

The Federal-Aid Highway Act of 1962

DAVID S. BLACK, General Counsel, U. S. Bureau of Public Roads

• THE FEDERAL legislation that forms the present body of law relating to the Federal and Federal-aid highway programs in the United States is now largely codified in one deceptively compact volume—title 23 of the United States Code. This collection of laws is, in fact, the result of a long and often painful evolutionary process which began about the turn of the century and which has drawn on the skill, intellect, and energy of thousands of dedicated and talented people in all of the States and in the Federal Government. And this process will continue long into the future.

The Federal-Aid Highway Act of 1962 and related legislation by the last session of Congress form only a tile or two in the whole mosaic of the law which affects the development of the finest system of highways in the world. This is not to minimize the importance of the most recent highway law but only to put it into proper perspective—for the labors of the recent 87th Congress did indeed produce a significant number of items of very substantial importance to the highway program.

The Act of 1961 which came out of the first session is now familiar. By this law Congress approved the current estimate of cost of completing the Interstate System as a basis of apportioning Interstate funds for fiscal years 1963 to 1966. The apportionment of the \$2.6 billion Interstate authorization for the fiscal year 1964 was made on September 21, 1962. The Federal-Aid Highway Act of 1961 increased the Interstate System authorizations through fiscal year 1971 by a total of \$11.56 billion. That act also provided for a 2-yr extension of time for the States to enter into agreements with the Secretary of Commerce for control of outdoor advertising adjacent to the Interstate System. Authority was further provided in the law for a State or political subdivision to use the airspace over or under the Interstate System for non-highway purposes under specified conditions. Title 2 of the 1961 Act increased certain of the highway user taxes to assure adequate revenues for timely completion of the Interstate System. These are only a few of the important accomplishments of the first session of the 87th Congress.

The 1962 Federal-Aid Highway Act is perhaps not so familiar to most yet; therefore, this paper proposes to examine some of the provisions of this most recent national highway legislation in a little more detail. The most important provision of the new law is without question the authorizations provided to allow the continuation of the ABC and public domain road programs. The Congress provided \$950 million in highway trust fund authorizations for the ABC highway program for fiscal year 1964 and \$975 million for fiscal year 1965. The President in his February 28, 1961, message on highways had recommended that authorizations for the ABC program be increased at a rate of \$25 million each two years until the \$1 billion level is reached. The Public Works Committee of both the House and the Senate, in considering the legislative history of the 1956 Act and subsequent highway legislation, observed however that the intent of Congress has been that there be a progressive increase of \$25 million each year in funds authorized for the ABC program until the \$1 billion annual level is reached.

The 1962 Act also provided authorizations for appropriations from the General Fund for the various Federal public domain road programs totaling \$358,550,000 for fiscal 1964 and 1965. This was an increase of \$103,050,000 over the last biennial authorization for these programs, and includes authorizations for a new category of public domain roads; that is, the roads and trails that will be selected by the Secretary of the Interior for development, protection, administration, and utilization of the public lands and resources under his control. The Secretary of Commerce will approve the location, type, and design of these projects and will supervise their construction. In the

past, most of the roads have been constructed on Bureau of Land Management lands in forested areas by timber sale purchasers pursuant to requirements of their contracts. The standards of the roads they can provide have been inadequate, however, and full resource development has been impossible.

Appropriations for the Inter-American Highway were authorized in the amount of an additional \$32 million for the completion of this 3,142-mi all-weather highway from Laredo, Texas, to Panama City. To protect the United States' investment in this highway, the law contains a proviso that no part of the authorization shall be obligated in any country until that country demonstrates to the satisfaction of the Secretary that it is capable of and willing to meet its commitment for maintenance under the agreements previously entered into with the Central American Republics. Congress also authorized the appropriation of \$850 thousand to complete the Rama Road in Nicaragua which will connect with the Inter-American Highway and extend 155 mi east to Rama, a river port on the Escondido River flowing to the Caribbean. This highway is opening up for development a vast new area of Nicaragua and will connect the major population of the country with the inland deepwater port on the Atlantic coast.

The provision of the new law that has received perhaps the widest attention and was surely the most controversial item of highway legislation before the second session of the 87th Congress was that section concerned with the relocation of families and businesses displaced as a result of federally aided highway construction. This is now section 133 of title 23, United States Code. Briefly, the law provides two things.

First, before the Secretary's approval of any project for right-of-way acquisition or construction with Federal aid, the State highway department must give satisfactory assurance that relocation advisory assistance shall be provided for the relocation of families to be displaced. Second, those States that pay moving costs of displaced families and businesses are entitled to treat such payments as reimbursable project costs to a maximum of \$200 in the case of an individual or family and \$3,000 in the case of a business concern, including the operation of a farm or nonprofit organization. The allowable expenses for transportation in the case of a business cannot exceed the cost of moving 50 mi.

