

# The Bill to Revise Federal Aid Highway Laws

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● THE discussions being held here today have a very significant characteristic. They reflect the increased recognition of the importance of the many varied legal aspects of highway development. The need for adequate organic laws is so essential to the future of highway programs at all levels of government that this phase of the subject cannot receive too much emphasis. It is inspiring, therefore, to witness by these discussions today the increased attention being given and the federal-state cooperative efforts being made towards spearheading thinking, exchange of ideas, and action on these legal aspects.

Among the problems facing some of the states is the problem of modernizing their highway laws. The Federal Government has a similar problem. The federal-aid laws, under which the Bureau of Public Roads has been operating over the past forty years, consist of a series of amendments and supplements to the original law enacted in 1916. In fact, the present laws relating to federal aid for highways are contained in no less than 37 separate enactments which modify the first Federal-Aid Road Act. It was inevitable that such an accumulation of enactments would give rise to obsolete provisions, inconsistencies, and overlappings. The fact that federal-aid highway authorizations are increasing in amount, with the prospect of very considerable increases in the authorizations for the interstate system, makes it extremely important that an up-to-date version of the federal-aid laws be restated in one act. This brings to mind a statement that has been made that "Sound government depends upon legislation that says the right thing in the right way, in language that is as clear, simple, and accessible as possible."

The purpose of this paper is to provide a brief discussion of the efforts and techniques on the part of the Bureau toward the accomplishment of a restated, one-package, federal-aid law. The material in this paper was covered in somewhat lesser detail in a paper recently presented before the AASHO Legal Affairs Committee at New Orleans. It is believed the subject may be of interest to anyone who has occasion to refer to or use the federal-aid laws, and may be of particular interest to any state which contemplates a similar undertaking with respect to its own highway laws.

It perhaps should be mentioned at this point that the proposed restatement and revision of the federal-aid highway laws into one enactment is a matter entirely separate and apart from any of the present proposals relating to the President's highway programs, which are concerned primarily with the additional authority and funds needed to provide a modern interstate highway system.

The current undertaking toward obtaining an up-to-date version of the federal-aid highway laws has been backed by a mandate of Congress which was contained in Section 12 of the Federal-Aid Highway Act of 1954. This section directed the Bureau to transmit by December 31, 1954, "a suggested draft of a bill or bills for a Federal Highway Act, which will include such provisions of existing law, and such changed or new provisions as the Secretary deems advisable." This assignment goes further than a mere codification, for it provides for changed or new provisions which would be beyond the scope of a codification. It has been determined, however, that in drafting the bill pursuant to Section 12 of the 1954 Act, the draft would include only such changes as were considered technically necessary and noncontroversial in nature, and would not include major substantive changes which would alter any of the basic provisions of existing law or that would possibly be of a controversial nature. Any recommendations for such major substantive changes are, therefore, to be treated as a separate subject which has no bearing on this paper.

Detailed discussion of the revision bill is beyond the scope of this paper, but it is felt that a brief discussion of the techniques used in drafting the bill may be of particular interest.

The first task was to determine the scope of the work. The first Federal-Aid Act was approved on July 11, 1916. Since that date, Congress has enacted many laws for the purpose of amending or supplementing the original act. There were also appropria-

tion acts for every year since 1916, and many of these contained permanent substantive provisions which amended or otherwise became a part of the federal-aid law. In addition, there were a number of other acts that had been passed from time to time which related to other federal agencies and which also affected the administration of Bureau activities in one way or another, but which have not been considered a part of the federal-aid law. After considerable thought, it was determined to limit the scope of the revision bill to only those acts, including appropriation acts, which in fact amended or supplemented the original Federal-Aid Road Act.

Having limited the scope of the effort there was next prepared an exhaustive topical index with references, under appropriate headings, to every section or sentence of the law which dealt in any way with the particular topic indexed. A code of colors was then developed with which to mark up a pamphlet copy of the various federal-aid laws. Each color was used as a symbol to indicate what had happened to the particular section or sentence marked. For example, yellow was used to indicate the repeal of the sections or sentences marked in yellow. Green was used to show that a particular section had been executed or had lapsed by passage of time.

It had been the original intention to include in the report, as Part V, a copy of each of the laws with the various colors overprinted thereon. However, it was found to be too expensive a printing job, so a series of five different overlays, all of which could be printed in black, was selected as a compromise. These overlays were used to indicate, in five general categories, the provisions which have been eliminated and the reasons for their elimination. By use of this system of overlays, a reader can quickly ascertain what has happened to each section of all prior laws.

The first type of overlay, a series of small dots, indicates a section that has been amended, repealed, or re-enacted.

Marginal notations opposite this overlay indicate where the particular provision covered by the overlay has been amended, repealed, or re-enacted.

The second overlay pattern used was a series of widely-spaced horizontal lines. This overlay indicates portions of the law which may still be technically in force and effect, but which are believed to be obsolete or for other reasons inappropriate for inclusion in an over-all highway bill. The specific reason for each omission is contained in a series of notes at the end of Part V, keyed to marginal notes opposite the appropriate overlay.

