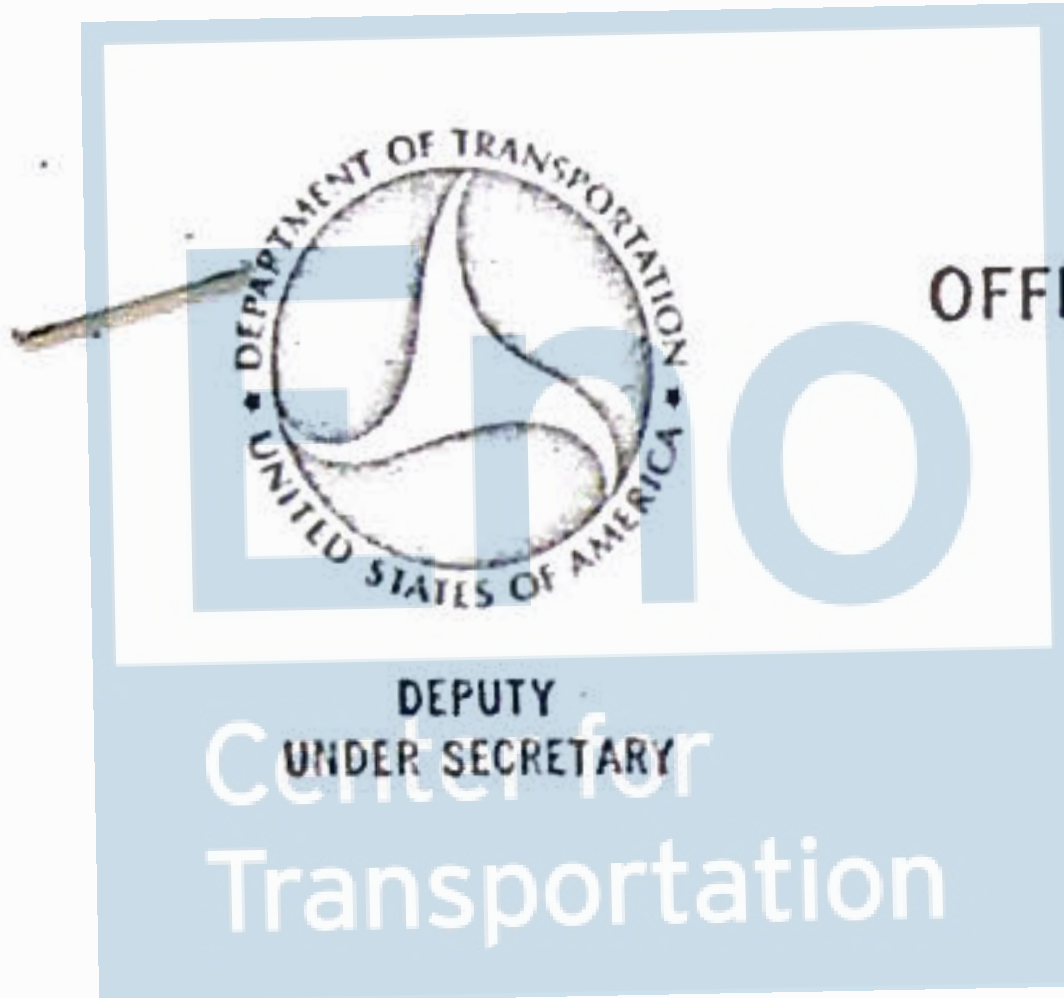


Mr. Cherington



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JUL 3 1969

MEMORANDUM FOR THE UNDER SECRETARY

SUBJECT: UPTA Legislation -- Decision on Key Financial Issue

Summary:

You will recall that at the conclusion of our meeting yesterday with Messrs. Cherington, Braman, and Villarreal, I agreed that I would submit to you a summary of the positions of these three gentlemen on the key UPTA financing issue. You and the Secretary will then have to decide upon the Department's position for the meeting with Secretaries Romney and Stans scheduled for Monday afternoon, July 7.

This memorandum and the attachments set forth the key considerations, the major alternatives, and the positions of the principals. In addition, attached are two further papers: a staff paper discussing the important question of the "reliability" of Contract Authority; and a paper recommending positions on the lesser issues in the UPTA legislation.

