

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

04 JUN 30 P5:49

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S E N A T E

S. No. 473

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Hindsight tells us the savings in terms of bodily injuries, lives, and property are worth every bit of prevention measure to ensure that accidents do not happen.

It is government policy that every regulatory agency, say, in sea, air or land transport is charged with the enforcement of safety measures and precautions within its sphere of operations. Very few of these agencies are adequately equipped to handle accidents. Moreover, tasking these same agencies with the conduct of investigations if and when accidents do happen, involves a conflict of interest because in most of the cases a stricter enforcement of the safety regulations could have prevented the accidents.

Rapid technological advances in transportation will in all likelihood increase the payload on roads, highways and bridges, sea-lanes and air-lanes and increase the risks attendant to transportation and travel.

This bill proposes the creation of the National Transportation Safety Board which shall have the power to conduct investigations on transportation accidents, formulate and implement safety programs, and prosecute violators of safety rules and regulations.

In view of the foregoing, early passage of this bill is earnestly requested.

S. Osmeña III
SERGIO OSMEÑA III
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC)
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Introduced by Senator S. R. Osmeña III

AN ACT
CREATING A NATIONAL TRANSPORTATION SAFETY BOARD,
APPROPRIATING FUNDS THEREFORE, AND FOR OTHER PURPOSES

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

1 **Section 1. Title** – This Act may be cited as the “**Transportation Safety**
2 **Act of 2004**”

3 **Sec. 2. Declaration of Policy** – It is the policy of the State to promote
4 safety in the transportation of people and goods through cost-effective measures
5 that either prevent, remedy or mitigate accidents involving any mode of transport,
6 including pipelines and conveyors. In pursuit of this objective, the Government
7 shall conduct independent accident investigations, support safety programs
8 based on continual and objective review of causes or reasons for unsafely,
9 appraise and assess operating practices and regulations or government
10 agencies involved in transportation in so far as they affect safety, and, where
11 appropriate, shall initiate, coordinate, formulate or promulgate safety
12 improvement standards for observance and implementation by concerned public
13 agencies and/or private entities.

14 **Sec. 3. Creation of the National Transportation Safety Board and its**
15 **relationship with other Government Agencies** – An autonomous National
16 Transportation Safety Board, is hereby created to implement the foregoing policy

1 if the State. For administrative purposes, the Board shall be attached to the
2 Department of Justice. The Department of Justice is hereby empowered and
3 expected to initiate prosecution or otherwise take affirmative action on the basis
4 of the finding and recommendations of the Board, if the Department finds the
5 same and the procedures followed acceptable.

6 **Sec. 4. Organization** – (1) The Board shall consist of three (3) full-time
7 members, including a Chairman, who shall be appointed by the President of the
8 Philippines, with the advice and consent of the Commission on appointments. A
9 member must have at least ten (10) years of practiced experience as an
10 employee or officer of a transport utility firm or regulatory agency in either air,
11 land, or mode of transportation and preferably, with knowledge of accident
12 reconstruction, safety engineering, or transportation and traffic safety. At any
13 given time, one of the three (3) members shall be a lawyer.

14 (2) The terms of office of the members of the Board shall be six (6) years,
15 except that the first appointees shall have term of two, four, and six years,
16 respectively. An individual may be re-appointed for another term, but in no case
17 exceeding twelve (12) years of service with the Board. Upon the expiration of his
18 term of office, a member shall continue to serve until his successor is appointed
19 and shall have qualified. Any member of the Board may be removed by the
20 President of the Philippines for cause including inefficiency, neglect of duty, or
21 *malfeasance in office*.

22 (3) The Chairman shall be the Chief Executive Officer of the Board and
23 shall exercise the executive and administrative functions of the Board with
24 respect to the appointment and supervision of personnel employed by the Board;
25 the distribution of business among such personnel and among any administrative
26 units of the Board; and the use and expenditure of funds. The Chairman shall be
27 assisted by a Managing Director and both shall be governed by the general
28 policies established by the Board en banc, including any decisions, finding,
29 determinations, rules, regulations, and formal resolutions.

