

Calendar No. 275

108TH CONGRESS
1ST SESSION**S. 1166**

To establish a Department of Defense national security personnel system
and for other purposes.

 IN THE SENATE OF THE UNITED STATES

JUNE 2, 2003

Ms. COLLINS (for herself, Mr. LEVIN, Mr. VOINOVICH, Mr. SUNUNU, Mr. STEVENS, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

SEPTEMBER 5, 2003

Reported by Ms. COLLINS, with amendments

[Insert the part printed in italic]

A BILL

To establish a Department of Defense national security
personnel system 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.**

4 This Act may be cited as the “National Security Per-
5 sonnel System Act”.

1 **SEC. 2. DEPARTMENT OF DEFENSE NATIONAL SECURITY**
 2 **PERSONNEL SYSTEM.**

3 (a) IN GENERAL.—(1) Subpart I of part III of title
 4 5, United States Code, is amended by adding at the end
 5 the following new chapter:

6 **“CHAPTER 99—DEPARTMENT OF DEFENSE**
 7 **NATIONAL SECURITY PERSONNEL**
 8 **SYSTEM**

“Sec.

“9901. Definitions.

“9902. Establishment of human resources management system.

“9903. Contracting for personal services.

“9904. Attracting highly qualified experts.

“9905. Special pay and benefits for certain employees outside the United States.

9 **“§ 9901. Definitions**

10 “For purposes of this chapter—

11 “(1) the term ‘Director’ means the Director of
 12 the Office of Personnel Management; and

13 “(2) the term ‘Secretary’ means the Secretary
 14 of Defense.

15 **“§ 9902. Establishment of human resources manage-**
 16 **ment system**

17 “(a) IN GENERAL.—(1) Notwithstanding any other
 18 provision of this part, the Secretary may, in regulations
 19 prescribed jointly with the Director, establish a human re-
 20 sources management system for some or all of the organi-
 21 zational or functional units of the Department of Defense.
 22 The human resources system established under authority

1 of this section shall be referred to as the ‘National Secu-
2 rity Personnel System’.

3 “(2) *The National Security Personnel System estab-*
4 *lished under this subsection shall not include—*

5 “(A) *the Aviation and Missile Research, Develop-*
6 *ment and Engineering Center;*

7 “(B) *the Army Research Laboratory;*

8 “(C) *the Medical Research and Materiel Com-*
9 *mand;*

10 “(D) *the Engineer Research and Development*
11 *Center;*

12 “(E) *the Communications-Electronics Command;*

13 “(F) *the Soldier and Biological Chemical Com-*
14 *mand;*

15 “(G) *the Naval Sea Systems Command Centers;*

16 “(H) *the Naval Research Laboratory;*

17 “(I) *the Office of Naval Research; or*

18 “(J) *the Air Force Research Laboratory.*

19 “(b) SYSTEM REQUIREMENTS.—The National Secu-
20 rity Personnel System established under subsection (a)
21 shall—

22 “(1) be flexible;

23 “(2) be contemporary;

24 “(3) not waive, modify, or otherwise affect—

1 “(A) the public employment principles of
2 merit and fitness set forth in section 2301, in-
3 cluding the principles of hiring based on merit,
4 fair treatment without regard to political affili-
5 ation or other nonmerit considerations, equal
6 pay for equal work, and protection of employees
7 against reprisal for whistleblowing;

8 “(B) any provision of section 2302, relat-
9 ing to prohibited personnel practices;

10 “(C)(i) any provision of law referred to in
11 section 2302(b) (1), (8), and (9); or

12 “(ii) any provision of law implementing
13 any provision of law referred to in section
14 2302(b) (1), (8), and (9) by—

15 “(I) providing for equal employment
16 opportunity through affirmative action; or

17 “(II) providing any right or remedy
18 available to any employee or applicant for
19 employment in the public service;

20 “(D) any other provision of this part (as
21 described in subsection (c)); or

22 “(E) any rule or regulation prescribed
23 under any provision of law referred to in this
24 paragraph; and

1 “(4) not be limited by any specific law, author-
2 ity, rule, or regulation prescribed under this title
3 that is waived in regulations prescribed under this
4 chapter.

