

# Codification of Federal-Aid Legislation

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Modernization of highway laws is a first "must" if the stage is to be set for the present drama of highway progress. The original Shakespearean plays had few if any props—and few were needed in that day and age. The story is different today.

And so it is with highway legislation. Efficient highway administration—both Federal and State—depends upon the most economical and wisest expenditure of the public dollar. This all requires the solid legal foundation of a modern up-to-date law.

The story is not new. The Highway Research Board has recognized the need for legal research toward attaining modern State legislation. Everyone is aware of the substantial progress being made in the current Highway Laws Project Study on this subject, under the direction of Morony and Levin.

This paper deals with the Federal side of the picture—to report on the recent final accomplishment of the codification and revision of the many Federal-aid highway enactments into an up-to-date single law—and to give some of the legislative details involved.

As a further introductory comment, perhaps a few words should be mentioned about Federal legislation and codification in general. All Federal legislation has two basic sources:

1. The United States Statutes at Large; and
2. The United States Code.

Like State session laws, the Statutes at Large are compiled chronologically and not by subject matter. Unless it is known when the law was passed, it cannot be found. If there are several amendments, the search will be in several different places.

About 1874, the first movement toward codification appeared in the enactment of Revised Statutes of the United States, which weeded out obsolete material. Later attempts materialized in 1926 in the actual codification of all permanent and general United States laws into subject matter categories of 50 titles, known as the United States Code. Such codification, however, was only *prima facie* evidence of the law.

In 1948, steps were taken by Congress to revise and codify each of the 50 titles into positive law, repealing the provisions of the Statutes at Large from which the codification was derived. To date, 15 of the 50 titles have been so revised and codified. Title 23—Highways covering the permanent, general provisions of the Federal-aid highway legislation is one of the most recent of these 15 completed codifications.

## NEED FOR CODIFICATION AND REVISION

●THE APPROVAL by the President on August 27, 1958, of a bill to revise, codify and enact into law Title 23 of the United States Code, entitled "Highways", represents the culmination of efforts extending over a period of more than eight years to revise and modernize the Federal laws relating to highways.

The need for this recent enactment has long been apparent to those dealing with Federal highway laws. The first of the many Federal statutes relating to highways, the Federal-Aid Road Act, was approved on July 11, 1916. Excluding the many appropriation acts, Congress has enacted since the 1916 Act 41 separate laws relating to highways.

Many new provisions were inserted over the years in these various enactments which repealed, amended, or modified previous acts without expressly referring to existing laws. The Federal highway laws, therefore, contained many provisions which were obsolete or executed, or which had been amended, supplemented or repealed, expressly or by implication.

As a consequence of this statutory development, it was necessary to review and analyze with painstaking care numerous laws, as well as various administrative practices which have been evolved under these laws, to determine the proper legal authority, responsibility, or limitation of the Bureau of Public Roads in connection with its many legal and operating problems. The growing importance of the highway program in recent years made the disposition of many of these problems more difficult and time-consuming. In turn, the difficulties of administering a program of the complexity and magnitude of the present highway program were magnified by the uncertainty of the law governing particular points.

Even for attorneys well-versed in Federal highway law, the determination of legal questions often required tedious and prolonged research. Since Federal-aid highway laws directly or indirectly affect many State and local agencies, the complexity of the statutes and uncertainty of the law were detrimental to those agencies as well. The instances were undoubtedly rare when all of the Federal laws relating to highways were conveniently available to an attorney or layman.

#### DRAFT REVISION BILL PREPARED IN 1950 AND BILLS INTRODUCED IN THE 81ST AND 82ND CONGRESSES

The first effort to codify the Federal highway laws was made in 1950. The Subcommittee on the Revision of the Laws of the Committee on the Judiciary of the House of Representatives, charged with responsibility for the revision of the United States Code, prepared and published a Preliminary Draft of Text, with revision notes, of a revision of Title 23, United States Code. The proposed title included all permanent laws applicable to Title 23 in effect on April 1, 1950.

