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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 for Transportation

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 of 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

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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.

EXHIBIT 3

Section 4(b).

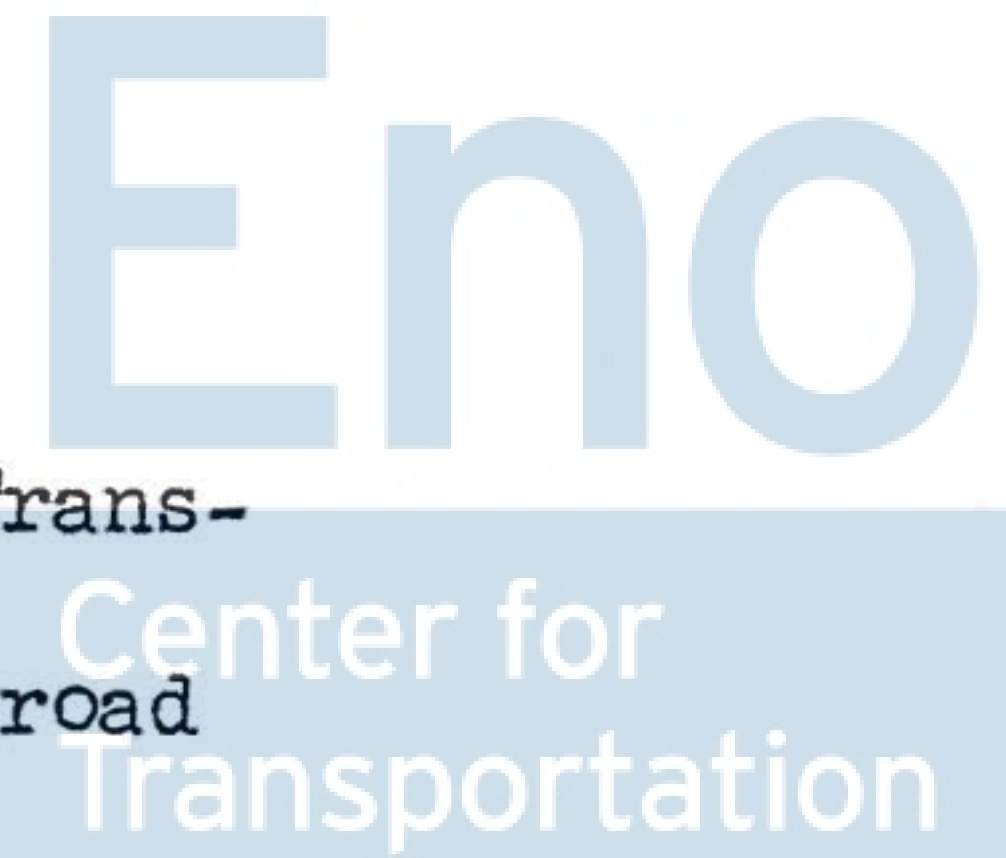
(b)(1). In carrying out his duties and responsibilities under this Act, the Secretary shall be governed by, but not limited to, the policy standards set forth in Title I of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.); the National Transportation policy of the Interstate Commerce 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. Chapt. 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.

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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 respective transportation mode.

(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.

EXHIBIT 5

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6(d).⁽¹⁾ 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 so much of title VII (72 Stat. 781) of the Federal Aviation Act of 1958, as pertains to the determination of probable cause of accidents involving civil aircraft.

(2) 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 Title VII (72 Stat. 781) of the Federal Aviation Act of 1958, as pertain to the investigation of aircraft accidents.

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

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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

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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)

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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.