

**Calendar No. 762**

106th Congress }  
2d Session }

SENATE

{ REPORT  
{ 106-386

**NATIONAL TRANSPORTATION SAFETY  
BOARD AMENDMENTS**

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

on

S. 2412



AUGUST 25, 2000.—Ordered to be printed  
Filed under authority of the order of the Senate of July 26, 2000

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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### NATIONAL TRANSPORTATION SAFETY BOARD AMENDMENTS

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Mr. MCCAIN, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 2412]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2412) “A Bill to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2000, 2001, 2002, and 2003, and for other purposes”, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

As reported, the bill would authorize appropriations for the Safety Board in the amounts of \$57,000,000 for fiscal year (FY) 2000, \$65,000,000 for FY 2001, \$72,000,000 for FY 2002, and \$79,000,000 for FY 2003. The bill also amends the National Transportation Safety Board Act in several ways. These statutory changes include:

(1) Technical clarification of NTSB’s authority to investigate accidents to the twelve-mile limit beyond the United States coast and its investigative authority over accidents that may have been the subject of intentional acts of destruction.

(2) Permission to prescribe overtime pay rates for accident investigators.

(3) Authority to negotiate technical service agreements with foreign safety agencies or foreign governments.

(4) Authority to collect reasonable fees for the reproduction and distribution of Board products.

(5) Authority to withhold voice and video recorder information from public disclosure.

(6) Creation of a chief financial officer (CFO), with oversight for waste, fraud, and abuse by the Inspector General of the Department of Transportation (DOTIG).

#### BACKGROUND AND NEEDS

The National Transportation Safety Board is an independent agency charged with determining the probable cause of transportation accidents and promoting transportation safety. The Board investigates accidents, conducts safety studies, evaluates the effectiveness of other government agencies' programs for preventing transportation accidents, and reviews appeals of adverse certificate and civil penalty actions by the Administrators of agencies of the Department of Transportation involving airman and seaman licenses. Since its inception in 1967, the NTSB has investigated more than 110,000 aviation accidents, at least 10,000 other accidents in the surface modes and issued more than 11,000 safety recommendations.

The Board has no authority to regulate the transportation industry. Therefore, its effectiveness depends on its reputation for timely and accurate determinations of accident causation and for issuing realistic and feasible safety recommendations.

More than 82 percent of the NTSB's recommendations have been implemented, with an even higher percentage of critical safety recommendations having been adopted. Over the years, these recommendations have included, for example: a ban on the transportation of oxygen generators as cargo on passenger carrying aircraft; the extension of large air carrier safety standards to commuter airline flights in aircraft having 10 or more passenger seats; procedures to permit vehicle owners to install air bag on/off switches until new, more technologically advanced air bags are available; improved school bus construction standards; rail passenger car safety improvements; new recreational boating safety and commercial fishing vessel regulations; and, the development of one-call notification systems in all 50 states to improve protections for buried pipelines.

#### LEGISLATIVE HISTORY

The NTSB's authorization expired at the end of FY 1999 (September 30, 1999) but its funding continues through the annual appropriations process. On April 27, 1999, the NTSB submitted a three-year reauthorization request to the Senate that proposed increased funding, additional staff, and statutory changes.

The Full Committee held a hearing on the NTSB's reauthorization request on July 15, 1999. During that hearing, NTSB Chairman Jim Hall brought the Committee up to date on accident investigations in all transportation modes (civil aviation, highway, railroad, pipeline, marine), its most wanted safety improvements list, and technological changes it has utilized in investigations, such as advances in computer-generated accident simulations. Chairman Hall also highlighted the Safety Board's reauthorization submission.

On April 12, 2000, Chairman McCain introduced S. 2412, a bill authorizing funding for FYs 2000 through 2003. In open executive session on June 15, 2000, the Committee approved without objection S. 2412.

#### SUMMARY OF MAJOR PROVISIONS

S. 2412 authorizes \$57,000,000 for FY 2000, \$65,000,000 for FY 2001, \$72,000,000 for FY 2002, and \$79,000,000 for FY 2003.

The Committee recognizes the Safety Board is currently experiencing a high level of major accident investigations, many of which are extremely technologically complex. The Committee is committed to providing a sufficient level of funding to ensure the Board has the necessary personnel and resources to complete these challenging investigations and carry out its statutory mission. Therefore, the Committee agreed to support the Safety Board's funding request and to extend the reauthorization through 2003. The Committee expects these additional resources to be targeted for major accident investigation activities and transportation safety improvement activities. To further assist the Board, the legislation also would raise the Board's emergency fund to the level commensurate to that which has been appropriated in recent years.

