

117TH CONGRESS
2D SESSION

H. R. 903

AN ACT

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system under title 5, United States Code, to employees of the Transportation Security Administration, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rights for the Trans-
3 portation Security Administration Workforce Act of
4 2022” or the “Rights for the TSA Workforce Act of
5 2022”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

8 (1) the term “adjusted basic pay” means—

9 (A) the rate of pay fixed by law or admin-
10 istrative action for the position held by a cov-
11 ered employee before any deductions; and

12 (B) any regular, fixed supplemental pay-
13 ment for non-overtime hours of work creditable
14 as basic pay for retirement purposes, including
15 any applicable locality payment and any special
16 rate supplement;

17 (2) the term “Administrator” means the Ad-
18 ministrator of the Transportation Security Adminis-
19 tration;

20 (3) the term “appropriate congressional com-
21 mittees” means the Committees on Homeland Secu-
22 rity and Oversight and Reform of the House of Rep-
23 resentatives and the Committees on Commerce,
24 Science, and Transportation and Homeland Security
25 and Governmental Affairs of the Senate;

1 (4) the term “at-risk employee” means a
2 Transportation Security Officer, Federal Air Mar-
3 shal, canine handler, or any other employee of the
4 Transportation Security Administration carrying out
5 duties that require substantial contact with the pub-
6 lie during the COVID–19 national emergency;

7 (5) the term “conversion date” means the date
8 as of which subparagraphs (A) through (F) of sec-
9 tion 3(c)(1) take effect;

10 (6) the term “covered employee” means an em-
11 ployee who holds a covered position;

12 (7) the term “covered position” means a posi-
13 tion within the Transportation Security Administra-
14 tion;

15 (8) the term “COVID–19 national emergency”
16 means the national emergency declared by the Presi-
17 dent under the National Emergencies Act (50
18 U.S.C. 1601 et seq.) on March 13, 2020, with re-
19 spect to the coronavirus;

20 (9) the term “employee” has the meaning given
21 such term by section 2105 of title 5, United States
22 Code;

23 (10) the term “Secretary” means the Secretary
24 of Homeland Security;

1 (11) the term “TSA personnel management
2 system” means any personnel management system
3 established or modified under—

4 (A) section 111(d) of the Aviation and
5 Transportation Security Act (49 U.S.C. 44935
6 note); or

7 (B) section 114(n) of title 49, United
8 States Code;

9 (12) the term “TSA” means the Transportation
10 Security Administration; and

11 (13) the term “2019 Determination” means the
12 publication, entitled “Determination on Transpor-
13 tation Security Officers and Collective Bargaining”,
14 issued on July 13, 2019, by Administrator David P.
15 Pekoske, as modified, or any superseding subsequent
16 determination.

17 **SEC. 3. CONVERSION OF TSA PERSONNEL.**

18 (a) RESTRICTIONS ON CERTAIN PERSONNEL AU-
19 THORITIES.—

20 (1) IN GENERAL.—Notwithstanding any other
21 provision of law, and except as provided in para-
22 graph (2), effective as of the date of the enactment
23 of this Act—

24 (A) any TSA personnel management sys-
25 tem in use for covered employees and covered

1 positions on the day before such date of enact-
2 ment, and any TSA personnel management pol-
3 icy, letter, guideline, or directive in effect on
4 such day may not be modified;

5 (B) no TSA personnel management policy,
6 letter, guideline, or directive that was not estab-
7 lished before such date issued pursuant to sec-
8 tion 111(d) of the Aviation and Transportation
9 Security Act (49 U.S.C. 44935 note) or section
10 114(n) of title 49, United States Code, may be
11 established; and

12 (C) any authority to establish or adjust a
13 human resources management system under
14 chapter 97 of title 5, United States Code, shall
15 terminate with respect to covered employees
16 and covered positions.

