

# S. 2434

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 11), 1975

Mr. GOLDWATER introduced the following bill; which was read twice and referred to the Committee on Commerce

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## A BILL

To establish an independent Federal Aviation Agency, and for  
other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Independent  
5 Federal Aviation Agency Act of 1975".

6 FINDINGS

7 SEC. 2. The Congress hereby finds and declares:

8 (1) A former independent agency of the United States  
9 known as the Federal Aviation Agency was established by  
10 the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.)  
11 to provide for the regulation and promotion of civil aviation

1 in such manner as to best foster its development and safety,  
2 and to provide for the safe and efficient use of the airspace  
3 by both civil and military aircraft, and for other purposes.

4 (2) Under provisions of the Department of Transporta-  
5 tion Act (49 U.S.C. 1651 et seq.), the Federal Aviation  
6 Agency was established as an integral component of the De-  
7 partment of Transportation and its name was changed to the  
8 Federal Aviation Administration. The functions, powers, and  
9 duties of the former Federal Aviation Agency, and of the  
10 Administrator and other officers and offices thereof, were  
11 transferred to and vested in the Secretary of Transportation.

12 (3) Since October 15, 1966, the date of enactment of  
13 the Department of Transportation Act (49 U.S.C. 1651 et  
14 seq.), the relationship between the Federal Aviation Admin-  
15 istration and the Office of the Secretary of Transportation has  
16 been characterized by undue interference exercised by the  
17 Office of the Secretary of Transportation over the entire range  
18 of Federal Aviation Administration activities. Such inter-  
19 ference, exceeding the intent of the Congress as expressed in  
20 the Department of Transportation Act and its legislative  
21 history, has had deleterious and debilitating effects on the  
22 conduct of the vital aviation safety mission intended to  
23 be performed by the Federal Aviation Administration.  
24 The resultant misplacement of authority and responsibility  
25 between the Office of the Secretary of Transportation and the

1 Federal Aviation Administration is manifest in all managerial  
2 and operational areas.

3 (4) It has become apparent that the proper conduct of  
4 the responsibilities associated with civil aviation development  
5 and safety—

6 (A) requires prompt, vigorous, and unencumbered  
7 action by an independent Federal aviation agency,  
8 notably to identify and remedy problem areas;

9 (B) demands that the head of such an agency be  
10 free to make determinations which, in the exercise of his  
11 best independent judgment, are necessary; and

12 (C) calls for the elimination of confusion as to the  
13 functional role of the Federal Aviation Administration  
14 arising from the existing institutional relationship which  
15 places the Federal Aviation Administration in a posi-  
16 tion subservient to that of another organization of  
17 Government.

18 ESTABLISHMENT OF AGENCY

19 SEC. 3. (a) There is hereby established the Federal Avi-  
20 ation Agency (hereafter in this Act referred to as the  
21 "Agency") as an independent agency of the United States.

22 (b) The Agency shall be headed by an Administrator  
23 who shall be appointed by the President, by and with the ad-  
24 vice and consent of the Senate. In appointing an Administra-  
25 tor, the President shall be guided by the qualifications for

1 such office which are specified in section 301 (b) of the  
2 Federal Aviation Act of 1958 (49 U.S.C. 1341 (b) ) ; except  
3 that nothing in such section, or this or any other Act, shall  
4 preclude the nomination or appointment to the position of  
5 Administrator of a retired officer of the Armed Forces of the  
6 United States. The appointment to, acceptance of, and service  
7 in the office of Administrator of any such retired officer shall  
8 in no way affect any status, rank, or grade he may occupy  
9 or hold in the Armed Forces, or any emolument, prerequisite,  
10 right, privilege, or benefit incident to or rising out of any such  
11 status, office, rank, or grade. So long as any such retired  
12 officer holds the office of Administrator, he shall receive the  
13 compensation of that office at the rate specified in section  
14 5313 of title 5, United States Code, and shall retain the  
15 rank and grade which he holds as an officer on the retired  
16 list of any of the Armed Forces, at the time of appointment  
17 to the office of Administrator, and shall in addition continue  
18 to receive the retired pay to which he is entitled by law,  
19 subject to the provisions of subchapter IV of chapter 55 of  
20 title 5, United States Code. No retired officer so appointed  
21 shall be subject to direction, control, supervision, restriction,  
22 or prohibition (military or otherwise) other than would be  
23 operative with respect to him if he were not an officer on  
24 the retired list of one of the branches of the Armed Forces.

