

RIGHTS FOR THE TRANSPORTATION SECURITY  
ADMINISTRATION WORKFORCE ACT OF 2021

MAY 6, 2022.—Committed to the Committee of the Whole House on the State of the  
Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland  
Security, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 903]

The Committee on Homeland Security, to whom was referred the bill (H.R. 903) 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, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Rights for the Transportation Security Administration Workforce Act of 2021” or the “Rights for the TSA Workforce Act of 2021”.

#### SEC. 2. DEFINITIONS.

For purposes of this Act—

- (1) the term “adjusted basic pay” means—
  - (A) the rate of pay fixed by law or administrative action for the position held by a covered employee before any deductions; and
  - (B) any regular, fixed supplemental payment for non-overtime hours of work creditable as basic pay for retirement purposes, including any applicable locality payment and any special rate supplement;
- (2) the term “Administrator” means the Administrator of the Transportation Security Administration;
- (3) the term “appropriate congressional committees” means the Committees on Homeland Security and Oversight and Reform of the House of Representatives and the Committees on Commerce, Science, and Transportation and Homeland Security and Governmental Affairs of the Senate;
- (4) the term “at-risk employee” means a Transportation Security Officer, Federal Air Marshal, canine handler, or any other employee of the Transportation Security Administration carrying out duties that require substantial contact with the public during the COVID–19 national emergency;
- (5) the term “conversion date” means the date as of which subparagraphs (A) through (F) of section 3(c)(1) take effect;
- (6) the term “covered employee” means an employee who holds a covered position;
- (7) the term “covered position” means a position within the Transportation Security Administration;
- (8) the term “COVID–19 national emergency” means the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) on March 13, 2020, with respect to the coronavirus;
- (9) the term “employee” has the meaning given such term by section 2105 of title 5, United States Code;
- (10) the term “Secretary” means the Secretary of Homeland Security;
- (11) 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;
- (12) the term “TSA” means the Transportation Security Administration; and
- (13) the term “2019 Determination” means the publication, entitled “Determination on Transportation Security Officers and Collective Bargaining”, issued on July 13, 2019, by Administrator David P. Pekoske, as modified, or any superseding subsequent determination.

#### SEC. 3. CONVERSION OF TSA PERSONNEL.

(a) RESTRICTIONS ON CERTAIN PERSONNEL AUTHORITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in paragraph (2), effective as of the date of the enactment of this Act—

(A) any TSA personnel management system in use for covered employees and covered positions on the day before such date of enactment, and any TSA personnel management policy, letter, guideline, or directive in effect on such day may not be modified;

(B) no TSA personnel management policy, letter, guideline, or directive that was not established before such date issued pursuant to section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) or section 114(n) of title 49, United States Code, may be established; and

(C) any authority to establish or adjust a human resources management system under chapter 97 of title 5, United States Code, shall terminate with respect to covered employees and covered positions.

(2) EXCEPTIONS.—

(A) PAY.—Notwithstanding paragraph (1)(A), the limitation in that paragraph shall not apply to any TSA personnel management policy, letters, guideline, or directive related to annual adjustments to pay schedules and

locality-based comparability payments in order to maintain parity with such adjustments authorized under section 5303, 5304, 5304a, and 5318 of title 5, United States Code; and

(B) **ADDITIONAL POLICY.**—Notwithstanding paragraph (1)(B), new TSA personnel management policy may be issued if—

(i) such policy is needed to resolve a matter not specifically addressed in policy in effect on the date of enactment of this Act; and

(ii) the Secretary provides such policy, with an explanation of its necessity, to the appropriate congressional committees not later than 7 days of issuance.

(C) **EMERGING THREATS TO TRANSPORTATION SECURITY DURING TRANSITION PERIOD.**—Notwithstanding paragraph (1), any TSA personnel management policy, letter, guideline, or directive related to an emerging threat to transportation security, including national emergencies or disasters and public health threats to transportation security, may be modified or established until the effective date in subsection (c)(1). The Secretary shall provide to the appropriate congressional committees any modification or establishment of such a TSA personnel management policy, letter, guideline, or directive, with an explanation of its necessity, not later than 7 days of such modification or establishment.

(b) **PERSONNEL AUTHORITIES DURING TRANSITION PERIOD.**—Any TSA personnel management system in use for covered employees and covered positions on the day before the date of enactment of this Act and any TSA personnel management policy, letter, guideline, or directive in effect on the day before the date of enactment of this Act shall remain in effect until the conversion date.

(c) **TRANSITION TO TITLE 5.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), effective as of the date determined by the Secretary, but in no event later than December 31, 2022—

(A) the TSA personnel management system shall cease to be in effect;

(B) section 114(n) of title 49, United States Code, is repealed;

(C) section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) is repealed;

(D) any TSA personnel management policy, letter, guideline, and directive, including the 2019 Determination, shall cease to be effective;

(E) any human resources management system established or adjusted under chapter 97 of title 5, United States Code, with respect to covered employees or covered positions shall cease to be effective; and

(F) covered employees and covered positions shall be subject to the provisions of title 5, United States Code.

(2) **CHAPTERS 71 AND 77 OF TITLE 5.**—Not later than 90 days after the date of enactment of this Act—

(A) chapter 71 and chapter 77 of title 5, United States Code, shall apply to covered employees carrying out screening functions pursuant to section 44901 of title 49, United States Code; and

(B) any policy, letter, guideline, or directive issued under section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) related to matters otherwise covered by such chapter 71 or 77 shall cease to be in effect.

(3) **ASSISTANCE OF OTHER AGENCIES.**—Not later than 180 days after the date of enactment of this Act or December 31, 2022, whichever is earlier—

(A) the Office of Personnel Management shall establish a position series and classification standard for the positions of Transportation Security Officer, Federal Air Marshal, Transportation Security Inspector, and other positions requested by the Administrator; and

(B) the Department of Agriculture's National Finance Center shall make necessary changes to its Financial Management Services and Human Resources Management Services to ensure payroll, leave, and other personnel processing systems for TSA personnel are commensurate with chapter 53 of title 5, United States Code, and provide functions as needed to implement this Act.

(d) **SAFEGUARDS ON GRIEVANCES AND APPEALS.**—

(1) **IN GENERAL.**—Each covered employee with a grievance or appeal pending within TSA on the date of the enactment of this Act or initiated during the transition period described in subsection (c) shall have the right to have such grievance or appeal removed to proceedings pursuant to title 5, United States Code, or continued within the TSA.

(2) **AUTHORITY.**—With respect to any grievance or appeal continued within the TSA pursuant to paragraph (1), the Administrator may consider and finally ad-

judicate such grievance or appeal notwithstanding any other provision of this Act.

(3) **PRESERVATION OF RIGHTS.**—Notwithstanding any other provision of law, any appeal or grievance continued pursuant to this section that is not finally adjudicated pursuant to paragraph (2) shall be preserved and all timelines tolled until the rights afforded by application of chapters 71 and 77 of title 5, United States Code, are made available pursuant to section 3(c)(2) of this Act.

#### **SEC. 4. TRANSITION RULES.**

(a) **NONREDUCTION IN PAY AND COMPENSATION.**—Under pay conversion rules as the Secretary may prescribe to carry out this Act, a covered employee converted from a TSA personnel management system to the provisions of title 5, United States Code, pursuant to section 3(c)(1)(F)—

(1) shall not be subject to any reduction in either the rate of adjusted basic pay payable or law enforcement availability pay payable to such covered employee; and

(2) shall be credited for years of service in a specific pay band under a TSA personnel management system as if the employee had served in an equivalent General Schedule position at the same grade, for purposes of determining the appropriate step within a grade at which to establish the employee's converted rate of pay.

(b) **RETIREMENT PAY.**—For purposes of determining a covered employee's average pay to calculate the employee's retirement annuity, consistent with title 5, United States Code, for any covered employee who retires within three years of the conversion date, the higher of the following shall be used:

(1) The covered employee's annual rate of basic pay on the first date of the pay period following the conversion under section 3(c)(1).

(2) The amount determined consistent with sections 8331(4) or 8401(3) of such title 5, whichever is applicable.

(c) **LIMITATION ON PREMIUM PAY.**—Notwithstanding section 5547 of title 5, United States Code, or any other provision of law, a Federal Air Marshal or criminal investigator hired prior to the date of enactment of this Act may be eligible for premium pay up to the maximum level allowed by the Administrator prior to the date of enactment of this Act. The Office of Personnel Management shall recognize such premium pay as fully creditable for the purposes of calculating pay and retirement benefits.

(d) **COLLECTIVE BARGAINING UNIT.**—Notwithstanding section 7112 of title 5, United States Code, following the application of chapter 71 pursuant to section 3(c)(2) of this Act, full- and part-time non-supervisory Transportation Security Administration personnel carrying out screening functions under section 44901 of title 49, United States Code, shall remain eligible to form a collective bargaining unit.

(e) **PRESERVATION OF OTHER RIGHTS.**—In the case of each covered employee as of the conversion date, the Secretary shall take any actions necessary to ensure that—

(1) any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to a covered employee immediately before the conversion date shall remain available to the employee until used, notwithstanding any limitation on accumulated leave under chapter 63 of title 5, United States Code; and

(2) part-time personnel carrying out screening functions under section 44901 of title 49, United States Code, continue to pay Federal Employees Health Benefits premiums on the same basis as full-time TSA employees.

