

116TH CONGRESS
1ST SESSION

S. 944

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

MARCH 28, 2019

Mr. SCHATZ (for himself, Mr. BLUMENTHAL, Mr. BROWN, Mr. CARDIN, Mr. DURBIN, Mr. MARKEY, Mr. MENENDEZ, Mrs. MURRAY, Mr. PETERS, Ms. ROSEN, Ms. SMITH, Ms. STABENOW, Mr. VAN HOLLEN, and Ms. WARREN) 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 2019”.

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. Representation of screening personnel.
- Sec. 7. No right to strike.
- Sec. 8. Rulemaking.
- 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; 115 Stat. 597), which was
18 signed into law by President George W. Bush on
19 November 19, 2001—

1 (A) to enhance the level of security screen-
2 ing throughout the Nation's aviation system;
3 and

4 (B) to transfer responsibility for such
5 screening from the private sector to the newly
6 established Transportation Security Administra-
7 tion (in this section referred to as "TSA").

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

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

1 under section 403 of the Homeland Security Act of
2 2002 (6 U.S.C. 203).

3 (5) TSA has interpreted the authorization de-
4 scribed in paragraph (4) as applying to all of the
5 transportation security officer workforce performing
6 screening functions, while all other TSA employees,
7 including managers, are subject to title 5, United
8 States Code, as incorporated in title 49 of such
9 Code.

10 (6) In November 2006, the International
11 Labour Organization ruled that the Bush Adminis-
12 tration violated international labor law when it pro-
13 hibited transportation security officers from engag-
14 ing in collective bargaining.

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

24 (8) That determination was superseded by sub-
25 sequent determinations issued in 2014 and 2016

1 that continued to limit the scope of the bargaining
2 and review process.

3 (9) The 2011, 2014, and 2016 determinations
4 both cited TSA's authority under section 111(d) of
5 the Aviation and Transportation Security Act (49
6 U.S.C. 44935 note) to create a personnel system
7 that denies the transportation security officer work-
8 force the rights under title 5, United States Code,
9 which are provided to most other Federal workers,
10 including—

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

14 (B) fair pay under the General Schedule
15 pay system;

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

18 (D) statutory protections against employ-
19 ment discrimination set forth in title 5, United
20 States Code.

21 (10) Every day, transportation security officers
22 put their safety on the line to protect the flying pub-
23 lic and on November 1, 2013, a transportation secu-
24 rity officer, Gerardo Hernandez, gave his life to pro-
25 tect the flying public when he was killed by a gun-

1 man who attacked the Los Angeles International
2 Airport.

3 (11) Transportation security officers are vital
4 to aviation security and have kept the United States
5 aviation system secure, even during lapses in appro-
6 priations, when they were not paid. For 16 days in
7 2013, 3 days in 2018, and, most recently, 35 days
8 at the end of 2018 through early 2019, the TSA
9 workforce worked without pay alongside airplane
10 safety specialists, air traffic controllers, and other
11 Federal workers responsible for the aviation security
12 and safety framework that has protected United
13 States air travel since 2001.

14 (12) The adverse impact of 2 missed paychecks
15 during the shutdown that took place between De-
16 cember 22, 2018, and January 25, 2019, was felt
17 disproportionately by the transportation security of-
18 ficer workforce, with many officers receiving starting
19 annual salaries as low as \$35,000.

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

22 (1) the personnel system utilized by the Trans-
23 portation Security Administration pursuant to sec-
24 tion 111(d) of the Aviation and Transportation Se-
25 curity Act (49 U.S.C. 44935 note) provides insuffi-

1 cient workplace protections for the transportation
2 security officer workforce, who are the frontline per-
3 sonnel who secure the Nation’s aviation system; and

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

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the official within the Department of
10 Homeland Security who is responsible for overseeing
11 and implementing transportation security pursuant
12 to the Aviation and Transportation Security Act,
13 whether designated as the Assistant Secretary of
14 Homeland Security (Transportation Security Admin-
15 istration), the Administrator of the Transportation
16 Security Administration, the Under Secretary of
17 Transportation for Security, or otherwise.

18 (2) AGENCY.—The term “agency” means an
19 Executive agency, as defined by section 105 of title
20 5, United States Code.

21 (3) CONVERSION DATE.—The term “conversion
22 date” means the date as of which paragraphs (1)
23 through (3) of section 4(b) take effect.

1 (4) COVERED EMPLOYEE.—The term “covered
2 employee” means an employee who holds a covered
3 position.

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

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

8 (B) any position within the Department of
9 Homeland Security, not described in subpara-
10 graph (A), the duties and responsibilities of
11 which involve providing transportation security
12 in furtherance of the purposes of the Aviation
13 and Transportation Security Act (Public Law
14 107–71; 115 Stat. 597), as determined by the
15 Secretary.

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

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

21 (8) TSA PERSONNEL MANAGEMENT SYSTEM.—
22 The term “TSA personnel management system”
23 means any personnel management system estab-
24 lished or modified under—

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

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

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

7 (a) TERMINATION OF CERTAIN PERSONNEL AU-
 8 THORITIES.—

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

12 (2) TERMINATION OF FLEXIBILITY IN EMPLOY-
 13 MENT OF SCREENER PERSONNEL.—Section 111 of
 14 the Aviation and Transportation Security Act (49
 15 U.S.C. 44935 note) is amended by striking sub-
 16 section (d).

