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The National Transportation Safety Board: Background and Issues for Reauthorization and Congressional Oversight

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Summary

The National Transportation Safety Board (NTSB) is a small, independent agency charged with the task of investigating transportation accidents; conducting transportation safety studies; issuing safety recommendations; aiding victim's families in aviation disasters; and promoting transportation safety. Funding authorization for NTSB expired at the end of FY2002. In the 108th Congress, NTSB reauthorization bills (H.R. 1579/S. 579) have been reported out of committee in both houses. The House is scheduled to take up H.R. 1579 on May 15, 2003. Issues for NTSB reauthorization include transfer of family assistance responsibilities to law enforcement agencies when it is determined that a transportation disaster was the result of a criminal act; funding the NTSB Academy; clarifying NTSB's relief from federal contracting requirements for investigation-related procurement; expanding the role of NTSB's disaster assistance to transportation modes other than aviation; and expanding or redefining the scope of NTSB's investigative role in selected transportation safety issues.

NTSB Background

NTSB History. The NTSB was established in 1967 as part of the newly formed Department of Transportation (DOT). In 1974, Congress passed the Independent Safety Board Act of 1974 (in P.L. 93-633) making the NTSB completely separate from the DOT. Doing so gave NTSB complete independence from DOT, thereby allowing the agency to carry out unbiased investigations and make recommendations regarding safety regulations and oversight practices of DOT without the public perception of conflicting interests. Over the course of its 35 year history the NTSB has established a worldwide reputation as a model agency for investigating accidents and identifying needed transportation safety improvements. Through the issuance of safety recommendations and advocacy for transportation safety needs, the NTSB has earned significant respect from the Congress for its efforts in identifying needed transportation safety improvements and maintaining public confidence in transportation safety.

NTSB Organization. The NTSB consists of a five member board and a staff of slightly more than 400, about half of which are located at its Washington, DC headquarters and the rest distributed among several regional offices throughout the United States. The Safety Board members, presidentially appointed with the advice and consent of the Senate, serve 5-year terms and may continue to serve beyond their term until a replacement board member is appointed. Not more than 3 Safety Board members may be appointed from the same political party, and at least 3 members must be appointed on the basis of technical qualifications, professional standing, and knowledge of transportation safety issues. The Safety Board is supported by the NTSB's technical and administrative staff that carry out the mission of the NTSB including conducting investigations and safety studies and prepare safety recommendations and safety advocacy materials.

NTSB Mission. The NTSB investigates the following transportation-related accidents and safety issues:

- All accidents involving civil aircraft and public aircraft, other than military or intelligence agency aircraft, within the United States and its territories;
- Selected highway and railroad grade crossing accidents;
- Railroad accidents involving passenger trains, loss of life, or significant property damage;
- Pipeline accidents involving significant property or environmental damage, or loss of life;
- Major marine casualties, except those involving only public vessels, occurring on the navigable waters or territorial sea of the United States, or involving U.S. flag vessels, jointly with the Coast Guard; and
- Other selected catastrophic accidents or recurring problems involving transportation safety.¹

Additionally, the NTSB renders assistance to the families of passengers involved in air carrier accidents, and handles appeals of certificate actions by the FAA or the Coast Guard and certain appeals involving civil penalties for enforcement actions by the FAA. The NTSB also maintains a database of civil aviation accidents and conducts special studies of selected transportation safety issues.² In accordance with international treaties, the NTSB also participates in investigations of foreign aviation accidents involving any U.S. manufactured or registered aircraft.

While the NTSB has no authority to change transportation safety regulations and practices, its principal means for effecting change in transportation safety is through the issuance of safety recommendations to regulators, operators, and users of transportation systems. Since investigations of complex accidents may take several years, the NTSB routinely issues recommendations over the course of an investigation as needed safety improvements are identified. NTSB highlights its key safety recommendations on a list of "Most Wanted" safety improvements that currently includes:

¹ See U.S. Code, Title 49, Section 1131.

² See "About the NTSB: History and Mission", [http://www.nts.gov/Abt_NTSB/history.htm]

- Improving automobile child occupant protection;
- Reducing human fatigue in transportation operations;
- Improving event recorders including: cockpit video systems, recorders for commercial highway vehicles, more crashworthy railroad event recorders, and improved flight data recorder maintenance;
- Preventing runway incursions at airports;
- Mitigating the hazards of structural icing on aircraft;
- Eliminating explosive fuel air mixtures in fuel tanks on transport category aircraft to prevent explosions such as TWA flight 800 in 1996;
- Implementing a collision avoidance system for railroads;
- Improving the safety standards of commercial trucks and buses;
- Strengthening enforcement laws requiring seatbelt usage;
- Promoting youth highway safety through graduated licensing, tougher underage drinking and driving laws, and nighttime restrictions for novice drivers;
- Enhancing recreational boating safety; and
- Enhancing marine post-accident drug and alcohol testing.

