

periodicals, and books of reference (including the exchange thereof); (4) printing and binding; (5) membership in and cooperation with such organizations as are related to, or are part of, the transportation industry in the United States or in any foreign country; (6) payment of allowances and other benefits to employees stationed in foreign countries as authorized by the Overseas Differentials and Allowances Act (74 Stat. 792); (7) making investigations and conducting studies in matters pertaining to transportation; and (8) acquisition (including exchange), operation and maintenance of transportation vehicles and such other property as is necessary in the exercise and performance of the powers and duties of the Secretary; Provided, That no such vehicles, purchased under the provisions of this section, shall be used otherwise than for official business.

CODIFICATION

Sec. 15. The Secretary is directed to submit to the Congress within two years from the effective date of this Act, a codification of all laws that contain the powers, duties, and functions transferred to and vested in the Secretary of the Department by this Act.



GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE
WASHINGTON, D.C. 20230

February 14, 1966

Memorandum to: Hon. Charles Zwick
Assistant Director
Bureau of the Budget

Attached is the latest draft, dated February 14, 1966, of the Department of Transportation legislation. Also attached, for the consideration of the task force, is a provision prepared by the Coast Guard representatives and later modified by me. It would permit Coast Guard officers and enlisted men to serve in the department in non-military capacities. ✓ It would also permit members of the armed services to serve in the department. If adopted, it could be added to section 4 of this draft.

The substantive differences between this draft and the February 7 draft are as follows:

- Amended*
1. The bill has been reorganized. A new title, "General Provisions", has been added as section 4. It contains old sections 3(b), (c) (old page 2) and 3(i) - (r) (old pages 19-22). Old section 8(m) has been deleted per the decision last Thursday.
 2. Section 5(f) (old section 4(f)) relating to the Safety Board's rule making powers has been changed by deleting the phrase "including rules, regulations, and procedures for the conduct of accident investigations." The phrase is picked up in section 5(i) (old section 4(i)) and, in effect, authorizes the Board to make recommendations to the Secretary relating to rules for the conduct of accident investigations.
 3. Section 5(h) (old section 4(h)), relating to the Safety Board's power to delegate its functions, has been modified so as to preclude the Board from delegating to the Secretary or operating units in the department, participation in determinations of probable cause of air accidents. This language is designed to preserve the intent of section 701(g) of the Federal Aviation Act of 1958.
 4. Old sections 4(1) and 14, relating to authorization for appropriations for the Safety Board and the department have been deleted as unnecessary.
 5. Section 6(b) (old 5(b)), relating to transfer of the Coast Guard, is substantially changed. The Coast Guard, as a unit, would be transferred to the new department. It would be transferred to the
- Amended*
- Check*
- Amended*

Secretary of the Navy in time of war. The functions of the Judge Advocate General under the Code of Military Justice which relate to the Coast Guard would be transferred to the General Counsel of the Department of Transportation, rather than to the Chief Counsel of the Coast Guard, as suggested by that agency. The sole reason for this was to keep away from substantive law changes as much as possible. Transfer to the Department's General Counsel is in keeping with the existing law under which the General Counsel of the Treasury Department performs this function. Section 9(h) (old section 8(h)), which lapses agencies transferred as a whole, has been modified so as not to apply to the Coast Guard.

off Counsel 6. Section 8(h) (old section 7(h)), providing that the Secretary of Transportation would be a member of the Water Resources Council remains in this draft.

7. Sections 9(a), (b), and (f) (old sections 8 (a), (b), and (f)), relating to personnel, remain unchanged. The changes proposed for these sections by Civil Service Commission have not been adopted, pending a decision. *Spells out*

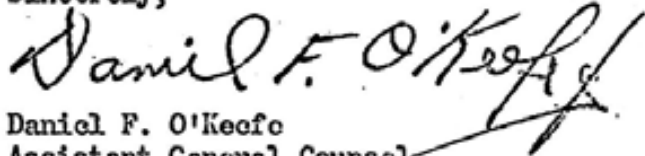
OK 8. Section 10(d)(5) and (6), relating to personnel, differ from old section 9(d)(5). Subsection (d)(6) is new. The new language adopts suggestions made by the Civil Service Commission. In the prior draft a new subsection would have been added to section 303 of the Federal Executive Salary Act in order to permit the President to place in the Department one level III, three level IV and six level V positions. The new draft would authorize the President to place one level III position (without a specific limit as to the Department of Transportation). In addition, the President's general authority to place thirty level IV and V positions in government generally would be amended so as to permit him to place thirty-nine such positions in government. I note that the President currently has placed only ten of the thirty authorized.

OK 9. Section 14, relating to effective date of the Act, has been modified to provide that Presidential appointees, when they take office, shall be compensated at the level provided for in the Act. Without this language I felt that a technicality might be raised precluding payment of their salaries until the entire Act became effective - possibly ninety days after the Secretary first takes office.

10. Minor word changes, technical changes and corrections have been made in sections 4(a) and (b) (old sections 3(a) and (b)); 4(i), (j), and (k) (old sections 8 (p), (q) and (r)); 5(a), (d), and (j) (old sections 4(a), (d), and (j)); 6(a), (d), and (e) (old sections 5(a), (d) and (e)); 7(b)(2) (old section 6(b)(2)); 8(a) and (b) (old sections 7(a) and (b)); 9(h) (old section 8(h)); section 10(h) (a new conforming amendment); and section 14 (old section 13).

As you know, this draft is submitted to you as a member of the task force. It has no Commerce Department clearance at this point.

Sincerely,



Daniel F. O'Keefe
Assistant General Counsel
for Transportation

Atts.

DRAFT

February 14, 1966

A B I L E

To establish a Department of Transportation, and for other purposes.

✓ Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Transportation Act."

DECLARATION OF PURPOSE

✓ Sec. 2. The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development and implementation of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

✓ The Congress therefore finds that the establishment of a Department of Transportation is necessary in the public interest and to assure the coordinated, effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in

the identification and solution of transportation problems; and to develop and recommend national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public, users, carriers, industry, labor, and the national defense.

ESTABLISHMENT OF DEPARTMENT

✓ Sec. 3. (a) There is hereby established at the seat of government an executive department to be known as the Department of Transportation (hereinafter referred to as the "Department"). There shall be at the head of the Department a Secretary of Transportation (hereinafter referred to as the "Secretary"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary (or, during the absence or disability of the Under Secretary, or in the event of a vacancy in the office of Under Secretary, an Assistant Secretary determined according to such order as the Secretary shall prescribe) shall act for, and exercise the powers of the Secretary, during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary. The Under Secretary shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

(c) There shall be in the Department four Assistant Secretaries and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

(d) There shall be in the Department an Assistant Secretary for Administration, who shall be appointed, with the approval of the President, by the Secretary under the classified civil service who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

GENERAL PROVISIONS

✓ Sec. 4. (a) The Secretary in carrying out the purposes of this Act shall, among his responsibilities, exercise leadership under the direction of the President in transportation matters, including those affecting the national defense and those involving national or regional emergencies; develop national transportation policies and programs, and make recommendations for their implementation; promote and undertake development, collection, and dissemination of technological, statistical, economic and other information relevant to domestic and international transportation; and promote and undertake research and development in and among all modes of transportation and types of transportation services and facilities.

(b) In exercising the functions, powers, and duties herein conferred on and transferred to the Secretary, the Secretary shall give full consideration to the need for operational continuity of the functions transferred, to the need for effectiveness and safety in transportation systems, and to the needs of the national defense.

(c) As necessary, and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote localities:

- (1) Emergency medical services and supplies;
- (2) Food and other subsistence supplies;
- (3) Messing facilities;
- (4) Motion picture equipment and film for recreation and training;
- (5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons; and
- (6) Living and working quarters and facilities.

The furnishing of medical treatment under paragraph (1) and the furnishing of services and supplies under paragraphs (2) and (3) of this subsection shall be at prices reflecting reasonable value as determined by the Secretary, and the proceeds therefrom shall be credited to the appropriation from which the expenditure was made.

(d) The Secretary is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of Transportation.

Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary of Transportation. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(c) For the purpose of Federal income, estate, and gift taxes, property accepted under section 4(d) of this Act shall be considered as a gift or bequest to or for the use of the United States.

(f) Upon the request of the Secretary, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any monies contained in the fund authorized herein. Income accruing from such securities, and from any other property pursuant to section 4(d) of this Act, shall be deposited to the credit of the fund authorized herein, and shall be disbursed upon order of the Secretary of Transportation.

(g) The Secretary is authorized, upon the written request of any person, firm, or corporation, to make special statistical studies relating to foreign and domestic transportation, and other matters falling within the province of the Department of Transportation, to prepare from its records special statistical compilations, and to furnish transcripts of its studies, tables, and other records upon the payment of the actual cost of such work by the person, firm, or corporation requesting it.

(h) All monies received by the Department of Transportation in payment of the cost of work under section 4(g) of this Act shall be deposited in a special account to be administered under the direction of the Secretary of Transportation. These monies may be used, in the discretion of the Secretary of Transportation, and not withstanding any other provisions of law, for the ordinary expenses incidental to the work and/or to secure in connection therewith the special services of persons who are neither officers nor employees of the United States.

(i) The Secretary is authorized to appoint such advisory committees as shall be appropriate for the purpose of consultation with and advice to the Department in performance of its functions. Members of such committees shall be entitled to per diem and travel expenses as authorized by the Administrative Expenses Act of 1946 (60 Stat. 808), for all persons employed intermittently as consultants or experts receiving compensation on a per diem basis.

(j) 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 by the agency originally exercising such functions, powers, and duties.

(k) In the exercise of the functions, powers, and duties transferred to the Secretary by this Act, the Secretary is authorized the same authority vested in the Civil Aeronautics Board in Section 1004 of the Federal Aviation Act of 1958 (72 Stat. 792), and his actions in exercising

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that authority shall have the same force and effect as when exercised by the Civil Aeronautics Board.

NATIONAL TRANSPORTATION SAFETY BOARD

✓ Sec. 5. (a) There is hereby established within the Department a National Transportation Safety Board. 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 cause or probable cause of transportation accidents, and shall report the facts, conditions, and circumstances relating to such accidents; and (2) the review on appeal of the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the Secretary. In exercising these functions, powers, and duties, the Board shall be independent of the Secretary and the operating units of the Department.

(b) The Board shall consist of five members to be appointed by the President, by and with the advice and consent of the Senate, and who shall continue in office as designated by the President at time of nomination through the last day of the first, second, third, fourth, and fifth full calendar years, respectively, following the year of enactment of this Act. Their successors shall be appointed for terms of five years, in the same manner as the members originally appointed under this Act. Members of the Board shall be appointed with due regard to their fitness for the efficient dispatch of the functions, powers, and duties vested in and imposed upon the Board. Members of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Any person appointed to fill a vacancy occurring prior to the expiration of a term for which his predecessor was appointed shall serve only for the remainder of such term. Upon the expiration of his term of office, except in the case of a member removed for cause under section 4(b), a member shall continue to serve until his successor is appointed and shall have qualified.

(d) The President shall designate from time to time one of the members of the Board as Chairman and one of the members as Vice-Chairman, who shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman. The Chairman shall be the chief executive and administrative officer of the Board and shall exercise the responsibility of the Board with respect to (1) the appointment and supervision of personnel employed by the Board; (2) the distribution of business among the Board's personnel; and (3) the use and expenditure of funds. In executing and administering the functions of the Board on its behalf, the Chairman shall be governed by the general policies of the Board and by its decisions, findings, and determinations. Three of the members shall constitute a quorum of the Board.

(e) The Chairman of the Board shall be compensated at the rate provided for at level V of the Federal Executive Salary Act of 1964 (78 Stat. 416), as provided in section 10(d) (4) of this Act. Members of the Board shall be compensated at the rate now or hereafter established for grade 16 of the General Schedule of the Classification Act of 1949 (63 Stat. 954).

(f) The Board is authorized to establish such rules, regulations, and procedures as are necessary to the exercise of its functions.

(g) The Board, any member thereof or any hearing examiner assigned to the Board, shall have the same powers as are vested in the Secretary to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate.

(h) Subject to the proviso in section 701(g) of the Federal Aviation Act of 1958 (72 Stat. 731), the Board may delegate to any officer or official of the Board or, with the approval of the Secretary, to any officer or official of the Department such of its functions as it may deem appropriate.

