

The original documents are located in Box 10, folder “Domestic Council - Memoranda (6)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Date: October 15, 1976

Time:

FOR ACTION:

cc (for information):

- Phil Buchen Jack Marsh
- Jim Lynn Bill Seidman
- Allan Greenspan
- Bob Hartman

FROM THE STAFF SECRETARY

DUE: Date: Monday, October 18, 1976

Time: 10:00 A.M.

SUBJECT:

Jim Cannon memo, 10/13 concerning Acknowledgement of letter From Russ Train Covering Impact of Regulations on Small Bussinesses.

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

No objection.

P.W.B.

 Philip W. Buchen



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.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

October 13, 1976

MEMORANDUM TO: THE PRESIDENT

FROM: JIM CANNON *Jim*

SUBJECT: Acknowledgement of Letter From Russ Train
Covering Impact of Regulations on Small
Businesses

In the attached letter to you (TAB A), Administrator Train is reporting on actions EPA has taken to reduce the economic impact of environmental regulations on small businesses. This is in response to your statement of concern about this issue when you signed the 1976 amendments to the Small Business Act (June 4, 1976, P.L. 94-305).

Mr. Train reports three areas of activity:

- Explicitly assessing the potential impacts of environmental regulations on small businesses. EPA is explicitly analyzing the problems of small businesses and is sponsoring studies, both alone and jointly with SBA on the potential problems faced by various types of small businesses. When these studies identify special burdens, EPA has adopted separate pollution abatement requirements for small producers.
- Providing financial assistance to small businesses adversely affected. There are two joint EPA/SBA financial programs already in existence. More effort is being given to publicize them.
- Monitoring the actual impacts of pollution control laws on small businesses. EPA and SBA have set up an arrangement whereby EPA will inform SBA of potential closures, and Mr. Train has designated one of his senior advisors to oversee all small business issues.

I recommend your signing a letter of acknowledgement from you to Mr. Train (TAB B).





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 10 1976

THE ADMINISTRATOR

Dear Mr. President:

In your statement in signing into law P. L. 94-305 (S. 2498) on June 4, you directed the Environmental Protection Agency (EPA) to work with the Small Business Administration (SBA) on loan programs to the small business community for pollution activities and to devote special attention to pollution regulations which the small business community believes excessively burdensome or inequitable. The purpose of this letter is to provide you with a brief summary of the actions already underway or contemplated by EPA for the immediate future pursuant to that directive.

As you noted in commenting on PL 94-305, EPA already has taken cognizance of the special problems of small business in complying with Federal environmental regulations. In certain industries where studies have suggested an excessive impact on small business, one alternative utilized by EPA has been to develop separate standards applicable to small producers. Effluent guidelines have been modified specifically for small producers in dairies, electroplating, leather goods, seafoods, textiles, and meat processing. We also have funded an SBA study and provided staff support to work closely with SBA in determining the differential impact of pollution control costs between large and small firms. Our interest in studies of this kind is in the assessment of particular areas where the smaller firm is disadvantaged because of the need to comply with Federal environmental regulations. A major EPA study also has been initiated on iron foundries, an industry characterized by a multitude of small firms and which is experiencing particular difficulties in the area of pollution control.

Through our liaison with the Small Business Administration we keep SBA apprised of industrial plants that we ascertain are experiencing particular difficulty allegedly due to pollution control costs. These plants are usually the very small, very old plants with which SBA is concerned in its water and air pollution control



loan programs. We also have established simplified procedures, in cooperation with SBA, for EPA certification as to the need and adequacy of SBA loan applicants in the area of water pollution control. A similar program will be undertaken to certify pollution control equipment for the SBA guaranteed Pollution Control Revenue Bond Program.

To ensure that the special problems of the small business community are fully addressed in the environmental area, I have recently designated Mr. Maurice Eastin, the Special Consultant for Industry Relations on my staff, to oversee top level policy issues with the Small Business Administration. Mr. Eastin will keep me personally informed of policy and operational developments and will provide the main point of contact with SBA on environmental matters concerning the small business community.

The Agency currently is undertaking further actions under the Federal Water Pollution Control Amendments of 1972 (FWPCA) specifically in regard to small enterprises. The FWPCA requires by 1977 the application of the best practicable control technology currently available (BPT) and by 1983 application of the best available technology economically achievable (BAT). While the FWPCA does not allow for economic variances to the BPT 1977 requirements except on an industry-wide basis, the legislation does allow case-by-case consideration of economic impacts of the BAT requirements under the provisions of Section 301(c). Thus, we can be particularly responsive to the special problems of smaller firms in the 1983 requirements. The BAT requirements are now being reviewed with particular sensitivity generally to the impacts on small business.

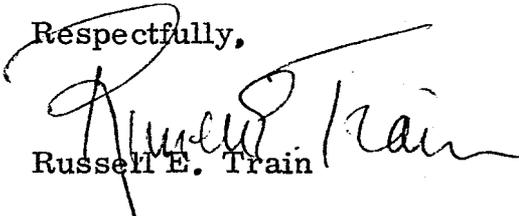
Concurrently, review processes are underway in other areas such as the recovery of gasoline vapors from the motor vehicle refueling process at service stations and in the area of reduction in the amount of lead additives in gasoline. Proposals for the recovery of vapors in refueling and the scheduling of a timed phase-down of lead additives in gasoline have raised some concern among the operators of gasoline filling stations and small refineries. The on-going review within the Agency gives special emphasis to these retail outlets and small refineries.



The Agency also is initiating talks with the Small Business Administration in an effort to publicize more widely than in the past the availability of existing Federal assistance programs. We are encouraging greater coordination between EPA and SBA in the regional and field offices. EPA will be initiating a program to notify each small businessman who applies for a National Pollution Discharge Elimination System permit of the existence and qualification requirements of the SBA/EPA pollution control loan program. In addition, we are taking steps to join with SBA and the Department of Agriculture in notifying farmers and various agribusiness firms of their eligibility for Federal pollution control loans. We also are planning to supply a packet of materials describing all Federal assistance programs available to facilitate compliance with pollution control regulations. The Agency's Standards and Regulations Manual, which defines internal procedures for developing environmental regulations, also will be revised to ensure that special consideration is given in the development process to the compliance difficulties of the small businessman.

We expect that these on-going and planned efforts, reflecting particular sensitivity to the special problems of the small business enterprise, will in time minimize the impacts of pollution regulations which may be excessively burdensome or inequitable to the small business sector.

Respectfully,


Russell E. Train

The President
The White House
Washington, D. C. 20500



DRAFT
10/13/76

Dear Russ:

Thank you for your letter of September 10, reporting on the actions that EPA is undertaking by itself and in association with the SBA to mitigate the adverse impacts of pollution control regulations on small businesses. As I said in my June 4, comments on the 1976 amendments to the Small Business Act, I believe that this is a very important problem.

I am pleased to learn of the steps you have taken on this issue and I expect that your studies and coordination will continue to result in specific actions. We must attempt to reduce serious adverse impacts on small businesses while continuing to move toward achieving our clean-up goals. I hope you will keep me informed of your progress in this regard.

Sincerely,

Gerald R. Ford



THE WHITE HOUSE

WASHINGTON

October 15, 1976

MEMORANDUM FOR: PHILIP BUCHEN ✓
ROBERT T. HARTMANN
JACK MARSH
MAX FRIEDERSDORF
ALAN GREENSPAN
JIM LYNN
BILL SEIDMAN

FROM: JIM CANNON JMC

SUBJECT: Detroit Transit Proposal

The attached memorandum replaces an earlier memorandum to the President from Paul O'Neill which was sent to you earlier today for your comments.

attachment



MEMORANDUM FOR: THE PRESIDENT

FROM: James T. Lynn

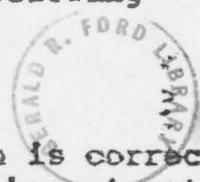
SUBJECT: OMB Comments on Secretary Coleman's Detroit Proposal - Request for Administration Commitment to Expand the Mass Transit Act

This memorandum is prompted by Secretary Coleman's October 9 proposal to you that the Federal Government should immediately commit itself to a \$600 million transit program in Detroit. The commitment would pre-empt a detailed analysis of Detroit alternatives which is required by DOT, and which is due in early 1977. This and similar major proposals (Los Angeles, Honolulu, Chicago, others) would, if approved, require annual funding levels substantially higher than those currently authorized through 1980, and impose funding requirements well beyond 1980. The Secretary accordingly also wants approval to announce next week at a convention of the American Public Transit Association (APTA) that the Administration will seek expansion and extension of mass transit legislation.