These “Most Wanted” transportation safety improvements typically encompass multiple safety recommendations requesting action from the DOT, the states, and Congress for regulatory change to address these safety concerns.

While there is no statutory requirement to adopt NTSB-issued safety recommendations, the NTSB’s ability to bring about transportation safety enhancements is rooted in its long-standing reputation for thorough investigation and assessment of needed safety improvements. NTSB’s safety recommendations and safety advocacy programs have influenced the regulatory agenda of transportation agencies regarding safety initiatives and have also influenced Congressional decision making and oversight of transportation safety issues. According to the NTSB, as of April 2002, it had issued almost 12,000 safety recommendations across all modes of transportation over its 35 year history, of which about 82% led to the implementation of acceptable safety improvements. Despite the generally high level of acceptance of NTSB-issued safety recommendations, there is some concern over the amount of time it can take to implement recommended safety improvements. One significant factor contributing to the length of time it can take to adopt NTSB safety recommendations is the process of assessing the feasibility, cost, and benefits of adopting a recommendation and developing an implementation plan which is left up to the recipient of a safety recommendation. NTSB is attempting to improve this process by working more closely and collaboratively with DOT agencies when drafting safety recommendations to better ensure that these recommendations can be implemented in a timely and acceptable manner. Nonetheless, Congress may want to examine NTSB’s efforts to liaison with other transportation agencies to determine if the safety recommendation process can be further improved to implement needed safety measures in a more timely and acceptable manner.

Reauthorization Issues

Funding Authorization and Appropriations. Funding authorization for the NTSB expired on Oct 1, 2002. During the second session of the 107th Congress, bills were passed separately in both the House and the Senate to reauthorize the NTSB (see H.R. 4466 and S. 2949). Senator John McCain introduced S. 579 on March 7, 2003 to

reauthorize the National Transportation Safety Board. S. 579, which was ordered reported favorably without amendments by the Senate Committee on Commerce, Science, and Transportation on March 13, 2003. Representative Don Young introduced a bill to reauthorize the NTSB (H.R. 1527) on April 1, 2003. The House Committee on Transportation and Infrastructure reported H.R. 1527 (H.Rept. 108-83) on May 1, 2003. Both bills, which would authorize appropriations for the NTSB from FY2003 through FY2006, provide the same funding levels:

Table 1. NTSB Authorization Levels (in \$M) in H.R. 1527/S. 579

Fiscal Year	Authorization	NTSB Academy ³
2003	73.325	3.347
2004	78.757	4.896
2005	83.011	4.995
2006	87.539	5.200

In addition to these funds, S. 579 provides for such sums as may be necessary to increase the NTSB's emergency fund, used for unforeseen complexities in accident investigation such as underwater recovery of wreckage, to \$3M, while H.R. 1527 would authorize a level of \$6 million. The Consolidated Appropriations Resolution for FY2003 (P.L. 108-7) specifies a funding level of \$72.45M. This funding level was \$1.97M above the budget request and the additional sums are designated for 25 new positions, pay of true overtime for investigators, and implementation of financial management initiatives. The President's budget request for FY2004 is \$71.48M.

Family Assistance for Intentional Criminal Acts. The Aviation Disaster Family Assistance Act of 1996 (in P. L. 104-264) requires the NTSB to coordinate Federal efforts to assist family members following an aviation disaster. The NTSB seeks legislation to clarify its role in providing assistance to the families of victims once a determination is made that an aviation disaster was the result of an intentional criminal act. H.R. 1527 and S. 579 contain language that would transfer the responsibility of family assistance from the NTSB to the FBI when it has been determined that an aviation disaster resulted from an intentional criminal act and the NTSB relinquishes its lead investigative role to criminal investigators.

Sustaining Operations of the NTSB Academy. P.L. 106-424 gave NTSB the authority to enter into agreements for facilities, technical services, and training in accident investigation theory and practice. In 2000, NTSB awarded a 20-year contract for a training site to the George Washington University (GWU). The NTSB Academy, currently being constructed on the Loudon County Campus of GWU in Ashburn, Virginia is scheduled to be completed in the summer of 2003. In addition to assessing funds needed to sustain the operations of the NTSB Academy, a key issue for Congress is whether the NTSB Academy will be a separate entity or a component of the overall NTSB

³ H.R. 1527/S. 579 provides for authorization of these funds for necessary expenses of the NTSB Academy not otherwise provided for.

budget. Funding the NTSB Academy within the overall NTSB budget will give NTSB greater flexibility in funding Academy activities based on internal training requirements and external demand for training. However, doing so may place a burden on the NTSB's ability to carry out its investigative, research, and safety advocacy functions if fixed operating costs for the Academy exceed projections or external demand for the NTSB Academy is lower than projected. H.R. 1527 and S. 579 provide for authorization of funds specified in Table 1 for expenses of the NTSB Academy not otherwise provided for. S. 579 allows the NTSB to impose and collect such fees as it determines to be appropriate for services provided by or through the Academy. H.R. 1527 has no such provision.

