APPROVED
AUG 23 1968

THE WHITE HOUSE
WASHINGTON

S. 3418

(Federal-Aid Highway Act of 1968)

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

August 19, 1968

MEMORANDUM FOR MR. HOPKINS

Subject: Enrolled bill S. 3418 -- Federal-aid Highway Act

In accordance with our earlier discussion, I am sending you the agency views letters on this enrolled bill and copies of the Director's Memorandum to the President dated August 15, 1968 on it.

The section on agency views is up to date except for two changes: the D.C. Government recommends disapproval and NCPC recommends disapproval. (The views of HUD have not yet been received.)

Also attached are copies of:

(1) a summary of the major provisions of the bill prepared by our staff;

(2) copies of the committee reports;

(3) a copy of the enrolled bill;

(4) a letter from Rep. Gude (Maryland), urging approval, which was sent us by Barefoot Sanders for further reply. (We would recommend no further reply since the acknowledgement seems responsible.)

Wilf Rommel
Assistant Director for
Legislative Reference

Attachments

Received
8-17-68
10 P

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

OFFICE OF
THE DIRECTOR

August 15, 1968

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled bill S. 3418 - Federal-aid Highway Act

I thought it might be helpful to you if I indicated the current status of agency views, outlined the key issues, and suggested some alternatives for action.

Agency views

DOT has submitted a letter which outlines the good and bad provisions of the bill; it is still evaluating options and makes no recommendation at this point. Interior and Justice recommend disapproval, primarily because of the provision dealing with D. C. freeways. Agriculture recommends approval from the standpoint of the provisions of most concern to it. Labor recommends approval. Treasury is concerned about encroachment on executive prerogatives and about some financial aspects of the bill and "would support a recommendation that the bill not be approved." The D. C. Government is "unable to recommend approval of the bill."

We do not yet have the views of NCPC and HUD.

Key issues

The bill contains the usual biennial authorizations for the Federal-aid and direct Federal highway programs and a number of new programs or program changes recommended by the Administration which are very desirable. For example, it includes a comprehensive relocation assistance program, provision for advance acquisition of rights-of-way, a program to improve traffic flow on existing streets (TOPICS), a demonstration fringe parking program, and authority to set bridge inspection standards.

At the same time, the bill includes a number of undesirable features, some of which are very objectionable. Of the latter, however, only one is so bad in our view as to warrant consideration of whether the bill should be disapproved, viz., the one dealing with D. C. freeways.

The key objectionable features of the bill are these -- all added initially by the House Committee:

1. D. C. freeways -- Section 23 of the bill directs the Secretary of Transportation and the D. C. Government to complete construction, as soon as possible, of all Interstate highway routes within the District as set forth in "the 1968 Interstate System Cost Estimate," notwithstanding any other provision of law, any court decision, or any administrative action to the contrary.

It directs the D. C. Government to commence work within 30 days on the Three Sisters Bridge, the Potomac River Freeway, the Center Leg of the Inner Loop, and the East Leg of the Inner Loop. With respect to other freeways, it requires the Secretary and the D. C. Government to study and to report their recommendations on each, including alternative routes, to Congress within 18 months. If such recommendations are not received, it directs the D. C. Government to construct all of the other Interstate projects.

In addition, the statement of the House managers goes into considerable detail in directing the alignment and design of the projects (particularly the Potomac River Freeway) and the staging of the construction.

Section 23 is thoroughly objectionable for the following reasons:

-- it denies the people of the District the right to participate in decisions which will have great effect on the viability and livability of the city for many years to come;

-- it violates the general requirement in the Federal-aid Highway Act that States, as a condition of Federal-aid, hold public hearings in the highway planning process;

-- it is in conflict with interagency agreements arrived at in 1966 and 1967 as to the alignment and other characteristics of certain of freeway projects, particularly if the conference report's directions are followed;

-- it does not ensure that Three Sisters bridge would be a viable project because the right-of-way on the Virginia side is not secured and is under legal challenge by local Arlington County officials;

-- it tends to precommit the North Central freeway, a very controversial project which remains under study, because the bill directs that the east leg of the Inner Loop extend to Bladensburg Road, an illogical termination point unless the North Central project is built.

-- it overrides the judgment of DOT which believes "the immediate construction of elements of the present Interstate System plan to be unwise, because it believes the entire plan within the District is unsound and needs fresh consideration and new thinking;"

-- it will in Interior's opinion do great injury to the Palisades environment, the Georgetown waterfront and vital park areas of the city, if the detailed specifications in the statement of the House managers are followed;

-- it raises serious questions, according to Justice, of separation of powers and of legislative encroachment; and it may encourage the Congress to intrude in executive branch decisions in other program areas, although admittedly Congress has special responsibilities for the District of Columbia and frequently legislates on District matters in great detail.

The best that can be said for Section 23 is that it attempts to resolve a long-standing controversy which has sorely tried the patience of the local community. However, it is quite likely that freeway opponents would go to the courts again, if this bill is enacted, to seek to enjoin the District. Whether or not they would be successful, one can only speculate but they could tie up construction for some time.

The other consideration which should be noted is that commitment to complete the D. C. freeway system is apparently the price for Congress' appropriating the funds for the subway system. Rep. Natcher has indicated publicly that he will not recommend subway funds until irrevocable progress has been made on the freeway projects involved here.

2. Highway beautification -- The bill provides only $25 million for 1969 for this program instead of the $85 million for each of 1969, 1970 and 1971 as requested. It also weakens the billboard control law in certain respects. Nevertheless, the basic programs are continued in the face of great concern that the House might terminate the programs altogether.

3. Encroachments on park lands -- Existing law prohibits the approval by DOT of any transportation project which requires "the use of any land from a public park, recreation area, wildlife or waterfowl refuge or historic site" unless (a) there is no feasible and prudent alternative, and (b) the project includes all possible planning to minimize harm to such areas or sites.

The bill erodes existing law by limiting its protective effect to "publicly owned land" within the enumerated classes. However, the danger here is difficult to assess.

4. Additional 1,500 miles on the Interstate System -- This mileage is intended to be used to meet the "critical missing link" situations which have come about as a result of the changes in population and development since the Interstate System was originally laid out. The bill does not fund the additional 1,500 miles but permits the States to use this mileage if they defer other projects already designated under the original 41,000 miles.

We regard this addition as undesirable since it tends to stretch the concept of the Interstate System with unforeseeable future consequences. On the other hand, the "missing link" concept has validity.

5. Impoundment and diversion -- The House version would have prohibited any impoundment of highway funds and restricted their use strictly to the Bureau of Public Roads. The conferees turned the prohibition and restriction into a "sense of Congress" provision and liberalized the restriction on expenditures.

While highly undesirable and certain to be troublesome if and when funds are impounded, the provision has no legal effect.

Alternatives

We see a number of alternatives for action on the bill, which in oversimplified form can be described as follows:

1. Sign the bill without a signing statement but attempt to reach agreement beforehand with key Congressmen on (a) appropriation of funds this year for the subway and (b) the construction of the four named D. C. freeway projects along the lines set forth in the 1966-67 interagency agreements rather than as specified in the statement by the House managers.

2. Sign the bill and, whether or not an agreement is reached with key Congressmen, issue a signing statement which rejects the detailed directions in the House managers statement with regard to the four named freeway projects and announce that these projects will be built as soon as possible, in accordance with sound planning and engineering concepts.

3. Disapprove the bill and base disapproval solely on the D. C. freeway provision. Indicate willingness to approve bill if Section 23 is dropped and the D. C. freeways are made the subject of public hearings procedure as proposed by the D. C. Government in a recent report to Congress.

4. Disapprove the bill and base disapproval on all the key issues.

Copies of the views letters of DOT, Justice and the D. C. Government on the enrolled bill are attached.

Charles J. Zwick
Director

Attachments

SUMMARY OF FEDERAL-AID HIGHWAY ACT OF 1968

This is the regular, biennial authorization bill for the Federal-aid highway programs and various direct Federal highway construction programs administered by Transportation, Agriculture, and Interior. The bill has the following major provisions:

1. Interstate authorizations (Sections 2 and 4 of bill)

The bill increases these authorizations, as requested, as follows:

- $ 400 million to a total of 4.0 billion for FY 1970
- $ 400 million to a total of 4.0 billion for FY 1971
- $1,315 million to a total of 4.0 billion for FY 1972
- $4,000 million for FY 1973
- $2,225 million for FY 1974.

In addition, it extends the time for completion of the Interstate system by two years--until June 30, 1974.

2. Other authorizations (Section 5)

The bill provides authorizations for other Federal-aid highways (ABC systems) and for direct Federal construction programs for fiscal years 1970 and 1971 as follows:

	(in millions) 1970	1971
Transportation		
Federal-aid highways		
Regular ABC systems	$1,100	$1,100
Non-urban systems only (AB)	125	125
Forest highways	33	33
Public lands highways	16	16
Agriculture		
Forest development roads and trails	170	170

	(in millions) 1970	1971
Interior		
Public lands development roads and trails	$ 3.5	$ 5
Park roads and trails	--	30
Parkways	--	11
Indian reservation roads and bridges	30	30

The amounts authorized are the same as those requested, except that the bill added:

-- $100 million more for each year for Federal-aid highways (ABC systems);

-- a separate, additional authorization of $125 million for each year for Federal-aid highways in non-urban areas;

-- $45 million more for each year for forest development roads and trails.

In addition, the Congress did not accept the proposal to finance forest highways and public lands highways from the Highway Trust Fund.

3. Highway safety authorizations (Section 5)

The bill provides authorizations for programs as follows:

	(in millions) 1970	1971
State and community highway safety programs	$ 75	$100
Highway safety research and development	30	37.5

The highway safety authorizations are $25 million higher in each year than the amounts requested. The research and development authorization for 1971 is $2.5 million less than requested.

In addition, the bill delays for one year--until January 1, 1970--the effect of the Highway Safety Act provision which

denies safety funds and requires a 10 percent reduction in highway construction funds to States not implementing an approved highway safety program by that date.

4. Highway beautification authorizations (Section 6)

The bill provides the following authorizations:

	(in millions)		
	1969	1970	1971
Control of outdoor advertising	$ --	$ 2	$ --
Control of junkyards	--	3	--
Landscaping and scenic enhancement	--	20	--
Administrative expenses	1.25	1.25	--

The amounts requested for the three program elements were $5 million, $10 million, and $70 million, respectively, for each of three fiscal years 1969, 1970, and 1971, with 5 percent of the amounts authorized to cover administrative expenses.

The bill also (a) weakens existing law with respect to bonus payments to States for billboard control under the 1958 Highway Act by permitting them to receive the bonus even though their control standards may not measure up to current requirements; (b) provides that State or local determinations on "customary use" with respect to size, lighting, and spacing of signs in commercial or industrial areas shall be accepted by the Secretary of Transportation for billboard control purposes--a weakening amendment although one accepted by Transportation as a compromise; and (c) exempts States from billboard removal requirements when the Federal share of the required just compensation to the owner is not available.

5. Interstate system mileage adjustments (Sections 14, 16 and 21)

The additional 1,500 miles of interstate highway which the bill authorizes represents the conference committee compromise on the 3,000 additional miles in the House-passed bill. This additional mileage would not be apportioned among the States, and the conference report states that it is to be used to meet the "critical missing link" situations which have come about as a result of the changes in population and development since the Interstate highway system was originally laid out.

The bill does not provide additional authorizations for the 1,500 miles. However, a State which wants to use some of this mileage can defer the financing of another of its Interstate projects already designated under the original 41,000 miles, if it believes that financing this mileage has higher priority. Nevertheless, to the extent these 1,500 miles are used, the ultimate cost of the Interstate system will be increased.

In addition to the above, the bill makes two other changes regarding adjustments to the Interstate system. First, it allows highways on the Federal-aid primary system to be designated as part of the Interstate system if the highway meets Interstate standards and is a logical addition or connection. Highways so designated are not to be charged against the Interstate system mileage limitation, nor is the designation to create any financial responsibility on the part of the Federal Government.

Second, the bill liberalizes a 1967 amendment which weakened the Interstate system concept by permitting States to substitute highway routings of greater length for original designated segments of the system which they elect to give up. The 1967 law limited the cost of the new segment to not more than that of the deleted segment based on the 1965 cost estimate. This bill raises the cost maximum by allowing the 1968 cost estimate to be used.

6. Traffic Operations Program to Increase Capacity and Safety (TOPICS) (Sections 5 and 10)

The Administration requested $250 million contract authority for each of the five fiscal years 1970 through 1974 for projects which directly facilitate and control traffic flow in and through urban areas, whether on or off the Federal-aid systems; e.g., improved traffic control systems, channelization of intersections, pedestrian overpasses, separate lanes for buses, and one-way and reverse operation of streets. The apportionment formula and the sharing of costs (50-50) were to be the same as existing law provides for urban extensions of the primary and secondary highway systems.

The enrolled bill differs from the proposal principally in that: (1) a TOPICS project must be on a Federal-aid system in urban areas, not on or off as proposed; and (2) the authorization is for two years only--1970 and 1971--and at a reduced level of $200 million annually.

7. Advance acquisition of rights of way (Section 7)

The Administration proposed the establishment of a revolving fund, capitalized initially at $100 million and replenished annually, from which advances could be made to the States for early acquisition of land in order to minimize escalation of right-of-way costs. While the enrolled bill differs in a number of ways from the proposal, we believe that the scheme adopted is workable.

8. Fringe parking facilities (Section 11)

The Administration's proposal was designed to encourage and assist the States in developing publicly-owned parking facilities outside central business districts in order to relieve traffic congestion in urban areas of more than 50,000 population.