17 (2) EXCEPTIONS.—

18 (A) PAY.—Notwithstanding paragraph
19 (1)(A), the limitation in that paragraph shall
20 not apply to any TSA personnel management
21 policy, letter, guideline, or directive related to
22 annual adjustments to pay schedules and local-
23 ity-based comparability payments in order to
24 maintain parity with such adjustments author-

ized under section 5303, 5304, 5304a, and 5318 of title 5, United States Code; and

(B) ADDITIONAL POLICY.—Notwithstanding paragraph (1)(B), new TSA personnel management policy may be issued if—

(i) such policy is needed to resolve a matter not specifically addressed in policy in effect on the date of enactment of this Act; and

(ii) the Secretary provides such policy, with an explanation of its necessity, to the appropriate congressional committees not later than 7 days of issuance.

(C) EMERGING THREATS TO TRANSPORTATION SECURITY DURING TRANSITION PERIOD.—Notwithstanding paragraph (1), any TSA personnel management policy, letter, guideline, or directive related to an emerging threat to transportation security, including national emergencies or disasters and public health threats to transportation security, may be modified or established until the conversion date. The Secretary shall provide to the appropriate congressional committees any modification or establishment of such a TSA personnel

1 management policy, letter, guideline, or direc-
2 tive, with an explanation of its necessity, not
3 later than 7 days of such modification or estab-
4 lishment.

5 (b) PERSONNEL AUTHORITIES DURING TRANSITION
6 PERIOD.—Any TSA personnel management system in use
7 for covered employees and covered positions on the day
8 before the date of enactment of this Act and any TSA
9 personnel management policy, letter, guideline, or direc-
10 tive in effect on the day before the date of enactment of
11 this Act shall remain in effect until the conversion date.

12 (c) TRANSITION TO TITLE 5.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), effective as of the date determined by the
15 Secretary, but in no event later than December 31,
16 2022—

17 (A) the TSA personnel management sys-
18 tem shall cease to be in effect;

19 (B) section 114(n) of title 49, United
20 States Code, is repealed;

21 (C) section 111(d) of the Aviation and
22 Transportation Security Act (49 U.S.C. 44935
23 note) is repealed;

(D) any TSA personnel management policy, letter, guideline, and directive, including the 2019 Determination, shall cease to be effective;

(E) any human resources management system established or adjusted under chapter 97 of title 5, United States Code, with respect to covered employees or covered positions shall cease to be effective; and

(F) covered employees and covered positions shall be subject to the provisions of title 5, United States Code.

(2) CHAPTERS 71 AND 77 OF TITLE 5.—Not later than 90 days after the date of enactment of this Act—

(B) any policy, letter, guideline, or directive issued under section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) related to matters otherwise covered by such chapter 71 or 77 shall cease to be in effect.

20 (d) SAFEGUARDS ON GRIEVANCES AND APPEALS.—

1 moved to proceedings pursuant to title 5, United
2 States Code, or continued within the TSA.

3 (2) AUTHORITY.—With respect to any griev-
4 ance or appeal continued within the TSA pursuant
5 to paragraph (1), the Administrator may consider
6 and finally adjudicate such grievance or appeal not-
7 withstanding any other provision of this Act.

8 (3) PRESERVATION OF RIGHTS.—Notwith-
9 standing any other provision of law, any appeal or
10 grievance continued pursuant to this section that is
11 not finally adjudicated pursuant to paragraph (2)
12 shall be preserved and all timelines tolled until the
13 rights afforded by application of chapters 71 and 77
14 of title 5, United States Code, are made available
15 pursuant to section 3(c)(2) of this Act.

16 SEC. 4. TRANSITION RULES.

17 (a) NONREDUCTION IN PAY AND COMPENSATION.—
18 Under pay conversion rules as the Secretary may prescribe
19 to carry out this Act, a covered employee converted from
20 a TSA personnel management system to the provisions of
21 title 5, United States Code, pursuant to section
22 3(c)(1)(F)—

23 (1) shall not be subject to any reduction in ei-
24 ther the rate of adjusted basic pay payable or law

1 enforcement availability pay payable to such covered
2 employee; and

3 (2) shall be credited for years of service in a
4 specific pay band under a TSA personnel manage-
5 ment system as if the employee had served in an
6 equivalent General Schedule position at the same
7 grade, for purposes of determining the appropriate
8 step within a grade at which to establish the employ-
9 ee's converted rate of pay.

