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SENATE COMMITTEE ON GOVERNMENT OPERATIONS

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STAFF MEMORANDUM NO. 89-2-11

March 25, 1966

SUBJECT: S. 3010, to establish a Department of Transportation, and for other purposes.

S. 3010 was introduced by Senator Warren G. Magnuson, Chairman of the Senate Committee on Commerce, on March 2, 1966, at the request of the President of the United States, in order to implement one of the major proposals contained in the President's Transportation Message of that date, proposing, among other things, the establishment of a Department of Transportation and transmitting a draft bill to accomplish that objective.

Each Member of the committee has been furnished a Briefing Book, prepared by an Administration Task Force. It is the purpose of this staff memorandum to summarize the highlights of the voluminous materials contained in the Briefing Book. To aid Members, references are made to the appropriate tabs with respect to the materials summarized in this memorandum.

PURPOSE

The purpose of S. 3010 is to centralize in one new Cabinet-level department, the development, direction and coordination of the principal transportation policies, functions and operations of the Federal Government which are now carried on by some 100,000 Federal employees in 35 Federal agencies and involve annual expenditures approximating \$6 billion. The bill seeks to accomplish this objective by establishing a Department of Transportation to which would be transferred all of the principal transportation agencies and functions of the Federal Government, other than the economic regulatory functions of the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Maritime Commission and the Federal Power Commission. (A copy of the President's Message and S. 3010 are set forth in the Briefing Book at Tab 4 & 5.)

In a briefing paper prepared by the Administration, it is stressed that S. 3010 does not (1) change existing relationships with the regulatory agencies, except for safety functions; (2) affect the Corps of Engineers, except for a small number of minor functions (discussed below); or (3) change existing functions in the field of urban transportation. (Briefing Book, Tab 7 & 8.)

OBJECTIVES OF TRANSPORTATION REORGANIZATION PROPOSALS
AND ROLE OF PROPOSED DEPARTMENT OF TRANSPORTATION

In his Transportation Message, the President stated that our transportation system has not emerged from a single drawing board on which the needs and capacities of our economy were all charted, and that such planning was not possible, since the system grew along with the rest of the country. Thus, investment and service innovations responded to special needs, and

research and development were sporadic and sometimes inconsistent and largely oriented toward the promotion of a particular means of transportation.

He then stated that:

"As a result, America today lacks a coordinated transportation system that permits travelers and goods to move conveniently and efficiently from one means of transportation to another, using the best characteristics of each."

Following a discussion of the Nation's needs in the transportation field, the President concluded:

"We must coordinate the executive functions of our transportation agencies in a single coherent instrument of government. Thus policy guidance and support for each means of transportation will strengthen the national economy as a whole."

In a briefing paper submitted to the committee staff, concerning the objectives of the transportation reorganization proposals (Briefing Book Tab 1), it is stated that the Administration continues to believe that the long-term, overall policy objective for transportation should be to place greater reliance on market control and on business initiative and decision-making and less on Government regulation and promotion. When the Federal Government has put its own transportation house in order, it can move with greater confidence toward modernization of major national transportation policies.

The paper then stated that, within this framework, the program proposed by the Administration has the following principal objectives:

1. Coordination and more effective administration of the widely dispersed transportation programs of the Federal Government;
2. Improvement and coordination of transportation services;
3. Encouragement of cooperation among all interested parties;
4. Identification and solution of transportation problems to the extent that Government transportation policies can contribute to this end;
5. More systematic and precise evaluation of public investment proposals; and
6. Coordination and reorientation of research and development activities.

In discussing the role of the proposed Department, in his Transportation Message, the President stated that the Department of Transportation will --

"coordinate the principal existing programs that promote transportation in America;

bring new technology to a total transportation system, by promoting research and development in cooperation with private industry;

improve safety in every means of transportation;

encourage high-quality, low-cost service to the public;

conduct systems analyses and planning, to strengthen the weakest parts of today's system; and

development investment criteria and standards, and analytical techniques to assist all levels of government and industry in transportation investment."

ORGANIZATION OF PROPOSED DEPARTMENT OF TRANSPORTATION

S. 3010 would establish a Department of Transportation, headed by a Secretary of Transportation, an Under Secretary, four Assistant Secretaries and a General Counsel, all appointed by the President subject to Senate confirmation. An Assistant Secretary for Administration would be appointed by the Secretary under the classified civil service, subject to the approval of the President. According to a briefing paper, the four Assistant Secretaries will not be in the line, but will be used primarily by the Secretary for cross-cutting department-wide problems such as long range planning and policy development, international transportation affairs, technology and research, etc. (Briefing Book, Tab 7).