We believe that Secretary Coleman's Detroit memo greatly understates the budgetary ramifications and overstates the benefits of the proposal, and OMB strongly recommends that Secretary Coleman be advised not to make this or any major rapid transit commitments or announcements for at least three months so that such decisions do not pre-empt your options as you review 1978 budget requests. Specifically, if you meet with Governor Milliken on Monday, we recommend strongly that no commitment be made other than that Detroit's proposals are under review and will receive careful consideration. OMB also recommends that no long term funding decisions be implied at the APTA conference. The following arguments support these recommendations:

Background

- Transit is not a panacea: While Secretary Coleman is correct when he states that some transit initiatives have been treated favorably by the press, an increasingly impressive array of



2

independent analyses are making devastating arguments against new major rapid transit projects. The BART system in San Francisco, for example, has had marginal effectiveness, carries only 2-3 percent of the trips in the Bay area, over 40 percent of its riders previously rode buses for the same trip, it only covers one third of its operating costs from the farebox, and has very little impact on land use. It principally benefits suburban commuters, not inner city residents in the Bay Area.

- Funds do not exist: DOT is beginning its third year of the six-year transit funding authority which you signed in November 1974. While funds for 1977-1980 are technically unobligated, DOT has already made commitments or planned how it might use almost every dollar. Hence, a commitment such as the one proposed would exceed planned levels and force a need for additional authority. At a minimum, such proposals should receive the greatest scrutiny possible and be compared with other competing applications for transit funds.
- Pre-empts budget trade-offs: As you know from budget previews, decisions which you have to face for 1978, 1979 and 1980 will be the toughest any President has had to face for years. The mass transit budget request for 1978 and the plan which Secretary Coleman has outlined would add \$1 billion in obligations and \$500 million in outlays to 1979 estimates above and beyond any of the targets or threats which you have already seen, DOT's overall FY 1976 request alone is already \$3 billion above planning figures for obligations, and \$1 billion above outlay targets. Recent transportation actions have added several billion dollars over your planned levels for 1976 and 1977 (e.g., ConRail, Northeast Corridor, airport grants, highway grants). Transportation budget threats for the future include not only transit, but also more for highways and railroads, and possibly aircraft noise retrofit. The DOT proposal seeks approval of an unspecified increase and extension to the transit program. What DOT actually has in mind is a transit program by 1980 well over a billion dollars higher than that assumed in your target estimates. You should have the opportunity to examine your options in a broader context.
- Not based on analysis: Secretary Coleman argues that the UMTA program carefully controls which projects it approves. But that control only exists to the extent that proposals



are subjected to intense scrutiny by UMTA - scrutiny which is designed to help ration UMTA's funds and prevent the serious planning problems that occurred with BART, and with METRO here. Approving Detroit in advance of this review would undermine the value of normal UMTA analysis - analysis which is more than likely to reject rail rapid transit options in Detroit in favor of high quality express bus service on Detroit's excellent freeway network. Specifically, the \$600 million mentioned for Detroit is an awkward amount. It is much more than is needed for buses, a downtown people mover and commuter railroad improvements, but is too low for a new rapid transit scheme.

W. A. J. P. 11-11-71

- Timing: There is absolutely no need to make such a decision at this time. The unrest problems which the Secretary discusses would remain unaffected by this decision for years, even assuming that a transit initiative would have some bearing on the issue.
- Long-term problems: Secretary Coleman's speech and meetings in Detroit last month are likely to be misinterpreted as an Administration promise of \$600 million to that city. They have already prematurely triggered legislative action by the Governor. UMTA is presently involved in several multi-hundred million dollar projects (Atlanta, Baltimore) which received support in speeches by former Secretary Volpe. It took years for DOT to salvage some order out of the chaos created by those speeches, and I think we should profit by those past errors and approach this proposal far more carefully.
- Operating Subsidies: Despite the superficial appeal of mass transit to the NY Times, transit is a program whose objectives and effectiveness have not been seriously examined for almost a decade. The major projects - particularly the large ones like Detroit's proposal - have extremely low benefit/cost ratios and - a point that is too often overlooked - have enormous built-in operating subsidy requirements which are never given sufficient weight at the time of the investment decisions. BART was to have been self-supporting, but only covers a third of its costs from the farebox. METRO was to have been self-supporting, but it too requires subsidies. I believe Detroit would be particularly hard pressed to cover major annual deficits of rail transit on top of its bus deficits.



4

Recommendation: The Administration should go slow on Detroit and on mass transit at this time. More orderly decisions can be reached during the next three months. In the meantime, there are several positive actions the Federal Government can do far short of promising \$600 million of money that we don't have for a project that barely exists on paper. For example, the downtown people mover proposal which Detroit submitted to UMTA this summer in competition with 38 other cities is reportedly very close to being one of three finalists. This is a \$50-100 million program that has been analyzed and for which funds have already been identified.

With respect to the Secretary's request to announce a legislative proposal at the transit convention next week, OMB strongly believes that it is in your best overall interests that no such commitment be made at that time. You need to have options prepared and evaluated on this issue, and the costs and benefits of this initiative compared to other initiatives. As an alternative, OMB strongly recommends that the Secretary address only the very major transit accomplishments which your Administration has already made.



THE WHITE HOUSE

WASHINGTON

October 15, 1976

MEMORANDUM FOR:

✓ PHILIP BUCHEN
ROBERT T. HARTMANN
JACK MARSH
MAX FRIEDERSDORF
ALAN GREENSPAN
JIM LYNN
BILL SEIDMAN

FROM:

JIM CANNON *J. Cannon*

SUBJECT:

Detroit Transit Proposal

Attached for your consideration is a proposal which Secretary Coleman has made to the President. It involves a commitment of federal mass transit funds to the city of Detroit. (Tab A)

This will have a budget impact in FY 80 in that the six-year mass transit funding which the President signed in 1974 will be used up in five years.

May I have your views by close of business on Saturday, October 16, so that I may incorporate them in a memorandum to the President.

Attached at Tab B is a preliminary draft of OMB's position on this suggestion.

Thank you.

attachments



A





THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

October 9, 1976

MEMORANDUM TO: The President

SUBJECT: Detroit Transit Proposal

Background

Detroit has been working for several years with the Department's Urban Mass Transportation Administration (UMTA) to develop an improved transit program. A new urgency has been added to that work as a result of civic unrest in the City, and Governor Milliken is now actively involved in pressing the City's case for Federal support.

The State and the City are jointly seeking a Federal commitment in principle to support a coordinated package of transit improvements consisting of bus service on freeways and arterials, commuter rail improvements, a two-mile "people mover" system downtown (linking the Renaissance Center to other key focal points), and a new rapid transit system of up to 20 miles. They are currently developing the cost-effectiveness analysis of transit alternatives which we require before we can make any specific commitments, but that will not be complete until January 1977.

The progress of this work has been punctuated by increasing unrest in the City--the riots in Cobo Hall, problems with teenage gangs, crime and terror incidents on city buses and freeways. The Governor has taken the unprecedented step of assigning State Police to patrol the expressways during rush hours to protect motorists. Both he and the Mayor report that this series of events has seriously shaken private business confidence in the revival of the City, and stymied new downtown investment. They strongly feel that the City urgently needs an expression of specific commitment by some outside force--some ray of hope--before a new round of business and residential flight is triggered. They see a Federal transit commitment as the only significant prospect in the offing.



Three weeks ago I told the Governor that no such Federal commitment could be made unless non-Federal matching funds were committed. He immediately began legislative action and obtained, on September 30, legislative approval of a \$220 million State transit funding package. This package includes additional automobile license plate fees and vehicle title transfer taxes to be paid in suburban counties around Detroit--an indication that the State is willing to take difficult political steps in the face of this crisis.

