

117TH CONGRESS
1ST SESSION

S. 1856

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.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2021

Mr. SCHATZ (for himself, Mr. PETERS, Mr. BLUMENTHAL, Mr. BOOKER, Mrs. GILLIBRAND, Mr. SANDERS, Mr. WARNER, Ms. HASSAN, Mr. VAN HOLLEN, Mr. PADILLA, Mr. CARDIN, Mr. MARKEY, Ms. WARREN, Mr. KAINE, Mr. MENENDEZ, Mr. CASEY, Ms. CORTEZ MASTO, Ms. KLOBUCHAR, Mr. BENNET, Ms. DUCKWORTH, Ms. HIRONO, Mr. BROWN, Ms. ROSEN, Mr. DURBIN, Ms. BALDWIN, Mr. LUJÁN, Mr. WYDEN, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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 2021” or the “Rights for the TSA Workforce Act of
5 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “2019 Determination” means the
9 publication entitled “Determination on Transpor-
10 tation Security Officers and Collective Bargaining”,
11 issued on July 13, 2019, by Administrator David P.
12 Pekoske;

13 (2) the term “adjusted basic pay” means—

14 (A) the rate of pay fixed by law or admin-
15 istrative action for a position occupied by a cov-
16 ered employee, before any deductions; and

17 (B) any regular, fixed supplemental pay-
18 ment for non-overtime hours of work creditable
19 as basic pay for retirement purposes, including
20 any applicable locality payment and any special
21 rate supplement;

22 (3) the term “Administrator” means the Ad-
23 ministrator of the Transportation Security Adminis-
24 tration;

1 (4) the term “conversion date” means the date
2 on which paragraphs (1) through (4) of section 3(c)
3 take effect;

4 (5) the term “covered employee” means an em-
5 ployee who occupies a covered position;

6 (6) the term “covered position” means a posi-
7 tion within the Transportation Security Administra-
8 tion;

9 (7) the term “employee” has the meaning given
10 the term in section 2105 of title 5, United States
11 Code, which shall be determined without regard to
12 any provision of law cited in paragraph (9);

13 (8) the term “Secretary” means the Secretary
14 of Homeland Security; and

15 (9) the term “TSA personnel management sys-
16 tem” means any personnel management system es-
17 tablished or modified under—

18 (A) section 111(d) of the Aviation and
19 Transportation Security Act (49 U.S.C. 44935
20 note); or

21 (B) section 114(n) of title 49, United
22 States Code.

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

2 (a) RESTRICTIONS ON CERTAIN PERSONNEL AU-
3 THORITIES.—Notwithstanding any other provision of law,
4 effective as of the date of enactment of this Act—

5 (1) any TSA personnel management system in
6 use for covered employees and covered positions on
7 the day before that date of enactment, and any
8 Transportation Security Administration personnel
9 management policy, letters, guideline, or directive in
10 effect on that day, may not be modified;

11 (2) no Transportation Security Administration
12 personnel management policy, letter, guideline, or di-
13 rective that was not established before that date
14 issued under section 111(d) of the Aviation and
15 Transportation Security Act (49 U.S.C. 44935 note)
16 or section 114(n) of title 49, United States Code,
17 may be established; and

18 (3) any authority to establish or adjust a
19 human resources management system under chapter
20 97 of title 5, United States Code, shall terminate
21 with respect to covered employees and covered posi-
22 tions.

23 (b) PERSONNEL AUTHORITIES DURING TRANSITION
24 PERIOD.—Any TSA personnel management system in use
25 for covered employees and covered positions on the day
26 before the date of enactment of this Act and any Trans-

1 portation Security Administration personnel management
 2 policy, letter, guideline, or directive in effect on the day
 3 before the date of enactment of this Act shall remain in
 4 effect until the effective date under subsection (c).

5 (c) TRANSITION TO GENERAL PERSONNEL MANAGE-
 6 MENT SYSTEM APPLICABLE TO CIVIL SERVICE EMPLOY-
 7 EES.—Effective as of a date determined by the Secretary,
 8 but in no event later than 180 days after the date of enact-
 9 ment of this Act—

10 (1) each provision of law cited in section 2(9)
 11 is repealed;

12 (2) any Transportation Security Administration
 13 personnel management policy, letter, guideline, or di-
 14 rective, including the 2019 Determination, shall
 15 cease to be effective;

16 (3) any human resources management system
 17 established or adjusted under chapter 97 of title 5,
 18 United States Code, with respect to covered employ-
 19 ees or covered positions shall cease to be effective;
 20 and

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

24 (d) SAFEGUARDS ON GRIEVANCES.—In carrying out
 25 this Act, the Secretary shall take such actions as are nec-

1 essary to provide an opportunity to each covered employee
 2 with a grievance or disciplinary action (including an ad-
 3 verse action) pending within the Transportation Security
 4 Administration on the date of enactment of this Act, or
 5 at any time during the transition period described in sub-
 6 section (c), to have that grievance removed to proceedings
 7 pursuant to title 5, United States Code, or continued with-
 8 in the Administration.

