

3

U. S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20950

STATEMENT OF GENERAL BENJAMIN O. DAVIS, ASSISTANT SECRETARY FOR ENVIRONMENT, SAFETY AND CONSUMER AFFAIRS, BEFORE THE AVIATION SUBCOMMITTEE OF THE SENATE COMMERCE COMMITTEE ON DRAFT LEGISLATION TO ESTABLISH A NATIONAL AGENCY FOR TRANSPORTATION SAFETY, WEDNESDAY, September 12, 1973.

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to testify on a draft bill which would establish a new independent National Agency for Transportation Safety. The intent of this bill is to establish an independent agency to determine the causes of transportation accidents and to perform the other duties currently the responsibility of the National Transportation Safety Board ("NTSB"). The bill would alter the organization of this safety agency by replacing the current five-man board with a single administrator. In addition, the bill would increase substantially the agency's budget and identify the types of accidents to be investigated more specifically than under existing law.

It is the Department's position that this bill is not necessary. Under existing law NTSB exercises its responsibilities independently of the Department. This independence is statutorily expressed in section 5 of the Department of Transportation Act:

"(f) In the exercise of its functions, powers, and duties, the Board shall be independent of the Secretary and the other offices and officers of the Department."

This independence is respected by the Department, and we believe by all elements of the transportation community.

At the same time, however, because of its relationship to the Department, the Board is able to utilize the safety expertise and staffs of each of our modal administrations. As I will discuss in a moment, the Department and the Board work closely together in the investigation of transportation accidents. In many cases these are joint efforts, but in all investigations the Board's authority supersedes that of the Department. The standard procedure in the event of a transportation accident falling within the investigatory authority of the Department is as follows: Unless there is a delegation of authority from the Board, or a prior agreement between the Board and the Department covering the specific type of accident, the modal administration initiates the investigation pursuant to its own statutory authority. In the meantime, the NTSB makes a determination whether it will assume authority over the investigation - a prerogative which in all cases is the Board's.

If the NTSB assumes jurisdiction, it is normal practice for the modal administration to make available any support, which is usually staff, the NTSB requests. If the Board declines to assume jurisdiction, the data resulting from the modal administration's investigation is available for NTSB's use.

As I mentioned before, the Board has assigned the Department, either by delegation or agreement, the responsibility for investigating accidents of a specific type or class. For instance, the Board has delegated to the Federal Aviation Administration the responsibility for non-fatal general aviation accidents, while reserving for itself the balance of the area, including all commercial air accidents and fatal general aviation accidents. I might add that even in the investigation of air accidents in the categories reserved for itself, the Board augments its staff by utilizing FAA personnel.

I believe that it should be clearly stated that this Department does not have any direct or indirect control over the Board's direction of accident investigations or studies. The Board's determination of cause and recommendations of remedial action are conducted and arrived at independently of the Department. The Department does not see the recommendations until they have been finalized and formally transmitted.

Further, with respect to the Board's budget, while their requests are submitted by the Secretary to the Office of Management and Budget as part of our administrative support functions, the Department does not conduct a budgetary review of the NTSB budget.

While it may be contended that the Board's being related to the Department has impaired its ability to carry out its statutory function, as section 2 of the draft bill suggests, we would disagree. As I have discussed, the Department has not interfered with the functioning of the Board. To the contrary we have cooperated with their efforts.

We believe that it is advantageous to both organizations for the Board to maintain its relationship with the Department. We are both working on the same problem -- transportation safety -- and our close connection makes interchange and coordination much easier. Therefore, we concur with the view expressed by Chairman Reed in the Board's 1972 annual report, and I quote: "...the Board has functioned as an independent body in the performance of its substantive functions, power, and duties... . There are advantages, which outweigh the possible disadvantages, for the Board to be located within the Department."

Now, I would like to turn to another aspect of the draft bill.

Several provisions suggest that while the investigatory effort in the aviation and marine areas is satisfactory, there is a need for expansion in the surface transportation area. In considering this question we think it is important for the Committee to be aware of the substantial investigatory effort already undertaken by the Department, the results of which, as I have indicated, are available to the Board. For instance, the Federal Highway Administration's Bureau of Motor Carrier Safety conducted 296 in-depth motor carrier accident investigations, and 570 summary investigations during 1972. In addition, FHWA notified the NTSB of 353 major or significant accidents that had occurred during the year.