1 (4) The Board shall establish and maintain distinct and appropriately
2 staffed bureaus, divisions, or offices to investigate and report on accidents
3 involving each of the following modes of transportation.

4 (a) Aviation;

5 (b) Highway and motor vehicle;

6 (c) Pipeline, railroad and tracked vehicle; and

7 (d) Marine transport carriers.

8 The Board shall, in addition, establish and maintain such capability as may
9 be needed to investigate and report on the safe transportation of hazardous
10 materials.

11 (5) The Board shall have a Managing Director who shall be appointed by
12 the President of the Philippines upon the recommendation of the Board. He shall
13 be responsible for the day to day administration of the Board.

14 **Sec. 5. Compensation** – The Chairman of the Board shall receive an
15 annual salary equivalent to an Undersecretary of a Department, while the
16 members of the Board shall receive an annual salary equivalent to an Assistant
17 Secretary. The compensation of the Managing Director shall be that applicable
18 to a line bureau director. They shall be entitled to commutable representation
19 and transportation allowances per month in the amount not exceeding the
20 monthly salary of the lowest-paid regular employee of the safety Board.

21 **Sec. 6. Duties and Functions of the Board** – The Board shall (1)
22 Investigate or cause to be investigated (in such detail as it shall prescribe), and
23 determine the facts, conditions and circumstances and the cause or probable
24 cause or causes of any:

25 (a) aircraft accident in accordance with regulations to be prescribed jointly
26 by the Board and the Secretary of Transportation and
27 Communications: Provided, that the facts, conditions, and
28 circumstances, and the cause or probable cause determined
29 therefrom shall be made available to the public by the Board;

1 (b) highway accident, including any railroad grade crossing accident, and
2 it selects in cooperation with the agencies involved;

3 (c) railroad accident in which there is a fatality, substantial property
4 damage, or which involves a passenger train;

5 (d) pipeline accident in which there is or substantial property damage;

6 (e) major marine casualty, except one involving only military vessels,
7 occurring on the navigable waters or territorial seas of the Philippines,
8 in accordance with regulations to be prescribed jointly by the board
9 and the Coast guard; *Provided*, That the facts, conditions, and
10 circumstances, and the cause or probable cause determined
11 therefrom shall be made available to the public by the Board;

12 (f) other accident which occurs in connection with the transportation of
13 people or property which, in the judgement of the Board, is
14 catastrophic, involves problems of a recurring character, or would
15 otherwise carry out the policy of this Act.

16 (2) Report in writing on the facts, conditions, and circumstance of each
17 accident investigated pursuant to paragraph (1) of this subsection and cause
18 such reports to be made available to the public within the shortest possible time
19 after the occurrence of the accident;

20 (3) Issue periodic reports to the Congress, the President, and to
21 governmental and non-governmental agencies concerned with transportation
22 safety, including owners of public transportation carriers who may be concerned
23 with the findings of the Board and to interested persons recommending and
24 advocating meaningful responses to reduce the likelihood or reoccurrence of
25 transportation accidents;

26 (4) Initiate and conduct special studies and special investigations on
27 matters pertaining to safety in transportation and human injury avoidance;

28 (5) Assess and re-assess techniques and methods of accident
29 investigation and promulgate recommended procedures for accident

1 investigations for the information and guidance of concerned government
2 agencies;

3 (6) Evaluate and assess the effectiveness of the concerned government
4 agencies in promoting transportation safety consciousness and in preventing
5 accidents;

6 (7) Evaluate the adequacy of safeguards and procedures concerning the
7 transportation of hazardous materials and the performance of carriers and
8 government agencies charges with assuring the safe transportation of such
9 materials;

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

12 (9) Prosecute in behalf of the people, or file charges or cause the filing
13 thereof, or move for the suspension, modification, or revocation of license or
14 operating certificate, before the appropriate court and/or administrative body,
15 against person or persons who may be guilty or responsible for accident
16 investigated by the Board; *Provided*, That such course of action shall require
17 prior approval of the Secretary of Justice.

