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Reauthorization of the National Transportation Safety Board

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Bart Elias
Specialist in Aviation Safety, Security, and Technology
Resources, Science, and Industry Division

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Summary

The National Transportation Safety Board (NTSB) is a small, independent agency with responsibility for investigating transportation accidents; conducting transportation safety studies; issuing safety recommendations; aiding victim's families in aviation disasters; and promoting transportation safety. Authorization for NTSB funding and activities for fiscal years 2003-2006 was enacted during the first session of the 108th Congress (P.L. 108-168).

In the 109th Congress, legislation to reauthorize the NTSB for fiscal years 2007-2009 has been ordered reported in the House (H.R. 5076). The bill seeks a 22% increase to authorized funding levels in FY2008 compared to FY2007 requested levels, largely to support a proposed staffing increase of about 19%. The NTSB has indicated that this increase is needed to effectively carry out its mission. Other issues under consideration in the current NTSB reauthorization process include the mission, operations, and funding of the NTSB Academy; relief from certain contracting requirements for investigation-related services; the designation of various reimbursements to the NTSB as offsetting collections; and payment for Department of Transportation Inspector General investigations and audits of the NTSB.

While not formally addressed in the current reauthorization debate so far, two other prominent issues involving the NTSB may come under congressional scrutiny: concerns over industry stakeholders lobbying NTSB officials in attempts to influence the scope or language of NTSB investigative findings, and the NTSB's heavy reliance on experts from transportation entities with a vested interest in the outcome of an investigation for fact gathering and data analysis. Some experts argue that the NTSB should instead create stronger ties with government laboratories and academic institutions for expertise to lessen the chances that bias, or the perception of bias, could creep into the accident-investigation process.

This report will be updated to reflect changes in the status of NTSB reauthorization legislation.

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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. As a fully independent agency, the NTSB can carry out unbiased investigations and make recommendations regarding safety regulations and oversight practices of DOT without the public perception of conflicting interests associated with being a component of a regulatory department whose policies and regulatory oversight might be brought into question during the course of an investigation. Over the course of its 39-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 considerable respect from Congress and the traveling public 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 approximately 400, about half of whom are located at its Washington, DC, headquarters, with the rest distributed among several regional offices throughout the United States. In the current reauthorization cycle, the NTSB is seeking to increase its staff size to an authorized level of 475 full-time equivalent employees beginning in FY2008. The NTSB has indicated that this staffing increase is needed to fully carry out the NTSB's mission, which includes conducting investigations and safety studies and preparing safety recommendations and safety advocacy materials for all modes of transportation.[1]

The five Safety Board members, presidentially appointed with the advice and consent of the Senate, serve five-year terms and may continue to serve beyond their term until a replacement board member is appointed. Not more than three Safety Board members may be appointed from the same political party, and at least three members must be appointed

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[1] Testimony of Mark V. Rosenker, Acting Chairman, National Transportation Safety Board, before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, U.S. House of Representatives, March 8, 2006.

on the basis of technical qualifications, professional standing, and knowledge of transportation safety issues.

Recently, there has been a considerable degree of turnover on the board. At present, there are two vacancies on the board, and the chairman position is currently unfilled, while Vice-Chairman Mark V. Rosenker serves as acting chairman until April 1, 2007, or until a permanent chairman is nominated and confirmed. Mr. Rosenker has been nominated for the chairman position, pending Senate confirmation. One recent point of contention among board members is the appointment process for board members' personal staff. Under current law, the NTSB chairman is the final authority with regard to staffing, including the staffing of member offices.[2] House reauthorization language in the National Transportation Safety Board Amendments Act of 2006 (H.R. 5076) proposes to modify this provision and give individual board members full authority to appoint individuals for personal staff positions.

NTSB Mission

The NTSB core mission consists of investigating transportation accidents and, based on investigative findings and focused studies of transportation safety concerns, issuing safety recommendations and advocating for improvements in transportation safety. Additionally the NTSB provides assistance to victims' families in airline disasters and serves as a board of appeals for certain transportation regulatory actions.

Accident Investigation. 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;
- In coordination with the Coast Guard, major marine casualties occurring on the navigable waters or territorial sea of the United States, or involving U.S. flag vessels, except those involving only public vessels; and
- Other selected catastrophic accidents or recurring problems involving transportation safety.

