

110TH CONGRESS  
2D SESSION

# S. 3440

To amend title 49, United States Code, to enhance aviation safety.

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IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Ms. SNOWE (for herself and Ms. KLOBUCHAR) introduced the following bill;  
which was read twice and referred to the Committee on Commerce,  
Science, and Transportation

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## A BILL

To amend title 49, United States Code, to enhance aviation  
safety.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Aviation Safety En-  
5 hancement Act of 2008”.

6 **SEC. 2. AVIATION SAFETY WHISTLEBLOWER INVESTIGA-**  
7 **TION OFFICE.**

8 Section 106 of title 49, United States Code, is  
9 amended by adding at the end the following:

1       “(s) AVIATION SAFETY WHISTLEBLOWER INVES-  
2 TIGATION OFFICE.—

3           “(1) ESTABLISHMENT.—There is established in  
4 the Department of Transportation an Aviation Safe-  
5 ty Whistleblower Investigation Office (referred to in  
6 this subsection as the ‘Office’).

7           “(2) DIRECTOR.—

8           “(A) APPOINTMENT.—The head of the Of-  
9 fice shall be the Director, who shall be ap-  
10 pointed by the Secretary of Transportation.

11           “(B) QUALIFICATIONS.—The Director  
12 shall have a demonstrated ability in investiga-  
13 tions and knowledge of, or experience in, avia-  
14 tion.

15           “(C) TERM.—The Director shall be ap-  
16 pointed for a term of 5 years.

17           “(D) VACANCY.—Any individual appointed  
18 to fill a vacancy in the position of the Director  
19 occurring before the expiration of the term for  
20 which the individual’s predecessor was ap-  
21 pointed shall be appointed for the remainder of  
22 that term.

23           “(3) COMPLAINTS AND INVESTIGATIONS.—

24           “(A) AUTHORITY OF DIRECTOR.—The Di-  
25 rector shall—

1           “(i) receive complaints and informa-  
2           tion submitted by employees of persons  
3           holding certificates issued under title 14,  
4           Code of Federal Regulations, and employ-  
5           ees of the Administration concerning the  
6           possible existence of an activity relating to  
7           a violation of an order, regulation, or  
8           standard of the Administration or any  
9           other provision of Federal law relating to  
10          aviation safety;

11          “(ii) assess complaints and informa-  
12          tion submitted under clause (i) and deter-  
13          mine whether a substantial likelihood ex-  
14          ists that a violation of an order, regulation,  
15          or standard of the Administration or any  
16          other provision of Federal law relating to  
17          aviation safety may have occurred; and

18          “(iii) based on findings of the assess-  
19          ment conducted under clause (ii), submit  
20          written recommendations to the Adminis-  
21          trator of the Federal Aviation Administra-  
22          tion (referred to in this subsection as the  
23          ‘Administrator’) for further investigation  
24          or corrective actions.

1           “(B) DISCLOSURE OF IDENTITIES.—The  
2 Director shall not disclose the identity of an in-  
3 dividual who submits a complaint or informa-  
4 tion under subparagraph (A)(i) unless—

5           “(i) the individual provides written  
6 consent to the disclosure; or

7           “(ii) the Director determines, in the  
8 course of an investigation, that the disclo-  
9 sure is unavoidable.

10          “(C) INDEPENDENCE OF DIRECTOR.—The  
11 Secretary of Transportation, the Administrator,  
12 or any officer or employee of the Administra-  
13 tion may not prevent or prohibit the Director  
14 from—

15          “(i) initiating, carrying out, or com-  
16 pleting any assessment of a complaint or  
17 information submitted under subparagraph  
18 (A)(i); or

19          “(ii) reporting to Congress on any  
20 such assessment.

21          “(D) ACCESS TO INFORMATION.—In con-  
22 ducting an assessment of a complaint or infor-  
23 mation submitted under subparagraph (A)(i),  
24 the Director shall have access to all records, re-  
25 ports, audits, reviews, documents, papers, rec-

1           ommendations, and other material necessary to  
2           determine whether a substantial likelihood ex-  
3           ists that a violation of an order, regulation, or  
4           standard of the Administration or any other  
5           provision of Federal law relating to aviation  
6           safety may have occurred.

7           “(4) RESPONSES TO RECOMMENDATIONS.—The  
8           Administrator shall submit a written response to a  
9           recommendation submitted by the Director under  
10          subparagraph (A)(iii) and retain records related to  
11          any further investigations or corrective actions taken  
12          in response to the recommendation.

13          “(5) INCIDENT REPORTS.—If the Director de-  
14          termines there is a substantial likelihood that a vio-  
15          lation of an order, regulation, or standard of the Ad-  
16          ministration or any other provision of Federal law  
17          relating to aviation safety may have occurred that  
18          requires immediate corrective action, the Director  
19          shall expeditiously report the potential violation to  
20          the Administrator and the Inspector General of the  
21          Department of Transportation.

