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

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MEMORANDUM FOR CAP WEINBERGER
KEN COLE
BUD KROGH

Subject: Highway legislation

We have just passed a crisis point on the highway bill, but may face another today or tomorrow with the Congress still in session. Saturday night, the conferees broke up and reported in disagreement. There were bitter recriminations against Senator Cooper and the Administration. No further conferences have been scheduled; and unless some further action occurs, there will be no highway legislation at all. The issue is what position and action, if any, to take in these closing days of the Congress.

A review of the events and positions in recent days help illuminate the issue. Our strategy has been to get a "good" bill (with an urban fund open to mass transit capital expenditures and without anti-impoundment, mass transit operating subsidies, a new junior interstate and some other undesirable features), or failing that, to get a "bare bones" bill which would provide short term extension of existing authorities -- mainly the interstate program -- with the intent to seek new legislation early next session. We have been much more successful than expected in precluding a bad bill for the President to deal with.

Aside from Administration efforts, the results to date can be attributed to our supporters in the Senate (Cooper with five proxies, Brooke, Buckley, Boggs and Muskie) plus a somewhat unusual coalition of interest groups including mass transit groups, environmental groups, and the chief of public works in Chicago backed by Mayor Daley. In spite of excruciating pressure from highway and city interests, these forces held firm and tied up the conference. The prospect of no bill at all will no doubt intensify pressures to resume the conference and on our forces to give in. The "glue" which holds the Administration and its supporters together is sufficiently tenuous so that resumption of the conference would present a situation where maneuvering room is limited and the chances for a cave-in by our side are at least 50-50. The pressure points are the following:

- The length of extension of existing authorities in a "bare bones" bill is a critical matter to most of the interest groups. If the extensions are comprehensive and exceed one year without adequate treatment or inclusion of mass transit provisions, most if not all of the interest groups now supporting us will switch, resulting in a very bad bill. These supporters badly want another "go" at the mass transit problem early in the next Congress. This issue is less critical to us, and indeed, there are disadvantages for the Administration to have to legislate early next year if the results of the 1974 budget review are large cuts in the highway program.

- The current positions on the mass transit provisions are bizarre. The Senate and the supporting interest groups which basically favor operating subsidies are now opposing them for fear of a veto of any bill which contain them. The House conferees who basically oppose operating subsidies are willing to include them in an effort to avoid mass transit <u>capital</u> expenditures from the highway trust fund and perhaps to defeat or embarrass the Administration. Signs of weakness in this area are already apparent, and it is doubtful that we can get any bill dealing with mass transit that does not include operating subsidies.

Some of the key offers and positions during the course of the conference over the past few days are as follows:

- The House conferees in a cleaver move offered their bill (more money, the junior interstate, more categorical grants) plus operating subsidies, the $3B authorization for mass transit from general funds (which we support) at a 80-20 share (which we oppose), and an agreement to set up a flexible urban fund, but with financing for transit expenditures to come from general funds rather than trust funds (the trust fund money would just build up more). The Senate conferees with Administration and interest group support rejected the offer.

- The Senate made three offers on Saturday: (1) a 2 year extension of interstate program authority, 6 month extension of other highway programs plus no anti-impoundment, no mass transit of any kind and no junior interstate; (2) a simple 2 year extension of the interstate program, one year on other highway programs and nothing else; and (3) a 2 year extension of the interstate program, no extension of other highway programs, and the mass transit operating subsidies plus the $3B in UMTA programs at the 80-20 share. The House rejected all of these offers.

- When the conference broke up in disagreement, Senators Randolph and Williams issued a vitriolic statement attacking Senator Cooper and, to a lesser degree, the Administration as disrupting the highway program and not really caring about the urban areas. Senator Cooper together with Boggs, Buckley, Brooke, Muskie and Proxmire responded with a statement that none of the charges were true and that the Senate had made a number of reasonable offers. Secretary Volpe plans an appropriate statement supporting Cooper's position today.

My assessment is that we can avoid the blame for killing the bill. The program consequences of having no bill at all are differently assessed. DOT believes that three states -- Kentucky, Tennessee and Virginia -- will be in trouble with their interstate programs about January, and no other problems will arise until the spring. While we are not prepared to dispute DOT directly, an earlier assessment that we did indicates that a somewhat larger number of states will be in trouble sooner (attached). Our analysis, perhaps, represents the worst case. In either event, the pain caused by the program consequences appears less than the potential pain of taking any initiative to reopen the conference and risk getting a bad bill. The most serious consequence of no bill is the need for legislation early next session in the face of potentially large budget reductions.

If the conference is reopened anyway, we can either (1) continue to support our own "bare bones" bill (interstate and other highway authorities only); or (2) seek a compromise which covers not only extension of the highway authorities, but also addition of the House proposal on mass transit capital subsidies (a modified Cooper-Muskie). If the conference reopens, I doubt that we can sustain option (1), since there is some limit to the pounding Cooper and others can take. I don't hold out much hope for option (2), but it may be worth a try.

In summary, I recommend that we settle for no bill at all. If we have another conference, we might try a compromise along the lines suggested above, after consultation with Senator Cooper. Finally, I would recommend that the President call Senator Cooper to thank him for his strong support on the Administration position. He deserves it.

William A. Morrill
Assistant Director

Attachment

ATTACHMENT

States most affected by veto of the 1972 Highway Act

A veto of the 1972 Highway Act will delay all Federal-aid Highway apportionments in FY 1973. Project approvals will cease for all States which have utilized all of their past apportionments except for Interstate projects, where a legal technicality may permit DOT to continue project approvals.

The following States are likely to require additional apportionment before the close of FY 1973. These States are divided into three groups depending upon when their existing apportionments are expected to be exhausted.

INTERSTATE		NON-INTERSTATE
	NOVEMBER	
Virginia		Wyoming
Kentucky		Texas
Tennessee		Washington
Oklahoma		Virginia
California		Arizona
		California
	FEBURARY	
Kansas		Alabama
New Mexico		Illinois
Florida		Arkansas
Arkansas		Massachusetts
		Missouri
		Idaho
	APRIL	
Missouri		Indiana
Delaware		Minnesota
Texas		South Dakota
Michigan		
Mississippi		
Nevada		

- In the Interstate category, five States (California, Virginia, Kentucky, Tennessee, Florida) account for 80% of the dollar shortage of apportionment.

- In the non-Interstate category, Texas, California, Illinois and Virginia dominate the dollar shortage of apportionment.

- The non-Interstate category is a grouping of smaller apportionment sub-categories, so additional States may be affected in one or more sub-categories.