

114TH CONGRESS
2D SESSION

S. 3525

To enhance the security operations of the Transportation Security Administration and the stability of the transportation security workforce by applying a unified personnel system under title 5, United States Code, to employees of the Transportation Security Administration who are responsible for screening passengers and property, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2016

Mr. SCHATZ (for himself, Mr. BROWN, Mr. MERKLEY, Ms. WARREN, Mr. FRANKEN, Mr. PETERS, Mr. TESTER, and Mr. HEINRICH) 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 the stability of the transportation security workforce by applying a unified personnel system under title 5, United States Code, to employees of the Transportation Security Administration who are responsible for screening passengers and property, 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Strengthening American Transportation Security Act of
4 2016”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; sense of Congress.
- Sec. 3. Definitions.
- Sec. 4. Conversion of screening personnel.
- Sec. 5. Transition rules.
- Sec. 6. Consultation requirement.
- Sec. 7. No right to strike.
- Sec. 8. Regulations.
- Sec. 9. Delegations to Administrator.
- Sec. 10. Authorization of appropriations.

7 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) On September 11, 2001, 19 terrorists, who
10 underwent airport security screening prior to board-
11 ing domestic flights, were able to commandeer 4 air-
12 planes and use those airplanes to perpetrate the
13 most deadly terrorist attack ever to be executed on
14 United States soil.

15 (2) In the aftermath of those attacks, Congress
16 passed the Aviation and Transportation Security Act
17 (Public Law 107–71), which was signed into law by
18 President George W. Bush on November 19, 2001—

19 (A) to enhance the level of security screen-
20 ing throughout our aviation system; and

1 (B) to transfer responsibility for such
2 screening from the private sector to the newly
3 established Transportation Security Administra-
4 tion (referred to in this section as “TSA”).

5 (3) By establishing TSA, Congress and the
6 American public recognized that the highest level of
7 screener performance was directly linked to employ-
8 ment and training standards, pay and benefits, and
9 the creation of an experienced, committed screening
10 workforce.

11 (4) Section 111(d) of the Aviation and Trans-
12 portation Security Act (49 U.S.C. 44935 note) au-
13 thorizes the Under Secretary of Transportation for
14 Security to “employ, appoint, discipline, terminate,
15 and fix the compensation, terms, and conditions of
16 employment of Federal service for such a number of
17 individuals as the Under Secretary determines to be
18 necessary to carry out the screening functions of the
19 Under Secretary under section 44901 of title 49,
20 United States Code”. The functions of the TSA
21 were transferred to the Department of Homeland
22 Security by section 403 of the Homeland Security
23 Act of 2002 (6 U.S.C. 203).

24 (5) TSA has interpreted the authorization set
25 forth in paragraph (4) as applying to the majority

1 of the Transportation Security Officer workforce
2 performing screening functions, while all other
3 Transportation Security Administration employees,
4 including managers, are subject to title 5, United
5 States Code, as incorporated in title 49 of such
6 Code.

7 (6) In November 2006, the International Labor
8 Organization ruled that the Bush Administration
9 violated international labor law when it prohibited
10 Transportation Security Officers from engaging in
11 collective bargaining.

12 (7) After the Federal Labor Relations Board
13 approved a petition for the election of an exclusive
14 representative, on February 4, 2011, TSA Adminis-
15 trator John Pistole issued a binding determination
16 stating that “it is critical that every TSA employee
17 feels that he or she has a voice and feels safe raising
18 issues and concerns of all kinds. This is important
19 not just for morale; engagement of every employee
20 is critically important for security.”.

21 (8) This determination was superseded by a
22 second determination issued on December 29, 2014,
23 which changed the previous guideline for collective
24 bargaining and resulting in limitations in the sub-
25 jects that can be bargained, issues in dispute that

1 may be raised to an independent, third-party neutral
2 decisionmaker (such as an arbitrator or the Merit
3 Systems Protection Board), and barriers to union
4 representation of the Transportation Security Offi-
5 cer workforce.

