APPROVED
SEP 1 1959
SEP 21 1959

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

SEP 17 1959

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H. R. 8678 - Federal-aid Highway Act of 1959
Sponsor - Rep. Fallon (D) Maryland

Statement Issued

Last Day for Action

September 22, 1959 - Tuesday

Purpose

To enable continued construction of the Interstate Highway System on a pay-as-you-build basis, to further restrict Federal control of billboards, to provide for a study of Alaska and Hawaii highway needs, and to authorize funds for miscellaneous highway projects.

Agency Recommendations

Bureau of the Budget - Approval

Department of Commerce - Approval
Department of Agriculture - Approval
Council of Economic Advisers - Approval
Department of the Treasury - No objection
Special Assistant for Public Works
Planning - No objection (informally)
Department of the Interior - No recommendation

Discussion

A. Main provisions

The bill provides revenues to the Highway Trust Fund that will enable the Secretary of Commerce to apportion part of 1961 and 1962 interstate highway authorizations among the States by increasing the tax on gasoline by one cent until June 30, 1961, and diverting amounts equal to a 5 percent excise tax on automobiles, parts and accessories, etc., to the Fund for the three years following that date. It also reduces the 1961 authorization of the Interstate System from $2.5 billion to $2 billion. It approves the 1958 estimate of the cost of completing the Interstate System as a basis for apportioning the 1962 authorization.

These changes in the law do not provide a completely satisfactory solution to the problem of highway financing. First, the tax increase will not provide the immediate revenues needed to meet existing obligations during this fiscal year. For this reason, a repayable advance of $359 million from the general fund has been sought and provided in the Mutual Security Appropriation bill. Second, the revenues provided are not sufficient to allow apportionment of the full authorizations for 1961 and 1962. As a result, apportionments in each year will be approximately $200 million less than authorized. Third, the diversion of excise taxes from the general fund will reduce the revenues available for general budget expenditures in the fiscal years 1962, 1963, and 1964. We believe that this diversion is very objectionable, and that every attempt should be made to change the law before it becomes effective to ensure that the Interstate System be constructed with taxes imposed for that purpose and not by diverting taxes dedicated to paying general Government expenses. In this connection, the report of the Secretary of Commerce relating to equitable taxes for financing highway construction is required by law to be made by January 3, 1961. It may provide the basis for recommending taxes to replace the scheduled diversion.

Despite these deficiencies, we believe that the bill represents the best compromise on financing arrangements that can be made at this time.

B. Miscellaneous provisions

The bill also requires the exemption (existing law is permissive) of highways crossing land zoned for industrial or commercial use within incorporated communities from the law providing national standards for billboard control. As a result, States will be unable to receive the authorized Federal incentive contributions for highways in these areas which meet these standards.

The required study by the Secretary of Commerce of Interstate System needs within Alaska and Hawaii may provide desirable information. However, the January 14, 1960 reporting date will make conduct of an adequate study difficult and will prevent use of the findings of the Alaska International Rail and Highway Commission's study, which will not be completed until 1961. The study arises from the fact that these new States have no Interstate System highways although their citizens pay the increased highway taxes.

The bill authorizes the appropriation of $2 million for relocation of a portion of the Natchez Trace Parkway in Mississippi which will be flooded by a lake being constructed by the Pearl River Valley Water Supply District to provide water for local needs. Payment of the costs of relocating Government roads flooded by locally-sponsored projects providing local benefits is usually a local

responsibility. In this case, local authorities propose to pay only $600,000 of the total cost. The bill also authorizes the Secretary of Commerce to use his emergency fund to pay the full cost of repairing disaster-caused damage to forest highways under his jurisdiction and to various roads and trails under the jurisdiction of the Secretaries of Agriculture and Interior. This section was occasioned by the recent earthquakes in the vicinity of Yellowstone Park which damaged some National Park and National Forest roads. In the absence of this section, the cost of repairs would be met by reprogramming funds available to the Department concerned. The section provides a method for bypassing the budget and appropriation process. The bill also provides $3 million of additional contract authority for constructing bridges over Federal dams. Since such bridges can be constructed with ordinary Federal-aid funds, which have been greatly increased since the original authorization for bridges over dams, the Department of Commerce and this Bureau opposed the new contract authority when it was under consideration as a separate bill.

We doubt the wisdom or necessity of these miscellaneous provisions. However, we do not believe they are of sufficient importance to warrant disapproval of the main provisions.

C. Future legislation

In responding to our request for views on the enrolled bill, the Special Assistant for Public Works Planning asked us to bring to your attention his proposed amendment to the highway laws designed to restrict the use of Interstate Highway funds on projects serving primarily local needs. His proposed language is attached.

Phillip S. Hughes
Assistant Director for
Legislative Reference

Enclosures

STATEMENT BY THE PRESIDENT

I have today approved H. R. 8678, the Federal-Aid Highway Act of 1959. In my budget message submitted to the Congress on January 19, 1959, I proposed a 1-1/2 cent increase in highway fuel taxes for the purpose of keeping the Federal-aid highway program on schedule and continuing the self-sustaining features of the program established in 1956. Although the bill does not meet these objectives, I have approved it in order to avoid a serious disruption of the highway program with its attendant adverse effects on State finances, highway contractors and workers, and the economy generally.

Because the bill does not provide the level of revenues required for continuing the highway program on the schedule contemplated under existing authorizations, it will be necessary to make orderly use of these authorizations so that spending can be held within limits that will avoid future disruption of the program. This action will be required if the Federal Government is to meet promptly its obligations to the States and at the same time adhere to the self-financing principle upon which the highway program has been established. Of necessity, such actions may lead to some deferment or delay in the completion of the Interstate System as originally contemplated.

In this connection, at my direction there has been underway since July a comprehensive review of the interstate program's current policies, practices, methods and standards -- including an examination of the relative Federal, State, and local responsibilities for planning, financing, and supervising the program. This study is being conducted by the Special Assistant to the President for Public Works Planning, Gen. John S. Bragdon, in collaboration with the Secretary of Commerce and

the Director of the Bureau of the Budget. If actions are needed to insure that our national objectives are being achieved at minimum Federal cost on a pay-as-you-go basis, it is expected that the necessary recommendations will be developed by this study.

