OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

October 16, 1970

Ken Cole
The White House

Dear Ken:

Enclosed is the information you requested on the National Rail Passenger Service Act. This package includes a statement by Secretary Volpe, a background paper on the rail passenger service problem and a briefing paper prepared this week for Secretary Volpe on the future of rail passenger transportation.

Sincerely,

Oscar Griffin

Oscar O. Griffin, Jr.
Assistant Director of
Public Affairs for
Information

Enclosures

STATEMENT OF SECRETARY OF TRANSPORTATION JOHN A. VOLPE ON THE PASSAGE BY THE HOUSE OF REPRESENTATIVES OF THE NATIONAL RAIL PASSENGER SERVICE ACT

Both Houses of Congress today took innovative action to revitalize intercity rail passenger service with the objective of making it an important and viable segment of our national transportation system.

The resounding margin by which this bill was passed -- by a voice vote in the House -- reflects, I believe, the importance Americans attach to continuing and improving intercity rail passenger service for fast, convenient and comfortable travel between urban areas as a matter of public convenience and necessity.

This act envisions a national system of intercity rail passenger service as a means of transportation superior in terms of speed and convenience to that offered today and of the quality currently being provided by the Metroliner operating between New York and Washington.

Obviously, such a standard will not be met immediately, but it is an attainable goal. Attaining such high standards will receive the full support of the Department of Transportation.

Public acceptance of improved rail passenger service will result in a strengthened and more versatile national transportation system, and can be the instrument of significantly reducing pollution in the air and congestion on our highway system.

10/14/70

HIGHLIGHTS OF THE RAIL PASSENGER SERVICE PROGRAM

The Problem:

Rail passenger service has quantitatively and qualitatively deteriorated to the point where it now cannot be considered a generally viable mode of intercity travel.

The extent of service decline is illustrated by the fact that the nation was served in 1929 by more than 20,000 intercity passenger trains and now is served by less than 500 intercity trains.

The public has overwhelmingly chosen the private automobile and to a lesser extent commercial air carriers as preferred modes of intercity travel.

These public preferences have received substantial Federal financial support in the form of aid to highway construction and ongoing programs of modernizing airports and airways, whereas rail passenger service has received little Federal financial assistance.

The nation's rail carriers in 1969 incurred a loss of over $200 million in the operation of passenger service. They have neither the incentive nor financial capacity to improve passenger service.

The Need:

The successful rail passenger service offered by the Metroliner operating between New York and Washington has demonstrated that given fast, clean, safe, comfortable and convenient service, a significant segment of the public will choose rail travel as a preferrable mode of intercity travel.

A viable intercity rail passenger service will relieve highway and airway congestion.

Train propulsion systems pollute significantly less than those of alternate modes.

Modern, efficient intercity railroad passenger service is a necessary part of a balanced transportation system.

Public convenience and necessity require the continuance and improvement of rail passenger service to provide fast and comfortable transportation between urban areas and other areas of the nation.

The Program:

The Act instructs the Secretary of Transportation to designate a Basic National Rail Transportation System specifying those points between which intercity passenger trains will be operated.

The National Railroad Passenger Corporation is created to operate by contract with railroads the "basic system" beginning May 1, 1971.

The Corporation will be capitalized by the payments of participating railroads which are expected to aggregate $200 million and is assisted by a combination of Federal grants and loan guarantees of up to $175 million.

SUMMARY OF 1970 RAIL PASSENGER SERVICE BILL

A BOLD APPROACH TO IMPROVE RAIL PASSENGER SERVICE:

In testifying June 2, 1970 before the Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Committee, Secretary of Transportation John A. Volpe said, "Rail passenger service in the United States is declining so severely in amount and quality that it may soon disappear completely unless action is taken now.

"...if the Government is going to do anything to meet this problem, it would be a serious mistake to do nothing more than prop up the present system with public subsidy. We must take a bolder approach and create a new structure. With sufficient capitalization, a new, quasi-public corporation, whose only purpose is to maintain and improve rail passenger service over a more economically sensible system, has a good chance of becoming a sound and successful enterprise."

PURPOSE:

Modern efficient railroad passenger service is a necessary part of a balanced national transportation system. Public convenience and necessity require the continuation and improvement of such service to provide fast and comfortable transportation between urban areas and other areas of the country.

Rail passenger service can help to decrease the congestion on highways and overcrowding of airways and airports.

The traveler in the United States should to the maximum extent feasible have freedom to choose the mode of travel most convenient to his needs.

The achievement of these goals requires the designation of a basic national rail transportation system and the establishment of a rail passenger corporation to provide the needed service.

THE BASIC NATIONAL RAIL TRANSPORTATION SYSTEM:

The Secretary of Transportation is directed to submit within 90 days of enactment a report to Congress specifying those points to and between which intercity passenger service should be operated together with basic service characteristics of operations to be provided within the system.

The report also will be submitted to the Interstate Commerce Commission for review and comments and consideration will be given to that agency's views.

CREATION OF THE CORPORATION:

Concurrent with the Secretary's action in designating the Basic System, the National Rail Passenger Corporation will be created by incorporators appointed by the President with the advise and consent of the Senate.

The Corporation is to have a board of 15 directors. Eight are to be appointed by the President and approved by the Senate. Seven are to be chosen by the stockholders.

Common stock is to be issued at the outset to railroads affiliated with the Corporation.

Cumulative preferred stock will be offered to the public at an appropriate time.

The Corporation will be empowered to operate or provide for the operation of intercity railroad passenger trains; to acquire the necessary facilities and equipment; and to conduct research and development related to its mission.

HOW THE CORPORATION WILL PROVIDE PASSENGER SERVICE:

On or before May 1, 1971 the Corporation is authorized to contract

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HOW THE CORPORATION WILL PROVIDE PASSENGER SERVICE:

On or before May 1, 1971 the Corporation is authorized to contract with each railroad company to relieve it of its intercity passenger service.

No railroad is obligated to enter into such an agreement.

A railroad wishing to contract with the Corporation must agree to pay to it each year for three years an amount equal to one-third of fifty percent of its fully distributed passenger service deficit incurred in 1969.

Prior to May 1, 1971 the Corporation will be expected to purchase such new equipment as time permits and to integrate good quality existing equipment which it has taken over from the railroads into its own service system.

Not later than May 1, 1971 the Corporation will begin service throughout the basic system. It is anticipated the actual movement of trains will be conducted for the Corporation under contract by the railroads.

FINANCING THE CORPORATION:

As part of their contracts with the Corporation, the railroads are obligated to make payments which are expected to aggregate $200 million.

The amount is payable in cash or, at the option of the Corporation, by the transfer of equipment or the provision of future service.

The railroads will receive in return common stock equal in par value in its initial organization and operation and in the acquisition of equipment and services.

The Secretary of Transportation is authorized to guarantee loans of up to $100 million to the Corporation for thepurchase or rehabilitation of rolling stock or other corporate purposes.

The Secretary of Transportation is authorized to make or guarantee short terms loans of up to $200 million to assist railroads in satisfying their contractual commitments to the Corporation.

Public participation is provided for by the prospective sale of preferred stock.

BRIEFING -- THE FUTURE OF RAIL PASSENGER TRANSPORTATION

The Problem

Railroads currently account for only one-third of the passenger miles they reported two decades ago and only about half of their traffic of 1958.

During the same 20-year period, the nation's common carriers as a group almost doubled the volume of their passenger business while only holding even their share of the intercity market. The airlines accounted for just about all of this gain.

As traffic has fallen the railroads have encountered growing deficits from passenger operations.

Fully distributed rail passenger losses now amount to nearly $500 million annually -- avoidable costs amount to $250 million and cash drain to $150 million.