6 (9) The 2011 and 2014 determinations both
7 cited TSA's authority under section 111(d) of the
8 Aviation and Transportation Security Act (49
9 U.S.C. 44935 note) to create a personnel system
10 that denies the Transportation Security Officer
11 workforce the rights under title 5, United States
12 Code, that are provided to most other Federal work-
13 ers, including—

14 (A) the right to appeal adverse personnel
15 decisions to the Merit Systems Protection
16 Board;

17 (B) fair pay under the General Services
18 wage system, 2011;

19 (C) fair pay and raises under the General
20 Services wage system, including overtime guide-
21 lines, access to earned leave;

22 (D) the application of the Fair Labor
23 Standards Act of 1938 (29 U.S.C. 201 et seq.);

24 (E) fair performance appraisals under
25 chapter 73 of title 5, United States Code; and

1 (F) direct protections against employment
2 discrimination set forth in title 7, United States
3 Code.

4 (b) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that—

6 (1) the personnel system utilized by the Trans-
7 portation Security Administration pursuant to sec-
8 tion 111(d) of the Aviation and Transportation Se-
9 curity Act (49 U.S.C. 44935 note) provides insuffi-
10 cient workplace protections for the Transportation
11 Security Officer workforce, who are the frontline
12 personnel who secure our Nation’s aviation system;
13 and

14 (2) such personnel should be entitled to the
15 protections under title 5, United States Code.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) ADMINISTRATOR.—The term “Adminis-
19 trator” means the official within the Department of
20 Homeland Security who is responsible for overseeing
21 and implementing transportation security pursuant
22 to the Aviation and Transportation Security Act,
23 whether designated as the Assistant Secretary of
24 Homeland Security (Transportation Security Admin-
25 istration), the Administrator of the Transportation

1 Security Administration, the Undersecretary of
2 Transportation for Security, or otherwise.

3 (2) AGENCY.—The term “agency” means an
4 Executive agency, as defined by section 105 of title
5 5, United States Code.

6 (3) CONVERSION DATE.—The term “conversion
7 date” means the date as of which paragraphs (1)
8 through (3) of section 3(b) take effect.

9 (4) COVERED EMPLOYEE.—The term “covered
10 employee” means an employee who holds a covered
11 position.

12 (5) COVERED POSITION.—The term “covered
13 position” means—

14 (A) a position within the Transportation
15 Security Administration; and

16 (B) any position within the Department of
17 Homeland Security, not described in subpara-
18 graph (A), the duties and responsibilities of
19 which involve providing transportation security
20 in furtherance of the purposes of the Aviation
21 and Transportation Security Act (Public Law
22 107–71), as determined by the Secretary.

23 (6) EMPLOYEE.—The term “employee” has the
24 meaning given such term by section 2105 of title 5,
25 United States Code.

1 (7) SECRETARY.—The term “Secretary” means
2 the Secretary of Homeland Security.

3 (8) TSA PERSONNEL MANAGEMENT SYSTEM.—
4 The term “TSA personnel management system”
5 means any personnel management system estab-
6 lished or modified under—

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

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

12 **SEC. 4. CONVERSION OF SCREENING PERSONNEL.**

13 (a) TERMINATION OF CERTAIN PERSONNEL AU-
14 THORITIES.—

15 (1) TSA PERSONAL MANAGEMENT SYSTEM.—
16 Section 114 of title 49, United States Code, is
17 amended by striking subsection (n).

18 (2) TERMINATION OF FLEXIBILITY IN EMPLOY-
19 MENT OF SCREENER PERSONNEL.—Section 111 of
20 the Aviation and Transportation Security Act (49
21 U.S.C. 44935 note) is amended by striking sub-
22 section (d).

23 (3) HUMAN RESOURCES MANAGEMENT SYS-
24 TEM.—

1 (A) IN GENERAL.—Section 9701 of title 5,
2 United States Code, is amended—

3 (i) by redesignating subsection (h) as
4 subsection (i); and

5 (ii) by inserting after subsection (g)
6 the following:

7 “(h) LIMITATION.—The human resources manage-
8 ment system authorized under this section shall not apply
9 to covered employees or covered positions (as such terms
10 are defined in section 3 of the Strengthening American
11 Transportation Security Act of 2016).”.

12 (B) EFFECTIVE DATE.—The amendments
13 made by subparagraph (A) shall take effect on
14 the date set forth in subsection (b).