President Kennedy, in his message to Congress said this about relocation assistance:

To move toward equity among the various federally assisted programs causing displacement, I recommend that assistance and requirements similar to those now applicable to the urban renewal program be authorized for the Federal-aid highway program.

The bill introduced in the House and referred to the House Public Works Committee contained language almost identical to the Urban Renewal law concerning relocation. It provided, in part, as follows:

The Secretary, as a condition precedent to his approval under section 106 of this title, shall require the State highway department, through an agency or agencies acceptable to the Secretary, to assure that there is a feasible method for the temporary relocation of families displaced by acquisition or clearance of rights-of-way for any Federal-aid highways, and that there are or will be provided in areas not generally less desirable in regard to the availability of public utilities and public and commercial facilities at rents or prices within the financial means of the families displaced by the acquisition or clearance of such rights-of-way, decent, safe, and sanitary dwellings adequate in number to accommodate such displaced families and reasonably accessible to their places of employment.

In hearings on the bill before the Roads Subcommittee, considerable opposition to the measure developed. Controversy between the sponsors and the opponents of the bill concerned the basic philosophy of the legislation, its cost, the degree to which

highway construction might be slowed or stopped, its comparison to somewhat similar provision in the law since 1956 for reimbursement of the cost of relocating utilities, and the need for relocation assistance in terms of the numbers of families and businesses that would be affected. The bill as reported out of the House eliminated the requirement of assurance by the State highway department that decent, safe, sanitary dwellings would be provided, adequate to accommodate displaced families and accessible to their places of employment. It retained, however, the provision for State assurance of the existence of a "feasible method" for relocation of displaced families, as a condition precedent to project approval by the Secretary. Debate on the floor of the House on the measure centered almost entirely on the meaning and effect of this requirement and whether the Secretary of Commerce should have the authority to determine that a method to accomplish relocation was "feasible" before project approval. Representative Baldwin of California offered an amendment deleting the "feasible method" language altogether and substituting therefor simply the requirement that the State highway department give satisfactory assurance that relocation advisory assistance shall be provided for the relocation of families displaced by acquisition or clearance of rights-of-way for any Federal-aid highway. The "Baldwin Amendment" was adopted by a vote of 236 to 159. This version of the measure was also voted by the Senate and is now applicable to all projects approved after the effective date of the Act. The Bureau has published Policy and Procedure Memorandum 21-4.4 prescribing the procedures to be followed by the States in implementing the law.

As far as the reimbursement of moving costs is concerned, the law affects only those States that under their own laws can make the relocation payments. According to the latest information, nearly a dozen States have expressed statutory provision in some form respecting payment of moving costs. Certain other States have made payment for costs of moving or incidental to the moving of personal property from highway right-of-way as a result of constitutional interpretation, condemnation, or other legal order or proceeding. It is anticipated that most of the remaining State legislatures will promptly move to take advantage of the new provision.

As far as the advisory assistance requirement is concerned, this provision applies, of course, to Federal-aid projects in all States, irrespective of whether the State can legally make payments of moving costs. PPM 21-4.4 states the minimum requirements in this respect in part as follows:

The State's relocation advisory service shall include as a minimum an office having as a major responsibility the provision of relocation assistance on a State-wide basis; a local subsidiary office shall be established for each project where there are 25 or more families to be relocated; on projects where there will be fewer than 25 relocations, relocation service may be rendered by individual contacts with the families by representatives from the central or other relocation assistance offices. Each office shall have listings of properties for sale, available rental properties, public housing projects and any other available replacement housing; information relative to services offered by and the addresses of other agencies operating in the general field of endeavor, such as:

- Social Welfare Agency
- Urban Renewal Agency
- Redevelopment Agency
- Public Housing Authority
- Chamber of Commerce
- Citizens Advisory Commerce
- Federal Housing Authority
- Public Loan Agencies

The State relocation offices are expected to work closely with the Federal Housing Authority, real estate boards, multiple-listing services, builders, local public housing authorities, and others in obtaining information concerning available housing that

is suitable in condition, price and/or rental range for the relocation of families, and shall make such information readily available to those requesting relocation assistance.

The total additional cost to the trust fund as a result of this new law cannot, of course, be predicted with assurance. In hearings before the House subcommittee estimates ranged as high as \$200 million. Based on the maximum payments provided for in the bill, however, the cost should not exceed \$75 million from the Highway Trust Fund to the end of the program in 1972. This figure is derived from data provided by the States themselves. The experience of the Housing and Home Finance Agency has demonstrated that an average relocation payment of about \$65 is paid to families and about \$1,150 to businesses. If these amounts, instead of the maximums authorized by the bill, are experienced, the cost will be only about one-third of the estimated \$75 million.