Relief from Federal Contracting Requirements. The extensive and often lengthy processes involved in federal procurement is often not amenable to transportation accident investigations where obtaining unique services, such as wreckage recovery, must be completed in a timely manner, and often, only one or a very small number of vendors possess the unique capabilities needed to perform the task. Presently, the NTSB has the authority to enter into agreements and other transactions necessary to carry out its mission without going through normal procurement procedures required of contracts in excess of \$25,000. However, the NTSB has been criticized in the past regarding its financial management and oversight. At issue is striking a balance between providing investigators with appropriate authority to complete needed investigative tasks in a timely and efficient manner, while providing sufficient financial management controls and oversight to minimize the risks of fraud, waste, and abuse. S. 579 seeks to clarify NTSB's authority regarding exemption from contracting requirements, but only if necessary to expedite an investigation. Under provisions in S. 579, the NTSB will be responsible for reporting all such contracts over \$25,000 in its annual report to Congress. H.R. 1527 does not include a similar provision.

Expanding the Role of Family Assistance. While no statutory requirement exists for NTSB to provide such assistance in other transportation modes, NTSB's family affairs personnel often assist with disaster relief in major accidents in transportation modes other than aviation. H.R. 874 (Young of Alaska), which was passed by the House by 414-5 on May 8, 2003, seeks to expand NTSB's family assistance role to provide aid at passenger rail disasters. Similar legislation (H.R. 554; H.R. 4466) was introduced in the 107th Congress.

Expanding the Scope of NTSB's Investigative Role. NTSB's broadest mandate is in aviation, where it is required to investigate all accidents involving civil aircraft, and accidents involving certain public aircraft. In other modes, NTSB's involvement is more selective, allowing NTSB some discretion to focus on transportation safety issues where identification of needed safety improvements is likely. On occasion, legislation has been introduced to further specify the scope of NTSB's involvement in accident investigation and safety studies.⁴ Emerging safety needs that may prompt legislation to expand the NTSB's role or direct the NTSB to perform a special study are often brought to the center of attention by high profile transportation accidents or accident

⁴ For example, in the 107th Congress, Representative Collin Peterson and Senator Paul Wellstone introduced bills to have NTSB investigate all fatal railroad grade crossing accidents, and H.R. 4466 contained provisions directing the NTSB to study safety issues related to carry-on luggage stored in overhead bins on passenger aircraft.

trends. While expanding the role of the NTSB may improve transportation safety by identifying needed safety improvements in specific areas, doing so may further strain the limited resources of this small agency and would likely not be feasible without additional resources. Key issues are how well legislative proposals to expand NTSB's role might fit with the NTSB's overall mission and whether NTSB involvement in these areas will likely lead to improvements in transportation safety.

Oversight Issues

Investigative Process. In 1999, the Rand Institute for Civil Justice completed a review of NTSB's practices and procedures in major aviation accidents.⁵ That study found that NTSB investigators were being overworked and weren't receiving adequate training to keep pace with the technical complexity of major aviation accidents, resulting in an over-reliance on subject matter expertise from airlines; aircraft manufacturers; pilots organizations; and so on. These groups participate as "parties" in NTSB investigations, but have vested interests in various aspects of the investigation that may be used in potential litigation against a particular party. Consequently, the study identified a need for an increased reliance on objective, independent, technical expertise to assist NTSB investigators.

The study recommended that NTSB increase its efforts to partner with federal laboratories, universities, and independent organizations with unique resources and expertise that can augment NTSB's capabilities. The study also recommended that NTSB should: (1) streamline internal operating procedures to reduce workload and improve product throughput; (2) implement full cost accounting to better manage resources; (3) establish a strategic plan for maintaining and training its technical staff; and (4) improve facilities for engineering and training. In light of this report, congressional oversight may focus on the effectiveness of measures that have been taken to improve NTSB's investigative process..

Lead Role in Marine Investigations. The NTSB currently has priority over all other federal agencies in every transportation mode except marine investigations, which are conducted under regulations prescribed jointly by the NTSB and the Coast Guard.⁶ P.L. 106-424 set a one year deadline for resolving differences between the NTSB and the Coast Guard. While negotiations had been at a standstill, an MOU establishing standards for determining when NTSB will lead a marine accident investigation was agreed to in September 2002, following Congressional hearings on NTSB reauthorization. The 108th Congress may consider whether any further legislative action is needed to clarify the roles of the two agencies. In doing so, Congress may consider the potential impact to the NTSB and Coast Guard in terms of manpower, appropriations, and public confidence in the marine accident investigation process.

⁵ Cynthia C. Lebow, Liam P. Sarsfield, William L. Stanley, Emile Ettetdgui, and Garth Henning. "Safety in the Skies: Personnel and Parties in NTSB Aviation Accident Investigations." Santa Monica, CA: RAND Institute for Civil Justice, 1999. Available at [<http://www.rand.org/publications/MR/MR1122.1/>]

⁶ See U.S. Code, Title 49, Section 1131.