**The original documents are located in Box C22, folder "Presidential Handwriting, 5/27/1975 (3)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.**

THE PRESIDENT HAS S...

THE WHITE HOUSE

WASHINGTON

DECISION

May 27, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON JMC

SUBJECT: HIGHWAY LEGISLATION

I have inserted the recommendations of your advisors on the attached cover memorandum prepared by Jim Lynn.

THE WHITE HOUSE

WASHINGTON

ACTION

May 21, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: HIGHWAY LEGISLATION

Events of the past few months have raised substantial questions about the Administration's 1976 highway funding levels and longer term legislation. Decisions are needed concerning our 1976 funding strategy and unresolved issues in the highway legislation. The attached memo provides background on the current status of the highway program and a further discussion of each issue.

Issue #1: What should be the Administration's strategy to control the 1976 highway funding level?

- Congressional sources indicate that a 1976 deferral of highway funds, tied to the Administration's proposed \$5.2 billion program, would be quickly overturned. Justice, Transportation (DOT), and OMB legal staff believe the courts will order the release of any funds which we would propose to defer in 1976. This would result in a program of between \$7.5 and \$8.5 billion based on estimates of how quickly funds could be obligated.
- DOT/Domestic Council/OMB recommend that the Administration negotiate with key congressional committees a revised 1976 funding level (around \$6.7 billion) controlled by a legislative limitation on 1976 obligations and tied to specific congressional actions on highway legislation.

Decision

- Negotiate a revised, controlled 1976 funding level RF (Coleman, Lynn, Cannon, Seidman, Marsh, Buchen/Lazarus)
- Submit a deferral in 1976 with \$5.2 billion program_____

Highway Legislation

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978 as originally proposed in the 1976 Budget?

- In light of the $6.6 billion 1976 highway program, congressional anticipation of a $7+ billion program in 1976, and recent annual contract authorizations of $6.5 billion, Congress and interest groups have strongly indicated that the proposed $5.5 billion 1977 program is unacceptable.

- DOT has proposed, with OMB and Domestic Council concurrence, that the effective date of provisions permitting gas tax preemption by the States be shifted from 1978 into 1977 to increase the total 1977 program to an acceptable level, provide better visibility for the preemption provisions, and assist States with cash problems.

Decision

- Permit state preemption of 1¢ gas tax in 1977 HRF
  (Coleman, Lynn, Cannon, Seidman, Marsh, Buchen/Lazarus)

- Keep 1978 as initial state preemption date ________

Issue #3: What provisions should be provided for funding mass transit projects built in lieu of urban Interstate Highways?

- DOT with the concurrence of the Domestic Council has proposed separate funding independent of the Interstate Highway process for mass transit substitutions. DOT believes separate funding is necessary to encourage substitutions for low priority, urban highway projects because the large size and differing construction pace of transit projects require faster funding.

- OMB believes that mass transit projects can be staged to match the availability of funds from the Interstate apportionment process and that the $2-$3 billion increase in highway and mass transit funding proposed by DOT is not needed in light of recently expanded mass transit and highway program levels. Control of these additional funds would be extremely difficult.

Decision

- New funding, independent of Interstate process ________
  (Coleman)

- Fund mass transit within present Interstate process HRF
  (Lynn, Seidman, Marsh, Cannon)

Issue #4: Should DOT be legislatively required to delegate all project approval authority to the States in the non-interstate programs if environmental regulations are delegated?

- DOT wants to be able to delegate complete environmental responsibilities to a State and still retain approval authority in other areas which would provide maximum Federal discretion.

- CEQ believes that environmental responsibilities should be delegated only if all other decision making responsibilities are delegated. They feel the DOT proposal would lead to unnecessary litigation and confusion. OMB supports the CEQ proposal because it would encourage additional delegation to the States of non-interstate responsibilities. The Domestic Council concurs.

Decision

- Require delegation of all responsibilities____________
  (Lynn, Cannon, Seidman, Buchen/Lazarus, CEQ)

- Permit separate environmental delegation____GRF____
  (Coleman, Marsh)

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

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) J. T. Lynn

SUBJECT: Highway Legislation

Events of the past few months have raised substantial questions about the Administration's 1976 highway funding levels and longer term legislation. Decisions are needed concerning our 1976 funding strategy and unresolved issues in the highway legislation. The attached memo provides background on the current status of the highway program and a further discussion of each issue.

Issue #1: What should be the Administration's strategy to control the 1976 highway funding level?

. Congressional sources indicate that a 1976 deferral of highway funds, tied to the Administration's proposed $5.2 billion program, would be quickly overturned. Justice, Transportation (DOT), and OMB legal staff believe the courts will order the release of any funds which we would propose to defer in 1976. This would result in a program of between $7.5 and $8.5 billion based on estimates of how quickly funds could be obligated.

. DOT/Domestic Council/OMB recommend that the Administration negotiate with key congressional committees a revised 1976 funding level (around $6.7 billion) controlled by a legislative limitation on 1976 obligations and tied to specific congressional actions on highway legislation.

Decision

- Negotiate a revised, controlled 1976 funding level _______
- Submit a deferral in 1976 with $5.2 billion program _______

Highway Legislation

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978 as originally proposed in the 1976 Budget?

. In light of the $6.6 billion 1975 highway program, congressional anticipation of a $7+ billion program in 1976, and recent annual contract authorizations of $6.5 billion, Congress and interest groups have strongly indicated that the proposed $5.5 billion 1977 program is unacceptable.

- DOT has proposed, with OMB and Domestic Council concurrence, that the effective date of provisions permitting gas tax preemption by the States be shifted from 1978 into 1977 to increase the total 1977 program to an acceptable level, provide better visibility for the preemption provisions, and assist States with cash problems.

  Decision

  - Permit state preemption of 1¢ gas tax in 1977 ___________
  - Keep 1978 as initial state preemption date _____________

Issue #3: What provisions should be provided for funding mass transit projects built in lieu of urban Interstate Highways?

- DOT with the concurrence of the Domestic Council has proposed separate funding independent of the Interstate Highway process for mass transit substitutions. DOT believes separate funding is necessary to encourage substitutions for low priority, urban highway projects because the large size and differing construction pace of transit projects require faster funding.

- OMB believes that mass transit projects can be staged to match the availability of funds from the Interstate apportionment process and that the $2-$3 billion increase in highway and mass transit funding proposed by DOT is not needed in light of recently expanded mass transit and highway program levels. Control of these additional funds would be extremely difficult.

  Decision

  - New funding, independent of Interstate process __________
  - Fund mass transit within present Interstate process ______

Issue #4: Should DOT be legislatively required to delegate all project approval authority to the States in the non-interstate programs if environmental regulations are delegated?

- DOT wants to be able to delegate complete environmental responsibilities to a State and still retain approval authority in other areas which would provide maximum Federal discretion.

- CEQ believes that environmental responsibilities should be delegated only if all other decision making responsibilities are delegated. They feel the DOT proposal would lead to unnecessary litigation and confusion. OMB supports the CEQ proposal because it would encourage additional delegation to the States of non-interstate responsibilities. The Domestic Council concurs.

  Decision

  - Require delegation of all responsibilities _________
  - Permit separate environmental delegation ___________

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

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Highway Legislation

Several events having a significant impact on the highway program have occurred since you approved the basic concepts of the proposed new Federal-Aid Highway legislation in January.

- In February, you ordered the release of an additional $2 billion of Federal-Aid Highway funds to stimulate employment.
- In April, the Senate overturned the deferral of the remaining $9.1 billion of Federal-Aid Highway funds, forcing the release of these funds in 1975.
- In the past few months, we have lost several additional appellate cases on the highway deferral issue as well as a Supreme Court case on a related issue.

The Secretary of Transportation has completed his review of the proposed legislation and has submitted a bill for final clearance before submission to the Congress. Decisions need to be made on our strategy for funding 1976 and on the three remaining open issues in the proposed new legislation.

One of the major objectives of the proposed highway legislation is to achieve reasonable long-term funding levels that are consistent with our fiscal objectives and program priorities. The Administration's posture on 1976 funding will be a key ingredient in negotiations with the Congress on the longer term levels. Table 1 summarizes the Administration's originally proposed funding along with subsequent changes and future options.

Table 1

Federal-Aid Highway
Program Level
($ in billions)

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
|---|---|---|---|---|---|---|
| Federal-Aid Program (Jan Est.) | | | | | | |
| - Highway Assistance | 4.6 | 5.2 | 5.5 | 5.7 | 5.8 | 5.9 |
| - State Revenue Preemption | -- | -- | -- | 1.0 | 1.0 | 1.0 |
| Total | 4.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| Admin. Feb. Release | 2.0 | -- | -- | -- | -- | -- |
| Current Admin. Prop. | 6.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| 1976--Est. Negotiated Limitation (Issue #1) (DOT/Dom. Council/OMB) | | +1.5 | | | | |
| 1977 State Preemption Shift (Issue #2) (DOT/Dom. Council/OMB) | ___ | ___ | +1.0 | ___ | ___ | ___ |
| Est. Negotiated Outcome (DOT/Dom. Council/OMB) | 6.6 | 6.7 | 6.5 | 6.7 | 6.8 | 6.9 |
| Mass Transit Authorization (Issue #3) (DOT/Dom. Council) | | ← | | +$1.0-$3.0 | | → |
| Est. Unconstrained Congressional Program | 6.8 | 7.5 | 8.0 | 8.5 | 9.0 | 9.0 |

Impact of Changes on Deficit

| | 1976 | 1977 |
|---|---|---|
| Release of $2B in February | +1.0 | +0.4 |
| Negotiated limitation on obligation (Issue 1) | +0.2 | +0.5 |
| Congressional Program (in addition to above) | +0.2 | +0.3 |
| 1977 State Preemption Shift (Issue 2) | --- | +1.0 |
| Mass Transit Substitution (Issue 3) | --- | +0.1 |

Funding for 1976

Issue #1: What should be the Administration's strategy in attempting to control the 1976 program level?

Discussion: Congressional sources indicate that a proposed 1976 deferral, based on the Administration's $5.2 billion program, would probably be quickly overturned. Even if we chose to defer funds in 1976, Justice, Transportation (DOT), and OMB legal staff believe that the courts would probably order the release of all highway funds in 1976. Given the availability of over $9 billion in previously authorized highway funds and the small chance of sustaining a deferral before the courts or in the Congress, other mechanisms to control funding levels in 1976 and beyond must be explored.

This problem is further complicated by the availability of additional funding during 1976. Under current procedures an additional $6.5-7.0 billion of new funds will become available for obligation in 1976 (in addition to the $9 billion that will be available in July). Our proposed legislation seeks to shift the availability of these new funds into 1977.

Additionally there are difficulties with the distribution of these funds. Presently available authorizations are legislatively distributed among the States. Some "fast spending" States will exhaust their authorizations early in 1976 or the transition quarter if the Administration's proposal to shift availability dates is adopted. They will therefore be unable to obligate their normal share of a $5.2 billion or larger program. OMB and DOT staff are studying the feasibility of providing special authorizations for these States to enable them to make the transition from the old highway programs into the new program.

DOT and OMB are seeking your approval to attempt to negotiate with the key congressional committees a revised 1976 funding level which would be tied to a congressional limitation on annual obligations (in the DOT Appropriations Act) and agreements on key provisions of the proposed highway legislation.

Such an agreement would:

- Provide a mechanism to control obligations outside the deferral process, hopefully reducing the 1976 program by $0.5-1.0 billion below an unconstrained level.

- Undoubtedly require the Administration to agree to a program level of roughly $6.7 billion in 1976, about $1.5 billion in excess of the 1976 budget level (1976 outlays of about $0.2B) and provision of special authorizations in "problem" States.

- Assist the Administration in negotiating key provisions of the highway legislation by offering to compromise on 1976 funding in exchange for reasonable authorization levels.

Unless the Administration is prepared to negotiate on 1976 funding, it will be very difficult to enter into a meaningful dialogue with the Congress on highway issues. Given the overall collapse of our current deferral strategy we have little to lose from efforts to reach a funding compromise.

Decision

Attempt to negotiate an acceptable revised 1976 funding level (Supported by DOT, Domestic Council and OMB) /_/

Stick with current 1976 funding level ($5.2B) /_/

See me for further discussions /_/

Outline of Highway Legislation

The proposed legislation conforms closely with earlier policy decisions reached among DOT, the Domestic Council, and OMB with your concurrence (TAB A).

The legislation would reaffirm the Federal commitment to the completion of the Interstate Highway System by:

--Extending the Highway Trust Fund beyond the present 1977 expiration date for the exclusive use of Interstate Highway Program.

--Prioritizing completion of the Interstate System by focusing resources on segments necessary for intercity connectivity, the prime Federal interest.

--Modestly increasing authorizations in 1978-1980 ($150 million annually above current levels).

The proposal would substantially lessen the Federal involvement in the non-interstate highway system, which should be primarily a state and local responsibility, by:

--Consolidating the present maze of 30+ categorical grants into three broad programs to be used at state and local discretion for a wider range of transportation activities.