The enrolled bill differs from the proposal in the following major respects: (1) it provides authority for a temporary (through fiscal year 1971) demonstration program rather than authority for a permanent program, (2) it reduces the Federal share from 75 percent, as proposed, to 50 percent, (3) it does not permit use of Interstate or systems "A" or "B" funds (only system "C" funds), and (4) it substitutes a less stringent comprehensive planning requirement.

9. Impoundment and diversion of funds (Section 15)

The House-passed bill specifically prohibited the impoundment or withholding from obligation of any Federal-aid highway funds which have been apportioned to the States. The conferees adopted a provision which expresses the sense of Congress that:

-- no member of the executive branch may impound or withhold from obligation funds apportioned for any Federal-aid highway system, except for temporary withholdings determined to be necessary to comply with the "pay-as-you-go" requirement of the Byrd amendment; and

-- no Highway Trust Fund money may be used to pay the administrative expenses of any Federal agency other than the Federal Highway Administration (including the Bureau of Public Roads), unless the expenses are attributable to Federal-aid highways and (a) contracted for in accordance

with the Economy Act (31 U.S.C. 686), or (b) specifically identified in a line item appropriation.

10. Preservation of parklands (Section 18)

Existing law prohibits the approval by the Secretary of any transportation project which requires "the use of any land from a public park, recreation area, wildlife or waterfowl refuge or historic site" unless (1) there is no feasible and prudent alternative, and (2) the project includes all possible planning to minimize harm to such areas or sites.

The bill amends existing law by limiting its protective effect to "publicly owned land" only (except historic sites, which are protected whether public or private), subject to the added requirement that the area or historic site has been determined to be of "national, State, or local significance by the Federal, State, or local officials having jurisdiction." Thus, lands owned by conservation organizations or other private bodies would be denied protection from transportation projects even if they are open to the public.

11. Fort Washington Parkway (Section 19)

The bill authorizes the Secretary of the Interior to acquire title to or easements in certain land in Prince Georges County, Maryland, in order to protect the natural scenery and shoreline of the Potomac and to provide the rights of way for a future parkway. It requires an advance commitment from the State of Maryland to pay one-third of the acquisition costs, but authorizes the Secretary to advance the State's share on the condition that the amount be repaid to the United States, without interest, within eight years. To carry out the acquisition, the unappropriated balance of the funds authorized by the Capper-Crampton Act (approximately $3.0 million) are authorized to be appropriated to the Secretary. Upon completion of the acquisition program, the Secretary is required to report to the Congress his recommendations concerning the construction of the Fort Washington Parkway through the acquired lands.

Since the Federal share of the $11 million estimated cost of the land acquisition is $7.4 million, the appropriation authorization is deficient by $4.4 million. Further, if the Maryland share of the cost ($3.6 million)

is advanced, the authorization of appropriations deficiency could be the full $8.0 million difference between the $3.0 million available under Capper-Crampton and the $11 million estimated cost.

12. District of Columbia highway system (Section 23)

The bill provides that, notwithstanding any other provision of law, any court decision, or any administrative action to the contrary, the Secretary of Transportation and the D.C. Government must complete, as soon as possible after its approval, all Interstate highway routes within the District of Columbia as set forth in the "1968 Interstate System Cost Estimate," as well as those already under construction.

With respect to the Three Sisters Bridge, the Potomac River Freeway, the Center Leg of the Inner Loop, and the East Leg of the Inner Loop, the bill directs the D.C. Government to commence work on each within 30 days of the bill's approval. With respect to all other D.C. Interstate highway projects included in the 1968 cost estimate, the bill requires the Secretary and the Government of the District of Columbia to study and to report their recommendations on each, including alternative routes, to Congress within 18 months after approval. If the recommendations are not submitted within the required period, all of the D.C. Interstate routes must be constructed as soon as possible thereafter.

13. Bridge inspection (Section 26)

The bill requires the Secretary of Transportation, after consulting with the State highway departments, to establish national bridge inspection standards for bridges on the Federal-aid highway system. The standards must specify the method and frequency of inspection and the qualifications required of the inspectors. In addition, the bill requires the Secretary to establish a program to train Federal and State employees to conduct bridge inspections.

This section was included by the Senate and appears to be a desirable safety requirement in the light of recent bridge collapses. If the States fail to cooperate fully, it may be desirable to consider adding a sanction provision at a later date.

14. Relocation assistance (Section 30)

This section provides a mandatory relocation assistance program to alleviate hardship for persons, businesses and farm operations displaced by direct Federal and Federal-aid highway construction. It provides a schedule of payments for costs incurred and losses suffered incident to moving, and authorizes assistance to families and individuals in securing a safe, decent and sanitary replacement dwelling. Costs are to be shared with the States on the same basis as are the project's construction costs, except that for displacements occurring prior to July 1, 1970, the Federal Government would bear the full cost.

The bill also authorizes the District of Columbia to participate in the relocation assistance program.

The program of relocation assistance authorized by the bill differs in many respects from that proposed by the Administration. However, we believe that it is a workable program which meets the basic objectives of the Administration's proposal.

15. In addition to the above major provisions, the following sections should be noted briefly:

-- Davis-Bacon Act extension (Section 12)--This Act now applies to the Interstate system and the bill extends it to the regular systems (ABC).

-- Functional highway classification study (Section 17)--The bill requires the post-1970 highway needs study to include the results of a systematic nationwide functional highway classification study to be made in cooperation with State highway departments and local governments.

-- Garden State Parkway (Section 20)--The bill allows the N.J. Highway Authority to levy tolls on certain segments of the Parkway if Federal-aid funds which went into their construction are repaid and if the Authority builds parallel toll-free facilities to serve local traffic. The funds repaid would be credited to New Jersey's Federal-aid highway account.

-- Equal employment opportunity (Section 22)--The bill contains certain requirements with respect to highway construction contracts to ensure equal employment opportunities.

-- Urban impact (Section 24)--The bill adds social effects, environmental impact, and consistency with the goals and objectives of the community's urban planning as factors which must be considered by State highway departments before they submit proposed Federal-aid highway locations. Current law requires consideration of only the economic effects of the highway location.

-- Construction by States in advance of apportionment (Section 25)--The bill extends to the regular Federal-aid systems (ABC) the existing authority which permits States to construct Interstate system projects in advance of the apportionment of applicable authorizations, subject to being reimbursed for the Federal share when the authorization subsequently becomes available.

-- Emergency relief (Section 27)--The bill liberalizes existing emergency relief authority in two respects: (1) enlarges it to include "catastrophic failures from any cause" and (2) increases the Federal share payable from the existing 50 percent to up to 100 percent of the replacement cost if the Secretary determines it to be in the public interest. This section was added by the Senate Committee and probably had its origin in the recent collapse of a bridge over the Ohio between West Virginia and Ohio.

-- Toll roads (Section 28)--The bill provides that the Secretary must make an affirmative finding that the inclusion of a new toll road in the Interstate system after June 30, 1968 is in the public interest before he concurs in the construction of such a road.

-- Small Business Act (Section 31)--The bill broadens SBA's existing authority to make long term, low interest loans to small businesses displaced by urban renewal and highway projects to include

businesses which are adjacent to or near, but not actually displaced by a project, and which suffer substantial economic injury as a result of the project.

-- Federal share (Section 34)--The bill authorizes an optional method of determining the Federal share of a highway project's cost in States which have large areas of Indian lands and Federally owned land. The existing method does not take into account national forests and national parks and monuments. The optional method would include them and the Federal share would accordingly be increased. However, if a State uses the optional method, it must agree to use the "saved State funds" only for highway construction purposes.

-- Real property acquisition policies (Section 35)--The bill establishes certain acquisition policies which the State highway departments must follow to receive Federal-aid funds. The most significant policy is the one which requires a State to establish an amount which it believes to be just compensation for a property and to make a prompt offer to acquire the property at the full amount.

GENERAL COUNSEL

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

AUG 15 1968

Honorable Charles J. Zwick
Director
Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Zwick:

This is in response to your request for the views of the Department of Transportation on the enrolled bill S. 3418, the Federal-aid Highway Act of 1968.

The Act basically provides for $4 billion authorizations for the highway program for each of the fiscal years 1970 through 1974. These authorizations are needed to continue the program, and are approximately the amounts we requested.

The Act also contains a great number of provisions which would change various substantive aspects of the highway program. We proposed many of these provisions in an attempt to make more rational the conduct of the highway program, particularly its impact in urban areas. Other provisions, however, were Congressionally instituted as a quid pro quo for these improvements we sought.

To properly appraise the bill and come to a conclusion requires an analysis of both the good and the bad aspects.

First, <u>the good provisions</u> are:

1. A comprehensive relocation assistance program for people displaced by highway projects. This will be especially helpful to lower income groups in urban areas.

2. Provision for advance acquisition of right-of-ways so as to allow better planning of highway projects, reducing costs and disruptive effects.

3. Authorization of $200 million for 1970 and 1971 for a program to improve urban traffic flow on existing streets ("TOPICS" program). If successful, this could be a key to the future development of an urban highway program.

4. Authorization for a demonstration fringe-area parking program to be operated in conjunction with the Urban Mass Transit program to show how this can relieve congestion in center city business areas.

5. Authority to require better equal employment opportunity programs by the highway construction industry.

6. Extension of Davis-Bacon Act protection to workers on all Federal-aid Highways.

7. Authority to set bridge inspection standards and to train state personnel in bridge inspection techniques.

8. Authority for emergency relief to replace structures on the Federal-aid highway system destroyed by catastrophic failure from any cause, not just natural causes.

9. Requirement that social and environmental effects of highway route locations in urban areas be considered in developing highway proposals as well as economic effects.

The <u>bad provisions</u> are:

1. Authorization of an additional 1,500 miles on the Interstate System. The conference report, however, says if additional mileage is requested by a State, the State must defer construction on an equal number of previously programmed miles. This could extend the Interstate Highway program for another two years beyond fiscal year 1974.

2. The bill gives State and local officials further say in whether roads may traverse park lands and similar areas under their jurisdiction and precludes any authority over privately owned but publicly dedicated park lands.

3. Requirement that the District of Columbia highways be constructed, particularly the Three Sisters Bridge and the Potomac River Freeway.

4. Declares it the sense of the Congress that Highway Trust Funds shall not be impounded from obligation.

In addition, while authorizations for the beautification program are provided, they are at token levels ($2 million for billboards, $3 million for junkyards and $20 million for landscaping; compared to requests of $5, $10, and $70 million). Also, the substance of the program is somewhat eroded by amendments.

A section-by-section analysis of the bill is attached.

The most troublesome provision in the bill is Section 23, providing that the Secretary and the D. C. Government shall construct the planned routes on the Interstate System within the District of Columbia "as soon as possible" and "in accordance with applicable provisions of Title 23." It also provides that the D. C. Government shall "commence work" within 30 days of enactment on four projects, including the controversial Three Sisters Bridge and the Potomac Freeway.

Such a direction by the Congress to the Executive Branch is to the best of our knowledge unprecedented, since it directs, rather than authorizes, immediate work on specific public works. The statement of the House Managers, not necessarily concurred in by the Senate Managers, goes even further and directs the letting of construction bids within 90 days and requires specific design features in the Potomac Freeway of dubious engineering practicality.

The Department of Transportation notes that this action by the Congress was taken despite a request by the new District Government to have time to consult with the citizens affected and to work

out the highway plan it considers desirable for the District. The Department also considers the immediate construction of elements of the present Interstate System plan to be unwise, because it believes the entire plan within the District is unsound and needs fresh consideration and new thinking. The immediate construction of the Three Sisters Bridge would be out of phase with planning and construction of necessary linkages and accordingly would merely transfer traffic congestion from one side of the river to another. Further, the right-of-way on the Virginia side is not secured, and is under legal challenge by local Arlington County officials. The right-of-way on the District side is subject to the approval of the Secretary of the Interior, and present planning requires the use of some parkland. The Potomac Freeway is still in the early design stage with many engineering problems to be worked out. For these reasons, many of which are discussed at greater length in the Secretary's statement before the House Public Works Committee, the Department of Transportation believes that section 23 is unwise as a matter of public policy.

Section 23 also raises a question of constitutionality, depending on how it is to be interpreted. For example, it is arguable that the references to construction "as soon as possible" and "in accordance with applicable provisions of Title 23" permit a wide latitude of executive judgment as to the pace and timing of the construction activities, requiring only a good faith effort to construct these routes consistent with all other Federal engineering and procedural requirements concerning highways. It is also arguable that the direction to the District Government to "commence work" could be fully complied with by entering into the necessary design studies without necessarily proceeding to construction. Moreover, the provisions do not limit the President's authority under the Revenue and Expenditure Control Act of 1968, and curtailment of expenditures and of obligations under that authority by both the Department of Transportation (on an across-the-board basis) and the District Government (on a project basis) could affect the timing and extent of the work. Nevertheless, despite this possibility, it seems clear that the practical intention of the Congress is to have these projects undertaken and completed, and signing the bill would signify some form of acquiescense in this intention.

In this situation, these options appear: (1) sign the bill, with a provision in the signing statement deploring this aspect of the bill and requesting Congressional reconsideration; (2) sign the bill, with a provision in the signing statement pointing out the interpretation noted above allowing for the exercise of substantial executive discretion and pointing out that any other interpretation would overstep the Constitutional line separating the powers of the Legislative and Executive Branches; (3) veto the bill, notwithstanding its very desirable features, with a statement requesting Congressional reconsideration of the undesirable features including those relating to the District highway program; (4) withhold signature from the bill for the 10-day constitutional period, which, in view of the current recess of the Congress, will prevent the bill from becoming law.

