



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

September 18, 1972



Honorable John A. Blatnik
Chairman, Committee on
Public Works
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I appreciate this opportunity to provide the Committee with the Department's views on H.R. 16656, the Federal-Aid Highway Act of 1972. As you know, we offered our summary views on the staff print of this proposed legislation to the Subcommittee on Roads. While the bill that has resulted from the Subcommittee's mark-up is an improvement and does contain some positive provisions, on balance we remain disappointed that it does not incorporate any of the important features that we at the Department have been working so hard to promote. Discussed below and set forth under separate subject headings are our major substantive problems with this proposed legislation. I sincerely hope that the Committee gives these views thorough consideration before taking final action on this bill.

1. Funding Public Transportation

The bill does not take any major new actions to promote public transportation. Its amendments to section 142 of title 23 will result in little more than is currently being done. Not moving forward in this important area is to guarantee that our urban transportation problems will become more serious in the years ahead. We believe that it is of the utmost importance that the officials responsible for transportation investment decisions have available the full range of alternatives necessary to adequately meet their different transportation requirements. To us, this means that the funds authorized under the highway program should be available to purchase buses and that, in the case of the urban systems, authorizations should be available for any transportation capital investment. For your consideration, attached

you will find our proposed amendment, drafted along the lines of the Cooper-Muskie amendment in the Senate: We believe that this amendment, rather than marking a radical departure with current procedures, merely continues in the same direction that recent highway legislation has been moving--to be more responsive to urban transportation needs, while at the same time not jeopardizing the highway requirements of our rural areas.

2. Availability of Urban System Funds

H.R. 16656, like the Senate bill, has significantly increased the funding for the Federal-Aid Urban System. However, the Senate bill also includes a very important provision which would allocate these funds proportionately among the urbanized areas and make them directly available to duly constituted metropolitan transportation agencies. We enthusiastically endorse this important step. For the first time, our major urban centers would be able to fully determine how best to meet their transportation needs. This proposal is consistent with the increasing role that local officials have come to play in the highway program in recent years. This provision would not change the relationship between State and local officials regarding the Interstate system, the primary or secondary systems, or the urban extensions of the primary and secondary systems. Only in the case of the urban system, which it should be recalled was established "to best serve the goals and objectives of the community as determined by the responsible local officials", would funds be "passed through." This provision, taken together with the amendment discussed in paragraph 1. above, would establish a program capable of effectively satisfying our urban transportation requirements. Here, too, for your consideration, we have attached a proposed amendment to H.R. 16656.

3. Interstate System Transfers and Substitutions

H.R. 16656 would modify the current provisions of title 23 relating to Interstate System transfers. It would replace the 200 additional miles available under the Cramer-Howard amendment with

whatever mileage is necessary to make the permitted modifications to the Interstate system. However, H.R. 16656 does not incorporate what we feel is a most desirable feature proposed by the Senate Public Works Committee. Section 111 of S. 3939 would permit Interstate funds to be used for projects on the Federal-Aid Urban System when an Interstate segment is to be deleted and the responsible State and local officials jointly determine that this is the better use of these funds. As a necessary first step in such transfer, the Secretary must make a finding that the segment to be deleted is not essential for system continuity. Without this finding such approval may not be granted.

At the present time, a number of urban Interstate segments are tied up in controversies which probably cannot be resolved. However, these areas do have a need for increased transportation capacity as evidenced by the decision to locate these Interstate segments in these particular cities. Giving the State and local governments the option of using these Interstate funds to satisfy other transportation needs, so long as the segment to be deleted is not essential for the continuity of the Interstate system, is a most constructive and desirable step that should be taken. We believe that this is not only a very pragmatic approach but also fully consistent with our desire to make the highway program fully responsive to the needs of the Nation. Again for your consideration, attached is our proposed amendment to H.R. 16656.

4. Overall Funding

H.R. 16656, while over a billion dollars lower than the staff print, is still far in excess of what the Administration feels is fiscally responsible. The proliferation of categorical grant programs combined with the general lack of restraint in setting the level of authorizations results in an \$8 billion highway program in the proposed bill. We hope that the number of grant programs can be reduced and the funding level substantially decreased. No one recognizes more than we do the need for transportation funding. However, these needs must be tempered by a recognition that Federal spending must be controlled. We do not think that H.R. 16656 now reflects this balance and strongly believe that significant reductions are in order.