The ball is now back in our court. The Governor and others in Michigan are pressing hard for some indication of Federal response, now that they have completed the action which I had indicated was needed. Not to respond now could be embarrassing to the Administration and could provoke a political attack from the Mayor and others. I believe, however, that this situation presents us with the opportunity to go on the offensive with a decisive expression of concern for key American cities. This issue needs to be approached as an urban policy issue, and not just a transit investment decision.

Proposal

I propose a response which will demonstrate Administration and Presidential leadership by taking action to express concern for declining central cities in a hard-nosed way, and in a way which does not unbalance our budget and tax postures. The policy messages I believe we can communicate in this effort are the following:

1. The key to city revival lies in stimulus to private investment and private job creation, which in turn creates a larger tax base through which a city can better deal with its own problems;
2. This Administration will help cities that demonstrate commitment to deal with their own problems; and
3. We will require a partnership approach among all levels of government and the private sector.

Specifically, I propose to announce within the next two weeks a \$600 million conditional commitment in principle of funds to Detroit for transit improvements. For this commitment to be triggered into actual grants, the transit effort will have to be made part of a major community development and city building effort by the State, City, and Federal governments and the private sector. Specifically, we must have commitments that:



--any transit construction will be carried out with union cooperation and in such a way as to provide skill training and jobs for substantial numbers of unemployed city youth who are at the heart of the problem of urban unrest;

--the private sector will make new investment commitments, on at least a dollar for dollar basis with the Federal Government's transit grant, for office, commercial, and residential development around proposed transit routes and stations; and

--State and local governments will make necessary commitments for supporting infrastructure and will assure the provision of public services which will enhance the prospects for private investment.

In this way, a transit commitment becomes a rallying point for an entire program in which all sectors can join.

Other Federal Departments--HUD and Commerce (through the Economic Development Administration)--could also be brought into this package. An announcement could be handled in any one of several ways--perhaps after a White House meeting sought by Governor Milliken, Mayor Young, the automobile company heads, unions, and others. You could be directly involved, or the actual announcement could be handled at the Cabinet level.

Budget Impact

The budget impact of a major transit commitment such as this is delayed. We would not have significant obligations until FY 1978, and outlay impacts would be strung out over a few years beginning in FY 1979 and 1980. However, there is no doubt that such a step would create pressures from some other cities, notably Los Angeles which is well along in preparing a comprehensive transit package.

However, compared to almost any other urban program initiative, transit grants can be managed and limited. They are on a discretionary basis, not formula allocated, and very few cities can begin to justify rail transit development. In other words, we are talking about a few major cities in a delayed and



strung-out time frame, not all medium and large cities. I believe, also, that the UMTA program budget is being managed in a very moderate way. We have rejected major grant applications in Denver and Dayton. We have cut programs in half in New Jersey (PATH) and Buffalo. We require grantees to enter into contracts which put a fixed ceiling on the Federal funding and commit local resources to be used to complete the project in the case of any cost overruns. I have exacted commitments from contractors and unions that there will be no strikes during the course of construction. You are not dealing with a runaway program here.

At the same time, UMTA program initiatives have been treated favorably by the press (see attached New York Times editorial) and represent visible and important stimulants to city economics. We have made a number of major UMTA commitments to central cities within the last two years (see attachment), so there can be no allegation of special favoritism to Detroit.

In order to accommodate the initiative I am proposing, it will be necessary to accelerate UMTA commitments of funds already authorized. As one of your first major acts as President, you signed the major National Mass Transportation Assistance Act in 1974, committing \$11.8 billion over the six years from FY 1975 to FY 1980. Of that amount, \$7.1 billion was for discretionary capital grants. I propose now to permit UMTA to spend out that capital authorization in five rather than six years, thereby requiring an agreement by you to seek new authorizations for FY 1980 and beyond. We can credibly take the position that, by the time these added authorizations and outlays for FY 1980 come on line, they can be absorbed by cuts elsewhere or by new revenues.

The time for us to announce such an intention is soon. I am addressing the annual meeting of the American Public Transit Association on October 20, 1976 and would like to do so then. In this manner we will be taking the offensive, not waiting for Congressional action. Both the Senate and House are planning to take up the UMTA legislation next year and will probably add substantial funding to the UMTA program--I believe that we should capture that issue by presenting an effective Administration funding proposal.

Bill
William T. Coleman, Jr.

Attachments



ATTACHMENT

(\$\$ in millions)

1. Major UMTA rail transit construction and rehabilitation commitments beginning in FY 1975:

Atlanta	\$800
Baltimore	\$500
Boston	\$200 (Interstate transfers)
Buffalo	\$269
New York City	\$500
Northern New Jersey	\$470
Philadelphia	\$240

2. Major UMTA bus and busway commitments since FY 1975:

Denver	\$200
Seattle	\$124

3. Detroit ranks 5th in size among urbanized areas, but 12th in amount of UMTA grants through FY 1976.



Sic Transit . . .

The pleasures of urban life are not limited to the availability of sophisticated cuisine, to rich options in the arts or to opportunities to encounter cultivated minds and sensibilities. An urban joy can be as simple as taking a small boy to Coney Island on the old Sea Beach line and choosing to return to Manhattan on the F train because of its bright, quiet, new cars and the view it affords of the Verrazano-Narrows Bridge before it scuttles into a tunnel for the long serious journey under Brooklyn.

Secretary of Transportation William T. Coleman Jr. clearly understands such things and is also aware of the additional fact that the vitality of any city depends, in large measure, on whether its people are able to move through it efficiently and in reasonable comfort. He announced the approval last week of five mass transit grants totaling \$340 million to major cities to support such activities as subway construction, acquisition of buses and improvement of existing equipment. Those grants, which included \$66.7 million for New York City, bring the Department of Transportation's mass transit aid for this fiscal year to \$1.5 billion.

Next to the \$70 billion the nation has spent over the years on its more than 40,000 miles of interstate highways, that amount may seem minuscule, but compared with the \$133 million the Federal Government allocated to mass transit just six years ago, it is significant. Since 1970, the curve of Federal mass transit expenditures has climbed steadily. Moreover, cities now have the option of diverting some highway money to mass transit purposes, and a number of mayors have demonstrated the wisdom and courage to do so.

If these straws in the wind indicate that the nation is finally beginning to free itself from the grip of the highway lobby, then they are most welcome. The automatic trust fund device for funding highways has not only contributed to the noxious urban atmosphere, but to the malaise in the railroad industry and to the strangulation of the cities as well. From 1945 to 1970, the nation's investment in highways amounted to more than \$150 billion and, during that time, less than 20 miles of subway were built in the United States.

Secretary Coleman put the conflict well the other day when he said, ". . . the city that is not accessible cannot serve its people. . . . For our urban centers to survive and thrive, we must have transportation systems that circulate people in and through our cities in comfort and convenience. . . . Highways alone, where buses with 40 passengers must compete with the one-occupant car for the same piece of pavement, will not do the job."

While there is little chance that America's romance with the internal combustion engine will soon fade, there is currently a large question about whether the nation's cities can remain viable. Policies which seek to redress the investment imbalance of the past are nothing so much as they are efforts to conserve our cities and investments in our future.



B





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

MEMORANDUM FOR: THE PRESIDENT

FROM: Paul O'Neill

SUBJECT: OMB Comments on Secretary Coleman's Detroit Proposal - Request for Administration Commitment to Expand the Mass Transit Act

This memorandum is prompted by Secretary Coleman's October 9 proposal to you that the Federal Government should immediately commit itself to a \$600 million transit program in Detroit. The commitment would pre-empt a detailed analysis of Detroit alternatives which is required by DOT, and which is due in early 1977. This and similar major proposals (Los Angeles, Honolulu, Chicago, others) would, if approved, require annual funding levels substantially higher than those currently authorized through 1980, and impose funding requirements well beyond 1980. The Secretary accordingly also wants approval to announce next week at a convention of the American Public Transit Association (APTA) that the Administration will seek expansion and extension of mass transit legislation.