The Department is still evaluating these options, and is making no recommendation at this point.

Sincerely,

Stanford G. Ross

Stanford G. Ross

Enclosure

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL-AID HIGHWAY ACT OF 1968

Section 1. Short Title

Cites Act as the "Federal-Aid Highway Act of 1968".

Section 2. Revision of Authorization of Appropriations for Interstate System

Section 2 increases authorizations of appropriations for the Interstate System for each of the fiscal years 1970 and 1971 from $3.6 billion to $4 billion and from $2.685 billion to $4 billion for 1972 and authorizes an additional amount of $4 billion for fiscal years 1973 and $2.225 billion for 1974.

Section 3. Authorization of Use of Cost Estimate for Apportionment of Interstate Funds

Section 3 authorizes the Secretary to use the apportionment factors in the Revised 1968 Cost Estimate (set forth in S. Rep. No. 1940, 90th Cong., 2d Sess.) to apportion the sums authorized to be appropriated for fiscal years 1970 and 1971 for expenditure on the Interstate System. (The revised factors include provision for the Century Freeway in California and the West Virginia Turnpike.)

Section 4. Extension of Time for Completion of System

(a) This subsection extends the time for completion of the Interstate System to June 30, 1974.

(b) This subsection provides that the 1968 Cost Estimate shall be used in making apportionments for fiscal years 1970 and 1971. The final revised cost estimate is to be submitted to the Congress in January 1970 for use in making the apportionments for the fiscal years 1972, 1973, and 1974.

Section 5. Authorizations

(1) Authorizes the appropriation of $1,100,000,000 for each of the fiscal years 1970 and 1971 for projects on the Federal-aid primary, Federal-aid secondary, and extensions of these systems in urban areas.

(2) Authorizes funds for traffic operation projects in urban areas -- $200,000,000 for each of the fiscal years 1970 and 1971 (TOPICS program).

(3) Authorizes for forest highways $33,000,000 for each of the fiscal years 1970 and 1971.

(4) Authorizes for public lands highways $16,000,000 for each of the fiscal years 1970 and 1971.

(5) Authorizes for forest development roads and trails $170,000,000 for each of the fiscal years 1970 and 1971.

(6) Authorizes for public lands development roads and trails $3,500,000 for fiscal year 1970 and $5,000,000 for fiscal year 1971.

(7) Authorizes for park roads and trails $30,000,000 for fiscal year 1971;

(8) Authorizes for parkways $11,000,000 for fiscal year 1971.

(9) Authorizes for Indian reservation roads and bridges $30,000,000 for each of the fiscal years 1970 and 1971.

(10) Authorizes for highway safety programs (23 U.S.C. 402) $75,000,000 for fiscal year 1970 and $100,000,000 for fiscal year 1971. These sums are not to be apportioned until Congress provides a new apportionment formula.

(11) Authorizes for highway safety research and development (23 U.S.C. 307(a) and 23 U.S.C. 403) $30,000,000 for fiscal year 1970 and $37,500,000 for fiscal year 1971.

(12) Authorizes for the Federal-aid primary and secondary systems, exclusive of their extensions in urban areas, $125,000,000 for each of fiscal years 1970 and 1971 (in addition to the sums previously authorized in this section for the ABC system) 60 percent to be expended on the primary and 40 percent on the Federal-aid secondary systems.

Section 6. Highway Beautification

(a) Amends 23 U.S.C. 131(d) to permit a bona fide State, county, or local zoning authority to determine "customary use"

to be accepted in lieu of billboard controls by agreement in zoned commercial or industrial areas within the jurisdiction of such authority.

(b) Makes a clarifying amendment to 23 U.S.C. 131(j) with respect to the elemination of dual controls presently required in section 131(j), thereby requiring that bonus payments be made to States having 1958 bonus agreements so long as they maintain the control required by the 1958 Act, irrespective of what controls are required by the 1965 Act.

(c) Subsection (c) authorizes $2,000,000 for fiscal year 1970 to carry out section 131, control of billboards.

(d) Amends 23 U.S.C. 131 by adding a new subsection (n) which provides that no outdoor advertising sign, display, or device shall be required to be removed pursuant to 23 U.S.C. 131 if the Federal share of the just compensation for such removal is not available for payment.

(e) Authorizes $3,000,000 for the fiscal year 1970 for the purpose of carrying out 23 U.S.C. 136, junkyard control.

(f) Authorizes $20,000,000 for fiscal year 1970 to carry out 23 U.S.C. 319(b), landscaping and scenic enhancement.

(g) Authorizes $1,250,000 for each of the fiscal years 1969 and 1970 for necessary administrative expenses in carrying out sections 131, 136 and 319(b), in addition to the sums previously noted.

Section 7. Advance Acquisition of Rights-of-Way

(a) Clarifying amendment to 23 U.S.C. 108(b).

(b) Adds a new subsection (c) to 23 U.S.C. 108 establishing a right-of-way revolving fund to be available for expenditure without regard to the fiscal year for which authorized. The Secretary, upon request of the State highway department, may advance money without interest to the State from the Fund for use in acquiring rights-of-way for future construction of highways on any Federal-aid system, as well as for making payments for moving or relocating persons, businesses, farms caused by such acquisition. Actual construction of a highway on the rights-of-way acquired under this subsection must commence within not less than 2 years nor more than 7 years following the end of the fiscal year in which the Secretary approves the advance of funds. Where a State does not commence construction of a project within the stated time limits, the moneys advanced the States are to be recredited to the Revolving Fund out of other Federal-aid highway funds apportioned to the State.

(c) Authorizes $100,000,000 for each of the fiscal years 1970, 1971, and 1972 to be appropriated to the right-of-way revolving fund.

(d) Requires apportionment of the funds authorized for the Revolving Fund for each fiscal year on or before January 1 preceding the commencement of such fiscal year in accordance with 23 U.S.C. 104(b), paragraphs 1, 2, 3, and 5. Amounts apportioned under this subsection are not considered authorization of appropriations for the Interstate System for purposes of section 209(g) of the Highway Revenue Act of 1956 (Byrd amendment).

(e) Funds apportioned to a State shall remain available for obligation for advances to such State until October 1 of the fiscal year for which the apportionment is made. Amounts not advanced or obligated for advancement before October 1 revert to the Revolving Fund and are available for advance to any State in an equitable manner, taking into consideration each State's need for and ability to use such advances.

Section 8. Definitions of Forest Road or Trails and Forest Development Roads and Trails

Amends the definition in 23 U.S.C. 101(a) of the terms "forest road or trail" and "forest development roads and trails".

to include other areas administered by the Forest Service (primarily national grasslands).

Section 9. Forest Development Roads and Trails

This section amends 23 U.S.C. 205(c) to increase the limitation on force account construction for forest roads and trails from $10,000 to $15,000 per mile, or per project if less than 1 mile in length. Projects with estimated costs in excess of this limit must be advertised for bids.

Section 10. Urban Area Traffic Operations Improvement Programs

(TOPICS)

Adds a new section 135 to title 23, United States Code, declaring it to be in the national interest that each State have a continuing program designed to reduce traffic congestion and facilitate the flow of traffic within urban areas. Under this section the Secretary may approve projects on an extension of the Federal-aid primary or secondary systems in urban areas for improvements which facilitate and control traffic flow if the project is based on a continuing comprehensive planning process in accordance with 23 U.S.C. 134. Sums authorized are to be apportioned in accordance with 23 U.S.C. 104(b)(3). The Secretary is to report annually on projects approved under this section with recommendations he may have for further improvement of traffic operations in accordance with this section.

Section 11. Fringe Parking Facilities

(a) Until June 30, 1971, the Secretary is authorized to approve as a project under title 23, United States Code, fringe parking demonstration projects. Such projects must be situated on land both adjacent to the right-of-way on a Federal-aid highway system and outside a central business district and provide for the construction thereon (or on or above the right-of-way itself) of publicly owned parking facilities to serve an urban area of more than 50,000 population. Such a fringe parking facility must be located and designed to be used with existing or planned public transportation facilities. If fees are charged for using the facility, the rates charged may not exceed those required for maintenance and operation.

(b) The Federal share payable on such project is 50 percent and funds apportioned under 23 U.S.C. 104(b)(3) are available to finance the Federal share payable.

(c) Before approving a fringe parking project, the Secretary must: (1) determine that the State or political subdivision involved or its agency or instrumentality has the authority and capability to construct, maintain, and operate the facility; (2) enter into an agreement governing the financing, maintenance, and operation of the facility with the State or appropriate political subdivision which will assure

the availability of adequate public transportation to persons using the facility; and (3) approve the design standards for the facility's construction, which standards are to be developed in cooperation with the State highway department.

(d) Defines the term "parking facilities" for purposes of this section as including access roads, buildings, structures, equipment, improvements and interests in lands.

(e) Private organizations are authorized to operate parking facilities constructed under this section on behalf of the public agency.

(f) Projects approved under this section may not be approved by the Secretary unless he determines that they are based on the continuing comprehensive transportation planning process under 23 U.S.C. 134.

(g) The Secretary is to report to Congress annually on the demonstration projects approved, with recommendations with respect to future operations of the projects and the possible sale of the projects to private enterprise as well as the possibility of future construction of such projects by private enterprise.

Section 12. Prevailing Rate of Wage

Section 12 amends 23 U.S.C. 113 to make the prevailing wage requirements of the Davis-Bacon Act (40 U.S.C. 276(a)) applicable to projects on all the Federal-aid systems including their extensions in urban areas. Previously, the Davis-Bacon Act applied only to projects on the Interstate System.

Section 13. Highway Safety Program Penalty

This section amends 23 U.S.C. 402(c) to delay until January 1, 1970, any imposition of the provision calling for a 10 percent reduction in Federal-aid funds apportioned to States not implementing highway safety programs.

Section 14. Interstate System Adjustments

This section authorizes an additional 1,500 miles on the Interstate System, for designation of routes in the same manner as the 41,000 miles are designated to be used to improve the efficiency and service of the Interstate System. (No additional authorizations for this added mileage were provided, however. The Conference report indicates this mileage is to be restricted to "critical missing link" situations and not simply to extend the system.)

Section 15. Prohibition of Impoundment of Apportionments

This section amends 23 U.S.C. 101 by adding two new sub-sections declaring it to be the sense of Congress (1) that

sums authorized to be appropriated for expenditure upon any Federal-aid system which have been apportioned may not be impounded or withheld from obligation by any officer or employee of any department, agency, or instrumentality of the Executive Branch of the Federal Government, except such specific sums as are necessary to be withheld for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund; and (2) that funds from the Highway Trust Fund may be used only for administrative expenses of the Federal Highway Administration (including the Bureau of Public Roads) attributable to Federal-aid highways. The use of the fund for administrative expenses of other agencies is permissible only where attributable to such highways and specifically identified in a line item appropriation or contracted for in accordance with the Economy Act (31 U.S.C. 686).

Section 16. Additions to the Interstate System

This section adds a new section 139 to title 23, United States Code, permitting the Secretary to designate highways on the primary system as part of the Interstate System if they meet the applicable standards. Designation under this section does not add mileage chargeable against Interstate limits nor does it create any Federal financing responsibility.

Section 17. Functional Highway Classification Study

This section requires the Secretary of Transportation to include, in the highway needs report to be submitted by January 1970, the results of a systematic nationwide functional highway classification study to be made in cooperation with the State highway departments and local governments.

Section 18. Preservation of Parklands.

This section amends both 23 U.S.C. 138 and 49 U.S.C. 1653(f) (section 4(f) of the Department of Transportation Act) to make uniform the requirements of both provisions pertaining to the preservation of publicly owned parklands. The amended sections continue the requirement that the Secretary not approve the use of such lands for highway projects unless there is "no feasible and prudent alternative", and if such lands must be used, that all possible planning be instituted to minimize harm to such lands. In addition, the new section also requires the public officials with jurisdiction over the parkland in question to state whether the parkland or other site is of significance for preservation.

Section 19. Fort Washington Parkway

Section 19 authorizes the Secretary of the Interior to acquire certain property in Prince Georges County, Maryland,

the State of Maryland to bear one-third of the acquisition cost, and for the purchase of certain scenic easements from private owners who will be allowed to maintain their land in its present use. Funds are authorized to be appropriated for carrying out the section. At the conclusion of land acquisition for the parkway, the Secretary of the Interior is directed to submit to Congress his recommendations concerning its actual construction.

Section 20. Garden State Parkway

Section 20 authorizes the State of New Jersey to repay the amount of all Federal-aid highway funds paid on account of certain sections of the Garden State Parkway (N. J.) so that the State may impose tolls on those sections.

Subsection (b) provides that this authorization is granted on the condition that the New Jersey State Highway Authority construct, in accordance with plans approved by the Secretary, toll-free highway facilities adequate to service local traffic in the vicinity of those sections of the parkway and that no tolls be imposed prior to completion of the toll-free facilities.

Section 21. Amendment to 23 U.S.C. 103

This section amends 23 U.S.C. 103(d) to require the cost of all mileage used for modification or revision under the

Howard Amendment to be no greater than the cost of the mileage withdrawn from the system as that cost was included in the 1968 cost estimate rather than in the 1965 cost estimate.