9 **SEC. 4. TRANSITION RULES.**

10 (a) NONREDUCTION IN PAY AND COMPENSATION.—

11 (1) IN GENERAL.—Subject to paragraph (2),
 12 under pay conversion rules as the Secretary may
 13 prescribe to carry out this Act, a covered employee
 14 converted from a TSA personnel management sys-
 15 tem to the provisions of title 5, United States Code,
 16 under section 3(c)(4) shall not be subject to any re-
 17 duction in the rate of adjusted basic pay payable, or
 18 total compensation provided, to that covered em-
 19 ployee.

20 (2) FEDERAL AIR MARSHAL SERVICE.—An em-
 21 ployee of the Federal Air Marshal Service converted
 22 from a TSA personnel management system to the
 23 provisions of title 5, United States Code, under sec-
 24 tion 3(c)(4) shall be converted such that the rate of
 25 adjusted basic pay payable to the employee is not

1 less than that rate for a position at GS–13 of the
2 General Schedule.

3 (b) PRESERVATION OF OTHER RIGHTS.—With re-
4 spect to each covered employee, as of the conversion date,
5 the Secretary shall take any actions necessary to ensure
6 that—

7 (1) any annual leave, sick leave, or other paid
8 leave accrued, accumulated, or otherwise available to
9 the covered employee, as of the day before the con-
10 version date, shall remain available to the covered
11 employee until used; and

12 (2) the Government share of any premiums or
13 other periodic charges under chapter 89 of title 5,
14 United States Code, governing group health insur-
15 ance shall be paid in an amount that is not less than
16 the amount paid for those premiums and other peri-
17 odic charges, as of the day before the conversion
18 date.

19 (c) GAO STUDY ON TSA PAY RATES.—Not later
20 than 270 days after the date of enactment of this Act,
21 the Comptroller General of the United States shall submit
22 to Congress a report on the differences in rates of pay,
23 classified by pay system, between Transportation Security
24 Administration employees—

1 (1) with duty stations in the contiguous 48
2 States; and

3 (2) with duty stations outside of the States de-
4 scribed in paragraph (1), including those employees
5 located in any territory or possession of the United
6 States.

7 (d) **RULE OF CONSTRUCTION.**—During the transition
8 period described in section 3(c), and after the conversion
9 date, the Secretary shall ensure that the Transportation
10 Security Administration continues to prevent the appoint-
11 ment of individuals who have been convicted of a sex
12 crime, an offense involving a minor, a crime of violence,
13 or terrorism.

14 **SEC. 5. CONSULTATION REQUIREMENT.**

15 (a) **EXCLUSIVE REPRESENTATIVE.**—

16 (1) **IN GENERAL.**—The labor organization cer-
17 tified by the Federal Labor Relations Authority on
18 June 29, 2011, or a successor labor organization,
19 shall be—

20 (A) treated as the exclusive representative
21 of full- and part-time non-supervisory personnel
22 of the Transportation Security Administration
23 carrying out screening functions under section
24 44901 of title 49, United States Code; and

1 (B) the exclusive representative for the
2 personnel described in subparagraph (A) under
3 chapter 71 of title 5, United States Code, with
4 full rights under that chapter.

5 (2) APPLICATION.—Any collective bargaining
6 agreement covering the personnel described in para-
7 graph (1)(A) that is in effect on the date of enact-
8 ment of this Act shall remain in effect, consistent
9 with subsection (d).

10 (b) CONSULTATION RIGHTS.—

11 (1) IN GENERAL.—Not later than 7 days after
12 the date of enactment of this Act, the Secretary
13 shall consult with the exclusive representative for the
14 personnel described in subsection (a)(1)(A) under
15 chapter 71 of title 5, United States Code, as well as
16 appropriate labor associations that represent a sub-
17 stantial percentage of employees, on the formulation
18 of plans and deadlines to carry out the conversion of
19 covered employees and covered positions under this
20 Act.