Another item that ranks high on the list of the accomplishments of the 87th Congress is that relating to increased highway research and planning.

Beginning with funds apportioned for fiscal year 1964, $\frac{1}{2}$ percent of a State's total apportionment, which under prior law (§ 307(c), title 23, United States Code) was available for highway planning and research purposes or for highway construction, may now be used only for research and planning. This $\frac{1}{2}$ percent fund is no longer available for construction and if not obligated for planning and research purposes within the 2-yr period provided by section 118 of title 23 will lapse except that portion derived from the Interstate apportionment, which would in such event be reapportioned among the other States.

Congress provided an additional $\frac{1}{2}$ percent of ABC apportioned funds for planning and research. If this additional sum is not used for these purposes, however, it is available for construction.

In the course of the bill's progress through the committee, this section underwent several changes. As originally conceived, the bill contemplated that the additional $\frac{1}{2}$ percent of ABC funds would be used for research purposes only. Further, a committee amendment provided that the $\frac{1}{2}$ percent funds if not used for research and planning would, instead of lapsing, become available for use by the Secretary of Commerce for research purposes. Neither of these provisions, however, were carried into the law as passed. Thus, the existing $\frac{1}{2}$ percent must be used for highway research and planning, whereas the additional $\frac{1}{2}$ percent may be used for such purposes. Under the prior law, the States were encouraged to match the $\frac{1}{2}$ percent funds, but matching was not required. For fiscal year 1964, both categories of funds will be matched unless the Secretary determines the interests of the Federal-aid programs would be best served without matching. The Bureau of Public Roads and the Department of Commerce had under consideration for some time the need for expanding the dollar volume for highway research activities undertaken by or through the State highway departments with the aid of Federal funds and it is also in accord with recommendations contained in the President's transportation message. The additional $\frac{1}{2}$ percent, together with State matching funds, will add almost \$10 million annually to the \$60 million now available annually from $\frac{1}{2}$ percent funds for research and planning.

Another of President Kennedy's recommendations dealt with planning in a more specialized sense; that is, the proposal on transportation:

. . . effective not later than July 1, 1965, the Secretary of Commerce shall, before approving a program for highway projects in any metropolitan area, make a finding that such projects are consistent with comprehensive development plans for the metropolitan area and that the Federal-aid system so developed will be an integral part of a soundly based, balanced transportation system for the area involved.

The section of the bill dealing with this matter as introduced was in language substantially identical to that contained in the President's message. The Administration bill required either continuing planning or completed development plans for the metropol-

itan areas. The bill as reported out of the House Subcommittee on Roads, however, made some changes. The term "metropolitan area" was eliminated and the planning requirement was made applicable to "urban areas of more than 50,000 in population." Moreover, the committee bill required that, after 1965, approved projects must be based only on "continuing transportation planning" rather than on "completed plans." This language was incorporated in the bill enacted by the House and the Senate and is presently contained in title 23, United States Code, as section 134. The new law requires the following:

. . . the Secretary shall cooperate with the States, as authorized in this title, in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population.

This language creates certain requirements with respect to transportation planning projects in these urban areas: (a) they must be sufficiently broad in scope to give full consideration to the number of people that will be moved by public transportation as well as the number of people that will move in private vehicles and the movement of goods; (b) they must be fully coordinated with general community plans; and (c) they must be organized so as to insure that the planning process will be closely coordinated with the policy-making and program administration. These planning studies that the legislation contemplates may, of course, be financed with 1½ percent funds if the requirements just stated are satisfied. The Bureau would not expect to approve 1½ percent financing without assurance that the urban project is fully coordinated with any studies financed with Housing and Home Finance Agency 701 planning assistance funds.

In addition, the requirement that highway plans and programs be coordinated with plans for the improvement of other affected forms of transportation, as specified in the second sentence of the new section, is interpreted to mean that, in the event the agreed-on plans indicate the desirability of special provisions for transit operation, the designs for highway facilities should be developed accordingly. This might mean special provisions for bus turnouts and for transfer points in connection with freeways or arterial street construction, or in some cases, provision for rail transit in the medians of freeways.

The provisions of the new law just discussed are those probably of greatest immediate interest. The second session of the 87th Congress, however, was quite prolific and produced a number of other changes in the highway law and in the enactment of new laws bearing on the Federal and Federal-aid highway programs.

