82D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2293

GRANTING THE CONSENT OF CONGRESS TO A SUPPLEMENTAL COMPACT OR AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE COMMONWEALTH OF PENNSYLVANIA CONCERNING THE DELAWARE RIVER PORT AUTHORITY, FORMERLY THE DELAWARE RIVER JOINT COMMISSION

JUNE 24, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BUCKLEY, from the Committee on Public Works, submitted the following

REPORT

[To accompany H. R. 8315]

The Committee on Public Works, to whom was referred the bill (H. R. 8315) granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 2, line 12, after the word "thereof" insert a parenthesis.

Page 24, line 8, after the word "desirable" insert a comma.

Page 26, line 2, after the word "opening" strike the word "of" and substitute the word "to".

The committee held hearings on H. R. 5502, H. R. 5508, and H. R. 5629, during which time testimony was offered by Federal, State, and local officials, Members of Congress, representatives of private industry, labor unions and civic organizations, and others interested in this legislation.

At the conclusion of the hearings, the committee adopted certain amendments to these bills, and H. R. 8315 was introduced as a substitute measure.

The purpose of this bill is to give congressional consent to a supplemental compact which spells out the grant of powers to the Delaware River Joint Commission which was established under a 1931 compact and 1932 consent, to develop and promote commerce on, and across,

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the Delaware River by rail, highway, and water between Philadelphia, Pa., and Camden, N. J., and the sea. Heretofore, the Commission has operated and maintained the Philadelphia-Camden Bridge and a rapid transit system thereover for the transportation of passengers, and investigated and reported on the need for additional bridges or tunnels, and facilities for transportation, terminals, and port improvement to develop and promote the ports of Philadelphia and of Camden, and the use by commercial vessels of their facilities.

The principal changes effected by the supplemental compact would be (1) to change the name of the Commission to the "Delaware River Port Authority," (2) to define as a port district the area of its operations in Pennsylvania and New Jersey, (3) to extend its jurisdiction northward to the boundary line between Bucks and Philadelphia Counties as extended across the Delaware River to the New Jersey shore of said river, (4) to authorize the establishment of a rapid transit system for passengers, express, and mail between points within Philadelphia and points in New Jersey within the port district by extending existing facilities or constructing new facilities for such system, and (5) to authorize the port authority, subject to prior approval by the Legislatures and the Governors of Pennsylvania and New Jersey, to provide other transportation, terminal or port improvement facilities needed for the commerce and welfare of the port district, and subject to the written consent of the Governors of said States, to acquire the Tacony-Palmyra Bridge between Philadelphia County and New Jersey.

The supplemental compact also covenants that its provisions shall not impair any right granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority for the financing, construction, operation, and maintenance of one bridge across the Delaware River south of Trenton. The supplemental compact also takes into account any possible encroachment upon private enterprise by requiring the port authority, in its reports recommending new projects, to state its findings that present facilities operated by private enterprise which are to be supplanted, or added to, are not adequate.

As introduced, H. R. 8315 would permit the use of bridge revenues for such nonbridge purposes as are limited strictly by this legislation to "properties or facilities for transportation, terminal, or port improvement purposes." In their reports to the committee, the Bureau of the Budget and the Bureau of Public Roads question the desirability of compelling interstate bridge traffic to support nonbridge facilities. Since, as was shown in the report of an official survey, only 5.04 percent of the vehicles crossing the existing bridge continued without terminating their trips or making a major stop in the port district, it is anticipated that nearly all of the tolls would be collected from local users who, according to testimony presented to the committee, have urged the pooling of such revenues for the related purposes of rapid transportation and port development for their own benefit as well as for the benefit of interstate and foreign commerce in general.

The committee has recognized that, if the port development proposed by the supplemental compact were entirely within the boundaries of one State, as is true with respect to other ports in the country (except the port of New York), the approval of the Congress would not be necessary because in that event such legislation is properly

within the competence and jurisdiction of the interested State, so long as construction would be approved with respect to navigation and no Federal funds would be involved.

Having consented to a similar development of the port of New York, the only other port lying within the territory or jurisdiction of two States, the Congress has ample precedent for approving this legislation which provides the only practicable means for developing the Delaware River Port district as a vitally necessary center of commerce. Moreover, both the Congress and the United States Supreme Court have consistently encouraged and upheld the constitutional provision which recognizes that the States themselves have the power and responsibility to agree among themselves and to deal in their own way with interstate and regional problems, without undue burden to the Nation as a whole, subject only to the safeguarding of the national interest by requiring the consent of Congress to such agreements.

