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108TH CONGRESS, *1st Session* | SENATE | REPORT 108–53

NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 579

MAY 22, 2003.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2003

MAY 22, 2003.—Ordered to be printed

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

REPORT

[To accompany S. 579]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 579) "A Bill To reauthorize the National Transportation Safety Board, and for other purposes", having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill, S. 579, the National Transportation Safety Board Reauthorization Act of 2003, as reported, is to authorize appropriations for the National Transportation Safety Board for Fiscal Years (FY) 2003, 2004, 2005, and 2006, and for other purposes.

BACKGROUND AND NEEDS

The National Transportation Safety Board (NTSB or Board), was established as an independent agency in 1974 when it was removed from the Department of Transportation (DOT). The NTSB is charged with determining the probable cause of transportation accidents and promoting transportation safety. The Board investigates accidents in all modes of transportation, conducts safety studies, and evaluates the effectiveness of other government agencies' programs for preventing transportation accidents. In addition, the NTSB coordinates all Federal assistance to families of victims of catastrophic aviation accidents. When resources allow, the NTSB also provides family assistance for accidents occurring in other transportation modes.

Most importantly, the NTSB makes safety recommendations, based on its investigations, to Federal, State, and local government

agencies and to the transportation industry regarding actions that it believes should be taken to prevent accidents. It is a unique agency in that its views and decisions on safety are separated from regulatory responsibilities, which are vested with other agencies.

The Board also serves as the "court of appeal" for airmen, aviation mechanics, and mariners whenever the Federal Aviation Administration (FAA) or the U.S. Coast Guard takes an adverse certificate action against them. In P.L. 106–181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Congress expanded the Board's jurisdiction to include review of FAA emergency revocations of pilot licenses. These emergency revocations take effect immediately, and prior to AIR 21, the pilot's only recourse was to take the FAA to court.

Since 1967, the Board has investigated more than 114,000 aviation accidents, and at least 10,000 additional accidents in other modes of transportation. The NTSB also investigates accidents involving hazardous material transportation and is the sole U.S. accredited representative authorized at foreign aviation accident investigations under the Convention on International Civil Aviation.

The NTSB has no authority to issue regulations covering the transportation industry. Therefore, its effectiveness is dependent upon timely and accurate determinations of accident causation and issuing safety recommendations. According to the NTSB, since its inception in 1967, the Board has issued almost 12,000 safety recommendations in all modes of transportation. Over 82 percent of those recommendations have been adopted by the regulatory and transportation communities.

NTSB OPERATIONS

Each year, the NTSB investigates more than 2,000 aviation accidents and incidents, including all fatal aviation accidents, and hundreds of railroad, highway, maritime, and pipeline transportation accidents. To leverage its limited resources, the Board typically designates other government agencies, organizations, corporations, or foreign authorities (for example, in the case of investigations involving foreign aircraft) as parties to the investigation. According to the NTSB, the participation of these other parties not only greatly multiplies the Board's resources, it also ensures general agreement on the facts developed during an investigation, and allows first-hand access to information so that the parties can take appropriate and timely corrective actions.

When the NTSB is notified of a major accident, it launches a "go-team" that varies in size depending on the severity of the accident and the complexity of the issues involved. Go-teams consist of Board investigators who are experts in appropriate technical specialties based on the mode of transportation and the nature of the accident. Each NTSB expert manages an investigative group made up of other experts from industry and government organizations that are parties to the investigation in the collection of the facts surrounding the accident. Eventually, each Board expert prepares a factual report that is verified for accuracy by each of the party representatives in the group. These reports are placed in the public docket and, after completion of a formal technical review by the team, they constitute the factual record of the investigation.

After investigating an accident, the NTSB determines the probable cause and issues a formal report. Parties do not participate in the analytical or report-writing phases of the NTSB's investigations, although they may submit their proposed findings of probable cause and proposed safety recommendations directly to the Board.

The NTSB is statutorily required to make a cause determination for all aviation accidents. Although the NTSB investigates all fatal aviation accidents, the Board may request that the FAA investigate non-fatal aviation accidents. Other Federal agencies or States often investigate accidents in other modes of transportation.