(f) **PROVISION OF ADDITIONAL BENEFITS.**—Subject to negotiations with the exclusive representative of full- and part-time non-supervisory Transportation Security Administration personnel carrying out screening functions under section 44901 of title 49, United States Code, pursuant to chapter 71 of title 5, United States Code, following the application of such chapter 71 pursuant to section 3(c)(2) of this Act, the Administrator may—

(1) notwithstanding chapter 63 of title 5, United States Code, provide leave benefits for covered employees that exceed those otherwise provided under such chapter;

(2) notwithstanding chapter 55 of title 5, United States Code, provide pay for covered employees that exceeds that otherwise provided under such chapter; and

(3) notwithstanding sections 5753 and 5754 of title 5, United States Code, set payable rates and conditions for the payment of incentives and bonuses that exceed those otherwise provided under such sections.

#### **SEC. 5. CONSULTATION REQUIREMENT.**

(a) **EXCLUSIVE REPRESENTATIVE.**—

(1) **IN GENERAL.**—

(A) Beginning on the date chapter 71 of title 5, United States Code, begins to apply to covered employees pursuant to section 3(c)(2), the labor organization certified by the Federal Labor Relations Authority on June 29, 2011, or any successor labor organization, shall be treated as the exclusive representative of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, United States Code, and shall be the exclusive representative for such personnel under chapter 71 of title 5, United States Code, with full rights under such chapter.

(B) Nothing in this subsection shall be construed to prevent covered employees from selecting an exclusive representative other than the labor organization described under paragraph (1) for purposes of collective bargaining under such chapter 71.

(2) NATIONAL LEVEL.—Notwithstanding any provision of such chapter 71, collective bargaining for any unit of covered employees shall occur at the national level, but may be supplemented by mutual consent of the parties by local level bargaining and local level agreements.

(3) CURRENT AGREEMENT.—Any collective bargaining agreement covering such personnel in effect on the date of enactment of this Act shall remain in effect until a collective bargaining agreement is entered into under such chapter 71, unless the Administrator and exclusive representative mutually agree to revisions to such agreement.

(b) CONSULTATION PROCESS.—Not later than seven days after the date of the enactment of this Act, the Secretary shall consult with the exclusive representative for the personnel described in subsection (a) under chapter 71 of title 5, United States Code, on the formulation of plans and deadlines to carry out the conversion of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, United States Code, under this Act. Prior to the date such chapter 71 begins to apply pursuant to section 3(c)(2), the Secretary shall provide (in writing) to such exclusive representative the plans for how the Secretary intends to carry out the conversion of such personnel under this Act, including with respect to such matters as—

(1) the anticipated conversion date; and

(2) measures to ensure compliance with sections 3 and 4.

(c) REQUIRED AGENCY RESPONSE.—If any views or recommendations are presented under subsection (b) 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.

#### **SEC. 6. NO RIGHT TO STRIKE.**

Nothing in this Act may be considered—

(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. 7. PROPOSAL ON HIRING AND CONTRACTING RESTRICTIONS.**

Not later than one year after the date of enactment of this Act, the Secretary shall submit a plan to the appropriate congressional committees on a proposal to uniformly apply, for the purposes of hiring and for authorizing or entering into any contract for service, the restrictions in section 70105(c) of title 46, United States Code, and section 44936 of title 49, United States Code.

#### **SEC. 8. COMPTROLLER GENERAL REVIEWS.**

(a) REVIEW OF RECRUITMENT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the efforts of the TSA regarding recruitment, including recruitment efforts relating to veterans and the dependents of veterans and members of the Armed Forces and the dependents of such members. Such report shall also include recommendations regarding how the TSA may improve such recruitment efforts.

(b) REVIEW OF IMPLEMENTATION.—Not later than 60 days after the conversion date, the Comptroller General shall commence a review of the implementation of this Act. The Comptroller General shall submit to Congress a report on its review no later than one year after such conversion date.

#### **SEC. 9. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the TSA's personnel system provides insufficient benefits and workplace protections to the workforce that secures the nation's transportation systems and that the TSA's workforce should be provided protections and benefits under title 5, United States Code; and

(2) the provision of these title 5 protections and benefits should not result in a reduction of pay or benefits to current TSA employees.

**SEC. 10. ASSISTANCE FOR FEDERAL AIR MARSHAL SERVICE.**

The Administrator may communicate with organizations representing a significant number of Federal Air Marshals, to the extent provided by law, to address concerns regarding Federal Air Marshals related to the following:

- (1) Mental health.
- (2) Suicide rates.
- (3) Morale and recruitment.
- (4) Any other personnel issues the Administrator determines appropriate.

**SEC. 11. PREVENTION AND PROTECTION AGAINST CERTAIN ILLNESS.**

The Administrator, in coordination with the Director of the Centers for Disease Control and Prevention and the Director of the National Institute of Allergy and Infectious Diseases, shall ensure that covered employees are provided proper guidance regarding prevention and protections against the COVID-19 National Emergency, including appropriate resources.

**SEC. 12. HAZARDOUS DUTY PAYMENTS.**

Not later than 90 days following the date of enactment of this Act, the Administrator shall provide a one-time bonus payment of \$3,000 to each at-risk employee.

**SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary, to remain available until expended, to carry out this Act.

Amend the title so as to read:

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, and for other purposes.

**PURPOSE AND SUMMARY**

H.R. 903, the "Rights for the Transportation Security Administration Workforce Act of 2021" seeks to enhance the Transportation Security Administration's (TSA) security operations by aligning TSA's personnel system with the system used by most other Federal agencies to drive enhancements to compensation, collective bargaining, and disciplinary rights for TSA's workforce. This change could help improve longstanding employee morale challenges within this frontline homeland security workforce and better position TSA to recruit, train, and retain the highly skilled, professional workforce required to execute its critical security mission.

Since its inception in 2001, TSA, a core component of the Department of Homeland Security (DHS), has had the authority to develop and maintain its own personnel system separate from the rest of the Federal Government; under TSA's system, its 60,000-person workforce does not receive the compensation or baseline protections and worker rights that are available to Federal employees elsewhere in the Federal Government. H.R. 903 directs a process for transitioning TSA to the personnel system set forth under title 5 of the U.S. Code with certain chapters of title 5 relating to labor rights and disciplinary appeal rights available to the TSA workforce within 90 days of enactment and the applicability of title 5, in its entirety, on a date determined by the Secretary of Homeland Security but in no event later than December 31, 2022. Additionally, H.R. 903 specifies that, following the transition to title 5

and subject to collective bargaining negotiations, TSA may continue to provide certain benefits that may exceed those generally provided under title 5.

In carrying out the transition, H.R. 903 directs TSA to be mindful of tenure and status, particularly with respect to leave, pay, group life insurance, health insurance, retirement, and severance pay, including protections to ensure that no employee's pay is reduced due to the transition. The Committee intends for TSA to work closely with the Office of Personnel Management to ensure pay calculations, retirement benefits, and other benefits are calculated in a manner which maximally benefits the employee. The bill stipulates how various issues would be handled during a transition period, including ongoing grievances, TSA's authorities to respond to emerging threats or national emergencies, and consultation with the labor organization serving as the exclusive representative of the Transportation Security Officer (TSO) workforce. It also specifies that nothing in the Act may be construed as providing employees a right to strike.

Additionally, H.R. 903 requires the DHS Secretary to submit a proposal to Congress to uniformly apply certain statutory hiring standards and disqualifying offenses across various transportation security worker populations and requires the Comptroller General to review TSA's recruitment efforts, including as they relate to veterans and their dependents and TSA's implementation of the Act. With respect to COVID-19, H.R. 903 requires TSA to provide a one-time hazardous duty bonus payments to employees carrying out duties that require substantial contact with the public during the COVID-19 national emergency and seeks to ensure the protection of the TSA workforce by requiring guidance and resources to be developed in coordination with the Centers for Disease Control and Prevention and the National Institute of Allergy and Infectious Diseases. Finally, the bill authorizes appropriations necessary to carry out the Act. H.R. 903 takes additional steps to support Federal Air Marshals (FAMs), authorizing the TSA Administrator to communicate with organizations representing FAMs to address concerns regarding mental health, suicide rates, morale and recruitment, and other personnel issues affecting FAMs.

#### BACKGROUND AND NEED FOR LEGISLATION

Following the September 11, 2001, terrorist attacks, Congress established TSA with the mission of securing the Nation's transportation systems against further attacks (see the Aviation and Transportation Security Act, Pub. L. 107-71). The law granted the TSA Administrator with broad authorities to employ, appoint, discipline, terminate, and fix the compensation for its workforce which includes TSOs. Some voiced a belief that TSA could use these authorities to create a modern, nimble personnel management system that would work better than the civil service system regulated by title 5 of the U.S. Code. Two decades later, however, TSA's personnel system is severely lacking, and one of the Federal Government's most diverse workforces remains one of its lowest paid. As a result, TSA struggles with low morale and high attrition.

Several factors contribute to TSA's morale and attrition problems. In the two decades of TSA's existence, TSO job responsibilities have steadily increased as TSA has rolled out sophisticated

technologies and security policies to provide a formidable defense against potential terrorist attacks. In just the past few years, TSOs have faced a range of new challenges, including a government shut-down which required them to work without pay; record-breaking travel volumes which required them to work long overtime hours; an ongoing global pandemic which poses significant health risks to TSOs; an unprecedented uptick in the number of firearms brought to security checkpoints, which threaten TSOs' safety; and a frightening surge in unruly passenger behavior, including increased assaults against TSOs.

