

111TH CONGRESS  
1ST SESSION

# S. 2768

To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2010 through 2014, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 2009

Mr. DORGAN (for himself, Mr. ROCKEFELLER, and Mr. LAUTENBERG) 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 authorize appropriations for the National Transportation Safety Board for fiscal years 2010 through 2014, and for other purposes.

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 “National Transpor-  
5       tation Safety Board Reauthorization Act of 2009”.

6       **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

7       (a) IN GENERAL.—Section 1118(a) of title 49,  
8       United States Code, is amended to read as follows:

1       “(a) IN GENERAL.—There are authorized to be ap-  
2       propriated for the purposes of this chapter \$100,000,000  
3       for fiscal year 2010, \$105,000,000 for fiscal year 2011,  
4       \$112,000,000 for fiscal year 2012, \$118,000,000 for fis-  
5       cal year 2013, and \$124,000,000 for fiscal year 2014.  
6       Such sums shall remain available until expended.”.

7       (b) FEES, REFUNDS, REIMBURSEMENTS, AND AD-  
8       VANCES.—Section 1118(c) of such title is amended to read  
9       as follows:

10       “(c) FEES, REFUNDS, REIMBURSEMENTS, AND AD-  
11       VANCES.—

12               “(1) IN GENERAL.—The Board may impose  
13       and collect such fees, refunds, reimbursements, and  
14       advances as it determines to be appropriate for ac-  
15       tivities, services, and facilities provided by or  
16       through the Board.

17               “(2) RECEIPTS CREDITED AS OFFSETTING COL-  
18       LECTIONS.—Notwithstanding section 3302 of title  
19       31, any fee, refund, reimbursement, or advance col-  
20       lected under this subsection—

21                       “(A) shall be credited as offsetting collec-  
22       tions to the account that finances the activities,  
23       services, or facilities for which the fee, refund,  
24       reimbursement, or advance is associated;

1           “(B) shall be available for expenditure only  
 2           to pay the costs of activities, services, or facili-  
 3           ties for which the fee, refund, reimbursement,  
 4           or advance is associated; and

5           “(C) shall remain available until expended.

6           “(3) RECORD.—The Board shall maintain an  
 7           annual record of collections received under para-  
 8           graph (2).

9           “(4) REFUNDS.—The Board may refund any  
 10          fee or advance paid by mistake or any amount paid  
 11          in excess of that required.”.

12 **SEC. 3. TECHNICAL CORRECTIONS.**

13          (a) DEFINITIONS.—Section 1101 of title 49, United  
 14          States Code, is amended by striking “otherwise.” and in-  
 15          serting “otherwise, and may include incidents not involv-  
 16          ing destruction or damage, but significantly affecting  
 17          transportation safety, as the Board may prescribe or Con-  
 18          gress may direct.”.

19          (b) GENERAL ORGANIZATION.—Section 1111(d) of  
 20          title 49, United States Code, is amended by striking “ab-  
 21          sent” and inserting “unavailable”.

22          (c) ADMINISTRATIVE.—Section 1113 of title 49,  
 23          United States Code, is amended—

24                  (1) by inserting “or depositions” in paragraph

25                  (a)(1) after “hearings”; and

1           (2) by inserting “In the interest of transpor-  
2           tation safety, the Board shall have the authority by  
3           subpoena to summon witnesses and obtain any and  
4           all evidence relevant to an accident investigation  
5           conducted under this chapter.” after “(2)” in sub-  
6           section (a)(2).

7           (d) DISCLOSURE, AVAILABILITY, AND USE OF IN-  
8           FORMATION.—Section 1114 of title 49, United States  
9           Code, is amended—

10           (1) by striking the heading for subsection (b)  
11           and inserting “(b) TRADE SECRETS; COMMERCIAL  
12           OR FINANCIAL INFORMATION.—”;

13           (2) by inserting “submitted to the Board in the  
14           course of a Board investigation or study and” in  
15           subsection (b)(1) after “information” the first place  
16           it appears;

17           (3) by striking “title 18” in subsection (b)(1)  
18           and inserting “title 18, or commercial or financial  
19           information,”;

20           (4) by striking “safety” in subsection (b)(1)(D)  
21           the first place it appears and inserting “safety, in-  
22           cluding through the issuance of reports of accident  
23           investigation or safety studies and safety rec-  
24           ommendations,”;

1           (5) by inserting “subparagraphs (A) through  
2           (C) of” after “under” in subsection (b)(2);

3           (6) by adding at the end of subsection (b) the  
4           following:

5           “(4) Each person submitting to the Board trade se-  
6           crets, commercial or financial information, or information  
7           that could be classified as controlled under the Inter-  
8           national Traffic in Arms Regulations shall appropriately  
9           annotate the information to indicate the restricted nature  
10          of the information in order to facilitate proper handling  
11          of such materials by the Board.”;