(i) The Board is further authorized to make such recommendations concerning transportation safety to the Secretary as it may deem appropriate, including recommendations for the conduct of special safety studies on matters pertaining to safety in transportation and the prevention of accidents, the initiation of accident investigations, and rules, regulations, and procedures for the conduct of accident investigations.

(j) Subject to the Civil Service and classification laws, the Board is authorized to select, appoint, employ and fix compensation of such officers and employees, including attorneys, as shall be necessary to carry out its powers and duties under this Act.

(k) The Secretary shall provide to the Board financial and administrative services, the cost of which shall be paid in advance, or by reimbursement, from funds of the Board.

TRANSFERS TO DEPARTMENT

Sec. 6. (a) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under title 23, United States Code; relating to highways; the Federal-aid Highway Act of 1962 (76 Stat. 1145), relating to engineering and planning surveys concerning highway construction programs in Alaska; the Act of July 14, 1960 (74 Stat. 526), relating to the National Driver Register Service; the Federal-aid Highway Act of 1954 (68 Stat. 70), relating to the Great River Road; the Highway Revenue Act of 1956 (70 Stat. 337), relating to the highway trust fund, studies and investigations of Federal-aid highways; the Federal-aid Highway Act of 1953 (72 Stat. 29), relating to matching highway funds; the Highway Beautification Act of 1965 (79 Stat. 1028); the Alaska Omnibus Act (73 Stat. 141), relating to transfers of lands, buildings, fixtures and other property used in connection with Bureau of Public Roads activities in Alaska; Senate Joint Resolution 61 (79 Stat. 573), relating to appropriations and reports to Congress; section 525(c) of the General Bridge Act of 1946 (60 Stat. 647), relating to the location of and plans for interstate bridges; the

Act of July 26, 1956 (70 Stat. 669), relating to the Muscatine Bridge Commission; the Act of December 21, 1944 (58 Stat. 846), relating to the City of Clinton Bridge Commission; the Act of April 12, 1944 (55 Stat. 140), relating to the White County Bridge Commission; the Act of April 27, 1962 (76 Stat. 59), relating to the annual audit of bridge commissions; the Act of September 30, 1965, relating to high-speed ground transportation (79 Stat. 893); the Urban Mass Transportation Act of 1964 (78 Stat. 302); the Act of September 7, 1957 (71 Stat. 629), and section 410 of the Federal Aviation Act of 1958 (72 Stat. 769), relating to guarantee of loans for the purchase of aircraft and aircraft equipment; title XIII, War Risk Insurance, of the Federal Aviation Act of 1958 (72 Stat. 800); the Great Lakes Pilotage Act of 1960 (74 Stat. 259); the Merchant Marine Act, 1920 (41 Stat. 983); the Merchant Marine Act, 1928 (45 Stat. 689); the Merchant Marine Act, 1936 (49 Stat. 1985); the Shipping Act, 1916 (39 Stat. 728); the Merchant Ship Sales Act of 1946 (60 Stat. 41); the Maritime Academy Act of 1958 (72 Stat. 622); the Act of June 12, 1940 (54 Stat. 346), relating to assistance to maritime schools; the Act of August 30, 1964 (78 Stat. 614), relating to the fishing fleet; the Act of September 14, 1961 (75 Stat. 514), relating to appointments to the Merchant Marine Academy; the Act of June 13, 1957 (71 Stat. 73) to the extent it relates to operating-differential subsidies; the Act of June 12, 1951 (65 Stat. 59), relating to vessel operations revolving fund; the Act of July 24, 1956 (70 Stat. 605), relating to the grant of medals and

decorations for service in the United States Merchant Marine; the Act of August 9, 1954 (78 Stat. 675), relating to emergency foreign merchant vessel acquisition and operation; Reorganization Plan No. 21 of 1950 (64 Stat. 1273); Reorganization Plan No. 7 of 1961 (75 Stat. 840); Reorganization Plan No. 7 of 1949 (63 Stat. 1070); and the Act of August 1, 1947 (61 Stat. 715), to the extent that it authorizes scientific and professional positions which relate primarily to functions transferred by this subsection.

(b) (1) The Coast Guard is hereby transferred to the Department, and there is hereby transferred to and vested in the Secretary all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury.

(2) Notwithstanding the transfer of the Coast Guard to the Department and the transfer to the Secretary of the functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury, effected by the provisions of subparagraph (1) of this subsection, the Coast Guard, together with the functions, powers, and duties relating thereto, shall operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President shall so direct, as provided in title 14, United States Code, section 3.

(3) Notwithstanding any other provision of this Act, the functions, powers, and duties of the General Counsel of the Department of the Treasury set out in the Uniform Code of Military Justice (10 United States Code, section 801, et seq.) are hereby transferred to and vested in the General Counsel of the Department.

(c) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Federal Aviation Agency, and of the administrator and other officers and offices thereof.

(d) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Civil Aeronautics Board, and of the Chairman, Members, officers and offices thereof under titles VI (72 Stat. 775) and VII (72 Stat. 781) of the Federal Aviation Act of 1958.

(e) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Interstate Commerce Commission under the Act of March 2, 1893 (27 Stat. 531), as amended by the Act of August 14, 1957 (71 Stat. 352), the Act of March 2, 1903 (32 Stat. 943), as amended by the Act of April 11, 1958 (72 Stat. 86), and the Act of April 14, 1910 (36 Stat. 298), as amended by the Act of August 14, 1957 (71 Stat. 352), relating to safety appliances; the Act of May 30, 1908 (35 Stat. 476), relating to ash pans; the Act of February 17, 1911 (36 Stat. 913), the Act of March 4, 1915 (38 Stat. 1192), the Act of June 26, 1918 (40 Stat. 616), the Act of June 7, 1924 (43 Stat. 659), the Act of June 27, 1930 (46 Stat. 822) and the Act of April 22, 1940 (54 Stat. 148), the Act of May 27, 1947

(61 Stat. 120), the Act of June 25, 1948 (62 Stat. 909), the Act of October 26, 1949 (63 Stat. 972), the Act of August 14, 1957 (71 Stat. 352), relating to boiler inspection; Reorganization Plan No. 3 of 1965 (79 Stat. 1330), relating to locomotive inspection; the Resolution of June 30, 1906 (34 Stat. 838), relating to block signals; the Act of May 27, 1908 (35 Stat. 325), the Act of March 4, 1909 (35 Stat. 965), relating to investigation and testing of appliances and inspection of mail cars; the Act of May 6, 1910 (36 Stat. 350); the Act of September 13, 1960 (74 Stat. 903), relating to accident reports; the Act of March 4, 1907 (34 Stat. 1415), the Act of May 4, 1916 (39 Stat. 61), the Act of June 25, 1948 (62 Stat. 909), the Act of August 14, 1957 (71 Stat. 352), relating to hours of service of employees; the Act of February 23, 1903 (33 Stat. 743), the Act of June 13, 1957 (71 Stat. 69), relating to awards; title 18, United States Code, sections 831-835, relating to explosives and other dangerous articles; the Act of March 19, 1918 (40 Stat. 450), the Act of March 4, 1921 (41 Stat. 1446), and the Act of March 3, 1923 (42 Stat. 1434), as amended by the Act of June 24, 1948 (62 Stat. 646), relating to the Standard Time Act; and the following sections of the Interstate Commerce Act (24 Stat. 379): sections 1(10), 1(11), 1(12), 1(13), 1(14)(a) (but not including establishment of the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it), 1(15), 1(16), 1(17), 6(c) the final sentence of 15(4), 15(10), and 420, relating to

car service; section 25, relating to safety appliances, methods and systems; section 226, relating to investigation of motor vehicle sizes and weights; section 1(21) except to the extent that it relates to the extension of line or lines of common carriers; section 204(a)(1) and (2) to the extent that they relate to qualifications and maximum hours of service of employees and safety of operation and equipment; and section 204(a)(3), (3a), and (5), relating to safety.

Nothing in this subsection shall diminish the functions, powers, and duties of the Interstate Commerce Commission under section 1(6), 206, 207, 209, 210a, 212, and 216 of the Interstate Commerce Act or under any other section of that Act not specifically referred to in the first paragraph of this subsection.

(f) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Secretary of the Army and other officers and offices of the Department of the Army under section 7 of the River and Harbor Act of March 4, 1915 (33 Stat. 1053), and the Act of April 22, 1940 (54 Stat. 150), relating to water vessel anchorages; section 5 of the Act of August 18, 1894 (28 Stat. 362), relating to drawbridge operating regulations; the Act of June 21, 1940 (54 Stat. 497), relating to obstructive bridges; section 4 of the Act of March 23, 1906 (34 Stat. 85), section 503 of the General Bridge Act (60 Stat. 847), section 17 of the Act of June 10, 1930 (46 Stat. 552), the Act of June 27, 1930 (46 Stat. 821),

and the Act of August 23, 1905 (34 Stat. 670), relating to the reasonableness of tolls; the Oil Pollution Act, 1924 (43 Stat. 604), relating to the detection of oil pollution and enforcement of measures against same; and section 9 of the Act of March 3, 1899 (30 Stat. 1151), the Act of March 23, 1906 (34 Stat. 84), and the General Bridge Act (60 Stat. 847), insofar as they relate to the location and clearances of bridges in the navigable waters of the United States.

TRANSPORTATION INVESTMENT STANDARDS

Sec. 7 (a) 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 such proposals as are concerned with (1) the acquisition of transportation facilities or equipment by Federal agencies in providing transportation services for their own use; (2) an interoceanic canal located outside the contiguous United States; (3) defense features included in the design and ^{development} ~~development~~ of civil air, sea and land transportation and funded through appropriations to the Department of Defense; or (4) programs of foreign assistance. The standards and criteria for economic evaluation of the transportation features of multi-purpose water resource projects shall be developed by the Secretary after consultation with the Water Resources Council, and shall be compatible with the standards and criteria for economic evaluation applicable to non-transportation features of such projects. The standards and criteria developed or revised pursuant to this subsection shall be promulgated by the Secretary upon their approval by the President.

(b) Every survey, plan or report formulated by a Federal agency which includes a proposal as to which the Secretary has promulgated standards and criteria pursuant to subsection (a) shall be (1) prepared

in accord with such standards and criteria and upon the basis of information furnished by the Secretary with respect to projected growth of transportation needs and traffic in the affected area, the relative efficiency of various modes of transport, the available transportation services in the area, and the general effect of the proposed investment on existing modes and on the regional and national economy;

(2) coordinated by the proposing agency with the Secretary and, as appropriate, with other Federal agencies, States, and local units of government for inclusion of his and their views and comments; and

(3) transmitted thereafter by the proposing agency to the President for disposition in accord with law and procedures established by him.

AMENDMENTS TO OTHER LAWS

Sec. 8 (a) Section 406(b) of the Federal Aviation Act of 1958, as amended, (72 Stat. 763) is amended by adding the following sentence at the end thereof: "In applying clause (3) of this subsection, the Board shall take into consideration any standards and criteria prescribed by the Secretary of Transportation, for determining the character and quality of transportation required for the commerce of the United States and the national defense."

(b) Section 201 of the Appalachian Regional Development Act (79 Stat. 10) is amended as follows:

(1) The first sentence of subsection (a) of that section is amended by striking the words "Commerce (hereafter in this section referred to as the 'Secretary')" and inserting in lieu thereof "Transportation."

(2) The last sentence of subsection (a) of that section is amended by inserting after the word "Secretary", the words "of Transportation".

(3) Subsection (b) of that section is amended by inserting after the word "Secretary", the words "of Commerce".

(4) Subsection (c) of that section is amended by striking the first sentence and inserting in lieu thereof the following sentence:

"Such recommendations as are approved by the Secretary of Commerce shall be transmitted to the Secretary of Transportation for his approval."

(5) The second sentence of subsection (c) of that section is amended by inserting after the word "Secretary" the words "of Transportation".

(6) Subsection (c) of that section is amended by inserting after the word "Secretary" the words "of Transportation".

(7) Subsection (f) of that section is amended by inserting after the word "Secretary", the words "of Commerce and the Secretary of Transportation". Subsection (f) of that section is further amended by striking the word "determines" and inserting in lieu thereof "determine".