17 (3) HUMAN RESOURCES MANAGEMENT SYS-
 18 TEM.—Section 9701 of title 5, United States Code,
 19 is amended—

20 (A) by redesignating subsection (h) as sub-
 21 section (i); and

22 (B) by inserting after subsection (g) the
 23 following:

24 “(h) LIMITATION.—The human resources manage-
 25 ment system authorized under this section shall not apply

1 to covered employees or covered positions (as such terms
 2 are defined in section 3 of the Strengthening American
 3 Transportation Security Act of 2019).”.

4 (4) EFFECTIVE DATE.—The amendments made
 5 by this subsection shall take effect on the conversion
 6 date.

7 (b) COVERED EMPLOYEES AND POSITIONS MADE
 8 SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM
 9 AS APPLIES TO CIVIL SERVICE EMPLOYEES GEN-
 10 ERALLY.—On the earlier of a date determined by the Sec-
 11 retary or 60 days after the date of the enactment of this
 12 Act—

13 (1) all TSA personnel management system poli-
 14 cies, directives, letters, and guidelines (including the
 15 determinations of the Administrator described in
 16 paragraphs (7), (8), and (9) of section 2(a)) shall
 17 cease to be effective;

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

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

1 **SEC. 5. TRANSITION RULES.**

2 (a) NONREDUCTION IN RATE OF PAY.—Any conver-
3 sion of an employee from a TSA personnel management
4 system to the provisions of law referred to in section
5 4(b)(3) shall be effected, under pay conversion rules pre-
6 scribed by the Secretary, without any reduction in the rate
7 of pay payable to the employee.

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

11 (1) all service performed by the covered em-
12 ployee before the conversion date is credited in the
13 determination of the employee's length of service for
14 purposes of applying the provisions of law governing
15 leave, pay, group life and health insurance, sever-
16 ance pay, tenure, and status, which are made appli-
17 cable to the employee under section 4(b)(3);

18 (2) all annual leave, sick leave, or other paid
19 leave accrued, accumulated, or otherwise available to
20 the covered employee immediately before the conver-
21 sion date remains available to the employee, until
22 used, while the employee remains continuously em-
23 ployed by the Department of Homeland Security;
24 and

25 (3) the Government share of any premiums or
26 other periodic charges under the provisions of law

1 governing group health insurance remains at the
2 level in effect immediately before the conversion date
3 while the employee remains continuously employed
4 by the Department of Homeland Security until the
5 end of the applicable contract year.

6 **SEC. 6. REPRESENTATION OF SCREENING PERSONNEL.**

7 (a) **EXCLUSIVE REPRESENTATIVE.**—

8 (1) **IN GENERAL.**—Effective on the date of the
9 enactment of this Act, the labor organization cer-
10 tified by the Federal Labor Relations Authority on
11 June 29, 2011, or a successor organization, shall be
12 deemed the exclusive representative of personnel de-
13 scribed in paragraph (2) under chapter 71 of title 5,
14 United States Code, with full rights under such
15 chapter 71.

16 (2) **PERSONNEL DESCRIBED.**—Personnel de-
17 scribed in this paragraph are full- and part-time
18 nonsupervisory personnel carrying out screening
19 functions under section 44901 of title 49, United
20 States Code.

21 (b) **CONSULTATION REQUIREMENTS.**—Not later than
22 14 days after the date of the enactment of this Act, the
23 Secretary shall—

24 (1) consult with the exclusive representative de-
25 scribed in subsection (a)(1) on the formulation of

1 plans and deadlines to carry out the conversion of
2 covered employees and covered positions under this
3 Act; and

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

8 (A) the proposed conversion date; and

9 (B) measures to ensure compliance with
10 section 5.

11 (c) CONSIDERATION OF VIEWS AND RECOMMENDA-
12 TIONS OF EXCLUSIVE REPRESENTATIVE.—If the exclusive
13 representative described in subsection (a)(1) submits to
14 the Secretary in writing any views or recommendations in
15 response to the final written plans provided to the exclu-
16 sive representative under subsection (b)(2), the Secretary
17 shall—

18 (1) consider the views or recommendations be-
19 fore taking final action on any matter to which the
20 views or recommendations relate; and

21 (2) provide the exclusive representative a writ-
22 ten statement of the reasons for the final action.

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

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

2 Nothing in this Act may be construed—

3 (1) to repeal or otherwise affect—

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

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

9 (2) to otherwise authorize any activity which is
10 not permitted under a provision of law specified in
11 paragraph (1).

12 **SEC. 8. RULEMAKING.**

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

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

16 The Secretary may, with respect to any authority or
17 function vested in the Secretary under any provision of
18 this Act, delegate the authority or function to the Admin-
19 istrator under such terms, conditions, and limitations, in-
20 cluding the power of redelegation, as the Secretary con-
21 siders appropriate.

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

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

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