Unfortunately, TSOs' pay and benefits have not evolved to reflect the challenges of the job, leaving entry-level TSOs among the lowest paid Federal employees. Unlike the General Schedule pay system under title 5, TSA's pay scale does not include regular annual increases. Salaries for those who have worked for the agency for nearly 20 years often remain near the bottom of their pay grade. According to TSA, TSOs are paid 30-percent less on average than Federal workers performing similar roles under title 5. A competitive labor market has compounded these problems, making TSA's salaries increasingly inadequate to attract and retain the talent TSA needs to execute its mission. Year after year, TSA ranks at or near the bottom in Federal employee morale surveys regarding pay. In the 2020 "Best Places to Work" survey, TSA ranked 407th out of 407 agency subcomponents—dead last—on pay satisfaction.

In addition to struggles with pay, TSA employees are not granted many of the basic workplace protections afforded most other Federal workers under the title 5 personnel system. For example, TSOs' collective bargaining rights are not guaranteed in statute and exist at the Administrator's sole discretion. TSOs were not allowed to unionize prior to 2011, and since then, they have only been allowed to negotiate over a very limited set of issues. Labor negotiations in which management has all the power and can walk away from the table at any time are of limited value to workers. Until recently, TSA employees also had limited options for filing workplace grievances and could not appeal disciplinary actions to an outside third-party such as the Merit Systems Protection Board (MSPB).

Historically, TSA management has used its special personnel authorities to mostly benefit senior management, not the frontline workforce. Senior managers, for example, have been permitted to award each other with large bonuses that would be prohibited under the title 5 personnel system. In one instance, a senior manager received \$90,000 in bonuses in a single year.

The costs of maintaining the status quo are high. TSA faces chronic, major challenges in training, hiring, and retaining frontline workers. Low morale and high attrition have had an adverse impact on the agency, crippling its ability to develop a mature workforce. In March 2019, the DHS Office of the Inspector General (OIG) published a report highlighting major problems TSA faces in recruiting, training, and retaining workers. The report found that, over a 2-year span in Fiscal Years 2016 and 2017, approximately one in three TSOs left the agency. According to the OIG, TSA spends an average of more than \$8,500 on recruiting and training each new hire. Given TSA's turnover challenges, those costs add up fast: in 2017 alone, TSA spent \$75 million on hiring and training—



including \$16 million on nearly 2,000 new hires who left within 6 months. Such drastic turnover results in less experience within the workforce, which ultimately threatens TSA's ability to reliably detect threats to transportation systems.

The Biden Administration has worked to address the challenges plaguing the TSA workforce. In June 2021, DHS Secretary Alejandro Mayorkas directed TSA to develop options for increasing pay and expanding collective bargaining and third-party appeal rights. In September 2021, TSA Administrator David Pekoske announced that TSA and the MSPB entered into a Memorandum of Agreement through which the MSPB agreed to review adverse action appeals from screening workforce employees. In March 2022, President Biden submitted to Congress the budget request for Fiscal Year 2023, which included an initiative to fund pay increases for TSA employees to provide salaries similar to what would be provided under the General Schedule. The President's budget proposal also requested funding to support an expansion in collective bargaining rights that would see TSOs enjoy rights similar to those afforded under title 5, as well as funding to support continuation of MSPB appeal rights.

H.R. 903 seeks to codify and build on these efforts by making TSA subject to the requirements of title 5 in statute. Under title 5, TSA employees would receive higher salaries as well as regular salary increases in future years. Employees would be guaranteed access to MSPB processes as well as permanent, expanded collective bargaining rights as are available to most other Federal workers. Moving the TSA workforce to the title 5 personnel system is intended to have a stabilizing effect and reduce what TSA needs to spend to attract and retain TSOs. Such a move is critical to ensuring TSA can continue to secure the Nation's transportation systems.

#### HEARINGS

For the purposes of clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearings were used to develop H.R. 903:

- On May 4, 2021, the Subcommittee on Transportation and Maritime Security held a hearing entitled, "Twenty Years of Workforce Challenges: The Need for H.R. 903, the Rights for the TSA Workforce Act of 2021." The Subcommittee heard testimony from Everett Kelley, Ph.D., National President, American Federation of Government Employees, AFL-CIO; Joi Olivia Chaney, Senior Vice President for Policy & Advocacy and Executive Director of the Washington Bureau, National Urban League; Tom Warrick, Nonresident Senior Fellow and Director of the Future of DHS Project, Atlantic Council; and Jeffrey Neal, Principal, ChiefHRO, LLC.
- In the 116th Congress, on May 21, 2019, the Subcommittee on Transportation and Maritime Security held a hearing entitled, "The TSA Workforce Crisis: A Homeland Security Risk." The Subcommittee heard testimony from John V. Kelly, Acting Inspector General, Department of Homeland Security; J. David Cox, National President, American Federation of Government Employees, AFL-CIO; Lance Lyttle, Managing

Director, Aviation Division, Port of Seattle; and Jeffrey Neal, Senior Vice President, ICF.

Subsequent to Committee consideration of H.R. 903, the Committee held the following hearings that are pertinent to the legislation:

- On September 29, 2021, the Committee on Homeland Security held a hearing entitled, “20 Years after 9/11: The State of the Transportation Security Administration.” The Committee heard testimony from Hon. David Pekoske, Administrator, Transportation Security Administration (TSA); Hon. Peter Neffenger, Private Citizen, Former Administrator, TSA; Hon. John S. Pistole, President, Anderson University, Former Administrator, TSA; and Hon. J.M. Loy, Private Citizen, Former Administrator, TSA.
- On November 16, 2021, the Subcommittee on Transportation and Maritime Security held a hearing entitled, “On the Frontlines in Turbulent Times: Workforce Perspectives on the State of Transportation Security.” The Subcommittee heard testimony from Everett Kelley, Ph.D., National President, American Federation of Government Employees (AFGE), AFL-CIO; Sara Nelson, International President, Association of Flight Attendants-CWA, AFL-CIO; John Samuelson, International President, Transport Workers Union of America, AFL-CIO; and John Casaretti, President, Air Marshal Association.

#### COMMITTEE CONSIDERATION

The Committee met on July 28, 2021, a quorum being present, to consider H.R. 903 and ordered the measure to be favorably reported to the House, with amendments, by a recorded vote of 19 ayes and 11 noes.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

1. An amendment to the amendment in the nature of a substitute offered by Mr. KATKO of New York to strike page 1, line 1, and all that follows and insert substitute text that would increase the pay of certain TSA frontline employees, provide for TSO salaries during a lapse in appropriations, and reduce the number of Senior Executive Service-level positions at TSA headquarters. The amendment failed by a recorded vote of 11 ayes and 19 noes (Rollcall No. 1).

## Committee Record Vote No. 1

Katko Amendment No. 1 to Thompson (MS) Amendment in the Nature of a Substitute to H.R. 903  
Failed: 11 ayes to 19 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	No	Mr. Katko .....	Aye
Mr. Langevin .....	No	Mr. McCaul .....	Aye
Mr. Payne .....	.....	Mr. Higgins (LA) .....	.....
Mr. Correa .....	No	Mr. Guest .....	Aye
Ms. Slotkin .....	No	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	No	Mr. Van Drew .....	No
Mr. Green (TX) .....	No	Mr. Norman .....	Aye
Ms. Clarke (NY) .....	No	Mrs. Miller-Meeks .....	Aye
Mr. Swalwell .....	No	Mrs. Harshbarger .....	Aye
Ms. Titus .....	No	Mr. Clyde .....	Aye
Mrs. Watson Coleman .....	No	Mr. Gimenez .....	Aye
Miss Rice (NY) .....	No	Mr. LaTurner .....	.....
Mrs. Demings .....	No	Mr. Meijer .....	Aye
Ms. Barragán .....	No	Mrs. Cammack .....	Aye
Mr. Gottheimer .....	No	Mr. Pfluger .....	Aye
Mrs. Luria .....	No	Mr. Garbarino .....	No
Mr. Malinowski .....	No		
Mr. Torres (NY) .....	.....		
Mr. Thompson (MS), Chairman.	No		

2. An amendment to the amendment in the nature of a substitute offered by Mrs. WATSON COLEMAN of New Jersey to ease the transition of the TSA workforce to title 5, ensure the provision of additional benefits, provide bonus pay, and make technical amendments. The amendment was agreed to by a recorded vote of 21 ayes and 10 noes (Rollcall No. 2).

## Committee Record Vote No. 2

Watson Coleman Amendment to Thompson (MS) Amendment in the Nature of a Substitute to H.R. 903  
Agreed to: 21 ayes to 10 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	Aye	Mr. Katko .....	Aye
Mr. Langevin .....	.....	Mr. McCaul .....	No
Mr. Payne .....	.....	Mr. Higgins (LA) .....	.....
Mr. Correa .....	Aye	Mr. Guest .....	No
Ms. Slotkin .....	Aye	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	Aye	Mr. Van Drew .....	Aye
Mr. Green (TX) .....	Aye	Mr. Norman .....	No
Ms. Clarke (NY) .....	Aye	Mrs. Miller-Meeks .....	No
Mr. Swalwell .....	Aye	Mrs. Harshbarger .....	No
Ms. Titus .....	Aye	Mr. Clyde .....	No
Mrs. Watson Coleman .....	Aye	Mr. Gimenez .....	Aye
Miss Rice (NY) .....	Aye	Mr. LaTurner .....	No
Mrs. Demings .....	Aye	Mr. Meijer .....	No
Ms. Barragán .....	Aye	Mrs. Cammack .....	No
Mr. Gottheimer .....	Aye	Mr. Pfluger .....	No
Mrs. Luria .....	Aye	Mr. Garbarino .....	Aye
Mr. Malinowski .....	Aye		
Mr. Torres (NY) .....	Aye		
Mr. Thompson (MS), Chairman.	Aye		

3. An amendment to the amendment in the nature of a substitute offered by Mr. KATKO of New York to limit the applicability of the conversion of the TSA workforce to title 5 to certain TSA frontline employees. The amendment failed by a recorded vote of 9 ayes and 23 noes (Rollcall No. 3).