Dwight D. Eisenhower

THE WHITE HOUSE

September 21, 1959

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

Send to Mr Hopkins
for inclusion in
Bill file record

SEP 18 1959

MEMORANDUM FOR MR. DAVID KENDALL

Subject: Enrolled Bill H. R. 8678 - the Highway Bill

Subsequent to the forwarding of the file on the above bill, the attached draft statement was received from General Bragdon for consideration in connection with it. It is sent, accordingly, for inclusion with the file.

Also, since transmission of the file, the Director has been considering the desirability of a Presidential statement explaining the Administration position with respect to contributions to States in the light of certain press comments by Senator Gore. We are preparing a draft statement along these lines and will forward it to you as soon as possible.

Phillip S. Hughes
Assistant Director for
Legislative Reference

Attachment

THE WHITE HOUSE
WASHINGTON

Public Works Planning September 17, 1959

MEMORANDUM FOR MR. HUGHES

Reference my telephone conversation, attached is a suggested draft for incorporation in the President's approval message of the Highway Act of 1959. As Mr. Staats suggested, I think this is much the better way to release this inasmuch as the date of the directive was over two months ago. Additionally, this will be most helpful to our Review Analysis inasmuch as trying to keep the matter from being public has been a handicap.

J. S. Bragdon

Attachment

DRAFT - September 17, 1959

I have today approved _____ which will enable the Interstate and Defense Highway System to continue.

Since this program was placed under way, its magnitude and the increasing problems of cost have been of concern. Early last July (July 2) I instructed my Special Assistant in Public Works Planning, General J. S. Bragdon, to institute a broad review of the Federal-aid Highway Program and in collaboration with the Secretary of Commerce and in consultation with the Bureau of the Budget.

The review is to include a re-examination of policies, practices, methods and standards now in effect, with special reference to their effectiveness in achieving the national objectives; an examination of the relative Federal, State and local responsibilities for the planning, financing and supervising the program; and a determination of means for improving the coordination between Federal planning for Federal-aid Highways and State-Local planning, especially urban planning.

The review will also develop recommendations for Legislative and Executive actions that may be needed to insure that the program meets its objectives in a manner that will minimize the Federal costs of the program and assure the financing of this cost on a self-sustaining basis.

THE SECRETARY OF COMMERCE
WASHINGTON 25, D. C.

The Honorable
The Director
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Director:

This letter is in response to your request of September 10, 1959, for the views of this Department with respect to H. R. 8678, an enrolled enactment

> "To amend the Federal-Aid Highway Acts of 1956 and 1958 to make certain adjustments in the Federal-aid highway program, and for other purposes."

Although H. R. 8678 as enacted contains certain provisions which have been opposed by the Administration, nevertheless this Department recommends that the President approve this enrolled enactment.

Section 101 of title I of the enrolled enactment provides that the Act may be cited as the Federal-Aid Highway Act of 1959.

Section 102 amends subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended by the Federal-Aid Highway Act of 1958, by decreasing the amount authorized for the Interstate System for fiscal year 1961 from $2.5 billion to $2.0 billion. Despite this reduction in the authorization for the fiscal year 1961, it will not be possible in view of the provisions of Section 209 (g) of the Highway Revenue Act of 1956 to apportion more than $1.8 billion for the Interstate System for such fiscal year.

Section 103 approves the current estimate of cost of completing the Interstate System which was submitted to the Congress on January 7, 1958, pursuant to section 108 (d) of the Federal-Aid Highway Act of 1956, as the basis for making the apportionment of funds authorized for the Interstate System for the fiscal year 1962. The same estimate has been approved by the Congress as the basis for the apportionment of funds for Interstate System for fiscal years 1960 and 1961. A new estimate of the cost of completing the

Interstate System is to be submitted to the Congress in January 1961 for use as the basis for apportionment of funds authorized for the Interstate System for fiscal years 1963, 1964, 1965, and 1966. The new estimate will not, however, be ready in time to be used as the basis for apportioning Interstate funds for the fiscal year 1962, and it is the view of this Department that the 1958 estimate must necessarily be approved for that purpose.

Section 104 authorizes the appropriation of the additional sum of $2 million for fiscal year 1960 for the construction, reconstruction and improvement of parkways. Expenditure of funds authorized for parkways is under the control of the Department of the Interior, and it would, therefore, be appropriate for that Department to submit its views concerning this aspect of the enrolled enactment.

Section 105 authorizes and directs the Secretary of Commerce to make a study of the need for extension of the National System of Interstate and Defense Highways within the States of Alaska and Hawaii and to report the results of such study to the Congress within 10 days subsequent to January 4, 1960. Existing law provides for the designation of the Interstate System within the continental limits of the United States. Pursuant to that law, the entire authorized mileage of 41,000 miles, except for a necessary operating reserve of about 3/4 percent of the total amount, had been designated before Alaska and Hawaii became States. A study of the need for extension of the Interstate System within Alaska and Hawaii would seem to be an appropriate step. Such study, in Alaska, should be coordinated with the study now being conducted by the Alaska International Rail and Highway Commission. The study directed by section 105 of the enrolled enactment, however, must be submitted to the Congress in January 1960, whereas the report of the Alaska International Rail and Highway Commission is not due until 1961. Information already developed in connection with the report of the Commission will no doubt prove of value in the study directed by section 105 of the enrolled enactment.

Section 106 of the enrolled enactment, in effect, excludes from the national policy concerning outdoor advertising adjacent to the Interstate System segments of Interstate highways which traverse commercial or industrial zones within the presently existing boundaries of incorporated municipalities, or which traverse other areas where the land use at the present time is clearly established by State law as commercial or industrial. Under existing law, such areas may be excluded from application of the

national standards upon application of the State and within the discretion of the Secretary of Commerce. Notwithstanding the provisions of the amendment, the States still would be able to avail themselves of the one-half percent increased Federal share of the cost of Interstate projects which are not within the excluded areas.