--Decreasing direct Federal assistance for non-interstate programs by about $1 billion from levels currently provided by the Congress, but permitting the States to preempt 1¢ of the present Federal gasoline tax ($1 billion annually) for unrestricted local use.

--Funding the non-interstate highway program from the general fund, thus forcing non-interstate highway programs to compete more directly for resources with other Federal programs, and concurrently shifting 2¢ ($2 billion annually) of Federal gasoline revenues into the General Fund.

Open Issues

Three issues remain to be resolved regarding the highway legislative proposal: Timing of state preemption of 1¢ of Federal gas tax revenues, funding for mass transit substitution, and delegation of project approval and environmental impact statement responsibilities to the States.

Timing of State Gas Tax Preemption

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978?

Discussion: The original highway proposal, announced in the Budget and State of the Union Messages, permitted state preemption of 1¢ of the Federal gas tax beginning in 1978.

Shifting the preemption to 1977 would:

--Provide total Federal highway funding to the States of $6.5 billion in 1977 ($5.5 billion from Federal-Aid programs and $1 billion from tax preemption), the minimum level the Congress will consider in light of recent annual authorizations of $6.5 billion, the 1975 program of $6.6 billion, and the anticipated 1976 program level of around $7.0 billion. (Table 1 shows long term funding proposals).

--Focus additional attention on the positive aspects of our preemption proposals which have been largely ignored by congressional and interest group critics of the Administration's proposal because of the distant "1978" implementation date.

--Give the States, which are hard pressed for cash, an additional $1 billion in cash in 1977, helping to relieve pressures to increase the Federal matching share of highway programs.

On the other hand, 1977 preemption authority would increase the cost of the Administration's proposal for fiscal year 1977 by about $1 billion. Other financing changes, agreed to by DOT/OMB have reduced the cost of the original proposal by $150 million annually in 1978-1980.

Decision

Permit state preemption of 1¢ gas tax in 1977 (Supported by DOT, Domestic Council and OMB) /_7

Keep 1978 as initial state preemption date /_7

## Funding for Mass Transit Substitution

Issue #3: What provisions should be provided in the legislation regarding the timing and source of funding for mass transit projects built in lieu of urban Interstate Highways?

Discussion: Under current procedures, funding for mass transit projects, substituted for urban Interstate Highway segments, is tied to the Interstate Highway apportionment formula. Each State receives an annual share of the total Interstate authorizations based on its share of the cost to complete the Interstate System (including the mass transit substitutions). These funds are then divided among Interstate Highway or Mass Transit Substitution projects at the discretion of the State.

DOT has proposed that upon substitution of a mass transit project for an Interstate Highway segment, separate funding be created in the Urban Mass Transportation Administration (UMTA) in addition to and independent of the Interstate Highway funding. Under this proposal, contract authorization would be available for the entire project at the time of the substitution, but Congress would be asked to establish a limitation on the rate of obligation of these funds similar to present congressional restrictions on UMTA obligations.

The DOT proposal would:

--Permit tailoring of funding availability to the requirements of individual mass transit projects, particularly important because DOT believes that the large size and differing construction schedules of such transit projects necessitate faster obligation of funds.

--Encourage mass transit substitution for low priority highway projects by providing earlier availability of funds.

--Eliminate the need for difficult annual state trade-offs between highway and mass transit for apportioned funds by providing separate transit funding.

--Eliminate the need to reduce the Interstate Highway Program when making a mass transit substitution by providing additional, separate transit funding.

On the other hand, the DOT separate funding proposal would:

--Increase transportation program levels by $2-$3 billion above the Administration's proposed highway and mass transit programs during the next five years.

--Provide special treatment for large mass transit projects, which OMB believes can be timed to reflect availability of funds, while forcing large urban highway projects to be staged to match the levels of Interstate apportionments.

DOT strongly endorses new funding provisions independent of the Interstate apportionment process because it will permit faster construction of transit projects, encourage transit substitutions, and partially alleviate pressure to increase mass transit program funding.

OMB opposes the independent funding because it does not believe the mass transit timing problem is so severe that it requires a $2-$3 billion expansion of transportation programs over the next five years.

Decisions

New funding, independent of Interstate apportionment process (Supported by DOT and Domestic Council) /_/

Fund mass transit substitutions within present Interstate process (Supported by OMB) /_/

Delegation of Project Approval and Environmantal Impact Statement Responsibilities to the States

Issue #4: Should DOT be legislatively required to delegate all project approval authority for non-interstate highway programs to the States if Environmental Impact Statement (EIS) responsibilities are delegated?

Discussion: A key thrust of the new highway legislation is the delegation of additional authority to the States for the non-interstate highway programs. DOT proposes that they be given the authority to delegate all project selection, design, and approval authority to the States. DOT

wishes to be able to delegate EIS responsibility for any project in which they have not substantially affected the approval of the project. CEQ has requested that provisions be included in the legislation permitting delegation of EIS responsibility only if all other decisions affecting approval of similar classes of projects have been delegated to the States.

DOT wants to retain the flexibility of exercising review authority over specific areas in the approval process of all or a portion of a State's projects and having the ultimate veto power over specific projects. As long as DOT does not substantially interfere with the project approval process, DOT believes that EIS delegation should be permitted. This would encourage maximum delegation of all responsibilities to the States while preserving the Federal option to intervene if all is not going well. It would also permit Federal highway funds to be used by DOT as a lever to achieve broader transportation objectives.

CEQ believes that whoever ultimately controls project approval should also exercise environmental responsibilities. If DOT retains review authority over portions of the approval process, CEQ feels that DOT ultimately controls the decision and should assume EIS responsibilities. They believe the DOT proposal would: lead to massive amounts of litigation over who actually retained project control for specific projects; create general public confusion about Federal environmental responsibilities; cause unnecessary, duplicative impact statements; and provide a bad precedent for inappropriate delegation in other areas.

OMB questions the wisdom of having the environmental delegation issue controlling all other Federal delegation. We are, however, sympathetic to CEQ concerns about excessive litigation and confusion with the DOT proposal. Overall we favor the CEQ approach because it would force new delegation to the States by tying together the EIS and other approvals. If we ultimately wish to transfer the non-interstate program to the States, this alternative is more attractive.

Decision

Permit delegation of environmental responsibilities without delegation of all other project approval responsibilities /_/
(Supported by DOT)

Legislatively require delegation of all project approval responsibilities to a State for particular classes of projects if environmental responsibilities are to be delegated /_/
(Supported by CEQ, Domestic Council and OMB)

Attachments

TAB A

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

INFORMATION

JAN 2 3 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: Roy L. Ash

FROM: Walter D. Scott /s/ Walter D. Scott

SUBJECT: New Aviation and Highway Legislation

Following discussions with you in early December concerning legislation for the extension and modification of the Federal aviation and highway programs, agreement has been reached on the major provisions of these proposals. DOT is currently drafting the necessary legislation. Key aspects of these proposals will be highlighted in your Budget Message. In addition, we recommend that the legislation be transmitted with a short, written Presidential Transportation Message within three weeks.

The aviation and highway proposals were developed with the objectives of:

--Increasing the efficiency and effectiveness of these programs by focusing Federal financing and oversight on national transportation system requirements while increasing state and local direction and flexibility.

--Dealing equitably with the complex trust fund/user charge policy issues in both programs by better matching dedicated revenues, beneficiaries, and program costs while proposing a straightforward solution to the deferred funds problem.

--Ensuring that the Administration is a full partner in Congressional deliberations by proposing programs with reasonable Congressional and interest group support.

The aviation legislation will provide contract authority to fund the Airport Grant Program at $350 million per year and to extend authorizations for the FAA Airway Facilities Program at $250 million per year through 1978. Under this proposal, most airport grant funding will be shifted from individual Federal project approval to a formula distribution system.

Federal aviation operating expenses will be funded from the aviation trust fund, and user fees will be adjusted by instituting general aviation landing fees (requested in the last Congress), decreasing the air carrier ticket tax on domestic passengers, and increasing the international departure tax. Unobligated grant funds of $0.2 billion will be allowed to lapse. Attachment A provides more detail on this proposal.

The highway legislation will provide $22.7 billion of contract authority for the Federal-aid highway program for 1977 through 1980, and extend the highway trust fund through 1980. Construction of the interstate system which will be financed from the trust fund, will be expedited by increasing funding levels and focusing efforts on completion of unfinished segments critical to national intercity connectivity. The non-interstate programs, to be financed from general funds, will be consolidated from over 30 restrictive categorical grants into three broad programs with provisions for "off-system" funding. Trust fund receipts will be reduced to the level of the proposed interstate system expenditures by shifting 2¢ of the gas tax into the general fund and permitting states to preempt 1¢ of all motor fuel taxes ($1.2 billion) in 1978. In addition, the $11 billion of deferred highway funds will be rescinded or exhausted by not requesting additional funds for 1976 and the transitional budget period. Attachment B provides more detail on this proposal.

Although these initiatives contain many provisions that will be supported by certain interest groups, the proposals for eliminating deferred funds and reducing the scope of the highway trust fund will face broad and substantial resistance. Authorizations for these programs have come from user financed trust funds, and in most cases are already apportioned to State and local bodies. We have reviewed many alternatives for reducing or eliminating unobligated balances, and have reluctantly concluded that there is no painless way of dealing with this problem. The straightforward approach recommended in these proposals essentially calls for "wiping the slate clean" for these programs. Likewise, it appears necessary to limit highway trust fund receipts and restrict its program to elements with high national interest if we are to get long term highway funding levels consistent with our fiscal objectives and other program priorities.

Overall, the proposals offer an opportunity to substantially increase local direction and management of these major grant programs while focusing the Federal involvement on projects of national interest. Most states, local bodies, and user groups will strongly support these efforts to eliminate unnecessary Federal involvement in and increase the efficiency and effectiveness of these grant programs.

Attachment A

## Aviation Legislation

...Key objectives of legislation are to:

--Reduce Federal involvement in local airport development and increase local flexibility in use of funds.

--Establish principle of user responsibility for financing a portion of airway system operating costs.

--Allocate user fees more equitably among aviation system users.

--Stop the growth in aviation trust fund "surplus" and eliminate unobligated airport program funds.

--Continue funding Federal airway capital development at present levels.

...Airport grant provisions would authorize a three-year program which would:

--Provide for direct formula grants to air carrier airports ($50 per air carrier departure with a $25,000 annual minimum per airport) to replace present project approval program. ($260M).

--Expand projects eligible for funding to include development of passenger and baggage handling facilities (but not terminals per se) and eliminate local matching requirements.

--Establish a $50M annual discretionary capital assistance and planning grant program to meet special requirements of national priority at air carrier and general aviation reliever airports, not adequately provided for through formula funding.

--Allocate general aviation grants on a formula basis to the states with gradual shift of program management and funding responsibilities to the states. In 1978, the last year of this transition, states would fund the program from preempted Federal aviation gas tax revenues.

--Allow $194M in unobligated airport grant funds to lapse on June 30, 1975.

--Overall increase the annual new obligational authority for the airport grant program from the present $325M to $350M while reducing the Federal involvement (and Federal grant administrative staff).

...Aviation fee structure would be modified to more equitably match fees with the burden different users place on the system by:

--Reducing the domestic passenger ticket tax from 8% to 7% ($110M annual reduction).

--Raising the international enplanement fee from $3 to $5 ($30M annual increase).

--Instituting new general aviation landing fees of $5 and $10 at airports with FAA traffic control towers as proposed in the Budget Restraint Message ($80M annual increase).

...Airway facility authorizations for Federally owned and operated traffic control and navigation equipment would be continued for three years at the present $250M annual level.

...Trust funding will be extended to include the $430M annual maintenance costs for airway facilities, currently funded from the general fund.

...Aviation interest group reaction to the proposals will be mixed, but probably generally positive.

--Airport operators (includes many cities) will strongly support the direct formula grants. They will push for a larger overall program.

--Air carriers will support the domestic passenger tax reduction and most of the formula grant changes. They will push for a larger tax decrease.

--General aviation interests will support the general aviation airport proposals, but will strongly oppose landing fees.

--State aviation officials will support most of the airport grant proposals.

--All groups will oppose lapsing of airport grant funds and the opening of the trust fund for operating expenditures.

...Congressional reaction will probably also be mixed.

--House Public Works and Transportation Committee will be handling aviation legislation for first time. Anticipate positive reaction to formula grant proposals.

--Senate Commerce Committee will probably resist additional delegation to the states and trust fund changes.

--Ways and Means reaction on revenue proposal is uncertain. Will be substantial air carrier pressure to move legislation.

## Highway Legislation

...Key objectives of the legislation are to:

--Increase the efficiency and effectiveness of highway assistance programs by providing additional state flexibility for non-interstate highway system while focusing Federal efforts on the critical national aspects of the Interstate system.

--Strike a long term balance between user receipts and trust funded programs at a level consistent with Administration's long term funding priorities.

--Provide a proposal for dealing with the immediate problem of the $11 billion Federal-aid deferral in a manner consistent with the Administration's fiscal objectives.

