

NATIONAL TRANSPORTATION SAFETY BOARD
REAUTHORIZATION ACT OF 2010

SEPTEMBER 22, 2010.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4714]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 4714) to amend title 49, United States
Code, to authorize appropriations for the National Transportation
Safety Board for fiscal years 2011 through 2014, and for other pur-
poses, having considered the same, report favorably thereon with
an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “National Transportation Safety
Board Reauthorization Act of 2010”.

(b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments to title 49, United States Code.
- Sec. 3. Definitions.
- Sec. 4. General organization.
- Sec. 5. Administrative.
- Sec. 6. Recordings, transcripts, and investigations.
- Sec. 7. Training.
- Sec. 8. Reports and studies.
- Sec. 9. Authorization of appropriations.
- Sec. 10. Accident investigation authority.
- Sec. 11. Maritime casualty investigations.
- Sec. 12. Inspections and autopsies.
- Sec. 13. Discovery and use of cockpit and surface vehicle recordings and transcripts.
- Sec. 14. Family assistance.

Sec. 15. Coast Guard notification.
 Sec. 16. Use of board name, logo, initials, and seal.

SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. DEFINITIONS.

Section 1101 is amended to read as follows:

“§ 1101. Definitions

“(a) ACCIDENT DEFINED.—In this chapter, the term ‘accident’—

“(1) means an event associated with the operation of a vehicle, aircraft, or pipeline, which results in damage to or destruction of the vehicle, aircraft, or pipeline, or which results in the death of or serious injury to any person, regardless of whether the initiating event is accidental or otherwise; and

“(2) may include an incident that does not involve destruction or damage of a vehicle, aircraft, or pipeline, but affects transportation safety, as the Board prescribes by regulation.

“(b) APPLICABILITY OF DEFINITIONS IN OTHER LAWS.—The definitions contained in section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter.”.

SEC. 4. GENERAL ORGANIZATION.

The last sentence of section 1111(d) is amended by striking “absent” and inserting “unavailable”.

SEC. 5. ADMINISTRATIVE.

(a) GENERAL AUTHORITY.—Section 1113(a) is amended—

(1) in paragraph (1)—

(A) by inserting “and depositions” after “hearings”; and

(B) by striking “subpena” and inserting “subpoena”; and

(2) in paragraph (2) by inserting before the first sentence the following: “In the interest of promoting transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain evidence relevant to an accident investigation conducted under this chapter.”.

(b) ADDITIONAL POWERS.—

(1) AUTHORITY OF BOARD TO ENTER INTO CONTRACTS AND OTHER AGREEMENTS WITH NONPROFIT ENTITIES.—Section 1113(b)(1)(H) is amended by inserting “and other agreements” after “contracts”.

(2) AUTHORITY OF BOARD TO ENTER INTO AND PERFORM CONTRACTS, AGREEMENTS, LEASES, OR OTHER TRANSACTIONS.—Section 1113(b) is amended—

(A) by striking paragraph (1)(I) and inserting the following:

“(I) negotiate, enter into, and perform contracts, agreements, leases, or other transactions with individuals, private entities, departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries on such terms and conditions as the Chairman of the Board considers appropriate to carry out the functions of the Board and require that such entities provide appropriate consideration for the reasonable costs of any facilities, goods, services, or training provided by the Board.”; and

(B) by adding at the end the following:

“(3) LEASE LIMITATION.—The authority of the Board to enter into leases shall be limited to the provision of special use space related to an accident investigation, or for general use space, at an average annual rental cost of not more than \$300,000 for any individual property.”.

(3) AUTHORITY OF OTHER FEDERAL AGENCIES.—Section 1113(b)(2) is amended to read as follows:

“(2) AUTHORITY OF OTHER FEDERAL AGENCIES.—Notwithstanding any other provision of law, the head of a Federal department, agency, or instrumentality may transfer to or receive from the Board, with or without reimbursement, supplies, personnel, services, and equipment (other than administrative supplies and equipment).”.

(c) CRITERIA ON PUBLIC HEARINGS.—

(1) IN GENERAL.—Section 1113 is amended by adding at the end the following:

“(i) PUBLIC HEARINGS.—

“(1) DEVELOPMENT OF CRITERIA.—The Board shall establish by regulation criteria to be used by the Board in determining, for each accident investigation and safety study undertaken by the Board, whether or not the Board will hold a public hearing on the investigation or study.

“(2) FACTORS.—In developing the criteria, the Board shall give priority consideration to the following factors:

- “(A) Whether the accident has caused significant loss of life.
- “(B) Whether the accident has caused significant property damage.
- “(C) Whether the accident may involve a national transportation safety issue.
- “(D) Whether a public hearing may provide needed information to the Board.
- “(E) Whether a public hearing may offer an opportunity to educate the public on a safety issue.
- “(F) Whether a public hearing may increase both the transparency of the Board’s investigative process and public confidence that such process is comprehensive, accurate, and unbiased.
- “(G) Whether a public hearing is likely to significantly delay the conclusion of an investigation and whether the possible adverse effects of the delay on safety outweigh the benefits of a public hearing.”.

(2) ANNUAL REPORT.—Section 1117 is amended—

- (A) by striking “and” at the end of paragraph (5);
- (B) by striking the period at the end of paragraph (6) and inserting “; and”; and
- (C) by adding at the end the following:

“(7) an analysis of the Board’s implementation of the criteria established pursuant to section 1113(i) during the prior calendar year, including an explanation of any instance in which the Board did not hold a public hearing for an investigation of an accident that has caused significant loss of life or property damage or that may involve a national transportation safety issue.”.

SEC. 6. RECORDINGS, TRANSCRIPTS, AND INVESTIGATIONS.

(a) VESSEL RECORDINGS AND TRANSCRIPTS.—Section 1114 is amended—

- (1) in subsection (a)(1) by striking “and (f)” and inserting “(e), and (g)”;
- (2) in subsection (d)(1) by striking “or vessel”;
- (3) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and
- (4) by inserting after subsection (d) the following:

“(e) VESSEL RECORDINGS AND TRANSCRIPTS.—

“(1) CONFIDENTIALITY OF RECORDINGS AND TRANSCRIPTS.—The Board may not disclose publicly any part of a vessel’s voice or video recorder recording or transcript of oral communications by or among the crew, pilots, or docking masters of a vessel, vessel traffic services, or other vessels, or between the vessel’s crew and company communication centers, related to an accident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information that the Board decides is relevant to the accident—

- “(A) if the Board holds a public hearing on the accident, at the time of the hearing; or
- “(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident are placed in the public docket.

“(2) REFERENCES TO INFORMATION IN MAKING SAFETY RECOMMENDATIONS.—This subsection does not prevent the Board from referring at any time to voice or video recorder information in making safety recommendations.”.

(b) PARTY REPRESENTATIVES TO NTSB INVESTIGATIONS.—

(1) IN GENERAL.—Section 1114 is further amended by adding at the end the following:

“(h) PARTY REPRESENTATIVES TO NTSB INVESTIGATIONS.—

“(1) PROHIBITION ON DISCLOSURE OF INFORMATION.—A party representative to an accident investigation of the Board is prohibited from disclosing, orally or in written form, investigative information, as defined by the Board, to anyone who is not an employee of the Board or who is not a party representative to such investigation, except—

- “(A) as provided in paragraph (2); or
- “(B) at the conclusion of the fact finding stage of an investigation, which the investigator-in-charge shall announce by formal posting of a notice in the publicly available investigation docket.

“(2) EXCEPTION.—If the investigator-in-charge determines that a disclosure of information related to an accident investigation is necessary to prevent additional accidents, to address a perceived safety deficiency, or to assist in the conduct of the investigation, the investigator-in-charge may at any time authorize in writing a party representative to disclose such information under conditions approved by the investigator-in-charge. Such conditions shall ensure that, until

the posting of a formal notice described in paragraph (1)(B), or until the information disclosed pursuant to this paragraph becomes publicly available by any other means, neither the entity represented by the party representative nor any other person may use such information in preparation for the prosecution of any claim or defense in litigation in connection with the accident being investigated or to make or deny any insurance claim in connection with such accident.

“(3) COMPLIANCE.—The Board shall require any individual who is a party representative to an investigation of the Board to sign a party agreement that includes language informing the individual of the prohibition in paragraph (1).

“(4) REPRESENTATIVES OF FEDERAL AGENCIES.—Paragraph (3) shall not apply to an individual who is a representative of the Secretary of Transportation, the Secretary of the department in which the Coast Guard is operating, or any other Federal department, agency, or instrumentality participating in the investigation and deemed by the Board to be performing a law enforcement or similar function.

“(5) PARTY REPRESENTATIVE DEFINED.—In this subsection, the term ‘party representative’ means an individual representing a party to an investigation pursuant to section 831.11 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this subsection.”.

(2) CIVIL PENALTY.—Section 1151 is amended—

(A) in the section heading by striking “**Aviation enforcement**” and inserting “**Enforcement**”; and

(B) by inserting “1114(h),” before “1132,” in each of subsections (a), (b)(1), and (c).

(3) CONFORMING AMENDMENT.—The analysis for chapter 11 is amended by striking the item relating to section 1151 and inserting the following:

“1151. Enforcement.”.

(c) GAO STUDY OF PARTY PROCESS.—

(1) IN GENERAL.—The Comptroller General shall conduct a study on the use of party representatives in investigations conducted by the National Transportation Safety Board.

(2) CONTENTS.—In conducting the study, the Comptroller General shall examine, at a minimum—

(A) whether the composition of the party representatives should be broadened to include on-going representatives from other entities that could provide independent, technically qualified representatives to a Board investigation;

(B) whether the participation of party representatives in a Board investigation results in any unfair advantages for the entities represented by the party representatives while the Board is conducting the investigation;

(C) whether the use of party representatives leads to bias in the outcome of a Board investigation; and

(D) whether Board investigations would be compromised in any way absent the participation and expertise of party representatives.

