

CONFERENCE AGENDA*

H.R. 15963
Department of Transportation

Eno

Center for
1. Maritime Functions
Transportation

The Senate creates an independent Maritime Board consisting of two independent Members and the Administrator with power to make administratively final decisions in Maritime subsidy matters. It transfers to the Federal Maritime Administrator by statute all other Maritime functions and makes these decisions administratively final in cases involving notice and hearings. The only cases involving notice and hearings by statute are those involving bare boat leases from the reserve fleet.

Matters to be considered:

- (i) Retention of Maritime functions and organization described above.
 - Sec. 6(a)(5)(A) P. 23, 1.9 Functions Transferred to Department.
 - Sec. 6(a)(5)(B) P. 25, 1.3 Federal Maritime Administration
 - Sec. 6(a)(5)(C) P. 25, 1.19 Maritime Board Functions
 - Sec. 6(a)(5)(D) P. 26, 1.8 Composition of Maritime Board
 - Sec. 6(a)(5)(E) P. 28, 1.21 Finality of Maritime Board Decisions

- (ii) Staff will make technical changes in other sections to conform to Conference decision.

2. Brewster Amendments

The Brewster amendments were designed primarily to affect the Maritime functions.

- (i) Brewster #1. Establishes the four administrations by Statute rather than directs the Secretary to establish them.
 - Sec. 3(e)(1) P. 4, 1. 11
- (ii) Brewster #2. Eliminates direct reporting of Administrators and Commandant of Coast Guard to Secretary.
 - Sec. 3(e)(3) P. 5, 1. 15

Possible compromise:

"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 Guard 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."

* - All references are to sections of Senate Passed Bill and to the Oct. 1, 1966 Comparative print (unless otherwise specified).

- (iii) Brewster #3. Limits judicial review of actions of Secretary, Administrators and Boards by adding the following language: "Except as otherwise provided in this Act."

Sec. 4(c) P. 10, l. 8.

Comment: Effect not clear; unable to determine how Act provides otherwise; could lead to unexpected results.

- (iv) Brewster #4. Adds "Except as provided in this Act" to subsection giving the Secretary, Administrators and Boards same authority in carrying out transferred functions, powers and duties as predecessor agencies had and with same effect.

Sec. 4(d) P. 11, l. 1.

Comment: Purpose of subsection was to prevent expansion or diminution of authority by virtue of transfer of functions to new department and its officials. Brewster #4 was designed to add further assurance to independence of subordinate officials, (particularly Maritime). This is fully covered elsewhere in language retransferring functions and providing administrative finality. Effect of Brewster amendment not clear. Statement of House managers could emphasize degree of independence decided on by Conference.

- (v) Brewster #6. * Provides administrative finality for and direct court appeal from those decisions of the Federal Maritime Administrator which "involve notice and hearings."

Sec. 6(a)(5)(B) P. 25, l. 9.

Comment: Only function involving notice and hearings by statute is chartering of bare boats from reserve fleet. However, Brewster language may be loose enough to include proceedings where notice and hearings are afforded by administrative regulations.

Possible compromise:

Statement of House Managers can express intent that the finality of Maritime Administrator's decisions extends only to situations where notice and hearings are provided by statute.

- (vi) Brewster #7. Makes clear that the delegation to the Maritime Board of functions under Title XI of the Merchant Marine Act, 1936, covers only those functions "relating to findings and determinations with respect to loan and mortgage insurance."

Sec. 6(a)(5)(C)(2) P. 26, l. 3.

- (vii) Brewster #8. Makes provisions of Administrative Procedure Act applicable to proceedings by the Department and any of its administrations and boards.

Sec. 6(h) P. 39, l. 16.

Comment: It is believed desirable to retain this and also retain related House language on P. 10, l. 15 by adding it at end of Senate's Sec. 4(C), P. 10, l. 18.

* - Brewster #5 was withdrawn on Senate Floor.

Center for
Transportation

(viii) Brewster #9. Makes actions of Secretary in developing and revising transportation investment standards and criteria "subject to the provisions of section 4 of this Act." Section 4(b)(2), P. 10, l. 3, prohibits the adoption, revision or implementation of investment standards or criteria contrary to or inconsistent with any Act of Congress without appropriate action by Congress.
Sec. 7(a) P. 40, l. 1.

(ix) Brewster #10. Adds the following language to the authority of the Secretary to delegate or redelegate his functions: "Except where this Act vests in any administration, agency or board, specific functions, powers and duties." Describes Secretary's functions as "residual".
Sec. 9(e)(1) P. 49, l. 6.

Possible compromise:

Delete word "residual" since Secretary will have of his own right many very substantial powers.

3. Transportation Investment Standards and Criteria

The Senate restored Section 7 dealing with transportation investment standards and criteria. In contrast to the earlier House version, the Senate requires Congressional approval rather than Presidential approval before the standards and criteria can be promulgated, requires all proposals, studies, etc. to be channeled through the President, makes the Secretary of Transportation a Member of the Water Resources Council for the purpose of considering investment transportation related projects. The Senate version puts in to statutory form a formula, related to rates, to be used in computing the navigation benefits of water resources projects.
Sec. 7. P. 40, l. 15.

