

RIGHTS FOR TRANSPORTATION SECURITY OFFICERS ACT
 OF 2020

FEBRUARY 21, 2020

Mr. THOMPSON of Mississippi, from the Committee on Homeland
 Security, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1140]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1140) 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 who provide screening of all passengers and property, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Rights for Transportation Security Officers Act of 2020”.

SEC. 2. DEFINITIONS.

For purposes of this Act—

- (1) the term “adjusted basic pay” means—
 - (A) the rate of pay fixed by law or administrative action for the position held by a covered employee before any deductions; and
 - (B) any regular, fixed supplemental payment for non-overtime hours of work creditable as basic pay for retirement purposes, including any applicable locality payment and any special rate supplement;
- (2) the term “Administrator” means the Administrator of the Transportation Security Administration;
- (3) the term “covered employee” means an employee who holds a covered position;
- (4) the term “covered position” means a position within the Transportation Security Administration;
- (5) the term “conversion date” means the date as of which paragraphs (1) through (4) of section 3(c) take effect;
- (6) the term “2019 Determination” means the publication, entitled “Determination on Transportation Security Officers and Collective Bargaining”, issued on July 13, 2019, by Administrator David P. Pekoske;
- (7) the term “employee” has the meaning given such term by section 2105 of title 5, United States Code;
- (8) the term “Secretary” means the Secretary of Homeland Security; and
- (9) the term “TSA personnel management system” means any personnel management system established or modified under—
 - (A) section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note); or
 - (B) section 114(n) of title 49, United States Code.

SEC. 3. CONVERSION OF TSA PERSONNEL.

- (a) **RESTRICTIONS ON CERTAIN PERSONNEL AUTHORITIES.**—Notwithstanding any other provision of law, effective as of the date of the enactment of this Act—
 - (1) any TSA personnel management system in use for covered employees and covered positions on the day before such date of enactment, and any TSA personnel management policy, letters, guideline, or directive in effect on such day may not be modified;
 - (2) no TSA personnel management policy, letter, guideline, or directive that was not established before such date issued pursuant to section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) or section 114(n) of title 49, United States Code, may be established; and
 - (3) any authority to establish or adjust a human resources management system under chapter 97 of title 5, United States Code, shall terminate with respect to covered employees and covered positions.
- (b) **PERSONNEL AUTHORITIES DURING TRANSITION PERIOD.**—Any TSA personnel management system in use for covered employees and covered positions on the day before the date of enactment of this Act and any TSA personnel management policy, letter, guideline, or directive in effect on the day before the date of enactment of this Act shall remain in effect until the effective date under subsection (c).
- (c) **TRANSITION TO GENERAL PERSONNEL MANAGEMENT SYSTEM APPLICABLE TO CIVIL SERVICE EMPLOYEES.**—Effective as of the date determined by the Secretary, but in no event later than 180 days after the date of the enactment of this Act—
 - (1) each provision of law cited in section 2(9) is repealed;
 - (2) any TSA personnel management policy, letter, guideline, and directive, including the 2019 Determination, shall cease to be effective;
 - (3) 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
 - (4) covered employees and covered positions shall be subject to the provisions of title 5, United States Code.
- (d) **SAFEGUARDS ON GRIEVANCES.**—In carrying out this Act, the Secretary shall take such actions as are necessary to provide an opportunity to each covered employee with a grievance or disciplinary action (including an adverse action) pending within TSA on the date of enactment of this Act or at any time during the transition

period described in subsection (c) to have such grievance removed to proceedings pursuant to title 5, United States Code, or continued within TSA.

SEC. 4. TRANSITION RULES.

(a) **NONREDUCTION IN PAY AND COMPENSATION.**—Under pay conversion rules as the Secretary may prescribe to carry out this Act, a covered employee converted from a TSA personnel management system to the provisions of title 5, United States Code, pursuant to section 2(c)(4) shall not be subject to any reduction in the rate of adjusted basic pay payable, or total compensation provided, to such covered employee.

(b) **PRESERVATION OF OTHER RIGHTS.**—In the case of each covered employee as of the conversion date, the Secretary shall take any actions necessary to ensure that—

(1) any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to a covered employee immediately before the conversion date shall remain available to the employee until used; and

(2) the Government share of any premiums or other periodic charges under chapter 89 of title 5, United States Code, governing group health insurance shall remain at least the same as was the case immediately before the conversion date.

SEC. 5. CONSULTATION REQUIREMENT.

