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MEMORANDUM

TO: Hon. Chet Holifield
FROM: Herbert Roback

This is a background memorandum on the proposed Department of Transportation prepared by Dan Fulmer. It is not intended as a complete analysis. At this stage it is more worthwhile to highlight the major issues, the prevailing sentiment and the background history of the proposal. Frequent mention is made of various substantive issues of transportation policy. Although our committee may want to steer clear of such issues, at least they must be understood since both proponents and opponents of the legislation have raised them.

Legislative Provisions

The major provisions of the bill are as follows:

(1) Consolidation of Existing Transportation Agencies.
The legislation will house in a new, 12th Cabinet Department: the Bureau of Public Roads (highway development); the Federal Aviation Agency (aviation safety, promotion and investment); the Coast Guard (marine safety and navigation); the Maritime Administration (development of U.S. flag merchant marine); the safety functions of the CAB and the ICC; and the car service functions of the ICC and the Great Lakes Pilotage Administration.

The Saint Lawrence Seaway Development Corporation and the Alaska Railroad will be transferred to the new department by a later Executive Order. The Director of the Bureau of the Budget, however, testified that this could be incorporated in the present legislation if the Congress so wishes.

(2) Establishment of Safety Board. An independent National Transportation Safety Board composed of Presidential appointees will be formed within the Department of Transportation which would exercise the functions transferred to the Secretary of Transportation by the act with regard to the determination of the cause of transportation accidents and the review on appeal of the suspension, alteration or denial of any certificate or license issued by the Secretary.

(3) Authorization to Develop Investment Standards. Section 7(a) requires the Secretary to develop standards for the formulation and evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment. Specific provision is made for consultation by the Secretary with the Water Resources Council (established by legislation last year) in preparing compatible economic standards applicable to the transportation features of multi-purpose water resource projects. Excluded from this section are military transport agencies, the Panama Canal and AID. Civil transportation investment proposals by the Corps of Engineers and other agencies are included.

The Administration's Objectives

The President's message of March 2 and the briefing books distributed to the committee contain rather general descriptions of the ills of our transportation system and of the existing deficiencies in public policy. These materials are equally general in what is proposed to cure these problems. Although the administration obviously wants this new department to improve policies and practices, its vagueness and unwillingness to cite specific problems and cures are understandable. It does not want to commit itself on such issues and it does not want to let a fight on specific issues hinder the passage of the legislation.

It is conceivable that the administration is taking a leaf from Secretary McNamara's book of defense reorganization. This strategy takes things a step at a time: first, create a broad organizational framework and vest in the new Secretary a very general but complete charter of decision-making responsibility; second, fill in the details of the organizational set-up after the broad charter is enacted; and finally, make specific policy decisions. By adopting this strategy, the executive branch receives from Congress very broad powers without having to argue about details and specific policy decisions. Later on, when it wants to make those decisions, opposition is thwarted by the fact that the general grant of power has been made.

With this qualification in mind about the lack of detail in the administration's presentation, one can find the following ills of our transportation system cited in the President's message:

Excessive accident rate;

Slow airport-to-city transportation, offsetting the speed of intercity air transport;

Long dock delays, offsetting the advantage of high-speed ships;

Adherence to "custom for its own sake," ignoring "opportunities to serve our people more economically and efficiently";

Orientation "to the needs of an earlier America," holding back the expansion of world trade and the distribution of U. S. products;

Aging and obsolete plant and equipment;

Failure to adapt to new concepts in industrial plant location, warehousing and distribution and to use new technology;

"Programs and policies which impede private initiative and dull incentives for innovation."

The major emphasis in the President's message and undoubtedly the major focus of the new department is the inability of both industry and government to deal with transportation in a coordinated fashion rather than as individual, separate modes of transportation. This problem prompted the following italicized comment in the President's message:

As a result, America today lacks a coordinated transportation system that permits travelers and goods to move conveniently and efficiently from one means of transportation to another, using the best characteristics of each.

It logically follows from this emphasis that the President's presentation of the new department proposal has as a major theme reorientation of the Government attitude on transportation from one of looking at each means or mode of transportation individually to one of dealing comprehensively with all the different modes to accomplish the main purpose of a transportation system-- that is, carrying people and goods efficiently, economically and safely from one place to another. This new attitude will be reflected in the organizational arrangement of the new department.