Possible conference agreements:

*possibly
but rather
not*

- (a) Delete all Sec. 7.
- (b) Accept McClellan formula, P. 41, l. 8-21 and delete remainder of Sec. 7. Move formula to section dealing with amendments to other laws. Sec. 8, p. 43, l. 1.
- (c) Accept Sec. 7 with following changes
 - (1) Substitute the following for last sentence of first paragraph of Sec. 7(a), P. 41, l. 4:
To the extent that any standards and criteria developed or revised pursuant to this subsection contain provisions which are inconsistent with any Act of Congress, they shall not be promulgated by the Secretary prior to their approval by a subsequent Act of Congress.

(2) Revise last clause of Sec. 7(b), P. 42, l. 15:
"(3) transmitted thereafter by the proposing agency for disposition in accordance with law and procedures established by the President."

If either alternative (b) or (c) is adopted the House Statement could include language making it clear that the intent of the McClellan formula is to return to the pre November 1964 economic evaluation criteria.

4. Direct Transfer of Functions to Subordinate Officials

The Senate versions provide (1) for the direct transfer of all aviation safety functions enumerated in certain sections of the Aviation Act to the Federal Aviation Administrator and makes his decisions in these matters administratively final; (2) transfers to the Federal Maritime Administrator all maritime functions other than those transferred to the Maritime Board but makes his decisions administratively final only in those cases involving notice and a hearing (bare boat leases); (3) Provides that the Railroad Administrator and Highway Administrator shall carry out the functions of the Secretary relating to safety in their fields and that their decisions in those matters shall be administratively final; (4) transfers to the National Transportation Safety Board directly all CAB safety functions (including accident investigations) and its functions of determining probable cause in reviewing certain matters on appeal and makes the Board's decisions in those matters administratively final; and (5) transfers the Maritime Subsidy functions to the Maritime Board and makes its decisions administratively final.

- Sec. 6(c) P. 31, 1, 1. Federal Aviation Administrator
- Sec. 6(a)(5)(B) P. 25, 1, 3. Federal Maritime Administrator
- Sec. 6(f) P. 37, 1, 1., 5., 9. Federal Railroad and Highway Administrators
- Sec. 6(d) P. 32, 1, 7. C.A.B. Safety functions
- Sec. 6(a)(5)(C) P. 25, 1, 19. Functions of Maritime Board
- Sec. 6(a)(5)(E) P. 28, 1, 21. Decisions of Maritime Board.

Ancillary language (a) prohibits redistribution of statutorily assigned duties except by reorganization plan or statute. Sec. 3(e)(4) P. 5, 1, 19; (b) limits the authority of the Secretary to delegate authority Sec. 9(e)(1), P. 49, 1, 6; (c) authorizes the subordinates to delegate authority Sec. 9(e)(2), P. 49, 1, 17; (d) prohibits the administrators delegating outside their administrations Sec. 9(e)(3), P. 50, 1, 1; and (e) earmarks certain transferred assets for the aviation administrator Sec. 9(f) P. 50, 1, 11 and the Maritime Administrator, the Maritime Board and the NTSB Sec. 9(g) P. 51, 1, 1.

Possible compromises:

- (a) Eliminate statutory delegation of authority to and/or administrative finality of the Federal Railroad and Highway Administrators
- (b) Make clear in Statement that only quasi-judicial and quasi-legislative decisions are intended to be covered by the finality language.

5. Aviation functions

The Senate version omitted the Office of Accident Investigations and placed in the National Transportation Safety Board all of the present CAB accident investigation functions as well as its functions of determining probable cause and reviewing certain matters on appeal. In addition to this investigative authority it gives the Safety Board authority to make its own investigations in rail and highway and pipeline cases. The NTSB's decisions on matters transferred from the CAB are made administratively final. The Senate version also transfers to the Federal Aviation Administrator the present FAA's aviation safety functions as enumerated in certain sections of the Aviation Act and makes his decision administratively final in these matters.

- Sec. 5(c) P. 14, 1, 16. CAB accident investigation functions
- Sec. 6(d) P. 32, 1, 10. CAB functions
- Sec. 5(d)(4) P. 15, 1, 10. NTSB rail, highway and pipeline investigations
- Sec. 6(c) P. 31, 1, 5. FAA Safety functions

6. The Horton Amendment

The Senate omitted in Section 4(a) the Horton amendment adopted by the House which would require the Secretary to "gather, maintain and keep the President fully advised of information regarding the status of labor management contracts and other labor management problems and assist in promoting industrial harmony and stable employment conditions in all modes of transportation."