With respect to the other point emphasized by the Bureau of the Budget and the Bureau of Public Roads—that the bills originally introduced might permit the perpetuation of tolls on bridges under the jurisdiction of the Delaware River Port Authority, contrary to the provisions of the 1946 Bridge Act as amended, and the policy established by the Congress that interstate bridges should become toll-free when the cost has been amortized by toll collections, the committee has inserted a proviso in the bill which, although specifically exempting the said port authority from the operation of the 30-year limitation provided for by section 506 of the General Bridge Act of 1946, as amended, requires that the collection of tolls shall cease at the expiration of 50 years from the date of the opening to traffic by the port authority of the bridge latest constructed, or acquired thereby, after the effective date of this legislation. The proviso further requires that the rate of such tolls shall be subject to the provisions of section 503 of the General Bridge Act of 1946, as amended. Therefore, since any possible watered capital values would be reflected in toll rates the Secretary of the Army would have the power to prevent the passing on of such watered capital values to the public by controlling the toll rates to be charged, and assuring that they will be reasonable and just.

It should be noted also that, as requested by the Department of the Army, the bill includes a provision specifically subjecting the port authority to the applicable provisions of section 502 (b) of the General Bridge Act of 1946, as amended, and to section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U. S. C., § 403), and requires the approval of the Corps of Engineers of plans for bridges and tunnels about to be constructed, thus protecting navigation on the Delaware River.

As requested by the Treasury Department, the committee has included in the bill a provision that the consent of Congress given by this legislation shall not be construed to affect the application of the internal revenue laws of the United States to the bonds or other securities or obligations issued by the port authority, their transfer and the income therefrom (including any profits made on the sale thereof).

Reports received from Federal agencies are set forth below:

THE SECRETARY OF COMMERCE,
Washington, May 28, 1952.

Hon. CHARLES A. BUCKLEY,
Chairman, Committee on Public Works,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in further reply to your request of September 29, 1951, for the views of this Department concerning H. R. 5503 and H. R. 5509, identical bills granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania, authorizing the Delaware River Joint Commission to construct, finance, operate, maintain, and own a vehicular tunnel or tunnels under, or an additional bridge across, the Delaware River and defining certain functions, powers, and duties of said commission, and for other purposes.

On October 19, 1951, at the request of your committee, this Department submitted to you a report with respect to H. R. 5503. Due to the urgency of your request we were unable to obtain the advice of the Bureau of the Budget with respect to that report.

Since that time, the Department has had occasion to make further study of the problems involved in H. R. 5503 and H. R. 5509. The current position of the Department, taken after further study of the bills and the problems involved, is set forth in the attached report. We therefore request that this report be substituted for our earlier report of October 19, 1951.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report to your committee. If we can be of further assistance in this matter, please call upon us.

Sincerely yours,

CHARLES SAWYER, *Secretary of Commerce.*

REPORT OF THE DEPARTMENT OF COMMERCE ON H. R. 5503 AND H. R. 5509

The supplemental agreement or compact recited in the bill and proposed for the consent of Congress would add a new article to the compact between New Jersey and Pennsylvania, consented to by Congress on June 14, 1932 (47 Stat. 308), concerning the Delaware River Joint Commission. This new article would empower the Delaware River Joint Commission, by whatever name said commission may be designated, in addition to other powers and duties conferred upon it, to construct, operate, maintain, and finance an additional bridge at the location indicated for vehicular traffic across the Delaware River between Philadelphia and Camden, or, in lieu of such bridge, a tunnel or tunnels for vehicular traffic under the Delaware River at the same location between said cities, with necessary approaches and highway connections to such proposed new bridge or tunnel.

Section 3 of the bill would authorize the commission to fix, charge, and collect tolls or other charges for the use of any bridge or tunnel heretofore or hereafter controlled, constructed, or acquired by the commission, and to combine any such bridges or tunnels not only with one another but with any railroad, rapid-transit system, or other properties or facilities heretofore or hereafter established, controlled, constructed, or acquired by the commission for transportation, terminal, or port improvement purposes; and to combine the tolls or revenues therefrom and to use or pledge any such tolls or other charges for the purpose of financing, acquiring, constructing, operating, or maintaining any facility or facilities, all to the extent provided by the provisions of the aforesaid compact as amended and supplemented. In the exercise of such authority, section 3 would expressly exempt the commission from compliance not only with the General Bridge Act of 1946, as amended, but also with the provisions of any other act of Congress heretofore adopted, including any act or resolution of the Congress that authorized or consented to the construction or acquisition of any highway bridge or tunnel that might be constructed or acquired by the commission. In other words, the bill would permit highway bridges and highway tunnels under the jurisdiction of the commission to be combined for financing purposes with any other properties and facilities of the commission regardless of their nonhighway character, and would authorize collection of tolls or other charges on all facilities so combined without any limitation as to time. In its present form, therefore, the bill would be in direct conflict with legislation heretofore enacted by Congress with respect to having a limitation on the combining of highway bridges and highway tunnels for financing purposes and as to the maximum period of 30 years during which tolls may be charged for such purposes, and would grant complete immunity to the commission from existing Federal statutes imposing such limitations and also