(3) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted under this subsection, including any recommendations for improvements in the Board’s use of the party representative process.

SEC. 7. TRAINING.

Section 1115(d) is amended—

(1) by inserting “theory and techniques and on transportation safety methods to advance Board safety recommendations” before the period at the end of the first sentence;

(2) by inserting “or who influence the course of transportation safety through support or adoption of Board safety recommendations” before the period at the end of the second sentence; and

(3) by inserting “under section 1118(c)(2)” before the period at the end of the third sentence.

SEC. 8. REPORTS AND STUDIES.

(a) STUDIES AND INVESTIGATIONS.—Section 1116(b) is amended—

(1) in paragraph (1) by striking “carry out” and inserting “conduct”; and

(2) by striking paragraph (3) and inserting the following:

“(3) prescribe requirements for persons reporting accidents, as defined in section 1101(a), that may be investigated by the Board under this chapter;”.

(b) INTERIM SAFETY RECOMMENDATIONS AND MEASURES.—Section 1116 is amended by adding at the end the following:

“(c) INTERIM SAFETY RECOMMENDATIONS AND MEASURES.—Nothing in this section shall restrict the Board from—

“(1) making urgent safety recommendations, identified through an ongoing safety investigation or study, to any regulatory department, agency, or instrumentality of the Federal Government or a State or local governmental authority or a person concerned with transportation safety; or

“(2) recommending interim measures to mitigate risks to transportation safety pending implementation of more comprehensive responses by the appropriate department, agency, instrumentality, authority, or person.”.

(c) EVALUATION AND AUDIT.—Section 1138(a) is amended by striking “conducted at least annually, but may be”.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) is amended to read as follows:

“(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter—

“(1) \$117,368,000 for fiscal year 2011;

“(2) \$120,258,000 for fiscal year 2012;

“(3) \$122,187,000 for fiscal year 2013; and

“(4) \$124,158,000 for fiscal year 2014.

Such sums shall remain available until expended.”.

(b) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—Section 1118(c) is amended—

(1) by striking the subsection heading and inserting the following: “FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES”;

(2) in paragraph (1)—

(A) by striking “and reimbursements” and inserting “reimbursements, and advances”; and

(B) by striking “services” and inserting “activities, services, and facilities”;

(3) in paragraph (2)—

(A) in the matter preceding subparagraph (A) by striking “or reimbursement” and inserting “reimbursement, or advance”; and

(B) in each of subparagraphs (A) and (B) by striking “activities” and all that follows before the semicolon and inserting “activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated”;

(4) by redesignating paragraph (3) as paragraph (4);

(5) by inserting after paragraph (2) the following:

“(3) ANNUAL RECORD OF COLLECTIONS.—The Board shall maintain an annual record of collections received under paragraph (2).”; and

(6) in paragraph (4) (as redesignated by paragraph (4) of this subsection) by inserting “or advance” after “fee”.

SEC. 10. ACCIDENT INVESTIGATION AUTHORITY.

(a) IN GENERAL.—Section 1131(a)(1) is amended—

(1) in the matter preceding subparagraph (A) by striking “cause or probable cause” and inserting “causes or probable causes”;

(2) in subparagraph (C) by striking “a fatality or substantial property damage” and inserting “a fatality (other than a fatality involving a trespasser) or substantial property damage”;

(3) in subparagraph (E) by striking “and” at the end;

(4) in subparagraph (F) by striking the period at the end and inserting “; and”;

(5) by adding at the end the following:

“(G) an accident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board.”.

(b) AUTHORITIES OF OTHER AGENCIES.—The second sentence of section 1131(a)(3) is amended by inserting “or relevant to” after “developed about”.

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—Section 1131(c) is amended by adding at the end the following:

“(3) AUTHORITY OF BOARD REPRESENTATIVE.—In the case of a delegation of authority under paragraph (1), the Secretary, or a person designated by the Secretary, shall have the authority of the Board, on display of appropriate credentials and written notice of inspection authority, to enter property where the aircraft accident has occurred or wreckage from the accident is located and to gather evidence in support of a Board investigation, in accordance with rules the Board may prescribe.”.

(d) INCIDENT INVESTIGATIONS.—Section 1131 is amended by adding at the end the following:

“(f) INCIDENT INVESTIGATIONS.—

“(1) MEMORANDUM OF UNDERSTANDING.—Not later than 90 days after the issuance of final regulations under section 1101(a)(2), the Chairman of the Board shall seek to enter into a memorandum of understanding with the Secretary of Transportation and the head of each modal administration of the Department of Transportation that sets forth—

“(A) an understanding of the conditions under which the Board will conduct an incident investigation that involves the applicable mode of transportation; and

“(B) the roles and responsibilities of the parties to the memorandum when the Board is conducting an incident investigation.

“(2) UPDATES AND RENEWALS.—Each memorandum of understanding required under paragraph (1) shall be updated and renewed not less than once every 5 years, unless parties to the memorandum agree that updating the memorandum is unnecessary.

“(3) BOARD AUTHORITY.—Nothing in this paragraph negates the authority of the Board to investigate an incident.

“(4) INCIDENT DEFINED.—In this subsection, the term ‘incident’ means an incident described in regulations issued under section 1101(a)(2).”.

SEC. 11. MARITIME CASUALTY INVESTIGATIONS.

(a) IN GENERAL.—Chapter 11 is amended by inserting after section 1132 the following:

“1132a. Maritime casualty investigations

“(a) DELEGATION OF AUTHORITY TO COAST GUARD.—

“(1) IN GENERAL.—In an investigation of a major marine casualty under section 1131(a)(1)(E), the Board, with the consent of the Secretary of the department in which the Coast Guard is operating, may delegate to the Commandant of the Coast Guard full authority to obtain the facts of the casualty. In the case of such a delegation, the Commandant, acting through the Commandant’s on-scene representative, shall have the full authority of the Board.

“(2) REQUIRED TRAINING, EXPERIENCE, AND QUALIFICATIONS.—The Board may not make a delegation under paragraph (1) unless the Board determines that the Commandant’s on-scene representatives have sufficient training, experience, and qualifications in investigation, marine casualty reconstruction, evidence collection and preservation, human factors, and documentation to act in accordance with the best investigation practices of Federal and non-Federal entities.

“(b) NOTIFICATION AND REPORTING.—The Board and the Secretary shall jointly prescribe regulations governing the notification and reporting of marine casualties to the Board.

“(c) PARTICIPATION OF COMMANDANT IN MARINE INVESTIGATIONS.—The Board shall provide for the participation of the Commandant of the Coast Guard in an investigation by the Board of a major marine casualty under section 1131(a)(1)(E) if such participation is necessary to carry out the duties and powers of the Commandant, except that the Commandant may not participate in establishing the probable cause of the marine casualty (other than as provided in section 1131(b)).”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 11 is amended by inserting after the item relating to section 1132 the following:

“1132a. Maritime casualty investigations.”.

SEC. 12. INSPECTIONS AND AUTOPSIES.

Section 1134(a) is amended in the matter preceding paragraph (1)—

(1) by striking “officer or employee” and inserting “officer, employee, or Federal designee”; and

(2) by inserting “in the conduct of any accident investigation or study” after “National Transportation Safety Board”.

SEC. 13. DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.

Section 1154(a)(1)(A) is amended by striking “; and” and inserting “; or”.

SEC. 14. FAMILY ASSISTANCE.

(a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS.—Section 41113(b)(7) is amended by inserting before the period at the end the following: “, and that at least 60 days before the planned destruction of any unclaimed possession of a passenger a reasonable attempt will be made to notify the family of the passenger”.

(b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section 41313(c)(7) is amended by inserting before the period at the end the following: “, and that at least 60 days before the planned destruction of any unclaimed possession of a passenger a reasonable attempt will be made to notify the family of the passenger”.

SEC. 15. COAST GUARD NOTIFICATION.

Not later than 6 months after the date of enactment of this Act, the National Transportation Safety Board and the Secretary of the department in which the Coast Guard is operating shall issue regulations to provide the Board prompt notification through the Coast Guard of all marine casualties of potential investigative interest to the Board.

SEC. 16. USE OF BOARD NAME, LOGO, INITIALS, AND SEAL.

Section 709 of title 18, United States Code, is amended—

(1) by inserting “or” at the end of the paragraph immediately preceding the paragraph that begins “Shall be punished as follows.”; and

(2) by inserting the following before the paragraph that begins “Shall be punished as follows.”:

“Whoever, except with the written permission of the Chairman of the National Transportation Safety Board, knowingly uses the words ‘National Transportation Safety Board’, the logo of the Board, the initials ‘NTSB’, or the official seal of the Board, or any colorable imitation of such words, logo, initials, or seal, in connection with any advertisement, circular, book, pamphlet, or other publication, or any play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, or such play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the National Transportation Safety Board.”.

PURPOSE OF LEGISLATION

H.R. 4714, as amended, the “National Transportation Safety Board Reauthorization Act of 2010”, reauthorizes the National Transportation Safety Board (NTSB or Safety Board) for fiscal years (FY) 2011 through 2014 and makes a number of statutory changes to explicitly define the Safety Board’s authority.

BACKGROUND AND NEED FOR LEGISLATION

The NTSB was created in 1967 as an independent agency supported financially and administratively by the U.S. Department of Transportation (DOT). It was subsequently established as a completely independent agency in 1975, when it was removed from DOT and all administrative ties between the two agencies were severed. The NTSB is currently charged with investigating all civil aviation accidents¹ and certain railroad, highway, marine, and pipeline accidents, as provided by law.² The NTSB determines the cause or probable cause of each accident it investigates, conducts safety studies, and evaluates the effectiveness of other government agencies’ regulations and programs for preventing transportation accidents.