NTSB REAUTHORIZATION REQUEST

On June 25, 2002, the Committee on Commerce, Science, and Transportation held a hearing on the reauthorization proposal of the NTSB. At the hearing, the NTSB requested a three-year reauthorization along with two statutory changes. While the Senate passed an NTSB reauthorization proposal, S. 2950, during the 107th Congress, the House of Representatives failed to act on the bill. Subsequently, in the 108th Congress, both chambers passed, and the President signed, the Consolidated Appropriations Resolution FY 2003 (P.L. 108–007). Included in that legislation was an appropriation of $72 million for the NTSB for FY 2003. To ensure that no gaps exist in fiscal year authorization funding levels, S. 579 would provide an authorization for FY 2003 as well as for the next three fiscal years, through FY 2006.

With regard to the statutory changes requested by the NTSB, the first involves the NTSB's investigative priority for major marine accidents, and the second concerns its responsibility for family assistance in transportation incidents resulting from intentional criminal acts. The Coast Guard and the NTSB reached an agreement on the issue of marine accident investigations on September 13, 2002, obviating the need for legislation on that issue. A family assistance provision is included in S. 579.

The NTSB's reauthorization request includes funding for operating expenses and for the cost of running the NTSB training academy. The following table shows the NTSB's FY 2003 appropriations level and the authorization levels requested by the NTSB for FYs 2004–2006.

FY 2003 APPROPRIATION AND FYS 2004–2006 AUTHORIZATION REQUEST

(IN MILLIONS)

	FY 2003 Appropriation	FY 2004 Request	FY 2005 Request	FY 2006 Request
Salaries and Expenses	$72.0	$78.8	$83.0	$87.5
Academy	*	$4.9	$5.0	$5.2
Total	$72.0	$83.7	$88.0	$92.7

* The appropriations Act did not differentiate between salaries and academy funding.

The NTSB's FY 2004 reauthorization request of $83.7 million includes funding for laboratory equipment and improvements to the Board's information technology infrastructure to enhance the NTSB's investigative tools and technical competence, as well as to improve public access to the NTSB's accident investigation, safety recommendation, and safety promotion information. It also includes five additional Academy positions, as well as 26 positions needed to fill shortages in investigative and technical specialty areas. The $4.3 million increase in funding requested for FY 2005 would maintain NTSB operations at the FY 2004 level. The President's FY 2004 budget submission requested $71.5 million for the NTSB, slightly below the appropriated level in FY 2003.

SUMMARY OF PROVISIONS

S. 579 would provide a four-year authorization for the NTSB's general expenditures of $73.325 million in FY 2003, $78.757 million in FY 2004, $83.011 million in FY 2005, and $87.539 million in FY 2006. In addition to this authorization of funding, the bill would allow for sufficient funding to maintain the NTSB emergency fund at a level of $3 million.

The bill also would provide a four-year authorization for the NTSB Training Academy of $3.347 million in FY 2003, $4.896 million in FY 2004, $4.995 million in FY 2005, and $5.200 million in FY 2006.

The total authorization amount that would be provided for the NTSB is $322 million over the four fiscal years. S. 579 also would allow the NTSB to collect fees for the use of the Academy which would be credited as offsetting collections and could only be used to cover costs for the activities and services of the Academy. The bill would require the NTSB to report to Congress on the progress and use of the Academy.

S. 579 would provide that in situations when the NTSB relinquishes responsibility for the investigation of an aviation incident, as in the case of an intentional criminal act, the NTSB would be allowed to forgo its statutory responsibility to assist families of passengers involved in such incidents. However, this transfer is conditioned on the willingness and ability of another Federal agency to assume the responsibility from the NTSB. Even after relinquishing responsibility, the Board would be expected to assist the other Federal agency to the maximum extent practicable. The Federal Bureau of Investigations (FBI) currently receives priority in the event of intentional criminal acts and has recently hired over 100 victims assistance staff to be responsive on this issue. The bill section also would require the NTSB and FBI to revise, within one year of enactment, the 1977 Memorandum of Understanding (MOU) between the two agencies on the investigation of accidents to take into account changes made by this bill.