with respect to existing requirements of Federal law that tolls shall be reasonable and just and that the Secretary of the Army may prescribe the reasonable rates of such tolls.

In any consideration of the pending bills, H. R. 5503 and H. R. 5509, there should be taken into account the provisions of the bills, H. R. 5502 and H. R. 5508, now before Congress proposing to grant its consent to another supplemental compact or agreement between New Jersey and Pennsylvania which would change the name of the Delaware River Joint Commission to the Delaware River Port Authority, and broaden its powers and authorize it, among other things, to construct, acquire, maintain, and operate bridges and tunnels and various and sundry types of nonhighway facilities for the improvement and development of the "port district" which would embrace Delaware and Philadelphia Counties in Pennsylvania and all the territory within eight counties of New Jersey comprising practically the whole southern half of said State. Said bills, H. R. 5502 and H. R. 5508, would empower the authority to combine for financing purposes all facilities under its control and jurisdiction and to collect tolls or other charges for the use thereof without any limitation as to time, and would exempt the authority from any Federal statutes imposing limitations with respect to such matters. The Department, in its report on H. R. 5502 and H. R. 5508, outlined in considerable detail the factors involved which would make it highly inadvisable to authorize highway bridges and highway tunnels to be combined with nonhighway facilities and permit tolls to be collected thereon without any limitation as to time and thus subject the highway bridges and tunnels to the perpetuation of tolls to support various and sundry facilities having no direct relation to such highway bridges and tunnels. The Department, therefore, recommended that H. R. 5502 and H. R. 5508 be amended so as to prohibit any highway bridge or highway tunnel from being combined for financing purposes with any facility other than a highway bridge or highway tunnel, and to require that when the tolls on any such highway bridge or tunnel or of any two or more such highway bridges or tunnels that may be combined shall have provided a fund sufficient to amortize the cost of their construction, within not to exceed 30 years as provided by the General Bridge Act of 1946, the collection of tolls thereon shall cease.

Since all four bills relate to the same commission (Delaware River Joint Commission which would become the Delaware River Port Authority under H. R. 5502 and H. R. 5508), and are subject to the same type of objections as indicated above, it is recommended that H. R. 5503 and H. R. 5509 be amended in the same manner as suggested by the Department with respect to H. R. 5502 and H. R. 5508. This can be accomplished by amending section 3 by striking out the language beginning with the word "Notwithstanding", line 1, page 13, down to and including the word "commission", at the end of line 7, page 13, and by inserting in line 4, page 14, after the word "supplemented" a comma and the words "as consented to by the Congress," and by changing the period after the word "commission" in line 6, page 14, to a colon and inserting the following proviso:

"*Provided*, That no highway bridge or highway tunnel shall be combined for financing purposes with any facility other than a highway bridge or highway tunnel, and the tolls or other charges collected for the use of any such bridge or tunnel shall not be pledged or used for the purpose of financing any facility other than a highway bridge or highway tunnel, and when the revenues derived from tolls and other charges collected on any such highway bridge or tunnel, or on any two or more such highway bridges or tunnels that may be combined into a single project for financing purposes, shall be sufficient, in addition to meeting necessary annual maintenance, repair, and operating costs, to amortize that portion of the cost thereof not yet amortized, as soon as possible under reasonable charges, but within not exceeding thirty years from the date any such highway bridge or tunnel may hereafter be constructed or acquired when not combined in a project with other highway bridges or tunnels, or within not exceeding thirty years from the date on which the last highway bridge or tunnel combined in such project was completed or acquired, the collection of tolls on any such bridge or tunnel, individually or in combination, shall cease."

The Department would interpose no objection to the enactment of H. R. 5503 or H. R. 5509 if amended in line with the above recommendations.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., May 19, 1952.

