The original documents are located in Box 43, folder "4/26/76 HR8235 Highway Construction and Safety Amendments (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Returned to the House of Representatives on 4/26/76 - per request of H. Con. Res. 618, for correction. (Delivered to the clerk of the House 4/26/76 (6:25 pm)

APR 22 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8235 - Highway construction and safety amendments
Sponsors - Rep. Howard (D) New Jersey and Rep. Shuster (R) Pennsylvania

Last Day for Action

April 26, 1976 - Monday

We recommend that no action be taken on this bill until Congress adjourns on April 26, since Congressional action on that date could make signing the bill unnecessary.

Purpose

To make available authorizations of $17.7 billion for fiscal years 1977 and 1978 for Federal highway construction and safety programs, and to amend various provisions of these programs.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Transportation	Approval
Department of Agriculture	Approval
National Transportation Safety Board	Approval
Department of the Interior	Disapproval (Veto message attached)

Discussion

H.R. 8235 would provide authorizations for Federal highway construction and safety programs for the next two fiscal years and make a variety of changes in those programs. While it does

contain some significant provisions recommended by the Administration, it is essentially an interim bill that maintains existing highway and safety programs. Fundamental highway construction and safety issues have been deferred for future consideration.

Because of a procedural error by the Congress, the title of the bill that would have extended the Highway Trust Fund was inadvertently omitted from the enrolled version of the bill. Most of the funds authorized by H.R. 8235 cannot be obligated without this extension. We understand from DOT that senior members of Congress are aware of this problem and plans are underway to take action perhaps by recalling the bill immediately upon their return from the Easter recess and replacing it with one containing the extension of the Trust Fund. Accordingly, we recommend that you take no action on this bill until after Congress adjourns on Monday, April 26, the first day of its return and the last day for action on the enrolled bill. In the event that Congress does not replace H.R. 8235 with a new bill, we recommend that you sign the enrolled bill. A separate bill extending the Trust Fund would then have to be passed by the Congress.

The enclosed views letter from the Department of Transportation contains a complete discussion of the major features of the bill and their relation to the Administration's recommendations. The remainder of this memorandum, therefore, will focus on several major aspects of the legislation.

Administration Proposal

The Administration proposed a major restructuring of highway programs and related activities in a comprehensive five-year proposal submitted to the Congress in July 1975. That legislation would have restricted the use of the Highway Trust Fund to the priority completion of the Interstate Highway System, permitting State preemption of $1 billion of gas tax revenues and consolidating the non-Interstate categorical grants into three broad programs to be financed out of the general funds of the Treasury with reduced levels of Federal involvement. Because it became clear that Congress would not favorably consider this legislation, the 1977 Budget requests were based on existing law rather than the Administration proposals. The enrolled bill contains some program consolidations and some additional delegation of authority to the States, but also adds some new programs

such as one to build safer roads outside the Federal-aid highway system. The net effect is a slight increase in the number of categorical programs. As noted earlier, the issues of long term extension of the Trust Fund and major program restructuring remain to be addressed by the Congress.

Funding

General

H.R. 8235 would make available almost $8 billion in new authorizations, mainly contract authority, for each of the fiscal years 1977 and 1978, plus $1.7 billion for the transition quarter, for highway construction and safety programs. The Administration had requested annual new authorizations of less than $7 billion for 1977 and 1978.

The Federal-Aid Highway programs (both Interstate and non-Interstate) are financed by Trust Fund contract authority, not subject to Congressional appropriation action, and thus are hard to control. However, the Federal-Aid authorizations are relatively close to the Administration's request and thus present no major problem. Because funding was provided for the transition quarter and advanced availability of authorizations was not eliminated for the Interstate Program (see discussion below), total long-term contract authorizations in the enrolled bill are $1.6 billion above the 1977 Budget request. In the short term, this will have no budget outlay impact if the DOT appropriation act contains a limitation on obligations as was requested in the 1977 budget.

The remaining programs are generally subject to Congressional appropriation action. While the Appropriation committees have traditionally limited the obligation rate for many of these programs, they have generally approved most of the funding for "placed-named" highway projects. Thus, this category may show an increase of $450-$550 million over the 1977 budget request. If more conservative Budget and Appropriation committee targets are achieved, the increase would be limited to $200-300 million in new budget authority and $30-$40 million in outlays in 1977.

We have attached for your information a table showing a comparison between the Administration's 1977 budget requests and the enrolled bill authorizations and a table showing a detailed breakout of the authorizations for the programs in 1977.

Timing of Funding

Currently, highway contract authority becomes available to the States for obligation on the January 1 prior to the fiscal year for which it is authorized. The Administration originally proposed the elimination of this advanced funding provision for both the Interstate and non-Interstate highway programs to reduce the level of unobligated funds and to make the funding process conform to procedures for other programs. Because 1977 Interstate funds were required to be apportioned last December, the Administration withdrew the proposal to eliminate advanced availability of funds for the Interstate program in 1977. The enrolled bill would continue the advanced availability of Interstate funds for 1977 and 1978, but would eliminate it for the non-Interstate programs in 1978. This will result in a permanent long-term savings of approximately $1.7 billion for the non-Interstate programs.

