

Union Calendar No. 154

111TH CONGRESS
1ST SESSION

H. R. 1881

[Report No. 111–273, Parts I and II]

To enhance the transportation security functions of the Department of Homeland Security by providing for an enhanced personnel system for employees of the Transportation Security Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mrs. LOWEY (for herself, Mr. THOMPSON of Mississippi, Ms. JACKSON-LEE of Texas, Mr. CARNEY, Mr. PASCRELL, Ms. ZOE LOFGREN of California, Mr. MARKEY of Massachusetts, Mrs. KIRKPATRICK of Arizona, Ms. KILPATRICK of Michigan, Mr. HASTINGS of Florida, Mr. HINCHEY, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. KIND, Mr. MCMAHON, Ms. MOORE of Wisconsin, Mr. GRIJALVA, Ms. NORTON, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 29, 2009

Additional sponsors: Ms. ROYBAL-ALLARD, Mr. CONNOLLY of Virginia, Mr. LEWIS of Georgia, Mr. PIERLUISI, Mr. NADLER of New York, Mrs. MALONEY, Mr. JOHNSON of Georgia, Ms. CORRINE BROWN of Florida, Mr. ABERCROMBIE, Mr. SMITH of Washington, Mr. AL GREEN of Texas, Mr. SCOTT of Virginia, Mr. CUMMINGS, Mr. McDERMOTT, Mr. SCHIFF, Mr. DINGELL, Mr. FARR, Ms. BERKLEY, Mr. LYNCH, Mr. HARE, Mr. MASSA, Ms. SHEA-PORTER, Mr. MITCHELL, Mr. ALTMIRE, Mr. PALLONE, Mr. BACA, Mrs. MCCARTHY of New York, Mr. DEFazio, Mr. MICHAUD, Mr. ISRAEL, Ms. KILROY, Ms. CASTOR of Florida, Mr. GRAYSON, Mr. BRADY of Pennsylvania, Mr. LUJÁN, Mr. ACKERMAN, Mr. ENGEL, Mr. CROWLEY, Mr. HALL of New York, Ms. CLARKE, Mr. COURTNEY, Mr. PAYNE, Ms. WASSERMAN SCHULTZ, Mr. KUCINICH, Mr. MAFFEI, Mr. DELAHUNT, Mr. CONYERS, Ms. SUTTON, Mr. ROTHMAN of

New Jersey, Mr. HOLT, Mr. BISHOP of New York, Mr. HIGGINS, Mr. RANGEL, Ms. VELÁZQUEZ, Ms. KAPTUR, Mr. MORAN of Virginia, Mr. KENNEDY, Mrs. CAPPS, Mr. YARMUTH, Ms. GIFFORDS, Ms. DELAURO, Mr. RAHALL, Mr. DICKS, Mr. REYES, Ms. EDWARDS of Maryland, Mr. WAXMAN, Mr. JACKSON of Illinois, Mr. BERMAN, Mr. MOLLOHAN, Mrs. NAPOLITANO, Mr. TONKO, Ms. DEGETTE, Ms. TITUS, Mr. PASTOR of Arizona, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mrs. DAVIS of California, Mr. LARSON of Connecticut, Mr. VAN HOLLEN, Mr. WEXLER, Ms. MATSUI, Mr. GEORGE MILLER of California, Ms. ESHOO, Mr. BECERRA, Mr. RYAN of Ohio, Mr. KLEIN of Florida, Ms. SLAUGHTER, Mr. SIRES, Mr. FATTAH, Mr. LOEBSACK, Mr. HODES, Mr. BLUMENAUER, Mr. DAVIS of Illinois, Ms. FUDGE, Mr. MEEKS of New York, Mr. CAPUANO, Mr. SARBANES, Mr. ARCURI, Mr. HONDA, Mr. WEINER, Mr. WALZ, Mr. OBERSTAR, Mr. CLEAVER, Mr. SCOTT of Georgia, Mr. DOYLE, Mr. LANGEVIN, Mr. GONZALEZ, Mr. BOSWELL, Mr. LIPINSKI, Mr. ELLISON, Mr. HIMES, Mr. CUELLAR, Ms. PINGREE of Maine, Ms. RICHARDSON, Ms. HARMAN, Mr. CLAY, Mr. STUPAK, Mr. COSTELLO, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. LEVIN, Mr. QUIGLEY, Mr. PETERS, Ms. SCHAKOWSKY, Mr. FRANK of Massachusetts, Ms. LEE of California, Mr. COHEN, Mr. LATOURETTE, Mr. DOGGETT, Mr. DRIEHAUS, and Ms. BALDWIN