Hon. CHARLES A. BUCKLEY,
Chairman, Committee on Public Works,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: The attention of this office has been called to H. R. 5502, H. R. 5508, and H. R. 5509, bills granting consent to the approval of two supplementary compacts between the State of New Jersey and the Commonwealth of Pennsylvania which have been referred to your committee. This office was requested by the Senate Committee on Public Works to advise that committee of the views of this Office on related bills pending before that committee. A report covering these two related bills, S. 2187 and S. 2188, was addressed to the chairman of the Senate Committee on Public Works on May 2, 1952. In order that your committee may have available to it the information and views which were presented in the Bureau's letter of May 2, 1952, to the Senate committee, copies of our letter are enclosed.

Sincerely yours,

F. J. LAWTON, *Director.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., May 2, 1952.

Hon. DENNIS CHAVEZ,
Chairman, Senate Committee on Public Works,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR CHAVEZ: This is in answer to your letters of September 28, 1951, inviting the Bureau of the Budget to comment on S. 2187, granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes, and S. 2188, granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania, authorizing the Delaware River Joint Commission to construct, finance, operate, maintain, and own a vehicular tunnel or tunnels under, or an additional bridge across, the Delaware River and defining certain functions, powers, and duties of said commission, and for other purposes.

The bill, S. 2187, grants the congressional consent, required by constitutional provisions, to a supplemental compact between the State of New Jersey and the Commonwealth of Pennsylvania. Sections 2 and 3, independently of the approval given by section 1 to the amended agreement, confer additional powers and authorities upon the Delaware River Port Authority. The supplemental compact presented for approval enlarges the jurisdiction and scope of the Delaware River Joint Commission which was heretofore created as a public corporate instrumentality of New Jersey and Pennsylvania, an enlargement designed principally to enable this governmental instrumentality to improve and develop the district for port purposes and integrate the transportation facilities in the territory within its jurisdiction.

This measure proposes major departures, in several respects, from the General Bridge Act of 1946, the applicable general Federal law. These departures are (1) permitting the pooling for financing purposes of two or more bridges, (2) authorizing the use of bridge revenues for purposes other than for amortization of the bridges, (3) permitting the rates of tolls on bridges to be fixed by the Delaware River Port Authority instead of by the Secretary of the Army, and (4) permitting the collection of tolls or other charges after a bridge has been amortized.

This office believes there is no objection to the pooling for financing purposes of two or more bridges or of bridges and tunnels which are so closely interrelated as would be the case in this instance. We realize that such pooling for financing purposes may result in continuation of tolls on one or more of the bridges thus pooled beyond the time which would otherwise be permitted. It is our view, however, that any such departures from the policy of the Bridge Act of 1946 respecting the termination of tolls within 30 years should be sparingly permitted and only upon a showing of the necessity therefor and of the impracticability of conforming to the general policy. If exceptions are to be granted, it is our view the extension should be for such further term of years only as is necessary under

the circumstances in the particular instance. We further believe that the authority of the Secretary of the Army under the General Bridge Act to fix tolls that are fair and reasonable should not be supplanted.

The principal issue which this bill presents arises from the proposal to permit the pooling of river-crossing and non-river-crossing facilities and the use of toll revenues from this combination for the purposes of financing the construction or operation of the various other facilities embraced in the terms "railroads, rapid transit systems, or other properties or facilities for transportation, terminal or port improvement purposes * * * heretofore or hereafter established, controlled, constructed, or acquired by the Commission * * *."

The committee will recognize the marked departure of these proposed authorities from the prevailing policy. They would, in effect, permit the taxing of interstate traffic to support other facilities in the port authority area, some of which would probably be primarily local in character and of benefit to those within a delimited area. S. 2187, therefore, presents three questions of far-reaching importance, not only with respect to the port authority proposed in this bill but also with respect to future port authority organizations for which the proposed legislation may serve as a precedent. These questions are: (1) Should interstate traffic be so burdened and asked to contribute to the support of such local facilities and local development; (2) should this support, where necessary, be made available to this public instrumentality by the State of New Jersey and the Commonwealth of Pennsylvania; (3) is it equitable and feasible to require bridge users to contribute to the support of the numerous other kinds of port development facilities—so largely of direct service to commercial users—which will undoubtedly be required for the continued development of such a major port, or should these other developments be required to charge fees for their use which will make them self-supporting without subsidy from bridge revenues? While these questions are ultimately for resolution by the Congress, the Department of Commerce, in the report which it is presenting upon the bill, registers objection to the diversion of toll income from river crossings to support non-river-crossing port development facilities. In the light of this objection, we are sure that the Congress will wish to consider very carefully the appropriate answers to these questions.