(8) Subsection (f) of that section is amended by striking the period at the end thereof and adding the following:

"to the Secretary of Commerce, who shall transfer funds to the Secretary of Transportation for administration of projects approved by both Secretaries."

(c) Section 206(c) of the Appalachian Regional Development Act of 1965 (79 Stat. 15) is amended by inserting after "Interior," the words "Secretary of Transportation,".

(d) Sections 12, 13(1), 13(2), 20 (except clauses (3), (4), (11), and (12) thereof), 204(a) (except clauses 4 and 4a thereof), 204(c), 205(d), 205(f), 220 (except subsection (c) thereof) and 222 (except subsections (b)(2) and (b)(3) thereof) of the Interstate Commerce Act (27 Stat. 379) are amended by inserting "(Secretary of Transportation with respect to the establishment and enforcement of reasonable requirements with respect to qualifications and maximum hours of service of employees, safety of operation and equipment, and car service)" immediately after "Commission" where it first occurs in each such section, and by inserting "or Secretary of Transportation, as the case may be" after Commission in every other place where it occurs in each such section, except where it occurs in the proviso of section 220(a) and the last time in section 222(h).

(e) Section 212(a) of the Interstate Commerce Act (49 Stat. 555) is amended by striking "of the Commission" the second, third, and fourth times those words occur.

(f) Section 13(b) of the Fair Labor Standards Act of 1938 (52 Stat. 1067) is amended by striking the words "Interstate Commerce Commission" and inserting in lieu thereof "Secretary of Transportation."

(g) Section 18(1) of the Interstate Commerce Act (27 Stat. 386) is amended by inserting "or Secretary of Transportation with respect to the establishment and enforcement of reasonable requirements with respect to qualifications and maximum hours of service of employees, safety of operation and equipment, and car service" after "Commission" where it last occurs therein.

(h) Section 101 of the Water Resources Planning Act (79 Stat. 245) is amended by adding "the Secretary of Transportation" after the words "Secretary of Health, Education, and Welfare,".

ADMINISTRATIVE PROVISIONS

Sec. 9 (a) In addition to the authority contained in any other act which is transferred to and vested in the Secretary, the Secretary is authorized, subject to the civil service and classification laws, to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to carry out the provisions of this Act and to prescribe their authority and duties. The Secretary may fix the compensation for not more than twenty positions in the Department at an annual rate not to exceed the highest rate now or hereafter established for grade 18 of the General Schedule of the Classification Act of 1949 (63 Stat. 954).

(b) Subsection b of section 505 of the Classification Act of 1949, (63 Stat. 964), relating to the maximum number of positions authorized at any one time for grade 16, 17, and 18 of the General

Schedule of such act, is further amended by striking the number "twenty-four hundred" and by inserting in lieu thereof "twenty-four hundred and twenty five."

✓ (c) The Secretary may obtain services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 310), but at rates not to exceed \$100 per diem for individuals unless otherwise specified in an appropriation act.

✓ (d) 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, the Secretary may delegate any of his functions, powers, and duties, to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.

✓ (e) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the Federal Aviation Agency, and of the head and other officers and offices thereof, are hereby transferred to the Secretary.

(f) So much of the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used,

existing, from, available or to be made available in connection with the functions, powers, and duties transferred by sections 6 (except section 6(e)) and 8(d), (e), (f), and (g) of this Act as the Director of the Bureau of the Budget shall determine shall be transferred to the Secretary.

(g) The transfer of personnel pursuant to subsections (e) and (f) of this section shall be without reduction in classification and compensation, except that this requirement shall not operate after one year from the date such transfers are made.

(h) Any offices and any agency heretofore established by law, all the functions, powers, and duties of which are transferred pursuant to this Act shall lapse; Provided, however, that this sentence shall not apply to the Coast Guard; and Further Provided, that any person holding a position compensated in accordance with the Federal Executive Salary Schedule who, without a break in service, is appointed in the Department to a position having duties comparable to those performed at the effective date of this Act shall continue to be compensated at the rate ^{not} provided for such level for the duration of his service in such position.

(i) The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interest of economy and

efficiency in the Department, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction and for graphics and visual aids; and a central library service. The capital of the fund shall consist of the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations, together with any appropriations made for the purpose of providing capital, which appropriations are hereby authorized. Such funds shall be reimbursed from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund.

(j) The Secretary shall cause a seal of office to be made for the Department of such device as he shall approve, and judicial notice shall be taken of such seal.

CONFORMING AMENDMENTS TO OTHER LAWS

Sec. 10 (a) Section 19(d)(1) of title 3, United States Code, is hereby amended by striking out the period at the end thereof and inserting a comma and the following: "Secretary of Transportation."

(b) Section 156 of the Revised Statutes (5 U.S.C. 1) is amended by adding at the end thereof:

"Twelfth. The Department of Transportation."

(c) The amendment made by subsection (b) of this section shall not be construed to make applicable to the Department any provision of law inconsistent with this Act.

(d) Section 303 of the Federal Executive Salary Act of 1964 (78 Stat. 416) is amended as follows:

(1) subsection (a) of that section is amended by adding at the end thereof the following:

"(11) Secretary of Housing and Urban Development.

"(12) Secretary of Transportation."

(2) subsection (c) of that section is amended by striking "(6) Under Secretary of Commerce for Transportation" and inserting in lieu thereof, "(6) Under Secretary of Transportation".

(3) subsection (d) of that section is amended by adding the following:

"(22a) Assistant Secretaries, Department of Transportation (4)".

"(47a) General Counsel, Department of Transportation".

(4) subsection (c) of that section is amended by adding the following:

"(27a) Assistant Secretary for Administration, Department of Transportation".

"(101) Chairman, National Transportation Safety Board, Department of Transportation".

(5) subsection (f) of that section is amended by striking out "thirty" and inserting in lieu thereof "thirty-nine."

(6) Immediately following subsection (g) of that section, the following new subsection is added:

"(h) Following the effective date of the Department of Transportation Act, the President is further authorized to place one position in level III."

(e) Subsections (b)(7), (d)(2), and (e)(12) (13) (14) (76) (82) and (89) of section 303 of the Federal Executive Salary Act of 1964 (78 Stat. 415) are repealed, subject to the provisions of section 8 of the Department of Transportation Act.

(f) The Act of August 1, 1956 (70 Stat. 897) is amended by striking the words "Secretary of Commerce" where they appear therein and inserting in lieu thereof "Secretary of Transportation."

(g) Title 18, United States Code, section 1020 is amended by striking the words "Secretary of Commerce" where they appear therein and inserting in lieu thereof "Secretary of Transportation."

(h) Subsection (1) of section 501, title 10, United States Code, is amended by striking out "the General Counsel of the Department of the Treasury" and inserting in lieu thereof "the General Counsel of the Department of Transportation."

ANNUAL REPORT

Sec. 11 The Secretary shall, as soon as practicable after the end of each fiscal year, make a report in writing to the President for submission to the Congress on the activities of the Department during the preceding fiscal year.

SAVED PROVISIONS

Sec. 12 (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses and privileges which have been issued, made, granted, or allowed to become effective by any department or agency, functions of which are transferred by this Act, or by any court of competent jurisdiction, or under any provision of law repealed or amended by this Act, or in the exercise of duties, powers, or functions which, under this Act are vested in the Secretary, and which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, or by any court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before any department, agency or component thereof, functions of which are transferred by this Act; but any such proceedings involved in such transfer shall be continued before the Department of Transportation, orders therein issued, appeals therefrom taken, and payments made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary or by operation of law.

(c) The provisions of this Act shall not affect suits commenced prior to the date on which this section takes effect; and all such suits shall be continued by the Department of Transportation, proceedings therein had, appeals therein taken and judgments therein rendered, in the same manner and effect as if this Act had not been enacted. No suit, action, or other proceeding commenced by or against any officer in his official capacity of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions or other proceedings may be asserted by or against the United States or such official of the Department as may be appropriate and, in any litigation

pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this section.

(d) With respect to any function, power, or duty transferred by this Act and exercised hereafter, reference in any other Federal law to any department or agency, officer or office so transferred or functions of which are so transferred shall be deemed to mean the Secretary.

SEPARABILITY

✓ Sec. 13 If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATE

Sec. 14 The President is authorized to nominate and appoint any of the officers provided for in sections 3 and 5 of this Act, as provided in such sections, at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office, in accordance with sections 5 and 10 of this Act. All other provisions of this Act shall take effect ninety days after the Secretary first takes office, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

*Agreed
Secretary
3-6-4
24 Oct.
Plan of work*

CONFIDENTIAL

Sec. 15. The President shall nominate and appoint any of the officers provided for in sections 3 and 5 of this Act, as provided in such sections, at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office, in accordance with sections 5 and 10 of this Act. Such compensation and related expenses of their offices shall be paid from funds available for the function to be transferred to the Department pursuant to this Act. All other provisions of this Act shall take effect ninety days after the Secretary first takes office, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

CODIFICATION

Sec. 15 The Secretary is directed to submit to the Congress within two years from the effective date of this Act, a codification of all laws that contain the powers, duties, and functions transferred to and vested in the Secretary of the Department by this Act.

Ret
Drawn
+
file

DOT Test Force

Meeting at Feb. 14, 1966

Present : BOB: Suck, Murray, Sedman, Murray; FAA: Dea
Goodrich; CG: Bursely; CAB: Gohman; ICC: Weiss;
Army: Fitt; Commerce: Markey; O'Keeffe; Bonds

1. Reviewed and made certain revisions and additions to the 2/14/66 draft of the bill.
2. Discussed and acted on language pertaining to the utilization of military personnel in the Dept.
3. Suck announced that no messages will go down to Congress this week. Too many Congressmen out of town.
4. Discussed briefing materials.
 1. Org & Mgt
 2. Subsidy
 3. Investment Policy & Revision
 4. Urban Transportation
 5. Interagency relationships
 6. Safety

7. International Transportation

8. Section by Section analysis

5. Motor Vehicle program:

Get into Paul Simon

6. Set a meeting of Org's Mgt Sub Com.



GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE

WASHINGTON, D.C. 20230

February 15, 1966

MEMORANDUM

Honorable Charles J. Zwick
Assistant Director
Bureau of the Budget
Room 246 Executive Office Building

Attached is a rough draft of the section-by-section summary of the Department of Transportation legislation (draft dated February 14). The summary is generally modeled on the summary sent to Congress in connection with the HUD Act.

The HUD format simply summarized the bill, rather than attempting to explain it. It is desirable, I believe, to depart from the HUD format to some degree in the case of the DOT bill. Specifically, I think we should have some detailed explanation, for example, of the Safety Board, the investment provisions, and the personnel protective provisions.

We discussed yesterday the possibility of attaching separate explanatory papers on the Safety Board provision, the investment provision and the organization of the new department. I think it would be desirable to make the section-by-section summary as brief as possible and to attach to it separate, detailed explanations of particular aspects of the bill as are useful.

I have talked with Al Fitt, who has agreed to provide a second draft of the explanation of the investment provision (section 7), and with Nate Goodrich, who has agreed to provide a second draft of the Safety Board provision (section 5).

I shall appreciate other comments on this draft as soon as possible so that we will be in a position to send the summary along with the bill.

Daniel F. O'Keefe, Jr.
Assistant General Counsel
for Transportation

cc:

Honorable Harold Seidman
Honorable John Adams
Mr. Joseph Goldman
Mr. Alan Dean
Mr. Nate Goodrich
Mr. Ernest Weiss
Commander Patrick Bursley
Mr. Gordon Murray
Mr. Arthur Kellen

SECTION-BY-SECTION SUMMARY
DEPARTMENT OF TRANSPORTATION

Section 1 provides that the Act would be cited as the Department of Transportation Act.

DECLARATION OF PURPOSE

Section 2 sets forth the basic purposes for the establishment of the Department. Congress would declare that the Nation requires development and implementation of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

Congress would find that a Department of Transportation is necessary in the public interest and to assure the coordinated effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service to be provided by private enterprise to the maximum extent feasible; to encourage the cooperation of Government, industry, labor and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation, to provide leadership in the identification and solution of transportation problems and to develop and recommend national transportation policies and programs with full consideration of the needs of the public, users, carriers, labor, and the national defense.

