

TRANSPORTATION SECURITY WORKFORCE
 ENHANCEMENT ACT OF 2009

SEPTEMBER 29, 2009.—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. 1881]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1881) to enhance the transportation security functions of the Department of Homeland Security by providing for an enhanced personnel system for employees of the Transportation Security Administration, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 1881 is to enhance the transportation security functions of the Department of Homeland Security by providing for an enhanced personnel system for employees of the Transportation Security Administration, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In 2001, when the Transportation Security Administration (TSA) was created, Congress provided discretionary authority to the new agency to create different personnel systems—each with different rights and protections—for different classes of employees. Specifically, in the Aviation and Transportation Security Act (ATSA) (P.L. 107-71), the 107th Congress and President George W. Bush gave the TSA Administrator the discretionary authority to create a new personnel system to recruit and expedite the hiring of a new Federal transportation screening workforce in the aftermath of the terrorist attacks of September 11, 2001. Over the past eight years, the exercise of this discretionary authority resulted in two different personnel systems being established at TSA: one for the non-screening workforce and one for the screening workforce.

Today, while some TSA employees are subject to the civil service policies and protections based on those that are provided to the Federal Aviation Administration employees (TSA was housed at the Department of Transportation before moving to the Department of Homeland Security (DHS)), most of TSA's workforce—the Transportation Security Officers (TSOs; i.e., screeners)—are subject to different conditions and benefits of employment, discipline, compensation, leave, and other basic employment rights including whistleblower protections. Notably, the whistleblower protections and collective bargaining rights furnished to TSOs differ from those provided to other TSA personnel and most other DHS employees.

The Committee has received testimony, as recently as March 2009, that while the exercise of discretionary authority helped quickly establish TSA, as intended by the 107th Congress, the resulting personnel system continues to be a major source for low employee morale and, in turn, stands in the way of TSA achieving its full potential as a security agency. Low morale has translated into high attrition rates—both voluntary and involuntary—at TSA. In fact, for Fiscal Year 2008, TSA experienced attrition rates among entry-level employees in the screening workforce of nearly 43 percent for part-time employees and 26 percent for full-time employees.

Past DHS, Office of Personnel Management (OPM), and internal TSA workforce survey results, an Office of Inspector General report, and Congressional testimony over the past several years depict the TSA workforce as frustrated with the lack of recognition for performance and the Agency's promotion practices and confused by different policies and procedures on leave, training, and other administrative matters. There is evidence this frustration and con-

fusion stems in part by different rights and protections and pay tied to performance for the TSO workforce, specifically. A significant portion of the TSA workforce is subject to the Performance Accountability and Standards System (PASS) which is TSA's primary system for evaluating worker performance. While the training, objective testing, and competencies appear to have some merit, there is significant concern that the system lacks transparency and is vulnerable to subjective judgments that, in turn, impact pay and advancement.

Since the establishment of TSA, Democratic Members of the Committee on Homeland Security have expressed concerns about granting TSA the discretionary authority to establish its own personnel systems. In the 110th Congress, Committee on Homeland Security Chairman Bennie G. Thompson (D-MS) authored critical legislation that gave a broad range of rights to the TSA workforce including collective bargaining rights (H.R. 1, Implementing the Recommendations of the 9/11 Commission Act of 2007). On January 9, 2007, the House of Representatives approved H.R. 1 with this important language. On March 13, 2007, the Senate approved homeland security legislation with similar language to provide rights to TSA's workforce (S. 4). In the end, however, under pressure from then-President George Bush to eliminate the language or risk a veto on the critical homeland security package, Congress was forced to strike this provision in the final conference report (P.L. 110-53). Following the omission of the critical provision in the final product, Representative Nita M. Lowey (D-NY) introduced free-standing legislation to provide rights and protections to the TSA workforce in August 2007 (H.R. 3212).

In October 2008, then-Senator Barack Obama (D-IL) sent a letter to American Federation of Government Employees (AFGE) President John Gage, in which Mr. Obama pledged to "work to ensure that TSOs have collective bargaining rights and a voice at work to address issues that arise locally and nationally." Senator Obama further stated, that "[a]dvocating for TSOs to receive collective bargaining rights and workplace protections will be a priority for my administration. It is unacceptable for TSOs to work under unfair rules and without workplace protections—this makes it more difficult for them to perform their jobs."