OMB believe that Secretary Coleman's Detroit memo greatly understates the budgetary ramifications and overstates the benefits of the proposal, and OMB strongly recommends that Secretary Coleman be advised not to make this or any major rapid transit commitments or announcements for at least three months so that such decisions do not pre-empt your options as you review 1978 budget requests. Specifically, if you meet with Governor Milliken on Monday, no commitment should be made other than that Detroit's proposals are under review and will receive careful consideration. OMB also recommends that no long term funding decisions be implied at the APTA conference. The following arguments support these recommendations:

Background

- Transit is not a panacea: While Secretary Coleman is correct when he states that some transit initiatives have been treated favorably by the press, an increasingly impressive array of



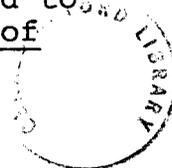
independent analyses are making devastating arguments against new major rapid transit projects. The BART system in San Francisco, for example, has had marginal effectiveness, carries only 2-3 percent of the trips in the Bay area, over 40 percent of its riders previously rode buses for the same trip, it only covers one third of its operating costs from the farebox, and has very little impact on land use. It principally benefits suburban commuters, not inner city residents in the Bay Area.

- Funds do not exist: DOT is beginning its third year of the six-year transit funding authority which you signed in November 1974. While funds for 1977-1980 are technically unobligated, DOT has already made commitments or planned how it might use almost every dollar. Hence, a commitment such as the one proposed would exceed planned levels and force a need for additional authority. At a minimum, such proposals should receive the greatest scrutiny possible and be compared with other competing applications for transit funds.
- Pre-empts budget trade-offs: As you know from budget previews, decisions which you have to face for 1978, 1979 and 1980 will be the toughest any President has had to face for years. The mass transit budget request for 1978 and the plan which Secretary Coleman has outlined would add \$1 billion in obligations and \$500 million in outlays to 1979 estimates above and beyond any of the targets or threats which you have already seen. DOT's overall FY 1978 request alone is already \$3 billion above planning figures for obligations, and \$1 billion above outlay targets. Recent transportation actions have added several billion dollars over your planned levels for 1976 and 1977 (e.g., ConRail, Northeast Corridor, airport grants, highway grants). Transportation budget threats for the future include not only transit, but also more for highways and railroads, and possibly aircraft noise retrofit. The DOT proposal seeks approval of an unspecified increase and extension to the transit program. What DOT actually has in mind is a transit program by 1980 well over a billion dollars higher than that assumed in your target estimates. You should have the opportunity to examine your options in a broader context.
- Not based on analysis: Secretary Coleman argues that the UMTA program carefully controls which projects it approves. But that control only exists to the extent that proposals



are subjected to intense scrutiny by UMTA - scrutiny which is designed to help ration UMTA's funds and prevent the serious planning problems that occurred with BART, and with METRO here. Approving Detroit in advance of this review would undermine the value of normal UMTA analysis - analysis which is more than likely to reject rail rapid transit options in Detroit in favor of high quality express bus service on Detroit's excellent freeway network. Specifically, the \$600 million mentioned for Detroit is an awkward amount. It is much more than is needed for buses, a downtown people mover and commuter railroad improvements, but is too low for a new rapid transit scheme.

- Timing: There is absolutely no need to make such a decision at this time. The unrest problems which the Secretary discusses would remain unaffected by this decision for years, even assuming that a transit initiative would have some bearing on the issue.
- Long-term problems: Secretary Coleman's speech and meetings in Detroit last month are likely to be misinterpreted as an Administration promise of \$600 million to that city. They have already prematurely triggered legislative action by the Governor. UMTA is presently involved in several multi-hundred million dollar projects (Atlanta, Baltimore) which received support in 1972 pre-election speeches by former Secretary Volpe. It took years for DOT to salvage some order out of the chaos created by those speeches, and I think we should profit by those past errors and approach this proposal far more carefully.
- Operating Subsidies: Despite the superficial appeal of mass transit to the NY Times, transit is a program whose objectives and effectiveness have not been seriously examined for almost a decade. The major projects - particularly the large ones like Detroit's proposal - have extremely low benefit/cost ratios and - a point that is too often overlooked - have enormous built-in operating subsidy requirements which are never given sufficient weight at the time of the investment decisions. BART was to have been self-supporting, but only covers a third of its costs from the farebox, METRO was to have been self-supporting, but it too requires subsidies. I believe Detroit would be particularly hard pressed to cover major annual deficits of rail transit on top of its bus deficits.



Recommendation: The Administration should go slow on Detroit and on mass transit at this time. More orderly decisions can be reached during the next three months. In the meantime, there are several positive actions the Federal Government can do far short of promising \$600 million of money that we don't have for a project that barely exists on paper. For example, the downtown people mover proposal which Detroit submitted to UMTA this summer in competition with 38 other cities is reportedly very close to being one of three legitimate finalists. This is a \$50-100 million program that has been analyzed and for which funds have already been identified.

With respect to the Secretary's request to announce a legislative proposal at the transit convention next week, OMB strongly believes that it is in your best overall interests that no such commitment be made at that time. You need to have options prepared and evaluated on this issue, and the costs and benefits of this initiative compared to other initiatives. As an alternative, OMB strongly recommends that the Secretary address only the very major transit accomplishments which your Administration has already made.



Domestic Council

Date: October 15, 1976

Time:

FOR ACTION:
Phil Buchen
Jack Marsh

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Monday, October 18, 1976

Time: 10:00 A.M.

SUBJECT: Jim Cannon memo, 10/15 concerning Senator McClure's Request for Assistance to Teton Dam Victims.

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

No objection.

P.W.B.
Philip W. Buchen



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.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

October 15, 1976

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON



SUBJECT:

Senator McClure's Request for Assistance
to Teton Dam Victims

Senator McClure has written to you (letter at TAB A) asking that you direct ERDA to consider turning over some land from the 572,000 acre Idaho National Engineering Laboratory (INEL) for use by farmers whose land was irreparably damaged by the Teton Dam flood disaster.

We have looked into the matter in cooperation with ERDA, Interior and OMB and all are in agreement that we should respond favorably to Senator McClure's request.

As indicated in the proposed response (attached at TAB B), special legislation would be needed to accomplish the transfer but we understand that Senator McClure is prepared to take the lead on such a step. Less than 2,000 acres of land would be involved and both ERDA and OMB have concluded that giving up this amount of land would not injure ERDA's ability to carry out its programs.

Senator McClure and Congressman Hansen are very anxious to have a response on this matter as soon as possible.

The proposed reponse has been reviewed and concurred in by ERDA, Interior, OMB, Max Friedersdorf, and Mr. Hartmann's staff.

RECOMMENDATION

That you sign the letter attached at TAB B.

Attachment



HENRY M. JACKSON, WASH., CHAIRMAN

FRANK CHURCH, IDAHO
LEE METCALF, MONT.
J. BENNETT JOHNSTON, LA.
JAMES ABOWREZK, S. DAK.
FLOYD K. HASKELL, COLO.
JOHN GLENN, OHIO
RICHARD STONE, FLA.
DALE BUMPERS, ARK.

PAUL J. FANNIN, ARIZ.
CLIFFORD P. HANSEN, WYO.
MARK O. HATFIELD, OREG.
JAMES A. MCCLURE, IDAHO
DEWEY F. BARTLETT, OKLA.

United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

GRENVILLE GARSIDE, SPECIAL COUNSEL AND STAFF DIRECTOR
WILLIAM J. VAN NESS, CHIEF COUNSEL

August 5, 1976

The Honorable Gerald R. Ford
President
The White House
1600 Pennsylvania Ave.
Washington D.C. 20500

Dear Mr. President:

MP

I want to thank you for all your assistance in the recent Teton Dam disaster in Idaho. The survivors are beginning to try to put their farms and lives back together and I know they are grateful for the assistance they have thus far received. While the immediate needs are being met, the long term relief for the victims of this disaster is still of great concern to all of us. Thus I find myself again requesting your assistance on behalf of the flood victims on the following problem.

There are a number of farmers who have not only lost their homes and farm buildings but they have completely lost the soil on their farm lands. While many are trying to recondition their land, there are about 3000 acres that will never be recoverable for agricultural use. The owners of this unrecoverable land want to continue farming in eastern Idaho but need our help in seeking alternative land sites for their relocation.

After looking at private and state lands not under cultivation (of which there is very little available) the only realistic alternative for land is the unused acreage within the northeastern corner of the ERDA site near Mud Lake.

