

Public Law 101-641  
101st Congress

An Act

Nov. 28, 1990  
[S. 3012]

To amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, and 1993, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Independent  
Safety  
Board Act  
Amendments  
of 1990.  
49 USC app.  
1901 note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Independent Safety Board Act Amendments of 1990".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 309(a) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1907(a)) is amended by adding at the end the following: "There are authorized to be appropriated for the purposes of this Act not to exceed \$32,000,000 for the fiscal year ending September 30, 1991; \$38,600,000 for the fiscal year ending September 30, 1992; and \$38,800,000 for the fiscal year ending September 30, 1993, such sums to remain available until expended."

EXAMINATION AND TESTING

SEC. 3. (a) Section 304(b)(2) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)(2)) is amended by inserting "vessel," immediately before "vehicle" each place it appears.

(b) Section 304(b)(2) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)(2)) is amended by adding at the end the following new sentences: "The Board shall have sole authority to determine the manner in which testing will be carried out under this paragraph and under section 701(c) of the Federal Aviation Act of 1958, including determining the persons who will conduct the test, the type of test which will be conducted, and the persons who will witness the test. Such determinations are committed to the discretion of the Board and shall be made on the basis of the needs of the investigation being conducted by the Board and, where applicable, the provisions of this paragraph."

COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS

SEC. 4. Section 306 of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1905) is amended by striking subsection (c) and inserting in lieu thereof the following:

"(c) PUBLIC DISCLOSURE OF COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS.—(1) Notwithstanding any other provision of law, the Board shall withhold from public disclosure cockpit voice recorder recordings and transcriptions, in whole or in part, of oral communications by and between flight crew members and ground stations, that are associated with accidents or incidents investigated by the Board.

“(2) Portions of a transcription of oral communications described in paragraph (1) which the Board determines relevant and pertinent to the accident or incident under investigation shall be made available to the public by the Board—

“(A) if the Board conducts a public hearing with respect to such accident or incident, at the time of such hearing; and

“(B) if the Board does not conduct such a public hearing, at the time when a majority of other factual reports regarding the accident or incident is placed in the public docket.

“(3) Nothing in this section shall restrict the Board at any time from referring to cockpit voice recorder information in making safety recommendations.

“(d) **USE OF COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS IN JUDICIAL PROCEEDINGS.**—(1) Except as provided in this subsection, in a judicial proceeding, there shall not be discovery by a party—

“(A) of portions of cockpit voice recorder transcriptions other than such portions made available to the public by the Board under subsection (c)(2); and

“(B) of cockpit voice recorder recordings.

“(2) Subject to paragraph (4), a court may permit discovery of cockpit voice recorder transcriptions by a party if the court, after an in camera review of such transcriptions, finds that—

“(A) the portions of the transcriptions made available to the public under subsection (c) do not provide the party with sufficient information for the party to receive a fair trial; and

“(B) discovery of additional portions of transcriptions is necessary to provide the party with sufficient information for the party to receive a fair trial.

No cockpit voice recorder transcriptions prepared by or under the direction of the Board, other than portions made available by the Board under subsection (c), shall be required to be produced for an in camera review, or shall be subject to discovery, unless the cockpit voice recorder recordings are not available.

“(3) Subject to paragraph (4), a court may permit discovery of cockpit voice recorder recordings by a party if the court, after an in camera review of such recordings, finds that—

“(A) the portions of transcriptions made available to the public under subsection (c) and to the party through discovery under paragraph (2) do not provide the party with sufficient information for the party to receive a fair trial; and

“(B) discovery of cockpit voice recorder recordings is necessary to provide the party with sufficient information for the party to receive a fair trial.

“(4) If, under paragraph (2) or (3), there is discovery in a judicial proceeding of a cockpit voice recorder recording or any portion of a cockpit voice recorder transcription not made available to the public under subsection (c)(2), the court shall issue a protective order to limit the use of such recording or portion to the judicial proceeding and to prohibit dissemination of such recording or portion to any person who does not need access to such recording or portion for such proceeding.

“(5) A court may permit admission of a cockpit voice recorder recording or any portion of a cockpit voice recorder transcription not made available to the public under subsection (c)(2) into evidence in a judicial proceeding, only if the court places such recording or

portion under seal to preclude the use of such recording or portion for purposes other than for such proceeding.”

#### TOXICOLOGICAL TESTING OF TRANSPORTATION DEPARTMENT EMPLOYEES

49 USC app.  
1657-1.

SEC. 5. (a) When the Department of Transportation, including any of its agencies, conducts post-accident or post-incident toxicological testing of an employee of the Department, specimen collection shall be accomplished as soon as practicable after the accident or incident, and the Department shall endeavor when feasible to complete such collection within four hours after the accident or incident.

Reports.

