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Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

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Washington, D.C.

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PRINCIPAL DIFFERENCES BETWEEN H.R. 15963 AS PASSED BY THE HOUSE AND AS AMENDED BY THE SENATE

I.

Maritime Functions

The House deleted all reference to maritime functions from H.R. 15963 and also eliminated the creation of a Federal Maritime Administration.

The Senate:

- (1) Restored to the bill the transfer of maritime functions to the new Department.
- (2) Creates within the Department a Maritime Board consisting of the Federal Maritime Administrator and two members appointed by the President with the advice and consent of the Senate.
- (3) Transfers to the Maritime Board, by statute, the functions under the Merchant Marine Act of 1936 relating to operating and construction functions, including determinations of relative construction and operating costs, and all functions relating to findings and determinations with respect to loan and mortgage insurance under the Merchant Marine Act of 1936.
- (4) Provides that decisions of the Maritime Board with respect to these functions shall be administratively final, and appeals as authorized by law shall be taken directly to the Courts.

(5) Retransfers directly to the Federal Maritime Administrator all the maritime functions other than those transferred to the Maritime Board.

(6) Makes decisions of the Maritime Administrator administratively final, with direct appeal to the Courts, in all matters which involve notice and hearings. The Senate amendment did not distinguish between matters which involve hearings because they are required by statute and matters which involve hearings because they are provided by administrative rule. Nor does the Senate Bill attempt to list or identify further those functions in which the Administrator's decisions are to be administratively final.

(7) As in the case of the other Administrations, establishes in the Department a Federal Maritime Administration to be headed by an Administrator.

II.

Transportation Investment Standards

The House deleted from H.R. 15963, Section 7 which authorized the Secretary to establish, with the approval of the President, standards and criteria for the formulation and economic evaluation of proposals for the investment of Federal funds in transportation facilities or equipment. Prior to the deletion of this section by the House, the House Committee on Government Operations had proposed amendments to extend the categories of exceptions to this authority, to eliminate references to water resources projects and the Water Resources Council, to provide for advance notice published in the Federal Register of proposed standards and criteria with an opportunity to the public to present its views, and to eliminate a provision requiring the routing of all surveys, plans or reports dealing with transportation investments to the President.

The Senate:

(1) Restored Section 7 dealing with transportation investment standards to the Bill.

(2) Retained the six exceptions approved by the House Committee on Government Operations; otherwise it made a number of changes in the section compared to the form in which it had come from the House Committee.

(3) Although excluding all standards and criteria relating to water resource projects from the Secretary of Transportation's authority, the Senate added a paragraph which is designed to govern the Water Resources Council in exercising the Council's authority to develop standards and criteria for the economic evaluation of water resource projects. The paragraph establishes by statute a formula for determining the primary direct navigation benefits of a water resource project. Such benefits are defined as the product of savings to shippers using the waterway and the estimated traffic that would use it. The savings to shippers must be calculated on the basis of freight rates or charges prevailing at the time of the study and those which would be charged on the proposed waterway. The estimate of traffic must be based upon the freight rates existing at the time of the study (even though competition of the waterway might later drive them down) and the projections of economic growth of the area. (We understand that the formula presently used by the Bureau of the Budget in estimating navigation benefits is based upon estimated cost differences to the shippers rather than in the differences between prevailing rates and estimated future rates on the waterways.)

(4) Requires that the standards and criteria proposed by the Secretary be approved by Congress. The earlier House version had provided for approval by the President after notice of proposed standards and criteria to the public with an opportunity to present its views.

(5) Expands the Water Resources Council to include the Secretary of Transportation on matters pertaining to navigation features of water resources projects. The House Committee had eliminated a similar provision in reporting the Bill to the House.

(6) Requires that every survey, plan or report formulated by a Federal agency would have to be transmitted to the President for disposition in accordance with law and procedures established by him. In reporting the Bill, the House Committee had changed this to provide that the proposing agency would transmit the proposal in accordance with law and procedures prescribed by the President, thus eliminating the requirement that every item go to the President.

III

Vesting of Authority Directly in Subordinates*

As it passed the House, H.R. 15963 vested all of the authority transferred to the new Department in the Secretary of Transportation. Only in the case of the National Transportation Safety Board did the House version re-transfer authority to a unit within the Department. In that instance, the House version retransferred to the NTSB those functions, powers and duties of the Secretary with regard to the determination of the cause or probable cause of transportation accidents and to the reviewing on appeal of the suspension amendment modification, revocation or denial of any certificate or license issued by the Secretary. The House Bill also provided that the Secretary shall establish the modal administrations in the Department and provided for the Presidential appointment of an Administrator, by and with the advice and consent of the Senate, to head each of the administrations. It provided that the Administrators and the Commandant of the Coast Guard should report directly to the Secretary.

In contrast, the Senate Bill provides:

(1) That each of the Administrators shall carry out the safety functions transferred to the Secretary which relate to their areas; that the Maritime Board shall carry out the subsidy functions of the Secretary and that the National Transportation Safety Board shall also carry out the aircraft accident investigation function of the C.A.B.