The administration has indicated (but not yet explicitly) its intention to staff the department along functional lines rather than by modes. For instance, there will probably be an assistant secretary for each of the following aspects of Government promotion which apply to all modes: (a) research and technology; (b) long-range planning and policy development; (c) international transportation; and (d) investment. Of course, in addition to these staff functions, there will continue to be line posts equivalent to the existing heads of public roads, aviation, maritime, etc.

Instead of listing here the general objectives cited by the briefing books which are somewhat vague and repetitious, it may be more helpful to construct what seems to be the major objectives of a new department and the advantages of such a department over the existing arrangement:

(1) Coordination and Balance. This is to be achieved in several functional areas of Government activity: administration, investment, budgeting, and policy.

In administration, it means more effective and integrated management of existing services now dispersed widely throughout the Executive Branch. Under the proposal, most of these services will be housed together under one roof.

In investment and budgeting, it will involve using the new attitude described above. For instance, instead of budgeting or approving an individual airport plan or highway plan, the department will try to tackle particular transportation problems or regional problems through a proper investment mix of various means of transportation. Moreover, all such investment will be subject to a set of standard criteria. This purpose is indicated in the legislation in section 7 and in the back-up books in references to systems analysis, cost-benefit studies and programming of the kind used in the Defense Department. In simple terms, it means doing trade-off studies of individual mode investment ideas. These new investment policies will also attempt to treat each mode equally.

In policy, the new department will create a central focal point within the Executive so that it can speak with one voice to Congress, the regulatory boards and to industry.

(2) Increased Government Attention to Transportation. A separate cabinet department for transportation, it is argued, will bring greater and more high-level Government attention to the needs of the American transportation system. A separate department will be able to give single-minded encouragement to new technologies, research, safety and policies.

(3) Development of New Policies and Solutions. One of the tasks of the new department, as well as one of the reasons for having a single, centralized focal point in the Executive for transportation, is to find new ways for solving transportation problems. The first step will be to gather better data. Next will come coordinated recommendations to the Congress for substantive changes in the transportation laws. This will apply mainly to regulation. Although the President did not reiterate the legislative proposals of President Kennedy in this message (to avoid policy fights now), he has subscribed generally to the central theme of the earlier Kennedy message: less rather than more regulation. It is more than an educated guess to suppose that the President believes that the existing legislation ought to be changed. It is also probable that he wants this new department to tackle this job later on.

Industry Reaction

The initial reaction of the transportation industries to the President's proposal made it seem that everybody except the railroads would oppose the plan outright. This has not eventuated, at least so far. Few have made official statements on the bill. The grapevine tells us, however, that except for the railroads, no one would be unhappy if it died. Some of the trade papers--like the Journal of Commerce and Aviation Daily--however, have spoken against the bill. General circulation papers like the New York Times have applauded the proposal enthusiastically.

The maritime people have mixed feelings. They do not like Nicholas Johnson of the Maritime Administration and were bitterly opposed to the recommendations of the President's task force. For a long time they have tried to get the Maritime Administration out of Commerce. This would be accomplished under the new proposal, but the industry can not be sure things will improve for them. Senator Magnuson believes they will. Mr. Garmatz was quoted on March 7 in the Journal of Commerce as follows: "I have some misgivings about whether the transferral of the Maritime Administration--as a minor component of still another cabinet department--will improve things."

The Trucking Association last week came out officially in favor of the new department. It applauded the President's decision to leave the regulatory functions separate and intact for the most part but cautioned that these agencies, as "arms of the Congress", should stay that way. Finally, it questioned the provisions of section 7 of the bill requiring the Secretary of Transportation to develop uniform transportation investment standards. It urged that Congress insure that its prerogatives not be hampered by this part of the bill.

Specific Problems and Criticism.

It is fair to assume that Senator Magnuson's recent testimony on the bill before the Senate Government Operations Committee comprises most of the problems that are likely to be raised in opposition to parts of the bill. Accordingly, the following problem areas are taken from his testimony:

(1) Investment Standards in Section 7. The Administration should clarify the words "standards and criteria consistent with national transportation policies". It is feared that this authority will permit the Secretary to impose new and contrary standards to investment proposals beyond those fixed in statutes and appropriations. It is also feared that highway trust fund money will be treated as if it were general revenue funds available for all transportation modes. What is wanted is new language which will make it clear that the Secretary can only recommend policies to Congress.

There is a specific problem in this section on water resource investment. It is thought that the Water Resources Planning Act (passed last year) will be reoriented by allowing the Secretary of Transportation to impose additional standards on water resource investment plans after consultation with the Water Resources Council.

