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THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: National Maximum Speed Limit

The national 55 m.p.h. speed limit has been imposed by denying Federal highway aid to states that do not adopt it. 23 U.S.C. § 154. Under the statutory scheme, the Secretary of Transportation "shall not approve" any Federal-State highway project in a state that does not have a maximum speed limit of 55 m.p.h. Id. § 154(a). Congress was also concerned about State non-enforcement of the 55 m.p.h. limit once it was on the books, and included a provision directing that the Secretary "shall reduce the state's apportionment of Federal-aid highway funds" by up to 10 percent if data required to be submitted indicates that the percentage of vehicles exceeding 55 m.p.h. on that State's roads is greater than 50 percent. Id. § 154(e), (f).

Craig Fuller is following up on the President's request to determine what can be done to relieve states of the 55 m.p.h. speed limit. He recognizes that under 23 U.S.C. § 154(a) sanctions must be imposed if a state does not have a 55 m.p.h. speed limit, but asks if the Secretary of Transportation may impose only de minimis fund reductions under 23 U.S.C. § 154(f) for non-enforcement of an existing 55 m.p.h. speed limit. Fuller notes that legislative action to repeal 23 U.S.C. § 154 would be difficult if not impossible.

It is true that while the statute sets a maximum it does not set any minimum amount of fund reductions for state non-enforcement, nor have I identified any set by regulation. At the same time, however, the course of action proposed in Fuller's inquiry would clearly flout Congress' intent in enacting 23 U.S.C. § 154. Congress enacted 23 U.S.C. § 154(e) and (f) precisely because it was concerned about non-enforcement of 55 m.p.h. speed limits; to administer the law in a fashion calculated to permit such non-enforcement would render these provisions meaningless and provoke hostile reaction on the Hill and, very likely, court action as well. Assuming a plaintiff can be found with the

requisite standing, I would not be at all surprised to see a court order the Secretary to withhold greater amounts to comply with the clear intent of Congress.

At the very least, the Administration would be perceived, correctly, as using a technical "loophole" to violate Congress' intent. Not only that, use of the loophole would reward states that impose a 55 m.p.h. limit (still required by § 154(a)) and then ignore it. The Administration would not only be violating the substance of a law, but doing so to permit States to blink their own 55 m.p.h. laws. I do not think our office can countenance consideration of such an option, and have drafted a memorandum to Fuller noting our strong objection to it.

Attachment

THE WHITE HOUSE

WASHINGTON

March 4, 1983

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: National Maximum Speed Limit

In the course of exploring possible means of relieving the states of the 55 m.p.h. speed limit, you have inquired whether the Secretary of Transportation may impose only de minimis fund reductions pursuant to 23 U.S.C. § 154(f) on those states which do not meet the statutory guidelines for enforcing the 55 m.p.h. speed limit. Counsel's Office advises strongly against such a course of action.

Congress enacted 23 U.S.C. § 154(e) and (f) precisely because it thought that some states might impose a 55 m.p.h. speed limit, to avoid the fund cut-off of 23 U.S.C. § 154(a), but then decline to enforce that limit. While 23 U.S.C. § 154(f) does not establish a minimum fund reduction amount for state and non-enforcement, some reduction is mandatory ("the Secretary shall reduce"), and imposing only a de minimis reduction would contravene the clear intent of Congress that the provisions safeguard against non-enforcement of state 55 m.p.h. speed limits.

It is even possible that court action could compel the Secretary to impose greater reductions, were she to impose only de minimis reductions in the face of a non-enforcement finding.

In any event, circumventing 23 U.S.C. § 154(f) through de minimis reductions would cast the Administration in the posture of flouting the clear intent of the law, thereby permitting states to flout their own laws establishing 55 m.p.h. speed limits. Such a posture would hardly be well received by the Congress, the media, or the public in general.

FFF:JGR:aw 3/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

Reprints

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- H - INTERNAL
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Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Craig L. Fuller

MI Mail Report User Codes: (A) (B) (C)

Subject: National Maximum Speed Limit

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	Referral Note:				<u> / / </u>
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THE WHITE HOUSE

WASHINGTON

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February 4, 1983

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MEMORANDUM FOR FRED FIELDING

FROM: CRAIG L. FULLER

SUBJECT: National Maximum Speed Limit

We are following up on the President's request to determine what action may be taken to relieve the 55 mph speed limit imposed on states. As legislative repeal of the National Maximum Speed Limit would be difficult, if not impossible, we are exploring other avenues of relief.