In accordance with international treaties, the NTSB also participates in investigations of foreign aviation accidents involving any U.S. manufactured or registered aircraft.[3] On occasion, the NTSB may also lend its expertise in foreign investigations at the request of another country, even though the United States may have no vested interest nor any

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[2] See 49 USC §1111(e).

[3] See National Transportation Safety Board, *About the NTSB: History and Mission.* Washington, DC: National Transportation Safety Board.

specific right under international agreement to participate in the accident investigation process. In these instances, where NTSB is asked to consult or actively participate in an overseas investigation, the NTSB is sometimes reimbursed for associated costs. Currently, these reimbursements are deposited to the Treasury General Fund. However, in this reauthorization cycle, the NTSB is asking that this and other reimbursements to the NTSB be specifically designated as offsetting collections for use by the NTSB. In current statute, only reimbursements related to activities of the NTSB Academy, such as tuition payments or classroom rental fees, are credited as offsetting collections.[4]

Other Related Functions. In addition to its core responsibility of investigating transportation mishaps, 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 from FAA enforcement actions. The NTSB also maintains a database of civil aviation accidents and conducts special studies of selected transportation safety issues.

Safety Recommendations and Advocacy. 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. The NTSB highlights its key safety recommendations on a list of "Most Wanted" safety improvements that currently includes:

- Reducing the dangers of in-flight icing;
- Eliminating flammable vapors in airliner fuel tanks;
- Preventing collisions and near-misses on airport runways (runway incursions);
- Improving cockpit voice recorders and flight data recorders and requiring cockpit video;
- Requiring child restraints for airline passengers under two years of age;
- Implementing positive train control systems for railroads;
- Improving post-accident drug and alcohol testing for marine accidents;
- Enhancing recreational boating safety;
- Improving the safety of motor carrier operations;
- Preventing medically unqualified drivers from operating commercial vehicles;
- Enhancing protection for bus and motor coach occupants;
- Improving child occupant protection through mandatory booster seat usage;
- Enhancing automobile seat-belt laws and enforcement;
- Eliminating risks posed by hard core drunk drivers;
- Improving school bus safety at railroad grade crossings; and
- Setting work hour limits and rest requirements that reflect current scientific understanding of human fatigue for safety-critical transportation workers in all transportation modes.

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[4] See 49 USC §1118(c).

These "Most Wanted" transportation safety improvements typically encompass multiple safety recommendations requesting action from the DOT and the states for statutory and 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. However, there is not always universal agreement that NTSB recommendations are needed. For example, the FAA has opposed NTSB's push to require child restraints on airliners for children under two, arguing that the increased cost of having to purchase tickets for these children could cause some families to drive instead, which is arguably more dangerous than flying.[5] Also, pilot unions have strongly opposed NTSB recommendations for cockpit video recorders, arguing that video images would be of limited value and fearing that, despite statutory protections, these videos could be misused if publicly disclosed or used for other purposes. In other examples, some unfulfilled recommendations proposed by the NTSB were not technically feasible at the time they were issued, and several years of research and development have been devoted to addressing these recommendations, even though the recommendations have not yet been satisfactorily addressed. For example, following the crash of TWA flight 800 in 1996, the NTSB recommended procedures and technologies to reduce fuel tank flammability and explosive fuel/air mixtures in airline fuel tanks. While the NTSB has been disappointed that interim operational measures to reduce fuel tank fires and explosions have never been satisfactorily implemented by the airlines, the NTSB is encouraged that, through extensive research and development, viable technologies for reducing flammability and inerting fuel tanks now exist and will be required on certain airliners under proposed regulatory changes to reduce fuel tank flammability.[6] However, despite the current progress toward addressing this longstanding safety need, the NTSB would like to see the requirements more broadly applied to all commercial airliners.

In general, NTSB's safety recommendations and safety advocacy programs have influenced the regulatory agenda of transportation agencies regarding safety initiatives and have had a profound influence on Congressional decision-making and oversight of transportation safety issues. Since 1967, the NTSB has issued over 12,000 safety recommendations across all modes of transportation, of which about 83% led to the implementation of acceptable safety improvements. Despite the generally high level of acceptance of NTSB-issued safety recommendations, there is lingering 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

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[5] Federal Aviation Administration, "Child Restraint Systems: Advance Notice of Proposed Rulemaking, Withdrawal." *Federal Register, 70*(165), August 26, 2005, pp. 50226-50228.

