

Filmed 5/20/69

Reel # 100

HISTORY OF THE DEPARTMENT OF TRANSPORTATION

in

THE LYNDON B. JOHNSON ADMINISTRATION

(November 22, 1963 - January 21, 1969)

ALAN S. BOYD, SECRETARY

Prepared by Department Historian  
Office of Management Systems  
Assistant Secretary for Administration

THE DEPARTMENT OF TRANSPORTATION  
IN THE LYNDON B. JOHNSON ADMINISTRATION

Table of Contents

Foreword

Secretary's Introduction

- I. The Legislative History of the DOT Act
- II. Implementation of the DOT Act -- the Trimble Task Force
- III. The Administration of the Department
  - A. Organization of the Department
    - 1. Staffing
    - 2. Administrative systems development
      - a. Counterpart Studies
      - b. Field coordination groups
      - c. Space consolidation
      - d. Executive Personnel management
      - e. Equal opportunity programs
      - f. Organization for emergency preparedness
    - 3. New administrative elements
      - a. Saint Lawrence Seaway Development Corporation
      - b. Urban Mass Transit Administration
  - B. Programs of the Department of Transportation
    - 1. Highway beautification
    - 2. Maritime policy
    - 3. Interventions in regulatory actions
      - a. Inter-American freight case
      - b. Washington and Old Dominion Railroad
    - 4. Investigation of automobile insurance
    - 5. The District of Columbia highway problem
    - 6. The Department and new communities
    - 7. Interagency cooperation
    - 8. Administration of Uniform Time Statute
    - 9. DOT Achievements in 1968

### Notes on Taped Documentation

In addition to the printed documentation included in these notebooks, the Department of Transportation has submitted to the Johnson Library a series of taped interviews that provide additional information and insights into the origin and working of the Department.

Since the officials interviewed were assured that their remarks would not be made public without the express consent of responsible officials, the tapes have been deposited with the following restriction:

"These tapes were recorded under a promise that their contents would be divulged only at the direction of the interviewee or President Johnson. It is the wish of the officers whose views are recorded that the information shall not be used to embarrass, damage, injure or harrass living persons."

Tapes record interviews of:

Secretary Alan Boyd  
Under Secretary John Robson  
Vice Admiral Paul E. Trimble USCG  
Assistant Secretary Cecil Mackey  
Assistant Secretary John Sweeney  
Assistant Secretary Alan L. Dean  
Mr. Langhorne Bond

Also submitted are tape recordings of Secretary Boyd's press conferences.

There are no restrictions on these tapes.

## INTRODUCTION

The information contained in these notebooks and in the taped interviews that accompany the written material provides a complete and comprehensive story of the efforts during President Johnson's Administration to organize the Department of Transportation and make it work. We have made an effort to include all materials -- including those that represent conflicts and differences of view -- so that later scholars may draw their own conclusions concerning our efforts and our successes and shortcomings.

Naturally, the story of the origin of each cabinet agency is unique. Because the Department of Transportation was organized during the Johnson Administration at the specific instruction of the President, this history documents the origins of a very large Department -- the problems that gave rise to it; the ideas which went into its creation, and the contributions of the dedicated and gifted people who joined with me to establish the Department. The history should be especially valuable because the creation of a cabinet agency is so rare in modern history our experience should be instructive and helpful for those who come after us.

Since I was probably as directly involved in the preliminary work of establishing the Department as any other single individual, I should like to highlight a few of the details that are recorded in the pages that follow to indicate some of my own impressions of events.

The role and functions of transportation have been highly important to the growth and prosperity of our country since its feeble beginnings on the shores of the western Atlantic. Records of our early pioneers are full of the dangers,



hardships, and ultimate rewards of the arduous journeys then necessary when men began to settle in wilderness areas, proceed to colonial capitals to join a legislature or a business, or even to visit relatives in a remote area. By the time of Thomas Jefferson's presidential years, his Secretary of the Treasury, Albert Gallatin, was well aware of the need for fast, easy and secure transport facilities to move goods to market, and to enhance the prosperity of struggling new States. To facilitate transportation he proposed a system of canals to run from the eastern slopes of the Appalachians to the Atlantic Ocean. Since then almost every Administration has undertaken more activities to promote, facilitate and encourage better means of transportation.

In our own time, the range and scope of Federal activity to encourage all the forms of transportation increased radically, but unsystematically. Beginning with a report of the Hoover Commission on Government Reorganization in 1949, various studies and analyses made by both government and private agencies recommended the amalgamation of all or some of the government's transportation activity into a single government agency. The Bureau of the Budget, most especially, became convinced that in the interest of efficiency and economy these activities should be brought under the control of one cabinet officer. Thus the reorganization of the Office of the Under Secretary of Commerce for Transportation which I occupied until I became Secretary of Transportation was an effort to consolidate all the Government's promotional and operational efforts in transportation under one responsible officer. I believe it might be argued that this consolidation was a deliberate preliminary step to the formation of the Department. In any event, a series of preliminary steps had been taken to prepare the groundwork for the establishment of a cabinet agency.

It should also be noted, however, that support for the new cabinet agency was not unanimous, even among the cabinet officers. Partly for that reason, an independent task force chaired by the Bureau of the Budget was established. In this way members of the task force could support the idea of a Department without the backing of their respective cabinet officer chiefs. In some cases the subordinates, working for the Bureau of the Budget Task Force, took positions which their Department heads would not have approved.

As the underlying study indicates, the Bureau of the Budget submitted a proposal to initiate a Department of Transportation to the President in the fall of 1965 after two separate Presidential Task Forces had made the recommendation in different contexts. This was not the first time a President had favored the idea. Perhaps the most significant previous espousal of the idea had come from President Eisenhower, who, in his final budget message just before leaving office, had urged the Congress to establish such a Department. President Johnson recognized the timeliness of the concept and recommended a Department of Transportation in his State of the Union Message on January 12, 1966. He followed up with a detailed recommendation on March 2 when he sent a carefully worked-out proposal to Congress.

In

The President's judgment that the time had come for a Department of Transportation was borne out by the unusually good reception his proposal received in Congress. As with most significant proposals before Congress, a considerable amount of careful work was done by my associates in briefing and persuading key members of Congress and of the industry that the idea was a good one. It would not be correct to maintain that the President's proposal was enacted in toto, nor that the original proposal would have instituted a more effective Department than the one which we now have.

The Bill that was enacted, however, provided for a Department structure that could and did begin immediately to have an impact upon the nation's transportation needs and achievements. The materials supplied with this history recount a number of the successful efforts of the Department, a number of its failures and many efforts that have been initiated, and are not yet successful. But I believe that our most outstanding successes to date have not been accomplishments that are easily measurable; they are rather in the area of education and persuasion; and though I count these as genuine achievements, the processes have only just begun. It will be many years before these initiatives come to fruition. One such idea is the notion that transportation should be looked at as a system. A system is malleable and can be adjusted to suit the convenience and the needs of citizens. Another characteristic of a system is that all parts are equally necessary and useful, even if in transportation some modes are much more used and helpful than others. Looking at transportation safety as an element in a system, for instance, forces us to consider whether funds spent to enhance highway safety will save more lives than the same funds invested in air traffic control. Perhaps even more significant in the long run is the notion that transportation is one of society's basic tools, and <sup>in</sup> thus that transportation has social dimensions. Transportation's effects can help materially to achieve the great society, and, unregulated, its effects can be baneful. It is true that if we succeed in creating a more rational system of automobile insurance there will be enormous economic gains, and much material progress, but more important, a better insurance system will add to the dignity and social worth and security of individual citizens.

If our initiatives bear the fruit that we expect of them, we can achieve -- from the point of view of Government -- a much more rational allocation of

scarce national resources, including the resource represented by the travellers' time. And from the point of view of the merchant or shipper, we shall be able to facilitate the travel of himself or his goods and presumably make the travel less costly. Or perhaps we shall be able to devise new types of transport capability, now undeveloped or unknown. We can expect that the hazards normally attached to most modes of travel will be materially reduced, including the hazards of air and noise pollution. By integrating our transport resources we shall be able to combine travel by air with access to airports by rapid transit or specially designed roads. By thoughtful location of highways both in the countryside and within the cities, we shall minimize damage to the environment, and indeed, if we utilize air-rights over highways and tracks, probably add new facilities and good environment to our inner cities.

We have already begun a renewal of the Coast Guard, and encouraged it to undertake initiatives in underwater search and rescue, studies of the undersea environment, and oceanography. These researches will yield results of value rather quickly, I believe; they will add to man's capacity to improve his own environment.

In

Looking at transportation as the willing servant of man will encourage us in the future to seek new ways of putting it to work. But perhaps most important it will require that people in all our communities will be invited and encouraged to help make the decisions that influence the existence and location of their own transportation facilities. The "two-hearing" concept will assure that all interested persons have an opportunity to express their views about their transport facilities, and the "urban concept team" will urge communities to employ all of the capabilities of their resources, "-- scientific, social and humanist --

to help plan their own environments. People must begin more actively to plan their own surroundings. For them to do so is essential to their own political development, as well as to their material well-being. But because transportation decisions are concerned with peoples' goods and their welfare, the decision-making will not progress without controversy. These are intensely political decisions.

At the end of President Johnson's Administration we can be proud of our achievement, satisfied with our unfinished initiatives, and hopeful concerning the capacity of this latest attempt of men to arrange their own affairs through governmental institutions.

Alan S. Boyd

In

Tapes located on the Shelves with the Administrative Histories

From the Department of Transportation Administrative Histories:

Tapes:

1. Alan Dean 8/8/68 Interviewed by W. F. Cronin, Historian and R. E. Paone, Consultant to the Dept. of Transportation
2. Langhorne Bond 8/20/68 (Tape loose and not in a box)
3. John Sweeney, Assistant Secretary for Public Affairs, Interviewed by W. F. Cronin, DOT Historian
4. John Robson, Under Secretary, 10/11/68
5. Donald G. Agger, Assistant Secretary for International Affairs and Special Programs, Interviewed by Walter Cronin, 12/16/68
6. Alan S. Boyd, Secretary of Transportation, 11/22/68, Walter Cronin, DOT Historian
7. M. Cecil Mackey, Assistant Secretary for Policy Development, Walter Cronin, DOT Historian, Rocco Paone, Consultant, 9/25/68  
Two interviews
8. Press Conference on Airport Congestion, 8/16/68, Secretary Alan S. Boyd, DOT, David Thomas, FAA
9. Deena Clark's Moment with Alan Boyd, 1/6/68
10. Press Conference, August 24, 1968, Secretary of Transportation, Alan Boyd, Mayor Washington, Mr. Hechinger, Mr. Fletcher
11. "Secretary Boyd's State of the Union Address-Message"
12. Assistant Commandant of the United States Coast Guard, Vice Admiral Paul E. Trimble by Paone, 7/26/68 (loose tape)

Removed and sent to the Audiovisual Archives, JLH, 9/11/74



# Chapter I

## LEGISLATIVE HISTORY OF THE DEPARTMENT OF TRANSPORTATION ACT (1966)

Foreword.....	1
Introduction.....	iii
The Proposal to Establish a DOT.....	1
Bureau of the Budget Task Force.....	5
Specialized Personnel.....	12
Features of the Draft Bill.....	13
Comments on the Draft Bill.....	14
New Draft of the DOT Bill.....	20
General Concept of Organization and Management.....	28
Congressional Consideration.....	31
The Transportation Industry and the Bill.....	35
Hearings -- Senate Committee, Phase I.....	37
Hearings -- Senate Committee, Phase II.....	44
Hearings -- House of Representatives.....	55
Industry Witnesses.....	66
House Report No. 1701.....	88
Senate Staff Memorandum 89-2-35.....	92
Debate in the House.....	95
The DOT Act in the Senate.....	101
HR 15963 in Conference.....	107
The Conference Report.....	109
In the Senate.....	112
In the House.....	115
Comparison of PL 89-670 with the President's Proposal.....	118

and that the following agencies should definitely be a part of the new Department: The Bureau of Public Roads, the Maritime Administration, the Federal Aviation Agency, the Coast Guard, the St. Lawrence Seaway Development Corporation, the Great Lakes Pilotage Administration, the safety functions of the Interstate Commerce Commission, the Car Service Division of the Interstate Commerce Commission, the subsidy functions of the Civil Aeronautics Board, and the Panama Canal. The Task Force thought that the Environmental Sciences Services Agency should be considered for inclusion in the Department at some later time.<sup>11</sup> The Task Force also recommended that a National Transportation Council be formed, whether or not a Department of Transportation was approved.<sup>12</sup> Such a Council would coordinate transportation policies with other government agencies, including those which were not considered as being future constituent agencies of the Department of Transportation.

With this report, the way was prepared for a more detailed study of the question of a Department of Transportation by the two task forces of 1966.



Footnotes to Introduction

L.

1. Alan/Dean, interview by Walter Cronin, August 8, 1968. Assistant Secretary Dean, who was then Associate Administrator for Administration of FAA, was the drafting officer.
2. Najeeb E. Halaby to President Lyndon B. Johnson, letter, June 30, 1965, p. 2.
3. Ibid, pp. 3-4.
4. Charles Schultze to Joseph Califano, letter, August 21, 1965, p. 1.
5. "A Department of Transportation and Related Organizational Issues" and "Alternatives to a Department of Transportation", unidentified papers from the files of Arthur Kallen, Bureau of the Budget.
6. Ibid, p. 2.
7. Ibid, p. 4.
8. Joseph Califano to Alan Boyd, letter, August 12, 1965.
9. Ibid.
10. Alan Boyd to Joseph Califano, letter, September 14, 1965.
11. Alan Boyd to Joseph Califano, attachment to letter, October 22, 1965, pp. 6-13.
12. Ibid, p. 17.

# **HISTORY OF THE DEPARTMENT OF TRANSPORTATION**

## **- CHAPTER I**

### **LEGISLATIVE HISTORY OF THE DEPARTMENT OF TRANSPORTATION ACT**

## FOREWORD

The Department of Transportation is the newest Cabinet agency and one of the larger ones. Congress constructed the Department about a year and a half ago by assembling a large number of existing agencies or parts of agencies with a number of new components under the guidance of a Secretary and a number of Assistant Secretaries and their staffs. The functions of the many elements range from the adjustment of time zones to the development of a supersonic transport aircraft to helping to fight wars. The Department includes an agency that had only five or six permanent employees, the Great Lakes Pilotage Association, and one having nearly forty-five thousand employees, the Federal Aviation Administration. The personnel and installations of the Department are on assignment in forty foreign countries as well as in all fifty States. One of the elements of the Department dates from 1790 -- the Coast Guard; one is so new that it dates from July 1, 1968.

The history of this organization during the Administration of President Johnson must therefore try to explain the enormous diversity of duties assigned to it, and at the same time highlight the efforts of the Secretary and his staff to unify a new Department, and give special attention to problems that are common to the several agencies. Ideally the history should also show how the Secretary attempts to foster and encourage the creativity and ingenuity of his people in devising new solutions to problems.

Because of the special circumstances in which it was produced, this history can be only an assembly of independently produced sections. It will thus seem to emphasize the independent activities of the elements rather more than the inter-dependent activities that are just getting under way. A later version of this history can be more integrated and show better the common themes and interests that seemed to require the establishment of the Department.

The coordinator for this project for the Executive Branch of the Federal Government was the Honorable John E. Robson, Under Secretary of Transportation. The responsible official of the Department of Transportation was the Honorable Alan L. Dean, Assistant Secretary for Administration.

The Historian of the Department, Dr. Walter F. Cronin, directed the preparation of the materials and wrote parts of the text dealing with legislative history and the Office of the Secretary. He was assisted by a Task Force consisting of CWO Joseph Greco, Jr. of the Coast Guard and Dr. Nick Komons of the Federal Aviation Agency. Consultants for the project included Dr. Rocco Paone, U. S. Naval Academy, and Mr. William Trevarrow.

Within the Administrations, materials were prepared under the guidance of the following officers:

Federal Aviation Administration -- Dr. Ellmore A. Champie  
U. S. Coast Guard -- CWO Joseph Greco  
Federal Highway Administration -- Mrs. Joyce Ritter  
Federal Railroad Administration -- Mr. Edwin E. Edel

Numerous other officers of the Department were generous with assistance on specific segments of the work.

## INTRODUCTION

On June 30, 1965 Mr. Najeeb Halaby resigned as Federal Aviation Administrator. Upon leaving office, he sent a letter to the President proposing that a Department of Transportation be established, and that such a department contain the Federal Aviation Agency.<sup>1</sup> The Halaby letter advised the President that a transfer of the government's transportation functions to the Department of Commerce, presumably to be administered by the Under Secretary of Commerce for Transportation, would not be desirable for two reasons: 1) such a transfer would meet with serious political opposition, because the chief reason for establishing an independent Federal Aviation Agency had been the general feeling that the Commerce Department did not handle its aviation functions well, and 2) it would not be sound administrative policy to have a Department whose primary concern was to foster business and commerce in general assume the responsibility<sup>2</sup> for services to and promotion of one segment of the national economy. The Administrator recommended that while consolidation arrangements for the new Transportation Department were underway, a National Transportation Council be established under the chairmanship of the Under Secretary of Commerce for Transportation. Its members -- probably consisting of the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Administrator of the Federal Aviation Agency, the Chairman of the Civil Aeronautics Board, and the Chairman of the Interstate Commerce Commission -- would advise the President on transportation problems and policies and would coordinate programs involving interagency relationships.<sup>3</sup>

The fact that the outgoing Federal Aviation Administrator advocated the abolition of his own independent agency and its absorption by a new Cabinet Department caught the attention of the White House Staff, as evidenced by the interest shown in the proposal by Mr. Charles Schultze, Joseph A. Director of the Bureau of the Budget. Mr. Schultze wrote Mr. Califano, Special Assistant to the President, that he and the Bureau supported the recommendations of Mr. Halaby, as well as those of the 1964 White House Task Forces on Government Reorganization and on Transportation, that a Department of Transportation be created.<sup>4</sup>

The fact that the Bureau of the Budget had been interested for a long time in some form of reorganization of transportation-related activities is clear from numerous documents found in the files of the Bureau. These documents specifically identify the problem to be dealt with as the dispersal of responsibility for policy-making, and indicate that a Department of Transportation would provide the best cure for the problem. Other possible organizational approaches to a solution of the problem, such as a National Transportation Council were considered and rejected according to data found in the various documents.<sup>5</sup>

Mr. Schultze had serious reservations, however, about the creation of a National Transportation Council, stating that it would only further complicate the pattern of government responsibility for transportation policy. Such a committee-like arrangement, he said, could produce only timid and non-controversial recommendations that would be of little help to the President; any policy statements would be "least common denominator" compromises.<sup>6</sup> He did, however, recommend that a Transportation Investment Review Board, consisting of the Secretary of Commerce, representatives from the Council of Economic Advisers, the Treasury, and the Office of

Science and Technology, be set up to advise the Bureau of the Budget and the President on transportation investment programs.<sup>7</sup> Such a Board, Mr. Schultze believed, would also provide invaluable experience for any future Department of Transportation.

Even before the Budget Director had endorsed the idea of a Transportation Department, Mr. Califano had asked Mr. Alan Boyd, the Transportation Under Secretary of Commerce, to head a task force which would develop proposals for a wide range of transportation problems, among which would be the problem of ending the diffusion of government responsibility in transportation by regrouping agencies concerned with transportation activity.<sup>8</sup> The task force selected by Mr. Boyd had as its members representatives from the White House Staff, the Bureau of the Budget, the Council of Economic Advisers, the Office of Science and Technology, the Departments of Commerce and Treasury, the Housing and Home Finance Agency, and the Chairmen of the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission.<sup>9</sup>

On August 27, 1965 Mr. Califano sent a supplemental memorandum to Mr. Boyd asking him to focus the attention of his task force on certain issues: 1) "a statement of general areas of interest for establishing social goals"-- the goals to be ambitious but attainable, farsighted but realistic; 2) for each goal he was asked to supply an estimate of the time required for the achievement of the goal, and an estimate of the costs involved.<sup>10</sup>

The Boyd Task Force reported to Mr. Califano on October 22, 1965. The report recommended that a Department of Transportation be established,

## The Proposal to Establish a Department of Transportation

On November 24, 1965, Mr. Charles Zwick, Deputy Director of the Bureau of the Budget, forwarded a memorandum to the Honorable Joseph Califano, a Presidential Special Assistant at the White House, enclosing redrafts of earlier proposals for 1) a transportation organization in the Federal Government, 2) transport regulation, and 3) highway safety. The first of the papers just mentioned proposed establishment of a Department of Transportation, headed by a new Cabinet officer, after discussing the problems inherent in the transportation industry and the Government's efforts to assert control over the transportation systems of the United States. Some of the difficulties at least were attributed to the fact that the governmental units then charged with responsibilities relating to transportation were disparate and uncoordinated. Agencies exercising some degree of control or influence over transportation included the Undersecretary of Commerce for Transportation, an office created in 1949; the Federal Aviation Agency (founded as the Civil Aviation Administration) which had been removed from the Department of Commerce in 1958; the urban mass transit program, then a part of the Housing and Home Finance Agency, the Civil Aeronautics Board, the Interstate Commerce Commission and the Corps of Engineers of the Army which controlled many aspects of construction and travel on the inland waterways of the country.<sup>1</sup>

---

---



The Bureau advocated creation of a new Department of Transportation, even though it recognized that such a proposal would be controversial. Such a Department, it said, would provide "an effective means of formulating and implementing comprehensive integrated national transportation policies". It would serve as a focal point in the Cabinet to assure that the United States had transportation systems adequate to both peacetime and emergency needs. This early recommendation suggested that the following administrative units be combined in a single Department:

- 1) All transportation activities of the Department of Commerce, the FAA, the safety functions of the ICC, the Coast Guard, and certain functions of the Corps of Engineers. Cited as possible inclusions were the mass transit activities of the Housing and Urban Development Department, the safety and subsidy functions of the CAB, and the weather, coast and geodetic functions of the Department of Commerce.

When the proposal received a favorable reaction from the White House, Mr. Kallen of the Bureau of the Budget elaborated his sug-

---

---

gestion for a Department of Transportation, completing the paper on December 27. To the list of organizations to be consolidated in the DOT he added the Bureau of Public Roads, the Maritime Administration, the Alaska Railroad, the Great Lakes Pilotage Association, the Saint Lawrence Seaway, and the safety and car service functions of the Interstate Commerce Commission. Obviously there were additional functions of agencies of the Federal government which might also be included in the new Department, such as the transportation functions of the Department of Defense, but pending further study the Bureau indicated that it was not recommending for inclusion the Panama Canal Company, the urban mass transit activities of HUD, the weather and coast and geodetic activities of the Department of Commerce, or the safety activities of the CAB.

The analysis contained in the recommendation stressed three basic types of problems arising from the U. S. Government's current shortcomings in transportation:

- a) Lack of policy consistency: Government investment and regulatory decisions were being made piecemeal and without relation to a transport plan of national policy. No agency was assigned to study comparative benefits to the nation of transportation investments, e.g. in highway safety or in airline safety.
- b) Lack of coordination among government agencies. Decisions of the Corps of Engineers which affected plant locations of many industries, shipping rate structures and national freight carriers were not reviewed by the rest of the Federal Executive agencies.
- c) Regulatory policy deficiencies. Some regulatory agencies were assigned promotional, safety and other non-regulatory functions.

Surveying the resources of the agencies proposed for the new Department, the paper observed that joining all of these activities would create a Department of about 50,000 employees who would administer programs costing \$6 billion annually. The new Department would have cognizance of goods and services accounting directly or indirectly for about 20% of the annual Gross National Product and about 14% of the total civilian employment.<sup>3</sup>

X

Bureau of the Budget Task Force

Since the proposal for the Department of Transportation was only one of several recommendations submitted to the President to assist in preparation for his State of the Union Address, the officers of the Bureau learned only a day or two before the Address was delivered on January 12, 1966, that the President would recommend the Department to the Congress. For that reason, no draft Bill had been prepared in the Executive Branch to implement the President's proposal. Immediately after the President had recommended that the Department be formed, a Task Force to draft legislation was organized by the Director of the Bureau of the Budget, Charles Schultze; its membership included officers from the agencies proposed for inclusion in the Department.<sup>4</sup> The Task Force was chaired by another Assistant Director of the Bureau of the Budget -- Charles Zwick.

First order of business for the Task Force was consideration of a draft Bill to establish a Department of Transportation that had been prepared by the General Counsel of the Department of Commerce. Two major issues required extensive consideration by the Task Force. First and most obvious was the question of the composition of the Department. What organizations or parts of organizations should be included? What functions should be considered appropriate for transfer to the new agency? The second major issue was the proper organization for the Department itself.

With respect to the composition of the Department, the initial draft Bill proposed that the functions of the Under Secretary of Commerce for Transportation and related activities, the Maritime Administration, and the Bureau of Public Roads should be transferred to the Department. Similarly the Coast Guard would be transferred from Treasury; the Federal Aviation Agency would be transferred intact; some of the duties of the Civil Aeronautics Board, the urban mass transit activities of the Department of Housing and Urban Development and all the functions of the Interstate Commerce Commission relating to safety in railroads, motor carriers, and pipelines, railroad car service and locomotive inspection were also to be transferred. The St. Lawrence Seaway and the Alaska Railroad were also obvious candidates for inclusion.

Opposition was anticipated from the aviation industry to the  
proposal to assign

the accident investigation function of the CAB to a Department that would also be responsible for operation of the air traffic control system. Ultimately the National Transportation Safety Board was designed to circumvent any problems of this sort. Another problem concerned the transfer of the Coast Guard from the Department of the Treasury, of which it had been a part since its founding in 1790. On January 25, Under Secretary Joseph W. Barr of the Treasury wrote to the Director of the Bureau of the Budget opposing the incorporation of the Coast Guard in the new Department. After considerable negotiation with the White House staff and others, Secretary Fowler withdrew the Treasury objections in a letter dated February 11.

The "Commerce Draft" was understandably vague about the organization of the Department. In addition to the Secretary, it specified that the Department would have two Under Secretaries, one of them for Policy Development and Program Coordination; five Assistant Secretaries, and a General Counsel.<sup>5</sup> It did not provide for a career Assistant Secretary for Administration. Still unresolved was the question of whether the Department should be organized along functional lines or whether the statutory officers should represent modes of transportation.<sup>6</sup>

From its first meeting the Task Force was concerned with the question whether Federal interest in urban mass transit could more properly be left in HUD or transferred to the new Department.

---

---

---

---

---

---

---

---

---

---

After considerable discussion in the Task Force, the issue was referred to the White House. The final decision was not to mention the issue in the proposed Bill. However, the President in his message accompanying the Bill as he sent it to Congress, suggested that he would require the Secretaries of HUD and DOT to prepare a recommendation as of its ultimate location to be transmitted to him within one year of the date of the passage of the Act. The plan for the study and report appealed to the Congressmen, who placed the requirement in the Department of Transportation Act.<sup>7</sup>

Transportation Investment Standards. The most controversial section of the Department of Transportation Law was the section dealing with transportation investment standards, in large part because the formation of criteria and standards for the investment of United States funds in transportation facilities was intimately bound up with functions of the Army Corps of Engineers and their relationships with the Congress. This problem came to the attention of the Task Force at least by the meeting of January 24. Following agreement at that meeting, Mr. Alfred S. Fitt, General Counsel of the Army, undertook to draft a section on the standards. He submitted the first draft on January 24, and followed it two days later with a revision. In substance the draft provided that the Secretary of Transportation would develop and revise the standards for formulation and economic evaluation of proposals

---

---

by all Federal agencies for the investment of funds in transportation facilities, except for those facilities intended primarily for the use of the agency. The standards and criteria for evaluation of the transportation features of such projects were to be developed after consultation with the Water Resources Council and were to be compatible with the criteria for evaluation of the non-transportation features of the projects.