On March 5, 2009, the Subcommittee on Management, Investigations, and Oversight of the Committee on Homeland Security received testimony that the TSA workforce is not allowed to collectively bargain, in contrast with the Customs and Border Protection (CBP) workforce (both Customs and Border Protection Officers and Border Patrol agents), and other law enforcement and non-law enforcement workers across the Federal government and state and local governments. Through the Committee's oversight work, including meetings with TSOs, it is evident that without robust Federal worker protections and collective bargaining rights, TSA cannot achieve its full potential as a security agency. The Committee specifically found that a lack of standard whistleblower protections and collective bargaining rights, such as those available within Customs and Border Protection (CBP), does not enhance transportation security operations, as it fosters attrition and a demoralized workforce. On several occasions TSOs have taken risks to report waste, fraud, and abuse occurring on their watch at TSA while

fearing the loss of their job or retaliation. A system should be in place where employees are able to report waste, fraud, abuse, and security gaps without the fear of reprisal. (Without these basic protections there is a disincentive to report offenses or security vulnerabilities.) The absence of these rights and protections is clearly counterproductive to the Nation's transportation security.

On April 2, 2009, Rep. Lowey, together with 17 other Members, including Reps. Thompson of Mississippi, Jackson-Lee of Texas, and Carney, introduced H.R. 1881, the "Transportation Workforce Enhancement Act of 2009." H.R. 1881 renews and improves upon past Committee efforts by increasing the quality of the entire TSA workforce including the TSOs, Behavior Detection Officers, Bomb Appraisal Officers, Federal Air Marshals, TSO supervisors, headquarters and field staff throughout the country. Providing basic employment protections and rights is critical to instill confidence in the workforce. Moreover, the bill will enhance the security operations of TSA by improving workforce morale and employee retention, put workers in a position to expose security gaps without fear of losing their jobs, and put TSA employees on par with those in other DHS components.

HEARINGS

Although there was not a specific legislative hearing on H.R. 1881, on March 5, 2009, the Subcommittee on Management, Investigations, and Oversight held an oversight hearing on the personnel systems and workforce at the Department of Homeland Security that focused on the Transportation Security Administration entitled "Putting People First: A Way Forward for the Homeland Security Workforce." The Subcommittee received testimony from Ms. Colleen M. Kelley, National President, National Treasury Employees Union; Mr. John Gage, National President, American Federation of Government Employees, AFL-CIO; Ms. Carol A. Bonosaro, President, Senior Executives Association; and Mr. Max Stier, President and CEO, Partnership for Public Service.

COMMITTEE CONSIDERATION

The Committee on Homeland Security met, pursuant to notice, in open markup session, a quorum being present, on Thursday, July 9, 2009, to consider H.R. 1881. The Committee took the following actions:

H.R. 1881, "To enhance the transportation security functions of the Department of Homeland Security by providing for an enhanced personnel system for employees of the Transportation Security Administration, and for other purposes."; was ordered to be reported to the House with a favorable recommendation, without amendment, by voice vote.

The Committee adopted the bill by a recorded vote of 13 yeas and 6 nays (Roll Call Vote No. 16).

COMMITTEE VOTES

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

The Committee on Homeland Security considered H.R. 1881 on July 9, 2009, and ordered the measure reported to the House with a favorable recommendation, without amendment, by VOICE VOTE.

The Committee adopted H.R. 1881 by a recorded vote of 13 yeas and 6 nays (Roll Call Vote No. 16). The vote was as follows:

YEAS	NAYS
Mr. THOMPSON	Mr. KING
Ms. SANCHEZ	Mr. ROGERS
Ms. HARMAN	Mr. DENT
Mr. DEFazio	Mr. BILIRAKIS
Ms. NORTON	Mr. BROUN
Mr. CUELLAR	Mr. OLSON
Mr. CARNEY	
Ms. CLARKE	
Ms. RICHARDSON	
Mr. CLEAVER	
Mr. GREEN	
Mr. HIMES	
Ms. KILROY	

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1881, the "Transportation Security Workforce Enhancement Act of 2009", would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 31, 2009.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1881, the Transportation Security Workforce Enhancement Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Barry Blom.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1881—Transportation Security Workforce Enhancement Act of 2009

Summary: H.R. 1881 would repeal the authority of the Transportation Security Administration (TSA) to establish or modify a personnel management system for its employees. Instead, those employees would become subject to the provisions of title 5, United States Code, and other civil service laws that apply to employees and positions within most other executive branch agencies, including the right to collective bargaining. Under the bill, the Secretary of Homeland Security would have to announce, within 14 days after enactment, plans for carrying out the conversion. Further, the bill would require the Secretary to permit a qualified labor organization to comment on those plans and to consider and respond to those comments. The conversion would have to be completed within 60 days of enactment.