Section 22. Equal Employment Opportunity

Section 22 adds a section 140 to title 23, United States Code, which requires that before the Secretary can approve any Federal-aid project he must receive satisfactory assurances from the State that employment on the project will be open to all persons without regard to race, color, creed, or national origin. This section expressly instructs the Secretary to require that each State shall include in the advertised specifications for contracts on Federal-aid projects notification of the specific equal employment opportunity responsibilities of the successful bidder.

Each State, when the Secretary deems it necessary to assure equal employment opportunity, shall certify that an appropriate apprenticeship or training program, available to all, is in effect on the local, Statewide, or regional basis. The Secretary of Labor is directed to assist the Secretary in effecting this section.

Subsection (c) of section 22 amends 23 U.S.C. 112(b), relating to letting of contracts, to provide that contracts for construction shall be awarded only on the basis of the

lowest responsive bid submitted by a bidder meeting established criteria of responsibility and no requirement or obligation is to be imposed as a condition precedent to the Secretary's concurrence in the award of a contract to the bidder unless that request or obligation is specifically set forth in the advertised specification.

Section 23. District of Columbia

Section 23 requires that the District of Columbia and the Secretary of Transportation complete all Interstate System routes under construction in the District of Columbia and to commence "within 30 days" work on (1) the Three Sisters Bridge (I-266), (2) the Potomac River Freeway (I-266), (3) the Center Leg of the Inner Loop (I-95), and (4) the East Leg of the Inner Loop (I-295). The District of Columbia Government and the Secretary are further directed to restudy all other projects on the District of Columbia Interstate System and report to Congress any recommendations for modification in 18 months. If no recommendations are submitted, the District of Columbia must construct the routes as set out in the 1968 Cost Estimate.

Section 23 (d) of the bill authorizes the District of Columbia's participation in the relocation program contained in the new chapter 5 of title 23 (see section 30, below).

Sections 23(e) and 23(f) authorize the District of Columbia to transfer lands or make payments to the Department of the Interior in even exchange for lands acquired from the Department for public purposes.

Section 24. Urban Impact Amendment

This section amends 23 U.S.C. 128 to require the State highway departments, before submitting proposals for highway locations, to consider the social effects, environmental impact, and consistency with the goals and objectives of urban planning promulgated by the community of such locations in addition to consideration of the economic impact of such locations, the only requirement for consideration under the present section.

Section 25. Construction by States in Advance of Apportionment

This section amends 23 U.S.C. 115(a) to permit construction by States in advance of apportionment on any of the Federal-aid systems. (The present law authorizes such advance construction on the Interstate System only.) Such advance construction is permissible only if funds are authorized for the years in which the advance construction is to be done in advance of apportionment. No application may be approved, however, which would exceed the State's expected apportionment of such authorizations.

Section 26. Bridge Inspection

This section amends 23 U.S.C. 116 by adding two new subsections requiring the Secretary to establish national bridge inspection standards for the Federal-aid highway system. Such standards are to specify in detail inspection procedures utilized, maximum time lapse between inspections, and qualifications of bridge inspectors. Each State shall be required to maintain written records of such inspections and to maintain a current inventory of all bridges on the Federal-aid system. It also requires the Secretary to establish, in cooperation with the State highway departments, a training program for State bridge inspectors and permits use of funds authorized pursuant to 23 U.S.C. 104(a) and 307(a) for such purposes.

Section 27. Emergency Relief

Subsection (a) amends 23 U.S.C. 125 to permit the use of the emergency fund to repair or reconstruct highways damaged by catastrophic failures from any cause. Present law restricts the use of the fund for repair or reconstruction caused by natural catastrophes only.

Subsection (b) authorizes the Federal share payable for repair or reconstruction to be increased up to 100 percent of

the replacement cost of a comparable facility, if the Secretary determines such to be in the public interest.

Subsection (c) makes this section applicable to repairs and reconstruction with respect to project agreements entered into on or after January 1, 1968.

Section 28. Toll Roads

Amends 23 U.S.C. 129 to require that the Secretary must affirmatively find that, under the particular circumstances, the construction of a toll road rather than a free facility is in the public interest before he may approve the construction of a toll road on the Interstate System. This new requirement is in addition to all other conditions for toll road approval in the present law, which presently permits such toll roads if those conditions are met. This new provision does not apply to toll bridges or toll tunnels, nor does it apply to toll roads already constructed.

Section 29. Highway Study -- Guam, American Samoa and the Virgin Islands

This section requires the Secretary of Transportation in cooperation with the governments of Guam, American Samoa and the Virgin Islands, to study needs for, and estimates and planning services relative to, highway construction programs in those territories, and requires a report to Congress on this subject before April 1, 1969. The cost of such study is to be borne by the administrative funds available to the Secretary under 23 U.S.C. 104(a).

Section 30. Relocation Assistance

This section amends title 23, United States Code, by adding a new chapter 5 providing for a substantially enlarged program of relocation assistance for persons, businesses and farms displaced by Federal and Federal-aid highway projects.

Section 501 (Declaration of policy) of the new chapter declares it to be the policy of Congress that persons, businesses, farmers and nonprofit organizations displaced because of Federal-aid highway programs shall not suffer disproportionate injuries thereby and, to achieve that purpose, such displaced persons shall be provided relocation payments and advisory assistance in accordance with this chapter.

Section 502 (Assurances of adequate relocation assistance program) prohibits the approval by the Secretary of any project on any of the Federal-aid highway systems which will displace persons, businesses, or farm operations unless he is satisfied by the State highway department that fair and reasonable relocation payments called for in this chapter will be made to displaced persons, that relocation assistance programs will be afforded to such persons, and that within a reasonable period of time before such displacement there will be available dwellings which are decent, safe, and sanitary, in

accordance with standards established by the Secretary, and are equal to the number of, and available to, the displaced individuals and families. These dwellings must also be reasonably accessible to the places of employment of the displaced persons and located in areas that are generally not less desirable than those from which they were displaced.

Section 503 (Administration of relocation assistance program) authorizes the State highway department to make relocation payments or provide relocation assistance or otherwise carry out relocation programs provided by this chapter by using a Federal, State, or local governmental agency having an established organization for carrying out such programs.

Section 504 (Federal reimbursement) provides that the Secretary shall approve, as a part of the cost of construction of a project, the cost of providing the payments and services described in section 502, except that the Federal share of the first $25,000 of such payments to any person on account of any real property acquisition or displacement occurring prior to July 1, 1970, shall be increased to 100 per centum of such cost. Payments over $25,000 to any person, and payments on account of acquisitions after July 1, 1970, are to be reimbursed according to the pro rata share applicable to the

project. Subsection (b) provides that project agreements for projects executed before the date of enactment of this chapter with respect to which property has not been acquired as of the date of enactment of this chapter shall be amended to include relocation costs.

Section 505 (Relocation payments) is the general authority for moving expenses payments. It provides, basically, that any-one who is displaced as a result of a highway project may elect to receive actual reasonable expenses in moving himself, his family, his business, or his farm operation, including moving his personal property to a new location. If a dis-placed person moves from a dwelling, he may elect, in lieu of actual reasonable moving expenses, to accept a fixed relocation payment consisting of a scheduled moving expense allowance not to exceed $200 and a dislocation allowance of $100. If a displaced person moves or discontinues his business or his farm operation, he may elect, in lieu of actual reasonable moving expenses, to accept a fixed relocation payment equal to the annual average net earnings of his business or farm, or $5,000, whichever is smaller. A displaced business, however, cannot make this election unless the State is satisfied that the business cannot be relocated without a substantial loss of existing patronage and that it is not part

f a commercial enterprise having at least one other establish-
ent which is not being acquired and which is engaged in the
ame or similar business. For the purposes of this provision,
he term "average annual net earnings" is defined as meaning
alf the earnings before payment of all income taxes for the
two preceding taxable years, including any compensation paid by
the business or farm operation to the owner, his spouse, or
dependents during such period.

Section 506 (Replacement housing) provides for an addi-
tional payment to be made to owners of single, two-, or
three-family dwellings taken for highway purposes. This pay-
ment is authorized only if the displaced individual owned
and actually occupied the dwelling for at least a year before
negotiations were begun to acquire the home for the highway
project. The payment is to be that amount not in excess of
$5,000 which, when added to the acquisition price paid for
the home, equals the average price required to purchase a
comparable dwelling which is decent, safe, and sanitary,
reasonably accessible to public services and places of employ-
ment, available on the private market, and adequate to
accommodate the displaced owner. This additional payment is
to be made only if the displaced owner buys and occupies a
decent, safe, and sanitary dwelling within one year after the

date on which he is required to move as a result of the project. This payment is not available if the owner receives an equivalent payment under the State law of eminent domain.

In order to provide persons who lease or rent their dwellings an equivalent payment, this section provides that any individual or family displaced from a dwelling not eligible to receive a payment under the foregoing provision who lawfully occupied that dwelling for not less than 90 days before negotiations were begun for the acquisition of the property for the project, shall also receive an additional payment. This payment to tenants and owners may not exceed $1,500. It is to be calculated as that amount necessary to enable such person to rent for up to 2 years (or to make a down payment on the purchase of) a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas at least as desirable as those from which they were displaced.

Section 507 (Expenses incidental to transfer of property) requires the State to reimburse the owner of real property for (1) reasonable and necessary expenses incurred for recording fees, transfer taxes and similar expenses incidental to conveying such property to the State, (2) penalties for prepayment of any bona fide mortgage on that property, and (3)

the pro rata share of any real property taxes allocable to the period after title vests in the State or the State takes possession, whichever date is the earlier. This section further provides that payments made under chapter 5 are not includable as income for Federal income tax purposes or for determining eligibility for assistance under the Social Security Act or any other Federal law.

Section 508 (Relocation services) requires States to provide a relocation advisory assistance program in order (1) to determine the needs, if any, of displaced persons for relocation assistance, (2) to assure that there will be available before displacement, in areas at least as desirable and at rents and prices within the financial means of the persons displaced, decent, safe, and sanitary dwellings equal in number to the number of, and available to, the displaced families and individuals, (3) to assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable locations, and (4) to supply displaced persons information concerning Federal housing and small business programs, and any other pertinent governmental programs. This section further provides that nothing in chapter 5 shall be construed to prohibit anyone from exercising his

rights or remedies under State law with respect to actions of a State agency in carrying out chapter 5.

Section 509 (Relocation assistance program on Federal highway projects) requires the Federal Government in all cases of direct Federal highway construction to provide the same relocation payments and services with respect to such projects as are required of the States in the case of Federal-aid highways.

Section 510. (Authority of the Secretary) authorizes the Secretary to make such rules and regulations as may be necessary to insure that relocation payments are fair and reasonable, as uniform as practicable, and will be made promptly after moving, or paid in advance in hardship cases. It also provides that anyone aggrieved by a determination as to eligibility or the amount of a payment may have his application reviewed by the head of the State agency making the determination. The Secretary is authorized to make such additional rules and regulations as he deems necessary or appropriate to carry out chapter 5.

Section 511 (Definitions) defines, for the purposes of chapter 5, the following terms: "persons", "family", "displaced person", "business", "farm operation", "Federal agency", and "State agency".

Section 31. Small Business Act

This section amends the Small Business Act to authorize the SBA to make loans to small business concerns suffering substantial economic injury because of their displacement by or their location in, adjacent to, or near, a federally-aided urban renewal program or a highway project or any other construction constructed by or with funds provided, in whole or in part, by the Federal Government.

Section 32. Eminent Domain

This section provides that nothing contained in chapter 5 shall be construed as creating, in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of that chapter.

Section 33. Annual Report

Requires the Secretary of DOT to report annually (with any recommendations) by January 15 on the administration of chapter 5 of title 23, United States Code.

Section 34. Federal Share

Provides that Federal share payable on ABC projects shall either be determined in accordance with existing law or in accordance with the same formula used under existing law except for the inclusion of national forests and national parks and monuments in the sliding scale.

Use of the new formula will increase the Federal share payable for projects on the Federal-aid ABC systems, but does not affect the amount apportioned annually to a State for such projects. In order to utilize the new formula, a State must agree to spend for highway construction purposes an amount equivalent to the reduction in the State's share of the cost of Federal-aid ABC projects caused by the State's election to shift to the new formula.

Section 35. Real Property Acquisition Policies

This section adds a new section 141 to title 23, United States Code, which requires the Secretary of Transportation, before approving projects, to obtain assurances from State highway departments that (1) every reasonable effort be made to acquire real property by negotiation; (2) construction will be scheduled to the greatest extent practicable so that no person will be required to move without 90 days' written notice; and (3) before initiating negotiations, each State shall establish a price for property believed to be just compensation under the laws of that State and make a prompt offer at that price.

Section 36. Separability

This section provides that if any provision of this Act (including amendments made by this Act), or the application

thereof to any person or circumstance is held invalid, the remainder of this Act and application of the provision to other persons or circumstances shall not be affected.

Section 37. Effective Date

The Act and the amendments made by it take effect on the date of enactment except that States will have until July 1, 1970, to comply with the new relocation provisions, thereafter such provisions will be completely applicable to all States. Until such date, such sections will be applicable to a State only to the extent it is able to comply under its laws. To the extent that a State can comply with the new relocation provisions, 23 U.S.C. 133 shall not apply to it. Effective July 1, 1970, 23 U.S.C. 133 is repealed. (23 U.S.C. 133 is the present relocation assistance provision. It authorizes--but does not require--relocation payments up to $200 for displaced individuals or families and $3,000 for displaced businesses or farms.)

Office of the Attorney General
Washington, D. C.

