



**MAASTO Board of Directors Meeting
December 20, 2023
Virtual/On-line
12:00 to 1:00 PM**

- Call to OrderPresident Jack Marchbanks, ODOT
 - Meeting began at 12:01PM

IL :		MN:
• Secretary Omer Osman		• Commissioner Nancy Daubenberger
IN:		• Kim Collins
• Commissioner Michael Smith		MO:
IO:		• Director Patrick McKenna
• Director Scott Marler		• Terri Parker
KS:		OH:
• Secretary Calvin Reed		• Director Jack Marchbanks
KY:		• Preeti Choudhary
• Secretary Jim Gray		WI:
MI:		• Secretary Craig Thompson
• Director Bradley Wieferrich		

- Approval of Meeting Minutes, November 16, 2023President Jack Marchbanks, ODOT
 - Comments – Trouble accessing files on Ohio’s file share.
 - First: WI (Sec Thompson)
 - Second: IO (Dir Marler)

- Legal Challenges to DBE Policies Terri Parker, Chief Legal Counsel, MoDOT
Kim Collins, Deputy Commissioner & Chief Administrative Officer, MnDOT
 - OH – It is our responsibility to lead.
 - WI – States need to be prepared to keep our DBE programs as strong as possible.
 - MO – Terri Parker, Chief Legal Counsel
 - Providing practical information
 - Harvard case is indicative that the SCOTUS will rule against DBE cases.
 - Case in KY is against USDOT
 - Cases in federal courts FL, TN, TX, et al
 - Also challenges in state courts.
 - Private businesses are also giving up DBE hiring practices.

- What is it that we could do?
- What is a general best practice for state DOT programs?
 - MO is looking at its small business program to see how it could be expanded. Many DBE businesses are small businesses.
 - Provide assistance to small businesses with marketing.
- Legal challenges are down the road, 5-7 years away.
- We need to be prepared and plan for it.
- MN– Kim Collins, Deputy Commissioner
 - Believes the timeline is a little sooner 2-3 years. Some cases will move more quickly through the courts.
 - DBE programs, as they are today, will not survive.
 - Challenges come from the equal protection act.
 - Historically, courts have found a carve out for minority/underrepresented groups.
 - Disparity studies enable development of an affirmative action plan into state DOT programs.
 - The court is critical of the broad application of a single category of minority groups.
 - Courts critical of timelines – affirmative action was not supposed to last forever.
 - These types of assertions are being made to call into question the constitutionality of these provisions.
 - The challenges are not new, what is new is the makeup of the court.
- MO – had a very significant challenge 5 years ago. Now updating the disparity study.
 - The collection of data didn't identify truly available firms.
 - Many trucking companies are over the road, not interested in highway construction.
 - Found a process to identify available firms, became the basis for the new programs.
 - One remedy was to publish in the bid documents the firms that were used to create the goal.
 - Created relationships between primes and subs, dissipated consternations.
 - Specifically identifies the demography's for MWDBE programs.
 - Being transparent where MO is and the progress they are making – dismantles arguments from challenges.
- WI – Similar in WI
 - Whether we disagree about the timeline, the challenges are coming.
 - We know where the arguments are going (they are knowable)
 - We need to come back with tangible actions to bolster our programs.