12          (7) by striking “shall” in paragraph(1)(A) of  
13          subsection (f) and inserting “may”;

14          (8) by striking “information” in paragraph (2)  
15          of subsection (f) and inserting “information, or  
16          other relevant information authorized for disclosure  
17          under this chapter,”; and

18          (9) by adding at the end thereof the following:

19          “(g) ONGOING BOARD INVESTIGATIONS.—(1) Not-  
20          withstanding any other provision of law, neither the  
21          Board, nor any agency receiving information from the  
22          Board, may publicly disclose records related to an ongoing  
23          Board investigation, and such records shall be exempt  
24          from disclosure under section 552(b)(3) of title 5. Not-  
25          withstanding the preceding sentence, the Board may make

1 public specific records relevant to the investigation, release  
2 of which in the Board’s judgment is necessary to promote  
3 transportation safety—

4           “(A) if the Board holds a public hearing on the  
5 accident or incident, at the time of the hearing;

6           “(B) if the Board does not hold a public hear-  
7 ing, at the time the Board determines that substan-  
8 tial portions of the underlying factual reports on the  
9 accident or incident, and supporting evidence, will be  
10 placed in the public docket; or

11           “(C) if the Board determines during an ongoing  
12 investigation or study that circumstances warrant  
13 disclosure of specific factual material and that such  
14 material need be placed in the public docket to facili-  
15 tate dialogue with other agencies or instrumental-  
16 ities, regulatory bodies, industry or industry groups,  
17 or Congress.

18           “(2) This subsection does not prevent the Board from  
19 referring at any time to evidence from an ongoing inves-  
20 tigation in making safety recommendations.

21           “(3) In this subsection, the term ‘ongoing investiga-  
22 tion’ means that period beginning at the time the Board  
23 is notified of an accident or incident and ending when the  
24 Board issues a final report or brief, or determines to close  
25 an investigation without issuing a report or brief.”.

1 (e) REPORTS AND STUDIES—Section 1116(b) of title  
2 49, United States Code, is amended—

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

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

7 “(3) prescribe requirements for persons report-  
8 ing accidents and incidents that may be investigated  
9 by the Board under this chapter;”.

10 (f) DISCOVERY AND USE OF COCKPIT AND SURFACE  
11 VEHICLE RECORDINGS AND TRANSCRIPTS.—Section  
12 1154(a)(1)(A) of title 49, United States Code, is amended  
13 by striking “and” and inserting “or”.

14 **SEC. 4. AUTHORITY OF THE BOARD.**

15 (a) EVALUATION AND AUDIT.—Section 1138(a) of  
16 title 49, United States Code, is amended by striking “con-  
17 ducted at least annually, but may be”.

18 (b) TRAINING OF BOARD EMPLOYEES AND OTH-  
19 ERS.—Section 1115(d) of title 49, United States Code, is  
20 amended—

21 (1) by striking “investigation.” and inserting  
22 “investigation, including investigation theory and  
23 techniques and transportation safety, to advance  
24 Board safety recommendations.”;

1           (2) by striking “training.” and inserting “train-  
2           ing or who influence transportation safety through  
3           support or adoption of Board safety recommenda-  
4           tions.”; and

5           (3) by striking “collections.” and inserting “col-  
6           lections under the provisions of section 1118 of this  
7           chapter.”.

8           (c) ACCIDENT INVESTIGATION AUTHORITY.—Section  
9           1131 of title 49, United States Code, is amended—

10           (1) by striking subsection (a)(1)(C) and insert-  
11           ing the following:

12           “(C) a freight or passenger railroad accident in  
13           which there is a fatality (other than a fatality involv-  
14           ing a trespasser), substantial property damage, or  
15           significant injury to the environment;”;

16           (2) by striking “and” after the semicolon in  
17           subsection (a)(1)(E);

18           (3) by inserting “or incident” after “accident”  
19           each place it appears in subsection (a)(1)(F);

20           (4) by striking “chapter.” in subsection  
21           (a)(1)(F) and inserting “chapter;”;

22           (5) by adding at the end of subsection (a)(1)  
23           the following:

24           “(G) an accident or incident in response to an  
25           international request and delegation under appro-



1        appropriate international conventions, coordinated through  
2        the Department of State and accepted by the Board;  
3        and

4            “(H) an incident or incidents significantly af-  
5        fecting transportation safety, as defined by the  
6        Board, under rules and in such detail as the Board  
7        may prescribe.”;

8            (6) by striking “paragraph (1)(A)–(D) or (F)”  
9        in subsection (a)(2)(A) and inserting “any of sub-  
10       paragraphs (A) through (F) of paragraph (1)”;

11           (7) by inserting “or incident” after “accident”  
12       each place it appears in subsection (a)(3);

13           (8) by inserting “or relevant to” after “devel-  
14       oped about” in subsection (a)(3);

15           (9) by inserting “AND INCIDENT” after “ACCI-  
16       DENT” in the heading for subsection (e); and

17           (10) by inserting “and incident” in subsection  
18       (e) after “each accident”.