The Committee is aware that the NTSB has had to expend enormous resources investigating a number of foreign air carrier crashes, but the NTSB has been able to recoup costs for its services.

In addition to setting authorization levels for four years, the bill also adopts a number of statutory changes as requested by the Safety Board:

1. *Voice Recorders*.—The bill includes language requested by the Safety Board to require the withholding from public disclosure of voice and video recorder information for all modes of transportation comparable to the protections already statutorily provided for cockpit voice recorders (CVRs). The bill does not require or endorse that such equipment be updated, but instead provides protections if such updates are forthcoming. This provision would be an important safeguard in ensuring that railroad, maritime, and motor vehicle recorders are protected in a manner similar to CVRs.

2. *Overtime Pay Equity*.—The bill provides the Board with authority to establish reasonable rates of overtime pay for its employees directly involved in accident-related work both on-scene and investigative. This authority was requested in acknowledgment of the extensive time spent by NTSB staff in carrying out their duties and the Board's inability under current law to more fairly compensate these employees. The authority in the bill is similar to that already provided by Congress to the Federal Aviation Administration and the Coast Guard. Bill language is included to place an annual cap on the amount of overtime pay an NTSB employee can receive under the new authority.

3. *Financial Controls*.—The Safety Board's budget has substantially increased over the years. As such, this measure includes a number of provisions to strengthen financial accountability at the Board. Currently, the NTSB is one of the few agencies of the Federal government not required to have a Chief Financial Officer (CFO). While the Board on its own initiative has established a CFO position this bill would ensure such a position of fiscal accountability is permanent. The legislation also statutorily authorizes the

Chairman to establish annual travel budgets to govern Board Member non-accident travel. After concerns were raised last year over Board Member travel, the Board Chairman established annual budgets and procedures governing non-accident related travel. These actions were an important step in addressing fiscal accountability at the Board and the Committee believes they should be continued in the future. Further, the bill would give the DOTIG the authority to review the financial management and business operations of the Board to determine compliance with applicable Federal laws, rules, and regulations.

4. *Definition Clarifications.*—The bill clarifies that the NTSB's existing jurisdiction over accidents on the navigable waters or territorial sea of the United States extends to the twelve-mile limit. Jurisdiction to the twelve-mile limit is based on international law, notably the 1982 United Nations Convention on the Law of the Sea. In 1998, twelve-mile jurisdiction authority was affirmed for the Coast Guard in its authorization. Since the NTSB and Guard function under a statutory requirement for joint rules, the use of consistent jurisdiction authority is important.

The bill also clarifies the NTSB's priority over accident scenes. With the exception of major marine investigations, investigations undertaken by the Safety Board are given priority over any investigation by another department, agency, or instrumentality of the United States Government (49 U.S.C. 1131(a)(2)). Recently several NTSB accident investigations have been impeded as other non-transportation related agencies have initiated their own separate investigations. In some investigations, court orders have been issued to prevent the NTSB from testing critical components. Safety Board investigators also have been unable to interview transportation operators as criminal and civil litigation has increased. These criminal investigations have impacted NTSB investigations into the ValuJet crash, the FineAir DC-8 cargo crash, and a grade crossing accident in Indiana.

The delays caused by these prosecution inquiries have restrained the Board's capability to make timely determinations of probable cause and issue safety recommendations. To ensure that NTSB will continue to be capable of exercising its responsibilities in a timely and judicious manner, the bill includes language reiterating NTSB's existing jurisdiction, whether the accident is accidental or intentional. The Committee fully expects the NTSB to maintain its longstanding policy of accommodating its investigatory needs to the unique needs of criminal investigations when criminal behavior is suspected or demonstrated.

The bill also contains language requiring the NTSB to renegotiate the Memorandums of Understanding (MOUs) governing investigation procedures that it currently has with the United States Coast Guard and the Federal Bureau of Investigations. These MOUs should be updated and refined as necessary to provide for a clear understanding of each agency's authority when an accident occurs.