- OH – Is there something challengers can do to get a temporary restraining order to stop the programs?
- Ms. Parker – we don't see that being successful. We follow federal regs until they do not exist any longer.
- Ms. Collins – in the KY case, they are seeking an injunction on the DBE program. So, it isn't out of the ballpark. People bring suits for any reason. It all depends on the court. It is 50/50 as to whether injunctions will happen. However, DBE is still the law of the land. We must look at our current programs and goal setting processes against the regulations. Making small business programs open to all small businesses. Reforms can be done now to shore up the weaknesses.
 - The fresher the study, the more defensible
- IO – Opportunity to shore up programs with best practices.
 - Charge the STIC to collect the best practices to collect and share the best practices in each state.
 - Motion to task STIC to pursue an inventory of best practices and recommendations on pro-active measures to bolster the DBE programs in coordination with the Chief Legal Committee:
 - First: WI (Sec Thompson)
 - Second: IL (Sec Osman)
 - Motion passed unanimously.
- MO – Preparing an Amicus Brief could potentially influence the courts. Ms. Parker will investigate.
- MN – Letter from the Equity in Infrastructure Project – a coalition of state DOTs to advance use of historically underutilized companies.
- CAV/EV Conference Preeti Choudhary, DriveOhio, ODOT
 - OH – Ms. Choudhary – CAV Committee in 2023 hosted the first EV CAV conference.
 - We want to do it again. Ohio wants to host. Plans are underway.
 - Want to combine and make it a CAV and EV conference.
 - These two technologies talk and are in collaboration.
 - Opportunity for people to learn.
 - Welcome questions and comments.
 - Shared slides (See attached file.)
 - What – CAV and EV Committees spotlight regional ideas and issues related to these topics
 - Where – Columbus, OH
 - When – June 3-5, 2024
 - Who – MAASTO BOD, CAV, EV, other MAASTO state agency reps, and industry.
 - Day – 1: Half day with a field trip (Transportation Research Center)

- Day – 2: AM and PM technical sessions with seated lunch and keynote speaker.
 - Day – 3: AM technical sessions with a boxed lunch.
 - Cost: \$30K
 - Reg: \$21K
 - Expected cost incurred: \$9K (provided by MAASTO?)
 - Next steps:
 - Work with Housman and Assoc to begin detailed planning.
 - Communicate conference logistics to our agencies and industry.
 - Call for abstracts for technical sessions.
 - MI – Supports this conference and likes the idea of including EVs. There is enough nexus that the conference will be great.
- Other Business.....President Jack Marchbanks, ODOT
 - FHWA GHG Performance Measure Final Rule
 - OH – Background provided by Scott Phinney
 - In December final rule making pertaining to Final GHG performance measure a year after the NPRM came out.
 - Requires states to set a 2022 baseline then and then to set a four-year target for 2025. Target must show a reduction of at least 0.1%.
 - Initial GHG Report must be submitted by 2/1/2024 to USDOT.
 - If states don't meet the target there no punitive consequences, but states must document what they are going to change to hit that target.
 - Methodology for calculation is simple. Amount of fuel sold and multiplied by conversion factor and consideration of VMT on NHS system.
 - Some states are looking at that and wondering how they impact that.
 - OH – How are states setting their targets?
 - MN – has targets as established in MNs Climate Action Plan. Roger Millar in WashDOT to provide a letter of support for the GHG measure to AASHTO. Letter not yet sent if other states want to sign on.
 - OH – would like to see the letter (see attached file). The letter includes IL and MI.
 - WI – AASHTO sent a letter explaining there is not unanimity among the states.
 - MO – No problem with the idea. Concerned with what ability the DOT has to move the needle and reduce fuel consumption. Concerned with being given a task that is only tangential to what authority the state DOT has. Does not dispute the aim or goal, just how we get there.

- Future MeetingsPresident Jack Marchbanks, ODOT
 - Inflation is still hot – Tasked OH Chief engineer to track major construction inflation across the MAASTO region.
 - January 24, 2024 (Virtual)
 - February 7, 2024 – AASHTO Washington Briefing, Washington, DC
 - [Work on a virtual link](#)
 - March 27, 2024 (Virtual)
 - April 23-26, 2024 – AASHTO Spring Meeting, Madison, WI
 - May 22, 2024 (Virtual)
 - June 26, 2024 (Virtual)
 - July 24, 2024 (Virtual)
 - August 26-28, 2024 – MAASTO Annual Meeting, Kansas City, MO

- Adjourn
 - First: IO (Dir Marler)
 - Second: Mn (Commissioner Daubenburger)
 - Meeting ended at 1:01 PM

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