

National Transportation Safety Board Reauthorization Act of 2022

Section-by-Section Analysis

Section 1. Short title; table of contents; references.

This section would provide that the bill may be cited as the “National Transportation Safety Board Reauthorization Act of 2022.” This section also would provide a table of contents for the bill, and provide that all references to the United States Code in the Act should be considered references to title 49, unless otherwise provided.

TITLE I – ENSURING READINESS FOR OUR MISSION

Section 101. Authorization of appropriations.

This section would authorize appropriations for the National Transportation Safety Board (NTSB) for fiscal years (FY) 2023 through 2027. This bill would authorize \$129.3 million in FY 2023, \$145 million for FY 2024, \$155 million for FY 2025, \$165 million for FY 2026, and \$175 million for FY 2027. These funding levels would enable the NTSB to carry out its safety mission, including addressing critical hiring needs, enhancing workforce training and development, and investing in equipment and technology. Funding would also enable us to enhance and maintain the multimodal accident database management system required by Congress in section 1108 of Public Law 115-245.

Section 102. Acquiring mission-essential knowledge and skills.

This section would authorize the Board to directly hire highly qualified investigators, engineers, or critical technical personnel into the competitive service in the event of a severe shortage of candidates or a critical hiring need for particular positions. This authority will sunset 3 years after the date of enactment of this Act, and will not apply to positions in the excepted service or the Senior Executive Service. The Board must comply with the merit principles of section 2301 of title 5, United States Code, and the public notice requirements of section 3327 of title 5, United States Code, in exercising this direct hire authority.

Section 103. Strategic human capital plan.

This section would amend 49 USC 1113 by creating a new subsection (h), directing the Board, within 18 months of the date of enactment of this Act, to complete a human capital plan. This plan would address immediate and long-term employment needs of the agency based upon trends in the transportation industry; support employee retention and succession planning; identify areas in which competency gaps presently exist; and, evaluate the plan’s overall effectiveness. The human capital plan would be updated no less frequently than every five years, and would be made publicly available on the Board’s website in English and other non-English languages, determined by the Board, to facilitate accessibility by Limited English Proficient individuals.

Section 104. Workforce development.

This section would make clear that the Board’s authority to train its workforce, as provided for by 49 USC 1115(d), includes the authority to provide workforce development training that will support the goals of the human capital plan directed by Section 103 of this Act. As presently written, 49 USC 1115(d) provides express authority only for training directly related to accident investigation.

Section 105. Senior Executive succession planning.

This section would provide flexibility to the Board to allow the effective allocation of its Senior Executives’ expertise and leadership. The NTSB strongly supports development of its Senior Executives, but current law has resulted in the agency limiting the number of Senior Executives to 19 which, in turn, prohibits the agency from ensuring appropriate succession planning for executives within highly technical modes including highway, rail, and pipeline and hazardous materials safety.

Executive Order (EO) 13714, issued December 15, 2015, calls for agencies with 20 or more Senior Executives to develop a plan to rotate 15 percent of those executives to other assignments for a minimum of 120 days annually. Such rotations may involve reassignment to other positions within the agency, with other federal agencies, or with non-federal partners. The addition of any Senior Executive Service positions at the Board would require compliance with the rotation program called for in the EO. Given the small size of the Board’s workforce, however, the obligation to move Senior Executives who are highly technical from their currently-assigned leadership positions could create significant difficulties in accomplish NTSB’s mission – both within the affected offices, as well as the agency at large.

Section 106. Investigative authorities.

This section makes amendments to NTSB’s general authority to investigate highway and railroad accidents. Commercial space is addressed in the letter accompanying this package.

Subsection (a) amends the authority for highway investigations to clarify that an NTSB safety investigation is separate, but parallel to, any state criminal investigation. Highway crashes that the NTSB investigates usually are also subject to state and/or local criminal investigations. The NTSB must coordinate with authorities for access to evidence and witnesses. The current wording of the statute “in cooperation with a State” often causes confusion and concern by local authorities regarding the NTSB’s role in a state’s criminal investigation and how NTSB involvement may impede their investigation and any criminal charges. It also gives the impression that states do not have to cooperate with the agency, which is problematic since the state controls much of the evidence and information in highway crashes. This was demonstrated in the investigation of a 2018 limousine crash in Schoharie, New York. The local District Attorney asserted that the current language, specifically that NTSB investigates “in cooperation

with a State,” implied that NTSB’s safety investigations were secondary to a state’s criminal investigation, and therefore the State could restrict NTSB’s access to the evidence. While a State court ultimately sided in favor of the NTSB, the NTSB was denied timely access to the crash vehicles and related information to follow our usual investigative protocols.