## Committee Record Vote No. 3

Katko Amendment No. 2 to Thompson (MS) Amendment in the Nature of a Substitute to H.R. 903  
Failed: 9 ayes to 23 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	No	Mr. Katko .....	Aye
Mr. Langevin .....	No	Mr. McCaul .....	.....
Mr. Payne .....	No	Mr. Higgins (LA) .....	.....
Mr. Correa .....	No	Mr. Guest .....	Aye
Ms. Slotkin .....	No	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	No	Mr. Van Drew .....	No
Mr. Green (TX) .....	No	Mr. Norman .....	No
Ms. Clarke (NY) .....	No	Mrs. Miller-Meeks .....	Aye
Mr. Swalwell .....	No	Mrs. Harshbarger .....	No
Ms. Titus .....	No	Mr. Clyde .....	Aye
Mrs. Watson Coleman .....	No	Mr. Gimenez .....	Aye
Miss Rice (NY) .....	No	Mr. LaTurner .....	Aye
Mrs. Demings .....	No	Mr. Meijer .....	Aye
Ms. Barragán .....	No	Mrs. Cammack .....	Aye
Mr. Gottheimer .....	No	Mr. Pfluger .....	Aye
Mrs. Luria .....	No	Mr. Garbarino .....	No
Mr. Malinowski .....	No		
Mr. Torres (NY) .....	No		
Mr. Thompson (MS), Chairman.	No		

4. An amendment to the amendment in the nature of a substitute offered by Mrs. CAMMACK of Florida to create a rule of construction that nothing in the Act shall limit the TSA Administrator's authority to impose new, or change existing, security screening procedures or requirements and exempt such procedures or requirements from any collective bargaining. The amendment failed by a recorded vote of 11 ayes and 21 noes (Rollcall No. 4).

## Committee Record Vote No. 4

Cammack Amendment to Thompson (MS) Amendment in the Nature of a Substitute to H.R. 903  
Failed: 11 ayes to 21 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	No	Mr. Katko .....	Aye
Mr. Langevin .....	No	Mr. McCaul .....	Aye
Mr. Payne .....	No	Mr. Higgins (LA) .....	.....
Mr. Correa .....	No	Mr. Guest .....	Aye
Ms. Slotkin .....	No	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	No	Mr. Van Drew .....	No
Mr. Green (TX) .....	No	Mr. Norman .....	Aye
Ms. Clarke (NY) .....	No	Mrs. Miller-Meeks .....	.....
Mr. Swalwell .....	No	Mrs. Harshbarger .....	Aye
Ms. Titus .....	No	Mr. Clyde .....	Aye
Mrs. Watson Coleman .....	No	Mr. Gimenez .....	Aye
Miss Rice (NY) .....	No	Mr. LaTurner .....	Aye
Mrs. Demings .....	No	Mr. Meijer .....	Aye
Ms. Barragán .....	No	Mrs. Cammack .....	Aye
Mr. Gottheimer .....	No	Mr. Pfluger .....	Aye
Mrs. Luria .....	No	Mr. Garbarino .....	No
Mr. Malinowski .....	No		
Mr. Torres (NY) .....	No		
Mr. Thompson (MS), Chairman.	No		

5. An amendment to the amendment in the nature of a substitute offered by Mr. GUEST of Mississippi to sunset the Act at the end of fiscal year 2022 if sufficient funds have not been specifically appropriated to carry out the Act's requirements. The amendment failed by a recorded vote of 11 ayes and 20 noes (Rollcall No. 5).

## Committee Record Vote No. 5

Guest Amendment to Thompson (MS) Amendment in the Nature of a Substitute to H.R. 903  
Failed: 11 ayes to 20 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	No	Mr. Katko .....	Aye
Mr. Langevin .....	No	Mr. McCaul .....	Aye
Mr. Payne .....	No	Mr. Higgins (LA) .....	.....
Mr. Correa .....	No	Mr. Guest .....	Aye
Ms. Slotkin .....	No	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	No	Mr. Van Drew .....	No
Mr. Green (TX) .....	No	Mr. Norman .....	.....
Ms. Clarke (NY) .....	No	Mrs. Miller-Meeks .....	Aye
Mr. Swalwell .....	.....	Mrs. Harshbarger .....	Aye
Ms. Titus .....	No	Mr. Clyde .....	Aye
Mrs. Watson Coleman .....	No	Mr. Gimenez .....	Aye
Miss Rice (NY) .....	No	Mr. LaTurner .....	Aye
Mrs. Demings .....	No	Mr. Meijer .....	Aye
Ms. Barragán .....	No	Mrs. Cammack .....	Aye
Mr. Gottheimer .....	No	Mr. Pfluger .....	Aye
Mrs. Luria .....	No	Mr. Garbarino .....	No
Mr. Malinowski .....	No		
Mr. Torres (NY) .....	No		
Mr. Thompson (MS), Chairman.	No		

6. An amendment to the amendment in the nature of a substitute offered by Mr. GIMENEZ of Florida to limit the use of DHS appropriations to carry out the Act's requirements unless specifically appropriated to do so. The amendment failed by a recorded vote of 11 ayes and 19 noes (Rollcall No. 6).

## Committee Record Vote No. 6

Gimenez Amendment to Thompson (MS) Amendment in the Nature of a Substitute to H.R. 903  
Failed: 11 ayes to 19 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	No	Mr. Katko .....	Aye
Mr. Langevin .....	No	Mr. McCaul .....	Aye
Mr. Payne .....	No	Mr. Higgins (LA) .....	.....
Mr. Correa .....	No	Mr. Guest .....	Aye
Ms. Slotkin .....	No	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	No	Mr. Van Drew .....	No
Mr. Green (TX) .....	No	Mr. Norman .....	.....
Ms. Clarke (NY) .....	No	Mrs. Miller-Meeks .....	Aye
Mr. Swalwell .....	.....	Mrs. Harshbarger .....	Aye
Ms. Titus .....	No	Mr. Clyde .....	Aye
Mrs. Watson Coleman .....	No	Mr. Gimenez .....	Aye
Miss Rice (NY) .....	.....	Mr. LaTurner .....	Aye
Mrs. Demings .....	No	Mr. Meijer .....	Aye
Ms. Barragán .....	No	Mrs. Cammack .....	Aye
Mr. Gottheimer .....	No	Mr. Pfluger .....	Aye
Mrs. Luria .....	No	Mr. Garbarino .....	No
Mr. Malinowski .....	No		
Mr. Torres (NY) .....	No		
Mr. Thompson (MS), Chairman.	No		



7. A motion by Mr. THOMPSON of Mississippi to favorably report H.R. 903, as amended, was agreed to by a recorded vote of 19 ayes and 11 noes (Rollcall No. 7).

Committee Record Vote No. 7

Thompson (MS) Motion to Favorably Report H.R. 903, as amended  
Failed: 19 ayes to 11 noes

Majority Members	Vote	Minority Members	Vote
Ms. Jackson Lee .....	Aye	Mr. Katko .....	No
Mr. Langevin .....	Aye	Mr. McCaul .....	No
Mr. Payne .....	Aye	Mr. Higgins (LA) .....	.....
Mr. Correa .....	Aye	Mr. Guest .....	No
Ms. Slotkin .....	Aye	Mr. Bishop (NC) .....	.....
Mr. Cleaver .....	Aye	Mr. Van Drew .....	Aye
Mr. Green (TX) .....	Aye	Mr. Norman .....	.....
Ms. Clarke (NY) .....	Aye	Mrs. Miller-Meeks .....	No
Mr. Swalwell .....	.....	Mrs. Harshbarger .....	No
Ms. Titus .....	Aye	Mr. Clyde .....	No
Mrs. Watson Coleman .....	Aye	Mr. Gimenez .....	No
Miss Rice (NY) .....	.....	Mr. LaTurner .....	No
Mrs. Demings .....	Aye	Mr. Meijer .....	No
Ms. Barragán .....	Aye	Mrs. Cammack .....	No
Mr. Gottheimer .....	Aye	Mr. Pfluger .....	No
Mrs. Luria .....	Aye	Mr. Garbarino .....	Aye
Mr. Malinowski .....	Aye		
Mr. Torres (NY) .....	Aye		
Mr. Thompson (MS), Chairman.	Aye		

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

## CORRESPONDENCE WITH OTHER COMMITTEES

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND REFORM,  
*Washington, DC, May 4, 2022.*

Hon. BENNIE G. THOMPSON,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR CHAIRMAN THOMPSON: I write concerning H.R. 903, the "Rights for the TSA Workforce Act." This bill contains provisions within the jurisdiction of the Committee on Oversight and Reform. As a result of your having consulted with me concerning the provisions of the bill that fall within our Rule X jurisdiction, I agree to forgo consideration of the bill, so the bill may proceed expeditiously to the House floor.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 903 we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issues within our Rule X jurisdiction. Further, I request your support for the appointment of conferees from the Committee on Oversight and Reform during any House-Senate conference on this or related legislation.