Every survey or plan by any agency of the government including a proposal for investing funds in facilities for which the Secretary of Transportation had promulgated standards and criteria must be prepared in accordance with information provided by the Secretary. Thereafter, the proposal must be coordinated with other Federal agencies, States, and local units of government, and finally transmitted to the Bureau of the Budget for disposition in accordance with law.<sup>8</sup>

During the next meeting of the Task force, the following decisions were made about the substance of the proposal for the Department:



- 1) The provision for a joint study of the urban transit problem by the DOT and HUD was dropped.
- 2) The statement on investment policy drafted by Army General Counsel Fitt was to be included in the Bill.
- 3) The Secretary of Transportation was to be added to the Water Resources Council.
- 4) Some minor functions of the Corps of Engineers were to be transferred to the DOT.
- 5) The Coast Guard was to be added to the list of agencies to be included in the Department.
- 6) The Car service functions of the ICC would likewise be transferred to the Department,
- 7) As well as the safety functions of the CAB and the ICC.
- 8) The Bill would provide for a separate safety board.<sup>9</sup>

During the meeting of the Task Force of January 28, 1966, the decision was made to propose a Departmental organization modelled on that of the Department of Housing and Urban Development. The Task Force decided that the entities to be brought into the new Department should lose their separate identities, and that their functions should be transferred to the Secretary in order to permit him freedom in organizing the Department. It was also planned that the large elements of the Department would be headed

---

---

---

by Administrators who would report to the Secretary. A corollary of that decision was that the Assistant Secretaries of the Department would perform functional duties as staff officers to the Secretary, rather than being line officers in the chain of command.<sup>10</sup>

A major subject discussed on January 28 was the organization of safety and the role of the National Transportation Safety Board, (NTSB) the issue being whether the NTSB should be charged with making the accident investigations upon which its findings would rest. The Task Force decided that the Safety Board should have only five members but that they should be given independent status by having them appointed by the President. The operating Administrations should be responsible for investigations rather than the Board.

All of these decisions were relayed during the afternoon of January 28 to a panel made up of Secretary of Commerce John T. Conner, Director of the Bureau of the Budget Schultze, Under Secretary of Commerce Boyd, Commerce General Counsel Robert E. Giles, and Mr. Califano of the President's staff, who were constituted as a Policy Group to review proposals for the President. In addition to the proposals above, it was suggested that the DOT Bill include a requirement that the Secretary of Transportation organize and conduct the

---

---

---

---

Department in such a way that the operating agencies would not be disrupted. That suggestion was apparently made by General William F. McKee, Administrator of the Federal Aviation Agency.<sup>11</sup>

### Specialized Personnel

From the beginning of the discussion of a new Department, it was clear that its success would depend to a considerable degree upon its ability to recruit unusually well qualified personnel. To accomplish the recruitment it would be essential to have authority to utilize special incentives such as supergrades and Public Law 313 recruitment. On January 29, Mr. Dean, Mr. Zwick, Mr. Weiss, Mr. Seidman and Mr. Mackey discussed this problem with Mr. John Macy, Chairman, Civil Service Commission. Mr. Macy was of the opinion that provision should be made for 18 to 20 appointees with grades not to exceed GS-18.

It would also be desirable to amend the Classification Act to provide for an additional number of supergrade officers, but Mr. Macy did not approve additional P. L. 313 recruitment. It was immediately evident that the law would have to be drafted to protect the status and grades of those employees already working in the constituent agencies.<sup>12</sup>

---

---

---

---

---

On the basis of all the changes agreed among the Task Force members, a new draft of the DOT law was prepared by Mr. Gordon Murray of the Bureau of the Budget and approved by the members of the Task Force on January 31, 1966.

#### Features of the Draft Bill (1/31/66)

Compared with the original draft Bill prepared by the Department of Commerce, the new draft had advanced markedly toward the form of the Bill eventually enacted. In the declaration of purpose, a clause was added specifying that the national transportation policies to be developed by the new Department should be "conducive to the provision of fast, safe, efficient and convenient transportation services, at the lowest cost consistent therewith and with the efficient utilization and conservation of the nation's resources."

This draft added a provision for a career Assistant Secretary for Administration conforming with the organization of the newer agencies. It also contained a long Section 4 concerned with the National Transportation Safety Board. The draft provided that the Board would "exercise the functions vested in the Secretary by this Act with regard to determination of the cause of transportation accidents and in the review on appeal of transportation safety enforcement cases." The Board was to be authorized to employ personnel but no mention was made of the idea of the Secretary providing administrative support for the Board that appears in the DOT Act. The new draft added certain organizations and functions to the list of those to comprise the Department; were the segments now included/the functions of the Secretary of Commerce regarding highways,

the High Speed Ground Transportation function, the FAA, including the War Risk provisions of the FAA Act, the Coast Guard, the Merchant Marine, those functions of the ICC relating to safety appliances on railroads, and the rivers and harbors responsibilities of the Corps of Engineers.

The section on transportation investment standards was considerably expanded and a new section was added dealing with the relationship of the Department of Transportation with the Appalachian Regional Development program.

#### Comments on the Draft Bill

On February 2, 1966 the draft bill was revised slightly to include provision for the supergrade personnel to be assigned in the Department, and the draft was circulated for comment to the agencies to which members of the Task Force belonged.

The Department of Interior approved the proposal for the new Department, but noted that the new legislation would transfer the Department of Commerce's responsibility under the U. S. Fishing Fleet Improvement Act of 1964 but would not alter the role of the Department of Interior. That Department recorded its willingness to take into consideration the information furnished by the Secretary of the DOT in preparing its own transportation investment plans. It was also aware that the President intended to transfer the administration of

the Alaskan Railroad to the new Department; Interior had no objection to the transfer.<sup>13</sup>

The Post Office Department, while favoring the enactment of the Bill, took exception to a provision in the draft by which the Secretary of the Department of Transportation would have responsibility for making recommendations concerning the subsidization of civil airlines to permit them to furnish transportation to the mails. The Postmaster General indicated that the Post Office should have responsibility for determining whether the airline availability was adequate, and therefore believed that the requirement for the Secretary of Transportation to inform the Civil Aeronautics Board concerning the Post Office needs for Transportation should be stricken from the Bill.<sup>14</sup>

The National Capital Transportation Agency also agreed with the purposes of the Bill, though it noted that the Bill did not have any effect on the Transportation Agency; it provided a rationale for the fact that the Bill did not change the status of the Agency, and should have no effect upon it.<sup>15</sup>

Presumably because the Department of Commerce would have so many of its subdivisions involved in the proposed new Department, its comments were more numerous and more substantive than those of other agencies. For example, Commerce suggested an explanation for the transfer of certain Commerce functions in Appalachian Regional Development to the DOT and supplied the draft provisions to accomplish the transfer; especially significant were powers relating to the construction of highways in the Appalachian area. The suggested amendments would require the Appalachian Regional Development Commission to submit all of its recommendations for road construction to the Secretary of Commerce who would transmit those he approved to the Secretary of Transportation. Federal assistance would not exceed 50% of the cost of any project, and funds would be transferred from Commerce to Transportation to be used in the road construction.

Other provisions would transfer to the DOT Department of Commerce functions relating to bridges, high speed ground transportation, guarantees of loans for purchase of aircraft, war risk insurance, Great Lakes Pilotage, and the Merchant Marine, including the subsidy function for merchant vessels.

Commerce suggested that changes be made in the draft bill, e.g. to permit the NTSB to initiate accident investigations, and to permit the Department to supply necessary medical facilities and housing in areas where they were not available through normal commercial channels.

Other minor changes were also suggested.<sup>16</sup>

In its comments, the Federal Aviation Agency argued that since the functions of the FAA would remain the same in the new Department, the law should state that the FAA organization would remain intact. Since the Administrator of FAA was already compensated at Level II of the Executive Salary scale, FAA argued that the Under Secretary of Transportation should also be compensated at that level, since he would be supervisor of the Administrator of FAA. It also strongly urged inclusion of language to insure that the investigation function for aircraft accidents would remain completely independent.<sup>17</sup>

The Civil Service Commission confined its comments on the draft Bill to personnel matters since the Commission would not be concerned with the major purposes of the Bill. The Commission objected that the Bill would have given the Secretary unprecedented authority independently to appoint officers to positions in Executive Level III and to take other related actions. It also criticized a proposed grant of authority to the Secretary to fix salaries administratively for certain categories of positions without regard to the Classification Act.<sup>18</sup>

The Interstate Commerce Commission also commented extensively on the draft of the DOT Act. It stated realistically that no



actual savings in funds should be expected from the formation of the DOT. The Commission did not object to transferring to the DOT its functions relating to motor carrier safety, railroad safety and car service. It reiterated its understanding that the economic regulatory functions of the Commission were to be left intact; it should also retain its power to establish compensation to be paid for the use of locomotives, cars or other vehicles not owned by the carrier using them. The Commission insisted that it should retain its right to suspend or revoke operating authority for those carriers that willfully violated safety regulations, since that sanction had proved to be effective. The Commission stated that the Act should contain a provision to the effect that the District Courts could review rulings of the Secretary in car safety and car service matters, just as the Courts could review similar rulings of the ICC. Finally, the Commission suggested that the Government's functions imposed by the Standard Time Act should also be transferred to the new Department.<sup>19</sup>

The Civil Aeronautics Board protested the intention of the Bill to transfer to the NTSB the safety appeal and accident investigation functions of the Board, arguing that it had successfully conducted those functions for over 25 years. It attributed its success primarily to its independence and emphasized that the

proposed NTSB did not appear to be sufficiently independent to inspire confidence. The Board noted also that it had developed a series of investigating techniques far less formal than the adversary proceeding sometimes used for similar investigations and recommended those techniques to the Board. Similar arguments were advanced against transferring the Board's safety appeal functions. With respect to subsidy functions, the Board did not object to the procedure laid down in the proposed legislation; that procedure would require the Board to take into consideration any principles and criteria prescribed by the Secretary of Transportation but leave the Board with its discretion unimpaired in all such cases.<sup>20</sup>

The Department of Justice in its comments on the proposed law made several suggestions for changes in language which would make the meaning of the law plainer, but did not comment on the intention or the implications of the law.<sup>21</sup>

One of the agencies most concerned in the establishment of the new Department -- the Coast Guard -- submitted its comments to General Counsel of the Treasury, Fred B. Smith on February 9. Admiral E. J. Roland, then Commandant of the Coast Guard, emphasized the necessity to safeguard the organizational integrity of the Coast Guard in transferring it to a new Department so that it would be instantly

available to serve with the Navy in the event of war. He suggested that organizing the Department according to modes of transportation would be desirable; he agreed that it would be desirable to have the NTSB review decisions made within the Department's Administrations rather than staff itself for independent investigation and action. Several additional organizational arrangements peculiar to the Coast Guard would have to be provided for in the legislation, according to Admiral Roland.<sup>22</sup>

#### New Drafts of the DOT Bill

On Saturday, February 5, the Task Force resumed its meetings, having before it some of the comments of the government agencies concerned, as outlined above. It appeared that the Bill would be transmitted to Congress on February 10, so there was some urgency to complete the drafting effort. The members agreed on resolutions of numerous problems still remaining in the draft of the Bill; for example, all work concerned with National Capital Transit was halted and it was decided that the Bill would not mention that agency, since its charter was concerned with the problems of one city only.

On the same day members of the Task Force met with Chairman John Macy of the Civil Service Commission to reconsider problems of personnel rank and compensation. The group agreed upon a structure for the Department which would include a Secretary, an Under Secretary,

four political Assistant Secretaries, a career Assistant Secretary for Administration, and a General Counsel. Mr. Macy concurred with the proposed organization and also agreed to the allocation to the Department of several Executive Level positions, including one at level III, three at level IV, and six at level V. It was thought that the FAA Administrator would occupy the level III position and the Administrators of the other Administrations would occupy level IV positions. There was discussion of other possible positions at levels higher than the regular Civil Service, including GS-18 positions for members of the NTSB and a level V position for the Chairman. In addition it was agreed that a savings clause should be included in the Bill to protect the positions of civil servants transferred in the component organizations for a period of at least one year after the activation of the Department.<sup>23</sup>

By February 7, the Task Force had completed a new draft of the Bill, incorporating the changes just discussed; these included several designed to re-emphasize the military function of the Coast Guard. The Bill would also amend the Classification Act to provide for a total of 2425 supergrade positions so that the Department might receive an equitable number; it also provided for judicial review of actions taken under powers transferred from the ICC. A new provision specified that the Secretary would submit to

the Congress within two years a codification of all laws transferred to the Secretary and the Department by the Bill.<sup>24</sup>

On February 10 the Task Force had a special meeting to discuss the problems raised by the Coast Guard concerning its place in the new Department. The Task Force agreed that the language used to transfer the Coast Guard into the Department should clearly indicate that the status of the Coast Guard would be the same in the Department as it had been in the Treasury Department. Task Force members agreed that the legislative history should emphasize the intent of the law to preserve the organizational integrity of the Coast Guard.

#### The February 14 Draft.

By February 14, the General Counsel of the Department of Commerce had prepared a new draft of the DOT law which he circulated to members of the Task Force. Though it followed the general lines of the draft prepared on February 7, it incorporated numerous changes that had been hammered out in the course of the Task Force discussions. Section 5 relating to the rule-making powers of the Safety Board was simplified by deleting the phrase, "including rules, regulations, and procedures for the conduct of accident investigations." That phrase was incorporated in Section 5(i), thus authorizing the Safety Board to make recommendations to the Secretary regarding rules for conducting the Board's accident investigations.

Another section of the proposed law was altered so as to preclude the Safety Board from delegating to the Secretary or to operating units in the Department the power to participate in determinations of the probable cause of air accidents. Since the Department was to provide the support services for the National Transportation Safety Board, sections concerning appropriations to the Board were deleted as unnecessary.

A most important change transferred the Coast Guard to the Department, instead of transferring to the Secretary "the functions, powers and duties of the Coast Guard" as the earlier draft had provided. Other changes were made to make the affected sections conform with the changes just mentioned.

Some of the changes related to personnel, providing for changes suggested by the Civil Service Commission and also for payment of salaries of appointees to Department positions even before the entire act became effective; i.e., 90 days after the Secretary took office.<sup>25</sup>

On February 14 the Task Force met and made some revisions and additions to the draft bill of February 14 just discussed, and in addition, considered and adopted language to authorize the utilization of military personnel in the new Department. Although it was not then certain when the President could send the message on

---

---

---

---

transportation to the Congress, the Task Force continued its planning and assembling of briefing materials to be used in Congressional Committees.<sup>26</sup>

In addition, the Task Force during its meeting of February 14 decided that the summary of the Bill should contain separate explanatory paragraphs on the Safety Board, the investment provision, and the organization of the new Department.

Since the draft of February 14 formed the basis of the document submitted to the Congress by the President on March 2, the essential provisions are summarized below:

Purposes: Congress found a Department necessary to assure the coordinated and effective administration of the transportation programs of the Federal government, to facilitate and encourage the private developers of transportation modes, and to provide leadership in identifying and solving transportation problems.

Establishment: The Department was planned to have a Secretary and Under Secretary and a group of four political Assistant Secretaries, whose functions were not delineated. The Secretary was enjoined to assure that the functions transferred to the Department were continued without interruption. He was granted numerous powers appropriate to Cabinet officers, subject to the restriction that his acts would be subject to judicial review to the same extent as those same acts were so subject when taken by predecessors in other Departments.

NTSB: The Board was established to exercise functions either assigned or transferred to the Secretary concerning determination of causes of accidents and review of actions taken to suspend or alter any license issued by the Secretary. It is to be independent of the Secretary in the performance of its functions, but will receive administrative support from the Department. The Board can make recommendations to the Secretary on transportation safety and rules and procedures for the conduct of accident investigations.

Transfers to the Department: Beginning in Section 6 of the Bill, clauses transferred to the Department the staffs, duties and functions of numerous existing organizations, including functions assigned to the Under Secretary of Commerce for Transportation, the Bureau of Public Roads, and the Maritime Administration. In addition, the Coast Guard, the FAA, the safety functions of the Civil Aeronautics Board, the safety functions of the Interstate Commerce Commission, and certain functions of the Army Corps of Engineers became part of the Department.

Transportation Investment Standards. One of the most controversial provisions of the bill (Sec. 7) dealt with the requirement for the Secretary to develop standards and criteria for public investment in transportation. The Secretary was to be directed to consult with the Water Resources Council in preparing standards applicable to transportation features of multipurpose water resource projects.

Amendments to other Laws: All of the changes and reassignments of functions just listed required the careful adjustment of the provisions of many other related Federal laws. The amendments were set out in



Section 9, along with the provision for the establishment of a working capital fund for operating the administrative services of the Department.

Summary: The draft of the section-by-section summary was submitted to the Task Force members by Mr. O'Keefe, as were additional paragraphs designed to broaden the authority of the Secretary in exercising functions transferred to him and to protect the integrity of the Coast Guard so that it could be readily transferred to the Navy if necessary.<sup>27</sup>

The section-by-section summary was intended to offer not just a precis of the Bill's provisions, but to some extent at least, an explanation for them. In addition, however, Mr. O'Keefe planned to obtain from his colleagues in the Task Force separate and more comprehensive explanations of such controversial sections as the investment provision and the provisions relating to the Safety Board. Mr. Fitt, General Counsel, Department of the Army, agreed to supply the explanation of the investment provision since it related so directly to the functions of the Corps of Engineers of the Army. An explanation for the Safety Board provision was to be prepared by Mr. Nathaniel Goodrich, General Counsel of FAA.<sup>28</sup>

On the next day Mr. O'Keefe forwarded drafts for suggested changes in the bill relating to the Secretary's authority, to the effective date for various actions under the law, and to the appointment of personnel of the Coast Guard to positions in the Department. A further change proposed that the Secretary be authorized to employ military personnel on detail in carrying out his functions. Such military personnel were not to be subject to direction or control by military superiors insofar as departmental duties were concerned. Various other minor changes in the bill were noted.<sup>29</sup>

---

---

---

### General Concept of Organization and Management

A subcommittee which met concurrently with the Task Force was considering problems of organization and management in the new Department. The group agreed upon the following statement to establish a basis for its planning:

The Department must initially be administered through a group of program-oriented administrations and corporations each of which will report directly to the Secretary and Under Secretary. All other officials (such as the Assistant Secretaries) will be regarded as staff to the Secretary and will assist him in the general leadership of the Department and its external relationships.

This concept was firmly established by January 17 and was maintained when  
30  
the Department was activated.

The rest of the paper recorded decisions of the subcommittee and questions remaining for settlement by the Task Force. These issues dealt with the number and pay of the secretarial officers and also of those officers holding supergrade and special compensation jobs. A most significant section of the paper specified that the existing agencies to be incorporated in the new Department would be abolished, and all their functions and powers transferred to the Secretary of Transportation, but also that the Secretary would be enjoined to exercise his powers with due regard for the continuing and effective performance of essential tasks. Another section dealt with the composition and functions of the NTSB.

At a meeting of the Organization and Management Subcommittee on February 17, 1966, Mr. Dean reported that in general the conceptual paper had satisfied the Task Force. A discussion arose concerning the

---

---

---

functions to be performed by the Assistant Secretaries. Mr. F.C. Turner, / <sup>Director of the</sup>  
Bureau of Public Roads, proposed an organization chart for the Department which he had prepared on behalf of the Bureau. It would have made the Assistant Secretaries line officers in charge of the Federal Highway Administration, the Federal Railroad Administration, the Federal Maritime Administration, and the Federal Aviation Administration. Mr. Turner argued that this arrangement would shorten the Secretary's line of communication, combine the policy and directive responsibilities for each mode, assure speedy and knowledgeable decisions, and avoid the possibility that an Assistant Secretary would not have enough to do. In the other proposed organization, he asserted, an idle official could concentrate on a particular mode and in effect still become an in-line official.

The consensus of the group was that the dangers mentioned by Mr. Turner would not develop and that his organizational proposal should not be adopted. The Subcommittee opted for functional Assistant Secretaries.

A corollary of the functional assignments for Assistant Secretaries would be, according to Mr. Dean, that each Administration would have its own capacity for administrative support functions, but the Secretary's office would have corresponding policy-oriented sections that would not have large operating staffs.

A lengthy discussion followed concerning the Department's responsibility for safety promotion and accident prevention. The subcommittee decided to state the Department's accident investigation function in such a way that the Secretary would retain some flexibility in these investigations.

Numerous other suggestions were considered, but none was adopted. 31 ?/

On the basis of the discussions in the Task Force, Mr. O'Keefe prepared another draft of the DOT law which he characterized as "the final draft" and forwarded it to the Task Force members on February 24.<sup>32</sup>

Substantially this draft was adopted by the Task Force to be submitted to the President. When he approved it, preparations were made for the President to send the draft bill to Congress.

## Congressional Consideration of the Proposal

When the Administration had finally decided upon the content of the proposal to establish a Department of Transportation, Congressional sponsors had to be sought. Congressman Chet Holifield of California\* was chosen to introduce and sponsor the Bill in the House. He was the senior Democratic member of the House Committee on Government Operations, and of its Subcommittee on Executive and Legislative Reorganization which conducted the hearings on the Bill. Senator Warren G. Magnuson of Washington introduced and sponsored the Bill in the Senate. Hearings were conducted by its Committee on Government Operations under the Chairmanship of Senator John L. McClellan of Arkansas.

To accompany the Bill as it was introduced in both Houses of Congress, the President forwarded a carefully drawn message urging that passage of the Bill would contribute greatly to the public safety and convenience. Recognizing the paradox of the American transportation system -- that it is the largest and best developed system in the world, and yet wasteful of lives and resources and inadequate even for the present generation-- the President argued the importance of transportation to the nation. In a sentence often quoted since, he wrote that "In a nation that spans a continent, transportation is the web of union".

The President outlined the massive -- almost overwhelming-- growth of transportation-oriented activities in the United States in the previous twenty years, noting that transportation consumed a major segment of American productive capacity, and in turn contributed heavily to the output of the American economy. The President observed that the

---

\* He was the senior Democratic member (next to Chairman Dawson) of the House Committee.

statistics, however impressive, did not characterize a healthy system when waste and inconvenience confronted the users of transportation. Because the penalties of maintaining the inefficient system were so great and the potential rewards of building an efficient system were equally great, the President called for the organization of the new Department of Transportation.

The President listed the functions to be transferred to the new Department and explained the operations of the proposed new organizations such as the National Transportation Safety Board. He explained the relationships of the Department to other agencies of the Government to indicate the reasons for transferring parts of some agencies' functions and not other parts. As examples he cited the subsidy functions of the Civil Aeronautics Board, the navigation programs of the Corps of Engineers, international aviation, and urban transportation which would not be transferred by the new law. Some functions were relevant to two or more Departments. In the case of urban transportation, for example, the President said he was asking the Secretary of Transportation and the Secretary of Housing and Urban Development jointly to recommend within one year how the urban transportation function should be managed in the Government.

The President laid out the major duties which the new Department would perform, including coordination of the transportation-promoting programs of the country, promoting of research and development to bring the new technology to bear on the needs of transportation in the U. S., promotion of safety in all modes of transportation, encouragement of private enterprise to take full advantage of new technology, encouragement of the carriers to provide high-quality, low-cost service to the public, conducting of systems analysis to strengthen weak parts of the

system, and developing of investment standards to assist both Government and industry.

The President noted explicitly that his recommendation was not designed to alter the economic regulatory functions of the Interstate Commerce Commission, the Civil Aeronautics Board or the Maritime Commission. Perhaps his most serious concern was with safety; he was appalled that 50,000 Americans would be killed on the highways in the coming year. The President believed that with adequate and properly coordinated safety programs the new Department could slow the highway death rate. He believed that the new Department would promote the SST more actively and develop more advanced concepts for all modes of transportation. Systems research and applications of technology could help bring rationality into the U. S. transportation system. The choice whether to accomplish the improvement by enacting the proposed legislation was then up to the Congress.

33

Accompanying the text of the bill and the President's message, the Senate Committee also printed the text of an analysis of the bill and of the briefing book submitted by the Task Force. The analysis was prepared by the Committee's staff, particularly by Dr. Eli Nobleman.

The long-term, overall policy objective for the Government, according to the analysis, was "to place greater reliance on market control and on business initiative and decision-making and less on

---

---

---



Government regulation and promotion". Once the Federal Government had reconstructed its own machinery, it could move confidently to help modernization of major national transportation policies.

The analysis noted that the administration briefing paper had stated that the President would transfer to the Secretary by Executive Order responsibility for the St. Lawrence Seaway Development Corporation and the Alaska Railroad. No decision had been made, however, with respect to two other government organizations active in transportation: the Panama Canal Company, and the National Capital Transportation Agency.

Even though there were numerous Government agencies dealing with transportation issues that were not to be included in the Department, they would be expected, according to the proposed law, to adhere to the overall policies, standards, and criteria established by the Secretary of Transportation. The paper listed 26 agencies or parts of agencies that had transportation-related functions in addition to their major concerns, but were not to be included in the Department. These included 1) agencies whose primary function is national security; 2) agencies with civilian programs in which transportation plays some part, such as the Forest Service and the National Park Service; 3) agencies with multipurpose programs of which transportation is only one of several interrelated elements, such as the Corps of Engineers; 4) agencies which have transportation responsibilities whose principal functions were unrelated to the transportation function, such as the U.S. Public Health Service; 5) regulatory agencies that need independence from the other executive branch agencies, such as the Federal Power Commission or the Civil Aeronautics Board.<sup>34</sup>

### The Transportation Industry and the Bill

Officers associated with Under Secretary Boyd knew that previous efforts to devise some type of government structure to deal with transportation problems had faltered in Congress because the representatives of the industry had been either completely hostile to the effort, or had given it only lukewarm support. They therefore began a series of intensive briefings and discussions with industry leaders with the result that when the legislative hearings were held, there was respectable industry support of the bill, and little real overt opposition. Typically, industry spokesmen testified in favor of the concept justifying the bill, but said that its provisions should not apply to their particular part of the industry.

Concurrently with the introduction of the bill in Congress, a series of briefings was begun. The senior officers of the affected agencies, leaders of the transportation industry, and members of the press were given separate briefings at the White House. These briefings and intensive efforts by Department of Commerce officers to persuade individual members of the Congress to support the bill apparently succeeded in producing the necessary votes to assure passage of the bill.<sup>35</sup>

---

---

Hearings: Senate Committee -- First Phase

Introduction of S. 3010. On March 2 Senator Warren G. Magnuson introduced the bill which had been prepared by the Task Force. In his introductory remarks after reviewing the several bills on creating a Department of Transportation which had been introduced in earlier years Senator Magnuson came quickly to the essential point about the proposal. It was obvious that transportation was becoming more important in the national economic life each day, but yet, he said, there was "no one in the present Government organization, other than the President himself, who has authority to coordinate many aspects of Federal transportation policies and programs".