SEPTEMBER 29, 2009

Reported from the Committee on Homeland Security

SEPTEMBER 29, 2009

Reported from the Committee on Oversight and Government Reform, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

To enhance the transportation security functions of the Department of Homeland Security by providing for an enhanced personnel system for 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Transportation Security Workforce Enhancement Act of
 6 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.
 Sec. 3. Conversion of transportation security personnel.
 Sec. 4. Transition rules.
 Sec. 5. Consultation requirement.
 Sec. 6. No right to strike.
 Sec. 7. Regulations.
 Sec. 8. Delegations to Assistant Secretary.
 Sec. 9. Authorization of appropriations.

9 **SEC. 2. DEFINITIONS.**

10 For purposes of this Act—

11 (1) the term “covered position” means—

12 (A) a position within the Transportation
 13 Security Administration; and

14 (B) any position within the Department of
 15 Homeland Security, not described in subpara-
 16 graph (A), the duties and responsibilities of
 17 which involve providing transportation security
 18 in furtherance of the purposes of the Aviation
 19 and Transportation Security Act (Public Law
 20 107–71), as determined by the Secretary;

1 (2) the term “covered employee” means an em-
2 ployee who holds a covered position;

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

6 (4) the term “Secretary” means the Secretary
7 of Homeland Security;

8 (5) the term “Assistant Secretary” means the
9 official within the Department of Homeland Security
10 who is responsible for overseeing and implementing
11 transportation security pursuant to the Aviation and
12 Transportation Security Act, whether designated as
13 the Assistant Secretary of Homeland Security
14 (Transportation Security Administration), the Ad-
15 ministrator of the Transportation Security Adminis-
16 tration, the Undersecretary of Transportation for
17 Security, or otherwise;

18 (6) the term “TSA personnel management sys-
19 tem” means any personnel management system, as
20 established or modified under—

21 (A) section 111(d) of the Aviation and
22 Transportation Security Act; or

23 (B) section 114(n) of title 49, United
24 States Code;

1 (7) the term “agency” means an Executive
2 agency, as defined by section 105 of title 5, United
3 States Code; and

4 (8) the term “conversion date” means the date
5 as of which paragraphs (1) through (3) of section
6 3(b) take effect.

7 **SEC. 3. CONVERSION OF TRANSPORTATION SECURITY PER-**
8 **SONNEL.**

9 (a) **TERMINATION OF CERTAIN PERSONNEL AU-**
10 **THORITIES.**—Effective as of the date of the enactment of
11 this Act—

12 (1) each provision of law cited in section 2(6)
13 is repealed, and any authority to establish or modify
14 a TSA personnel management system under either
15 such provision of law shall terminate; and

16 (2) all authority to establish or adjust a human
17 resources management system under chapter 97 of
18 title 5, United States Code, shall terminate with re-
19 spect to covered employees and covered positions.

20 (b) **COVERED EMPLOYEES AND POSITIONS MADE**
21 **SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM**
22 **AS APPLIES TO CIVIL SERVICE EMPLOYEES GEN-**
23 **ERALLY.**—Effective as of the date determined by the Sec-
24 retary, but in no event later than 60 days after the date
25 of the enactment of this Act—

1 (1) all TSA personnel management systems
2 shall cease to be effective;

3 (2) any human resources management system
4 established or adjusted under chapter 97 of title 5,
5 United States Code, to the extent otherwise applica-
6 ble with respect to covered employees or covered po-
7 sitions, shall cease to be effective; and

8 (3) covered employees and covered positions
9 shall become subject to the provisions of title 5,
10 United States Code, and all other civil service laws
11 which apply with respect to both—

12 (A) any employees and positions within the
13 Department of Homeland Security (other than
14 covered employees and covered positions, and
15 disregarding the effect of any action taken
16 under chapter 97 of title 5, United States
17 Code); and

18 (B) employees and positions within agen-
19 cies generally (outside of the Department of
20 Homeland Security).