The third overlay consisted of a series of diagonal lines used to indicate that a section has been executed. Marginal notes are considered unnecessary in this case since no explanation or further references are required. For instance, lines 7 through 9 of Section 1 of the 1916 Act, overlaid with diagonal lines, permitted the assent of the Governor to the Act until final adjournment of the first regular session of the legislature after passage of the Act. Of course, there is no need for retention of this clause.

The tenth through the twelfth lines on Page 1 of the 1916 Act contain a clause reading: "The Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of construction. . . ." These lines were overlaid with the fourth pattern, a series of vertical lines, indicating implied repeal, and are keyed by a marginal note to Section 6 of the 1921 Act. Turning again to the section, it is found that it does not call for an agreement upon the roads to be built, and the character and method of construction, but rather requires system designation and leaves the initiative entirely to the states, with power of approval in the Secretary.

This latter provision indicates some of the difficulties encountered. It was often difficult to determine whether there was an implied repeal or merely a somewhat different way of stating the same provision. There was also difficulty in determining whether there was a re-enactment or amendment, or merely an implied repeal. Undoubtedly there could be, and in fact were, honest differences of opinion concerning the correct category in which to place some of the provisions. However, from the point of view of the end product — that is, the new bill — the category is not so important as the decision as to whether the section or sentence in question should or should not be carried forward into the new bill.

A simple example of surplusage is contained on Page 5, Part V of the report in the first few lines of Section 5 of the Post Office Appropriation Act of February 28, 1919, which read:

Sec. 5. That the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, is hereby amended to provide that

These lines are covered by a fifth overlay of closely-spaced horizontal lines indicating surplusage. This is perhaps the simplest, since it is used to indicate that the language in question is no longer necessary.

No overlay was placed upon the remaining sections. They form the basis for the revision bill, because presumably they constitute the provisions of the law still in full force and effect.

At this point a table of contents was made for the revision bill. In this connection the arrangement was made insofar as federal aid was concerned, on a chronological basis to the extent possible. Then all existing law provisions were assembled under the appropriate heading and either the law was retained in its original language, if possible, or editorial changes were made in language so that the language of the entire bill would be uniform. If it was not possible to use the original or merely make editorial changes, the language was rewritten and consolidated with as few changes as possible. To make it clear to Congress exactly what changes were made in the language, there was included in the report another part, designated as Part IV, which ran in two columns. The proposed bill was placed in the left-hand column, and the sources from prior laws in the right-hand column. Part IV was keyed to Part V so that a person interested in any particular section of the law could trace it through and see just what disposition was made of it.

For example, the definition of the term "highway" is contained in the Federal Highway Act (1921). On the right-hand margin opposite this definition in Part V the number "324" appears. Turning to Part IV, Section 324, "Definitions," the left-hand column under subparagraph (g) gives a definition of the term "highway" proposed to be included in the revision bill. The right-hand column indicates that this definition is based on four different sections of the law which are regarded in Part V as still in existence. These definitions were consolidated into subparagraph (g).

In addition, certain changes were made in this definition. The word "footpaths" was added in line 5 and the word "tunnel" in line 7. Whenever changes of this nature were made the change was indicated in a footnote.

This illustrates the technique used. It was found to be a rather long and arduous task. However, it is believed that a bill was produced which, if enacted by Congress, would be beneficial to all those persons who deal with federal highway legislation.

The United States Code contains a consolidation and codification of the general permanent laws of the United States, arranged according to subject matter under fifty title headings. Some of these titles have recently been revised and enacted to positive law. The Federal highway laws are now purportedly set forth under Title 23 of the United States Code. In the event the draft bill is enacted, it will serve to produce a clear, unified, up-to-date version of the federal-aid laws codified in one act so that those having occasion to refer to Title 23 of the United States Code will have the actual positive law in front of them, which is not now the case with respect to Title 23.

It has been said that bill drafting must have the accuracy of engineering, for it is law engineering, and that it must have the detail and consistency of architecture, for it is law architecture. It has also been said that the perfect statute, like perfect justice, is "God's idea, man's ideal." While the ideal may never be achieved, an attempt should be made to come as close to it as possible, for it is most essential that the provisions of law be stated with such clarity as would eliminate any possible ambiguities as to their meaning. An attempt has been made to keep these principles of draftsmanship in mind, which accounts for the many instances wherein the language of the existing law was restated for purposes of clarity.

In the preparation of the draft bill, suggestions were solicited from the Washington office and the entire field organization of the Bureau. These were considered at Bureau

staff meetings. The draft bill, therefore, takes into account the experience and thinking of the men who have been actually administering the federal-aid laws over a period of many years. As a result of the exhaustive study of all the federal-aid highway laws in connection with this undertaking, the Bureau is convinced more than ever as to the pressing necessity for early action by Congress in enacting the substance of the draft bill.

Based on the Bureau's draft bill, there were introduced in the House of Representatives identical bills, H. R. 234, 235, and 2127. In the Senate, S. 1072 has been introduced, which is identical to the House bills. While brief hearings have already been held before the House Committee on Public Works, no action was taken by that committee, nor have there been any hearings held or action taken by the Senate Public Works Committee. These bills are still alive and now awaiting action by the current session of Congress.