Following introduction of the Bill, three Senators -- Ernest Gruening, Gale W. McGee, and Claiborne Pell -- joined Senator Magnuson in urging favorable action on the Bill, which was referred to the Committee on Government Operations. The Bill reached the floor of the Senate again on September 29, 1966; meanwhile, Hearings had been held in the Committee and the Bill had been extensively re-worded.

The Senate Committee on Government Operations began its hearings on S3010 at 10:10 a.m. on March 29, 1966. The first witness to be heard was Senator Warren Magnuson, of the State of Washington. Although he was Chairman of the Senate Commerce Committee, Senator Magnuson said that since his Committee had not yet taken a position on the Bill, he would speak for himself only. Magnuson supported the enactment of S3010, with some exceptions which he explained. For example, he insisted that it was unwise to split the car service functions of the ICC between it and the Department of Transportation; he advocated transferring the entire function to the Department. He thought that Section 7 on Transportation Investments should be studied and clarified. Better coordination of investments was essential, of course, but Magnuson thought that a series of regional economic analyses was needed for guiding investment in both public and private sectors. These analyses would be of greater value than the Federal criteria in deciding upon investment strategy.

While he was aware of the need for the FAA and its work, Senator Magnuson knew that the future of air transportation depended upon its effective cooperation with other modes of transportation. Senator Magnuson questioned whether the proposed shift of CAB functions to the Department was either necessary or desirable, but he did favor the transfer of the FAA to the new Department. He was disappointed that the Bill did not give the Secretary more authority with respect to the transportation services purchased by the Federal government since the government transportation cost for any given year was about \$4 billion.

The Senator made several suggestions about internal organization of the Department and appeared to favor assigning modal responsibilities to the Assistant Secretaries. He favored giving the Secretary authority to represent the public interest in merger proceedings and also favored transfer of the Merchant Marine and Coast Guard interests of the Government to the new Department. He insisted, however, that the Administrators of FAA and the Bureau of Public Roads should continue to be Presidential appointees. This was essential to protect the power of the Senate over these key officials.

The Administration's rationale for the Department was presented by the Director of BOB, Mr. Charles Schultze. The President and Congress, he said, would profit greatly if they were able to look to a single department head for all information and assistance in transportation matters, particularly in the formation of a national transportation policy. Formation of government programs to promote safety in all modes of transportation, particularly by programs of research, would be greatly simplified by a new department. Mr. Schultze stressed the additional gains to be anticipated from the improvement and coordination of transportation throughout the country, the closing of information gaps to facilitate the identification of both problems and solutions, and the coordination and re-orientation of research activities.

Mr. Schultze said that the proposed department would require expenditure of additional funds -- perhaps 5 million dollars per year -- but that the increased effectiveness of other transportation expenditure could be worth more than that sum. Even without consideration of the possible long-term savings, the administrative costs for the department would be less than one-tenth of one percent of the cost of Federal trans-

portation programs. Savings might be anticipated from economies resulting from consolidations in such areas as computer utilization, aircraft maintenance, research useful to more than one component of the department, and common use of medical facilities.

It was also important to take account of those agencies whose functions would not be affected by the proposed legislation. The economic regulatory functions of such commissions as the ICC, for example, would not be affected, nor would the majority of the functions of the Corps of Engineers. For the moment the urban mass transit functions would not be affected either. The major purpose of the Bill, said Mr. Schultze, was not to change the content of the government's transportation programs, but rather to establish an "appropriate administrative instrument" for formulating and executing policy.<sup>36</sup>

The Cabinet Officers whose department would be most seriously affected by the Bill under consideration was the next witness -- Honorable John T. Connor, Secretary of Commerce. Secretary Connor reiterated the now familiar arguments of the administration in favor of the new legislation, and emphasized the importance to national growth of the transportation function. A trillion dollar economy, he said, is now in view and to support it with transportation capability will require such extraordinary planning and management that a new Department is needed. In response to questioning, Mr. Connor said that the size and functions of the Department of Commerce would be radically reduced by the establishment of the new Department. He nonetheless favored the idea, however. While the Commerce budget for 1967 was five and one-half billion dollars, about four billion six hundred million dollars were for programs

---

---

destined to be transferred to the new Department. 7,350 employees of the Department of Commerce total of 32,000 would also be transferred to Transportation. The seemingly great imbalance between dollars and numbers of people to be transferred was accounted for by the Highway Trust Fund, management of which would go with the Bureau of Public Roads to the new Department of Transportation.<sup>37</sup>

Major General R. G. MacDonnell, Acting Chief of Army Engineers, was next called as a witness with respect to the relationship of the new Department to the Corps of Engineers. General MacDonnell reported that the Army favored the enactment of the Bill to establish the Department, explaining that the Bill would shift to the new Department the responsibility for regulation of anchorages for vessels and for alteration and operation of drawbridges and other bridges which might interfere with navigation. Under the proposed Section 7 the Corps of Engineers would be required to make their studies of navigation projects in accordance with the standards and criteria relating to project economics established by the Secretary of Transportation. The Secretary would also be required to consult with the Water Resource Council to insure coordination between the economic standards and criteria he establishes and the existing procedures governing Federal water resources development programs. Following the John L. explanation offered by General MacDonnell, Senator/McClellan and he discussed in detail the precise changes in the activities of the Corps of Engineers that would be required by the DOT Act. The testimony brought out that the Corps of Engineers already relied upon the Department of Commerce to furnish the type of information that would be forthcoming from the new Department. Even though from the standpoint of the



Engineers the process of authorizing waterway projects might be the same under the new Department as it was under the Commerce Department, General MacDonnell noted that the DOT would develop expertise in all modes of transportation, not just water transportation; for that reason the waterway projects could be better planned with respect to the forms of transportation in the United States. He also made it clear that the Secretary of Transportation would not have a veto over the projects developed by the Corps of Engineers because the process by which projects were developed was already well established; the special relationship between the Public Works Committees of the Congress and the Corps of Engineers would remain undisturbed. Thus, the Secretary of Transportation might respond negatively when allowed to review a project that had been proposed by a Congressional Committee and planned in detail by the Engineers. But, if he did, his negative response would be supplied to the Public Works Committees of Congress along with the project. The Secretary of Transportation would not be able to prevent a report on a project from being made to the Congressional Committees by the Engineers, any more than the Secretary of Commerce could at the time of the hearing. Chairman McClellan emphasized that he particularly wanted the legislative history to show this limitation on the power of the Secretary.<sup>38</sup>

Assistant Secretary Charles M. Haar of the Department of Housing and Urban Development next appeared as a witness to support the Administration position on the creation of the Department. HUD had a special interest in the content of the legislation, since under its own legislation HUD has as part of its program responsibilities an obligation to assist metropolitan and other urban areas to plan and coordinate all

---

---

---



aspects of their own development. In most such situations transportation is a major element in the planning. In addition HUD also had to administer the Urban Mass Transportation Act of 1964. It was established Federal policy, Mr. Haar said, to require planning for a balanced transportation system as a prerequisite to Federal assistance for both highways and other mass transport projects.

The DOT Bill did not change any of these established policies or programs but asked that the Secretaries of HUD and Transportation, after a year's operation of the Department of Transportation, collaborate on a recommendation to the President concerning the handling of urban transportation. Mr. Haar emphasized that urban transportation is involved with many facets of life -- how land is developed, how housing is located and how people live. These are not properly aspects of transportation, but are influenced by transportation availability.

Abraham A.

During the discussion Senator/Ribicoff expressed dissatisfaction with the arrangement to leave the location of urban mass transit undetermined. He regarded the arrangement as unnecessarily wasteful. He and Mr. Haar discussed at some length the reasoning behind the unusual arrangement.<sup>39</sup>

Opening the discussion of non-governmental interests in the proposed DOT, Mr. Charles Shumate and Mr. A. E. Johnson of the American Association of State Highway Officials, supported the legislation in general but expressed concern that the "50-year partnership between the States and the Bureau of Public Roads" might be upset by the new

---

---

---

---

---

arrangements. For that reason they advocated that if the Department were established, the legislation should be drafted to make sure that the Bureau of Public Roads and especially the Federal Highway Administrator would retain autonomy, with authority to commit the Federal government to expenditures.

Both the Bureau of Public Roads and the Highway Administrator should remain at a very high level in the Department, Mr. Shumate said, so that the Administrator would have unhindered access to the Secretary. Mr. Shumate was particularly concerned that the Highway Trust Fund should remain inviolate, to be used only to build highways and appurtenant structures. He said he was not certain that Section 7 of the proposed Act would protect the highway fund.

Also of concern to Mr. Shumate was the question whether the Federal Highway Administrator would be appointed by the President with confirmation by the Senate. He insisted that the Administrator should have the stature conferred by such appointment.<sup>40</sup>

After the close of Mr. Shumate's testimony, the Senate Committee held no more hearings until May 3, 1966.

---

---

---

## Hearings: Senate Committee-Phase II

In opening phase II of the Senate Hearings on May 3, 1966, Senator McClellan stated that since March 30 the Committee had received about 50 requests to appear to testify on S. 3010. Although no formal hearing had been conducted for over a month, members of the Committee and its staff had communicated with Mr. Boyd and members of his group at Commerce, as had other members of the Senate. One of the most important witnesses was Senator Monroney who was particularly interested in both aviation and water resources.

According to a memorandum prepared by Mr. Boyd concerning his discussions with Senator Monroney, the Senator favored the idea of a Department but strongly objected to Section 7 on the ground that the extant system had worked well for a hundred years and thus should be continued. He stated that Senators McClellan and Magnuson shared his view. Monroney also questioned whether a Secretary of Transportation would promote aviation's interests effectively and whether the NTSB would be competent to deal with aviation safety.<sup>41</sup>

(Section 7 of the Bill was that section dealing with Transportation investment standards, providing that the Secretary would "develop and, from time to time in the light of experience, revise standards and criteria consistent with national transportation policies, for the formulation and economic evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment . . .")

---

---

---

This paper will not summarize or paraphrase in detail the statements made by witnesses, since there was a large amount of overlapping testimony. Since the following discussion is an attempt to summarize the chief issues raised by the testimony of the witnesses it is based upon a summary of the testimony prepared by the staff of the Senate Committee, contained in the files maintained by Mr. Mackey.

These notes will relate to the sections of the DOT Bill in order of their occurrence in the legislation.

#### Declaration of purpose

Several witnesses, and especially Mr. Stuart Tipton of the Air Transport Association, were concerned about the relationship of the Secretary of the Department to the establishment of transportation policy because Sections 2 and 4 seemed to give the Secretary authority that was traditionally that of the Congress. Some witnesses insisted that the proposed law did not define clearly enough the Secretary's responsibility either for formulating transportation policy proposals or for following the policies established by Congress. They felt the Secretary's recommendations concerning transportation policy should be made to the Congress, not to the President. Some concern was expressed that the abrupt transfer of responsibilities from the regulatory agencies and operating elements to the Secretary would be counter-productive, and for that reason witnesses suggested that the functions of the several agencies be turned over to the Secretary gradually. On behalf of the Airline Pilots Association, Mr. Charles H. Ruby suggested that aviation functions should not be turned over to the Secretary until after the Department had gathered sufficient experience to manage them adequately.

Other suggested amendments to make certain that the Secretary's authority would not infringe upon the responsibilities of the Water Resources Council.

#### The Establishment of the Department

One of the numerous conflicts which developed concerned the manner of organizing the Department. Basically there were two possible approaches to Department structure. One would have had the Assistant Secretaries in charge of the several modes of transportation. That is, there could be an Assistant Secretary for Air, an Assistant Secretary for Highways, etc. The others would give the Assistant Secretaries functional responsibilities. The original Bill provided for four Assistant Secretaries without specifying their functions.

In addition to suggesting functions for the Assistant Secretaries, some witnesses suggested the addition of offices or sections to the Department. One frequent suggestion was that the Department should have an Office of Passenger Transportation; was the Department should have an Office of Passenger Transportation; another was the Department should have a unit to deal with transportation mergers; still another urged that the Department should have a unit -- perhaps even an Assistant Secretary -- to deal with the problem of Urban Mass Transit.

Several witnesses suggested that the law provide for interested persons to present their views to the Department and to the NTSB before the issuance of decisions, orders, or other actions.

Many witnesses were also concerned about the operational continuity of the organizations to be incorporated into the Department. Mr. Halaby\* in particular wanted to insure that the FAA functions would not be disturbed. The precise statement of the powers and duties of the Secretary was of concern to some witnesses. Mr. Tipton submitted a lengthy redraft of the sections dealing with the functional allocation.

One witness suggested that the section authorizing the Secretary to make studies and inquiries might well infringe the privacy of persons or corporations, particularly in their business dealings.

#### The National Transportation Safety Board (Section 5)

One of the most controversial units in the new Department was the NTSB, although witnesses were not inclined to quarrel with the function of the Board. One of the chief reasons for establishing the Department was to centralize the safety efforts of the government. The element of controversy arose because there was disagreement concerning the relationship of the Safety Board to the Secretary and the rest of the Department. Most witnesses wanted assurance of the independence of the Safety Board, particularly in its accident investigation function. Some questioned the feasibility of expecting the NTSB to make fair judgments concerning responsibility for accidents when the finding might implicate another of the agencies under the Secretary's control. To avoid the

\*  
Najeeb E. Halaby, senior vice president, Pan American World Airways

problem of having judgments concerning responsibility for accidents made by unqualified personnel, some witnesses suggested that the NTSB be equipped with an investigative staff divided by mode of transportation to insure the expertise of the investigators.

Numerous witnesses were concerned lest the expertise gained by the investigators of the several groups then responsible for accident investigations might be lost. For that reason, they recommended that one or another of the investigating groups -- Coast Guard or ICC -- be exempted from inclusion in the Department.

#### Elements of the Department (Section 6)

Somewhat similar discussions occurred with respect to the inclusion in the Department of almost every element finally assigned to it. Senator Magnuson, for example, thought FAA and the Maritime Administration should be transferred to the Department intact. Mr. Baskerville<sup>\*</sup> appearing on behalf of the Upper Mississippi Towing Corporation urged that the functions of the Army, especially the Corps of Engineers, should be left as they were. He also urged that the Coast Guard should not be included in the Department.

Senator Monroney wished FAA to be maintained as a separate entity, and wanted to establish that the Administrators would report to the Secretary directly, not through the Assistant Secretaries.

At some point in the discussion objections were made to the transfer of the Coast Guard, the FAA, the Maritime Administration, and others. The protests concerning the Maritime Administration, led by

---

<sup>\*</sup> Walter G. Baskerville, Sr.



Mr. Paul Hall of the AFL-CIO Seamen's Union, proved to be the most potent objections, since the Maritime Administration did not become part of the Department. There was considerable discussion whether regulation of car services should be combined with economic regulatory functions. Some witnesses insisted that any type of regulation had economic consequences and that it was unrealistic to consider separating the two functions.

#### Transportation Investment Standards (Section 7)

Both Senator Magnuson and Senator Monroney objected that the language in Section 7 was not precise enough to assure that the prerogatives of the Congress were not infringed upon.

Several witnesses insisted that the system by which water resource projects were decided upon should remain intact. In that case, the criteria and standards for investment would remain as they were. In any event, changes should be made by the Congress upon the suggestion of the Department rather than by the President. Several witnesses urged that the cost-benefit ratio be retained in considerations of transport investment.

On June 24 the Staff of the Senate Committee on Government Operations printed a staff memorandum (No. 89-2-30) in which it summarized the principal issues that had emerged in the discussion of S 3010 and suggested amendments to resolve some of the issues. The principal issues included the following:

1. Clarification of the respective roles of the Secretary and the Congress in establishing transportation policy.
2. Assurance of operational continuity of the agencies transferred.



3. Presidential appointment and Senate confirmation of heads of the modal operating agencies within the Department.

4. Assurance of complete independence for the NTSB.

5. Assurance that the Administrative Procedures Act would be applicable in safety regulation and other quasi-legislative actions of the Secretary and the NTSB.

6. Transfer of Urban Mass Transit functions from HUD to DOT

7. Retention by the ICC of its car service functions, including those relating to the supply of freight cars, distribution and fixing of per diem rates.

8. The effect of transportation investment standards on such programs as the multipurpose water resource projects of the Corps of Engineers.

9. A few additional issues which were espoused by small numbers of individuals.

Upon the instruction of Senator McClellan, Chairman of the Committee on Government Operations, the Committee Staff had consulted with representatives of the Administration to devise appropriate language for amendments to compromise or resolve some of the issues above.

Amendments relating to policy and purpose included several providing that the Secretary would make recommendations to the President and the Congress, while the original draft provided only that he would make recommendations. An additional pair of amendments required that the Secretary be governed by the statutes that

included transportation policy, but indicated that he need not be limited to those subjects on which there was already legislation. Nothing in the act, it said, should be construed to allow the Secretary to implement any transportation policy that was inconsistent with any act of Congress.

To take account of the objections relating to operational continuity of the agencies transferred, the staff devised a series of amendments which provided for the establishment of Administrations for Air, Rail, Highways and Maritime Affairs, and the transfer of the Coast Guard; each was to be headed by an Administrator appointed by the President and confirmed by the Senate. Each Administrator was to perform those duties prescribed by the Secretary.

A new section was drafted to specify the duties of the Federal Aviation Administrator and to forbid the transfer of his functions unless the transfer was specifically authorized by statute or a reorganization plan. An added provision stated that the Secretary was charged with responsibility for developing a civil supersonic aircraft.

To assure the independence of the NTSB, Congressional and Administration leaders agreed that the adjudicatory and appellate certification functions of the CAB would be transferred directly to the NTSB rather than to the Secretary. An independent Office of Accident Investigations was also to be created by statute rather than by Department order.

Although the Administration was opposed to transfer of the Urban Mass Transit function without the preliminary study outlined by the President in his Transportation message, the Staff prepared an amendment that would, if adopted, effect this transfer.<sup>42</sup>

On July 11, Mr. Charles Zwick of the Bureau of the Budget forwarded to Senator McClellan the Administration's comments on the Staff memorandum just discussed. The Administration did not object to the proposal to add the words "to the President and Congress" to the provision concerning the Secretary's action to recommend transportation policy, nor did it object to the proposal concerning operational continuity. The Administration did not agree to the transfer of the Mass Transit function at that time because of the arrangement for consultation that the President desired. The Administration similarly rejected proposals for the ICC to retain its car service and safety functions; for the appointment of Assistant Secretaries to head the various modal administrations; and for retention of independent status for the FAA and the FHWA. As for Section 7, the Administration would not agree to having instructions incorporated into the law concerning the criteria to be used in evaluating multipurpose water projects, since the facts concerning transportation changed so rapidly.

The Administration also rejected the amendment proposed by the staff concerning the transfer of the FAA, because by transferring all the powers and duties to the Administrator of the FAA instead of to the

---

---

---

Secretary of Transportation, the amendment would have seriously limited the usefulness of the Secretary. Since he would not control his entire department, the President would be unable to hold him responsible for performance of all the functions of the Department.

During the summer of 1966 the Senate Committee held several sessions in which it attempted to smooth out the conflicts between the Committee draft of S 3010 and the positions of the Administration. Finally, on September 22 "the Senate Government Operations Committee ordered reported S 3010 as revised by Senator Jackson". In addition, the Committee adopted an amendment/<sup>by</sup>which all powers except subsidy of the Maritime Administration would be transferred to the Maritime Administrator, thus the Secretary would be bypassed even though the Administration remained in his Department.

The revised text of S 3010 contained several important changes. In the order of the Bill, the changes included:

1. A provision that the Secretary should cooperate with Interior, HUD, and Agriculture in preserving natural beauty while developing transportation plans and programs.
2. Qualifications of the Administrator and Deputy Administrator of FAA were carried over into the new Aviation Agency.
3. Provision to the effect that statutory functions enumerated in the Bill could not be transferred except by reorganization plan.
4. The Secretary could merely recommend transportation policies to the President and Congress.

5. NTSB was given investigation powers then vested in CAB.

6. A Maritime Administration was included in DOT, but decisions of the Administrator were "administratively final" with appeal only through the courts.

7. Section 7 was included in the Bill, but weakened, because transportation investment standards and criteria could be promulgated only after approval by the Congress.

In addition, numerous less controversial provisions were included.

Hearings: House of Representatives (April 6-June 21, 1966)

The DOT legislation, drafted in the Bureau of the Budget Task Force through the process described above, was introduced in the House of Representatives by Representative Chet Holifield of California and referred to the Committee on Government Operations. As H.R. 13200 it was identical to Senate Bill S 3010.

During his introductory remarks to the Committee Mr. Holifield emphasized that the idea of a Department of Transportation was not new; it had been under consideration by the Congress in one form or another 17 times in the course of 92 years. He reminded his fellow Committee members that this Bill was a proposal to institute a new Cabinet Department; and that the procedure accorded with the suggestion of the first Hoover Commission:

Legislative history since 1913 revealed a reluctance to create a new executive department, and a disposition to establish many other types of administrative agencies. This tendency should be reversed in the interest of administrative efficiency. We believe that the Federal Government should now proceed to organize most if not all of its administrative activities within executive departments.<sup>43</sup>

The first witness before the House Committee was the Director of the Bureau of the Budget, Mr. Charles Schultze; who had already testified before the Senate Committee on government operations. His initial statement to this Committee contained essentially the same information as his discussion with the Senate Committee outlined above, but he did add an assurance that although the Bill would cause all organizations (except

the Coast Guard) incorporated in the new Department to lapse and their functions to pass to the Secretary of Transportation, Section 4(b) of the Bill would require the Secretary to give full consideration to the needs of operational continuity of the several agencies such as the Federal Aviation Agency, the Bureau of Public Roads and similar groups.

Mr. Schultze cited three chief reasons for recommending formation of the Department: 1) a continued lack of a rational planning effort would produce serious imbalance among the elements of the transportation system; 2) recent technological and social changes had made the inter-relationships within the system even more important; and 3) problems of safety were becoming ever more pressing. Coordination and re-orientation of research and development efforts were also important because of the great cost of such programs to the Federal government. Payoffs were to be expected from utilization of a single research effort to apply to the requirements of two or more forms of transportation.

In discussing the organization of the Department, Mr. Schultze made the point that the proposed structure conformed to that recommended by the Hoover Commission in that the authority of the Secretary over the elements of his Department was clearly established. The National Transportation Safety Board was established so that it might translate information concerning the causes of accidents into programs for accident prevention. To guarantee its stature and independence, the members of the Board are Presidential appointees with five-year terms.

Assurance that Federal investment in transport would have good effects upon other aspects of the national life would come from the fact that the Secretary would be authorized to develop standards for evaluation of proposals for investment. Procedures for other transportation investment would be so designed as to be comparable to those for water resource projects. The same standards and criteria would later be applied to subsidy operations by other elements of the government. <sup>44</sup>

Secretary John T. Connor of the Department of Commerce was the second witness before the Committee. His prepared statement emphasized that the new Department would not be merely a collection of diverse programs, nor merely an enlarged bureaucracy, nor an agency to interfere in the business of transportation; its function was to facilitate the building of the nation's transportation system. He emphasized that the United States Government normally created a governmental department when great new social forces had emerged to be recognized and dealt with by the Government. The Department of Transportation would be a promotional and developmental agency, separate from the economic regulatory groups in the government.

In discussion with the Committee, Secretary Connor made the point that the Secretary of Transportation would have wide authority because the functions and powers of the several transferred agencies would be granted to the Secretary to be redelegated by him. The agencies themselves would not continue as statutory agencies, but they would be

---

---

---



coordinated by the Secretary. The Bill did not spell out the internal organization of the Department, leaving that to the Secretary; nor did the Bill alter the statutory functions or duties of the included agencies. This was important because Congressman Holifield was concerned that the relationship of the agencies with the corresponding Congressional Committees should be retained intact.

Florence P.

Mr. Schultze, when questioned extensively by Mrs. Dwyer concerning the fact that the location of the urban transportation effort had not been decided, indicated that the Bureau believed that the one year consultation which the President had requested for HUD and DOT would produce the information required to locate the effort in the more advantageous Department.

Mr. Schultze said that Section 7 of the proposed law was modeled after existing provisions for the establishment of standards which permitted any interested agency to involve itself in the production of standards. The executive agencies had developed by 1947 a series of standards to be employed in evaluating water resource projects. Such standards were by then the responsibility of the Water Resources Council.

John N.

Congressman Erlenborn raised a question concerning the differences between the promotional activities which were to be split away from their parent agencies and included in the Department and the regulatory activities which were left to their respective agencies. Mr. Boyd, speaking as the Under Secretary of Commerce for Transportation, indicated that there was a historical

---

---

---

---

difference between the types of functions, with the legislature traditionally retaining control of the regulatory functions.

In an extended exchange with Secretary Connor, Rep. Clarence Brown, Jr. considered the implication of the fact that the law would transfer to the Secretary the functions of all the agencies transferred to the new Department, and that the Secretary would then, in theory, be able to shift the duties of the several agencies to other segments of the Department.<sup>45</sup>

During the appearance of Lt. Gen. William F. Cassidy, Chief of the Corps of Engineers of the U. S. Army, members of the Committee questioned at length the provisions of the proposed law, particularly Section 7, which seemed to them to offer some threat to the traditional pattern of handling waterway and navigation projects by the Corps of Engineers. General Cassidy's prepared statement merely reported that Section 7 of the proposed law would require the Secretary of Transportation to promulgate standards and criteria "for the formulation and economic evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment". The legislation would require that studies of waterways, harbors and other navigation projects of the Corps of Engineers be made in conformity with economic standards and criteria developed by the Secretary of Transportation, but the reports by which the navigation projects are placed before the Congress would continue to be made by the Corps of Engineers. The Department of Transportation could also furnish information to the Corps for use in studies

---

---

of proposed navigation projects, as did the Department of Commerce previously. The term "standards and criteria" referred to the basic economic guidance to be applied by an agency planning or evaluating any project which would provide transportation services. Actual changes resulting from the enactment of Section 7 would be minimal; in fact, the DOT would provide information that had been provided earlier by the Department of Commerce. The DOT would be asked for specialized information normally furnished the Engineers by consultants or by Commerce. After completion of the study of a project, the DOT would be invited to comment upon it along with other cabinet agencies.

Also, the Department would be required, when formulating its standards and criteria, to coordinate its work with the Water Resources Council. Since both the standards of the Council and those of the Department were submitted through the President, no difficulties in coordination were to be anticipated. General Cassidy expressed the belief that with the Department formulating the standards and criteria, some benefits would be derived from the fact that the Department deals with all types of transportation and would therefore apply a broader scope of judgment in developing its standards and criteria.

To allay feelings of anxiety of some members of the Committee, General Cassidy assured them that passage of the DOT Bill would not affect the primary functions of the Corps of Engineers. It was the Corps that put any project report together to submit to the Congressional Committees. The judgment of the Engineer officers would be incorporated in the report and the comments of the other agencies would be passed along to the Congress as annexes to the report.