Most importantly, the NTSB makes safety recommendations, based on its investigations, to Federal, State, and local government

¹Under existing law, the term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise. 49 U.S.C. § 1101 (2008).

²Under existing law, the Safety Board must investigate a highway accident that it selects in cooperation with a State, including a railroad grade crossing accident; a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train; a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment; a major marine casualty under regulations prescribed jointly by the Safety Board and the Coast Guard; and any other accident related to the transportation of individuals or property when the Safety Board decides the accident is catastrophic or involves problems of recurring character. 49 U.S.C. § 1131(a) (2008).

agencies and the transportation industry regarding measures necessary to prevent accidents. Since 1967, the Safety Board has investigated more than 132,000 aviation accidents³ and more than 10,000 accidents in other transportation modes. The Safety Board also serves as the administrative court of appeal for airmen, mechanics, and mariners to appeal certificate action taken against them by the Federal Aviation Administration (FAA) or the U.S. Coast Guard.⁴

The NTSB has no authority to issue substantive regulations covering the transportation industry. However, the NTSB issues safety recommendations to government agencies, transportation operators, and other stakeholders. Therefore, its effectiveness depends on producing timely accident reports and regulators' and stakeholders' adoption of its safety recommendations. According to the NTSB, since its inception in 1967, it has issued more than 13,000 safety recommendations in all modes of transportation.⁵ In general, the NTSB has been successful in achieving adoption of most of its recommendations. More than 82 percent of all recommendations made by the NTSB in all modes of transportation have eventually been adopted by the regulatory and transportation communities. In effect, the NTSB's work improves transportation safety in the United States, and around the world.

According to the Government Accountability Office (GAO), a "safe, efficient and convenient transportation system is integral to the health of our economy and quality of life."⁶ Our nation's highways, transit and rail systems, pipelines, airlines, airports, harbors, and waterways not only provide the backbone of our economy by moving people and goods, but they also employ millions of workers and generate a significant share of total economic output. In 2008, transportation-related goods and services contributed \$1.38 trillion, or 9.5 percent, to the total U.S. gross domestic product (GDP) of \$14.44 trillion. Civil aviation alone is responsible for 12 million jobs, \$1.3 trillion in total economic activity and 5.6 percent of the GDP.⁷

On the other hand, the societal and economic toll of transportation accidents is staggering. Over the past five years, on average, 41,515 people have died and more than 2.5 million people are seriously injured annually on the nation's roadways. Motor vehicle crashes are the leading cause of death for people of every age from three to 34. Every hour, 150 children (under the age of 19) are treated in emergency rooms for crash-related injuries. Each year, the economic cost of motor vehicle crashes to the U.S. economy is \$289 billion.⁸ In addition, crashes involving large trucks and buses remain a significant safety concern. Crashes involving large trucks have resulted in 4,887 fatalities and 105,000 injured persons each year, on average, over the past five years. The average cost of a

³NTSB, FY 2011 Budget Request, *Mission and Organization Overview* (Sept. 14, 2009), at 10.

⁴"Certificate action" in this context includes amendment, suspension, or revocation of a license issued by the FAA or Coast Guard, for reasons of public safety.

⁵*Supra* note 3. The NTSB reports that 38 percent of these recommendations have pertained to aviation safety.

⁶GAO, *Challenges Facing the Department of Transportation and Congress* (March 2009).

⁷Federal Aviation Administration, *The Economic Impact of Civil Aviation on the U.S. Economy* (December 2009).

⁸See Ted Miller and Eduard Zaloshnja, *On a Crash Course: The Dangers and Health Costs of Deficient Roadways*, Pacific Institute for Research and Evaluation (May 2009).

fatal crash involving a large truck is more than \$3.6 million.⁹ In addition, according to the Federal Railroad Administration, there were 10,604 rail accidents/incidents (665 fatalities) in 2009. According to GAO, about 1,200 people are killed each year in commercial and general aviation accidents.¹⁰

In its Strategic Plan, GAO observed that:

[t]o support the U.S. economy and allow it to grow and prosper, the nation relies on the safe movement of people and goods. For example, on a typical day in the United States in 2002 (latest data available), about 53 million tons of goods valued at about \$36 billion moved nearly 12 billion ton miles on the nations multimodal transportation network. This freight movement is expected to increase by 70 percent by 2020, while the national airspace system is projected to grow threefold by 2025. This growth will likely result in larger numbers of deaths and injuries unless transportation safety can be markedly improved. The National Transportation Safety Board's use of available technology to investigate the causes of accidents . . . is one means of obtaining information that can be used to help prevent future transportation-related accidents.¹¹

The NTSB's accident investigative work and its safety recommendations are a significant component of maintaining and improving the safety of the nation's transportation system, and the economy and public welfare as a whole. The NTSB's authorization expired on September 30, 2008.

SUMMARY OF THE LEGISLATION

Section 1. Short title; table of contents

Section 1 provides that the short title of the Act is the "National Transportation Safety Board Reauthorization Act of 2010" and sets out the table of contents for the bill.

Sec. 2. Amendments to Title 49, United States Code

This section provides that, except where otherwise expressly provided, any references to sections are made to title 49, United States Code (U.S.C.).

Sec. 3. Definitions

This section changes the definition of the term "accident" to include an incident (i.e., an event that does not involve loss of life or substantial damage but that affects transportation safety). Because the NTSB is tasked with "accident investigations", defining the term "accident" to include an "incident" effectively authorizes

⁹See Ted Miller and Eduard Zaloshnja, *Unit Costs of Medium and Heavy Truck Crashes*, Pacific Institute for Research and Evaluation (March 2007).

¹⁰See GAO, *GAO Strategic Plan 2007–2012* (2007) ("GAO Strategic Plan"). In the aviation sector, it has long been recognized that safety is key to a robust aviation system. As the World Bank has noted, the "traveling public's demand for high safety and the events of September 11 have put the significant pressure on regulatory agencies to establish and maintain acceptable global standards for aviation safety and security. Countries which do not comply with these standards will become isolated from the international air transport network. This would have serious negative implications for development." The World Bank <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTTRANSPORT/EXTAIRTRANSPORT> (site accessed April 22, 2010).

¹¹See GAO Strategic Plan at 77.

the NTSB to investigate transportation incidents in addition to accidents. The definition applies to the modes of aviation, rail, pipelines, and highways.

The Committee believes that the NTSB currently has authority to investigate all incidents that affect transportation safety. Although the existing statute does not make specific reference to incidents in the context of the NTSB's investigation authority,¹² the term "incident" is used several times in title 49.¹³ Accordingly, the Committee believes that it has always been Congress' intent to authorize the NTSB to investigate incidents. In addition, many of the NTSB's existing regulations pertain to incident investigations.¹⁴ Furthermore, the United States is a signatory to the Convention on International Civil Aviation (the "Chicago Convention"), which established the International Civil Aviation Organization (ICAO) and requires member nations to investigate "serious aviation incidents". Since 1982, NTSB has investigated 2,752 aviation incidents, such as runway incursions, smoke events, and engine power loss.

In the past, the NTSB's authority to investigate incidents has been questioned in some instances. The change in this subsection will provide the NTSB with the explicit authority to investigate incidents when, in the Safety Board's discretion, investigation of such events would improve transportation safety. The Committee expects that, based on this change, the NTSB will have greater latitude to use its professional judgment to determine which investigations will have the greatest impact on transportation safety.

Sec. 4. General organization

This section makes a technical correction to address an ambiguity in statute and provides that the Vice Chairman is authorized to act as the Chairman when the Chairman is not available either in person or by telephone or other electronic communications. This technical correction brings the NTSB statute in line with current practices in light of modern telecommunications.

Sec. 5. Administrative

Subsection (a) clarifies that the Safety Board's statutory power to subpoena evidence and witnesses applies to all accident investigations, not just those investigations that involve public hearings. The amendment does not enlarge the scope of the NTSB's subpoena power, nor does it change the process for challenging an NTSB subpoena in a Federal district court. The NTSB's power to subpoena evidence and witnesses is a crucial tool for obtaining necessary information in any NTSB investigation. The NTSB has, by statute, traditionally possessed this power. Due to an ambiguity in the current statutory language, the NTSB's subpoena authority has been interpreted by those seeking to resist the Safety Board's authority to apply only in the context of a public hearing. This subsection resolves the ambiguity in current statutory language.

Subsection (b) gives the Safety Board the authority to enter into cooperative agreements with nonprofit entities, for services such as

¹² See 49 U.S.C. §§ 1101, 1131(a) (2008).

¹³ See, e.g., 49 U.S.C. §§ 1114(b)(3), 1114(c), 1114(e)(1), 1114(e)(3), 1116(b) (2008) (all referencing incidents).

¹⁴ See, e.g., 49 C.F.R. §§ 831.2(a)(1), 831.2(c), 831.4 (2009) (all referring to incident investigations).

course production, instruction, and software development, without the need for formal contracts. This subsection provides that the NTSB can enter into leases for special-use space for accident investigations or for general-use space, at an average annual rental cost of not more than \$300,000 for an individual property. Congress gave the NTSB leasing authority when the Safety Board was created in 1975, but this authority was inadvertently removed from the statute during re-codification in 1994. In 2009, the Comptroller General issued a decision that the NTSB has independent authority to lease real property, based on the NTSB's previous statutory authority, because recodification was intended to restate the law "without substantive change". This section explicitly states that the NTSB has leasing authority, but limits this authority.

This subsection also provides the NTSB with authority to transfer or receive supplies, personnel, or services with or without compensation.