Finally, I would appreciate a response confirming this understanding and ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Homeland Security as well as in the *Congressional Record* during floor consideration thereof.

Sincerely,

CAROLYN B. MALONEY,  
*Chairwoman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC, May 4, 2022.*

Hon. CAROLYN B. MALONEY,  
*Chairman, Committee on Oversight and Reform,  
House of Representatives, Washington, DC.*

DEAR CHAIRWOMAN MALONEY: Thank you for your letter regarding H.R. 903, the "Rights for the TSA Workforce Act of 2021." I recognize that the Committee on Oversight and Reform has a jurisdictional interest in H.R. 903, and I appreciate your effort to allow this bill to be considered on the House floor.

I concur with you that forgoing action on the bill does not in any way prejudice the Committee on Oversight and Reform with respect to its jurisdictional prerogatives on this bill or similar legisla-

tion in the future, and I would support your effort to seek appointment of an appropriate number of conferees to any House-Senate conference involving this legislation.

I will include our letters on H.R. 903 in the Committee report on this measure and in the *Congressional Record* during floor consideration of this bill. I look forward to working with you on this legislation and other matters of great importance to this Nation.

Sincerely,

BENNIE G. THOMPSON,  
*Chairman.*

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and with respect to the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

#### FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 903 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the objective of H.R. 903 is to improve the workplace rights, protections, and benefits applicable to TSA personnel by applying the personnel system of title 5 of the U.S. Code to TSA employees.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 903 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

#### *Section 1. Short Title.*

This section states that the Act may be cited as the “Rights for the Transportation Security Administration Workforce Act of 2021” or the “Rights for the TSA Workforce Act of 2021”.

#### *Sec. 2. Definitions.*

This section provides definitions for “adjusted basic pay,” “Administrator,” “appropriate congressional committees,” “at-risk employee,” “conversion date,” “covered employee,” “covered position,” “COVID-19 national emergency,” “employee,” “Secretary,” “TSA personnel management system,” “TSA,” and “2019 Determination.”

#### *Sec. 3. Conversion of TSA Personnel.*

This section requires that, as of the date of enactment, any TSA personnel management system in use and any TSA personnel management policy, letter, guideline, or directive may not be modified; no new TSA personnel management policy, letter, guideline, or directive may be established; and any authority to establish or adjust a human resources management system under chapter 97 of title 5, U.S. Code, shall terminate. Exceptions are provided to allow for annual adjustments to pay schedules and locality-based payments and to allow for a new policy needed to resolve a matter not specifically addressed in existing policy, if the Secretary provides an explanation of its necessity to the appropriate congressional committees within 7 days of issuance. An exception is also provided to allow modifications to or establishment of any TSA personnel management policy, letter, guideline, or directive related to an emerging threat to transportation security, including national emergencies or disasters and public health threats to transportation security, until TSA converts to title 5. The Secretary must notify appropriate congressional committees of any such action with an explanation of its necessity within 7 days.

This section also requires that any TSA personnel management system in use and any TSA personnel management policy, letter, guideline, or directive in effect on the day before enactment shall remain in effect until the conversion date.

It states that not later than 90 days after enactment, chapters 71 and 77 of title 5, U.S. code, shall apply to TSA employees carrying out screening functions under section 44901 of title 49, U.S. code, and any policy, letter, guideline, or directive issued under section 111(d) of the Aviation and Transportation Security Act related to matters otherwise covered by chapters 71 and 77 shall cease to be in effect.

It states that, as of the date determined by the DHS Secretary but in no event later than December 31, 2022, the TSA personnel management system shall cease to be in effect; section 114(n) of title 49, U.S. Code, and section 111(d) of the Aviation and Trans-

portation Security Act are repealed; any TSA personnel management policy, letter, guideline and directive, including the 2019 Determination on collective bargaining, shall cease to be effective; any human resources management system established or adjusted under chapter 97 of title 5, U.S. Code, with respect to TSA employees or positions shall cease to be effective; and TSA employees and positions shall be subject to the provisions of title 5, U.S. Code.

This section also requires that, not later than 180 days after enactment or by December 31, 2022 (whichever is earlier), the Office of Personnel Management establish a position series and classification standard for TSA positions including Transportation Security Officer, Federal Air Marshal, and Transportation Security Inspector. Additionally, the Department of Agriculture's National Finance Center must make necessary changes to its financial and human resources management systems to ensure payroll, leave, and other personnel processing systems for TSA personnel are commensurate with chapter 53 of title 5, U.S. Code, and provide necessary functions.

Finally, this section provides safeguards on grievances and appeals so that each covered employee with a grievance or appeal pending within TSA on the date of enactment or initiated during the transition period shall have the opportunity to have such grievance or appeal removed to proceedings pursuant to title 5, U.S. Code, or continued within TSA. The Administrator may consider and finally adjudicate any grievance or appeal continued within TSA, and any appeal or grievance that is not so adjudicated shall be preserved and all timelines tolled until the rights afforded by application of chapters 71 and 77 of title 5, U.S. Code, are made available.

#### *Sec. 4. Transition Rules.*

This section sets forth that all covered employees converted from a TSA personnel management system to the provisions of title 5, U.S. Code, shall not be subject to any reduction in either the rate of adjusted basic pay or law enforcement availability pay. Further, such employees shall be credited for years of service in a specific pay band under a TSA personnel management system as if the employee had served in an equivalent General Schedule position at the same grade, for purposes of determining the appropriate step within a grade at which to establish the employee's converted rate of pay.

This section also requires that, for purposes of determining a covered employee's average pay to calculate the employee's retirement annuity for any covered employee who retires within 3 years of the conversion date, the higher of the employee's rate of basic pay on the first date of the pay period following the conversion or the amount determined consistent with sections 8331(4) or 8401(3) of title 5, U.S. Code, shall be used. Additionally, a Federal Air Marshal or criminal investigator hired prior to the date of enactment may be eligible for premium pay up to the maximum level allowed by the Administrator prior to the date of enactment, and the Office of Personnel Management shall recognize such premium pay as fully creditable for purposes of calculating pay and retirement benefits.

Next, this section requires that, following the application of chapter 71 of title 5, U.S. Code, full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, U.S. Code, shall remain eligible to form a collective bargaining unit. It also requires that the Secretary take any actions necessary to ensure that, for each covered employee as of the conversion date, any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to an employee immediately before the conversion date shall remain available to the employee until used, and that part-time personnel carrying out screening functions under section 44901 of title 49, U.S. Code, continue to pay Federal Employees Health Benefits premiums on the same basis as full-time TSA employees.

Moreover, this section provides that the TSA Administrator may provide certain benefits that exceed those otherwise provided under title 5, U.S. Code, subject to negotiations with the exclusive representative of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, U.S. Code. Specifically, the Administrator may provide leave benefits that exceed those otherwise provided under chapter 63 of title 5; pay that exceeds that otherwise provided under chapter 55 of title 5; and set payable rates and conditions for the payment of incentives and bonuses that exceed those otherwise provided under sections 5753 and 5754 of title 5.

It allows for local level bargaining and agreements on issues mutually agreed upon by the exclusive representative and the TSA Personnel Authorities. Lastly, it ensures the current collective bargain agreement in effect at the time of enactment shall remain in effect until the effective date of a new collective bargaining agreement unless the Administrator and exclusive representative mutually agree to revisions.

#### *Sec. 5. Consultation Requirement.*

This section requires that beginning on the date chapter 71 of title 5, U.S. Code, begins to apply to covered employees, the labor organization certified by the Federal Labor Relations Authority on June 29, 2011, or any successor labor organization, shall be treated as the exclusive representative of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, U.S. Code, and shall be the exclusive representative for such personnel under chapter 71 of title 5. Nothing in this subsection shall be construed to prevent covered employees from selecting an exclusive representative other than the labor organization described for purposes of collective bargaining under chapter 71. This section also provides that collective bargaining for any unit of covered employees shall occur at the national level but may be supplemented by mutual consent of the parties by local level bargaining and local level agreements. Further, any collective bargaining agreement covering such personnel in effect on the date of enactment shall remain in effect until a collective bargaining agreement is entered into under chapter 71, unless the Administrator and exclusive representative mutually agree to revisions to such agreement.

This section also requires that, not later than 7 days after the date of enactment, the Secretary shall consult with the exclusive

representative under chapter 71 of title 5, U.S. Code, on the formulation of plans and deadlines to carry out the conversion of full- and part-time non-supervisory TSA personnel carrying out screening functions under section 44901 of title 49, U.S. Code. Prior to the date chapter 71 begins to apply under this Act, the Secretary shall provide in writing to such exclusive representative the plans for how the Secretary intends to carry out the conversion of such personnel under this Act, including with respect to the anticipated conversion date and measures to ensure compliance with sections 3 and 4 of this Act. If the exclusive representative presents any views or recommendations, the Secretary shall consider them before taking final action on any matters they cover and provide the exclusive representative a written statement of the reasons for the final actions to be taken.

*Sec. 6. No Right to Strike.*

This section clarifies that that this Act does not repeal or otherwise affect—or authorize any activity which is not permitted under—section 1918 of title 18, U.S. Code, relating to disloyalty and asserting the right to strike against the Government, or section 7311 of title 5, U.S. Code, relating to loyalty and striking.