In 1968 the passenger service avoidable loss amounted to 50.7% of the industry's net income.

The Need

The Northeast Corridor, centered around New York, is the most dramatic (but not only) example of how intercity rail passenger service can greatly improve the national transportation system.

There is now a serious air congestion problem in New York.

The practical annual capacity of the three major New York City airports has been reached at about 800,000 annual operations. Available air space has been rationed so as to minimize delays.

It is when the anticipated air traffic growth is taken into account that intracorridor traffic demand assumes even greater importance in formulating national transportation policy.

Anticipated peak hour number of scheduled commercial aircraft operations at the three New York airports could amount to over 300 daily operations by 1975, as contrasted to the present 160 operations under instrument flight rules.

On the basis of current trends, it is evident something must give. Either vast sums must be spent to expand present airports, build new ones and install highly automated air traffic controls or cut back on aircraft operations and air traffic.

There is a third alternative -- that of shifting a portion of the anticipated increased traffic in the Northeast and other urban corridors to alternative forms of transportation.

That is where the prospective role of rail transportation becomes exceedingly relevant.

Corridors

As the nation's population increases -- estimates -- 225 million by 1975, 250 by 1980 and 320 million by 2000 -- our urban corridor population is estimated to increase even more rapidly.

Some demographers predict that by 2000 the Northeast Corridor will contain one-fourth of all our people.

Similarly, about 15% of the population is expected to live in the central strip between Chicago to Buffalo and Pittsburgh and about the same proportion in the area including San Diego--Los Angeles--San Francisco.

Metroliner

Analysis conducted by the Department of Transportation shows it is possible to divert large amounts of intracorridor traffic to rail service if it provides reliable, fast and comfortable service.

This prognostication, presumed correct by a number of studies and surveys, is now backed up by the experience of Metroliner service.

Formal demonstration started October 1.

Federal commitment $10,700,151.

Seven round trips daily between New York and Washington.

Pre-demonstration experience...

1,600,000 passengers carried between January 16, 1968 and October 1, 1970.

Load factor 66%.

On time performance 95%.

80% of interviewed passengers said they would take the Metroliner on their next Corridor trip.

Under the demonstration, the government will be receiving for the first time Metroliner maintenance and financial information and will be in a position to determine the cost-benefit ratio for this type equipment.

Having already established a reliable statistical base on Corridor passengers, we can now proceed to those experiments in service changes which have always been considered crucial to measuring public response. These experiments include: staffing trains with hostesses, offering complimentary meals, reduced fares during certain times of day and improvement of scheduling.

On the equipment side, the Department contemplates working with Penn Central in a $3 million modification and improvement program designed to increase the reliability, maintenance efficiency and comfort level of the Metroliner fleet.

Also, we will improve passenger accessability by opening a second suburban passenger station in New Jersey comparable to one recently opened in Lanham, Maryland.

Rail Passenger Service Bill

Rail passenger service is declining so severely in amount and quality that it may soon disappear completely unless action is taken now.

If the Government is going to do anything to meet this problem, it would be a serious mistake to do nothing more than prop up the present system with public subsidy. We must take a bolder approach and create a new structure. With sufficient capitalization, a new, quasi-public corporation whose only purpose is to maintain and improve rail passenger service over an economically sensible system has a good chance of becoming a sound and successful enterprise.

The Rail Passenger Service Bill, passed by a 78-3 vote in the Senate and approved by the Interstate and Foreign Commerce Committee of the House, meets these criteria.

The Bill, as approved by the Senate, would:

Direct the Secretary of Transportation to submit within 90 days of enactment a report to Congress specifying those points to and between which intercity passenger service should be operated together with basic service characteristics.

The National Rail Passenger Corporation will be created by incorporators appointed by the President and approved by the Senate.

A 15-member board of directors--eight to be appointed by the President; seven to be chosen by stockholders.

Common stock to be issued at the outset to railroads affiliated with the Corporation.

Preferred stock will be sold to the public at an appropriate time.

The Corporation will be empowered to operate or provide for the operation of intercity passenger trains; to acquire the necessary facilities and equipment; and to conduct research and development related to its mission.

On or before March 1, 1971 the Corporation is authorized to contract with each railroad company to relieve it of its intercity passenger service.

No railroad is obligated to enter into such an agreement.

A railroad wishing to contract with the Corporation must agree to pay to it each year for three years an amount equal to one-third of fifty percent of its fully distributed passenger service deficit incurred in 1969.

Prior to March 1, 1971 the Corporation will be expected to purchase such new equipment as time permits and to integrate good quality existing equipment which it has taken over from the railroads into its own system.

Not later than March 1, 1971 the Corporation will begin service throughout the basic system. It is anticipated the actual movement of trains will be conducted for the Corporation under contract by the railroads.

Financing

Railroads' payments expected to aggregate $200 million.

This amount payable in cash, transfer of equipment or provision of service.

The railroads will receive common stock equal in par value to their payments.

Federal grants of $40 million are authorized to assist the Corporation in its initial organization.

The Secretary of Transportation is authorized to guarantee loans of up to $60 million to the Corporation for the purchase or rehabilitation of rolling stock or other corporate purposes.

The Secretary of Transportation is authorized to make or guarantee short term loans of up to $75 million to assist railroads in satisfying their contractual commitments to the Corporation.

October 16, 1970

THE WHITE HOUSE

MEMORANDUM FOR

Honorable John A. Volpe
Secretary
Department of Transportation

The purpose of this is to confirm our conversation of October 14 with regard to the Railpax Bill. We agreed that any authorizations or appropriations for guarantees or outlays in excess of those levels recommended by the Administration would be withheld.

John D. Ehrlichman
Assistant to the President
for Domestic Affairs

cc: George Shultz
Caspar Weinberger

EXECUTIVE

TN 4

FG 1

FG 125

October 21, 1970

MEMORANDUM FOR

PETER FLANIGAN

Confirming this mornings telephone conversation, would you please develop for John Ehrlichman's review and submission to the President a paper outlining the pros and cons of the Railpax legislation and whether or not the President should sign it.

One of the things you should determine is how deeply the Administration is committed to this legislation. I know, for instance, that Secretary Volpe has done a great deal of work to get the legislation passed. We should also have a feeling as to what the industry reaction to this program is. I am given to understand that they are not very happy with it; however, are they unhappy with it only because they desire full subsidy (which we are not in favor of), or are there other more valid reasons?

We should have this for John's review no later than Friday evening, October 23.

Thank you for your cooperation.

KEN COLE

Ken Cole: ④
FYI

EXECUTIVE
TN4
FG999
FG25
Griffin, Oscar O.

THE WHITE HOUSE
WASHINGTON
October 21, 1970

RZ:

The National Rail Passenger Service Act (commonly known as Railpax) just arrived at the White House today. Last day for action is Nov. 2.

Secretary Volpe has been pushing hard for this bill, as you know. There was, at one time, some consideration of announcing in Vermont that the President intended to sign the bill.

Since then, JDE has had serious reservations about the bill. He has had many calls and discussions with Railway people who do not like portions of the bill. I believe the Railroad people want it to go further than it does and would hope they could get direct subsidies.

At any rate, whether or not the President will sign the bill is "up in the air" at this time, according to JDE. There is a meeting this morning at DOT on the subject.

j

*National Railroad Passenger Corporation

3131

RDC
JJB

ADMINISTRATIVELY CONFIDENTIAL

C.F.
TNL
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THE WHITE HOUSE

WASHINGTON

October 27, 1970

MEMORANDUM FOR JOHN EHRLICHMAN

FROM: PETER FLANIGAN
(Draft by Jon Rose)

You have requested a memorandum regarding enrolled bill H. R. 17849, the "Railpax" bill. I am informed that an exhaustive memorandum by OMB will reach you shortly giving the legislative history and probably recommending that the President sign the bill.