(2) Omits the provision that the Administrators and the Coast Guard Commandant report directly to the Secretary.

(3) That the decisions of the Maritime Board and the National Transportation Safety Board are administratively final subject only to appeal to the Courts; that the decisions of the Federal Maritime

* - See also discussion of Brewster Amendments, p. 15, infra.

Administrator involving notice and hearings are administratively final subject only to appeal to the Courts and that the decisions of the Federal Aviation Administrator, the Federal Railroad Administrator and the Federal Highway Administrator pertaining to safety are administratively final subject only to appeal to the National Transportation Safety Board or to the Courts, as appropriate. In the case of the Aviation Administrator, certain sections of the Federal Aviation Act are listed as pertaining to safety; in the case of the other two Administrators, the Senate version did not attempt to list which parts of the laws pertain to safety.

(4) Establishes the modal Administrations, directly by statute; the House Bill provides that the Secretary shall establish the various Administrations.

(5) Provides that the functions, powers and duties specified in the Act to be carried out by each Administrator or by the Maritime Board shall not be transferred elsewhere in the Department unless specifically provided for by reorganization plan or by statute; the Senate version also prohibits any of the Administrators from delegating outside of his organization any of the statutory functions given them by this Act.

IV

Aviation Functions

The House version transferred to the Secretary all of the functions of the Federal Aviation Administration, the aviation functions of the Secretary of Commerce and the functions of the Civil Aeronautics Board relating to

aviation safety and the review on appeal of the suspension, denial, modification, etc., of certificates and licenses. The House version further retransferred to the National Transportation Safety Board the Secretary's authority with respect to the determination of a probable cause of transportation accidents and the review on appeal of the modification, denial, suspension, etc., of licenses and certificates by the Secretary. The House provided that the Secretary should establish within the Department an Office of Accident Investigation which shall be independent of the Federal Aviation Administration and which would have among its duties the investigation of aviation accidents in accordance with rules and regulations prescribed by the Secretary. The House also provided for the establishment by the Secretary of a Federal Aviation Administration to be headed by an Administrator.

The Senate version:

(1) Deletes the provision for an Office of Accident Investigation and instead transfers to the National Transportation Safety Board all of the accident investigation functions of the Civil Aeronautics Board in addition to the functions transferred by the House version. The Senate Bill specifically provides that the decisions of the National Transportation Safety Board shall be administratively final, subject only to appeal to the Courts. (This is probably implied in the House Bill which placed all of the Secretary's authority in two areas in the Board). The Senate Bill specifically gives the NTSB the authority to hire investigators and initiate and carry on accident investigations.

(2) Retr transfers by statute to the Federal Aviation Administrator all of the Secretary's authority with respect to aviation safety matters

and provides that his decision in matters pertaining to safety as set out in certain sections of the Federal Aviation Act shall be administratively final subject only to appeal to the National Transportation Safety Board or the Courts, as appropriate.

(3) Provides specifically for the appointment of a Deputy Federal Aviation Administrator at an Executive Level Grade IV, equivalent to an Assistant Secretary; the Federal Aviation Administrator is set at Executive Level II in contrast to the House report's expectation that he would be an Executive Level III.

(4) Provides that the qualifications of the Administrator and Deputy Administrator shall be the same as those presently existing for the Administrator and Deputy Administrator of the Federal Aviation Agency but at the same time preserves authority for the appointment of the existing Federal Aviation Administrator.

National Transportation Safety Board

(1) The basic change made in the National Transportation Safety Board by the Senate is to place by statute in the Board the aircraft accident investigation functions now carried on by the Civil Aeronautics Board.

(2) The Senate Bill also provides specifically that the decisions of the National Transportation Safety Board shall be administratively final, subject to appeal to the Courts. (Since all of the Secretary's authority with respect to determinations of probable cause of accidents and the review on appeal of certificate and license actions were transferred by statute to the NTSB in the House version, administrative finality of its decisions would seem to have been implied anyway.)

(3) In addition to the power to initiate and conduct aircraft accident investigations to the same extent that the Civil Aeronautics Board now has that power, the Senate version gives the NTSB authority to initiate or conduct rail, highway or pipeline accident investigations as the Board deems necessary or appropriate. The Senate version also gives the Board specific authority to hire investigators.

(4) Where the House version authorized the Board to require the Secretary to conduct further investigations, to initiate specific accident investigations and to provide the Board with notification of transportation accidents and reports of such accidents, the Senate version changes the word "require" to "request".

(5) The authority of the Board to make recommendations to the Secretary concerning policies, programs, and procedures for transportation safety, and rules, regulations and procedures for the conduct of accident investigations is limited in the Senate bill by the deletion of language underlined.

(6) The language in the House Bill which requires the Board to give full consideration to the requirements imposed upon the Secretary by that paragraph of the House Bill requiring attention to continuity of operations is omitted from the Senate Bill. This change conforms to the omission of the specific continuity requirement from the Senate Bill.