25 (c) There shall be a Deputy Administrator of the

1 Agency who shall be appointed by the President, by and  
2 with the advice and consent of the Senate. In appointing a  
3 Deputy Administrator, the President shall be guided by the  
4 qualifications for such office which are specified in section  
5 302 (b) of the Federal Aviation Act of 1958 (49 U.S.C.  
6 1342 (b) ).

7 (d) Any person who, on the effective date of this Act,  
8 held a position compensated in accordance with the Execu-  
9 tive Schedule, and who, without a break in service, is ap-  
10 pointed in the Agency to a position having duties comparable  
11 to those performed immediately preceding his appointment  
12 shall continue to be compensated in his new position at not  
13 less than the rate provided for his previous position, for the  
14 duration of his service in his new position.

15 POWER OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR

16 SEC. 4. (a) (1) The Administrator shall be responsible  
17 for the exercise of all powers and the discharge of all duties  
18 of the Agency, and he shall have full authority and control  
19 over all personnel and activities thereof.

20 (2) In carrying out his functions, powers, and duties  
21 under this Act, the Administrator shall be governed by all  
22 applicable statutes, including the policy standards set forth in  
23 the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

24 (3) Decisions of the Administrator made pursuant to  
25 his exercise of the functions, powers, and duties enumerated

1 in the Federal Aviation Act of 1958 (49 U.S.C. 1301 et  
2 seq.) shall be administratively final, and appeals as author-  
3 ized by law shall be taken directly to the National Trans-  
4 portation Safety Board or to any court of competent jurisdic-  
5 tion, as appropriate.

6 (4) The Administrator shall not submit his decisions for  
7 the approval of, nor be bound by the decisions or recom-  
8 mendations of, any committee, board, or other organization  
9 created by Executive order.

10 (b) The Deputy Administrator shall perform such duties  
11 and exercise such powers as the Administrator shall pre-  
12 scribe. The Deputy Administrator shall act for, and exercise  
13 the powers of, the Administrator during his absence or  
14 disability.

15 TRANSFERS TO AGENCY

16 SEC. 5. (a) There are hereby transferred to and vested  
17 in the Administrator all functions, powers, and duties of the  
18 Secretary of Transportation and other officers and offices of  
19 the Department of Transportation, including those functions,  
20 powers, and duties of the Secretary which are exercised by  
21 the Administrator of the Federal Aviation Administration,  
22 under the following laws and provisions of law:

23 (1) The Act of September 7, 1957, as amended  
24 (71 Stat. 629).

1           (2) The Federal Aviation Act of 1958 (49 U.S.C.  
2     1301 et seq.).

3           (3) Section 6 (c) of the Department of Transporta-  
4     tion Act (49 U.S.C. 1655 (c) ).

5           (4) The Airport and Airway Development Act of  
6     1970 (49 U.S.C. 1701 et seq.).

7           (b) The personnel, assets, liabilities, contracts, property,  
8     records, and unexpended balances of appropriations, authori-  
9     zations, allocations, and other funds employed, held, used,  
10    arising from, available or to be made available, of the Depart-  
11    ment of Transportation (which are related to the area of  
12    civil aviation) are hereby transferred from the Secretary of  
13    Transportation and the Administrator of the Federal Avia-  
14    tion Administration (to the extent assigned by the Secretary  
15    to the Administrator of the Federal Aviation Administra-  
16    tion) to the Administrator.