Provision is also made for the establishment within the Department of a National Transportation Safety Board, composed of five members, appointed by the President with regard to their fitness to perform the functions of the Board, subject to Senate approval, for five-year terms, and removable only for cause. The Chairman and the Vice Chairman would be designated by the President. The functions and duties of this Board will be discussed below.

The officers referred to above would receive annual compensation under the Federal Executive Salary Act of 1964, as follows: the Secretary of Transportation Level I (\$35,000); the Under Secretary, Level III (\$28,500); the four Assistant Secretaries and the General Counsel, Level IV (\$27,000); and the Assistant Secretary for Administration, Level V (\$26,000); the Chairman of the National Transportation Safety Board would be compensated at Level V (\$26,000), and the Board Members at GS 18 (\$25,382).

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General

AGENCIES AND FUNCTIONS INCLUDED IN
AND EXCLUDED FROM TRANSFERS

S. 3010 provides for the transfer to the Secretary, and to the Department of Transportation, of agencies and elements thereof, as well as functions. In addition, as part of the reorganization of Federal transportation activities, the President will make certain transfers by Executive Order, pursuant to statutory authority previously vested in him. (Briefing Book, Tab 7).

Under the transfers described below, all functions, powers and duties of the transferred agencies are vested in the Secretary of Transportation. All of the transferred agencies will lapse and no longer have any legal status, with the exception of the Coast Guard which would be transferred as a legal entity and excluded from lapse. In order to prevent undue interruption of the functions now being performed by various operating units which form the foundation of the new Department, S. 3010 requires the Secretary to give full consideration to the need for operational continuity of the functions transferred, and the Secretary will reconstitute by Departmental order the Federal Aviation Agency, the Maritime Administration and the Bureau of Public Roads, immediately upon creation of the Department. (Briefing Book, Tab 7.)

Agencies and Functions Transferred

S. 3010 proposes to transfer to the new Department the following agencies and functions:

1. The Federal Aviation Administration, in its entirety, with all of its functions (air safety, certification of airmen, aircraft and aviation schools, establishment, maintenance and operation of a common system of air navigation and traffic control for civil and military aircraft, administration of Federal airport program, promotion and investment, etc.). It will continue to carry out all of its present functions in the new Department.

2. The Bureau of Public Roads, Department of Commerce, together with the Federal-aid highway program which it administers, as well as its numerous other highway activities.

3. The Office of the Under Secretary of Commerce for Transportation, and its policy, program, emergency transportation and research staffs, including all of the functions now vested in the Secretary of Commerce and other officers and offices of the Department of Commerce under various statutes. These are the functions of the Secretary which are 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.

4. The Federal Maritime Administration, Department of Commerce, with its operating-differential and construction-differential subsidy programs for the United States Merchant Marine and shipping industry.

5. The United States Coast Guard, Department of the Treasury, whose principal peacetime activities relate to transportation and marine safety, together with the functions of the Secretary of the Treasury which relate to the Coast Guard. The functions of the General Counsel of the Treasury Department under the Uniform Code of Military Justice are also transferred to the General Counsel of the new Department, so as to preserve the plan embodied in existing law wherein the Judge Advocates General of the Armed Forces exercise judicial functions with respect to review and final action concerning courts-martial under the Code and the Secretaries of the various departments exercise final approval authority as well as clemency action. The Coast Guard would be transferred and would operate in the new Department as a complete organizational unit, but would operate as part of the Navy in time of war, or when the President directs, as provided in existing law.

6. The Great Lakes Pilotage Administration, Department of Commerce, together with its functions of administering the Great Lakes Pilotage Act of 1960 which provides for the establishment of an effective system of regulated pilotage on the Great Lakes. Its responsibilities include the registration of United States pilots, regulation of pilotage pools, and establishment of rates and charges for pilotage services, and arranging with Canada for reciprocal pooling, establishment of just rates, etc.

7. The safety functions of the Civil Aeronautics Board, including the responsibility for investigating and determining the probable cause of aircraft accidents and its appellate functions relating to safety.