Subsection (c) requires the NTSB to develop criteria for determining whether to hold a public hearing on a particular investigation or safety study. The subsection directs the NTSB to consider several factors when developing criteria for when to hold a public hearing such as whether the subject of an investigation or safety study involves: a significant loss of life, considerable property damage, a national safety issue, an opportunity to gain new information, an opportunity to educate the public on a safety issue, and an opportunity to instill public confidence in the Safety Board's investigative transparency. Furthermore, the Safety Board must weigh the possible adverse effects on safety of a delay in the conclusion of an investigation against the benefits of a public hearing. The NTSB is also required to report, annually, and to provide an explanation of any instance in which the Safety Board did not hold a public hearing for an investigation of an accident that caused significant loss of life or property damage or that may have involved a national safety issue.

Sec. 6. Recordings, transcripts, and investigations

Subsection (a) specifies that vessel recordings and transcripts related to an accident investigation may not be publicly released unless the NTSB holds a public hearing on the accident or publicly releases a majority of other factual reports regarding the accident, and then only in transcript or written form.

Subsection (b) prohibits representatives of parties to NTSB investigations from violating the "cone of silence" during ongoing investigations, with violations punishable by a civil penalty. To assist investigations of accidents, NTSB uses a party system whereby other government agencies, corporations, unions, and others make available technically qualified individuals to provide expert resources and pertinent knowledge of specific products or processes. Representatives of parties to NTSB investigations sign a party pledge and agree not to disclose information outside the "cone of silence" during ongoing investigations.

During an investigation, NTSB investigators may identify information that a party to an NTSB investigation must use to: (1) prevent additional accidents, (2) address a perceived safety deficiency, or (3) assist Safety Board investigators. Under subsection (b), the investigator-in-charge can authorize that party's representative to

privately share the information with the employees of the party who can use it to prevent future accidents.

However, subsection (b) also restricts the way in which the party can use the information received. First, the party may not disclose the information publicly. Second, the party is prohibited from using the information, before it otherwise becomes public, to prepare a defense to tort claims brought on behalf of passengers who were injured or killed in the accident under investigation. Nothing in the provision, however, prevents the party from seeking legal advice in non-tort matters on the basis of information authorized by the investigator-in-charge to be disclosed. For example, the party might seek legal advice on how the information affects contractual or indemnity claims against third parties or suppliers. The provision ensures equal access to information between the party and prospective tort claimants; it prevents the party from gaining an unfair advantage in anticipated tort litigation by using the information to prepare a defense during the brief time period that the information is not publicly available or otherwise available to potential plaintiffs. Violation of this provision is punishable by a civil penalty.

Subsection (c) requires GAO to study any bias that may result from the NTSB's use of the party process for investigations.

To ensure compliance with International Traffic in Arms Regulations (ITAR) and export regulations, industry is required to identify all material that is subject to these regulations when it is provided to the NTSB as part of an accident investigation. Given that the burden of regulatory compliance and risk of fines is placed on industry, it is essential that the NTSB create internal procedures for its proper handling of material received from industry and identified as ITAR or export controlled. This becomes especially important as the NTSB continues to implement the Safety Board's effort to further come into compliance with a number of legislative and executive mandates aimed at improving the U.S. Government's use of electronic media to foster a more open and transparent government.

Sec. 7. Training

This section authorizes the NTSB to offer safety classes on topics more broadly defined than accident investigation theory (e.g., courses to advance understanding of changes sought in NTSB safety recommendations) and to charge fees for the classes.

Sec. 8. Reports and studies

Subsection (a) makes technical changes to the statute.

Subsection (b) clarifies that the NTSB may issue urgent recommendations when, in the course of its investigation, the Safety Board finds a safety issue that can be, and should be, addressed immediately. In addition, this section clarifies that the NTSB may also recommend interim measures when the ultimate desired recommendation is for action that is so costly, time-consuming, or, for some reason, impossible to accomplish in the short term (e.g., requires statutory changes) that another less effective measure is judged to be appropriate and helpful until the ultimate, more effective recommendation can be implemented.

The Committee believes that the NTSB already has the authority to issue urgent and interim recommendations and the Safety Board

has, in fact, exercised its authority several times in the past. Historically, when a final accident report is issued, any urgent recommendations issued during the investigation are incorporated in the final accident report, usually in a separate section of the report. Similarly, interim recommendations are also generally reflected in the final accident report.

Subsection (c) strikes the requirement for an annual audit of the NTSB.

Sec. 9. Authorization of appropriations

Subsection (a) authorizes appropriations for the NTSB at the following levels: \$117.368 million in FY 2011, \$120.258 million in FY 2012, \$122.187 million in FY 2013, and \$124.158 million in FY 2014. These are the authorization levels requested by the NTSB to enable it to meet its critical mission of investigating transportation accidents and incidents. The NTSB conducts extensive internal reviews to arrive at its staffing level requests. In 2006, the agency established a Chief Human Capital Officer position to strategically align the agency's workforce to its mission through effective management of human capital policies and programs. Since that time, the agency has conducted human capital forecasting. The agency derives the human capital forecast through an internal review of current on board staffing numbers, attrition rates, and an assessment of the transportation industry to determine agency needs. According to the NTSB, its optimal staffing level has been approximately 477 full time equivalent (FTE) positions for the past 10 years.

The table below shows the FY 2010 appropriation level, the President's budget request for FY 2011, and the authorization levels in this subsection. The bill authorizes the funding levels requested by the NTSB. The NTSB's requested authorization levels for FY 2011 through FY 2014 are based on increasing the number of NTSB staff to 477 FTE positions, and sustaining that staffing level through FY 2014.¹⁵

AUTHORIZATION LEVELS

[In millions]

	FY 2010 Enacted ¹⁶	FY 2011 President's Budget	FY 2011 Auth.	FY 2012 Auth.	FY 2013 Auth.	FY 2014 Auth.
Funding	\$98.05	¹⁷ \$100.4	\$117.368	\$120.258	\$122.187	¹⁸ \$124.158
FTEs	411	402	477	477	477	477

*The FY 2010 enacted level is the appropriated level, not the authorized funding level.

Increased funding would: provide for optimal staffing levels, as determined by the NTSB's 2009 human capital forecast; enable the NTSB to undertake more investigations; and permit the NTSB to

¹⁵ For FY 2009 and FY 2010, NTSB previously requested authorization levels to support 475 positions. The FY 2011–2014 request includes additional funding to support the same number of FTEs, plus two additional FTE positions to support Title V—Rail Passenger Disaster Family Assistance of the Rail Safety Improvement Act of 2008 (P.L. 110–432).

¹⁶ Consolidated Appropriations Act, 2010, P.L. 111–117 (2009).

¹⁷ The President's budget request includes \$3 million for a pending headquarters lease.

¹⁸ In preparing its authorization request, the NTSB assumes salary increases of two percent and a non-pay inflation rate of 0.5 percent each year. In FY 2011, \$500,000 is added to the base for lab updates.

accomplish more detailed examinations of transportation safety issues.

Historically, the Committee on Transportation and Infrastructure has provided NTSB with its authorization level requests. For instance, in the 107th and 108th Congresses, the NTSB requested authorization levels sufficient to finance 479 FTEs. The Committee on Transportation and Infrastructure reported and the House passed an NTSB reauthorization bill that provided the necessary funding to finance 479 FTEs. See H.R. 4466 (107th Congress) and H.R. 1527 (108th Congress). In the 109th Congress, the NTSB requested authorization levels sufficient to finance 475 FTEs. Again, the Committee on Transportation and Infrastructure reported a bill honoring the NTSB's request. See H.R. 5076 (109th Congress).

The NTSB reports that staffing shortages have caused it to forgo accident investigations and have contributed to internal delays. Because of the nature of the NTSB's work, its new hires tend to be highly educated and experienced. In aviation, the NTSB reports that staffing shortages in specialized investigative disciplines (e.g., meteorology or air traffic control) contribute to internal delays in providing critical investigative services. In the surface modes, current staffing limitations have hindered the Safety Board from conducting multiple investigations.

In rail, the NTSB's 2008 Report to Congress listed approximately 950 railroad accidents involving freight trains that the Safety Board did not investigate due to resource limitations. In 2009, the NTSB's rail investigators launched to 10 rail accidents, including six transit-related accidents. The NTSB only has 11 rail investigators. In addition, there are almost six million highway accidents per year, but the NTSB can only thoroughly investigate about four or five of these accidents per year.

Further, all modes of transportation are experiencing technological growth, and NTSB staff must be prepared for those changes. Technological advances in the aviation industry, such as glass cockpits, satellite navigation systems, and the use of composite materials, increase the complexity of accident investigations. This is also true in the railroad industry where technology has changed, including the use of sophisticated electronic alerting devices, digitized electronic event recorders, and computer-aided dispatching.

To meet the challenges presented by a dynamic industry like transportation, the NTSB needs the human resources to be able to effectively investigate new transportation technologies and to meet the expanding demands on its staff.

Many of the technologies that the NTSB uses today offer breakthrough capabilities, but they are time-intensive. For example, the proliferation of recorded data in, and around, transportation vehicles and infrastructure in all modes has the potential to reveal critical information to accident investigators. However, downloading and decoding these data sources, and in some cases, rebuilding circuit boards or extracting data from damaged chips, take many hours and a well-trained staff.

Rail and pipeline accident investigations have increased in complexity because of advances in transportation system technologies. These complexities include computerized electronic train control systems that provide safety redundancy to prevent train collisions and computerized pipeline operating systems that allow a con-

troller to move more than 100 million gallons of gasoline a day through a pipeline. In the past, rail or pipeline investigations required analysis of the mechanical and human components of the operations, today's accidents require investigation of the electronic components as well, a task that calls for a different type of expertise. On the nation's highways, the increased use of manufactured materials in automobiles, such as composites and high-strength metals and alloys, requires new and sophisticated examination procedures.