5 “(c) OTHER NONWAIVABLE PROVISIONS.—The other
6 provisions of this part referred to in subsection (b)(3)(D)
7 are (to the extent not otherwise specified in this title)—

8 “(1) subparts A, B, E, G, and H of this part;
9 and

10 “(2) chapters 41, 45, 47, 55, 57, 59, 71, 72,
11 73, and 79, and this chapter.

12 “(d) LIMITATIONS RELATING TO PAY.—(1) Nothing
13 in this section shall constitute authority to modify the pay
14 of any employee who serves in an Executive Schedule posi-
15 tion under subchapter II of chapter 53 of this title.

16 “(2) Except as provided for in paragraph (1), the
17 total amount in a calendar year of allowances, differen-
18 tials, bonuses, awards, or other similar cash payments
19 paid under this title to any employee who is paid under
20 section 5376 or 5383 of this title or under title 10 or
21 under other comparable pay authority established for pay-
22 ment of Department of Defense senior executive or equiva-
23 lent employees may not exceed the total annual compensa-
24 tion payable to the Vice President under section 104 of
25 title 3.

1 “(e) PROVISIONS TO ENSURE COLLABORATION WITH
2 EMPLOYEE REPRESENTATIVES.—(1) In order to ensure
3 that the authority of this section is exercised in collabora-
4 tion with, and in a manner that ensures the participation
5 of, employee representatives in the planning, development,
6 and implementation of the National Security Personnel
7 System, the Secretary and the Director shall provide for
8 the following:

9 “(A) The Secretary and the Director shall, with
10 respect to any proposed system or adjustment—

11 “(i) provide to the employee representa-
12 tives representing any employees who might be
13 affected a written description of the proposed
14 system or adjustment (including the reasons
15 why it is considered necessary);

16 “(ii) give such representatives at least 30
17 calendar days (unless extraordinary cir-
18 cumstances require earlier action) to review and
19 make recommendations with respect to the pro-
20 posal; and

21 “(iii) give any recommendations received
22 from such representatives under clause (ii) full
23 and fair consideration in deciding whether or
24 how to proceed with the proposal.

1 “(B) Following receipt of recommendations, if
2 any, from such employee representatives with re-
3 spect to a proposal described in subparagraph (A),
4 the Secretary and the Director shall accept such
5 modifications to the proposal in response to the rec-
6 ommendations as they determine advisable and shall,
7 with respect to any parts of the proposal as to which
8 they have not accepted the recommendations—

9 “(i) notify Congress of those parts of the
10 proposal, together with the recommendations of
11 the employee representatives;

12 “(ii) meet and confer for not less than 30
13 calendar days with the employee representa-
14 tives, in order to attempt to reach agreement on
15 whether or how to proceed with those parts of
16 the proposal; and

17 “(iii) at the Secretary’s option, or if re-
18 quested by a majority of the employee rep-
19 resentatives participating, use the services of
20 the Federal Mediation and Conciliation Service
21 during such meet and confer period to facilitate
22 the process of attempting to reach agreement.

23 “(C)(i) Any part of the proposal as to which the
24 representatives do not make a recommendation, or
25 as to which the recommendations are accepted by

1 the Secretary and the Director, may be implemented
2 immediately.

3 “(ii) With respect to any parts of the proposal
4 as to which recommendations have been made but
5 not accepted by the Secretary and the Director, at
6 any time after 30 calendar days have elapsed since
7 the initiation of the congressional notification, con-
8 sultation, and mediation procedures set forth in sub-
9 paragraph (B), if the Secretary, in his discretion,
10 determines that further consultation and mediation
11 is unlikely to produce agreement, the Secretary may
12 implement any or all of such parts (including any
13 modifications made in response to the recommenda-
14 tions as the Secretary determines advisable), but
15 only after 30 days have elapsed after notifying Con-
16 gress of the decision to implement the part or parts
17 involved (as so modified, if applicable).

18 “(iii) The Secretary shall notify Congress
19 promptly of the implementation of any part of the
20 proposal and shall furnish with such notice an expla-
21 nation of the proposal, any changes made to the pro-
22 posal as a result of recommendations from the em-
23 ployee representatives, and of the reasons why im-
24 plementation is appropriate under this subpara-
25 graph.

1 “(D) If a proposal described in subparagraph
2 (A) is implemented, the Secretary and the Director
3 shall—

4 “(i) develop a method for the employee
5 representatives to participate in any further
6 planning or development which might become
7 necessary; and

8 “(ii) give the employee representatives ade-
9 quate access to information to make that par-
10 ticipation productive.