(7) The Senate Bill raises the Chairman of the Board from Executive Level IV in the House Bill to Executive Level III; members of the Board are raised from Executive Level V to Executive Level IV.

(8) The Senate Bill specifically prohibits the Board from delegating its appellate and probable cause determination functions derived from the Civil Aeronautics Board.

VI.

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."

VII.

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 which requires the Secretary of Transportation and the Secretary of HUD to consult and exchange information regarding their respective transportation policies and activities and to carry out joint planning in research and to coordinate in assistance for local transportation projects. The Senate bill requires the two Secretaries report to the President within one year after the effective date of the Act on their studies and other activities under this Subsection, including any legislative recommendations they believe are desirable.

VIII.

The Erlernborn Amendment

In the section of the Bill dealing with administrative provisions (Section 9, Senate Bill; Section 8, House Bill) the House Committee added the underlined portion of the following language which addition is omitted in 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 . . ."

IX.
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,

X.
Natural Beauty, Conservation and Recreation

The Senate Bill contains two paragraphs relating to natural beauty, conservation and recreation which are not in the House Bill. The third paragraph of Section 2 declares it to be the national policy 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.

XI.

St. Lawrence Seaway Development Corporation - The 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.

XII.

Working Capital Fund; Audit by Comptroller General

(1) 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".

(2) 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.

XIII.
Conflicts in Interest

The paragraphs authorizing the appointment of members of Advisory Committees and their pay have one difference. The Senate included the following language: "Payment under this subsection shall not render members of Advisory Committees employees or officials of the United States for any purpose." This language is not in the House Bill. This would remove Advisory Committee members from the category of special Government employees in the conflict of interest laws (18 U.S.C. Sec. 201 et seq.). For example, 18 U.S.C. Sec. 205 prohibits a special Government employee from acting as an agent or attorney for prosecuting any claim against the United States in relation to a particular matter involving a specific party in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision approval, etc. The language might also very well render the antibribery statute (18 U.S.C. Sec. 201) inapplicable to attempts to bribe such Advisory Committee members and to the receipt by them of bribes. This language was put in the National Traffic and Motor Vehicle Safety Act of 1966 to accommodate the automobile manufacturers who might serve on Advisory Committees under that Act and who feared the financial interest provisions of the Conflict of Interest Laws (18 U.S.C. Sec. 208). Apparently the Senate Committee decided to make the clause applicable to all Advisory Committees in the new Department even though it is a highly unusual clause and was tailored for a particular purpose.

XIV.
The Brewster Amendments

During the Floor consideration of the Bill, the Senate adopted a number of amendments proposed by Senator Brewster of Maryland. These appear in the Congressional Record for September 29, 1966, pages 23435-23438.

Some, but not all of these amendments tend to weaken the position of the Secretary and strengthen the position of the subordinates in the Department.

The Brewster amendments to which objection might be raised are:

(1) The first amendment which establishes the four Administrations in the Department by the Act itself rather than directing the Secretary to establish those Administrations.

(2) The second amendment which eliminates the requirement that the Administrators and the Commandant of the Coast Guard report directly to the Secretary and instead states that they shall carry out such functions, powers and duties as are specified in the Act and such additional duties as the Secretary may prescribe.

(3) The third amendment which limits judicial review by the words "except as otherwise provided in this Act." The exact effect of this language is hard to define but the Senator explained that the original language was in conflict with other sections of the bill which give greater administrative and decisional independence than the agencies now performing these functions have. Obviously the amendment was designed to foster subordinate agency independence.

(4) The fourth amendment adds the words "except as provided in this Act" to the clause giving the Secretary, the Administrators and the Boards the same authority as that vested in the Department or agency exercising such powers and functions immediately preceding their transfer. The Senator explained that the purpose of this was to eliminate the possibility of the

Secretary overruling the Maritime Administrator in connection with the functions transferred to him. He said "My fourth amendment would therefore provide that the independence vested in the Maritime Administration as in all other Administrations would not be eroded or destroyed by the lingering of old and futile appeals."

(5) The sixth Brewster amendment provides for administrative finality in the decisions of the Federal Maritime Administrator pursuant to actions which involve notice and hearings. This further weakens the authority of the Secretary in the Bill as reported by the Senate Committee.

The next three Brewster amendments are basically perfecting amendments to conform to the Senate version. They: (1) Limit the functions of the Maritime Board under Title XI of the Merchant Marine Act to findings and determinations with respect to loan and mortgage insurance. (2) Preserve the applicability of the Administrative Procedure Act. (3) Make it clear that the actions of the Secretary under Section 7 are subject to the clause in Sec. 4(b)(2) requiring Congressional action for the adoption or revision of any transportation policy or standards or criteria contrary to, or inconsistent with any Act of Congress,* and (4) prevent the Secretary from further delegating any authority delegated by the Bill directly to the Administrators, agencies and Boards in the Department.

* - Since Sec. 7(a) of the Senate Bill requires Congressional approval of transportation investment standards and criteria before promulgation, the language in 4(b)(2) dealing with investment standards and criteria seems superfluous.