Extension of Repayment for Increased Federal Share

Public Law 94-30 provided that States could temporarily defer until December 31, 1976, all or part of their matching share for Federal-Aid Highway projects for which funds were obligated between February 12 and September 30, 1975. If the State matching share (10% on interstate projects and 30% on most other projects) was not repaid by December 31, 1976, the State would lose future Federal highway grants until the funds were repaid. The law was enacted to enable States to take advantage of previously deferred highway funds that were ordered released by you ($2 billion) and by the Congress (an additional $9.1 billion).

H.R. 8235 would extend the repayment date of the State-deferred share, with partial payments of 20% due on January 1, 1977, 30% on January 1, 1978, and the remaining 50% on January 1, 1979. In a statement issued when you signed P.L. 94-30 into law, you stated that the deferral was unfortunate but that you were signing it because of the "tough provision" which required repayment by the end of 1976 or the loss of future Federal highway funds.

Highway Related Safety Programs

H.R. 8235 would allow DOT to waive certain highway safety requirements on States to allow them to undertake alternative safety measures, and provide that DOT could award incentive grants to States based on criteria other than fatality rate reductions. These changes were requested by the Administration.

The bill would also make some undesirable changes in the enforcement of safety standards. The Administration had requested a restoration of DOT's rulemaking authority so that highway safety standards could be modernized more easily. Currently Congressional approval is required to amend the standards, most of which have not changed since their issuance in the late 1960's. The enrolled bill instead would require a study to be submitted to Congress no later than July 1, 1977, evaluating current DOT safety standards. It would essentially forbid enforcement of the standards until the study is completed by removing until then any sanctions which DOT could apply to non-complying States. In addition, the bill would permanently repeal DOT's authority to withhold 10% of the Federal-Aid highway construction funds for non-complying States. These provisions would reduce the viability and effectiveness of the standards. In its attached views letter, DOT notes that, "We are, however, disappointed with the highway safety provisions and believe little progress was made toward our goals."

Interior Recommendation

In its attached views letter the Department of the Interior recommends that you veto H.R. 8235. The Department objects to two provisions in the bill:

1. Section 124 which would authorize the Secretary of Transportation, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies regarding the most feasible Federal-Aid routes to serve the traveling public through and around national parks. Interior believes that this provision, especially the use of the word "through," "greatly diminishes the protection from unnecessary highway construction which is presently afforded the areas of the National Park System..."

2. Section 132 which would authorize the Secretary of Transportation "to construct and to reconstruct any public highway or highway bridge across any Federal public works project, notwithstanding any other provision of law, where there has been a substantial change in the requirements and costs of such highway or bridge since the public works project was authorized, and where such increased costs work an undue hardship upon any one State." (emphasis added). We understand that this provision is primarily designed to forgive certain obligations on the part of the States involved in the Tennessee-Tombigbee Waterway Project,

which would connect the Tennessee and Tombigbee rivers to provide a new inland transportation artery. Interior believes that the "notwithstanding" clause would nullify the protection now given to Federal public works projects against environmental hazards by the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Historic Preservation Act of 1966 and the Endangered Species Act.

We agree with the Department that both provisions are undesirable and could establish unwise precedents. However, we do not believe they are serious enough problems to warrant disapproval of the bill. We would note that

- both provisions provide authority to the Secretary of Transportation, and appropriate consultation between DOT and Interior could eliminate or at least sharply minimize any potential problems;

- section 124 only authorizes a study of routes through national parks and requires cooperation by the Secretary of Transportation with Interior and State and local officials; and

- it is not clear that the "notwithstanding" language will be interpreted as broadly as Interior fears.

* * * * *

When a highway bill is signed, we recommend that a signing statement be issued pointing out that the excessively high authorizations contained in the bill may result in some new programs being carefully reviewed and urging the Congress to place obligational limits on the Federal-Aid highway program. A proposed signing statement, a minor revision of a draft furnished to us informally by DOT, is attached for your consideration.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

Attachment 1

Enrolled Bill H.R. 8235
1977 Authorizations
($ in millions)

	Administration 1977 Budget	House	Senate	Enrolled Bill
1. Federal-Aid Highways				
--Interstate.....	3,250	4,041[1]/	3,325[1]/	3,516[1]/
--Non-Interstate.....	3,450	3,644	3,349	3,229[2]/
2. Highway Related Safety..... (non-construction)	120	282	140	212
3. Other FHWA National Programs[3]/.	32	426	73	391
"Place-Named" Highway Projects[3]/.....	10	239	100	296
4. Other Programs (Agriculture, Interior highway programs)...	27	308	313	308
5. Miscellaneous.....	--	1	2	17
Total.....	6,889	8,941	7,302	7,969

1/ 1978 authorizations which will be available for obligation in 1977.
2/ 1977 authorizations which will be available for obligation in TQ.
3/ Includes no year authorizations.