In addition to the demands of new technologies, the need for NTSB's investigative services continues to grow as well. For example, the number of commercial aircraft is forecast to increase from 15,000 currently to 25,000 by the year 2015. The FAA expects traffic growth of about four to five percent each year for the next decade, which likely will lead to a greater volume of accidents. Even if the worldwide accident rate remains constant, current trends indicate that by 2015, a major aviation accident will occur somewhere in the world each week.

Under ICAO's Annex 13 (Accident Investigation) and Annex 8 (Airworthiness), the NTSB participates in accident investigations worldwide in which the United States is an aircraft's State of Registry, State of Operator, State of Manufacturer, or State of Design. Because of its role representing U.S. aviation interests in foreign accidents involving a U.S.-operated or U.S.-manufactured aircraft, and the expected increase in aviation accidents, the NTSB anticipates the need to increase the resources allocated to those investigations. Finally, because of its worldwide reputation for excellence, the NTSB is frequently asked to assist other nations in investigating aviation accidents that occur within their borders. It is of international importance that the NTSB has sufficient resources to continue these services of goodwill.

Similarly, maritime commerce has become increasingly international in nature, and international standards play a larger role in investigations. The NTSB is likely to be drawn into more investigations worldwide. Furthermore, expanded offshore activities, the growth of short sea shipping, and even the beginning of Arctic shipping will increase the need for additional investigative staff. Currently, the NTSB has the capacity to handle just one-quarter of all major maritime casualties.

In recent years, the NTSB has done "more with less," stretching its technical expertise to meet the needs of an increasingly complex transportation system. The NTSB must be well-staffed to meet these challenges with the same high standards that it currently achieves.

With increased funding provided by H.R. 4714, the NTSB will be able to hire 66 additional personnel for the following safety critical positions:

Aviation Safety	27
Aviation Safety Investigators	11
Air Traffic Control Investigators	2
Aviation Safety Investigators In Charge	2
Investigator Support Technician	1
Operational Factors Investigator	2
Power plants Investigator	1
Maintenance Records Investigator	1
Helicopters Investigator	1
Human Performance Investigator	2

Meteorology Investigator	1
Cabin Safety Investigator	1
Report Writer	1
Editor	1
Highway Safety	5
Highway Safety Investigator	1
Vehicle Factors Investigator	1
Human Performance Investigator	1
Motor Carrier Operations Investigator	1
Survival Factors Investigator	1
Marine Safety	7
Associate Director for Quality Management	1
Human Performance Investigator	1
Marine Accident Investigator, Nautical Operations	2
Marine Accident Investigator, Marine Engineering	1
Marine Accident Investigator, Naval Architect	1
Writer Editor	1
Rail, Pipeline, and Hazardous Materials Investigations	8
Rail Investigator, Track Specialist	1
Signals/Positive Train Control Engineer	1
Transit Operations Rail Specialist	2
Mechanical Group Specialist	2
Pipeline Accident Investigator/Petroleum Engineer	2
Research and Engineering	17
Surface Recorder Specialist	1
Computational Tools Development Specialist	1
Performance Engineer	2
Electronic Recording Device Engineer	1
Structural Mechanics Engineer	1
Video Image Photogrammetry Specialist	1
Electronic Aviation Data Management System Manager	1
Flight Data Recorder Readout Specialist	2
Cockpit Voice Recorder Readout Specialist	1
Data and Text Mining Analyst Programmer	1
Materials Engineer	1
Transportation Safety Analyst	1
Materials Lab Technician	1
Materials Characterization Specialist	1
Systems Modeler	1
Transportation Disaster Assistance	2
TDA Specialist	2
Total Staff	66

Accordingly, the Committee believes that it is imperative to work toward the necessary staffing level of 477 FTEs to ensure that the NTSB has the investigative staff necessary to carry out its critical mission.

Subsection (b) allows the NTSB to accept fees in advance for its courses and rental spaces.

Sec. 10. Accident investigation authority

Subsection (a)(1) changes NTSB’s main investigative goal to determine the multiple “causes or probable causes” of an accident rather than the singular “cause or probable cause”. ICAO and other foreign accident-investigation agencies, as a matter of common practice, are not limited to identifying a single cause or probable cause when investigating an accident. In addition, the NTSB’s regulations state that it will find the “probable causes” of U.S. civil transportation accidents in its accident reports.¹⁹ The Committee believes that multiple factors often combine to cause an accident;

¹⁹ 49 C.F.R. § 801.32 (2009).

therefore, exploring more than one cause provides a valuable opportunity to mitigate future accidents.

Subsection (a)(2) makes a change to existing law regarding the NTSB's responsibility to investigate railroad accidents. The NTSB's reauthorization proposal requested a change to the requirement that the Safety Board investigate every accident involving a railroad fatality; the Safety Board believes it is incapable of fulfilling this mandate because of its current appropriations level and the limit that level imposes on manpower distributions within the Safety Board. The Committee did not make the requested change and believes that the increase in authorization levels should help the Safety Board attain the manpower required to conduct rail accident investigations. The Committee did, however, provide some relief to the Safety Board by eliminating the requirement that the Safety Board investigate railroad trespasser accidents. Railroad trespasser accidents are the most common type of fatal rail accident, yet can only be successfully prevented by effective education and enforcement at the State and local level.

The Committee believes, however, that the Safety Board should better define through internal policy, guidance, or regulation the criteria for rail and pipeline accidents involving substantial property damage and pipeline accidents in which there is significant injury to the environment. Adopting such policy, guidance, or regulation would clarify those rail and pipeline accidents that the Safety Board will investigate.

Subsection (a)(5) permits the NTSB, upon coordination with the U.S. State Department, to accept the delegation of responsibility for an investigation from a foreign state under an international convention, such as ICAO's Chicago Convention, and to expend appropriated funds to do so.

Subsection (b) makes a minor technical change to existing law by stating that other government entities with the authority to investigate an accident shall ensure that appropriate information "relevant to" the accident is exchanged in a timely manner.

Subsection (c) states that an agency representative to whom the NTSB has delegated investigative authority has the same authority as the NTSB to enter the property where an accident occurred and to inspect records related to an accident. This provision addresses a recent ICAO audit of the United States, which found that the United States had failed to expressly grant all on-scene accident investigators, acting with Safety Board authority, clear authority to access accident sites.

Subsection (d) requires the NTSB to seek to enter into a memorandum of understanding (MOU) with the Secretary of Transportation and the head of each modal administration of the DOT regarding the Safety Board's role in the conduct of incident investigations. Each MOU will outline the conditions under which the NTSB will conduct an incident investigation as well as the roles and responsibilities of the parties to the MOU when the Safety Board is conducting an incident investigation. Nothing in this section negates the authority of the Safety Board to investigate an incident. The MOU shall be updated or renewed not less than once every five years, unless the parties to the MOU decide that updating is unnecessary.

Sec. 11. Maritime casualty investigations

Subsection (a) permits the NTSB to delegate the Safety Board's full authority to investigate major marine casualties to the Coast Guard if the NTSB determines that Coast Guard personnel assigned to investigate marine casualties possess the training, experience, and qualifications to employ best practices in use by marine casualty investigators. This provision addresses issues identified by the Inspector General of the Department of Homeland Security regarding unqualified Coast Guard marine casualty investigators.

Subsection (a) also requires the NTSB and the Secretary of the department in which the Coast Guard is operating to jointly prescribe regulations under which the Coast Guard would report marine casualties to the NTSB.

Furthermore, consistent with the NTSB's current practice, subsection (a) requires the NTSB to provide for the participation of the Commandant of the Coast Guard in NTSB investigations for the Coast Guard to carry out its duties. However, the Commandant would not participate in determining the probable causes of marine casualties.

Subsection (b) makes a technical, conforming amendment to statute.

Sec. 12. Inspections and autopsies

This section ensures that designees or delegates of the NTSB, such as FAA inspectors or Coast Guard representatives, have appropriate authority to conduct on-scene fact-finding for the NTSB.

Sec. 13. Discovery and use of cockpit and surface vehicle recordings and transcripts

This section makes a minor technical correction by changing an "and" to "or" to conform to the rest of the statute.

Sec. 14. Family assistance

This section requires domestic and foreign air carriers to develop, in their aircraft accident family assistance plans, a process to notify family members of passengers prior to the destruction of unclaimed and unassociated personal effects. Air carriers are required by law to have family assistance plans to help families of aviation accidents. The Committee, the NTSB's Office of Transportation Disaster Assistance, and DOT do not believe this provision would be unduly burdensome to air carriers.

Sec. 15. Coast Guard notification

This section requires the Coast Guard and the NTSB to mutually develop, within six months of the date of enactment of this Act, requirements whereby the Coast Guard will notify the Safety Board of all marine casualties of potential investigative interest to the Safety Board.

Sec. 16. Use of Board name, logo, initials, and seal

This section amends 18 U.S.C. § 709 to prohibit unauthorized use of the Safety Board's name, logo, initials, and seal. The section imposes criminal sanctions on those who use the Safety Board's likeness to convey the false impression that the NTSB approved, endorsed, or authorized certain materials. Deterring such conduct will

help ensure public confidence in official publications of the NTSB as well as prevent acts that could mislead the public on the progress of ongoing investigations.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

In the 110th Congress, on April 23, 2008, the Subcommittee on Aviation held a hearing focused on the NTSB's reauthorization proposal. The Safety Board's authorization expired on September 30, 2008.²⁰

In the 111th Congress, on January 27, 2010, the Subcommittee on Aviation held a hearing focused on the NTSB's reauthorization proposal.