15 (b) COVERED EMPLOYEES AND POSITIONS MADE
16 SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM
17 AS APPLIES TO CIVIL SERVICE EMPLOYEES GEN-
18 ERALLY.—On the earlier of a date determined by the Sec-
19 retary or 60 days after the date of the enactment of this
20 Act—

21 (1) all TSA personnel management personnel
22 policies, directives, letters, and guidelines, including
23 the Determinations of February 2011 and December
24 2014 shall cease to be effective;

1 (2) any human resources management system
2 established or adjusted under section 9701 of title 5,
3 United States Code, shall cease to be effective with
4 respect to covered employees and covered positions;
5 and

6 (3) covered employees and covered positions
7 shall become subject to the applicable labor provi-
8 sions under title 49, United States Code.

9 **SEC. 5. TRANSITION RULES.**

10 (a) **NONREDUCTION IN RATE OF PAY.**—Any conver-
11 sion of an employee from a TSA personnel management
12 system to the provisions of law referred to in section
13 4(b)(3) shall be effected, under pay conversion rules pre-
14 scribed by the Secretary, without any reduction in the rate
15 of basic pay payable to such employee.

16 (b) **PRESERVATION OF OTHER RIGHTS.**—The Sec-
17 retary shall take any necessary actions to ensure, for any
18 covered employee as of the conversion date, that—

19 (1) all service performed by such covered em-
20 ployee before the conversion date is credited in the
21 determination of such employee's length of service
22 for purposes of applying the provisions of law gov-
23 erning leave, pay, group life and health insurance,
24 severance pay, tenure, and status, which are made
25 applicable to such employee under section 4(b)(3);

1 (2) all annual leave, sick leave, or other paid
2 leave accrued, accumulated, or otherwise available to
3 the covered employee immediately before the conver-
4 sion date remains available to the employee, until
5 used, while the employee remains continuously em-
6 ployed by the Department of Homeland Security;
7 and

8 (3) the Government share of any premiums or
9 other periodic charges under the provisions of law
10 governing group health insurance remains at the
11 level in effect immediately before the conversion date
12 while the employee remains continuously employed
13 by the Department of Homeland Security.

14 **SEC. 6. CONSULTATION REQUIREMENT.**

15 (a) **EXCLUSIVE REPRESENTATIVE.**—The labor orga-
16 nization certified by the Federal Labor Relations Author-
17 ity on June 29, 2011, or successor organization shall be
18 deemed the exclusive representative of full- and part-time
19 nonsupervisory personnel carrying out screening functions
20 under section 44901 of title 49, United States Code under
21 chapter 71 of title 5, United States Code, with full rights
22 under such chapter 71.

23 (b) **CONSULTATION RIGHTS.**—Not later than 14 days
24 after the date of the enactment of this Act, the Secretary
25 shall—

1 (1) consult with the exclusive representative for
2 employees under chapter 71 of title 5, United States
3 Code, on the formulation of plans and deadlines to
4 carry out the conversion of covered employees and
5 covered positions under this Act; and

6 (2) provide final written plans to the exclusive
7 representative on how the Secretary intends to carry
8 out the conversion of covered employees and covered
9 positions under this Act, including with respect to—

10 (A) the proposed conversion date; and

11 (B) measures to ensure compliance with
12 section 5.

13 (c) **REQUIRED AGENCY RESPONSE.**—If any views or
14 recommendations are presented under subsection (b)(2) by
15 the exclusive representative, the Secretary shall consider
16 the views or recommendations before taking final action
17 on any matter with respect to which the views or rec-
18 ommendations are presented and provide the exclusive
19 representative a written statement of the reasons for the
20 final actions to be taken.

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

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

24 Nothing in this Act may be construed—

25 (1) to repeal or otherwise affect—

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

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

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

9 **SEC. 8. REGULATIONS.**

10 The Secretary may prescribe any regulations that
11 may be necessary to carry out this Act.

12 **SEC. 9. DELEGATIONS TO ADMINISTRATOR.**

13 The Secretary may, with respect to any authority or
14 function vested in the Secretary under any of the pre-
15 ceding provisions of this Act, delegate any such authority
16 or function to the Administrator of the Transportation Se-
17 curity Administration under such terms, conditions, and
18 limitations, including the power of redelegation, as the
19 Secretary considers appropriate.

20 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

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

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