Lastly, with regard to this section, further explanation is needed on why the Administration selected as the major factors bearing on the development of investment criteria the following: (a) projected growth of transportation needs and traffic in the affected area; (b) available transportation services; (c) relative efficiency of various modes of transportation; and (d) general effect of proposed investment on existing modes, and on regional and national economy. Here is raised directly the policy fight on making trade-offs in investment among different modes of transportation. Apparently, the Public Works and Appropriations Committees fear additional criteria will be imposed on projects they approve. Chief among the worries is what will happen to regional evaluations and projects.

(2) Conflicts Between CAB and FAA. There is some question why it is necessary to eliminate the appellate review in CAB of certain FAA administrative orders concerning airmen and air safety certificates. This review was considered a necessary safeguard against arbitrary action by the FAA.

There is also anxiety about the possible conflict of interest in accident safety which the proposal implies by allowing FAA both to set safety standards and to apply them. It is feared that the FAA will want to confirm its initial decisions on safety regulations in reviewing accident causes. It might be better to keep the latter function of investigation and cause determination

in the CAB. (Although not mentioned by Senator Magnuson, there is also some question why CAB investment functions are not transferred to the new department while maritime ones are.)

(3) Continuity of Existing Line Agencies. Except for the Coast Guard, none of the existing agencies being transferred to the new department will go over as legal entities. Consequently, the Administration is being asked what will happen to the existing organizational structure of Public Roads, FAA, etc. It is feared that the heads of these agencies will no longer be Presidential appointees subject to Congressional confirmation and check.

Since many of these agencies have been reorganized several times in the recent past and because there will be a delay in fixing new responsibilities and personnel structures, it is feared that there will be a lag in decision-making and productivity. Accordingly, it is suggested that the existing agencies be transferred intact as legal entities rather than follow the H.U.D. pattern.

(4) Defense Department Relationships. It is considered there is insufficient provision in the proposal for ensuring that the Department of Defense, as a major shipper, follows standard government transportation policies. The suggestion has been made that government shipping agencies at least have to consult with the new department.

(5) Passenger Transportation. The bill permits at least a year's delay in establishing an effective means of coordination between the mass transit duties of the Secretary of H.U.D. and the Secretary of Transportation. It also does not cure the problem of conflicting responsibilities between CAB, ICC and the Post Office over passenger transportation routes and subsidies. An assistant secretary of passenger transportation should be provided in the bill who will ultimately be the single executive voice on this matter.

(6) Industry Mergers. It is not clear what affect the new department will have on the present Interagency Merger Committee established by President Kennedy. It is thought essential that a spokesman for the public interest be heard in merger proceedings (mainly among railroads). An assistant secretary for mergers in the new department has been recommended.

(7) Freight Car Shortages. The new department will absorb all car service functions of the ICC with the exception of the fixing of per diem rates for freight cars. The Vietnam war has further accentuated the shortage of freight cars, and a coordinated solution to the problem can come about only through a consolidation of all car service functions in the new department, which would

be armed by the passage of S. 1098 (reported to the House but not called up yet). This bill would provide economic incentives to the railroads to increase the size of the car fleet.

(8) Miscellaneous (not cited by Senator Magnuson) There has been some speculation in the trade press that the President will ultimately transfer all regulatory functions to the new department. Under Secretary of Commerce Alan Boyd is quoted in Aviation Daily of March 11 as saying that such absorption is "inconceivable." It appears that this issue has been put to rest, but there is a question about what will be proposed later on for the regulatory agencies and the regulatory legislation.

It is worth mentioning the fact that the Legislative Reference Service prepared a "pro and con" analysis on a department of transportation some years ago. Although it is not a recent paper and is somewhat superficial, it has been distributed widely to Members, and, thus, ought to be noted here. The following arguments were cited as the most commonly heard against such a proposal: (a) Commerce is perfectly capable of doing the job of coordinating transportation since most of the transportation promotion functions are now housed in Commerce; transportation is an important part of commerce and should not be considered apart from other industrial and economical activity; (b) a new department merely creates a new power bureaucracy; (c) new departments should not be created so lightly; (d) it has been traditional to keep the number of cabinet departments small with each department holding jurisdiction over a rather broad field; and (e) it is preferable to leave control of promotional programs with career employees who do not change with administrations and who are experienced with the complexities of transportation problems.