10 (b) RETIREMENT PAY.—Not later than 90 days after
11 the date of enactment of this Act, the Secretary shall sub-
12 mit to the appropriate congressional committees a pro-
13 posal, including proposed legislative changes if needed, for
14 determining a covered employee's average pay for pur-
15 poses of calculating the employee's retirement annuity,
16 consistent with title 5, United States Code, for any cov-
17 ered employee who retires within three years of the conver-
18 sion date, in a manner that appropriately accounts for
19 time in service and annual rate of basic pay following the
20 conversion date.

21 (c) LIMITATION ON PREMIUM PAY.—Notwith-
22 standing section 5547 of title 5, United States Code, or
23 any other provision of law, a Federal Air Marshal or crimi-
24 nal investigator hired prior to the date of enactment of
25 this Act may be eligible for premium pay up to the max-

1 imum level allowed by the Administrator prior to the date
2 of enactment of this Act. The Office of Personnel Manage-
3 ment shall recognize such premium pay as fully creditable
4 for the purposes of calculating pay and retirement bene-
5 fits.

6 (d) PRESERVATION OF LAW ENFORCEMENT AVAIL-
7 ABILITY PAY AND OVERTIME PAY RATES FOR FEDERAL
8 AIR MARSHALS.—

9 (1) LEAP.—Section 5545a of title 5, United
10 States Code, is amended by adding at the end the
11 following:

12 “(l) The provisions of subsections (a)–(h) providing
13 for availability pay shall apply to any Federal Air Marshal
14 who is an employee of the Transportation Security Admin-
15 istration.”.

16 (2) OVERTIME.—Section 5542 of such title is
17 amended by adding at the end the following:

18 “(i) Notwithstanding any other provision of law, a
19 Federal Air Marshal who is an employee of the Transpor-
20 tation Security Administration shall receive overtime pay
21 under this section, at such a rate and in such a manner,
22 so that such Federal Air Marshal does not receive less
23 overtime pay than such Federal Air Marshal would receive
24 were that Federal Air Marshal subject to the overtime pay

1 provisions of section 7 of the Fair Labor Standards Act
2 of 1938.”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by paragraphs (1) and (2) shall begin to apply on
5 the conversion date (as that term is defined in sec-
6 tion 2 of the Rights for the TSA Workforce Act of
7 2022).

8 (e) COLLECTIVE BARGAINING UNIT.—Notwith-
9 standing section 7112 of title 5, United States Code, fol-
10 lowing the application of chapter 71 pursuant to section
11 3(c)(2) of this Act, full- and part-time non-supervisory
12 Transportation Security Administration personnel car-
13 rying out screening functions under section 44901 of title
14 49, United States Code, shall remain eligible to form a
15 collective bargaining unit.

16 (f) PRESERVATION OF OTHER RIGHTS.—The Sec-
17 retary shall take any actions necessary to ensure that the
18 following rights are preserved and available for each cov-
19 ered employee as of the conversion date and any covered
20 employee appointed after the conversion date, and con-
21 tinue to remain available to covered employees after the
22 conversion date:

23 (1) Any annual leave, sick leave, or other paid
24 leave accrued, accumulated, or otherwise available to
25 a covered employee immediately before the conver-

1 sion date shall remain available to the employee
2 until used, subject to any limitation on accumulated
3 leave under chapter 63 of title 5, United States
4 Code.

5 (2) Part-time personnel carrying out screening
6 functions under section 44901 of title 49, United
7 States Code, pay Federal Employees Health Bene-
8 fits premiums on the same basis as full-time TSA
9 employees.

10 (3) Covered employees are provided appropriate
11 leave during national emergencies to assist the cov-
12 ered employees and ensure TSA meets mission re-
13 quirements, notwithstanding section 6329a of title 5,
14 United States Code.