ESTABLISHMENT OF DEPARTMENT

Section 3(a) would establish a Department of Transportation and provide for a Secretary of Transportation to be appointed by the President, by and with the advice and consent of the Senate.

Sections 3(b) and (c) provide for an Under Secretary of Transportation, four Assistant Secretaries, and a General Counsel. These officials would be appointed by the President, by and with the advice and consent of the Senate.

Section 3(d) provides for an Assistant Secretary for Administration to be appointed by the Secretary under the classified civil service, with the approval of the President.

GENERAL PROVISIONS

Section 4(a) provides that the Secretary shall exercise leadership under the direction of the President in transportation matters and develop national transportation policies and programs. The Secretary would carry them out or make recommendations for their implementation to the President, the Congress, or the transportation regulatory agencies, as appropriate. The subsection also provides for the Secretary to promote and develop transportation information and research and development in transportation. Transportation would, of course, include all modes of transportation, as well as all types of transportation facilities (e.g., airports) and services (e.g., freight forwarding).

Section 4(b) provides that the Secretary shall give full consideration to the need for operational continuity of the functions transferred

by the Act, to the need for effectiveness and safety in transportation systems and to the needs of the national defense. This section is intended to prevent ~~undue~~^{disruptive or} premature reorganizing within the new department of the functions now being performed by the various operating units which will be the foundation of the department.

Section 4(c) would permit the Secretary to provide for emergency medical services, food, quarters, and other specified services, generally on a reimbursable basis, to employees and dependants stationed at remote localities, when such services are not otherwise available.

Sections 4(d), (i), and (f) would authorize the Secretary to accept gifts and bequests of property to aid the work of the department. Money gifts and bequests would be deposited in the Treasury in a separate fund to be disbursed on order of the Secretary of Transportation. Such gifts and bequests would be considered as gifts to the United States for tax purposes. The Secretary of the Treasury, upon request of the Secretary of Transportation, would be authorized to invest money gifts in United States or United States guaranteed securities.

Sections 4(g) and (h) would authorize the Secretary to make special statistical studies in transportation, upon request of any person, firm or corporation, on a cost reimbursable basis.

Section 4(i) would authorize the Secretary to appoint advisory committees. Members would be authorized per diem and travel expense in accordance with existing law.

Section 4(j) would make orders and actions of the Secretary, in the exercise of the functions transferred to him under the 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 function was transferred.

Section 4(k) provides the Secretary the same powers as are vested in the Civil Aeronautics Board in exercising the functions transferred by this Act. These include the authority to hold hearings, issue subpoenas, administer oaths, examine witnesses, take depositions and compel testimony.

NATIONAL TRANSPORTATION SAFETY BOARD

Section 5(a) would establish within the Department a National Transportation Safety Board which would exercise the functions transferred to the Secretary by this Act with regard to the determination of cause or probable cause of transportation accidents, and with regard to the review of the suspension, alteration, modification, revocation, or denial of any certificate or license issued by the Secretary. The Board would be independent of the Secretary and the operating units of the Department.

Sections 5(b), (c), (d), and (e) generally provide that members of the Board would be appointed with regard to their fitness to perform the functions of the Board, by the President, by and with the advice and consent of the Senate; that Board members would serve five-year terms and be removable only for cause; and that the President would appoint a Chairman whose duties are prescribed. The Chairman would be compensated at Level V of the Federal Executive Salary Act of 1964 and members would be compensated at grade 18 level. Other details are set forth in the bill.

Sections 5(f), (g), (h), (i), (j), and (k) generally provide that the Board could issue appropriate rules and regulations to carry out its

functions; that the Board, its members, or hearing examiners could issue subpoenas, and perform other necessary judicial functions; that the Board can delegate its functions subject to the proviso in section 701(g) of the Federal Aviation Act of 1958 which would prohibit the Secretary from participating in determinations of probable cause in air accidents; that the Board can make recommendations concerning transportation safety and rules and procedures for the conduct of accident investigations to the Secretary; that the Board can employ persons under the civil service; and that the Secretary shall provide financial and administrative services to the Board, on a reimbursable basis. Other details are set forth in the bill.

TRANSFERS TO DEPARTMENT

Section 6(a) would transfer to the Secretary of Transportation all of the functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under various specified statutes. These transfers are the functions of the Secretary administered by the Under Secretary of Commerce for Transportation, including the high-speed ground transportation program, the aviation loan guarantee program, the aviation war risk insurance program, the Great Lakes Pilotage Administration, the Maritime Administration and the Bureau of Public Roads. The Maritime Administration, among many other maritime activities, has responsibility for operating-differential subsidy and construction-differential subsidy for the U. S. merchant marine and shipping industry. The Bureau of Public Roads, among its many highway activities, is responsible for the apportioning and expending of monies from the Highway Trust Fund for the Federal-aid highway systems.

Section 6(b) would transfer the Coast Guard to the Secretary of Transportation, as well as functions of the Secretary of the Treasury which relate to the Coast Guard. The Coast Guard would be transferred as a complete organizational unit and would operate under the Secretary of the Navy in time of war or when the President directs, as provided in existing law. Section 6(b)(3) would transfer the functions of the General Counsel of the Department of the Treasury under the Uniform Code of Military Justice to the General Counsel of the new department. This would preserve the theory in existing law wherein the General Counsel, rather than the Secretary, is responsible for

Section 6(c) would transfer to the Secretary of Transportation all of the functions, powers, and duties of the Federal Aviation Agency and of the other officers and offices thereof. The Federal Aviation Agency, among its many responsibilities in the field of air transportation, promulgates and enforces safety regulations concerning airmen, and aircraft and conducts other air safety activities; conducts various activities related to air navigation and traffic control; provides leadership and direction through the national government industry program for the design and development of a commercial supersonic transport aircraft; and administers the Federal airport program.

Section 6(d) would transfer to the Secretary ^{the} functions of the Civil Aeronautics Board which relate to safety. In general, these functions are to provide for independent review of actions denying or adversely affecting licenses issued under regulations governing air safety and to investigate the facts and circumstances relating to accidents involving

civil aircraft, determine the probable cause of such accidents, and to make recommendations to prevent such accidents in the future.

Section 6(e) would transfer to the Secretary the functions of the Interstate Commerce Commission (ICC) relating to the administration and enforcement of the various railroad, motor carrier, and pipe line safety laws and those parts of Part I of the Interstate Commerce Act which relate to car service. Also transferred would be ICC functions with regard to safe transportation of explosives and other dangerous articles.

Section 6(f) would transfer to the Secretary certain specific functions of the Secretary of the Army relating to the movement and operational cost of land and water transportation, including establishment of water vessel anchorages, operating regulation of drawbridges, authority to regulate rates on toll bridges; and approval of the location and clearance of bridges over navigational waters.

TRANSPORTATION INVESTMENT STANDARDS

Section 7(a) states that the Secretary of Transportation shall develop standards and criteria consistent with national transportation policies and programs for the formulation and economic evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment except proposals concerned with the acquisition of transportation facilities or equipment by Federal agencies in providing transportation services for their own use, an interoceanic canal located outside the contiguous United States, defense features included in the design and development of transportation financed through appropriations to the Defense Department; or programs of foreign assistance. Provision is made

for consultation by the Secretary with the Water Resources Council in preparing principles and standards applicable to transportation features of multi-purpose water resource projects, and further provides that the standards developed by the Secretary shall be compatible with standards applicable to non-transportation features of such projects. The standards and criteria would be promulgated by the Secretary after approval by the President. Excluded from coverage in the section would be functions of the Military Sea Transport Service (MSTS), the Military Airlift Command (MAC), the Panama Canal, and AID. Included would be proposals by other agencies, including the Corps of Engineers. *Printed*

Section 7(b) requires that every survey plan or report by a Federal agency which includes a proposal as to which the Secretary has issued standards and criteria pursuant to subsection (a) shall be prepared in accord with the standards and criteria furnished by the Secretary of Transportation and coordinated by the proposing agency with the Secretary and other government agencies as appropriate, and transmitted to the President for disposition.

AMENDMENTS TO OTHER LAWS

Section 8(a) amends the Federal Aviation Act of 1958 (Section 406(b)) by providing that, in determinations of subsidy for air carriers, the Civil Aeronautics Board shall take into consideration standards and criteria prescribed by the Secretary of Transportation for determining the character and quality of transportation required for commerce of the United States and the national defense.

Section 8(b) would amend section 201 of the Appalachian Regional Development Act so as to provide that the Secretary of Transportation, rather than the Secretary of Commerce, would be authorized to assist in the construction of an Appalachian development highway system, and make the determination as to which provisions, if any, of the Federal highway laws are inconsistent with the Appalachian Act. The Appalachian Regional Development Commission would continue to submit for approval its recommendations to one Federal official, the Secretary of Commerce, who would transmit such recommendations as he approves to the Secretary of Transportation for approval. The Secretary of Transportation would be authorized to require participating states to use coal derivatives in the construction of roads. Federal assistance to any construction project could not exceed 50 per centum of the cost, unless both the Secretary of Commerce and the Secretary of Transportation determine that additional Federal funds are required. Appropriations would be made to the Secretary of Commerce who would transfer funds to the Secretary of Transportation for administration of approved projects.

Section 8(c) would include the Secretary of Transportation in the list of those with whom the Appalachian Regional Development Commission shall consult.

Sections 8(d), (e), (f), and (g) would amend various sections of the Interstate Commerce Act and the Fair Labor Standards Act of 1938 to make the necessary changes to implement the transfers in section 6(e). The Secretary would receive the same authority as the ICC to administer, execute and enforce the functions transferred to him.

Section 8(h) would include the Secretary of Transportation on the Water Resources Council.

ADMINISTRATIVE PROVISIONS

Sections 9(a), (b), (c), and (d) authorize the Secretary to appoint personnel under the civil service laws, to appoint not more than twenty positions, the compensation for which is not to exceed the annual rate for GS-18 (in addition to the twenty positions which would be inherited from the Federal Aviation Agency); to hire experts and consultants; and to delegate his functions and issue appropriate rules and regulations.

Sections 9(e), (f), and (g) would transfer to the Secretary all personnel, assets, liabilities, and appropriations which relate to the functions transferred by the Act. The Director of the Bureau of the Budget would have the authority to implement these transfers. Personnel transferred would be without reduction in classification and compensation for a period of one year. It is expected that most of the personnel would be assigned responsibilities in the new department comparable to those they presently perform, thus minimizing the impact of grade reduction. Personnel transferred, of course, would retain whatever rights and benefits they are presently entitled to under applicable laws.

Section 9(h) would lapse the offices of the Under Secretary of Commerce for Transportation, the Maritime Administration, the Bureau of Public Roads, the Great Lakes Pilotage Administration, and the Federal Aviation Agency. The Coast Guard would not be lapsed. Any person holding a position in any such agency compensated under the Federal Executive

Salary Schedule who, without a break in service is appointed to a position having duties comparable to those he presently performs, would continue to be compensated at the rate of his present position for the duration of his service in such position.

Section 9(i) would authorize the Secretary to establish a working capital fund, similar to those in other departments, for operating various common administrative services in the Department such as supply, messenger, mail, telephone, space, library, and reproduction services. Details are set forth in the bill.

Section 9(j) directs the Secretary to adopt a Department seal and provides for judicial notice of the seal.

CONFORMING AMENDMENTS TO OTHER LAWS

Section 10(a) would place the Secretary of Transportation in the line of succession to the Office of President of the United States.

Sections 10(b) and (c) are technical provisions which would extend to the new department the provisions of Title IV of the Revised Statutes, except to the extent inconsistent with the bill. These provisions deal with such matters as departmental vacancies, regulations, duties of clerks, details, and employment of personnel, oaths, subpoenas, and witness fees.

Section 10(d) amends Section 303 of the Federal Executive Salary Act of 1964 by placing the Secretary of Housing and Urban Development and the Secretary of Transportation in Level I of the Federal Executive Salary Schedule; by deleting the Under Secretary of Commerce for

Transportation and inserting the Under Secretary of Transportation at Level III; by adding four Assistant Secretaries of the Department of Transportation and a General Counsel of the Department of Transportation at Level IV; and by adding an Assistant Secretary for Administration of the Department of Transportation and the Chairman of the National Transportation Safety Board at Level V. The section also authorizes the President to place one position in Level III and a total of nine additional positions in Level IV and Level V of the Executive Salary Schedule.