The Committee supports the NTSB's request for a statutory change to the Board's responsibility to provide assistance to families of passengers involved in aircraft accidents resulting from intentional criminal acts. Current law triggers the NTSB's family affairs response irrespective of the suspected cause of the accident. This is necessary to provide family assistance without any delay due to uncertainty about which agency will lead the investigation. Although the NTSB Amendments Act of 2000 (P.L. 106–424) estab-

lished a mechanism for the transfer of investigative priority from the NTSB to the FBI in the event of an accident caused by an intentional criminal act, no mechanism for the transfer of family affairs responsibility was requested or provided.

Based on the events of September 11, 2001, the NTSB believes that such a mechanism is needed. The NTSB believes that, if investigative responsibility is transferred to the FBI, the responsibility for family assistance should be transferred as well. The rationale being that when the FBI has investigative priority, the site of the crash is considered a crime scene and access to the scene and release of information about the investigation are much more restricted than when the NTSB has investigative priority.

According to the NTSB, since September 11, 2001, the FBI has recognized the need to have a stronger program to respond to victims for events of this magnitude. In January 2002, the Director of the FBI announced a reorganization of the Office of Victims Assistance (OVA). The new Program Director of OVA is responsible for designing a program to work with the NTSB and other agencies to support victims in terrorist and criminal events resulting in mass fatalities. This should provide the necessary infrastructure for the FBI to assume the NTSB's family assistance responsibilities in the event of an aircraft accident caused by an intentional criminal act.

The bill further would allow the NTSB relief from competition requirements in contracting laws if it is necessary to expedite an investigation. The NTSB has had several investigations where its work was delayed because competitive bidding was required for unique and specific work, with few capable entities able to provide the needed expertise. The Department of Veterans Affairs and the Medicare Integrity Program have exemption authority similar to the provision provided in this legislation. The exemption would not cover competitive requirements for non-investigative procurements, and would require an accounting of each contract of $25,000 or more in annual reporting. A letter from the NTSB specifically requesting this change was sent to Senators Hollings and McCain.

LEGISLATIVE HISTORY

On June 25, 2002, the Committee on Commerce, Science, and Transportation held a hearing on the activities of the NTSB and its legislative reauthorization proposal. On September 17, 2002, Senator Hollings introduced S. 2950, a bill to authorize appropriations for the NTSB. The bill was cosponsored by Senators McCain, Rockefeller, Hutchison, Breaux, and Smith. The Committee ordered the amended bill reported favorably on September 30, 2002, by a voice vote. S. 2950 was passed by the full Senate on November 11, 2002, however the bill was not considered by the House of Representatives before the 107th Session of Congress expired.

On March 7, 2003, Senator McCain introduced S. 579, a bill to authorize appropriations for the NTSB, which is essentially identical to legislation reported by the Committee during the 107th Congress. The bill was cosponsored by Senators Hollings, Lott, Rockefeller, and Hutchison. The bill was reported favorably by the Committee without amendments on March 13, 2003.

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, prepared by the Congressional Budget Office:

S. 579—National Transportation Safety Board Reauthorization Act of 2003

Summary: The National Transportation Safety Board (NTSB) investigates every civil aviation accident and significant accidents in other modes of transportation. Over the 2003–2006 period, S. 579 would authorize the appropriation of $270 million for NTSB activities and its training academy. The bill also would authorize the appropriation of amounts necessary for the agency to maintain an emergency fund of $3 million at all times.

Assuming appropriation of amounts authorized by the bill, CBO estimates that implementing S. 579 would cost $270 million over the 2003–2008 period. Enacting the bill would not affect direct spending or revenues.