The Railpax bill creates a common carrier National Railroad Passenger Corporation to own and manage intercity passenger trains discarded by the railroads and included in a railway passenger grid to be designated by the Secretary of Transportation. Eight of the corporation's fifteen directors are Presidential appointees. Railroads can be relieved of their passenger service without fear of anti-trust prohibitions, by paying to the corporation (in the form of cash or equipment) an amount equal to their passenger losses in 1969 (computed by 3 different ways). In exchange for their payments, the railroads will receive Railpax stock. Non-participating railroads will be prohibited from discontinuing existing passenger service for four years. After two years the corporation may discontinue unprofitable service with the traditional approval of ICC; however, such decisions may be vetoed if an affected state or locality offers to pay two-thirds of the deficit.

Federal subsidy is provided by a $40 million grant to assist in organizing and operating the new corporation, $100 million in loan guarantees (worth $25 million or more in present-value terms) to the new corporation for capital equipment or real property, and $200 million of loans or loan guarantees to railroads for their payments to the corporation (1969 passenger rail losses) worth $50 million in present-value terms. In addition, tax deductions will be given for railroad payments to the corporation, and further subsidy may occur because of the likely default of some direct loans or loan guarantees.

In all likelihood there will be very strong pressures for the Federal Government to pick up any operating deficits the corporation may sustain. DoT predicts that after a $40 million deficit the first year, the corporation will decrease its deficits to $9 million in the third year

ADMINISTRATIVELY CONFIDENTIAL

and make a profit the fourth and following years. The DoT projections are based on the somewhat speculative assumption that improved service will gradually attract increasing traffic. I have been given a more pessimistic estimate, checked with some industry sources, that operating deficits could amount to $50 to $75 million annually. If the prospects of operating subsidies of this size are included, federal financial requirements under the bill could total more than $600 million during the next five years with about half being in the form of capital or operating grants.

The bill includes some disturbing labor protection provisions as the highest-prevailing wage sections of the Davis-Bacon Act are made applicable to laborers and mechanics employed by contractors and subcontractors of the corporation. These costly sections can be avoided by the substitution of a union-management agreement. However, all of the present costly featherbedding practices are likely to be included because it will be assumed that the government will pay the operating deficits of the corporation.

BACKGROUND

I believe that a thorough review of the rich history of the railpax legislation will be included in the forthcoming OMB memo. The saga may be summarized as follows:

During the summer and fall of 1969 strong congressional pressure developed for some form of federal action to save railroad passenger service. A Hartke-Tydings proposal, supported by the Association of American Railroads, would have provided operating and equipment subsidies of $435 million over a five-year period. Impatient because of administration inaction, the Senate Commerce Committee finally reported on March 12, 1970 a bill which would have established a federally-subsidized national network of railroads. During the interim period between the summer of 1969 and the spring of 1970 there was intense debate within the administration concering an appropriate position on rail passenger service. In December, 1969, DoT, via Assistant Secretary Paul Cherington, produced its Railpax proposal to which it has since been unrelentingly committed. The threat of an overly generous congressional subsidy scheme was always a major factor in the deliberations by the Administration. A free-market approach of liberalized ICC standards for discontinuing passenger trains was favored by some, but was generally viewed as incapable of gaining congressional approval. Several ad-hoc interagency task forces attempted to find an alternative to Railpax or direct federal subsidies for rail passenger service, but were unsuccessful.

The Bureau of the Budget, in a letter from Director Mayo to John Ehrlichman on February 23, 1970, took a strong stand against railpax on the ground of economic feasibility and precedent. In making its first choice a liberalized discontinuance procedure, the Bureau strongly questioned the need to save intercity rail passenger service.

On May 1, 1970 Senator Mansfield introduced an amendment to the Commerce Committee bill which essentially transformed it into the original DoT railpax proposal. This amendment was sponsored by Senators Magnuson, Hartke, Cotton and Prouty. On the same day Secretary Volpe wrote a letter, uncleared by the Bureau of the Budget, to Senator Magnuson strongly supporting the revised bill. The bill was passed by the Senate on May 6, 1970, 78 to 3. On June 17 the BoB recommended to the House Commerce Committee favorable consideration of the Senate-passed bill as opposed to a more expensive proposal being considered by the committee.

In a separate, but related action on June 19 DoT transmitted to the Congress, with an "in accord" clearance, a bill providing for loan guarantees to all railroads of up to $750 million. This bill was not limited to rail passenger service. It is essentially dead now.

The House committee finally reported out the railpax bill, but increased the dollar limit to $340 million as opposed to $175 million. Both houses completed final action on October 14 and received warm congratulations from Secretary Volpe for their efforts. The Secretary has also commended the Congress for its wisdom in at least one campaign speech in Indiana where he attempted to deny any credit for railpax to Senator Hartke and to give it all to Senator Prouty.

Principal Arguments in Favor of Signing the Bill

1. The Administration is strongly committed to the bill by the actions of Secretary Volpe. Any attempt to backtrack on this commitment now would appear hopelessly indecisive and would severely damage the credibility of a cabinet officer if not of the entire administration. The White House cannot so dramatically undercut the commitments of cabinet secretaries without drastically undermining their effectiveness as administration spokesmen.

2. There is strong political pressure for some federal effort to save rail passenger service. This one bears a smaller price tag than some other schemes we could get if this one is vetoed. In addition, a veto on budgetary grounds would be difficult to justify in the presence of our $750 million railroad loan guarantee proposal.

3. There is some social interest in preserving rail passenger service as an alternative to increased air pollution and traffic congestion resulting from greater use of the airlines and the highways.

4. At present the shareholders of the nation's railroads are paying for the nation's reluctance to abandon rail passenger service. As this reluctance seems likely to continue for the foreseeable future, it seems only fair that this burden be transferred to the taxpayers as a whole.

5. The Railpax Corporation proposal offers a reasonable program for a unified national attack on the passenger service problem which has suffered to date from the fragmented and erratic treatment it has received from the different railroads, and present ICC discontinuance procedures.

Principal Arguments Against Signing the Bill

1. There is no real need to preserve rail passenger service. Only 1-1/2% of inter-city passenger traffic travels by rail now; and this is likely to decline. About 95% of all towns of 2,500 people or more have inter-city bus service. Many have local service airlines. In short, the volume of rail passenger traffic is too small to justify on any basis a major outlay of the size proposed. If rail passenger service will not pay for itself, it should be discontinued.

2. There is no guarantee that the Railpax Corporation will not require a continuing federal appropriation to finance its deficit. Even an optimistic DOT estimate foresees some deficits. In view of the power of the ICC to stop the Corporation from discontinuing trains, and the power of a state or local agency to veto a discontinuance by paying 2/3 of the operating deficit, it seems highly unlikely that Railpax will achieve a DOT goal of a reduction to 200 passenger trains from the present 420. Thus, DOT deficit estimates seem certain to be exceeded because it is almost certain that political pressures will cause the retention of uneconomic trains. Indeed rail industry officials privately indicate that the Railpax scheme is likely to require annual federal appropriations to meet predictable operating deficits.

3. Some responsible industry officials indicate that the Railpax goal of reaching 200 trains within two years from the existing 420 will be achieved under the present discontinuance system without any further federal legislation or subsidy.

4. The subsidy provided by Railpax creates an undesirable precedent which will certainly be cited by local service airlines and bus companies if they start losing traffic. In addition the bill violates the user-charge principle advocated by this Administration in highway and airport legislation.

5. The bill is a large first step toward federal management and control of the nation's railroad system. This seems particularly true because the problems of the nation's railroads seem much deeper than merely the losses from passenger service.