Subsection (b) would amend the current NTSB rail investigative authority to provide that accidents at railroad grade crossings, or which involve rail trespassers, are not accidents in which Board investigation is mandatory. Rather, the Board would retain the flexible jurisdiction to investigate those grade crossing or trespasser accidents in which it determines a significant safety benefit to the public may accrue. Authority for the investigation of railroad grade crossing accidents is already set forth in 49 USC 1131(a)(1)(b), and indeed the Board traditionally treats such accidents as highway investigations, with the active involvement of railroad investigators. Creating the same investigative discretion for the Board’s rail division to select grade crossing accidents as already exists for its highway division will harmonize the investigative jurisdictions of both.

Trespassing on railroad property is the leading cause of rail-related fatalities, accounting for 62 percent of US rail-related deaths in fiscal year 2018. However, the NTSB is unable to investigate every trespasser fatality and, in fact, investigates such accidents extremely rarely due to limited resources and limited safety benefits. Under 49 USC 1116(c)(5), the NTSB must annually report a list of these accidents. Excluding these accidents from the requirement under 49 USC 1131(a)(1)(C) would focus the NTSB’s mandate and resources in investigating rail accidents for which there are safety benefits.

Subsection (c) provides greater specificity to the term “substantial property damage,” as that term is used in sections 1131(a)(1)(C) and (D) regarding railroad and pipeline investigative jurisdiction. This subsection directs the Board, within 12 months of the date of enactment of this Act, to issue a final rule defining the term. Such rulemaking would provide clarity to the Federal Railroad Administration, the Pipeline and Hazardous Materials Safety Administration, industry and labor organizations, and other safety stakeholders regarding the threshold for rail and pipeline accident property damage sufficient to precipitate a Board investigation.

Section 107. Ensuring access to data.

This section would clarify the NTSB’s authority to obtain recorded information and require provision of information, including proprietary intellectual property, to enable the Board to independently analyze the data and overall performance of an accident situation.

Section 108. Technical corrections.

This section would make a technical correction to the NTSB’s authority to release information to the public under 49 USC 1114 and the Trade Secrets Act.

TITLE II – ENHANCING ACCOUNTABILITY AND IMPROVING PROCESSES AND PRODUCTS

Section 201. Drug-Free workplace.

This section would direct the Board to implement a program for the drug testing of its employees, pursuant to Executive Order (EO) 12564 (September 15, 1986; Drug-free Federal Workplace).NTSB.

Section 202. Improving the delivery of family assistance.

In order to improve the delivery of family assistance, this section:

Current law requires the NTSB to conduct family assistance for any investigation it leads, including in sovereign territories. This could create conflict, especially if the country in which the accident has occurred also has family assistance legislation or the country’s laws run contrary to the assurances outlined in U.S. statute. This section amends section 1136(a) to clarify that the NTSB will provide family assistance for investigations the NTSB leads in the United States, its territories, or over international waters.

Amends sections 1136(d) and 1139 to separate the NTSB and designated organization functions associated with passenger lists and allow the NTSB to disclose information from passenger lists to local, state, or federal agencies responsible for determining the whereabouts or welfare of passengers. As currently worded, the legislation permits the NTSB to share such information solely with a family member. Historically, the NTSB has shared information from the passenger list/manifest with federal, state, and local agencies, healthcare systems/hospitals, and the designated organization (i.e. the American Red Cross), when necessary to determine the whereabouts and welfare of the victims involved in the transportation accident (i.e. to account for the victims involved in the accident). The disclosure restriction should remain for the designated organization as it relates to releasing the passenger list.