Based on information from TSA and the Office of Personnel Management (OPM), and subject to the appropriation of the necessary amounts, CBO estimates that implementing H.R. 1881 would cost about \$690 million over the 2010–2014 period. That estimate includes the costs of higher salaries likely to be paid to some employees under the General Schedule (GS) and the costs of creating a labor relations program, which include the expenses to hire necessary employees and retrain current employees to operate with a workforce that includes collective bargaining units. Enacting H.R. 1881 would not affect direct spending or revenues.

H.R. 1881 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1881 is shown in the following table. The costs of this legislation would fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Impact on Salaries of Moving to the General Schedule:						
Estimated Authorization Level	104	129	131	133	134	631
Estimated Outlays	100	128	131	133	134	626
Impact of Implementing Collective Bargaining:						
Estimated Authorization Level	12	12	13	13	13	63
Estimated Outlays	11	12	13	13	13	61
Total Changes:						
Estimated Authorization Level	116	141	144	146	147	694
Estimated Outlays	111	140	144	145	147	687

Basis of estimate: For this estimate, CBO assumes that H.R. 1881 will be enacted near the end of 2009, that the conversion will require the full 60 days allowed under the bill, and that the necessary amounts for implementing it will be appropriated each year.

The legislation would make several changes to current law related to the personnel system for TSA employees. The costs of converting from the TSA personnel system to the General Schedule de-

pend in large part on how employees are classified under GS pay grades. Because TSA positions have never been part of the General Schedule, there is considerable uncertainty as to how the roughly 60,000 positions currently under that pay system would ultimately be assigned within the GS system and, hence, considerable uncertainty as to the cost of the conversion. For the purposes of this estimate, CBO estimates that the reclassification would result in many employees, particularly the approximately 50,000 employees in the lower four pay bands of the current system, receiving a salary increase under the bill. Based on discussions with OPM and TSA, CBO has assumed that the 36,000 employees in the bottom two bands of TSA's current pay system would be classified at various steps within the GS-5 pay grade. Using data on salary and length of service (which employees are credited with for purposes of determining pay under the bill) provided by OPM, CBO estimates the conversion would result in an average salary increase of about \$1,700 for those employees. Employees in the next two pay bands with jobs requiring additional responsibilities and duties would be classified at higher pay grades and also would receive a salary increase as a result. As stated in H.R. 1881, no employee would suffer a reduction in pay. In total, CBO estimates that moving to the General Schedule would increase outlays by \$100 million in 2010 and \$626 million over the 2010–2014 period, assuming appropriation of the necessary amounts.

CBO expects that, under H.R. 1881, the agency also would incur costs starting in 2010 to move from its current personnel system to a system based on collective bargaining, particularly to hire specialists in labor relations. Based on information provided by other federal agencies on the costs to support personnel systems that allow collective bargaining, as well as information provided by TSA, CBO estimates that such costs would total \$11 million in 2010 and \$61 million over the five-year period, assuming appropriation of the necessary amounts.

CBO cannot estimate the impact of potential changes in TSA's spending that might result from future negotiations with labor groups. Although those costs could be significant, particularly in future years, CBO has not included any such changes in this estimate.

Intergovernmental and private-sector impact: H.R. 1881 contains no intergovernmental or private-sector mandates as defined in UMRRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Barry Blom; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1881 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized: To authorize appropriations to ensure an enhanced personnel system for employees of the Transportation Security Administration (TSA) of the Department of Homeland Security.

riety; to terminate certain personnel authorities and flexibilities provided to the Assistant Secretary of TSA and replace those authorities with the same personnel management system that applies to civil service employees under Title V of the United States Code; implement clear guidelines and requirements for the transition to the new personnel system; and provide for a transition that is inclusive and transparent to all employees while maintaining the personnel flexibilities that are needed by TSA.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, 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 the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation 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 provides that H.R. 1881 may be cited as the “Transportation Security Workforce Enhancement Act of 2009”, as well as a table of contents.

Section 2. Definitions

This section defines the terms for purposes of this Act only to include: “covered position”; “covered employee”; “employee”; “Secretary”; “Assistant Secretary”; “TSA personnel management system”; “agency”; and “conversion date.”

