

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5960



Introduced by Reps. Roger G. Mercado, Eleandro Jesus Madrona and George Arnaiz

EXPLANATORY NOTE

The objective of this bill is to create an independent and non-regulatory agency mandated to ensure a thorough and impartial investigation of transportation accidents in the country.

Unlike in other jurisdiction, the Philippines observes a method of creating ad hoc bodies to conduct investigation following a transportation related-accident, be it on land, rail, sea or air. Oftentimes, if not always, the integrity of the results of the investigations on any major accident by these fact finding bodies is subjected to criticism because such agency or agencies which is part and parcel of the investigative body maybe liable themselves due to improper implementation of pertinent laws, rules and regulations regarding safety.

The presence of conflict of interest, in most cases, compromises the accuracy and correctness of the findings of an investigation as it tries to suppress the facts of the case. As a result, instead of laying out the real problem to help improve the system, it limits the flow of knowledge to the prejudice of the riding public.

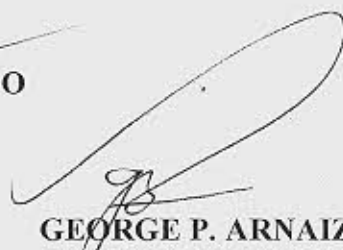
The creation of a National Transportation Safety Board, as provided in this measure, is the ultimate solution. The Board shall be composed of members appointed for a fixed term and supported by personnel equipped with skills and trained to handle and conduct an investigation in every peculiar transportation accident.

It is the hope of these representations that the establishment of the NTSB, through the enactment of this bill, will provide credibility to accident investigations for the purpose of ensuring the safety of the passengers and promote the general interest.

Thus, immediate passage of this measure is earnestly sought.


ROGER G. MERCADO


ELEANDRO JESUS F. MADRONA


GEORGE P. ARNAIZ

Republic of the Philippines
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15th CONGRESS
2nd Regular Session

House Bill No. **5960**

Introduced by **Reps. Roger G. Mercado, Eleandro Jesus F. Madrona and
George P. Arnaiz**

AN ACT
CREATING A NATIONAL TRANSPORTATION SAFETY BOARD, PRESCRIBING
ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND
FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress assembled:*

SECTION 1. Short Title. - This Act shall be known and cited as the
"Transportation Safety Act of 2011". It shall hereinafter be referred to as the "Act".

SECTION 2. Declaration of Policy. - It is hereby declared the policy of the
State to promote safety in the transportation of people and goods through cost-
effective measures that either prevent, remedy, or mitigate accidents involving any
mode of transport, including pipelines and conveyors. Towards this end, the
Government shall:

(a) Conduct independent accident investigations;

(b) Support safety programs based on continuing and objective reviews of
causes or reasons for unsafety; and

(c) Appraise and assess operating practices and regulations of government
agencies involved in the transportation sector, insofar as they affect safety, and
where appropriate, shall initiate, coordinate, formulate, or promulgate safety
improvement standards for the observance and implementation by the concerned
government agencies and/or private entities.

SECTION 3. Creation of the National Transportation Safety Board. –

(a) To give flesh to the foregoing State policy, there is hereby created a
National Transportation Safety Board, hereinafter referred to as the "Board", which
shall be attached solely for budgetary purposes and administrative support to the
Office of the President.

SECTION 4. Composition and Organization. - (a) The Board shall consist of five (5) full-time Members, including a Chairman, who shall be appointed by the President of the Philippines. A Member of the Board must be a natural born citizen at the time of their appointment, and must have at least five (5) years of actual experience as an employee or officer of a transport utility firm or regulatory agency in either air, land or sea mode of transportation and preferably, with knowledge of accident reconstruction, safety engineering or transportation and traffic safety.

(b) The term of office of each Member shall be for five (5) years without prejudice to one (1) reappointment; *Provided*, That the terms of the initial appointees shall be on staggered basis; the Chairman shall hold office for a term of five (5) year; the next two (2) Members shall be for three (3) years; and the last two (2) Members, for two (2) years.

(c) A Member shall continue to serve until his successor is appointed and shall have been qualified. Should a Member of the Board fail to complete his term, his successor shall be appointed by the President, but only for the unexpired portion of the term of his predecessor.

(d) Any Member of the board may be removed by the President for cause, including but not limited to inefficiency, neglect of duty, or malfeasance, and /or misfeasance in office.