5. *Technical Service Agreements and Collections.*—The bill would clarify the Board's existing authority to enter into agreements with foreign countries for training and technical assistance in safety regulation and aircraft certification. The Board has entered into these agreements for several years but the State Department has re-

cently indicated that the NTSB should no longer negotiate these agreements. The Safety Board participates as the official U.S. representative in foreign aircraft accidents and the subject agreements focus on accident/incident investigation and prevention. The bill language would permit the NTSB to continue to initiate and negotiate these training and technical service agreements, and to recover the costs for the training and technical services. The bill would also permit the Board to recover the costs associated with reproducing and distributing its accident reports and public dockets.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate and Section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 28, 2000.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2412, the National transportation Safety Board Amendments Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is James O'Keeffe.

Sincerely,

BARY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

#### *S. 2412—National Transportation Safety Board Amendments Act of 2000*

Summary: S. 2412 would authorize the appropriation of \$216 million for the National Transportation Safety Board (NTSB) over the 2001–2003 period and would revise various NTSB policies and procedures. The bill also would authorize the appropriation of amounts necessary to replenish the NTSB emergency fund due to future expenditures. Under the bill, certain fees collected by the NTSB would be classified as offsetting collections credited to appropriations. Finally, S. 2412 would authorize the Inspector General of the Department of Transportation to conduct audits of the NTSB's financial management and business operations and would require the NTSB to reimburse the department for such costs.

Assuming appropriation of the specified amounts, CBO estimates that implementing S. 2412 would result in discretionary spending of \$216 million over the 2001–2005 period. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 2412 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2412 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
NTSB spending under current law:						
Budget authority <sup>1</sup> .....	57	0	0	0	0	0
Estimated outlays .....	71	6	1	0	0	0
Proposed changes:						
Authorization level .....	0	65	72	79	0	0
Estimated outlays .....	0	59	71	78	8	0
NTSB spending under S. 2412:						
Authorization level <sup>1</sup> .....	57	65	72	79	0	0
Estimated outlays .....	71	65	72	78	8	0

<sup>1</sup> The 2000 level is the amount appropriated for that year.

**Basis of estimate:** For this estimate, CBO assumes that the amounts authorized by S. 2412 will be appropriated by the beginning of each fiscal year. Estimated outlays are based on historical spending by the beginning of each fiscal year. Estimated outlays are based on historical spending patterns. CBO estimates that provisions classifying certain proceeds from training services, and the sale of publications as offsetting collections would have no significant effect on discretionary spending.

Based on historical use of the NTSB emergency fund, CBO estimates that amounts required to replenish the emergency fund would be less than \$500,000 annually, subject to the availability of appropriated funds.

CBO estimates that the Inspector General of the Department of Transportation would spend less than \$500,000 a year to conduct financial audits of the NTSB and that such costs would be funded from the amounts authorized in the bill for the board.

**Pay-as-you-go considerations:** None.

**Intergovernmental and private-sector impact:** S. 2412 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

**Previous CBO estimate:** On September 24, 1999, CBO transmitted a cost estimate for H.R. 2910, the National Transportation Safety Board Amendments Act of 1999, as ordered reported by the House Committee on Transportation and Infrastructure on September 23, 1999. H.R. 2910 and S. 2412 are similar, but the Senate bill would authorize funding levels for 2001 through 2003 while the House bill extends only through 2002.

**Estimate prepared by:** Federal Costs: James O'Keeffe. Impact on the State, Local, and Tribal Governments: Victoria Heid Hall. Impact on the Private Sector: Jean Wooster.

**Estimate approved by:** Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:



## NUMBER OF PERSONS COVERED

The number of persons covered should be consistent with current levels.

## ECONOMIC IMPACT

No negative impact on the taxpayer is expected from this bill. The bill authorizes appropriations similar to currently appropriated levels. The Safety Board is also authorized to collect reimbursements for certain costs associated with training courses it conducts. These reimbursements would be credited to the NTSB as off-setting collections.

## PRIVACY

The bill as reported would have no adverse impact on the personal privacy of individuals.

## PAPERWORK

There should be no change in paperwork requirements.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section states the short title of the bill, the National Transportation Safety Board Amendments of 2000.