Enrolled Bill H.R. 8235
1977 Authorizations
($ in millions)

1. Federal-Aid Highways (trust fund)		
. Interstate		
-- continuation	3,250	
-- guarantee 1/2% minimum to all States*	91	
-- resurfacing existing roadway*	175	3,516
. Non-Interstate		
-- Primary System	1,350	
-- Secondary System	400	
-- Urban System	800	
-- Forest Highways	33	
-- Public Lands Highway	16	
-- Economic Growth Center Highways	50	
-- Emergency Relief	100	
-- Bridge Reconstruction	180	
-- Pavement Marking	50	
-- High Hazard Locations	125	
-- Rail-Highway Grade Crossings	125	3,229
		6,745
2. Highway Related Safety Program (trust fund)		
. NHTSA Programs		
-- Basic State & Community Grants	122	
-- Incentive Grants	15	
-- Research and Development	40	177
. FHWA Programs		
-- Basic Grants	27.5	
-- Research and Development	7.5	35
		212
3. Other FHWA National Programs		
. Safer Off-System Roads (GF)*	200	
. Off-System Rail-Highway Crossings (GF)*	75	
. Highway Beautification (GF)	65	
. Traffic Control Signal Demonstrations (TF)*	40	
. Territorial Highways (GF)	11	391

° "Place-Named" Highways

. Urban High Density (Cline Avenue) (TF).	65	
. Highways Crossing Federal Projects..... (Tennessee-Tombigbee) (GF)*.....	100	
. Great River Road (TF & GF).....	35	
. Railroad-Highway Crossing Demos..... (4 new locations added) (GF)	26.4	
. Acceleration of Projects Demos..... (Lake Raystown) (GF)*	25	
. Bridges on Federal Dams..... (Chattanooga, Ft. Smith, Greenup) (TF)	22.2	
. Overseas Highway (limits on existing authorization) (GF).....	(35)	
. Access Highways to Recreation Areas at Certain Lakes (GF).....	15	
. Guideway Demonstration (GF)*.....	7	296

4. Other Agency Construction Programs

-- Forest Development Roads and Trails (Forest Service) (GF)....	140	
-- Public Lands Roads and Trails (BLM) (GF).....	10	
-- Park Roads and Trails (National Park Service) (GF).....	30	
-- Parkways (National Park Service) (GF).....	45	
-- Indian Reservation Roads and Bridges (BIA) (GF).....	83	308

5. Miscellaneous (GF).....	17
TOTAL	7,969

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* New program with this bill.

TF - Trust funded. All trust funded programs are contract authority except Safety Related R&D, Overseas Highways, Acceleration of Projects, and Traffic Control Signal Demonstrations.

GF - General funded.

STATEMENT BY THE PRESIDENT

Today I have signed into law the Federal-Aid Highway Act of 1976. This legislation is the product of almost a year-long debate. On July 7, 1975, I submitted a proposed long-range bill recommending some fundamental changes in this program. The Act I am signing today is a two-year interim measure which permits the program to continue while setting the stage for the next Congress to again confront the critical issues facing the program. However, the fact that this is only an interim measure in no way detracts from the spirit of cooperation that enabled all parties to arrive at an acceptable bill, a bill that permits a vital program to continue.

The proposal that I forwarded to Congress last July had four principal objectives.

-- First, it recommended the restructuring of the present system of financing highways. The Trust Fund would have been reserved exclusively for the completion of the Interstate System, all other Federal highway assistance would have come from the general fund, and one cent of the gas tax would have been returned to the States.

-- Second, more than thirty categorical grant programs would have been consolidated into three block grant programs.

-- Third, the Federal interest in the Interstate System would have been more precisely defined, by placing primary emphasis upon completion of critical intercity routes on the System.

-- Fourth, the Federal resources authorized for the highway program would have been held to responsible levels, consistent with the overriding need to control Federal spending while still sufficient to achieve the objectives of the program.

The Congress addressed each of these issues in its deliberations on this bill and made progress in the direction I had recommended. The bill I am signing today consolidates a number of existing categorical grant programs into a broader, more flexible program, a step which should help State and local officials solve their transportation problems more effectively. This legislation also assigns priority to the completion of intercity routes, closing critical gaps in the Interstate System. Although this Congress did not address all of the fundamental issues of the highway program, the next Congress will need to deal comprehensively with them.

I am pleased to note that the Congress has taken some action to bring the operation of the highway program under better fiscal control. However, because the bill would still result in substantial outstanding authorizations being available during fiscal year 1977, I believe it is important for Congress to take separate action to place an obligation ceiling on the Federal-Aid Highway Program at least through fiscal year 1977. Further, new activities authorized in this legislation will be carefully scrutinized before any requests for additions to the budget are sent to Congress.

For more than 25 years in national government, in both the legislative and executive branches, I have been a firm supporter of the highway program. I was a member of Congress in 1956 when the landmark legislation establishing the Highway Trust Fund was enacted. It is a privilege today, 25 years later, for me as President to sign legislation permitting this important program to continue, while we continue to seek solutions to the transportation problems of a nation entering its third century.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

APR 16 1976

Honorable James T. Lynn
Director, Office of Management
and Budget

Dear Mr. Lynn:

In response to the request of your office, the following report is submitted on the enrolled enactment H.R. 8235, "To authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes."