(e) The Chairman shall be the chief Executive Officer of the Board and shall exercise its executive and administrative functions with respect to:

(1) The appointment and supervision of personnel employed by the Board;

(2) The distribution of business among such personnel and among any administrative units of the Board; and

(3) The use and expenditure of its funds.

(f) The Board shall establish and maintain distinct appropriately staffed bureaus, division, or offices, to investigate and report on accidents involving each of the following modes of transportation:

(1) Aviation;

(2) Highway and motor vehicle;

(3) Pipeline, railroad, and tracked vehicle; and

(4) Marine transport carriers.

(g) The Board shall, in addition, establish and maintain such capabilities as may be needed to investigate and report on the safe transportation of hazardous and toxic materials.

SECTION 5. *The Executive Director.* - (a) The Board shall have an Executive Director who shall be appointed by the Chairman.

(b) No person shall be appointed Executive Director unless he is at least thirty five (35) years of age at the time of his appointment, a Member of the Philippine Bar, and who has practiced his profession for at least ten (10) years prior to the date of his appointment. He must not have been a candidate for any elective position in the elections immediately preceding his appointment.

(c) The Executive Director shall:

(1) Record and officially report on the proceedings of the Board and shall have authority to administer oaths in all matters falling within the jurisdiction of the Board.

(2) Be responsible for running the day to day operations of the Board;

(3) Act as the custodian of the records, maps, profiles, reports, and other documents and papers filed in connection with any case or proceedings before the Board;

(4) Be responsible for the effective implementation of the policies, rules, and directives promulgated by the Board; and

(5) Coordinate and supervise the activities of the different operating units of the Board and shall perform such other functions as may be assigned to him by the Chairman and/or the Board.

SECTION 6. *Compensation.* - (a) The Chairman and the Members of the Board shall have the rank of a Department Secretary and Undersecretary, respectively. They shall receive the compensation and other emoluments corresponding to those of a Department Secretary and Undersecretary, respectively.

(b) The Executive Director shall have the rank of Assistant Secretary and shall be entitled to compensation and other emoluments corresponding to those of an Assistant Secretary.

(c) The Chairman, the Members of the Board, and the Executive Director shall be entitled to commutable representation and transportation allowances per month in the amount not exceeding the monthly salary of the lowest-paid regular employee of the Board.

(d) The Board shall determine the schedule of salaries of the employees subject to the compliance with the existing compensation law: Provided, That the

Board shall determine and fix the compensation and fringe benefits of employees holding technical positions that are not common to the other agencies of the government which shall be specified in the Implementing Rules and Regulations.

SECTION 7. *Duties and Functions of the Board.* - The Board shall:

(a) Investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any:

(1) Aircraft accidents, in accordance with ANNEX 13, ICAO regulations: *Provided*, That the facts, conditions, and circumstances, and the cause or probable cause determined therefrom shall be made available to the public by the Board within sixty (60) days from the completion of its investigation;

(2) Highway accidents, including any railroad grade crossing accident, the Board selects, in cooperation with the Local Government Unit (LGU) where such accident or incident occurred;

(3) A railroad accident in which there is a fatality, substantial property damage, or which involved a passenger train;

(4) Pipelines accidents, in which there is fatality or substantial property damage;

(5) Major marine casualty, except one involving only military vessels, occurring on the navigable waters or territorial seas of the Philippine Coast Guard (PCG): *Provided*, That the facts, conditions, and circumstances, and the cause or probable cause determined therefrom shall be made available to the public by the Board within sixty (60) days from the completion of its investigation; and

(6) Other accidents, which occur concerning the transportation of people, and property, which, in the judgment of the Board, is catastrophic, involve problems of a recurring character, or would otherwise carry out the mandate of this Act.

(b) Report in writing to Congress and the President on the facts, conditions, and circumstances of each accident investigated pursuant to Section 7 (a) of this Act, and cause such report to be made available to the public by the Board within sixty (60) days from the completion of its investigation.