Section 10(e) removes from the Federal Executive Salary Schedule, subject to the provisions of Section 9 of the Department of Transportation Act, reference to the Administrator of the FAA; Deputy Administrator, FAA; the Associate Administrator for Administration, FAA; the Associate Administrator for Development, FAA; the Associate Administrator for Programs, FAA; the General Counsel, FAA; the Federal Highway Administrator; and the Maritime Administrator.

Section 10(f) amends the Act which makes the vessel operation revolving fund available to pay activation and deactivation cost of ships chartered out by the Secretary of Commerce so as to make it applicable to ships chartered out by the Secretary of Transportation.

Section 10(g) amends the Act which prescribes a criminal penalty for false representations relating to highway projects submitted to the Secretary of Commerce so as to make it applicable to such projects submitted to the Secretary of Transportation.

Section 10(h) implements the provision of section 6(b)(3) of this Act.

ANNUAL REPORT

Section 11 provides for an annual report.

SAVINGS PROVISIONS

Sections 12(a), (b), (c) and (d) provide that orders, regulations and the like, issued and in effect on the effective date of this section, by any department or agency, functions of which are transferred by this Act, shall continue in effect until modified or changed by the Secretary or other legal authority; that proceedings before agencies at the effective date of the section shall continue before the new department; that court proceedings shall not be affected by this and including provision for appropriate substitution of successor parties; and that references in Federal laws, with respect to functions transferred by this Act, would be deemed to mean the Secretary of Transportation.

SEPARABILITY

Section 13 provides a standard separability clause.

EFFECTIVE DATE

Section 14 authorizes the President to nominate and appoint any of the Presidentially appointed officers provided for in Sections 3 and 4 of the Act of the bill, as provided in those sections, at any time after the Secretary first takes office or on such prior date after enactment of the Act as the President prescribes in the Federal Register.

CODIFICATION

Section 15 would direct the Secretary to submit to the Congress within two years from the effective date of the Act, a codification of all laws transferred to the Secretary by this Act.



GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE
WASHINGTON, D.C. 20230

February 16, 1966

MEMORANDUM TO Honorable Charles J. Zwick
Assistant Director, Bureau of the Budget
Room 246 Executive Office Building

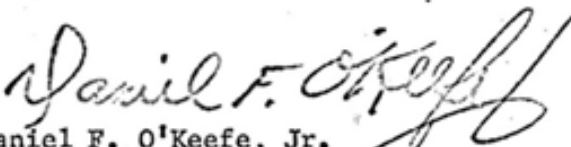
Attachment I is a revised version of section 4(k) (page 6) of the bill relating to authority of the Secretary in exercising the functions which would be transferred to him under the Department of Transportation Act. It broadens the scope of old 4(k).

Attachment II is a revised version of the effective date provision, and Attachment III is the Coast Guard and military provisions discussed on Monday.

I plan to incorporate these revisions in the final draft which I expect to have typed on Thursday. I will appreciate any comments by Thursday noon.

The final version of the bill will also reflect the addition to section 6(f) of the Oil Pollution Act of 1961 (a technical omission); a new 8(h) (a technical omission), (old 8(h) relating to the Water Resources Council has been deleted); deletion of the last sentence of section 9(a) and raising the number in section 9(b) to forty-five, per the decision Monday.

Attachments


Daniel F. O'Keefe, Jr.
Assistant General Counsel
for Transportation

cc:
Honorable Harold Seidman (BOB)
Mr. Gordon M. Murray (BOB)
Mr. Arthur D. Kallen (BOB)
Honorable John G. Adams (CAB)
Mr. Joseph B. Goldman (CAB)
Mr. Alan L. Dean (FAA)
Mr. Nathaniel H. Goodrich (FAA)
Mr. Ernest Weiss (ICC)
Commander G. H. P. Bursley (Treas.)

ATTACHMENT I

Proposed Revision of Section 4(k) (page 6)

(k) In the exercise of the functions, powers, and duties transferred under this Act, the Secretary is authorized the same authority as vested in the agency originally exercising such functions, powers, and duties, and his actions in exercising such functions, powers, and duties shall have the same force and effect as when exercised by such agency.

ATTACHMENT II

EFFECTIVE DATE

The President is authorized to nominate and appoint the Secretary, the Under Secretary, the Assistant Secretaries, the General Counsel, and the Members of the National Transportation Safety Board, as provided in sections 3 and 5 of this Act, at any time after the date of enactment of this Act. All of sections 1, 2, 3, 4, 5, 7, and 13; subsections (a), (b), (c), (d), (e), (f), (k), (l), and the last proviso of section (j) of section 9; and subsections (a), (b), (c), and (d) of section 10, shall take effect on the date the Secretary first takes office; Provided however, that the position of Under Secretary of Commerce for Transportation shall not be stricken from the Federal Executive Salary Act of 1964 until the remaining provisions of this Act become effective. All other provisions of this Act shall take effect ninety days after the Secretary first takes office, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

ATTACHMENT III

Provision to be added to Section 4 (page 6)

(1) (1) Nothing in this Act or other law shall preclude appointment, detail or assignment of an officer or enlisted man on active duty in the Coast Guard to any position in the Department, other than Secretary and Under Secretary.

(2) Nothing in this Act or other law shall preclude appointment or assignment of a retired officer or enlisted man of the Coast Guard to any position in the Department.

(3) The provisions of section 9(e) (1) shall apply to persons appointed, detailed, or assigned under authority of this subsection.

Provision to be inserted in Section 9 (page 22)

(Current subsection (d) and following subsections would be renumbered)

(d) The Secretary is authorized to provide for participation of military personnel in carrying out his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Department by the appropriate Secretary, pursuant to cooperative agreements with the Secretary of Transportation. Members so detailed shall not be charged against any statutory limitation on grades or strengths applicable to the military departments.

(e). (1) Appointment, detail, or assignment to, acceptance of, and service in any appointive or other position in the Department under the authority of section 4(1) and section 9(d) shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy

or hold or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A person so appointed, detailed, or assigned shall not be subject to direction by or control by his Armed Force or any officer thereof directly or indirectly with respect to the responsibilities exercised in the position to which appointed or assigned.

(2) The Secretary shall report annually in writing to the appropriate committees of the Congress on personnel appointed and agreements entered into under subsection (d) of this section, including the number, rank, and positions of members of the armed services detailed pursuant thereto.

Ret 10 01 file
Revised 1/28/66

TASK FORCE ON THE DEPARTMENT OF TRANSPORTATION
Subcommittee on Organization and Management

General Concept of Organization and Management

In attempting to design an organization structure for the Department of Transportation the Task Force can divide the job into two phases. These are (1) study and development of recommendations concerning the organizational and management features of the Department which will be affected by the text of the legislation; and (2) the development and description of an organization in sufficient detail to meet the needs of testimony before the Congress and to serve as a starting point and guide for the Secretary after the establishment of the Department. In view of the tight schedule for clearance of the legislation, the first phase of this job is now critical and is receiving priority attention from the Subcommittee. No decisions with respect to organization can, however, be made without initial agreement on some general concepts concerning the structure and management of the Department. The members of the Subcommittee agree on the following conceptual statement:

The Department must initially be administered through a group of program oriented administrations and corporations each one 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.

Observations and Issues

Consistent with the above concept statement, the following observations and issues are presented to the Task Force for consideration.

1. Number of Under Secretaries. The draft legislation should provide for a single Under Secretary whose rights of succession should be clearly stated.
2. Number of Assistant Secretaries. It is suggested that the bill provide for four Assistant Secretaries.
3. Assistant Secretary for Administration. Provision should be made for an Assistant Secretary for Administration using language similar to that in Section 4(b) of the HUD Act.
4. Number of Executive Salary Act Positions. The legislation should keep both the level and number of Executive Pay Act positions flexible until the work on organization planning is much further advanced. It should, however, be recognized that the FAA is an extraordinarily large and complex organization more comparable to the Internal Revenue Service. The existing holders of Executive level jobs should be protected for the duration of their incumbency in comparable jobs in the Department.
5. Special Positions. The Federal Aviation Agency now has 23 so-called Special Positions for which salaries may be set at levels not to exceed that of GS-18 without regard to the provisions of the Classification Act. It is recommended that the Secretary be furnished with a sufficient number of "Special" positions to meet his needs in organizing the Department. The resolution of this matter will require consultation with the Civil Service Commission.

6. Supergrade and P. L. 313 Positions. The Bureau of the Budget staff will consult with the Civil Service Commission concerning any provisions relating to supergrades and P. L. 313 positions which should be incorporated in the legislation.

7. Provision for Heads of the Administrations and their Powers. The existing statutory agencies, administrations, and bureaus to be incorporated in the new Department will be abolished and all their functions and powers transferred to the Secretary. This alternative gives the Secretary the greatest flexibility and would result in the heads of the administrations being appointed by him.

However, it will be necessary to include language in the Act which will give adequate assurance that operating agencies will not be disrupted and that the Secretary will exercise his powers over the internal organization of the Department with due regard to the impact upon the continuing and effective performance of essential service.

8. Transportation Safety Board. Such a board will be established in the Department by law and will consist of five members appointed by the President with Senate confirmation for fixed, overlapping terms. The Board will determine probable cause of transportation accidents, will set rules for the conduct of accident investigations and will hear appeals on certification cases based on safety considerations.

Minutes of Meeting
Subcommittee on Organization and Management
Task Force on the Department of Transportation

3:00 P.M. February 17, 1966

Present: Alan Dean Cecil Mackey
Ludwig Hoffmann Arthur Kallen
Frank Turner Commander Burdick, USCG
Ernie Weiss Captain Morgan, USCG
Gene Withoner
Grant Howard

Mr. Dean outlined the general situation:

Work has continued to perfect the bill.

There are ^{few if any} ~~relatively~~ no loose ends, so far as a finished bill is concerned.

The Civil Service Commission did not concur with the Special Positions. ^{This provision of the bill was} ~~deleted~~ ^{additional} and the number of Supergrants raised from 25 to 45.

A good provision has been added to the bill for the utilization of Coast Guard military personnel in the ^{Department} ~~structural~~ ^{Transportation} ~~level~~.

Work is continuing on the President's Message, which is not limited to the Department of Transportation ^{proposal} ~~to include~~ and many other ^{matters} ~~things~~ related to transportation.

The proposed bill will not be transmitted this week, and next week is not certain either.

The Task Force probably won't meet before Monday 2-21-66.

Regarding the Concept Paper --- the basic ideas have been accepted by the Task Force; probably what we should do today is to change it up, and cover any omissions.

Mrs. Weiss questioned the Incident Investigation working, page 3, but agreed to discuss it in turn.

Mrs. Dean referred to the last paragraph, page 1 --- Everyone recognized the new Department must be put into operation without disruption to the operating programs, and this can only be done by protecting the major organizations concerned. It is also expected, that with experience, there will be some things that will have to be pulled together. We need an official who can assure the most effective operation. The question is, where do you put the emphasis, and therefore, what do you say first? The group indicated there was no problem with the paragraph being in the present sequence.

Mrs. Dean referred to the first item page 2 --- This item is very critical. It is felt to be most important to the Secretary to have ^{the assignment of responsibilities to} ~~three~~ Assistant Secretaries flexible. With a Department of this size, and with Administrations as powerful as the Coast Guard, the Bureau of Public Roads

(medium pars about office of Mr. Turner to chair)

and the Federal Aviation Agency, you don't want to put an Assistant Secretary ^{in the line} between the Secretary and the Heads of major operations. This would envisage that unless the Secretary finds this won't work, he will utilize the Assistant Secretaries this way.

Mr. Mackay added that if you don't have these Assistant Secretaries carry out the cross-cutting functions, other officials will ~~have to be assigned those duties~~ ^{have to be assigned those duties}. ~~separate staff for each in each major organization.~~

Mr. Turner referred to the chart he sent to Mr. Dean which combined the Assistant Secretary and Agency Head into one position. Mr. Turner then went on to voice his convictions against the Assistant Secretary positions, as presently ^{described} ~~outlined~~ based on the belief his proposal ^{would}:

- 1) ~~Shorten the communication time~~ as contrasted to the present provision
- 2) Combine the policy and directive responsibilities for each of the prime segments.
- 3) Speed the flow and decision on matters (e.g., He has doubts that an Assistant Secretary could handle the Congressional Relations of the diverse operations involved, in an effective manner. The Assistant Secretary is so far removed, he would have to farm the

- 4) Preclude the likelihood of the Assistant Secretary not having enough to do, so that by nature, he would seek to fill the void by so concentrating on a major operational area that he in effect becomes a link-direction point between the Secretary and major organization.

