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H. R. 2309

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

IN THE HOUSE OF REPRESENTATIVES
May 3, 2017

Mr. Thompson of Mississippi (for himself and Mrs. Lowey) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the “Rights for Transportation Security Officers Act of 2017”.

SEC. 2. Findings; Sense of Congress.

(a) Findings.—Congress finds the following:

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

(2) In the aftermath of those attacks, Congress passed the Aviation and Transportation Security Act (ATSA), enacted by President George W. Bush on November 19, 2001 ([Public Law 107–](#)

[71](#)), to enhance the level of security screening throughout our aviation system and transfer responsibility for such screening from the private sector to a new Federal agency, the Transportation Security Administration (TSA).

(3) By establishing TSA, Congress and the American public recognized that the highest level of screener performance was directly linked to employment and training standards, pay and benefits, and the creation of an experienced, committed screening workforce.

(4) The ATSA included a statutory footnote allowing the TSA Administrator to “employ, appoint, discipline, terminate, and fix the compensation”, including the “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”.

(5) TSA has interpreted the ATSA footnote as applying to the Transportation Security Officer workforce performing screening functions, while all other Transportation Security Administration employees, including managers, are subject to title 5, United States Code, as incorporated in title 49 of such Code.

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

(7) After the Federal Labor Relations Board approved a petition for the election of an exclusive representative, on February 4, 2011, then-TSA Administrator John Pistole issued a binding determination stating in part “it is critical that every TSA employee feels that he or she has a voice and feels safe raising issues and concerns of all kinds. This is important not just for morale; engagement of every employee is critically important for security”.

(8) Subsequently, in 2014, then-Administrator Pistole issued a second determination, which was superseded by a 2016 determination, which changed the previous guidelines for collective bargaining and limited the subjects that can be bargained as well as issues in dispute that may be raised to an independent, third-party neutral decisionmaker.

(9) The 2011, 2014, and 2016 determinations cited TSA’s authority under section 44935 note of title 59, United States Code, to create a personnel system that denies the Transportation Security Officer workforce the same title 5 rights as other Federal workers, including the right to present grievances to a neutral third party, fair pay under the General Services wage system, including access to overtime pay and earned leave, application of the Fair Labor Standards Act of 1938, fair performance appraisals under [chapter 73](#) of title 5, United States Code, and direct protections against employment discrimination found in title 7, United States Code.

(10) The Transportation Security Officer workforce is an integral component of the security framework in place since the terrorist attacks on September 11, 2001, and responsible for screening more than 738 million passengers annually. In the course of their work, Transportation Security Officers not only identify aviation security threats but also identify kidnapping and

trafficking victims and prevent firearms from being brought on planes in carry-on bags. In 2016 alone, 3,391 firearms were discovered by Transportation Security Officers at aviation security checkpoints.

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

(b) Sense of Congress.—It is the sense of Congress that the personnel system utilized by the Transportation Security Administration pursuant to the authority of section 44935 note of title 49, United States Code, provides insufficient workplace protections for the Transportation Security Officer workforce, the frontline personnel who secure our Nation’s aviation system and that such personnel should be provided protections under title 5, United States Code.

SEC. 3. Definitions.

For purposes of this Act—

(1) the term “covered position” means—

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

(B) any position within the Department of Homeland Security, not described in subparagraph (A), the duties and responsibilities of which involve providing transportation security in furtherance of the purposes of the Aviation and Transportation Security Act ([Public Law 107–71](#)), as determined by the Secretary;

(2) the term “covered employee” means an employee who holds a covered position;

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

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

(5) the term “Administrator” means the official within the Department of Homeland Security who is responsible for overseeing and implementing transportation security pursuant to the Aviation and Transportation Security Act, whether designated as the Assistant Secretary of Homeland Security (Transportation Security Administration), the Administrator of the Transportation Security Administration, the Undersecretary of Transportation for Security, or otherwise;

(6) the term “TSA personnel management system” means any personnel management system, as established or modified under—

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

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

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

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

SEC. 4. Conversion of screening personnel.

(a) Termination of certain personnel authorities.—Effective as of the date of the enactment of this Act—

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

(2) all 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; and

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

(b) Covered employees and positions made subject to same personnel management system as applies to civil service employees generally.—Effective as of the date determined by the Secretary, but in no event later than 60 days after the date of the enactment of this Act—

(1) all TSA personnel management policies, letters, guidelines, and directives, including the August 2016 Determination, shall cease to be effective;

(2) any human resources management system established or adjusted under [chapter 97](#) of title 5, United States Code, to the extent otherwise applicable with respect to covered employees or covered positions, shall cease to be effective; and

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

SEC. 5. Transition rules.

(a) Nonreduction in rate of pay.—Any conversion of an employee from a TSA personnel management system to the provisions of law made applicable with respect to such employee by section 4(b)(3) shall be effected, under pay conversion rules prescribed by the Secretary, without any reduction in the rate of basic pay payable to such employee.

(b) Preservation of other rights.—In the case of each individual who is a covered employee as of the conversion date, the Secretary shall take any actions which may be necessary to ensure that—

(1) all TSA personnel management policies, letters, guidelines, and directives, including the August 2016 Determination, shall cease to be effective;

(2) all 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, so long as such individual remains continuously employed by the Department of Homeland Security; and

(3) the Government share of any premiums or other periodic charges under the provisions of law governing group health insurance shall remain the same as was the case immediately before the conversion date, so long as such individual remains continuously employed by the Department of Homeland Security.

SEC. 6. Consultation requirement.

(a) Exclusive representative.—The labor organization certified by the Federal Labor Relations Authority on June 29, 2011, or successor shall be treated as the exclusive representative of full- and part-time non-supervisory personnel carrying out screening functions under section 44901 of title 49, United States Code, as that term is used in section 111(d) of the Aviation and Transportation Security Act and shall be the exclusive representative for the employees under [chapter 71](#) of title 5, United States Code, with full rights under such chapter 71. Any collective bargaining agreement on the effective date of this legislation shall remain in effect.

(b) Consultation rights.—Within 14 days after the date of the enactment of this Act, the Secretary shall consult with the exclusive representative for employees under [chapter 71](#) of title 5, United States Code, on the formulation of plans and deadlines to carry out the conversion of covered employees and covered positions under this Act. The Secretary shall provide in writing to the exclusive representative the final plans in accordance with which the Secretary intends to carry out the conversion of covered employees and covered positions under this Act, including with respect to such matters as—

(1) the proposed conversion date; and

(2) measures to ensure compliance with section 5.

(c) Required agency response.—If any views or recommendations are presented under subsection (b)(2) 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.

(d) Sunset provision.—The provisions of this section shall cease to be effective as of the conversion date.

SEC. 7. No right to strike.

Nothing in this Act shall 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. 8. Regulations.

The Secretary may prescribe any regulations necessary to carry out this Act.

SEC. 9. Delegations to Administrator.

The Secretary may, with respect to any authority or function vested in the Secretary under any of the preceding provisions of this Act, delegate any such authority or function to the Administrator of the Transportation Security Administration under such terms, conditions, and limitations, including the power of redelegation, as the Secretary considers appropriate.

SEC. 10. Authorization of appropriations.

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