(b) The head of each agency within the Department of Transportation shall send to the Office of the Secretary of Transportation a report on the circumstances concerning the amount of time required to complete specimen collection related to a toxicological test which is conducted on an employee within that agency who is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the National Transportation Safety Board.

(c) Any failure to comply with the requirements of this section may not be asserted, by the subject of such testing, as a claim, cause of action, or defense in any administrative or judicial proceeding.

#### BOARD ACCESS TO TOXICOLOGICAL TESTING RECORDS

SEC. 6. Section 304(b) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)), is amended by redesignating paragraph (11) as paragraph (12) and by inserting immediately after paragraph (10) the following new paragraph:

“(11)(A) Notwithstanding section 503(e) of the Act entitled ‘An Act making supplemental appropriations for the fiscal year ending September 30, 1987, and for other purposes’, approved July 11, 1987 (5 U.S.C. 7301 note), the Board is authorized to obtain from the Secretary of Transportation, by written request, and shall be furnished—

“(i) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, which is conducted on an employee of the Department of Transportation, including any of its agencies, pursuant to post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when that employee is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the Board; and

“(ii) any laboratory record providing documentation that such test is confirmed positive.

“(B) Except as provided in subparagraph (C), the Board shall maintain in confidence and exempt from public disclosure in accordance with section 552(b)(3) of title 5, United States Code—

“(i) any laboratory record, made available under subparagraph (A), of a confirmed and verified toxicological test which reveals medical use of a drug permitted under applicable regulations; and

“(ii) any medical information provided by the tested employee in connection with such test or in connection with a review of such test.

“(C) The Board may use such a laboratory record for development of any evidentiary record in an investigation by the Board of an accident or incident if—

“(i) the fitness of the employee who is the subject of the toxicological testing is at issue in the investigation; and

“(ii) the use of that record is necessary in the development of such evidentiary record.”.

#### ODOMETER MILEAGE DISCLOSURE

SEC. 7. (a) Section 408(d)(2)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(2)(C)) is amended by striking the third sentence and inserting in lieu thereof the following: “The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i), shall prescribe that the person granted such power of attorney shall retain a copy of such power of attorney and shall submit the original back to the State with a copy of the title showing the restatement of the mileage, and may prescribe that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with the purposes of this title, taking into consideration costs to the State. The rule shall not require that a vehicle be titled in the State in which the power of attorney was issued.”.

(b) The amendment made by subsection (a) shall be effective on the date of enactment of this Act and the Secretary of Transportation shall implement the amended section by promulgating a revision of existing regulations within six months after such effective date. Such rule shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles.

Inter-  
governmental  
relations.

Effective date.  
Regulations.  
15 USC 1988  
note.

#### REPORT ON LOW-LEVEL RADIOACTIVE WASTE TRANSPORTATION

SEC. 8. Within twelve months after the date of enactment of this Act, the Secretary of Transportation shall conduct and complete a thorough study of and prepare a report to Congress on the transportation of low-level radioactive waste, specifically including—

(1) an evaluation of the feasibility of requiring States that transport waste to a regional disposal facility established and operated under an interstate compact pursuant to section 4 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d) to use, to the maximum extent practicable, routes which are within the geographic borders of the States that are parties to the compact;

(2) factual information on the volume of low-level radioactive waste being shipped currently and estimates of such shipments for the calendar years 1991 through 1995;

(3) a list of the routes proposed to be used for shipment of such waste to the disposal facilities operated under such an interstate compact;

(4) a review of the process for determining and approving such routes;

(5) a review of the processes for resolving any disputes that may arise, between States and between Commissions created by such interstate compacts, regarding such routes; and

49 USC app.  
1804 note.

(6) identification of the public safety risks associated with possible accidents in transporting such waste and of the response plans to be employed in the event of a transportation accident.

INTERCITY RAIL PASSENGER SERVICE

SEC. 9. (a) Section 402(d)(1) of Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by adding at the end the following new sentence: "The Corporation may subsequently convey title or other interest in such property to a third party, if such reconveyance is found by the Commission to further the purposes of this Act."

(b) The amendment made by subsection (a) shall apply to any proceeding instituted before, on, or after the date of enactment of this Act (including any such proceeding pending before any Federal court on such date of enactment).

COMMUTER RAIL SERVICE

SEC. 10. Notwithstanding any other provision of law, the National Railroad Passenger Corporation shall not discontinue commuter rail service between Valparaiso, Indiana and Chicago, Illinois, before May 6, 1991.

Approved November 28, 1990.

LEGISLATIVE HISTORY—S. 3012 (H.R. 5132):

HOUSE REPORTS: No. 101-661, Pt. 1 (Comm. on Public Works and Transportation) and Pt. 2 (Comm. on Energy and Commerce) both accompanying H.R. 5132.

SENATE REPORTS: No. 101-450 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 136 (1990):

Oct. 27, considered and passed Senate and House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):  
Nov. 28, Presidential statement.