11 “(2) The Secretary may, at the Secretary’s discre-
12 tion, engage in any and all collaboration activities de-
13 scribed in this subsection at an organizational level above
14 the level of exclusive recognition.

15 “(3) In the case of any employees who are not within
16 a unit with respect to which a labor organization is ac-
17 corded exclusive recognition, the Secretary and the Direc-
18 tor may develop procedures for representation by any ap-
19 propriate organization which represents a substantial per-
20 centage of those employees or, if none, in such other man-
21 ner as may be appropriate, consistent with the purposes
22 of this subsection.

23 “(f) PAY-FOR-PERFORMANCE EVALUATION SYS-
24 TEM.—(1) The National Security Personnel System estab-
25 lished in accordance with this chapter shall include a pay-

1 for-performance evaluation system to better link individual
2 pay to performance and provide an equitable method for
3 appraising and compensating employees.

4 “(2) The regulations implementing this chapter
5 shall—

6 “(A) group employees into pay bands in accord-
7 ance with the type of work that such employees per-
8 form and their level of responsibility;

9 “(B) establish a performance rating process,
10 which shall include, at a minimum—

11 “(i) rating periods;

12 “(ii) communication and feedback require-
13 ments;

14 “(iii) performance scoring systems;

15 “(iv) a system for linking performance
16 scores to salary increases and performance in-
17 centives;

18 “(v) a review process;

19 “(vi) a process for addressing performance
20 that fails to meet expectations; and

21 “(vii) a pay-out process;

22 “(C) establish an upper and lower salary level
23 for each pay band;

1 “(D) ensure that performance objectives are es-
2 tablished for individual position assignments and po-
3 sition responsibilities; and

4 “(E) establish performance factors to be used
5 to evaluate the accomplishment of performance ob-
6 jectives and ensure that comparable scores are as-
7 signed for comparable performance, while accommo-
8 dating diverse individual objectives.

9 “(3) For fiscal years 2004 through 2008, the overall
10 amount allocated for compensation of the civilian employ-
11 ees of an organizational or functional unit of the Depart-
12 ment of Defense that is included in the National Security
13 Personnel System shall not be less than the amount of
14 civilian pay that would have been allocated to such com-
15 pensation under the General Schedule system, based on—

16 “(A) the number and mix of employees in such
17 organizational or functional unit prior to the conver-
18 sion of such employees to the National Security Per-
19 sonnel System; and

20 “(B) adjusted for normal step increases and
21 rates of promotion that would have been expected,
22 had such employees remained in the General Sched-
23 ule system.

24 “(4) The regulations implementing the National Se-
25 curity Personnel System shall provide a formula for calcu-

1 lating the overall amount to be allocated for fiscal years
2 after fiscal year 2008 for compensation of the civilian em-
3 ployees of an organizational or functional unit of the De-
4 partment of Defense that is included in the National Secu-
5 rity Personnel System. The formula shall ensure that such
6 employees are not disadvantaged in terms of the overall
7 amount of pay available as a result of conversion to the
8 National Security Personnel System, while providing flexi-
9 bility to accommodate changes in the function of the orga-
10 nization, changes in the mix of employees performing
11 those functions, and other changed circumstances that
12 might impact pay levels.

13 “(5) Funds allocated for compensation of the civilian
14 employees of an organizational or functional unit of the
15 Department of Defense in accordance with paragraph (3)
16 or (4) may not be made available for any other purpose
17 unless the Secretary of Defense determines that such ac-
18 tion is necessary in the national interest and submits a
19 reprogramming notification in accordance with established
20 procedures.

21 “(g) PERFORMANCE MANAGEMENT SYSTEM.—The
22 Secretary of Defense shall develop and implement for or-
23 ganizational and functional units included in the National
24 Security Personnel System, a performance management
25 system that includes—

1 “(1) adherence to merit principles set forth in
2 section 2301;

3 “(2) a fair, credible, and equitable system that
4 results in meaningful distinctions in individual em-
5 ployee performance;

6 “(3) a link between the performance manage-
7 ment system and the agency’s strategic plan;

8 “(4) a means for ensuring employee involve-
9 ment in the design and implementation of the sys-
10 tem;

11 “(5) adequate training and retraining for super-
12 visors, managers, and employees in the implementa-
13 tion and operation of the performance management
14 system;

15 “(6) a process for ensuring ongoing perform-
16 ance feedback and dialogue between supervisors,
17 managers, and employees throughout the appraisal
18 period, and setting timetables for review;

19 “(7) effective transparency and accountability
20 measures to ensure that the management of the sys-
21 tem is fair, credible, and equitable, including appro-
22 priate independent reasonableness, reviews, internal
23 grievance procedures, internal assessments, and em-
24 ployee surveys; and

1 “(8) a means for ensuring that adequate agency
2 resources are allocated for the design, implementa-
3 tion, and administration of the performance manage-
4 ment system.