On March 2, 2010, Chairman James L. Oberstar introduced H.R. 4714, the "National Transportation Safety Board Reauthorization Act of 2010." On March 3, 2010, the Committee on Transportation and Infrastructure met in open session to consider H.R. 4714. The Committee adopted two amendments to the bill by voice vote. The Committee on Transportation and Infrastructure ordered H.R. 4714, as amended, reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 4714 or ordering the bill reported. A motion to order H.R. 4714, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

²⁰ See 49 U.S.C. § 1118(a)(2008).

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to reauthorize the NTSB.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 4714 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 10, 2010.

Hon. JAMES L. OBERSTAR,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4714, the National Transportation Safety Board Reauthorization Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 4714—National Transportation Safety Board Reauthorization Act of 2010

Summary: H.R. 4714 would authorize the appropriation of \$483 million for the National Transportation Safety Board (NTSB) over the 2011–2014 period. Assuming appropriation of the specified amounts, CBO estimates that implementing H.R. 4714 would cost \$473 million over the 2011–2015 period. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 4714 would impose private-sector mandates, as defined in UMRA, but CBO estimates that the total cost of complying with the mandates would be minimal and fall below the annual threshold established in UMRA for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4714 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	117	120	122	124	0	483
Estimated Outlays	103	118	120	122	10	473

Basis of estimate: For this estimate, CBO assumes that H.R. 4714 will be enacted during fiscal year 2010 and that the authorized amounts will be appropriated each year. Outlay estimates are based on historical spending patterns of the NTSB.

The bill would authorize the appropriation of \$483 million over the 2011–2014 period for the salaries and expenses of the NTSB personnel and for the general administrative operations of the board. The NTSB received appropriations totaling \$98 million for fiscal year 2010. The bill also would revise some policies and procedures at the NTSB. Assuming appropriation of the specified amounts, CBO estimates that implementing H.R. 4714 would cost \$473 million over the 2010–2015 period.

Pay-as-you-go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 4714 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 4714 would impose private-sector mandates, as defined in UMRA. The bill would prohibit individuals and entities from using the words “National Transportation Safety Board,” the initials “NTSB,” the logo of the NTSB, or the seal of the NTSB without the written permission of that agency. The cost of the mandate would be the cost of acquiring written permission to use such words or symbols or the forgone net value attributable to such uses in the event that permission is not granted. Based on information from the NTSB, CBO expects that the direct cost to comply with the mandate would be minimal. H.R. 4714 also would impose a private-sector mandate on air carriers. After an accident resulting in major loss of life, an air carrier would have to make a reasonable attempt to notify the family of each passenger within 60 days of any planned destruction of unclaimed possessions. According to the NTSB, most air carriers already comply with this requirement, and the cost for the remaining air carriers to comply would not be significant. Consequently, CBO estimates that the total cost of complying with the mandates in H.R. 4714 would fall well below the annual threshold for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

Previous CBO estimate: On December 3, 2009, CBO transmitted a cost estimate for S. 2768 as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 19, 2009. That bill authorized the appropriation of \$559 million for the NTSB, including \$100 million for 2010. S. 2768 contained only one of the private-sector mandates contained in H.R. 4714. CBO’s cost estimates for the two bills reflect those differences.

Estimate prepared by: Federal Costs: Sarah Puro; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of

the House of Representatives. H.R. 4714, as amended, does not include any earmarks, limited tax benefits, or limited tariff benefits under clause 9(e), 9(f), or 9(g) of rule XXI.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 4714, as amended, does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE II—OTHER GOVERNMENT AGENCIES

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CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

Sec.
 1101. Definitions.
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 * * * * * * *
 1132a. Maritime casualty investigations.
 * * * * * * *
 [1151. Aviation enforcement.]
 1151. Enforcement.
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SUBCHAPTER I—GENERAL

§ 1101. Definitions

[Section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter. In this chapter, the term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise.]

§ 1101. Definitions

- (a) ACCIDENT DEFINED.—*In this chapter, the term “accident”—*
 - (1) *means an event associated with the operation of a vehicle, aircraft, or pipeline, which results in damage to or destruction of the vehicle, aircraft, or pipeline, or which results in the death of or serious injury to any person, regardless of whether the initiating event is accidental or otherwise; and*
 - (2) *may include an incident that does not involve destruction or damage of a vehicle, aircraft, or pipeline, but affects transportation safety, as the Board prescribes by regulation.*
- (b) APPLICABILITY OF DEFINITIONS IN OTHER LAWS.—*The definitions contained in section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter.*

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

§ 1111. General organization

- (a) * * *
- * * * * * * *
- (d) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is [absent] *unavailable* or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.
- * * * * * * *

§ 1113. Administrative

- (a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board, and when authorized by it, a member of the Board, an administrative law judge employed by or assigned to the Board, or an officer or employee designated by the Chairman of the Board,

may conduct hearings *and depositions* to carry out this chapter, administer oaths, and require, by **[subpena]** *subpoena* or otherwise, necessary witnesses and evidence.

(2) *In the interest of promoting transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain evidence relevant to an accident investigation conducted under this chapter.* A witness or evidence in a hearing under paragraph (1) of this subsection may be summoned or required to be produced from any place in the United States to the designated place of the hearing. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

* * * * *
(b) ADDITIONAL POWERS.—(1) The Board may—
(A) * * *

* * * * *
(H) make contracts *and other agreements* with nonprofit entities to carry out studies related to duties and powers of the Board; and

[(I) negotiate and enter into agreements with individuals and private entities and departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries for the provision of facilities, accident-related and technical services or training in accident investigation theory and techniques, and require that such entities provide appropriate consideration for the reasonable costs of any facilities, goods, services, or training provided by the Board.]

(I) negotiate, enter into, and perform contracts, agreements, leases, or other transactions with individuals, private entities, departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries on such terms and conditions as the Chairman of the Board considers appropriate to carry out the functions of the Board and require that such entities provide appropriate consideration for the reasonable costs of any facilities, goods, services, or training provided by the Board.

[(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection to be credited as offsetting collections to the appropriation of the Board. The Board shall maintain an annual record of collections received under paragraph (1)(I) of this subsection.]

(2) AUTHORITY OF OTHER FEDERAL AGENCIES.—Notwithstanding any other provision of law, the head of a Federal department, agency, or instrumentality may transfer to or receive from the Board, with or without reimbursement, supplies, personnel, services, and equipment (other than administrative supplies and equipment).

(3) LEASE LIMITATION.—The authority of the Board to enter into leases shall be limited to the provision of special use space related to an accident investigation, or for general use space, at an average annual rental cost of not more than \$300,000 for any individual property.

* * * * *

(i) PUBLIC HEARINGS.—

(1) DEVELOPMENT OF CRITERIA.—The Board shall establish by regulation criteria to be used by the Board in determining, for each accident investigation and safety study undertaken by the Board, whether or not the Board will hold a public hearing on the investigation or study.

(2) FACTORS.—In developing the criteria, the Board shall give priority consideration to the following factors:

(A) Whether the accident has caused significant loss of life.

(B) Whether the accident has caused significant property damage.

(C) Whether the accident may involve a national transportation safety issue.

(D) Whether a public hearing may provide needed information to the Board.

(E) Whether a public hearing may offer an opportunity to educate the public on a safety issue.

(F) Whether a public hearing may increase both the transparency of the Board’s investigative process and public confidence that such process is comprehensive, accurate, and unbiased.

(G) Whether a public hearing is likely to significantly delay the conclusion of an investigation and whether the possible adverse effects of the delay on safety outweigh the benefits of a public hearing.

§ 1114. Disclosure, availability, and use of information

(a) GENERAL.—(1) Except as provided in subsections (b), (c), (d), [and (f)] (e), and (g) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

* * * * *

(d) SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—

(1) CONFIDENTIALITY OF RECORDINGS.—The Board may not disclose publicly any part of a surface vehicle voice or video recorder recording or transcript of oral communications by or among drivers, train employees, or other operating employees responsible for the movement and direction of the vehicle [or vessel], or between such operating employees and company communication centers, related to an accident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information that the Board decides is relevant to the accident—

(A) * * *

* * * * *

(e) VESSEL RECORDINGS AND TRANSCRIPTS.—

(1) CONFIDENTIALITY OF RECORDINGS AND TRANSCRIPTS.—The Board may not disclose publicly any part of a vessel’s voice or video recorder recording or transcript of oral communications

by or among the crew, pilots, or docking masters of a vessel, vessel traffic services, or other vessels, or between the vessel's crew and company communication centers, related to an accident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information that the Board decides is relevant to the accident—

- (A) if the Board holds a public hearing on the accident, at the time of the hearing; or
- (B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident are placed in the public docket.

(2) REFERENCES TO INFORMATION IN MAKING SAFETY RECOMMENDATIONS.—This subsection does not prevent the Board from referring at any time to voice or video recorder information in making safety recommendations.

[(e)] (f) DRUG TESTS.—(1) * * *

* * * * *

[(f)] (g) FOREIGN INVESTIGATIONS.—

(1) * * *

* * * * *

(h) PARTY REPRESENTATIVES TO NTSB INVESTIGATIONS.—

(1) PROHIBITION ON DISCLOSURE OF INFORMATION.—A party representative to an accident investigation of the Board is prohibited from disclosing, orally or in written form, investigative information, as defined by the Board, to anyone who is not an employee of the Board or who is not a party representative to such investigation, except—

- (A) as provided in paragraph (2); or
- (B) at the conclusion of the fact finding stage of an investigation, which the investigator-in-charge shall announce by formal posting of a notice in the publicly available investigation docket.