[6] National Transportation Safety Board, *Most Wanted Transportation Safety Improvements, Federal Issues, Aviation: Eliminate Flammable Fuel/Air Vapors in Fuel Tanks on Transport-Category Aircraft;* Federal Aviation Administration, "Reduction of Fuel Tank Flammability in Transport Category Airplanes; Proposed Rule," *Federal Register, 70*(225), November 23,2005, pp.70922 — 70962.

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. Since the last reauthorization in 2003, the NTSB has tried 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. The NTSB refers to this initiative as SWAT for "Safety With A Team."[7] However, this approach has been criticized by some as having the potential effect of watering down the NTSB's safety objectives. These critics contend that by collaborating too closely with regulatory agencies and other stakeholders, the NTSB may be swayed away from issuing or wording safety recommendations that may be more difficult or challenging for regulators to address and could bring the NTSB's impartiality and independence into question. Striking an appropriate balance between identifying needed safety improvements and proposing recommendations that are operationally and technically achievable remains an ongoing challenge for the NTSB. Policymakers may deliberate about how to best structure interactions between the NTSB and recipients of NTSB recommendations to facilitate the communication of the NTSB's desired safety objectives and the operational and technical limitations that may stand in the way of fully meeting these objectives.

NTSB Funding Levels

Funding for the NTSB has historically consisted of: a base authorization or appropriation amount; a set-aside emergency fund to cover unforeseen accident costs such as wreckage recovery, salvage, and storage; and supplemental appropriations to cover the costs of large, complex investigations such as the investigation of the TWA flight 800 accident.

The National Transportation Safety Board Reauthorization Act of 2003 (P.L. 108-168), authorized base appropriations from FY2003 through FY2006 for the NTSB. The annual authorization level was set at $73.325 million in FY2003, and was increased at a rate of about 6% per year, reaching $87.539 million for FY2006 (see **Table 1**). In addition to these sums, P.L. 108-168 authorized additional funding for operating the NTSB Academy from FY2003 through FY2008. However, these additional funds for the academy were never appropriated. Instead, appropriations language over the past two years has instructed the NTSB not to increase academy funding or increase investigator details to the academy in a manner that may detract from their primary investigation duties.

Since FY2003, appropriations for the NTSB have been slightly below authorized levels. In FY2003, the NTSB received $72 million. In FY2004, the NTSB received $73.5 million, plus an additional $600,000 to boost the balance of the NTSB's emergency fund back to $2 million. In FY2005, the NTSB received a base appropriation of $76.7 million, less a rescission of $8 million in unobligated supplemental appropriations intended to cover costs associated with the investigations of EgyptAir flight 990 in 1999 and Alaska Air flight 261 in 2000, both of which are now completed. Thus, the net appropriation for FY2005 was $68.7 million. In FY2006, the NTSB received $76.7 million, less a

[7] National Transportation Safety Board, "NTSB Celebrates One Year of SWAT Success," *The Chairman's Corner*, August 27, 2004, p. 1.

rescission of $1 million from the same supplemental funding account to cover the EgyptAir flight 990 and Alaska Air flight 261 investigations. After factoring in a government-wide 1% rescission, the NTSB's net appropriation for FY2006 was just under $75 million. In testimony before both the House Aviation Subcommittee and the Senate Subcommittee on Aviation, Acting NTSB Chairman Mark Rosenker asserted that the agency's FY2006 budget was unable to support the staff size of 416 full-time equivalents with which the NTSB began the year.[8] The NTSB responded accordingly by reducing staff through attrition to a current level of 396 full-time equivalents.

The administration has proposed an authorization and appropriation of $80 million for FY2007, $4 million above FY2006 enacted levels, to cover salary and cost increases. In FY2008, the administration has proposed a funding authorization of $100 million, 22% above the FY2007 requested amount. This increase would be used to hire about 75 additional investigators and support staff, a staffing increase that the NTSB believes is necessary to adequately perform its mission. For FY2009, the administration has requested an authorization of $105 million to sustain this increased staffing level and cover anticipated salary and cost increases. H.R. 5076 roughly parallels the administration request, proposing a slightly higher authorized amount in FY2007 and $1 million less than the administration projection for FY2008.

Table 1. Authorized, Appropriated, and Requested Funding Levels for the National Transportation Safety Board

(FY2003 - FY2009, $ in millions)

Fiscal Year	2003	2004	2005	2006	2007	2008	2009
Authorizations							
P.L. 108-168							
- Base	73	79	83	88			
- Academy	3	5	5	5			
House-proposed (H.R. 5076)					82	99	105
Appropriations	72	74	69	75			
Administration Requests	70	71	66	76	80	100	105
FTEs	—	—	416	396	399	475	475

Note: Amounts above are after rescissions to base and supplemental funding levels. Amounts do not include the NTSB's emergency fund currently authorized at a level not to exceed $4 million and appropriated at a level of $2 million. See text.