8. The safety and car service functions of the Interstate Commerce Commission, involving principally the inspection and enforcement of safety regulations for railroads, motor carriers and pipelines, and the distribution of rail car supply in times of shortage. The car service functions transferred would permit the Secretary to allocate, for optimum utilization and distribution, railroad freight equipment. Also included are the Commission's functions with respect to safe transportation of explosives and other dangerous articles and the setting of geographical limits of standard time zones in the United States.

9. Those functions of the Secretary of the Army, performed by the Corps of Engineers, which relate to anchorages, bridges and tolls. These functions involve (a) designation of certain areas as anchorages; (b) establishment of regulations regarding drawbridge operations; (c) determination of whether existing bridges are unreasonably obstructive to navigation and Government participation in the cost of necessary alterations; (d) review of bridge tolls to determine reasonableness if controversy arises; (e) policing of oil and chemical pollution; and (f) determination of proper vertical and horizontal bridge clearances over waterways.

In addition to the above, an Administration briefing paper states

that the President will, by Executive Order, transfer to the Secretary of Transportation responsibility for the following (Briefing Book, Tab 7):

10. The St. Lawrence Seaway Development Corporation, which would remain independent, but operate under the direction and supervision of the Secretary of Transportation instead of the Secretary of Commerce.

11. The Alaska Railroad, now under the direction and supervision of the Secretary of the Interior.

Agencies and Functions Not Transferred

According to an Administration briefing paper, although some 35 Federal agencies have transportation responsibilities, only those agencies or functions are proposed for transfer which are more closely related to the major purpose of the new Department of Transportation than they are to their present organizational bases; and the achievement of the principal purposes of the Department -- the development and implementation of national transportation policies and the coordination of Federal transportation programs -- is dependent upon the inclusion in the Department of those agencies or functions which are listed in the preceding section. (Briefing Book, Tab 8.)

Concerning 26 agencies, or parts thereof, which have been excluded from transfer, it is noted that their transportation responsibilities are more closely related to supporting the principal purpose of their present parent agency than to developing the Nation's transportation system. These include primarily (I) agencies which are related to national security; (II) agencies pursuing civilian programs with transportation elements which complement their basic objectives; (III) agencies involved in multi-purpose programs; (IV) agencies which perform functions more closely related to industries other than transportation; (V) regulatory agencies; and (VI) agencies still under consideration with respect to possible transfer.

I. In the national security group, are the following agencies which are concerned with moving military personnel and supplies:

1. Office of the Assistant Secretary of Defense (Installations and Logistics).
2. Army Transportation Agency.
3. Military Sea Transport Service.
4. Military Airlift Command.

II. Agencies pursuing civilian programs with transportation elements which complement their basic objectives are:

5. Forest Service (roads and trails).
6. National Park Service (roads and trails).

7. Bureau of Transportation and International Services, Post Office Department (freight rates).
8. Bureau of Customs (depository for shipping papers, travelers, etc.).
9. District of Columbia Government (roads).
10. General Services Administration (vehicle fleets, shipping rates, equipment standards).
11. National Aeronautics and Space Administration (aeronautical research).

III. Agencies involved in multi-purpose programs in which transportation is only one among many inter-related elements which they consider in the course of their activities are:

12. Corps of Engineers (civil functions) which is concerned with multipurpose projects that involve reclamation, recreation, irrigation and navigation.
13. Tennessee Valley Authority.
14. Appalachian Regional Planning Commission.
15. Office of Emergency Planning.

IV. Agencies which are concerned with aspects of the transportation industry, but have principal responsibilities which relate to other industries, institutions or the public in general, are:

16. Environmental Science Services Administration, Department of Commerce (principally the Weather Bureau and the Coast and Geodetic Survey).
17. United States Travel Service, Department of Commerce (promotion of tourism).
18. United States Public Health Service (traffic safety research).
19. National Mediation Board (railway labor problems).

V. The regulatory agencies dealing with transportation have historic of independence from other executive branch agencies. Thus, economic regulation performed by the following agencies have been excluded:

20. Federal Maritime Commission (ocean shipping).

21. Federal Power Commission (pipelines).
22. Civil Aeronautics Board (airlines).
23. Interstate Commerce Commission (motor carriers, railroads, water carriers, freight forwarders, pipelines, etc.).

(As noted above, the safety functions of the Civil Aeronautics Board and the Interstate Commerce Commission, as well as the Interstate Commerce Commission's car service functions would be transferred to the new Department.)