In this draft, substantive changes of law were avoided and all laws of a temporary nature were omitted as inappropriate in a Code of permanent law. Such temporary provisions were not scheduled for repeal if considered in active force at that time. A bill, based upon this draft, was introduced in September 1950 in the second session of the 81st Congress. However, it was not acted upon by the Congress.

Another bill, similar in format to the bill in the 81st Congress but incorporating recommendations made by the Department of Commerce, was introduced in the 82nd Congress in April 1951.

The Department's report on this bill was submitted to the Bureau of the Budget late in 1951 after further and extensive consideration of the provisions of the bill by the staff of Public Roads and the Department of Commerce. Again, following usual procedures, other executive departments that were interested in and affected by the bill submitted recommendations.

While there was no action on the bill during the 82nd Congress, the study and legal analysis of the bill and of the techniques and principles involved in codifying the highway laws were not lost. The experience and knowledge gained from these early attempts to codify and revise the existing maze of laws proved valuable in later years.

#### SECTION 12—FEDERAL-AID HIGHWAY ACT OF 1954

The Congress formally recognized the desirability of a codification or restatement of the Federal highway laws in 1954. By the provisions of section 12 of the Federal-Aid Highway Act of 1954, the Secretary of Commerce was authorized and directed to prepare and transmit to the Committees on Public Works of the Senate and of the House of Representatives a draft of a bill for a Federal Highway Act which would include such provisions of existing law and such changed or new provisions as the Secretary deemed advisable.

The preparation of proposed legislation pursuant to this mandate of the Congress was directed toward the production of a clear, unified, and up-to-date version of the Federal

highway laws. While this was the purpose of the earlier efforts towards codification and revision of the highway laws, a different approach was considered indicated because of the specific directive of the Congress. The accomplishment of the general objective was not possible by a mere codification because of the number of provisions which had become obsolete or executed and because of the complexity of the numerous amendments as well as the duplication of many of the provisions.

#### DRAFTING THE PROPOSED BILL UNDER SECTION 12 OF THE 1954 ACT

In the drafting of a bill, it was first necessary to determine the scope of the work involved. It has already been pointed out that there had been separate enactments. Moreover, appropriation legislation had been enacted every year since 1916, and many of these acts contained substantive provisions which have been administered as a part of the law. In addition, a number of other laws had been passed from time to time which affected the administration of the Bureau of Public Roads in one way or another. Generally these latter acts also affected other Federal agencies. After considerable analysis of all of the laws which might possibly be included in such a proposed bill, it was determined to limit the scope of the revision effort to those acts which in fact amended or supplemented the original Act of 1916, together with appropriation acts containing substantive provisions of law. No changes of substance in the law were contemplated—the objective being a clarification and modernization of existing law.

The drafting techniques involved since this subject was treated fully in 1956 by Kaltenbach, then Solicitor of the Bureau of Public Roads, before the Committee on Highway Laws of the Highway Research Board will not be discussed.

The preparation of the proposed draft bill for Congress was an arduous task. However, by treating each section of every act independently to determine whether it should be retained in the new bill, it was possible to account literally for every word in the existing Federal highway legislation.

#### REPORT TO THE CONGRESS

The report of the Secretary of Commerce pursuant to section 12 of the 1954 Act, as it was presented to Congress in January 1955, was composed of five parts:

Part 1 - Introduction.

Part 2 - A draft of the proposed bill.

Part 3 - Recommendations for possible changes in this draft.

Part 4 - The proposed draft in columnar form set opposite the corresponding provisions of the existing law, together with comments.

Part 5 - The old law marked to indicate the disposition of each provision.

Parts 4 and 5 could be used together so that a person interested in any particular section of the law could trace it and see just what disposition was made of it.

#### ACTION ON CODIFICATION LEGISLATION DURING THE 84TH CONGRESS

During the 84th Congress legislation was introduced based upon the draft bill submitted to Congress pursuant to section 12 of the 1954 Act. Brief hearings were held on this proposed legislation by the House Committee on Public Works. No further action was taken, due in part to the fact that legislation which eventually became the Federal-Aid Highway Act of 1956 was then being considered by the Congress.