Amends sections 1136 and 1139 to add assistance to survivors of covered accidents to designated organization responsibilities to conform statute with current operating practices and with the air and rail carrier obligations set forth in 49 US Code (USC) 41113 (b)(15), 49 USC 41313 (c)(15), and 49 USC 24316 (b)(8).

Amends section 24316, regarding rail passenger accidents, to conform with the Amtrak statute, with the amendments to section 1139, regarding “any loss of life.” Section 24316 requires rail passenger carriers to submit plans for addressing the needs of the families of passengers involved in a covered rail passenger accident. This conforming change will ensure that any future operators will be required to submit such plans.

Section 203. Updating civil penalty authority.

This section would expand the current authority for civil penalties to cover activities related to railroad accidents. Under current law, civil penalties are applied to aircraft accidents.

Section 204. Ensuring accountability for timeliness of reports.

This section would ensure the visibility of any accident or crash investigation not completed within two years from the date of the event. For any such delayed report, the Board must provide a report to the relevant Congressional committees identifying the investigation and the reasons why a final report was not issued within two years. This report to Congress must be updated every 90 days, until the investigation is completed and a final report is issued.

Section 205. Implementing safety recommendations.

This section would apply to the US Coast Guard (USCG) the same requirements that currently apply to the US Department of Transportation (USDOT) under 49 USC 1135 for responding to NTSB safety recommendations and for providing an annual report to Congress on the regulatory status of each recommendation on the Most Wanted List. When USCG was transferred from USDOT to the newly established US Department of Homeland Security in 2003, it was no longer subject to the requirements.

Section 206. Closed unacceptable recommendations.

This section would require the Board, as part of its Annual Report to Congress, to identify each recommendation made to the Secretary of Transportation or the Commandant of the Coast Guard that was closed in an unacceptable status in the preceding 12 months. This requirement would provide the Congressional committees of jurisdiction with greater visibility to the inaction of the Secretary or Commandant to improve transportation safety.

TITLE III – STRENGTHENING DIVERSITY, EQUITY, INCLUSION, AND ACCESSIBILITY

Section 301. Creating a diverse and inclusive workforce.

This section directs the Board, as part of the human capital plan called for by Section 103 of this Act, to employ efforts to increase the diversity, equity, inclusion, and accessibility of its agency workforce. It directs the Board to use efforts to create employment opportunities for members of historically underserved communities, as that term is broadly defined in Section 2(a) of Executive Order 14035 (June 25, 2021; related to Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce).

Section 302. Promoting diversity, equity, inclusion, and accessibility in the workforce.

This section directs the Board, within 90 days of enactment of the Act, to publicly post on its website the action plans prepared in response to Executive Order (EO) 13985 (January 20, 2021; related to Promoting Equitable Delivery of Government Benefits and Equitable Opportunities) and EO 14035 (June 25, 2021; related to Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce). This section further directs the Board to publicly post its progress toward implementing the action plans and any subsequent updates to these plans.

Section 303. Enhancing transparency of equal employment opportunity programs.

This section directs the Board, within 90 days of enactment of the Act and annually thereafter, to publicly post on its website the most recent annual report to the Equal Employment Opportunity Commission, as required by the Commission's Management Directive (MD) 715.

Section 304. Accessibility in the workplace.

Subsection (a) directs the Board to conduct, within 12 months of the date of enactment of this Act, an assessment of its headquarters and regional offices to identify barriers to accessibility consistent with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) and its corresponding Accessibility Guidelines (36 C.F.R. Part 1191), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). Because identifying and removing barriers to the full accessibility to Board offices by the agency's workforce is so critical, this subsection directs the Board to further consider in its assessment best accessibility practices that exceed those recommended under the Acts and Guidelines.

Subsection (b) authorizes such sums as may be necessary to implement corrective actions to remove the accessibility barriers identified by the assessment.

Sec. 305. Availability of products in languages other than English.

This section directs the Board to ensure that written products, determined appropriate by the Board, are made available to the public in languages other than English, to facilitate accessibility for Limited English Proficient individuals.

Section 306. References to Chairman and Vice Chairman.

The section replaces gender-specific references to the NTSB *Chairman* and *Vice Chairman* with the gender-neutral terms *Chair* and *Vice Chair*.