ERDA holds 572,000 acres at their Idaho site. Their facilities cover approximately 1% of this acreage. ERDA's northeast corner is bisected by a state highway thus making it unlikely for future ERDA development. I contacted ERDA on the feasibility of releasing some of this land. I learned that an overall review of ERDA land has just been completed which recommended that no ERDA land in Idaho be reclassified for agricultural use. When this land was under AEC jurisdiction however, a report was in the process of completion that would have reclassified this section for agricultural use. I feel this land should be reclassified for farming and made available to the disaster victims.

The budgetary impact of this consideration is important. If we can replace the destroyed land with federal land, we have not only maintained the land base in the region but we have also reduced the dollar payment that the U.S. Treasury would have to make to the claimants who have lost their land due to the failure of the Teton Dam.

RECEIVED

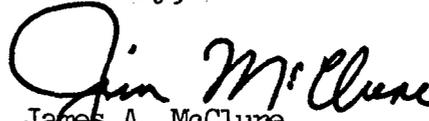
The Honorable Gerald R. Ford

Page 2

In light of the critical need for farm land for the Teton victims, the location of the ERDA lands in eastern Idaho and the budgetary impact, I urge you to consider the uniqueness of this request in helping release the needed land. I appreciate any support you may be able to give the victims in helping them return to their life's work - the job of farming.

Thank you for your consideration.

Sincerely,


James A. McClure
United States Senator

McC:av

THE WHITE HOUSE

WASHINGTON

Dear Senator McClure:

Thank you for your letter of August 5, 1976, concerning our efforts to assist the victims of the Teton Dam disaster. I am grateful that we were able to mobilize Federal resources expeditiously to help the victims of the tragic flood rebuild their homes and communities.

Your letter identifies a special problem faced by farmers whose land was irreparably damaged by the flood and who are now having difficulty continuing farming in Idaho because of an apparent shortage of suitable State or privately-owned farm land. I recognize your point that the current authority for Federal Government pecuniary compensation of claims for damaged or lost property may not enable these farmers to continue farming unless additional land is made available.

As you requested, I asked the Administrator of the Energy Research and Development Administration (ERDA) to review his agency's needs for the land constituting the Idaho National Engineering Laboratory (INEL) to determine whether some of this land could be made available to these flood victims for farming. The Administrator concluded that the INEL land should be retained so that ERDA can carry out its programs; but, in view of the unfortunate events resulting from the flood, ERDA is prepared to make some land available to flood victims for farming if we can find a way to accomplish this objective.

We believe such special assistance would be appropriate in the case of those farmers whose land was irreparably damaged, whose livelihood is farming, and who are unable to find suitable replacement land.



It may be rather difficult to make the land available because the specific statutes authorizing compensation to the flood victims do not provide for compensation in kind. Further, the Federal Government does not have a statutory means to accomplish a transfer of land title to the flood victims. Nevertheless, the Administration stands ready to work with you in achieving this objective.

First, specific legislation authorizing a transfer of land to the flood victims will be needed.

Second, some time undoubtedly will be required before legislation can be obtained. If the flood victims involved are interested and are willing to take the risks involved, the Administrator of ERDA and the Secretary of Interior are prepared to work with them to make available some of the INEL land under temporary use permits pending action on required legislation.

Finally, there appears to be a continuing question as to whether or not suitable land is available for purchase. In the interest of resolving this question, I have asked the Secretary of Interior to take the lead, working with other Federal agencies and local officials, to make a definitive assessment of the situation and to complete that assessment within the next 30 days. Such a survey should provide information that will undoubtedly be needed to justify legislation authorizing the proposed transfer of land.

I have asked Administration officials to continue working closely with you on this matter. I appreciate your bringing it to my attention.

Sincerely,

The Honorable James A. McClure
United States Senate
Washington, D. C. 20510



United States Department of the Interior

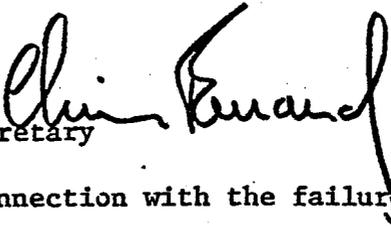
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Memorandum

OCT 1 1976

To: Glenn Schleede
Domestic Council

From: Chris Farrand
Deputy Assistant Secretary



Subject: Land Transfers in connection with the failure of the
Teton Dam

Attached is a staff memorandum prepared for me on the subject of the proposed transfer of lands now under ERDA jurisdiction for use in relocating farm families whose land was destroyed in the collapse of Teton Dam.

We are not certain whether the proposal for "use permits" on the ERDA land pending legislative transfer is a wise solution. We are certain, however, that administrative transfer without legislation will not work. In order for the Department to accept the land from ERDA, we must make a determination that the land in question is suitable for return to the Public Domain. Any such determination would be in conflict with the proposed disposal, i.e., relocation of families.

Although your memorandum of September 23 indicated otherwise, our information suggests that there are ample private lands in the area that are available and on the market. Our claims program can provide cash compensation in an amount sufficient to cover "replacement" of losses. Hence, we can make funds available to those families whose land is not reclaimable in amounts sufficient to acquire comparable acreage of comparable quality land. Also, bear in mind that there are at present no provisions for in-kind compensation, nor was any such compensation anticipated in the Claims Act. The provision of use permits pending transfer of the ERDA would confuse the adjudication of the claims.

Therefore if our interest is to relocate families as rapidly as possible, then private lands are no doubt the most direct and expedient source of lands. If you want to pursue the ERDA land transfer, I suggest that we await appropriate legislation. It should be remembered that in all probability these lands have



not been classified and a determination made as to their irrigability. Therefore we have no satisfactory evidence at this time that indicates that these lands can be converted or indeed are suitable for irrigated agriculture.

Enclosure





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

SEP 21 1976

MEMORANDUM FOR: JIM CANNON
 FROM: James T. Lynn *JTL*
 SUBJECT: Proposal from Senator McClure concerning the use of certain Idaho lands now controlled by ERDA

This memorandum is in response to your memo of September 4, 1976, which asks for our help in evaluating a request to the President from Senator McClure concerning the proposal for transfer of certain lands now controlled by ERDA for use by farmers in Idaho.

As you requested, we have reviewed the ERDA position concerning the possible transfer of ERDA land in Idaho to farmers whose land has been damaged beyond recovery by the Teton Dam failure. The following provides our answers to your questions:

1. (a) Are the claims correct that the farmers' land covered by Senator McClure's request is not recoverable?

The best information we can obtain (from the Idaho Falls Office of the Soil Conservation Service) is that about 1,000 acres (out of the estimated 407,000 acres damaged) were damaged beyond repair (i.e. all top soil washed away down to the bed rock). This information indicates that the total number of acres irrecoverably damaged appears to be somewhat less than the 3,000 acres noted in Senator McClure's letter.

How much land is classed as class 1?

*1,500 acres
 Some too badly damaged to be used
 Some below margin in size*

- (b) Are the claims correct that there is no state or private land available?

According to the Idaho Falls Office of the Soil Conversation Service, there does not appear to be any land in that area available for replacement which is either owned by the state or local government or privately owned. An exception could be the development (i.e. preparation for irrigation) of some of the "desert entry" land around for Snake River. However, this would be extremely costly for farmers to develop and is not considered a viable option.



2. How strong is ERDA's programmatic claim that the land must be retained? Is the specific land desired that critical to ERDA's "National Environmental Research Park?"

The primary use that ERDA has made of this area is as a baseline control which sets a standard for how ecosystems behave over a long period of time (ERDA has closely observed the vegetation on this site for 25 years). ERDA can observe the effects of the introduction of environmental pollutants from energy sources on such an ecosystem and thereby have a standard for comparison.

ERDA's Assistant Administrator for Environment and Safety (Dr. Liverman) believes that up to about 2,000 acres of the specific land probably could be made available without destroying the value of that area for environmental research purposes as long as the balance of the land in that area remains available to serve the baseline control function.

Another factor, which is not a direct ERDA programmatic claim to the land, is the position taken by the Governor of Idaho about 18 months ago when he stated that he was opposed to disturbing this section of the Idaho National Engineering Laboratory because of the potential effect on wildlife in the area. This land has been used by a significant portion of the total number of antelope which migrate through the state. Also, the Ada County Fish and Game League has indicated strong opposition, including threatening to sue against giving such lands away.