5. Highway Beautification Program

The bill also contains a number of provisions concerning the highway beautification program which we feel will be exceedingly detrimental to the program.

We strenuously object to the moratorium on the removal of signs giving specific information in the interest of the traveling public, which is set forth in section 119(h) of the bill. We believe that a broad moratorium of this nature would result in a two-year moratorium on practically the entire program because of the necessity of revising procedures and regulations relating to this program. This subsection would remove the important incentive built into present law whereby States are encouraged to carry out a company-by-company removal program and to clear entire stretches of scenic highways of billboards. We believe this amendment would seriously disrupt, if not halt, the significant strides since January 1971, which has seen the number of States in compliance increase from 14 to 49. Clearly, the commitment of the Congress, the Administration, and the 49 complying States must not be negated.

While the provision removing the 660-foot control is fully supported, the language utilized would have an undesirable effect since it applies only to those signs "erected with the purpose of their message being read ... (the) main travel way." These words are highly subjective and would be difficult, if not impossible, to administer and should be deleted from the bill.

We recommend, therefore, that the words "located outside of incorporated cities and villages, and" be inserted before the word "visible" in line 17 on page 17 of H.R. 16656, and that the remainder of the section after the word "system" in line 18 be deleted. This amendment would have the further benefit of precluding the necessity to amend State agreements as they relate to size, lighting, and spacing.

Another provision of H.R. 16656 (section 119(b)) would amend section 131(c) of title 23 to permit

directional signs to gas, food, lodging, and other tourist facilities. We feel such a change would severely undercut present law by exempting the great majority of signs presently covered by the law. Moreover, permitting additional directional signs to gas, food, lodging, and other tourist facilities would hamper development of alternate methods of providing this kind of information to a motorist other than by the use of billboards.

We also recommend deletion of subsection (c) of section 119. This subsection would amend the present Act by permitting "jumbo" signs beyond 660 feet in commercial and industrial areas. Whether located in these areas or in the open countryside, "jumbo" signs are a distraction to drivers and a visual blight on our highways. Presently, Federal law provides for brand-name official gas, food, and lodging signs on Interstate rights-of-way. These have proven to be very successful and well received by the motorist. However, the proposed bill would place conditions on their erection which would so restrict the use of these signs that they would rarely, if ever, be erected. This type of signing is an innovative approach and, therefore, the States should be allowed flexibility and latitude so that this aspect of the program can be developed and evaluated fully. For this reason, we recommend the deletion of section 119(e) from H.R. 16656.

6. Priority Primary Routes

Section 126 of H.R. 16656 would establish a second generation Interstate System. This provision would establish a 10,000-mile highway network to be built to Interstate standards and funded out of a separate authorization, initially set at \$300 million per year for 1974 and 1975. We strongly object to this new program and would hope that it would be deleted from the bill.

Currently, the highway statutes permit facilities to be constructed to whatever standards are required. Whenever this means that highways must be built to Interstate standards to satisfy the demand for additional transportation capacity,

these facilities are so constructed. However, to authorize at this time what amounts to a second generation Interstate System which will commit States to the future construction of these high level facilities is not appropriate. States must have the flexibility to meet their needs as they see fit. With the Interstate System now almost 80 percent complete, emphasis should now be on providing flexible transportation programs.

7. Federal-State Relationship

The bill includes two sections which will have a significant bearing on the future Federal-State relationship. The first is section 116, which would apply the secondary road plan approach to all highway programs other than the Interstate. We endorse this provision and believe that it is a positive step which recognizes the ability of States to operate their highway programs under their own procedures.

The second is section 124, which would reaffirm the right of the States to select projects for funding under the Federal-aid highway program. We do not believe that this alters in any way the provisions of law which give the Secretary, through the various approval powers, discretion to establish priorities and achieve long-range Federal objectives. However, if it is the intention of this provision to strip the Department of its authority to manage the program, we would then strongly recommend the deletion of section 124.

8. Three Sisters Bridge

Section 139 of H.R. 16656 would withdraw the authority of the courts to issue any order or take any action which would in any way impede, delay or halt construction of the Three Sisters Bridge. In addition, any approval, determination or other action, taken by the Secretary of Transportation, or the head of any other agency of the Federal or District of Columbia governments, in constructing the Three Sisters Bridge, would not be reviewable in any court.