He also reassured the Committee that the Secretary of Transportation would not control the Water Resources Council since it reports to the President. When questioned as to whether the Corps of Engineers was consulted during the preparation of the proposed law, General Cassidy replied that the General Counsel of the Army, Mr. Fitt, had served on the Task Force, and had actually drafted the language that later became Sections 6(f) and 7 of H. R. 13200. The draft had been coordinated with the Chief of Engineers before it was submitted to the Task Force. According to General Cassidy, "while there were several technical and perfecting amendments made later on, there were no substantive changes to the first draft prepared on January 24. All later changes in the Bill itself were coordinated with the Chief of Engineers. All recommendations by the Corps for changes in the Bill were incorporated therein."

The Civil Aeronautics Board was represented by its Chairman, Honorable Charles S. Murphy. He first outlined the functions of the Board, indicating that a primary duty was to provide independent de novo review of the actions of the Federal Aviation Agency in denying, suspending or revoking licenses of all types for both airmen and their airplanes. Revoking of licenses for either safety or disciplinary reasons was always subject to review by the Board in a full evidentiary hearing. The Board's accident investigation functions included responsibility for investigating all accidents involving civil aircraft, determining the cause of the accidents and making recommendations to the Administrator of the FAA of ways to avoid such accidents. Although its statute empowered the Board to

commission the FAA to conduct investigations for it, the statute precluded any FAA participation in the determination of probable causes of accidents. Mr. Murphy pointed out that the techniques of accident investigation developed by the CAB were widely regarded as effective. As evidence he cited the fact that it had assisted the AEC in investigating the accident at the Cambridge, (Mass) Electronic Accelerator.

While the Bill under consideration would alter the Board's function of accident investigation, it did not alter the economic regulatory functions of the Board, including subsidy functions.

The Board supported the passage of the Bill under review. <sup>46</sup>

#### Testimony of FAA Administrator

Honorable William F. McKee, Administrator of the FAA, next appeared to offer favorable testimony concerning the DOT Bill. He stressed the fact that the bill would enable the new Department to make a concentrated effort to improve safety conditions in all modes of transport. It would also make possible better utilization of resources since government programs in all modes could be coordinated. Most of FAA's responsibilities and programs would not be greatly affected when the Agency was incorporated in the Department. The function of determining the causes of accidents would be shifted from CAB to the National Transportation Safety Board, but the accident investigation function would remain with CAB. Certain operating savings could be anticipated from consolidation of headquarters functions and common facilities in aircraft maintenance. Both FAA and

the Coast Guard already shared certain characteristics in common, the most important of which is that both are designated to become associated with the Department of Defense in time of war. When discussing the proposed status of the FAA in the new Department, General McKee made the point emphatically that under the proposed legislation, FAA would maintain its operational integrity, even though it would be a part of the Department of Transportation.

Benjamin S.

Congressman/Rosenthal, representing a district near La Guardia Airport in New York, engaged the General in a lengthy discussion concerning the responsibility in the government for the noise abatement effort. McKee emphasized that the problem of noise abatement was a complicated one, the solution to which would require primarily the efforts of the aircraft manufacturers. He also disclosed his preference for building large regional airports in remote areas as contrasted with large numbers of smaller airports.

In an exchange with Herbert Roback, Mr. Nathaniel Goodrich, General Counsel the FAA, insisted that the new legislation would not change the Executive Order under which the FAA would become an element of the Department of Defense in time of war, nor would any of the responsibilities of the FAA under existing laws be affected, except that technically they would become responsibilities of the Secretary of Transportation. <sup>47</sup>

The Coast Guard was represented at these hearings by its Assistant Commandant, Vice Admiral William D. Shields, in the absence of Admiral Roland, the Commandant. Admiral Shields maintained that the Coast Guard would benefit by assimilation into the new Department for several reasons.

It would be a part of a Department whose major interest -- transportation -- was also the major interest of the Coast Guard; the Coast Guard would be in the mainstream of transportation policy formation; the Coast Guard would enjoy enhanced prestige at international conferences; Coast Guard personnel would be able to serve in high positions in the Department. A key question presented by Mr. Holifield was whether the Coast Guard did not resent being integrated in the large Department. Admiral Shields replied that although the Coast Guard had a natural loyalty to the Treasury Department, a transfer would not hurt the organization if it were maintained as an entity capable of being transferred intact to the Navy in time of war. Admiral Shields stated his understanding that under the proposed law the Coast Guard would retain its accident investigation functions, leaving the final determination of causes of accidents to the NTSB.

48

The Honorable Charles M. Haar, Assistant Secretary for Metropolitan Development of the Department of Housing and Urban Development, reviewed the proposed relationship of the Department of Transportation to his own Department. HUD, he said, had already developed good working relationships with FAA and the Bureau of Public Roads, and he expected those relationships to continue. Mr. Haar strongly defended the proposed arrangement under which the two departments would jointly prepare a study to recommend the best location for the urban transit function. Committee

---

---



Chairman Holifield expressed his concurrence that the period allowed for study of the urban transit problem was desirable, although he, himself, favored the absorption of the function by the new Department of Transportation. Mr. Haar assured the Committee that in the interim period all the functions then assigned to the Department of Housing and Urban Development would be conducted in accordance with the legislation in effect.<sup>49</sup>

The Chairman of the Federal Maritime Commission, Rear Admiral John Harllee, USN (retired), stated during his appearance that the Federal Maritime Commission had unanimously endorsed the proposal for a Department of Transportation. In response to a question, Admiral Harllee spelled out the functions of the Commission. These included primarily regulatory actions relating to 400 foreign carriers, 80 domestic carriers, 400 freight terminals, and 900 ocean freight forwarders. He carefully distinguished these functions from those of the Maritime Administration of the Department of Commerce whose functions include subsidizing of the American Merchant Marine, caring for the reserve fleet, expenditure of research and development funds and related promotional activity. Although the activities of the Commission did not extend to subsidies, the Committee discussed at length the problem of the inadequate American Merchant Marine, and possible aids to its growth.<sup>50</sup>

---

---

---

---

---



### Industry Witnesses

On April 25 the Subcommittee began to hear as witnesses private individuals not associated with any government agency. The first was Mr. F. A. Mechling, Executive Vice President of A. L. Mechling Barge Lines, Inc. Speaking for the American Waterways Operators Incorporated of which he was Legislative Chairman, Mr. Mechling registered approval of the proposed legislation with the following reservations:

1. An amendment should be included to allow the President to appoint an Assistant Secretary for each mode of transportation.
2. An amendment should be included to allow Congress to retain control of the standards and criteria for investing Federal funds in water resources improvements.
3. The Coast Guard should be permitted to retain jurisdiction over merchant marine safety functions.
4. The intent of the Congress should be shown that in regulating bridges crossing navigable waterways, the Secretary would create no undue burdens to or hazards to commercial navigation.

While the meaning of item 1 is clear, Mechling said that the reason for his second reservation was that the operators wanted the relationship between the Congress and the Corps of Engineers to be preserved, insofar as the relationship deals with the improvement of navigation on inland waterways.

He explained that his restriction was intended to preserve the protection then granted by law to the barge operators to assure that their advantage derived from low operating costs would be maintained.

Mr. Mechling made it clear that he feared the power of a cabinet officer who would have charge of a Department of Transportation, particularly since somehow a rate-making or rate-influencing function might develop. He

was also concerned that the Department might develop authority, through its safety inspection functions, to rule on matters such as the minimum number of persons required to operate a towboat. Mr. Holifield observed that the effect of the testimony was to oppose the idea of a Department of Transportation, unless it had no power to change the status quo.

Mr. Erlenborn observed that he had somewhat the same view as Mr. Mechling; namely that a Department with power would eventually have to include the regulatory function, which would put life or death control of the industry in the hands of the Secretary.

51

Mr. Frederick B. Lee and Mr. David H. Scott appeared on behalf of the National Pilots Association. Mr. Lee opposed the absorption of the FAA into the new Department on the ground that problems of aviation are unique so that aviation deserves an agency of its own. Similarly he felt that if aviation lost its representative agency, it would be inadequately funded by the Federal government. Lee opposed the concept of the National Transportation Safety Board on the ground that the Board could not be independent if it were a part of the Department. He noted also that unless the ICC, the CAB, and Federal Maritime Commission were incorporated in the Department, the Department could never be fully effective. The Pilots Association did favor an agency to coordinate ground transportation.

Mr. Clifford Burton, Executive Director of the Air Traffic Control Association, also strongly opposed the formation of the new Department on the ground that FAA would then become a subsidiary organization instead of an independent agency whose head not only had access to the President but even served as the President's adviser on aviation matters. He would

favor an independent Department of Air Transportation. He stated his belief that despite the law's caveat that the NTSB should be independent, it was impossible for any agency to be independent whose budget, finances, and personnel were dependent upon the Secretary of Transportation.

The Executive Director of the National Business Aircraft Association, Mr. William K. Lawton, took a similar view during his testimony. Granting the need for coordination and planning usually cited as the main reason for the establishment of the DOT, Mr. Lawton insisted that the function could best be performed by the Under Secretary of Commerce for Transportation. He too was critical of the notion of the NTSB, and of the idea of the Secretary formulating and evaluating criteria for the investment of government funds in transportation. Past experience had led him to believe that in any such evaluation, the interests of private or business aviation would be ill-served, since the airlines would dominate any preliminary proceedings.

The Chairman of the Committee on Public Works, Congressman George H. Fallon, also appeared to suggest an amendment to one part of the Bill, though in general he approved the idea of a Department of Transportation. He wanted to point out incidentally that the Committee on Public Works had jurisdiction over most of the funds that would be appropriated to the Department. He criticized the law as it was drafted, since he said, "this language seems to be a substantive change in the law under its operation". He maintained that lacking any amendment to the law, the Secretary would have authority to approve or disapprove highway construction without regard to the provisions of existing law. Such action would be a threat to the

proper authority of the Congress which includes the authority to evaluate proposed projects for highways or other public works. Mr. Fallon also stated that the legislation as drafted could be interpreted to allow the Secretary to divert Highway Trust Funds from their proper use to other uses. He strongly opposed any such diversion and offered amendments which would alter the law in such a way as to prevent the potential abuses, and would allocate to the Secretary his proper authority; namely, to advise the Congress as to levels and areas of Federal transportation expenditure.

In matters of highway financing, especially, he was convinced that the existing relationships between Federal and State government were ideal

52

and should not be disturbed.

William C.

Congressman/Cramer, Florida, ranking minority member of the Committee on Public Works appeared next, and took a similar position. He argued that the Administrator of the Bureau of Public Roads should be as independent as possible, reporting only to the Secretary.

In a lengthy discussion with the Committee Mr. Cramer emphasized three major objections to the proposed legislation: 1) there is a question as to what the Department could accomplish that could not be accomplished by existing machinery; 2) there is a question as to the status of the separate elements to be incorporated into the Department; and 3) the power to be concentrated in the Secretary, especially under Section 7 of the Bill would be an infringement of the powers of Congress. As Mr. Cramer put it, Section 7(a) should be stricken because "it is intended

to give the Secretary and the President absolute and complete control over all types of transportation, all funds relating to transportation for all time in the future". He was particularly concerned that the power over the Highway Trust Fund would pass to the Secretary who could then divert funds from highway uses to other transportation uses. <sup>53</sup>

Representing the Common Carrier Conference of Domestic Water Carriers, Mr. J. W. Hersey, its executive committee chairman and Mr. Paul Mackenzie, one of its attorneys, also categorically opposed the enactment of HR 13200, on the grounds: 1) that no real need for the legislation had been established; 2) that while the Bill purported to deal with a reorganization of functions, it, in fact, seriously eroded the "traditional and historical Congressional prerogatives in the area of transportation"; and 3) it would be imprudent to establish a new Department which would require the expenditure of funds when national commitments were already very high.

Mr. Hersey argued that it would be unsafe to leave the Secretary  
of Transportation wide areas of discretion in regulating the  
operating conditions of the modes of transportation and presented a list of cases in which executive agencies had taken action that was damaging to water transportation, particularly as they applied cost-benefit ratios to determine appropriate development projects.

Congressman Holifield entered a couple of comments to refute some of the points Mr. Hershey had made. For instance, the Congressman invited attention to the fact that all forms of transportation were subsidized to some extent.

There was an extensive interchange between Mr. Hersey and Congressman Holifield concerning the question whether regulation of the transport modes could be carried out by the Congress alone, or whether it might more appropriately be done by administrative agencies or Congress with the advice and assistance of these agencies.

Congressman Erlenborn joined with Mr. Hershey to maintain that the proposed law would require standards and criteria established by the Secretary of Transportation to supercede those of the Congress, whose rightful function is to determine policy.<sup>54</sup>

Professor Martin L. Lindahl of Dartmouth College appeared on behalf of the New England Council to support the proposed legislation. His testimony emphasized the importance of coordinated transportation facilities to New England, which he believed that the new Department would provide. Mr. Lindahl also emphasized the potential benefit from the Department's research programs and from its appearances before the regulatory commissions in behalf of the public interest.<sup>55</sup>

After Professor Lindahl's testimony on April 26, the Committee did not meet again until May 2. On that day the first witness was Joseph B. Hartranft Jr., President of the Aircraft Owners and Pilots Association who opposed the passage of the DOT law. The position of the Association was that "the public interest can best be served by a separate and independent aviation agency; one that can promote and foster development of the aviation industry and our national air transport system without being subservient to a departmental secretary. . ." (pp 344) Mr. Hartranft

---

---

---

---

---

argued that the aircraft industry got along well with the FAA and the CAB, whereas the new Department, the industry would lose an advocate and gain only an arbiter since the Secretary would be responsible for many modes of transport. In addition, the witness argued, although the Bill's supporters made much of the fact that economic regulation is not a function of the new Department, most of the arguments advanced for the Bill were economic in nature. When Mr. Hartranft offered the argument that the aviation industry had grown well without a Cabinet agency to fend for it, Congressman Rosenthal said he hated to fall back on cliches about free enterprise when the fact was that private capital could never have brought the industry to its present development without "substantial and massive" government support.

#### Air Transport Association

A very lengthy testimony was given by Mr. Stuart G. Tipton, President of Air Transport Association, who reported that the Association favored the proposed legislation. He insisted strongly, however, that the FAA must be transferred intact to the new Department, and must not be subordinate to the Secretary. Mr. Tipton was also opposed to the concept of the National Transportation Safety Board because he believed that the older system of accident investigation was as perfect as such a system could be made.

Mr. Tipton was not satisfied that the proposed Section 4(b) on organizational continuity would adequately protect the status of the FAA in the new Department. To support the points made in his testimony,



Mr. Tipton submitted a series of amendments which he proposed the Congressmen add to the Bill as they reported it to the floor.<sup>56</sup>

Officers of the National Industrial Traffic League, including Mr. Charles H. Wager, President, indicated that the League had voted to support the idea of a Department of Transportation, but with major exceptions. The League had previously opposed the idea of a Department of Transportation because earlier proposals would have authorized the Department to engage in economic regulation.

In this instance the League was opposed to the transfer to the Department of the car service functions of the Interstate Commerce Commission because it believed this function to be a form of economic regulation. The League's position was that no need had been shown to transfer the function from the ICC, which was already performing its safety regulation duties effectively. Mr. Holifield maintained that the witness (Mr. Wager) was actually saying that as long as the Secretary of DOT did nothing to affect the economics of transportation or regulation of transportation, but confined himself to promotional activities, the League would support the Department. Mr. Wager insisted that the League was interested only in assuring that regulatory power would remain with the ICC.<sup>57</sup>

Vice Admiral James S. Hirshfield (USCG Retired) represented the Lake Carriers Association of Cleveland. While few would take issue with the stated objections of a Department of Transportation, said

---

---

---

---



Admiral Hirschfield, his association would question whether the DOT as proposed would be an appropriate vehicle for achieving the objectives. It was doubtful that the Department should formulate government transportation policy, since that should properly be the prerogative of Congress. The Association was dubious about the NTSB's ability to make correct evaluations of the causes of accidents, since each mode would require a different expertise. The Association was fearful that the authority of the Coast Guard, particularly in the safety area, would be reduced, and that the Act as presented would radically alter the method of determining transportation investment. In effect, said the witness, the proposal would "throw open the door and make intermodal competition an issue in every navigation project, and in the construction of every bridge".

Admiral Hirshfield argued that since the legislation provided that the recommendations of the Corps of Engineers for rivers and harbors work would be forwarded to the President instead of to the Congress, the President would assign the function to the Department of Transportation. This would mean that the DOT could intercept any such proposal which it did not approve.<sup>58</sup>

In a somewhat more extended appearance, Mr. Daniel P. Loomis, President, Association of American Railroads, maintained that the Association favored the creation of the Department of Transportation, but took issue with certain specific provisions of the proposed

---

legislation, as earlier witnesses had. The railroads favored leaving the regulatory power and authority of the Interstate Commerce Commission intact. The railroads did, however, favor the provisions of the Act which would assist the nation to utilize its resources with a minimum of economic waste. Such utilization would occur in the process of balancing the nation's investment in support of the various types of transportation.

With respect to the powers of the Interstate Commerce Commission, the railroads opposed the transfer of its quasi-legislative and quasi-judicial functions to an executive agency which would be subject to the pressures from political or other interest groups. It appeared to Mr. Loomis that the legislation under consideration would shift the power of the Commission to establish rules, regulations and practices to the Department, but would retain for the Commission power to fix compensation for the carriers. The railroads opposed the shift.

The railroads also opposed the proposed shift of power from the ICC to the Secretary in the area of safety, because that regulation, too, was inseparable from economic regulation. Mr. Loomis would favor transferring only one function from the ICC; namely, the accident investigation function.<sup>59</sup>

Attitudes of organized labor toward the founding of the Department of Transportation were represented by Mr. Andrew J. Biemiller, Director of Department of Legislation, AFL-CIO. Labor generally favored the

legislation under consideration, but Mr. Biemiller had several suggestions to make for improving the Department's chances of success. He maintained that of all government regulatory agencies, the ICC was the only one that did not employ legal and technical experts to analyze and test by hearings the evidence submitted by the applicants before them. The defect must be corrected, he maintained. As for the maritime industry, he argued that the new legislation should clearly delineate the place and functions of the maritime agencies, and that they must be placed under an administrator appointed by the President. The new Maritime Administration must be an independent agency but it should have "a compulsory consultative relationship" with the DOT. Some of his proposed amendments also had to do with the location of jurisdiction over freight car supply and the CAB's power over subsidy matters. Because the unions involved insisted that there should be an independent Maritime Administration, Mr. Biemiller would not agree that the new Department should include the Maritime Administration. <sup>60</sup>

The Railway Labor Executives Association was represented by Mr. G. E. Leighty. On behalf of his organization, whose executives represent most of the labor organizations of the country, Mr. Leighty generally approved the Bill being considered.

Relying on data produced by a committee of the House of Representatives, Mr. Leighty disagreed with any approach that would combine railroad car service and safety regulation in any one organization, since the purposes of the two functions were to some degree antithetical.

---

He urged that the Department assume the responsibility for safety and let the car service functions be performed elsewhere.

He also approved of the idea behind the National Transportation Safety Board. He argued that Federal Highway funds should be used to finance the expense of converting grade crossings to overpasses, since the essential object being promoted was automotive safety.

Mr. Leighty was concerned that the Congress might take action to authorize the Department to undertake rate-making before it was organized and equipped to take account of the interrelationship among the modes of transportation, and assure that the public was served with the best possible combination of modal arrangements.

The railway labor executives expressed their general agreement with the amendments suggested by Senator Magnuson. These suggestions included:

- 1) transfer of all car service functions to the Department, on condition that they should not be managed in connection with the safety functions;
- 2) formation of an Office of Passenger Transportation, headed by an Assistant Secretary which would function to protect the passenger's interest, inter alia, by appearing before the Interstate Commerce Commission hearings to represent the passengers' viewpoint; and 3) formation of an Office of Transport Mergers to represent the public interest in ICC merger proceedings.

61

Testimony on behalf of the Committee of American Steamship Lines (CASL) was presented by Captain J. W. Clark, President of Delta Steamship Lines. CASL rejected the idea of having shipping under the guidance of

the new Department. Responsibilities under the shipping laws, they said, should be vested in and administered by an independent agency responsive to policy determination and review by Congress. Even if the Department were to be authorized, the functions relating to shipping should be under the jurisdiction of an independent board on the model of the NTSB. The shippers believed that such a board would implement the basically sound Merchant Marine Act of 1936 as the Department of Commerce had failed to do. Neither the tramp steamer nor the passenger liner construction program was sufficiently active to maintain the United States' position in world shipping. Recent administrations have not received adequate appropriations to support shipyard subsidy programs. Captain Clark emphasized the potential danger in such a deficient position, since the economy of the United States depends to such a great degree upon imports of raw materials.

The CASL proposed that there be created within the Department of Transportation a Civil Maritime Board that would exercise the functions of the Federal government vis-a-vis the shipping industry. CASL produced a long list of functions for the proposed Board which would add up to the research and development, subsidy, and liaison functions of the government. He emphasized his allegation that the shipping lines "paid their own way" in contrast to most other forms of transportation which were subsidized. While it is true that shipping is subsidized industry, Captain Clark maintained, the subsidies go to the shipyards, not to the operators.

Mr. Paul Hall, President of the Seafarers International Union, appeared on behalf of most of organized maritime labor in the United States. He opposed the inclusion of maritime matters in the new Department and argued for a completely independent Federal Maritime Agency. The labor groups did this because none of the proposals then current would have separated the subsidy functions of the Maritime Administration (quasi-judicial in character) from the promotional and administrative functions. In a colloquy with Congressman Holifield, Mr. Hall adamantly refused to admit that the maritime industry would be better off if it became part of the Department of Transportation than it then was as a part of the Department of Commerce.

63

Mr. Ralph Casey, President of American Merchant Marine Institute, was critical of the proposed legislation, not, he said, because the Merchant Marine officials objected to the purpose of the Department, but because they believed the Department would not be able to accomplish the objectives outlined. Mr. Casey's position was that to put the maritime industry within the framework of the new Department would actually hinder the achievement of maritime programs already established by the Merchant Marine Act of 1936. He indicated that Section 7 of the proposed act would frustrate the Maritime programs by establishing criteria for the investment of Federal funds in facilities and equipment. Although he commended the institutions created to promote safety, he was afraid the NTSB would cut out the Coast Guard operations in maritime safety. His colleague,

Mr. Earl W. Clark, insisted that even having a maritime board within a cabinet department would be ineffective since the members of the board who were supposed to make independent judgments would actually all be subordinates of the Secretary and thus subject to his control.

Mr. Casey reiterated his position that any official in charge of maritime affairs, and especially of subsidies, should be completely independent in his operations, with his status guaranteed by Presidential appointment and confirmation by the Senate.<sup>64</sup>

The testimony of Mr. R. L. Wagner, Chairman of the Association of Oil Pipelines, introduced pipelines, a completely new area of concern. The pipeline industry took the position that if a Department of Transportation were created, the car service and safety functions of the ICC should not be transferred to the new Department. The chief reason for that position was that he believed safety regulation and economic regulation were inseparable. Congressman Holifield was unwilling to accept the distinction made by Mr. Wagner, believing that anything relating to functions of a mode also related to economics.<sup>65</sup>

Mr. George E. Pratt appeared to express the approval of the Greater Philadelphia Chamber of Commerce of the proposed legislation. He was the first to say that he believed that the DOT would not result in savings but that if the Bill's purposes were accomplished, the extra cost would be well justified. He warned against the danger of infringing upon the privacy of commercial interests if the

---

---

---



Department were not most cautious in making the special studies authorized in Section 4(g) and (h) of the proposed Act. <sup>66</sup>

One of the most informative witnesses to appear before the Subcommittee was Mr. Sidney Zagri, Legislative Counsel, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Mr. Zagri approved the enactment of the legislation and supported his statements with facts. He stressed also the importance of utilizing the results of the latest research in the transportation capabilities of the United States, and the potential of using the most advanced technology available to promote standardization and interchangeability of equipment. Mr. Zagri insisted that the Bill did not adequately define the powers and duties of the new Secretary. He thought the Bill should contain a declaration to the effect that the duties of the regulatory agencies were not altered or diminished by the passage of the Act.

A good part of Mr. Zagri's testimony dealt with the problem of improving safety conditions in the several industries. He discussed in great detail the limitations of the Interstate Commerce Commission, particularly in the functions of safety regulation. He observed that the railroads enjoyed a relative freedom from regulation under the system, since there had been a gradually declining number of safety inspections conducted, though costs for ICC inspection facilities and services had increased. Similarly, the ICC does not regulate physical qualifications for employees of railroads nor conditions of railroad

---

---



tracks and beds, nor the speed of trains. Insofar as truck transport was concerned the situation was even more threatening. Four million trucks ten years old or older remain on the highways; 9.3<sup>percent</sup> of the trucks were more than 15 years old. "Gray area" operators using old and inadequate equipment maintain lower rates than the legitimate operators, but only because they imperil the general safety.

Mr. Zagri attributed a good part of the "inefficiency" of the ICC in its regulatory function to its "pro-railroad" bias. Inspectors were required to perform car service functions along with safety inspections. These functions are incompatible.

Most of the deficiencies he discussed could be corrected by the new Department, according to Mr. Zagri's testimony.<sup>67</sup>

Mr. John Bush, Chairman, Interstate Commerce Commission, likewise indicated support for the proposed legislation. He listed several advantages to the ICC from the passage of the proposed law: 1) Commissioners would be enabled to concentrate on the Commission's case load without having to deal with safety and car service matters; 2) by preserving the inherent advantages of each mode, Commissioners could overcome the difficulty caused by the rapid changes in costs and relative advantages due in part to the competing promotional activities of the several government agencies; and 3) the Commission would benefit from the input of information prepared in the Department as representative of the public interest in many of its cases.

---

---

---

One of the most difficult of the Commission functions, according to Mr. Bush, was the car service function--issuing orders and regulations to control the supply of freight cars and other commodity-carrying cars to their users. The Commission did not have computer capability to assist in this effort. The Commission favored the transfer of this function partly because the Department would have adequate access to computers to make the car service more dependable. As for trucking safety, Mr. Bush admitted that the Commission could examine only a very limited number of vehicles per year, even though it knew that about one truck in four was in such poor condition that it would be rejected. For all these reasons, Mr. Bush was convinced that the functions would be performed more adequately if they were transferred to the Department of Transportation.

68

By means of communications to the Subcommittee the following organizations registered their views concerning the proposed legislation:

1. The Florida Board of Conservation. Favored the Bill generally, but thought Congress should take care not to abrogate its policy-forming functions. Strongly favored multi-purpose water projects.
2. Airport Operators Council International. Favored the adoption of the Act. Especially favored the coordination of highways, mass transit and other ground transportation with airports and coordination of the National Air Service pattern with the National Airport System.
3. Mississippi Valley Association. Opposed adoption of the Act, particularly on the grounds that the new Department would usurp the

proper function of the Congress in controlling transportation investment. Maritime Administration should be independent, reporting to Congress. Should be permitted to rebuild the Merchant Marine.

4. The Gulf Intercoastal Canal Association. Also opposed the new Department. It cited as unsound the proposed Section 7 on the ground that it removed powers from the Congress and assigned them to an Executive agency. Every water project should be evaluated on a cost-benefit analysis.<sup>69</sup>

On Tuesday, June 21, 1966, the Executive and Legislative Reorganization Subcommittee met at the call of Congressman Holifield. Present were members of the Bureau of the Budget Task Force and representatives of the several government agencies concerned. The meeting was called to discuss certain changes that had been made by the Committee in the Bill that had been presented to the House.