The Federal Government most certainly is not disposed to impede the development and improvement of the transportation and port facilities of the Pennsylvania-New Jersey area in question. At the same time, it is properly concerned that such an objective be accomplished only with due consideration of the interest and welfare of the general public, particularly those of the interstate traveler who is obliged to use river crossings and to pay for such use. The Bureau, for that reason, has felt that it should emphasize to the committee the issue of whether interstate bridge traffic should be compelled to contribute to the support of non-bridge facilities primarily local in character or whether their support should come from the States involved or the users thereof.

The Treasury Department, in the attached copy of its communication to this office, has suggested the desirability of amending section 1 of S. 2187 in order to preserve the application of the Federal internal revenue laws to the bonds or other securities or obligations of the commission, their transfer, and the income therefrom. We agree that the adoption of this proposed amendment would clarify the tax provisions of the bill.

We wish to mention two other features of the bill of a more detailed or technical nature. First, it appears that the proposed authorization in section 2 for the Commission to construct bridges duplicates authority already available pursuant to the General Bridge Act of 1946. This duplicating authority therefore appears to be unnecessary and might raise some doubt as to the applicability of the General Bridge Act of 1946 to any bridge constructed by the Commission. Second, with respect to the provisions of section 2 which authorize the construction and operation of railroad facilities and of a rapid transit system, it is pointed out that the Interstate Commerce Commission is presently responsible for authorizing construction of railroad lines to be used for common carrier service. In view of this existing statutory requirement for Interstate Commerce Commission approval, it would seem desirable to avoid any separate and special statutory authorization for the establishment of such rail transportation facilities.

In connection with its consideration of this bill the committee may wish to note that the enactment of S. 2187 would have the result that two organizations would be authorized to acquire the Tacony-Palmyra Bridge. The Delaware River Joint Toll Bridge Commission is already authorized to acquire this bridge by Public Law 287 (82d Cong.). This is being mentioned merely for the informa-

tion of the committee. This office is not aware of any objection to such duplicating authority.

S. 2188 grants the congressional consent, required by constitutional provisions, to a supplemental compact between the State of New Jersey and the Commonwealth of Pennsylvania. The basic problems presented by this bill in substance are the same as those involved in S. 2187. The above comments with respect to S. 2187 are, therefore, generally applicable to S. 2188.

Sincerely yours,

ELMER B. STAATS, *Assistant Director.*

TREASURY DEPARTMENT,
Washington, February 27, 1952.

Hon. FREDERICK J. LAWTON,
Director, Bureau of the Budget,
Washington, D. C.

MY DEAR MR. LAWTON: Reference is made to the request under date of February 13, 1952, for the views of this Department with respect to S. 2187 and S. 2188, bills granting the consent of Congress to supplemental compacts or agreements between the State of New Jersey and the Commonwealth of Pennsylvania. It is noted that with respect to S. 2187, in article XI of the amended compact, the following provision appears: * * * "and the bonds or other securities or other obligations issued by the commission, their transfer and the income therefrom (including any profits made on the sale thereof) shall at all times be free of taxation within the Commonwealth of Pennsylvania and the State of New Jersey." While such language in a compact between two sovereign States might, without more, not be construed to affect in any manner the application of the Federal income tax laws to such bonds and their income within the two States, the consent of Congress to such a provision might give rise to some confusion.

In order to avert any possible difficulties along this line it is suggested that there be inserted before the colon on line 5, page 2, the following language: ": *And provided,* That the consent of Congress hereby given shall not be construed to affect in any manner whatsoever the application of the internal revenue laws of the United States to the bonds or other securities or obligations issued by the commissioner, their transfer and the income therefrom (including any profits made on the sale thereof)." While language similar to that in S. 2187 is not found in S. 2188, in the event of any amendment by the Congress to S. 2188 along such lines it would seem desirable to provide similar language to that suggested above for insertion in S. 2187.

Very truly yours,

E. H. FOLEY,
Acting Secretary of the Treasury.

MAY 20, 1952.

Hon. CHARLES A. BUCKLEY,
Chairman, Committee on Public Works,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in further reply to your communication of March 21, 1952, requesting the comments of this Department concerning H. R. 5629, a bill granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes.