[8] Testimony of Mark V. Rosenker, Acting Chairman, National Transportation Safety Board, before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, U.S. House of Representatives, March 8, 2006. Testimony of Mark V. Rosenker, Acting Chairman, National Transportation Safety Board, before the Committee on Commerce, Science and Transportation, Subcommittee on Aviation, U.S. Senate, May 24, 2006.

Current Issues for Reauthorization

Several issues have been identified in the current debate over reauthorization of the NTSB. The central issue in this reauthorization cycle is the adequacy of the NTSB's staff size. The NTSB has requested a staff increase of roughly 22% starting in FY2008, an increase it believes is necessary to adequately carry out its mission. Other issues under consideration in the current NTSB reauthorization process include the mission, operations, and funding of the NTSB Academy; relief from certain contracting requirements for investigation-related services; the designation of various reimbursements to the NTSB as offsetting collections; and payment for Department of Transportation Inspector General investigations and audits of the NTSB.

NTSB Staffing Levels and Accident Coverage

The *Washington Post* reported that in 2005, by NTSB's own estimates, its field investigators deployed to only 62% of all fatal airplane crashes in the United States, compared to 75% in 2001.[9] The trend has alarmed some aviation safety experts who contend that the NTSB could miss opportunities to improve safety or identify a critical safety concern before it leads to more mishaps. The NTSB, on the other hand, asserts that its near-term strategy has been to target the deployment of its field investigators to focus on crashes where new safety issues are likely to present themselves. However, without on-scene involvement this is often difficult to assess, particularly in the early stages of an investigation. Therefore, it appears that the NTSB's long-term strategy is to request funding for additional investigative staff beginning in FY2008. This request for additional funding to hire new investigators and support staff is a central issue in the current reauthorization debate.

Preliminary analysis by the GAO indicates that both the number of NTSB on-site field investigations of aviation accidents and investigations where only an FAA-inspector was sent to the crash site have been declining since 2002. However, the number of "data collection accidents," where investigators do not perform on-scene functions, has been steadily increasing. In 2002, the NTSB sent investigators to 322 field accidents compared to 219 in 2005. Also, the number of "limited" investigations, where on-scene functions are delegated to FAA inspectors, has declined by about half in the past three years, from 1,461 in 2002 to 762 in 2005. During that same period, the number of "data collection" investigations — where most or all of the investigation process is completed in the office through telephone interviews and data gathering — has increased by a factor of almost five, from 159 in 2002 to 783 in 2005. While this trend may, in part, be due to a reduction in the severity of aviation accidents, it is also likely the result of NTSB's changing strategy to manage its limited investigator resources and clear a large backlog of uncompleted investigations. In 2001, the NTSB's backlog of cases more than six months old was 2,400.[10] This backlog was reduced down to 944 cases in early 2006, but one apparent

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[9] Sara Kehaulani Goo, "NTSB Goes to Fewer Crashes; Backlogged Investigators Pass on Small-Plane Accident Sites," *The Washington Post*, February 8, 2006, p. A17 (Corrected February 24, 2006).

[10] *Ibid.*

consequence is that investigators are spending more time in the office completing old cases and less time in the field doing on-site investigation.

While the most critical need for investigators appears to be for general field investigators that handle the bulk of NTSB's case load of aviation investigations involving smaller aircraft, expertise in certain speciality fields may also need to be expanded to address the growing complexity of major transportation disasters. For example, the Air Line Pilots Association (ALPA), the largest union representing airline pilots in the United States, has been critical of what they consider a lack of in-depth investigation by the NTSB delving into human factors aspects of airline crashes. A union representative stated that the NTSB tended to overlook human factors either for the sake of expediency or due to budget pressures.[11] While human factors causes play a role in the majority of aviation accidents, workload and staffing levels may limit the involvement of NTSB's human factors experts in exploring the root causes of these accidents, such as training, policies, and procedures. Besides human factors, the NTSB also faces potential staffing needs in other highly specialized areas such as airline operations, air traffic control, aircraft structures and systems, and maritime operations. Because these disciplines are highly specialized, it takes considerable effort to recruit qualified individuals and train them to apply their knowledge and expertise to accident investigation. Staff attrition in these highly specialized disciplines could increase the NTSB's reliance on outside expertise and have an impact not only on the ability of the NTSB to fully investigate transportation accidents, but also on the quality of the NTSB's investigation and analysis. Policymakers may consider options to enhance the NTSB's ability to recruit and retain field investigators and specialists in a variety of critical science and engineering fields as well as professionals with unique operational experience in various transportation modes.

