

116TH CONGRESS
1ST SESSION

H. R. 1140

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system under title 5, United States 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 11, 2019

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 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 under title 5, United States 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 2019”.

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) TSA was established in recognition of the
22 need to raise the level of screener performance and
23 that achieving such performance is directly linked to
24 employment and training standards, pay and bene-
25 fits, and the creation of an experienced, committed
26 Federal screening 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 [Ad-
7 ministrator] determines to be necessary to carry out
8 the screening functions of the Under Secretary
9 under section 44901 of title 49, United States
10 Code”.

11 (5) TSA has cited the ATSA footnote as the
12 basis for developing a personnel system for the TSO
13 workforce, while all other Transportation Security
14 Administration employees, including managers, are
15 under the Federal personnel system provided under
16 title 5, United States Code, as incorporated in title
17 49 of such Code.

18 (6) In November 2006, the International Labor
19 Organization ruled that the Bush administration vio-
20 lated 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) Subsequently, in 2014, then-Administrator
8 Pistole issued a second determination, which was su-
9 perseded by a 2016 determination, which changed
10 the previous guidelines for collective bargaining and
11 limited the subjects that can be bargained as well as
12 issues in dispute that may be raised to an inde-
13 pendent, third-party neutral decisionmaker.

14 (9) The 2011, 2014, and 2016 determinations
15 cited the ATSA footnote as authority to create a
16 personnel system that denies the Transportation Se-
17 curity Officer workforce the same rights and protec-
18 tions under title 5, United States Code, as other
19 Federal workers, including the right to present
20 grievances to a neutral third party, fair pay under
21 the General Services wage system, including access
22 to overtime pay and earned leave, and Fair Labor
23 Standards Act protections.

24 (10) The Transportation Security Officer work-
25 force is an integral component of the security frame-

1 work in place since the terrorist attacks on Sep-
2 tember 11, 2001, and responsible for screening more
3 than 738 million passengers annually.

4 (11) In the course of their work, Transpor-
5 tation Security Officers not only identify aviation se-
6 curity threats but also identify kidnapping and traf-
7 ficking victims and prevent firearms from being
8 brought on planes in carry-on bags. In 2018 alone,
9 4,239 firearms were discovered by Transportation
10 Security Officers at aviation security checkpoints.

11 (12) Every day, Transportation Security Offi-
12 cers put their safety on the line to protect the flying
13 public and on November 1, 2013, a Transportation
14 Security Officer, Gerardo Hernandez, gave his life to
15 protect the flying public when he was killed by a
16 gunman who attacked the Los Angeles International
17 Airport.

18 (13) Transportation Security Officers are vital
19 to aviation security and have kept the American
20 aviation system secure, even during lapses in appro-
21 priations, when they were not paid. For 16 days in
22 2013, three days in 2018, and, most recently, 35
23 days in at the end of 2018 through early 2019, the
24 TSA workforce worked without pay alongside air-
25 plane safety specialists, air traffic controllers, and

1 other Federal workers responsible for the aviation
2 security and safety framework that has protected
3 United States air travel since 2001.

4 (14) The adverse impact of two missed pay-
5 checks during the shutdown that took place between
6 December 22, 2018, and January 25, 2019, was felt
7 disproportionately by the Transportation Security
8 Officer workforce, with many Officers receiving
9 starting salaries of as low as \$32,000.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that the Transportation Security Administration’s
12 personnel system for the Transportation Security Officer
13 workforce provides insufficient benefits and workplace
14 protections to these frontline personnel who secure the
15 United States aviation system, and that such personnel
16 should be provided protections and benefits under title 5,
17 United States Code.

18 **SEC. 3. DEFINITIONS.**

19 For purposes of this Act—

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

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

23 (B) any position within the Department of
24 Homeland Security, not described in subpara-
25 graph (A), the duties and responsibilities of

1 which involve providing transportation security
2 in furtherance of the purposes of the Aviation
3 and Transportation Security Act (Public Law
4 107–71), as determined by the Secretary;

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

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

10 (4) the term “Secretary” means the Secretary
11 of Homeland Security;

12 (5) the term “Administrator” means the Ad-
13 ministrator of the Transportation Security Adminis-
14 tration;

15 (6) the term “TSA personnel management sys-
16 tem” means any personnel management system, as
17 established or modified under—

18 (A) section 111(d) of the Aviation and
19 Transportation Security Act; or

20 (B) section 114(n) of title 49, United
21 States Code;

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

1 (8) the term “conversion date” means the date
2 as of which paragraphs (1) through (3) of section
3 4(b) take effect.