...Federal-aid highway Interstate assistance, financed from the trust fund, would increase significantly through 1980 while Non-Interstate assistance, financed from the general fund, would be held at the 1976 level.

| | Program Level (Billions of Dollars) | | | | | |
|---|---|---|---|---|---|---|
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
| TOTAL | 4.6 | 5.2 | 5.4 | 5.6 | 5.8 | 5.9 |
| Interstate (Trust Fund) | (2.5) | (3.0) | (3.2) | (3.4) | (3.6) | (3.7) |
| Non-Interstate (General Fund) | (2.1) | (2.2) | (2.2) | (2.2) | (2.2) | (2.2) |

...State preemption of 1¢ per gallon of the Federal motor fuel tax would be permitted in 1978. The potential annual $1.2 billion in added state revenues would provide a substantial infusion of funds for local highway construction and maintenance problems.

...Interstate funds would be focused on unfinished segments necessary to national intercity connectivity by apportioning some of the interstate funds on the basis of unfinished critical links.

...Four broad program areas (Interstate, Rural and small urban, Urbanized, and Safety) would replace the present maze of categorical grants. Funding would be permitted from these program areas for roads not on the Interstate, Primary or Secondary Systems.

...Trust fund receipts would be reduced by the shift of 2¢ per gallon of gas tax receipts into the general fund and the local 1¢ per gallon preemption of motor fuel taxes. Receipts would equal the proposed Interstate System program level so that trust fund receipts and expenditures would be balanced.

...Deferred funds would be eliminated by rescinding the $3.2 billion "advanced" year Interstate allocation, requesting no additional Federal-aid authorizations for 1976 and the transitional period, and rescinding all unobligated balances as of September 30, 1976.

...Interest groups will generally support the revised program structure and the increases for the Interstate System.

...States should strongly support provisions providing for state motor fuel tax preemption as this will substantially increase revenues and local flexibility.

...Highway interest groups will strongly oppose rescission and trust fund modification.

...Congressional Committees will undoubtedly strongly oppose many of these provisions, particularly the rescission proposals. Substantial negotiations to reach a viable solution to the deferral and long term trust funding problems should be anticipated.

THE WHITE HOUSE

WASHINGTON

May 28, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM LYNN

FROM: JERRY H. JONES

SUBJECT: Highway Legislation

Your memorandum to the President of May 21 on the above subject has been reviewed and the following was approved:

Issue #1 -- Negotiate a revised, controlled 1976 funding level.

Issue #2 -- Permit state preemption of 1¢ gas tax in 1977.

Issue #3 -- Fund mass transit within present Interstate process.

Issue #4 -- Permit separate environmental delegation.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld
Jim Cannon
Phil Buchen
Jack Marsh
Bill Seidman

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 21, 1975 Time:

FOR ACTION: Phil Buchen
Jim Cannon
Jack Marsh
Robert T. Hartmann
Max Friedersdorf
Bill Seidman

cc (for information):

FROM THE STAFF SECRETARY

---

DUE: Date: Friday, May 23, 1975 Time: noon

---

SUBJECT:

Lynn memo (5/21/75) re: Highway Legislation

ACTION REQUESTED:

___ For Necessary Action

X For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

X For Your Comments

___ Draft Remarks

REMARKS: SP

5/23 - Hartmann - hasn't been able to see it
Marsh wCB
Buchen wCB

5/26 - OMB pulled back to make slight revision

**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.

Jerry H. Jones
Staff Secretary

[redacted]

THE WHITE HOUSE

WASHINGTON

DATE: 5/22

TO: Bill Kendall/~~Vern Loen~~

FROM: Max L. Friedersdorf

Comments Please

no comment

VL

M

THE WHITE HOUSE

WASHINGTON

Staff to:

Buchen

Cannon

Marsh

Friedersdorf

Seidman

Hartmann

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 21, 1975 Time:

FOR ACTION: Phil Buchen
Jim Cannon
Jack Marsh
Robert T. Hartmann
Max Friedersdorf
Bill Seidman

cc (for information):

FROM THE STAFF SECRETARY

---

DUE: Date: Friday, May 23, 1975 Time: noon

---

SUBJECT:

Lynn memo (5/21/75) re: Highway Legislation

ACTION REQUESTED:

____ For Necessary Action

X For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

X For Your Comments

____ Draft Remarks

REMARKS:

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.

Jerry H. Jones
Staff Secretary

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Highway Legislation

Events of the past few months have raised substantial questions about the Administration's 1976 highway funding levels and longer term legislation. Decisions are needed concerning our 1976 funding strategy and unresolved issues in the highway legislation. The attached memo provides background on the current status of the highway program and a further discussion of each issue.

Issue #1: What should be the Administration's strategy to control the 1976 highway funding level?

- Congressional sources indicate that a 1976 deferral of highway funds, tied to the Administration's proposed $5.2 billion program, would be quickly overturned. Justice, Transportation (DOT), and OMB legal staff believe the courts will order the release of any funds which we would propose to defer in 1976. This would result in a program of between $7.5 and $8.5 billion based on estimates of how quickly funds could be obligated.

- DOT/Domestic Council/OMB recommend that the Administration negotiate with key congressional committees a revised 1976 funding level (around $6.7 billion) controlled by a legislative limitation on 1976 obligations and tied to specific congressional actions on highway legislation.

Decision

- Negotiate a revised, controlled 1976 funding level ________
- Submit a deferral in 1976 with $5.2 billion program ________

Highway Legislation

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978 as originally proposed in the 1976 Budget?

- In light of the $6.6 billion 1975 highway program, congressional anticipation of a $7+ billion program in 1976, and recent annual contract authorizations of $6.5 billion, Congress and interest groups have strongly indicated that the proposed $5.5 billion 1977 program is unacceptable.

. DOT has proposed, with OMB and Domestic Council concurrence, that the effective date of provisions permitting gas tax preemption by the States be shifted from 1978 into 1977 to increase the total 1977 program to an acceptable level, provide better visibility for the preemption provisions, and assist States with cash problems.

Decision

- Permit state preemption of 1¢ gas tax in 1977 ___________
- Keep 1978 as initial state preemption date ______________

Issue #3: What provisions should be provided for funding mass transit projects built in lieu of urban Interstate Highways?

. DOT with the concurrence of the Domestic Council has proposed separate funding independent of the Interstate Highway process for mass transit substitutions. DOT believes separate funding is necessary to encourage substitutions for low priority, urban highway projects because the large size and differing construction pace of transit projects require faster funding.

. OMB believes that mass transit projects can be staged to match the availability of funds from the Interstate apportionment process and that the $2-$3 billion increase in highway and mass transit funding proposed by DOT is not needed in light of recently expanded mass transit and highway program levels. Control of these additional funds would be extremely difficult.

Decision

- New funding, independent of Interstate process __________
- Fund mass transit within present Interstate process ______

Issue #4: Should DOT be legislatively required to delegate all project approval authority to the States in the non-interstate programs if environmental regulations are delegated?

. DOT wants to be able to delegate complete environmental responsibilities to a State and still retain approval authority in other areas which would provide maximum Federal discretion.

. CEQ believes that environmental responsibilities should be delegated only if all other decision making responsibilities are delegated. They feel the DOT proposal would lead to unnecessary litigation and confusion. OMB supports the CEQ proposal because it would encourage additional delegation to the States of non-interstate responsibilities. The Domestic Council concurs.

Decision

- Require delegation of all responsibilities _________
- Permit separate environmental delegation ___________

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Highway Legislation

Several events having a significant impact on the highway program have occurred since you approved the basic concepts of the proposed new Federal-Aid Highway legislation in January.

- In February, you ordered the release of an additional $2 billion of Federal-Aid Highway funds to stimulate employment.

- In April, the Senate overturned the deferral of the remaining $9.1 billion of Federal-Aid Highway funds, forcing the release of these funds in 1975.

- In the past few months, we have lost several additional appellate cases on the highway deferral issue as well as a Supreme Court case on a related issue.

The Secretary of Transportation has completed his review of the proposed legislation and has submitted a bill for final clearance before submission to the Congress. Decisions need to be made on our strategy for funding 1976 and on the three remaining open issues in the proposed new legislation.

One of the major objectives of the proposed highway legislation is to achieve reasonable long-term funding levels that are consistent with our fiscal objectives and program priorities. The Administration's posture on 1976 funding will be a key ingredient in negotiations with the Congress on the longer term levels. Table 1 summarizes the Administration's originally proposed funding along with subsequent changes and future options.

Federal-Aid Highway
Program Level
($ in billions)

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
|---|---|---|---|---|---|---|
| Federal-Aid Program (Jan Est.) | | | | | | |
| - Highway Assistance | 4.6 | 5.2 | 5.5 | 5.7 | 5.8 | 5.9 |
| - State Revenue Preemption | -- | -- | -- | 1.0 | 1.0 | 1.0 |
| Total | 4.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| Admin. Feb. Release | 2.0 | -- | -- | -- | -- | -- |
| Current Admin. Prop. | 6.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| 1976--Est. Negotiated Limitation (Issue #1) (DOT/Dom. Council/OMB) | | +1.5 | | | | |
| 1977 State Preemption Shift (Issue #2) (DOT/Dom. Council/OMB) | ___ | ___ | +1.0 | ___ | ___ | ___ |
| Est. Negotiated Outcome (DOT/Dom. Council/OMB) | 6.6 | 6.7 | 6.5 | 6.7 | 6.8 | 6.9 |
| Mass Transit Authorization (Issue #3) (DOT/Dom. Council) | | ← | +$1.0-$3.0 | | | → |
| Est. Unconstrained Congressional Program | 6.8 | 7.5 | 8.0 | 8.5 | 9.0 | 9.0 |

Impact of Changes on Deficit

| | 1976 | 1977 |
|---|---|---|
| Release of $2B in February | +1.0 | +0.4 |
| Negotiated limitation on obligation (Issue 1) | +0.2 | +0.5 |
| Congressional Program (in addition to above) | +0.2 | +0.3 |
| 1977 State Preemption Shift (Issue 2) | --- | +1.0 |
| Mass Transit Substitution (Issue 3) | --- | +0.1 |

Funding for 1976

Issue #1: What should be the Administration's strategy in attempting to control the 1976 program level?

Discussion: Congressional sources indicate that a proposed 1976 deferral, based on the Administration's $5.2 billion program, would probably be quickly overturned. Even if we chose to defer funds in 1976, Justice, Transportation (DOT), and OMB legal staff believe that the courts would probably order the release of all highway funds in 1976. Given the availability of over $9 billion in previously authorized highway funds and the small chance of sustaining a deferral before the courts or in the Congress, other mechanisms to control funding levels in 1976 and beyond must be explored.

This problem is further complicated by the availability of additional funding during 1976. Under current procedures an additional $6.5-7.0 billion of new funds will become available for obligation in 1976 (in addition to the $9 billion that will be available in July). Our proposed legislation seeks to shift the availability of these new funds into 1977.

Additionally there are difficulties with the distribution of these funds. Presently available authorizations are legislatively distributed among the States. Some "fast spending" States will exhaust their authorizations early in 1976 or the transition quarter if the Administration's proposal to shift availability dates is adopted. They will therefore be unable to obligate their normal share of a $5.2 billion or larger program. OMB and DOT staff are studying the feasibility of providing special authorizations for these States to enable them to make the transition from the old highway programs into the new program.

DOT and OMB are seeking your approval to attempt to negotiate with the key congressional committees a revised 1976 funding level which would be tied to a congressional limitation on annual obligations (in the DOT Appropriations Act) and agreements on key provisions of the proposed highway legislation.

Such an agreement would:

- Provide a mechanism to control obligations outside the deferral process, hopefully reducing the 1976 program by $0.5-1.0 billion below an unconstrained level.

- Undoubtedly require the Administration to agree to a program level of roughly $6.7 billion in 1976, about $1.5 billion in excess of the 1976 budget level (1976 outlays of about $0.2B) and provision of special authorizations in "problem" States.

- Assist the Administration in negotiating key provisions of the highway legislation by offering to compromise on 1976 funding in exchange for reasonable authorization levels.

Unless the Administration is prepared to negotiate on 1976 funding, it will be very difficult to enter into a meaningful dialogue with the Congress on highway issues. Given the overall collapse of our current deferral strategy we have little to lose from efforts to reach a funding compromise.

Decision

Attempt to negotiate an acceptable revised 1976 funding level (Supported by DOT, Domestic Council and OMB) /_/

Stick with current 1976 funding level ($5.2B) /_/

See me for further discussions /_/

## Outline of Highway Legislation

The proposed legislation conforms closely with earlier policy decisions reached among DOT, the Domestic Council, and OMB with your concurrence (TAB A).

The legislation would reaffirm the Federal commitment to the completion of the Interstate Highway System by:

--Extending the Highway Trust Fund beyond the present 1977 expiration date for the exclusive use of Interstate Highway Program.

--Prioritizing completion of the Interstate System by focusing resources on segments necessary for intercity connectivity, the prime Federal interest.

--Modestly increasing authorizations in 1978-1980 ($150 million annually above current levels).