Prior Proposals and Studies Cited by the Administration

In the President's message and in the back-up books various precedents are cited for the new proposal:

(1) First Hoover Commission. Although the Task Force on Transportation did recommend a new department of transportation, the main commission in 1949 rejected this course of action in favor of consolidating various promotional functions in Commerce. This took place subsequently. The commission argued that transportation is "only one industry among many in which the Federal Government is concerned" and "it would be quite inadvisable for the Federal Government to set up a department which would be devoted entirely to the problems of one industry." Strictly speaking, transportation is not a single, monolithic industry but is composed of many different modes or industries, often feuding among themselves.

The present set-up in Commerce does not follow completely the Hoover Commission recommendations. For instance, the safety functions of the ICC and the Coast Guard were not transferred. It also should be noted that many of the ills of the transportation system cited in the Commission report seem to be with us still. This was specifically mentioned by BOB director Charles Schultze in his testimony before the Senate. (A copy of the task force report is not available but the two directors of the task force, Dearing and Owen, subsequently wrote a book entitled "National Transportation Policy", which is essentially similar to the task force report they wrote for the Hoover Commission.)

(2) Doyle Report. This was the work of a special staff committee appointed by the Senate Commerce Committee in the 86th Congress. The report was printed as a Senate document but never formally endorsed by the Commerce Committee. It is a very detailed work, highly critical of the inconsistencies of regulatory law and practice. It also focused attention on the ills of the transportation system, particularly the railroads. The group also criticized the lack of good statistics and analyses of the problems. Its recommendations can be grouped into three main categories: (a) consolidation of promotional activities of the Federal Government in a department of transportation, organized along functional lines and not by modes; (b) consolidation of regulatory agencies into one commission also organized functionally but completely separate from the executive department; (c) whole-sale revamping of the statutory base.

One of the significant quotes of the report is the following (p. 93):

We must remember that although...organization cannot, of itself, insure coordination, a faulty organization can virtually assure failure to coordinate... Although it is not essential that our proposal be selected, it is vital that the many varied interests of government as policy maker, as promoter, and as regulator of transportation be brought into accord.

Although the Doyle committee was firmly opposed to a single agency responsible for both promotion and regulation, it did believe that an executive agency responsible for all promotional activities would, through a coordinated and uniform investment policy and analysis, act as a salutary goad to Congress and the regulatory agencies.

(3) President Eisenhower's Proposal. This proposal for a department of transportation was only a single line mention in Eisenhower's last budget message in 1961. Senator Curtis, however, asked the BOB during the Senate hearings to deliver the working papers or studies that prompted the proposal.

(4) S. 1122. The back-up book gives prominent mention to Senator Case's recurrent legislative proposal over the last few years for a transportation department. Like the Administration's proposal, it also transfers all of the Commerce activities and the FAA. As to other functions, the bill directs the new secretary to study the functions of the ICC, CAB and other bodies and made recommendations on further transfers.

President Kennedy's 1962 Message

In April 1962 President Kennedy sent a major message to Congress on transportation. It did not deal with organization. Like the previous Doyle report, it was highly critical of the inconsistencies in the regulatory pattern and the lack of equal treatment (both by regulation and promotion) of the various modes. The President advocated less regulation, permitting more play to the forces of the free market. He also recommended that all users of transportation facilities pay their share of the costs, such as through user charges, fuel taxes for water and air carriers, etc. President Kennedy also recommended that Federal aid to airports be directed toward development of single airports to serve a group of cities or a region rather than continued proliferation of airports at the edges of small communities. Also recommended was the partial elimination of minimum rate regulation; the grant to all carriers of the right to ship vehicles on carriers of other branches of the industry in order to put them on an equal basis with freight forwarders and piggy-back shippers; the repeal of the prohibition against railroads hauling cargo it owns; and encouragement of experimental freight rates and services.

Except for his recommendations on urban transportation, the Kennedy transportation program died in Congress, mainly because of strong industry opposition.

Additional Material

The back-up books are probably too general for detailed analysis of this bill. Further help will be required from our legislative counsel's office as well as from the administration. For example, a thorough examination of present practices and laws is necessary in connection with the section 7 proposed authority on standards for investment. For that matter, it might be advisable to ask the BOB to develop for internal use only an answer to Senator Magnuson's points. Also, the numerous laws being affected or repealed by this bill need to be spelled out in fuller narrative form.

The Senate Committee has asked BOB for the following material which should be available to our committee: (a) memorandum on section 7; (b) tabular presentation of the provisions in this bill and in other proposals.

The committee might also want to have for its study the task force reports submitted to the President on transportation and government organization. These reports have not been made public or given to the committee.