(c) Issue periodic reports to Congress, the President, and to make it available to government agencies and instrumentalities, and non-government organizations concerned with transportation safety upon request, including owners of public transportation carriers who may be concerned with the findings of the Board and to interested persons. Such reports shall contain proposals for corrective measures to make the transportation of persons as safe and free from the risk of

injury as possible, including steps to minimize human injuries from transportation accidents: *Provided*, That said reports shall be made public within sixty (60) days from its submission to the Congress or to the President, as the case may be;

(d) Initiate and conduct special studies and investigations on matters pertaining to safety in transportation and avoiding injury to persons and damage to property;

(e) Gather, analyze, maintain, and publish from time to time data and statistics on transportation accidents;

(f) Carry out special studies and investigations relative to transportation safety;

(g) Prescribe requirements for persons reporting accidents and aviation incidents that:

- (1) May be investigated by the Board pursuant to this Act; or
- (2) Involve public aircraft, except aircraft of the Armed Forces of the

Philippines.

(h) Perform such other functions as may be necessary to effectively implement the objectives and provisions of this Act.

SECTION 8. Powers of the Board. - (a) The Board or any designated Member thereof may conduct such hearings, administer oaths, and require by subpoena duces tecum and subpoena testificandum the production of such evidence and testimony as the Board or such Member may deem necessary.

Any person, natural or judicial, who refuses to obey a subpoena, an order, or an inspection notice of the Board or any duly designated employee thereof in the exercise of his duties and functions under the provisions of this Act, may be required to comply forthwith by the Regional Trial Court (RTC) where such person resides or conduct his place of business, upon the request of the Board. Failure to obey such an order shall be punished by such court as contempt of court;

(b) Any representative authorized by the Board, upon presenting appropriate credentials, may enter any property wherein a transportation accident has occurred or wreckage from such accident is located in order to undertake the appropriate investigation thereof. The representative may inspect at reasonable times, records, files, processes, controls, and facilities relevant to the investigation of such accidents. Each inspection shall be commenced and completed with reasonable promptness;

(c) In investigating the aircraft accident pursuant to this Section, the Board may inspect and test, to the extent necessary, any civil aircraft engine, equipment, propeller, appliance, or property on an aircraft involved in an accident in air

commerce: *Provided*, however, That any civil aircraft, aircraft engine, equipment, propeller, appliance, or property on an aircraft involved in air commerce shall be preserved, and may be moved, only as prescribed by regulations promulgated by the Board;

(d) An officer or employee of the Board may examine or test any motor vehicle, vessel, rolling stock, track, or pipeline component. Such examination or test shall be conducted in a manner that:

(1) Does not unnecessarily, interfere with the transportation services provided by the owner or operator of the motor vehicle, vessel, rolling stock, or pipeline component; and

(2) To the maximum extent feasible, preserves evidence related to the accident, consistent with the needs of the investigation and with the cooperation of that owner or operator.

(e) The Board shall have the sole discretion to:

(1) Decide on the manner by which the testing will be undertaken pursuant to this Act;

(2) The person who will conduct the test;

(3) The type of test to be conducted; and

(4) Any individual or individuals who will witness the test;

Provided, That an inspection, examination, or test conducted pursuant to this Act by an officer or employee of the Board shall be started and completed promptly; *Provided, further*, That the results and findings of such inspection, examination, or test shall be made public within thirty (30) days upon completion thereof.

(f) The Board may require and shall be furnished a copy of the autopsy reports by the officials concerned on any person who dies as a result of having been involved in a transportation accident. The Board may order, if necessary, the autopsy, or require other tests of such persons as may be needed for the investigation of the accident;

(g) The Board may enter into such contracts, leases, agreements, and other transactions as may be necessary in the conduct of its functions and duties;

(h) The Board may call assistance of, and use any available services, equipment, facilities, of the DOJ, DOTC, PCG, Department of National Defense (DND), Department of the Public Works and Highways (DPWH), Philippine National Police (PNP), and other agencies and instrumentalities of the government;

(i) The Board may create advisory committees composed of qualified private citizens and government officials with whom the Board may consult in the implementation of its functions and duties, and to pay honoraria of these persons for meetings actually attended. Whenever necessary, the Board may likewise appoint or retain the services of recognized experts as consultants on the accidents under investigation. Such consultants shall be paid compensation as fixed by the Board: Provided, That not more than three (3) consultants shall be appointed for each accident being investigated: *Provide, further,* That no officer, external auditor, or legal counsel of any private company or enterprise primarily engaged in the transportation industry shall be eligible for appointment as a consultant of the Board within three (3) years from his retirement, resignation, or separation therefrom;