3. Assuming a conclusion that the ERDA programmatic justification is weak, how could the land be made available for farm purposes? What are the costs and benefits of doing this?

The principal obstacle to allowing the land to be made available for farming purposes is the fact that ERDA has no statutory authority to accomplish this objective. About 90% of the land in question was acquired by ERDA from the public domain. If ERDA decided to release this land, it would have to be returned to the Interior Department for administration. The remaining 10% was acquired from state and private interests and would have to be turned over to GSA as excess to ERDA requirements. -Neither GSA nor Interior presently have the statutory authority to assure that the land could be made available on a preferential basis to the flood victims.

Two alternatives are available for allowing the land in question to be made available for farming purposes:



- (1) Use Permits - Have ERDA sign use permits with the farmers which would allow the farmers to use the property. The problem with use permits is that they must be temporary and revocable. Normally the time period covered by use permits would be about five years which would show the intention of the Government to allow the property to be used by farmers during this period. However, ERDA's lawyers state that the use permits must be revocable because ERDA would not be able to "encumber the land by alienating the Government's property rights." For the farmers, this obviously places a severe limit on the value of use permits. Unfortunately, the temporary and revocable permits which ERDA could issue would not provide sufficient assurance for a lender to provide investment funds to the farmers which would be required in order to irrigate the land. We understand that an investment of about \$125,000 would be required per each half section (320 acres) in order to irrigate the land and make it arable.
- (2) New Statutory Authority - Propose an amendment to the Teton Dam flood relief bill which would authorize ERDA to enter into agreements with the Teton Dam victims to provide the land to the farmers. However, it would appear to be virtually impossible to obtain the necessary congressional approval during the remainder of this session of Congress.

Concerning the costs and benefits of making the land available for farm purposes, our assessment is as follows:

- Compared to other options (such as buying distant farm land and trucking the top soil back) the use of the ERDA site appears to be a cost effective solution assuming that a decision is made that the farmers should be allowed to continue to farm in the same vicinity.
- Concerning direct ERDA programmatic requirements, at least 2,000 acres of this land does not appear to be critical.
- The most serious programmatic problem that we can discover (beyond the statutory problem) would appear to be the strong opposition which the state wildlife authorities and the environmentalists would be likely to take against encroachment on what had been set aside as an environmental preserve. In particular, the environmentalists would be concerned about the effect on the antelope herd in Idaho. ERDA believes that an Environmental Impact Statement would be required.



In view of the rather complex set of circumstances surrounding the proposal by Senator McClure, the fact that no legislation would be likely in any event this session of Congress, and the potential controversy with environmentalists involved in a decision to release ERDA lands for farming, we recommend requesting the Administrator of ERDA and the Secretary of the Interior to prepare a joint study of the feasibility of Senator McClure's proposal and report on the matter later this fall. This approach would show that the Government was seriously concerned about the plight of the farmers, while at the same time avoiding any precipitous move which could antagonize those concerned with the environmental issues.



THE WHITE HOUSE
WASHINGTON

October 19, 1976

MEMORANDUM FOR: JIM CANNON
THROUGH: PHIL BUCHEN *P.*
FROM: KEN LAZARUS *K.*
SUBJECT: Public Works and Prison
Rehabilitation

We have reviewed your draft memorandum to the President on the subject noted above and offer the following:

(1) We would suggest that you merge Options 2 and 3, which would appear to logically supplement, rather than supplant, one another.

(2) Three additional points should be made in support of the proposal:

(a) Approximately \$300 million would be required merely to bring various correctional facilities now under federal court order into compliance with federal court standards.

(b) This proposal is entirely consistent with the Public Works Employment Act, in that it suggests employment programs which are labor intensive as required by the legislation.

(c) There is no other source of funding for the needs of our court systems.

(3) Under the Act, the 25 percent set aside recommendation advanced by Justice could be done on either a state-by-state basis or in the aggregate. In our view, the latter would be preferable.

(4) Counsel's Office supports Option 1.



THE WHITE HOUSE
WASHINGTON

October 16, 1976

MEMORANDUM FOR:

✓ PHIL BUCHEN
ROBERT T. HARTMANN
JACK MARSH
MAX FRIEDERSDORF
ALAN GREENSPAN
JIM LYNN
BILL SEIDMAN

FROM:

JAMES CANNON *JAC*

SUBJECT:

Public Works and Prison Rehabilitation

Attached is a draft memo to the President regarding a proposal by the Department of Justice to allocate a specific portion of public works construction funds for the renovation of State and local penal institutions. The funds would be administered by the Economic Development Administration under Title I of the Public Works Employment Act of 1976.

I would appreciate your comments on the proposal by Wednesday, October 20.

Attachment



THE WHITE HOUSE
WASHINGTONDRAFT MEMORANDUM

October 15, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Public Works and Prison Rehabilitation

This memorandum seeks your guidance on a proposal by the Department of Justice for the dedication of public works construction funds for construction and renovation of State and local penal institutions.

BACKGROUND

On July 22, 1976, the Congress enacted into law (over your veto) the Public Works Employment Act of 1976. The ostensible purpose of the Act was to stimulate employment through the creation of public works jobs. Title I of the Act specifically provided for the funding of projects for the construction, renovation and repair of public facilities.

On October 2, 1976, you signed into law H. R. 15194, the Public Works Employment Appropriations Act of 1976, appropriating some \$3.95 billion for public works projects under the authorization act. Of this amount, up to \$2 billion is available under Title I for construction and renovation projects.

The Economic Development Administration in the Department of Commerce is responsible for administration of this program.

PROPOSAL

The Department of Justice has recommended that you direct the Secretary of Commerce to dedicate up to one-fourth of the funds available under Title I of the Act to be expended on construction, renovation or repair of State and local correctional facilities.

DISCUSSION

The need for more prisons and for rehabilitation of existing prisons is clear and compelling. As you pointed out in a speech before the Florida Chapter of the Federal Bar Association last



February: "... America still has the same prison capacity as in 1960, although crime has doubled and the population has burgeoned."

Because of overcrowding and dilapidation, many judges are reluctant to send convicted prisoners to certain jails. In fact, several Federal courts have ordered certain State and local governments to stop accepting prisoners into their jails and to begin expensive renovations. Moreover, many believe the corollary to mandatory minimum prison sentences, as you and other responsible leaders have advocated, is more prisons. Finally, as a practical matter, dedication of up to one-fourth of the public works construction funds to building new prisons and renovating old ones would put "teeth" in your anticrime program.

On the other hand, it should be noted that Title I funds are available for prison construction projects now and if a State or local government deems construction or repair of a correctional facility to be a priority it may apply to EDA for public works funds for the project. It could be argued, therefore, that by dedicating a set percentage of these funds to construction or repair of correctional facilities you are limiting the flexibility of State and local governments to set their own priorities. Secondly, dedicating a portion of the funds to one purpose would inevitably create pressures for similar dedications for other purposes.

Additional background materials are attached at Tab A.

OPTIONS

If you are inclined to take action on this problem, three options present themselves.

1. Direct the Secretary of Commerce to dedicate up to one-fourth of the funds available under Title I to be expended on construction, renovation or repair of State and local correctional facilities. (Department of Justice proposal.)
2. Publicly encourage State and local governments to submit applications for Title I funds for construction, renovation or repair of correctional facilities and direct the Assistant Secretary for Economic Development to give "high priority" to these applications.



3. Call upon State and local governments to give priority attention to construction, renovation and repair of correctional facilities in applying for Title I funds.

RECOMMENDATIONS

DECISION

- _____ Option 1 -- Dedicate one-fourth of Title I funds to prison projects.
- _____ Option 2 -- Direct Assistant Secretary for Economic Development to give prison projects "high priority"
- _____ Option 3 -- Encourage State and local governments to use Title I funds for prison projects.



A





THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

September 7, 1976

file please

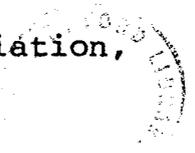
MEMORANDUM FOR JAMES T. LYNN, DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET

SUBJECT: The Public Works Employment Act of 1976

It appears that the Administration may have been presented with an opportunity to accomplish something of significance in regard to the problem of crime.