The NTSB Academy

The National Transportation Safety Board Amendments Act of 2000 (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). Construction on the NTSB Academy, located on the Loudon County Campus of GWU in Ashburn, Virginia, was completed in August 2003.

In addition to assessing the funding needed to sustain the operations of the NTSB Academy, a key issue for Congress has been whether to fund the NTSB Academy as a separate entity or a component of the overall NTSB budget. Funding the NTSB Academy within the overall NTSB budget would give NTSB greater flexibility to fund Academy activities based on internal training requirements and external demand for training. However, doing so may place an additional burden on the NTSB's ability to carry out its investigative, research, and safety advocacy functions if operating costs for the Academy exceed projections or external demand for the NTSB Academy is less than projected. In addition to providing a separate funding authorization for the NTSB Academy on top of NTSB base authorization levels, P.L. 108-168 allows the NTSB to impose and collect fees for services provided by or through the Academy which may be credited as offsetting

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[11] Andy Pasztor, "WSJ: Pilots Group Criticizes National Transportation Safety Board," *Dow Jones Newswires,* October 17, 2005.

collections that remain available until expended. In the current reauthorization debate, the NTSB has proposed that funding authorization for the NTSB Academy be made part of the broader agency authorization, rather than a distinct entity. The NTSB asserts that a single authorization amount is more consistent with its objective of integrating the academy operations into the overall mission and program for the agency. This would also be in line with appropriations actions over the past three fiscal years that have not identified separate funding levels for the academy. Unlike P.L. 108-168, H.R. 5076 goes along with this request and does not specify any separate or additional funding levels for the academy. Also, as requested, the bill would strike a statutory provision for separate reporting to Congress on NTSB Academy operations. The NTSB has proposed that this reporting be consolidated with the NTSB's annual report to Congress on its overall operations.

While the NTSB seeks to better integrate the operations of the academy with the overall role of the agency, GAO analysis of academy operations suggests that significant progress is still needed to accomplish this objective. Despite the creation of the academy three years ago, the GAO found the "NTSB has not developed a strategic training plan, nor has it identified the core competencies needed to support its mission and a curriculum to develop these competencies."[12] The GAO also found that the NTSB Academy facility is significantly underutilized, in part because the NTSB lacks a core curriculum for its own staff. In fact, for FY2006, 97% of NTSB staff training is expected to come from training vendors other than the NTSB Academy. GAO estimated that available classroom space was utilized less than 10% of the time they were available during FY2005. Moreover, in FY2004 and FY2005, NTSB staff made up less than 20% of the total enrollment in classes offered at the NTSB Academy. However, despite having an enrollment of about 80% fee-paying external students and having the option to rent out classroom space when it is not in use, revenues generated from these sources have covered only about 8% of the academy's total operating expenses, including lease of the facility itself under the terms of a long-term lease agreement with the George Washington University. Excluding the cost of the lease, reimbursements still only covered about 15% of NTSB's other costs to run the facility and offer instruction, even though the NTSB does not figure in instructor salaries for NTSB personnel assigned to teach classes at the academy. In response to these findings, policymakers may seek to improve NTSB's approach to staff training and its initiatives to generate additional revenue through course offerings, symposia, and other training opportunities offered through the NTSB Academy.

The NTSB has indicated that, in 2006, it significantly revised the philosophy for the Academy and is focusing on developing "state-of-the-art training courses and programs."[13] However, examination of the available course offerings and current academy operations suggest, on the contrary, that the academy is largely maintaining a status quo

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[12] U.S. Government Accountability Office, *National Transportation Safety Board: Preliminary Observations on the Value of Comprehensive Planning and Greater Use of Leading Practices and the Training Academy,* Statement of Gerald L. Dillingham, Director, Physical Infrastructure Issues Before the Subcommittee on Aviation, Committee on Commerce, Science, and Transportation, U.S. Senate, May 24, 2006, GAO-06-801T, p. 11.