*Section 2. Definitions*

This section clarifies that the NTSB's existing authority to investigate accidents on the navigable waters or territorial seas of the United States extends to the twelve-mile limit. Jurisdiction to the twelve-mile limit is based on international law, notably the 1982 United Nations Convention on the Law of the Sea. In 1988, President Reagan extended the territorial sea of the United States to twelve miles from the coast. NTSB investigatory authority is expressed in terms of accidents on the navigable waters or territorial sea of the United States. The NTSB enabling law does not define territorial sea, and this change would codify the 12-mile limit. In 1998, nearly identical twelve-mile jurisdiction authority was affirmed for the Coast Guard in its authorization. This section also provides a technical change to the NTSB's authority, making it consistent with the Coast Guard's jurisdiction. The provision, however, does not affect the respective authorities of each of the two agencies to carry out investigations.

The section also clarifies the NTSB's priority over accident scenes. With the exception of major marine investigations, investigations undertaken by the Safety Board are given priority over any investigation by another department, agency, or instrumentality of the United States Government (49 U.S.C. 1131(a)(2)).

*Section 3. Authority to enter into agreements*

This section clarifies the Board's existing authority to enter into agreements with foreign countries for training and technical assistance in safety regulation and aircraft certification. The section authorizes the Board to charge reasonable fees for the provision of these services and for the expenses it incurs in the provision of the

training and technical assistance. The section requires the Board to maintain an annual record of the collections received. The fees collected would be credited to the appropriation of the Board as off-setting collections under the provision.

#### *Section 4. Overtime pay*

The section gives the Board the authority to establish reasonable rates of overtime pay for its employees directly involved in accident-related work both on-scene and investigative. The section caps a Board employee's overtime at 15 percent of the employee's annual rate of base pay.

#### *Section 5. Recorders*

The section requires the withholding from public disclosure of voice and video recorder information for all modes of transportation comparable to the protections already statutorily provided for cockpit voice recorders (CVRs). While language in the section prohibits the public disclosure of the actual voice and video recorder information, it does allow the NTSB to refer to the information when making safety recommendations.

#### *Section 6. Priority of investigations*

The section creates procedures for NTSB to turn over its investigation to the FBI when it appears that the accident was caused by an intentional criminal act. The section also requires the NTSB and the FBI to revise their 1977 agreement on the investigation of accidents to take into account the amendments made by the bill.

#### *Section 7. Public aircraft investigation clarification*

The section grants the NTSB the same authority in public aircraft accident investigations that it currently has with respect to civil aviation accident investigations to enter property where a transportation accident has occurred or wreckage from the accident is located and to test components.

#### *Section 8. Memorandum of understanding with the Coast Guard*

The section requires the NTSB and the United States Coast Guard to revise their investigation Memorandum of Understanding governing major marine accidents, to redefine or clarify the standards used to determine when the NTSB will lead a marine accident investigation, and to develop new standards to determine when a major marine casualty accident involves safety issues related to the Coast Guard's safety functions.

#### *Section 9. Travel budgets*

The section authorizes the Chairman to establish annual travel budgets to govern Board Member non-accident travel. Last year, the NTSB Chairman announced the establishment of such budgets and this section ensures that travel budgets will continue to be annually prepared. Language in the section also requires the Chairman of the Board to submit to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Transportation and Infrastructure an annual report accounting for foreign and domestic travel, including personnel or other expenses, associated with that travel.

*Section 10. Chief Financial Officer*

The section statutorily establishes a position of CFO at the Board. The Board currently has a CFO, but the Board is one of the few Federal agencies that is not statutorily required to maintain this position. The section also requires the CFO to report directly to the Chairman of the Board on financial management matters and to provide guidance on the implementation of asset management systems including property and inventory control.

*Section 11. Improved audit procedures*

The section requires the NTSB to develop and implement comprehensive internal audit controls for its financial programs based on the findings and recommendations of a private sector audit firm contract entered into by the Board in March 2000. The bill requires those reforms, at a minimum, to address the Board's asset management systems, including systems for cash and credit management, debt collection, and property and inventory management and control.

*Section 12. Authority of the Inspector General*

The section authorizes the DOTIG to review only the business and financial management of the NTSB. Currently, the Board has no standing Inspector General oversight. The section is crafted so that necessary fiscal accountability oversight is provided, while prohibiting the DOTIG from becoming involved in NTSB investigations and investigation procedures. The DOTIG would be reimbursed by the NTSB for its work.

