

# INFORMER

#6, May 2010

Professional Engineers in California Government

## Irresponsible Behavior



Public Private Partnerships (P3s) and design-build are procedures which have consistently failed when used on transportation and other infrastructure projects in California and elsewhere.

Design-build typically lumps final design and construction into one no-bid contract, more than doubling the cost. P3s theoretically bring in private funds but, in fact, the public always pays the bill.

The latest P3 project, Route 125 in San Diego, cost more than twice the estimate and recently went bankrupt, the first project in the nation to default on a federal TIFIA loan. The previous P3 project, Route 91 in Orange County, required a taxpayer bailout at twice what it cost to build the project.

PECG has successfully blocked proposed legislation to expand these experiments. However, in early 2009, Senate Bill 4 was approved by the Legislature and signed by the Governor, authorizing P3 and design-build on a limited number of projects for transportation. PECG wound up being neutral because the bill included various safeguards, including public inspection as well as preparation of the environmental documents and preliminary design by Caltrans on State Highway projects.

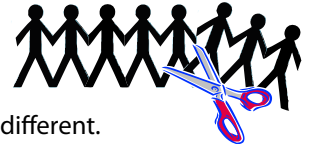
The first P3 project to rear its head under this new authorization is the Doyle Drive or Presidio Parkway in San Francisco, the rebuilding of the 1.5 mile connector between the Golden Gate Bridge and the City. The original plan was to use eight competitively bid construction projects to accomplish the reconstruction. The first four contracts came in with bids as low as 40% under



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## Playing With Numbers

The typical annual State Budget dance includes messing around with Caltrans staffing authorization for the next fiscal year. This year is no different.



The Governor's January Budget proposal recommended maintaining Caltrans staff at its current authorization for the fiscal year beginning in July. This was based on staffing needs projected by Caltrans for the approximately 2,000 projects it will be working on.

Shortly thereafter, the Legislative Analyst's Office (LAO) had a bit of a temper tantrum. They complained that Caltrans could tell them how many people would be working on each project but couldn't provide the average staffing required for each phase of each project being worked on. Of course that data has never been provided and doesn't exist but the Analyst accused Caltrans of not knowing what it was doing.



The Analyst then concluded that because Caltrans was able to get its work done on time despite furloughs, which effectively reduced staff effort by 15%, the Legislature should cut Caltrans Capital Outlay Support staff by 15% in the upcoming fiscal year. Silly as it sounds, that was the recommendation.

Actually, Caltrans did have to delay a couple dozen projects until the next fiscal year. Caltrans also used up all of its "shelf" projects to expeditiously spend the federal stimulus funds which became available, so there is the added need to get more projects ready for the "shelf" in case additional federal or other funding becomes available. But, never mind all that. The Analyst recommended eliminating **1500 positions.**



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# Good Things Are Happening, Too

By Shabbir Ahmed, PEGC President

PEGC is involved in many issues that are important to all of us – outsourcing our jobs, negotiating pay and benefit improvements, battling furloughs and (from time to time) layoffs, dealing with the State Budget, attacks on our pension plan, potential minimum wage if the Budget is late, representing members, and much, much more. If it were not for PEGC, an organization of members, volunteer leaders, and professional experts, the results on these and other issues would be far worse.



PEGC's interests, and those of its members, are the same as the interests of the public and other taxpayers. We seek to provide excellent service in an efficient and economical manner. We can and should all be proud of that. However, these big picture items are a constant battle, particularly when we deal with an Administration that doesn't fully appreciate the value of public service and public servants, coupled with difficult economic times, a State Budget deficit, a cynical media, and a citizenry that is frequently wary of government.

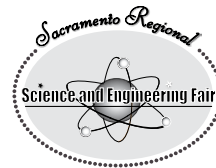
Much of our efforts are preventing bad things from happening, frequently on a large scale. Our pensions are criticized as being excessive. The private sector and some politicians want our jobs outsourced to private firms at more than twice the cost. We face the potential of receiving minimum wage for one or more months this summer if the Legislature is late with the Budget, which they almost always are. The Governor places us on unpaid furloughs and the courts are reluctant to stop him. The Legislature cuts our holidays and overtime compensation, offering nothing in return. The Governor wants to cut our pay further.

Yes, the major issues are a battle, but I have come to realize that there are many good things that happen also, either for a positive gain or prevention of something that would be quite damaging to some or all of us. Here are a few examples.

For ten years, PEGC has been a leader in an organization called the National Association of State Highway and Transportation Unions, or **NASHTU**, which includes 37 member organizations throughout the country. Like PEGC, they represent state employed engineers and related professionals. Our combined efforts in Washington, D.C. have given us a voice on important policy matters. The Obama Administration opposes uncontrolled and wasteful **outsourcing** at the federal level and we have been meeting with them increasingly to encourage more federal funding for infrastructure and tighter federal regulations on wasteful contracting.



PEGC has sponsored and co-produced three Emmy-award winning **documentaries** on bridge infrastructure projects. In each case, the common theme is the positive role that state government and its engineers play in serving the public. These documentaries have been shown throughout the United States and are continuing to be aired nationally. Currently, we are sponsoring a documentary on climate change and the clean energy alternatives which again highlight the important role of government and its engineering and related professionals in developing solutions to the problem.



PEGC is a major sponsor of the Sacramento Regional Science and **Engineering Fair** each year, serving on the governing Board with dozens of PEGC members as volunteers. We are also becoming involved in similar Fairs in Los Angeles, Orange County, Inland Empire, Fresno, and San Diego.

A bill was recently introduced which would have transferred all of the school plan checking and inspection oversight performed by the **Division of the State Architect** to local agencies, essentially eliminating that Division and the service it has been providing to the public for many decades. PEGC's lobbyist defeated that bill, along with a number of other bad bills which crop up each year.