5 “(h) PROVISIONS REGARDING NATIONAL LEVEL
6 BARGAINING.—(1) The National Security Personnel Sys-
7 tem implemented or modified under this chapter may in-
8 clude employees of the Department of Defense from any
9 bargaining unit with respect to which a labor organization
10 has been accorded exclusive recognition under chapter 71
11 of this title.

12 “(2) For issues impacting more than 1 bargaining
13 unit so included under paragraph (1), the Secretary may
14 bargain *with a labor organization* at an organizational
15 level above the level of exclusive recognition. Any such bar-
16 gaining shall—

17 “(A) be binding on all subordinate bargaining
18 units *of the labor organization* at the level of recogni-
19 tion and their exclusive representatives, and the De-
20 partment of Defense and its subcomponents, without
21 regard to levels of recognition;

22 “(B) supersede all other collective bargaining
23 agreements *of the labor organization*, including col-
24 lective bargaining agreements negotiated with an ex-

1 exclusive representative at the level of recognition, ex-
2 cept as otherwise determined by the Secretary; and

3 “(C) not be subject to further negotiations *with*
4 *the labor organization* for any purpose, including
5 bargaining at the level of recognition, except as pro-
6 vided for by the Secretary.

7 “(3) The National Guard Bureau and the Army and
8 Air Force National Guard are excluded from coverage
9 under this subsection.

10 “(4) Any bargaining completed pursuant to this sub-
11 section with a labor organization not otherwise having na-
12 tional consultation rights with the Department of Defense
13 or its subcomponents shall not create any obligation on
14 the Department of Defense or its subcomponents to confer
15 national consultation rights on such a labor organization.

16 “(i) PROVISIONS RELATING TO APPELLATE PROCE-
17 DURES.—(1) The Secretary—

18 “(A) may establish an appeals process that pro-
19 vides employees of the Department of Defense orga-
20 nizational and functional units that are included in
21 the National Security Personnel System fair treat-
22 ment in any appeals that they bring in decisions re-
23 lating to their employment; and

24 “(B) shall in prescribing regulations for any
25 such appeals process—

1 “(i) ensure that employees in the National
2 Security Personnel System are afforded the
3 protections of due process; and

4 “(ii) toward that end, be required to con-
5 sult with the Merit Systems Protection Board
6 before issuing any such regulations.

7 “(2) Regulations implementing the appeals process
8 may establish legal standards for adverse actions to be
9 taken on the basis of employee misconduct or performance
10 that fails to meet expectations. Such standards shall be
11 consistent with the public employment principles of merit
12 and fitness set forth in section 2301. Legal standards and
13 precedents applied before the effective date of this section
14 by the Merit Systems Protection Board and the courts
15 under chapters 75 and 77 of this title shall apply to em-
16 ployees of organizational and functional units included in
17 the National Security Personnel System, unless such
18 standards and precedents are inconsistent with legal
19 standards established under this paragraph.

20 “(3) An employee who is adversely affected by a final
21 decision under the appeals process established under para-
22 graph (1) shall have the right to petition the Merit Sys-
23 tems Protection Board for review of that decision. The
24 Board may dismiss any petition that, in the view of the
25 Board, does not raise substantial questions of fact or law.

1 No personnel action shall be stayed and no interim relief
2 shall be granted during the pendency of the Board's review
3 unless specifically ordered by the Board.

4 “(4) The Board shall order such corrective action as
5 the Board considers appropriate if the Board determines
6 that the decision was—

7 “(A) arbitrary, capricious, an abuse of discre-
8 tion, or otherwise not in accordance with law;

9 “(B) obtained without procedures required by
10 law, rule, or regulation having been followed; or

11 “(C) unsupported by substantial evidence.