Ken Lazarus has inquired of the Departments of Commerce and Justice whether the provisions of Title I of the Public Works Employment Act of 1976 permit part of the authorized \$2 billion to be expended on state and local penal facilities, thereby helping to resolve a problem identified by the President in his Crime Message.

As you can see from the attached memorandum, the Department of Justice believes that some portion (about one-fourth) of these funds can be expended, efficiently and effectively, in carrying out a stated aim of the Administration -- adequate penal and correctional facilities. The funds realistically are available from no other source. The planning is well advanced. The need is clear. In his speech last February in Miami before the Florida Chapter of the Federal Bar Association, the President stated:



Unbelievably, America still has the same prison capacity as in 1960, although crime has doubled and the population has burgeoned. The need for more prisons is obvious and very, very urgent.

The impact of such a program would go far beyond alleviating unemployment -- the primary purpose of the Act. It would result in an increased deterrent effect, reduced litigation as to jail conditions, and reduced future spending on federal correctional facilities.

I hope you can take the time to peruse the memorandum and to let me know your thoughts on the subject. Time is of the essence since the temporal strictures of the Act are so severe and since, as page 1 of today's "Wall Street Journal" indicates, the scramble to use these funds (for such projects as landscaping trolley tracks) has begun.


HAROLD R. TYLER, JR.

Attachment



Funding State and Local Penal and Correctional Facilities
under the Public Works Employment Act of 1976

This memorandum addresses the issue whether the Public Works Employment Act of 1976 can be of assistance in helping state and local governments meet their requirements for adequate penal facilities.

Summary

The funds authorized by the Act can be used to aid local governments in constructing new jails and in renovating old ones. Such expenditures would be within the purposes of the Act, and the funds could be used quickly and efficiently within the allotted time limits. Such use of the funds could not only have a potential effect in reducing the level of the nation's crime, but could result in substantial savings to the federal government by obviating a considerable amount of proposed federal jail construction.

Discussion

I. The Public Works Employment Act of 1976.

A. The Statute.

On July 22, 1976, Congress enacted the Public Works Employment Act of 1976 (P.L. 94-369), an intended anti-recession measure under which federal funds will be distributed to state and local governments under the auspices of the Economic Development Administration of the Department of Commerce. Title I of the Act is intended to produce greater employment through the funding of projects for the construction, renovation, and repair of public facilities. 1/ (A copy of the Act is appended at Tab A.)

1/ Only Title I of the Act is directly relevant to the subject of this memorandum. Title II, which seeks to avoid recessionary budget cuts by providing grants to local governmental units to be used for the maintenance of basic governmental services, may have some marginal relevance. Title III (amending the Federal Pollution Control Act) is irrelevant.

Section 111 of Title I of the Act authorizes an appropriation of up to \$2 billion for the period ending September 30, 1977. 2/ The money is to be distributed in the form of grants of 100 percent of the cost of the projects funded (Section 103(b)). The money may also be distributed as increased contributions to projects initiated under other federal legislation, raising the federal share of such projects to 100 percent (Section 104), and to projects initiated under state or local laws requiring a contribution (Section 105).

The money is to be expended for construction, renovation, repair, or improvement of public works projects (Section 103(a)), or to produce plans, specifications, and designs for such projects (Section 103(a)). It may not be used for site acquisition (Section 106(b)), for building certain water projects (Section 106(a)), or for maintenance of projects constructed with funds from the Act (Section 106(c)). Since the purpose of the Act is to provide needed employment promptly, grants are to be conditioned upon assurances that the projects can be started with on-site labor within 90 days of approval (Section 106(d)).

The money is to be allocated to projects throughout the nation (Section 108(a)), with preference to areas of high unemployment (70 percent, preferentially, to those areas where unemployment exceeds 6 1/2 percent and the national average and 30 percent to those areas where the rate is below the national average but in excess of 6 1/2 percent) (Section 108(c)). Priority is to be given to projects of local, as opposed to state, governments (Section 108(b)).

B. The Implementing Regulations

Under Section 107 of the Act, the Secretary of Commerce is to issue implementing regulations within 30 days of passage. Those regulations were issued on August 20, 1976, under the signature of the Assistant Secretary for

2/ On August 25, by a vote of 311-72, the House of Representatives passed a bill (H.R. 15194) appropriating \$2 billion for Title I projects. The next day the Senate Appropriations Committee reported the House bill to the floor of the Senate, increasing the appropriation for the whole bill by \$500 million. It is likely that a conference will be required after Senate passage.



Economic Development, and were published in the Federal Register on Monday, August 23 (41 F.R. 35670). (A copy is appended at Tab B.)

The regulations are not restrictive. For the most part, they merely provide detail to the eligibility aspects of the Act. However, Section 316.11(c) of those regulations requires that any detention facilities funded under Title I must be in compliance with the provisions of Part E of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750b(1), (4)-(9)). Those provisions require that applications include a comprehensive statewide program, an emphasis on community based corrections, advanced design features, regional sharing (where feasible and desirable); advanced correctional practices, personnel standards, and drug and alcohol treatment. Since only the first of these requirements would be particularly burdensome, and since it would already have been met by state planning agencies in earlier applications to LEAA for funds for penal or correctional purposes, these requirements do not appear to be a serious bar to the effective use of Title I funds for such purposes. 3/

Conclusion: Funds under the Act may be used to build penal and correctional facilities and to renovate existing facilities. The strictures of the Act, however, indicate that the bulk of this money would go to local communities, and thus that the funds used for such purposes would most likely be available for jails rather than penitentiaries.

II. The Need for Jail Construction and Renovation.

There is an urgent, demonstrable need for construction and renovation of jails. The nature of the specific need varies with the size of the community.

3/ The regulations (§316.10(g)) limit project costs to \$5 million but permit the Assistant Secretary to waive the limit for "good cause." This provision would affect only a limited number of large, metropolitan jail construction projects, and "good cause" in those cases would seem to be apparent.



Jails located in or near large metropolitan areas are commonly overcrowded. 4/ The jail in Prince Georges County is operating at 297% above capacity. Florida is using tents and airplane hangars to house prisoners. Maryland has purchased a "mothballed" freighter to use as a prison. The Law Enforcement Assistance Administration has recently resorted to authorizing the purchase of hundreds of trailers for use as substitute facilities.

Most rural jails, although small (75 percent have capacities of 20 or less), are still large enough to handle existing and projected near-term needs. However, the conditions of many of these jails have been described by knowledgeable authorities as anywhere from "despicable" to "abominable." Six percent are more than 100 years old; 12 percent are more than 75 years old; 25 percent are more than 50 years old. Eighty percent have no recreational facilities available and many have no visitation facilities. Some have totally inadequate sanitation facilities. Many present safety hazards -- to both inmates and staff -- as a result of non-locking cell doors and antiquated security features.

These overcrowded and substandard conditions have a drastic effect on the criminal justice system. Judges are understandably reluctant to detain persons prior to trial where such facilities exist, and, although evidence suggests incarceration of convicted offenders deters crime, 5/ in the last few years an increasingly number of serious offenders has been sentenced only to probation, frequently because judges are unwilling to send offenders to overcrowded

4/ The 1972 census stated that five percent (or 167) of the nation's jails were then overcrowded. Many experts now allege that all urban jails are overcrowded and that rural and county jails are nearing a crisis point.

5/ For a general discussion of the subject, see James Q. Wilson, Thinking About Crime (New York, Basic Books, 1975); Norval Morris, The Future of Imprisonment (Chicago, University of Chicago Press, 1974); and Ernest van den Haag, Punishing Criminals (New York, Basic Books, 1975).



or substandard jail facilities. Indeed, in recent years the conditions in some penal facilities have been found so poor that federal courts have ruled that being sentenced to them constitutes cruel and unusual punishment under the Eighth Amendment of the Constitution. 6/ The states of Alabama and Louisiana currently have all their jails under either court attack or court order. It is acknowledged by all who have studied the field that these local jails are in serious need of renovation, both for humanitarian and correctional purposes.

Other detrimental consequences can be found where overcrowded or poorly designed jails exist, since most jails are multi-use facilities. Thirty percent of jails house juveniles with adult offenders. Ten percent do not segregate mental patients awaiting commitment. Some sixty percent do not segregate pretrial detainees.