Edward A.

Before the committee discussion began, Congressman/Garmatz presented two resolutions that had been passed by the Committee on Merchant Marine and Fisheries. One of these resolutions expressed the feeling of the Committee that there should be established an independent agency to be known as the Federal Maritime Administration and that HR 13200 be amended so as to exclude from the new Department the functions residing in the Federal Maritime Administration. The second of the two resolutions expressed the committee's belief that the Coast Guard should not be a part of the new Department, but should remain in the Treasury Department.

---

With Mr. Boyd as the lead witness, the Committee began a discussion of changes that it had made in the Administration Bill. The first suggested amendment placed in the Bill a requirement that the Secretary establish within the Department a Federal Highway Administration, a Federal Railroad Administration, a Federal Maritime Administration and a Federal Aviation Administration. The Administrator of each would be appointed by the President with the advice and consent of the Senate.

There followed a lengthy discussion of the problem of noise abatement. Mr. Boyd indicated for the Administration that it had no objection to a provision concerning noise abatement, but did not wish the Bill to put noise abatement specifically in the FAA because the problem -- one characteristic of several modes -- was really one of research and development.

A second proposal was to establish an Office of Accident Investigation that would be independent of the FAA. In endorsing the idea Mr. Boyd explained that the reports of the Office would go to the NTSB so that it could decide the cause of the accident. Although the FAA might participate in the investigation of an aircraft accident, the CAB could investigate the responsibility of the FAA. The critical factor was that the FAA did not participate in the findings of probable causes by the CAB. The same situation would prevail under the new Department, with the NTSB making findings concerning causes of accidents.

The next suggestion dealt with the duty of the Secretary to develop national transportation policies and programs and make recommendations for their implementation. It was proposed to add the words "to the President and the Congress". Administration witnesses denied the necessity of such language since the Secretary would not be able to initiate a policy himself. He would have to suggest it to the Congress which alone would have the power to establish any policy. In this connection there was also considerable discussion of the power of the Secretary stated in Section 7 to "develop . . . and revise standards and criteria for the formulation and economic evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment. . ."

A question arose concerning the phrasing in Section 4(j) as follows:

Orders and actions of the Secretary or the National Transportation Safety Board in the exercise of functions, powers and duties transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been taken by the agency originally exercising such functions, powers and duties.

John N.

Mr./Erlenborn asked why only judicial review was included in the provision, which might also include administrative review. Language was devised to preserve any statutory requirement for administrative review without freezing the administrative non-statutory requirements.

There was extended discussion of the powers and functions of the NTSB. In the new draft, its powers were considerably expanded to:

- 1) conduct special studies on matters pertaining to safety and prevention of accidents; 2) require the Secretary to furnish additional information

about any accident if the facts were not adequately developed, to conduct additional investigations or to take other necessary action; 3) allow it to require of the Secretary notification or reports of transportation accidents. Discussion indicated that it was not anticipated that the Board would get notification only of those accidents that the Board deemed sufficiently important for its attention.

A lengthy discussion followed of the process for submitting proposals for Federal expenditure for transportation-related objects. Mr. Boyd assured the Congressmen that there was no effort to change the traditional way the Corps of Engineers submits such projects to Congress. There was also discussion of supergrade authorizations for the Department of Transportation. While Mr. Holifield did not object to the provision of supergrades for the new Department, he observed that it would be difficult to arrange the allocation since the Chairman of the Post Office and Civil Service Committee who had recently been floor manager for legislation to authorize additional supergrades, had promised then that he would request no more supergrades for that session of Congress. The issue was not resolved on the record.

This discussion completed the public hearings for H. R. 13200.<sup>70</sup>

## House Report No. 1701

On July 15, 1966 the Committee on Government Operations issued Report No. 1701 to accompany the DOT Act which had been revised by the Committee. The Report recommended that the Bill be passed in its revised form. The major differences between the Committee's revised Bill HR 15963 and the original Bill HR 13200 included the changes made by the Committee as follows:

1. Certain sections were moved and renumbered in the new Bill, and language changes were made to improve clarity.
2. A new section required the Secretary to establish a Federal Highway Administration, a Federal Railroad Administration, a Federal Maritime Administration and a Federal Aviation Administration, each to be headed by an Administrator appointed by the President with the consent of the Senate. Similarly the Coast Guard with its Presidentially appointed Commandant would come into the Department. The Administrators would become line officers in the Department with responsibilities for specified functions.
3. One section required the Secretary to set up an Office of Accident Investigation independent of FAA. The Office would supercede the Bureau of Safety of the CAB.
4. The Secretary would be required to undertake research and measures to promote noise abatement.
5. Language was added to assure that only the Congress could <sup>existing</sup> establish criteria for investment of Federal funds and that the/relations between Congress and the Executive Branch with respect to transportation investment would not be altered.



6. The Secretary would be required to consult with the heads of other Federal agencies about their transportation needs.

7. A section was added to assure that the Administrative Procedures Act would be followed in the Department's actions.

8. Additional authority and powers were given to the NTSB, and a requirement was added for it to make an independent annual report to Congress.

9. The Interstate Highway System was removed from the operation of Section 7, so that the Congress could continue to control the program. Similar provision was made for water transportation proposals.

10. A requirement was imposed that the Secretary provide data to other Federal agencies on the impact of any given transportation project upon the overall transportation system of the area.

11. The requirement that proposals for investment of Federal funds in transportation projects be submitted to the President was removed.

12. Authorization for specific numbers of supergrade positions was removed from the Bill.<sup>71</sup>

The report also contained much information submitted to support passage of the Bill, including estimates of the savings ultimately to result from the operation of the Department.

On July 27 the Rules Committee of the House agreed to grant an open rule for consideration of H.R. 15963 and to allow four hours of



general debate on the Bill, to be divided equally between Democrats and Republicans, as controlled by the Chairman and ranking-minority member of the Committee on Government Operations.<sup>72</sup>

A statement issued by the Republican Policy Committee on August 10 forecast some of the Bill's later difficulties. The Committee agreed that some action was necessary to coordinate transportation policy, an idea that had been endorsed by President Eisenhower in 1961. It found several elements lacking in H.R. 15963, however. For example, it insisted that the accident investigation function of the CAB should be left intact. It believed that the problem of aircraft noise should be given high priority. It advocated that Section 7 should be stricken from the Bill and that the Maritime Administration should be established as an independent agency. It stated the view that the Administration had not pushed maritime construction as much as it should have, and urged that action be taken to increase shipbuilding in the United States. The Committee argued that transfer of the maritime function could "perpetuate the trouble-ridden management of the maritime crisis".<sup>73</sup>

Discussion of H.R. 15963 was initiated in the House on August 22, 1966 by Representative Chet Holifield of California, though the formal debate was not to begin until August 24. Congressman Holifield admitted that the proposed Department of Transportation was not a panacea for the

transportation ills of the nation, but said it was rather a new framework and a new posture of government. He outlined the chief features of the Bill, indicating that each mode of transportation would be represented by an Administrator who would have direct access to the Secretary. He emphasized that although the objective was a transportation system responsive to the country's needs, the Bill provided for explicit safeguards to the rights of all parties in administrative and judicial proceedings. Congressional prerogatives were reaffirmed.

In his initial presentation Congressman Holifield also argued that the Maritime Administration should be placed in the new Department, although he was careful to point out also that placement of the maritime interests in the new Department would not cure the ills of the industry. He wanted to emphasize that despite the enormous subsidies already paid to all forms of transportation, the merchant marine was a "sick industry," but that it would stand a better chance for assistance of all types within the Department than outside it. He specifically advocated that principle, he said, even though the maritime unions had put enormous pressure on him and other members of Congress to keep the Maritime Administration out of the Department. He urged other members who were concerned about the future of the United States Merchant Marine to consider carefully whether the merchant fleet could prosper under supervision of an independent agency as well as it could under a Department of Transportation which would consider the merchant fleet in its appropriate relationship to other modes of transportation.<sup>74</sup>

---

---

---

---

Senate Staff Memorandum 89-2-35, August 11, 1966

The Committee Staff paper of August 11 summarized the results of several Committee "mark-up" sessions and included also a number of amendments developed by the staff at Senator <sup>Henry M.</sup> Jackson's direction. Amendments tentatively agreed to by the Committee included the following:

1. Policy and Purpose

- a. Language was added to require the Secretary to make recommendations concerning national transportation policies to the President and to Congress where the original proposals did not indicate the recipient of the Secretary's recommendations.
  - b. A new paragraph declared it to be national policy to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and historical sites. The Secretary was required to cooperate with other cabinet officers and with the States in developing and implementing plans and programs. The Secretary was prohibited from approving any plan or project requiring land from such a site unless there were no feasible alternative to use of such land.
  - c. New language would require the Secretary to provide leadership in developing transportation programs and plans and would add noise abatement to his responsibilities.
  - d. The Secretary was to be governed by all applicable statutes in carrying out the Act, including all the policy standards contained in earlier legislation. Additional clauses provided that nothing in the Act should be construed to authorize adoption of any policy or investment standard contrary to any act of Congress.
- 
-

## 2. National Transportation Safety Board

- a. All reports, orders, decisions, rules, etc., prepared by the NTSB were to be made public.

## 3. Car Service Functions

- a. According to new language all car service functions except determination of per diem and demurrage charges would be left with the ICC instead of being transferred to the Secretary of the DOT, as S3010 had provided.

## 4. Transportation Investment Standards

- a. Amendments to Section 7 added water resource projects as a fifth exception to the Secretary's authority to establish standards and criteria for transportation investment; provided for approval by Congress rather than the President of the standards and criteria developed by the Secretary; provided for development by the Water Resources Council of standards and criteria for evaluation of water projects; established a definition of primary direct navigation benefits of water projects; and included the Secretary as a member of the Water Resources Council for matters pertaining to navigation features of water resource projects.

Supplementing these amendments adopted by the Committee, the Staff developed an additional set of proposed amendments at the request of Senator Jackson. These included:

- 1. Operational continuity. Decisions taken by the Committee reflected a conviction that all functions, powers, and duties vested in the agencies to be transferred should reside in the Secretary, who was

directed to establish four modal operating administrations, each headed by an administrator appointed by the President. All duties, functions, and powers pertaining to safety transferred to the Secretary were to be exercised by the Administrators of the several modal agencies whose decisions respecting safety were to be administratively final, not subject to Secretarial review, but appealable to NTSB or to courts or both.

2. Appeals. Actions taken by the Secretary and the NTSB pursuant to powers transferred by the Act were to be subject to judicial review to the same extent as actions taken by the agencies originally having jurisdiction.
3. NTSB. While the original proposals provided that certain functions, powers, and duties relating to safety transferred to the Secretary would be exercised by the NTSB, the new proposal provided that these powers, duties and functions would be transferred to the NTSB, along with authority to conduct certain investigations in rail, highway, and pipeline safety. Delegation to the operating administrations of the conduct of the accident investigations, authority for the NTSB to conduct its own investigations, and authority for it to delegate to operating administrations the determination of cause of accident in certain cases then resolved on the basis of field reports of the personnel of the several operating agencies were also included in the proposed amendments. Certain other amendments were proposed at the same time including one to transfer to the Secretary some authority over highways in the Appalachian region and the supervision of the St. Lawrence Seaway Development Corporation.

## Debate in the House

Extensive debate on the Bill to establish the Department of Transportation began in the House of Representatives on August 24, 1966, with Congressman Holifield

---

---

as its sponsor. The following is a summary of the main arguments presented during the discussion of the Bill:

### Arguments on behalf of the Bill:

1. Only a Department having expertise in the several modes of transportation would be able to formulate a national transportation policy.

Only with a well-designed policy can the government make a rational allocation of resources.

2. The Bill would create a Department whose control would be balanced properly between Congress and the Executive Branch. This balance is shown in the drafting of the provisions dealing with transportation investment. While the Secretary was to be authorized to devise criteria and standards for investment by the government, he was prohibited from promulgating any standards inconsistent with laws already in force concerning such investments.

3. Bringing together a number of agencies of the Government to be managed in a single Department would make administration of the government's transportation functions more efficient. It was reasonable to expect that the Government's investments in transportation-related functions would produce better services and facilities when the investments were balanced both among the modes, and with relation to the needs of the users of transportation.

4. Passage of the bill was especially important because of the enormous impact of the transportation system on the well-being of every citizen. A Transportation Department would be oriented to protecting the interests of the consumer.

5. The legislation was carefully drawn to assemble in one Department the promotional, research, safety and similar functions of the Government with relation to transportation since these functions already belonged to executive agencies, but it did not involve economic regulation of transportation since that function was considered more properly to belong to the Congress and its agencies.

6. It was reasonable to suppose that if all the resources being devoted to any aspect of transportation throughout the government could be assembled in one place, the resulting benefits would be greater in the aggregate, and to each of the modes as well. The aspect of transportation most discussed was safety; a Transportation Department could have a major impact on the problem of accidents.

#### Arguments against the Bill:

1. The legislation did not provide that the Department would assume the economic regulatory function. Some Congressmen argued that without power to promulgate economic regulations for the modes of transportation, the Department would have little influence in the long run, since the private companies would not respond to influence if it were not backed up by economic sanctions.



2. The legislation did not provide finally for the urban mass transit function. Although the President in his message to Congress transmitting the DOT bill had indicated that he would require the Secretaries of Transportation and Housing and Urban Development to undertake a study to determine the proper location for the function, the proposed law did not mention this most important segment of the transportation problem.

3. The National Transportation Safety Board, though ostensibly independent, could not be independent in fact of the Secretary of Transportation. The Board was to be part of the Department, even if it only drew administrative support from the Department, and had no other relationship to it. If, in the course of its investigations, it decided that the cause of an accident could be traced to a shortcoming of some part of the Department of Transportation, it would be understandably hesitant to blame another part of its own agency. It might even succumb to pressures from the Secretary to treat the Department gently.

4. Undoubtedly the most controversial aspect of the Bill as it was considered in Congress was Section 7, concerned with investment standards and criteria. The Bill as submitted provided that "the Secretary shall develop and from time to time in the light of experience revise standards and criteria consistent with national transportation policies, for the formulation and economic evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment, except . . ."

proposals dealing with transportation facilities for Federal agencies, an interoceanic canal outside the contiguous United



States, defense features included in transportation facilities, and programs of foreign assistance. The standards and criteria developed by the Secretary would be submitted to the President for approval. Similarly, plans, surveys, or reports formulated by Federal agencies were to be prepared in accordance with the Secretary's standards, coordinated with the Secretary, and submitted by the proposing agency to the President. These standards and criteria developed by the Secretary would relate to growth projections, transportation needs, relative efficiency of various transport modes, available transportation services, and the general effect the proposed investment would have on the overall transportation system of the area, the region, and the national economy.

Many Congressmen objected to this provision of the bill on the ground that it would abrogate a right and a proper function of the Congress and transfer the functions of the Congress to the Secretary, or ultimately to the President. Such an abrogation would be undesirable, they insisted.

5. Proponents of all forms of transportation in the Congress voiced opinions analogous to those offered by the witnesses heard by the Committee to the effect that the Department should have jurisdiction over all forms of transportation except the one with which the speaker was immediately individual concerned. There was no reason, these Congressmen thought, to change the existing statutory relationships of FAA, CAB, the Coast Guard or whatever agency the Congressman favored most.

6. One of the most complicated controversies had to do with the appropriate location for the Maritime Administration and its function of

subsidizing the merchant marine. Perhaps anticipating the impact of the DOT bill, supporters of an independent Maritime Administration had earlier introduced a bill (HR 11696) to create an independent Maritime Administration. Proponents of that bill insisted that support for the Maritime Administration functions would be no more / <sup>adequate</sup> under a Department of Transportation than it then was under the Department of Commerce.

7. The law as proposed would transfer the powers, duties and functions of the FAA, the Bureau of Public Roads, and the ICC to the Secretary of Transportation, giving him the option to reallocate the duties and powers to whomever he chose. This would mean the dissolution and disappearance of those statutory agencies and delegation of enormous power to the Secretary.

8. Some Congressmen argued that if the Coast Guard were to be transferred to another agency than Treasury, it should become part of the Department of Defense, rather than of the Department of Transportation.

9. One point of view was that the provisions of the Bill, particularly of Section 7, would give the Secretary power to create new transportation policy, a function properly reserved to the Congress. Others argued that even if he could not create new policy since he had to refer his determinations to the President, he could at least influence the President, an equally undesirable excess of power.

10. Some Congressmen raised the objection that the powers of the Secretary were not sufficiently comprehensive since he was unable to control the transportation procurement of many of the agencies of the Government even if he could influence their operations. In this category

would be Department of Interior, Department of Defense, Department of Agriculture and others.

11. Another much discussed failing of the legislation was its lack of provisions to give the Secretary power to control transportation noise, especially jet aircraft noise in the vicinity of major airports. Several Congressmen proposed establishment of an Office of Noise Abatement, or other institutional forms of control capability for the Secretary.

Most of these arguments were repeated one or more times during the four hours of debate allocated in the House of Representatives.

#### Amendments to the Bill:

Much of the character of the Department of Transportation may be attributed to the amendments added to the Bill as it passed the House of Representatives. The House version of the Bill contained no Section 7 on transportation investments. The section proved to be so unpopular that Congressman Holifield agreed that the provision might be dropped in accordance with an amendment proposed by Congressman John N. Erlenborn of Illinois, the senior Republican member of Holifield's subcommittee.

agencies; 4) assurance of independence of the NTSB; 5) continued separation of the accident investigation functions and the determination of the cause of accidents; 6) assurance of the application of the Administrative Procedures Act to issuance of safety regulations and other actions by the Secretary and his associated agencies; 7) transfer of the urban mass transit function from HUD; 8) the problem of car-service functions; 9) the effect of transportation investment standards on programs such as the water resource projects of the Corps of Engineers. Numerous lesser problems arose and were also dealt with by the Committee.

When some witnesses expressed fear that the NTSB could not in fact be independent, the Committee adopted an amendment to Section 5(b) transferring to the NTSB those powers and duties acquired by the Secretary that related to determination of probable cause in accidents and the denial or revocation of licenses. A considerable number of additional functions and powers were also transferred to the Board. It was expected, however, that the Board would use sparingly its power to conduct investigations, and would rely on the Secretary, acting through his Administrations, to furnish information needed by the Board. The Committee added a new section to require the Board to make public all its reports, orders, decisions, rules and regulations.

A further safeguard of promotion of aviation safety was the provision that all the CAB functions relating to safety that were transferred by the Act would be exercised by an independent agency, and that its functions must be separated from those of the operating unit, the Federal Aviation Administration.

While the Committee Report did not specify any duties for the Assistant Secretaries, it did strongly urge the Secretary to give special attention

## The DOT Act in the Senate

The Senate began to consider its version of the DOT Bill (Senate Bill 3010) on September 29, 1966. Senator John L. McClellan, Chairman of the Committee on Government operations, outlined the provisions and purposes of the Bill. The Committee had added so many amendments, he explained, that S. 3010 as reported was an entirely new Bill. An explanation of the Bill was provided in Senate Report 1659 dated September 27, 1966.

In the Committee's Bill, which was actually a substitute for the Administration Bill, the Department's operating agencies were to include: the Federal Aviation Administration, the Federal Highway Administration, the Federal Maritime Administration, the Federal Railroad Administration, and the U. S. Coast Guard. In addition, the Committee Bill would establish in the Department an independent, bipartisan Maritime Board, with the Federal Maritime Administrator serving as Chairman, together with two Presidentially appointed members, to handle maritime subsidy matters.

The agencies and functions transferred were approximately the same as those that would have been transferred by the House Bill except for the addition of the St. Lawrence Seaway Development Corporation and the Alaska Railroad.

The Report summarized the results of the hearings on the Bill, indicating that the issues that emerged during the hearings included:

- 1) roles of the Secretary and Congress with respect to national transportation policy;
- 2) assurance of the operational continuity and integrity of agencies transferred;
- 3) Presidential appointment of heads of modal operating

to passenger service and representation of the public interest in mergers of passenger carriers.

The Committee recognized considerable merit in the safeguards proposed in Section 7 that had been eliminated during the House consideration of the Bill. It therefore retained Section 7, but added further amendments to limit the Secretary's power. In the amended Bill, the Secretary would retain the duty to develop standards and criteria for evaluating water resource projects, but the standards must be approved by the Senate rather than the President before they could be promulgated. The Report further specified that in estimating navigation benefits from any proposed project, the Corps of Engineers should use only freight rates prevailing in the area affected by the project, not in any other area.

A very important amendment by the Committee incorporated the President's idea that the Secretaries of the Department and of HUD should be given one year jointly to work out a suggestion for the best location for the urban mass transit function. An additional change would allow the President to carry out the provisions of both the National Traffic and Motor Vehicle Safety Act and the Highway Safety Act through a single Bureau and Director. All provisions of these Acts would be transferred to the new Department.

#### DISCUSSION

Section 7. Almost immediately a protracted discussion arose in the Senate concerning the problem of fixing standards and criteria for evaluating proposals for waterway improvements. The argument centered around whether the Engineers must use as their comparison base figure in

calculating costs the actual cost of shipping an item by rail or other means, or the cost calculated at a new rate that would eventually result from the added competition of the waterway. Senator/Proxmire charged bluntly that since the future cost would certainly be less than the cost of shipping an item before a waterway was built, the effect of the requirement for the Engineers to use present cost would be to weight the argument in favor of building of the waterway. As he put it, "this is sure to load the dice on the building of the waterway in favor of the pork barrel. I can understand why some members of Congress want more pork".

Karl E.

Senator/Mundt remarked during the discussion that without Section 7 the Bill would either not have been reported, or it would have been substantially different. His reason for saying this was that without Section 7, the Bill as passed by the House would have left the Secretary free to establish the criteria for navigation projects in any way he considered appropriate.

Jurisdiction of NTSB. Senator Mundt offered an amendment to limit the powers of the NTSB to delegate its functions. Under his amendment the last paragraph of Section 5(m) would read as follows:

provided further, that the Board shall not delegate the appellate functions, nor determination of probable cause transferred to it by Section 6(d) of this Act.

The amendment was adopted by unanimous consent.

Highway Trust Fund. Senator Jennings Randolph, \_\_\_\_\_ then offered an amendment to insert in the list of exceptions in Section 7 the words "or (6) grants-in-aid programs authorized by law". He indicated that several Senators were concerned that the legislation under consideration did not specifically exclude from Section 7 the Highway Trust Fund.



Senator Randolph pointed out that it was not the intent of the Administration to alter the relationship of the Secretary to the Trust Fund. That fact had been established in the analysis forwarded by the Administration with the Bill. The purpose of the amendment was to assure that the Senate would retain its "traditional authority" to determine the scope and magnitude of investment of Federal funds in the construction of highways. The amendment was adopted without objection.

Maritime Administration. Senator Daniel B. Brewster introduced a series of amendments to the Bill which were designated to make the Maritime Administration independent of the Secretary of Transportation. Speaking as the Senator charged with the duty to facilitate the passage of the Bill, Senator Jackson refused to consent to the amendments offered. He stated that the amendments would place the Maritime Administrator in a special category having far more power than the heads of the other administrations because decisions taken by him in quasi-judicial proceedings would be made administratively final, with further resort only to the courts rather than to the Secretary. This authority would make the Administrator in fact independent of the Secretary. When Senator Brewster offered to modify his amendments to give the Maritime Administrator the same powers as the other Administrators and otherwise to correspond with the wishes of Senator Jackson, the latter indicated that he would accept the amendments subject to examination to determine that they were actually technical in nature. The Senate accepted the amendments.

Supergrades. Senator A.S. Mike Monroney introduced amendments relating to the ranks and grades of personnel in the Department. The purpose of his first amendment was to strike from the Bill language providing extra super-



grade positions for the Department. His reason for this action was that his Committee (Post Office and Civil Service) had already sponsored legislation providing supergrades for the year 1967, an arrangement he did not want upset. He also objected to the provisions in the Bill concerning ranking of the Assistant Secretaries in the Department. He indicated that the Assistant Secretaries should receive compensation in Level IV rather than Level III, and that the Assistant Secretary for Administration should be compensated in Level V rather than in Level IV. This adjustment would bring the compensation of the Assistant Secretaries into line with that of the corresponding officers in other Government Departments. The amendments were passed with no objection.

Having passed the amendments just noted, the Senate then voted on the Committee's substitute bill in the form of an amendment. The amendment was adopted and then substituted for the original Bill S. 3010 and consideration of S. 3010 was indefinitely postponed. Senator Jackson then moved that everything following the enacting clause of HR 15963 be struck out and that the text of S. 3010 as amended be substituted for it. Since the Bill then carried the House designation number, the final vote was on the adoption of HR 15963; it was carried with a majority of 64 to 2 with 34 Senators not voting.

77

---

---

---

HR 15963 in Conference

Administration Analysis. As passed by the Senate on September 29, HR 15963 could have established a Department of Transportation quite different in several important respects from the Department desired by the Administration. According to a memorandum prepared by the Bureau of the Budget, Section 7 still contained two unacceptable features: 1) it required the standards and criteria developed by the Secretary for the investment of Federal funds in transportation facilities to be approved by the Congress rather than by the President, and 2) it would write into law specific detailed procedures for computing navigation benefits on inland waterway projects.

On the first objection, the Bureau noted that Congress should not be involved in the details of administration of legislation but should cast statutory policy in broad and general terms so that rules and procedures could be readily changed to adapt to new conditions. Congress similarly should not be involved in accepting or rejecting specific waterway projects, especially since it would be bound only by whatever criteria it should consider appropriate. The Bureau also believed that since the Bill was concerned with the organization of the executive branch of the Government, it should not be a vehicle for changing transportation policy or for limiting authority that the executive branch already had.

Further, though all parties had agreed in recent years that the appropriate criterion for determining the value of navigation projects was the cost of shipping based on actual rates, the Senate version tended to run counter to that principle. Most important, however, was an oversight in the Senate Bill which first exempted water resource projects from the purview of the Secretary and then specified detailed criteria for the evaluation of waterways projects.<sup>78</sup>

An analysis of the Brewster amendments prepared at the same time noted that Senator Brewster's ten originally proposed amendments all related to the effort to make the decisions of the Maritime Administrator administratively final, and in effect to make the Maritime Administrator statutorily independent of the Secretary with respect to functions, powers, and duties of the Secretary relating to maritime affairs.

Since in the course of the Senate debate, Amendments 5 and 6, basic to the others of Brewster's ten, had been modified to make the Maritime Administrator less independent without altering the other eight correspondingly, there were inconsistencies in the Bill passed by the Senate.<sup>79</sup> 7

---

---

---

---

---

The Conference Report

Since the House and the Senate had individually passed separate versions of the Administration proposal for a Department of Transportation, both Houses appointed conferees to arrive at a compromise bill acceptable to both. For the House of Representatives, members of the Conference included: Messers. Holifield, Brooks, Hardy, Erlenborn, Brown; Senators included McClellan, Jackson, Ribicoff, Harris, and Mundt.