15 (4) Eligible covered employees carrying out
16 screening functions under section 44901 of title 49,
17 United States Code, receive a split-shift differential
18 for regularly scheduled split-shift work as well as
19 regularly scheduled overtime and irregular and occa-
20 sional split-shift work.

21 (5) Eligible covered employees receive group re-
22 tention incentives, as appropriate, notwithstanding
23 sections 5754(c), (e), and (f) of title 5, United
24 States Code.

1 SEC. 5. CONSULTATION REQUIREMENT.

2 (a) EXCLUSIVE REPRESENTATIVE.—

3 (1) IN GENERAL.—

4 (A) Beginning on the date chapter 71 of
5 title 5, United States Code, begins to apply to
6 covered employees pursuant to section 3(c)(2),
7 the labor organization certified by the Federal
8 Labor Relations Authority on June 29, 2011,
9 or any successor labor organization, shall be
10 treated as the exclusive representative of full-
11 and part-time non-supervisory TSA personnel
12 carrying out screening functions under section
13 44901 of title 49, United States Code, and shall
14 be the exclusive representative for such per-
15 sonnel under chapter 71 of title 5, United
16 States Code, with full rights under such chap-
17 ter.

18 (B) Nothing in this subsection shall be
19 construed to prevent covered employees from
20 selecting an exclusive representative other than
21 the labor organization described under para-
22 graph (1) for purposes of collective bargaining
23 under such chapter 71.

24 (2) NATIONAL LEVEL.—Notwithstanding any
25 provision of such chapter 71, collective bargaining
26 for any unit of covered employees shall occur at the

1 national level, but may be supplemented by local
2 level bargaining and local level agreements in fur-
3 therance of elements of a national agreement or on
4 local unit employee issues not otherwise covered by
5 a national agreement. Such local-level bargaining
6 and local-level agreements shall occur only by mu-
7 tual consent of the exclusive representative of full
8 and part-time non-supervisory TSA personnel car-
9 rying out screening functions under section 44901 of
10 title 49, United States Code, and a TSA Federal Se-
11 curity Director or their designee.

12 (3) CURRENT AGREEMENT.—Any collective bar-
13 gaining agreement covering such personnel in effect
14 on the date of enactment of this Act shall remain in
15 effect until a collective bargaining agreement is en-
16 tered into under such chapter 71, unless the Admin-
17 istrator and exclusive representative mutually agree
18 to revisions to such agreement.

19 (b) CONSULTATION PROCESS.—Not later than seven
20 days after the date of the enactment of this Act, the Sec-
21 retary shall consult with the exclusive representative for
22 the personnel described in subsection (a) under chapter
23 71 of title 5, United States Code, on the formulation of
24 plans and deadlines to carry out the conversion of full-
25 and part-time non-supervisory TSA personnel carrying out

1 screening functions under section 44901 of title 49,
2 United States Code, under this Act. Prior to the date such
3 chapter 71 begins to apply pursuant to section 3(c)(2),
4 the Secretary shall provide (in writing) to such exclusive
5 representative the plans for how the Secretary intends to
6 carry out the conversion of such personnel under this Act,
7 including with respect to such matters as—
8 (1) the anticipated conversion date; and
9 (2) measures to ensure compliance with sections
10 3 and 4.

11 (c) REQUIRED AGENCY RESPONSE.—If any views or
12 recommendations are presented under subsection (b) by
13 the exclusive representative, the Secretary shall consider
14 the views or recommendations before taking final action
15 on any matter with respect to which the views or rec-
16 ommendations are presented and provide the exclusive
17 representative a written statement of the reasons for the
18 final actions to be taken.