(a) **EXCLUSIVE REPRESENTATIVE.**—The labor organization certified by the Federal Labor Relations Authority on June 29, 2011, or successor labor organization shall be treated as the exclusive representative of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, United States Code, and shall be the exclusive representative for such personnel under chapter 71 of title 5, United States Code, with full rights under such chapter. Any collective bargaining agreement covering such personnel on the date of enactment of this Act shall remain in effect, consistent with subsection (d).

(b) **CONSULTATION RIGHTS.**—Not later than 7 days after the date of the enactment of this Act, the Secretary shall consult with the exclusive representative for the personnel described in subsection (a) under chapter 71 of title 5, United States Code, on the formulation of plans and deadlines to carry out the conversion of covered employees and covered positions under this Act. Prior to the conversion date, the Secretary shall provide (in writing) to such exclusive representative the plans for how the Secretary intends to carry out the conversion of covered employees and covered positions under this Act, including with respect to such matters as—

(1) the anticipated conversion date; and

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

(c) **REQUIRED AGENCY RESPONSE.**—If any views or recommendations are presented under subsection (b) by the exclusive representative, the Secretary shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented and provide the exclusive representative a written statement of the reasons for the final actions to be taken.

(d) **SUNSET PROVISION.**—The provisions of this section shall cease to be effective as of the conversion date.

SEC. 6. NO RIGHT TO STRIKE.

Nothing in this Act shall be considered—

(1) to repeal or otherwise affect—

(A) section 1918 of title 18, United States Code (relating to disloyalty and asserting the right to strike against the Government); or

(B) section 7311 of title 5, United States Code (relating to loyalty and striking); or

(2) to otherwise authorize any activity which is not permitted under either provision of law cited in paragraph (1).

PURPOSE AND SUMMARY

The Transportation Security Administration (TSA) workforce is among the lowest paid in the Federal government and lacks basic workplace protections afforded to most other government workers. As a result, TSA struggles with low morale and high attrition. H.R. 1140, the “Rights for Transportation Security Officers Act of 2020,” seeks to provide TSA employees with the rights, protections, and benefits afforded to most other Federal workers in order to improve agency operations, workforce retention, and morale. The bill would require the Secretary of Homeland Security (DHS Secretary), with-

in 180 days of enactment of this Act, to convert its workforce from its current personnel system to the personnel system under Title 5 of the United States Code. In carrying out the conversion to the Title 5 Federal pay scale, the DHS Secretary would be required to ensure that no employ receives a reduction in pay. Under H.R. 1140, the DHS Secretary would be required to consult with the labor organization that serves as the exclusive representative of TSA security screening personnel within 7 days of enactment of this Act on the formulation of plans to carry out the conversion.

BACKGROUND AND NEED FOR LEGISLATION

After the September 11, 2001 terrorist attacks, Congress established TSA with the mission of securing the Nation's transportation systems against further attacks (See the *Aviation and Transportation Security Act, Pub.L. 107-71*). When creating this new agency, Congress granted TSA broad authority to create and manage its own personnel system separate from that of other executive branch agencies and the rest of the Department of Homeland Security.

Since 2001, TSA has used this authority to mostly benefit senior management, not the frontline workforce. Senior managers, for example, have been permitted to award each other with large bonuses that would be prohibited under the Title 5 personnel system. Meanwhile, TSA faces chronic, major challenges in training, hiring, and retaining frontline workers. Year after year, TSA ranks near the bottom in Federal employee morale surveys, especially regarding pay satisfaction. In March 2019, the Department of Homeland Security (DHS) Office of the Inspector General (OIG) published a report highlighting major problems TSA faces in recruiting, training, and retaining workers. The report found that, over a two-year span in Fiscal Years 2016 and 2017, approximately one in three Transportation Security Officers (TSOs) left the agency. In Fiscal Year 2017 alone, TSA spent approximately \$16 million to hire and train nearly 2,000 TSOs who left within six months of being hired.

Several factors contribute to TSA's morale and attrition problems. TSOs are among the lowest paid employees in the Federal government and receive minimal, infrequent pay increases. TSOs' job responsibilities have grown increasingly demanding, requiring extensive training on advanced security technologies and long hours in crowded, stressful environments. In addition, TSA employees are not granted many of the basic workplace protections afforded most other Federal workers under the Title 5 personnel system. For example, TSA employees have limited options for filing workplace grievances and cannot appeal disciplinary actions to an outside third-party such as the Merit Systems Protection Board. Further, TSOs are limited in their ability to negotiate protections because it is not one of the limited issue areas for which TSA permits collective bargaining.