The Conference adopted still another version of the Bill. Below are indicated the changes from the House version:

1. Declaration of purpose. The Conference adopted the Senate version of the declaration of purpose that included the paragraph concerning the preservation of natural beauty.

2. Establishment of the Department. This section conformed fairly closely to the Senate version of the Bill. The section omitted a provision for the Federal Maritime Administration, and included the provision that the Administrators and the Commandant of the Coast Guard report directly to the Secretary. The Act included provisions for the other modal administrations and for a Deputy Administrator of the FAA; the conference version specifically provided that the incumbent Administrator of the FAA could retain his position.

The conference version transferred the aviation investigation functions of the Civil Aeronautics Board to the NTSB. The Secretary was authorized to carry out the provisions of both the National Traffic Safety and Motor Vehicle Safety Acts through

one National Safety Traffic Bureau with a single director.

3. General Provisions. The conference substitute amendment provided that the Secretary should consult and cooperate with the Secretary of Labor in gathering information on the status of the industry's labor-management problems and in promoting labor harmony in the industry. Provisions were drafted to preserve all the rights of judicial review over all decisions in the Department that had existed previously in similar questions. A Senate amendment to section 4(e) required the Secretary to present to the ICC information concerning the fitness in safety matters of applicants for operating authority; with some clarification, that provision was retained. The provision in section 4(f) that the Secretary was prohibited from approving programs that would utilize public park lands was retained. A provision was included to require the Secretary to collaborate with the Secretary of Housing and Urban Development in planning for local projects and following a period of one year to submit recommendations for the logical and efficient location of urban mass transit functions in the executive branch.

4. National Transportation Safety Board. The Conference Committee adopted the Senate's version of the powers and duties of the National Transportation Safety Board. Specifically these included the aircraft accident investigation function of the CAB, and authority for the Board to initiate or conduct rail, highway, and pipeline accident investigations. The Board was forbidden to delegate certain of its

appeals and determination functions.

5. Transfers to the Department. The Conference version of the Bill deleted all reference to Merchant Marine and maritime functions. It transferred to the Secretary all functions of the FAA, and added, "including the development and construction of a civil supersonic aircraft." The Aviation Administrator's decisions were designated administratively final in matters relating to aviation safety, with appeals to the NTSB or to the Courts.

A further section transferred to the NTSB all of the CAB safety functions transferred to the Secretary and provided that decisions of the Board would be administratively final.

With respect to railroad and pipeline safety and motor carrier safety, decisions of the Administrators of Federal Railroad and Federal Highway Administrations were designated final in those proceedings in which notice and hearings are required by law. Provisions of the Administrative Procedures Act were made specifically applicable to proceedings of the Department and its subordinate units. An amendment transferred to the Department the operation of the Alaska Railroad.

6. Transportation investment standards. The Conference committee accepted the Senate version of Section 7 discussed above.

7. Amendments to other laws. The Conference substitute amendment retained language transferring the St. Lawrence Seaway Development Corporation to the new Department, making the Secretary a member of the Marine Resources and Development Engineering Development Board and transferring to him the authority of the Secretary of Commerce over transportation in the Kansas City area according to the Missouri-Kansas Compact. 80

On October 13, 1966, Senator Jackson , acting for Senate members of the Conference Committee submitted the report of the Conference Committee to the Senate. In presenting the report, Senator Jackson briefly emphasized aspects of it that he considered important. Most significantly, he reported, the Conference adopted the Senate position on all points at issue except for the status of the Maritime Administration. He indicated that adopting the report would insure several important gains for the transportation industry. For instance, the structure of the Department and the strengthening of the NTSB would insure that safety matters would be placed in the hands of trained experts, leaving the Secretary free to devote his efforts to other responsibilities. Equally important, the Senate was able to persuade the House conferees to include Section 7 in the Bill, so that the Senate's control of transportation investment would be maintained. \_\_\_\_\_

It was the committee's intent "that the resulting calculation of navigation benefits will be essentially those historically employed by the Corps of Engineers prior to the development of new procedures adopted in October 1960..."

According to Senator Jackson, the House conferees were adamant on one point: the maritime function must not be included in the new Department. Without the Senate concurrence



in that House position, there could have been no Department; for this reason the Senate members had reluctantly concurred with the House view, Mr. Jackson said. He was careful to point out, however, that even without including the Maritime Administration, the Department would have important- and perhaps even decisive-influence in maritime affairs, first because it would include the Coast Guard's maritime safety functions, and second because "the Secretary is granted substantive authority to exercise leadership under the direction of the President in transportation matters..."

Senator Magnuson credited Senator Jackson with responsibility for two desirable amendments to the Bill: first, the statement that it was national policy to preserve the natural beauty of the countryside and the public parks, and second, the arrangement for the Secretary to cooperate with the Secretary of HUD in programs for urban areas. The Senator also stated his regret that maritime matters had been excluded from the Department and his conviction that "it cannot work to the advantage of our nation's merchant marine to have the location of the administration of maritime matters left in limbo." He promised that it was the intention of the Committee on Commerce later to hold hearings to try again to determine a suitable location of the maritime interests of the Government. The Senator also indicated that his Committee on Commerce would continue to exercise jurisdiction over the Department's activities as it had over most of the activities when they were responsibilities of other agencies. He emphasized again the potential



gain in safety from the activities of the Department as well as the importance of the Secretary's function to develop policy recommendations in the area of transportation for the President and the Congress.

Senator Brewster moved the adoption of the Conference Report which was thereupon agreed to.<sup>81</sup>

---

---

---

### The Conference Report in the House

The House of Representatives also considered the Conference Report on October 13, after it had been called up by Representative Holifield. He then provided an explanation of some of the changes made in the revised Bill. The Bill which he was re-introducing, said Mr. Holifield, did not place the Maritime Administration in the Department of Transportation as the Senate had desired because the House conferees would not yield on that point. In exchange, the Senate had insisted that Section 7 on Transportation Investment Standards be included in the Bill, even though it had been dropped by the House during its consideration of the Bill. Another compromise made during the Conference placed a limitation on the finality of decisions of the Highway and Railway Administrators; their decisions would be administratively final only in those matters involving notice and hearings required by statute.

Mr. Holifield explained in detail the duties and powers of the Secretary in order to offset some misconceptions that had arisen concerning the significance of these duties. His primary function, according to Holifield, was to plan and develop a national transportation policy and coordinate the modes of transportation, but when he had developed such a policy he must get the approval of the appropriate committees of Congress before putting it into effect.

The issue most discussed on this occasion was that of standards and criteria for approval of transportation investment projects. Representative Robert E. Jones of Alabama re-emphasized that "Congress will determine the criteria of economic benefit by which each project will be analyzed." In that way, Congress could be certain that it would control all transportation investments, but especially water resources investments.

John C.

Congressman Kluczynski emphasized the change the Conference had made in Section 4(f) of the Bill. Instead of providing that the Secretary could not approve the use of public parkland, recreation areas, waterfowl or wildlife refuges, or historic sites for transportation projects, "unless there is no feasible alternative," the Bill now said, "unless there is no feasible and prudent alternative to the use of such land." He was certain, said the Congressman, that the preservation of the parks and open spaces was "of utmost importance and urgency, but not to the total exclusion of other considerations." Attempting to define a feasible alternative as the earlier version would have required would be "virtually impossible" and would have resulted in "hampering and unnecessarily delaying transportation progress." With the inclusion of the word "prudent," the Section became workable, according to Mr. Kluczynski. His view was shared by Dan Congressman Rostenkowski who said that there could be circumstances which would make desirable the use of parklands for highways, "for instance, if it became necessary to chose between preserving a wildlife refuge or saving human lives by highway improvement." And if the Secretary should decide that public parkland should be used for a highway, "all possible planning must be done to minimize harm to the land."

The House voted to accept the Conference Report on H.R. 15963. That action cleared the legislation for the action of the President. 82

President Johnson signed H.R. 15963 on October 15, 1966 at the White House in the presence of numerous members of Congress, members of the Cabinet, Mayors, and other interested citizens. The law carries the designation P. L. 89-670.

The President's remarks on that occasion outlined the problems that the Department was designed to tackle and called attention to the resources that the Department would have available to apply to the problems. He observed that transportation is the biggest single industry in the country, and that although the American transportation facilities were excellent, they were no longer adequate to the needs of the country since the demand for transportation was likely to double within twenty years. Because the problem would probably grow worse, the President said, "Our lifeline is tangled." He said that he would appoint as Secretary a strong man to be his principal advisor and "strong-right arm" in all transportation matters. He hoped that the new Secretary would be the best qualified man to give leadership to the country in transportation. He expressed appreciation for the efforts of the members of Congress and private citizens who over the years had advocated creation of the Department. <sup>83</sup>

Comparison of P.L. 89-670 with the President's Proposal

PL 89-670 established a Department of Transportation that was considerably different from the institution envisaged in the Bill submitted by the President. Listed below are the <sup>more important</sup> sections that were altered and the sections added to the President's Bill:

Section 2 (b) (2) of PL 89-670 was not included in the President's bill. It provides that it shall be the national policy to preserve the natural beauty of the countryside and the public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

Section 3 (e) (1 through 4) includes the provisions added by the Congress concerning the organization of parallel Administrations for Highways, Railroads and Aviation, each to be headed by an Administrator to be appointed by the President by and with the advice and consent of the Senate. Qualifications of the Administrator and Deputy Administrator of the FAA are specified, with the provision that the FAA Administrator then in office, General McKee, could be appointed to the same office under the new law. The law specified that the functions, powers and duties of the several Administrators might not be transferred elsewhere in the Department without having a reorganization plan approved by Congress.

Section 3 (f) (1 through 4) provided that the functions laid down in the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Act of 1966 might be assigned to the same Director and Bureau. The Office of Federal Highway Administrator was to be continued in the new Department under the title, Director of Public Roads.

Section 4 (a) in specifying the duties of the Secretary required that he "consult and cooperate with the Secretary of Labor in gathering information

regarding the status of labor-management contracts and other labor-management problems and in promoting industrial harmony and stable employment conditions in all modes of transportation" and added noise abatement to the fields in which he was responsible for research and development. He was further to consult with heads of other government agencies and encourage them to consult with each other about their own transportation needs and services to foster a coordinated system in the government, and similarly to encourage cooperation among state and local governments, industry, labor, the carriers and other interested parties.

Section 4 (b) (2) specified that nothing in the act was to be construed as authorizing any change in a transportation policy or any investment standards or criteria without appropriate action by Congress. Subsection (3) specified that the Secretary must give full consideration to the need for operational continuity of functions transferred to him, the need for effectiveness and safety, and the national defense.

Section 4 (c) specified that the actions of the Secretary or the NTSB would be subject to judicial review to the same extent as would the actions of predecessor agencies.

Section 4 (e) spelled out a duty of the Secretary to investigate the safety compliance records of applicants for operating authority from the ICC, to furnish the results of such investigation to the Commission, and, if necessary, to intervene and present the information during the Commission hearing.

Section 4 (f) instructed the Secretary to cooperate with the Secretaries of Interior, Agriculture, and Housing and Urban Development in developing

transportation plans and programs for maintaining natural beauty and prohibited the Secretary from approving any plan or program that would require the use of lands for a public park, recreation area or historic site (with some exceptions).

Section 4 (g) directed the Secretary to collaborate with the Secretary of HUD in planning for local transportation projects, and after one year to submit a plan to Congress recommending the appropriate location for the Urban Mass Transit functions in the Executive Branch.

Section 5 was entirely new, except for parts (a) and (b) that established the NTSB. The new sections outline the functions and duties of the NTSB, specifying that it shall exercise the functions relating to investigation of aircraft accidents that the Act transferred to the Secretary. The Board is also required to make public all reports and recommendations to the Secretary or an Administrator or any request to the Secretary or an Administrator to take action.

Section 5 (f) and (g) specified that the Board should be entirely independent of the Department in the exercise of its functions, and that it must independently report to the Congress each year.

Section 5 (m) permitted the Board to delegate any of its functions to any officer of the Department, except that it may not delegate its appellate functions or its duty to determine the cause of accidents.

Section 5 (o) authorized the Board to utilize the personnel or facilities of any other part of the Department or any other government agency, whether State, municipal or local, if it could be arranged on a re-imbursable basis.



Section 6 (c) discussing transfers to the Department, specified that in general the functions of the Federal Aviation Agency would be transferred to the Secretary, including the development and construction of a civil supersonic aircraft. FAA functions relating to aviation safety were specifically transferred to the Federal Aviation Administrator. The law also provided that the functions transferred from the Civil Aeronautics Board, the ICC, the Department of the Army and others would be transferred to the Secretary. Appeals taken from decisions of the Administrators of these functions would not, however, be taken to the Secretary, but to the NTSB, or to the courts, as appropriate.

The provisions of the Administrative Procedures Act were specifically stated to apply to proceedings in the Department or any of its subunits.

Administration of the Alaska Railroad was transferred to the Department. Section 7 on transportation investment standards was materially altered during the Congressional treatment of the legislation. The standards and criteria which the Secretary is to develop will not apply to specified classes of projects, two of which are water resource projects and grant-in-aid projects authorized by law. The section also includes the formula for calculating the navigation benefits from a water resources project. The Water Resources Council was expanded to include the Secretary of Transportation.

Section 9 (j) included provisions concerning the working capital fund; the innovation in the section was the proviso that such funds should be reimbursed in advance by the Administrations so that such services as printing, and various types of procurement could proceed as soon as the Department was in operation.

1. C. J. Zwick to Joseph Califano, memorandum, December 24, 1965, BOB file T9-10.
2. C. J. Zwick to Joseph Califano, enclosure to memorandum, December 24, 1965, BOB file T9-10.
3. "Department of Transportation", paper, December 27, 1967, BOB file T9-10.
4. Members included: FAA-Alan L. Dean, Associate Administrator for Administration and Nathaniel Goodrich, General Counsel; CAB-Robert Murphy, Vice Chairman and Joseph Goldman, General Counsel; ICC-Ernest Weiss, Assistant Managing Director; Corps of Engineers-Alfred B. Fitt, General Counsel of the Department of the Army; Coast Guard-Rear Admiral Mark A. Whalen, Special Assistant to the Chief of Staff and Commander G. Patrick Bursley, Aide to the Assistant Secretary of the Treasury; Department of Commerce-M. Cecil Mackey, Director of the Office of Transportation Policy Development and Daniel O'Keefe, Assistant General Counsel for Transportation; Bureau of the Budget-Charles J. Zwick, Assistant Director; Harold Seidman, Assistant Director for Management and Organization, and Arthur Kallen, Senior Management Analyst.
5. "A Bill", Department of Commerce draft, January 21, 1966, DOT file TAD-1.
6. "The Legislative Process and the Department of Transportation Bill", unidentified paper in BOB file T9-10, November, 1966. (Internal evidence suggests that Arthur Kallen drafted this document.)
7. Ibid.
8. A. B. Fitt to C. J. Zwick, memorandum, January 25, 1966.
9. "Policy and Task Force Members on Department of Transportation", draft notes, no date, DOT Task Force file.
10. "Meeting of Task Force on Department of Transportation", draft notes with enclosed agenda, January 28, 1966, DOT Task Force file.
11. Alan L. Dean to William F. McKee, memorandum, January 29, 1966, DOT Task Force file.
12. Alan L. Dean, "Discussion with Macy", notes, DOT Task Force file.
13. S. A. Cain to Charles Schultze, letter, February 4, 1966, DOT Task Force file.
14. Lawrence F. O'Brien to Charles Schultze, letter, February 4, 1966, DOT Task Force file.

15. Owen J. Malone to Philip S. Hughes, letter, February 4, 1966, DOT Task Force file.
16. Robert E. Giles to Philip S. Hughes, letter, February 4, 1966, DOT Task Force file.
17. Nathaniel H. Goodrich to senior officers of FAA, memorandum with draft letter enclosure, February 3, 1966.
18. John W. Macy, Jr. to Philip S. Hughes, letter, February 3, 1966.
19. Interstate Commerce Commission to Philip S. Hughes, unsigned draft letter, February 4, 1966.
20. Harold R. Sanderson to Charles Schultze, letter, February 7, 1966, DOT Task Force file.
21. Herbert E. Hoffman to Gordon M. Murray, memorandum with notes enclosed, February 7, 1966.
22. E. J. Roland to Fred B. Smith, memorandum, February 9, 1966.
23. "Notes on Meeting with John Macy", unsigned memorandum, February 5, 1968, DOT Task Force file.
24. "Draft Bill", February 7, 1966, DOT Task Force file.
25. Daniel O'Keefe to C. J. Zwick, memorandum, February 14, 1966; "Draft Bill", February 14, 1966.
26. Alan L. Dean, memorandum of meeting, February 14, 1966, DOT Task Force file.
27. Daniel O'Keefe to C. J. Zwick, memoranda, February 14 and February 15, 1966, DOT Task Force file.
28. Daniel O'Keefe to C. J. Zwick, memorandum, February 15, 1966, DOT Task Force file
29. Daniel O'Keefe to C. J. Zwick, memorandum, February 16, 1966, DOT Task Force file.
30. "Task Force on the Department of Transportation: Subcommittee on Organization and Management", memorandum, revised January 28, 1966.
31. "Minutes of Meeting, Subcommittee on Organization and Management", February 17, 1966, DOT Task Force file.

32. Daniel O'Keefe to C. J. Zwick, memorandum, February 24, 1966, DOT.
33. Establish a Department of Transportation, Hearings before the Committee on Government Operations, United States Senate, March 29 and 30, 1966, Government Printing Office, Washington, Part 1. The President's message is on pp. 37-50.
34. Ibid. pp. 51-57.
35. Langhorne Bond, interview by Walter Cronin, August 20, 1968.
36. Establish a Department of Transportation, op. cit., pp. 78-93.
37. Ibid., pp. 93-108.
38. Ibid., pp. 108-116.
39. Ibid., pp. 116-131.
40. Ibid., pp. 131-139.
41. Memorandum by Alan S. Boyd of conversation with Senator Monroney, April 7, 1966.
42. Senate Committee on Government Operations, Staff Memorandum No. 80-2-30 June 24, 1966 (with 9 exhibits) Mackey file.
43. Creating a Department of Transportation, Hearings before a Subcommittee on Government Operations, United States House of Representatives, April 6, 7, 25 and 26, 1966, Government Printing Office, Washington, Part 1, pp. 50-51.
44. Ibid., pp. 50-61.
45. Ibid., pp. 61-101.
46. Ibid., pp. 127-132.
47. Ibid., pp. 132-158.
48. Ibid., pp. 138-166.
49. Ibid., pp. 167-180.
50. Ibid., pp. 180-190.
51. Ibid., pp. 191-207.
52. Ibid., pp. 208-240.
53. Ibid., pp. 240-261.

54. Ibid, pp. 261-284.
55. Ibid, pp. 284-292.
56. Ibid, Part 2, pp. 415-453.
57. Ibid, pp. 456-461.
58. Ibid, pp. 461-481.
59. Ibid, pp. 481-507.
60. Ibid, pp. 507-518.
61. Ibid, pp. 519-546.
62. Ibid, pp. 546-562.
63. Ibid, pp. 563-580.
64. Ibid, pp. 580-597.
65. Ibid, pp. 597-607.
66. Ibid, pp. 607-619.
67. Ibid, pp. 619-654.
68. Ibid, pp. 654-666.
69. Ibid, pp. 666-716.
70. Ibid, pp. 716-758.
71. Department of Transportation Act, 89th Congress, 2nd Session, House of Representatives, Report No. 1701, July 15, 1966, pp. 1-22.
72. H. Res. 935, 89th Congress, 2nd Session, July 27, 1966; Consideration of H. R. 15963, 89th Congress, 2nd Session, Report No. 1774, July 27, 1966. See also Larry Redmond to Paul Southwick, memorandum, July 27, 1966.
73. Republican Policy Committee Statement on Department of Transportation, press release, August 10, 1966.
74. Congressional Record, August 22, 1966, pp. 19296 ff.
75. Amendments to S. 3010 which Have Been Tentatively Agreed to or Are under Committee Consideration, Senate Committee on Government Operations, Staff Memorandum No. 89-2-35, August 11, 1966.

76. Congressional Record, August 24, 1966, pp. 16509-16533; August 29, 1966, pp. 20053-20072; August 30, 1966, pp. 20342-20384.
77. Congressional Record, September 29, 1966, pp. 23417-23442.
78. Section 7 of S. 3010, unsigned memorandum, presumably prepared in the Bureau of the Budget.
79. Comments on Amendments Offered by Senator Brewster and Accepted in Senate Version of Department of Transportation Bill, DOT Task Force File.
80. Department of Transportation Act, Conference Report, 89th Congress, 2nd Session, House of Representatives, Report No. 2236, October 12, 1966.
81. Congressional Record, October 13, 1966, pp. 25506-25510.
82. Congressional Record, October 13, 1966, pp. 25588-25592.
83. Remarks of the President upon Signing a Bill Creating a Department of Transportation, White House press release, October 15, 1966.

COMMENTS ON AMENDMENTS OFFERED BY SENATOR BREWSTER  
AND ACCEPTED IN SENATE VERSION OF DEPARTMENT OF  
TRANSPORTATION BILL

In general, we have the following comments to make with regard to the total impact of the amendments. First, the ten originally proposed amendments were clearly drafted to implement the concept of amendments numbered 5 and 6. Amendments 5 and 6 were modified by Senator Jackson and Senator Brewster on the floor. As originally proposed, the effect of amendments 5 and 6 would be to make the decisions of the Federal Maritime Administrator with respect to all of the Maritime functions in section 6(a) (5)(A) administratively final and would have made the Administrator, with respect to all of those functions, statutorily independent of the Secretary and all other officers of the Department. The amendment agreed upon by Senators Jackson and Brewster, and ultimately by the Senate, would make the Administrator's decisions administratively final only on matters which involve notice and hearings. It did not provide that the Administrator would be independent of the Secretary and other officers of the Department in other matters.

Since the original proposal by Senator Brewster was rejected and an amendment was adopted which would place the Maritime Administrator in a position more similar to the positions of the other Administrators in the Department, many of the ten amendments no longer appear appropriate.

Second, these amendments were accepted by Senator Jackson during the debate with the understanding that they were "of a technical nature and not of a substantive nature." In our view, however, many of the amendments are essentially substantive and affect more than the maritime sections of the bill. The total impact of the amendments accepted by the Senate depart from the original concept of the Senate Government Operations Committee proposal. Read together, they would, as a practical matter, reduce the effective administration of the Department by the Secretary and would create in the Administrators more autonomy than was intended by the Committee. In addition, some of the remaining amendments were designed to supplement amendments 5 and 6, as originally offered. Although amendments 5 and 6 were subsequently modified on the floor, the other supporting amendments remained unchanged, although they are no longer appropriate.

Specific comments on each amendment follow. References are to S. 3010, as reported September 27, 1966. A list of the amendments is attached.

Amendment No. 1, page 36, line 25. This provision relates to the establishment in the Department of the four modal Administrations. The Committee-reported version provided that the Secretary would establish in the Department the four modal Administrations. The amendment would create the four Administrations by legislation as opposed to imposing a



statutory duty on the Secretary to establish the modal Administrations. As a practical matter, the change tends to strengthen legislative history supporting the position of the modal Administrators as being autonomous from the Secretary.

Amendment No. 2, page 37, line 24 through page 38, lines 1 and 3. The effect of the amendment would be to delete the provision requiring the Administrators and the Commandant of the Coast Guard to report directly to the Secretary, as well as to reverse the order and downgrade the status of the functions which the Secretary might delegate to the Administrators. A suggested modification would be as follows:

"In addition to such functions, powers, and duties as are specified in this Act to be carried out by the Administrators, the Administrators and the Commandant of the Coast shall carry out such additional functions, powers, and duties as the Secretary may prescribe. The Administrators and the Commandant of the Coast Guard shall report directly to the Secretary."

Amendment No. 3. Page 41, line 21. This amendment relates to the judicial review of actions taken by the Secretary, and the various Administrators and Boards in the Department. The intent of the provision was to preserve review by the courts to the same extent (no more - no less) than is currently the situation under existing law. The addition of the language in the Senate amendment would cast doubt on that intent and imply that rights to court appeal not in current law were intended by this Act. Further, the provision appears to have been inserted because of the "independent" status accorded the Maritime Administrator by the original version of amendments 5 and 6.

Amendment No. 4. Page 42, line 7. This amendment relates to powers and authorities in the Secretary, and the various Administrators and Boards. The same comments as in No. 3 above, are applicable to this section.

Amendment No. 7. Page 54, line 19. We have no objection to this amendment.

Amendment No. 8. Page 66, line 22. We have no objection to the substance of this amendment. However, we suggest that the provision in H.R. 15963, section 4(c), page 7, lines 4 through 8, and section 6(h), page 22, line 22 through page 23, line 3, is a more appropriate mechanism for accomplishing the desired result. The essential difference is that, under the House provision, there would be less risk that argument could be raised that the DOT Act enlarges upon functions which, under current law, would be subject to the Administrative Procedure Act. The intent of the provision is to preserve the existing law.

Amendment No. 9. Page 67, line 16. We have no objection to this provision.

Amendment No. 10. Page 75, lines 14 through 17. This provision would place a limit upon the authority of the Secretary to delegate functions within the Department. The concept of section 9(f)(1), (2), and (3) is to provide that the Secretary may delegate those functions which are transferred to him to his respective officials in the Department. In addition, the Administrators are given the authority to delegate those functions retransferred to them within their own Administrations. The amendment would place a limit on the Secretary's authority without placing a limit upon the Administrator's authority. The effect of the amendment, as a practical matter, would be to downgrade the status of the Secretary, vis-a-vis the Administrators.

Substitute Amendment No. 6. The effect of the amendment agreed to by the Senate which would require administrative finality in Maritime Administrator decisions involving hearing and notice, is objectionable since the only other provisions in the bill making Administrator's decisions final related to safety. The Maritime Administration does not have any primary functions relating to safety. Its functions are promotional and involve policy decisions. Consequently, we do not favor the amendment accepted by the Senate in this regard.

Furthermore, the words "which involve notice and hearings" could lead to extensive litigation since the language does not make clear what we understand the intent to be; namely to make the Maritime Administrator's decisions final in matters where a statutory hearing is required as opposed to those situations where the Administrator may choose to hold a hearing in his discretion. If the provision is to be retained, we suggest, in order to help avoid unnecessary law suits, and to insure, as in the rest of the Act, that no new rights are inadvertently created, that the language be amended to read as follows:

"Decisions of the Federal Maritime Administrator made pursuant to the exercise of the functions, powers, and duties enumerated in subparagraph (A) of paragraph (5) of this subsection which by statute require notice and hearings, (but not including the functions transferred to the Maritime Board in subparagraphs (C) and (D) of this subsection), shall be taken directly to the courts."

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

STAFF MEMORANDUM NO. 89-2-35

August 11, 1966

SUBJECT: Amendments to S. 3010 which have been tentatively agreed to or are under committee consideration.

Following several mark-up sessions, tentative agreement was reached by committee Members with respect to a number of amendments. Thereafter, at the direction of Senator Jackson, several additional proposed amendments were developed by the staff, working with representatives of the staff of the Senate Committee on Commerce and representatives of the Administration.