(j) Appoint advisory committees composed of qualified private citizens and officials of the national government and LGUs as appropriate;

(k) Any law to the contrary notwithstanding, accept voluntary and uncompensated services;

(l) Accept donations and gifts of money and other property;

(m) Enter into contracts with nonprofit entities to carry out studies related to the duties and powers of the Board for its operating expenses;

(n) Require that the departments, agencies, and instrumentalities of the government, including LGUs and government of foreign countries, provide appropriate consideration for the reasonable costs of goods and services supplied by the Board: *Provided,* That such amounts shall accrue exclusively to the Board for its operating expenses;

(o) The Chairman of the Board may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies and instrumentalities of the national government and LGUs, non-government organizations, and independent standard-setting authorities that carry out program and activities related to transportation safety. The Board shall designate representative to serve in the committees.

(p) The Board, or any officer, or employee designated by the Chairman, may after due notice published in two (2) newspapers of general circulation, conduct an inquiry to obtain information related to transportation safety;

(q) The Board, or its designated officer or employee, may require by order, a department, agency, or instrumentality of the national government, LGU, or a person, natural or judicial, which transports persons or goods, to submit to the Board a written report and answers to requests and questions pursuant to the powers of the Board under this Act. The Board shall prescribe the time within which the reports and the answers thereto must be submitted to its designated officer or employee.

Copies of the report and the answers thereto shall be made public within sixty (60) days from submission to the Board; and

(r) The Board shall, within sixty (60) days from the effectivity of this Act, promulgate the rules of procedure to implement the provisions of this Section.

SECTION 9. *Relationship with Other Government Agencies.* - (a)

Nothing in this Act shall deprive other government agencies from performing their intrinsic functions, including the investigation of accidents or making inquiries thereon, when those functions exist prior to the effectivity of this Act: *Provided, however,* That the Board, at its discretion, may require the submission of the records, findings, and recommendations of the investigation or inquiry;

(b) The PNP or any other law enforcement agency shall continue to investigate and record accidents involving motor vehicles and/or pedestrians. For this purpose, the Board shall prescribe a uniform and standard operating system for investigations of such accidents, which shall be mandatory on the part of the investigating body or person;

(c) The Board's power shall take precedence over those of other government agencies tasked with investigating air and marine accidents which, in the Board's judgment, requires its inquiry or attention;

(d) For the preservation, proper handling, conservation, and protection of evidence, records, files, and/or specimens related to any accident over which it assumes or has jurisdiction, the Board may assume control or possession of the evidence, records, files, and/or specimens;

(e) The Board may require the submission of the records, findings, and/or recommendations of previous accidents and/or investigations of such accidents, from any government agency. For this purpose, the agency concerned shall transmit to the Board, within fifteen (15) days from the receipt thereof, said records, findings, and/or recommendations;

(f) In the exercise of the powers, the Board shall take into consideration the provisions of any treaty entered into by the Republic of the Philippines with other countries relative to the investigation of accidents over which the Board assumed jurisdiction.

SECTION 10. *Disclosure, Availability, and Use of Information.*

(a) Except as provided in this Section, any copy of a record, information, and/or investigation submitted or received by the Board or a Member or employee thereof, shall be made available to the public on identifiable request and at reasonable cost;

(b) The Board shall not make the records available for purposes other than accident or incident investigation, unless the appropriate authority for the administration of justice determines that their disclosure outweighs the adverse domestic and international impact;

(c) The Board shall not disclose any information related to a trade secret except:

1) To another department, agency, or instrumentality of the national government, when requested for official use;

2) To a committee of Congress having jurisdiction over the subject matter to which the investigation is related, when requested by that committee;

3) In a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

4) To the public: *Provided*, That such disclosure shall be for the protection of public health and safety: *Provided, further*, That such disclosure shall be made only after due notice to any interested party to whom the information is related: *Provided, furthermore*, That the interested party is given the opportunity to comment on the requested disclosure: *Provided, moreover*, That the information so disclosed will not be detrimental to public health and safety: *Provided, finally*, That the disclosure shall be made in a manner designed to protect and preserve its confidentiality:

(d) The Board shall not publicly disclose any part of a cockpit voice recording or transcript of oral communications by and between flight crew Members and ground stations related to an accident or incident investigated by the Board: *Provided, however*, That the board shall make public any part of transcript the Board decides is relevant to the said accident or incident:

(1) When the Board holds a public hearing on the accident or incident;
or

(2) When the Board makes public its findings relative to the said accident or incident.