6. The bill gives DOT 30 days after passage of the bill to designate the passenger service systems eligible for Railpax. The ICC, state commissions and rail unions then have 30 days to comment. This seems far too short a time in which to develop a rational and workable scheme for rail passenger service across the country.

7. The bill would in effect give federal government sanction to the labor featherbedding practices which now pervade rail passenger service. This implied sanction would result from the fact that the cost of featherbedding would be picked up by the federal payment of deficits; thus any current pressure to reduce featherbedding would be eliminated.

Possible Ways to Justify a Veto

If a veto were thought desirable, it could be based on (1) the high authorization cost of $340 million, (2) the need for more time than 30 days to plan a viable rail passenger service grid, (3) the need for removing the requirement of an ICC approval to discontinue rail passenger service beyond the determination of the original grid structure, (4) removal of the one-third deficit subsidy requirement to states and local authorities if they wish service to continue, and (5) modification of undesirable labor protection provision.

Conclusion

If this bill were being now presented to us as a departmental proposal, I would oppose it on economic grounds. If the present trend of declining rail passenger traffic continues, the bill offers the spectre of rather large continuing federal appropriations to subsidize an uneconomic mode of passenger transportation. These appropriations will have strong political support because the Railpax network will no doubt be constructed in such a way as to benefit areas represented by key Congressional figures. The strongest economic argument for the bill is that the Railpax network could produce a rational passenger service system much more promptly than the present ad hoc discontinuance procedures. If the optimistic DOT projections are true, such a system could eventually make a profit. In any event, the burden for continuing uneconomic rail passenger service would be shifted from the railroad stockholders to the general public. These considerations, standing alone, would be insufficient for the bill to have my support.

Now, however, the bill comes to us for signature or veto having received strong and continuing Administration support through the statements of Secretary Volpe. I do not believe that it is sound administrative practice or politically credible for the Administration, in the absence of overwhelming new evidence, now to reverse its principal spokesman for transportation policy. To do so on the eve of a Congressional election would seem particularly undesirable.

Therefore, unless the President is prepared to risk Secretary Volpe's resignation, I would recommend that he sign the Railpax bill.

ASSOCIATION OF
AMERICAN RAILROADS
AMERICAN RAILROADS BUILDING · WASHINGTON, D. C. 20036

THOMAS M. GOODFELLOW
President

October 28, 1970

Dear Henry:

Railroad interest and support of RAILPAX has been evident since it was first submitted by the Administration to the Congress. We sought changes from time to time, but our support as an industry has been firm. We worked hard to get it through the Congress.

Now, we're working hard to help the Department of Transportation and its incorporators and officers make it a success.

Today we held an informal meeting with representatives of the Federal Railroad Administration and almost a hundred railroad people from passenger roads all over the country. Our purpose was to clarify questions relating to the Act, so we can act responsibly and effectively in its implementation. I've enclosed a list of those in attendance.

The meeting was highly useful. We've set up machinery to work with DOT on a continuing and almost daily basis; and when the Corporation takes over, to help it execute its responsibilities. We have set up a Steering Committee to coordinate areas of primary interest with DOT. We have established active, working subcommittees in such areas as contracting, accounting, operations, traffic, labor, etc., to work up suggestions, draft procedures, contracts, etc., so as to help expedite the work of the Corporation. We stand ready and willing to cooperate with DOT and the Corporation in any way possible.

While I cannot speak for the individual railroads, I do not know of any railroad that has definitely said it will not join. It's to our advantage, and to the public as well, that RAILPAX work.

I hope that the President will sign the bill soon.

Sincerely,

Tom

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 17849 - Rail Passenger Service Act of 1970
Sponsor - Rep. Tiernan (D) Rhode Island

Last Day for Action

November 2, 1970 - Monday

Purpose

The bill would provide for: (1) the designation of a basic national rail passenger system, (2) the creation of and financial assistance to a National Railroad Passenger Corporation, authorized to own, manage and operate intercity trains, (3) the establishment of a financial investment advisory panel to advise the Corporation.

Agency Recommendations

Office of Management and Budget	Disapproval
Council of Economic Advisers	Disapproval
Department of Transportation	Approval
Interstate Commerce Commission	Approval
National Transportation Safety Board	Approval
Department of the Treasury	Approval (Informally)
Department of Labor	No objection
General Services Administration	No objection
Post Office Department	Defers to DOT
Department of Justice	Defers to DOT (Informally)

Discussion

H.R. 17849 originated from a joint effort of the Senate Commerce Committee and the Department of Transportation to develop a comprehensive rail passenger service bill. A version passed the Senate on May 6, 1970, with the support of DOT. The subsequently passed House bill, which the Senate then accepted, amended the original Senate version in several respects, the most important of which was to increase the loan and loan guarantee amounts in the bill. The grant provisions of the bill are in the same amounts as those endorsed by DOT.

The following is a summary of the major provisions of the enrolled bill with the important differences from the Senate-passed/DOT-supported bill:

(1) Title I states the congressional finding that a modern, efficient intercity railroad passenger service is a necessary part of a balanced transportation system; that the public requires the continuance of such service; that to achieve these goals requires the designation of a basic national rail passenger system and the establishment of a rail passenger corporation; and that Federal financial assistance as well as investment capital from the private sector is needed.

(2) Title II - Basic national rail passenger system - The Secretary of Transportation, acting in cooperation with other interested agencies, would be required to submit to the ICC and to the Congress within 30 days his preliminary recommendations for the basic system. These recommendations would specify: those points between which intercity passenger trains shall be operated, all routes over which service may be provided, and the service characteristics of operations to be provided within the basic system.

Within 30 days after receipt of the preliminary report, the ICC, State commissions, and representatives of railroads and labor unions are to provide the Secretary with their comments on the report. The original Senate bill provided for a review by the ICC only; the House added the State commissions, railroads and unions.

The Secretary would then within 90 days after enactment submit his final report designating the basic system to the Congress. This report must include the recommendations of the ICC, the State commissions, railroads and labor unions together with reasons for failing to adopt any such recommendations. The basic system would become effective upon its submission to the Congress.

(3) Title III - Creation of a rail passenger corporation - The bill would authorize a National Railroad Passenger Corporation, which would be a "for profit" corporation and which would not be an agency of the U.S. Government. The purpose of the corporation would be to provide interstate rail passenger service.

Incorporation - The President would appoint at least 3 incorporators, with Senate advice and consent, who would also serve as the Board of Directors for the first 180 days.

Directors and Officers - The Corporation would have 15 directors, with 8 appointed by the President with the advice and consent of the Senate for 4-year terms, 3 elected annually by common shareholders, and 4 elected annually by preferred shareholders. The president and other officers of the Corporation would be appointed by the Board of Directors.

Financing - Two issues of stock are authorized, common and preferred, each of which carries voting and dividend rights. Common stock may be initially issued only to a railroad; and preferred may be issued and held only by a "person" other than a railroad or someone controlling a railroad. The bill further specifies par values, dividend arrangements, maximum allowable holdings for railroads, and other items.

General powers of the Corporation - The Corporation is authorized to own, manage, operate or contract for the operation of intercity trains; to conduct research and development; and to acquire or construct facilities and equipment necessary for railroad operation.

ICC and State regulation - The Corporation would be deemed a common carrier by railroad and subject to some ICC regulations but not those pertaining to fares, abandonment or extension of lines, and routes and service provided. Similarly, the Corporation would not be subject to any State laws relating to rates, routes or service.

Antitrust exemption - Persons contracting with the Corporation for joint operations of facilities and equipment would be exempted from the antitrust laws.

