

114TH CONGRESS
2D SESSION

H. R. 4488

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system of Title 5 of the U.S. Code to employees of the Transportation Security Administration who provide screening of all passengers and property, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2016

Mr. THOMPSON of Mississippi (for himself and Mrs. LOWEY) 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

A BILL

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system of Title 5 of the U.S. Code to employees of the Transportation Security Administration who provide screening of all 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.**

2 This Act may be cited as the “Rights for Transpor-
3 tation Security Officers Act of 2016”.

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

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

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

12 (2) In the aftermath of those attacks, Congress
13 passed the Aviation and Transportation Security Act
14 (ATSA), enacted by President George W. Bush on
15 November 19, 2001 (Public Law 107–71), to en-
16 hance the level of security screening throughout our
17 aviation system and transfer responsibility for such
18 screening from the private sector to a new Federal
19 agency, the Transportation Security Administration
20 (TSA).

21 (3) By establishing TSA, Congress and the
22 American public recognized that the highest level of
23 screener performance was directly linked to employ-
24 ment and training standards, pay and benefits, and
25 the creation of an experienced, committed screening
26 workforce.

1 (4) The Aviation and Transportation Security
2 Act included a statutory footnote allowing the TSA
3 Administrator to “employ, appoint, discipline, termi-
4 nate, and fix the compensation”, including the
5 “terms, and conditions of employment of Federal
6 Service for such a number of individuals as the
7 Under Secretary determines to be necessary to carry
8 out the screening functions of the Under Secretary
9 under section 44901 of title 49, United States
10 Code”.

11 (5) TSA has interpreted the ATSA footnote as
12 applying to the majority of the Transportation Secu-
13 rity Officer workforce performing screening func-
14 tions, while all other Transportation Security Ad-
15 ministration employees, including managers, are
16 subject to title 5, United States Code, as incor-
17 porated in title 49 of such Code.

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

23 (7) After the Federal Labor Relations Board
24 approved a petition for the election of an exclusive
25 representative, on February 4, 2011, then-TSA Ad-

1 administrator John Pistole issued a binding determina-
2 tion stating in part “it is critical that every TSA
3 employee feels that he or she has a voice and feels
4 safe raising issues and concerns of all kinds. This is
5 important not just for morale; engagement of every
6 employee is critically important for security”.

7 (8) The February 4, 2011, determination was
8 superseded by a second Determination issued on De-
9 cember 29, 2014, changing the previous guideline
10 for collective bargaining and resulting in limitations
11 in the subjects that can be bargained, issues in dis-
12 pute that may be raised to an independent, third-
13 party neutral decisionmaker (such as an arbitrator
14 or the Merit Systems Protection Board), and bar-
15 riers to union representation of the Transportation
16 Security Officer workforce.

17 (9) Both the 2011 and 2014 determinations
18 cited TSA’s authority under section 44935 note of
19 title 59, United States Code, to create a personnel
20 system that denies the Transportation Security Offi-
21 cer workforce the same title 5 rights as other Fed-
22 eral workers, including the right to appeal adverse
23 personnel decisions to the Merit Systems Protection
24 Board, fair pay under the General Services wage
25 system, 2011, fair pay and raises under the General

1 Services wage system, including overtime guidelines,
2 access to earned leave, application of the Fair Labor
3 Standards Act of 1938, fair performance appraisals
4 under chapter 73 of title 5, United States Code, and
5 direct protections against employment discrimination
6 found in title 7, United States Code.

7 (b) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that the personnel system utilized by the Transpor-
9 tation Security Administration pursuant to the authority
10 of section 44935 note of title 49, United States Code, pro-
11 vides insufficient workplace protections for the Transpor-
12 tation Security Officer workforce, the frontline personnel
13 who secure our Nation’s aviation system and that such
14 personnel should be provided protections under title 5,
15 United States Code.

16 **SEC. 3. DEFINITIONS.**

17 For purposes of this Act—

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

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

21 (B) any position within the Department of
22 Homeland Security, not described in subpara-
23 graph (A), the duties and responsibilities of
24 which involve providing transportation security
25 in furtherance of the purposes of the Aviation

1 and Transportation Security Act (Public Law
2 107–71), as determined by the Secretary;

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

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

8 (4) the term “Secretary” means the Secretary
9 of Homeland Security;

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

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

23 (A) section 111(d) of the Aviation and
24 Transportation Security Act; or

1 (B) section 114(n) of title 49, United
2 States Code;

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

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

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

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

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

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

22 (3) section 44935 note of title 49, United
23 States Code, is repealed.