S. 1266, introduced by Senator Kerr, and H. R. 4886, introduced by Mr. Wright, contain provisions similar to section 106 of the enrolled enactment. In a letter dated June 23, 1959, addressed to the Chairman of the Senate Public Works Committee, and an almost identical letter dated June 18, 1959, addressed to the Chairman of the House Public Works Committee, this Department expressed opposition to the enactment of S. 1266 and H. R. 4886. One of the reasons for opposing the bills was the fact that considerable uncertainty or escape from the law could result from future expansion and shifting of the boundaries of incorporated municipalities. This objection has been met in section 106 of title I of the enrolled enactment by excluding areas "within the presently existing boundaries of incorporated municipalities" and areas where the land use "as of the date of approval of this Act" is clearly established by State law as commercial or industrial.

While it is the view of this Department that this portion of the enrolled enactment constitutes a possible lessening of the area of application of the existing law, it will not create any significant administrative problems.

Section 107 amends sections 120 and 125 of title 23, United States Code, relating to emergency relief. Under existing law, an emergency fund of $30 million annually is authorized for expenditure for the repair or reconstruction of highways, roads and trails which the Secretary shall find have suffered serious damage as a result of disaster over a wide area. Under existing law, the emergency funds may be used only for the repair or reconstruction of highways on one of the Federal-aid systems, and the Federal share of the cost of such repair or reconstruction cannot exceed 50 percent. Under the amendment set forth in section 107, the emergency fund could be used also for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads. The emergency fund could also be used in the discretion of the Secretary of Commerce for these roads irrespective of whether the Governor of the State has declared an emergency (as is required with respect to the other Federal-aid system highways) and, at the same time,

the Federal share payable on account of any repair or reconstruction of the roads covered by the amendment may amount to 100 percent.

In order to accomplish the contemplated emergency relief, the Secretary is authorized to expend monies from any funds available to him. These funds are then replaced or replenished by appropriations. As we interpret section 107, such appropriations would be made from either the Highway Trust Fund or the general fund depending upon the source of financing for the particular type of highway involved.

Legislation authorizing emergency relief for highways on the Federal-aid highway systems has existed for more than 30 years, and it seems appropriate that comparable legislation should exist for the emergency repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads which are a Federal responsibility. This section of the enrolled enactment is the direct result of the recent earthquake which occurred in Montana and adjoining States, doing extensive damage to roads of the above class, and this Department views the section as being desirable legislation.

Section 108 increases the amount authorized for the construction of bridges over Federal dams as set forth in 23 U.S.C. 320 from $10 million to $13 million. By letter dated June 22, 1959, this Department advised the Chairman of the Senate Committee on Public Works that the enactment of S. 793, which would have increased the amount authorized for bridges over Federal dams from $10 million to $15 million, seemed to be unnecessary in view of the availability of increased amounts of Federal-aid highway funds subsequent to enactment of the law originally authorizing amounts for bridges of this nature.

Title II of the enrolled enactment increases the tax on motor fuel by 1 cent for a 21-month period beginning October 1, 1959, and also transfers from the general fund to the Highway Trust Fund the equivalent of a 5-percent tax on passenger automobiles and parts for three years--July 1, 1961, through June 30, 1964. In regard to this, you pointed out to the Senate Committee on Finance on September 4, 1959, concerning H. R. 8678, that the President had recommended an increase in the tax on motor fuel by 1.5 cents for 5 years beginning July 1, 1959, and that the Administration has opposed diversion of funds from the general fund to the Highway Trust Fund, but that, notwithstanding these

differences, legislation similar to the enrolled enactment could be accepted as a temporary measure since:

1. The additional revenue will solve the financial problem of the Highway Trust Fund for the next 2 years without a drastic curtailment of the program.

2. The enrolled enactment's proposed transfers from the general fund would not take effect until after reports by the Secretary of Commerce on highway costs and equitable distribution of tax burdens are due to be placed before the Congress, early in 1961. The proposed diversion can be reconsidered at that time and appropriate action taken.

It is the view of this Department that the most important aspect of the enrolled enactment is to continue the Interstate program without drastic curtailment. Accordingly, despite the inclusion of several provisions with which we are not in accord, this Department recommends that the President approve the enrolled enactment.

Sincerely yours,

Secretary of Commerce

DEPARTMENT OF AGRICULTURE
WASHINGTON 25, D. C.

September 11, 1959

Hon. Maurice H. Stans, Director
Bureau of the Budget

Dear Mr. Stans:

This is in response to your request for a report from this Department on enrolled enactment H. R. 8678 "To amend the Federal-Aid Highway Acts of 1956 and 1958 to make certain adjustments in the Federal-aid highway program, and for other purposes".

Insofar as this enactment affects this Department we recommend that it be approved by the President.

This is the Federal-Aid Highway Act of 1959. The principal effect which it has upon this Department is that it amends Section 125 of Title 23, U. S. Code, which established an emergency fund, so that the fund would be available for expenditure by the Secretary of Commerce for the repair or reconstruction of forest highways and forest development roads and trails seriously damaged as a result of disaster over a wide area, such as by floods, hurricanes, earthquakes and other catastrophies. This amendment would enable the Secretary of Commerce to use this emergency fund for the repair or reconstruction of the forest highways and forest development roads and trails which have suffered serious damage in disasters such as the recent earthquake in southwestern Montana.

Sincerely yours,

True D. Morse

True D. Morse
Acting Secretary

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

September 11, 1959

Mr. Phillip S. Hughes
Assistant Director for
Legislative Reference
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Hughes:

This is in reference to your request of September 10, 1959 for the views of the Council of Economic Advisers on enrolled bill H. R. 8678, the "Federal-Aid Highway Act of 1959."

The major provisions of H. R. 8678 would reduce the amount of the maximum apportionment to the States for the Interstate Highway Program in fiscal year 1961 from $2.5 to $2.0 billion, increase the motor fuel tax from 3¢ to 4¢ between October 1, 1959 and July 1, 1961, and transfer excise taxes collected on automobiles, parts and accessories to the Highway Trust Fund in an amount equal to a 5 percent tax between July 1, 1961 and July 1, 1964.