The Department of Agriculture recommends that the President approve the enactment, insofar as it affects this Department's responsibilities.

H.R. 8235 would directly affect this Department only to the extent that it authorizes appropriations for certain highways, roads, and trails within the National Forest System. Section 105(a)(3) would authorize, for forest highways, out of the Highway Trust Fund, $33 million for the fiscal year ending September 30, 1977, and $33 million for the fiscal year ending September 30, 1978. Section 105(a)(5) would authorize, for forest development roads and trails, $35 million for the three-month period ending September 30, 1976, $140 million for the fiscal year ending September 30, 1977, and $140 million for the fiscal year ending September 30, 1978.

The amounts authorized to be appropriated by H.R. 8235 for highways, roads, and trails within the National Forest System are adequate for the periods indicated in the enrolled bill.

Sincerely,

ROBERT W. LONG
Acting Secretary

Office of
Chairman

National Transportation Safety Board

Washington, D C. 20594

April 19, 1976

Mr. James M. Frey
Office of Legislative Reference
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request for the views and recommendations of the National Transportation Safety Board on H. R. 8235, an enrolled bill, "To authorize appropriations for the construction of certain highways in accordance with Title 23 of the United States Code, and for other purposes".

The Safety Board has serious reservations with respect to sections 116 and 120 of Title I and section 208 of Title II of the Enrolled bill. Section 116 concerns the acceptance of State certifications by the Secretary of Transportation for construction of projects on all Federal-aid systems except the Interstate system. Subsection (a) of this section would remove the provision of section 117 of Title 23 which requires conformity with Federal standards. Subsection (b) would add a new provision to section 117 of Title 23, which also relaxes the requirements for approving State projects on the Federal-aid secondary system. The Safety Board views these changes as potentially backward steps in the effort to upgrade highway safety in all Federal-aid systems.

Section 120 would increase the width of buses on the Interstate System from 96 to 102 inches. The Safety Board believes that the wider buses are likely to create more hazardous driving conditions for other users of the highway.

Excepting the sections of H. R. 8235 discussed above, which substitute less stringent safety requirements, the Safety Board endorses enactment of the enrolled bill.

Sincerely yours,

Webster B. Todd, Jr.
Chairman

cc: Honorable Warren G. Magnuson
Honorable Birch Bayh
Honorable Robert E. Jones
Honorable John J. McFall
Honorable Harley O. Staggers
Honorable Jack Brooks

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 20 1976

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill H.R. 8235, "To authorize appropriations 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 veto the enrolled bill.

H.R. 8235 would authorize appropriations for the construction of certain highways in accordance with Title 23 of the United States Code and make other amendements to Title 23.

This Department strongly objects to Sections 124 and 132 of H.R. 8235.

I. Section 124

Section 124 of the bill would amend Section 138 of Title 23 of the United States Code. Section 124 would authorize the Secretary of Transportation, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies regarding the most feasible Federal-aid routes to serve the traveling public through or around national parks.

It is our view that this amendment diminishes the protection presently afforded parklands under Title 23 and Section 4(f) of the Department of Transportation Act, 80 Stat. 933, 49 U.S.C. § 1653(f) (1970).

Under current law, the Secretary of Transportation is prohibited from authorizing the use of Federal funds to construct Federal-aid highways through public parks unless there is "no feasible and prudent alternative" to such use. If no such prudent and feasible alternative exists, the Secretary can approve construction through parks only if there has been all possible planning to minimize harm to the parks:

> "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture and with the States in developing transportation plans and programs

> that include measures to maintain or enhance the natural beauty of the lands traveled. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance as determined by the Federal, State or local officials having jurisdiction thereof, or any land from an historic site of national, State or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife area, wildlife and waterfowl refuge, or historic site resulting from such use."
> 23 U.S.C. § 138 (1970).

This provision, and its sister provision, Section 4(f), assures that, in deciding to approve or disapprove a State highway proposal for Federal-aid, the Secretary of Transportation takes into account a broad spectrum of environmental values as factors relevant to his decision in recognition of the national policy to preserve public park and recreation lands, wildlife and waterfowl refuges, and historic sites declared by the Congress in Section 2 of the Department of Transportation Act:

> "The Congress hereby declares that the general welfare, the economic growth of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources***.
>
> "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites."
> 49 U.S.C. § 1651 (1970).

The protection afforded parklands by these statutes represents a sound public policy whichhas been recognized and reinforced by a number of important court decisions, the most renowned of which is Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S 402 (1971). In this case,the Supreme Court reversed the lower court

decisions which had upheld construction of an interstate highway through Overton Park in Memphis, Tennessee, and stated that only the most unusual situations permit exemption from the bar to the use of Federal funds for construction of highways through parks under 23 U.S.C. § 136 (1970). The court realized that the requirement that there be no "feasible" alternative before a Federal-aid highway can be constructed through a park admits of little administrative discretion. For this exemption to apply, the Court held that the Secretary must find that as a matter of sound engineering it would not be feasible to build the highway along any other route. We interpret the Court's opinion to mean that feasibility addresses the question of whether any alternative route is, as a physical matter, possible and practical, and can be constructed consistent with generally accepted highway construction techniques. The Court suggested an alternative route is prudent unless there are unusual factors present or the cost or community disruption from selecting the alternative would reach extraordinary magnitudes. The Court recognized that the "no prudent alternative" limitation on the Secretary's discretion expresses the congressional intention that the protection of the Nation's parks be given paramount importance. To quote the Court,

> "The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitude. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems." Citizens to Preserve Overton Park, Inc. v. Volpe, supra, at 412-413.

