

March 3, 1988

MEMORANDUM

TO: Senator Hollings
FROM: Steve Palmer
RE: S. 1600, Legislation to Establish an Independent FAA

On August 6, 1987, Senator Ford introduced S. 1600, legislation to remove the FAA from DOT, establishing it as an independent agency. Having held a series of hearings on the bill, Senator Ford may approach you about scheduling this bill on a future Commerce Committee mark-up. This memo will help provide factual information on the bill and recent hearings.

Summary of Bill

S. 1600 would establish an independent FAA under the control of an Administrator appointed to a seven-year term. The independent FAA would retain all functions currently administered by the FAA, such as issuing safety rules, operating the air traffic control system, and inspecting airline maintenance practices. As under current law, all international aviation, airline consumer, and Essential Air Service subsidy program activities would remain in DOT. As proposed by S. 1600, the independent FAA would continue to be funded through the Congressional authorization/appropriations process.

There are currently 21 co-sponsors to S. 1600, including Senators Kassebaum, Inouye, and Stevens from the Commerce Committee. Other cosponsors include Senators Byrd, Lautenberg, Cranston, Simon, Dodd, Daschle, Burdick, Conrad, Sanford, DeConcini, Sasser, Mikulski, Melcher, Glenn, Stafford, Bingamon, Simpson, and Pryor.

Congressman Jim Oberstar (D-MN) is planning to introduce a similar bill in the House next week.

Summary of Hearings

To date, Senator Ford has chaired 3 hearings on S. 1600. Witnesses have included former three FAA Administrators, former DOT Secretary Alan Boyd, National Transportation Safety Board (NTSB) Chairman Jim Burnett, and numerous aviation industry and labor groups. The testimony from the industry has been strongly supportive of an independent FAA. Opponents have included former Secretary Boyd and NTSB Chairman Burnett.

Of the industry groups, the Air Transport Association (ATA), representing the airline industry, has been the strongest supporter of this bill. Last year, ATA proposed creating a public corporation to operate the air traffic control system, which Senators Inouye and Stevens introduced (S. 1159). However, when it became apparent that

that bill would not get the necessary political support, and Senator Ford offered the idea of an independent FAA, the airlines moved quickly to support S. 1600.

A fourth hearing with DOT Secretary James Burnley is scheduled for March 23. Secretary Burnley is expected to testify that because of the many problems encountered by the FAA with respect to procurement, personnel, and budget, major revisions in the FAA's structure are needed. However, he will not endorse a specific proposal.

Pros and Cons of S. 1600

The idea of an independent FAA has attracted a great deal of attention. It will likely get more, as the Byrd Safety Commission (chaired by John Albertine) is expected to issue its report in April in support of a comprehensive change to the FAA's structure.

Why the FAA Should be Made Independent

1. An independent FAA would eliminate political interference and micro-management by the Secretary and Departmental staff.
2. This reduced interference would likely reduce the timeframe for completing rulemaking proceedings.
3. A fixed 7-year term for the Administrator would provide insulation, and allow better long-term planning and better command of FAA bureaucracy.

S. 1600, as introduced, does not address many of the "reforms" sought by the aviation industry. In particular, there are three areas that the aviation industry is looking for changes in the operation of the FAA, and could surface as amendments:

- A. **Budget** - Because of the \$6 billion surplus, and the fact that expenditures from the Trust Fund are subject to the limitations of the unified budget, there will be an attempt to find some way of making the Administrator "trustee" of FAA's budget, bypassing OMB and exempting it from the Congressional budget process.
- B. **Personnel** - Because of difficulties in attracting controllers to high traffic centers and towers, there will be an attempt to exempt the FAA from civil service statutes and rules, giving the FAA flexibility to provide pay differentials to its employees in order to better locate personnel.
- C. **Procurement** - The industry argues that Federal procurement rules are too slow and cumbersome for the FAA to ensure the needed expansion of the air traffic control system and will likely attempt to have FAA's procurement practices streamlined.

Why the FAA Should Remain in DOT

1. An independent FAA can be expected to become closely aligned with and influenced by the aviation industry. DOT tends to be more responsive to the goals of the Administration and the public. As such, the industry will have greater access to an independent FAA.
2. In this light, it would be difficult for the Administrator to take actions that conflict with industry. An example was the decision to fire the air traffic controllers in 1981. An Administrator of an independent FAA would likely have done whatever was necessary to keep the system operating, rather than make the decision to fire the striking controllers.
3. Without a Cabinet-level head, the FAA would likely have reduced access to the President and OMB. (This year, the only budget appeal that went to the President was DOT -- for FAA and Coast Guard.)
4. With an independent FAA, initiatives cutting across all modes of transportation would be difficult. The best example of this is the on-going effort by DOT to set up drug testing programs for safety-sensitive employees in each sector of the transportation industry.
5. The fixed term of the Administrator would make him less responsive to public pressure, as there would be no threat of removal by the President.
6. Even though many people agree that DOT has slowed some safety rulemaking proceedings, no one has criticized it for blocking a safety initiative made by the FAA. More importantly, on several occasions, DOT has forced the FAA to take action on certain safety initiatives when the FAA did not act on its own.