As defined by the Act, “covered position” is intended to mean any position within the Transportation Security Administration (TSA) or the Department of Homeland Security that involves carrying out

the duties as outlined in the Aviation and Transportation Security Act (ATSA) or in furtherance of transportation security; this includes positions such as Transportation Security Officers (TSOs), front-line supervisors, Federal Air Marshals, Behavior Detection Officers, Bomb Appraisal Officers, administrative staff, and all other employees of the TSA.

Further, the term “TSA personnel management system” means the personnel management system or systems as established under statute in Title 49, Section 114(n) of the U.S. Code and any modifications to those systems. In addition, Title 49 of US Code 44935 note, referred to as the “footnote”, as established in section 111(d) in ATSA that provides the Assistant Secretary the authority to set the terms and conditions of employment for TSOs, shall also be considered part of the TSA personnel management system since it provides discretionary authority to the Assistant Secretary to amend the personnel system for TSOs as he or she sees fit.

The Committee believes it is essential to define these terms in order to clearly articulate the individuals this legislation would affect and impact, the parameters of the current TSA personnel system and other matters.

Section 3. Conversion of Transportation Security Personnel

This section terminates the authorities provided to the Assistant Secretary in Title 49 of U.S. Code 44935 note, as established in section 111(d) of Aviation and Transportation Security Act (ATSA) to set the terms and condition of employment for the screener workforce; further, the bill strikes the personnel system under section 114(n) of Title 49 of U.S. Code as established by ATSA, effective 60 days from date of enactment.

This section directs that 60 days from the date of enactment all Transportation Security Administration (TSA) employees will be governed by Title V of the United States Code, except for Chapter 97, similar to the same personnel system as other Department of Homeland Security (DHS) employees. This transition to a system under Title V would mean the employees are subjected to the same protections of the Federal civil service system, including the right to collective bargaining, compensation, leave, health, and other employee rights. It is the intent of the Committee all TSA employees receive the legal obligations and protections afforded to other government employees through other laws, including but not limited to the: Federal Labor Standards Act, Veterans’ Preference Act, Equal Pay Act, Age Discrimination in Employment Act and the Rehabilitation Act, among others. Further, the Committee intends that DHS could and should consult with the Office of Personnel Management (OPM) or any other applicable government entity, should DHS need to do so. But, such consultation is not required, and should only be sought if doing so will not delay implementation and conversion of employees. Furthermore, the Committee intends for DHS to use current OPM guidelines governing personnel and compensation and believes that using such guidelines may alleviate the need to consult OPM.

The Committee recognizes that while discretionary authority helped quickly establish TSA, as intended by the 107th Congress, it was, and continues to be a major source for low employee morale and therefore hinders TSA from attaining its full potential as a se-

curity agency. There is extensive information that shows that the TSA workforce continues to be frustrated and confused by evolving personnel policies including a pay-for-performance system that is prone to subjective judgments and opens the door to unfair work practices and promotions. TSA needs a transparent and fair system in place—and time-tested civil service system under Title V of the United States Code will put some stability in place for TSA and improve morale, dissatisfaction and improve high attrition rates.

As outlined by this section, no later than 60 days from the date of enactment all TSA employees will be governed and subject to Title V of the United States Code, except for Chapter 97, and be covered by the same personnel system as other DHS employees. The Committee recognizes that the timeline set forth is narrow but believes that it can be accomplished within this period. It is the Committee's intent that this transition would put the employees on the same footing as their colleagues and ensure that they have the same rights and protections afforded to them as their colleagues. These rights and benefits include compensation under the general schedule, leave, health and life insurance, whistleblower protections, labor management relations and the right to collectively bargain all under Title V of the United States Code, and the laws that govern the Federal workforce such as the Rehabilitation Act, the Civil Service Reform Act, the Veteran's Preference Act, the Uniformed Services Employment and Reemployment Act, and the Fair Labor Standards Act.

Section 4. Transition Rules

This section provides guidance for the transition to Title V of the United States Code and preserves employee pay, leave and health benefits. This section also states that nothing in this Act shall affect any administrative or judicial proceeding commenced before the date of the enactment of this Act.

Specifically, the Committee included this provision to ensure no Transportation Security Administration (TSA) employee in the conversion to the Title V system would experience a loss of compensation. Further, the section was also included to guarantee the preservation of other rights that those employees are currently receiving such as length of service for purpose of governing leave, pay, life and health insurance, tenure and status. Further, the Committee intends for all leave—annual, sick or other paid leave—that is accumulated to be available to the employee as long as they are continuously employed by the Department of Homeland Security. This section also preserves the full time contribution to the Federal employee health benefit and ensures that employees who enjoy this benefit now will continue to receive that contribution under the new system.