The Division of Occupational Safety and Health (**DOSH**) told its employees to list all teaching, training or presentations which they perform at any time, whether or not it is related to their job or employment, and sign a form under penalty of perjury. PEGC's attorney convinced DOSH management to rescind that policy and restrict their questions to relevant activities using state resources. The **Department of General Services** told employees to let them know of any boards or commissions the employees serve on. That overly invasive inquiry was rescinded when challenged by PEGC. These are just a few examples of how PEGC protects your employment and privacy on an ongoing basis.



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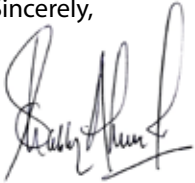
## GOOD THINGS ARE HAPPENING TOO

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At any given time, PECG is representing dozens of members on claims, appeals, grievances, and other administrative procedures involving work-related issues. Sometimes management's actions are justified. When they are not, PECG is there to represent the members' interests.

As a former Board Member of PECG and as your current President, I deeply appreciate your support throughout the years, during good times and bad. You have supported PECG and our efforts to represent you as individuals and as an organization of public servants. This is a time of challenges, which means it is also a time of opportunities. We will continue to do our best to represent you and the public we all serve.

Sincerely,



Shabbir Ahmed  
PECG President

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## PLAYING WITH NUMBERS

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Then, in his May Revise Proposal, the Governor recommended eliminating **750 positions** which, oddly enough, is exactly half what the Analyst recommended. There was no rational explanation. The Governor simply said Caltrans should be able to achieve 7% efficiencies, so staff should be cut by 750 positions. He also recommended an increase in contracting out while acknowledging that contracting costs twice as much.

All of these recommendations would have to receive Legislative approval. In the initial review, Legislative subcommittees decided to reduce Caltrans' authorization by about **200 positions** through attrition, more as a token gesture to belt tightening than anything else. The subcommittees also rejected the Governor's proposal to increase contracting. Instead, they cut outsourcing to maintain the historic 90% staff and 10% contracting included in previous State Budgets for Caltrans Capital Outlay Support.

PECG will continue working with Legislative leadership and Committee Chairs to ensure that if there are any reductions in any department, they are minor and will be based on a reasonable projection of workload.



## IRRESPONSIBLE BEHAVIOR

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the Engineer's estimate, saving the taxpayer tens of millions of dollars. The project was fully funded and on schedule.



Then, last summer, the San Francisco County Transportation Authority stopped the project and decided to use a single no bid contractor to complete the design and construction. Because this process would more than double the remaining cost for the final four contracts, from less than \$500 million to at least \$1.2 billion, the Authority sought to involve a private entity to provide the additional up front funding. The result would be a massive debt to be repaid out of State Highway funds over the next 30 years.

To proceed as a design-build P3 project under Senate Bill 4, the project required the approval of the California Transportation Commission (CTC). On May 19, the Commission considered the Authority's application for approval. The Commission staff recommended disapproval. Legal opinions from the Attorney General, Legislative Counsel, and the Commission's attorneys concluded the project was illegal and violated Senate Bill 4 in several ways. Every local and regional agency which testified at the meeting recommended disapproval of the project as a no bid P3 endeavor. PECG testified in opposition to the P3 proposal.

The only support came from the contractors who stood to make more than half a billion dollars in profit and the local agency which proposed the idea. Nevertheless, the CTC voted 6 to 5 to reject their own staff recommendation. They gave the green light to go ahead with this project as a no bid P3.



As Senate Transportation Chair Alan Lowenthal said at the meeting in recommending disapproval, it is "not responsible" to authorize tripling the cost of a fully funded project, requiring hundreds of millions of dollars intended for other projects to be diverted from the State Highway Account over the next three decades.

There is still time for the project to be returned to its previous status involving design by Caltrans and competitively bid construction contracts which have already been fully funded from a variety of sources. PECG is pursuing legislative and legal remedies to get the project back on track.

# When All Else Fails, Go to Court



Several major issues of importance to PEGC members are being addressed by the California courts. The process is always slow and the results are uncertain but when management acts unilaterally or won't try to resolve a problem, the court becomes the ultimate decision maker.

One example is **furloughs**. The Governor chose to unilaterally impose furloughs when the Legislature refused to do it for him. He refused to negotiate alternatives with PEGC or other labor organizations. This resulted in about two dozen lawsuits. In some cases, lower courts upheld the furloughs and ruled that they were illegal. Other courts ruled in favor of the Governor. PEGC's initial lawsuit and some others are currently in the Court of Appeal, awaiting oral argument. If PEGC is successful in either of our lawsuits, the requested remedy is back pay for all of the salary reductions over seventeen months.

Another issue in court is the question of **paying full salaries on time**, if the Legislature is late in adopting a State Budget. In a

suit brought by the Governor against the Controller, the courts have thus far ruled that only the federal minimum wage, not full salaries, can be paid in the absence of a State Budget authorizing such payments.

The problem could be easily resolved if the Legislature would pass and the Governor would sign a State Budget by July 1 or if they pass either PEGC-sponsored bill, AB 790 or AB 1699, to authorize continuous appropriation with or without a budget. As that has not occurred thus far, the issue is currently in the hands of the court. There will be a Court of Appeal hearing on June 21 to address this issue further.

Then, there is the question of **salaries** for Unit 9 employees. The Unit 9 MOU says that salary increases will be paid based on the agreed upon salary survey through 2008 "and thereafter." DPA refused to provide the salary increase authorized by the survey in 2009. PEGC filed a grievance which DPA denied. DPA has refused to go to arbitration, even though the arbitration clause of the MOU is still in effect. Thus, PEGC has been forced to go to court to seek an Order requiring DPA to participate in arbitration on this issue.



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