

Eno

Center for
Transportation

August 17, 1966

*sent to all
members*

Honorable Sam J. Ervin, Jr.
United States Senate
Washington, D.C.

Dear Senator Ervin:

At the last mark-up session of the committee on S. 3010, a bill to create a Department of Transportation, I asked Senator Henry Jackson to endeavor to work out language relating to the organizational structure of the proposed Department, which would give adequate authority to the Secretary and, at the same time, reserve to the modal administrators sufficient authority to insure operational integrity and continuity of basic programs within their respective areas of activity. This approach seemed particularly desirable in connection with the Federal Aviation Agency and there seemed to be general agreement that this theme should be consistently applied to the other modes.

With typical diligence, Senator Jackson has worked out such a proposal which is explained in the attached staff memorandum. This memorandum also reviews those amendments which the committee previously adopted on a tentative basis, and lists several others which remain to be acted upon.

Also attached is a confidential committee print of S. 3010 containing Senator Jackson's amendment as well as those previously adopted. Senator Jackson and I would appreciate having this print treated with confidence at least until he can present it to the full committee. The material is forwarded at this time with the thought that members would want to review it before our next meeting on this legislation.

With kindest personal regards, I am

Sincerely yours,

John L. McClellan
Chairman

Enclosures

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.

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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 18, lines 15-24).

3. Car Service (Sections 6 and 8)

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

4. Transportation Investment Standards (Section 7)

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

Amendments Developed by the Staff at the Direction of Senator Jackson

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

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

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

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

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

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

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

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

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

2. Appeals Provision (Section 4)

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

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

3. National Transportation Safety Board (Section 5)

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

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

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

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

Amendments Proposed by Committee Members or Others

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

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

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