A cursory reading of 23 USCS 154 indicates that, while sanctions must be imposed on states with legal speed limits in excess of 55 mph, 23 USCS 154 (a), there is no minimum reduction of funds for non-enforcement of the limit, 23 USCS 154 (f).

Is it the case that the Secretary of Transportation has the discretion to impose a de minimis penalty for non-enforcement of the National Maximum Speed Limit?

Pub.L. 93-301, Title 23, is authorized to be appropriated to carry out this section by the Federal Highway Administration, out of the Highway Trust Fund, \$10,000,000 for the fiscal year ending June 30, 1974, and \$10,000,000 for the fiscal year ending June 30, 1975."

Legislative History. For legislative history and purpose of Pub.L. 93-87, see 1973 U.S.Code Cong. and Adm.News, p. 1859. See, also, Pub.L. 94-280, 1976 U.S. Code Cong. and Adm.News, p. 798; Pub.L. 95-599, 1978 U.S.Code Cong. and Adm. News, p. 6575; Pub.L. 96-470, 1980 U.S. Code Cong. and Adm.News, p. 4675.

Library References
Highways § 994.
C.J.S. Highways §§ 176, 178.

on program

duct and systematically maintain an engineering to identify hazardous locations, sections, and obstacles and unmarked or poorly marked a danger to motorists and pedestrians, assign of such locations, sections, and elements, and schedule of projects for their improvement.

approve as a project under this section any t project.

carry out this section shall be available solely s on any Federal-aid system (other than the n the Virgin Islands, Guam, and American Sa-

payable on account of any project under this f the cost thereof.

be appropriated to carry out this section shall es as provided in section 402(c) of this title. ble for obligation in the same manner and to funds were apportioned under section 104(b) ary is authorized to waive provisions he deems es of this section.

establish an evaluation process approved by the assess results achieved by highway safety im- out in accordance with procedures and criteria . Such evaluation process shall develop cost- pes of corrections and treatments which shall s for highway safety improvement projects.

report to the Secretary of Transportation not each year, on the progress being made to im- provement projects for hazard elimination and mprovements. Each State report shall contain f, and safety benefits derived from, the various mitigate or eliminate hazards and the previous experience at these locations. The Secretary of t a report to the Congress not later than April res being made by the States in implementing ogram. The report shall include, but not be projects undertaken, their distribution by cost and methods used, and the previous and subse- at improved locations. In addition, the Secre- and evaluate each State program, identify any compliance with the schedule of improvements and include recommendations for future im- elmination program.

of this section the term "State" shall have the 401 of this title.

II, § 209(a), Aug. 13, 1973, 87 Stat. 286, and tile I, § 131, May 5, 1976, 90 Stat. 441; Pub.L.

95-599, Title I, § 168(a), Nov. 6, 1978, 92 Stat. 2722; Pub.L. 96-106, § 10(b), Nov. 9, 1979, 93 Stat. 798.

1979 Amendment. Subsec. (g). Pub.L. 96-106 substituted "December 30" for "September 30" and "April 1" for "January 1".

1978 Amendment. Subsec. (a). Pub.L. 95-599 substituted "public roads" for "highways" and added provisions relating to identification of hazardous locations.

Subsec. (b). Pub.L. 95-599 substituted provisions relating to approval of highway safety improvement projects by the Secretary for provisions authorizing appropriations for fiscal years ending June 30, 1974 through June 30, 1976.

Subsec. (c). Pub.L. 95-599 re-enacted subsec. (c) without change.

Subsec. (d). Pub.L. 95-599 substituted provisions prescribing the Federal Share payable on account of any project under this section for provisions relating to apportionment of funds made available under subsec. (b) to the States. See subsec. (e) of this section.

Subsec. (e). Pub.L. 95-599 substituted provisions relating to apportionment of funds to the States under this section for provisions relating to progress reports required of the States under this section.

Subsec. (f). Pub.L. 95-599 added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub.L. 95-599 added subsec. (g).

Subsec. (h). Pub.L. 95-599 redesignated former subsec. (f) as (h).