Section 103 of title 23 previously contained a limitation that, except under special circumstances, effectively prevented the expenditure of Federal-aid secondary funds for the construction of secondary highways in urban areas. This provision was amended to remove the limitation and thereby permit increased flexibility in financing improvements on Federal-aid secondary routes. A number of States have found it difficult to improve these urban extensions because of the high priority for the use of urban funds on arterial street improvements. This has resulted in improvement of secondary routes up to urban boundaries and the inability of the State to finance further improvements where needed in the cities. The Senate Public Works Committee Report on this matter points out the hardship created in the outlying sections of the larger urban areas in which there is rapid suburban expansion and in smaller cities where the urban extensions of secondary routes do not carry sufficient traffic to merit high priority on available urban funds.

Although the law does contain provision [section 104(c)] for the limited transfer of funds from primary or secondary apportionments to the class of urban funds, this has not been adequate to provide the needed financing of the secondary extensions.

P. L. 87-58, better known as the Public Works Acceleration Act, was approved September 14, 1962, and is intended to provide useful work for the unemployed and

underemployed through initiating or accelerating needed public work in designated communities which are eligible by reason of their being redevelopment and substantial labor surplus areas. The President authorized the allocation of \$900 million for expenditure in connection with direct Federal and Federal-aid public works projects. The funds are allocated to the heads of the Federal agencies responsible for such programs. So far, \$400 million has been appropriated, and of this amount two allocations totaling \$362.2 million have been made by the President to the various Federal agencies. Of the President's initial allocation of \$165 million, the Department of Commerce received \$9 million which was earmarked for expenditure on 34 direct Federal highway projects, 33 of which are forest highway projects and one is a defense access project. Most of these have been advertised and work is under way. Of the nearly \$200 million subsequent allocation, the Bureau of Public Roads has received for expenditure an additional amount of a little more than \$6 million for more highway construction which is expected to be approved shortly.

The Department of Commerce Appropriation Act for 1963 (P. L. 87-843) contains an appropriation of \$2 million out of the general fund for bonus payments to be made to the States for the control of outdoor advertising adjacent to the Interstate System in accordance with section 131 of title 23. Bureau of Public Roads procedures, whereby the States that have entered into agreements with the Secretary for advertising control may claim their $\frac{1}{2}$ percent bonus, are in the final stages of preparation and should be published soon. At the present time, 17 States have enacted laws and entered into the required agreements that qualify them for the bonus. The most recent addition to this list was Virginia which signed an agreement with the Secretary on November 20, 1962.

P. L. 87-851, the Work Hours Act of 1962, codified a variety of existing 8-hr laws, made a requirement of payment of time and a half for work in excess of a 40-hr week, and extended the provisions of the law to include those Federal-aid programs that require payment of minimum wages as prescribed by the Department of Labor. Heretofore, the 8-hr laws were applicable only to Federal contracts. This extension of application applies only to contracts for highway construction on the Interstate System because it is only with respect to Interstate projects that Federal wage standards are applicable.

In the field of highway safety, improvements (P. L. 87-359) were made in the law concerning the National Driver Register Service. Also by P. L. 87-637 the Secretary of Commerce is directed to prescribe and publish specifications for hydraulic brake fluids to be manufactured, transported, or sold in interstate commerce for use in motor vehicles.

Though it was originally intended that this paper present some predictions concerning the upcoming sessions of Congress, the legislative program of the Department of Commerce is still not in final form so that any such prognostications would be premature. However, there may be some activity by Congress in the field of urban mass transportation and in the area of criminal law to strengthen the provisions of title 18 of the United States Code relating to frauds perpetrated in connection with the Federal-aid highway program. Nevertheless, nothing more can be said at this time because the program is too indefinite at the moment to permit speculation. The opening session of the 88th Congress should prove an interesting one in the field of highway law and its efforts should be productive of additional improvement. The upcoming session will not be concerned with the fiscal problems involved in either ABC or Interstate authorizations and Congress will therefore have the opportunity to concentrate on some technical improvements in the highway laws which should facilitate the Bureau's administration of the Federal and Federal-aid programs.

Also, State legislatures will convene in all but three of the States this year. It is hoped that progressive highway legislation will be vigorously pursued to strengthen, improve, and modernize the highway laws at the State level, where the highways are actually planned, designed, and built. The partnership between the States and the Federal Government, if it is to remain healthy, must rest on a framework of laws that keep pace with the needs of a dynamic program. Much of the responsibility for this task rests with the highway lawyers who must constantly evaluate the laws with which they work and point the way to change where change is needed. This year is

the only real chance most will have until 1965 to see tangible results of such efforts. One may expect to see changes in contracting requirements, in eminent domain law, in advertising control, in administrative law. It is hoped that highway legal counsel will play some role in effecting these changes so that they will constitute a step forward.