Reports to Congress - The Corporation would transmit a report annually to the President and the Congress. DOT and the ICC would also transmit reports to the President and the Congress, one year after enactment and then biennially, on the state of rail passenger service and the effectiveness of the Act.

(4) Title IV - Provision of rail passenger services - The Corporation is authorized to contract with a railroad (after a written request from the railroad) to relieve it of its entire responsibility for the provision of intercity rail passenger service under Federal or State laws. Such contracts would be offered to the railroads on or before May 1, 1971 and again during the period of March 1, 1973 through January 1, 1975. Upon entering into such a contract, the railroad would be allowed to discontinue all other passenger trains upon 30-day notice to the ICC. The Corporation would begin service between points in the basic system on May 1, 1971.

Payments to the Corporation - In consideration of being relieved of passenger service, a railroad would pay the Corporation whichever of the following three amounts is most favorable to the railroad:

(a) 50 percent of the fully distributed passenger deficit of the railroad for the calendar year 1969;

(b) 100 percent of the avoidable loss of all intercity rail passenger service operated by the railroad during the calendar year 1969;

(c) 200 percent of the avoidable loss of the intercity rail passenger service operated by the railroad over routes between points within the basic system during the calendar year 1969.

In return, the railroad would receive common stock in an amount equivalent in par value to the payment made. A five-year moratorium would be established on discontinuance of services by any railroad which has not contracted with the Corporation.

Corporation service responsibility - The Corporation would be required to provide the service included within the basic system until July 1, 1973, to the extent it has assumed responsibility for such service by a contract with a railroad to relieve that railroad of its responsibility.

Anytime after July 1, 1973, the Corporation could, subject to ICC procedures, jurisdiction, and authority under Section 13(a) of the Interstate Commerce Act, discontinue such train or trains in the basic system which it determines are not required in whole or in part by public convenience and necessity or will impair its ability to provide other services. The enrolled bill also requires that 30-days' notice of intention to discontinue any service must be given to the Governor of each State in which the train in question is operating and through public postings.

If during this period a State, regional or local agency requests continuation of the service and agrees within 90 days to reimburse the Corporation for at least two-thirds of losses associated with the continued service, the Corporation could not change or discontinue the service. Any disagreement as to the reasonable apportionment of such losses between the Corporation and the other public agencies would be resolved by the Secretary of Transportation taking into account the purposes of this Act.

Labor protection provisions - The bill provides protection for the interests of railroad employees affected by the discontinuance of intercity services. No contract between the Corporation and any railway for the assumption of passenger service by the former could be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of the contract afford affected employees fair and equitable protection by the railroad.

The provisions of the Davis-Bacon Act are made applicable to laborers and mechanics employed by contractors and subcontractors of the Corporation in the performance of construction work. However, wage rates and collective bargaining agreements under the Railway Labor Act are to be considered as being in compliance with the Davis-Bacon Act. Health and safety standards promulgated by the Secretary of Labor under the Contract Work Hours and Safety Standards Act are made applicable to all construction work under contracts made by the Corporation.

(5) Title V - Establishment of a financial investment advisory panel - Within 30 days after enactment, the President would be required to appoint a fifteen-member panel to advise the Corporation on ways and means of increasing the capitalization of the Corporation. On or before January 1, 1971, the panel would submit a report to Congress evaluating the Corporation's initial capitalization and the prospects for increasing it.

(6) Title VI and Title VII - Federal financial assistance - The Federal Government would be authorized to provide the following financial assistance to the Corporation and the railroads:

(a) The Secretary of Transportation could make grants up to $40 million to the Corporation to assist it in organizing and conducting its affairs.

(b) The Secretary would be authorized to guarantee loans to the Corporation totaling $100 million to acquire new rolling stock, to upgrade roadbeds, or for other corporate purposes.

(c) The Secretary would be authorized to make loans or loan guarantees totaling $200 million outstanding at any one time to railroads for the purpose of enabling them to perform contracts entered into under this legislation.

This was the major change to the original DOT supported bill, which included amounts for the categories above of: $40 million, $60 million, and $75 million respectively.

(7) Title VIII - Miscellaneous provisions - Includes technical provisions on separability, auditing, etc.

(8) Title IX - Tax deduction - The provision, which was added in the House and was not in the DOT supported bill, would allow a railroad to take a tax deduction for any payment (in cash, equipment or services) made to the Corporation so long as the railroad does not in return receive stock in the Corporation. The deduction is to be disallowed if during a 36-month period following the last payment to the Corporation the railroad acquires any stock in the Corporation.

George P. Shultz

Director

Enclosures

ADDENDUM TO THE MEMORANDUM FOR THE PRESIDENT ON ENROLLED BILL H.R. 17849 RAIL PASSENGER SERVICE ACT OF 1970

Historical Development

Congressional interest and concern for railroad passenger service started in the summer of 1969 and serious activity began in September 1969, and centered around S. 2750 sponsored by Senators Hartke and Tydings and the American Association of Railroads. The bill provided for operating and equipment subsidies of $435M over 5 years. DOT testified in September and November and said they were studying the problem and would come up with recommendations by late December 1969. The Federal Railroad Administration of DOT favored direct subsidies to railroads, but Assistant Secretary of DOT Cherington proposed RAILPAX--a joint public-private corporation which would own and operate rail passenger service over a selected network of "potentially profitable" routes.

DOT submitted its basic proposal to the Bureau of the Budget on December 1, and requested clearance by December 2, since the Senate Commerce Committee was to be in executive session on that date to consider the committee print bill (S. 2750). DOT further stated that if the Administration did not take a strong position, the committee would report out its own bill that week. This threat (of a much more generous scheme of operating and capital subsidies) hung over all of the following negotiations. Substantially modified letters were sent to the committees by Secretary Volpe on December 8 and 11, which opposed operating subsidies and promised an Administration proposal by the start of the new session.

An interagency task force (WH, BOB, CEA, DOT) was established to develop and consider alternative approaches to the problem, including RAILPAX, and to develop a proposal. Although DOT participated in the interagency task force, it stood by its RAILPAX proposal and did not consider any alternatives as plausible. DOT submitted its legislative proposal for RAILPAX on December 23 and it was informally circulated to CEA, Commerce and Treasury.

On January 12, 1970, a White House meeting with Messrs. Baker and Cherington-DOT, Mr. Moore-CEA, Mr. Mann-BOB and Messrs. Cashen and Colson-WH, decided to submit a RAILPAX bill to Congress and a second draft of the bill was circulated for formal comments to the agencies. CEA, Commerce, Treasury, Labor, ICC and Justice all had serious problems with the DOT proposal which they felt should have been resolved before transmittal of an Administration draft.

Mr. Mayo met with Mr. Ehrlichman on January 17, 1970. Both were opposed to RAILPAX, and it was agreed that Mr. Ehrlichman would explore two alternatives:

1. Have a Congressman introduce the RAILPAX bill, or

2. DOT submit a bill to Congress authorizing liberal train discontinuance.

On February 12, 1970, Messrs. Ehrlichman, Cashen, Beggs, Baker and Mayo met and DOT was told to seriously consider 4 or 5 alternatives. DOT presented a paper discussing alternatives to Mr. Ehrlichman on February 18.

On February 23, 1970, in a letter to Mr. Ehrlichman, Mr. Mayo (1) raised the basic question of whether there is a need to save inter-city railroad passenger service; (2) challenged the economic viability of the DOT proposal; (3) predicted that RAILPAX would be a precedent for "continued and increasing Federal subsidy;" and (4) stated that RAILPAX would be subsidized competition for other modes of inter-city transportation and so might retard the substitution of other, more economic, techniques. The BOB letter concluded by recommending a "free market approach" to allow train discontinuances or an all private RAILPAX -- in that order.