The prospective collection of additional revenues for the Highway Trust Fund will permit making an apportionment during this calendar year for Interstate Highway Program construction during fiscal year 1961 of about $1.8 billion. Without the prospect for additional funds, not only could no Interstate Program apportionment be made this year, but the apportionment a year hence would also be reduced to about $500 million and other restrictions on current rates of new contract approval would have to be imposed.

The manner in which the prospective revenues would be raised is not fully in accord with the legislative program of the President. It would be preferable to collect the needed additional funds by raising the tax on motor fuels 1-1/2¢ for five years; such a step would provide sufficient revenue to avoid any transfer of money from the general fund of the Treasury, or the funding of any deficit through borrowing.

We do not favor the use of general Treasury funds for Interstate Highway purposes, but we recognize that under existing law the Congress can give further consideration to an equitable distribution of the tax

burden before any such transfers commence under the provisions of H. R. 8678 and, accordingly, the Council recommends that H. R. 8678 be approved.

Sincerely yours,

Raymond J. Saulnier

Chairman

Council of Economic Advisers

OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON

SEP 11 1959

Sir:

Your office has requested the views of this Department on the enrolled enactment of H.R. 8678, "To amend the Federal-Aid Highway Acts of 1956 and 1958 to make certain adjustments in the Federal-aid highway program, and for other purposes."

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Very truly yours,

Acting Secretary of the Treasury

The Director
Bureau of the Budget

THE WHITE HOUSE
WASHINGTON

September 12, 1959

MEMORANDUM TO: The Director,
Bureau of the Budget

In response to a memorandum from Assistant Director for Legislative Reference of the Budget, I am submitting the following on Enrolled Bill H. R. 8678.

J. S. Bragdon
Special Assistant For
Public Works Planning

Enclosure

Studies of the Interstate System thus far indicate a relegation to secondary importance of the defense and interstate objectives of the Interstate System with a concomitant great magnification of that system within cities and urban areas; and also a neglect of other segments of the Federal-Aid system, e.g. secondary and other primary routes. This is partly a result of the 90/10 sharing for the Interstate System as contrasted with 50/50 for other segments.

There is also evident what may be interpreted as a scramble to procure 90/10 money to solve intra-city traffic problems and fallacious reasoning that these problems are and/or ought to be among the objectives of the Interstate System. There has been the tendency to regard the 90/10 funds as "free" funds which if each city does not make extended effort to secure a maximum share of, that city will lose out while some other city will gain a disproportionate greater amount.

The tendency described is heightened by the Bureau of Public Road's practice of considering traffic volume wherever encountered along an interstate route as a functional problem to be solved by it, and not one to which the ordinary division of Federal, State and local responsibilities should be applied.

I suggest the addition of the following section:

"The Secretary of Commerce is authorized and directed to prepare definitions and criteria to distinguish between segments of the urban classification of the primary system and of the interstate system in urban areas in the light of the primary purposes of those segments. The Interstate System is primarily to provide a national network of highways connecting all states and cities with a fast, safe means of long-distance highway motor travel in the interests of defense, and interstate commerce and communication. Urban routes should provide within urban areas primarily intra-state highway communication without attempting to completely take care of traffic conditions local to the immediate area except insofar as these would ordinarily contribute traffic to the designated urban route".

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

SEP 12 1959

Dear Mr. Stans:

This is in response to the request of your office for the views of this Department on the enrolled bill, H. R. 8678, "To amend the Federal-Aid Highway Acts of 1956 and 1958 to make certain adjustments in the Federal-aid highway program, and for other purposes."

This Department had no opportunity to consider the bill before enactment, and therefore we refrain from making a positive recommendation as to its approval by the President.

It is noted with interest that additional contract authority in the sum of $2,000,000 has been provided for the relocation of a portion of the Natchez Trace Parkway, near Jackson, Mississippi, under section 104 of the bill. This section of the Parkway will be flooded by the lake which will be created by the dam to be built by the Pearl River Valley Water Supply District.

We are also most interested that the Secretary of Commerce will be authorized and is directed to make a study of the need for the extension of the National System of Interstate and Defense Highways within the States of Alaska and Hawaii during the remainder of the year 1959, and that a competent report of the study is to be submitted to the Congress by date of January 14, 1960.

Sincerely yours,

Joyce a. Hardy

Assistant Secretary of the Interior

Hon. Maurice H. Stans
Director, Bureau of the Budget
Washington 25, D. C.

IMMEDIATE RELEASE

September 21, 1959

James C. Hagerty, Press Secretary to the President

- -

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have today approved H. R. 8678, the Federal-Aid Highway Act of 1959. In my budget message submitted to the Congress on January 19, 1959, I proposed a 1-1/2 cent increase in highway fuel taxes for the purpose of keeping the Federal-aid highway program on schedule and continuing the self-sustaining features of the program established in 1956. Although the bill does not meet these objectives, I have approved it in order to avoid a serious disruption of the highway program with its attendant adverse effects on State finances, highway contractors and workers, and the economy generally.

Because the bill does not provide the level of revenues required for continuing the highway program on the schedule contemplated under existing authorizations, it will be necessary to make orderly use of these authorizations so that spending can be held within limits that will avoid future disruption of the program. This action will be required if the Federal Government is to meet promptly its obligations to the States and at the same time adhere to the self-financing principle upon which the highway program has been established. Of necessity, such actions may lead to some deferment or delay in the completion of the Interstate System as originally contemplated.

In this connection, at my direction there has been underway since July a comprehensive review of the interstate program's current policies, practices, methods and standards -- including an examination of the relative Federal, State, and local responsibilities for planning, financing, and supervising the program. This study is being conducted by the Special Assistant to the President for Public Works Planning, General John S. Bragdon, in collaboration with the Secretary of Commerce and the Director of the Bureau of the Budget. If actions are needed to insure that our national objectives are being achieved at minimum Federal cost on a pay-as-you-go basis, it is expected that the necessary recommendations will be developed by this study.

# # #

Mr. Hopkins:

Please hold this for inclusion in the bill file after the President has acted.