The proposal would substantially lessen the Federal involvement in the non-interstate highway system, which should be primarily a state and local responsibility, by:

--Consolidating the present maze of 30+ categorical grants into three broad programs to be used at state and local discretion for a wider range of transportation activities.

--Decreasing direct Federal assistance for non-interstate programs by about $1 billion from levels currently provided by the Congress, but permitting the States to preempt 1¢ of the present Federal gasoline tax ($1 billion annually) for unrestricted local use.

--Funding the non-interstate highway program from the general fund, thus forcing non-interstate highway programs to compete more directly for resources with other Federal programs, and concurrently shifting 2¢ ($2 billion annually) of Federal gasoline revenues into the General Fund.

Open Issues

Three issues remain to be resolved regarding the highway legislative proposal: Timing of state preemption of 1¢ of Federal gas tax revenues, funding for mass transit substitution, and delegation of project approval and environmental impact statement responsibilities to the States.

## Timing of State Gas Tax Preemption

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978?

Discussion: The original highway proposal, announced in the Budget and State of the Union Messages, permitted state preemption of 1¢ of the Federal gas tax beginning in 1978.

Shifting the preemption to 1977 would:

--Provide total Federal highway funding to the States of $6.5 billion in 1977 ($5.5 billion from Federal-Aid programs and $1 billion from tax preemption), the minimum level the Congress will consider in light of recent annual authorizations of $6.5 billion, the 1975 program of $6.6 billion, and the anticipated 1976 program level of around $7.0 billion. (Table 1 shows long term funding proposals).

--Focus additional attention on the positive aspects of our preemption proposals which have been largely ignored by congressional and interest group critics of the Administration's proposal because of the distant "1978" implementation date.

--Give the States, which are hard pressed for cash, an additional $1 billion in cash in 1977, helping to relieve pressures to increase the Federal matching share of highway programs.

On the other hand, 1977 preemption authority would increase the cost of the Administration's proposal for fiscal year 1977 by about $1 billion. Other financing changes, agreed to by DOT/OMB have reduced the cost of the original proposal by $150 million annually in 1978-1980.

Decision

Permit state preemption of 1¢ gas tax in 1977 (Supported by DOT, Domestic Council and OMB) ☐

Keep 1978 as initial state preemption date ☐

Funding for Mass Transit Substitution

Issue #3: What provisions should be provided in the legislation regarding the timing and source of funding for mass transit projects built in lieu of urban Interstate Highways?

Discussion: Under current procedures, funding for mass transit projects, substituted for urban Interstate Highway segments, is tied to the Interstate Highway apportionment formula. Each State receives an annual share of the total Interstate authorizations based on its share of the cost to complete the Interstate System (including the mass transit substitutions). These funds are then divided among Interstate Highway or Mass Transit Substitution projects at the discretion of the State.

DOT has proposed that upon substitution of a mass transit project for an Interstate Highway segment, separate funding be created in the Urban Mass Transportation Administration (UMTA) in addition to and independent of the Interstate Highway funding. Under this proposal, contract authorization would be available for the entire project at the time of the substitution, but Congress would be asked to establish a limitation on the rate of obligation of these funds similar to present congressional restrictions on UMTA obligations.

The DOT proposal would:

--Permit tailoring of funding availability to the requirements of individual mass transit projects, particularly important because DOT believes that the large size and differing construction schedules of such transit projects necessitate faster obligation of funds.

--Encourage mass transit substitution for low priority highway projects by providing earlier availability of funds.

--Eliminate the need for difficult annual state trade-offs between highway and mass transit for apportioned funds by providing separate transit funding.

--Eliminate the need to reduce the Interstate Highway Program when making a mass transit substitution by providing additional, separate transit funding.

On the other hand, the DOT separate funding proposal would:

--Increase transportation program levels by $2-$3 billion above the Administration's proposed highway and mass transit programs during the next five years.

--Provide special treatment for large mass transit projects, which OMB believes can be timed to reflect availability of funds, while forcing large urban highway projects to be staged to match the levels of Interstate apportionments.

DOT strongly endorses new funding provisions independent of the Interstate apportionment process because it will permit faster construction of transit projects, encourage transit substitutions, and partially alleviate pressure to increase mass transit program funding.

OMB opposes the independent funding because it does not believe the mass transit timing problem is so severe that it requires a $2-$3 billion expansion of transportation programs over the next five years.

Decisions

New funding, independent of Interstate apportionment process (Supported by DOT and Domestic Council) /_/

Fund mass transit substitutions within present Interstate process (Supported by OMB) /_/

Delegation of Project Approval and Environmantal Impact Statement Responsibilities to the States

Issue #4: Should DOT be legislatively required to delegate all project approval authority for non-interstate highway programs to the States if Environmental Impact Statement (EIS) responsibilities are delegated?

Discussion: A key thrust of the new highway legislation is the delegation of additional authority to the States for the non-interstate highway programs. DOT proposes that they be given the authority to delegate all project selection, design, and approval authority to the States. DOT

wishes to be able to delegate EIS responsibility for any project in which they have not substantially affected the approval of the project. CEQ has requested that provisions be included in the legislation permitting delegation of EIS responsibility only if all other decisions affecting approval of similar classes of projects have been delegated to the States.

DOT wants to retain the flexibility of exercising review authority over specific areas in the approval process of all or a portion of a State's projects and having the ultimate veto power over specific projects. As long as DOT does not substantially interfere with the project approval process, DOT believes that EIS delegation should be permitted. This would encourage maximum delegation of all responsibilities to the States while preserving the Federal option to intervene if all is not going well. It would also permit Federal highway funds to be used by DOT as a lever to achieve broader transportation objectives.

CEQ believes that whoever ultimately controls project approval should also exercise environmental responsibilities. If DOT retains review authority over portions of the approval process, CEQ feels that DOT ultimately controls the decision and should assume EIS responsibilities. They believe the DOT proposal would: lead to massive amounts of litigation over who actually retained project control for specific projects; create general public confusion about Federal environmental responsibilities; cause unnecessary, duplicative impact statements; and provide a bad precedent for inappropriate delegation in other areas.

OMB questions the wisdom of having the environmental delegation issue controlling all other Federal delegation. We are, however, sympathetic to CEQ concerns about excessive litigation and confusion with the DOT proposal. Overall we favor the CEQ approach because it would force new delegation to the States by tying together the EIS and other approvals. If we ultimately wish to transfer the non-interstate program to the States, this alternative is more attractive.

Decision

Permit delegation of environmental responsibilities without delegation of all other project approval responsibilities ☐
(Supported by DOT)

Legislatively require delegation of all project approval responsibilities to a State for particular classes of projects if environmental responsibilities are to be delegated ☐
(Supported by CEQ, Domestic Council and OMB)

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

INFORMATION

JAN 2 3 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: Roy L. Ash

FROM: Walter D. Scott /s/ Walter D. Scott

SUBJECT: New Aviation and Highway Legislation

Following discussions with you in early December concerning legislation for the extension and modification of the Federal aviation and highway programs, agreement has been reached on the major provisions of these proposals. DOT is currently drafting the necessary legislation. Key aspects of these proposals will be highlighted in your Budget Message. In addition, we recommend that the legislation be transmitted with a short, written Presidential Transportation Message within three weeks.

The aviation and highway proposals were developed with the objectives of:

--Increasing the efficiency and effectiveness of these programs by focusing Federal financing and oversight on national transportation system requirements while increasing state and local direction and flexibility.

--Dealing equitably with the complex trust fund/user charge policy issues in both programs by better matching dedicated revenues, beneficiaries, and program costs while proposing a straightforward solution to the deferred funds problem.

--Ensuring that the Administration is a full partner in Congressional deliberations by proposing programs with reasonable Congressional and interest group support.

The aviation legislation will provide contract authority to fund the Airport Grant Program at $350 million per year and to extend authorizations for the FAA Airway Facilities Program at $250 million per year through 1978. Under this proposal, most airport grant funding will be shifted from individual Federal project approval to a formula distribution system.

Federal aviation operating expenses will be funded from the aviation trust fund, and user fees will be adjusted by instituting general aviation landing fees (requested in the last Congress), decreasing the air carrier ticket tax on domestic passengers, and increasing the international departure tax. Unobligated grant funds of $0.2 billion will be allowed to lapse. Attachment A provides more detail on this proposal.

The highway legislation will provide $22.7 billion of contract authority for the Federal-aid highway program for 1977 through 1980, and extend the highway trust fund through 1980. Construction of the interstate system which will be financed from the trust fund, will be expedited by increasing funding levels and focusing efforts on completion of unfinished segments critical to national intercity connectivity. The non-interstate programs, to be financed from general funds, will be consolidated from over 30 restrictive categorical grants into three broad programs with provisions for "off-system" funding. Trust fund receipts will be reduced to the level of the proposed interstate system expenditures by shifting 2¢ of the gas tax into the general fund and permitting states to preempt 1¢ of all motor fuel taxes ($1.2 billion) in 1978. In addition, the $11 billion of deferred highway funds will be rescinded or exhausted by not requesting additional funds for 1976 and the transitional budget period. Attachment B provides more detail on this proposal.

Although these initiatives contain many provisions that will be supported by certain interest groups, the proposals for eliminating deferred funds and reducing the scope of the highway trust fund will face broad and substantial resistance. Authorizations for these programs have come from user financed trust funds, and in most cases are already apportioned to State and local bodies. We have reviewed many alternatives for reducing or eliminating unobligated balances, and have reluctantly concluded that there is no painless way of dealing with this problem. The straightforward approach recommended in these proposals essentially calls for "wiping the slate clean" for these programs. Likewise, it appears necessary to limit highway trust fund receipts and restrict its program to elements with high national interest if we are to get long term highway funding levels consistent with our fiscal objectives and other program priorities.

Overall, the proposals offer an opportunity to substantially increase local direction and management of these major grant programs while focusing the Federal involvement on projects of national interest. Most states, local bodies, and user groups will strongly support these efforts to eliminate unnecessary Federal involvement in and increase the efficiency and effectiveness of these grant programs.

## Aviation Legislation

...Key objectives of legislation are to:

--Reduce Federal involvement in local airport development and increase local flexibility in use of funds.

--Establish principle of user responsibility for financing a portion of airway system operating costs.

--Allocate user fees more equitably among aviation system users.

--Stop the growth in aviation trust fund "surplus" and eliminate unobligated airport program funds.

--Continue funding Federal airway capital development at present levels.

...Airport grant provisions would authorize a three-year program which would:

--Provide for direct formula grants to air carrier airports ($50 per air carrier departure with a $25,000 annual minimum per airport) to replace present project approval program. ($260M).

--Expand projects eligible for funding to include development of passenger and baggage handling facilities (but not terminals per se) and eliminate local matching requirements.

--Establish a $50M annual discretionary capital assistance and planning grant program to meet special requirements of national priority at air carrier and general aviation reliever airports, not adequately provided for through formula funding.

--Allocate general aviation grants on a formula basis to the states with gradual shift of program management and funding responsibilities to the states. In 1978, the last year of this transition, states would fund the program from preempted Federal aviation gas tax revenues.

--Allow $194M in unobligated airport grant funds to lapse on June 30, 1975.

--Overall increase the annual new obligational authority for the airport grant program from the present $325M to $350M while reducing the Federal involvement (and Federal grant administrative staff).

...Aviation fee structure would be modified to more equitably match fees with the burden different users place on the system by:

--Reducing the domestic passenger ticket tax from 8% to 7% ($110M annual reduction).

--Raising the international enplanement fee from $3 to $5 ($30M annual increase).

--Instituting new general aviation landing fees of $5 and $10 at airports with FAA traffic control towers as proposed in the Budget Restraint Message. ($80M annual increase).

...Airway facility authorizations for Federally owned and operated traffic control and navigation equipment would be continued for three years at the present $250M annual level.

...Trust funding will be extended to include the $430M annual maintenance costs for airway facilities, currently funded from the general fund.

...Aviation interest group reaction to the proposals will be mixed, but probably generally positive.

--Airport operators (includes many cities) will strongly support the direct formula grants. They will push for a larger overall program.

--Air carriers will support the domestic passenger tax reduction and most of the formula grant changes. They will push for a larger tax decrease.

--General aviation interests will support the general aviation airport proposals, but will strongly oppose landing fees.

--State aviation officials will support most of the airport grant proposals.

--All groups will oppose lapsing of airport grant funds and the opening of the trust fund for operating expenditures.

...Congressional reaction will probably also be mixed.

--House Public Works and Transportation Committee will be handling aviation legislation for first time. Anticipate positive reaction to formula grant proposals.

--Senate Commerce Committee will probably resist additional delegation to the states and trust fund changes.

--Ways and Means reaction on revenue proposal is uncertain. Will be substantial air carrier pressure to move legislation.

## Highway Legislation

...Key objectives of the legislation are to:

--Increase the efficiency and effectiveness of highway assistance programs by providing additional state flexibility for non-interstate highway system while focusing Federal efforts on the critical national aspects of the Interstate system.