22          “(6) REPORTING OF CRIMINAL VIOLATIONS TO  
23          INSPECTOR GENERAL.—If the Director has reason-  
24          able grounds to believe that there has been a viola-  
25          tion of Federal criminal law, the Director shall expe-

1       ditionously report the violation to the Inspector Gen-  
2       eral.

3               “(7) ANNUAL REPORTS TO CONGRESS.—Not  
4       later than October 1 of each year, the Director shall  
5       submit a report to Congress that contains—

6               “(A) information on the number of com-  
7       plaints submitted and information received by  
8       the Director under paragraph (3)(A)(i) during  
9       the preceding 12-month period;

10              “(B) summaries of the submissions de-  
11       scribed in subparagraph (A);

12              “(C) summaries of further investigations  
13       and corrective actions recommended in response  
14       to the submissions described in subparagraph  
15       (A); and

16              “(D) summaries of the responses of the  
17       Administrator to the recommendations de-  
18       scribed in subparagraph (C).”.

19       **SEC. 3. MODIFICATION OF CUSTOMER SERVICE INITIATIVE.**

20       (a) FINDINGS.—Congress finds the following:

21              (1) Subsections (a) and (d) of section 40101 of  
22       title 49, United States Code, directs the Federal  
23       Aviation Administration (in this section referred to  
24       as the “Administration”) to make safety its highest  
25       priority.

1           (2) In 1996, to ensure that there would be no  
2 appearance of a conflict of interest for the Adminis-  
3 tration in carrying out its safety responsibilities,  
4 Congress amended section 40101(d) of such title to  
5 remove the responsibilities of the Administration to  
6 promote airlines.

7           (3) Despite these directives from Congress re-  
8 garding the priority of safety, the Administration—

9                   (A) issued a vision statement in which it  
10 stated that the vision of the Administration in-  
11 cludes “being responsive to our customers and  
12 accountable to the public”; and

13                   (B) issued a customer service initiative in  
14 2003, which required aviation inspectors to  
15 treat air carriers and other aviation certificate  
16 holders as “customers” rather than as regu-  
17 lated entities.

18           (4) The initiatives described in paragraph (3)  
19 appear to have given regulated entities and Adminis-  
20 tration inspectors the impression that the manage-  
21 ment of the Administration gives an unduly high pri-  
22 ority to the satisfaction of regulated entities regard-  
23 ing its inspection and certification decisions and  
24 other lawful actions of its safety inspectors.

1           (5) As a result of the emphasis on customer  
2           satisfaction, some managers of the Administration  
3           have discouraged vigorous enforcement and replaced  
4           inspectors whose lawful actions adversely affected an  
5           air carrier.

6           (b) MODIFICATION OF INITIATIVE.—Not later than  
7           90 days after the date of the enactment of this Act, the  
8           Administrator of the Federal Aviation Administration  
9           shall modify the customer service initiative, mission, and  
10          vision statements, and other statements of policy of the  
11          Administration—

12           (1) to remove any reference to air carriers and  
13           other entities regulated by the Administration as  
14           “customers”;

15           (2) to clarify that in regulating safety, the only  
16           customers of the Administration are individuals trav-  
17           eling on aircraft; and

18           (3) to clarify that air carriers and other entities  
19           regulated by the Administration do not have the  
20           right to select the employees of the Administration  
21           who will inspect their operations.

22          (c) SAFETY PRIORITY.—In carrying out the Adminis-  
23          trator’s responsibilities, the Administrator shall ensure  
24          that safety is given a higher priority than preventing the  
25          dissatisfaction of an air carrier or other entity regulated

1 by the Administration with an employee of the Adminis-  
2 tration.

3 **SEC. 4. POST-EMPLOYMENT RESTRICTIONS FOR FLIGHT**  
4 **STANDARDS INSPECTORS.**

5 (a) IN GENERAL.—Section 44711 of title 49, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

8 “(d) POST-EMPLOYMENT RESTRICTIONS FOR  
9 FLIGHT STANDARDS INSPECTORS.—

10 “(1) PROHIBITION.—A person holding an oper-  
11 ating certificate issued under title 14, Code of Fed-  
12 eral Regulations, may not engage in employment ne-  
13 gotiations, knowingly employ, or make a contractual  
14 arrangement of employment with an employee of the  
15 Federal Aviation Administration if the individual, in  
16 the preceding 2-year period—

17 “(A) served as, or was responsible for over-  
18 sight of, a flight standards inspector of the  
19 Agency; and

20 “(B) had responsibility to inspect, or over-  
21 see inspection of, the operations of the certifi-  
22 cate holder.