Sec. 4(a) P. 8, 1, 12. (House language)

Possible compromise: The following language is understood to be acceptable to all concerned:

Consult and cooperate with the Secretary of Labor in gathering information regarding the status of labor-management contracts and other labor-management problems and in promoting industrial harmony and stable employment conditions in all modes of transportation;

7. The Dwyer Amendment

The Senate Bill omitted the language of the Dwyer amendment which provides "The Secretary of Housing and Urban Development shall study and report within one year after the effective date of this Act to the President and the Congress on the logical and efficient organization and location of urban mass transportation functions in the Executive Branch." To some extent the basic purpose of the Dwyer amendment is reflected in Section 4(g) of the Senate version.

Sec. 4(g) P. 13, 1, 1.

Possible Compromise: Add language of Dwyer Amendment at end of Sec. 4(g) of Senate version.

8. The First Erlenborn Amendment

This made clear the President's authority to transfer the FAA functions to the Defense Department in time of war. Was omitted by the Senate.
Sec. 6(c)(2) P. 32, 1, 1. (House language)

Possible compromise: Put back in the bill.

9. The Second Erlenborn Amendment

The following underlined language was omitted from the Senate Bill:

"The Secretary is authorized, upon the written request of any person, or any State, territory, possession or political subdivision thereof, to make special statistical studies relating to foreign and domestic transportation and special statistical studies relating to other matters falling within the province of the Department . . ."

Sec. 9(n)(1) P. 56, 1, 17 (House language)

Possible Compromise: Restore underlined language.

10. Natural Beauty, Conservation and Recreation

The Senate Bill has two paragraphs on natural beauty, conservation and recreation not in the House Bill. Language in Section 2 declares the national policy to be that in carrying out the provisions of the Act, special effort should be made to preserve the natural beauty of the countryside in public park and recreation lands, wildlife and waterfowl refuges and historic sites. Section 4(f) requires the Secretary to cooperate and consult with the Secretaries of Interior, HUD and Agriculture and with the State in developing all transportation plans and programs to carry out such policy and include measures to maintain or enhance the natural beauty of the lands traversed. The Secretary is prohibited from approving any program or project which requires the use of land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless (1) there is no feasible alternative and (2) such program includes all possible planning to minimize the harm to such areas.

Sec. 2 P. 2, 1. 20.

Sec. 4(f) P. 12, 1. 5.

Possible Compromise:

In 4(f) modify "feasible alternative" by (a) adding "from an economic or engineering standpoint" or (b) by changing "feasible" to "practicable". Alternatives that are "feasible" could be extremely expensive at times.

11. Working Capital Fund; Audit by Comptroller General

In providing a working capital fund for the new Department, the Senate requires the agencies and offices of the Department and other sources utilizing the assets of the fund to reimburse the fund "in advance" for services and supplies provided. The House does not require reimbursement "in advance". The Senate requires an annual audit of the fund by the Comptroller General; provides that any surplus found in it above the amounts transferred or appropriated to establish and maintain the fund shall be covered into the Treasury as miscellaneous receipts; and requires an annual report by the Comptroller General to the Congress on the results of the audit together with any recommendations he may have. These provisions do not appear in the House Bill.

Sec. 9(j) P. 53, l. 19, P. 54, l. 1.

Comment: The Comptroller General feels the mandatory annual audit would deprive him of flexibility in utilizing his personnel. He suggests the following language for the last sentence of the subsection:

"There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund, all assets, liabilities, and prior losses considered, above the amounts transferred or appropriated to establish and maintain said fund."

12. Conflicts in Interest

The Senate added the following to Sec. 9(o) authorizing the appointment of advisory boards:

"Payment under this subsection shall not render members of Advisory Committees employees or officials of the United States for any purpose."

Sec. 9(o) P. 57, l. 23.

Possible Compromise:

Delete the sentence since it raises possibilities of broad exemptions from the conflict of interest and bribery laws. Statement of the House managers can make clear that language in Sec. 4(f)(1) P. 6, l. 15 preserves this exemption which now exists for the National Traffic and Motor Vehicle Safety Advisory Committee.

13. Investigation and Report of Safety Compliance Record

The Senate added a requirement that the Secretary investigate the safety compliance record of each carrier or person seeking authority from the ICC and to report his findings to the Commission. In addition, the Secretary is required (1) to intervene and present evidence in Commission proceedings for permanent authority and for approval of transactions when the applicant's safety record fails to satisfy the Secretary; (2) to furnish promptly upon request of the Commission a statement regarding the safety record of any carrier, or person seeking temporary operating authority; and (3) to furnish upon request of the Commission a complete report of the safety compliance of any carrier and to make such additional inspections or safety compliance surveys which thereafter the Commission deems necessary or desirable.

Sec. 4(e) P. 11, 1. 11.

Comment: Staff is preparing language to delineate the types of proposed transactions covered.

14. St. Lawrence Seaway Development Corp. - Alaska Railroad

The Senate Bill places the St. Lawrence Seaway Development Corporation in the Department and transfers to the Department the functions of the Alaska Railroad. These actions can be taken by the President without statutory authority but the Senate Report indicates that the Senate believes the statutory backing for such transfers will be desirable.

Sec. 6(i) P. 40, 1, 4. Alaska Railroad

Sec. 8(g) P. 45, 1, 17. St. Lawrence Seaway