The "Rights for Transportation Security Officers Act of 2020" seeks to ensure that all TSA employees have access to the fair and transparent personnel system established under Title 5 of the U.S. Code. Under that Federal personnel system, TSOs and other employees would receive higher salaries as well as regular salary increases in future years. Employees would also receive access to MSPB processes and collective bargaining rights as are available to most other Federal workers.

HEARINGS

For the purposes of section 103(i) of H. Res 6. of the 116th Congress, the following hearings were used to develop H.R. 1140:

- On April 9, 2019, the Committee held a hearing entitled, “Securing America’s Transportation and Maritime Systems: A Review of the Fiscal Year 2020 Budget Requests for the Transportation Security Administration and the U.S. Coast Guard.” The Committee received testimony from Hon. David P. Pekoske, Administrator, TSA, and Admiral Karl L. Schultz, Commandant, U.S. Coast Guard.
- On May 21, 2019, the Committee held a hearing entitled, “The TSA Workforce Crisis: A Homeland Security Risk.” The Committee received testimony from Mr. John Kelly, Acting Inspector General, DHS; Mr. David Cox, National President, American Federal of Government Employees, AFL–CIO; Mr. Lance Lyttle, Managing Director, Aviation Division, Port of Seattle; and Mr. Jeffrey Neal, Senior Vice President, ICF.
- On October 29, 2019, the Committee held a hearing entitled, “One Year Later: Implementation of the TSA Modernization Act.” The Committee received testimony from Ms. Patricia F.S. Cogswell, Acting Deputy Administrator, TSA, and Mr. William Russell, Director, Homeland Security & Justice, Government Accountability Office.

COMMITTEE CONSIDERATION

The Committee met on January 29, 2020, with a quorum being present to consider H.R. 1140 and ordered the measure to be reported to the House with a favorable recommendation, as amended.

The following amendment was offered and agreed to:

An amendment in the nature of a substitute offered by Mr. Thompson.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Rights for Transportation Security Officers Act of 2020”.

SEC. 2. DEFINITIONS.

For purposes of this Act—

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

(A) the rate of pay fixed by law or administrative action for the position held by a covered employee before any deductions; and

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

(2) the term “Administrator” means the Administrator of the Transportation Security Administration;

(3) the term “covered employee” means an employee who holds a covered position;

(4) the term “covered position” means a position within the Transportation Security Administration;

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

(6) the term “2019 Determination” means the publication, entitled “Determination on Transportation Security Officers and Collective Bargaining”, issued on July 13, 2019, by Administrator David P. Pekoske;

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

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

(9) the term “TSA personnel management system” means any personnel management system established or modified under—

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

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

SEC. 3. CONVERSION OF TSA PERSONNEL.

(a) RESTRICTIONS ON CERTAIN PERSONNEL AUTHORITIES.—Notwithstanding any other provision of law, effective as of the date of the enactment of this Act—

(1) any TSA personnel management system in use for covered employees and covered positions on the day before such date of enactment, and any TSA personnel management policy, letters, guideline, or directive in effect on such day may not be modified;

(2) no TSA personnel management policy, letter, guideline, or directive that was not established before such date issued pursuant to section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) or section 114(n) of title 49, United States Code, may be established; and

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

(b) PERSONNEL AUTHORITIES DURING TRANSITION PERIOD.—Any TSA personnel management system in use for covered employees and covered positions on the day before the date of enactment of this Act and any TSA personnel management policy, letter, guideline, or directive in effect on the day before the date of enactment of this Act shall remain in effect until the effective date under subsection (c).

(c) Transition to General Personnel Management System Applicable to Civil Service Employees.—Effective as of the date determined by the Secretary, but in no event later than 180 days after the date of the enactment of this Act—

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

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

(3) 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

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

(d) SAFEGUARDS ON GRIEVANCES.—In carrying out this Act, the Secretary shall take such actions as are necessary to provide an opportunity to each covered employee with a grievance or disciplinary action (including an adverse action) pending within TSA on the date of enactment of this Act or at any time during the transition period described in subsection (c) to have such grievance removed to proceedings pursuant to title 5, United States Code, or continued within TSA.

SEC. 4. TRANSITION RULES.