12 “(5) An employee who is adversely affected by a final
13 order or decision of the Board may obtain judicial review
14 of the order or decision as provided in section 7703. The
15 Secretary of Defense may obtain judicial review of any
16 final order or decision of the Board under the same terms
17 and conditions as provided for the Director of the Office
18 of Personnel Management under section 7703.

19 “(6) Nothing in this subsection shall be construed to
20 authorize the waiver of any provision of law, including an
21 appeals provision providing a right or remedy under sec-
22 tion 2302(b) (1), (8), or (9), that is not otherwise waivable
23 under subsection (a).

24 “(j) PHASE-IN.—(1) The Secretary of Defense is au-
25 thorized to apply the National Security Personnel System

1 established in accordance with subsection (a) to organiza-
2 tional or functional units including—

3 “(A) up to 120,000 civilian employees of the
4 Department of Defense in fiscal year 2004;

5 “(B) up to 240,000 civilian employees of the
6 Department of Defense in fiscal year 2005; and

7 “(C) more than 240,000 civilian employees in a
8 fiscal year after fiscal year 2005, if the Secretary of
9 Defense determines in accordance with subsection
10 (a) that the Department has in place—

11 “(i) a performance management system
12 that meets the criteria specified in subsection
13 (g); and

14 “(ii) a pay formula that meets the criteria
15 specified in subsection (f).

16 “(2) Civilian employees in organizational or func-
17 tional units participating in Department of Defense per-
18 sonnel demonstration projects shall be counted as partici-
19 pants in the National Security Personnel System for the
20 purpose of the limitations established under paragraph
21 (1).

22 “(k) PROVISIONS RELATED TO SEPARATION AND RE-
23 TIREMENT INCENTIVES.—(1) The Secretary may establish
24 a program within the Department of Defense under which
25 employees may be eligible for early retirement, offered sep-

1 aration incentive pay to separate from service voluntarily,
2 or both. This authority may be used to reduce the number
3 of personnel employed by the Department of Defense or
4 to restructure the workforce to meet mission objectives
5 without reducing the overall number of personnel. This au-
6 thority is in addition to, and notwithstanding, any other
7 authorities established by law or regulation for such pro-
8 grams.

9 “(2)(A) The Secretary may not authorize the pay-
10 ment of voluntary separation incentive pay under para-
11 graph (1) to more than 10,000 employees in any fiscal
12 year, except that employees who receive voluntary separa-
13 tion incentive pay as a result of a closure or realignment
14 of a military installation under the Defense Base Closure
15 and Realignment Act of 1990 (title XXIX of Public Law
16 101–510; 10 U.S.C. 2687 note) shall not be included in
17 that number.

18 “(B) The Secretary shall prepare a report each fiscal
19 year setting forth the number of employees who received
20 such pay as a result of a closure or realignment of a mili-
21 tary base as described under subparagraph (A).

22 “(C) The Secretary shall submit the report under
23 subparagraph (B) to—

1 “(i) the Committee on the Armed Services and
2 the Committee on Government Affairs of the Senate;
3 and

4 “(ii) the Committee on Armed Services and the
5 Committee on Government Reform of the House of
6 Representatives.

7 “(3) For purposes of this section, the term ‘employee’
8 means an employee of the Department of Defense, serving
9 under an appointment without time limitation, except that
10 such term does not include—

11 “(A) a reemployed annuitant under subchapter
12 III of chapter 83 or chapter 84 of this title, or an-
13 other retirement system for employees of the Fed-
14 eral Government;

15 “(B) an employee having a disability on the
16 basis of which such employee is or would be eligible
17 for disability retirement under any of the retirement
18 systems referred to in paragraph (1); or

19 “(C) for purposes of eligibility for separation
20 incentives under this section, an employee who is in
21 receipt of a decision notice of involuntary separation
22 for misconduct or unacceptable performance.

23 “(4) An employee who is at least 50 years of age and
24 has completed 20 years of service, or has at least 25 years
25 of service, may, pursuant to regulations promulgated

1 under this section, apply and be retired from the Depart-
2 ment of Defense and receive benefits in accordance with
3 chapter 83 or 84 if the employee has been employed con-
4 tinuously within the Department of Defense for more than
5 30 days before the date on which the determination to con-
6 duct a reduction or restructuring within 1 or more Depart-
7 ment of Defense components is approved pursuant to the
8 system established under subsection (a).