August 15, 1968

Honorable Charles J. Zwick
Director, Bureau of the Budget
Washington, D.C. 20503

Dear Mr. Zwick:

You have asked for the views of this Department on enrolled bill S. 3418, the Federal-Aid Highway Act of 1968. The bulk of the bill involves substantive and technical amendments to title 23 of the United States Code, and we defer to the Departments directly involved as to their desirability. Two sections, however, raise serious questions of encroachment by the Congress upon the functions and prerogatives of the Executive Branch: Section 15, which relates to the President's power to impound highway trust funds, and Section 23, which directs that work on the Three Sisters Bridge and certain highways in the District of Columbia be commenced within 30 days.

In our view Section 15, while most unwise, is properly construed as advisory rather than mandatory, and therefore does not necessitate disapproval of the bill. The mandatory requirements of Section 23, however, raise serious questions of constitutional policy relating to the separation of powers and Executive responsibilities. Enactment of Section 23 would create a precedent whose potential reach goes far beyond the highway program. Therefore, we recommend that the President not approve the bill, for the reasons we discuss below.

In view of the present month-long Congressional recess, the President's failure to sign the bill would result in a "pocket veto." Of course a message explaining his reasons for not signing the bill would still be important. Congress is not entitled to vote to override a pocket veto, but it could enact new legislation when it returns. See, Art. I, section 7, clause 2 of the Constitution; The Pocket Veto Case, 279 U.S. 644, 680, 684-685 (1929); Wright v. United States, 302 U.S. 583, 592-596 (1938); 40 Op. A.G. 274 (1943).

I.

Section 15 of the bill would add the following language to 23 U.S.C. 101:

> "(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any [federal officer or agency] * * *." (Emphasis added.)

This subsection runs directly counter to the Opinion of the Attorney General to the Secretary of Transportation, dated February 27, 1967, 1/ construing the present Federal-Aid Highway Act of 1956. That Opinion holds that the President has the power to impound funds which are available for expenditure and have been apportioned to the various States, but have not been contractually committed by approval of a particular project.

The "sense of Congress" formula was substituted by the Conference Committee for the House version, which would have added to 23 U.S.C. 104 a clearly mandatory paragraph:

1/ The Secretary of Transportation has not released that Opinion for publication. A copy is attached.

(f) "No part of any sums authorized to be appropriated for expenditure upon any Federal-Aid system which has been apportioned pursuant to the provisions of this section shall be impounded or withheld from obligation * * *." (Emphasis added.)

The Conference Report also moved the provision from 23 U.S.C. 104, which describes the operation of the apportionment system, to 23 U.S.C. 101, which contains declarations of general policy.

The formula "it is the sense of Congress" traditionally has been considered to constitute a Congressional statement of opinion, not having the force of law. Moreover, the Supreme Court has stated repeatedly that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." Waterman S.S. Corp. v. United States, 381 U.S. 252, 269 (1965).

Since Section 15 of the enrolled bill is advisory rather than mandatory, it does not require a veto. It should be recognized, of course, that this section will provide additional ammunition for Congressmen who have already claimed that the impounding of apportioned highway trust funds is contrary to the present law and the will of Congress.

II.

Section 23 provides in part:

"(a) Notwithstanding any other provision of law, or any court decision or administrative action to the contrary, the Secretary of Transportation and the government of the District of Columbia shall, in addition to those routes already under construction, construct all routes on the Interstate System within the District of Columbia as set forth in . . . House Document Numbered 199,

Ninetieth Congress. Such construction shall be undertaken as soon as possible after the date of enactment of this Act, except as otherwise provided in this section, and shall be carried out in accordance with all applicable provisions of title 23 of the United States Code.

"(b) Not later than 30 days after the date of enactment of this section the government of the District of Columbia shall commence work on the following projects:

(1) Three Sisters Bridge . . .
(2) Potomac River Freeway . . .
(3) Center leg of the Inner Loop . . .
(4) East Leg of the Inner Loop . . .

"(c) The government of the District of Columbia and the Secretary of Transportation shall study those projects . . . within the District of Columbia which are not specified in subsection (b) and shall report to Congress not later than 18 months after the date of enactment of this section their recommendations with respect to such projects . . . . ." (Emphasis added.)

In contrast to the "sense of Congress" formula used in Section 15, Section 23 is expressed as a categorical mandate upon the Executive Branch and the District of Columbia, "notwithstanding any other provision of law, or any court decision or administrative action to the contrary."

The President's constitutional duty "to take care that the Laws be faithfully executed" applies to all the laws. It has long been the Executive position that the President is not obligated to give effect to a specific statute if doing so would impair his execution of other laws. He must have discretionary power to determine priorities and accommodate the competing demands of various statutory directives and programs.

In S. 3418, however, the "notwithstanding" language seems to constitute a congressional determination that Section 23 is to be given absolute priority over all conflicting statutes, court decisions, and agency determinations.

Under our system of government, it is the function of Congress to authorize the construction of particular projects and to appropriate the necessary funds. It is the function of the Executive Branch to carry out the projects thus authorized, exercising sound discretion in matters such as timing, planning and engineering problems, the balancing of the needs and desires of the public at large and the community affected, and fiscal considerations.

Here, Congress has assumed the role of "highway engineer." It has not only ordered the Executive Branch what to build and where to build it, it has even told the District of Columbia when it must start work.

Whether Congress can constitutionally require the Executive to take specific affirmative action has long been a subject of dispute between the Executive and Congress. However, we can find no precedent for this kind of legislation. The very novelty of Section 23 suggests the serious nature of the policy questions it raises, whether or not the provision is unconstitutional. 2/

Congressional committees and spokesmen have insisted that Congress has power under the Constitution to enact legislation directing a specific mandate to the Executive Branch, which the President must "faithfully execute" if he signs it into law.

In practice, however, such mandates have not been enacted. There have been numerous instances -- especially in the military field -- where congressional committees have sought to compel the Executive Branch to carry out a

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2/ See the remarks of Senators Mansfield and Cooper, 114 Cong. Rec. (Daily Ed., July 29, 1928) S9670, 9680, 9682.

particular program, such as the construction of nuclear missile frigates. In some instances these mandates have been passed by one House, only to be deleted by the conference committee. I believe the present bill is the first direct confrontation on this issue to reach the President for signature.

Enactment of Section 23 would thus establish a novel and most unfortunate legislative precedent in a very sensitive area. I am deeply concerned that this precedent may haunt the Executive Branch, impair effective government and imbalance separation of powers, in areas far beyond the highway program, for many years to come.

Accordingly, I recommend that the President withhold approval of S. 3418.

Sincerely,

Ramsey Clark

Attorney General

Attachment

February 25, 1967

The Honorable,

The Secretary of Transportation.

Dear Mr. Secretary:

This is in reply to your letter of February 21, 1967, requesting my opinion as to the legality of a reduction in the amount of Federal-aid highway funds which may be obligated during the Fiscal Year ending June 30, 1967. 1/

The facts underlying your inquiry are as follows: President Johnson's message to Congress of September 8, 1966, Transmitting Proposals for Measures for Curbing Inflation and Preserving our National Economy, announced that a reduction or deferral of lower priority federal expenditures by approximately $3 billion was required in order to assure the continuing

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1/ Although the Department of Commerce is still technically responsible for the administration of the Federal-aid highway program, 23 U.S.C. 101, these functions are in the process of being transferred to the Department of Transportation pursuant to section 6(a)(1)(A)-(G) of the Department of Transportation Act, P.L. 89-670, 80 Stat. 937.

health and strength of our economy. (H. Doc. 492, 89th Cong., 2d Sess., pp. 1, 4.) Pursuant to this mandate the Director of the Bureau of the Budget by letter dated November 7, 1966, advised you, in your then capacity of Under Secretary of Commerce for Transportation, that the Federal-aid highway program would have to bear a fair and feasible share of the deferrals.

In line with subsequent discussions with and instructions from the Bureau of the Budget, the Federal Highway Administrator advised his division and regional engineers on November 23, 1966, that the Federal-aid highway program was being limited to $3.3 billion in total project obligations during Fiscal Year 1967. The instructions indicated that the limitation was in recognition of the need for reducing non-military Federal expenditures in order to curb inflationary pressures.

Prior to this action it was anticipated that $4 billion would be made available for obligation during Fiscal Year 1967. The effect of the action is to defer to

fiscal years subsequent to fiscal 1967 the obligation of funds in excess of $3.3 billion for Federal-aid highway projects. The reduction of funds was limited to the approval of future projects and did not affect the availability of funds for projects which already had been approved and which, pursuant to 23 U.S.C. 106(a), constitute contractual obligations of the United States.

An understanding of the legal problems raised by your inquiry will be facilitated by an outline of the pertinent provisions of the Federal-aid highway program. The program involves successive, and distinct, stages of authorizations, apportionments, programs, projects and appropriations.

The basic authorizations for appropriations for the Interstate Highway system relating to the 15-year period ending with Fiscal Year 1972 may be found in section 108(b) of the Federal-aid Highway Act of 1956, 70 Stat. 378, as amended, 23 U.S.C. 101 note. The funds expected to be available with respect to each fiscal year included in these authorizations are apportioned among the States on or before the first day of January preceding the fiscal

year for which they are authorized to be appropriated. 23 U.S.C. 104(a), (b). Funds so apportioned remain available for obligation 2/ at any time prior to the close of the second fiscal year after the fiscal year for which they are authorized. 23 U.S.C. 118(a), (b).

After apportionment, the States submit general programs of proposed highway projects for approval. 23 U.S.C. 105. Following the approval of a program by the Secretary, the State submits "such surveys, plans, specifications, and estimates for each proposed project included in an approved program as the Secretary may require." Approval of a specific project by the Secretary "shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto." 23 U.S.C. 106(a).

Payments to the States are made pursuant to appropriation acts based on estimates of the requests to be made by the States in each fiscal year for reimbursement for work performed. We understand that there is a variable, often

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2/ While 23 U.S.C. 118(b) uses the term "expenditure", the second sentence of the subsection indicates that the term "expenditure" is there used in the sense of "obligation."

considerable, time lag between the approval of a project and the requests of the State for partial or full reimbursement of the federal proportional contribution to the cost of the work performed on that project. Thus actual appropriations in any given year will include reimbursement of costs resulting from projects approved in preceding years.

The amount which may be appropriated in any given year for Federal-aid highway purposes is subject to two limitations: First, it cannot exceed the amounts provided for in the authorization act and, second, it cannot exceed the funds available in the Highway Trust Fund.3/ See, e.g., Departments of State, Justice and Commerce, the Judiciary and Related Agencies Appropriation Act, 1967, P.L. 89-797, 80 Stat. 1495 (Bureau of Public Roads, Federal-Aid Highways (Trust Fund)).

It is my conclusion that the Secretary has the power to defer the availability to the States of those funds authorized and apportioned for highway

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3/ Section 209 of the Highway Revenue Act of 1956, 70 Stat. 397, 23 U.S.C. 120 note, established the Highway Trust Fund and appropriated into that Fund amounts equivalent to specified percentages of certain taxes received in the Treasury. Under section 209(f), the amounts in the Highway Trust Fund are available for appropriations out of the Fund, to be made annually, for expenditures to meet the obligations of the United States under 23 U.S.C. 106(a).

construction which have not, by the approval of a project, become the subject of a contractual obligation on the part of the Federal Government in favor of a State.

I.

Although your inquiry is not directly concerned with an appropriation act, but rather with the effect of legislation authorizing actions ultimately leading to appropriations, it will be useful to consider first the effect of a congressional appropriation of money. The basic function of such legislation is to furnish the formal permission required by Article I, section 9, clause 7 of the Constitution for the withdrawal of funds from the Treasury. Cincinnati Soap Co. v. United States, 301 U.S. 308, 321 (1937). The courts have recognized that appropriation acts are of a fiscal and permissive nature and do not in themselves impose upon the Executive Branch an affirmative duty to expend the funds. Mahill v. United States, 16 C.Cl. 562, 565 (1880); Caemmerer v. United States, 26 C.Cl. 316, 317 (1891); Lovett v. United States, 104 C.Cl. 557, 583 (1945), affirmed on other grounds, 328 U.S. 303 (1946); McKay v. Central Electric Power Corporation, 223 F. 2d 623, 625 (C.A. D.C. 1955).

Congress, of course, is fully aware of the rule that an appropriation act in itself does not constitute a mandate to spend. The classic exposition of this characteristic of appropriations legislation may be found in the House Appropriations Committee report on the General Appropriation Bill, 1951, submitted by the late Chairman Clarence Cannon:

"RESPONSIBILITY OF THE EXECUTIVE BRANCH

"Economy neither begins nor ends in the Halls of Congress. The Congress * * * decides the maximum amounts which must be appropriated for * * * various activities, and the annual appropriation bill provides the sums so determined by the Congress.

"Appropriation of a given amount for a particular activity constitutes only a ceiling upon the amount which should be expended for that activity. * * * [It is the] responsibility [of every Government official] to so control and administer the activities under his jurisdiction as to expend as little as possible out of the funds appropriated." H. Rept. 1797, 81st Cong., 2d Sess., p. 9.

Or as the then Senator Harry S. Truman observed in 1943:

"MR TRUMAN. * * * When the Congress appropriates funds it gives the executive branch an authority to incur obligations. Certainly none of us hold that we give a mandate to expend the funds appropriated. We expect the funds to be used only where needed, and not in excess of the amount appropriated, to carry out some phase of law." 89 Cong. Rec. 10362.