17          (c) In any case where all of the functions, powers, and  
18    duties of any office or agency are transferred pursuant to this  
19    Act, such office or agency shall lapse on the date such trans-  
20    fer is effective.

21                            AMENDMENTS TO OTHER LAWS

22          SEC. 6. (a) The Department of Transportation Act (49  
23    U.S.C. 1651 et seq.) is amended as follows:

1       (1) Section 3 of such Act (49 U.S.C. 1652) is  
2 amended—

3           (A) by amending paragraph (1) of subsection (c)  
4 to read as follows:

5       “(1) There is hereby established within the Department  
6 a Federal Highway Administration and a Federal Railroad  
7 Administration. Each of these components shall be headed  
8 by an Administrator. The Administrators shall be appointed  
9 by the President, by and with the advice and consent of the  
10 Senate.”;

11           (B) by striking out paragraph (2) of subsection  
12 (c); and

13           (C) by renumbering paragraphs (3) and (4) of  
14 subsection (c) (and all references thereto) as para-  
15 graphs (2) and (3), respectively.

16       (2) Section 4 of such Act (49 U.S.C. 1653) is  
17 amended—

18           (A) in subsection (a), by striking out “with par-  
19 ticular attention to aircraft noise” and inserting in lieu  
20 thereof “with the exception of aircraft noise”; and

21           (B) in subsection (b) (1) by striking out “the Fed-  
22 eral Aviation Act of 1958, as amended (49 U.S.C. 1301  
23 et seq.)”;

24       (3) Section 6 of such Act (49 U.S.C. 1655) is  
25 amended—



1 (A) by striking out subsection (c) ; and

2 (B) by relettering the subsections of such section  
3 (and all references thereto) as subsections (a) through  
4 (h), respectively.

5 (4) Section 9 of such Act (49 U.S.C. 1657) is  
6 amended—

7 (A) by striking out subsection (f) ; and

8 (B) by relettering the subsections of such section  
9 (and all references thereto) as subsections (a) through  
10 (p), respectively.

11 (b) Subchapter II (relating to executive schedule pay  
12 rates) of chapter 53 of title 5 of the United States Code is  
13 amended as follows:

14 (1) Section 5313 of such subchapter is amended by  
15 striking out “ (19) Administrator, Federal Aviation Admin-  
16 istration.” and inserting in lieu thereof “ (19) Administrator,  
17 Federal Aviation Agency.”.

18 (2) Section 5315 of such subchapter is amended by  
19 striking out “ (80) Deputy Administrator, Federal Aviation  
20 Administration” and inserting in lieu thereof “ (80) Deputy  
21 Administrator, Federal Aviation Agency.”.

22 (c) Section 304 of the Transportation Safety Act of  
23 1974 (49 U.S.C. 1903) is amended—

24 (1) by amending the second sentence of paragraph  
25 (1) of subsection (a) to read as follows: “The Board

1 may request the Secretary of Transportation (hereafter  
2 in this title referred to as the 'Secretary'), or the Ad-  
3 ministrator of the Federal Aviation Agency in the case  
4 of aircraft accidents, to make investigations with regard  
5 to such accidents and to report to the Board the facts,  
6 conditions, and circumstances thereof (except in acci-  
7 dents where misfeasance or nonfeasance by the Federal  
8 Government is alleged), and the Secretary or his des-  
9 ignees, or the Administrator of the Federal Aviation  
10 Agency or his designees in the case of aircraft accidents,  
11 are authorized to make such investigations."; and

12 (2) by striking out "Secretary of Transportation"  
13 in subsection (a) (9) (A) and inserting in lieu thereof  
14 "Administrator of the Federal Aviation Agency".