This memorandum will discuss (a) amendments tentatively agreed to; (b) additional amendments developed by the staff at Senator Jackson's direction; and (c) additional amendments proposed by committee members or others.

Amendments Agreed to Tentatively

1. Policy and Purpose (Sections 2 and 4)

(a) In Section 2, language was added requiring the Secretary of Transportation to make recommendations concerning national transportation policies and programs to the President and the Congress. As introduced, the bill was silent with respect to the recipient of these recommendations. (Sec. 2, page 2, lines 18-19). This, and similar language in section 4(a) were added in order to clarify the respective roles of the Secretary of Transportation and the Congress, relative to national transportation policy.

(b) Beautification: An additional paragraph was added to section 2 declaring it to be National policy, that in carrying out the provisions of this Act, special effort be made to preserve the national beauty of the countryside and public park and recreational lands, wildlife and waterfowl refuges, and historical sites. In addition, the Secretary of Transportation is required to cooperate and consult with the Secretaries of the Interior, Health, Education, and Welfare, Agriculture and with the States in developing all transportation plans and programs that carry out such policies; and, after the date of this Act, the Secretary is not permitted to approve any plan or project requiring the use of land from a public park, recreational area, wildlife and waterfowl refuges, or historical site unless there is no feasible alternative to the use of such land and such plans include all possible planning to minimize harm to such area. (Sec. 2, page 2, lines 23-25, page 3, lines 1-14).

(c) Section 4(a) details the specific duties and areas of responsibility of the Secretary with respect to various transportation policies and programs, and requires him to develop such policies and programs and make recommendations

for their implementation. Existing language is silent concerning the recipient of these recommendations.

Language was added which requires the Secretary to provide leadership in the development of such policies and programs; to make recommendations with respect thereto to the President and the Congress; and adding noise abatement, with particular reference to aircraft noise, to his areas of responsibility. (Sec. 4(a), page 6, lines 2,4,11-17).

Additional language was added requiring the Secretary to consult with the heads of other Federal departments and agencies engaged in the procurement of transportation or the operation of their own transportation services to encourage them to establish and observe policies consistent with the maintenance of a coordinated transportation system operated by private enterprise. (Sec. 4(a), page 6, lines 11-17).

(d) A new subsection 4(b)(1) has been added which requires that the Secretary, in carrying out his duties and responsibilities under this Act, be governed by all applicable statutes, including the policy standards set forth in all of the principal transportation statutes, each of which is specifically referred to. This was added in order to eliminate any doubt concerning the effect of S. 3010 on existing transportation law, to clarify the will of the Congress with respect to such law, and to make certain that the Secretary would be required to perform his duties within the framework of, and subject to, all of the national transportation policies already enacted by the Congress. (Sec. 4(b)(1), pages 6-7, lines 24-25, 1-18).

A new subsection 4(b)(2) has been added which provides that nothing in the Act shall be construed to authorize the adoption, revision or implementation of any transportation policy or investment standards or criteria contrary to or inconsistent with any Act of Congress. This was added as a further safeguard against possible action by the Secretary which might contravene policies and programs provided for in existing law. (Sec. 4(b)(2), page 7, lines 19-23).

## 2. National Transportation Safety Board (Section 5)

Language was adopted requiring that the National Transportation Safety Board, except as otherwise authorized by statute, make public all reports, orders, decisions, rules, and regulations that it issues as well as every recommendation it makes to the Secretary, every special study it conducts and every action of the Board requiring the Secretary to take action under Section 5.

The purpose of this amendment is to insure that all citizens will have full access to governmental actions which affect them. (Sec. 5(e), page 8, lines 15-24).



3. Car Service (Sections 6 and 8)

S. 3010, as introduced, provided for the transfer from the Interstate Commerce Commission to the Secretary of Transportation of all car service functions except those relating to per diem and demurrage charges. In view of strong sentiment that these functions be administered by a single agency and that they are regulatory in nature, the language in sections 6(e) and 8(d), relating to this proposed transfer, was deleted, leaving all of these functions with the ICC where they are under existing law. (Sec. 6(e), page 28, lines 22-25, page 29, lines 1-2 and 4-6; Sec. 8(d), page 25, line 16).

4. Transportation Investment Standards (Section 7)

The committee adopted an amendment to subsection 7(a) which (1) added water resource projects as a fifth exemption from the Secretary's authority to establish standards and criteria for the economic evaluation of Federal transportation investments; (2) provided for approval by the Congress, instead of by the President, of standards and criteria developed by the Secretary, prior to their promulgation; (3) provided for the development by the Water Resources Council of standards and criteria for the economic evaluation of water resource projects; (4) established a definition of primary direct navigation benefits of water resources projects which restores the concept followed by the Corps of Engineers prior to November 1964 when the Bureau of the Budget issued new criteria for the evaluation of such projects; and (5) includes the Secretary of Transportation as a member of the Water Resources Council on matters pertaining to navigation features of water resource projects.

Amendments Developed by the Staff at the Direction of Senator Jackson

1. Operational Continuity and Integrity of Transferred Agencies  
(Sections 3 and 6)

In general, a concept has been developed under which (1) all functions, powers and duties, now vested in the transferred agencies, are transferred to the Secretary of Transportation; (2) the Secretary is directed to establish four modal operating administrations (Highway, Railroad, Maritime and Aviation), each headed by an Administrator appointed by the President, subject to Senate confirmation, and, in the case of aviation, the present Presidentially-appointed Deputy Administrator is retained; (3) all of the statutory functions, powers and duties transferred to the Secretary pertaining to safety are assigned by statute to the modal administrators who would report directly to the Secretary; and (4) the decisions of the modal Administrators regarding safety would be made administratively final and not subject to Secretarial review, but appealable directly to the National Transportation Safety Board, the courts, or both.

Thus, with respect to aviation safety, the functions, powers and duties transferred to the Department from the Federal Aviation Agency

pertaining to aviation safety would by law be carried out by the Federal Aviation Administrator whose decisions as to safety would be administratively final. Appeal from his decisions would be directly to the Safety Board or the Courts, as appropriate.

The same principles would apply to the Railroad and Highway Administrators. All of the powers, duties and functions of the Secretary of Commerce pertaining to maritime matters, now handled by the Maritime Administration, would be transferred to the Secretary of Transportation. However, the Federal Maritime Administrator would by law carry out and exercise those of the transferred functions which are quasi-judicial in nature and require the holding of hearings, involving primarily maritime subsidy; and the decisions of the Maritime Administrator in the exercise of these functions would be administratively final, subject to appeals to the Courts, as authorized by law or this Act.

With further reference to aviation safety, (1) existing technical qualifications of the Administrator of the Federal Aviation Agency would be continued, as well as those of the Deputy Administrator; and (2) the functions, powers and duties transferred to the Department from the Civil Aeronautics Board pertaining to aircraft accident investigation, determination of probable cause and certificate appeals would be exercised by the National Transportation Safety Board which would be independent of the Secretary and other units in the Department.

Amendments relative to the establishment of modal administrations are contained in subsection 3(e)(1), pages 4 and 5; amendments relative to the qualifications of the Administrator and Deputy Administrator of the Federal Aviation Agency are contained in subsection 3(e)(2), page 5; general provisions relative to the powers and duties of the modal Administrators are contained in subsection 3(e)(3), page 5.

Language pertaining to the exclusive exercise of various specified powers and functions by the modal Administrators is contained in section 6, on pages 24-25 (maritime); 25-27 (aviation); and 29-30 (railroads and highways).

Subsection 3(e)(4) prohibits the transfer elsewhere in the Department of any of the functions, powers and duties specified in the Act to be carried out by each modal Administrator, unless specifically provided for by reorganization plan or by statute. (page 5, lines 15-20).

## 2. Appeals Provision (Section 4)

Subsection 4(j) of S. 3010, as introduced would make orders and actions of the Secretary and the National Transportation Safety Board in the exercise of functions, powers and duties transferred under this Act subject to judicial review to the same extent and in the same manner as if such orders and actions were issued and taken by the agency from which the functions were transferred.

An amendment has been added to include judicial review from orders and actions of modal Administrators taken pursuant to the functions, powers and duties specifically assigned by this Act.

3. National Transportation Safety Board (Section 5)

Section 5 of S. 3010, as introduced, establishes a five-man board, appointed by the President, subject to Senate confirmation, located within the Department, but independent of the Secretary. Section 5, in its original form, provides that the Board shall exercise the functions, powers and duties transferred to the Secretary by sections 6 and 8 of this Act with regard to (1) determining the probable cause of transportation accidents and reporting the facts, conditions and circumstances of each accident; and (2) review on appeal of the suspension, amendment, modification, revocation or denial of any certificate or license issued by the Secretary.

Under the proposed amendment, the powers, functions and duties transferred to the Secretary by sections 6 and 8 of the Act would be transferred to the Board to exercise the same with regard to (1) the determination of the probable cause of accidents; (2) review on appeal of certificate and licensing actions, such as revocation of a pilot's license, both of which are presently carried out by the Civil Aeronautics Board, in the aviation field. In addition, the Board would conduct special safety studies, issue reports on safety and recommend safety legislation.

With respect to accident investigations, the proposed amendment would transfer to the Board the responsibilities for investigation of aviation accidents, now carried on by the Civil Aeronautics Board. With respect to accidents in other modes, the Board would be able to (1) request the Secretary and the modal Administrators to undertake such accident investigations as it believes necessary; (2) make recommendations concerning policies and procedures for the conduct of accident investigations; (3) have its members or staff participate in accident investigations; (4) conduct its own investigations in rail, highway and pipeline safety areas; and (5) delegate to the operating units the responsibility for determining the cause of routine accidents which are now generally resolved on the basis of accident reports made by field staffs of the various agencies involved.

With respect to aviation accidents, this arrangement would continue the traditional separation between the FAA and the CAB by assigning the CAB's probable cause and accident investigation functions to the National Transportation Safety Board. It would also enable the continuation of the existing practice whereby the CAB delegates to the FAA responsibility for certain categories of investigations, particularly non-fatal accidents, involving small planes.

Amendments Proposed by Committee Members or Others

1. Interstate Commerce Commission -- Safety Information (Section 4)



During the hearings on S. 3010, the Chairman raised a question concerning the effect of the transfer of the safety functions of the ICC to the Department of Transportation on the ICC's responsibility to determine the safety fitness of applicants for operating rights. It was noted that since the ICC would no longer have a safety investigating staff of its own, it would have to depend upon information developed by personnel of the Department and furnished by the Secretary. In order to insure that such information would be forthcoming promptly, a provision has been added as subsection 4(m) which requires the Secretary to investigate the safety compliance record of each carrier or person seeking authority from the ICC and to report their finding to the Commission. In addition, the Secretary would be required to (1) intervene and present evidence of the applicant's fitness in ICC application proceedings for permanent authority or for approval of proposed transactions when the applicant's safety record fails to satisfy the Secretary; (2) furnish promptly upon request of the ICC a statement regarding the safety record of any carrier or person seeking temporary operating authority from the ICC; and (3) furnish upon request of the ICC a complete report of the safety compliance surveys which thereafter the ICC deems necessary or desirable in order to process an application or to determine the fitness of a carrier, including intervention and presentation of evidence upon request of the Commission. (Sec. 4(m), page 12, lines 4-20).

## 2. Appalachian Regional Development (Sections 6 and 8)

S. 3010 would transfer responsibility for the Appalachian highway and access road programs to the Secretary of Transportation who would be required to give his approval to all recommendations of the Appalachian Regional Commission. Under existing law, such approval is the responsibility of the Secretary of Commerce who usually delegates it to the Bureau of Public Roads which works closely with the Commission in the development of recommendations. Additionally, since the establishment of the Economic Development Administration in the Department of Commerce, Appalachian access road projects have been subjected to two reviews -- first, by the Bureau of Public Roads and second, by the Assistant Secretary of Commerce for Economic Development. It has been alleged that this additional step has greatly impeded the progress of the program and the economic evaluation performed by the Assistant Secretary is a duplication of the function of the Appalachian Regional Commission.

Under the provisions of S. 3010, the Commission would not only be required to secure approval from the Secretary of Transportation who will have overall responsibility for the activities of the Federal Highway Administration (formerly Bureau of Public Roads), but also from the Secretary of Commerce who has overall responsibility for the Economic Development Administration. In order to eliminate the double submission by the Appalachian Regional Commission to both the Secretary of Transportation and the Secretary of Commerce, Senator Javits has proposed an amendment which is intended to avoid the duplicative efforts involved by terminating the role of the Department of Commerce. It may be noted that although this amendment is not contained in the Confidential Committee Print, it would involve amendments to subsections 6(a) and 8(b).

3. Lawrence Seaway Development Corporation (Section 6)

S. 3010 makes no provision for the transfer of the St. Lawrence Seaway Development Corporation to the Department of Transportation. However, in his testimony before this committee, the Director of the Bureau of the Budget stated that the Corporation, now in the Department of Commerce, will be transferred to the Department of Transportation, to function under the supervision and direction of the Secretary, by Executive Order, after the creation of the new Department. He explained that the reason for this lay in the fact that the statute establishing this agency allows the President to designate its location and to transfer it as he deems necessary.

In response to a question by Senator Jackson, the Budget Director stated that he would see no objection if it were dealt with legislatively, although it was not necessary to do so.

Under date of July 18, 1966, the Chairman of this committee received a communication signed by Senator Hart and 11 other Senators stating as their belief that the Corporation should be transferred by statute to the Department of Transportation. They stated further that a reaffirmation of the original intent of the Congress in creating the Corporation is essential at the time when the Department is created and organized, and that the matter should not be resolved by an Executive Order, following the establishment of the new Department. Finally, they stated that past experience indicates that the transfer of the Corporation by Executive Order will not provide an adequate re. for the organizational down-grading "of an agency which must play a very important role in national as well as international transportation policy."

On the same day, Senator Mansfield, for himself, Senator Hart and 11 other Senators, introduced an amendment designed to carry out this objective. Although it is not contained in the Confidential Committee Print, it would amend Section 6 of S. 3010 by adding a new subsection (c).

Eli E. Nobleman  
Professional Staff Member

Approved:

James R. Calloway  
Chief Clerk and Staff Director

~~"Decisions of the Federal Maritime Administrator made pursuant to the exercise of the functions, powers, and duties enumerated in Subparagraph (A) of Paragraph (5) of this Subsection, but not including the functions hereafter transferred to the Maritime Board in Subparagraphs (C) and (D) of this Subsection, shall be administratively final, and appeals as authorized by law, including this Act, shall be taken directly to the Courts. In the exercise of his functions, powers, and duties, the Maritime Administrator shall be independent of the Secretary and all other officers of the Department."~~

6. Floor Substitute for Amendments 5 and 6

Page 54, line 9 -- Subparagraph (B) of Paragraph 5 of Subsection (a) of Section 6 -- Add to the end of Subparagraph (B) the following:

"Decisions of the Federal Maritime Administrator made pursuant to the exercise of the functions, powers, and duties enumerated in Subparagraph (A) of Paragraph (5) of this Subsection, which involve notice and hearings, but not including the functions hereafter transferred to the Maritime Board in Subparagraphs (C) and (D) of this Subsection, shall be administratively final, and appeals as authorized by law, including this Act, shall be taken directly to the Courts."

7. Page 54, line 19 - Strike the terms "The administration of . . ." and insert in lieu thereof the following: "All functions relating to findings and determinations with respect to loan and mortgage insurance under . . .".

BREWSTER AMENDMENTS TO THE SENATE DEPARTMENT OF TRANSPORTATION BILL, S. 3010

1. Page 36, line 25 - Subparagraph 1 of Subsection (e) of Section 3 - Strike the words "The Secretary shall establish . . ." and insert in lieu thereof the following: "There is hereby established . . ."
2. Page 37, line 24 through page 38, lines 1 through 3 - Subparagraph 3 of Subsection (e) of Section 3 - Strike the language to be found in Subparagraph 3 appearing on page 37, lines 24 and 25, through to page 38, lines 1 through 3, inclusive, and insert in lieu thereof the following: "The Administrators and the Commandant of the Coast Guard shall carry out such functions, powers, and duties as are specified in this Act and such additional duties as the Secretary may prescribe."
3. Page 41, line 21 - Subsection (c) of Section 4 - Strike the term "Orders" and insert in lieu thereof the following: "Except as otherwise provided in this Act, orders . . .".
4. Page 42, line 7 - Subsection (d) of Section 4 - Strike the term "In" and insert in lieu thereof the following: "Except as provided in this Act, in . . .".
- ~~5. Page 50, line 2 - Subsection (a) of Section 6 - Strike the term "There" and insert in lieu thereof the following: "Except as limited and restricted herein, there . . .".~~
- ~~6. Page 54, line 9 - Subparagraph (B) of Paragraph (5) of Subsection (a) of Section 6 - Add to the end of Subparagraph (B) the following:~~

8. Page 66, line 22 - Subsection (h) of Section 6 - Strike the terms "Notwithstanding any other provision . . ." and insert in lieu thereof the following: "The provisions of the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1001 et seq.) shall be applicable to proceedings by the Department and any of the Administrations or Boards within the Department established by this Act except that notwithstanding this or any other provision . . ."
9. Page 67, line 16 - Subsection (a) of Section 7 - Insert the following immediately after the term "Secretary": ". . ., subject to the provisions of Section 4 of this Act, . . ."
10. Page 75, lines 14 through 17 - Paragraph (1) of Subsection (f) of Section 9 - Strike the language to be found on lines 14 through 17, inclusive, and insert in lieu thereof the following: "Except where this Act vests in any Administration, Agency or Board, specific functions, powers, and duties, the Secretary may, in addition to the authority to delegate and redelegate contained in any other Act in the exercise of the functions transferred to or vested in the Secretary in this Act, delegate any of his residual functions, powers and . . ."



## Section 7 of S. 3010

Section 7 has two unacceptable features.

- It requires standards and criteria to be approved by the Congress rather than the President.
- It writes into law specific detailed procedures for computing navigation benefits on inland waterway projects.

Requiring that standards and criteria be approved by the Congress rather than by the President before they can be promulgated by the Secretary of Transportation violates the sound and long-accepted principle of legislative drafting.

- Statutory policy should be cast in broad and general terms so that prompt administrative adaptation of rules and procedures can be made to changing conditions.
- Transportation requirements are growing and changing with the growth and increasing complexity of our economy. A requirement of congressional review and legislative approval would frustrate essential administrative flexibility.
- Congress will continue to have final authority. It will continue to approve or reject specific projects. In doing this it will apply the standards and criteria which it believes are appropriate.
- The bill is concerned with the organization of the executive branch to carry out its responsibilities in the transportation field. It would be extremely unwise to use this bill as a vehicle for changing transportation policy or to limit authority currently vested in the executive branch. This is particularly true, since no testimony was presented during the hearings on this issue.

All parties agree that costs are the relevant criteria to use in evaluating navigation benefits. The recent debate has been on how best to arrive at these costs. Rates in the past have been used as the best available approximation of costs. The language in the Senate version runs counter to the principle that costs are the correct criteria.

In a recent letter, Acting Director Hughes, of the Bureau of the Budget, stated that the Corps of Engineers was returning to the procedures in effect before November of 1964 for calculating navigation benefits. This means that rates will again be used as the best estimate of rail costs -- the Senate version would overturn the basic principles of Senate Document 97.

The House did not understand the implications of Section 7, so it eliminated it from the bill. The Senate bill first exempts water resource projects from the purview of the Secretary, then specifies detailed criteria for the evaluation of waterways. Since the Senate apparently does not understand Section 7, it should be dropped from the bill.

October 5, 1966



7/8

79-10

Bureau of the Budget

ROUTE SLIP

TO Murray/Prestemon

Take necessary action ☐

Approval or signature ☐

Comment ☐

Prepare reply ☐

Discuss with me ☐

For your information ☐

See remarks below ☐

FROM Charles Schultze

DATE 7/6/65

REMARKS

.Please prepare memo for President  
responding to this.

Maybe we ought to use this occasion to  
make a general pitch for a Transportation  
Investment Review Board. But don't push  
too hard for a Dept. of Trans. in 1966  
(latest word: not much chance).



FEDERAL AVIATION AGENCY

Washington 25, D.C.

OFFICE OF  
THE ADMINISTRATOR

June 30, 1965

Dear Mr. President:

Before I leave the post of Administrator of the Federal Aviation Agency I should like to submit to you some views coming out of personal experience and observation on the much discussed and extremely important matter of transportation organization in the Executive Branch.

I am convinced of the validity of the argument that if we are to develop consistent, integrated transportation policies and a balanced national transportation system, we must have in place organizational arrangements which make this possible. At present no close observer can conclude other than that we have lagged far behind the traffic, the traveller's needs, and the technological advances in transportation in our efforts to equip the Executive Branch to cope in an effective and comprehensive manner with the total Government role in the fostering of efficient, safe, and economical transportation.

The Department of Commerce, based on a charter conferred by its organic act and subsequent statutes, administers a number of promotional transportation programs and contains in its official hierarchy an Under Secretary of Commerce for Transportation. Over the years such transportation functions as the Bureau of Public Roads, the Maritime Administration, and the Office of Emergency Transportation have been lodged in the Secretary and have been placed under the general direction of the Under Secretary for Transportation. Moreover, certain other elements, such as the Weather Bureau and the Coast and Geodetic Survey (now proposed to be combined by your pending re-organization plan), devote their primary efforts to support of transportation. However, critically important transportation responsibilities both in the promotional and safety regulatory areas are independent of the Commerce Department. The largest of these is

RECEIVED  
JUN 30 1965  
U.S. DEPT. OF COMMERCE

the 45,000 employee Federal Aviation Agency. The 5000 man Coast Guard, certain functions of the Bureau of Customs, and the railroad safety activities of the Interstate Commerce Commission are also located outside of the Commerce Department. The economic regulatory functions relating to transportation are almost wholly lodged in other agencies such as the Interstate Commerce Commission and the Civil Aeronautics Board. Over the past decade the role of the Department in transportation matters has actually declined, chiefly as the result of the removal of the Civil Aeronautics Administration in 1958 and its inability to obtain resources and manpower adequate to effect authoritative coordination.

One looks in vain for a point of responsibility below the President capable of taking an evenhanded, comprehensive, authoritative approach to the development of transportation policies or even able to assure reasonable coordination and balance among the various transportation programs of the Government. We have suffered substantially from this deficiency as is demonstrated by the decline of railroad passenger service, the delays in meeting the needs of the Northeast Corridor, and the uncertainties over the role of helicopter and short takeoff aircraft in urban and intercity transportation.

With assumption of responsibility by two great leaders, Jack Connor and Alan Boyd, in Commerce the time appears ripe for bold moves in transportation organization. These moves could, if successfully implemented, be among the most important achievements of your Administration--and they would be in line with your perception of the really important things with which our country must deal in the next decade. What I suggest is a two-stage program which would (1) first improve both domestic and international transportation policy formulation and interagency coordination through the establishment of a National Transportation Council; and (2) subsequently provide for the creation of a Department of Transportation under an official of Cabinet rank.

You may ask why not just move the Federal Aviation Agency, the Coast Guard, and the appropriate functions of other agencies to the Department of Commerce--possibly accompanied by a name change to Department

of Commerce and Transportation. I am not proposing this alternative for two reasons:

1. The history of the Federal Aviation Act and past reorganization efforts in the transportation area indicate that such a consolidated department is politically unattainable or attainable only at high cost. The unexpungable fact is that Commerce, especially in the early years of the Eisenhower Administration, did not handle its aviation functions well, and the creation of the Federal Aviation Agency was one result of this neglect.
2. A consolidated Department of Commerce and Transportation would also be defective from the standpoint of sound organizational concepts. The Department of Commerce should serve as the agency of Government generally concerned with the fostering of business, industry, commerce, and trade in the public interest, and the Secretary should be the President's general adviser on such matters. It is incompatible for the Department to have a separate, parochial and potentially conflicting responsibility for services to and the promotion of one segment of our national economic life--transportation. Furthermore, the FAA history suggests that a transportation agency must evenhandedly meet both civil and military needs. These services could eventually go so far as the administration of a single airspace control system which simultaneously assures the safe flight of aircraft and maintains air surveillance for national defense purposes. Such an operationally oriented, civil-military department cannot be rationally placed under the tent of the Department of Commerce.

#### National Transportation Council

Pending decisions on a Department of Transportation or other fundamental consolidations of transportation functions, I would urge the establishment by executive order of a National Transportation Council. This Council should be under the chairmanship of the Under Secretary of Commerce for Transportation and should contain as members the heads of other



departments and agencies with a major concern with transportation. Specifically, the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Administrator of the Federal Aviation Agency, the Chairman of the Civil Aeronautics Board, and the Chairman of the Interstate Commerce Commission would appear to be logical members of this Council.

The Council would be charged with three primary responsibilities. The first would be the exercise of leadership in developing and proposing to the President policies and programs which would assure the development of a healthy, balanced national transportation system. Second, the Council would be responsible for the identification of international transportation problems and the development policies to deal with them. Third, the Council would serve as a mechanism for the coordination of programs involving major interagency relationships.

It is of critical importance that the Council have a small but highly professional staff. This staff would do more than the normal secretariat work for an interagency committee. It would serve as the focal point for the conduct, oversight, or coordination of study and research efforts directed or recommended by the Council.

#### Abolition of the Interagency Group on International Aviation Policy

The establishment of the National Transportation Council would make possible the abolition of at least one existing interagency committee. I refer to the Interagency Group on International Aviation Policy (ICIAP), a committee established by President Kennedy in 1963 under the chairmanship of the Secretary of State. ICIAP, which also includes representatives of the Departments of Defense and Commerce, the FAA and the CAB, was charged by the President with identifying international aviation policy problems, advising on their solution, and assuring necessary followup action.

Although the purposes of ICIAP seemed in 1963 to be soundly conceived, the Group has not proved effective. It has held only four meetings in the three years since it was set up, and a number of international aviation

From  
Interagency  
Council  
Board?

→  
New  
State  
Secretary  
in  
foreign  
policy

problems have emerged or persisted throughout this period without significant attention from ICIAP--and without solution. The lack of a firm policy on countering Sino-Soviet penetration through aviation in less-developed countries, the absence of coordinated initiative in using aviation to help build the "bridges to Eastern Europe" of which you have spoken, the Nation's uncertain approach to aviation technical assistance within or without the AID program, and the lack of a well-articulated policy to guide executive agencies in reducing gold flow through the export of aeronautical products are several examples of policy or followthrough deficiencies with which ICIAP has seemed unable to cope.

I therefore suggest that upon the establishment of the National Transportation Council the ICIAP be abolished and that its functions be assigned to the Council where they can be dealt with through a stronger mechanism with a broader perspective toward the problems to be resolved.

Should you decide not to proceed with the creation of the Council at this time, the abolition of ICIAP is still indicated as a part of your program for the elimination of obsolete or ineffective committees. In the absence of the Council the functions of ICIAP could readily be assigned to the Interagency Group on International Aviation (IGIA), a committee established pursuant to President Eisenhower's memorandum of August 11, 1960. In contrast to the inactivity of ICIAP the IGIA has provided a useful mechanism for developing coordinated advice to the Secretary of State on international aviation matters. The Administrator of the Federal Aviation Agency is the chairman of IGIA and the Departments of State, Defense, and Commerce, and the Civil Aeronautics Board are represented on its membership. The role of IGIA in developing coordinated positions for the U. S. representation in the International Civil Aviation Organization (ICAO) is highly important and requires the continued existence of such a group.