The pros and cons of Mr. Turner's fears that the Assistant Secretaries would virtually take over the day-to-day operations, were thoroughly discussed. It was the consensus of the group that a consolidation of the Assistant Secretary and Heads of the major organizations was not desirable.

Mr. Turner asked if there would be cross-cutting in the Assistant Secretary for Administration (referring to the second item, page 2, and to such functions as personnel, budget, general administration, etc.), or will they remain with the operations themselves. Mr. Deane stated the latter; that in this kind of an operation, ^{budget, personnel and other support services} must be a part of ~~the~~ the Administrator's responsibilities for managing large operating activities. ~~that there would be a great deal of self-administration within the operations;~~ ^{be a} ^{for an} ~~such to be a small~~ budget analytical ability, a Departmental personnel office, etc. but these will be policy making and advisory offices without large ~~scale~~ operating staffs.

Mr. Mackay questioned the advisability of showing the sub-breakdown boxes for the Assistant Secretary for

Wiss raised a question as to the Accident Investigation Item, page 3. Mr. Dean referred to the whole spectrum of safety that was being picked up, and then through tracing the experience of accident investigation development for the FAA and CAB. He further pointed out that if a provision is not made for accident investigation separate from the FAA, as it is now, it will really present a problem. Therefore, working from this particular thinking, a separate entity has been provided for.

Much discussion then followed regarding safety as a broad
field, vs. accident investigation as a narrow part thereof;
the possibility of specifically limiting the title to aviation
accident investigation; the likelihood of the ^{questions concerning} hearings governing
the location of accident investigation in the new organization and
the desirability of being able to say it is retained as a
separate entity from operations; the difficulty of concentrating
all accident investigation in this one group; ~~which it is essential~~
~~in the transportation department for investigation and~~
~~investigation~~, the need to recognize that the concept of the National
Safety Board and the Accident Investigation does not fit the highway program.

It was finally agreed that the Accident Investigation item would be reworded so as not to ^{automatically} involve all operational areas, and yet

It was also agreed that the last paragraph on page 3 regarding the highway safety program should be reworded because the bill would not contemplate such a highway safety program.

Mr. Dean commented that the first item, page 4, is in agreement with the bill. It ultimately kills off 4 FAA positions, but picks up some others. It is pretty close to an average department on the executive levels. Both the executive levels and the supergrades were worked out with the Civil Service Commission. The Agencies will preserve their supergrades as they stand. Mr. Dean also stated that the savings paragraph, bottom of page 4, is taken from precedents.

Mr. Kallen suggested that the first sentence of the item on page 5 will have to contain an exception for the Coast Guard.

Mr. Withoner discussed the data collection and briefing documents (short-long versions). The long version was given to the representatives present, asking for their review, suggestions and return of the copy by Friday noon. Mr. Dean asked for particular

emphasis on checking the accuracy.

Mr. Mackey suggested four items that were used in the HUD development, and suggested these should be considered:

- 1) A comparative summary for all elements as to employment and budget data (Mr. Dean suggested that BoB should certify these data as correct).
- 2) A listing of the name, membership, and brief statement of purpose for each Interagency Committee and each Public Advisory Board (those considered to be at the Secretarial or Presidential appointment level).
- 3) A paper that sets out the Federal Executive Salaries for the Department, and how these will be used.
- 4) A statement of relationships with States, as a result of transfers ^{of functions} made to the Department of Transportation. Mr. Dean suggested this would be unnecessary, as no change is planned in this regard.



GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE
WASHINGTON, D.C. 20230

29

February 24, 1966

MEMORANDUM TO Honorable Charles J. Zwick
Assistant Director, Bureau of the Budget
Room 246 Executive Office Building

Attached is a copy of the "final" draft of the Department of Transportation legislation. I am submitting it as a member of the task force. I believe it represents our final conclusions reached last Friday. It has not been cleared in the Department and does not necessarily reflect the final recommendations of this Department.

I will send a copy of the revised draft of the analysis and technical addendum as soon as they have been typed.

Attachments

Daniel F. O'Keefe, Jr.
Daniel F. O'Keefe, Jr.
Assistant General Counsel
for Transportation

cc:
Honorable Harold Seidman (BOB)
Honorable John J. Adams (CAB)
Mr. Joseph B. Goldman (CAB)
Commander Patrick Bursley (Coast Guard)
Mr. Alfred Fitt (Army)
Mr. Ernest Weiss (ICC)
Mr. Nathaniel H. Goodrich (FAA)
Mr. Alan L. Dean (FAA)
Mr. Gordon M. Murray (BOB)
Mr. Arthur D. Kallen (BOB)
Mr. M. Cecil Mackey (Commerce)

*Require "final" draft -
submit analysis
attention
printed on 5/8/10*

April 7, 1966

Note of conversation with Senator Monroney

I spent two hours with Senator Monroney and his staff divided as follows: an hour with the staff - Carter Bradley and John Burzio - and one with Senator Monroney in addition to those two.

Re Section 7 of the Department of Transportation bill, the Senator said the present system has operated well for more than 100 years and there is no need for a change. He expects this section to be eliminated and referred to Senator McClellan and Senator Magnuson as having the same view.

The Senator supports the idea of a Department of Transportation. He accepts the need for coordination on policy and on research. He is very much concerned about programs. His comment was that with six operating entities - highways, maritime, Coast Guard, aviation, etc. - the Secretary of Transportation will be in the position of a father with six children each of whom wants a new pair of shoes every year and all of which cannot be afforded. His fear is that aviation will be the one that is left out.

I told him that the matter of priorities is established now through the budget process on an ad hoc basis and that he should support the approach which would provide for a rational establishment of priorities based on need. Under this approach, the requirements of aviation would be fully met. Second, the bill proposes assignment of the functions of the Federal Aviation Administrator to the Secretary. These functions require the promotion of aviation. I could not believe he would be concerned that any man who is appointed by the President and required to submit to questioning by the Commerce Committee of the Senate for confirmation would then fail to carry out the mandate of the law.

He is also concerned about downgrading the Federal Aviation Agency, i.e., stepping down the head of the aviation function from a grade 2 to a grade 3 and eliminating the administrator's direct line of communication to the President. I tried to convince him that as a

practical matter there had been very little communication between the Federal Aviation Administrator and the President and that furthermore through transferring the Administrator's function to the Secretary there would be in fact a clear cut higher level line of direct communication to the President.

What appeared to be the major concern of Senator Monroney was that uninformed or unqualified people would start tampering with the air traffic control system and that in the development of investment priority, the required funds for modernizing the traffic control system might not be made available. In response, I indicated that Section 4 of the bill provides for maintenance of the operating integrity of all functions and, in addition, I was sure the Administration would be willing to provide through testimony legislative history to guarantee the integrity of the air traffic control system. I also reiterated my earlier remarks about the Secretary having responsibility which is now lodged in the Administrator.

He expressed concern that the National Transportation Safety Board would not have an aviation point of view. He was clearly confused about the functions of the Safety Board because he indicated that it would be issuing safety rules. I told him this latter idea was not contemplated and that I could not understand the suggestion about the lack of aviation point of view inasmuch as the Board would have to make its findings of probable cause based on facts found by the accident investigating teams who would continue to be specialists in aviation accident investigation except in those areas of commonality, i.e., human factors, materials testing, weather, and communications.

He was concerned also about ICC safety personnel being called upon to investigate aviation accidents for which they were not qualified. I told him there was no contemplation this would occur and that again the Administration would be willing to provide testimony to develop legislative history on this point.

In summary, Senator Monroney's position is that he favors the concept of Department of Transportation absent investment criteria that could be applied to waterway improvement projects. His letter to Senator McClellan was consciously negative because he felt there would be

plenty of time for him to move to a positive position. He is concerned about identification and integrity of the aviation safety interests but can probably be satisfied if there is a Presidential appointment and Senate confirmation for the operating agency head.

(sgd) Alan S. Boyd

Alan S. Boyd

cc: Mr. Mackey

BB FORM
NO. 38

ROUTE SLIP

(Fold Here)

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET

DATE 6/27/66

TO: Messrs. Dean and Goodrich

FROM: Chas. Zwick

REMARKS: Only enough copies to send
one to each agency - will you
two gentlemen please share this
copy.

DOT 6/11 file
leg. 2, 6 701

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

STAFF MEMORANDUM NO. 89-2-30

June 24, 1966

SUBJECT: Status Report on S. 3010, to Establish a Department of Transportation, and for other purposes.

As of this date, this committee has held seven days of hearings on S. 3010, receiving testimony from 52 witnesses representing the executive branch, independent regulatory agencies, industry, labor and the public, generally. In addition, 27 exhibits and 28 statements and communications have been incorporated into the hearing record which is contained in three volumes, totaling 638 pages. Two additional days of hearings are scheduled, June 28 to hear concluding testimony from public witnesses, and June 29 to discuss S. 3010 with administration witnesses (Director of the Bureau of the Budget and Under Secretary of Commerce for Transportation).

This memorandum contains a summary of the principal issues involved in S. 3010, and suggested amendments to resolve some of these issues.

Principal Issues

The principal issues which have emerged relate primarily to (1) clarification of the respective roles of the Secretary and the Department of Transportation and the Congress with respect to national transportation policy; (2) assurance of the operational continuity and integrity of the agencies transferred; (3) provision for Presidential appointment with Senate confirmation of the heads of the modal operating agencies within the Department; (4) assurance of complete independence of the National Transportation Safety Board with respect to its adjudicatory and appellate functions and the continued separation of accident investigations and determination of probable cause in major air accidents; (5) assurance of the application of the Administrative Procedures Act to safety regulations and other quasi-legislative actions by the Secretary of Transportation and the National Transportation Safety Board, as provided in existing law; (6) transfer of all urban mass transit functions and responsibilities from the Department of Housing and Urban Development to the Department of Transportation; (7) the retention by the Interstate Commerce Commission of all of its car-service functions including those relating to the supply of freight cars, distribution and fixing of per diem and demurrage rates; and (8) the effect of transportation investment standards on certain programs, such as the multipurpose water resource projects of the Corps of Engineers.

In addition to the broader issues listed above, there was a substantial amount of testimony in favor of (1) Assistant Secretaries for each of the principal modes of transportation; (2) retention of the present independent status of the Federal Aviation Agency as well as retention by the Civil Aeronautics Board of all of its present safety functions; (3) retention by the Federal Highway Administrator of his present responsibilities and functions; (4) elimination of the multipurpose water resource projects from the requirements of Section 7; and (5) retention by the Interstate Commerce Commission of all of its present safety functions.

Proposed Amendments Agreed to in Principle and/or Specific Language

In order to facilitate the committee's consideration of the bill, the Chairman directed the staff to develop proposed amendments with representatives of the administration, in an effort to resolve some of these issues. It is stressed that these are staff proposals only, and, although they have been agreed to by the administration, they have not been reviewed or approved by the Chairman.

Attached hereto as exhibits are amendments concerning which agreement has been reached, either in principle, as to specific language, or both. These are discussed below under appropriate headings.

1. Policy and Purpose

Policy and purpose are set forth in Sections 2 and 4 of S. 3010. During the hearings, considerable testimony was received which raised questions as to the respective roles of the Secretary of Transportation and the Congress regarding national transportation policy. Particular concern was expressed with regard to the impact of the provisions of these sections on existing transportation policy, and suggestions were made that language be included which would make certain that the Secretary would be required to function within the framework of the very considerable body of such policy enacted by the Congress over the years. In order to clarify the respective roles of the Secretary of Transportation and the Congress, with respect to national transportation policy, the following amendments, attached hereto as exhibits, were agreed to:

(a) In Section 2, on page 2, line 15, following the word "recommend", the words "to the President and the Congress" were added. The effect of this is to require the Secretary to recommend to the President and the Congress national transportation policies and programs to accomplish the objectives set forth in the section. In its present form, this section requires only that the Secretary make recommendations, but is silent with respect to the recipients of these recommendations. (See Exhibit 1).