The Committee recognizes that the TSA currently offers a full time contribution to the Federal employee health benefit program to part time employees. It is desire of the Committee that employees that currently receive this benefit will continue to receive that contribution during the transition and under the new personnel system.

Section 5. Consultation Requirement

This section provides that during the 60 day transition period to the civil service system, there will be a consultation requirement between the Assistant Secretary and the employees through their qualified labor organizations. A qualified labor organization, for purposes of this consultation period only, meets the definition of a labor organization under Chapter 71 of Title V, United States Code and has at least 1000 covered employees who pay dues to the organization.

Specifically, within 14 days after the date of enactment a qualified labor organization shall be informed of the Secretary's plans to carry out the conversation of the covered employees to include a proposed date and the measures to ensure the non-reduction in compensation and protection of other benefits and leave. Further, within the 14 days, the labor organization will have an opportunity to present its views and recommendations upon learning the Secretary's plans. The Secretary is required to consider the views and recommendations of the labor organization before taking final action and also provide the labor organization with a statement of the reasons for the final actions and plans to be executed. The consultation requirement provides that employees and their representatives may stay informed during the transition process and provides an opportunity for the employees and their representative to present their views and recommendations to the Assistant Secretary on the transition plan. The Secretary is required to consider the recommendations and provide a statement and reason for the final actions being taken.

It is the Committee's desire that this consultation requirement be an avenue for employees to be engaged in the transition and its planning as they move towards to the new system. The Committee established parameters for a qualified labor organization for a limited purpose-to ensure consultation during the 60 day transition period only. The Committee does not intend for the consultation requirement to impact or override the exclusive bargaining recognition or labor management relations under Chapter 71 of Title V of the United States Code or any other provision of law. Further, the provisions of the section sunset and will no longer be effective as of the conversion date to the new personnel system. The Committee intends as stated previously, that the Department of Homeland Security (DHS) could consult with the Office of Personnel Management (OPM) or any other applicable government entity, should DHS wish to do so. But, such consultation is not required, provided that OPM guidelines governing personnel and compensation are used.

Section 6. No Right To Strike

This section restates current law that nothing in this Act would provide Transportation Security Administration (TSA) employees with the right to strike. Under current Federal criminal law, no Federal employee shall strike against the United States Government.

The Committee included this provision to emphasize that no Federal employee has the right to strike. The Committee believes that this section, as a restatement of current law, is necessary to resolve concerns expressed by the Conference Committee in its report ac-

companying the Aviation and Transportation Security Act (ATSA) in 2001 as well as concerns raised by Members and other stakeholders. Specifically, the Conference Committee noted that “[t]he participants in this Federal security workforce will not be able to strike or engage in work stoppages[.]” The Committee supports this position and believes it is consistent with the provision of collective bargaining rights.

Section 7. Regulations

This section provides the Secretary of the Department of Homeland Security the authority to prescribe any regulations necessary to carry out this Act.

Section 8. Delegations to Assist Secretary

This section provides the Secretary the authority to delegate any authorities or functions necessary to fulfill this act to the Assistant Secretary.

The Committee believes that the Assistant Secretary is best suited to advise the Secretary in ways to appraise, evaluate, and plan for this transition, and identify the positions that are impacted by it, given the Assistant Secretary’s knowledge of the Transportation Security Administration’s (TSA) missions and operations.

Section 9. Authorization of Appropriations

This section authorizes the appropriation of such sums necessary to carry out the 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):

AVIATION AND TRANSPORTATION SECURITY ACT

* * * * *

TITLE I—AVIATION SECURITY

* * * * *

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

(a) * * *

[(d) SCREENER PERSONNEL.—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.】

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TITLE 49, UNITED STATES CODE

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SUBTITLE I—DEPARTMENT OF TRANSPORTATION

* * * * *

CHAPTER 1—ORGANIZATION

* * * * *

§ 114. Transportation Security Administration

(a) * * *

* * * * *

【(n) PERSONNEL MANAGEMENT SYSTEM.—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 Under Secretary may make such modifications to the personnel management system with respect to such employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation.】

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MINORITY VIEWS

While Republican Members of the Committee on Homeland Security join our Democratic colleagues in supporting the hardworking employees of the Transportation Security Administration (TSA), we oppose Committee action on H.R. 1881 for a number of reasons.