The Supreme Court thus gave the strongest possible interpretation to 23 U.S.C., section 138, holding that summary judgment had been improperly granted, and remanded the case to the District Court for a hearing to determine whether the Secretary of Transportation had acted within his statutory authority under the Federal-Aid Highway Act, or had been arbitrary, capricious, and had abused his discretion, or otherwise acted illegally, in approval of the project.

Section 124 can serve no purpose other than to provide for the study and eventual construction of feasible routes through national parks. While the proposed language refers only to studies, we believe that it represents an invitation to seek such routes without the need to determine first that no other feasible alternative to such a route is available. The language of H.R. 8235 could be interpreted as an

implicit sanction for the lessening of the protections presently afforded parklands, by changing the requirement of "no feasible" alternative route around the parklands to the "most feasible" alternative route across such lands and by failing to give any consideration to the possible existence of any prudent alternative. The diminution of this standard, by even such an indirect approach as this "study" authority, does violence to those valuable resources which have been set aside as parklands and deemed worthy of preservation and protection.

We further object to the proposed study provision because it suggests that the Secretary of Transportation has the independent authority to allow the use of such lands if he determines that the most feasible route for a Federal-aid highway is through a national park. Under 23 U.S.C. § 317 (1970), he must have the concurrence of the Secretary of the Interior before such lands may be used. Accordingly, the bill is misleading in its impact because many areas which are "studies" could not be made available for highway use under 23 U.S.C. § 317. These same constraints may well apply to State and local parks.

In your consideration of this legislation, we think it appropriate to note that, contrary to the implication of this study provision, the Secretary of Transportation does not have an affirmative duty to specify any particular route as a feasible and prudent alternative to the proposed route. The burden of choosing a route does not lie with the Secretary; he must only approve or disapprove proposed routes. Under the present statutory framework, the responsibility for route selection falls on the States. The Court of Appeals for the Sixth Circuit has so held in Citizens to Preserve Overton Park, Inc. v. Brinegar, 494 F.2d 1212 (6th Cir. 1974).

II. Section 132

Section 132(a) of the enrolled bill, which adds a new section to Chapter I of Title 23, United States Code, authorizes the Secretary of Transportation "to construct and to reconstruct any public highway or highway bridge across any Federal public works project, notwithstanding any other provision of law, where there has been a substantial change in the requirements and costs of such highway or bridge since the public works project was authorized, and where such increased costs would work an undue hardship upon any one State." (emphasis supplied) The appropriate State would be obligated to accept ownership and to operate and maintain any such highway or bridge. The section authorizes the appropriation of not to exceed $100 million to carry out the purposes of the section.

This section is designed to forgive certain obligations on the part of the States involved in the Tennessee-Tombigbee Waterway Project. The project, which would connect the Tennessee and Tombigbee Rivers to provide a new inland transportation artery, was authorized by the Act of July 24, 1946 (60 Stat. 634). That Act incorporated into law the project as formulated in House Document 486, 79th Congress. As so formulated, the project was to be funded by the Federal Government except for certain aspects which promised to yield primarily local benefits. In particular, the report submitted by the then Secretary of War to the Congress summarizing the project stated and recommended: "the non-Federal agenciesshould bear the construction cost of all highway bridges and highway relocations..." It is our understanding that in recent years this cost has increased markedly and that section 132(a) of the enrolled bill has been included to release the involved States from their obligations to bear this cost.

Without discussing the merits of whether the Tennessee-Tombigbee project should be afforded this special treatment, this Department objects to the overly broad manner in which the provision has been drafted. Not only would the section apply to all other Federal public works projects, it would exempt any construction falling within its ambit from "any other provision of law." This exemption would include the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Historic Preservation Act of 1966, and the Endangered Species Act. In other words, those portions of Federal public works projects which came within the purview of this section could be constructed without any reference to the environmental safeguards and review procedures set out in those statutes. This is a serious defect in the bill.

Sincerely yours,

Loting Assistant Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

TO THE HOUSE OF REPRESENTATIVES

I return herewith, without my approval, H.R. 8235, a bill "To authorize appropriations for the construction of certain highways in accordance with Title 23 of the United States Code, and for other purposes."

The bill would authorize appropriations for the construction of certain highways in accordance with Title 23 of the United States Code and it would make other amendments to Title 23. Two of these amendments to Title 23 are objectionable because of the precedents which they would establish.

Section 124 of the bill would authorize the Secretary of Transportation, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies regarding the most feasible Federal-aid routes to serve the traveling public through and around national parks. This amendment greatly diminishes the protection from unnecessary highway construction which is presently afforded the areas of the National Park System under Title 23 and section 4(f) of the Department of Transportation Act.