An appropriation act thus places an upper and not a lower limit on expenditures. The duty of the President to see that the laws are faithfully executed, under Article II, Section 3 of the Constitution, does not require that funds made available must be fully expended. This principle has received statutory recognition in the Anti-Deficiency Act, 31 U.S.C. 665(c), which authorizes the executive branch to effectuate savings of appropriated funds, and in 31 U.S.C. 701, which provides that unexpended appropriated funds shall revert to the Treasury.

Many factors must be weighed by the Executive in determining the extent to which funds should be expended. Consideration must be given not only to legislative authorizations and appropriations but also to such factors as the effect of the authorized expenditures on the national economy and their relation to other programs important to the national welfare.

A situation analogous to the present one arose in the early 1940's when the economy of the United States shifted first to defense and later to war production. At that time President Roosevelt directed that projects having a lower priority would have to be postponed or even cancelled in spite of the availability of appropriated funds. In response to complaints about the curtailment by the Bureau of the Budget of certain programs of the Agricultural Marketing Administration, President Roosevelt set forth the powers and responsibilities of the executive branch in this area:

> "It should, of course, be clearly understood that what you refer to as 'the practice of the Bureau [of the Budget] of impounding funds duly appropriated by the Congress' is in fact action by the Chief Executive, and has two purposes. The first purpose is compliance with the Anti-Deficiency Act, which requires that apprcpriated funds be so apportioned over

the fiscal year as to insure against deficiency spending. * * * Secondly, the apportionment procedure is used as a positive means of reducing expenditures and saving money wherever and whenever such savings appear possible.

"While our statutory system of fund apportionment is not a substitute for item or blanket veto power, and should not be used to set aside or nullify the expressed will of Congress, I cannot believe that Congress as a whole would take exception to either of these purposes which are common to sound business management everywhere. In other words, the mere fact that Congress, by the appropriation process, has made available specified sums for the various programs and functions of the Government is not a mandate that such funds must be fully expended. Such a premise would take from the Chief Executive every incentive for good management and the practice of commonsense economy. This is particularly true in times of rapid change in general economic conditions and with respect to programs and activities in which exact standards or levels of operation are not and cannot well be prescribed by statute." 4/

One incident which occurred during that period seems particularly relevant for the problem at hand. Section 9 of the Rural Post Roads Act of July 13, 1943, 57 Stat. 560, 563, provided:

4/ This letter is reproduced in part in Supplemental National Defense Appropriation, 1944, Hearings before a Subcommittee of the Senate Committee on Appropriations, 78th Cong., 1st Sess. on H.R. 3598, p. 739.

"No part of any appropriation authorized in this Act shall be impounded or withheld from obligation or expenditure by any agency or official, unless the War Production Board shall certify that the use of critical materials for additional highway construction would impede the conduct of the war."

This section was based on an even broader proposed rider which had been added to the bill in the Senate for the avowed purpose of eliminating the authority of the Bureau of the Budget to impound highway funds, 89 Cong. Rec. 6313-6316, and which was narrowed in conference because the Senate provision "was found wholly objectionable by all the managers on the part of the House." See H. (Conf.) Rept. 677, 78th Cong., 1st Sess., p. 4 and 89 Cong. Rec. 7385-7386. In adopting section 9, Congress seems to have recognized that authorizing legislation does not compel the executive branch to obligate or to expend highway funds.

II.

There is nothing in Title 23 of the United States Code which imposes upon the Executive Branch the duty to approve all qualifying projects for which apportioned funds are available.

A. 23 U.S.C. 118, which provides that apportioned funds "shall be available for expenditure under the provisions of this title," does not give the States any inchoate right to the apportioned funds. The gist of this section is that apportioned funds are available for obligation (see note 2, supra) for a period of two years after the end of the fiscal year for which the sums are authorized. It does not mean that the Secretary must approve all projects which comply with the technical requirements of 23 U.S.C. 109 as soon as funds are apportioned. Such interpretation of the statute would be inconsistent with the pay-as-you-go principle underlying the Federal-aid highway program. Thus, when it appears that the balance in the Highway Trust Fund is or will be less than the sums apportioned among the States on the basis of the authorizations contained in section

108(b) of the Federal Highway Aid Act of 1956, as amended, the Secretary must limit the approvals of projects under 23 U.S.C. 106(a) to a figure within the sums estimated to be actually available for expenditure."5/

It is not consistent with this approach to contend that the States have vested rights in the funds apportioned prior to the actual approval of projects under 23 U.S.C. 106(a). It is approval of a project under that section which constitutes the contractual obligation of the United States. No provision of the Act gives any State a vested right to the apportioned funds prior to such approval.

B. I am aware of 23 U.S.C. 101(b), in which Congress declared that it is in the national interest to accelerate the construction of the Federal-aid highway systems; that the prompt and early completion of the National System of Interstate and Defense Highways is essential to the national

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5/ Congress is well aware of this "reimbursement planning" or "contract control" procedure. See, e.g., S. Rept. 903, 86th Cong., 1st Sess., p. 25 (Minority views); 113 Cong. Rec. H1023 (Daily Ed., February 6, 1967).

interest; and that it is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the fifteen years' appropriations (through the fiscal year ending June 30, 1972) to which the section refers. I do not consider that these policy declarations contain any mandate which is inconsistent with the deferral on the approval of Federal-aid highway projects involved here.

23 U.S.C. 101(b) does not use any mandatory language. It is well-established that such statements of policy do not add to or alter specific operative provisions of a statute. Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 202 (1962); Lauf v. E.G. Shinner & Co., 303 U.S. 323, 330 (1938); Price v. Forrest, 173 U.S. 410, 427 (1899); Sutherland, Statutory Construction (3d Ed., 1943), section 4820. Language of this type is a form of Congressional guidance and not a directive. It reflects Congressional understanding that during the course of a long-range program, situations may arise in which the stated considerations of policy might not be decisive. See 37 Op. A.G. 546, 548; 42 Op. A.G. No. 15, pp. 8-9; id., No. 20, p. 3.

The choice by Congress of hortatory language in 23 U.S.C. 101(b) also seems to be indicative of its awareness of the point stressed by President Roosevelt to the effect that there are many programs and activities, especially in times of rapid changes in general economic conditions, in which it is impossible to prescribe exact statutory standards and levels of operation.

Moreover, since the purpose of action here is not to reduce the total amount of the funds to be devoted to the Federal-aid highway program but merely to slow the program for a limited period,[6/] hopefully it will have no adverse effect on the completion of the program "as nearly as practicable" by the end of the period envisaged in 23 U.S.C. 101(b).

C. It has been suggested that the highway taxes imposed by the Highway Revenue Act of 1956 are paid into the Highway Trust Fund established by section 209 of that Act, and that the executive branch therefore has the

6/ Under 23 U.S.C. 118(b) apportioned funds remain available for two years after the close of the fiscal year for which authorized.

fiduciary duty to proceed with the construction of highways to the full extent permitted by the assets in that Fund.

As noted above, the proceeds of the highway taxes are not paid directly into the Fund; Congress merely has appropriated into the Fund amounts equivalent to specified percentages of certain taxes received in the Treasury. The assets in the Fund are neither directly nor automatically available for the payment of the Federal contributions to the States. The disbursements out of the Fund require appropriations under section 209(f), and such appropriations cannot exceed the authorizations provided for the Federal-aid highway program.

The Highway Trust Fund thus is, in effect, a device designed to identify an amount equivalent to certain designated taxes as a ceiling on the sums available for highway construction. As indicated above, appropriations for Federal-aid highways are subject to a double limitation: they may not exceed the Federal-aid highway authorizations, nor the amount available in the Fund. As a limitation on the sums which may be spent under the Federal-aid highway

legislation, the Fund is functionally akin to the conventional appropriation and, as such, it constitutes an authority rather than a mandate. While the executive branch has normally expended substantially all the monies made available by appropriations, there is no duty to spend the entire amount that is available. In the instant situation, the Executive has determined that project approvals should be limited during the current fiscal year so as to reduce the prospective level of expenditures from the Highway Trust Fund. This is a determination which the Executive is fully empowered to make.

III.

I conclude that the recent limitation on the Federal-aid highway funds which may be obligated during the current fiscal year was a valid exercise of Executive authority.

Sincerely,

S/

Ramsey Clark
Acting Attorney General

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON
Commissioner
THOMAS W. FLETCHER
Assistant to the Commissioner

August 15, 1968

Mr. Wilfred H. Rommel
Assistant Director for Legislative
Reference
Bureau of the Budget
Room 253, Executive Office Building
17th and Pennsylvania Avenue, N.W.
Washington, D. C.

Dear Mr. Rommel:

Reference is made to facsimile of an enrolled enactment of Congress entitled:

> S. 3418 - "To authorize appropriations for the fiscal years 1970 and 1971 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes."

The Mayor and the majority of the District of Columbia Council, while they recognize the advantages of the relocation assistance provisions contained in section 30 of S. 3418, must nevertheless, with respect to section 23 of the bill, requiring the construction of certain specified routes on the Interstate System within the District, reiterate the view the District Government expressed in its report on H.R. 16000, a bill which required the same action, in a more extensive degree, and which was the predecessor to section 23. In that report, the District stated that it was very much concerned about the effect the enactment of H.R. 16000 would have on the District's ability to plan an effective highway system to meet the city's needs and to allow maximum citizen participation in the determination of those needs. After pointing out that the enactment of the bill would have the effect of perpetuating the situation against which the United States

Court of Appeals for the District of Columbia leveled criticism in the case of D.C. Federation of Civic Associations, Inc. v. Thomas F. Airis, 391 F. 2d 478 (1968)--the inability of members of the public to participate meaningfully in the city's decisions regarding development of highways affecting their vital interests, the District stated:

> "The Government of the District of Columbia is strongly of the view that the residents of the District should meaningfully participate in such decisions."

The Congress, in enacting section 23 of the bill, has disregarded the need of the people of the District to have a voice in the location of highway routes possibly affecting their individual interests. While the section makes provision for a restudy of portions of the Interstate System within the District, it makes mandatory the construction of four Interstate System projects, without giving the residents of the District an opportunity to express their views concerning such projects. In addition, at the conclusion of the restudy of the balance of the Interstate System, Congressional approval is still required before implementation. In the belief that this action by the Congress does not permit District residents meaningfully to participate in decisions affecting their interests, the Mayor and the majority of the Council are unable to give the measure their approval.

There may also be a problem involving the approaches on the Virginia side of the proposed Three Sisters Bridge. The District is aware that the Arlington County Board has raised a question as to whether the Spout Run area will be available for this purpose. Unless this question is resolved in favor of so using the Spout Run area, the possibility arises that the District may be required by section 23 of the bill to construct a bridge for which there will be no approaches on the Virginia side of the Potomac River.

We are particularly concerned by the requirement, contained in subsection (b) of section 23, that the Secretary of Transportation and the government of the District of Columbia proceed with the construction of the Potomac River

Freeway and the East Leg of the Inner Loop. With respect to the first of these, while the bill itself does not specify the type of construction, the conference report (H. Rept. No. 1799) states that the project is to be partly elevated and partly in tunnel, from 31st Street to the Three Sisters Bridge. This requirement is, however, not in accord with the plans for the Potomac River Freeway in this portion of the Georgetown waterfront which were unanimously approved by the members of the National Capital Planning Commission at its meeting of May 5, 1967. Those plans, designed to promote the full and orderly development of this area of the District of Columbia, placed both roadways of the Potomac River Freeway in tunnel between the Three Sisters Bridge and a point east of the Georgetown waterfront. The utilization of the present Whitehurst Freeway for the accommodation of the westbound roadway of the Potomac River Freeway, and the completion of the construction of a second elevated structure for the accommodation of the eastbound roadway, as specified in the conference report, will make difficult, if not impossible, the development of the Georgetown waterfront to its full potential.

Section 23(b) also provides that the East Leg of the Inner Loop shall terminate at Bladensburg Road. Such a requirement will inevitably interfere with, if not prevent, the adequate development for recreational purposes of the Kingman Lake area between East Capitol Street and Bladensburg Road. We consider it necessary that the primary use of this area of the District be for a recreational purpose that will benefit the citizens of the District, particularly since it is located in a section of the city where recreational facilities are all too few.

For the reasons set forth above, respecting the features of section 23 of S. 3418 which we consider undesirable, the Government of the District of Columbia is unable to recommend the approval of the bill.

WALTER E. WASHINGTON
Commissioner of the District of Columbia

JOHN W. HECHINGER
Chairman, District of Columbia Council

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 22, 1968
Thursday, 7:15 p.m.

FOR THE PRESIDENT

FROM Joe Califano

Attached is a copy of the Highway Bill signing statement. It was written by Charlie Murphy, Harry Middleton and Matt Nimetz, edited by me, and cleared personally with Udall, Ramsey Clark, Weaver, Boyd, Washington, Hechinger, Okun, Zwick, Barefoot Sanders and DeVier Pierson.

Charlie Murphy and I believe this is the best approach, for it moves forward with the highway program, but allows Boyd and Mayor Washington some flexibility to modify the plan in the next few months and satisfies the lawyers at Justice.

At the time of release of the statement, Alan Boyd and Walter Washington can give a briefing at the Transportation Department or the District Building.

Attachment

SIGNING STATEMENT - HIGHWAY BILL

After careful consideration, I have signed the Federal-Aid Highway Act of 1968.

In many respects, this is the most important highway authorization bill since the start of the Interstate Program ~~in 1956~~. It authorizes funds to carry the program through 1974, enough to assure the construction of many thousands of miles of roads. It deals more effectively and more humanely than any previous measure with ~~the~~ problems created by road ~~construction~~ in ~~urban areas~~.