19 **SEC. 6. NO RIGHT TO STRIKE.**

20 Nothing in this Act may be considered—
21 (1) to repeal or otherwise affect—
22 (A) section 1918 of title 18, United States
23 Code (relating to disloyalty and asserting the
24 right to strike against the Government); or

6 SEC. 7. PROPOSAL ON HIRING AND CONTRACTING BACK- 7 GROUND CHECK REQUIREMENTS.

8 Not later than one year after the date of enactment
9 of this Act, the Secretary shall submit a plan to the appro-
10 priate congressional committees on a proposal to har-
11 monize and update, for the purposes of hiring and for au-
12 thorizing or entering into any contract for service, the re-
13 strictions in section 70105(c) of title 46, United States
14 Code, (relating to the issuance of transportation security
15 cards) and section 44936 of title 49, United States Code,
16 (relating to security screener employment investigations
17 and restrictions).

18 SEC. 8. COMPTROLLER GENERAL REVIEWS.

19 (a) REVIEW OF RECRUITMENT.—Not later than one
20 year after the date of the enactment of this Act, the Com-
21 troller General shall submit to Congress a report on the
22 efforts of the TSA regarding recruitment, including re-
23 cruitment efforts relating to veterans and the dependents
24 of veterans and members of the Armed Forces and the
25 dependents of such members. Such report shall also in-

1 clude recommendations regarding how the TSA may im-
2 prove such recruitment efforts.

3 (b) REVIEW OF IMPLEMENTATION.—Not later than
4 60 days after the conversion date, the Comptroller General
5 shall commence a review of the implementation of this Act.
6 The Comptroller General shall submit to Congress a re-
7 port on its review no later than one year after such conver-
8 sion date.

9 (c) REVIEW OF PROMOTION POLICIES AND LEADER-
10 SHIP DIVERSITY.—Not later than one year after the date
11 of the enactment of this Act, the Comptroller General shall
12 submit to Congress a report on the efforts of the TSA
13 to ensure that recruitment, hiring, promotion, and ad-
14 vancement opportunities are equitable and provide for de-
15 mographics among senior leadership that are reflective of
16 the United States' workforce demographics writ large.
17 Such report shall, to the extent possible, include an over-
18 view and analysis of the current demographics of TSA
19 leadership and, as appropriate, recommendations to im-
20 prove hiring and promotion procedures and diversity in
21 leadership roles that may include recommendations for
22 how TSA can better promote from within and retain and
23 advance its workers.

24 (d) REVIEW OF HARASSMENT AND ASSAULT POLI-
25 CIES AND PROTECTIONS.—Not later than one year after

1 the date of the enactment of this Act, the Comptroller
2 General shall submit to Congress a report on the efforts
3 of the TSA to ensure the safety of its staff with regards
4 to harassment and assault in the workplace, such as inci-
5 dents of sexual harassment and violence and harassment
6 and violence motivated by an individual's perceived race,
7 ethnicity, religion, gender identity or sexuality, and includ-
8 ing incidents where the alleged perpetrator or perpetrators
9 are members of the general public. Such report shall in-
10 clude an overview and analysis of the current TSA policies
11 and response procedures, a detailed description of if,
12 when, and how these policies fail to adequately protect
13 TSA personnel, and, as appropriate, recommendations for
14 steps the TSA can take to better protect its employees
15 from harassment and violence in their workplace. In con-
16 ducting its review, the Comptroller General shall provide
17 opportunities for TSA employees of all levels and posi-
18 tions, and unions and associations representing such em-
19 ployees, to submit comments, including in an anonymous
20 form, and take those comments into account in its final
21 recommendations.

22 **SEC. 9. SENSE OF CONGRESS.**

23 It is the sense of Congress that—
24 (1) the TSA's personnel system provides insuf-
25 ficient benefits and workplace protections to the

1 workforce that secures the nation's transportation
2 systems and that the TSA's workforce should be
3 provided protections and benefits under title 5,
4 United States Code; and

5 (2) the provision of these title 5 protections and
6 benefits should not result in a reduction of pay or
7 benefits to current TSA employees.

8 **SEC. 10. ASSISTANCE FOR FEDERAL AIR MARSHAL SERV-
9 ICE.**

10 The Administrator may communicate with organiza-
11 tions representing a significant number of Federal Air
12 Marshals, to the extent provided by law, to address con-
13 cerns regarding Federal Air Marshals related to the fol-
14 lowing:

15 (1) Mental health.