J. Taggart

THE WHITE HOUSE
WASHINGTON

Public Works Planning

September 18, 1959

MEMORANDUM FOR MR. KENDALL

Inclosed is a copy of a memorandum I sent to Sam Hughes of the Budget with some paragraphs to be included in the message when approval is given to the Highway Act of 1959. It amounts to an announcement of the study of the Interstate System which the President directed me to make last July.

Maurice Stans, Fritz Mueller and Jerry Morgan all agreed that we should give it publicity now. No mention of this study was made at the time because it was decided not to do anything that might check getting the temporary financing (the one-cent tax) proposal through.

It has been announced that Congressman Blatnik of the House Public Works Committee is to head a special sub-committee to investigate the practices, procedures and methods of the Bureau of Public Roads in the road program. I think, therefore, it is doubly important that our study be mentioned. It has been somewhat of a handicap that it has not been made generally known so far.

J. S. Bragdon

Attachment

Draft - September 17, 1959

I have today approved _____ which will enable the Interstate and Defense Highway System to continue.

Since this program was placed under way, its magnitude and the increasing problems of cost have been of concern. Early last July (July 2) I instructed my Special Assistant in Public Works Planning, General J. S. Bragdon, to institute a broad review of the Federal-aid Highway Program and in collaboration with the Secretary of Commerce and in consultation with the Bureau of the Budget.

The review is to include a re-examination of policies, practices, methods and standards now in effect, with special reference to their effectiveness in achieving the national objectives; an examination of the relative Federal, State and local responsibilities for the planning, financing and supervising the program; and a determination of means for improving the coordination between Federal planning for Federal-aid Highways and State-Local planning, especially urban planning.

The review will also develop recommendations for Legislative and Executive actions that may be needed to insure that the program meets its objectives in a manner that will minimize the Federal costs of the program and assure the financing of this cost on a self-sustaining basis.

THE WHITE HOUSE
WASHINGTON

Sept 19

Bill Hopkins

Bill

Pls put the
record on this
signing statement
— Dave has the OK
+ the approved signing
statement

Raemer

Rus addition circulated + worked out with Gen Bragdon

In this connection, at my direction there has been underway since July a comprehensive review of the interstate program's current policies, practices, methods and standards to determine on a pay-as-you-go basis whether our national objectives are being achieved at minimum Federal cost ~~and on a self-sustaining basis~~. This study is being conducted by the Special Assistant to the President for Public Works Planning, General John S. Bragdon, in collaboration with the Secretary of Commerce and the Director of the Bureau of the Budget. The study includes a review of the relative Federal, State and local responsibilities for planning, financing and supervising the interstate program ~~and also their coordination, especially in urban areas.~~

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

September 18, 1959

MEMORANDUM FOR MR. DAVID KENDALL

Subject: H. R. 8678, the Federal-aid Highway Act of 1959

In accordance with my previous memorandum of this date, I am transmitting herewith a draft statement by the President for issuance upon approval of H. R. 8678, the Federal-aid Highway Act of 1959.

The Director believes the point made in the last paragraph is extremely important in view of the legislative history of the highway appropriation added to the Mutual Security Appropriation Act and subsequent statements to the press.

Phillip S. Hughes
Assistant Director for
Legislative Reference

Attachment

STATEMENT BY THE PRESIDENT

I have today approved H. R. 8678, the Federal-Aid Highway Act of 1959. In my budget message submitted to the Congress on January 19, 1959, I proposed a 1½-cent increase in highway fuel taxes for the purpose of keeping the Federal-aid highway program on schedule and continuing the self-sustaining features of the program established in 1956. Although the bill does not meet these objectives, however, I have approved it in order to avoid a serious disruption of the highway program with its attendant ~~deleterious~~ adverse effects on State finances, highway contractors and workers, and the economy generally.

I consider as highly objectionable the proposed diversion from the general fund to the Highway Trust Fund of certain excise taxes that have traditionally been used to support other equally important programs of the Federal Government. Fortunately the Congress will have an opportunity to reconsider highway financing matters before the diversion of taxes from the general fund becomes effective.

Because the bill does not provide the level of revenues required for continuing the highway program on the schedule contemplated under existing authorizations, it will be necessary to ~~schedule the~~ make orderly ~~utilization~~ use of these authorizations so that spending can be held within limits that will ~~so as to~~ avoid future disruption of the program. This action will be required if the Federal Government is to meet promptly its obligations to the States and at the same time adhere to the self-financing principle upon which the highway program has been established. Of necessity, such actions may lead to some deferment or delay in the completion of the Interstate System as originally contemplated.

BB FORM
NO. 4

Bureau of the Budget

ROUTE SLIP

TO Mr. Kendall

205 West Wing

The White House

- [ ] Take necessary action
- [ ] Approval or signature
- [ ] Comment
- [ ] Prepare reply
- [ ] Discuss with me
- [ ] For your information
- [ ] See remarks below

FROM W. Pfleger, Jr. CF DIV DATE October 1, 1959

W. P. Pfleger, Jr.

REMARKS

Material requested this A.M. on Roads.

Keep me posted.

Excerpt from Senate Appropriations Committee
Report - Subcommittee of Commerce and Related
Agencies - Appropriation Bill, 1960, Report No. 397

"The committee supports the principle that highway users rather than the general taxpayers should pay the cost of the Federal-aid highways and that it should be based on a pay-as-you-go basis."

Excerpt from Conference Report on Mutual Security
Appropriation Bill, 1960 - Congressional Record, p. 18,165

"Amendment No. 42: Appropriates $359,000,000 as proposed by the Senate. Since the President has recommended that the repayment be made by June 30, 1960, the conferees have accepted the amendment with the expectation that this will be done without default of existing obligations with the States."

July 28, 1959

BUREAU OF PUBLIC ROADS' COMMENTS

re

STUDY OF HIGHWAY PROGRAM BY BUREAU OF THE BUDGET

"Item 5. Obtain legal review of law, contracts entered into with States and other documents to determine:

"a. Effect of 'as soon as practicable' phrase on approval of programs, plans, and contracts."