--Strike a long term balance between user receipts and trust funded programs at a level consistent with Administration's long term funding priorities.

--Provide a proposal for dealing with the immediate problem of the $11 billion Federal-aid deferral in a manner consistent with the Administration's fiscal objectives.

...Federal-aid highway Interstate assistance, financed from the trust fund, would increase significantly through 1980 while Non-Interstate assistance, financed from the general fund, would be held at the 1976 level.

| | Program Level (Billions of Dollars) | | | | | |
|---|---|---|---|---|---|---|
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
| TOTAL | 4.6 | 5.2 | 5.4 | 5.6 | 5.8 | 5.9 |
| Interstate (Trust Fund) | (2.5) | (3.0) | (3.2) | (3.4) | (3.6) | (3.7) |
| Non-Interstate (General Fund) | (2.1) | (2.2) | (2.2) | (2.2) | (2.2) | (2.2) |

...State preemption of 1¢ per gallon of the Federal motor fuel tax would be permitted in 1978. The potential annual $1.2 billion in added state revenues would provide a substantial infusion of funds for local highway construction and maintenance problems.

...Interstate funds would be focused on unfinished segments necessary to national intercity connectivity by apportioning some of the interstate funds on the basis of unfinished critical links.

...Four broad program areas (Interstate, Rural and small urban, Urbanized, and Safety) would replace the present maze of categorical grants. Funding would be permitted from these program areas for roads not on the Interstate, Primary or Secondary Systems.

...Trust fund receipts would be reduced by the shift of 2¢ per gallon of gas tax receipts into the general fund and the local 1¢ per gallon preemption of motor fuel taxes. Receipts would equal the proposed Interstate System program level so that trust fund receipts and expenditures would be balanced.

...Deferred funds would be eliminated by rescinding the $3.2 billion "advanced" year Interstate allocation, requesting no additional Federal-aid authorizations for 1976 and the transitional period, and rescinding all unobligated balances as of September 30, 1976.

...Interest groups will generally support the revised program structure and the increases for the Interstate System.

...States should strongly support provisions providing for state motor fuel tax preemption as this will substantially increase revenues and local flexibility.

...Highway interest groups will strongly oppose rescission and trust fund modification.

...Congressional Committees will undoubtedly strongly oppose many of these provisions, particularly the rescission proposals. Substantial negotiations to reach a viable solution to the deferral and long term trust funding problems should be anticipated.

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM

**LOG NO.:**

**Date:** May 21, 1975

**Time:**

**FOR ACTION:** Phil Buchen
Jim Cannon
Jack Marsh
Robert T. Hartmann
Max Friedersdorf
Bill Seidman

**cc (for information):**

**FROM THE STAFF SECRETARY**

---

**DUE: Date:** Friday, May 23, 1975 **Time:** noon

---

**SUBJECT:**

Lynn memo (5/21/75) re: Highway Legislation

**ACTION REQUESTED:**

____ For Necessary Action

_X_ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

_X_ For Your Comments

____ Draft Remarks

**REMARKS:**

noted

**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.

Jerry H. Jones
Staff Secretary

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Highway Legislation

Events of the past few months have raised substantial questions about the Administration's 1976 highway funding levels and longer term legislation. Decisions are needed concerning our 1976 funding strategy and unresolved issues in the highway legislation. The attached memo provides background on the current status of the highway program and a further discussion of each issue.

Issue #1: What should be the Administration's strategy to control the 1976 highway funding level?

- Congressional sources indicate that a 1976 deferral of highway funds, tied to the Administration's proposed $5.2 billion program, would be quickly overturned. Justice, Transportation (DOT), and OMB legal staff believe the courts will order the release of any funds which we would propose to defer in 1976. This would result in a program of between $7.5 and $8.5 billion based on estimates of how quickly funds could be obligated.

- DOT/Domestic Council/OMB recommend that the Administration negotiate with key congressional committees a revised 1976 funding level (around $6.7 billion) controlled by a legislative limitation on 1976 obligations and tied to specific congressional actions on highway legislation.

Decision

- Negotiate a revised, controlled 1976 funding level ✓
- Submit a deferral in 1976 with $5.2 billion program ______

Highway Legislation

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978 as originally proposed in the 1976 Budget?

- In light of the $6.6 billion 1975 highway program, congressional anticipation of a $7+ billion program in 1976, and recent annual contract authorizations of $6.5 billion, Congress and interest groups have strongly indicated that the proposed $5.5 billion 1977 program is unacceptable.

. DOT has proposed, with OMB and Domestic Council concurrence, that the effective date of provisions permitting gas tax preemption by the States be shifted from 1978 into 1977 to increase the total 1977 program to an acceptable level, provide better visibility for the preemption provisions, and assist States with cash problems.

Decision

- Permit state preemption of 1¢ gas tax in 1977 ✓
- Keep 1978 as initial state preemption date ____

Issue #3: What provisions should be provided for funding mass transit projects built in lieu of urban Interstate Highways?

. DOT with the concurrence of the Domestic Council has proposed separate funding independent of the Interstate Highway process for mass transit substitutions. DOT believes separate funding is necessary to encourage substitutions for low priority, urban highway projects because the large size and differing construction pace of transit projects require faster funding.

. OMB believes that mass transit projects can be staged to match the availability of funds from the Interstate apportionment process and that the $2-$3 billion increase in highway and mass transit funding proposed by DOT is not needed in light of recently expanded mass transit and highway program levels. Control of these additional funds would be extremely difficult.

Decision

- New funding, independent of Interstate process ____
- Fund mass transit within present Interstate process ✓

Issue #4: Should DOT be legislatively required to delegate all project approval authority to the States in the non-interstate programs if environmental regulations are delegated?

. DOT wants to be able to delegate complete environmental responsibilities to a State and still retain approval authority in other areas which would provide maximum Federal discretion.

. CEQ believes that environmental responsibilities should be delegated only if all other decision making responsibilities are delegated. They feel the DOT proposal would lead to unnecessary litigation and confusion. OMB supports the CEQ proposal because it would encourage additional delegation to the States of non-interstate responsibilities. The Domestic Council concurs.

Decision

- Require delegation of all responsibilities ✓
- Permit separate environmental delegation ____

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM

LOG NO.: due: 5/23 noon

MAY 22 1975

Date: May 21, 1975

Time:

FOR ACTION:
Phil Buchen
Jim Cannon
~~Jack Marsh~~
Robert T. Hartmann
Max Friedersdorf
Bill Seidman

cc (for information):

FROM THE STAFF SECRETARY

---

DUE: Date: Friday, May 23, 1975 Time: noon

---

SUBJECT:

Lynn memo (5/21/75) re: Highway Legislation

ACTION REQUESTED:

___ For Necessary Action

X For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

X For Your Comments

___ Draft Remarks

REMARKS:

See infra

JOM

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.

Jerry H. Jones
Staff Secretary

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

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) J[illegible] T. Lynn

SUBJECT: Highway Legislation

Events of the past few months have raised substantial questions about the Administration's 1976 highway funding levels and longer term legislation. Decisions are needed concerning our 1976 funding strategy and unresolved issues in the highway legislation. The attached memo provides background on the current status of the highway program and a further discussion of each issue.

Issue #1: What should be the Administration's strategy to control the 1976 highway funding level?

. Congressional sources indicate that a 1976 deferral of highway funds, tied to the Administration's proposed \$5.2 billion program, would be quickly overturned. Justice, Transportation (DOT), and OMB legal staff believe the courts will order the release of any funds which we would propose to defer in 1976. This would result in a program of between \$7.5 and \$8.5 billion based on estimates of how quickly funds could be obligated.

. DOT/Domestic Council/OMB recommend that the Administration negotiate with key congressional committees a revised 1976 funding level (around \$6.7 billion) controlled by a legislative limitation on 1976 obligations and tied to specific congressional actions on highway legislation.

Decision

- Negotiate a revised, controlled 1976 funding level JM
- Submit a deferral in 1976 with \$5.2 billion program ____

Highway Legislation

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues (\$1 billion annually) initially in 1977 or in 1978 as originally proposed in the 1976 Budget?

. In light of the \$6.6 billion 1975 highway program, congressional anticipation of a \$7+ billion program in 1976, and recent annual contract authorizations of \$6.5 billion, Congress and interest groups have strongly indicated that the proposed \$5.5 billion 1977 program is unacceptable.

. DOT has proposed, with OMB and Domestic Council concurrence, that the effective date of provisions permitting gas tax preemption by the States be shifted from 1978 into 1977 to increase the total 1977 program to an acceptable level, provide better visibility for the preemption provisions, and assist States with cash problems.

Decision

- Permit state preemption of 1¢ gas tax in 1977 ___Jm___
- Keep 1978 as initial state preemption date ______

Issue #3: What provisions should be provided for funding mass transit projects built in lieu of urban Interstate Highways?

. DOT with the concurrence of the Domestic Council has proposed separate funding independent of the Interstate Highway process for mass transit substitutions. DOT believes separate funding is necessary to encourage substitutions for low priority, urban highway projects because the large size and differing construction pace of transit projects require faster funding.

. OMB believes that mass transit projects can be staged to match the availability of funds from the Interstate apportionment process and that the $2-$3 billion increase in highway and mass transit funding proposed by DOT is not needed in light of recently expanded mass transit and highway program levels. Control of these additional funds would be extremely difficult.

Decision more info

- New funding, independent of Interstate process ______
- Fund mass transit within present Interstate process ___JOM___

Issue #4: Should DOT be legislatively required to delegate all project approval authority to the States in the non-interstate programs if environmental regulations are delegated?

. DOT wants to be able to delegate complete environmental responsibilities to a State and still retain approval authority in other areas which would provide maximum Federal discretion.

. CEQ believes that environmental responsibilities should be delegated only if all other decision making responsibilities are delegated. They feel the DOT proposal would lead to unnecessary litigation and confusion. OMB supports the CEQ proposal because it would encourage additional delegation to the States of non-interstate responsibilities. The Domestic Council concurs.

Decision

- Require delegation of all responsibilities ______
- Permit separate environmental delegation ___Jm___

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Highway Legislation

Several events having a significant impact on the highway program have occurred since you approved the basic concepts of the proposed new Federal-Aid Highway legislation in January.

- In February, you ordered the release of an additional $2 billion of Federal-Aid Highway funds to stimulate employment.
- In April, the Senate overturned the deferral of the remaining $9.1 billion of Federal-Aid Highway funds, forcing the release of these funds in 1975.
- In the past few months, we have lost several additional appellate cases on the highway deferral issue as well as a Supreme Court case on a related issue.

The Secretary of Transportation has completed his review of the proposed legislation and has submitted a bill for final clearance before submission to the Congress. Decisions need to be made on our strategy for funding 1976 and on the three remaining open issues in the proposed new legislation.

One of the major objectives of the proposed highway legislation is to achieve reasonable long-term funding levels that are consistent with our fiscal objectives and program priorities. The Administration's posture on 1976 funding will be a key ingredient in negotiations with the Congress on the longer term levels. Table 1 summarizes the Administration's originally proposed funding along with subsequent changes and future options.

Table 1

Federal-Aid Highway
Program Level
($ in billions)

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
|---|---|---|---|---|---|---|
| Federal-Aid Program (Jan Est.) | | | | | | |
| - Highway Assistance | 4.6 | 5.2 | 5.5 | 5.7 | 5.8 | 5.9 |
| - State Revenue Pre-emption | -- | -- | -- | 1.0 | 1.0 | 1.0 |
| Total | 4.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| Admin. Feb. Release | 2.0 | -- | -- | -- | -- | -- |
| Current Admin. Prop. | 6.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| 1976--Est. Negotiated Limitation (Issue #1) (DOT/Dom. Council/OMB) | | +1.5 | | | | |
| 1977 State Preemption Shift (Issue #2) (DOT/Dom. Council/OMB) | | | +1.0 | | | |
| Est. Negotiated Outcome (DOT/Dom. Council/OMB) | 6.6 | 6.7 | 6.5 | 6.7 | 6.8 | 6.9 |
| Mass Transit Authorization (Issue #3) (DOT/Dom. Council) | | ← | +$1.0-$3.0 | | | → |
| Est. Unconstrained Congressional Program | 6.8 | 7.5 | 8.0 | 8.5 | 9.0 | 9.0 |

Impact of Changes on Deficit

| | 1976 | 1977 |
|---|---|---|
| Release of $2B in February | +1.0 | +0.4 |
| Negotiated limitation on obligation (Issue 1) | +0.2 | +0.5 |
| Congressional Program (in addition to above) | +0.2 | +0.3 |
| 1977 State Preemption Shift (Issue 2) | --- | +1.0 |
| Mass Transit Substitution (Issue 3) | --- | +0.1 |

Funding for 1976

Issue #1: What should be the Administration's strategy in attempting to control the 1976 program level?

Discussion: Congressional sources indicate that a proposed 1976 deferral, based on the Administration's $5.2 billion program, would probably be quickly overturned. Even if we chose to defer funds in 1976, Justice, Transportation (DOT), and OMB legal staff believe that the courts would probably order the release of all highway funds in 1976. Given the availability of over $9 billion in previously authorized highway funds and the small chance of sustaining a deferral before the courts or in the Congress, other mechanisms to control funding levels in 1976 and beyond must be explored.