*Section 13. Authorization of appropriations*

This section authorizes \$57,000,000 for FY 2000, \$65,000,000 for FY 2001, \$72,000,000 for FY 2002, and \$79,000,000 for FY 2003. The section also raises the Board's emergency fund to \$2,000,000. This emergency fund authorization level is commensurate with the amount that has been appropriated in recent years.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

## TITLE 49. TRANSPORTATION

## SUBTITLE II. OTHER GOVERNMENT AGENCIES

## CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

## SUBCHAPTER I. GENERAL

**[§ 1101. Definitions**

**[Section 40102(a) of this title applies to this chapter.]**

**§ 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.*

## TITLE 49. TRANSPORTATION

### SUBTITLE II. OTHER GOVERNMENT AGENCIES

#### CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

##### SUBCHAPTER II. ORGANIZATION AND ADMINISTRATIVE

### § 1111. General organization

(a) ORGANIZATION.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) APPOINTMENT OF MEMBERS.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) TERMS OF OFFICE AND REMOVAL.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(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 or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) DUTIES AND POWERS OF CHAIRMAN.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

- (1) appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;
- (2) distribute business among the officers, employees, and administrative units of the Board; and
- (3) supervise the expenditures of the Board.

(f) QUORUM.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) OFFICES, BUREAUS, AND DIVISIONS.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

- (1) Aviation.

- (2) Highway and motor vehicle.
- (3) Rail and tracked vehicle.
- (4) Pipeline.

(h) *CHIEF FINANCIAL OFFICER.*—*The Chairman shall designate an officer or employee of the Board as the Chief Financial Officer. The Chief Financial Officer shall—*

*(1) report directly to the Chairman on financial management and budget execution;*

*(2) direct, manage, and provide policy guidance and oversight on financial management and property and inventory control; and*

*(3) review the fees, rents, and other charges imposed by the Board for services and things of value it provides, and suggest appropriate revisions to those charges to reflect costs incurred by the Board in providing those services and things of value.*

[(h)] (i) *SEAL.*—The Board shall have a seal that shall be judicially recognized.

### § 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 to carry out this chapter, administer oaths, and require, by subpoena or otherwise, necessary witnesses and evidence.

(2) 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.

(3) A subpoena shall be issued under the signature of the Chairman or the Chairman's delegate but may be served by any person designated by the Chairman.

(4) If a person disobeys a subpoena, order, or inspection notice of the Board, the Board may bring a civil action in a district court of the United States to enforce the subpoena, order, or notice. An action under this paragraph may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpoena, order, or notice as a contempt of court.

(b) *ADDITIONAL POWERS.*—

(1) The Board may—

(A) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(B) make agreements and other transactions necessary to carry out this chapter without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(D) confer with employees and use services, records, and facilities of State and local governmental authorities;

(E) appoint advisory committees composed of qualified private citizens and officials of the Government and State and local governments as appropriate;

(F) accept voluntary and uncompensated services notwithstanding another law;

(G) accept gifts of money and other property;

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

[(I) require that the departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries provide appropriate consideration for the reasonable costs of goods and services supplied by the Board.]

*(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 services or training in accident investigation techniques, and require that such entities provide appropriate consideration for the reasonable costs of any facilities, 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.*

(c) SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board submits to the President or the Director of the Office of Management and Budget a budget estimate, budget request, supplemental budget estimate, other budget information, a legislative recommendation, prepared testimony for congressional hearings, and comments on legislation, the Board must submit a copy to Congress at the same time. An officer, department, agency, or instrumentality of the Government may not require the Board to submit the estimate, request, information, recommendation, testimony, or comments to another officer, department, agency, or instrumentality of the Government for approval, comment, or review before being submitted to Congress.

(d) LIAISON COMMITTEES.—The Chairman may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies, and instrumentalities of the Government, State and local governmental authorities, and independent standard-setting authorities that carry out programs and activities related to transportation safety. The Board may designate representatives to serve on or assist those committees.

(e) INQUIRIES.—The Board, or an officer or employee of the Board designated by the Chairman, may conduct an inquiry to obtain information related to transportation safety after publishing notice of the inquiry in the Federal Register. The Board or designated officer or employee may require by order a department, agency, or instrumentality of the Government, a State or local governmental authority, or a person transporting individuals or property in commerce

to submit to the Board a written report and answers to requests and questions related to a duty or power of the Board. The Board may prescribe the time within which the report and answers must be given to the Board or to the designated officer or employee. Copies of the report and answers shall be made available for public inspection.

(f) REGULATIONS.—The Board may prescribe regulations to carry out this chapter.