*Sec. 7. Proposal on Hiring and Contracting Restrictions.*

This section requires the Secretary of Homeland Security to submit to the appropriate congressional committees not later than 1 year after enactment a proposal to uniformly apply, for the purposes of hiring and for authorizing or entering into any contract for service, the restrictions in section 70105(c) of title 46, U.S. Code, and section 44936 of title 49, U.S. Code.

*Sec. 8. Comptroller General Reviews.*

This section requires the Comptroller General to report to Congress within 1 year of enactment on TSA’s efforts regarding recruitment, including efforts relating to veterans, members of the Armed Forces, and their dependents. The report must include recommendations regarding how TSA may improve such efforts.

Additionally, not later than 60 days after the conversion date, the Comptroller General must commence a review of the implementation of this Act, and the Comptroller General must submit a report to Congress on its review no later than 1 year after the conversion date.

*Sec. 9. Sense of Congress.*

This section provides the sense of Congress that TSA’s personnel system provides insufficient benefits and workplace protections to its workforce, that TSA’s workforce should be provided protections and benefits under title 5, U.S. Code, and that the provision of these protections and benefits should not result in a reduction of pay or benefits to current TSA employees.

*Sec. 10. Assistance for Federal Air Marshal Service.*

This section authorizes the TSA Administrator to communicate with organizations representing a significant number of Federal Air Marshals, to the extent provided by law, to address concerns regarding Federal Air Marshals related to mental health, suicide

rates, morale and recruitment, and any other personnel issues the Administrator determines appropriate.

*Sec. 11. Prevention and Protection Against Certain Illness.*

This section requires the TSA Administrator, in coordination with the Director of the Centers for Disease Control and Prevention and the Director of the National Institute of Allergy and Infectious Diseases, to ensure covered employees are provided proper guidance regarding prevention and protections against the COVID-19 national emergency, including appropriate resources.

*Sec. 12. Hazardous Duty Payments.*

This section requires the TSA Administrator to provide, not later than 90 days following the date of enactment, a one-time bonus payment of \$3,000 to each Transportation Security Officer, Federal Air Marshal, canine handler, or other TSA employee carrying out duties that require substantial contact with the public during the COVID-19 national emergency.

*Sec. 13. Authorization of Appropriations.*

This section authorizes to be appropriated such sums as may be necessary, to remain available until expended, to carry out this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

**TITLE 49, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE I—DEPARTMENT OF  
TRANSPORTATION**

\* \* \* \* \*

**CHAPTER 1—ORGANIZATION**

\* \* \* \* \*

**§ 114. Transportation Security Administration**

(a) IN GENERAL.—The Transportation Security Administration shall be an administration of the Department of Homeland Security.

(b) LEADERSHIP.—

(1) HEAD OF TRANSPORTATION SECURITY ADMINISTRATION.—

(A) APPOINTMENT.—The head of the Administration shall be the Administrator of the Transportation Security Administration (referred to in this section as the “Administrator”). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.



(B) QUALIFICATIONS.—The Administrator must—

- (i) be a citizen of the United States; and
- (ii) have experience in a field directly related to transportation or security.

(C) TERM.—Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, after the date of enactment of the TSA Modernization Act, the term of office of an individual appointed as the Administrator shall be 5 years. The term of office of an individual serving as the Administrator on the date of enactment of the TSA Modernization Act shall be 5 years beginning on the date that the Administrator began serving.

(2) DEPUTY ADMINISTRATOR.—

(A) APPOINTMENT.—There is established in the Transportation Security Administration a Deputy Administrator, who shall assist the Administrator in the management of the Transportation Security Administration. The Deputy Administrator shall be appointed by the President.

(B) VACANCY.—The Deputy Administrator shall be Acting Administrator during the absence or incapacity of the Administrator or during a vacancy in the office of Administrator.

(C) QUALIFICATIONS.—The Deputy Administrator must—

- (i) be a citizen of the United States; and
- (ii) have experience in a field directly related to transportation or security.

(3) CHIEF COUNSEL.—

(A) APPOINTMENT.—There is established in the Transportation Security Administration a Chief Counsel, who shall advise the Administrator and other senior officials on all legal matters relating to the responsibilities, functions, and management of the Transportation Security Administration.

(B) QUALIFICATIONS.—The Chief Counsel must be a citizen of the United States.

(c) LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.—The Administrator may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

(d) FUNCTIONS.—The Administrator shall be responsible for security in all modes of transportation, including—

- (1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and
- (2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(e) SCREENING OPERATIONS.—The Administrator shall—

- (1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;
- (2) develop standards for the hiring and retention of security screening personnel;
- (3) train and test security screening personnel; and
- (4) be responsible for hiring and training personnel to provide security screening at all airports in the United States

where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

(f) **ADDITIONAL DUTIES AND POWERS.**—In addition to carrying out the functions specified in subsections (d) and (e), the Administrator shall—

(1) receive, assess, and distribute intelligence information related to transportation security;

(2) assess threats to transportation;

(3) develop policies, strategies, and plans for dealing with threats to transportation security;

(4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;

(6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933;

(7) enforce security-related regulations and requirements;

(8) identify and undertake research and development activities necessary to enhance transportation security;

(9) inspect, maintain, and test security facilities, equipment, and systems;

(10) ensure the adequacy of security measures for the transportation of cargo;

(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;

(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

(14) work with the International Civil Aviation Organization and appropriate aeronautic authorities of foreign governments under section 44907 to address security concerns on passenger flights by foreign air carriers in foreign air transportation;

(15) establish and maintain a National Deployment Office as required under section 44948 of this title; and

(16) carry out such other duties, and exercise such other powers, relating to transportation security as the Administrator considers appropriate, to the extent authorized by law.

(g) **NATIONAL EMERGENCY RESPONSIBILITIES.**—

(1) **IN GENERAL.**—Subject to the direction and control of the Secretary of Homeland Security, the Administrator, during a national emergency, shall have the following responsibilities:

(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the

Federal Government other than the Department of Defense and the military departments.

(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary of Homeland Security shall prescribe.

(2) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The authority of the Administrator under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) CIRCUMSTANCES.—The Secretary of Homeland Security shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) MANAGEMENT OF SECURITY INFORMATION.—In consultation with the Transportation Security Oversight Board, the Administrator shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

(i) VIEW OF NTSB.—In taking any action under this section that could affect safety, the Administrator shall give great weight to the timely views of the National Transportation Safety Board.

(j) ACQUISITIONS.—

(1) IN GENERAL.—The Administrator is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the Administrator considers necessary;

(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain such personal property (including office space and patents), or any interest therein, within and outside the continental United States, as the Administrator considers necessary;

(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain, and operate equipment for these facilities;

(D) to acquire services, including such personal services as the Secretary of Homeland Security determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and

(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(k) TRANSFERS OF FUNDS.—The Administrator is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions assigned by law to the Administrator.

(l) REGULATIONS.—

(1) IN GENERAL.—The Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the Administrator determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Administrator shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Administrator.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the Administrator shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to

the enhancement of security the regulation will provide. The Administrator may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the Administrator determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

(A) IN GENERAL.—The Administrator shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the Administrator that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the Administrator may take such an action, after receiving a notification concerning the action from the Administrator of the Federal Aviation Administration under subparagraph (A), if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY ADMINISTRATOR.—

(1) AUTHORITY OF ADMINISTRATOR.—In carrying out the functions of the Administration, the Administrator shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (l) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the Administrator as the head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

[(n) PERSONNEL MANAGEMENT SYSTEM.—

[(1) IN GENERAL.—The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the Administrator may make such modifications to the personnel management system with respect to such employees as the Administrator considers appropriate, such as adopting aspects of other personnel systems of the Department of Homeland Security.

[(2) MERITORIOUS EXECUTIVE OR DISTINGUISHED EXECUTIVE RANK AWARDS.—Notwithstanding section 40122(g)(2) of this title, the applicable sections of title 5 shall apply to the Transportation Security Administration personnel management system, except that—

[(A) for purposes of applying such provisions to the personnel management system—

[(i) the term “agency” means the Department of Homeland Security;

[(ii) the term “senior executive” means a Transportation Security Administration executive serving on a Transportation Security Executive Service appointment;

[(iii) the term “career appointee” means a Transportation Security Administration executive serving on a

career Transportation Security Executive Service appointment; and

[(iv) The term “senior career employee” means a Transportation Security Administration employee covered by the Transportation Security Administration Core Compensation System at the L or M pay band;

[(B) receipt by a career appointee or a senior career employee of the rank of Meritorious Executive or Meritorious Senior Professional entitles the individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under the applicable Transportation Security Administration pay system; and

[(C) receipt by a career appointee or a senior career employee of the rank of Distinguished Executive or Distinguished Senior Professional entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall be in addition to the basic pay paid under the applicable Transportation Security Administration pay system.

[(3) DEFINITION OF APPLICABLE SECTIONS OF TITLE 5.—In this subsection, the term “applicable sections of title 5” means—

[(A) subsections (b), (c) and (d) of section 4507 of title 5; and

[(B) subsections (b) and (c) of section 4507a of title 5.]

(o) **AUTHORITY OF INSPECTOR GENERAL.**—The Transportation Security Administration shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.) and other laws relating to the authority of the Inspector General of the Department of Homeland Security.

(p) **LAW ENFORCEMENT POWERS.**—

(1) **IN GENERAL.**—The Administrator may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) **POWERS.**—While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may—

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) **GUIDELINES ON EXERCISE OF AUTHORITY.**—The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the Administrator, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General’s policy on use of deadly force.