[13] Testimony of Mark V. Rosenker, Acting Chairman, National Transportation Safety Board, before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, U.S. House of Representatives, March 8, 2006, p. 5

with regard to its operations and approach to training. Because the NTSB Academy has been operational for only a few years, opportunities exist for refining and expanding its structure and course offerings. The NTSB indicated that it plans to establish a training and academic oversight board for the academy. The oversight board will consist of senior NTSB staff and will work closely with other government training facilities to "benefit from their experience and best practices."[14] Congressional oversight may seek to more thoroughly examine the NTSB's planning and execution of efforts to improve and expand the curriculum of the NTSB Academy.

Relief from Certain Contracting Requirements

The extensive and often lengthy processes involved in federal procurement are often not amenable to transportation accident investigations where obtaining unique services, such as wreckage recovery, must be completed in a timely manner. Often, only one source or a very small number of vendors possess the unique capabilities needed by the NTSB. 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 flexibility to complete needed investigative tasks in a timely and efficient manner while providing sufficient financial management controls and oversight to minimize the risk of fraud, waste, and abuse. P.L. 108-168 clarifies the NTSB's authority regarding exemption from contracting requirements to be used only if necessary to expedite an investigation, and requires the NTSB to list all such contracts over $25,000 in its annual report to Congress. However, this provision is set to expire at the end of FY2006. The NTSB has requested that the sunset clause of this provision be deleted and the NTSB's special contracting authority for investigation-related services be made permanent.[15] H.R. 5076 (Sec. 8) would strike the sunset provision of the NTSB's special contracting authority as requested, and would require reporting on contracts awarded under this special authority to be identified in the NTSB's annual report to Congress each year.

Reimbursements to the NTSB

As previously mentioned, the NTSB participates in some foreign accident investigations where it is not representing a particular United States interest in the process or outcome of the investigation, but rather lends its technical expertise and experience to the investigation. In some cases, the NTSB is reimbursed for the personnel, travel, and other expenses it incurs while participating in these accident investigations, but these receipts are currently not credited as offsetting collections. Similarly, airlines are required to pay the costs of disaster mortuary services for airline disasters. However, the NTSB often pays for these costs up front to ensure the immediate delivery of these services and later seeks reimbursement from those responsible for payment. These reimbursements also are not specifically credited as offsetting collections. Under current statute, the only reimbursements to the NTSB that are credited as offsetting collections are those items related to the NTSB Academy, such as tuition payments for courses and fees for facility

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[14] *Ibid.*

[15] *Ibid.*

rentals.[16] Because other reimbursements are not specifically credited to NTSB funding lines, the NTSB could face a funding shortfall if it is necessary to expend any sizable amount of agency funds on reimbursable items that are not directly offset by reimbursements received by the Treasury. Therefore, the NTSB has asked that all such reimbursable items be credited as offsetting collections to the NTSB funding line. H.R. 5076 includes language that would allow the NTSB to collect fees, refunds, and reimbursements as it determines appropriate for any services it provides, either directly or indirectly.

Inspector General Oversight of the NTSB

While the NTSB is an independent agency completely separate from the DOT, the DOT Office of Inspector General was given limited authority to audit and review NTSB functions in the 2000 NTSB reauthorization act (P.L. 106-424; 49 USC § 1137). This provision addressed concerns over identified fraud and inefficiencies in the NTSB's financial management office in the 1990s that went unchecked for some time, in part because there was no entity to oversee and audit these operations. The law gives the DOT Office of Inspector General limited oversight of the NTSB's financial management, property management, and business operations, but does not give the Inspector General authority to review the NTSB's investigative functions or safety recommendations process. The statutory language specifies that the Inspector General shall be reimbursed by the NTSB for any costs associated with audits or reviews of the NTSB. This poses potential problems by creating a possible conflict of interest, or at least a perception of a possible conflict of interest. Also, because Inspector General audits are not specifically budgeted for, these costs could impact the NTSB's resources to carry out its core mission to investigate accidents and promote transportation safety. Therefore, the NTSB is requesting that this statutory language be repealed and the DOT Office of Inspector General be directly appropriated funds for its activities related to NTSB oversight.[17] The DOT Office of Inspector General concurs with this recommendation, and H.R. 5076 includes a provision that would strike the existing statutory language requiring NTSB reimbursement to the DOT Office of Inspector General.