VI. Agencies which are still under consideration with respect to their transfer or the transfer of some or all of their functions are:

24. Panama Canal Company.
25. National Capital Transportation Agency.

With respect to these, the briefing paper states that, except for more pressing considerations, they might have been included in the new Department. However, since both agencies are in transition and their future status will depend upon negotiations currently being conducted, it was felt that their inclusion in the new Department at this time would only serve to confuse the negotiations. (Briefing Book, Tab 8.)

26. Office of Transportation, Department of Housing and Urban Development, which deals with mass transit problems. The Administration advises that the relationship of urban interests and transportation interests will be the subject of a one-year study and intensive discussions conducted by and between the two Secretaries, and it is expected that some transfers of functions will be proposed following completion of the study and discussions. (Briefing Book, Tab 18.)

Relation to Other Government Agencies and Activities

S. 3010 requires the Secretary of Transportation to exercise leadership, under the direction of the President, in transportation matters, to develop national transportation policies and programs and to carry them out or make recommendations for their implementation. Accordingly, although the 26 Government agencies listed in the preceding section are not included in the proposed Department of Transportation, it is noted that, with respect to their transportation responsibilities and functions, they are expected to adhere to overall policies, standards and criteria established by the Secretary of Transportation. (Briefing Book, Tabs 4, 7 & 8.)

In this connection, the President's Transportation Message notes that since the activities of several departments and agencies affect transportation promotion and safety, sound management requires that an appropriate and intimate relationship be established between those activities and the new Department. By way of illustration, examples are cited involving the Civil Aeronautics Board, the Corps of Engineers and urban transportation responsibilities of the Department of Housing and Urban Development.

With respect to the subsidy functions of the Civil Aeronautics Board, the message notes that such subsidies, now provided only for local airline service, clearly promote our domestic transportation system. However, since subsidy awards are an integral part of the regulatory function of authorizing air carrier service, the subsidy program should remain in the Civil Aeronautics Board. However, the Secretary of Transportation will develop principles and criteria which the Board will take into consideration in its proceedings, thus coordinating the subsidy program with overall national transportation policy.

Concerning the navigation functions of the Corps of Engineers, the Message states that the Corps, through its construction of locks and harbor facilities and its channel deepening and riverbank protection work, makes a major contribution to water transportation. Thus, although the Department of Transportation should not assume the responsibility for that construction, its Secretary should be involved in the planning of water transportation projects. The Message states further that, with the approval of the President, the Secretary of Transportation should also issue standards and criteria for the economic evaluation of Federal transportation investments generally, and, in the case of transportation features of multipurpose water projects, he should do so after consulting with the Water Resources Council.

With respect to urban transportation, the Message states that the Departments of Transportation and Housing and Urban Development must cooperate in decisions affecting urban transportation, since the future of urban transportation, including the safety, convenience and livelihood of its users, depends upon wide-scale, rational planning; and if the Federal Government is to contribute to that planning, it must speak with a coherent voice. The Message states further that although the Department of Housing and Urban Development 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.

SPECIAL FUNCTIONS AND RESPONSIBILITIES

General

S. 3010 would vest in the Secretary of Transportation important and far-reaching responsibilities in the fields of transportation investment standards. With respect to safety, it would centralize in the Secretary and the Department of Transportation all of the safety functions now performed by other transportation agencies. With respect to invest-

ment standards, it would vest in the Secretary of Transportation primary authority for the development of investment standards and provides for completely new procedures in determining the nature and extent of Federal investments in transportation facilities. Each of these will be discussed below in order to provide Members with the details of the proposed changes.

Transportation Safety

S. 3010 would transfer to the Secretary of Transportation all of the safety functions, powers, duties and responsibilities now vested in the Civil Aeronautics Board, the Federal Aviation Agency, the United States Coast Guard and the Interstate Commerce Commission. In addition, as indicated earlier in this memorandum, it would establish within the Department, but independent of the Secretary and the operating units of the Department, a National Transportation Safety Board, composed of five members, appointed by the President for 5-year terms, subject to Senate confirmation, which would exercise the functions transferred to the Secretary with respect to the determination of cause or probable cause of transportation accidents, and would act as an appellate board with respect to airmen and mariner certificates issued by the Federal Aviation Administration (now exercised by the Civil Aeronautics Board) and the Coast Guard.