(4) **REVOCATION OR SUSPENSION OF AUTHORITY.**—The powers authorized by this subsection may be rescinded or suspended

should the Attorney General determine that the Administrator has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the Secretary of Homeland Security and the Administrator.

(q) **AUTHORITY TO EXEMPT.**—The Administrator may grant an exemption from a regulation prescribed in carrying out this section if the Administrator determines that the exemption is in the public interest.

(r) **NONDISCLOSURE OF SECURITY ACTIVITIES.**—

(1) **IN GENERAL.**—Notwithstanding section 552 of title 5, the Administrator shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Administrator decides that disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the security of transportation.

(2) **AVAILABILITY OF INFORMATION TO CONGRESS.**—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) **LIMITATION ON TRANSFERABILITY OF DUTIES.**—Except as otherwise provided by law, the Administrator may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.

(4) **LIMITATIONS.**—Nothing in this subsection, or any other provision of law, shall be construed to authorize the designation of information as sensitive security information (as defined in section 1520.5 of title 49, Code of Federal Regulations)—

(A) to conceal a violation of law, inefficiency, or administrative error;

(B) to prevent embarrassment to a person, organization, or agency;

(C) to restrain competition; or

(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

(s) **TRANSPORTATION SECURITY STRATEGIC PLANNING.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—

(A) a National Strategy for Transportation Security; and

(B) transportation modal security plans addressing security risks, including threats, vulnerabilities, and consequences, for aviation, railroad, ferry, highway, maritime, pipeline, public transportation, over-the-road bus, and other transportation infrastructure assets.

(2) **ROLE OF SECRETARY OF TRANSPORTATION.**—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).

(3) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—The National Strategy for Transportation Security shall include the following:

(A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(B) The development of risk-based priorities, based on risk assessments conducted or received by the Secretary of Homeland Security (including assessments conducted under the Implementing Recommendations of the 9/11 Commission Act of 2007) across all transportation modes and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).

(C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.

(D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, local, and tribal authorities and establishes mechanisms for encouraging cooperation and participation by private sector entities, including nonprofit employee labor organizations, in the implementation of such plan.

(E) A comprehensive delineation of prevention, response, and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States and threatened and executed acts of terrorism outside the United States to the extent such acts affect United States transportation systems.

(F) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets. Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(G) A 3- and 10-year budget for Federal transportation security programs that will achieve the priorities of the National Strategy for Transportation Security.

(H) Methods for linking the individual transportation modal security plans and the programs contained therein, and a plan for addressing the security needs of intermodal transportation.

(I) Transportation modal security plans described in paragraph (1)(B), including operational recovery plans to



expedite, to the maximum extent practicable, the return to operation of an adversely affected transportation system following a major terrorist attack on that system or other incident. These plans shall be coordinated with the resumption of trade protocols required under section 202 of the SAFE Port Act (6 U.S.C. 942) and the National Maritime Transportation Security Plan required under section 70103(a) of title 46.

(4) SUBMISSION OF PLANS.—

(A) IN GENERAL.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

(B) PERIODIC PROGRESS REPORT.—

(i) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security, including the transportation modal security plans.

(ii) CONTENT.—Each progress report submitted under this subparagraph shall include, at a minimum, the following:

(I) Recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal and intermodal security plans that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, considers appropriate.

(II) An accounting of all grants for transportation security, including grants and contracts for research and development, awarded by the Secretary of Homeland Security in the most recent fiscal year and a description of how such grants accomplished the goals of the National Strategy for Transportation Security.

(III) An accounting of all—

(aa) funds requested in the President's budget submitted pursuant to section 1105 of title 31 for the most recent fiscal year for transportation security, by mode;

(bb) personnel working on transportation security by mode, including the number of contractors; and

(cc) information on the turnover in the previous year among senior staff of the Department of Homeland Security, including component agencies, working on transportation security issues. Such information shall include the number of employees who have perma-

nently left the office, agency, or area in which they worked, and the amount of time that they worked for the Department of Homeland Security.

(iii) WRITTEN EXPLANATION OF TRANSPORTATION SECURITY ACTIVITIES NOT DELINEATED IN THE NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—At the end of each fiscal year, the Secretary of Homeland Security shall submit to the appropriate congressional committees a written explanation of any Federal transportation security activity that is inconsistent with the National Strategy for Transportation Security, including the amount of funds to be expended for the activity and the number of personnel involved.

(C) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

(D) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Homeland Security and Governmental Affairs, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(5) PRIORITY STATUS.—

(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

(ii) the report required by section 44938 of this title;

(iii) transportation modal security plans required under this section;

(iv) the transportation sector specific plan required under Homeland Security Presidential Directive–7; and

(v) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

(6) COORDINATION.—In carrying out the responsibilities under this section, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall consult, as appropriate, with Federal, State, and local agencies, tribal governments, private sector entities (including nonprofit employee labor organizations), institutions of higher learning, and other entities.

(7) **PLAN DISTRIBUTION.**—The Secretary of Homeland Security shall make available and appropriately publicize an unclassified version of the National Strategy for Transportation Security, including its component transportation modal security plans, to Federal, State, regional, local and tribal authorities, transportation system owners or operators, private sector stakeholders, including nonprofit employee labor organizations representing transportation employees, institutions of higher learning, and other appropriate entities.

(t) **TRANSPORTATION SECURITY INFORMATION SHARING PLAN.**—

(1) **DEFINITIONS.**—In this subsection:

(A) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” has the meaning given that term in subsection (s)(4)(E).

(B) **PLAN.**—The term “Plan” means the Transportation Security Information Sharing Plan established under paragraph (2).

(C) **PUBLIC AND PRIVATE STAKEHOLDERS.**—The term “public and private stakeholders” means Federal, State, and local agencies, tribal governments, and appropriate private entities, including nonprofit employee labor organizations representing transportation employees.

(D) **TRANSPORTATION SECURITY INFORMATION.**—The term “transportation security information” means information relating to the risks to transportation modes, including aviation, public transportation, railroad, ferry, highway, maritime, pipeline, and over-the-road bus transportation, and may include specific and general intelligence products, as appropriate.

(2) **ESTABLISHMENT OF PLAN.**—The Secretary of Homeland Security, in consultation with the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), the Secretary of Transportation, and public and private stakeholders, shall establish a Transportation Security Information Sharing Plan. In establishing the Plan, the Secretary of Homeland Security shall gather input on the development of the Plan from private and public stakeholders and the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(3) **PURPOSE OF PLAN.**—The Plan shall promote sharing of transportation security information between the Department of Homeland Security and public and private stakeholders.

(4) **CONTENT OF PLAN.**—The Plan shall include—

(A) a description of how intelligence analysts within the Department of Homeland Security will coordinate their activities within the Department and with other Federal, State, and local agencies, and tribal governments, including coordination with existing modal information sharing centers and the center described in section 1410 of the Implementing Recommendations of the 9/11 Commission Act of 2007;

(B) the establishment of a point of contact, which may be a single point of contact within the Department of

Homeland Security, for each mode of transportation for the sharing of transportation security information with public and private stakeholders, including an explanation and justification to the appropriate congressional committees if the point of contact established pursuant to this subparagraph differs from the agency within the Department of Homeland Security that has the primary authority, or has been delegated such authority by the Secretary of Homeland Security, to regulate the security of that transportation mode;

(C) a reasonable deadline by which the Plan will be implemented; and

(D) a description of resource needs for fulfilling the Plan.

(5) COORDINATION WITH INFORMATION SHARING.—The Plan shall be—

(A) implemented in coordination, as appropriate, with the program manager for the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485); and

(B) consistent with the establishment of the information sharing environment and any policies, guidelines, procedures, instructions, or standards established by the President or the program manager for the implementation and management of the information sharing environment.

(6) ANNUAL REPORT ON PLAN.—The Secretary of Homeland Security shall annually submit to the appropriate congressional committees a report containing the Plan.

(7) SECURITY CLEARANCES.—The Secretary of Homeland Security shall, to the greatest extent practicable, take steps to expedite the security clearances needed for designated public and private stakeholders to receive and obtain access to classified information distributed under this section, as appropriate.

(8) CLASSIFICATION OF MATERIAL.—The Secretary of Homeland Security, to the greatest extent practicable, shall provide designated public and private stakeholders with transportation security information in an unclassified format.

(u) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—

(1) APPLICATION OF SUBSECTION.—

(A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and under a provision of this title other than a provision of chapter 449 (in this subsection referred to as an “applicable provision of this title”).

(B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed and orders issued by the Secretary of Homeland Security or the Administrator under chapter 449 of this title are provided under chapter 463 of this title.

(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

(i) Paragraphs (2) through (5) do not apply to violations of regulations prescribed, and orders issued, by

the Secretary of Homeland Security under a provision of this title—

(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

(II) by a member of the armed forces of the United States when performing official duties; or

(III) by a civilian employee of the Department of Defense when performing official duties.

(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary of Defense's designee.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary shall give written notice of the finding of a violation and the penalty.

(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security under this subsection, a court may not re-examine issues of liability or the amount of the penalty.

(C) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary of Homeland Security under this subsection if—

(i) the amount in controversy is more than—

(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(II) \$50,000 if the violation was committed by an individual or small business concern;

(ii) the action is in rem or another action in rem based on the same violation has been brought; or

(iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM PENALTY.—The maximum civil penalty the Secretary of Homeland Security administratively may impose under this paragraph is—

(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) \$50,000, if the violation was committed by an individual or small business concern.