15 SAVING PROVISIONS

16 SEC. 7. (a) All orders, determinations, rules, regula-  
17 tions, permits, contracts, certificates, licenses, and privi-  
18 leges—

19 (1) which have been issued, made, granted, or  
20 allowed to become effective—

21 (A) under any provision of law amended by  
22 this Act, or

23 (B) in the exercise of duties, powers, or func-  
24 tions which are transferred under this Act,

25 by (i) any department or agency, any functions of which

1 are transferred by this Act, or (ii) any court of compe-  
2 tent jurisdiction; and

3 (2) which are in effect at the time this Act takes  
4 effect, shall continue in effect according to their terms  
5 until modified, terminated, superseded, set aside, or re-  
6 pealed by the Administrator, by any court of competent  
7 jurisdiction, or by operation of law.

8 (b) The provisions of this Act shall not affect any pro-  
9 ceedings pending at the time this section takes effect before  
10 any department or agency (or component thereof), functions  
11 of which are transferred by this Act; but such proceedings,  
12 to the extent that they relate to functions so transferred, shall  
13 be continued before the Agency. Such proceedings, to the  
14 extent they do not relate to functions so transferred, shall  
15 be continued before the department or agency before which  
16 they were pending at the time of such transfer. In either case,  
17 orders shall be issued in such proceedings, appeals shall be  
18 taken therefrom, and payments shall be made pursuant to  
19 such orders, as if this Act had not been enacted; and orders  
20 issued in any such proceedings shall continue in effect until  
21 modified, terminated, superseded, or repealed by the Admin-  
22 istrator, by a court of competent jurisdiction, or by operation  
23 of law.

24 (c) (1) Except as provided in paragraph (2)—

1 (A) the provisions of this Act shall not affect suits  
2 commenced prior to the date this section takes effect, and

3 (B) in all such suits proceedings shall be had,  
4 appeals taken, and judgments rendered, in the same  
5 manner and effect as if this Act had not been enacted.

6 No suit, action, or other proceeding commenced by or  
7 against any officer in his official capacity as an officer of  
8 any department or agency, functions of which are trans-  
9 ferred by this Act, shall abate by reason of the enactment of  
10 this Act. No cause of action by or against any department  
11 or agency, functions of which are transferred by this Act, or  
12 by or against any officer thereof in his official capacity shall  
13 abate by reason of the enactment of this Act. Causes of  
14 actions, suits, actions, or other proceedings may be asserted  
15 by or against the United States or such official of the Agency  
16 as may be appropriate and, in any litigation pending when  
17 this section takes effect, the court may at any time, on its  
18 own motion or that of any party, enter an order which will  
19 give effect to the provisions of this subsection.

20 (2) If before the date on which this Act takes effect,  
21 any department or agency, or officer thereof in his official  
22 capacity, is a party to a suit, and under this Act—

23 (A) such department or agency is transferred to the  
24 Administrator, or

1           (B) any function of such department, agency, or  
2           officer is transferred to the Administrator,  
3 then such suit shall be continued by the Administrator (ex-  
4 cept in the case of a suit not involving functions transferred  
5 to the Administrator, in which case the suit shall be con-  
6 tinued by the department, agency, or officer which was a  
7 party to the suit prior to the effective date of this Act).

8           (d) With respect to any function, power, or duty  
9 transferred by this Act and exercised after the effective date  
10 of this Act, reference in any other Federal law to any depart-  
11 ment or agency, officer or office so transferred or functions  
12 of which are so transferred shall be deemed to mean the  
13 officer or agency in which this Act vests such function after  
14 such transfer.

15                                           EFFECTIVE DATE

16           SEC. 8. This Act shall take effect ninety days after its  
17 date of enactment.

94TH CONGRESS  
1ST SESSION

**S. 2434**

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**A BILL**

To establish an independent Federal Aviation Agency, and for other purposes.

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By Mr. GOLDWATER

SEPTEMBER 30 (legislative day, SEPTEMBER 11), 1975

Read twice and referred to the Committee on  
Commerce