As a general rule, we believe that the exemption of Federal-aid projects on a case-by-case basis from the requirements of Federal laws and regulations and the restriction of the authority of the courts are not desirable. Moreover, if the purpose of section 139 is to expedite the processing of the Three Sisters Bridge project, it is our opinion that it does not achieve that purpose. Because the provision is prospective, it would leave the existing court order standing. The Department's General Counsel has advised that processing the Three Sisters Bridge without complying with the existing court order may lead to contempt proceedings against the Secretary of Transportation.

We also would oppose any provision mandating the processing of the project and construction of the Three Sisters Bridge without compliance with Federal statutory provisions. The Department consistently has maintained that the Federal highway statutes, specifically section 103 of title 23, vest the States with the responsibility for initiating, planning and executing highway projects. Any proposal to remove these functions from the District of Columbia and the State of Virginia would supersede local initiative and responsibility and create a precedent for similar action with respect to highway controversies in the several States.

9. District of Columbia

Section 140 of the bill would make the "Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities", approved March 2, 1893 (27 Stat. 532), as amended, inapplicable to any segment of the Interstate System within the District of Columbia.

We urge that this section be deleted. The only procedure by which the District of Columbia is authorized to plan and construct highways is pursuant to the permanent system of highway plan.

Because the proposed section does not provide any guidance on how the District of Columbia would plan and execute highway projects, the

enactment of section 140 would abolish the authority of the District of Columbia to initiate and execute Interstate projects. Since the Federal-aid highway program places the responsibility for initiating, planning and executing projects in the States (including the District of Columbia), section 140 would preclude the construction of Interstate projects in the District of Columbia.

Subsection 110(4) of the bill would make inapplicable Federal statutory provisions regarding the substitution and removal of mileage on the Interstate System to segments of that system in the District of Columbia. We do not feel that the District of Columbia should be limited in this fashion.

10. Highway Safety

We recognize and appreciate the Committee's continued concern in the vital area of highway safety. There are, however, two principal problems that we wish to point out with respect to this program.

First, we are keenly disappointed with the failure to include in H.R. 16656 any of the measures proposed by the Department in H.R. 14760 and included by the Senate in S. 3939. In particular, we feel that our proposal authorizing the Secretary to designate "national emphasis programs" and requiring their inclusion in States' comprehensive and annual work programs is essential to enhancing the Department's effectiveness in preventing highway accidents. We strongly recommend inclusion of this measure in the Committee's final bill.

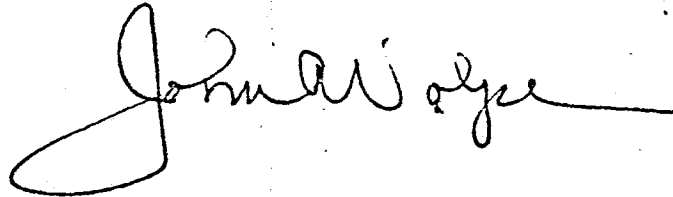
Second, quite aside from our strong preference for the preservation of administrative flexibility in lieu of the establishment of new categorical grants, we must express an overriding objection with respect to section 209 of the bill. This section would open the door for the diversion of Federal highway safety funds available under section 402 of the Highway Safety Act from such vital highway safety efforts as alcohol countermeasures, driver control and traffic law enforcement to physical improvements

on highways. While elimination of roadside obstacles could be a worthwhile endeavor, it should not be undertaken at the expense of more important aspects of the highway safety program.

Finally, there are other recommended changes we wish to offer in connection with this program. In light of their technical nature, I have asked my staff to contact the Committee staff directly with our comments on these additional points.

In conclusion, let me again acknowledge my appreciation for the opportunity to provide these comments for the Committee's consideration. I sincerely hope that they will be carefully considered in your final determinations on this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "John W. O'Connell". The signature is written in dark ink and is positioned below the word "Sincerely,".

Enclosures: a/s

Amendments to Section 122 of H.R. 16656 , Federal-Aid Highway Act
of 1972

PUBLIC TRANSPORTATION

SEC. 122. (a) Section 142 of title 23, United States Code, is amended
to read as follows:

"§142. Public transportation.