(a) NONREDUCTION IN PAY AND COMPENSATION.—Under pay conversion rules as the Secretary may prescribe to carry out this Act, a covered employee converted from a TSA personnel management system to the provisions of title 5, United States Code, pursuant to section 2(c)(4) shall not be subject to any reduction in the rate of adjusted basic pay payable, or total compensation provided, to such covered employee.

(b) PRESERVATION OF OTHER RIGHTS.—In the case of each covered employee as of the conversion date, the Secretary shall take any actions necessary to ensure that—

(1) any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to a covered employee immediately before the conversion date shall remain available to the employee until used; and

(2) the Government share of any premiums or other periodic charges under chapter 89 of title 5, United States Code, governing group health insurance shall remain at least the same as was the case immediately before the conversion date.

SEC. 5. CONSULTATION REQUIREMENT.

(a) EXCLUSIVE REPRESENTATIVE.—The labor organization certified by the Federal Labor Relations Authority on June 29, 2011, or successor labor organization shall be treated as the exclusive representative of full- and part time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, United States Code, and shall be the exclusive representative for such personnel under chapter 71 of title 5, United States Code, with full rights under such chapter. Any collective bargaining agreement covering such personnel on the date of enactment of this Act shall remain in effect, consistent with subsection (d).

(b) CONSULTATION RIGHTS.—Not later than 7 days after the date of the enactment of this Act, the Secretary shall consult with the exclusive representative for the personnel described in subsection (a) under chapter 71 of title 5, United States Code, on the formulation of plans and dead-

lines to carry out the conversion of covered employees and covered positions under this Act. Prior to the conversion date, the Secretary shall provide (in writing) to such exclusive representative the plans for how the Secretary intends to carry out the conversion of covered employees and covered positions under this Act, including with respect to such matters as—

- (1) the anticipated conversion date; and
- (2) measures to ensure compliance with sections 3 and 4.

(c) **REQUIRED AGENCY RESPONSE.**—If any views or recommendations are presented under subsection (b) by the exclusive representative, the Secretary shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented and provide the exclusive representative a written statement of the reasons for the final actions to be taken.

(d) **SUNSET PROVISION.**—The provisions of this section shall cease to be effective as of the conversion date.

SEC. 6. NO RIGHT TO STRIKE.

Nothing in this Act shall be considered—

- (1) to repeal or otherwise affect—

(A) section 1918 of title 18, United States Code (relating to disloyalty and asserting the right to strike against the Government); or

(B) section 7311 of title 5, United States Code (relating to loyalty and striking); or

- (2) to otherwise authorize any activity which is not permitted under either provision of law cited in paragraph (1).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security considered H.R. 1140 on January 29, 2020 and took the following vote:

Ordering to be reported to the House with a favorable recommendation, as amended; was Agreed TO, by a recorded vote of 17 yeas and 9 nays (Roll Call Vote No. 11).

Roll No. 11

Yeas	Nays
Mr. Thompson of Mississippi	Mr. Rogers of Alabama
Mr. Langevin	Mr. King of New York
Mr. Richmond	Mr. Katko
Mr. Payne	Mr. Ratcliffe
Miss Rice	Mrs. Lesko
Mr. Correa	Mr. Green of Tennessee
Ms. Torres Small of New Mexico	Mr. Crenshaw
Mr. Rose of New York	Mr. Guest
Ms. Underwood	Mr. Bishop
Ms. Slotkin	
Mr. Cleaver	
Mr. Green of Texas	

Roll No. 11—Continued

Yeas	Nays
Ms. Clarke of New York	
Ms. Titus	
Mrs. Watson Coleman	
Ms. Barragán	
Mrs. Demings	
Total 17	9

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY,
ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 1140 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the objective of H.R. 1140 is to rescind the authority granted to TSA to establish and maintain a personnel system specific to TSA and to transition all TSA employees to the personnel system established under Title 5 of the U.S. Code. Transitioning TSA personnel to Title 5 will ensure all employees have access to the same rights and protections as those afforded to most other Federal employees.

ADVISORY ON EARMARKS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this Act may be cited as the “Rights for Transportation Security Officers Act of 2020.”

Sec. 2. Definitions

This section provides the definitions of “adjusted basic pay,” “Administrator,” “covered employee,” “covered position,” “conversion date,” “2019 Determination,” “employee,” “Secretary,” and “TSA personnel management system,” as used in the Act.