(g) OVERTIME PAY.—

(1) *IN GENERAL.*—Subject to the requirements of this section and notwithstanding paragraphs (1) and (2) of section 5542(a) of title 5, for an employee of the Board whose basic pay is at a rate which equals or exceeds the minimum rate of basic pay for GS-10 of the General Schedule, the Board may establish an overtime hourly rate of pay for the employee with respect to work performed at the scene of an accident (including travel to or from the scene) and other work that is critical to an accident investigation in an amount equal to one and one-half times the hourly rate of basic pay of the employee. All of such amount shall be considered to be premium pay.

(2) *LIMITATION ON OVERTIME PAY TO AN EMPLOYEE.*—An employee of the Board may not receive overtime pay under paragraph (1), for work performed in a calendar year, in an amount that exceeds 15 percent of the annual rate of basic pay of the employee for such calendar year.

(3) *BASIC PAY DEFINED.*—In this subsection, the term “basic pay” includes any applicable locality-based comparability payment under section 5304 of title 5 (or similar provision of law) and any special rate of pay under section 5305 of title 5 (or similar provision of law).

(4) *ANNUAL REPORT.*—Not later than January 31, 2001, and annually thereafter, the Board shall transmit to the Senate Committee on Commerce, Science and Transportation and the House Transportation and Infrastructure a report identifying the total amount of overtime payments made under this subsection in the preceding fiscal year.

#### **§ 1114. Disclosure, availability, and use of information**

(a) *GENERAL.*—(1) Except as provided in subsections (b), (c), [and (e)] (d), and (f) 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.

(2) *The Board shall deposit in the Treasury amounts received under paragraph (1) to be credited to the appropriation of the Board as offsetting collections.*

(b) *TRADE SECRETS.*—

(1) The Board may disclose information related to a trade secret referred to in section 1905 of title 18 only—

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(3) Protection of voluntary submission of information. Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily provided safety-related information if that information is not related to the exercise of the Board's accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(c) COCKPIT **[VOICE]** RECORDINGS AND TRANSCRIPTS.—

(1) The Board may not disclose publicly any part of a **[cockpit voice recorder]** *cockpit voice or video recorder* recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, 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 or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to **[cockpit voice recorder]** *cockpit voice or video recorder* information in making safety recommendations.

(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) 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.

**[(d)]** (e) *DRUG TESTS.*—

(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

(A) Any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

(B) Any laboratory record documenting that the test is confirmed positive.

(2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552(b)(3) of title 5—

(A) a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and

(B) medical information provided by the tested officer or employee related to the test or a review of the test.

(3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—

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

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

**[(e)]** (f) *FOREIGN INVESTIGATIONS.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose records or information relating to its participation in foreign aircraft accident investigations; except that—

(A) the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and

(B) the Board may disclose records and information when authorized to do so by the country conducting the investigation.

(2) *SAFETY RECOMMENDATIONS.*—Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations.

### § 1115. Training

(a) DEFINITION.—In this section, “Institute” means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) USE OF INSTITUTE SERVICES.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) FEES.—

(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.

(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. 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. 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 “National Transportation Safety Board, Salaries and Expenses”] *of the Board* as offsetting collections.

### § 1118. Authorization of appropriations

[(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter \$37,580,000 for fiscal year 1994, \$44,000,000 for fiscal year 1995, \$45,100,000 for fiscal year 1996, \$42,400,000 for fiscal year 1997, \$44,400,000 for fiscal year 1998, and \$46,600,000 for fiscal year 1999. Such sums shall remain available until expended.

[(b) EMERGENCY FUND.—The Board has an emergency fund of \$1,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. The following amounts may be appropriated to the fund:

[(1) \$1,000,000 to establish the fund.

[(2) Amounts equal to amounts expended annually out of the fund.]

[(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.]

**§ 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, and \$79,000,000 for fiscal year 2003, such sums to remain available until expended.*

(b) *EMERGENCY FUND.*—*The Board has an emergency fund of \$2,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. Amounts equal to the amounts expended annually out of the fund are authorized to be appropriated to the emergency fund.*

TITLE 49. TRANSPORTATION

SUBTITLE II. OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

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 of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States;

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on the navigable waters or territorial sea of the United States, or involving a vessel of the United States, 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) the accident is catastrophic;

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

**[(2) An investigation]** (2)(A) *Subject to the requirements of this paragraph, an investigation by the Board under paragraph (1)(A)–(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident.*

*(B) If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.*

*(C) If a Federal law enforcement agency suspects and notified the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.*

(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 the accident is exchanged in a timely manner.