9 “(5)(A) Separation pay shall be paid in a lump sum
10 or in installments and shall be equal to the lesser of—

11 “(i) an amount equal to the amount the em-
12 ployee would be entitled to receive under section
13 5595(e) of this title, if the employee were entitled to
14 payment under such section; or

15 “(ii) \$25,000.

16 “(B) Separation pay shall not be a basis for payment,
17 and shall not be included in the computation, of any other
18 type of Government benefit. Separation pay shall not be
19 taken into account for the purpose of determining the
20 amount of any severance pay to which an individual may
21 be entitled under section 5595 of this title, based on any
22 other separation.

23 “(C) Separation pay, if paid in installments, shall
24 cease to be paid upon the recipient’s acceptance of employ-
25 ment by the Federal Government, or commencement of

1 work under a personal services contract as described in
2 paragraph (5).

3 “(6) An employee who receives separation pay under
4 this section on the basis of a separation occurring on or
5 after the date of the enactment of the Federal Workforce
6 Restructuring Act of 1994 (Public Law 103–236; 108
7 Stat. 111) and accepts employment with the Government
8 of the United States, or who commences work through a
9 personal services contract with the United States within
10 5 years after the date of the separation on which payment
11 of the separation pay is based, shall be required to repay
12 the entire amount of the separation pay to the Depart-
13 ment of Defense. If the employment is with an Executive
14 agency (as defined by section 105 of this title) other than
15 the Department of Defense, the Director may, at the re-
16 quest of the head of that agency, waive the repayment if
17 the individual involved possesses unique abilities and is the
18 only qualified applicant available for the position. If the
19 employment is within the Department of Defense, the Sec-
20 retary may waive the repayment if the individual involved
21 is the only qualified applicant available for the position.
22 If the employment is with an entity in the legislative
23 branch, the head of the entity or the appointing official
24 may waive the repayment if the individual involved pos-
25 sesses unique abilities and is the only qualified applicant

1 available for the position. If the employment is with the
2 judicial branch, the Director of the Administrative Office
3 of the United States Courts may waive the repayment if
4 the individual involved possesses unique abilities and is the
5 only qualified applicant available for the position.

6 “(7) Under this program, early retirement and sepa-
7 ration pay may be offered only pursuant to regulations
8 established by the Secretary, subject to such limitations
9 or conditions as the Secretary may require.

10 “(1) PROVISIONS RELATING TO HIRING.—Notwith-
11 standing subsection (c), the Secretary may exercise any
12 hiring flexibilities that would otherwise be available to the
13 Secretary under section 4703(a)(1). Veterans shall be of-
14 fered preference in hiring.

15 **“§ 9903. Contracting for personal services**

16 “(a) OUTSIDE THE UNITED STATES.—The Secretary
17 may contract with individuals for services to be performed
18 outside the United States as determined by the Secretary
19 to be necessary and appropriate for supporting the activi-
20 ties and programs of the Department of Defense outside
21 the United States.

22 “(b) NO FEDERAL EMPLOYEES.—Individuals em-
23 ployed by contract under subsection (a) shall not, by virtue
24 of such employment, be considered employees of the
25 United States Government for the purposes of—

1 “(1) any law administered by the Office of Per-
2 sonnel Management; or

3 “(2) under the National Security Personnel
4 System established under this chapter.

5 “(c) APPLICABILITY OF LAW.—Any contract entered
6 into under subsection (a) shall not be subject to any statu-
7 tory provision prohibiting or restricting the use of personal
8 service contracts.

9 **“§ 9904. Attracting highly qualified experts**

10 “(a) IN GENERAL.—The Secretary may carry out a
11 program using the authority provided in subsection (b) in
12 order to attract highly qualified experts in needed occupa-
13 tions, as determined by the Secretary.

14 “(b) AUTHORITY.—Under the program, the Sec-
15 retary may—

16 “(1) appoint personnel from outside the civil
17 service and uniformed services (as such terms are
18 defined in section 2101 of this title) to positions in
19 the Department of Defense without regard to any
20 provision of this title governing the appointment of
21 employees to positions in the Department of De-
22 fense;

23 “(2) prescribe the rates of basic pay for posi-
24 tions to which employees are appointed under para-
25 graph (1) at rates not in excess of the maximum

1 rate of basic pay authorized for senior-level positions
2 under section 5376 of this title, as increased by lo-
3 cality-based comparability payments under section
4 5304 of this title, notwithstanding any provision of
5 this title governing the rates of pay or classification
6 of employees in the executive branch; and

7 “(3) pay any employee appointed under para-
8 graph (1) payments in addition to basic pay within
9 the limits applicable to the employee under sub-
10 section (d).