On March 12, Senate Commerce Committee ordered reported a bill to establish and federally subsidize a national network of passenger trains. On May 1, a compromise amendment was introduced on the Senate floor by Senator Mansfield on behalf of Senators Magnuson, Cotton, Hartke, and Prouty which brought the bill essentially in line with the original DOT RAILPAX proposal.

On May 1, Secretary Volpe wrote Senator Magnuson strongly endorsing the bill (S. 3706, as amended) on behalf of the Administration. Formal clearance of this letter was never requested. On June 2, Secretary Volpe, in testimony before the House Interstate and Foreign Commerce Committee, said "On behalf of the Administration, I strongly urge early and favorable consideration of S. 3706 by this Committee and the Congress."

On June 17, BOB responded by letter to a request for views by the House Interstate and Foreign Commerce Committee and recommended that the "... Committee give favorable consideration to S. 3706 rather than H.R. 17428."

The bill was passed by the Senate on May 6, by a vote of 78 to 3.

On June 19, in another related action, DOT transmitted a draft bill (now S. 4011--sponsored by Senator Cotton) which was cleared as being "in accord with the President's program". That bill, which has not been reported out in either House, would authorize $750 million loan guarantees to all railroads.

On September 23, the House Interstate and Foreign Commerce Committee reported an amended version of the Senate-passed S. 3706 but raised the dollar authorization from $175M to $340M. Mr. Weinberger, in a memorandum to Secretary Volpe and Mr. Timmons, urged that the Administration strongly oppose the House committee bill as being extravagant and support the Senate-passed bill.

On October 14, when the bill was finally approved by the Senate and by a voice vote in the House, Secretary Volpe issued a public statement of praise for the Congressional action.

<u>Pros and Cons</u>

The pros and cons of the RAILPAX proposal as contained in H.R. 17849 can be addressed on 3 separate levels: 1. Should any effort be made to keep inter-city rail passenger service in existence? 2. Should the Federal Government provide financial assistance and/or become directly involved in the operation? 3. Is the bill as passed by Congress the best way to provide the Federal assistance?

1. <u>Should any effort be made to keep inter-city rail passenger in existence?</u>

<u>Pro</u> 1. Rail passenger service is or will again become an important alternative mode of inter-city transportation especially as population increases and congestion becomes even greater.

2. Existing rail passenger facilities (especially roadbeds) should be saved now so that if new rail systems come along, the land and right-of-ways will be available for later use.

3. Rail passenger service can reduce congestion, reduce pollution and provide mobility for those who do not or cannot drive or fly.

4. There should be one intensive experiment to see if rail passenger service can be profitable if operated with modern business techniques and with modern facilities.

<u>Con</u> 1. If the market economy supports other modes of inter-city transportation but not the railroads, public demand is not present, and railroads should go out of business until demand recurs.

2. Freight service will save the right-of-ways and basic roadbeds to be available for future possible needs.

3. Only 1-1/2% of inter-city passenger traffic is carried by railroads now and this is not likely to increase enough to meaningfully contribute to reduced congestion and pollution, or to economic support for increased capacity. In fact, the DOT proposal under the enrolled bill would reduce the present 17 million annual rail passenger trips to 4 million.

4. Number of riders is increasing on the modern Washington-New York Metroliner experiment but the profitability is inconclusive--this test should be carried further before a full scale program is undertaken.

5. The DOT proposal under the enrolled bill is not to save the presently operating inter-city rail passenger service but rather to reduce the roughly 420 trains now operating to some 200 "potentially profitable" trains in the basic system.

6. About 95% (all but 23) of towns with over 2,500 population now served by rail passenger trains also have inter-city bus service. All eleven of the inter-city corridors planned to be served by the "basic" rail passenger system have local service air lines.

2. <u>Should the Federal Government provide financial assistance to and/or become directly involved in the operation of the rail passenger system?</u>

<u>Pro</u> 1. There is no way under present law for the railroads to salvage that part of their passenger service which is economically viable or capable of being self-supporting--this is because there is much public pressure against "train-off" allowances by the ICC and the Congress would not permit it to happen.

2. Historical data indicate that after heavy "train-off" allowances in the early 1960's there was some initial improvement but in recent years the deficit has worsened as service has declined.

3. Government assistance is necessary to show Government concern for railroad transportation and create a positive attitude and that measure of necessary financing which the railroads cannot afford.

4. Railroad management is almost universally opposed to remaining in the passenger business, with or without subsidy.

5. Allowing a reduction in the deficits of the railroads through trainoffs would not result in improved service on the residual "paying" trains due to the present attitude of railroad management.

6. The Administration has already indicated its willingness to become directly involved in financial assistance to the nation's railroads by proposing (in June 1970), as part of the President's program, the Emergency Transportation Assistance Act (S. 4011) which would authorize $750 million in Government loan guarantees for loans to railroads.

<u>Con</u> 1. Direct financial and operating involvement by the Federal Government is not necessary and is perhaps far more assistance than is needed to "save" just the "potentially profitable" passenger trains. Through legislation, the ICC could be given a new statutory criterion to allow "train-offs" where other modes of transportation are available on a basis which would permit railroads to retain "profitable routes". This is the stated objective under the RAILPAX proposal. If this proposal is not economically sound without subsidy, it probably will not be after subsidy. If some form of financial relief is needed to upgrade service and facilities on the remaining routes, legislation could provide for allowing pooled resources by the railroads possibly with Federal loan guarantees.

2. Direct Government intervention in inter-city rail passenger service in a form other than regulation is likely to lead to larger government subsidies or to a commitment to much greater aid to the railroads. The present financial crisis of the Penn-Central Railroad (which has 150 of the roughly 420 remaining passenger trains) may indicate that the difficulties of the railroads generally are so serious and systemic to general railroad operations that a remedy limited to the passenger train portion of the industry will not be adequate to meet the problem.

3. To make inter-city rail passenger service more competitive with other modes through subsidies and the elimination of marginal trains may divert passengers and worsen the economic viability, or even threaten the existence of other modes such as bus lines or local service airlines. The latter now serve all eleven of the inter-city corridors slated for improved rail service and they receive Federal subsidy.

4. As a precedent, the financial and operational assistance offered to the railroads under the RAILPAX proposal in the enrolled bill could be a basis for: (a) increased subsidies to local service airlines and (b) a claim by bus companies that they should have the same type of relief.

5. Subsidy to railroads runs counter to the Administration's approach to financing transportation programs--that beneficiaries of the service should pay their fair share of the Federal costs. Underlying the new airways/airports legislation is a commensurate increase in user taxes. The Federal-aid highway program is fully funded through gasoline and other use-related taxes. The heavy special overhead and lack of viable alternatives made user charges inappropriate for the new mass transit program. However, similar conditions do not exist for rail passenger service. The RAILPAX system, as authorized in the enrolled bill, could be criticized as a case of: benefits for few - taxation for all. A rational case could be made (if the new basic rail system is effective) that motorists should share the costs of decongesting the highways by using the Highway Trust Fund to support RAILPAX.

3. Is the enrolled bill as passed by the Congress the best way to provide Federal assistance to support rail passenger service?

Pro

1. The Government will be indicating "moral" and financial commitment to railroads.

2. The Corporation has substantial flexibility in managing the rail network and can run railroads for profit.

3. Under the Corporation, a single coherent management and planning of the "basic" system can be substituted for the present fragmented private railroad management structure.

4. The Corporation board has broad representation and technical expertise from government and private individuals.

5. The enrolled bill provides the Corporation with only modest capital. $340M from government and another estimated $200M from railroads to start Corporation. This is the minimum feasible participation by the Government to show good faith.

6. The enrolled bill avoids the threat of a far greater Federal financial involvement through operating subsidies to all passenger service.