#### REVISION OF CODIFICATION BILL NECESSITATED BY 1956 ACT

The Federal-Aid Highway Act of 1956 was approved June 29, 1956, and that Act provided for a tremendously expanded highway program with increased emphasis on the Interstate System. Its many new provisions necessitated changes in and additions to the proposed revision bill presented to the 84th Congress. In fact, the complexity of the new program served to emphasize the need for revision and codification of the highway laws.

Work was commenced during the latter part of 1956 on the necessary revisions of the draft bill previously presented to Congress. Other changes, minor in nature, were made in phraseology and format. Again, no substantive changes in the law were made. The draft bill was sent to the Bureau of the Budget, and, in accordance with its usual procedures in matters of this kind, the Bureau of the Budget submitted the draft bill, as revised, to the various other governmental departments interested in this legislation. These departments included the Department of Defense, the Department of Agriculture, and the Department of the Interior. Numerous conferences and discussions were held during 1957 to smooth out differences of opinion among the interested agencies and departments as to the phraseology and possible legal interpretation of various sections.

#### ACTION ON CODIFICATION LEGISLATION DURING 85TH CONGRESS

In January 1958, the revised draft bill, as cleared by the Bureau of the Budget, was presented to the 85th Congress. The Committees on Public Works of the House and of the Senate were furnished with a section-by-section comparison of the proposed bill with its sources in existing laws, similar in format to Part 4 of the original submission to Congress pursuant to the 1954 Act. Legislation, based upon the draft bill submitted to the Congress by the Secretary of Commerce, was introduced early in the session in both the Senate and the House of Representatives.

In the meantime, however, Congress had under consideration legislation which became the Federal-Aid Highway Act of 1958, approved April 16, 1958. Enactment of the 1958 Act required, of course, certain further changes in the codification bill. Work was immediately commenced to incorporate the necessary modifications into the proposed legislation. At this time it was considered by the staff of the Committee on Public Works of the House of Representatives in cooperation with the Law Revision Counsel of the House Committee on the Judiciary, and valuable technical assistance was received from these sources.

Based on the Department's revision of the proposed legislation to include the permanent provisions of law in the 1958 Act and to cast the bill into the form desired for Title 23 of the United States Code, legislation was introduced in Congress during May 1958 on which the Committee on Public Works of the House of Representatives held hearings on June 5, 1958. At this time testimony was heard from representatives of the interested Government agencies, including the Department of Commerce and the Bureau of Public Roads. Further testimony was received by the Committee from various interested organizations. Comments of all witnesses were extremely favorable, and immediate enactment of the bill was recommended.

The House Committee reported favorably on the bill, H. R. 12776, with certain technical amendments, on June 19, 1958 (House Report No. 1938, 85th Congress, 2d Session). That report contained a section-by-section comparison of the bill then under consideration, H. R. 12776, with the sources in prior laws, together with explanatory comments on certain sections. These explanatory comments dealt with the changes made in existing law which were technical refinements and changes in phraseology to conform to existing administrative practices and procedures. The House Committee report also contained a table showing the distribution and placement of sections of existing law in the new Title 23, United States Code. This table is divided into three columns showing the existing law in chronological order by date of enactment, the disposition of each provision of each Act commencing with the 1916 Act and the placement of each provision in Title 23. By means of these two tables, the section-by-section comparison table and the distribution table, both of which were prepared by the legal staff of Public Roads, one can find the part that any section of the old law forms of new Title 23.

H. R. 12776 was passed by the House on June 26, 1958, and was sent to the Senate the following day.

Hearings were held in the Senate by the Senate Committee on Public Works during July 1958 on an identical Senate bill, S. 3953. The Senate reported its bill favorably, with technical amendments, on July 23, 1958. The provisions of the Senate bill, as amended by the Senate Committee, were substituted for those of the House bill on the floor of the Senate, and the bill was passed, as amended, by the Senate on August 5.