23 “(2) WRITTEN AND ORAL COMMUNICATIONS.—

24 For purposes of paragraph (1), an individual shall  
25 be considered to be acting as an agent or representa-



1 fied in subsection (a) or the last day of the 2-year period  
2 beginning on such date of enactment, whichever is later.

3 (c) ISSUANCE OF ORDER.—Not later than 90 days  
4 after the date of enactment of this Act, the Administrator  
5 of the Federal Aviation Administration shall issue an  
6 order to carry out this section.

7 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated to the Administrator  
9 such sums as may be necessary to carry out this section.

10 **SEC. 6. IMPROVED VOLUNTARY DISCLOSURE REPORTING**  
11 **SYSTEM.**

12 (a) DEFINED TERM.—In this section, the term “Vol-  
13 untary Disclosure Reporting Program” means the pro-  
14 gram established by the Federal Aviation Administration  
15 through Advisory Circular 00–58A, dated September 8,  
16 2006.

17 (b) VERIFICATION AND EVALUATION.—The Adminis-  
18 trator of the Federal Aviation Administration shall modify  
19 the Voluntary Disclosure Reporting Program to require  
20 inspectors to—

21 (1) verify that air carriers implement com-  
22 prehensive solutions to correct the underlying causes  
23 of the violations voluntarily disclosed by such air  
24 carriers; and

1           (2) evaluate, before accepting a new report of  
2           a previously disclosed violation, whether the air car-  
3           rier took the actions described in paragraph (1).

4           (c) SUPERVISORY REVIEW OF VOLUNTARY SELF-  
5 DISCLOSURES.—The Administrator shall establish a proc-  
6 ess by which voluntary self-disclosures received from air  
7 carriers are reviewed and approved by a supervisor after  
8 the initial paper review by an inspector.

9 **SEC. 7. NATIONAL REVIEW TEAM.**

10          (a) ESTABLISHMENT.—The Administrator of the  
11 Federal Aviation Administration shall establish a National  
12 Review Team, comprised of Federal Aviation Administra-  
13 tion inspectors who are serving or have served as principal  
14 supervisory inspectors.

15          (b) RESPONSIBILITIES.—The National Review Team  
16 shall conduct periodic, unannounced audits of air carrier  
17 operations and maintenance practices and procedures to  
18 evaluate air carrier oversight carried out by the Federal  
19 Aviation Administration throughout the United States.

20          (c) SUPERVISION.—The National Review Team shall  
21 be directly supervised by the Associate Administrator for  
22 Aviation Safety.

23          (d) LIMITATION.—The Associate Administrator for  
24 Aviation Safety shall prohibit each member of the Na-  
25 tional Review Team from participating in any audit de-

1 scribed in subsection (b) if such member had previously  
2 had the responsibility for inspecting, or overseeing the in-  
3 spection of, the operations of the air carrier that is the  
4 subject of such audit.

5 **SEC. 8. HEADQUARTERS REVIEW OF AIR TRANSPORTATION**  
6 **OVERSIGHT SYSTEM DATABASE.**

7 (a) **REVIEWS.**—The Administrator of the Federal  
8 Aviation Administration shall establish a process by which  
9 the air transportation oversight system database of the  
10 Federal Aviation Administration is reviewed by a team of  
11 employees of the Administration on a monthly basis to en-  
12 sure—

13 (1) the identification of any trends in regu-  
14 latory compliance; and

15 (2) that appropriate corrective actions are  
16 taken in accordance with Administration regulations,  
17 advisory directives, policies, and procedures.

18 (b) **MONTHLY TEAM REPORTS.**—

19 (1) **IN GENERAL.**—The team of employees con-  
20 ducting a monthly review of the air transportation  
21 oversight system database under subsection (a) shall  
22 submit a report on the results of the review to the  
23 Administrator, the Associate Administrator for Avia-  
24 tion Safety, and the Director of Flight Standards.

1           (2) CONTENTS.—Each report submitted under  
2 paragraph (1) shall identify—

3           (A) any trends in regulatory compliance  
4 discovered by the team of employees in con-  
5 ducting the monthly review; and

6           (B) any corrective actions taken or pro-  
7 posed to be taken in response to the trends.

8           (c) QUARTERLY REPORTS TO CONGRESS.—The Ad-  
9 ministrator shall submit a quarterly report to the Com-  
10 mittee on Commerce, Science, and Transportation of the  
11 Senate and the Committee on Transportation and Infra-  
12 structure of the House of Representatives that—

13           (1) describes the results of the reviews of the  
14 air transportation oversight system database con-  
15 ducted under this section; and

16           (2) includes copies of reports received under  
17 subsection (b).

18 **SEC. 9. RULEMAKING.**

19           Not later than 90 days after the date of the enact-  
20 ment of this Act, the Administrator of the Federal Avia-  
21 tion Administration shall prescribe regulations to carry  
22 out this Act and the amendments made by this Act.

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