Con

1. DOT's proposed reduction of the basic network to 200 trains is very optimistic. Because the basic network is not designated in advance there will be strong political pressure to create a basic system that is from the beginning very uneconomical due to the addition of non-self-supporting trains.

2. The potential for profitable operation, even if the planned reduction is achieved, is highly questionable. DOT's own data shows an overall deficit of $16 million in the fourth year. It is greater in earlier years. By the fourth year it is estimated that only 4 trains will operate at a profit.

3. The corporation can be forced to continue trains even after the first two years of operation because train discontinuances will have to be approved by ICC under the present law (Section 13(a) of the Interstate Commerce Act). Also, if a State or local body is willing to pay part of costs of operating the train, the corporation has to continue to run the train.

4. The establishment of a board of 15 directors, selected from different bodies, could lead to conflicting viewpoints and a weak management system.

5. The Secretary of Transportation must designate within 30 days of enactment of the bill the basic national systems and provide 30 days for State Commerce Commissions, labor unions and the ICC to comment. This time limit is probably too short to permit a thorough review of alternative basic system routes and to explore the viewpoints of other interested groups.

6. The Interstate Commerce Commission still has substantial powers over the corporation. ICC adjudicates differences as to the amount a carrier is obligated to pay the corporation; fixes compensation due carriers for use of tracks and other facilities; and prescribes regulations regarding adequate rail passenger service. This last provision (Section 801 of the enrolled bill) is almost open-ended and could inject ICC into many policy aspects of the corporation.

7. The President's role of appointing eight members of the corporation board means that the Federal government will continue to bear at least some "moral" responsibility for the corporation, thus increasing pressure for more Federal financial assistance if the corporation runs a deficit.

8. The Federal Government contributes $40M in direct grants, $100M for loan guarantees to help corporation acquire facilities, and $200M for direct loans or loan guarantees to help railroads enter into the basic network. Yet, corporation is semi-private, for-profit operation and government can have little impact on mode of operations except through the eight Presidential appointees.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

Subject: Railpax

Attached is a memorandum describing the enrolled bill and recording agency views. This memorandum discusses the reasons why we recommend a Presidential veto.

The Railpax corporation starts with a severe handicap. It will own rail passenger trains which are proven losers. After discontinuance of half of the trains and the injection of $340 million of Federal assistance in the form of grants, loans, and loan guarantees, the theory is the corporation will become profitable. Some railroad executives privately admit that this is impossible. Rather they expect annual operating deficits of $50 million or more. I realize that DOT has projected deficits declining until the corporation is profitable, which they estimate will be within four years. Their estimates appear unduly optimistic, and are not supported by adequate evidence.

The likelihood of deficits is reinforced since DOT plans to use as the criterion for the proposed grid, that a number of people equal to those now served will have access to service under Railpax. This allows only a reduction in the frequency of service, and not the discontinuance of long-haul service to population centers, the residents of which have long since shown their preference for other transportation modes. I realize that the criterion can be modified but political pressures may require such a grid anyway.

I understand that the estimates of a profitable Railpax are based on revenues declining only modestly or not declining at all, or even rising. This is in marked contrast to the forty percent decline in intercity passenger rail revenues during the last three years. I have seen no basis to expect a change in this trend. Moreover, the prospects for Railpax to be operating in the red are reinforced by a provision in the act which allows State or local authority to insist that an unprofitable train continue if the public body is willing to pay for two-thirds of the deficit.

The discontinuance of trains after the initial grid is determined, must be approved by the ICC in the same way that railroad companies request discontinuance now. The tie of Railpax to the Government and the intent of Congress to assist passenger service can be construed as nullifying the current emphasis on an economic reason for discontinuance. The result may be a larger operating deficit for the Federal Government to pay. Also, in five years this feature may result in more unprofitable trains in operation than if Railpax were not passed at all. Confidentially, some railroad executives have stated that discontinuance of trains would likely reduce the number to the level envisioned for Railpax within two or three years. The only advantage of Railpax would be to accomplish the same thing two years earlier. The use of Railpax to handle deficits could provide resistance for further discontinuance based on economic grounds.

The problems in identifying a viable grid are monumental. To do it in 30 days appears to risk selecting poor routes and being burdened with an unnecessarily large annual deficit.

The bill requires use of the Davis-Bacon Act, thereby assuring high labor cost for construction. By providing financial support, the Government will indirectly relieve pressures on unions and management to reduce high cost practices. This would occur at a time when management and unions are awakening to the gains from removing these practices.

Railpax, with its majority of directors appointed by the President, would inevitably have its deficits, its service problems, and its other headaches laid at the feet of the President. The Government would be charged with "running the railroads," without the necessary authority to improve any of the problems and with all the factors which led to the present plight built into their future operation.

A veto message should stress the unnecessarily high costs and limited benefits of the bill. This bill is nearly twice as expensive as the House version which was endorsed by the Administration.

In spite of the public position of the Secretary of Transportation in favor of the bill, I feel the bill is bad enough to veto.

Attachment

COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 27, 1970

Dear Mr. Rommel:

This is in reply to your request for our views on enrolled bill, H. R. 17849, an act "To provide financial assistance for and establishment of a national rail passenger system, to provide for the modernization of railroad passenger equipment, to authorize the prescribing of minimum standards for railroad passenger service, to amend section 13a of the Interstate Commerce Act, and for other pruposes."

This bill would extend Federal involvement and financial assistance to an area of highly dubious value. Intercity rail passenger service has declined markedly over the years for clear economic reasons. The largest markets for rail passenger service have been lost to the speed of the airplane and the convenience and low cost of cars and buses. Only one percent of intercity passenger traffic goes by train. With the possible exception of high speed service in densely populated compact areas such as the Washington - New York - Boston corridor, rail passenger trains cannot compete with airplanes, cars or buses either on price or on travel time. Outside such areas, the rail passenger market is confined to those who have not become accustomed to the airplane, e.g., the elderly, or who place a low value on their time. This market is bound to shrink steadily in the future. The requirement of Section 201 to establish a nationwide rail system (including Hawaii, Alaska and Puerto Rico) flies in the face of all serious analyses of the demand for rail passenger service.

1%

The decline of the rail passenger market has been reflected in mounting losses. This bill would essentially relieve the railroads of these losses upon payment of half of last year's passenger deficit. Subsequent deficits, which are very likely to mount if any substantial intercity passenger train network is maintained, will have to come from the Federal treasury. The use of Federal funds to perpetuate an increasingly uneconomic service is extremely difficult to justify, especially when national budget priorities require the closest scrutiny. This is especially true in light of the substantial size of the initial Federal commitment and the prospect that it may grow in the future. We should point out that the original version of this bill provided Federal grants and loan guarantees of $175 million while the present bill provides $340 million.

Crux

Apart from the dubious merits of Federal subsidies for rail passenger service, this bill raises substantial issues of responsible fiscal management. The intercity rail passenger deficit is currently well over $100 million per year. This deficit, most of which will be shifted to the National Railroad Passenger Corporation, is likely to grow over the years. The total railroad and Federal contribution to the Corporation's capital even at the increased level in this bill has every prospect of being exhausted in 3 to 5 years. In spite of this, the bill has no provision to deal with the likely bankruptcy of the Corporation. This clearly visible problem is left for some future budget to deal with. This both evades a problem that ought to be dealt with now and promises to shift future decisions on rail passenger service from its economic merits to the merits of bankruptcy of a federally sponsored corporation. To avoid the loss of prestige involved in such a bankruptcy, future rail passenger deficits may get an open-ended claim on the Treasury, whether or not such a claim can be economically justified. To so shift the consequences of undercapitalization of the Corporation to future budgets is irresponsible fiscal management. We should not evade our responsibility by relying on value hopes that the underlying forces which produce rail passenger deficits will disappear. There are several other serious objections to this bill which I cannot discuss in detail. Particularly disturbing are the "feather bedding" provisions of Section 405, and the new obstacles to discontinuance of service in Section 404.