Section 132 of the bill authorizes the Secretary of Transportation to construct and to reconstruct any public highway or highway bridge across any Federal public works project, nothwithstanding any other provision of law, where there has been a substantial change in the requirements and costs of such highway or bridge since the public works project was authorized, and where such increased costs would work an undue hardship upon any one State. Although it is broadly written, this section is designed to forgive certain finiancial obligations on the part of one particular State involved in the construction of one specific waterway project. This section would exempt this construction and all other similarly situated project construction from all other provisions of law. This would nullify the provisions of the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Historic Preservation Act of 1966, and the Endangered Species Act from any application in these instances.

I believe that these two sections of the bill establish dangerous precedents for the future. For these reasons I feel that the approval of H.R. 8235 would not be desirable.

THE WHITE HOUSE

April 1976

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 20 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for departmental views on H.R. 8235, an enrolled bill

"To authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes.

On July 7, 1975, the Administration's proposed Federal-Aid Highway Act of 1975 was submitted to the Congress, followed by the submission of the proposed Highway Safety Act of 1975 on July 25. These proposals had as their principal objectives the restructuring of the various highway construction and highway safety programs in order to delineate more precisely Federal and State responsibilities. Further, the issue of user charge financing for highways was addressed and major modifications to the present financing system were proposed.

During Congressional consideration prior to the passage of the enrolled bill, all of the areas covered by the Administration's proposals were addressed. In several areas, Congress did move the program in the direction recommended by the Department. In other areas, the Congress simply maintained the status quo pending further assessment. In any event, the interim nature of this bill will require the next Congress to confront the fundamental issues that face the highway program.

The enrolled bill, while being the product of almost one year's debate on the fundamental issues confronting the highway program, cannot be characterized as landmark legislation. While it does include some important provisions in response to the Administration's proposals, it is primarily a measure which continues in operation the Department's important highway construction and highway safety programs for two years while the next Congress again addresses the critical issues that could not be resolved during this last year.

This is not to say that the programs being continued are inconsequential. They are vital programs which are at the heart of the Federal government's involvement in transportation. While we believe that many of these

programs can be improved by a major restructuring, this legislation will continue the programs while taking some intermediate steps in the right direction. Accordingly, the Department recommends approval of the enrolled bill.

With respect to the Administration's highway construction proposal, the Department recommended that the present operation of the Interstate program be revised to delineate Federal priorities with greater precision. Specifically, we recommended that Interstate routes be classified either as being essential for the completion of the System or important only from a regional perspective. Routes in the first category were to be given greater weight in the apportionment of funds and receive priority with respect to the use of funds.

The enrolled bill, while not adopting the recommended two-tiered Interstate proposal, requires that 30 percent of each States' Interstate apportionment be used for the construction of intercity routes. This clearly moves in the direction that we recommended insofar as it would place emphasis on routes considered important from a Federal perspective and would permit a more rational consideration of options for dealing with the future of the Interstate program.

The second major feature of the Administration's bill was the proposed consolidation of most of the existing categorical grant programs into three broadly defined block grant programs. The enrolled bill does consolidate a few programs, although the hearing record supported a much larger scale consolidation than the Congress agreed to. The most important consolidation in the bill is the provision of a single authorization for the primary system, the priority primary system, and urban extensions of primary routes.

Third, the Administration proposed responsible funding levels. These levels were sufficient to achieve the program's objectives while still being consistent with the President's goal of controlling Federal spending. One important method of achieving this goal was through the proposed elimination of advance availability of highway authorizations.

The enrolled bill, while higher in total funding than the Administration's proposal, does maintain Federal-aid highway authorizations at levels very close to those recommended by the Department. The other funds authorized in the bill are for other agency programs or Departmental programs not included in the Federal-aid highway account. Generally, these other activities require appropriations either because they are not funded through contract authority or because of the Congressional Budget Act provisions. In an important step, the enrolled bill does eliminate the advance availability of authorizations for all but the Interstate program.

The last major objective in the Department's construction bill was the modification of the Highway Trust Fund and the revision of user taxes. The Department recommended that only the Interstate System be financed from the Highway

Trust Fund and that all other activities be financed from general revenues. In line with this proposal, revenues generated by two cents of the gas tax would have been diverted to the general fund and one cent of the gas tax would have been repealed in any State that reimposed that tax.

In this area, the enrolled bill is silent. The Congress had intended to extend the Highway Trust Fund and present highway user taxes for two years and address the complex questions concerning the future of the Trust Fund next year. However, as a result of procedural errors that occurred during passage of the bill, the title which would have accomplished this purpose was not enacted and thus is not included in the enrolled bill. At this point we are still trying to determine whether there are any procedural remedies or whether Congress must on their return enact separate legislation extending the Trust Fund.

As the enrolled bill now stands, the early resolution of the Trust Fund extension issue will avoid any programmatic problems. However, if there is a delay in extending the Trust Fund, there may be some problems that arise with respect to the apportionment of $1.6 billion in transition quarter authorizations that become available on enactment. Therefore, we recommend that the approval of this bill take place at the latest possible moment to permit resolution of the Trust Fund extension problem prior to enactment of H.R. 8235.