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

20 **Sec. 7. Power of the Board** – (a) The Board or any designated member
21 thereof may conduct such hearings, administer oaths and require by subpoena
22 duces tecum the production of such evidence as the Board or such officer may
23 deem necessary.

24 In case of refusal to obey a subpoena, an order, or an inspection notice of
25 the Board or of any duly designated employee thereof by any person, such
26 person may be required to comply forth with by a court of competent jurisdiction
27 upon the request of the Board. Failure to obey such an order is punishable by
28 such court as a contempt of court.

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

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

13 (4) The Board may enter into such contracts, leases, agreements and
14 other transactions as may be necessary in the conduct of its functions and
15 duties.

16 (5) The Board may call upon the assistance of and use available services,
17 equipment and facilities of the Department of Transportation and
18 Communications, the Department of National Defense, the Department of Public
19 Works and Highways and other agencies and instrumentalities of the
20 government.

21 (6) The Board may create advisory committees composed of qualified
22 private citizens and government officials with which the Board may consult in the
23 implementation of its functions and duties, and to pay honoraria to these persons
24 for meetings actually intended. Whenever necessary, the Board may likewise
25 appoint recognized experts as Consultants on the accidents under investigation
26 who shall be paid the compensation fixed by the Board; *Provided*, That not more
27 than two (2) consultants shall be appointed for each accident being investigated.

28 **Sec. 8. Recall, Replacement and Notification of Defective**
29 **Conveyances** – The Board may recommend that the Department of

1 Transportation and Communications order the recall by the manufacturer or its
2 Philippine agent or representatives, of all locally sold units of a particular model
3 of a vehicle or transport vessel, if a defect attributable to the design or
4 manufacture of any part or instrumentation of the model, had been reported
5 within five (5) years of the date of introduction of the model into the local market
6 and subsequently proven or substantiated to affect many units of that model.
7 The purpose of such recall shall be for the correction of said defect in all affected
8 units either by replacement or the redesign of the defective device in order to
9 render the particular transport vessel model safe for public and commercial use.
10 If this defect cannot be technically corrected, the Department of Transportation
11 and Communications can instead order a full refund for all surrendered vehicles.
12 In any case, the Department of Justice can initiate prosecutory proceedings. The
13 Board shall notify not only the distributor or purchase but also the public of such
14 defect. The cost for such remedial measures shall be for the account of the
15 manufacturer or its agents, without prejudice to any claims for damages that the
16 victims of accidents on their heirs may file at the proper courts.

17 **Sec. 9. Grounding Defective Conveyance** – The Board shall, after
18 consultations with the proper government regulatory or registering agency, order
19 the grounding of any defective conveyance pending the investigation of the
20 cause or nature of its defect. If the defect will not affect the safety of transport
21 operations, the Board may authorize the continuous operation of the conveyance
22 under certain limitations to be prescribed by it.

23 **Sec. 10. Immunized Testimony** – No testimony or part thereof taken
24 during any investigation conducted by the Board relating to the accident or the
25 investigation thereof, shall be admitted as evidence or used in any suit or action
26 for damages growing out of any matter mentioned in such testimony. The
27 Board's official report or part thereof, however, may be used as rebuttable
28 evidence or basis for instituting a suit or court action.

1 **Sec. 11. Penalties** – The unjustified failure to implement the necessary
2 measure promulgated by the Board under Section six, paragraph (2) shall be
3 punishable by one (1) to six (6) months of imprisonment to be imposed upon the
4 head or his assigned subordinate of the government office or agency concerned,
5 without prejudice to administrative disciplinary action to be taken against him or
6 his responsible subordinate.