This problem is further complicated by the availability of additional funding during 1976. Under current procedures an additional $6.5-7.0 billion of new funds will become available for obligation in 1976 (in addition to the $9 billion that will be available in July). Our proposed legislation seeks to shift the availability of these new funds into 1977.

Additionally there are difficulties with the distribution of these funds. Presently available authorizations are legislatively distributed among the States. Some "fast spending" States will exhaust their authorizations early in 1976 or the transition quarter if the Administration's proposal to shift availability dates is adopted. They will therefore be unable to obligate their normal share of a $5.2 billion or larger program. OMB and DOT staff are studying the feasibility of providing special authorizations for these States to enable them to make the transition from the old highway programs into the new program.

DOT and OMB are seeking your approval to attempt to negotiate with the key congressional committees a revised 1976 funding level which would be tied to a congressional limitation on annual obligations (in the DOT Appropriations Act) and agreements on key provisions of the proposed highway legislation.

Such an agreement would:

- Provide a mechanism to control obligations outside the deferral process, hopefully reducing the 1976 program by $0.5-1.0 billion below an unconstrained level.

- Undoubtedly require the Administration to agree to a program level of roughly $6.7 billion in 1976, about $1.5 billion in excess of the 1976 budget level (1976 outlays of about $0.2B) and provision of special authorizations in "problem" States.

- Assist the Administration in negotiating key provisions of the highway legislation by offering to compromise on 1976 funding in exchange for reasonable authorization levels.

Unless the Administration is prepared to negotiate on 1976 funding, it will be very difficult to enter into a meaningful dialogue with the Congress on highway issues. Given the overall collapse of our current deferral strategy we have little to lose from efforts to reach a funding compromise.

Decision

Attempt to negotiate an acceptable revised 1976 funding level (Supported by DOT, Domestic Council and OMB) /_/

Stick with current 1976 funding level ($5.2B) /_/

See me for further discussions /_/

Outline of Highway Legislation

The proposed legislation conforms closely with earlier policy decisions reached among DOT, the Domestic Council, and OMB with your concurrence (TAB A).

The legislation would reaffirm the Federal commitment to the completion of the Interstate Highway System by:

--Extending the Highway Trust Fund beyond the present 1977 expiration date for the exclusive use of Interstate Highway Program.

--Prioritizing completion of the Interstate System by focusing resources on segments necessary for intercity connectivity, the prime Federal interest.

--Modestly increasing authorizations in 1978-1980 ($150 million annually above current levels).

The proposal would substantially lessen the Federal involvement in the non-interstate highway system, which should be primarily a state and local responsibility, by:

--Consolidating the present maze of 30+ categorical grants into three broad programs to be used at state and local discretion for a wider range of transportation activities.

--Decreasing direct Federal assistance for non-interstate programs by about $1 billion from levels currently provided by the Congress, but permitting the States to preempt 1¢ of the present Federal gasoline tax ($1 billion annually) for unrestricted local use.

--Funding the non-interstate highway program from the general fund, thus forcing non-interstate highway programs to compete more directly for resources with other Federal programs, and concurrently shifting 2¢ ($2 billion annually) of Federal gasoline revenues into the General Fund.

Open Issues

Three issues remain to be resolved regarding the highway legislative proposal: Timing of state preemption of 1¢ of Federal gas tax revenues, funding for mass transit substitution, and delegation of project approval and environmental impact statement responsibilities to the States.

## Timing of State Gas Tax Preemption

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978?

Discussion: The original highway proposal, announced in the Budget and State of the Union Messages, permitted state preemption of 1¢ of the Federal gas tax beginning in 1978.

Shifting the preemption to 1977 would:

--Provide total Federal highway funding to the States of $6.5 billion in 1977 ($5.5 billion from Federal-Aid programs and $1 billion from tax preemption), the minimum level the Congress will consider in light of recent annual authorizations of $6.5 billion, the 1975 program of $6.6 billion, and the anticipated 1976 program level of around $7.0 billion. (Table 1 shows long term funding proposals).

--Focus additional attention on the positive aspects of our preemption proposals which have been largely ignored by congressional and interest group critics of the Administration's proposal because of the distant "1978" implementation date.

--Give the States, which are hard pressed for cash, an additional $1 billion in cash in 1977, helping to relieve pressures to increase the Federal matching share of highway programs.

On the other hand, 1977 preemption authority would increase the cost of the Administration's proposal for fiscal year 1977 by about $1 billion. Other financing changes, agreed to by DOT/OMB have reduced the cost of the original proposal by $150 million annually in 1978-1980.

Decision

Permit state preemption of 1¢ gas tax in 1977 (Supported by DOT, Domestic Council and OMB) ☐

Keep 1978 as initial state preemption date ☐

## Funding for Mass Transit Substitution

Issue #3: What provisions should be provided in the legislation regarding the timing and source of funding for mass transit projects built in lieu of urban Interstate Highways?

Discussion: Under current procedures, funding for mass transit projects, substituted for urban Interstate Highway segments, is tied to the Interstate Highway apportionment formula. Each State receives an annual share of the total Interstate authorizations based on its share of the cost to complete the Interstate System (including the mass transit substitutions). These funds are then divided among Interstate Highway or Mass Transit Substitution projects at the discretion of the State.

DOT has proposed that upon substitution of a mass transit project for an Interstate Highway segment, separate funding be created in the Urban Mass Transportation Administration (UMTA) in addition to and independent of the Interstate Highway funding. Under this proposal, contract authorization would be available for the entire project at the time of the substitution, but Congress would be asked to establish a limitation on the rate of obligation of these funds similar to present congressional restrictions on UMTA obligations.

The DOT proposal would:

--Permit tailoring of funding availability to the requirements of individual mass transit projects, particularly important because DOT believes that the large size and differing construction schedules of such transit projects necessitate faster obligation of funds.

--Encourage mass transit substitution for low priority highway projects by providing earlier availability of funds.

--Eliminate the need for difficult annual state trade-offs between highway and mass transit for apportioned funds by providing separate transit funding.

--Eliminate the need to reduce the Interstate Highway Program when making a mass transit substitution by providing additional, separate transit funding.

On the other hand, the DOT separate funding proposal would:

--Increase transportation program levels by $2-$3 billion above the Administration's proposed highway and mass transit programs during the next five years.

--Provide special treatment for large mass transit projects, which OMB believes can be timed to reflect availability of funds, while forcing large urban highway projects to be staged to match the levels of Interstate apportionments.

DOT strongly endorses new funding provisions independent of the Interstate apportionment process because it will permit faster construction of transit projects, encourage transit substitutions, and partially alleviate pressure to increase mass transit program funding.

OMB opposes the independent funding because it does not believe the mass transit timing problem is so severe that it requires a $2-$3 billion expansion of transportation programs over the next five years.

Decisions

New funding, independent of Interstate apportionment process (Supported by DOT and Domestic Council) /_/

Fund mass transit substitutions within present Interstate process (Supported by OMB) /_/

Delegation of Project Approval and Environmantal Impact Statement Responsibilities to the States

Issue #4: Should DOT be legislatively required to delegate all project approval authority for non-interstate highway programs to the States if Environmental Impact Statement (EIS) responsibilities are delegated?

Discussion: A key thrust of the new highway legislation is the delegation of additional authority to the States for the non-interstate highway programs. DOT proposes that they be given the authority to delegate all project selection, design, and approval authority to the States. DOT

wishes to be able to delegate EIS responsibility for any project in which they have not substantially affected the approval of the project. CEQ has requested that provisions be included in the legislation permitting delegation of EIS responsibility only if all other decisions affecting approval of similar classes of projects have been delegated to the States.

DOT wants to retain the flexibility of exercising review authority over specific areas in the approval process of all or a portion of a State's projects and having the ultimate veto power over specific projects. As long as DOT does not substantially interfere with the project approval process, DOT believes that EIS delegation should be permitted. This would encourage maximum delegation of all responsibilities to the States while preserving the Federal option to intervene if all is not going well. It would also permit Federal highway funds to be used by DOT as a lever to achieve broader transportation objectives.

CEQ believes that whoever ultimately controls project approval should also exercise environmental responsibilities. If DOT retains review authority over portions of the approval process, CEQ feels that DOT ultimately controls the decision and should assume EIS responsibilities. They believe the DOT proposal would: lead to massive amounts of litigation over who actually retained project control for specific projects; create general public confusion about Federal environmental responsibilities; cause unnecessary, duplicative impact statements; and provide a bad precedent for inappropriate delegation in other areas.

OMB questions the wisdom of having the environmental delegation issue controlling all other Federal delegation. We are, however, sympathetic to CEQ concerns about excessive litigation and confusion with the DOT proposal. Overall we favor the CEQ approach because it would force new delegation to the States by tying together the EIS and other approvals. If we ultimately wish to transfer the non-interstate program to the States, this alternative is more attractive.

Decision

Permit delegation of environmental responsibilities without delegation of all other project approval responsibilities ☐
(Supported by DOT)

Legislatively require delegation of all project approval responsibilities to a State for particular classes of projects if environmental responsibilities are to be delegated ☐
(Supported by CEQ, Domestic Council and OMB)

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

INFORMATION

JAN 23 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: Roy L. Ash

FROM: Walter D. Scott /s/ Walter D. Scott

SUBJECT: New Aviation and Highway Legislation

Following discussions with you in early December concerning legislation for the extension and modification of the Federal aviation and highway programs, agreement has been reached on the major provisions of these proposals. DOT is currently drafting the necessary legislation. Key aspects of these proposals will be highlighted in your Budget Message. In addition, we recommend that the legislation be transmitted with a short, written Presidential Transportation Message within three weeks.

The aviation and highway proposals were developed with the objectives of:

--Increasing the efficiency and effectiveness of these programs by focusing Federal financing and oversight on national transportation system requirements while increasing state and local direction and flexibility.

--Dealing equitably with the complex trust fund/user charge policy issues in both programs by better matching dedicated revenues, beneficiaries, and program costs while proposing a straightforward solution to the deferred funds problem.

--Ensuring that the Administration is a full partner in Congressional deliberations by proposing programs with reasonable Congressional and interest group support.

The <u>aviation legislation</u> will provide contract authority to fund the Airport Grant Program at $350 million per year and to extend authorizations for the FAA Airway Facilities Program at $250 million per year through 1978. Under this proposal, most airport grant funding will be shifted from individual Federal project approval to a formula distribution system.

Federal aviation operating expenses will be funded from the aviation trust fund, and user fees will be adjusted by instituting general aviation landing fees (requested in the last Congress), decreasing the air carrier ticket tax on domestic passengers, and increasing the international departure tax. Unobligated grant funds of $0.2 billion will be allowed to lapse. Attachment A provides more detail on this proposal.

The highway legislation will provide $22.7 billion of contract authority for the Federal-aid highway program for 1977 through 1980, and extend the highway trust fund through 1980. Construction of the interstate system which will be financed from the trust fund, will be expedited by increasing funding levels and focusing efforts on completion of unfinished segments critical to national intercity connectivity. The non-interstate programs, to be financed from general funds, will be consolidated from over 30 restrictive categorical grants into three broad programs with provisions for "off-system" funding. Trust fund receipts will be reduced to the level of the proposed interstate system expenditures by shifting 2¢ of the gas tax into the general fund and permitting states to preempt 1¢ of all motor fuel taxes ($1.2 billion) in 1978. In addition, the $11 billion of deferred highway funds will be rescinded or exhausted by not requesting additional funds for 1976 and the transitional budget period. Attachment B provides more detail on this proposal.

Although these initiatives contain many provisions that will be supported by certain interest groups, the proposals for eliminating deferred funds and reducing the scope of the highway trust fund will face broad and substantial resistance. Authorizations for these programs have come from user financed trust funds, and in most cases are already apportioned to State and local bodies. We have reviewed many alternatives for reducing or eliminating unobligated balances, and have reluctantly concluded that there is no painless way of dealing with this problem. The straightforward approach recommended in these proposals essentially calls for "wiping the slate clean" for these programs. Likewise, it appears necessary to limit highway trust fund receipts and restrict its program to elements with high national interest if we are to get long term highway funding levels consistent with our fiscal objectives and other program priorities.

Overall, the proposals offer an opportunity to substantially increase local direction and management of these major grant programs while focusing the Federal involvement on projects of national interest. Most states, local bodies, and user groups will strongly support these efforts to eliminate unnecessary Federal involvement in and increase the efficiency and effectiveness of these grant programs.

# Aviation Legislation

...Key objectives of legislation are to:

--Reduce Federal involvement in local airport development and increase local flexibility in use of funds.

--Establish principle of user responsibility for financing a portion of airway system operating costs.

--Allocate user fees more equitably among aviation system users.

--Stop the growth in aviation trust fund "surplus" and eliminate unobligated airport program funds.

--Continue funding Federal airway capital development at present levels.