Absence of a permanent TSA Administrator

This is the third time in as many months that the Majority has insisted on meeting to report legislation upon which the Department of Homeland Security cannot comment because the relevant senior official has not yet been confirmed by the Senate. The Committee adopted the Transportation Security Administration Authorization Act (H.R. 2200) on May 14, 2009. H.R. 2200 was subsequently passed by the House on June 4, 2009. However, TSA was not able to comment on the bill because President Obama has not yet nominated an Administrator. The Committee also adopted the Chemical Facility Anti-Terrorism Act of 2009 (H.R. 2868) on June 23, 2009. The Department's National Protection and Programs Directorate was not able to take a position on the bill because Mr. Rand Beers, the President's nominee for Under Secretary for National Protection and Programs, had not yet been confirmed, nor has an Assistant Secretary for Infrastructure Protection been appointed.

With action on H.R. 1881, the Majority is continuing to force legislative directives on the Administration and the Department of Homeland Security without first receiving official input on the bills from the impacted agency or allowing Secretary Napolitano to have her team in place. Interestingly, however, the Committee will not consider an authorization bill for the Science and Technology Directorate and the Domestic Nuclear Detection Office in July, as the Majority previously planned, because they now prefer to wait until Dr. Tara O'Toole is confirmed as the Under Secretary for Science and Technology. This begs the question: Why wouldn't the Committee also wait for the nomination and confirmation of a TSA Administrator before considering a bill that makes sweeping changes to TSA's personnel management system and directly affects the Administrator's authorities?

The TSA Administrator's current authority

The TSA Administrator already has the authority under current law to make changes to TSA's personnel management system, including providing collective bargaining rights to TSA screeners. The Aviation and Transportation Security Act provides the Administrator with great discretion in setting the employment terms of screeners. Nothing in current law prevents Acting TSA Administrator Gail Rossides, or her successor, from changing TSA's personnel management system or providing collective bargaining rights to

screeners. In fact, Acting Administrator Rossides could choose to implement the provisions of H.R. 1881. However, it could be argued that passing this legislation serves to diminish the Administrator's authority because it prescribes the system the Administrator must implement, and therefore eliminates the Administrator's current flexibility to implement a system of his or her choosing.

Elimination of pay-for-performance

On May 27, 2009, President Obama's new Director of the Office of Personnel Management, Mr. John Berry, announced that President Obama plans to institute a pay-for-performance system in the Federal workplace. The Performance Accountability and Standards System (PASS), TSA's current personnel management system, is a flexible and dynamic system that recognizes employees for their on the job performance. In Fiscal Year 2008, 99% of the employees covered by PASS received bonuses in addition to their yearly cost of living increase because they achieved TSA's high screening standards, with some employees receiving salary increases in addition to these bonuses. The potential for bonuses and salary increases serves as incentive to TSA screeners to strive to exceed TSA's screening standards.

Republican Members of the Committee on Homeland Security support the President's interest in ensuring the Federal Government has a personnel system able to meet the challenges of the 21st Century and support PASS, which is already paying employees for their performance. H.R. 1881 is contrary to the Obama Administration's stated goal, and converts TSA to Title 5, which Director Berry has called "straining and . . . balkanized to the point that it risks failure."

Security concerns

Republican Members of the Committee are also concerned with the security implications posed by providing collective bargaining to Transportation Security Officers (TSOs). Currently, the TSA Administrator is able to exercise flexibility in the event of an emerging threat. For example, during the August 2006 liquid bombing plot, the Administrator was able to reconfigure screening operations quickly and adapt the items the screeners were looking for to respond to the threat. In addition, the Administrator forward deployed TSOs to London to assist with passenger screening operations. There is concern that this flexibility and security would be hampered in the event of the next plot if the Administrator is not able to quickly make changes to screening operations to respond to an impending threat. In fact, in March 2007 testimony before the Senate Homeland Security and Governmental Affairs Committee on TSA's personnel flexibilities, then-Administrator Kip Hawley stated that "[t]his flexibility is key to how DHS, through TSA, protects Americans while they travel, both at home and abroad." He also noted that provisions to eliminate this flexibility "would significantly diminish TSA's ability to respond quickly to security threats and would ultimately reduce transportation security."

For these reasons, the Republican Members of the Committee reluctantly oppose H.R. 1881.

PETER T. KING.
LAMAR SMITH.
MARK SOUDER.
MIKE ROGERS.
MICHAEL T. MCCAUL.
CHARLES W. DENT.
GUS M. BILIRAKIS.
PAUL C. BROUN.
PETE OLSON.
ANH "JOSEPH" CAO.
STEVE AUSTRIA.

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