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

5 (a) **TERMINATION OF CERTAIN PERSONNEL AU-**
6 **THORITIES.**—Effective as of the date of the enactment of
7 this Act—

8 (1) each provision of law cited in section 3(6)
9 is repealed, and any authority to establish or modify
10 a TSA personnel management system under either
11 such provision of law shall terminate;

12 (2) all authority to establish or adjust a human
13 resources management system under chapter 97 of
14 title 5, United States Code, shall terminate with re-
15 spect to covered employees and covered positions;
16 and

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

19 (b) **COVERED EMPLOYEES AND POSITIONS MADE**
20 **SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM**
21 **AS APPLIES TO CIVIL SERVICE EMPLOYEES GEN-**
22 **ERALLY.**—Effective as of the date determined by the Sec-
23 retary, but in no event later than 60 days after the date
24 of the enactment of this Act—

1 (1) all TSA personnel management policies, let-
2 ters, guidelines, and directives, including the August
3 2016 Determination, shall cease to be effective;

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

9 (3) covered employees and covered positions
10 shall become subject to the provisions of title 5,
11 United States Code.

12 **SEC. 5. TRANSITION RULES.**

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

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

1 (1) all TSA personnel management policies, let-
2 ters, guidelines, and directives, including the August
3 2016 Determination, shall cease to be effective;

4 (2) all annual leave, sick leave, or other paid
5 leave accrued, accumulated, or otherwise available to
6 a covered employee immediately before the conver-
7 sion date shall remain available to the employee,
8 until used, so long as such individual remains con-
9 tinuously employed by the Department of Homeland
10 Security; and

11 (3) the Government share of any premiums or
12 other periodic charges under the provisions of law
13 governing group health insurance shall remain the
14 same as was the case immediately before the conver-
15 sion date, so long as such individual remains con-
16 tinuously employed by the Department of Homeland
17 Security.

18 **SEC. 6. CONSULTATION REQUIREMENT.**

19 (a) **EXCLUSIVE REPRESENTATIVE.**—The labor orga-
20 nization certified by the Federal Labor Relations Author-
21 ity on June 29, 2011, or successor shall be treated as the
22 exclusive representative of full- and part-time non-super-
23 visory personnel carrying out screening functions under
24 section 44901 of title 49, United States Code, as that term
25 is used in section 111(d) of the Aviation and Transpor-

1 tation Security Act and shall be the exclusive representa-
2 tive for the employees under chapter 71 of title 5, United
3 States Code, with full rights under such chapter 71. Any
4 collective bargaining agreement on the effective date of
5 this legislation shall remain in effect.

6 (b) CONSULTATION RIGHTS.—Within 14 days after
7 the date of the enactment of this Act, the Secretary shall
8 consult with the exclusive representative for employees
9 under chapter 71 of title 5, United States Code, on the
10 formulation of plans and deadlines to carry out the conver-
11 sion of covered employees and covered positions under this
12 Act. The Secretary shall provide in writing to the exclusive
13 representative the final plans in accordance with which the
14 Secretary intends to carry out the conversion of covered
15 employees and covered positions under this Act, including
16 with respect to such matters as—

- 17 (1) the proposed conversion date; and
18 (2) measures to ensure compliance with section
19 5.

20 (c) REQUIRED AGENCY RESPONSE.—If any views or
21 recommendations are presented under subsection (b)(2) by
22 the exclusive representative, the Secretary shall consider
23 the views or recommendations before taking final action
24 on any matter with respect to which the views or rec-
25 ommendations are presented and provide the exclusive

1 representative a written statement of the reasons for the
2 final actions to be taken.

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

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

6 Nothing in this Act shall be considered—

7 (1) to repeal or otherwise affect—

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

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

13 (2) to otherwise authorize any activity which is
14 not permitted under either provision of law cited in
15 paragraph (1).

16 **SEC. 8. REGULATIONS.**

17 The Secretary may prescribe any regulations nec-
18 essary to carry out this Act.

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

20 The Secretary may, with respect to any authority or
21 function vested in the Secretary under any of the pre-
22 ceding provisions of this Act, delegate any such authority
23 or function to the Administrator of the Transportation Se-
24 curity Administration under such terms, conditions, and

1 limitations, including the power of redelegation, as the
2 Secretary considers appropriate.

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

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

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