11 “(c) LIMITATION ON TERM OF APPOINTMENT.—(1)
12 Except as provided in paragraph (2), the service of an em-
13 ployee under an appointment made pursuant to this sec-
14 tion may not exceed 5 years.

15 “(2) The Secretary may, in the case of a particular
16 employee, extend the period to which service is limited
17 under paragraph (1) by up to 1 additional year if the Sec-
18 retary determines that such action is necessary to promote
19 the Department of Defense’s national security missions.

20 “(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1)
21 The total amount of the additional payments paid to an
22 employee under this section for any 12-month period may
23 not exceed the lesser of the following amounts:

24 “(A) \$50,000 in fiscal year 2004, which may be
25 adjusted annually thereafter by the Secretary, with

1 a percentage increase equal to one-half of 1 percent-
2 age point less than the percentage by which the Em-
3 ployment Cost Index, published quarterly by the Bu-
4 reau of Labor Statistics, for the base quarter of the
5 year before the preceding calendar year exceeds the
6 Employment Cost Index for the base quarter of the
7 second year before the preceding calendar year.

8 “(B) The amount equal to 50 percent of the
9 employee’s annual rate of basic pay.

10 For purposes of this paragraph, the term ‘base quarter’
11 has the meaning given such term by section 5302(3).

12 “(2) An employee appointed under this section is not
13 eligible for any bonus, monetary award, or other monetary
14 incentive for service except for payments authorized under
15 this section.

16 “(3) Notwithstanding any other provision of this sub-
17 section or of section 5307, no additional payments may
18 be paid to an employee under this section in any calendar
19 year if, or to the extent that, the employee’s total annual
20 compensation will exceed the maximum amount of total
21 annual compensation payable at the salary set in accord-
22 ance with section 104 of title 3.

23 “(e) LIMITATION ON NUMBER OF HIGHLY QUALI-
24 FIED EXPERTS.—The number of highly qualified experts

1 appointed and retained by the Secretary under subsection
2 (b)(1) shall not exceed 300 at any time.

3 “(f) SAVINGS PROVISIONS.—In the event that the
4 Secretary terminates this program, in the case of an em-
5 ployee who, on the day before the termination of the pro-
6 gram, is serving in a position pursuant to an appointment
7 under this section—

8 “(1) the termination of the program does not
9 terminate the employee’s employment in that posi-
10 tion before the expiration of the lesser of—

11 “(A) the period for which the employee
12 was appointed; or

13 “(B) the period to which the employee’s
14 service is limited under subsection (c), including
15 any extension made under this section before
16 the termination of the program; and

17 “(2) the rate of basic pay prescribed for the po-
18 sition under this section may not be reduced as long
19 as the employee continues to serve in the position
20 without a break in service.

21 **“§ 9905. Special pay and benefits for certain employ-**
22 **ees outside the United States**

23 “The Secretary may provide to certain civilian em-
24 ployees of the Department of Defense assigned to activi-
25 ties outside the United States as determined by the Sec-

1 retary to be in support of Department of Defense activities
 2 abroad hazardous to life or health or so specialized be-
 3 cause of security requirements as to be clearly distinguish-
 4 able from normal Government employment—

5 “(1) allowances and benefits—

6 “(A) comparable to those provided by the
 7 Secretary of State to members of the Foreign
 8 Service under chapter 9 of title I of the Foreign
 9 Service Act of 1980 (Public Law 96–465, 22
 10 U.S.C. 4081 et seq.) or any other provision of
 11 law; or

12 “(B) comparable to those provided by the
 13 Director of Central Intelligence to personnel of
 14 the Central Intelligence Agency; and

15 “(2) special retirement accrual benefits and dis-
 16 ability in the same manner provided for by the Cen-
 17 tral Intelligence Agency Retirement Act (50 U.S.C.
 18 2001 et seq.) and in section 18 of the Central Intel-
 19 ligence Agency Act of 1949 (50 U.S.C. 403r).”.

20 (2) The table of chapters for part III of such title
 21 is amended by adding at the end of subpart I the following
 22 new item:

“99. Department of Defense National Security Personnel System ... 9901”.

