

H.R. 4714, AS AMENDED,
THE “NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2010”
INTRODUCED BY REPRESENTATIVE JAMES L. OBERSTAR
September 23, 2010

SUMMARY

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.

The legislation authorizes appropriations necessary to permit the Safety Board to continue its critical work of investigating and determining the causes of transportation incidents and accidents. Specifically, the bill:

- **Establishes necessary funding levels.** Establishes authorization levels to provide funding to allow the NTSB to meet its critical mission of investigating transportation accidents and incidents. The authorization levels will enable NTSB to meet its optimal staffing level and, ultimately, increase its staff by 66 full-time equivalent (FTE) positions to a total of 477 FTEs.

(Dollars in millions)	FY 2011	FY 2012	FY 2013	FY 2014
Funding	\$107.583	\$115.347	\$122.187	\$124.158
FTEs	436	461	477	477

The total authorization level included in H.R. 4714, as amended, is \$14.7 million less than the authorization level included in H.R. 4714, as reported by the Committee on Transportation and Infrastructure. In addition, this authorization level is less than the amount requested by the NTSB.

- **Clarifies the NTSB’s authority to investigate incidents.** Explicitly clarifies that the NTSB has the authority to investigate transportation “incidents” (i.e., events that do not involve loss of life or substantial damage but that affect transportation safety), in addition to “accidents”. The definition would be applicable to the modes of aviation, rail, pipelines, and highways.
- **Permits the NTSB to identify more than one cause of an accident.** Changes the NTSB’s primary investigative goal to determine the “causes” of an accident, when more than one cause may have contributed to the accident. The NTSB’s mandate of identifying, when applicable, more than one cause will be consistent with the practice of international accident-investigation agencies.

- **Provides for adequate on-scene, fact-finding by NTSB investigators.** Ensures that NTSB investigators, their designees, and delegates have the authority that they need to conduct on-scene, fact-finding for the NTSB, including the ability to enter the property where an accident occurred or inspect records related to an accident. Also ensures that NTSB investigators have access to the proprietary information necessary to read and interpret data from electronic navigational and other equipment in vehicles involved in accidents.
- **Requires the NTSB to develop criteria for determining whether to hold a public hearing.** Requires the NTSB to develop criteria for determining whether or not to hold a public hearing with respect to a particular investigation or safety study and to report, annually, the reasons why hearings were not held for investigations or studies that caused significant loss of life or property damage or that involve a national transportation safety issue.
- **Protects confidential information from disclosure.** Current law protects certain trade secrets from disclosure by NTSB employees in most circumstances. The bill extends that protection to cover commercial and financial information in the NTSB's possession as well, as long as such information is otherwise protected under an exemption from the disclosure requirements of the Freedom of Information Act. Also provides that these limitations on disclosure apply to disclosure of proprietary data obtained by the NTSB to read and interpret data from electronic navigational and other equipment in vehicles involved in accidents.
- **Facilitates urgent and interim safety recommendations.** Clarifies that the Safety Board is authorized to make urgent safety recommendations during an ongoing investigation when NTSB investigators identify a need for immediate safety improvements. Also clarifies that the Safety Board may, upon the conclusion of an investigation, recommend interim safety improvements that should be implemented pending adoption of the Safety Board's more far-reaching safety recommendations.
- **Prevents parties to investigations from gaining unfair advantage in tort litigation arising from accidents.** H.R. 4714 statutorily prohibits a party representative to an NTSB investigation from disclosing internal investigative information unless the NTSB investigator-in-charge authorizes it in writing for safety reasons (or unless the information has otherwise already been released to the public). These changes would prevent the party from gaining an unfair advantage in anticipated tort litigation by using privileged information to prepare a defense. Violation of this provision is punishable by a civil penalty. H.R. 4714 is consistent with recent NTSB revisions to internal procedures that apply to party representatives. In addition, this legislation requires the Government Accountability Office (GAO) to study any bias that may result in the use of the party process for investigations.
- **Authorizes the NTSB to purchase accidental death and dismemberment (AD&D) insurance for employees** who travel to hazardous locations for purposes of accident investigation, and provides that any AD&D insurance payment must be credited against the U.S. government's liability in tort in connection with the injury or death that triggered the insurance payment.

- **Facilitates cooperation between the NTSB and Coast Guard in the investigation of major marine casualties.** 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 investigation practices. Consistent with the NTSB’s current practice, the bill also requires the NTSB to provide for the participation of the Commandant of the Coast Guard in appropriate NTSB investigations. However, the Commandant would not participate in determining the probable causes of marine casualties.
- **Requires the Coast Guard and the NTSB to mutually develop notification requirements** whereby the Coast Guard will notify the Board of relevant accidents and incidents.
- **Requires air carriers to communicate certain information to the families of accident victims.** Requires air carriers’ plans to assist the families of aviation accident victims to incorporate a process to notify the family members prior to the destruction of unclaimed and unassociated personal effects.
- **Permits the NTSB to enter into cooperative agreements with nonprofit entities** for services such as course production, instruction, and software development, without the need for a formal contract. Clarifies the NTSB’s statutory authority with regard to leasing activities for special-use space relating to accidents or the provision of office space up to \$300,000. Also provides the NTSB with authority to transfer or receive supplies, personnel, or services with or without compensation.