(b) ACCIDENTS INVOLVING PUBLIC VESSELS.—

(1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.

(2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

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

(1) When asked by the Board, the Secretary of Transportation may—

(A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and

(B) report the facts and circumstances of the accident to the Board.

(2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.

(d) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and ~~1134(b)(2)~~ *1134(a), (b), (d), and (f)* of this title.

(e) ACCIDENT REPORTS.—The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.

**§ 1137. Authority of the Inspector General**

(a) *IN GENERAL.*—*The Inspector General of the Department of Transportation, in accordance with the mission of the Inspector General to prevent and detect fraud and abuse, shall have authority to review only the financial management and business operations of the National Transportation Safety Board, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations.*

(b) *DUTIES.*—*In carrying out this section, the Inspector General shall—*

*(1) keep the Chairman of the Board and Congress fully and currently informed about problems relating to administration of the internal accounting and administrative control systems of the Board;*

*(2) issue findings and recommendations for actions to address such problems; and*

*(3) report periodically to Congress on any progress made in implementing actions to address such problems.*

(c) *ACCESS TO INFORMATION.*—*In carrying out this section, the Inspector General may exercise authorities granted to the Inspector General under subsections (a) and (b) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).*

(d) *REIMBURSEMENT.*—*The Inspector General shall be reimbursed by the Board for the costs associated with carrying out activities under this section.*

TITLE 49. TRANSPORTATION

SUBTITLE II. OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER IV. ENFORCEMENT AND PENALTIES

**~~§ 1154. Discovery and use of cockpit voice and other material~~**

***§ 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 voice recorder** *cockpit or surface vehicle recorder* transcript that the National Transportation Safety Board has not made available to the public under section **1114(c)** *section 1114(c) or 1114(d)* of this title; and

(B) a **cockpit voice recorder** *cockpit or surface vehicle recorder* recording.

(2)(A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a **cockpit voice recorder** *cockpit or surface vehicle recorder* transcript if, after an in camera review of the transcript, the court decides that—

(i) the part of the transcript made available to the public under section 1114(c) of this title does not provide the party with sufficient information for the party to receive a fair trial; and

(ii) discovery of additional parts of the transcript is necessary to provide the party with sufficient information for the party to receive a fair trial.

(B) A court may allow discovery, or require production for an in camera review, of a **cockpit voice recorder** *cockpit or surface vehicle recorder* transcript that the Board has not made available under **section 1114(c)** *section 1114(c) or 1114(d)* of this title only if the **cockpit voice recorder** *cockpit or surface vehicle recorder* recording is not available.

(3) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a **cockpit voice recorder** *cockpit or surface vehicle recorder* recording if, after an in camera review of the recording, the court decides that—

(A) the parts of the transcript made available to the public under section **1114(c)** *section 1114(c) or 1114(d)* of this title and to the party through discovery under paragraph (2) of this subsection do not provide the party with sufficient information for the party to receive a fair trial; and

(B) discovery of the **cockpit voice recorder** *cockpit or surface vehicle recorder* recording is necessary to provide the party with sufficient information for the party to receive a fair trial.

(4)(A) When a court allows discovery in a judicial proceeding of a part of a **cockpit voice recorder** *cockpit or surface vehicle recorder* transcript not made available to the public under section **1114(c)** *1114(c) or 1114(d)* of this title or a **cockpit voice recorder** *cockpit or surface vehicle recorder* recording, the court shall issue a protective order—

(i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and

(ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

(B) A court may allow a part of a **cockpit voice recorder** *cockpit or surface vehicle recorder* transcript not made available to the public under section **1114(c)** *1114(c) or 1114(d)* of this title or a **cockpit voice recorder** *cockpit or surface vehicle*

*recorder* recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

(5) This subsection does not prevent the Board from referring at any time to **【cockpit voice recorder】** *cockpit or surface vehicle recorder* information in making safety recommendations.

(6) *In this subsection:*

(A) *RECORDER.*—*The term “recorder” means a voice or video recorder.*

(B) *TRANSCRIPT.*—*The term “transcript” includes any written depiction of visual information obtained from a video recorder.*

(b) *REPORTS.*—No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