21 **SEC. 4. TRANSITION RULES.**

22 (a) NONREDUCTION IN RATE OF PAY.—Any conver-
23 sion of an employee from a TSA personnel management
24 system to the provisions of law made applicable with re-
25 spect to such employee by section 3(b)(3) shall be effected,

1 under pay conversion rules prescribed by the Secretary,
2 without any reduction in the rate of basic pay payable to
3 such employee.

4 (b) PRESERVATION OF OTHER RIGHTS.—In the case
5 of each individual who is a covered employee as of the con-
6 version date, the Secretary shall take any actions which
7 may be necessary to ensure that—

8 (1) all service performed by such individual as
9 a covered employee before the conversion date shall
10 be credited in the determination of such individual's
11 length of service as an employee for purposes of ap-
12 plying the provisions of law governing leave, pay,
13 group life and health insurance, severance pay, ten-
14 ure, and status, which are made applicable with re-
15 spect to such individual by section 3(b)(3);

16 (2) all annual leave, sick leave, or other paid
17 leave accrued, accumulated, or otherwise available to
18 a covered employee immediately before the conver-
19 sion date shall remain available to the employee,
20 until used, so long as such individual remains con-
21 tinuously employed by the Department of Homeland
22 Security; and

23 (3) the Government share of any premiums or
24 other periodic charges under the provisions of law
25 governing group health insurance shall remain the

1 same as was the case immediately before the conver-
2 sion date, so long as such individual remains con-
3 tinuously employed by the Department of Homeland
4 Security.

5 (c) PENDING PROCEEDINGS.—No provision of this
6 Act shall affect any administrative or judicial proceeding
7 commenced before the date of the enactment of this Act.
8 Determinations in any such proceeding shall be made and
9 appeals therefrom shall be taken as if this Act had not
10 been enacted.

11 **SEC. 5. CONSULTATION REQUIREMENT.**

12 (a) QUALIFIED LABOR ORGANIZATION.—For pur-
13 poses of this section, the term “qualified labor organiza-
14 tion” means a labor organization which, as of the date
15 of the enactment of this Act—

16 (1) satisfies the definition of a labor organiza-
17 tion under section 7103(a)(4) of title 5, United
18 States Code; and

19 (2) is receiving through payroll deductions,
20 from at least 1,000 covered employees, dues payable
21 to the labor organization.

22 (b) CONSULTATION RIGHTS.—A qualified labor orga-
23 nization—

24 (1) shall, within 14 days after the date of the
25 enactment of this Act, be informed by the Secretary

1 in writing of the plans in accordance with which the
2 Secretary intends to carry out the conversion of cov-
3 ered employees and covered positions under this Act,
4 including with respect to such matters as—

5 (A) the proposed conversion date; and

6 (B) measures to ensure compliance with
7 section 4; and

8 (2) shall be afforded a reasonable opportunity
9 to present its views and recommendations regarding
10 those plans.

11 (c) REQUIRED AGENCY RESPONSE.—If any views or
12 recommendations are presented under subsection (b)(2) by
13 a labor organization, the Secretary—

14 (1) shall consider the views or recommendations
15 before taking final action on any matter with respect
16 to which the views or recommendations are pre-
17 sented; and

18 (2) shall provide the labor organization a writ-
19 ten statement of the reasons for the final actions to
20 be taken.

21 (d) RULE OF CONSTRUCTION REGARDING EXCLU-
22 SIVE REPRESENTATION.—Nothing in this section shall be
23 considered—

24 (1) to permit or require the application, or the
25 continued application, of subsection (b) or (c) if any

1 labor organization has been accorded exclusive rec-
2 ognition with respect to all covered employees; or

3 (2) to limit the right of any agency or exclusive
4 representative to engage in collective bargaining.

5 (e) SUNSET PROVISION.—The provisions of this sec-
6 tion shall cease to be effective as of the conversion date.

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

8 Nothing in this Act shall be considered—

9 (1) to repeal or otherwise affect—

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

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

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

18 **SEC. 7. REGULATIONS.**

19 The Secretary may prescribe any regulations nec-
20 essary to carry out this Act.

21 **SEC. 8. DELEGATIONS TO ASSISTANT SECRETARY.**

22 The Secretary may, with respect to any authority or
23 function vested in the Secretary under any of the pre-
24 ceding provisions of this Act, delegate any such authority
25 or function to the Assistant Secretary under such terms,

1 conditions, and limitations, including the power of redele-
2 gation, as the Secretary considers appropriate.

3 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums
5 as may be necessary to carry out this Act.

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