(b) In Section 4(a), on page 4, line 8, following the word "recommendations", the words "to the President and the Congress" were added. This section details the specific duties and areas of responsibility of the Secretary concerning various national transportation policies and programs, and requires the Secretary to make recommendations for their implementation. It is silent, however, with respect to the recipients of these recommendations. The administration interpreted both sections 2 and 4(a) to mean that these recommendations were to be made to the President and the Congress, and the suggested language will merely confirm this interpretation. (See Exhibit 2).

(c) On page 4, following line 14, a new subsection 4(b)(1) has been added which requires that the Secretary, in carrying out his duties and responsibilities under this Act shall be governed by, but not limited to, the policy standards set forth in all of the principal transportation statutes, each of which

is specifically referred to. This was suggested in order to eliminate any doubt concerning the effect of S. 3010 on existing transportation law, to clarify the role 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.

(d) An additional amendment has been suggested as a new subsection 4(b)(2) 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. (See Exhibit 3).

2. Operational Continuity and Integrity of Transferred Agencies

During the hearings, considerable concern was expressed with respect to the maintenance of the operational continuity and the integrity of the transferred agencies. Particular reference was made by numerous witnesses to the effect of the transfers on the operations of the Federal Aviation Agency. The principal recommendations made by witnesses to meet this problem were (1) the establishment of Assistant Secretaries for each of the major modes of transportation; (2) the transfer of such agencies as the Federal Aviation Agency, the Bureau of Public Roads and the Maritime Administration intact and as legal entities, in the same manner as provided for the transfer of the United States Coast Guard; and (3) the elimination of the Federal Aviation Agency from the provisions of the bill. However, the administration is firmly opposed to any of these approaches, on the grounds that they would (1) defeat the purpose of establishing a Department of Transportation; (2) establish clientele Assistant Secretaries, detracting from the authority of the Secretary; (3) defeat the objective of establishing Assistant Secretaries as staff and planning advisors to the Secretary; and (4) eliminate from the Department one of the major transportation modes.

By way of compromise, the staff suggested an amendment to Section 3 which would (1) provide for the establishment within the Department of a Federal Aviation Administration, a Federal Railroad Administration, a Federal Highway Administration and a Federal Maritime Administration, each of which would be headed by an administrator appointed by the President, by and with the advice and consent of the Senate; (2) vest in each administrator such powers and duties as may be prescribed by the Secretary and require that they administer, under the supervision of the Secretary, departmental programs and activities relating to their respective transportation modes. This was agreed to by the administration. (See Exhibit 4).

It was further suggested by the staff that the areas of operation of each administrator be specifically stated and that none of the assigned functions

and powers of the administrators could be transferred, except by specific provision in a reorganization plan, or by statute. The administration rejected this broad approach on the ground that it would deprive the Secretary of needed flexibility. However, because of the special situation of the Federal Aviation Agency, agreement was reached with respect thereto, and language was incorporated spelling out the general duties of the Federal Aviation Administrator and forbidding the transfer of his functions and power except by reorganization plan or statute. These amendments, attached hereto as Exhibit 4, are summarized as follows:

(a) In Section 3, on page 3, after line 24, a new subsection 3(e)(1) is added providing for the establishment of the 4 modal administrations, and provision is made for their appointment by the President, subject to Senate confirmation. (See Exhibit 4).

(b) With respect to the Federal Aviation Administration, a new subsection 3(e)(2) is added specifying the general duties and powers of the Federal Aviation Administrator; and a new subsection 3(e)(3) is added which forbids the transfer of any of his powers, as set forth in subsection 3(e)(2), unless specifically authorized by a reorganization plan or by statute. (See Exhibit 4).

3. Complete Independence of the National Transportation Safety Board with respect to its Adjudicatory and Appellate Review Functions in Aviation and other Accidents

At the hearings, considerable concern was expressed regarding the advisability of altering the present accident investigation and safety procedures followed by the Federal Aviation Agency and the Civil Aeronautics Board in aviation accidents. The consensus of the testimony was that the public interest would best be served by eliminating these transfers and agencies from the Department of Transportation, or by permitting the Civil Aeronautics Board to retain the adjudicatory and investigative functions which it now performs pursuant to Titles VI and VII of the Federal Aviation Act of 1958, as amended. Particular emphasis was placed upon the established tradition of having a separate accident investigation staff for certain types of aviation accidents. This is reflected in the 1958 Act, which vests in the Civil Aeronautics Board the functions of investigating aviation accidents, determining probable cause, and exercising appellate jurisdiction over the decisions of the Federal Aviation Agency with respect to certificates and licenses, all separate and apart from the Federal Aviation Agency.

The administration contended that this arrangement is preserved by (1) those provisions of Section 5 of S. 3010 which provide that the National Transportation Safety Board, an independent agency within the Department, would be required to exercise those functions now performed by the Civil Aeronautics Board which were transferred to the Secretary of Transportation pursuant to Section 6 of the Act; and (2) the planned separation of the accident investigation functions which would be vested in an Office of Accident Investigations, a proposed staff agency, completely independent of the operating unit, the Federal Aviation Administration.

However, agreement was reached that the bill should be amended so as to (1) make absolutely certain that the present tradition of separating accident investigations from adjudicatory and appellate certification functions be maintained; and (2) to assure the complete independence of the National Transportation Safety Board in connection with the exercise of the adjudicatory and appellate certification functions. Accordingly, it was agreed that (1) Section 6(d) be amended so as to provide that the Civil Aeronautics Board's adjudicatory and certification appellate functions, under Titles VI and VII of the Federal Aviation Act of 1958, be transferred directly to the National Transportation Safety Board, rather than to the Secretary, as now provided in the bill, (See Exhibit 5); (2) that Section 5 be amended so as to provide that the National Transportation Safety Board shall exercise these powers directly, instead of as now provided in Section 5 which requires the Board to exercise the powers transferred to the Secretary, (See Exhibit 6); and (3) that Section 3 be amended so as to provide for the establishment of an Office of Accident Investigations by statute, instead of by Departmental order, as now contemplated (See Exhibit 7).

The effect of these amendments is to vest ~~all~~ the powers and functions of the Civil Aeronautics Board with respect to ~~aviation accidents~~, probable cause and certification appeals directly in the Board and to insure that aviation accidents will be investigated by a component within the Department, separate and apart from the operating unit -- the Federal Aviation Administration. It is contemplated that all other accidents would be investigated by the appropriate modal operating administrations in the Department, unless the Secretary chose to delegate these investigations elsewhere in the Department.

4. Compliance with the Requirement of the Administrative Procedures Act

At the hearings, concern was expressed with respect to the lack of any provision in the bill for meeting the requirements of the Administrative Procedures Act in certain types of quasi-legislative and quasi-judicial proceedings conducted by the Secretary and the National Transportation Safety Board. Although the administration contended that those requirements already in force would not be affected by the transfer, it was agreed to add a new subsection 4(j) to eliminate any doubt as to the necessity for compliance with these requirements, particularly as they affect proposed safety rule-making. (See Exhibit 8).

5. Urban Mass Transportation

In his Transportation Message, the President stated that although the Department of Housing and Urban Affairs bears the principal responsibility for a unified Federal approach to urban problems, it cannot perform this task without the counsel, support and cooperation of the Department of Transportation. Accordingly, he stated further that he would ask the two Secretaries to recommend to him, within a year after the creation of the new Department, the means and procedures by which this cooperation can best be achieved -- not only in principal, but in practical effect.

At the hearings, several members of this committee, as well as public witnesses, expressed concern with respect to the failure of S. 3010 to provide for the inclusion of the urban mass transportation program in the Department. Although the administration is opposed to any transfer pending an analysis of the study referred to above, in view of the stated interest of committee members, an amendment to Section 6 has been prepared which would transfer all of the functions and responsibilities of the Secretary and Department of House and Urban Development, in the urban mass transit field, to the Secretary of Transportation. This would enable immediate action in this area, upon the establishment of the Department of Transportation, rather than the year's delay which is now contemplated. (See Exhibit 9).

Eli E. Nobleman
Professional Staff Member

Approved:

James R. Calloway
Chief Clerk and Staff Director

EXHIBIT 1

SEC. 2. The Congress declares that the general welfare, the economic growth and stability of the Nation and its security require the continuing development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

The Congress therefore finds that the establishment of a Department of Transportation is necessary in the public interest and to assure the coordinated, effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in the identification and solution of transportation problems; and to develop and recommend to the President and the Congress national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public, users, carriers, industry, labor, and the national defense.

EXHIBIT 2

Of
Same as Hov37

SEC. 4. (a). The Secretary in carrying out the purposes of this Act shall, among his responsibilities, exercise leadership under the direction of the President in transportation matters, including those affecting the national defense and those involving national or regional emergencies; provide general leadership in the development of national transportation policies and programs and make recommendations to the President and the Congress for their implementation; promote and undertake development, collection, and dissemination of technological, statistical, economic and other information relevant to domestic and international transportation; promote and undertake research and development in and among all modes of transportation and types of transportation services and facilities; and consult with the heads of other Federal departments and agencies engaged in the procurement of transportation or the operation of their own transport services to encourage them to establish and observe policies consistent with the maintenance of a coordinated transportation system operated by private enterprise.

Accepted by
Task Force

EXHIBIT 3

*Unnecess
but no harm.*

Section 4(b).

(b)(1). In carrying out his duties and responsibilities under this Act, the Secretary shall be governed by, but not limited to, the policy standards set forth in Title I of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.); the National Transportation policy of the Interstate Commerce Act, as amended (49 U.S.C., preceding §§ 1, 301, 901, and 1001); the Merchant Marine Act of 1920, as amended (46 U.S.C. 861 et seq.), the Merchant Marine Act of 1928, as amended (46 U.S.C. 891 et seq.), the Merchant Marine Act of 1936, as amended (Title I, 46 U.S.C. 1101 et seq.), the Shipping Act of 1916, as amended (46 U.S.C. 801 et seq.), and the Merchant Marine Ship Sales Act of 1946, as amended (50 U.S.C. App. 1735 et seq.); the Act of August 27, 1958, as amended (23 U.S.C. 101 et seq. Federal-Aid Highways); and Title 14 U.S.C., Title 52 and 53 of the Revised statutes (46 U.S.C. Chaps. 2A, 7, 11, 14, 15 and 18), the Acts of April 25, 1940 (46 U.S.C. 526-526u) and September 2, 1958 (46 U.S.C. 527-527h), all relating to the United States Coast Guard.

(2) Nothing in this Act shall be construed to authorize without appropriate action by Congress, the adoption, revision, or implementation of any transportation policy, or investment standards or criteria contrary to or inconsistent with any Act of Congress.

*Accepted by
Test Force*

EXHIBIT 4

(e)(1). There shall be in the Department of Transportation a Federal Aviation Administration, a Federal Railroad Administration, a Federal Highway Administration, and a Federal Maritime Administration, each of which shall be headed by an administrator who shall be appointed by the President, by and with the advice and consent of the Senate. Each administrator shall have such powers and duties as may be prescribed by the Secretary and shall administer, ~~under the supervision and direction of the Secretary, departmental programs and activities relating to his~~ *and shall report directly to* ~~respective transportation mode~~ *the Secretary.*

(2) The Federal Aviation Administrator shall administer departmental programs and activities relating to rules, regulations, and operations, insofar as they pertain to licensing of aircraft and airmen and operation of the air traffic control system, including, but not limited to, safety regulation, airspace control, and air traffic management.

(3) The powers of the administrator, as set forth in subsection (2) hereof, shall not be transferred unless specifically provided for by reorganization plan submitted pursuant to provisions of the Reorganization Act of 1949, as amended (63 Stat. 203), or by statute.

*Schultz will
try to take
out #3
2 & 3.
FAA doesn't
like.*

EXHIBIT 5

*Serious
drafting problem.
Prefer House version
leaves out
four lines.*

6(d). There are hereby transferred to and
vested in the National Transportation Safety Board all functions,
powers, and duties of the Civil Aeronautics Board, and of the
Chairman, members, officers and offices thereof under sections
602 and 609 of title VI (72 Stat. 776) and ~~sections 701-703~~ *so much of*
of title VII (72 Stat. 781) of the Federal Aviation Act of 1958 *e*

*as pertains to termination of probable
cause of accidents involving civil aircraft.*

EXHIBIT 6

NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 5(a). There is hereby established within the Department a National Transportation Safety Board.