23 (b) IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN
 24 PERSONNEL.—(1) Any exercise of authority under chap-
 25 ter 99 of such title (as added by subsection (a)), including

1 under any system established under such chapter, shall
2 be in conformance with the requirements of this sub-
3 section.

4 (2) No other provision of this Act or of any amend-
5 ment made by this Act may be construed or applied in
6 a manner so as to limit, supersede, or otherwise affect the
7 provisions of this section, except to the extent that it does
8 so by specific reference to this section.

9 (c) EXTERNAL THIRD-PARTY REVIEW OF LABOR-
10 MANAGEMENT DISPUTES.—Chapter 71 of title 5, United
11 States Code is amended—

12 (1) in section 7105(a), by adding at the end the
13 following:

14 “(3)(A) In carrying out subparagraphs (C), (D), (E),
15 (F), and (H) of paragraph (2), in matters that involve
16 agencies and employees of the Department of Defense, the
17 Authority shall take final action within 180 days after the
18 filing of a charge, unless—

19 “(i) there is express approval of the parties to
20 extend the 180-day period; or

21 “(ii) the Authority extends the 180-day period
22 under subparagraph (B).

23 “(B) In cases raising significant issues that involve
24 agencies and employees of the Department of Defense, the
25 Authority may extend the time limit under subparagraph

1 (A), and the time limits under sections 7105(e)(1),
2 7105(f) and 7118(a)(9) of this title, if the Authority gives
3 notice to the public of the opportunity for interested per-
4 sons to file amici curiae briefs.”;

5 (2) in section 7105(e), by adding at the end the
6 following:

7 “(3) If a representation inquiry or election in-
8 volves employees of the Department of Defense, the
9 regional director shall, absent express approval from
10 the parties, complete the tasks delegated to the re-
11 gional authority under paragraph (1) within 180
12 days after the delegation.”;

13 (3) in section 7105(f)—

14 (A) by inserting “(1)” after “(f)”;

15 (B) by redesignating paragraphs (1) and
16 (2) as subparagraphs (A) and (B), respectively;
17 and

18 (C) by adding at the end the following:

19 “(2) In any dispute that involves agencies and em-
20 ployees within the Department of Defense, if review is
21 granted, the Authority action to affirm, modify, or reverse
22 any action shall, absent express approval from the parties,
23 be completed within 120 days after the grant of review.”;

24 (4) in section 7118(a), by adding at the end the
25 following:

1 “(9)(A) Any individual conducting a hearing de-
 2 scribed in paragraph (7) or (8), involving an unfair labor
 3 practice allegation within the Department of Defense,
 4 shall complete the hearing and make any determinations
 5 within 180 days after the filing of a charge under para-
 6 graph (1). The Authority’s review of any such determina-
 7 tions shall, absent express approval from the parties, be
 8 completed within 180 days after the filing of any excep-
 9 tions.

10 “(B) The 180-day periods under subparagraph (A)
 11 shall apply, unless there is express approval of the parties
 12 to extend a period.”; and

13 (5) in section 7119(c)(5)(C), by adding at the
 14 end the following: “The Panel shall, absent express
 15 approval from the parties, take final action within
 16 180 days after being presented with an impasse be-
 17 tween agencies and employees within the Depart-
 18 ment of Defense.”.

19 **SEC. 3. MILITARY LEAVE FOR MOBILIZED FEDERAL CIVIL-**
 20 **IAN EMPLOYEES.**

21 (a) IN GENERAL.—Subsection (b) of section 6323 of
 22 title 5, United States Code, is amended—

23 (1) in paragraph (2)—

24 (A) by redesignating subparagraphs (A)
 25 and (B) as clauses (i) and (ii), respectively, and

1 at the end of clause (ii), as so redesignated, by
2 inserting “or”; and

3 (B) by inserting “(A)” after “(2)”; and

4 (2) by inserting the following before the text be-
5 ginning with “is entitled”:

6 “(B) performs full-time military service as a re-
7 sult of a call or order to active duty in support of
8 a contingency operation as defined in section
9 101(a)(13) of title 10;”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall apply to military service performed on
12 or after the date of the enactment of this Act.

Calendar No. 275

108TH CONGRESS
1ST SESSION

S. 1166

A BILL

To establish a Department of Defense national
security personnel system and for other purposes.

SEPTEMBER 5, 2003

Reported with amendments