"(a) To encourage the development, improvement; and use of public mass transportation systems for the transportation of passengers within urbanized areas, so as to increase the efficiency of the Federal-aid system, sums apportioned in accordance with paragraph (6) of subsection (b) of section 104 of this title shall be available to finance the Federal share of the cost of construction of and acquisition of facilities and equipment for public mass transportation projects. For purposes of this section the term "public mass transportation" means ground transportation which provides general or special service (excluding school bus, charter, or sightseeing service) to the public on a regular and continuing basis, and includes activities designed to coordinate such service with other transportation. Projects which may be financed under this subsection shall include, but not be limited to, exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus, rail, and other public mass transportation passengers, construction of fixed rail facilities and the purchase of passenger equipment, including rolling stock for fixed rail.

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"(b) To encourage the development, improvement, and use of public transportation systems for the transportation of passengers in such urban areas and rural areas as may be designated by the State and approved by the Secretary on the basis of local transportation need, so as to increase the traffic capacity of the Federal-aid systems, sums apportioned in accordance with paragraphs (1), (2), (3), and (5) of subsection (b) of section 104 of this title shall be available to finance the Federal share of the costs of projects within their respective systems, for the construction of exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public transportation passengers and for the purchase of passenger equipment other than rolling stock for fixed rail.

"(c) The establishment of routes and schedules of such public mass transportation systems in urbanized areas shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of title 23, United States Code.

"(d) For all purposes of this title, a project authorized by subsections (a) and (b) of this section shall be deemed to be a highway project, and, the Federal share payable on account of such project shall be that provided in section 120 of this title.

"(e) No project authorized by this section shall be approved unless the Secretary of Transportation is satisfied that public mass transportation

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systems will have adequate capability to utilize fully the proposed project and to maintain and operate properly any equipment acquired under this section.

"(f) No equipment which is acquired with financial assistance provided by this section shall be available for use in charter, leased, sightseeing, or other service in any area other than the area for which it was acquired.

"(g) In the acquisition of equipment pursuant to subsections (a) and (b) of this section, the Secretary shall require that such equipment meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act, as amended, and shall authorize, wherever practicable, that such equipment meet the special criteria for low-emission vehicles set forth in section 212 of the Clean Air Act, as amended.

"(h) The Secretary shall assure that the provisions of subsection (a) of section 16 of the Urban Mass Transportation Act of 1964, as amended, relating to planning and design of mass transportation facilities to meet special needs of the elderly and the handicapped (as defined in subsection (d) thereof), shall apply in carrying out the provisions of this section."

"(i) Funds available for expenditure to carry out the purposes of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

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"(j) The provisions of chapters 1, 3, and 5 of title 23 of the United States Code shall apply in carrying out the provisions of this section except with respect to projects within urban areas as to which the Secretary determines the provisions of the Urban Mass Transportation Act of 1964, as amended, are more appropriately applicable."

(b) The table of contents of chapter 1 of title 23 of the United States Code is amended by striking

"142. Urban highway public transportation."

and inserting in lieu thereof:

"142. Public transportation."

AMENDMENTS PROVIDING FOR A NEW SECTION TO H.R. 16656
FEDERAL-AID HIGHWAY ACT OF 1972

AVAILABILITY OF URBAN SYSTEM FUNDS

SEC. . (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§147. Availability of urban system funds.

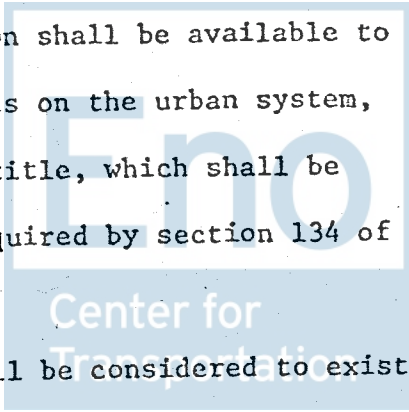
"(a) Funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title shall be allocated among the urbanized areas within any such State in the ratio that the population within any such urbanized area bears to the population of all urbanized areas within such State.

"(b) Funds allocated in accordance with subsection (a) of this section shall be available for expenditure within any such urbanized area for projects on the urban system, including those authorized by section 142 of this title, which shall be planned in accordance with the planning process required by section 134 of this title.

"(c) Funds allocated to any urbanized area under subsection (a) of this section shall be available for expenditure in another urbanized area within such State only where the responsible public officials in both such urbanized areas agree to such availability.