In his Transportation Message, the President stated that no function of the new Department and no responsibility of its Secretary will be more important than safety. He then recommended the establishment of the Safety Board, stating that its "sole function * * * will be the safety of our travelers". After reviewing the Board's functions, he stated that he considered these functions so important that he was requesting authority from the Congress to name five Presidential appointees as its members.

It appears from the briefing materials that the basic objective in establishing the National Transportation Safety Board is to create a single body concerned exclusively with safety matters, having no other assigned functions, enabling it to develop a high degree of expertise. With respect to its appellate functions, it is expected to give effect to the doctrine of separation of functions by separating the judgment of cause from the investigation of the events leading up to accidents. (Briefing Book, Tab 11.)

Under existing law and procedures, the Civil Aeronautics Board, the Interstate Commerce Commission and the Coast Guard conduct investigations of accidents in their respective transportation fields. Under the provisions of S. 3010, it is anticipated that accidents in these areas will be investigated by the appropriate element of the Department of Transportation and the results will be reviewed by the National Transportation Safety Board. (Briefing Book, Tabs 7 & 12.) The responsibility for determining the cause or probable cause of all transportation accidents will be vested in the Board. Further, the Board will operate with a limited advisory staff, and will make its determinations on the basis of an independent analysis of the results of on-the-spot investigations conducted by other elements of the Department, as indicated. (Briefing Book, Tab 12.)

The ultimate objective of the Board's functions is to translate the findings of accident causes into means for accident prevention. To assist it in achieving this goal, the Board would be authorized to make recommendations to the Secretary for the conduct of special safety studies pertaining to safety in transportation. (Briefing Book, Tab 12.)

With respect to the Board's appellate functions, under present law and procedures, the Federal Aviation Agency is responsible for licensing and disciplining airmen, aircraft, air carriers, etc., and the Civil Aeronautics Board reviews on appeal orders involving the suspension, alteration, modification, revocation or denial of safety certificates issued by the Federal Aviation Agency. Similar authority concerning documents and licenses issued to mariners is vested in the Coast Guard, and review on appeal is vested in the Commandant of the Coast Guard. Under the provisions of S. 3010, all of the appellate authority is vested in the Board. (Background material concerning the safety functions is found in Briefing Book, Tab 11-15.)

Transportation Investment Standards

In his Transportation Message, the President stated that one of the roles of the proposed Department of Transportation will be "to develop investment criteria and standards, and analytical techniques to assist all levels of government and industry in their transportation investments".

S. 3010 requires the Secretary of Transportation, subject to Presidential approval, to 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, with certain stated exceptions (purchase of transportation facilities for agency use, an inter-oceanic canal, defense features included at the direction of the Department of Defense, and foreign aid). Thus, any proposal for a Federal investment in transportation facilities or equipment, other than those excepted, will be required to conform to standards and criteria which are established by the Secretary.

In the case of multipurpose water resource projects, provision is made for the development by the Secretary of economic standards and criteria after consultation by the Secretary with the Water Resources Council, and such standards and criteria are required to be compatible with those for economic evaluation applicable to nontransportation features of such projects. It may be noted that the Water Resources Council was established by Public Law 89-90 (July 22, 1965) and is composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Health, Education, and Welfare and the Chairman of the Federal Power Commission, and provision is made for participation in Water Resources Council activities by other Federal agencies and departments. The Council is to establish, after consultation with other entities, both Federal and non-Federal, and with the approval of the President, "principles, standards, and procedures" for

Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects.

Under existing procedures, when a river development project is proposed, the Corps of Engineers evaluates the cost-benefits of the project by estimating the economic value of river transportation in relation to the overall project. This determination is used to evaluate the economic feasibility of a river basin program, in addition to flood control, power, irrigation and recreation benefits. Congress then authorizes the river development project and appropriates funds for their completion.

According to Administration briefing materials, the standards and criteria established by the Secretary of Transportation will apply to all proposals for the investment of Federal funds in transportation facilities or equipment by Federal agencies in and outside of the Department of Transportation, including water transportation investments. Thus, all civil transportation investment proposals, such as navigation programs proposed by the Corps of Engineers, would be subject to standards and criteria established by the Secretary, even though such programs are not the responsibility of the Department of Transportation. In addition, the standards and criteria established will involve a comparison of each proposed investment with all other proposed investments and a determination of the relative order of their overall merit. Finally, each agency would be required to apply the standards and criteria established by the Secretary who will then determine whether there has been compliance. (Briefing Book, Tab 4, 6 & 17.)

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