...Airport grant provisions would authorize a three-year program which would:

--Provide for direct formula grants to air carrier airports ($50 per air carrier departure with a $25,000 annual minimum per airport) to replace present project approval program. ($260M).

--Expand projects eligible for funding to include development of passenger and baggage handling facilities (but not terminals per se) and eliminate local matching requirements.

--Establish a $50M annual discretionary capital assistance and planning grant program to meet special requirements of national priority at air carrier and general aviation reliever airports, not adequately provided for through formula funding.

--Allocate general aviation grants on a formula basis to the states with gradual shift of program management and funding responsibilities to the states. In 1978, the last year of this transition, states would fund the program from preempted Federal aviation gas tax revenues.

--Allow $194M in unobligated airport grant funds to lapse on June 30, 1975.

--Overall increase the annual new obligational authority for the airport grant program from the present $325M to $350M while reducing the Federal involvement (and Federal grant administrative staff).

...Aviation fee structure would be modified to more equitably match fees with the burden different users place on the system by:

--Reducing the domestic passenger ticket tax from 8% to 7% ($110M annual reduction).

--Raising the international enplanement fee from $3 to $5 ($30M annual increase).

--Instituting new general aviation landing fees of $5 and $10 at airports with FAA traffic control towers as proposed in the Budget Restraint Message.($80M annual increase).

...Airway facility authorizations for Federally owned and operated traffic control and navigation equipment would be continued for three years at the present $250M annual level.

...Trust funding will be extended to include the $430M annual maintenance costs for airway facilities, currently funded from the general fund.

...Aviation interest group reaction to the proposals will be mixed, but probably generally positive.

--Airport operators (includes many cities) will strongly support the direct formula grants. They will push for a larger overall program.

--Air carriers will support the domestic passenger tax reduction and most of the formula grant changes. They will push for a larger tax decrease.

--General aviation interests will support the general aviation airport proposals, but will strongly oppose landing fees.

--State aviation officials will support most of the airport grant proposals.

--All groups will oppose lapsing of airport grant funds and the opening of the trust fund for operating expenditures.

...Congressional reaction will probably also be mixed.

--House Public Works and Transportation Committee will be handling aviation legislation for first time. Anticipate positive reaction to formula grant proposals.

--Senate Commerce Committee will probably resist additional delegation to the states and trust fund changes.

--Ways and Means reaction on revenue proposal is uncertain. Will be substantial air carrier pressure to move legislation.

## Highway Legislation

...Key objectives of the legislation are to:

--Increase the efficiency and effectiveness of highway assistance programs by providing additional state flexibility for non-interstate highway system while focusing Federal efforts on the critical national aspects of the Interstate system.

--Strike a long term balance between user receipts and trust funded programs at a level consistent with Administration's long term funding priorities.

--Provide a proposal for dealing with the immediate problem of the $11 billion Federal-aid deferral in a manner consistent with the Administration's fiscal objectives.

...Federal-aid highway Interstate assistance, financed from the trust fund, would increase significantly through 1980 while Non-Interstate assistance, financed from the general fund, would be held at the 1976 level.

| | Program Level (Billions of Dollars) | | | | | |
|---|---|---|---|---|---|---|
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
| TOTAL | 4.6 | 5.2 | 5.4 | 5.6 | 5.8 | 5.9 |
| Interstate (Trust Fund) | (2.5) | (3.0) | (3.2) | (3.4) | (3.6) | (3.7) |
| Non-Interstate (General Fund) | (2.1) | (2.2) | (2.2) | (2.2) | (2.2) | (2.2) |

...State preemption of 1¢ per gallon of the Federal motor fuel tax would be permitted in 1978. The potential annual $1.2 billion in added state revenues would provide a substantial infusion of funds for local highway construction and maintenance problems.

...Interstate funds would be focused on unfinished segments necessary to national intercity connectivity by apportioning some of the interstate funds on the basis of unfinished critical links.

...Four broad program areas (Interstate, Rural and small urban, Urbanized, and Safety) would replace the present maze of categorical grants. Funding would be permitted from these program areas for roads not on the Interstate, Primary or Secondary Systems.

...Trust fund receipts would be reduced by the shift of 2¢ per gallon of gas tax receipts into the general fund and the local 1¢ per gallon preemption of motor fuel taxes. Receipts would equal the proposed Interstate System program level so that trust fund receipts and expenditures would be balanced.

...Deferred funds would be eliminated by rescinding the $3.2 billion "advanced" year Interstate allocation, requesting no additional Federal-aid authorizations for 1976 and the transitional period, and rescinding all unobligated balances as of September 30, 1976.

...Interest groups will generally support the revised program structure and the increases for the Interstate System.

...States should strongly support provisions providing for state motor fuel tax preemption as this will substantially increase revenues and local flexibility.

...Highway interest groups will strongly oppose rescission and trust fund modification.

...Congressional Committees will undoubtedly strongly oppose many of these provisions, particularly the rescission proposals. Substantial negotiations to reach a viable solution to the deferral and long term trust funding problems should be anticipated.

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

ACTION

MAY 21 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Highway Legislation

Several events having a significant impact on the highway program have occurred since you approved the basic concepts of the proposed new Federal-Aid Highway legislation in January.

- In February, you ordered the release of an additional $2 billion of Federal-Aid Highway funds to stimulate employment.

- In April, the Senate overturned the deferral of the remaining $9.1 billion of Federal-Aid Highway funds, forcing the release of these funds in 1975.

- In the past few months, we have lost several additional appellate cases on the highway deferral issue as well as a Supreme Court case on a related issue.

The Secretary of Transportation has completed his review of the proposed legislation and has submitted a bill for final clearance before submission to the Congress. Decisions need to be made on our strategy for funding 1976 and on the three remaining open issues in the proposed new legislation.

One of the major objectives of the proposed highway legislation is to achieve reasonable long-term funding levels that are consistent with our fiscal objectives and program priorities. The Administration's posture on 1976 funding will be a key ingredient in negotiations with the Congress on the longer term levels. Table 1 summarizes the Administration's originally proposed funding along with subsequent changes and future options.

Table 1

Federal-Aid Highway
Program Level
($ in billions)

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
|---|---|---|---|---|---|---|
| Federal-Aid Program (Jan Est.) | | | | | | |
| - Highway Assistance | 4.6 | 5.2 | 5.5 | 5.7 | 5.8 | 5.9 |
| - State Revenue Preemption | -- | -- | -- | 1.0 | 1.0 | 1.0 |
| Total | 4.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| Admin. Feb. Release | 2.0 | -- | -- | -- | -- | -- |
| Current Admin. Prop. | 6.6 | 5.2 | 5.5 | 6.7 | 6.8 | 6.9 |
| 1976--Est. Negotiated Limitation (Issue #1) (DOT/Dom. Council/OMB) | | +1.5 | | | | |
| 1977 State Preemption Shift (Issue #2) (DOT/Dom. Council/OMB) | | | +1.0 | | | |
| Est. Negotiated Outcome (DOT/Dom. Council/OMB) | 6.6 | 6.7 | 6.5 | 6.7 | 6.8 | 6.9 |
| Mass Transit Authorization (Issue #3) (DOT/Dom. Council) | | ← +$1.0-$3.0 → | | | | |
| Est. Unconstrained Congressional Program | 6.8 | 7.5 | 8.0 | 8.5 | 9.0 | 9.0 |

Impact of Changes on Deficit

| | 1976 | 1977 |
|---|---|---|
| Release of $2B in February | +1.0 | +0.4 |
| Negotiated limitation on obligation (Issue 1) | +0.2 | +0.5 |
| Congressional Program (in addition to above) | +0.2 | +0.3 |
| 1977 State Preemption Shift (Issue 2) | --- | +1.0 |
| Mass Transit Substitution (Issue 3) | --- | +0.1 |

Funding for 1976

Issue #1: What should be the Administration's strategy in attempting to control the 1976 program level?

Discussion: Congressional sources indicate that a proposed 1976 deferral, based on the Administration's $5.2 billion program, would probably be quickly overturned. Even if we chose to defer funds in 1976, Justice, Transportation (DOT), and OMB legal staff believe that the courts would probably order the release of all highway funds in 1976. Given the availability of over $9 billion in previously authorized highway funds and the small chance of sustaining a deferral before the courts or in the Congress, other mechanisms to control funding levels in 1976 and beyond must be explored.

This problem is further complicated by the availability of additional funding during 1976. Under current procedures an additional $6.5-7.0 billion of new funds will become available for obligation in 1976 (in addition to the $9 billion that will be available in July). Our proposed legislation seeks to shift the availability of these new funds into 1977.

Additionally there are difficulties with the distribution of these funds. Presently available authorizations are legislatively distributed among the States. Some "fast spending" States will exhaust their authorizations early in 1976 or the transition quarter if the Administration's proposal to shift availability dates is adopted. They will therefore be unable to obligate their normal share of a $5.2 billion or larger program. OMB and DOT staff are studying the feasibility of providing special authorizations for these States to enable them to make the transition from the old highway programs into the new program.

DOT and OMB are seeking your approval to attempt to negotiate with the key congressional committees a revised 1976 funding level which would be tied to a congressional limitation on annual obligations (in the DOT Appropriations Act) and agreements on key provisions of the proposed highway legislation.

Such an agreement would:

- Provide a mechanism to control obligations outside the deferral process, hopefully reducing the 1976 program by $0.5-1.0 billion below an unconstrained level.

- Undoubtedly require the Administration to agree to a program level of roughly $6.7 billion in 1976, about $1.5 billion in excess of the 1976 budget level (1976 outlays of about $0.2B) and provision of special authorizations in "problem" States.

- Assist the Administration in negotiating key provisions of the highway legislation by offering to compromise on 1976 funding in exchange for reasonable authorization levels.

Unless the Administration is prepared to negotiate on 1976 funding, it will be very difficult to enter into a meaningful dialogue with the Congress on highway issues. Given the overall collapse of our current deferral strategy we have little to lose from efforts to reach a funding compromise.

Decision

Attempt to negotiate an acceptable revised 1976 funding level (Supported by DOT, Domestic Council and OMB) /_/

Stick with current 1976 funding level ($5.2B) /_/

See me for further discussions /_/

Outline of Highway Legislation

The proposed legislation conforms closely with earlier policy decisions reached among DOT, the Domestic Council, and OMB with your concurrence (TAB A).

The legislation would reaffirm the Federal commitment to the completion of the Interstate Highway System by:

--Extending the Highway Trust Fund beyond the present 1977 expiration date for the exclusive use of Interstate Highway Program.

--Prioritizing completion of the Interstate System by focusing resources on segments necessary for intercity connectivity, the prime Federal interest.

--Modestly increasing authorizations in 1978-1980 ($150 million annually above current levels).

The proposal would substantially lessen the Federal involvement in the non-interstate highway system, which should be primarily a state and local responsibility, by:

--Consolidating the present maze of 30+ categorical grants into three broad programs to be used at state and local discretion for a wider range of transportation activities.

--Decreasing direct Federal assistance for non-interstate programs by about $1 billion from levels currently provided by the Congress, but permitting the States to preempt 1¢ of the present Federal gasoline tax ($1 billion annually) for unrestricted local use.

--Funding the non-interstate highway program from the general fund, thus forcing non-interstate highway programs to compete more directly for resources with other Federal programs, and concurrently shifting 2¢ ($2 billion annually) of Federal gasoline revenues into the General Fund.

Open Issues

Three issues remain to be resolved regarding the highway legislative proposal: Timing of state preemption of 1¢ of Federal gas tax revenues, funding for mass transit substitution, and delegation of project approval and environmental impact statement responsibilities to the States.

Timing of State Gas Tax Preemption

Issue #2: Should States be permitted to preempt 1¢ of Federal gas tax revenues ($1 billion annually) initially in 1977 or in 1978?

Discussion: The original highway proposal, announced in the Budget and State of the Union Messages, permitted state preemption of 1¢ of the Federal gas tax beginning in 1978.

Shifting the preemption to 1977 would:

--Provide total Federal highway funding to the States of $6.5 billion in 1977 ($5.5 billion from Federal-Aid programs and $1 billion from tax preemption), the minimum level the Congress will consider in light of recent annual authorizations of $6.5 billion, the 1975 program of $6.6 billion, and the anticipated 1976 program level of around $7.0 billion. (Table 1 shows long term funding proposals).

--Focus additional attention on the positive aspects of our preemption proposals which have been largely ignored by congressional and interest group critics of the Administration's proposal because of the distant "1978" implementation date.

--Give the States, which are hard pressed for cash, an additional $1 billion in cash in 1977, helping to relieve pressures to increase the Federal matching share of highway programs.

On the other hand, 1977 preemption authority would increase the cost of the Administration's proposal for fiscal year 1977 by about $1 billion. Other financing changes, agreed to by DOT/OMB have reduced the cost of the original proposal by $150 million annually in 1978-1980.

Decision

Permit state preemption of 1¢ gas tax in 1977 (Supported by DOT, Domestic Council and OMB) /_/

Keep 1978 as initial state preemption date /_/

Funding for Mass Transit Substitution

Issue #3: What provisions should be provided in the legislation regarding the timing and source of funding for mass transit projects built in lieu of urban Interstate Highways?