21 (2) PLANS.—Before the conversion date, the
22 Secretary shall provide (in writing) to the exclusive
23 representative and labor associations described in
24 paragraph (1) the plans for how the Secretary in-
25 tends to carry out the conversion of covered employ-

1 ees and covered positions under this Act, including
2 with respect to such matters as—

3 (A) the anticipated conversion date; and

4 (B) measures to ensure compliance with
5 sections 3 and 4.

6 (c) **REQUIRED AGENCY RESPONSE.**—If any views or
7 recommendations are presented under subsection (b) by
8 the exclusive representative, or the labor associations de-
9 scribed in that subsection, the Secretary shall—

10 (1) consider the views or recommendations be-
11 fore taking final action on any matter with respect
12 to which the views or recommendations are pre-
13 sented; and

14 (2) provide the exclusive representative and
15 those labor associations a written statement of the
16 reasons for the final actions to be taken.

17 (d) **SUNSET PROVISION.**—The provisions of this sec-
18 tion shall cease to be effective as of the conversion date.

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

1 (B) section 7311 of title 5, United States
2 Code (relating to loyalty and striking); or
3 (2) to otherwise authorize any activity that is
4 not permitted under either provision of law cited in
5 paragraph (1).

6 **SEC. 7. RULE OF CONSTRUCTION WITH RESPECT TO CER-**
7 **TAIN CRIMES RELATING TO TERRORISM.**

8 Nothing in this Act may be construed to contradict
9 chapter 113B of title 18, United States Code, including
10 with respect to—

11 (1) section 2332b (relating to acts of terrorism
12 transcending national boundaries);

13 (2) section 2339 (relating to harboring or con-
14 cealing terrorists); and

15 (3) section 2339A (relating to providing mate-
16 rial support to terrorists).

17 **SEC. 8. REPORT BY GAO REGARDING TSA RECRUITMENT.**

18 (a) IN GENERAL.—Not later than 1 year after the
19 date of enactment of this Act, the Comptroller General
20 of the United States shall submit to Congress a report
21 on the efforts of the Administrator regarding recruitment,
22 including recruitment efforts relating to—

23 (1) veterans and the dependents of veterans;
24 and

1 (2) members of the Armed Forces and the de-
2 pendents of those members.

3 (b) CONTENTS.—The report required under sub-
4 section (a) shall include recommendations regarding how
5 the Administrator may improve the recruitment efforts de-
6 scribed in that subsection.

7 **SEC. 9. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) the personnel system of the Transportation
10 Security Administration provides insufficient bene-
11 fits and workplace protections to the workforce that
12 secures the transportation systems of the United
13 States; and

14 (2) the workforce of the Transportation Secu-
15 rity Administration should be provided protections
16 and benefits under title 5, United States Code.

17 **SEC. 10. FEDERAL AIR MARSHAL SERVICE.**

18 The Administrator shall—

19 (1) implement in-person or remote (by means of
20 telecommunications) mental health programs at each
21 field office of the Federal Air Marshal Service that
22 offer, at a minimum, confidential and direct psy-
23 chiatric counseling; and

24 (2) consult with appropriate labor associations
25 that represent a substantial percentage of Federal

1 Air Marshal Service employees regarding, with re-
2 spect to those employees—

3 (A) mental health;

4 (B) suicide rates;

5 (C) morale and recruitment;

6 (D) equipment and training; and

7 (E) any other personnel issues the Admin-
8 istrator determines appropriate.

9 **SEC. 11. VETERANS HIRING.**

10 (a) DEFINITIONS.—In this section, the terms “dis-
11 abled veteran”, “preference eligible”, and “veteran” have
12 the meanings given the terms in section 2108 of title 5,
13 United States Code.

14 (b) PRIORITIZATION.—The Secretary shall prioritize
15 the appointment of veterans, including disabled veterans,
16 and other preference eligibles, including widows and wid-
17 ows of veterans, to covered positions.

18 **SEC. 12. PREVENTION AND PROTECTION AGAINST CERTAIN**
19 **ILLNESS.**

20 The Administrator, in coordination with the Director
21 of the Centers for Disease Control and Prevention and the
22 Director of the National Institute of Allergy and Infec-
23 tious Diseases, shall ensure that covered employees are

- 1 provided proper guidance regarding prevention and protec-
- 2 tions against coronavirus, including appropriate resources.