- (E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary of Homeland Security shall provide to the person against whom the penalty is to be imposed—
- (i) written notice of the proposed penalty; and
  - (ii) the opportunity to request a hearing on the proposed penalty, if the Secretary of Homeland Security receives the request not later than 30 days after the date on which the person receives notice.
- (4) COMPROMISE AND SETOFF.—
- (A) The Secretary of Homeland Security may compromise the amount of a civil penalty imposed under this subsection.
  - (B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.
- (5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary of Homeland Security.
- (6) DEFINITIONS.—In this subsection:
- (A) PERSON.—The term “person” does not include—
    - (i) the United States Postal Service; or
    - (ii) the Department of Defense.
  - (B) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).
- (7) ENFORCEMENT TRANSPARENCY.—
- (A) IN GENERAL.—The Secretary of Homeland Security shall—
    - (i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this subsection; and
    - (ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.
  - (B) ELECTRONIC AVAILABILITY.—Each summary under this paragraph shall be made available to the public by electronic means.
  - (C) RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT.—Nothing in this subsection shall be construed to require disclosure of information or records that are exempt from disclosure under sections 552 or 552a of title 5.
- (v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Transportation Security Administration for salaries, operations, and maintenance of the Administration—
- (1) \$7,849,247,000 for fiscal year 2019;
  - (2) \$7,888,494,000 for fiscal year 2020; and
  - (3) \$7,917,936,000 for fiscal year 2021.
- (w) LEADERSHIP AND ORGANIZATION.—

(1) IN GENERAL.—For each of the areas described in paragraph (2), the Administrator of the Transportation Security Administration shall appoint at least 1 individual who shall—

(A) report directly to the Administrator or the Administrator’s designated direct report; and

(B) be responsible and accountable for that area.

(2) AREAS DESCRIBED.—The areas described in this paragraph are as follows:

(A) Aviation security operations and training, including risk-based, adaptive security—

(i) focused on airport checkpoint and baggage screening operations;

(ii) workforce training and development programs; and

(iii) ensuring compliance with aviation security law, including regulations, and other specialized programs designed to secure air transportation.

(B) Surface transportation security operations and training, including risk-based, adaptive security—

(i) focused on accomplishing security systems assessments;

(ii) reviewing and prioritizing projects for appropriated surface transportation security grants;

(iii) operator compliance with surface transportation security law, including regulations, and voluntary industry standards; and

(iv) workforce training and development programs, and other specialized programs designed to secure surface transportation.

(C) Transportation industry engagement and planning, including the development, interpretation, promotion, and oversight of a unified effort regarding risk-based, risk-reducing security policies and plans (including strategic planning for future contingencies and security challenges) between government and transportation stakeholders, including airports, domestic and international airlines, general aviation, air cargo, mass transit and passenger rail, freight rail, pipeline, highway and motor carriers, and maritime.

(D) International strategy and operations, including agency efforts to work with international partners to secure the global transportation network.

(E) Trusted and registered traveler programs, including the management and marketing of the agency’s trusted traveler initiatives, including the PreCheck Program, and coordination with trusted traveler programs of other Department of Homeland Security agencies and the private sector.

(F) Technology acquisition and deployment, including the oversight, development, testing, evaluation, acquisition, deployment, and maintenance of security technology and other acquisition programs.

(G) Inspection and compliance, including the integrity, efficiency and effectiveness of the agency’s workforce, operations, and programs through objective audits, covert test-

ing, inspections, criminal investigations, and regulatory compliance.

(H) Civil rights, liberties, and traveler engagement, including ensuring that agency employees and the traveling public are treated in a fair and lawful manner consistent with Federal laws and regulations protecting privacy and prohibiting discrimination and reprisal.

(I) Legislative and public affairs, including communication and engagement with internal and external audiences in a timely, accurate, and transparent manner, and development and implementation of strategies within the agency to achieve congressional approval or authorization of agency programs and policies.

(3) NOTIFICATION.—The Administrator shall submit to the appropriate committees of Congress—

(A) not later than 180 days after the date of enactment of the TSA Modernization Act, a list of the names of the individuals appointed under paragraph (1); and

(B) an update of the list not later than 5 days after any new individual is appointed under paragraph (1).

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## AVIATION AND TRANSPORTATION SECURITY ACT

\* \* \* \* \*

### TITLE I—AVIATION SECURITY

\* \* \* \* \*

#### SEC. 111. TRAINING AND EMPLOYMENT OF SECURITY SCREENING PERSONNEL.

[Subsections (a) and (b) omitted—amends other Acts]

(c) TRANSITION.—The Under Secretary of Transportation for Security shall complete the full implementation of section 44935 (e), (f), (g), and (h) of title 49, United States Code, as amended by subsection (a), as soon as is practicable. The Under Secretary may make or continue such arrangements for the training of security screeners under that section as the Under Secretary determines necessary pending full implementation of that section as so amended.

[(d) SCREENER PERSONNEL.—

[(1) GENERAL AUTHORITY.—Except as provided in paragraph (2), and notwithstanding any other provision of law, the Under Secretary of Transportation for Security may 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 Under Secretary shall establish levels of compensation and other benefits for individuals so employed.

[(2) EXCEPTIONS.—



【(A) REEMPLOYMENT.—In carrying out the functions authorized under paragraph (1), the Under Secretary shall be subject to the provisions set forth in chapter 43 of title 38, United States Code.

【(B) LEAVE.—The provisions of subchapter V of chapter 63 of title 5, United States Code, shall apply to any individual appointed under paragraph (1) as if such individual were an employee (within the meaning of subparagraph (A) of section 6381(1) of such title).】

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## MINORITY VIEWS

When Congress created the Transportation Security Administration (TSA) with enactment of the Aviation and Transportation Security Act (ATSA, Pub. L. 107-71), it recognized the criticality of providing unique authorities to ensure the agency can carry out its national security mission. These authorities provide TSA vital flexibility in the management of its personnel system so it can respond to evolving threats and best protect the traveling public.

H.R. 903 would repeal the vital workforce flexibilities enacted under ATSA and move TSA's personnel system under title 5, United States Code. Title 5 strictly governs the pay, benefits, and collective bargaining rights of most civilian federal employees. It fails to provide security agencies like TSA with the necessary flexibility to position their workforce to meet evolving threats.

Committee Republicans are concerned that moving TSA employees under title 5 would undermine the agency's ability to perform its national security mission. According to information obtained from TSA, H.R. 903 would hinder TSA's ability to address serious instances of misconduct among the workforce. Under current law, the agency may exercise one-step removal for serious offenses such as intentional security breaches, theft, failure of drug and alcohol tests while on duty, or arrests for certain criminal offenses. Under H.R. 903, an employee who knowingly allows guns or explosives through a security checkpoint would no longer be immediately fired.

H.R. 903 would expand collective bargaining rights for TSA employees. As a result, security policies needed to protect the traveling public would be negotiable topics in union bargaining. Under current law, TSA can impose new security requirements, such as enhanced passenger screening when intelligence indicates credible threats. Under this bill, how those new security requirements are implemented could be subject to negotiation with the union.

In addition to the impact H.R. 903 could have on aviation security, Committee Republicans are concerned with how it proposes to transition the TSA to a fully unionized workforce. The bill sets the exclusive bargaining agent for the screeners and requires the TSA to immediately negotiate with them. The bill does not provide for an intervening union election. The screener workforce never gets a chance to exercise their Constitutional right to choose their representation.

Committee Republicans are also concerned that TSA screeners could lose benefits under this bill. If H.R. 903 becomes law, screeners will lose the ability to trade shifts with one another, donate certain accrued leave to their fellow colleagues, and receive certain incentive pay. Some overtime pay would be prohibited and career milestone bonuses could no longer be offered.

The FY 2023 President's Budget request includes \$870.9 million to provide needed pay raises and annual increases to TSA employees. These raises would make screener salaries commensurate with the salaries of other Department of Homeland Security (DHS) front-line employees and provide a General Schedule type step increase. Appropriating funding to increase front-line TSA pay would be more effective in boosting employee morale than moving the entire agency into title 5.

In 2019, TSA received a report from the bipartisan Blue Ribbon Panel on Human Capital Service Delivery. The Panel, comprised of former officials from both Republican and Democrat administrations—including the Chief Human Capital Officer for the Department of Homeland Security under President Barack Obama—strongly recommended against moving TSA personnel under title 5. The Panel pointed out that under ATSA, the TSA can pay its employees more than they can make under title 5.

Finally, Committee Republicans are concerned with the significant cost to taxpayers should this legislation be enacted. The Congressional Budget Office estimated that similar legislation in the 116th Congress, H.R. 1140, would cost \$1.77 billion. Committee Republicans object to filing a bill report for H.R. 903 before receiving a score from the Congressional Budget Office, which will provide needed insight into how significantly this legislation would cost the American taxpayer.

Committee Republicans acknowledge the dedication of the TSA workforce and the reality that they are chronically among the lowest paid federal employees. However, moving the agency under title 5 will create more problems than it solves. Committee Republicans believe that Congress should appropriate funding to boost salaries for TSA's front-line workforce.

Rather than condemning agency personnel to the antiquated system under title 5, Committee Republicans stand ready to work across the aisle to implement TSA's bipartisan Blue Ribbon Panel recommendations and build an efficient and effective personnel management system at the agency that boosts front-line pay, protects employee benefits, and meets the national security mission of protecting the traveling public.

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