Other Possible Issues for NTSB Reauthorization and Congressional Oversight

Besides the issues specifically identified during the NTSB reauthorization debate, two other prominent, and related, issues involving the NTSB may come under congressional scrutiny. First, some have expressed concerns over possible industry stakeholder lobbying of NTSB officials in attempts to influence the scope or language of NTSB investigative findings.[18] Second, concerns have also been raised about the NTSB's

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[16] See 49 USC §1118(c).

[17] Testimony of Mark V. Rosenker, Acting Chairman, National Transportation Safety Board, before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, U.S. House of Representatives, March 8, 2006.

[18] See, Sara Kehaulani Goo, "Safety Agency's Chief Is Wary of Lobbying," *The Washington*

(continued...)

heavy reliance on experts from transportation entities with a vested interest in the outcome of an investigation, such as airlines and aircraft manufacturers, for fact gathering and data analysis. Some experts argue that the NTSB should instead create stronger ties with government laboratories and academic institutions for expertise to lessen the chances that bias, or the perception of bias, could creep into the accident investigation process.[19]

Stakeholder Lobbying of NTSB Officials

One ongoing concern is the degree to which entities with a vested interest in the outcome of an investigation may be able to influence NTSB board members. This is an important consideration because under the NTSB party system of conducting investigations, entities with vested interests in an investigation are made a part of the investigation team and work closely with NTSB staff and officials to provide technical knowledge and experience.[20]

However, the potential exists for entities to cross a fuzzy line between providing technical knowledge and expertise and attempting to gain or exert influence in the NTSB investigative process and decisions about what findings, conclusions, and causal factors will be highlighted in the board's final report on an investigation. Former chairman Ellen Engelman Conners claimed that during the investigation of the crash of American Airlines flight 587, board members came under intense pressure from both the airline and the aircraft manufacturer, Airbus, in an effort to sway the NTSB's conclusions and language in the final report.[21] Conners maintained that lobbying efforts have not yet influenced the outcome of an investigation, but these tactics have delayed the investigation process.[22] It is notable, however, that in the American Airlines flight 587 investigation, the Safety Board, in a split decision, voted to change the order of causal factors recommended by the NTSB staff, a move that placed a greater emphasis on the design characteristics of the aircraft's rudder control system and de-emphasized the role that American Airline's pilot training played in the accident. Two board members at the time, issued a joint dissenting statement asserting that "[t]o diminish the role of the [training] in the accident is to downplay the role it played in the pilot's actions which caused the accident."[23] The counter-argument for reversing the order was to emphasize the design problems with the

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[18] (...continued)
Post, January 6, 2005, p. A6.

[19] Cynthia C. Lebow, Liam P. Sarsfield, William L. Stanley, Emile Ettedgui, and Garth Henning, *Safety in the Skies: Personnel and Parties in NTSB Aviation Accident Investigations*, 2000, RAND Corporation, Institute for Civil Justice: Santa Monica, CA, p. *xiv*.

[20] See 49 CFR §831.11.

[21] Matthew L. Wald, "Agency Official Says Lobbying Hindered Airline Crash Inquiry." *The New York Times*, January 6, 2005; Sara Kehaulani Goo, "Safety Agency's Chief Is Wary of Lobbying," *The Washington Post*, January 6, 2005, p. A6.

[22] *Ibid.*

[23] Member Carol J. Carmody's Statement, in which Member Richard F. Healing joined. In National Transportation Safety Board, *In-Flight Separation of Vertical Stabilizer, American Airlines Flight 587, Airbus Industrie A300-605R, N14053, Belle Harbor, New York, November 12, 2001*, NTSB/AAR-04/04, p. 165.

rudder system which more closely paralleled the new recommendations issued by the NTSB in its final report. Recommendations pertaining to pilot training had previously been issued by the NTSB during the course of the investigation. The dissenting members believed that the statement of probable cause should accurately reflect the findings of the investigation and not be flavored to emphasize the importance of any particular recommendations being put forth. While the motives behind such a change in emphasis to a probable cause statement could arguably be justified based on more closely aligning the wording of the probable cause to the NTSB's agenda for advocating recommended safety changes based on investigative findings, in this case, the potential public perception that the adopted probable cause language may have, in part, been influenced by lobbying efforts by a party to the investigation could bring the board members' motives into question. A pattern of actions of this sort could potentially lead to a loss of public trust in the NTSB and the party process of investigating accidents.