There are enclosed two copies of a report which this Department has submitted to the Senate Committee on Public Works with respect to S. 2187, an identical bill. We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

If we can be of further assistance in this matter, please call upon us.

Sincerely yours,

CHARLES SAWYER, *Secretary of Commerce.*

REPORT OF THE DEPARTMENT OF COMMERCE ON S. 2187, A BILL GRANTING THE CONSENT OF CONGRESS TO A SUPPLEMENTAL COMPACT OR AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE COMMONWEALTH OF PENNSYLVANIA CONCERNING THE DELAWARE RIVER PORT AUTHORITY, FORMERLY THE DELAWARE RIVER JOINT COMMISSION, AND FOR OTHER PURPOSES

S. 2187 would grant the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission. The supplemental agreement or compact, as recited in the bill, changes the name of the Delaware River Joint Commission to the Delaware River Port Authority. It would broaden the powers heretofore granted to the Delaware River Joint Commission and would authorize its successor, the Delaware River Port Authority, among other things, to construct, acquire, maintain, and operate bridges and tunnels and other facilities of various types, including freight terminals, railroads, airports, aircraft, ferries and harbor craft, wharves, ship repair yards, radio stations, grain elevators, and warehouses, for the improvement and development of the port district, and with authority to exercise the right of eminent domain within the port district. The "port district," as defined in the compact, would cover all the territory within the counties of Delaware and Philadelphia in Pennsylvania, and all the territory within the following eight counties of New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.

The purpose, functions, and scope of authority of the proposed Delaware River Port Authority would be similar to those of the existing Port of New York Authority in that it would be empowered to establish, operate, and finance on a unified and integrated basis multiple types of facilities to promote the development of a densely populated and industrialized metropolitan and port area as a center of foreign and domestic commerce. Because of the great cost involved in the construction, maintenance, and operation of facilities for the development of such an area it has been urged that all such facilities, including highway bridges and highway tunnels, serve one common purpose and are so interrelated that they should be combined for financing purposes, with tolls or other charges to be collected on all facilities so combined without any limitation as to time.

The financial and toll aspects of this problem were the subject of extensive correspondence during the mid-thirties between the Bureau of Public Roads, which then was in the Department of Agriculture, and the Port of New York Authority, the only such authority then in existence. At about that time various legislative proposals were under consideration for a general bridge act to eliminate the necessity of enacting a special bill for each individual bridge, which practice had become quite burdensome to the President and to the Congress. It was in this connection that the Bureau of Public Roads received from the Port of New York Authority a letter of May 16, 1938, and it is believed desirable to quote the following pertinent excerpts from that letter:

"* * * Permission to include a bridge in the port authority group operation would be valueless, unless tolls can be adjusted from the standpoint of the group as a whole and not from the standpoint of the particular bridge.

"The port authority financing of bridges, tunnels, and related terminal projects rests upon the proposition that the present facilities and facilities which may be needed in the future all serve a common pool of traffic and as a group depend upon this pool for their economic justification. No single existing or future interstate bridge in this district stands wholly on its own either from a financing or a toll standpoint. Therefore it is essential that no rigid formula be embodied in the act which tends to freeze the tolls on any new bridge so that it cannot be incorporated into the group financing and operation.

* * * * * * *

"Obviously the adjustment of tolls on bridges included in the port authority group operation is a matter which is extraordinarily difficult to reduce to a formula which can be embodied in a congressional act, and we believe that the soundest policy is to exempt this situation from any such formula and leave the reasonableness to the determination of the Secretary of War (or whatever Federal officer may be designated)."

* * * * * * *

The Port of New York Authority was created in 1921 and was the only agency of its kind in existence for about 30 years. In view of this fact and the special circumstances involved no objection to the plan of toll financing by that authority was interposed during that time by the Bureau of Public Roads, either in connec-

tion with the administration of its Federal-aid road activities or otherwise. However, in view of the enactment of similar legislation in the Eighty-first Congress (Public Law 743) consenting to a compact between Missouri and Illinois creating the Bi-State Development Agency and the Bi-State Metropolitan District to comprise three counties in Illinois and the city of St. Louis and three counties in Missouri, and introduction of the pending bill (S. 2187) proposing to grant consent to a compact creating the Delaware River Port Authority which would have control over a port district extending across the State of New Jersey to the Atlantic Ocean and comprising all of eight counties that constitute practically the whole southern half of said State, together with intimations of other like proposals to follow, a different situation is now presented which makes it desirable that the whole subject be carefully reviewed to determine a proper and consistent policy that should be followed by this Department with respect to such proposals in the future. Such review and reconsideration of the whole matter should take into account the following factors:

1. The propriety of combining for financing purposes highway bridges and highway tunnels with nonhighway facilities of various types not directly related to such highway-crossing facilities, as proposed by S. 2187, and thus make it possible to subject the highway bridges and tunnels to perpetual tolls to support such nonhighway facilities is open to serious question;

2. Highway bridges and highway tunnels, like the public highways of which they form a part, are designed primarily for free use for business, pleasure, and all other daily activities of life by all members of the general public with their own privately owned vehicles, for which right and privilege they pay license fees on the vehicles used and taxes on the gasoline consumed, the revenues derived from such sources usually being applied to public highway construction and maintenance. While highway bridges and highway tunnels in any area such as that involved serve a common pool of traffic and are mutually complementary or supplementary to each other in the fulfillment of that function, they nevertheless would be competitive if financed separately with provision that each be freed of tolls as soon as toll revenues derived therefrom would amortize its cost of construction. Highway bridges and tunnels, therefore, might justifiably be combined with each other for financing purposes under the circumstances here involved and be subject to tolls until the cost of the facilities so combined has been amortized, but they should not be combined with or required to assist in financing other facilities of an entirely different character as proposed by S. 2187;

3. The various and sundry nonhighway port-development facilities proposed by S. 2187 are to be distinguished from highway bridges and highway tunnels in that they would be used primarily by private commercial concerns in the conduct of their business enterprises and should be self-supporting as such or combined with other facilities of like nature, but should not be combined for financing purposes with highway bridges and highway tunnels; and

4. While, therefore, a highway bridge or tunnel in an area of the kind involved might be combined with other highway bridges or tunnels in such area for financing purposes, the facilities so combined should be subject to tolls only for such time as may be necessary for amortizing the cost of their construction, with a limitation on the period during which tolls may be collected to be prescribed by law or determined pursuant to authority to be vested in the Secretary of the Army or such other Federal official as may be designated by the Congress. In other words, there should be a statutory provision pursuant to which such highway bridge and tunnel facilities would ultimately become free.

This Department, therefore, has given very careful consideration to the whole matter and is of the view that legislation granting consent to compacts of the nature involved in S. 2187 should be in conformity with the principles set forth in preceding paragraphs numbered 1 to 4, inclusive.

Section 3 of S. 2187 attempts to exempt the Delaware River Port Authority from compliance not only with the General Bridge Act of 1946, as amended, but also with the provisions of any other act of Congress heretofore adopted, including any act or resolution of the Congress that authorized or consented to the construction or acquisition of any highway bridge or tunnel that might be constructed or acquired by the authority. In other words, it would be in direct conflict with the established policy of Congress with respect to having a limitation on the combining of highway bridges and highway tunnels for financing purposes and as to the period during which tolls may be charged for such purposes, and would grant complete immunity to the authority in its operations from any existing Federal statutes imposing such limitations and also with respect to existing requirements of Federal law that tolls shall be reasonable and just and that the

Secretary of the Army may prescribe the reasonable rates of such tolls. Obviously, section 3 of the bill is too broad and should be amended.

It therefore is suggested that said section be amended by striking out the language beginning with the word "Notwithstanding", line 20, page 24, down to and including the word "commission", line 1, page 25, and by inserting on line 17, page 25, after the word "supplemented" a comma and "as consented to by the Congress", and by changing the period after the word "commission" in line 19, page 25, to a colon and inserting the following proviso:

"*Provided*, That no highway bridge or highway tunnel shall be combined for financing purposes with any facility other than a highway bridge or highway tunnel, and the tolls or other charges collected for the use of any such bridge or tunnel shall not be pledged or used for the purpose of financing any facility other than a highway bridge or highway tunnel, and when the revenues derived from tolls and other charges collected on any such highway bridge or tunnel, or on any two or more such highway bridges or tunnels that may be combined into a single project for financing purposes, shall be sufficient, in addition to meeting necessary annual maintenance, repair, and operating costs, to amortize that portion of the cost thereof not yet amortized, as soon as possible under reasonable charges, but within not exceeding thirty years from the date any such highway bridge or tunnel may hereafter be constructed or acquired when not combined in a project with other highway bridges or tunnels, or within not exceeding thirty years from the date on which the last highway bridge or tunnel combined in such project was completed or acquired, the collection of tolls on any such bridge or tunnel, individually or in combination, shall cease."

