AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



115TH CONGRESS
1ST SESSION

# S. 272

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

FEBRUARY 1, 2017

Mr. SCHATZ (for himself, Mr. BROWN, Ms. WARREN, and Mr. MERKLEY) 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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) SHORT TITLE.—This Act may be cited as the ''Strengthening American Transportation Security Act of 2017''.

(b) TABLE OF CONTENTS.—The table of contents for 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. Rulemaking.
Sec. 9. Delegations to Administrator.
Sec. 10. Authorization of appropriations.

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

(a) FINDINGS.—Congress finds the following:

(1) On September 11, 2001, 19 terrorists, who underwent airport security screening prior to boarding domestic flights, were able to commandeer 4 airplanes and use those airplanes to perpetrate the most deadly terrorist attack ever to be executed on United States soil.

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

(A) to enhance the level of security screening throughout our Nation's aviation system; and

(B) to transfer responsibility for such screening from the private sector to the newly established Transportation Security Administration (referred to in this section as ''TSA'').

(3) By establishing TSA, Congress and the American public recognized that the highest level of screener performance was directly linked to employment and training standards, pay and benefits, and the creation of an experienced, committed screening workforce.

(4) Section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) authorizes the Under Secretary of Transportation for Security to ''employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment of Federal service for such a number of individuals as the Under Secretary determines to be necessary to carry out the screening functions of the Under Secretary under section 44901 of title 49, United States Code''. The functions of the TSA were transferred to the Department of Homeland Security under section 403 of the Homeland Security Act of 2002 (6 U.S.C. 203).

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

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

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

(7) After the Federal Labor Relations Board approved a petition for the election of an exclusive representative, on February 4, 2011, TSA Administrator John Pistole issued a binding determination stating that ''it is critical that every TSA employee feels that he or she has a voice and feels safe raising issues and concerns of all kinds. This is important not just for morale; engagement of every employee is critically important for security.''.

(8) This determination was superseded by a second determination issued on December 29, 2014, which changed the previous guideline for collective bargaining and resulted in limitations in the subjects that can be bargained, issues in dispute that may be

raised to an independent, third-party neutral decisionmaker (such as an arbitrator or the Merit Systems Protection Board), and barriers to union representation of the Transportation Security Officer workforce.

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

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

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

(C) fair pay and raises under the General Services wage system, including overtime guidelines, access to earned leave;

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

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

(F) direct protections against employment discrimination set forth in title 5, United States Code.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the personnel system utilized by the Transportation Security Administration pursuant to section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) provides insufficient workplace protections for the Transportation Security Officer workforce, who are the frontline personnel who secure our Nation's aviation system; and

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

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the official within the Department of Homeland Security who is responsible for overseeing and implementing transportation security pursuant to the Aviation and Transportation Security Act, whether designated as the Assistant Secretary of Homeland Security (Transportation Security Administration), the Administrator of the Transportation

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

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

(3) CONVERSION DATE.—The term ''conversion date'' means the date as of which paragraphs (1) through (3) of section 3(b) take effect.

(4) COVERED EMPLOYEE.—The term ''covered employee'' means an employee who holds a covered position.

(5) COVERED POSITION.—The term ''covered position'' means—

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

(B) any position within the Department of Homeland Security, not described in subparagraph (A), the duties and responsibilities of which involve providing transportation security in furtherance of the purposes of the Aviation and Transportation Security Act (Public Law 107–71), as determined by the Secretary.

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

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(8) TSA PERSONNEL MANAGEMENT SYSTEM.—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. 4. CONVERSION OF SCREENING PERSONNEL.**

(a) TERMINATION OF CERTAIN PERSONNEL AUTHORITIES.—

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

(2) TERMINATION OF FLEXIBILITY IN EMPLOYMENT OF SCREENER PERSONNEL.—Section 111 of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) is amended by striking subsection (d).

(3) HUMAN RESOURCES MANAGEMENT SYSTEM.—

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

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

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

''(h) LIMITATION.—The human resources management system authorized under this section shall not apply to covered employees or covered positions (as such terms are defined in section 3 of the Strengthening American Transportation Security Act of 2017).''.

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

(b) COVERED EMPLOYEES AND POSITIONS MADE SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM AS APPLIES TO CIVIL SERVICE EMPLOYEES GENERALLY.—On the earlier of a date determined by the Secretary or 60 days after the date of the enactment of this Act—

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

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

(3) covered employees and covered positions shall become subject to the applicable labor provisions under title 49, United States Code.

**SEC. 5. TRANSITION RULES.**

(a) NONREDUCTION IN RATE OF PAY.—Any conversion of an employee from a TSA personnel management system to the provisions of law referred to in section 4(b)(3) shall be effected, under pay conversion rules prescribed by the Secretary, without any reduction in the rate of basic pay payable to such employee.

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

(1) all service performed by such covered employee before the conversion date is credited in the determination of such employee's length of service for purposes of applying the provisions of law governing leave, pay, group life and health insurance, severance pay, tenure, and status, which are made applicable to such employee under section 4(b)(3);

(2) all annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to the covered employee immediately before the conversion date remains available to the employee, until used, while the employee remains continuously employed by the Department of Homeland Security; and

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

**SEC. 6. CONSULTATION REQUIREMENT.**

(a) EXCLUSIVE REPRESENTATIVE.—The labor organization certified by the Federal Labor Relations Authority on June 29, 2011, or successor organization shall be deemed the exclusive representative of full- and part-time nonsupervisory personnel carrying out screening functions under section 44901 of title 49, United States Code, under chapter 71 of title 5, United States Code, with full rights under such chapter 71.

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

(1) consult with the exclusive representative for employees 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; and

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

(A) the proposed conversion date; and

(B) measures to ensure compliance with section 5.

(c) REQUIRED AGENCY RESPONSE.—If any views or recommendations are presented under subsection (b)(2) 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. 7. NO RIGHT TO STRIKE.**

Nothing in this Act may be construed—

(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).

**SEC. 8. RULEMAKING.**

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

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

The Secretary may, with respect to any authority or function vested in the Secretary under any of the preceding provisions of this Act, delegate any such authority or function to the Administrator of the Transportation Security Administration under such terms, conditions, and limitations, including the power of redelegation, as the Secretary considers appropriate.

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

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

○