Other significant features of title I of the enrolled bill are:

1. For the first time, funds are explicitly authorized for the rehabilitation of routes on the Interstate System. $175 million is authorized for this purpose in fiscal year 1978 and a like amount in fiscal year 1979. Further, the Secretary is required to report to the Congress, within one year, his recommendations with respect to a permanent Federal program to maintain the performance levels of the Interstate System.

2. The bill provides additional flexibility to State and local officials by amending the Interstate transfer provision to permit funds attributable to withdrawn Interstate routes to be used for highway or transit projects. It also permits routes between urbanized areas to be withdrawn, whereas existing law permits the withdrawal only of routes located in urbanized areas. Further, it modifies the procedures for determining the sum available for substitute projects as well as for reducing Interstate apportionments and forgives repayment of Federal funds previously expended on a withdrawn route if the sums were applied to a transportation purpose. Although these changes will increase the authority available for substitute projects, the Congressional Budget Act now requires appropriations to fund the projects.

3. The bill amends the certification acceptance provision in existing law which has limited the States' ability to make maximum use of authority delegated to them to certify compliance with a number of requirements in existing legislation with respect to non-Interstate projects. It would require only that the States have the ability to accomplish the policies and objectives contained in title 23 and administration regulations based on title 23. It would also reinstate an earlier provision of law known as the secondary road plan, permitting the Secretary to accept a certification by the State that all requirements have been met under standards and procedures for such projects as they have been approved by the Secretary.

4. The bill amends the provisions of title 23 concerning the control of outdoor advertising. The key provision would permit nonconforming signs to be retained in specific areas defined by a State if it is demonstrated that these signs provide directional information in the interest of the traveling public and that their removal would work substantial economic hardship throughout the defined area. Generally, the amendments in the enrolled bill affecting the billboard removal program will make it more difficult to remove nonconforming signs.

With respect to highway safety, the Department proposed several amendments to expand the limited discretion of the Department and the States in the conduct of the section 402 highway safety program. Congress rejected many of the amendments and generally reaffirmed its policy, established by the 1973 Highway Safety Act, of congressionally controlling the major policy aspects of the program.

The Department's highway safety amendments sought to reduce sources of procedural and substantive inflexibility in four areas: highway safety program standards; noncompliance sanctions; incentive programs; and funding. In the first area, the Department proposed restoration of its rulemaking authority so that it could expeditiously modernize the standards, most of which are unchanged since their issuance in the late 1960's, and provide the States more flexibility in implementing any particular standard. Instead, Congress required the Department to submit, by July 1, 1977, a study evaluating the standards and making recommendations regarding the need to change them. The Department opposed the study approach since the highway safety community is already generally agreed upon that the need and an effort to revise the standards is already underway.

In the same area, the Department also sought expanded authority to waive standards so that States could undertake alternative, high payoff measures. Congress responded by adding a sentence to section 402(c) that we interpret as providing essential open-ended waiver authority. However, while liberalizing the waiver authority, the Congress did preclude the Department from requiring the adoption or enforcement of motorcycle helmet use laws.

To improve the flexibility and equity of the sanction provisions, the Department proposed eliminating the flat sum aspect of the highway construction and highway safety fund sanctions so that the amount of a sanction could be set to reflect the gravity of the particular noncompliance. We also proposed a procedure for enabling noncomplying States to recover withheld safety funds. Congress adopted the two proposals regarding the highway safety fund sanction, but suspended our authority to invoke that sanction until the standards report is submitted to Congress. Further, Congress eliminated the highway construction fund sanction altogether. These amendments leave the Department without any significant control over the State programs until the study is submitted. Even thereafter, the Department will have only the relatively insubstantial highway safety fund sanction to induce compliance with the standards.

In view of the observed shortcomings of the fatality rate reduction incentive program, the Department proposed that it be given discretion to establish more appropriate criteria. Responding to our observation that the current criteria place large States at a disadvantage, Congress added a new incentive program based upon a State's reduction of its absolute number of fatalities. While this action will correct the "large State" problem, it does not aid in meeting our primary objective of increasing the incentive value of the programs.

The Department proposed single authorizations for the section 402 program. Under this approach, the States would have been able to make their programmatic judgments on strictly a safety payoff basis without concern about lapse of funds in particular programmatic elements. Our intent was to ensure a single, unified program in each State. Not only did Congress authorize separate authorizations, but it also called for an end to single column apportionment of the section 402 Federal funds. As a result, all States will have less flexibility in allocating such funds for the National Highway Traffic Safety Administration and Federal Highway Administration standards.

The funding levels adopted by Congress are approximately fifty percent higher than the Department's requests for the section 402 State and community program, but essentially the same for the incentive program and for research and development.

We are generally pleased with the highway construction amendments. They move the program in the right direction while setting the stage for the next Congress to confront these issues. We are, however, disappointed with the highway safety provisions and believe little progress was made toward our goals.

On balance, the bill is a responsible effort by the Congress in their attempt to address fundamental issues facing the program. We believe it provides us with a basis for gaining needed modifications in the program next year.