Conclusion: There is a pressing and widely-recognized need for jail construction and renovation. (A copy of a recent GAO study that is in agreement with this conclusion is attached at Tab C. See pp. 19-27).

6/ See, e.g., Costello v. Wainwright, 525 F.2d 1239 (5th Cir. 1976); Finney v. Arkansas Bd. of Corrections, 505 F.2d 194 (8th Cir. 1974); Gates v. Collier, 501 F.2d 129 (5th Cir. 1974).

III. The Need for Federal Funds for Such Purposes.

Penal and correctional facilities have never ranked high in the priorities of taxpayers. Even where some local funds are available, they are usually inadequate to permit the construction of modern facilities. For example, while correctional experts are in general agreement that single inmate cells should be the rule (for safety and privacy purposes), local authorities are reluctant to build such facilities because of their cost.

State funding may be a more realistic means of providing adequate jails than local funding. Yet those states which have inadequate jails are also likely to have inadequate penitentiaries, and consequently statewide systems can be expected to continue to receive higher priority.

Past efforts at federal funding have not been particularly successful because of two principal shortcomings. First, the total federal funds available have been inadequate for the purpose. The LEAA funds available for jail construction and repair, under Part E of the Safe Streets Act, total \$37 million for FY 1977 and \$41 million for FY 1978. Yet LEAA has projected a figure of \$300 million as necessary merely to bring those correctional facilities now under federal court orders into compliance with court standards, and a joint ABA/LEAA study estimates the cost of bring all correctional facilities up to such standards at \$3.5 to \$4.7 billion. (A copy of the ABA/LEAA study is appended at Tab D.) Second, problems have been encountered as a result of the requirement that, as a requisite to obtaining LEAA funds, the local governments supply up to 50 percent of the costs of such projects. Some locales, even where under court order, have simply been unable to raise the necessary revenue. Some are reluctant to expend the required matching funds because of the view that the proposed facilities are too expensive as a result of what they perceive as unnecessarily high LEAA standards (e.g., single occupant cells). Others, under pressure from federal courts to renovate their jail systems, quite naturally resent being forced to expend local funds at federal direction.



The availability of federal funds an order of magnitude greater than those previously available for penal facilities, dispensed under a program that places no burden upon states and localities to produce matching funds, should resolve most of the funding problems previously encountered.

A further rationale for the use of federal funds for such purposes is the long-term savings that can accrue to the federal government. The Bureau of Prisons contracts with local jails for housing of federal prisoners (there are some 6,100 federal prisoners, about one-fourth of the total, in non-federal facilities). The inadequacies of many local jails, however, has led to the construction by the Bureau of three federal Metropolitan Correctional Centers (MCC's). The Bureau has determined that there is an immediate need for construction of MCC's in three more metropolitan areas ^{7/}, and is studying the need for construction of MCC's in ¹⁷ additional cities. ^{8/} There is much to be said for aiding in the improvement of local jails and avoiding the construction of at least some of these MCC's, especially since the MCC's already constructed have served the purpose of providing models for jail construction. The construction of a dozen more such facilities could be avoided through the use of Title I funds to improve local jails. ^{9/}

Conclusion: There does not appear to be any other adequate, practicable source of funds for the building of local penal facilities, and the use of Title I funds for this purpose may result in substantial savings from other parts of the federal budget.

^{7/} These metropolitan areas are Baltimore-Washington, Detroit, and Phoenix.

^{8/} These cities are Atlanta, Boston, Houston, Los Angeles, Miami, New Orleans, Philadelphia, St. Louis, East St. Louis, San Antonio, San Francisco, Sacramento, Tampa, Tucson, and Orlando.

^{9/} The 17 cities indicated include some within the same state. The strictures of the Public Works Act would probably limit construction to one jail per state, thus reducing to 12 the total of MCC's that could be obviated.



IV. The Ability to Plan and Execute a Program of Construction Within the Stated Time Limits.

Since the Public Works Employment Act is designed as an immediate anti-recession measure, it is replete with provisions requiring the prompt expenditure of the funds authorized. Intelligent spending for penal facilities can, in fact, be accomplished promptly. 10/

The federal government is in a unique position to plan and execute an expidited program of construction of penal and correctional facilities. The Bureau of Prisons has had long, high-level experience with planning such facilities. Its National Institute of Corrections is designed to provide technical assistance to local penal and correctional authorities, and the Bureau's task force on jails is nearing completion of its work. Moreover, the National Clearinghouse for Criminal Justice Planning and Architecture (an LEAA-funded group at the University of Illinois) has developed comprehensive plans not only for general application but for specific application as well; it has plans for renovating all correctional facilities in Nevada, Illinois, New Jersey, Hawaii, and Oklahoma, among others, and has specific plans for a number of local jails. 11/ (An example of one such plan is attached at Tab E. See pages 67-93.)

The above groups can readily be formed into a task force to set specific standards for applicants. Although, in the past, local authorities have opposed national standards because of the cost of their implementation, with 100 percent federal funding such objections should be avoided.

10/ Such a utilization of Title I funds would help in other ways to achieve the purpose of the legislation. Section 316.10(a)(2)(i)(C) of the implementing regulations states a strong preference for labor intensive projects. Experts on penal and correctional architecture have advised the Department of Justice that jail facilities are more labor intensive than other public works projects because they require little capital for special equipment or expensive frils, they are not subject to prefabrication, and they use a wide variety of labor skills.

11/ These include at least five county jails in Texas, Indiana, and Nebraska. State and county plans are being developed for Oregon, Colorado, New Hampshire, Tennessee, and New Mexico. Kentucky and Kansas have completed their own plans, and other states are working on plans of their own.



Conclusion: If some portion of the Title I funds are earmarked for correctional purposes, they can be expended within the timetable of the Act with a substantial level of efficiency.

V. The Amount of Funds Needed.

Using as a base figure the \$300 million that LEAA has projected as necessary merely to comply with existing court orders, and adding to that figure approximately \$180 million estimated as necessary for construction, expansion, and renovation in a dozen large cities where the federal needs are greatest ^{12/} and an additional \$100 million for renovation of small jails not presently under court order, the sum of \$580 million would be an appropriate benchmark. Of course these figures are estimates, and the need for funds is greater than is reflected by these figures. Moreover, it cannot be determined which areas of the country would be eligible for funds under the unemployment formula used in the Act. Nevertheless, \$580 million appears to be a reasonable working estimate. A substantially smaller program would do no more than enable localities to comply with court orders. A substantially larger program might lead to undesirable inefficiency in expenditure.

Conclusion: A sum of money between \$500 million and \$600 million can effectively be expended for this purpose in the coming year.

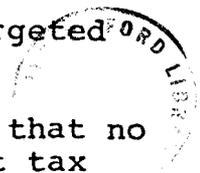
VI. Arguments Against Such a Program.

The chief arguments against this program would be anti-prison sentiment and the existence of greater priorities.

The arguments regarding anti-prison sentiment, ^{13/} can be disposed of on the merits. In any event, the force of any such arguments could be reduced by concentrating initially on renovation of existing facilities since many of those who are opposed to prison expansion are strongly in favor of modernizing existing facilities.

^{12/} They would be selected from among those cities targeted for MCC construction.

^{13/} Such sentiment is divided among those who believe that no one should be incarcerated and those who feel that tax money should not be wasted building "country clubs" for criminals.



The arguments regarding priorities are of greater concern, since many localities may indeed have more urgent needs. Certainly institutions for the mentally retarded, hospitals, and the like will to many be more attractive projects than jails. Nevertheless, given the national preoccupation with the problem of crime and the potential of such a construction program for helping indirectly to meet that problem, the expenditure for prison facilities seems clearly justifiable. Moreover, since the sum suggested is only one-fourth of that authorized, other priorities should be able to be dealt with under the Act.

Conclusion: There appears to be no insurmountable arguments against such a program.

Recommendation

The first recorded reference to building a jail in America appears to be a 1632 order by the city of Boston requiring "a people pen to be constructed with all convenient speed." We still tend to address the issue only when, under all the circumstances, we find it convenient. The Public Works Employment Act seems to have made addressing the problem surprisingly convenient at this time, and the opportunity should not be lost.

C. FORD LIBRARY