The NHTSA maintains continuous communication with the NTSB and is available to assist in the Board's investigation of major motor vehicle accidents of national interest. NHTSA also makes the accident data it gathers through its accident investigation program available to NTSB. During fiscal year 1972, NHTSA's technical teams accumulated data from approximately 74,000 police reports, and conducted over 9,000 brief investigations and 1,000

in-depth multi-disciplinary investigations.

During 1972 the Federal Rail Administration's Office of Safety investigated 120 serious or potentially serious railroad accidents, of which 80 involved hazardous materials. The results of these investigations have also been made available to the Board. The Rail Administration also assisted the NTSB in 6 field investigations and public hearings regarding railroad accidents.

The Coast Guard has the responsibility for conducting investigations and fact-finding hearings regarding marine casualties and boating accidents. The records of these proceedings are made available to the Board for its function of determining cause. For accidents involving commercial vehicles the Coast Guard convenes a Marine Board of Investigation. Last year, one Marine Board of Investigation report was released to the public, three Marine Board Investigations were completed, five Marine Boards were convened and one was reopened and reconvened for further investigation. In addition, the Commandant sends narrative factual accounts of other marine accidents to the NTSB. Last year 332 of these reports were transmitted.

Next, I would like to discuss three specific sections of the bill.

Section 4 identifies certain types of accidents for investigation by the proposed new agency. While this section would add the authority to investigate certain marine accidents to that presently vested in the Board, it also would restrict the agency's authority to investigate motor vehicle, rail and pipeline accidents. Under current law, the Board is authorized to initiate or conduct rail, highway or pipeline accident investigations as it seems "necessary and appropriate", and is vested with the full responsibility for investigating aircraft accidents. We believe the identification in Section 4 of the accidents to be investigated is ill-advised. It restricts the Board's, or under the draft bill, the Administrator's ability to determine which accidents warrant investigation. Some which might meet the criteria of section 4(e) would not provide the agency with any information on which to base safety recommendations -- a function we believe should be the agency's priority. In addition, the proposed section would require the agency to discard the cooperative arrangement it has with Federal and State agencies and form its own staff. In light of the staff and expertise now available for assignment to the NTSB, we seriously question the utility of attempting to build into a new agency the same expertise that exists elsewhere. The bill shows

some recognition of this point, for it directs the proposed agency to work in conjunction with the Department and the Coast Guard on marine accident investigations and with State highway departments on motor vehicle investigations.

Section 6 would give the Administrator the authority as a matter of right to intervene in Federal administrative proceedings as an advocate of safety. He also would be authorized to participate in State or local proceedings when invited by certain officials. In light of the legislation now under consideration by the Congress to establish a Federal consumer advocate, we believe it preferable to wait on the outcome of this legislation before evaluating the merits of establishing a Federal safety advocate.

The third section, Section 9, would require the DOT Secretary to respond formally and in writing within 120 days to safety recommendations submitted by the proposed National Agency for Transportation Safety. The Secretary's response would have to announce his intention to adopt or reject the recommendation, and in the case of a rejection, state reasons. We believe this provision is not necessary. The Department, through my office, has established a formal procedure for management review and handling of NTSB recommendations directed to the Department and for assuring timely responses from the modal administration responsible

for the particular safety issue in question.

Finally, I would like to express our views on the appropriate organizational structure for the NTSB, or any other agency charged with its same responsibilities. We believe that in making the final determination of the cause or probable cause of accidents, and in reviewing appeals from the revocation, suspension or modification of airmen's or seamen's licenses, the opinion of a single administrator is not sufficient to assure an objective and impartial decision. In our view, the present structure of the Board, which evolved historically from the precedent of the Civil Aeronautics Board, is an appropriate solution to a difficult problem. This is not the first time the structure of a transportation safety agency has been debated. During the late 1930's when the Federal Government first assumed the responsibility for investigating aircraft accidents, this responsibility was placed in a three member board. Later a single administrator was given this safety responsibility, with a guarantee of no political interference. This structure proved not to be completely free from political interference, and a five member board subsequently was formed. We believe this organization has proved to be the most effective.

In summary, for the reasons I have stated, we oppose enactment of this bill. We, of course, do not contend that the safety programs of the Department and the Board cannot be improved. Rather, in our view, the NTSB, in its present relationship to the Department, is an important factor in energizing the Department and its administrations engaged in accident investigation and prevention work.

Mr. Chairman, this concludes my prepared testimony. My staff has prepared more technical comments on the bill, which we would be happy to provide, if the Committee so desires. I now will be happy to answer any questions you or other members of the Committee might have.