Key Considerations:

The discussion at the meeting brought out the fact that there are four broad considerations that bear on the ultimate decision on the financing question:

1. What approach, if enacted, would provide the greatest likelihood of accomplishing the substantive purposes of the legislation?
2. What are the possibilities of getting approval within the Executive Branch of the various alternatives?
3. What are the chances of getting approval by the Congress of the various alternatives?
4. What would be the impact upon the interested public of the alternative positions the Executive Branch could take?

Alternatives:

There were three basic alternatives around which the discussion focused. There are, of course, other alternatives and variations of each of the three basic alternatives. However, the consensus seemed to be that these are the key ones at this point and a choice should be made from amongst them.

All three alternatives assume a statement of intent, in the preamble of the bill, to have a 12-year, \$10 billion program. However, specific authorization would be provided in the bill only for the first five years, amounting to \$3.1 billion.

The three alternatives are:

1. A designated account with earmarked revenues (presumably the auto excise tax), and Contract Authority;
2. Contract Authority out of the General Fund;
3. Authority to appropriate out of the General Fund.

By way of definition, Contract Authority is authority provided in the substantive legislation to obligate funds without further appropriation action. However, the Appropriations Committees have found ways, in effect, to limit such authority to obligate. This latter fact is extremely important; how one evaluates it may determine one's choice between the three alternatives. This subject is discussed in more detail in Attachment 4.

Positions of the Principals:

The choices of the principals are summarized below and set forth in more detail in Attachments 1-3.

Mayor Braman strongly favors Alternative 1 (designated account with earmarked revenues and Contract Authority) because he believes that:

1. It is the only alternative that will accomplish the substantive objectives of the program.
2. A great deal of support has been painstakingly built up around this approach. This support will disappear if an alternative is proposed, but the support can be

brought to bear once the bill is submitted by the Executive Branch, with a reasonable possibility of enactment in the next session of Congress.

3. Even if it fails of enactment in this session, its submission by the President will gain him considerable favor amongst the interested groups, will provide evidence of his support in the crucial problems of our urban areas, and will prevent Democratic Congressmen from gaining the initiative and the nationwide support which has been mobilized for the program over the last four years.

If such a bill cannot gain Executive Branch approval at this time, Mayor Braman would prefer not to submit any alternatives to this session of the Congress. The Administration, he believes, must provide leadership in mass transit in the same manner that the Eisenhower Administration provided leadership for the Highway Trust Fund.

Administrator Villarreal also favors Alternative 1 because he believes that it is the ideal vehicle for gaining essential local support and confidence in the program. As a fall-back position, he would support Alternative 2 (Contract Authority from the General Fund), or some other alternative if this cannot gain Executive Branch approval.

Dr. Cherington believes that a designated account is unsaleable without earmarked revenues that approximate user charges. The automotive excise tax does not meet this test (although it would be better than sumptuary taxes), but a license fee on urban drivers or vehicles would come closer. Alternative 2 (Contract Authority from the General Fund) appears more likely to gain consensus in the Executive Branch, but may be difficult in the Congress. Alternative 3 (authority to appropriate from the General Fund) would at least get the program started.

Lesser Issues:

The recommended positions on the lesser issues are set forth in Attachment 5. In summary, they involve:

1. Direct application by private carriers;
2. Advance acquisition of rights-of-way;

3. Excess land acquisition;

4. The addition of relocation features later if S.1, the general relocation bill, fails of enactment.

In addition, the following features of the bill are not in issue: easing the limitation on amounts going to any one State; State opportunity to comment on applications; and a requirement for local public hearings.

Charles D. Baker

Attachments - 5

cc:

Dr. Cherington

Mayor Braman

Mr. Villarreal

Mayor Braman's Position

1. Large sums of Federal assistance for mass transit are crucial if we are to make any significant favorable impact on the urban transportation problem. Both the Secretary and the President have indicated that this is a high priority goal of this Administration.
2. If this program is forced to compete for General Funds, through Appropriations Committees, it is highly improbable that the needed large sums of money will be made available. For example, for the advance appropriation for FY 1970, the Executive Branch requested \$230 million from the last Congress (which was probably a more urban-oriented Congress than the present one), but the Congress reduced this amount to \$175 million. There is little reason to believe that the Congress, through the Appropriations Committees, will suddenly begin to provide \$300 million, \$400 million, \$600 million, \$800 million, and \$1 billion out of the General Fund over the next five years.
3. In the case of one alternative (Alternative 3) which involves authorization to appropriate out of the General Fund, the Department would explicitly be required to go through the appropriation process. In Alternative 2, which involves Contract Authority out of the General Fund, experience indicates that the Appropriations Committees would find means of requiring the Department to go through them, and would limit the program.
4. The Appropriations Committees have generally not been disposed to reduce programs which are financed by earmarked revenues. Therefore, Alternative 1 appears to be the only alternative which provides a reasonable possibility of achieving the basic purpose of providing substantially increased Federal assistance for mass transit.
5. All of the organizations representing the metropolitan areas of the country are categorically in favor of the trust fund (or "designated account") approach. They simply will not support any other alternative. These organizations include the Conference of Mayors, the National League of Cities and the National Association of County Officials. Moreover, President Nixon's Task Force on Transportation stated there was no issue on which they were in more agreement than of the necessity for a trust fund approach to urban mass transit. This they considered the number one transportation priority of the Nixon Administration.

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- 2 -

Introduction of a lesser Bill by the Administration will convince urban-oriented groups that the Administration is not seriously concerned about mass transit and urban problems in general, particularly when compared to the Administration's proposal for a designated account for airways/airports. In the Congress, the initiative will pass to the Democrats, such as Senator Williams of New Jersey.

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Administrator Villarreal's Position

1. Local support and confidence are essential. For this reason, the designated account with earmarked revenues and Contract Authority (Alternative 1) is an ideal vehicle.

2. If Executive Branch clearance cannot be obtained for this approach, and in the light of strong congressional resistance of which the Administrator is personally aware, an alternative such as Alternative 2, with general fund financing and contract authority providing high level financing based on a five-year authorization (as previously recommended, \$3.1 billion) should be re-endorsed and vigorously advocated.

3. If the designated account approach and even Alternative 2 fail to be cleared, some other alternative should be sent forward because the President has placed urban transportation among his "top ten" issues and Secretary Volpe has called urban transportation his "number one problem". Failure to propose a positive program this year would, therefore, do the President great harm. He might, for example, be confronted with the choice of signing a Democratic trust fund act or vetoing it. In either case he would lose support in the cities.

4. The possibility of a direct appeal by Secretary Volpe to the President should be seriously considered if no positive Republican program can be agreed upon for submission to the Congress in the very short term.



Dr. Cherington's Position

1. A trust fund is unsaleable without earmarked revenues that approximate to user charges. The automotive excise tax does not meet this test, although it would be better than sumptuary excises.
2. A license fee on urban drivers or vehicles would come closer to meeting the "user charge" criterion.
3. A General Fund program with Contract Authority appears more likely to gain consensus in the Executive Branch but may be difficult in the Congress.
4. A General Fund program for five years, with two years of advance funding, would at least get the program started. Once started it seems doubtful that Congress would resist follow-on authorizations and appropriations.

Staff Paper

Does Contract Authority Provide Reasonable Assurance of
Future Funding?

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One of the basic questions in evaluating the alternative financing proposals relates to the degree of reliability of future funding which Contract Authority provides, with and without earmarked revenues.

A basic argument for the earmarked revenues approach (when it is combined with Contract Authority) is that the Congress is generally not disposed to reduce below authorized levels programs which are financed from earmarked revenues (as long as the program levels are within the amounts provided by the earmarked revenues). Accordingly, this approach provides a reasonable degree of likelihood (but by no means certainty) that if the program is enacted, the program levels authorized in the basic statute will in fact become available on schedule.

Does Contract Authority, utilizing General Funds, provide a similar degree of assurance, or does it provide significantly less assurance?

Theoretically, once Contract Authority is provided in the basic statute, funds can immediately be obligated in the authorized amounts without further action through the appropriation process. After the obligations are incurred and the bills come due for payment, Congress provides "liquidating cash appropriations", theoretically on a pro forma basis.

In fact, however, in the past several years, the Appropriations Committees have found devices to exercise effective control, through the appropriation process, over the annual levels of programs which have Contract Authority. The devices may involve placing a limitation, in an appropriation for personnel, over the gross dollar amount of project applications which the personnel can approve. Or, it may involve a rider in a theoretically pro forma liquidating cash appropriation.