(2) EXCEPTION.—If the investigator-in-charge determines that a disclosure of information related to an accident investigation is necessary to prevent additional accidents, to address a perceived safety deficiency, or to assist in the conduct of the investigation, the investigator-in-charge may at any time authorize in writing a party representative to disclose such information under conditions approved by the investigator-in-charge. Such conditions shall ensure that, until the posting of a formal notice described in paragraph (1)(B), or until the information disclosed pursuant to this paragraph becomes publicly available by any other means, neither the entity represented by the party representative nor any other person may use such information in preparation for the prosecution of any claim or defense in litigation in connection with the accident being investigated or to make or deny any insurance claim in connection with such accident.

(3) COMPLIANCE.—The Board shall require any individual who is a party representative to an investigation of the Board to sign a party agreement that includes language informing the individual of the prohibition in paragraph (1).

(4) REPRESENTATIVES OF FEDERAL AGENCIES.—Paragraph (3) shall not apply to an individual who is a representative of the Secretary of Transportation, the Secretary of the department in which the Coast Guard is operating, or any other Federal department, agency, or instrumentality participating in the investigation and deemed by the Board to be performing a law enforcement or similar function.

(5) PARTY REPRESENTATIVE DEFINED.—In this subsection, the term “party representative” means an individual representing a party to an investigation pursuant to section 831.11 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this subsection.

§ 1115. Training

(a) * * *

* * * * *

(d) TRAINING OF BOARD EMPLOYEES AND OTHERS.—The Board may conduct training of its employees in those subjects necessary for the proper performance of accident investigation theory and techniques and on transportation safety methods to advance Board safety recommendations. The Board may also authorize attendance at courses given under this subsection by other government personnel, personnel of foreign governments, and personnel from industry or otherwise who have a requirement for accident investigation training or who influence the course of transportation safety through support or adoption of Board safety recommendations. The Board may require non-Board personnel to reimburse some or all of the training costs, and amounts so reimbursed shall be credited to the appropriation of the Board as offsetting collections under section 1118(c)(2).

§ 1116. Reports and studies

(a) * * *

(b) STUDIES, INVESTIGATIONS, AND OTHER REPORTS.—The Board also shall—

(1) **carry out** conduct special studies and investigations about transportation safety, including avoiding personal injury;

* * * * *

[(3) prescribe requirements for persons reporting accidents and aviation incidents that—

[(A) may be investigated by the Board under this chapter; or

[(B) involve public aircraft (except aircraft of the armed forces and the intelligence agencies);]

(3) prescribe requirements for persons reporting accidents, as defined in section 1101(a), that may be investigated by the Board under this chapter;

* * * * *

(c) INTERIM SAFETY RECOMMENDATIONS AND MEASURES.—Nothing in this section shall restrict the Board from—

(1) making urgent safety recommendations, identified through an ongoing safety investigation or study, to any regulatory department, agency, or instrumentality of the Federal Government

or a State or local governmental authority or a person concerned with transportation safety; or

(2) recommending interim measures to mitigate risks to transportation safety pending implementation of more comprehensive responses by the appropriate department, agency, instrumentality, authority, or person.

§ 1117. Annual report

The National Transportation Safety Board shall submit a report to Congress on July 1 of each year. The report shall include—

(1) * * *

* * * * *

(5) a list of accidents, during the prior calendar year, that the Board was required to investigate under section 1131 but did not investigate and an explanation of why they were not investigated; **[and]**

(6) a list of ongoing investigations that have exceeded the expected time allotted for completion by Board order and an explanation for the additional time required to complete each such investigation~~...~~; **and**

(7) an analysis of the Board's implementation of the criteria established pursuant to section 1113(i) during the prior calendar year, including an explanation of any instance in which the Board did not hold a public hearing for an investigation of an accident that has caused significant loss of life or property damage or that may involve a national transportation safety issue.

§ 1118. Authorization of appropriations

[(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter \$57,000,000 for fiscal year 2000, \$65,000,000 for fiscal year 2001, \$72,000,000 for fiscal year 2002, \$73,325,000 for fiscal year 2003, \$78,757,000 for fiscal year 2004, \$83,011,000 for fiscal year 2005, \$87,539,000 for fiscal year 2006, \$81,594,000 for fiscal year 2007, and \$92,625,000 for fiscal year 2008. Such sums shall remain available until expended.]

(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter—

- (1) \$117,368,000 for fiscal year 2011;*
- (2) \$120,258,000 for fiscal year 2012;*
- (3) \$122,187,000 for fiscal year 2013; and*
- (4) \$124,158,000 for fiscal year 2014.*

Such sums shall remain available until expended.

* * * * *

(c) [FEES, REFUNDS, AND REIMBURSEMENTS] FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—

(1) **IN GENERAL.—**The Board may impose and collect such fees, refunds, **[and reimbursements]** *reimbursements, and advances* as it determines to be appropriate for **[services]** *activities, services, and facilities* provided by or through the Board.

(2) **RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—**Notwithstanding section 3302 of title 31, any fee, refund, **[or reimbursement]** *reimbursement, or advance* collected under this subsection—

(A) shall be credited as offsetting collections to the account that finances the [activities and services for which the fee is imposed or with which the refund or reimbursement is associated] *activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;*

(B) shall be available for expenditure only to pay the costs of [activities and services for which the fee is imposed or with which the refund or reimbursement is associated] *activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;* and

* * * * *

(3) *ANNUAL RECORD OF COLLECTIONS.*—*The Board shall maintain an annual record of collections received under paragraph (2).*

[(3)] (4) *REFUNDS.*—*The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.*

* * * * *

SUBCHAPTER III—AUTHORITY

§ 1131. **General authority**

(a) *GENERAL.*—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and [cause or probable cause] *causes or probable causes* of—

(A) * * *

* * * * *

(C) a railroad accident in which there is [a fatality or substantial property damage] *a fatality (other than a fatality involving a trespasser) or substantial property damage,* or that involves a passenger train;

* * * * *

(E) a major marine casualty (except a casualty involving only public vessels) occurring on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988, or involving a vessel of the United States (as defined in section 2101(46) of title 46), under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; [and]

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) * * *

* * * * *

(iii) the investigation of the accident would carry out this chapter[.]; and

(G) *an accident in response to an international request and delegation under appropriate international conventions, coordi-*

nated through the Department of State and accepted by the Board.

* * * * *

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)-(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about or relevant to the accident is exchanged in a timely manner.

* * * * *

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—(1) * * *

* * * * *

(3) *AUTHORITY OF BOARD REPRESENTATIVE.*—*In the case of a delegation of authority under paragraph (1), the Secretary, or a person designated by the Secretary, shall have the authority of the Board, on display of appropriate credentials and written notice of inspection authority, to enter property where the aircraft accident has occurred or wreckage from the accident is located and to gather evidence in support of a Board investigation, in accordance with rules the Board may prescribe.*

* * * * *

(f) INCIDENT INVESTIGATIONS.—

(1) *MEMORANDUM OF UNDERSTANDING.*—*Not later than 90 days after the issuance of final regulations under section 1101(a)(2), the Chairman of the Board shall seek to enter into a memorandum of understanding with the Secretary of Transportation and the head of each modal administration of the Department of Transportation that sets forth—*

(A) *an understanding of the conditions under which the Board will conduct an incident investigation that involves the applicable mode of transportation; and*

(B) *the roles and responsibilities of the parties to the memorandum when the Board is conducting an incident investigation.*

(2) *UPDATES AND RENEWALS.*—*Each memorandum of understanding required under paragraph (1) shall be updated and renewed not less than once every 5 years, unless parties to the memorandum agree that updating the memorandum is unnecessary.*

(3) *BOARD AUTHORITY.*—*Nothing in this paragraph negates the authority of the Board to investigate an incident.*

(4) *INCIDENT DEFINED.*—*In this subsection, the term “incident” means an incident described in regulations issued under section 1101(a)(2).*

* * * * *

§ 1132a. Maritime casualty investigations

(a) *DELEGATION OF AUTHORITY TO COAST GUARD.*—

(1) *IN GENERAL.*—In an investigation of a major marine casualty under section 1131(a)(1)(E), the Board, with the consent of the Secretary of the department in which the Coast Guard is operating, may delegate to the Commandant of the Coast Guard full authority to obtain the facts of the casualty. In the case of such a delegation, the Commandant, acting through the Commandant's on-scene representative, shall have the full authority of the Board.

(2) *REQUIRED TRAINING, EXPERIENCE, AND QUALIFICATIONS.*—The Board may not make a delegation under paragraph (1) unless the Board determines that the Commandant's on-scene representatives have sufficient training, experience, and qualifications in investigation, marine casualty reconstruction, evidence collection and preservation, human factors, and documentation to act in accordance with the best investigation practices of Federal and non-Federal entities.

(b) *NOTIFICATION AND REPORTING.*—The Board and the Secretary shall jointly prescribe regulations governing the notification and reporting of marine casualties to the Board.

(c) *PARTICIPATION OF COMMANDANT IN MARINE INVESTIGATIONS.*—The Board shall provide for the participation of the Commandant of the Coast Guard in an investigation by the Board of a major marine casualty under section 1131(a)(1)(E) if such participation is necessary to carry out the duties and powers of the Commandant, except that the Commandant may not participate in establishing the probable cause of the marine casualty (other than as provided in section 1131(b)).

* * * * *

§ 1134. Inspections and autopsies

(a) *ENTRY AND INSPECTION.*—An [officer or employee] officer, employee, or Federal designee of the National Transportation Safety Board in the conduct of any accident investigation or study—

(1) * * *

* * * * *

§ 1138. Evaluation and audit of National Transportation Safety Board

(a) *IN GENERAL.*—To promote economy, efficiency, and effectiveness in the administration of the programs, operations, and activities of the National Transportation Safety Board, the Comptroller General of the United States shall evaluate and audit the programs and expenditures of the National Transportation Safety Board. Such evaluation and audit shall be [conducted at least annually, but may be] conducted as determined necessary by the Comptroller General or the appropriate congressional committees.