Conclusion: Authority to approve and authority to determine practicability are discretionary in nature and require the exercise of administrative judgment. In determining whether to approve programs (under section 105) and projects (under section 106), to be followed by project agreements (under section 110), the Secretary of Commerce has authority to take into account considerations which he administratively deems pertinent for determining what is a practicable and administratively desirable course of action. Administrative judgment must, of course, be exercised in a manner consistent with and designed to promote the policies and objectives declared by the Congress.

Discussion: The courts have construed the phrase "as soon as practicable" on innumerable occasions. As the Supreme Court of Washington aptly stated in Sears, Roebuck and Co. v. Hartford Accident and Indemnity Company (1957) 313 P. 2d 341, 351:

> " 'As soon as practicable' means as soon as can reasonably be expected under the circumstances" (Citing cases).
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> Another court has said, regarding this phrase:
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> "Its accepted meaning is 'within a reasonable time in the light of the circumstances,' and what constitutes a reasonable time is a fact question for the jury." Leytem v. Firemen's Fund Indemnity Co. (1957) 85 N.W. 2d 921, 922.

Since time is not the only element involved in ascertaining the meaning of the phrase, it is pertinent to inquire into the meaning of the word "practicable." The Supreme Court of Iowa has aptly stated in Gifford v. New Amsterdam Casualty Co. (1933) 216 Ia 23, 248 N.W. 235, 236:

" * * * * whether a thing is 'practicable' depends upon the actualities, the very facts and circumstances of the case. Facts persist. A thing is not 'practicable' if some element essential to its accomplishment is lacking. Notice cannot be served when the party to be served is unknown, and consequently the service of such notice is not practicable until the identity of the party to be served is known." (Emphasis added.)

Section 105(a) of title 23, United States Code, requires the Secretary of Commerce to act upon programs "as soon as practicable after the same have been submitted." (The next sentence, however, is permissive rather than mandatory, providing that "the Secretary may approve a program in whole or in part.") Similarly, section 106(a) requires the Secretary "to act upon such surveys, plans, specifications and estimates as soon as practicable" and section 110(a) requires that "as soon as practicable * * * the Secretary shall enter into a formal project agreement with the State highway departments."

It should be noted that the power to approve--whether it involves the approval of programs under section 105 or the approval of projects under section 106--is inherently a discretionary power, contemplating, as it does, approval or disapproval based upon the exercise of sound administrative judgment. However, once a project is approved and Federal funds are thereby obligated (23 U.S.C. 106), the execution of the project agreement memorializes the obligation previously incurred. Therefore, failure on the part of the Secretary to enter into a project agreement with respect to a project already approved, assuming all Federal requirements have been met, would be arbitrary and unlawful.

Application of the meaning given to the word "practicable" in the Gifford case (supra) to sections 105, 106 and 110(a) leads to the conclusion that the approvals contemplated by those sections would normally be based on considerations other than the financial status of the Trust Fund. This is true because the law clearly manifests an intent that obligations could be incurred up to the limit of the authorized funds apportioned and that funds would subsequently be appropriated to liquidate these obligations. Since the giving of approvals and the determination of what constitutes "as soon as practicable" are discretionary matters involving the exercise of administrative judgment, the power to approve or to determine the "practicable" course includes authority to take into account financial considerations when the circumstances warrant.

It is fundamental that authority conferred by the law must be exercised in a way which will promote and carry out the objectives of the legislation. Accordingly, administrative judgment must be evaluated on the basis of whether it is consistent with and will aid in achieving the intent of the law. As applied to the present situation, consideration may be given to all relevant factors including, on the one hand, the declarations in the law of an intent to accelerate construction of the Federal-aid highway systems (23 U.S.C. 101(b)), to achieve "prompt and early completion" of the Interstate System (id.), to finance it within "the thirteen years' appropriations" (id.), to bring the entire system to simultaneous completion in all States (id.) and to enact legislation to bring about a balance of total receipts and total expenditures whenever it appears that the total receipts will be less than the total expenditures from the Highway Trust Fund (§ 209(d) of the 1956 Act) and, on the other hand, the existing practicabilities relating to the financial condition and prospects of the Highway Trust Fund.

"b. Legal authority of BPR to control rate of progress under State contracts."

Conclusion: Where an existing contract does not give the State the right to retard or stop highway construction, the State could not do so without the consent of the contractor and any State action taken without such consent would be at the risk of damages for breach of contract. With respect to future contracts, the Secretary has authority to require that the State include provisions giving the State the right to retard or stop construction. Such a requirement could legally be imposed if it is administratively determined that the carrying out of the provisions of title 23, United States Code, reasonably necessitates that the States be in a position to retard or stop construction upon request of the Secretary. However, serious policy considerations would be involved since any such proposal would entail higher bids.

Discussion: This question must be considered in two parts: First, with respect to contracts already entered into and second, with respect to contracts which will be entered into in the future. The discussion will necessarily exclude consideration of specific provisions which may be present in existing contracts.

Where an existing contract does not give the State the right to retard or stop highway construction, the State could not do so without the consent of the contractor. Since delays in construction are costly, it is unlikely that any such consent will be granted without full reimbursement for the additional costs incurred by reason of the work stoppage. Any stoppage ordered by the State without the contractor's consent would be at the risk of damages for breach of contract.

On the other hand, whether the Secretary could require that the States include in their contracts provisions which would give the State the right to retard or stop construction and whether, in addition thereto, the Secretary could require the State to exercise such a right upon his request present an entirely different legal question. Section 112(d) of title 23, United States Code, provides in pertinent part that:

"No contract * * * shall be entered into by any State highway department * * * without prior concurrence of the Secretary in the award thereof."

The required concurrence is obviously not a perfunctory or ministerial duty. On the contrary, it would seem that the statute contemplates the exercise of administrative judgment to determine whether the concurrence should be given.