Whatever the device, since 1962, the Appropriations Committees have gained control, one by one, over the levels of programs funded by Contract Authority. It may be difficult to believe that the Congress would on one day enact legislation to authorize a program and provide funding for that program (i.e., Contract Authority) and then on the next day (figuratively speaking) significantly reduce that funding in an appropriation bill. But this is what in fact has happened in numerous programs, DOT's own State and Community Highway Safety Grant Program being one excellent example. (Three years of Contract Authority were provided in the statute for this program, in the amount of \$67 million, \$100 million, and \$100 million, respectively. In the appropriation process, Congress effectively reduced these amounts to \$10 million, \$25 million and \$65 million, respectively.)

Other examples of similar control through the appropriation process include Forest Highways and Public Lands Highways (these two programs fell under Appropriations Committee control for the first time in FY 1969), Highway Beautification, Urban Renewal, College Housing, Open Space Land Grants, and others.

The suggestion has been made that once the Contract Authority for mass transit is provided in the statute and cities start digging holes for subways, the Appropriations Committees would not dare to cut back programs substantially below authorized levels. Unfortunately, it seems highly improbable that the cities will begin digging holes before the Appropriations Committees gain control of the program. It is clear that the cities depending upon Federal assistance for mass transit will not start building their subways until they have reasonable assurance that the matching Federal funds will be forthcoming. Because of the history of the Federal Government's failure to provide "promised" levels of funds in a variety of programs, including programs financed with Contract Authority, cities requiring Federal assistance for mass transit cannot be expected to begin digging holes simply on the basis that Congress has provided Contract Authority. We have been so advised by bond counsel and Mayor Braman has indicated the same from his own experience and from the reaction of other Mayors. Before the cities start digging holes, they will want either the assurance provided by a designated account with earmarked revenues, or a formal Federal commitment to their cities -- i.e., an executed grant contract by UMTA. If Federal mass transit legislation is passed by this session of Congress, it is most unlikely that any city could submit an application for a new rail rapid system which could be processed and approved by UMTA sooner than the Appropriations Committees could effectively slap a limit on the program. If this is correct, then no more holes will even have begun to be dug than can be financed with funds provided through the appropriation process -- in much smaller amounts than authorized in the basic statute.

It would appear from the above that Contract Authority from the General Fund does not provide a degree of assurance of future high levels of funding comparable to that provided by earmarked revenues. However, Contract Authority from the General Fund does provide some small advantages over authority to appropriate out of General Funds. This is the case because Contract Authority forces the Appropriations Committees to take an initiative which, under authority to appropriate, is automatically theirs. Contract Authority therefore provides some degree of pressure on the Appropriations Committees which is absent in the case of authority to appropriate.



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Other Issues

The Department has carefully reviewed comments made by agencies to whom the Bureau of the Budget submitted the previous draft of the bill for views and has reached the following conclusions:

1. Private Participation. Direct application by private carriers would be retained. The proposal made in previous draft bills is supported by private carriers who suggested the funding of depreciation accounts as a condition of participation. The Department believes that this arrangement is preferable to private carrier participation through local public agencies created for this purpose. (Reviewing agencies urged elimination of this provision.)

2. Advance Acquisition of Right-of-Way. The program would include explicit authorization of advance acquisition of right-of-way to be financed by 100 percent Federal loans bearing interest at the going Federal rate and having a term of five years or would terminate on the date the Federal grant for project development is approved, whichever occurred first. (Terminal date and interest charge added at suggestion of reviewing agencies. Some reviewing agencies also suggested that the Federal loan be limited to 2/3 of the acquisition cost.)

3. Excess Land Acquisition. The proposal would include authorization to finance the acquisition of land in excess of system requirements in order to control development adjacent to transportation systems and to recoup a portion of system costs. These 100 percent Federal loans would bear interest at the going Federal rate and have a term of ten years or would terminate with the completion of the transportation project, whichever was earlier. (Terminal date and interest charge added at suggestion of reviewing agencies. Some reviewing agencies suggested elimination of excess land acquisition.)

4. Relocation Assistance. No specific provisions for relocation assistance would be included in the bill, but if S.1 is not enacted into law, the Department would support the amendment of the bill to include provisions of those similar to S.1. (Adopts suggestion of reviewing agencies.)