19        (d) CIVIL AIRCRAFT AND MARITIME ACCIDENT IN-  
20       VESTIGATIONS.—

21            (1) IN GENERAL.—Section 1132 of title 49,  
22       United States Code, is amended—

23            (A) by inserting “or have investigated” in  
24       subsection (a)(1) after “investigate”;

1 (B) by striking “aircraft.” in subsection  
2 (a)(1)(A) and inserting “aircraft or commercial  
3 space launch vehicle.”; and

4 (C) by adding at the end the following:

5 “(e) **AUTHORITY OF BOARD REPRESENTATIVE.**—The  
6 Board may, with the consent of the Secretary, delegate  
7 to the Department of Transportation full authority to ob-  
8 tain the facts of any aviation accident or incident the  
9 Board shall investigate, and the on-scene representative  
10 of the Secretary shall have the full authority of the Board  
11 to, on display of appropriate credentials and written notice  
12 of inspection authority, enter property where an aviation  
13 accident has occurred or wreckage from the accident is  
14 located and do anything necessary to gather evidence in  
15 support of a Board investigation, in accordance with such  
16 rules as the Board may prescribe.

17 “(f) **MARITIME ACCIDENT INVESTIGATIONS.**—The  
18 Board may, with the consent of the Secretary of the de-  
19 partment in which the Coast Guard is operating, delegate  
20 to the Coast Guard full authority to obtain the facts of  
21 any maritime accident or incident the Board shall inves-  
22 tigate, and the on-scene representative of the Com-  
23 mandant of the Coast Guard shall have the full authority  
24 of the Board to, on display of appropriate credentials and  
25 written notice of inspection authority, enter property

1 where a maritime accident has occurred or wreckage from  
 2 the accident is located and do anything necessary to gath-  
 3 er evidence in support of a Board investigation, in accord-  
 4 ance with such rules as the Board may prescribe.”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) The heading for section 1132 of title  
 7 49, United States Code, is amended to read as  
 8 follows:

9 “§ 1132. **Civil aircraft and maritime accident inves-**  
 10 **tigations”.**

11 (B) The table of contents for chapter 11 of  
 12 title 49, United States Code, is amended by  
 13 striking the item relating to section 1132 and  
 14 inserting the following:

“1132. Civil aircraft and maritime accident investigations”.

15 (e) INSPECTIONS AND AUTOPSIES.—Section 1134 of  
 16 title 49, United States Code, is amended—

17 (1) by striking “officer or employee of the Na-  
 18 tional Transportation Safety Board—” in subsection  
 19 (a) and inserting “officer, employee, or designee of  
 20 the National Transportation Safety Board in the  
 21 conduct of any accident or incident investigation or  
 22 study—”;

23 (2) by adding at the end of subsection (b)(1)  
 24 the following: “The Board may download or seize  
 25 any recording device and recordings and may require

1 specific information only available from the manu-  
2 facturer to enable the Board to read and interpret  
3 any flight parameter or navigation storage device or  
4 media on board the accident aircraft. The provisions  
5 of section 1114(b) of this chapter shall apply to  
6 matters properly identified as trade secrets or com-  
7 mercial or financial information.”; and

8 (3) by inserting after “component.” in sub-  
9 section (c) the following: “The officer or employee  
10 may download or seize any recording device and re-  
11 cordings, and may require the production of specific  
12 information only available from the manufacturer to  
13 enable the Board to read and interpret any oper-  
14 ational parameter or navigation storage device or  
15 media on board the accident vehicle, vessel, or roll-  
16 ing stock. The provisions of section 1114(b) of this  
17 chapter shall apply to matters properly identified as  
18 trade secrets or commercial or financial informa-  
19 tion.”.

20 **SEC. 5. AVIATION PENALTIES AND FAMILY ASSISTANCE.**

21 (a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION  
22 ACCIDENTS.—Section 41113(b)(7) of title 49, United  
23 States Code is amended by striking “months.” and insert-  
24 ing “months and that, prior to destruction of unclaimed  
25 possessions, a reasonable attempt will be made to notify

1 the family of each passenger within 60 days of any  
2 planned destruction date.”.

3 (b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION  
4 ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section  
5 41313(c)(7) of title 49, United States Code is amended  
6 by striking “accident.” and inserting “accident and that,  
7 prior to destruction of unclaimed possessions, a reasonable  
8 attempt will be made to notify the family of each pas-  
9 senger within 60 days of any planned destruction date.”.

○