S. 579 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. 579 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
NTSB spending under current law:						
Budget authority[1]	72	0	0	0	0	0
Estimated outlays	70	7	0	0	0	0
Proposed changes:						
Authorization level	6	84	88	93	0	0
Estimated outlays	4	76	88	93	9	0
NTSB spending under S. 579:						
Authorization level	78	84	88	93	0	0
Estimated outlays	74	83	88	93	9	0

[1] The 2003 level is the amount appropriated thus far for that year for the National Transportation Safety Board.

Basis of estimate

For this estimate, CBO assumes that S. 579 will be enacted in fiscal year 2003 and that the authorized amounts will be appropriated for each year. Estimates of spending are based on information from NTSB and historical spending patterns for these programs.

NTSB and its Academy

For fiscal year 2003, S. 579 would authorize the appropriation of $77 million. Because $72 million has already been appropriated for these activities in 2003, CBO estimates that implementing this provision of the bill would require appropriation of an additional $5 million. CBO assumes that the additional budget authority would be provided in a supplemental appropriations act in 2003. Over the

2004–2006 period, the bill would authorize the appropriation of $265 million for the NTSB.

Emergency fund

Current law authorizes the appropriation of amounts necessary to maintain balances in the emergency fund of $2 million. S. 579 would increase this authorization to $3 million. (The emergency fund currently has a balance of about $1.5 million.) Implementing this provision of S. 579 would cost 1 million in 2003.

NTSB does not use the emergency fund on a regular basis, and CBO does not estimate any outlays from the fund over the 2003–2008 period. Consequently, we estimate that the emergency fund would not require any additional appropriations to maintain the funds at $3 million over the next five years.

Intergovernmental and private-sector impact: S. 579 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Rachel Milberg; impact on state, local, and tribal governments: Greg Waring; impact on the private sector: Jean Talarico.

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, as reported:

NUMBER OF PERSONS COVERED

S. 579 would authorize appropriations to fund the operations of the NTSB for Fiscal Years 2003, 2004, 2005, and 2006. The funding levels are similar to previous years, and the number of persons covered should be consistent with current levels.

ECONOMIC IMPACT

No negative impact to taxpayers is expected from the enactment of S. 579 as it would authorize appropriations for the NTSB at levels similar to previous authorization levels. The NTSB also would be authorized to collect reimbursements for the activities and services of the NTSB Training Academy. These fees are to be credited to the NTSB as offsetting collections.

PRIVACY

S. 579 would not have an adverse effect on the personal privacy of any individuals that would be impacted by this legislation.

PAPERWORK

The Committee does not anticipate any significant increase in paperwork burdens as a result of S. 579.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

The short title of the bill is the "National Transportation Safety Board Reauthorization Act of 2003."

Sec. 2. Authorization of appropriations

This section would authorize appropriations of $73,325,000 for Fiscal Year 2003, $78,757,000 for Fiscal Year 2004, $83,011,000 for Fiscal Year 2005, and $87,539,000 for Fiscal Year 2006. It also would authorize $3,000,000 for the NTSB's emergency fund. For the NTSB Academy, this section would authorize $3,347,000 for Fiscal Year 2003, $4,896,000 for Fiscal Year 2004, $4,995,000 for Fiscal Year 2005, and $5,200,000 for Fiscal Year 2006. The Board would be authorized to collect fees for services provided by the Academy, which would be credited as offsetting collections to pay for such services. The Board would be required to transmit annual reports to Congress on the activities and operations of the Academy.

Sec. 3. Assistance to families of passengers involved in aircraft accidents

In situations when the NTSB relinquishes responsibility for the investigation of an aviation incident, this section would allow the Board to also relinquish its statutory responsibility to assist families of passengers involved in such incidents. This transfer is conditioned on the willingness and ability of the other Federal agency to assume the responsibility from the NTSB. Even after relinquishing responsibility, the Board would assist the other Federal agency to the maximum extent practical. The NTSB Amendments Act of 2000 (P.L. 106–424) established a mechanism for the transfer of investigation priority from the NTSB to the FBI in the event of an accident caused by an intentional criminal act. This section would establish a mechanism for the Board to transfer its family assistance responsibilities under the same circumstances. This section also would require the NTSB and FBI to revise within one year the 1977 MOU between the two agencies on the investigation of accidents to take into account changes made by this section. A copy of the revised MOU would be provided to the congressional authorizing committees.