In addition, section 315 of title 23, United States Code, authorizes the Secretary "to prescribe and promulgate all needful rules and regulations for the carrying out of provisions of this title." The authority thus granted is amply sufficient to empower the Secretary to issue a rule or regulation which would require the States to incorporate in all future contracts provisions which the Secretary has determined in the exercise of sound administrative judgment to be "needful * * * for the carrying out of the provision" of title 23, U.S.C. In other words, if it is administratively determined that the carrying out of the statutory provisions reasonably necessitates that the Secretary be in position to retard or stop construction under contracts awarded by the States, the Secretary has authority to prescribe a regulation reasonably adapted for the purpose.

It should be borne in mind, however, that there undoubtedly will be an increase in cost resulting from the State's reservation in a construction contract of the right to slow down or stop work because of the lack of funds. Contractors will probably add to their bids an amount deemed sufficient to cover the risk of increased costs resulting from work stoppages of this nature.

"c. Legal consequences of failure to pay State claims under approved projects promptly."

Conclusion: Insofar as projects already undertaken by the States are concerned, the Federal Government's refusal to make progress payments or the undue deferral of final payments would constitute both a breach of faith and possibly could be a breach of contract or obligation of law.

Insofar as future contracts are concerned, from a strictly legal point of view, the Secretary has authority to take appropriate measures to bar or restrict substantially the making of progress payments and to postpone final payments for a reasonable period of time after completion of the project. However, any such action would undoubtedly lead to a serious financial impact upon the States, many of which are hard pressed financially.

Discussion: Section 121(a) of title 23, United States Code, authorizes the Secretary "in his discretion, from time to time as the work progresses," to make payments on account of construction costs actually incurred. The authority thus granted is, of course, discretionary and empowers the Secretary to adopt whatever policy his administrative judgment indicates.

From a legal standpoint, the administrative determination must be consistent with and in furtherance of the objectives of the legislation and the declaration of congressional policy regarding the Federal-aid highway program. The exercise of discretion becomes unauthorized and illegal if it is arbitrary or capricious or not a reasonable means of accomplishing the objectives of the legislation.

Subsection (b), on the other hand, plainly provides "a State shall be entitled to payments out of appropriated funds apportioned to it" after a project has been completed in accordance with approved plans and specifications and after "approval of the final voucher by the Secretary." In other words, the effect of section 121 is that a State's right to be paid arises only after a project has been completed, the final voucher has been approved by the Secretary and, as subsection (c) provides, "completion of the construction has been approved by the Secretary following inspections pursuant to section 114(a)."

Two different situations must be considered. One situation relates to projects which have already been undertaken by the States. The other pertains to future projects. As to future projects, the Secretary has authority to enunciate a policy to the effect that progress payments would no longer be made and that Federal payments would be deferred for a reasonable period of time after completion of the

project. Although such a policy may impede the highway program, the impediment may not necessarily be such as to be deemed contrary to the intent and language of the statute. Accordingly, there appears to be no legal objection to imposing the restrictions described upon the payment of Federal funds with respect to projects undertaken after the restrictions are imposed; for the authority vested in the Secretary empowers him to impose such restrictions upon or discontinue the making of progress payments as he may administratively deem desirable or to prescribe, as one of the conditions on which he will assume a contractual obligation to help finance a particular project, that progress payments will not be made.

With respect to projects that are in progress when the payment restrictions are imposed, the Federal Government's refusal to make progress payments or its undue deferral of payments would be a breach of faith and possibly could be held by a court to be a breach of contract or obligation imposed by statute (23 U.S.C., §§ 106 & 121). Such projects have been undertaken by the States in the light of provisions in the statute and the regulations and the procedures and practices of Public Roads clearly indicating that progress payments would be made and that final payments would not be intentionally deferred. The States have made plans and assumed obligations upon the basis of its understanding and reasonable assurances that the Federal share of the project costs would be paid in accordance with established practices.

Section 106 of title 23, United States Code, provides that the State highway department shall submit surveys, plans, specifications and estimates for each proposed project to the Secretary for his approval and that his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto. Under sections 110 and 111 of title 23, United States Code, a project agreement is contemplated between the Federal Government and the State making provision for Federal participation in the project and imposing various obligations. Under 23 U.S.C. 121(b) it is specifically provided that, after completion of a project in accordance with the plans and specifications and approval of the final voucher by the Secretary, the State shall be entitled to payment out of the appropriate funds apportioned to it of the unpaid balance of the Federal share payable on account of such project. This specifically contemplates payment following completion of the project. 23 U.S.C. 121(c) provides that no final payment shall be made to a State for its cost of construction of a project until the completion of construction has been approved by the Secretary following inspections pursuant to section 114(a) of title 23, United States Code.

In brief, with respect to projects already undertaken by the States, any failure on the part of the Secretary to make progress payments or to make the final payment in due course possibly could constitute a breach of contract or obligation imposed by law, particularly in view of the foregoing provisions and the practices and procedures that have heretofore been followed and in view of the progress payment practice that prevails generally in the construction industry throughout the country.

The State's legal recourse would be to file suit to recover damages for the delay in payment of the Federal share.

It has been held that the prima facie measure of damages for the breach of a contract is the amount of the loss which the injured party has sustained (United States v. Beahan, 110 US 338, 344) and this would appear to be a difficult thing for the State to establish.

In Ramsey v. U. S. 121 Ct. Cls. 426, the rule is stated thus:

> "The law is well settled that, as a general rule, special damages, beyond the amount recognized as legal interest, cannot be recovered for a breach of contract to pay money which results only in a delay in payment. The law implies an agreement to make good the loss arising from a default in payment of money at a specified time by requiring the payment of lawful interest. Therefore, the only measure of damages which plaintiffs could recover for the delay would be legal interest on the principal amount withheld. However, the common law rule that delay or default in payment of money gives rise to a right to recover interest has been held not to be applicable to the sovereign government on grounds of public convenience, unless the sovereign's consent to pay interest has been exhibited by an act of the Congress or by lawful contract of its executive officers. A provision in a government contract for the payment of interest must be affirmative, clear-cut and unambiguous. The Supreme Court has held that although an award of interest on a claim againt the United States would be just or equitable, this fact alone does not empower the Court of Claims to make such an award on the basis of what they think is a sound policy. The immunity of the United States from liability for interest on unpaid claims is not to be waived by such policy arguments. Calling interest 'damages' or loss does not deprive it of being interest, and the statute forbids the allowance of interest." (Emphasis added.)