-- Families -- particularly the poor -- who are displaced from their homes by highway projects -- will receive the assistance they need in moving to other dwellings.

-- Authority to acquire new rights of way in advance can help assure that highways in the future will be better planned, less costly, and cause the least possible disruption to local residents and businesses.

-- Funds to institute innovative measures to improve traffic flows will mean less congestion in city streets.

-- A new ~~demonstration~~ program providing fringe parking away from crowded business districts will further improve the movement of traffic.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 21, 1968

MEMORANDUM FOR

JOE CALIFANO

I have no suggested language changes and concur that the Highway bill, despite its objectionable features, should be signed.

From a conservation standpoint, it should be noted that:

1) There is very little hope of getting <u>any</u> beautification funds if the bill is vetoed and Congress is asked to reconsider it.

2) The provision dealing with park land is of marginal importance as compared to the other provisions.

3) The most crippling language on D. C. construction is in the conference report rather than the bill and the signing statement makes clear that we will be guided by the law alone.

I have received confirmation from Justice today that this would be a pocket veto situation despite the Senate resolution. There will be a formal legal opinion from the Attorney General confirming this. (Of course, this would be academic as to the Highway bill if the President signs it.)

DeVier Pierson

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C.. 20410

AUG 21 1968

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Bureau of the Budget
Washington, D. C. 20503

Attention: Mrs. Garziglia

Dear Mr. Rommel:

Subject: S. 3418, 90th Congress, Enrolled Enactment

This is in reply to your request for the views of this Department on the enrolled enactment of S. 3418, "To authorize appropriations for the fiscal years 1970 and 1971 for the construction of certain highways, and for other purposes."

The enrolled enactment would make numerous changes in Federal highway assistance programs including provisions which would 1) extend mileage and authorizations for the Interstate System; 2) provide authorizations for various programs for Federal aid for highways and roads, highway safety and highway safety research and development, and highway beautification; 3) authorize a revolving fund for use in advance acquisition of rights of way; 4) authorize a demonstration program for the construction of fringe parking facilities to be used in connection with public transportation facilities; 5) authorize a program for improvements in urban street systems to ease traffic congestion; 6) modify conditions under which park lands may be used for highways; 7) provide procedures to assure equal employment in highway construction; 8) require State highway departments to consider the social effects of route locations; 9) require the commencement of certain projects in the District of Columbia; 10) provide real property acquisition policies; and 11) authorize a highway relocation assistance program.

The provisions of the enrolled enactment authorizing increased relocation assistance would enable persons and businesses displaced by the Federal highway programs and the construction of Federal-aid highways to meet the real costs of relocation more adequately than does existing law. We particularly endorse the additional payments (up to $5,000) required to be made to displaced homeowners to permit the acquisition of comparable dwellings.

The provisions of this legislation involving the use of certain park lands for highways, the expenditure of funds for additional mileage for the Interstate System, and the commencement of several highway projects in the District of Columbia raise serious policy issues. These involve encroachment of executive authority and other unfavorable precedents which could have far-reaching effects on future legislation. In light of this fact, I cannot recommend approval of the bill.

Sincerely yours,

Robert C. Weaver

THE WHITE HOUSE
WASHINGTON

August 19, 1968

Mr McPherson:

DeVier (who is in Okla.) rec'd a call from Larry Temple (at the Ranch).

Ref your wire on pocket vetoes and getting an AG opinion, the President does want an opinion. But he wants it without specific reference to the highway bill (he wants it only for the legal proposition involved).

DeVier only gave me a brief on this in case his transfer to Wozencraft was cut off (I found out later Wozencraft was out of city but DeVier spoke to Mr Richman).

Ruth

cc: Bill Hopkins
Don Furtado

August 15, 1968

MEMORANDUM FOR MR. McPHERSON

RE: Pocket Veto

This memorandum is pertinent only if there should be any possibility of a veto of a Senate bill awaiting action by the President at this time.

There is ample precedent for pocket vetoes by the President during an adjournment such as the present one when adjournment continues long enough to prevent the return of bills by the President to the Congress within the time allowed. The Pocket Veto Case 279 U.S. 655 (1929) and opinions of the Attorney General, including 40 Op. A.G. 274 (1943) support this course of action. That was the basis for the pocket veto by the President a few days ago of H. R. 10915.

There is a new element this year during this adjournment so far as the Senate is concerned. In adjourning, the Senate by unanimous consent authorized the Secretary of the Senate to receive messages from the President during adjournment. Checking our records back to 1950, we do not find a case where there was such authority when a bill originating in the house concerned was pocketed.

I therefore recommend that, if there is a possibility of veto consideration, the Attorney General be asked in timely fashion for an opinion in writing as to whether such action on the part of the Senate changes the current situation as to a pocket veto in any way as it relates to the Senate.

My own view is that this authority of the Secretary of the Senate to receive messages from the President makes no difference whatsoever and that it is still a pocket veto situation. Inasmuch as the Senate is a continuing body, were it to be held otherwise the Senate could, for all practical purposes, make a nullity of the provision in the Constitution under which a bill does not become a law when the Congress by their adjournment prevent its return.

William J. Hopkins

WJH:rah

(SEND BY WIRE)

DRAFT/Furtado/16Aug68

MEMO FOR THE PRESIDENT

Last week you "pocket vetoed" H.R. 10915, the cotton imports bill. You now have before you for action S. 3418, the ~~controversial Federal-aid~~ Highway bill, which several departments have recommended that you also veto.

Normally, it would be quite clear that a pocket veto would occur anytime Congress was in adjournment long enough to prevent the return of a bill by the President within ten days.

A question has been raised, however, about the pocket veto of a Senate bill at the present time. In adjourning, the Senate took the unusual step of unanimously authorizing the Secretary of the Senate to receive messages from the President during adjournment.

In his memorandum to Budget concerning S. 3418, the Attorney General ~~has~~ stated that the unanimous action of the Senate has no effect on normal pocket veto procedure. Congress is still adjourned. Failure of the President to sign S. 3418 within ten days (by August 23) will still result in a pocket veto.

Nevertheless, S. 3418 is a controversial bill and this is a very political year. Some Congressmen might be tempted to get a little publicity by alleging that no pocket veto had occurred because the Senate was not adjourned in the usual sense.

To arm ourselves against any such argument, and to clarify for the record that authorization of either House to receive messages during adjournment does not affect normal pocket veto procedure, I recommend that we ask for a formal opinion of the Attorney General, to be received shortly before Congress reconvenes. ~~The only hesitation I have in recommending this comes from the fact that a formal AG opinion is printed in the Federal Register; hence we might raise an issue in public that nobody was really thinking about before. But on balance I think it would be wise to get it on the record.~~ Ramsey agrees and says it is a relatively easy case to make on the merits.

HM

Harry C. McPherson, Jr.

Ask for formal opinion_____

Forget it_____

Call me_____

bcc: Bill Hopkins

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG - 2 1968

Dear Mr. Zwick:

This is in response to your request for the views of this Department on S. 3418, an enrolled bill "To authorize appropriations for the fiscal years 1970 and 1971 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes."

We recommend that the President not approve the bill.

Many of the national provisions of the bill do not deal with programs administered by this Department and we therefore defer to the Department of Transportation relative to them. In regard to the other provisions of the bill, we believe that the one dealing with the construction of freeways in the District of Columbia is so objectionable that we feel compelled to recommend that the President not approve the bill.

This Department, specifically its National Park Service, has worked with the various agencies of the District of Columbia, and agencies and departments of the Federal Government in an effort to make this city an area of which the whole Nation can be proud. We have, over the years, made agreements that we feel will protect the scenic and recreational values of this city. This bill ignores many of these.

We have entered into agreements with the District of Columbia and the Virginia Departments of Highways concerning the construction of the Three Sisters Bridge and Interstate 266, which would cross the bridge into the District of Columbia. The 1966 agreement provides for the depressing of the new eastbound lanes of the Potomac River Freeway. It also provides for the eventual elimination of the Whitehurst Freeway and in substitution therefor the depression of the westbound ramp of the Potomac Freeway. This agreement was later revised in 1967 at a meeting with the National Capital Planning Commission to provide for the tunneling of both ramps, eastbound and westbound, of the Potomac River Freeway for the entire Georgetown

Waterfront and the removal of the existing Whitehurst Freeway construction simultaneously therewith. This change received the unanimous approval of the National Capital Planning Commission.

The Conference Report provides as follows:

"That section of the Interstate Route I-266 known as the Potomac River Freeway and extending from the Three Sisters Bridge to approximately 31st Street in Northwest Washington shall * * * * * be built from its eastern extremity at the already completed portion of the Potomac River Freeway at 31st Street westward to the Three Sisters Bridge in the vicinity of the intersection of Foxhall Road and Canal Road. It shall be an eight-lane facility consisting of two four-lane roadways.

"The westbound roadway will proceed as an elevated structure from 31st Street along the present Whitehurst Freeway to a point just west of Key Bridge where it will proceed UNDER the existing C. & O. Canal to an alinement between the present Canal Road and Georgetown University. The alinement will then proceed westerly to the eastbound roadway of the Three Sisters Bridge."

The provisions of the Conference Report provides for tunneling only the eastbound roadway while the westbound roadway will connect to the existing Whitehurst Freeway in the vicinity of 31st Street and then proceed as an elevated structure to a point just west of Key Bridge. This provision would continue the existence of the unsightly elevated Whitehurst Freeway and destroy the development of a scenic park along the Georgetown Waterfront.

A further part of the 1966 agreement was that the National Park Service agreed to complete the Palisades Parkway between the District of Columbia line and the new river crossing at Spout Run so as to provide east-west access between Palisades Parkway and K Street, provided the District transfers the street space along this route.

There is no language in the bill or Conference Report which provides for the transfer of the present District of Columbia street space on Canal Road to the National Park Service to allow for the completion of the Palisades Parkway between the District of Columbia line and the Three Sisters crossing. Ordinarily such language, of course, is not a necessity. However, in this instance, the Report is not completely silent on this subject, but provides:

"Canal Road which presently follows directly adjacent to the C. & O. Canal shall be relocated from Key Bridge to the intersection of Foxhall Road and MacArthur Boulevard by placing it between the Potomac River Freeway and Georgetown University on a high level which will overlook the beauty and splendor of the C. & O. Canal and this reach of the Potomac River."

This provision relocating this stretch of road would, in our opinion, represent a monstrous and needless desecration of the Palisades environment.

The 1966 agreement also provided that the District of Columbia Department of Highways and Traffic agree to the tunneling of the South Leg of the Inner Loop between Constitution Avenue and 14th Street. Connections are to be provided between the South Leg and Independence Avenue in the vicinity of 14th Street. This agreement for the tunneling of the South Leg of the Inner Loop was an inseparable and indispensable part of the 1966 agreement which included agreement on the Three Sisters Bridge. The Conference Report on S. 3418 authorizes an 18-month study of the matter with no assurance that this tunneling project would be carried out as per the 1966 agreement.

Further, the 1966 agreement provides for the location of the East Leg of the Inner Loop through Anacostia Park, on condition that access be provided therefrom for D. C. Stadium parking and that the alignment be consistent with the Rapid Transit alignment proposed in this vicinity. The Conference Report explains in detail the alignment and the dates of approval by consenting authorities, the National Capital Planning Commission, and the District Board of Commissioners.

It further states that the plan therein described already has the approval of all the agencies concerned. It notes that the plan contemplates the rebuilding of existing golf course in Kingman Lake Area and the development of an extensive recreational area with marinas, etc.

The Conference Report makes no mention that subsequent to the above-mentioned approvals, the District of Columbia Highway Department and the National Park Service agreed and in fact did concurrently retain the services of Lawrence Halprin, Landscape Architect, to study the impact of the roadway through Anacostia Park on the park land and the community.

Mr. Halprin concluded that Lake Kingman should not be filled, because of its uniqueness as a resource in the heart of the city for swimming and other water sports. The insistence on building the East Leg

through the Anacostia Park would constitute a multi-lane barrier between park lands and the river; with its interchanges and connecting roads consuming 100 acres of fast disappearing park lands it becomes a concrete intrusion in lands increasingly needed to provide recreational opportunities to those in the adjoining densely populated areas economically unable to seek leisure activities elsewhere.

Section 18 of the bill amends section 4(f) of the Department of Transportation Act which relates to the preservation of public park lands, recreation areas, wildlife or waterfowl refuge areas and historic sites. The amendment weakens the existing section in two respects:

(1) It limits the application of section 4(f) to transportation programs that utilize only publicly owned land within such areas (except historic sites). Thus, lands owned by the Nature Conservancy or other private bodies would under the amendment have no protection even though they may be open to the public for use and enjoyment.

(2) It leaves to the discretion of State or local officials having jurisdiction whether or not the publicly owned land within such areas proposed to be transgressed is of State or local significance, respectively, and therefore subject to section 4(f). Should such an official make a determination, even though erroneous, that an area does not have such significance, there is a serious question whether the Secretary of Transportation could rule otherwise.

Section 19 of the bill authorizes this Department to acquire certain lands and interests in Prince Georges County, Maryland, which are depicted on a map on file in the National Park Service. We cannot spend any money to acquire these lands or interests therein, until we receive commitments from the State of Maryland to pay one-third of these costs. We are authorized to advance the State's share on condition that the United States is reimbursed, without interest, within 8 years after the advance is made. Upon completion of the acquisition program, we are required to report to the Congress on the construction of Fort Washington Parkway. The funds authorized are not adequate to complete the acquisition project and would require our seeking a change in the appropriation authorization at a future date which will probably cause some price escalation.