24 (b) **COVERED EMPLOYEES AND POSITIONS MADE**
25 **SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM**

1 AS APPLIES TO CIVIL SERVICE EMPLOYEES GEN-
2 ERALLY.—Effective as of the date determined by the Sec-
3 retary, but in no event later than 60 days after the date
4 of the enactment of this Act—

5 (1) all TSA personnel management personnel
6 policies, directives, letters, and guidelines including
7 the Determinations of February 2011 and December
8 2014 shall cease to be effective;

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

14 (3) covered employees and covered positions
15 shall become subject to the provisions of title 49,
16 United States Code.

17 **SEC. 5. TRANSITION RULES.**

18 (a) **NONREDUCTION IN RATE OF PAY.**—Any conver-
19 sion of an employee from a TSA personnel management
20 system to the provisions of law made applicable with re-
21 spect to such employee by section 4(b)(3) shall be effected,
22 under pay conversion rules prescribed by the Secretary,
23 without any reduction in the rate of basic pay payable to
24 such employee.

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

5 (1) all service performed by such individual as
6 a covered employee before the conversion date shall
7 be credited in the determination of such individual's
8 length of service as an employee for purposes of ap-
9 plying the provisions of law governing leave, pay,
10 group life and health insurance, severance pay, ten-
11 ure, and status, which are made applicable with re-
12 spect to such individual by section 4(b)(3);

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

20 (3) the Government share of any premiums or
21 other periodic charges under the provisions of law
22 governing group health insurance shall remain the
23 same as was the case immediately before the conver-
24 sion date, so long as such individual remains con-

1 tinuously employed by the Department of Homeland
2 Security.

3 **SEC. 6. CONSULTATION REQUIREMENT.**

4 (a) **EXCLUSIVE REPRESENTATIVE.**—The labor orga-
5 nization certified by the Federal Labor Relations Author-
6 ity on June 29, 2011, or successor shall be deemed the
7 exclusive representative of full- and part-time nonsuper-
8 visory personnel carrying out screening functions under
9 section 44901 of title 49, United States Code, as that term
10 is used in section 111(d) of the Aviation and Transpor-
11 tation Security Act and shall be the exclusive representa-
12 tive for the employees under chapter 71 of title 5, United
13 States Code, with full rights under such chapter 71.

14 (b) **CONSULTATION RIGHTS.**—Within 14 days after
15 the date of the enactment of this Act, the Secretary shall
16 consult with the exclusive representative for employees
17 under chapter 71 of title 5, United States Code, on the
18 formulation of plans and deadlines to carry out the conver-
19 sion of covered employees and covered positions under this
20 Act. The Secretary shall provide in writing to the exclusive
21 representative the final plans in accordance with which the
22 Secretary intends to carry out the conversion of covered
23 employees and covered positions under this Act, including
24 with respect to such matters as—

25 (1) the proposed conversion date; and

1 (2) measures to ensure compliance with section
2 5.

3 (c) **REQUIRED AGENCY RESPONSE.**—If any views or
4 recommendations are presented under subsection (b)(2) by
5 the exclusive representative, the Secretary shall consider
6 the views or recommendations before taking final action
7 on any matter with respect to which the views or rec-
8 ommendations are presented and provide the exclusive
9 representative a written statement of the reasons for the
10 final actions to be taken.

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

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

14 Nothing in this Act shall be considered—

15 (1) to repeal or otherwise affect—

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

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

21 (2) to otherwise authorize any activity which is
22 not permitted under either provision of law cited in
23 paragraph (1).

1 **SEC. 8. REGULATIONS.**

2 The Secretary may prescribe any regulations nec-
3 essary to carry out this Act.

4 **SEC. 9. DELEGATIONS TO ADMINSTRATOR.**

5 The Secretary may, with respect to any authority or
6 function vested in the Secretary under any of the pre-
7 ceding provisions of this Act, delegate any such authority
8 or function to the Administrator of the Transportation Se-
9 curity Administration under such terms, conditions, and
10 limitations, including the power of redelegation, as the
11 Secretary considers appropriate.

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

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

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