16 (2) Suicide rates.

17 (3) Morale and recruitment.

18 (4) Equipment and training.

19 (5) Work schedules and shifts, including man-
20 dated periods of rest.

21 (6) Any other personnel issues the Adminis-
22 trator determines appropriate.

1 **SEC. 11. PREVENTION AND PROTECTION AGAINST CERTAIN**

2 **ILLNESS.**

3 The Administrator, in coordination with the Director
4 of the Centers for Disease Control and Prevention and the
5 Director of the National Institute of Allergy and Infec-
6 tious Diseases, shall ensure that covered employees are
7 provided proper guidance regarding prevention and protec-
8 tions against the COVID–19 National Emergency, includ-
9 ing appropriate resources.

10 **SEC. 12. HAZARDOUS DUTY PAYMENTS.**

11 Subject to the availability of appropriations, and not
12 later than 90 days after receiving such appropriations, the
13 Administrator shall provide a one-time bonus payment of
14 \$3,000 to each at-risk employee.

15 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

16 There is authorized to be appropriated such sums as
17 may be necessary, to remain available until expended, to
18 carry out this Act.

19 **SEC. 14. STUDY ON FEASIBILITY OF COMMUTING BENEFITS.**

20 Not later than 270 days after the enactment of this
21 Act, the Administrator shall submit to the appropriate
22 congressional committees a feasibility study on allowing
23 covered employees carrying out screening functions under
24 section 44901 of title 49, United States Code, to treat as
25 hours of employment time spent by such employees regu-
26 larly traveling between airport parking lots and bus and

1 transit stops and screening checkpoints before and after
2 the regular work day. In conducting such study, the Ad-
3 ministrator shall consider—

4 (1) the amount of time needed to travel to and
5 from airport parking lots and bus and transit stops
6 at representative airports of various sizes;

7 (2) the feasibility of using mobile phones and
8 location data to allow employees to report their ar-
9 rival to and departure from airport parking lots and
10 bus and transit stops; and

11 (3) the estimated costs of providing such bene-
12 fits.

13 **SEC. 15. BRIEFING ON ASSAULTS AND THREATS ON TSA EM-
14 PLOYEES.**

15 Not later than 90 days after the date of the enact-
16 ment of this Act, the Administrator shall brief the appro-
17 priate congressional committees regarding the following:

18 (1) Reports to the Administrator of instances of
19 physical or verbal assault or threat made by a mem-
20 ber of the general public against a covered employee
21 engaged in carrying out screening functions under
22 section 44901 of title 49, United States Code, since
23 January 1, 2019.

24 (2) Procedures for reporting such assaults and
25 threats, including information on how the Adminis-

1 trator communicates the availability of such proce-
2 dures.

3 (3) Any steps taken by TSA to prevent and re-
4 spond to such assaults and threats.

5 (4) Any related civil actions and criminal refer-
6 rals made annually since January 1, 2019.

7 (5) Any additional authorities needed by the
8 Administrator to better prevent or respond to such
9 assaults and threats.

10 **SEC. 16. ANNUAL REPORTS ON TSA WORKFORCE.**

11 Not later than one year after the date of the enact-
12 ment of this Act and annually thereafter, the Adminis-
13 trator shall submit to the appropriate congressional com-
14 mittees a report that contains the following:

15 (1) An analysis of the Office of Personnel Man-
16 agement's Federal Employee Viewpoint Survey
17 (FEVS) to determine job satisfaction rates of cov-
18 ered employees.

19 (2) Information relating to retention rates of
20 covered employees at each airport, including trans-
21 fers, in addition to aggregate retention rates of cov-
22 ered employees across the TSA workforce.

1 (3) Information relating to actions taken by the
2 TSA intended to improve workforce morale and re-
3 tention.

Passed the House of Representatives May 12, 2022.

Attest:

Clerk.

117TH CONGRESS
2D SESSION

H. R. 903

AN ACT

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system under title 5, United States Code, to employees of the Transportation Security Administration, and for other purposes.