Thus, we recommend that the bill be approved.

Sincerely,

William T. Coleman, Jr.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 22 Time: 330pm

FOR ACTION: Judy Hope
Max Friedersdorf
George Humphreys
Robert Hartmann (signing statement and veto message attached)

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: April 23 Time: 500pm

SUBJECT:

H.R. 8235 - Highway Construction and Safety Amendments

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

It is possible that a new bill will come from the Hill on the 26th because of a problem with the enrolling process but if not the President will need to have the attached before him which bears a last day of the 26th.

I Concur with Interior

Scott A

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

4/22/76
4:55

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 9

Date: April 22 Time: 330pm

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Signing statement edited

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James M. Cannon
For the President

STATEMENT BY THE PRESIDENT

Today I have signed into law the Federal-Aid Highway Act of 1976. This legislation is the product of ~~almost a year long~~ a lengthy debate. On July 7, 1975, I submitted a proposed long-range bill recommending some fundamental changes in this program. The Act I am signing today is a two-year interim measure which permits the program to continue while setting the stage for the next Congress to again ~~confront~~ address the critical issues facing the program. However, the fact that this is only an interim measure in no way detracts from the spirit of cooperation that enabled all parties to arrive at an acceptable bill, a bill that permits a vital program to continue.

The proposal that I forwarded to Congress last July had four principal objectives.

-- First, it recommended the restructuring of the present system of financing highways. Under this plan, the Trust Fund would have been ~~reserved~~ used exclusively for the completion of the Interstate System, and all other Federal highway assistance would have come from the general fund, and one cent of the gas tax would have been returned to the States.

-- Second, more than thirty categorical grant programs would have been consolidated into three block grant programs.

-- Third, the Federal interest in the Interstate System would have been more precisely defined, by placing primary emphasis upon completion of critical intercity routes on the System.

-- Fourth, the Federal resources authorized for the highway program would have been held to responsible levels, consistent with the overriding need to control Federal spending while

The Congress addressed each of these issues in its deliberations on this bill and made progress in the direction I had recommended. The bill I am signing today consolidates a number of existing categorical grant programs into a broader, more flexible program, a step which should help State and local officials solve their transportation problems more effectively. This legislation also assigns priority to the completion of intercity routes, closing critical gaps in the Interstate System. Although this Congress did not address all of the fundamental issues of the highway program, the next Congress will need to deal comprehensively with them.

I am pleased to note that the Congress has taken some action to bring the operation of the highway program under better fiscal control. However, because the bill would still result in substantial outstanding authorizations being available during fiscal year 1977, I believe it is important for the Congress to take separate action to place an obligation ceiling on the Federal-Aid Highway Program at least through fiscal year 1977. Further, new activities authorized in this legislation will be carefully scrutinized before any requests for additions to the budget are sent to the Congress.

For more than 25 years, in national government, in both the legislative and executive branches, I have been a firm supporter of the highway program. I was a member of the Congress in 1956 when the landmark legislation establishing the Highway Trust Fund was enacted. It is a privilege today, 25 years later, for me as President to sign legislation permitting this important program to continue while we continue to seek solutions to the transportation problems of a nation entering its third century.

[redacted]

April 22 Time: 330pm

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Ken Lazarus
Steve McConahey

(signing statement and veto message attached)

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Agree with the recommendations of OMB. Ken Lazarus 4/26/76

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James M. Cannon
For the President

Insert *

THE WHITE HOUSE
WASHINGTON

Further, provisions in this law dealing with highway construction through our national parks and across public works projects must be carefully implemented to avoid establishing unwise precedents.

THE WHITE HOUSE
WASHINGTON

4/24/76

Judy: Please indicate on the attached where you want to change the signing statement, and how.
Judy 4/24

Attached is proposed language to be inserted at page 2, where indicated.

THE WHITE HOUSE

WASHINGTON

April 23, 1976

MEMORANDUM FOR: JUDY JOHNSTON

FROM: JUDITH RICHARDS ~~HOPE~~

SUBJECT: H.R. 8235 Highway Construction and Safety Amendments

1. I recommend approval.

2. If the bill must be signed on the 26th, which I doubt, then the OMB signing statement is OK by me with this modification: I would add a note representing the Department of Interior's view, using the tack that the OMB memorandum does at page 6 -- that is: the two provisions are undesirable but may be workable through appropriate consultation between DOT and DOI, etc.

3. If the time for signing begins to run again after the error is corrected by Congress on Monday, then I would urge a signing ceremony. DOT, Friedersdorf and Marrs concur so far. I have not pursued it vigorously until I know whether it is possible.

Please advise on Monday of the status, so that I can prepare a schedule proposal for such a ceremony, time permitting.

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THE WHITE HOUSE

WASHINGTON

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THE WHITE HOUSE

WASHINGTON

April 23, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF RKW

SUBJECT: H.R. 8235 - Highway Construction and Safety Amendments

The Office of Legislative Affairs concurs with the agencies that the SUBJECT BILL BE HELD UNTIL NEW BILL IS SENT FROM HILL.

Attachments

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