Section 29 of the bill calls for a study by the Secretary of Transportation "of the need for, and estimates and planning surveys relative to, highway construction programs for Guam, American Samoa, and the Virgin Islands." This study would be carried out in cooperation with the governments

of each of these territories. We have no objection to this study.

Sincerely yours,

Secretary of the Interior

Hon. Charles J. Zwick
Director, Bureau of the Budget
Washington, D. C. 20503

P.S. This supplements my direct memo to the President which you will see shortly.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

AUG 2 1968

Honorable Charles J. Zwick
Director, Bureau of the Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Zwick:

This is in response to Mr. Rommel's request for a report on the enrolled enactment of S. 3418, the "Federal-Aid Highway Act of 1968."

Among other things the measure adds a new section, entitled "Equal Employment Opportunity," to title 23, U.S.C. This provision is based on the provision in the Senate-passed version of the bill which was framed after the Committee staff held several meetings with representatives of industry, the Operating Engineers, this Department, and the Department of Transportation. Its Report on the measure states the expectation "that in the implementation of this provision, the States in their program submissions to the Secretary [of Transportation] will establish timetables and reasonable goals to make equal employment a reality in the near future."

Another provision of the enrolled enactment, apparently reflecting the substance of a letter recently written to this Department by the General Accounting Office, calls for award of contracts only to the lowest bidder meeting established criteria of responsibility; and requirements or obligations precedent to the award of a contract must be specifically set forth in the advertised specifications.

It is my understanding that the enrolled bill will permit the specification of acceptable timetables and reasonable goals for the bidders. Accordingly, this Department would consider the equal employment opportunity provisions unobjectionable.

I endorse the extension of Davis-Bacon wage standards to primary and secondary road construction and recommend that the President approve this bill.

Sincerely,

Willard Wirtz

Secretary of Labor

THE UNDER SECRETARY OF THE TREASURY
FOR MONETARY AFFAIRS
WASHINGTON 25, D.C.

AUG 5 1968

Sir:

Your office has requested the views of this Department on the enrolled enactment of S. 3418, "To authorize appropriations for the fiscal years 1970 and 1971 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes."

The enrolled enactment would authorize appropriations for the Interstate Highway System and other highway systems and programs. In addition, it would amend several substantive provisions of various highway programs.

Section 108(a) of title 23, United States Code, authorizes the Secretary of Transportation, upon the request of a State highway department, to make available the funds apportioned to the State for expenditure on Federal-aid highways for acquisition of rights-of-way up to seven years in advance of construction. Federal participation in the costs of rights-of-way so acquired is limited to the applicable pro rata Federal share.

Section 7 of the enrolled enactment would establish a new advance acquisition program under which the Secretary of Transportation would be authorized to make interest free advances to the States from a right-of-way revolving fund which would be created by the bill, to pay the entire costs of projects for the acquisition of rights-of-way, including the net cost to the State of property management, and related moving and relocation payments.

Actual construction of a highway on rights-of-way so acquired would be required to commence not less than two years nor more than seven years following the end of the fiscal year in which the Secretary approves an advance from the fund. Upon the termination of the loan period or upon approval by the Secretary of the plans, specifications, and estimates for the construction of the highway, whichever occurs first, the fund would be credited, out of Federal-aid highway funds apportioned to the State, with an amount equal to the Federal share of the funds advanced, and the State would be required to reimburse the revolving fund in an amount equal to the non-Federal share of the funds advanced. No provision would be made for the deduction from other Federal-aid highway funds apportioned to the State in the event the State fails to reimburse the fund for the non-Federal share. Thus, section 7 is substantially the same as H.R. 16622, the Department's opposition report on which has been pending Bureau of the Budget clearance since July 3, 1968.

The Report of the House Committee on Public Works (H.Rept. 1584) indicates that an objective of the proposal is to reduce the cost of right-of-way acquisition. Any potential savings to be realized from advance acquisition, however, must be weighed against the cost to the Federal Government of making such advances. The current estimated cost to the Government of borrowing for periods comparable to the length of time such advances would be outstanding is approximately 5-1/2 percent. The present value of the interest subsidy inherent in a seven year interest-free advance, discounted at 5-1/2 percent, is approximately 31 percent of the amount advanced. This subsidy is, of course, in addition to the subsidy provided by not requiring the States to reimburse the Federal Government for its administrative expenses and losses attributable to the loan program. As we indicated in our report on H.R. 16622 to discourage uneconomic advance acquisitions, provision should be made for the payment of interest to the right-of-way revolving fund on any advances to the States at a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States with maturities comparable to the term of the advances, plus an allowance adequate in the judgment of the Secretary of Transportation to cover administrative expenses and probable losses under the program.

Section 7(c) would authorize to be appropriated out of the highway trust fund to the proposed right-of-way revolving fund $100 million for each of the fiscal years 1970, 1971, and 1972. Monies in the highway trust fund, which in the judgment of the Secretary of the Treasury are not required to meet current withdrawals, are invested in interest-bearing obligations of the United States. However, no provision would be made in the enrolled enactment for the payment of interest by the proposed right-of-way revolving fund to the highway trust fund, nor for the payment of Federal administrative expenses attributable to the loan program from the right-of-way revolving fund.

A fundamental purpose of establishing a revolving fund is to provide for the systematic disclosure of the relationship between program receipts and expenditures, thus facilitating decisions regarding allocation of scarce budgetary resources and charges for the services provided by the program. If a revolving fund is to perform this purpose effectively, all costs, including administrative expenses and interest on Federal funds whether obtained from appropriations or borrowing, must be taken into account. To the extent that certain costs are not accounted for, the financial performance of the program would be over-stated and a fundamental purpose of the revolving fund technique under-mined.

Section 19 would authorize the Secretary of the Interior to acquire certain lands or interests in lands in Prince Georges County, Maryland, for the proposed Fort Washington Parkway. Section 19(c)

would prohibit the expenditure of funds by the Secretary until he shall have received definite commitments from the State of Maryland or from political subdivisions thereof for one-third the cost of acquiring easements or interests in such lands. The legislative history (House Report Nos. 1584, 1799) indicates that in the absence of this provision the non-Federal share would be one-half of such costs. Section 19(c) also authorizes the Secretary to advance to the State of Maryland or any political subdivision thereof the non-Federal share of such costs, to be repaid, without interest, within a period of eight years. The present value of the interest subsidy inherent in an eight-year interest-free advance, discounted at 5-1/2 percent, is approximately 35 percent of the amount advanced. That is, the interest rate subsidy would effectively reduce the non-Federal share to about 22 percent of project costs, and increase the Federal share to about 78 percent of such costs.

Section 15 of the enrolled enactment would state the sense of Congress that no part of any sums authorized to be appropriated for expenditure upon any Federal-aid highway system which have been apportioned shall be impounded or withheld from obligation, by an officer or employee of the executive branch, except such sums determined by the Secretary of Treasury, after consultation with the Secretary of Transportation, as necessary to be withheld from obligation for specific periods of time to assure sufficient amounts will be available in the highway trust fund to defray expenditures from the fund. Thus section 15 is similar to S. 2964, the Department's opposition report on which has been pending Budget clearance since April 24, 1968.

Since the apparent intent is to require the spending of moneys available in the highway trust fund, the provisions of section 15 appear to encroach on executive prerogatives. Section 23, which would require the Secretary of Transportation and the Government of the District of Columbia to construct all routes on the Interstate System within the District of Columbia, and would require the District of Columbia to commence work on certain projects, similarly appears to raise the executive encroachment issue. As a general principle of executive management funds available for program expenditure purposes should not be required to be spent. The executive should be allowed sufficient flexibility to establish priorities and to apply available program funds to the most pressing needs. Such flexibility is even more essential at this time in view of the tight budgetary situation and the overall reductions imposed by the Congress in the Revenue and Expenditure Control Act of 1968.

While the Department has no independent knowledge as to the need for other substantive provisions of this legislation, we would on the basis of the provisions discussed above support a recommendation that the enrolled enactment not be approved by the President.

Sincerely yours,

Frederick L. Deming

The Director

Bureau of the Budget

DEPARTMENT OF AGRICULTURE
WASHINGTON 25, D.C.

August 2 1968

Honorable Charles J. Zwick
Director, Bureau of the Budget

Dear Mr. Zwick:

As requested, here is our report on enrolled enactment S. 3418, "The Federal-Aid Highway Act of 1968."

The Department of Agriculture is particularly interested in the Forest Highways, Public Lands Highways, and Forest Development Roads and Trails covered by S. 3418.

Subsection 5(3) of the enactment authorizes the appropriation of $33 million for Forest Highways for each of fiscal years 1970 and 1971. Forest Highways are parts of Federal-Aid, State, county and other public highways in and adjacent to the National Forests. The Forest Highway system, now totalling 25,000 miles, is administered by the Secretary of Transportation through the Bureau of Public Roads. Forest Highways are important means of access to and outlet from the National Forests. They are heavily used by persons visiting the National Forests for recreation and other purposes. Most of the products of the forests move over these highways enroute to mill or market.

Subsection 5(4) authorizes the appropriation of $16 million for each of fiscal years 1970 and 1971 for public lands highways. These highways are main highways through unappropriated public lands, certain Indian lands, and other Federal reservations, and are also administered by the Secretary of Transportation.

Subsection 5(5) authorizes the appropriation of $170 million for each of fiscal years 1970 and 1971 for Forest Development Roads and Trails. These roads and trails are the direct responsibility of this Department. They are built and maintained to preserve and provide for wise use of the many resources of the National Forest System.

The construction and maintenance of Forest Highways, certain public lands highways and Forest Development Roads and Trails are essential to the full protection, development, and utilization of the lands comprising the National Forest System. The presence or lack of access by road or trail largely determines the value of timber that can be marketed, the size,

duration, and distribution of timber sales, and the level of salvage cuttings. This factor strongly influences the effectiveness of measures for protecting these lands from fire, insects, disease, and other destructive forces. It sets the level of use made of recreation, wildlife, and other resources of the National Forest System.

In 1961, President Kennedy sent to the Congress "A Development Program for the National Forests." This program set forth the resource management and development work needed in the National Forests during the fiscal years 1963-1972 to assure that they will meet their full share of present and future public needs.

The original estimated cost of the Forest Development Road and Trail construction proposed in this 10-year program is approximately $1.7 billion, of which about $1.2 billion would be financed with appropriated funds. The balance of about $0.5 billion would constitute work performed by purchasers of National Forest timber. But, in order to keep logs moving to the mills, the Forest Service has been required to increase the accumulated amount constructed by timber purchasers by $100 million.

This reliance on purchaser-constructed roads has often resulted in choices in road locations which are less desirable and not entirely consistent with good forest management and development. Many areas planned for development, where access is more difficult, have been left undeveloped.

Also, development of an efficient National Forest transportation system is not promoted by an increase in the proportion of purchaser-constructed roads. Permanent, main-haul roads which will serve entire tributary areas must be built to a standard adequate for access to, use and development of, all tributary resources. This often requires a road standard higher than that necessary to remove the timber.

We are able, in some instances, if funds are available, to obtain maximum economy roads by supplementing the increased cost of construction to higher standards. As an exclusive alternative to Government construction, this is undesirable, since many purchasers are not properly equipped for higher standard road construction.

The $170 million authorized by subsection 5(5) for Forest Development Roads and Trails for fiscal years 1970 and 1971 is within the funding proposed in the Development Program for the National Forests. Approval of S. 3418 will assist the orderly accomplishment of this program.

Section 8 of the enactment amends the definition of "forest road or trail" and "forest development roads and trails" in section 101(a) of Title 23, United States Code. This amendment makes the definition of the two terms consistent with 23 U.S.C. 205(a) and will avoid possible misinterpretation of the intent of both sections that the terms apply also to such roads in the National Grasslands and other areas administered by the Forest Service.

Section 9 of the enactment amends section 205(c) of Title 23, United States Code to increase the cost limitation on force account construction from $10,000 to $15,000 and to require advertisement of bids and letting of contracts where construction is estimated to cost $15,000 or more per mile or per project for projects with a length of less than one mile. The amendment clarifies the threshold of the limitation on force account construction and provides an opportunity for more efficient handling of small construction projects.

The relocation assistance provisions of section 30 of the enactment are expected to have little effect on the road construction programs of this Department. The related provisions of section 35 establishing real property acquisition policies for road and highway projects likewise are expected to have little effect on our road right-of-way acquisitions.

Form the standpoint of these provisions, we recommend approval of the enactment.

The enactment makes some changes in section 138 of Title 23 of the United States Code and section 4(f) of the Department of Transportation Act (80 Stat. 931; P.L. 89-670) relative to the preservation of the natural beauty of the countryside and public park or recreation lands, wildlife and waterfowl refuges, and historic sites which might be affected by Federal-Aid Highway projects. Concern has been indicated that these changes would weaken the authority of the Secretary of Transportation to disapprove the location of a highway project which he feels would adversely affect such lands if the State or local officials approve it. The legislative history of this provision is ambiguous. Insofar as projects which might affect the National Forests and other lands administered by this Department there is no material change with respect to the review and approval of such projects and the recommendation of the necessary provisions for protecting the natural beauty and recreation and other resources of the lands.

The enactment also contains provisions directing the construction of approaches to the District of Columbia across the Potomac River and highways through the District. We are aware of the concern over the specific Congressional mandates with reference to these. Although the specific provisions do not directly affect this Department, we recognize the possible precedent this might set for determining the location of future highway projects affecting public lands needed and used for park, recreational, or historic purposes.

These matters merit careful consideration.

Sincerely yours,