* * * * *

SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

§ 1151. [Aviation enforcement] Enforcement

(a) *CIVIL ACTIONS BY BOARD.*—The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1114(h), 1132, 1134(b) or

(f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS BY ATTORNEY GENERAL.—On request of the Board, the Attorney General may bring a civil action in an appropriate court—

(1) to enforce section 1114(h), 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

* * * * *

(c) PARTICIPATION OF BOARD.—On request of the Attorney General, the Board may participate in a civil action to enforce section 1114(h), 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title.

* * * * *

§ 1154. Discovery and use of cockpit and surface vehicle recordings and transcripts

(a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—

(A) any part of a cockpit or surface vehicle recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title[; and]; or

* * * * *

SUBTITLE VII—AVIATION PROGRAMS

* * * * *

PART A—AIR COMMERCE AND SAFETY

* * * * *

SUBPART II—ECONOMIC REGULATION

* * * * *

CHAPTER 411—AIR CARRIER CERTIFICATES

* * * * *

§ 41113. Plans to address needs of families of passengers involved in aircraft accidents

(a) * * *

(b) CONTENTS OF PLANS.—A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

(1) * * *

* * * * *

(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months, *and that at least 60 days before the planned destruction of any unclaimed possession of a passenger a reasonable attempt will be made to notify the family of the passenger.*

* * * * *

CHAPTER 413—FOREIGN AIR TRANSPORTATION

* * * * *

§ 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents

(a) * * *

* * * * *

(c) CONTENTS OF PLANS.—To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

(1) * * *

* * * * *

(7) UNCLAIMED POSSESSIONS RETAINED.—An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident, *and that at least 60 days before the planned destruction of any unclaimed possession of a passenger a reasonable attempt will be made to notify the family of the passenger.*

* * * * *

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 33—EMBLEMS, INSIGNIA, AND NAMES

* * * * *

§ 709. False advertising or misuse of names to indicate Federal agency

Whoever, except as permitted by the laws of the United States, uses the words “national”, “Federal”, “United States”, “reserve”, or “Deposit Insurance” as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the banking, loan, building and loan,

brokerage, factorage, insurance, indemnity, savings or trust business; or

* * * * *

Whoever, except with the written permission of the Director of the United States Marshals Service, knowingly uses the words "United States Marshals Service", "U.S. Marshals Service", "United States Marshal", "U.S. Marshal", "U.S.M.S.", or any colorable imitation of any such words, or the likeness of a United States Marshals Service badge, logo, or insignia on any item of apparel, in connection with any advertisement, circular, book, pamphlet, software, or other publication, or any play, motion picture, broadcast, telecast, or other production, in a manner that is reasonably calculated to convey the impression that the wearer of the item of apparel is acting pursuant to the legal authority of the United States Marshals Service, or to convey the impression that such advertisement, circular, book, pamphlet, software, or other publication, or such play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the United States Marshals Service; or

Whoever, except with the written permission of the Chairman of the National Transportation Safety Board, knowingly uses the words "National Transportation Safety Board", the logo of the Board, the initials "NTSB", or the official seal of the Board, or any colorable imitation of such words, logo, initials, or seal, in connection with any advertisement, circular, book, pamphlet, or other publication, or any play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, or such play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the National Transportation Safety Board;

Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine under this title; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine under this title or imprisonment for not more than one year, or both.

* * * * *

MINORITY VIEWS

NTSB BACKGROUND

The NTSB is a small, but important, part of the Federal Government and makes critical contributions to our Nation's transportation safety each year. The NTSB is charged with investigating civil aviation accidents and significant transportation accidents in the surface modes—railroad, highway, marine, and pipeline. In addition, the NTSB assists the victims of aviation accidents. And, when resources allow, the NTSB also provides family assistance for accidents in other transportation modes.

The NTSB has done a tremendous service to this Nation and the traveling public in all modes of transportation for many years. In the United States, the three-year average commercial aviation accident rate is .018 accidents per 100,000 departures. Since 2001, the Federal Aviation Administration (FAA) has safely handled 101.8 million flights carrying 6.3 billion passengers in the United States—an amazing record by any standard. This unprecedented aviation safety record is due, in part, to the outstanding work over the years by hundreds of NTSB professionals as well as the Federal Aviation Administration and the aviation industry.

But even with this outstanding safety record in commercial air transportation, the tragic loss of Colgan Flight 3407 is a stark reminder that we must continue to work towards making the system even safer.

Since its creation in 1967, the NTSB has investigated more than 132,000 aviation accidents, and more than 10,000 accidents in other transportation modes. As a result of these investigations, the Board has issued a total of almost 13,000 safety recommendations and over 82 percent of those have been adopted. The NTSB has had great success with its “Most Wanted” list of transportation safety improvements. Since its inception, 300 recommendations have been placed on the “Most Wanted” list with the majority having been accepted and implemented.

Finally, the NTSB also serves as the “Court of Appeals” for any airman, mechanic or mariner whenever certificate action is taken by the FAA Administrator or the U.S. Coast Guard Commandant.

AUTHORIZATION LEVELS

H.R. 4714 provides for a four-year reauthorization—fiscal years 2011 through 2014. Given the size of the Federal deficit, and the improvement in aviation safety resulting in fewer aviation accidents requiring NTSB's attention, the Minority is concerned with the high level of funding authorized in this bill.

FY	FY 2010 Enacted (in millions)	H.R. 4714 (in millions)	Obama Administration request (in millions)
2010	\$98.05	\$117.368	\$100.4
2011	\$120.258
2012	\$124.158
2013	\$122.187
2014	\$124.158

As introduced, H.R. 4714 proposes a *twenty percent* increase in funding from 2010 to 2011, despite the state of the Federal budget and President Obama’s “freeze the discretionary budget” promise from his most recent State of the Union address. The Minority believes a better starting point for the NTSB’s funding levels is \$100.4 million, the amount requested in the fiscal year 2011 President’s Budget. The NTSB both supports and is comfortable with the President’s Budget Request of \$100.4 million for fiscal year 2011.

Even a *ten percent* increase in authorization levels, as included in the amended version of H.R. 4714, raises concerns due to the Federal deficit. H.R. 4714, as amended, would authorize a 27% increase in funding over 4 years.

The NTSB is a small, efficient, nimble agency that has operated quite successfully with FTE staffing levels in the 380s. It is accurate that during the 107th and 108th Congresses the Committee on Transportation and Infrastructure reported and the House passed NTSB reauthorization bills that provided the necessary funding to finance 479 FTEs. Those efforts occurred before the 2008–2009 recession and the ballooning Federal deficit. The Minority believes that all Federal agencies need to find ways to cut their budgets. The NTSB has recently launched investigations into areas where they lack actual jurisdiction over or where the U.S. Coast Guard or DOT can conduct the investigation without duplicitous efforts. The Minority believes that the NTSB must revisit its staffing plans in light of the economic realities all Americans are facing today.

NTSB AUTHORITY

H.R. 4714 expands the NTSB’s authority to investigate “incidents” in all modes of transportation. The bill directs the NTSB to define the term “incidents” in a rulemaking, and it is the Minority’s understanding that all Department of Transportation modal agencies will be given the opportunity to comment on and influence the NTSB’s rulemaking.

In addition, the Chairman of the NTSB is directed to enter into Memorandums of Understanding (MOU) with each appropriate modal agency in order to describe and reach understanding on the roles and responsibilities of each party in the event of an NTSB incident investigation.

The Minority believes the inclusion of “incidents” in the definition of “accidents” will require close oversight by Congress to ensure that there are no negative impacts on the ability of each modal transportation agency to investigate and conduct enforcement activities.

The potential for the NTSB to obtain evidence voluntarily from the parties involved in an incident may limit the evidence available to the modal agencies in the pursuit of an enforcement action. Therefore, how the NTSB and modal agency operate when there is an incident being investigated by both would require close scrutiny.

PARTY REPRESENTATIVE

The Minority is concerned about the impact of a provision prohibiting the disclosure of information by party representatives during an investigation. While the intent of the provision is sincere, its impact may severely harm the party representative system; a system that has served the Nation well over the years.

The Minority believes this provision requires further modification to ensure no unintended consequences, and the party representative system remains intact.

COAST GUARD

The bill authorizes a significant increase in the number of NTSB maritime casualty investigators. The bill also enables the NTSB to utilize the capabilities and expertise of the Coast Guard when the NTSB takes the lead on the investigation of a marine casualty in U.S. waters. The Minority believes the NTSB should fully leverage the Coast Guard's trained cadre of accident investigators and therefore, does not need to hire duplicative personnel to carry out the investigative and analytic work in-house.

INTERIM AND FINAL SAFETY RECOMMENDATIONS

The Minority is also concerned with a provision in the bill that clarifies nothing shall restrict the NTSB from making interim safety recommendations or from recommending interim measures to mitigate risks to transportation pending implementation of more comprehensive action by transportation agencies.

In light of the recent NTSB recommendations related to the D.C. Metro Rail accident, the Minority recognizes the provision's objective to ensure all possible safety precautions are taken. However, this amendment may cause confusion with the issuance of both interim safety recommendations and final recommendations contained in the NTSB's formal accident report.

The bill language should be modified to clarify that if the interim recommendations issued earlier in the investigation conflict with the final safety recommendations contained in the formal accident report issued at the completion of the investigation, then the final safety recommendations take precedent.

Further, the language should be modified to clarify that the NTSB's authority to issue interim measures to mitigate risks to transportation pending implementation of more comprehensive action by transportation agencies would be included in the final accident report along with longer-term recommendations.

JOHN L. MICA.