The House subsequently agreed to the Senate amendments, and the bill to revise, codify and enact into law Title 23 of the United States Code became law upon its approval by the President on August 27, 1958.

The result of this enactment is a "one-package" law, a clear concise and up-to-date version of existing Federal highway laws of a permanent nature in an orderly and logical arrangement. While Title 23 contains certain technical refinements and language changes to conform to existing practices and procedures, it was not intended to change any of the fundamental and underlying concepts of existing Federal highway legislation or to make any changes of real substance in the law.

A few examples of these technical changes made in the law will be described briefly.

Section 103(b), relating to the Federal-aid primary highway system, is based upon enactments in 1921, 1928, 1931, 1932, 1936, 1938 and 1956. The subsection provides for, among other things, a so-called "seven-percent system", first set up by the 1921 Act, as a limitation on the mileage of primary system. In drafting section 103(b), the law was clarified to make it certain that the seven percent limitation is not applicable to the primary system in urban areas. At the time of the enactment of the 1921 and 1928 Acts, Federal-aid funds were not available for expenditure in urban areas. It was not contemplated, therefore, that the seven percent limitation would have application in urban areas. The Federal-aid primary systems are now extended to urban areas and have been for some time, but the law was never amended to expressly make it clear that the mileage limitation did not apply to such areas. The exclusion from the seven percent limitation of mileage in urban areas was therefore added to section 103(b) as a technical change in line with actual practice and the intent of Congress.

Another example of language change in conformity with administrative practice and interpretation of prior laws is found in section 104, entitled "Apportionment." The last sentence of subsection (a) of that section provides that unexpended balances of sums deducted for administrative expenses of the Bureau of Public Roads for prior years will be taken into account in determining the necessary deduction for the current year. Separate apportionment of unexpended balances would not be required. Under the 1921 Act, any sums previously deducted for administration and not needed were to be reapportioned within 60 days after the close of each fiscal year. Over the years, Public Roads had followed the practice of carrying over any unexpended amounts which had been so deducted and taking these amounts into consideration in making deductions under the next apportionment. The carry-over method was developed in order to carry out, in the most economical and efficient manner, the intent of the Congress that the States receive benefit of any sums not needed for administrative and research purposes. The method results in an increased sum for apportionment to the States at the next regular apportionment of Federal-aid funds in the same amount as would otherwise be reapportioned. The method now prescribed by section 104(a) of Title 23, therefore, eliminates considerable paper work and accomplishes the purpose of the original 1921 enactment.

Section 116(a) of Title 23 provides that the duty of maintenance on the part of the State with respect to a Federal-aid highway project shall cease when the project is removed from a Federal-aid system. The prior law from which this provision was drawn made no such specific exception from the duty of the State to maintain a Federal-aid project. Upon removal from a Federal-aid system, Federal interest in a project ceases, and the State's obligation to the United States to maintain should also terminate. This is particularly true in cases of highway relocation. The new language was included as a desirable clarification of the existing law.

Again, a clarification was made in section 120, relating to the Federal share payable for Federal-aid projects, by adding subsection (e) which directed the Secretary of the Interior to furnish a statement annually as to the area of public lands in the various States which is needed by Public Roads to determine the increased share in States having more than five percent of their total area in public lands. There was no such requirement in the prior law, although as a matter of practice such a statement was furnished by the Secretary of the Interior.

One of the sections requiring most extensive language change was section 130, Railway-Highway Crossings. Since enactment of the 1944 Act on which said section 130 was based, the Bureau of Public Roads had, by Administrative Memorandum, established

certain procedures to carry out the 1944 enactment. The provisions of section 130 now reflect clearly the practical methods of administration previously developed by administrative procedure and effect no substantive change in the previous provisions of law on this subject.

Without question the painstaking efforts which have resulted in enactment of Title 23 have simplified the Federal highway laws. It is anticipated that this enactment will facilitate their application to the many legal problems presented under the highway program, thus expediting its administration.