URGE RN VETO.

In summary, this bill appropriates substantial funds for an enterprise with little economic justification. The funds appropriated are already almost twice as large as those in the original bill. However, even at this higher funding level, there is the real prospect that future budgets will be saddled with commitments which it ought to be our responsibility to spell out now. For these reasons we strongly urge the President to veto this bill. If, however, he is not prepared to do this, his signing message should contain a clear commitment that the Federal capital contribution to the Corporation will be limited to the amount specified in this bill, that rail passenger service will have to stand or fall on its economic merits, and that this bill implies no claim on future budgets.

Goes to minimum reqs if signing.

Sincerely,

Paul W. McCracken

Mr. Wilfred H. Rommel
Office of Management and Budget
Washington, D. C.

Railpax

THE WHITE HOUSE

WASHINGTON

October 30, 1970

EXECUTIVE (8)
TN4
FG999
SA
FG25-1
PR10
Goodfellow Thomas
Marshall, Paul
FG6-16
FG25

MEMORANDUM FOR

JOHN EHRLICHMAN

Attached is a memorandum from Bill Timmons setting forth the views on the Railpax bill.

Bill also called me this morning with the following information: the rumor of a veto is hurting Kleppe. The farmers want Railpax very much because they have been paying freight rates that are constructed to pay for losses that the railroad incurrs due to passenger service. With Railpax farmers expect freight rates to be the same or lower since they won't have to pay for passenger losses. Therefore, they want the President to sign Railpax.

Allott also called with the same pitch. There is a Congressional seat we could get in Colorado.

George Shultz just called me to say that he had just received a phone call from Secretary Volpe that the St. Paul Minnesota paper is carrying a story that George Shultz is against the bill and therefore the President is going to veto it. Because of the pressure building, Volpe's pitch was that he shouldn't bother to submit a memorandum to the President stating his feelings but rather the President should just act one way or the other. Shultz told him to submit his memorandum.

The pressure building on this indicates to me that it would be wise to act in either way sooner rather than later. John Rhodes of Arizona just called to say that he thought the President should sign the bill. The President will be seeing him on Saturday.

KEN COLE

Attachment

cc: George Shultz

THE WHITE HOUSE

WASHINGTON

October 29, 1970

MEMORANDUM FOR KEN COLE

FROM: WILLIAM E. TIMMONS

SUBJECT: Railpax

Since a pocket veto of Railpax would not be subject to an override, this legislative factor is not an issue. Also, this office cannot comment on the merits or de-merits of the rail passenger program and costs as they relate to Administration priorities. I do not think the Congress in the post election session would pass another railpax measure should this bill now under consideration be vetoed.

There are some facts bearing on the Congressional aspects of a veto:

1. We did not alert Republicans on Capitol Hill that the bill might be vetoed. Therefore, a veto could embarrass some of our friends who supported the legislation.

2. While the veto could be held till election day, a veto on November 3rd concernably could hurt some of our candidates like Prouty, Weicker, Scott. All favor signing.

3. The possibility of a veto is out already and we are receiving calls inquiring about the status. We can expect Democratic charges to hit the papers this weekend. (I strongly suspect DOT is building up pressure).

In light of these factors, I recommend signing from a Congressional/political viewpoint.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

OCT 30 1970

MEMORANDUM FOR THE PRESIDENT:

SUBJECT: Rail Passenger Legislation

Rail passenger legislation is now before you for signature. Given the complexities of the rail situation and the budgetary constraints which are so severe, the decision is clearly most difficult. George Shultz discussed this with me yesterday and expressed some reservations. He stated that he was forwarding his views to you and commented that you might find useful any additional remarks that I might make.

Earlier this week, I met with John Ehrlichman and we discussed several issues including this one. I think it was a frank, candid review. Yesterday Under Secretary Beggs and several members of my staff met with Domestic Council staff and people from CEA and OMB to go over this legislation. Jim Beggs reports to me that it was an in-depth exchange and that in his view the relevant issues had been raised and addressed.

Given this exchange that has already taken place, and which I know will be reflected in reports to you from others, I will limit my observations here to two points; the potential for making a positive contribution to the Nation's transportation system through this legislation and the implications that may arise if this bill is not enacted into law.

If enacted, a basic rail network would be specified by this Department, over which the Rail Passenger Corporation would operate trains. Our analyses to date suggest provision for service to approximately 14 short-haul, high-density corridors and another 14 long-haul routes. Our Northeast Corridor studies and our metroliner experiments indicate that the corridor operations have good prospects for economic success and of equal import do provide a significant alternative to the increasingly costly and congested air transportation mode. There is also increasing evidence that intercity automobile passenger travel can be affected by as much as 10-20%, given something like a metroline alternative. Clearly some corridors will be better than others and in our final selections we must be very careful. Nonetheless, the aggregation of these operations shows strong prospect for economic viability. The long-haul operations have been assessed in several ways including, of course, Canadian experience and current East Coast-South operations. Here again prospects for individual routes vary and before finalization of the network extreme care must be exercised. Nonetheless, all of the indications that we have are that the Rail Passenger Corporation will be economically viable by the third or fourth year of operation and will be providing sound transportation alternatives to aviation and highway movement. The operations of the Corporation can be expected to turn a relatively small initial year loss of $30-40 million--the current level in the preliminary network--into an operating profit by the third year.

It seems to me that the foregoing is important for three reasons. First, it does provide some transportation alternatives where they are needed. Second, the economic prospects make the hazard of future demands for Federal support relatively low. Third, the immediate elimination of two-thirds of the rail passenger miles and something in excess of 80% of the operating loss reduces this very complicated and politically sensitive industry problem (our basic network has tentatively been structured to reach 40 States) to manageable proportions.

The implications of not enacting this legislation seem to me to be equally important. If we choose not to proceed and thus clearly dispose of a transportation alternative, it would seem that the legislative pressure for increased Federal airport and highway funding can only go up. This is probably most acute given the probable Congressional reaction if we do not proceed. On the eve of reporting out by the Senate Commerce Committee of Senator Hartke's $435 million subsidy bill, I intervened with your agreement. This eventually resulted in Senate passage by 78-3 of what was essentially our alternative proposal. The House voted the bill through by acclamation and the conference was among the shortest on record. Thus, the legislators are on record behind this bill straight down the line and acted so in the belief that they were endorsing an Administration lead.

A third impact of not going ahead relates, of course, to the railroad industry itself. Penn Central is by no means the only railroad in dire trouble. This legislation would provide the roads relief from cash losses of $200 million or more within a year or two. Train-off proceedings before the ICC in recent years and mounting Congressional pressures suggest that they will <u>not</u> be able to get out from under this problem if this legislation is not enacted. Thus, pressures and demands we can expect to face from Congress, industry and the public if the rail industry is not turned around (of course, this legislation is but one of several necessary steps) present grave financial implications.

Budgetary impacts from proceeding with this bill will be well less in FY 71 than the authorized $40 million. By the end of FY 72 we may have reached the limit of $40 million, but may in fact still be below it for the two-year total. The related loans/loan guarantees (totaling $300 million) can similarly be extended over a multi-year period, if in fact this total is reached, which it may well not be.

I regard this legislation as in the national interest and vital to the effectiveness of our Administration. I urge that you sign it.

John

Mr. President —

My credibility on Capitol Hill will practically be destroyed if this bill is vetoed, and it could well cost us Win Prouty's seat.

John