Attention is invited to the fact that the compact recited in the pending bill would empower the Delaware River Port Authority, in addition to the general powers which would be conferred upon it, to acquire by purchase or by condemnation the existing Tacony-Palmyra Bridge which crosses the Delaware River at Palmyra, N. J. It is understood that the Tacony-Palmyra Bridge was sold in 1948 to the Burlington County Bridge Co., but that said sale was held by the New Jersey Superior Court to be fraught with fraud and corruption and the court ordered the sale to be set aside. It is further understood that the New Jersey Supreme Court recently has confirmed the decision of the lower court in voiding said sale. In addition, it should be pointed out that the States of Pennsylvania and New Jersey have entered into another compact which would authorize the Delaware River Joint Toll Bridge Commission, a commission having jurisdiction of bridges over a certain portion of the Delaware River north of Philadelphia, also to acquire the Tacony-Palmyra Bridge. S. 1938, granting the consent of Congress to this other compact, has been enacted into law.

The Department of Commerce would interpose no objection to enactment of S. 2187 if it were amended in line with the above recommendations.

DEPARTMENT OF THE ARMY,
May 8, 1952.

Hon. CHARLES A. BUCKLEY,
Chairman, Committee on Public Works,
House of Representatives.

DEAR MR. BUCKLEY: Reference is made to your request for the views of this Department with respect to H. R. 5503, H. R. 5509, and H. R. 5628, Eighty-second Congress, first session, bills granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania, authorizing the Delaware River Joint Commission to construct, finance, operate, maintain, and own a vehicular tunnel or tunnels under, or an additional bridge across the Delaware River and defining certain functions, powers, and duties of said commission, and for other purposes. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense.

The Department of the Army, on behalf of the Department of Defense, has considered these bills, and offers no objection to their favorable consideration if amended as hereinafter recommended.

By an act approved February 15, 1921 (41 Stat. 1101), the consent of Congress was granted to the Delaware River Bridge Joint Commission to construct a bridge across the Delaware River between Philadelphia and Camden, in accordance with the provisions of the General Bridge Act of March 23, 1906 (33 U. S. C 491–498). The General Bridge Act of 1906 provides, among other things, for the

prior approval of the location and plans of a proposed bridge and for the regulation of bridge tolls by the Secretary of the Army, but does not limit the time during which tolls may be charged. A compact entered into by Pennsylvania and New Jersey on July 1, 1931, to which the consent of Congress was given by a joint resolution approved June 14, 1932 (47 Stat. 308), created the Delaware River Joint Commission, for the following principal purposes: (1) The operation and maintenance of the Philadelphia-Camden Bridge. (2) The establishment, operation, and maintenance of railroad or other facilities for transporting passengers across said bridge, including extensions thereof.

Section 1 of said bills would give the consent of Congress to a supplemental agreement, signed by the Governor of New Jersey on August 23, 1951, and by the Governor of Pennsylvania on August 30, 1951, which amends the original compact by adding a new article XII–A authorizing the Delaware River Joint Commission to construct an additional bridge or tunnel approximately 3 miles downstream from the existing bridge.

Section 2 of the bills would authorize the Commission to construct, finance, operate, maintain, and own the bridge or the tunnel or tunnels. Although section 1 provides that nothing contained in the supplemental agreement shall be construed to affect the jurisdiction of any department, officer, or official of the United States over or in regard to any navigable waters, bridge, or other facility, it is not clear that the Commission would be required under section 2 to submit a map of the location and plans of any proposed bridge or tunnel for the approval of the Secretary of the Army prior to its construction. It is therefore recommended that the period at the end of section 2 be changed to a comma and the following clause added: "in accordance with the applicable provisions of the General Bridge Act of 1946 (33 U. S. C. 525–533) and section 10 of the River and Harbor Act of March 3, 1899 (33 U. S. C. 403)."

Section 3 of the bills would authorize the Commission, notwithstanding any of the provisions of the General Bridge Act of 1946, to combine any two or more bridges, tunnels, and other facilities for financing purposes, and to collect tolls without any limitation as to time. The attention of the committee is invited to the fact that legislation has been vetoed which does not give assurance that a bridge shall be maintained and operated free of tolls after the recovery through tolls of its costs of construction and the actual cost of maintenance, repair, and operation during the toll period.

The bill does not involve the expenditure of funds by the United States.

This report has been coordinated among the departments and boards in the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that there is no objection to the submission of an identical report on S. 2188, a companion bill.

Sincerely yours,

FRANK PACE, Jr., *Secretary of the Army.*

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