Sec. 4. Relief from contracting requirements for investigations services

This section would allow the NTSB to enter into private contracts or agreements without engaging in competitive bidding if such actions are needed to expedite an investigation. It would further require the NTSB to include an accounting for each contract of $25,000 or more in the annual report for the preceding year. The NTSB has indicated that, in several cases, its investigations were delayed because it had to use competitive bidding for what is usually unique and specific work, with few capable entities involved in the bidding process. Similar exemption provisions have been provided to the Department of Veterans Affairs and the Medical Integrity Program. The exemption provision would not cover competitive requirements for non-investigative procurements.

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, UNITED STATES CODE

SUBTITLE II. OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER II. ORGANIZATION AND ADMINISTRATIVE

* * * * * * *

§ 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 subpena 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 subpena 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 subpena, 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 subpena, 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 subpena, 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;] *Statutes, and, for investigations conducted under section 1131, enter into such agreements or contracts without regard to any other provision of law requiring competition if necessary to expedite the investigation; and*

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instru-

mentality 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) 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 and technical services or training in accident investigation theory and techniques, and require that such entities provide appropriate consideration for the reasonable costs of any facilities, goods, 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.

(3) The Board, as a component of its annual report under section 1117, shall include an enumeration of each contract for $25,000 or more executed under this section during the preceding calendar year.

(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, or 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 author-

ity, 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) LIMITATION ON TOTAL AMOUNT OF OVERTIME PAY.—The Board may not make overtime payments under paragraph (1) for work performed in any fiscal year in a total amount that exceeds 1.5 percent of the amount appropriated to carry out this chapter for that fiscal year.

(4) 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).

(5) ANNUAL REPORT.—Not later than January 31, 2002, and annually thereafter, the Board shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House Transportation and Infrastructure Committee a report identifying the total amount of overtime payments made under this subsection in the preceding fiscal year, and the number of employees whose overtime pay under this subsection was limited in that fiscal year as a result of the 15 percent limit established by paragraph (2).

* * * * * * *

§ 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, **[**and**]** $72,000,000 for fiscal year 2002, **[**such sums to**]** *$73,325,000 for fiscal year 2003, $78,757,000 for fiscal year 2004, $83,011,000 for fiscal year 2005, and $87,539,000 for fiscal year 2006. Such sums shall 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.] *In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $3,000,000.*

(c) ACADEMY.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Board for necessary expenses of the National Transportation Safety Board Academy, not otherwise provided for, $3,347,000 for fiscal year 2003, $4,896,000 for fiscal year 2004, $4,995,000 for fiscal year 2005, and $5,200,000 for fiscal year 2006. Such sums shall remain available until expended.

(2) FEES.—The Board may impose and collect such fees as it determines to be appropriate for services provided by or through the Academy.

(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this paragraph—

(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(C) shall remain available until expended.

(4) REFUNDS.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.

* * * * * * *

SUBCHAPTER III. AUTHORITY

* * * * * * *

§ 1136. Assistance to families of passengers involved in aircraft accidents

(a) IN GENERAL.—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for facilitating the recovery and identi-

fication of fatally-injured passengers involved in an accident described in subsection (a).

(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5) To arrange a suitable memorial service, in consultation with the families.

(d) PASSENGER LISTS.—

(1) REQUESTS FOR PASSENGER LISTS.—

(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) USE OF INFORMATION.—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) USE OF AIR CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2)

shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) PROHIBITED ACTIONS.—

(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) UNSOLICITED COMMUNICATIONS.—In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

(3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.—No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) DEFINITIONS.—In this section, the following definitions apply:

(1) AIRCRAFT ACCIDENT.—The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) PASSENGER.—The term "passenger" includes—

(A) an employee of an air carrier or foreign air carrier aboard an aircraft; and

(B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.

(i) STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.

(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investiga-

tive priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

(2) BOARD ASSISTANCE.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

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