Sec. 3. Conversion of TSA personnel

This section states that, as of the date of enactment of this Act, TSA may not modify its current personnel management system or establish any new personnel management policy, letter, guideline, or directive. It specifies that any authority to establish or adjust a human resources management system under chapter 97 of Title 5, U.S. Code, terminates as of the date of enactment with respect to covered employees and covered positions.

This section also states that, at a date determined the DHS Secretary but no later than 180 days after enactment, section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) and 49 U.S.C. 114(n) are repealed. Further, on such date, all TSA personnel management policies, letters, guidelines and directives and any human resources management system established or adjusted under chapter 97 of Title 5, U.S. Code, will cease to be effective and all covered employees and positions shall become subject to the provisions of Title 5 of the U.S. Code.

This section includes safeguards for the conversion period. Specifically, it states that the DHS Secretary shall take such actions as are necessary to provide an opportunity to each covered employee with a grievance or disciplinary action (including an adverse action) pending within TSA on the date of enactment or at any time during the conversion period to have such grievance removed to proceedings pursuant to title 5, U.S. Code, or continued within TSA. The Committee intends that disciplinary actions covered by this section to include all adverse actions, whether conduct- or performance-based, as well as appeals to such actions.

Sec. 4. Transition rules

This section states that any covered employee that is converted from a TSA personnel management system to the provisions of Title 5 of the U.S. Code shall not be subject to any reduction in the rate of adjusted basic pay payable, or total compensation provided, to such covered employee.

Additionally, the DHS Secretary is required to take such actions necessary to ensure that any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to a covered em-

ployee immediately before the conversion date shall remain available to the employee until used, and that the government share of any premiums or other periodic charges under chapter 89 of Title 5, U.S. Code, governing group health insurance shall remain at least the same as was the case immediately before the conversion date.

Sec. 5. Consultation requirement

This section states that the labor organization certified by the Federal Labor Relations Authority in June 2011 or its successor shall be treated as the exclusive representative of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, U.S. Code, and shall be the exclusive representative of such personnel under chapter 71 of Title 5, U.S. Code, with full rights under such chapter. It further states that any collective bargaining agreement covering such personnel on the date of enactment shall remain in effect.

The section also states that, within 7 days of enactment of the Act, the DHS Secretary shall consult with the exclusive labor representative on the formulation of plans and deadlines to carry out the conversion of covered employees and covered positions. Prior to the conversion date, the Secretary would be required to provide to such representative the plans for carrying out the conversion. The Secretary would also be required to consider the views or recommendations of the exclusive representative before taking final action on any matter with respect to which the views or recommendations are presented and provide the exclusive representative a written statement of the reasons for the final actions to be taken. The section states that the provisions of the section shall cease to be effective as of the conversion date.

Sec. 6. No right to strike

This section states that nothing in the Act shall be considered to repeal or otherwise affect section 1918 of Title 18, U.S. Code (relating to disloyalty and asserting the right to strike against the Government), or section 7311 of Title 5, U.S. Code (relating to loyalty and striking), or to otherwise authorize any activity which is not permitted under either such provision of law.

COMMITTEE CORRESPONDENCE

CAROLYN B. MALONEY
CHAIRWOMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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February 20, 2020

The Honorable Bennie J. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to you concerning H.R. 1140, the "Rights for Transportation Security Officers Act of 2019." There are certain provisions in the legislation which fall within the Rule X jurisdiction of the Committee on Oversight and Reform.

In the interest of permitting your Committee to proceed expeditiously on this bill, I am willing to waive this Committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill, the Committee on Oversight and Reform does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its Rule X jurisdiction. I request that you urge the Speaker to name Members of this Committee to any conference committee which is named to consider such provisions.

Please place this letter into the Congressional Record during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective Committees.

Sincerely,


Carolyn B. Maloney
Chairwoman

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Mike Rogers, Ranking Member
Committee on Homeland Security

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN



MIKE ROGERS, ALABAMA
RANKING MEMBER

**One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515**

February 20, 2020

The Honorable Carolyn Maloney
Chairwoman
Committee on Oversight and Reform
2157 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Maloney:

Thank you for your letter regarding H.R. 1140, the "Rights for Transportation Security Officers Act of 2019." I recognize that the Committee on Oversight and Reform has a jurisdictional interest in H.R. 1140, and appreciate your effort to allow this bill to be considered on the House floor.

I concur with you that forgoing action on the bill does not in any way prejudice the Committee on Oversight and Reform with respect to its jurisdictional prerogatives on this bill or similar legislation in the future, and I would support your effort to seek appointment of an appropriate number of conferees to any House – Senate conference involving this legislation.