1976 Amendment. Subsec. (f). Pub.L. 94-280 added subsec. (f).

Legislative History. For legislative history and purpose of Pub.L. 93-87, see 1973 U.S.Code Cong. and Adm.News, p. 1859. See, also, Pub.L. 94-280, 1976 U.S. Code Cong. and Adm.News, p. 798; Pub.L. 95-599, 1978 U.S.Code Cong. and Adm. News, p. 6575; Pub.L. 96-106, 1979 U.S. Code Cong. and Adm.News, p. 1813.

Library References
Highways § 994.
C.J.S. Highways §§ 176, 178.

§ 153. Repealed. Pub.L. 95-599, Title I, § 168(b), Nov. 6, 1978, 92 Stat. 2723

Section, added Pub.L. 93-87, Title II, § May 5, 1976, 90 Stat. 441, related to a 210(a), Aug. 13, 1973, 87 Stat. 287, and amended Pub.L. 94-280, Title I, § 131, obstacles.

§ 154. National maximum speed limit

(a) The Secretary of Transportation shall not approve any project under section 106 in any State which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour, or (2) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. Clause (2) of this subsection shall not apply to any portion of a highway during such time that the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

(b) As used in this section the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(c) Notwithstanding the provisions of section 120 sums apportioned to any State under section 104 shall be available to pay the entire cost of any modification of the signing of the Federal-aid highways for which such sums are apportioned within such State due to a reduction in speed limits to conserve fuel if such change in signing occurs or has occurred after November 1, 1973.

(d) The requirements of this section shall be deemed complied with by administrative action lawfully taken by the Governor or other appropriate State official that complies with this section.

(e) Each State shall submit to the Secretary such data as the Secretary determines by rule is necessary to support its certification under section 141 of this title for the twelve-month period ending on September 30 before the date the certification is required, including data on the percentage of motor vehicles exceeding fifty-five miles per hour on public highways with speed limits posted at fifty-five miles per hour in accordance with criteria to be established by the Secretary, including criteria which takes

into account the variability of speedometer readings and criteria based upon the speeds of all vehicles or a representative sample of all vehicles.

(f) If the data submitted by a State pursuant to subsection (e) of this section show that the percentage of motor vehicles exceeding 55 miles per hour is greater than 50 percent, the Secretary shall reduce the State's apportionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal year, in the case of fiscal years 1982 and 1983, and up to 10 percent, in the case of subsequent fiscal years.

(g) In any case where the Secretary determines, in accordance with criteria established by the Secretary, that a reduction in apportionment required by subsection (f) of this section would result in hardship to a State, the fiscal year apportionment reduced for such State shall be the apportionment for one fiscal year later than the fiscal year to which such reduction would apply under subsection (f) but for such hardship determination.

(h) The Secretary shall promptly apportion to a State any funds which have been withheld pursuant to subsection (f) of this section if he determines that the percentage of motor vehicles in such State exceeding fifty-five miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld.

(i) Repealed. Pub.L. 97-35, Title XI, § 1108(b), Aug. 13, 1981, 95 Stat. 626.

Added Pub.L. 93-643, § 114(a), Jan. 4, 1975, 88 Stat. 2286, and amended Pub.L. 95-599, Title II, § 205, Nov. 6, 1978, 92 Stat. 2729; 97-35, Title XI, § 1108, Aug. 13, 1981, 95 Stat. 626.

1981 Amendment. Subsec. (f). Pub.L. 97-35, § 1108(a), substituted provisions relating to reduction of funds, under specified criteria, for fiscal years 1982, 1983, and subsequent fiscal years, for provisions relating to reduction of funds, under certain criteria, for fiscal years ending Sept. 30, 1981, through fiscal years ending Sept. 30, 1985, and for each succeeding fiscal year thereafter.

Subsec. (i). Pub.L. 97-35, § 1108(h), struck out subsec. (i), which related to incentive grants to States.

1978 Amendment. Subsecs. (e) to (i). Pub.L. 95-599 added subsecs. (e) to (i). Legislative History. For legislative history and purpose of Pub.L. 93-643, see

1974 U.S.Code Cong. and Adm.News, p. 8011. See, also, Pub.L. 95-599, 1978 U.S. Code Cong. and Adm.News, p. 6575, see also, Pub.L. 97-35 1981 U.S.Code Cong. and Adm.News, p. 398.