"(d)(1) Where the units of general purpose local government in any urbanized area shall combine together under State law to create a metropolitan transportation agency, or where the State shall create a metropolitan transportation agency, with sufficient authority to develop and implement a plan for expenditure of funds allocated to such urbanized area pursuant to this section,

funds allocated under subsection (a) of this section shall be available to such metropolitan transportation agency for projects on the urban system, including those authorized by section 142 of this title, which shall be planned in accordance with the planning process required by section 134 of this title.



"(2) A metropolitan transportation agency shall be considered to exist when (A) an agency for the purposes of transportation planning has been created by the State or by the unit or units of general purpose local governments within any urbanized area which represent at least 75 per centum of the total population of such area and includes the largest city, and (B) such agency has adequate powers and is suitably equipped and organized to carry out projects on the urban system: Provided, That such projects may be implemented by the metropolitan transportation agency through delegation of authority for implementation to the participating local governments."

(b) The table of contents of chapter 1 of title 23 of the United States Code is amended by adding at the end thereof:

"147. Availability of urban system funds."

AMENDMENT PROVIDING FOR A NEW SECTION TO H.R. 16656
FEDERAL-AID HIGHWAY ACT.

TRANSFER OF INTERSTATE SYSTEM MILEAGE WITHIN A STATE

SEC. (a) The fourth sentence of subsection (e)(2) of section 103 of title 23, United States Code, is amended to read:

"The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph, except that the cost to the United States of the aggregate of all mileage designated in any State under the third sentence of this paragraph shall not exceed the cost to the United States of the mileage approval for which is withdrawn under the second sentence of this paragraph; such costs shall be that as of the date of the withdrawal."

(b) Paragraph (2) of subsection (e) of section 103 of title 23 of the United States Code is amended by adding at the end thereof the following:

"The authority granted by this paragraph shall expire on the date of enactment of the Federal-Aid Highway Act of 1972. However, the amendment contained in section 112(a) of the Federal-Aid Highway Act of 1972 shall be retroactive."

(c) Subsection (e) of title 23, United States Code, is amended by adding the following:

"(4) In addition to the mileage authorized by the first sentence of paragraph (1) of this subsection, there is hereby authorized additional mileage for the Interstate System to be used in making modifications or revisions in the Interstate System as provided in this paragraph. Upon the joint request of a State Governor and the local governments concerned, the Secretary

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may withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title prior to the enactment of this paragraph, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System (including urban routes necessary for metropolitan transportation) or will no longer be essential by reason of the application of this paragraph and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. After the Secretary has withdrawn his approval of any such route or portion thereof the mileage of such route or portion thereof and the additional mileage authorized by the first sentence of this paragraph shall be available for the designation of such interstate route or portions thereof within that State as provided in this subsection necessary to provide the essential connection of the Interstate System in such State in lieu of the route or portions thereof which were withdrawn. The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph, except that the cost to the United States of the aggregate of all mileage designated in any State under the third sentence of this paragraph shall not exceed the cost to the United States of the mileage approval for which is withdrawn under the second sentence of this paragraph. Such costs shall be that as of the date of the withdrawal. Whenever the Secretary determines that such routes or portions thereof are not essential or whenever the amounts necessary for the completion

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of the substitute essential routes or portions thereof are less than the cost of the withdrawn route or portions thereof, the amounts remaining or the difference shall be transferred to and added to the amounts apportioned to such State under paragraph 6 of subsection (b) of section 104 of title 23, United States Code, for the account of the urbanized area from which the withdrawal of the routes or portions thereof was made in such urbanized areas. In considering routes or portions thereof to be added to the Interstate System under the second and third sentences of this paragraph, the Secretary shall, in consultation with the States and local governments concerned, assure (A) that such routes or portions thereof will provide a unified and connected Interstate System (including urban routes necessary for metropolitan transportation), and (B) the extension of routes which terminate within municipalities served by a single interstate route, so as to provide traffic service entirely through such municipalities. Any mileage from a route or portion thereof which is withdrawn under the second sentence of this paragraph and not replaced by a substitute essential route or portion thereof may be redesignated as part of the Interstate System by the Secretary in accordance with paragraph (1) of this subsection."

(d) The table of contents of chapter 1, title 23 of the United States Code is amended by adding at the end thereof:

"148. Transfer of Interstate System mileage within a State."