account as a factor necessary for the normal operation or achievement of any statutory objective of the project or activity shall not violate this statute.

(e) Other civil rights certifications

3) Lobbying (45 CFR 1168)
4) Conflicts of interest
5) Contingency fees
6) Drug-free workplace (Drug-Free Workplace Act of 1988)
7) Federal debt status

d. Bid guarantees and bonding requirements: Grantees whose contracts for construction or facility improvements exceed $100,000 are required to obtain a bid guarantee from each bidder equivalent to 5 percent of the bid price. The grantee must also require contractors to have both performance and payment bonds for 100 percent of the contract price

1) OMB Circular A-110, Subpart C, Section 48(c)
2) OMB Circular A-102

f. Letter of task agreement

g. Contract amendments

Readings: California Public Contract Law, pp. 87-102

10-11. October 29 and November 5 : Abuse of the Public Contracting Process : Civil and criminal sanctions for misconduct
a. 18 U.S.C. Section 208 and California Government Code Sections 1090 et seq., 1120 et seq., and 87100 et seq.: Prohibitions on conflicts of interest
b. Federal and State False Claims Acts
(1) Whistleblower protection
(2) Qui tam actions
c. Penal Code Section 424 : Misuse / Misappropriation of public funds
d. Penal Code Section 504 : Embezzlement of public property
e. Penal Code Section 6200 : Falsifying government records
f. Title 18 U.S. Code Sections 201 et seq. and California Penal Code Sections 67 et seq. and 85 et seq. : Bribery
g. Penal Code Section 182(a)(5) : Conspiracy to obstruct justice
h. Copeland Anti-Kickback Act : 18 USC Sec. 874 and 40 USC Sec. 276c
Readings: *California Public Contract Law*, pp. 103-154

12. November 12: Environmental laws applicable to transportation plans and projects (I): The Clean Air Acts
   a. The California Clean Air Act: Air Quality Management Plans
      1) South Coast Air District
      2) Southern California
      3) Sacramento
   b. The Federal Clean Air Act
      1) Transportation Control Measures
      2) "Conformity"

Readings: *California Transportation Law*, pp. 203-248

Homework Assignment #4 due at beginning of class.

13. November 19: Environmental laws applicable to transportation planning (II): Environmental Review
   a. National Environmental Policy Act (NEPA)
   b. California Environmental Quality Act (CEQA)
      1) Means of reducing paperwork in environmental review - and limitations thereon

Readings: *California Transportation Law*, pp. 249-286

   a. Title VI of the 1964 Civil Rights Act
   b. The status of affirmative action in public contracting requirements
   c. Environmental Justice and Executive Order 12,898

Readings: *California Transportation Law*, pp. 287-291; 441-451; *California Public Contract Law*, pp. 66-76

15. December 3: Civil Rights Laws (II): Property Rights and Takings Law / Labor laws applicable to transportation-related public works contracts
   a. Property rights and takings law
      1) Condemnations: Eminent Domain
      2) Regulatory takings

Readings will be assigned

b. Labor laws applicable to transportation-related public works contracts:
   1) Occupational safety and health (OSHA) laws
      1) Federal Occupational Safety and Health Act (OSHA) (29 USC Sec. 651 et seq.)
      2) California Occupational Safety and Health Act (Cal. Lab. Code Secs. 6300 et seq.)
   2) Collective bargaining rights
      a) Federal Transit Act Sec. 13(c) (49 USC 5333(b))
      b) Meyers-Millias-Brown Act
   3) Davis-Bacon Act (400 USC Sec. 276a)
   4) Fair Labor Standards Act of 1938 (29 USC 201 et seq.)
   5) Family and Medical Leave Act of 1993
   6) McNamara – O’Hara Service Contract Act of 1965 (41 USC Sec. 351 et seq.)
   7) Contract Work Hours and Safety Standards Act
   8) Walsh-Healey Public Contracts Act : 41 USC Sec. 35.
   9) Vietnam-Era Veterans Readjustment Assistance Act of 1974 (38 USC Sec. 4212)

Readings will be assigned

Homework Assignment #5 due at beginning of class.