A variety of safeguards already exist to prevent external entities from influencing NTSB findings and conclusions. First, under the "Sunshine Act",[24] the Safety Board as a whole must meet in public on most matters pertaining to accident investigations, which would increase the transparency of any attempt by a board member or members to sway an investigation. Also, while interested parties may provide technical expertise in the fact finding phase of an investigation, analysis of these facts is done strictly by the NTSB staff of investigators. The investigative process is designed to provide each party an opportunity to provide the NTSB with its perspectives and concerns. Parties are free to submit their own analyses and exchange information and ideas with NTSB investigators. Also, formal procedures exist for parties to petition the NTSB to reconsider or modify its investigative findings after an investigation has been completed and the final report has been adopted.[25] Nonetheless, in a highly complex and contentious accident, evaluating competing perspectives brought forth by various parties to the investigation can prove challenging for the NTSB and can stretch out the length of time needed to complete an investigation. Also, despite these procedures, the potential for parties to exert their influence on the NTSB process still exists, and could have a negative impact on the effectiveness of the NTSB. Even if the NTSB was not swayed by such efforts to influence an investigation, a public perception that the NTSB was not fully impartial could diminish the agency's reputation and credibility. Striking a balance between allowing involved parties to provide unique data and technical analysis that often they alone possess while preventing these entities from subtly or overtly attempting to sway the investigative process in their favor or exert influence and pressure on board members is likely to be a sizable challenge. Policymakers may consider limitations or more formal rules for the interaction between investigative parties and the NTSB, although this issue has not been specifically addressed during the current reauthorization process.

Use of Impartial Outside Expertise on Investigation Teams

A lingering concern, closely tied to possible stakeholder lobbying of NTSB officials, is the NTSB's extensive reliance on entities with a stake in the investigation,

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[24] Under the "Sunshine Act" or "Government in the Sunshine Act", 5 USC §552b, entities like the Safety Board must deliberate in open, public meetings, when conducting certain agency business, such as reviewing and adopting the findings of an accident investigation.

[25] See 49 CFR §845.41.

such as airlines and aircraft manufacturers, for technical expertise. This reliance on subject matter experts from those entities that may be under investigation leaves open the possibility that NTSB could receive biased analysis of technical data and potentially puts the NTSB in the position of evaluating competing hypotheses and analysis of technical data provided by parties that approach the accident from a particular perspective with particular interests to protect.

In 2000, the RAND Corporation Institute for Civil Justice reviewed the NTSB's aviation investigation practices and found that "[c]oncern about the party process has grown as the potential losses resulting from a major crash, in terms of both liability and corporate reputation, have escalated, along with the importance of NTSB findings to the litigation of air crash cases."[26] The report strongly recommended that the NTSB develop policies and procedures for making greater use of outside experts from more impartial sources such as government laboratories and academia to participate in and contribute to the investigative process. The report also recommended that the NTSB's internal resources be enhanced through better training and strategic staffing if the agency's independence is to be assured. The report proposed a model in which private consultants and academics be made an integral part of the party process, instead of having peripheral roles of support and analysis of elements of the investigation. As a first step, RAND suggested that the NTSB perform a nationwide assessment of federal laboratories, universities, and independent corporations to identify the resources and expertise to augment NTSB investigative capabilities, and form memoranda of understanding (MOUs) and other formal relationships with these entities. While the NTSB has entered into formal MOUs with the National Aeronautics and Space Administration (NASA), and has a close working relationship with several Department of Defense (DoD) laboratories, these entities largely continue to play a support role in investigations and are not an integral part of the party process. While subject matter experts from academia are routinely consulted and sometimes asked to provide analysis of technical data and facts regarding an accident, these experts also do not participate in the investigation to the same degree of involvement as parties to the investigation such as aircraft manufacturers, airlines, and pilot unions. Policymakers may consider whether changes to the NTSB party process, such as allowing outside experts to play a more integral role in investigations, could improve the NTSB investigative process. This issue has not been formally addressed by Congress in the current reauthorization process.

Legislative Status

On March 8, 2006, the House Aviation Subcommittee held a hearing on NTSB reauthorization. The National Transportation Safety Board Amendments Act of 2006 (H.R. 5076) was introduced in the House by Representative Don Young on April 4, 2006, and ordered reported by voice vote of the Committee on Transportation and Infrastructure on April 5, 2006. The Senate Committee on Commerce, Science, and Transportation, Subcommittee on Aviation held a hearing on NTSB reauthorization on May 25, 2006, however an NTSB reauthorization bill had not been introduced or considered in the Senate as of the date of this report.

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[26] Cynthia C. Lebow, et al., *Safety in the Skies.*