(b) The Board shall exercise those functions, powers, and duties transferred to it by section 6 of this Act, and those transferred to the Secretary by sections 6 and 8 of this Act with respect to --

(1) The review on appeal of the suspension, amendment, modification, revocation, or denial of any certificate of license issued by the Secretary; and

(2) Determining the cause or probable cause of transportation accidents and reporting the facts, conditions, and circumstances relating to such accidents.

(c) The Board is further authorized to --

(1) Make such recommendations to the Secretary as, in its opinion, will tend to prevent transportation accidents;

(2) Conduct special studies on matters pertaining to safety in transportation and the prevention of accidents;

(3) Ensure that in cases in which it is required to determine cause or probable cause, reports of investigation adequately state the circumstances of the accident involved. Where additional information is required, the Board may request the Secretary to conduct further investigations or

to take such other measures as are required in the opinion of the Board to ensure development of all facts and circumstances surrounding the accident;

(4) Make recommendations to the Secretary concerning policies, programs, and procedures for transportation safety, and rules, regulations, and procedures for the conduct of accident investigations;

(5) Require the Secretary to initiate specific accident investigations through the appropriate administration, as provided for in section 3 of this Act, as the Board determines to be necessary or appropriate;

(6) Arrange for the personal participation of members or other personnel of the Board in accident investigations conducted by the Department in such cases as it deems appropriate; and

(7) Arrange with the Secretary to receive notification of accidents and reports prepared by accident investigators.

(d) In exercising these functions, powers, and duties, the Board shall be independent of the Secretary and the operating units of the Department, and shall give full consideration to the requirements imposed on the Secretary by section 4(b) of this Act.

(e) The Board shall report to the Congress two years after the effective date of this Act on the conduct of its functions under this Act and the effectiveness of accident investigations in the Department, together with such recommendations for legislation as it may deem appropriate. An interim report shall be submitted to the Congress one year after the effective date of this Act.

(f) The Board shall consist of five members to be appointed by the President, by and with the advice and consent of the Senate, and who shall continue in office as designated by the President at time of nomination through the last day of the first, second, third, fourth, and fifth full calendar years, respectively, following the year of enactment of this Act. Their successors shall be appointed for terms of five years, in the same manner as the members originally appointed under this Act. Members of the Board shall be appointed with due regard to their fitness for the efficient dispatch of the functions, powers, and duties vested in and imposed upon the Board. Members of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(g) Any person appointed to fill a vacancy occurring prior to the expiration of a term for which his predecessor was appointed shall serve only for the remainder of such term. Upon the expiration of his term of office, except in the case of a member removed for cause under section 5(f), a member shall continue to serve until his successor is appointed and shall have qualified.

(h) The President shall designate from time to time one of the members of the Board as Chairman and one of the members as Vice Chairman, who shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman. The Chairman shall be the chief executive and administrative officer of the Board and shall exercise the responsibility of the Board with respect to (1) the appointment and supervision

of personnel employed by the Board; (2) the distribution of business among the Board's personnel; and (3) the use and expenditure of funds. In executing and administering the functions of the Board on its behalf, the Chairman shall be governed by the general policies of the Board and by its decisions, findings, and determinations. Three of the members shall constitute a quorum of the Board.

(i) The Chairman of the Board shall be compensated at the rate provided for at level V of the Federal Executive Salary Act of 1964 (78 Stat. 416), as provided in section 10(d)(4) of this Act. Members of the Board shall be compensated at the rate now or hereafter established for grade 18 of the General Schedule of the Classification Act of 1949 (63 Stat. 954).

(j) The Board is authorized to establish such rules, regulations, and procedures as are necessary to the exercise of its functions.

(k) The Board, any member thereof, or any hearing examiner employed by or assigned to the Board shall have the same powers as are vested in the Secretary to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate.

(l) Subject to the provision in section 701(g) of the Federal Aviation Act of 1958 (72 Stat. 731), the Board may delegate to any officer or official of the Board or, with the

approval of the Secretary, to any officer or official of the Department such of its functions as it may deem appropriate.

(m) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix compensation of such officers and employees, including attorneys and hearing examiners, as shall be necessary to carry out its powers and duties under this Act.

(n) The Board is authorized to use with their consent the available services, equipment, personnel, and facilities of the Department and of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis when appropriate, and on a similar basis to cooperate with the Department and such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Board. The Board is further authorized to confer with and avail itself of the cooperation, service, records, and facilities of State, Territorial, municipal or other local agencies.

EXHIBIT 7

3(f) The Secretary shall establish within the Department an Office of Accident Investigation, which shall be independent of the Federal Aviation Administration. The office shall, among its duties, investigate aviation accidents in accordance with rules and regulations prescribed by the Secretary.

EXHIBIT 8

4(j). Orders and actions of the Secretary or the National Transportation Safety Board (established by section 5 of this Act) 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 by the department or agency exercising such functions, powers, and duties immediately preceding their transfer. Any statutory requirements relating to notice, hearings, or action upon the record or administrative review that apply to any function transferred by this Act shall apply to the exercise of such functions by the Secretary or the National Transportation Safety Board.

EXHIBIT 9

(Urban Mass Transit)

There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Secretary of Housing and Urban Development and other officers and offices of the Department of Housing and Urban Development under the Urban Mass Transportation Act of 1964 (78 Stat. 302); and under the Department of Housing and Urban Development Act (79 Stat. 667) and Title V of the Housing Act of 1961 (75 Stat. 173) insofar as the said Acts relate to mass transportation: Provided, however, that this subsection shall not modify or alter in any respect the functions, powers, and duties of the Secretary of Housing and Urban Development under Title VII of the Housing Act of 1961 (75 Stat. 183, et seq.); Provided further, that section 8 of the Urban Mass Transportation Act of 1964 (78 Stat. 306) be, and it is hereby, repealed; and Provided further, that in order to carry out the purpose of Title VII of the Public Housing Act of 1961, the Secretary of Housing and Urban Development and the Secretary of Transportation shall consult and exchange information on matters concerning the location of transportation facilities and systems.

Strike the reference on p. 13, lines 9-10, of S. 3010 to "the Urban Mass Transportation Act of 1964 (78 Stat. 302)" which quotation is mooted by the first further proviso above.

Paul Southwick

July 27, 1966

3:10 pm

Larry Redmond

Rules Committee today completed hearing on request to grant a rule on H.R. 15963, establishing a Department of Transportation, and in executive session following conclusion of the hearings granted an open rule providing four hours of general debate on the bill. ✓

Distribution:

Secretary

Under Secretary

Under Secretary for Transportation

Mr. Bridwell

Mr. Mackey

Mr. Giles

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Mr. O'Keefe

House Republican Policy Committee
Hon J. Rhodes, Chairman
1 Cannon House Office Building
Phone: 225-6168

Immediate Release

August 10, 1966

Republican Policy Committee Statement on Department of Transportation

Historically, the Republican Party has encouraged the development of American transportation. In the 1860s Republicans aided the opening of the West by providing land grant incentives for rail transportation. In the early 1900s, the construction of the Panama Canal under the leadership of President Theodore Roosevelt promoted our vital sea transportation. The highly successful interstate highway system was inaugurated in 1956 under a Republican Administration. And in 1959 the St. Lawrence Seaway was placed in operation.

For many years it has been apparent that there was a need for better coordination among the various governmental agencies that deal with transportation. As a result, various proposals have been advanced to coordinate the vast transportation bureaucracy which uses, promotes, regulates, and operates transportation in the United States and throughout the free world. The Hoover Commission Task Force on Transportation recommended the creation of a department in 1946. And in his final budget message to Congress, President Eisenhower stated: "A Department of Transportation should be established so as to bring together at cabinet level the presently fragmented federal functions regarding transportation activities." Now, five years after the Eisenhower message, the Johnson-Humphrey Administration has endorsed this proposal. Certainly, the creation of an efficient and effective department of Transportation has been delayed much too long.

Unfortunately, the bill that the Johnson-Humphrey Administration proposed, and that has now been reported by the Government Operations Committee, is faulty and inadequate in a number of important respects and should be improved. In this bill, important transportation activities have been excluded. The proposed transfer of aviation accident investigations to the new Department cannot be justified. The broad powers granted the Secretary of Transportation under Section 7 invade the policy-making authority of Congress. And the proposed transfer of the Maritime Administration to the new Department would perpetuate the present trouble-ridden mismanagement of the maritime crisis.

Therefore, while we favor and support legislation that would establish a Department of Transportation, we believe that such legislation should contain the following safeguards and improvements:

1. The aviation accident investigation function of the Civil Aeronautics Board should remain independent. In the event the CAB's Bureau of Safety is transferred to the new Department, as contemplated by the proposed legislation, this country would return to the totally unsatisfactory arrangement that existed prior to 1958. At that time, as a result of complaints and accusations from industry representatives, government personnel and outside observers, Congress enacted the Federal Aviation Act. Under this Act, an independent Federal Aviation Agency was established to regulate and control the airways and the various promotional aspects of aviation. By the same Act, the independent CAB was created. It was charged with the economic regulation of aviation and the conduct of aviation accident investigations. The CAB then created a Bureau of Safety to conduct such investigations. This Bureau has acquired an outstanding reputation for experience, thoroughness, and impartiality in the investigation of aviation accidents. Since the establishment of these twin but independent bodies, aviation has prospered and air safety has advanced. These advances would be jeopardized if these important

of these twin but independent bodies, aviation has prospered and air safety has advanced. These advances would be jeopardized if these important functions are brought together again within a new Department.

2. To date, little has been done with respect to the problem created by aircraft noise, and no one in government has assumed direct responsibility for taking action. This important problem should receive immediate and continuing attention within the new Department. Adequate research and the establishment of reasonable standards to reduce aircraft noise should be given a high priority.

3. Throughout the hearings on the proposed bill, Section 7 was criticized severely. It was opposed by witness after witness, including the Transportation Association of America whose membership represents all modes of transportation plus shippers and investors. Under this section, the Secretary could adopt national transportation investment standards and criteria without seeking Congressional approval. He would have the authority to determine whether the investment of federal money should be made on behalf of one mode of transportation or another. He could impose his standards of investment on other agencies of government who administer investment programs enacted by Congress. This section should be stricken from the bill.

4. The Administration bill would leave the urban mass transportation program within the newly-established Department of Housing and Urban Development. Certainly, urban transportation is an integral part of mass transportation. The close relationship and interdependence between urban mass transportation and other modes of transportation dictate that the urban mass transportation should be transferred from the Department of HUD to the new Department. This program was only recently has been assigned to HUD. Now is the time to make this transfer to the new Department.

5. As the April 20, 1966 House Republican Policy Committee statement pointed out: "America is facing a crisis of major proportions with respect to its vital Merchant Marine. At the close of World War II, this country had a Merchant Marine fleet of over 3,500 vessels. By 1951, there were 1,955 active U.S. flag ships. Today there are only 1,000, including those reactivated for the Vietnam War. The U.S. has dropped to 14th place among the world's major shipbuilding nations while Russia has risen from 12th to 7th place as a maritime nation. The Merchant Marine shipbuilding effort in this country must be increased. Unless this is done, our defense commitments throughout the world will be in jeopardy. Indeed, our national survival may depend upon the shipping that should be under construction but which the Johnson-Humphrey Administration has scuttled. We demand that steps be taken to correct this disastrous situation."

Although faced with this major crisis, the proposed bill does little more than transfer the problem to a new Department. There is nothing in the bill that reflects a sense of urgency or that calls for a redirection of effort. Moreover, there is no indication that the functions of the Maritime Administration will even be handled by one man with clear-cut authority. The present plight of the American Merchant Marine demands action. Unfortunately, the present stepchild status would continue under the proposed bill. The proposed transfer does not correct the Johnson-Humphrey Administration's known and apparent deficiencies in the maritime field. Therefore, we believe that the Maritime Administration should be established as an independent agency.

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 role 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 formulated 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. X

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. St. 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 Department. Finally, they stated that past experience indicates that the transfer of the Corporation by Executive Order will not provide an adequate remedy 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

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 other-
wise 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:~~

~~"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 . . .".

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