In addition to the foregoing, other cases in support of this view are as follows: U. S. v. certain lands in St. Charles County, Missouri, known as Weldon's spring area, 60 F. Supp. 741; Busser v. U. S. 45 F. Supp. 327; Consolidated Engineering Company v. U. S. 35 F. Supp. 980; and Komatsu Manufacturing Company v. U. S. 131 F. Supp. 949.

Hence, since legal interest is the measure of damages for delaying payment of money and since the United States is immune from liability for interest, it would be most difficult, if not impossible, for a State to recover damages for delay in making payment of the Federal share of the cost of a project.

"d. Authority to control project programming under the apportionment procedure - same for obligation of projects."

Conclusion: The authority of the Secretary of Commerce to approve programs (under section 105) and projects (under section 106) may be exercised in such a manner as to regulate the rate at which apportioned funds are obligated. The approval power is inherently discretionary and, since section 106 provides that a contractual obligation to pay the Federal share arises upon the Secretary's approval of the project, the rate at which apportioned Federal funds are obligated may be controlled in the exercise of sound administrative judgment. The Secretary's judgment must, of course, be exercised in a manner consistent with and designed to promote the policies and objectives declared by the Congress.

Discussion: The Secretary's authority to approve programs and projects is granted in permissive terms. While section 105 of title 23, United States Code, requires that "The Secretary shall act upon programs submitted" by the States, the same section provides that "The Secretary may approve a program in whole or in part." Similarly, section 106 of title 23, United States Code, authorizes the Secretary to approve surveys, plans, specifications and estimates for each proposed project. Suffice it to point out that authority to approve is inherently a discretionary power and contemplates the exercise of sound judgment.

Bearing in mind that section 106(a) of title 23, United States Code, expressly provides that the Secretary's "approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto," it necessarily follows that, although the Secretary is under mandate to make apportionments in full, he does have it within his power to control the obligation of apportioned funds since the obligation of funds is dependent upon his approval of the project.

Since the power to approve programs and projects is discretionary in nature and since the obligation of funds is dependent upon such approval, the Secretary may control, via his approval power, the rate at which apportioned funds are obligated. Such discretion is, of course, not unlimited. The Secretary could not, for example, exercise his discretion in such a way as to injure, impair or defeat the purposes and objectives of the Federal-aid legislation. On the contrary, it is fundamental that the Secretary must exercise authority granted him by the Congress together with his best efforts and judgment toward achieving the purposes and objectives of the legislation.

For example, 23 U.S.C. 118 provides for the lapsing of apportioned funds remaining unexpended more than two years after the close of the fiscal year for which such funds are authorized. For the Secretary to exercise his authority to withhold approval of projects in such manner as to cause lapsation of funds apportioned to particular States would not be in accord with the purposes and objectives of the Federal highway legislation.

While the Secretary may consider the practicalities which sound judgment indicates are relevant, he must bear in mind the policy and objectives which the Federal-aid legislation is designed to effectuate. In line with this, the 1958 Federal-aid legislation, which was in part an antirecession measure, mandated an immediate apportionment of an additional $400,000,000 for ABC projects which had to be placed under contract by December 1, 1958, for completion by December 1, 1959.

Further, the Act provided for an increase in the authorizations of Interstate funds in the amount of $800,000,000, including $200,000,000 for the fiscal year 1959 which the Secretary was also directed to apportion immediately.

In the light of these circumstances, the Secretary would have been arbitrary and capricious had he not taken all reasonable means to advance the highway program as expeditiously as possible. This is particularly so since the 1958 Act specifically directed the apportionment of the full amounts authorized for 1959 and 1960, notwithstanding the Byrd amendment, and since all parties were well aware at that time that unless additional monies were provided by the next session of the Congress, the Trust Fund would not be able to meet the obligations made pursuant to the 1958 Act.

"e. Legal responsibility for Federal Government to agree to change orders which raise costs beyond original agreement."

Conclusion: While the Secretary has no contractual obligation to approve any funds for a project in excess of the amount specified in the project agreement, he nevertheless is considered to have a legal responsibility to approve for Federal participation such changes as are necessary to assure the proper completion of a project in a manner consistent with the objectives of the law.

Discussion: Section 1.9 of the regulations provides that a project agreement between the State highway department and the Administrator shall be executed for each project and that subsequent to execution of the project agreement no change shall be made which will increase the cost of a project to the Federal Government except upon agreement with the Administrator. Section 1.10 (e) further provides that no contract for any project or part thereof shall be entered into or award therefor made by any State without prior concurrence of such action by the Administrator, and no alteration in the contract subsequently shall be made without the approval of the Administrator. All that is necessary, therefore, to preclude the obligation of additional funds is for the Administrator to withhold his agreement to any proposed changes.

Whatever discretionary authority is vested in the Secretary of Commerce must be exercised reasonably and in the context of serving the purposes and objectives of the Federal-aid highway law. When the Bureau of Public Roads following the approval of plans, specifications and estimates enters into a project agreement, the obligation of the United States to provide Federal aid is limited to the maximum prescribed in the project agreement. As a matter of law, there is no obligation upon the Bureau of Public Roads to approve any additional funds for a project thus covered by a project agreement. It is the State's responsibility to provide whatever additional funds may be necessary, over and above the maximum stated in the project agreement as constituting the obligation of the Federal Government. However, provisions in AM 1-10.2 and PPM 21-7 clearly evidence the established policy of Public Roads to consider favorably increases in Federal funds and approval of changes involving additional Federal funds.

With regard to the approval of changes in the contracts between the State and the contractor, it should be remembered that the objective of Federal participation in highway construction is to provide usable adequate highway facilities (See 23 USC 109a). Sometimes this objective cannot be attained without making changes in a contract for a particular project. A categorical refusal to consider or approve any requests for such changes is ordinarily tantamount to refusal to exercise the judgment contemplated by the Federal-aid legislation.