SECTION-BY-SECTION 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.

Section 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.).

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

Section 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.

Section 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 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.

Subsection (d) authorizes the Safety Board to procure accidental death and dismemberment insurance for an employee of the Safety Board who travels to a hazardous location for purposes of accident investigation or other NTSB activity.

Section 6. Disclosure, availability, and use of information.

Where current law generally protects certain trade secrets from disclosure by NTSB employees, subsection (a) extends that protection to cover commercial and financial information in the NTSB's possession as well, as long as such information is otherwise protected under an exemption from the disclosure requirements of the Freedom of Information Act.

Subsection (a) also requires persons to properly annotate documents submitted to the Safety Board that contain trade secrets, commercial information, financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations. Furthermore, subsection (a) specifies that the NTSB's disclosures of information to protect public health and safety may include disclosures through accident investigation reports, safety studies, and safety recommendations.

Subsection (b) makes a technical change by removing the conjunction "that" from the last sentence of section 1114(d)(1) of title 49.

Subsection (c) 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 (d) amends existing law by permitting the NTSB to withhold, from public disclosure, materials acquired while assisting on an investigation of a foreign accident.

Subsection (e) 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, the 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 (e) 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 (e) contains language to ensure that the restrictions on party representatives' disclosures will not impede FAA employees' performance of their statutory obligation to ensure safe aviation operations.

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

Section 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.

Section 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.

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

Section 9. Authorization of appropriations.

Subsection (a) authorizes appropriations for the NTSB at the following levels: \$107.583 million in FY 2011, \$115.347 million in FY 2012, \$122.187 million in FY 2013, and \$124.158 million in FY 2014. According to the NTSB, its optimal staffing level has been approximately 477 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 authorization levels for FY 2011

through FY 2014 are based on increasing, over time, the number of NTSB staff to reach 477 FTE positions by FY 2013, and sustaining that staffing level through FY 2014.¹

AUTHORIZATION LEVELS
(in millions)

	FY 2010 Enacted²	FY 2011 President's Budget	FY 2011 Auth.	FY 2012 Auth.	FY 2013 Auth.	FY 2014 Auth.
Funding	\$98.05	\$100.4 ³	\$107.583	\$115.347	\$122.187	\$124.158 ⁴
FTEs	411	402	436	461	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 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).

H.R. 4714, as reported by the Committee on Transportation and Infrastructure, authorizes the funding levels requested by the NTSB.

The total authorization level included in H.R. 4714, as amended, is \$14.7 million less than the authorization level included in H.R. 4714, as reported. In addition, this authorization level is less than the amount requested by the NTSB in testimony before the Committee.

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

¹ 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).

² Consolidated Appropriations Act, 2010, P.L. 111-117 (2009).

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

⁴ 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.

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 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 progressively over the next four fiscal years, by 2013, the NTSB will be able to hire 66 additional personnel for the following safety-critical positions, and sustain these positions through FY 2014:

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

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

Section 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.⁵ The Committee believes that multiple factors often combine to cause an accident; 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

⁵ 49 C.F.R. § 801.32 (2009).

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.

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.

Section 11. Marine casualty investigations.

This section permits the NTSB to delegate, to the Coast Guard, the Safety Board's full authority to investigate major marine casualties 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 addresses issues identified by the Inspector General of the Department of Homeland Security regarding unqualified Coast Guard marine casualty investigators.

Consistent with the NTSB's current practice, this section 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.

Section 12. Inspections and autopsies.

Subsection (a) 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.

Subsection (b) clarifies the Safety Board’s authority to inspect and test any civil aircraft, engine, propeller, appliance, or property inside an aircraft involved in an accident, and it provides that movement of such aircraft, components, or property will occur only in accordance with Safety Board regulations. The subsection also clarifies that the Safety Board is authorized to obtain proprietary or other information necessary to retrieve and interpret data from any navigation, storage, or other electronic device on board an aircraft involved in an accident. Safety Board investigators must obtain such data from time to time in order to thoroughly investigate an accident.

Recognizing that such necessary data is often proprietary or otherwise classified as a trade secret or commercial or financial information, subsection (b) includes language to extend, to that data, any applicable protections from disclosure.

Subsection (c) authorizes the Safety Board to examine or test any vehicle, vessel, or rolling stock involved in an accident; to seize or otherwise obtain any recording device pertinent to an accident; and to obtain, from the manufacturer of such a device, information that is necessary to read and interpret the data on the device. Subsection (c) further provides that the Safety Board’s examination or testing of relevant vehicles, components, or other property must be carried out in a way that does not cause unnecessary interference with the transportation services provided by the owner or operator at issue.

Section 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.

Section 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.

Section 15. Notification of marine casualties.

This section requires the Coast Guard and the NTSB to mutually develop, within six months, requirements whereby the Coast Guard will promptly notify the Safety Board of marine casualties.

Section 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.