Library References Highways 9994. C.J.S. Highways §§ 176, 178.

1. State laws

Mere fact that sharing in federal road funds was contingent on state's adoption of maximum highway speed limit of 55 miles per hour did not render K.S.A. 8-1334 to 8-1341 unconstitutional. State v. Dumler, 1977, 559 P.2d 798, 221 Kan. 386.

§ 155. Access highways to public recreation areas on certain lakes

(a) The Secretary is authorized to construct or reconstruct access highways to public recreation areas on lakes in order to accommodate present and projected traffic density. The Secretary shall develop guidelines and standards for the designation of routes and the allocation of funds for the purpose of this section which shall include the following criteria:

(1) No portion of any access highway constructed or reconstructed under this section shall exceed thirty-five miles in length nor shall any portion of such highway be located more than thirty-five miles from the nearest part of such recreation area.

(2) Routes shall be designated by the Secretary on the recommendation of the State and responsible local officials, after consultation with the head of the Federal agency (if any) having jurisdiction over the public recreation area involved.

(b) The Federal share payable on account of any project authorized pursuant to this section shall not exceed 75 per centum of the cost of construction or reconstruction of such project.

(c) All of the provisions of this title applicable to highways on the Federal-aid system (other than the Interstate System) determined appropriate by the Secretary, except those provisions which the Secretary determines are inconsistent with this section, shall apply to any highway designated under this section which is not a part of the Federal-aid system when so designated.

(d) For the purpose of this section reservoir, pool, or other body of water of any lock, dam, or similar structure partment of the Army, or the Bureau of Interior, or the Tennessee Valley Authority resulting from construction assistance of Department of Agriculture. This section or hereafter constructed or authorized

(e) There is authorized to be appropriated for the fiscal year 1976 to carry out this subsection for a fiscal year shall and for the two succeeding fiscal years. Added Pub.L. 93-643, § 115(a), Jan. 4, 1975, 88 Stat. 2290; Pub.L. 95-599, Title I, § 129(e), Nov. 6, 1978, 92 Stat. 2729.

1978 Amendment. Subsec. (b). Pub.L. 95-599, § 129(e), substituted "75 per centum" for "70 per centum".

Effective Date of 1978 Amendment. Amendment by section 129(e) of Pub.L. 95-599 effective with respect to obligations incurred after Nov. 6, 1978, see section 129(h) of Pub.L. 95-599, set out as a note under section 120 of this title.

Appropriations; Reversion of Appropriations Authorization. Section 101 of Pub.L. 94-134, Title I, Nov. 24, 1975, 89 Stat. 703, appropriated in part: "For necessary expenses not otherwise provided, to carry out the provisions of section 115(a), Federal-Aid Highway C.

§ 156. Highways crossing Federal pr

(a) The Secretary is authorized to construct or reconstruct a public highway or highway bridge across a project, notwithstanding any other provision of law, if the Secretary determines that a substantial change in the requirements for such project since the public works project was authorized or increased costs would work an undue hardship on the State. No such highway or bridge shall be constructed or reconstructed until the State has approved such construction or reconstruction in writing. The Secretary may, in his discretion, suspend the operation of this section until the State has approved such construction or reconstruction in writing. The Secretary may, in his discretion, suspend the operation of this section until the State has approved such construction or reconstruction in writing.

(b) There is hereby authorized to be appropriated \$100,000,000 to carry out this section. The amount available for the fiscal year 1976 shall be available for the fiscal year 1976 and for two succeeding fiscal years. Added Pub.L. 94-280, Title I, § 132(a), Nov. 10, 1976, 90 Stat. 442.

Legislative History. For legislative history and purpose of Pub.L. 94-280, see 1976 U.S.Code Cong. and Adm.News, p. 798.

CHAPTER 2—OTHER

Sec. 215.	Territories highway development program.	217.
216.	Darien Gap Highway.	218.
		219.

1976 Amendment. Pub.L. 94-280, Title I, § 135(b), May 5, 1976, 90 Stat. 442, substituted item 219 "Safer of off-system roads" for "Off-system roads".

1975 Amendment. Pub.L. 93-643, § 122(b), Jan. 4, 1975, 88 Stat. 2290 added item 219.