I will include our letters on H.R. 1140 in the *Congressional Record* during floor consideration of this bill. I look forward to working with you on this legislation and other matters of great importance to this nation.

Sincerely,


BENNIE G. THOMPSON
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Michael Rogers, Ranking Member
The Honorable Tom Wickham, Parliamentarian

MINORITY VIEWS

When Congress created the Transportation Security Administration (TSA) with enactment of the *Aviation and Transportation Security Act (ATSA, Pub. L. 107-71)*, it recognized the criticality of providing unique authorities to ensure the agency can carry out its national security mission. These authorities provide TSA vital flexibility in the management of its personnel system so it can respond to evolving threats and best protect the traveling public.

H.R. 1140 would repeal the vital workforce flexibilities enacted under ATSA and move TSA's personnel system under title 5, United States Code. Title 5 strictly governs the pay, benefits, and collective bargaining rights of most civilian federal employees. It fails to provide agencies with the necessary flexibility to position their workforce to meet evolving threats.

Committee Republicans are concerned that moving TSA employees under title 5 would undermine the agency's ability to perform its national security mission. According to information obtained from TSA, H.R. 1140 would hinder TSA's ability to address serious instances of misconduct among the workforce. Under current law, the agency may exercise one-step removal for serious offenses such as intentional security breaches, theft, failure of drug and alcohol tests while on duty, or arrests for certain criminal offenses. Under H.R. 1140, an employee who knowingly allows guns or explosives through a security checkpoint would no longer be immediately fired.

H.R. 1140 would expand collective bargaining rights for TSA employees. As a result, security policies needed to protect the traveling public would be negotiable topics in union bargaining. Under current law, TSA can impose new security requirements, such as enhanced passenger screening when intelligence indicates credible threats. Under this bill, how those new security requirements are implemented could be subject to negotiation with the union.

In addition to the damaging impact H.R. 1140 could have on aviation security, Committee Republicans are concerned with how it proposes to transition the TSA to a fully unionized workforce. The bill sets the exclusive bargaining agent for the screeners and requires the TSA to immediately negotiate with them. The bill does not provide for an intervening union election. The screener workforce never gets a chance to exercise their Constitutional right to choose their representation.

Committee Republicans are also concerned that H.R. 1140 will do little if anything to improve screener pay or morale. In fact, TSA screeners would lose benefits under this bill. If H.R. 1140 becomes law, screeners will lose the ability to trade shifts with one another or donate certain accrued leave to their fellow workers. Certain overtime pay would be prohibited and career milestone bonuses could no longer be offered.

H.R. 1140 would also make hiring veterans much harder. Under current law, veterans only have to demonstrate prior service to receive a hiring preference by the TSA. Under this bill, veterans would have to meet much stricter title 5 requirements to be eligible for a hiring preference.

In 2019, TSA received a report from the bipartisan Blue Ribbon Panel on Human Capital Service Delivery. The Panel, comprised of former officials from both Republican and Democrat administrations—including the Chief Human Capital Officer for the Department of Homeland security under President Barack Obama—strongly recommended against moving TSA personnel under title 5. The Panel pointed out that under ATSA, the TSA can pay its employees more than they can make under title 5.

Finally, Committee Republicans are very concerned with the significant cost to taxpayers should this legislation be enacted. The Majority has repeatedly cited years-old cost data that is hundreds of millions of dollars less than TSA's current cost estimate. TSA's cost estimate of \$1.17 billion over five years was transmitted to the Committee prior to markup of H.R. 1140, but the Majority has continued to erroneously cite lower sums. Committee Republicans further object to filing a bill report for H.R. 1140 before receiving a score from the Congressional Budget Office, which will provide needed insight into how significantly this legislation would cost the American taxpayer.

Committee Republicans acknowledge the dedication of the TSA workforce and the reality that they are chronically among the lowest paid federal employees. However, moving the agency under title 5 will create more problems than it solves. Committee Republicans believe that Congress should appropriate funding for the Administrator's career progression initiative which boosts screener salaries and career advancement awards.

Rather than condemning agency personnel to the antiquated system under title 5, Committee Republicans stand ready to work across the aisle to implement TSA's bipartisan Blue Ribbon Panel recommendations and build an efficient and effective personnel management system at the agency that boosts screener pay, protects benefits, and meets the national security mission of protecting the traveling public.

MIKE ROGERS.