Department of Transportation

?? | The limitations of an interagency council, however effectively chaired and supported, are such that it should be supplanted as soon as Secretaries Connor and Boyd and Budget Director Schultze can compose the effective reorganization of a Department of Transportation to which would be entrusted most or all of the functions previously mentioned in this letter. Such a Department would have nearly 70,000 employees, and it could be organized internally into administrations responsible for programs relating to the various major forms of transport. Such transportation oriented technical organizations as the present Weather Bureau and Coast and Geodetic Survey would be included in the Department. Particularly important to the success of the Department would be the establishment at the secretarial level of strong, adequately financed policy and planning staffs, and equally important a vigorous transportation research and development organization for all modes.

While the creation of such a Department would substantially reduce the size of the Department of Commerce, it would in no way detract from its primary mission. I assume that your recent Task Force on Government Organization has given attention to the organizational problems in the transportation area and has made recommendations to you on this matter. I would urge that the Director of the Bureau of the Budget be charged with pursuing studies of the role and organization of a Department of Transportation with a view of providing you with recommendations which could be considered during the development of the legislative program for the Second Session of the 89th Congress.

I would be happy to discuss these proposals with you or provide you with any additional information you might desire.

Respectfully yours,

  
N. E. HALABY  
Administrator

The President  
The White House  
Washington, D. C.

*NE  
may 1967, sent  
not 1766*



AUG 21 1965

EXECUTIVE OFFICE OF THE PRESIDENT  
BUREAU OF THE BUDGET  
WASHINGTON, D.C. 20503

T 9-10

MEMORANDUM FOR MR. CALIFANO

Subject: Transportation Organization

Bureau staff have reviewed the memorandum sent to the President on June 30 by Mr. Halaby concerning transportation organization in the executive branch. Because of rapidly developing issues in the international air transport area, we have not yet prepared comments for the President on all of the points discussed in the Halaby letter. We expect to do so after further clarification of some of the international aviation issues. In the meantime, this memorandum outlines our current thinking on the problems raised in the memorandum to the President.

Mr. Halaby's letter highlights an important problem, the diffusion of transportation responsibilities among Government agencies, which was of great concern to two of the 1964 Presidential task forces -- the Task Force on Government Reorganization and the Task Force on Transportation. Both groups pointed out that transportation activities are widely dispersed among agencies, including the regulatory commissions. Policy making is consequently difficult and often ineffective.

The Secretary of Commerce and the Under Secretary for Transportation have important transportation functions. The Secretary is the President's principal adviser on transportation policy. Because of the existing statutory division of transportation functions, however, the Department cannot exercise effective leadership in all Government transportation activities, not even in the policy area. To remedy this diffusion, both task forces recommended the creation of a Department of Transportation. I am in agreement with the task forces and Mr. Halaby that this represents the best long-run solution to this organizational problem. Since it may not be expedient at this time to take such a far-reaching step, the President may wish to consider certain transitional moves that might facilitate ultimate creation of a new Department of Transportation and meanwhile produce better solutions for some current pressing problems.

### National Transportation Council

We have serious reservations concerning Mr. Halaby's suggestion that the President establish a National Transportation Council or committee. We understand that Under Secretary Boyd is already considering the formation of both a broadly based interagency transportation committee and a public advisory committee. Given the existing statutory diffusion of authority in the transportation field, we doubt that meaningful agreement on significant policies can be achieved by interagency consensus. More likely, any "policy" statements from such a group will be compromises stated in language geared to the most acceptable common denominator.

If Mr. Boyd establishes such an interagency committee it should be only after careful consideration of such questions as:

- (1) What kinds of issues are to be considered by the group?
- (2) How is agreement to be reached -- majority vote, consensus?
- (3) Is the committee advisory to the Secretary of Commerce or to member agencies?

If the committee is to be established we believe it is preferable that it serve in an advisory capacity to the Secretary. This would facilitate the President's reliance primarily on a single officer for policy views in the transportation area and enhance the role of the Secretary as the President's principal transportation adviser.

Although we have doubts concerning the efficacy of an interagency group with a broad general charter, there is a definite role for interagency consultation and action with respect to certain specific transportation functions. Enlarging the charter of the existing Interagency Committee on Transport Mergers, as discussed in the following section, would be preferable to establishing a new group with broad, and correspondingly vague, responsibility.

### Interagency Committee on Regulatory Policies

Regulatory agencies generally and transportation regulatory agencies in particular take the position that policy can only be made on a case by case basis through formal proceedings. The Bureau of the Budget, other agencies in the executive branch and many experts,

in the transportation field at least, have long believed that policy should be the result of a continuing planning and review process based on general economic, political and other considerations related to national objectives. Certain Federal agencies, however, lend support to the ad hoc method of policy formulation by participating in a wide variety of regulatory cases where their parochial interests are involved; the Department of Defense, the Department of Agriculture, the General Services Administration, the Tennessee Valley Authority and the Atomic Energy Commission are among such agencies.

A more effective approach, consistent with executive leadership in the formulation of transportation policy, is exemplified by the Interagency Committee on Transport Mergers established in 1962. This Committee, under the chairmanship of the Under Secretary for Transportation was charged with (a) developing criteria, relevant to the contemporary scene, for the evaluation of transport mergers proposed by carriers, and (b) evaluating individual merger proposals and recommending an executive branch position to the Department of Justice for presentation in regulatory proceedings. Within the limits of its charter, this Committee has functioned well. Its effectiveness, however, has been circumscribed in two ways: First, the Committee was restricted in the development of criteria to the framework of existing antitrust policy. We believe this framework badly needs review in the light of modern economic conditions. Second, the Committee's scope was limited to (a) intra-model mergers and (b) mergers proposed by carriers. It was thus estopped (a) from initiating proposals for merger that might be more in the public interest than those proposed by the carriers and (b) from preparing non-merger alternatives which might achieve all the good results predicted for mergers without the risk of side effects adverse to the public interest. The Bureau of the Budget believes that serious consideration should be given to lifting these limitations on the Committee's activities.

The Bureau also looks favorably on further expanding the responsibilities of the Committee to include regulatory policy issues other than those involving mergers. There is the same urgent need for development of coordinated executive branch positions on major regulatory issues involving rates, operating rights, financing and rate of return, entry and exit, and other aspects of the economics of regulated transportation. This view rests on the proposition that transportation policy is made not only by legislation but also, and perhaps to a greater extent, by regulatory proceedings and subsequent court actions thereon. At the present time, insofar as the executive branch is concerned, these policy developments often occur by default.



### Transportation Investment Review Board

One of the major problems in transportation results from Federal investment decisions being made by specialized or narrowly oriented program agencies with little or no regard for (a) the Nation's overall transportation requirements; (b) their impact on overall economic growth; (c) the effects of facilities and services provided for the benefit of one mode on other transportation modes; and (d) the relationships between costs and benefits of individual investment proposals or between different proposals. There is no effective process for comparative evaluation of the investment programs of various operating agencies like the Federal Aviation Agency and the Bureau of Public Roads in terms of their contribution to the achievement of national transport goals and other national objectives. The Department of Commerce does not have the authority to assess, for example, the value of Federal funds being invested in airport construction as compared to more active assistance to the railroads, nor does any other Federal instrumentality -- not excepting the Bureau of the Budget.

To provide a sounder basis for decision-making on Federal transportation investments, the Bureau proposes that steps be taken to create a Transportation Investment Review Board. This Board would be advisory to the Bureau of the Budget and the President. Its chairman should be the Secretary of Commerce with membership from the Council of Economic Advisers, the Treasury, and perhaps the Office of Science and Technology. For maximum effectiveness this Board should be established by legislation.

The Bureau of the Budget should participate as an observer and adviser. If additional representation is desired, it might be drawn from among the Nation's experts on public investment analysis. **Joe:** Members should probably not be representatives of the various transportation industries nor of Federal agencies with major transportation investment programs. They can be heard in connection with the Board's deliberation on investment proposals. The Board's major function should be to apply objective evaluation standards to individual agency investment proposals and to make recommendations for the approval, revision, or disapproval of such programs. **Alan Boyd:** They can be heard in connection with the Board's deliberation on investment proposals. The Board's major function should be to apply objective evaluation standards to individual agency investment proposals and to make recommendations for the approval, revision, or disapproval of such programs. **ther we ought to take the lead on** **Alan Boyd:** They can be heard in connection with the Board's deliberation on investment proposals. The Board's major function should be to apply objective evaluation standards to individual agency investment proposals and to make recommendations for the approval, revision, or disapproval of such programs. **should be considered an open matter.** **We don't need to decide it now.**

Before such a Board is created, however, a comprehensive set of objective investment criteria should be developed. This is a difficult task which will require a period of concentrated effort by knowledgeable individuals both within and without the Government of whom there are now a substantial number. The Bureau proposes to take the lead in establishing a task force to develop the criteria to be used in future transportation investment analysis by the proposed Transportation Investment Review Board. The Board's

analysis in turn will provide invaluable experience for any future Department of Transportation.

Interagency Committee on International Aviation Policy

The question of organization for international aviation problems was studied by the Bureau in 1963. The Interagency Committee on International Aviation Policy (ICIAP) was established by President Kennedy as a result of that study to ensure that international aviation problems were considered as part of the process of conducting our foreign relations.

Unfortunately, this organizational approach has not proved effective. There has been considerable difficulty within the State Department in focusing necessary top-level attention on this area. The ICIAP is now under the chairmanship of Under Secretary Mann. Because of the press of other vital problems there have been few meetings of the committee. Staff within the Department have not been able to bring urgent issues to the top level for expeditious resolution. As a consequence, ICIAP has not kept U. S. international aviation policy under the continuing review envisaged at the time of its establishment. Moreover, there has been no effective followup on the issues raised in the few meetings of the committee. These deficiencies assume increased importance in light of the recent White House meeting on a possible need for reviewing certain aspects of our international aviation policy.

In light of the failure of the State Department adequately to carry out its assigned role, we believe that consideration should be given to shifting responsibility for ICIAP to the Secretary of Commerce. The Under Secretary would be in a better position to assure that international aviation issues are considered within the context of overall U. S. transportation policies. Under the present Under Secretary of Commerce for Transportation, the Commerce Department is more likely to provide the kind of leadership we want for this effort than the Department of State. The State Department would, of course, continue as a member of the committee and make use of it in preparing U. S. positions for meetings with foreign nations.

The proposed transfer of responsibility should be considered in the light of the review of certain international aviation issues discussed at the recent White House meeting. The Bureau will transmit further recommendations on this matter in the near future.

(signed) Charlie  
Charles L. Schultze

cc: DO Record  
Director's chron  
Mr. Lee White (White House)  
Mr. Broadbent  
Mr. Murray

Director  
Mr. Rowan  
Mr. Capron  
Mr. Seidman  
GOB Files ✓  
GOB chron  
Mr. Kallen

*Mr. Schultze*

OMO:GOB AKallen/GMurray:hrs 8/6/65

3  
Seems to be a  
critical examination,  
which 288 analysts  
did make.

T9-10

## A DEPARTMENT OF TRANSPORTATION AND RELATED ORGANIZATIONAL ISSUES

Alternatives for more effective transportation organization within the Executive Branch of the Federal Government are:

1. Creation of a Department of Transportation with all the principal agencies providing facilities for the public or otherwise promoting transportation development.

agencies have been transferred

2. Limited transfers of transportation agencies to the Department of Commerce to the extent that the Department can make effective policy in the land and water transportation fields.

3. Strengthening of the consultative mechanisms within the Executive Branch to coordinate transportation policy among promotional and regulatory agencies. A consultative mechanism could also be a prelude to the creation of a Department of Transportation. Consultative mechanism could range in scope from a fully staffed Transportation Council coordinating all transportation policy formation to a series of high-level interagency committees dealing with investment review, carrier mergers, regional planning, and research and development.

The preferred alternative is the creation of a Department of Transportation. If it should be decided to undertake more limited reorganization, it should proceed to the extent that the Department of Commerce has complete authority in the promotion of land and deep water transportation.

This would mean the transfer to the Department of <sup>the mass transit program</sup> ~~the mass transit program~~ <sup>to</sup> ~~so that~~ <sup>except for planning</sup> ~~coordination of planning~~ <sup>when</sup> ~~between highways, mass transit, and other~~

land transportation programs could take place under the authority of the Secretary. In the same way transfer of the Coast Guard could supplement the present authority of the Department <sup>and</sup> ~~in~~ the Maritime Administration and the St. Lawrence Seaway, resulting in complete coordination of maritime transport.

s.b. in  
H.U.D.  
other aspects  
in D.C. and D.T.

*can include -*

A less preferred alternative as a permanent policy is the complete reliance upon consultative arrangements. A National Transportation Council could be formed which would bring all the <sup>operational</sup> promotional and regulatory agencies together to coordinate common policies. Other agencies involved in transportation such as State, Defense, NASA, and Labor could be brought into the consultation as their interest required. Complete reliance on interagency committees with more limited points-of-view, such as the Interagency Committee on Transport Mergers, would not <sup>as a long-term solution</sup> be satisfactory, although it would be better than nothing in the final analysis.

*who says so?*

*more  
equi-  
ment  
trans a  
new  
to have  
a series  
Cwill*

This paper will now discuss in turn the three alternatives.

#### A Department of Transportation

Two recent Presidential task forces, those on Organization and Transportation, have recommended the creation of a Department of Transportation. Thus the need has been recognized both from the standpoint of overall administrative efficacy and from the needs of transportation policy. Staff consultations with [the Office of Management and Organization in] the Bureau of the Budget revealed an agreement in principle that part of the difficulty in transportation policy formation lies in organizational dispersion of Federal programs, and a Department of Transportation is an appropriate organizational solution.

The dispersal of programs dealing with transport investment, operation of facilities, safety, and research programs is well known and has been widely documented for many years. Realization of the effects of this dispersal led to the favorable report of the Hoover Commission toward the



location of major transportation responsibilities in the Department of Commerce and the enactment of Reorganization Plan No. 21 of 1950 establishing the Office of Under Secretary for Transportation.

A Department of Transportation is a specific antidote for dispersal of responsibility for policy making. The major programs are placed under a single Secretary who guides and coordinates policy for all the functions. He establishes program and planning concepts, organizational arrangements, and other means of administering all transportation programs to achieve coordinated policy objectives.

Included in a Department of Transportation would be the present activities of the Department of Commerce in the transportation field, the Bureau of Public Roads, the Maritime Administration, the

St. Lawrence Seaway, the Great Lakes Pilotage Administration, and the Emergency Transportation Administration. Other additions would be the mass transportation program in the Housing and Home Finance Agency,

the Federal Aviation Agency, and the Coast Guard. Consideration should also be given to the transfer of the ICC rail and motor safety functions

and some of the safety functions of the Civil Aeronautics Board. Car service and airline subsidy functions now residing in ICC and CAB

respectively should also be considered for inclusion in the new Department of Transportation. Such a Department of Transportation would be a major force in the Federal Government with as many as 50,000 employees and an annual budget of about \$6 billion.

### Limited Transfers of Land and Maritime Activities

A basic purpose of a Department of Transportation would be to provide a consistent administration and policy for Government activities in land, water, and air transportation. It would draw together the now dispersed agencies dealing with all transport modes. If it does not prove feasible to take so fundamental a step as the creation of a new Department, some limited and partial steps could be taken to improve the administration of transportation policy. The same arguments that justify a Department of Transportation would justify a more limited reorganization in the present framework of the Department of Commerce.

Presently, the Department of Commerce is the dominant agency in the Executive Branch dealing with land and maritime transportation. Yet it is not possible even in these limited areas to coordinate policy and administration because of the existence of independent programs in land and maritime transport. In land transportation, the highway policies of the Bureau of Public Roads have a definite relationship to the mass transit policies of the Housing and Home Finance Agency. These programs are also related to the effort of the Department to develop high-speed ground transportation. This coordinative problem could be solved through the concentration of all land transportation programs in the Department of Commerce, including the highway program as at present, the mass transit program, and programs dealing with high-speed ground transportation research and development.

This concentration of land transport activities would follow the trend in the maritime area. Following the transfer of the Maritime Administration activities to the Department in 1950, the St. Lawrence Seaway and the Great Lakes Pilotage programs were placed in Commerce, thus making possible some coordination in policy and administration. The major maritime activities now outside Commerce are the Coast Guard and the Panama Canal.

If it is assumed desirable to have a coordinated policy and administration covering all modes, it is equally desirable and an essential first step to capture some element of coordination in the Federal administration of programs dealing with single modes. It is thus eminently practical to concentrate all land and maritime programs in the Department of Commerce, the agency in which the dominant programs now exist. In this way there would at least be no fragmentation in two of the most important areas of Federal responsibility.

#### Consultative Mechanisms

Two levels of consultation are required under present Federal transportation organization: consultation to coordinate the dispersed transport programs, and consultation to relate transportation policy to other more general governmental policies. Prior to the establishment of a Department of Transportation, an intensification of the consultation among now independent transportation agencies will be necessary to prepare for the improvements in policy making inherent in a more formalized organization.

*Who says  
consultation  
has to do it?*

At the same time the impacts of transportation on anti-trust policy, labor relations, basic research and development, defense, foreign relations, taxation and finance, and other general policies of the Government must be assessed and reflected in policy. Consultation among governmental agencies is essential for this purpose. This consultative need will continue after the creation of a Department of Transportation.

Two alternative approaches to overall consultative arrangements, combining transport and non-transport problems, are considered. The first approach is an overall high-level consultative body in the form of a National Transportation Council consisting of all major transportation officials, including regulatory chairmen, and heads of principal non-transport agencies with important relationships to transportation. This is the preferred alternative, 7

The other alternative is the creation of a limited number of higher level *executive branch* interagency consultative bodies dealing with broad functional areas such as anti-trust and merger policy, investment analysis, international transportation, regional planning, and similar areas. The Interagency Committee on Transport Mergers is an example of such a group now functioning. Consultative bodies in the fields of international aviation and water resources also provide useful experience.

*should be advisory  
in any case*

7

*major committee  
advises President  
(Wagonmaster)  
John U.S.T.*

Complete reliance on segmented interagency committees as a

basis for policy making would compound the fragmentation so characteristic of transportation policy at present. The mere number of committees would disperse executive attention so that basic matters of policy would be handled by alternates, substitutes, or even staff without adequate authority. The most serious disadvantage would be the lack of focus on overall transportation policy by a group with sufficient prestige to reflect Administration policy. The National Transportation Council, consisting of the leading Federal transportation executives, is recommended as the appropriate solution for present consultative needs, pending the organization of a Department of Transportation. Such a Council should be formed by Executive Order, or Presidential letter as appropriate.

*are  
drawn  
men*

Another proposal that has been made is the creation of a Transportation Investment Review Board. Consisting of the heads of transportation agencies and representatives of the Executive Office of the President, such a board would appraise investment programs for overall economic effectiveness. The need for such review is unquestioned, but there is lacking the means of sophisticated benefit-cost and other analyses to demonstrate clearly the alternative choices in investment policy. Because of the divergencies of viewpoint among promotional agencies, such a process of analysis would have to be located centrally to assure adequate objectivity. Under a consultative arrangement such a process, would most logically be located in the Executive Office of the President, say in the Bureau of the Budget or the Council of Economic Advisers. A Department of Transportation would be a more

*probably, but  
this would be  
the first job*



*They never find the  
question of alternatives  
comprising of the  
I think!*

appropriate location, but in this event no consultative review board would be needed.

Without such centrally developed studies, the Investment Review Board would have no adequate basis for its deliberations. There is the possibility that it might become an agency for consensus and division of budgetary resources along pragmatic lines, possibly using a set formula based on past expenditure experience. On the basis of the foregoing, it appears that the Investment Review function should await the organization of appropriate means of program analysis.

*Agree  
Transp Council*

#### Summary

Fundamental cure for the present dispersal of transportation policy responsibility in the Federal Government is essential. The most basic approach is the formation of a Department of Transportation. Less desirable, but worth consideration if the Departmental approach is not feasible, is the concentration of full authority for land and maritime transportation in the Department of Commerce. This would be a substantive contribution to effective policy making and a suitable interim step toward the eventual organization of a Department of Transportation. Pending further organizational steps, a National Transportation Council, consisting of leading Federal transportation officials should be formed to organize consultation about important policy matters in the field. Alternatives, such as segmented committees or an investment review board do not provide a sufficient concentration of authority for fundamental policy consideration.

79-10

(2)

## ALTERNATIVES TO DEPARTMENT OF TRANSPORTATION

### National Transportation Council

There are a number of questions concerning suggestions that the President establish a National Transportation Council or committee. Under Secretary Boyd is already considering the formation of both a broadly based inter-agency transportation committee and a public advisory committee. But given the existing statutory diffusion of authority in the transportation field, it is doubtful that meaningful agreement on significant policies can be achieved by interagency consensus. More likely, any "policy" statements from such a group will be compromises stated in language geared to the most acceptable common denominator.

If Mr. Boyd establishes such an interagency committee it should be only after careful consideration of such questions as:

- (1) What kinds of issues are to be considered by the group?
- (2) How is agreement to be reached -- majority vote, consensus?
- (3) Is the committee advisory to the Secretary of Commerce or to member agencies?

If the committee is to be established, it is preferable that it serve in an advisory capacity to the Secretary. This would facilitate the President's reliance primarily on a single officer for policy views in the transportation area and enhance the role of the Secretary as the President's principal transportation adviser.

Although the efficacy of an interagency group with a broad general charter is doubtful, there is a definite role for interagency consultation and action with respect to certain specific transportation functions. Enlarging the charter of the existing Interagency Committee on Transport Mergers, as discussed in the following section, would be preferable to establishing a new group with broad, and correspondingly vague, responsibility.

### Interagency Committee on Regulatory Policies

Regulatory agencies generally and transportation regulatory agencies in particular take the position that policy can only be made on a case by case basis through formal proceedings. The Bureau of the Budget, other agencies in the executive branch and many experts, in the transportation field at least, have long believed that policy should be the result of a continuing planning and review process based on general economic, political and other considerations related to national objectives. Certain Federal agencies, however, lend support to the ad hoc method of policy formulation by participating in a wide variety of regulatory cases where their parochial interests are involved; the Department of Defense, the Department of Agriculture, the General Services Administration, the Tennessee Valley Authority and the Atomic Energy Commission are among such agencies.



A more effective approach, consistent with executive leadership in the formulation of transportation policy, is exemplified by the Interagency Committee on Transport Mergers established in 1962. This Committee, under the chairmanship of the Under Secretary for Transportation was charged with (a) developing criteria, relevant to the contemporary scene, for the evaluation of transport mergers proposed by carriers, and (b) evaluating individual merger proposals and recommending an executive branch position to the Department of Justice for presentation in regulatory proceedings. Within the limits of its charter, this Committee has functioned well. Its effectiveness, however, has been circumscribed in two ways: First, the Committee was restricted in the development of criteria to the framework of existing antitrust policy. We believe this framework badly needs review in the light of modern economic conditions. Second, the Committee's scope was limited to (a) intra-model mergers and (b) mergers proposed by carriers. It was thus estopped (a) from initiating proposals for merger that might be more in the public interest than those proposed by the carriers and (b) from preparing non-merger alternatives which might achieve all the good results predicted for mergers without the risk of side effects adverse to the public interest. Consideration should be given to lifting these limitations on the Committee's activities.

Consideration might also be given to expanding the responsibilities of the Committee to include regulatory policy issues other than those involving mergers. There is the same urgent need for development of coordinated executive branch positions on major regulatory issues involving rates, operating rights, financing and rate of return, entry and exit, and other aspects of the economics of regulated transportation. This view rests on the proposition that transportation policy is made not only by legislation but also, and perhaps to a greater extent, by regulatory proceedings and subsequent court actions thereon. At the present time, insofar as the executive branch is concerned, these policy developments often occur by default.

#### Transportation Investment Review Board

One of the major problems in transportation results from Federal investment decisions being made by specialized or narrowly oriented program agencies with little or no regard for (a) the Nation's overall transportation requirements; (b) their impact on overall economic growth; (c) the effects of facilities and services provided for the benefit of one mode on other transportation modes; and (d) the relationships between costs and benefits of individual investment proposals or between different proposals. There is no effective process for comparative evaluation of the investment programs of various operating agencies like the Federal Aviation Agency and the Bureau of Public Roads in terms of their contribution to the achievement of national transportation goals and other national objectives. The Department of Commerce does not have the authority to assess, for example, the value of Federal funds being invested in airport construction as compared to more active assistance to the railroads, nor does any other Federal instrumentality -- not excepting the Bureau of the Budget.

To provide a sounder basis for decision-making on Federal transportation investments, steps might be taken to create a Transportation Investment Review Board. This Board would be advisory to the Bureau of the Budget and the President. Its chairman should be the Secretary of Commerce with membership from the Council of Economic Advisers, the Treasury, and perhaps the Office of Science and Technology.

The Bureau of the Budget should participate as an observer and adviser. If additional representation is desired, it might be drawn from among the Nation's experts on public investment analysis. Members should probably not be representatives of the various transportation industries nor of Federal agencies with major transportation investment programs. They can be heard in connection with the Board's deliberation on investment proposals. The Board's major function should be to apply objective evaluation standards to individual agency investment proposals and to make recommendations for the approval, revision, or disapproval of such programs.

Before such a Board is created, however, a comprehensive set of objective investment criteria should be developed. This is a difficult task which will require a period of concentrated effort by knowledgeable individuals both within and without the Government of whom there are now a substantial number. A task force should be created to develop the criteria to be used in future transportation investment analysis by the proposed Transportation Investment Review Board. The Board's analysis in turn will provide invaluable experience for any future Department of Transportation.

#### Interagency Committee on International Aviation Policy

The question of organization for international aviation problems was studied by the Bureau in 1963. The Interagency Committee on International Aviation Policy (ICIAP) was established by President Kennedy as a result of that study to ensure that international aviation problems were considered as part of the process of conducting our foreign relations.

Unfortunately, this organizational approach has not proved effective. There has been considerable difficulty within the State Department in focusing necessary top-level attention on this area. The ICIAP is now under the chairmanship of Under Secretary Mann. Because of the press of other vital problems there have been few meetings of the committee. Staff within the Department have not been able to bring urgent issues to the top level for expeditious resolution. As a consequence, ICIAP has not kept U. S. international aviation policy under the continuing review envisaged at the time of its establishment. Moreover, there has been no effective followup on the issues raised in the few meetings of the committee. These deficiencies assume increased importance in light of the recent White House meeting on a possible need for reviewing certain aspects of our international aviation policy.

In light of the failure of the State Department adequately to carry out its assigned role, consideration might be given to shifting responsibility for ICIAP to the Secretary of Commerce. The Under Secretary would be in a better position to assure that international aviation issues are considered within

the context of overall U. S. transportation policies. Under the present Under Secretary of Commerce for Transportation, the Commerce Department is more likely to provide the kind of leadership needed for this effort than the Department of State. The State Department would, of course, continue as a member of the committee and make use of it in preparing U. S. positions for meetings with foreign nations.

The proposed transfer of responsibility should be considered in the light of the review of certain international aviation issues discussed at the recent White House Meeting.