(e) Any law to the contrary notwithstanding, the head of the concerned agency shall, upon order or written request by the Board, provide the following information to the Board:

(1) Any report or a confirmed positive toxicological test, verified as positive by the medico-legal officer of the National Bureau of Investigation (NBI), conducted on an officer or employee of the concerned agency under post-accident, unsafe practice, or reasonable toxico-logical requirements of the concerned agency,

when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board; and

(2) Any laboratory record documenting that test is confirmed as positive.

(f) Except as provided in Section 10 (b) of this Act, the Board shall maintain the confidentiality of, and exempt from disclosure:

(1) Laboratory records provided to the Board under the provisions of this Act that reveal medical use of a drug allowed under applicable laws, and regulations; and

(2) Medical information related to the test or a review of the test voluntarily provided to the Board by the tested officer or employee.

(g) The Board may use a laboratory record made available to it under this Act to develop an evidentiary record in its investigation of an accident or incident if:

(1) The fitness of the tested officer or employee is at issue in the investigation; and

(2) The use of that record is necessary to develop the evidentiary record.

SECTION 11. *Testimony.* - (a) Any party to an administrative proceeding may, at any time, make an offer to the Board, conditionally or otherwise for a consented decree, voluntary compliance or desistance and other settlement of the case.

(b) Testimony, or the offer thereof, and any or all of the ultimate facts upon which the offer is based, shall be considered for settlement purposes only and cannot be used as evidence against any party for any other purposes and shall not constitute an admission by the party making the offer of any violation of this Act, and the rules, regulations, orders, and resolutions promulgated by the Board.

SECTION 12. *Transportation Safety Fund.* - (a) There is hereby created a Transportation Safety Fund, hereinafter known as the "Fund", to be deposited in a special trust fund to be administered by the Board. The Fund shall be funded from:

1) Savings from the Board's annual operating expenses; and

2) Monetary donations and gifts received by the Board under Section 8 (l) of this Act.

(b) Subject to the usual accounting and auditing rules and regulations, the Fund shall be used exclusively for the following purposes:

1) Operational expenses in investigating major accidents;

2) Initiate studies and research in the causes and possible prevention of accidents and other disasters, as provided in this Act;

3) Reimbursement of extraordinary expenditures and expenses of government and private agencies and/or persons mobilized by the Board in investigating major accidents; and

4) Training and related conferences to further and enhance the expertise of the officers and employees of the Board to effectively implement the mandate of the Board under the provision of this Act.

SECTION 13. *Appropriations.* - The sum of Fifty Million Pesos (P 50,000,000.00) is hereby appropriated out of any funds in the national treasury not otherwise appropriated, for the initial organization and operations of the Board. Thereafter, such sums as may be necessary for the operations of the board shall be included in the annual General Appropriations Act.

SECTION 14. *Annual Report.* - At the end of every fiscal year, the Board shall submit to the President of the Senate and the Speaker of the House of Representative an annual report containing, but not limited to:

(a) Statistical and analytical summary of accident or incident investigations conducted and reviewed by the Board during the preceding year;

(b) A survey and summary of the recommendations made by the Board to reduce the likelihood of the recurrence of those accidents, together with the observed response to each recommendation;

(c) A detailed appraisal of each accident investigation and accident prevention activity of other departments, agencies, other instrumentalities of the national government and the LGUs; and

(d) The uses of, disbursement from, and receipts to the Fund created in accordance with this Act.

SECTION 15. *Implementing Rules and Regulations.* Within sixty (60) days from the effectivity of this Act, the Board, in consultation with the DOJ, DOTC, PCG, DND, DPWH, PNP, and NBI, shall promulgate the implementing Rules and Regulations (IRR) for the effective implementation of this Act.

SECTION 16. *Separability Clause.* - If, for any reason, any provisions of this Act is declared invalid or unconstitutional the other part or parts thereof which are not affected thereby shall continue to be in full force and effect.

SECTION 17. *Repealing Clause.* - All laws, decrees, executive orders, issuances, or rules and regulations, or portions thereof, that are inconsistent with this Act or any provision or provisions thereof, are hereby repealed or modified accordingly.

SECTION 18. *Effectivity.* This Act shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.

Approved,