Discussion: Under current procedures, funding for mass transit projects, substituted for urban Interstate Highway segments, is tied to the Interstate Highway apportionment formula. Each State receives an annual share of the total Interstate authorizations based on its share of the cost to complete the Interstate System (including the mass transit substitutions). These funds are then divided among Interstate Highway or Mass Transit Substitution projects at the discretion of the State.

DOT has proposed that upon substitution of a mass transit project for an Interstate Highway segment, separate funding be created in the Urban Mass Transportation Administration (UMTA) in addition to and independent of the Interstate Highway funding. Under this proposal, contract authorization would be available for the entire project at the time of the substitution, but Congress would be asked to establish a limitation on the rate of obligation of these funds similar to present congressional restrictions on UMTA obligations.

The DOT proposal would:

--Permit tailoring of funding availability to the requirements of individual mass transit projects, particularly important because DOT believes that the large size and differing construction schedules of such transit projects necessitate faster obligation of funds.

✓ --Encourage mass transit substitution for low priority highway projects by providing earlier availability of funds.

--Eliminate the need for difficult annual state trade-offs between highway and mass transit for apportioned funds by providing separate transit funding.

--Eliminate the need to reduce the Interstate Highway Program when making a mass transit substitution by providing additional, separate transit funding.

On the other hand, the DOT separate funding proposal would:

--Increase transportation program levels by $2-$3 billion above the Administration's proposed highway and mass transit programs during the next five years.

--Provide special treatment for large mass transit projects, which OMB believes can be timed to reflect availability of funds, while forcing large urban highway projects to be staged to match the levels of Interstate apportionments.

DOT strongly endorses new funding provisions independent of the Interstate apportionment process because it will permit faster construction of transit projects, encourage transit substitutions, and partially alleviate pressure to increase mass transit program funding.

OMB opposes the independent funding because it does not believe the mass transit timing problem is so severe that it requires a $2-$3 billion expansion of transportation programs over the next five years.

Decisions

New funding, independent of Interstate apportionment process (Supported by DOT and Domestic Council) /_/

Fund mass transit substitutions within present Interstate process (Supported by OMB) /_/

Delegation of Project Approval and Environmantal Impact Statement Responsibilities to the States

Issue #4: Should DOT be legislatively required to delegate all project approval authority for non-interstate highway programs to the States if Environmental Impact Statement (EIS) responsibilities are delegated?

Discussion: A key thrust of the new highway legislation is the delegation of additional authority to the States for the non-interstate highway programs. DOT proposes that they be given the authority to delegate all project selection, design, and approval authority to the States. DOT

wishes to be able to delegate EIS responsibility for any project in which they have not substantially affected the approval of the project. CEQ has requested that provisions be included in the legislation permitting delegation of EIS responsibility only if all other decisions affecting approval of similar classes of projects have been delegated to the States.

DOT wants to retain the flexibility of exercising review authority over specific areas in the approval process of all or a portion of a State's projects and having the ultimate veto power over specific projects. As long as DOT does not substantially interfere with the project approval process, DOT believes that EIS delegation should be permitted. This would encourage maximum delegation of all responsibilities to the States while preserving the Federal option to intervene if all is not going well. It would also permit Federal highway funds to be used by DOT as a lever to achieve broader transportation objectives.

CEQ believes that whoever ultimately controls project approval should also exercise environmental responsibilities. If DOT retains review authority over portions of the approval process, CEQ feels that DOT ultimately controls the decision and should assume EIS responsibilities. They believe the DOT proposal would: lead to massive amounts of litigation over who actually retained project control for specific projects; create general public confusion about Federal environmental responsibilities; cause unnecessary, duplicative impact statements; and provide a bad precedent for inappropriate delegation in other areas.

OMB questions the wisdom of having the environmental delegation issue controlling all other Federal delegation. We are, however, sympathetic to CEQ concerns about excessive litigation and confusion with the DOT proposal. Overall we favor the CEQ approach because it would force new delegation to the States by tying together the EIS and other approvals. If we ultimately wish to transfer the non-interstate program to the States, this alternative is more attractive.

Decision

Permit delegation of environmental responsibilities without delegation of all other project approval responsibilities /_/
(Supported by DOT)

Legislatively require delegation of all project approval responsibilities to a State for particular classes of projects if environmental responsibilities are to be delegated /_/
(Supported by CEQ, Domestic Council and OMB)

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

INFORMATION

JAN 23 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: Roy L. Ash

FROM: Walter D. Scott /s/ Walter D. Scott

SUBJECT: New Aviation and Highway Legislation

Following discussions with you in early December concerning legislation for the extension and modification of the Federal aviation and highway programs, agreement has been reached on the major provisions of these proposals. DOT is currently drafting the necessary legislation. Key aspects of these proposals will be highlighted in your Budget Message. In addition, we recommend that the legislation be transmitted with a short, written Presidential Transportation Message within three weeks.

The aviation and highway proposals were developed with the objectives of:

--Increasing the efficiency and effectiveness of these programs by focusing Federal financing and oversight on national transportation system requirements while increasing state and local direction and flexibility.

--Dealing equitably with the complex trust fund/user charge policy issues in both programs by better matching dedicated revenues, beneficiaries, and program costs while proposing a straightforward solution to the deferred funds problem.

--Ensuring that the Administration is a full partner in Congressional deliberations by proposing programs with reasonable Congressional and interest group support.

The aviation legislation will provide contract authority to fund the Airport Grant Program at $350 million per year and to extend authorizations for the FAA Airway Facilities Program at $250 million per year through 1978. Under this proposal, most airport grant funding will be shifted from individual Federal project approval to a formula distribution system.

Federal aviation operating expenses will be funded from the aviation trust fund, and user fees will be adjusted by instituting general aviation landing fees (requested in the last Congress), decreasing the air carrier ticket tax on domestic passengers, and increasing the international departure tax. Unobligated grant funds of $0.2 billion will be allowed to lapse. Attachment A provides more detail on this proposal.

The highway legislation will provide $22.7 billion of contract authority for the Federal-aid highway program for 1977 through 1980, and extend the highway trust fund through 1980. Construction of the interstate system which will be financed from the trust fund, will be expedited by increasing funding levels and focusing efforts on completion of unfinished segments critical to national intercity connectivity. The non-interstate programs, to be financed from general funds, will be consolidated from over 30 restrictive categorical grants into three broad programs with provisions for "off-system" funding. Trust fund receipts will be reduced to the level of the proposed interstate system expenditures by shifting 2¢ of the gas tax into the general fund and permitting states to preempt 1¢ of all motor fuel taxes ($1.2 billion) in 1978. In addition, the $11 billion of deferred highway funds will be rescinded or exhausted by not requesting additional funds for 1976 and the transitional budget period. Attachment B provides more detail on this proposal.

Although these initiatives contain many provisions that will be supported by certain interest groups, the proposals for eliminating deferred funds and reducing the scope of the highway trust fund will face broad and substantial resistance. Authorizations for these programs have come from user financed trust funds, and in most cases are already apportioned to State and local bodies. We have reviewed many alternatives for reducing or eliminating unobligated balances, and have reluctantly concluded that there is no painless way of dealing with this problem. The straightforward approach recommended in these proposals essentially calls for "wiping the slate clean" for these programs. Likewise, it appears necessary to limit highway trust fund receipts and restrict its program to elements with high national interest if we are to get long term highway funding levels consistent with our fiscal objectives and other program priorities.

Overall, the proposals offer an opportunity to substantially increase local direction and management of these major grant programs while focusing the Federal involvement on projects of national interest. Most states, local bodies, and user groups will strongly support these efforts to eliminate unnecessary Federal involvement in and increase the efficiency and effectiveness of these grant programs.

# Aviation Legislation

...Key objectives of legislation are to:

--Reduce Federal involvement in local airport development and increase local flexibility in use of funds.

--Establish principle of user responsibility for financing a portion of airway system operating costs.

--Allocate user fees more equitably among aviation system users.

--Stop the growth in aviation trust fund "surplus" and eliminate unobligated airport program funds.

--Continue funding Federal airway capital development at present levels.

...Airport grant provisions would authorize a three-year program which would:

--Provide for direct formula grants to air carrier airports ($50 per air carrier departure with a $25,000 annual minimum per airport) to replace present project approval program. ($260M).

--Expand projects eligible for funding to include development of passenger and baggage handling facilities (but not terminals per se) and eliminate local matching requirements.

--Establish a $50M annual discretionary capital assistance and planning grant program to meet special requirements of national priority at air carrier and general aviation reliever airports, not adequately provided for through formula funding.

--Allocate general aviation grants on a formula basis to the states with gradual shift of program management and funding responsibilities to the states. In 1978, the last year of this transition, states would fund the program from preempted Federal aviation gas tax revenues.

--Allow $194M in unobligated airport grant funds to lapse on June 30, 1975.

--Overall increase the annual new obligational authority for the airport grant program from the present $325M to $350M while reducing the Federal involvement (and Federal grant administrative staff).

...Aviation fee structure would be modified to more equitably match fees with the burden different users place on the system by:

--Reducing the domestic passenger ticket tax from 8% to 7% ($110M annual reduction).

--Raising the international enplanement fee from $3 to $5 ($30M annual increase).

--Instituting new general aviation landing fees of $5 and $10 at airports with FAA traffic control towers as proposed in the Budget Restraint Message ($80M annual increase).

...Airway facility authorizations for Federally owned and operated traffic control and navigation equipment would be continued for three years at the present $250M annual level.

...Trust funding will be extended to include the $430M annual maintenance costs for airway facilities, currently funded from the general fund.

...Aviation interest group reaction to the proposals will be mixed, but probably generally positive.

--Airport operators (includes many cities) will strongly support the direct formula grants. They will push for a larger overall program.

--Air carriers will support the domestic passenger tax reduction and most of the formula grant changes. They will push for a larger tax decrease.

--General aviation interests will support the general aviation airport proposals, but will strongly oppose landing fees.

--State aviation officials will support most of the airport grant proposals.

--All groups will oppose lapsing of airport grant funds and the opening of the trust fund for operating expenditures.

...Congressional reaction will probably also be mixed.

--House Public Works and Transportation Committee will be handling aviation legislation for first time. Anticipate positive reaction to formula grant proposals.

--Senate Commerce Committee will probably resist additional delegation to the states and trust fund changes.

--Ways and Means reaction on revenue proposal is uncertain. Will be substantial air carrier pressure to move legislation.

## Highway Legislation

...Key objectives of the legislation are to:

--Increase the efficiency and effectiveness of highway assistance programs by providing additional state flexibility for non-interstate highway system while focusing Federal efforts on the critical national aspects of the Interstate system.

--Strike a long term balance between user receipts and trust funded programs at a level consistent with Administration's long term funding priorities.

--Provide a proposal for dealing with the immediate problem of the $11 billion Federal-aid deferral in a manner consistent with the Administration's fiscal objectives.

...Federal-aid highway Interstate assistance, financed from the trust fund, would increase significantly through 1980 while Non-Interstate assistance, financed from the general fund, would be held at the 1976 level.

| | Program Level (Billions of Dollars) | | | | | |
|---|---|---|---|---|---|---|
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
| TOTAL | 4.6 | 5.2 | 5.4 | 5.6 | 5.8 | 5.9 |
| Interstate (Trust Fund) | (2.5) | (3.0) | (3.2) | (3.4) | (3.6) | (3.7) |
| Non-Interstate (General Fund) | (2.1) | (2.2) | (2.2) | (2.2) | (2.2) | (2.2) |

...State preemption of 1¢ per gallon of the Federal motor fuel tax would be permitted in 1978. The potential annual $1.2 billion in added state revenues would provide a substantial infusion of funds for local highway construction and maintenance problems.

...Interstate funds would be focused on unfinished segments necessary to national intercity connectivity by apportioning some of the interstate funds on the basis of unfinished critical links.

...Four broad program areas (Interstate, Rural and small urban, Urbanized, and Safety) would replace the present maze of categorical grants. Funding would be permitted from these program areas for roads not on the Interstate, Primary or Secondary Systems.

...Trust fund receipts would be reduced by the shift of 2¢ per gallon of gas tax receipts into the general fund and the local 1¢ per gallon preemption of motor fuel taxes. Receipts would equal the proposed Interstate System program level so that trust fund receipts and expenditures would be balanced.

...Deferred funds would be eliminated by rescinding the $3.2 billion "advanced" year Interstate allocation, requesting no additional Federal-aid authorizations for 1976 and the transitional period, and rescinding all unobligated balances as of September 30, 1976.

...Interest groups will generally support the revised program structure and the increases for the Interstate System.

...States should strongly support provisions providing for state motor fuel tax preemption as this will substantially increase revenues and local flexibility.

...Highway interest groups will strongly oppose rescission and trust fund modification.

...Congressional Committees will undoubtedly strongly oppose many of these provisions, particularly the rescission proposals. Substantial negotiations to reach a viable solution to the deferral and long term trust funding problems should be anticipated.