7 When the order or recommendation of the Board is not complied with or
8 implemented by any person, operator, or company, manufacturer or distributor,
9 within the time prescribed by the Board in such order or report, the Board shall
10 recommend to the licensing authority the immediate cancellation of the permit,
11 license, or authority to operate which may have been granted to said person or
12 entity.

13 In case the offender is a manufacturer or distributor, an administrative fine
14 in such amount as may be deemed appropriate by the Board, which shall not be
15 less than five thousand pesos (P5,000.00) nor more than the estimated peso
16 value of the actual or potential damages arising therefrom, to be determined
17 actually or by some empirical means, shall be imposed in addition to the
18 cancellation of his or its permit, license, or authority.

19 **Sec. 12. Relationship with other Institutions** – (1) Nothing herein shall
20 deter existing government accident investigation bodies from performing their
21 intrinsic functions, including investigation of accidents or making inquiries
22 thereon, when those functions exist prior to this Act: *Provided, however,* That the
23 Board, at its discretion, may direct the manner in which such investigation shall
24 be conducted, require the submission of the records, reports, findings and
25 recommendations or assume direct responsibility for accidents satisfying the
26 conditions enumerated under Section six, paragraph (1) of this Act.

27 (2) The police or law enforcement agency shall continue to investigate and
28 record accidents on the roads involving motor vehicle and/or pedestrians. The

1 Board shall prescribed a uniform and standard reporting system for such
2 accidents which shall be mandatory to the principal investigating body or person.

3 (3) The Board's power shall take precedence over those of other
4 government agencies tasked with investigating air and marine accidents which,
5 in the judgement of the Board, requires its inquiry and attention. For proper
6 handling, conservation and protection, the Board may assume possession or
7 control of the records, files, specimens, pieces of evidence, and the like for such
8 accidents.

9 (4) The Board may require the submission of the records, reports, finding
10 and recommendations of past investigations from any government investigating
11 body, and the latter shall comply forthwith.

12 (5) The Secretary of Justice shall direct the appropriate body or
13 prosecuting arm of the State to institute proceedings, suit or court action, against
14 any person or entity who may be guilty of negligence or instrumental to the
15 occurrence of the accidents, when in his judgement, the report or finding of the
16 Board warrant such action.

17 (6) In the exercise of its powers, the Board shall take into consideration
18 the provisions of any treaty or agreement entered into by the Philippines with
19 other countries relative to investigations of transportation accidents.

20 **Sec. 13. Appropriation** – The sum of twenty-four million pesos
21 (P24,000,000.00) is hereby authorized to be appropriated, out of any funds of the
22 National Treasury not otherwise appropriated for the initial organization and
23 operation of the Board. Thereafter, such amounts as may be necessary to
24 finance its operations and maintenance shall be included in the annual General
25 Appropriations Act.

26 Savings from its annual operating budgets shall be constituted into a
27 TRANSPORTATION Safety Fund, to be administered by the National Treasurer,
28 until the Fund shall have reached the level of Ten million pesos (P10,000,000.00)
29 or twenty five percent (25%) of its previous year's budget, whichever is higher.

1 The Fund can only be used for reimbursing the extraordinary expenses of
2 government and private agencies and/or persons mobilized by the Board in
3 investigating major accidents. Releases from the Fund shall be made promptly
4 upon request by the Board.

5 **Sec. 14. Separability Clause** – Any portion or provision of this Act which
6 may be declared unconstitutional shall not have the effect of nullifying other
7 portions of provisions hereof as long as such remaining portions or provisions
8 can still subsist and be given entirely.

9 **Sec. 15. Repealing Clause** – All laws, decrees, orders, proclamations,
10 rules and regulations, or parts thereof, which are hereby repealed, amended,
11 amended or modified accordingly.

12 **Sec. 16. Effectivity** – This Act shall take effect fifteen (15) days after its
13 publication in at least two (2) national newspapers of general circulation.

Approved,