

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 903  
OFFERED BY MR. THOMPSON OF MISSISSIPPI**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Rights for the Trans-  
3 portation Security Administration Workforce Act of  
4 2021” or the “Rights for the TSA Workforce Act of  
5 2021”.

**6 SEC. 2. DEFINITIONS.**

7       For purposes of this Act—

8           (1) the term “adjusted basic pay” means—

9                   (A) the rate of pay fixed by law or admin-  
10                   istrative action for the position held by a cov-  
11                   ered employee before any deductions; and

12                   (B) any regular, fixed supplemental pay-  
13                   ment for non-overtime hours of work creditable  
14                   as basic pay for retirement purposes, including  
15                   any applicable locality payment and any special  
16                   rate supplement;

1           (2) the term “Administrator” means the Ad-  
2           ministrator of the Transportation Security Adminis-  
3           tration;

4           (3) the term “appropriate congressional com-  
5           mittees” means the Committees on Homeland Secu-  
6           rity and Oversight and Reform of the House of Rep-  
7           resentatives and the Committees on Commerce,  
8           Science, and Transportation and Homeland Security  
9           and Governmental Affairs of the Senate;

10          (4) the term “conversion date” means the date  
11          as of which subparagraphs (A) through (F) of sec-  
12          tion 3(c)(1) take effect;

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

15          (6) the term “covered position” means a posi-  
16          tion within the Transportation Security Administra-  
17          tion;

18          (7) the term “COVID–19 national emergency”  
19          means the national emergency declared by the Presi-  
20          dent under the National Emergencies Act (50  
21          U.S.C. 1601 et seq.) on March 13, 2020, with re-  
22          spect to the coronavirus;

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

1 (9) the term “Secretary” means the Secretary  
2 of Homeland Security;

3 (10) the term “TSA personnel management  
4 system” means any personnel management system  
5 established or modified under—

6 (A) section 111(d) of the Aviation and  
7 Transportation Security Act (49 U.S.C. 44935  
8 note); or

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

11 (11) the term “2019 Determination” means the  
12 publication, entitled “Determination on Transpor-  
13 tation Security Officers and Collective Bargaining”,  
14 issued on July 13, 2019, by Administrator David P.  
15 Pekoske, as modified, or any superseding subsequent  
16 determination.

17 **SEC. 3. CONVERSION OF TSA PERSONNEL.**

18 (a) RESTRICTIONS ON CERTAIN PERSONNEL AU-  
19 THORITIES.—

20 (1) IN GENERAL.—Notwithstanding any other  
21 provision of law, and except as provided in para-  
22 graph (2), effective as of the date of the enactment  
23 of this Act—

24 (A) any TSA personnel management sys-  
25 tem in use for covered employees and covered

1 positions on the day before such date of enact-  
2 ment, and any TSA personnel management pol-  
3 icy, letters, guideline, or directive in effect on  
4 such day may not be modified;

5 (B) no TSA personnel management policy,  
6 letter, guideline, or directive that was not estab-  
7 lished before such date issued pursuant to sec-  
8 tion 111(d) of the Aviation and Transportation  
9 Security Act (49 U.S.C. 44935 note) or section  
10 114(n) of title 49, United States Code, may be  
11 established; and

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

17 (2) EXCEPTIONS.—

18 (A) PAY.—Notwithstanding paragraph  
19 (1)(A), the limitation in that paragraph shall  
20 not apply to any TSA personnel management  
21 policy, letters, guideline, or directive related to  
22 annual adjustments to pay schedules and local-  
23 ity-based comparability payments in order to  
24 maintain parity with such adjustments author-

1            ized under section 5303, 5304, 5304a and 5318  
2            of title 5, United States Code; and

3            (B)     ADDITIONAL     POLICY.—Notwith-  
4            standing paragraph (1)(B), new TSA personnel  
5            management policy may be issued if—

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

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

14          (C)     EMERGING THREATS TO TRANSPOR-  
15          TATION SECURITY DURING TRANSITION PE-  
16          RIOD.—Notwithstanding paragraph (1), any  
17          TSA personnel management policy, letter,  
18          guideline, or directive related to an emerging  
19          threat to transportation security, including na-  
20          tional emergencies or disasters and public  
21          health threats to transportation security, may  
22          be modified or established until the effective  
23          date in subsection (c)(1). The Secretary shall  
24          provide to the appropriate congressional com-  
25          mittees any modification or establishment of

1           such a TSA personnel management policy, let-  
2           ter, guideline, or directive, with an explanation  
3           of its necessity, not later than 7 days of such  
4           modification or establishment.

5           (b) PERSONNEL AUTHORITIES DURING TRANSITION  
6 PERIOD.—Any TSA personnel management system in use  
7 for covered employees and covered positions on the day  
8 before the date of enactment of this Act and any TSA  
9 personnel management policy, letter, guideline, or direc-  
10 tive in effect on the day before the date of enactment of  
11 this Act shall remain in effect until the conversion date.

12          (c) TRANSITION TO TITLE 5.—

13           (1) IN GENERAL.—Except as provided in para-  
14           graph (2), effective as of the date determined by the  
15           Secretary, but in no event later than December 31,  
16           2022—

17           (A) the TSA personnel management sys-  
18           tem shall cease to be in effect;

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

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

1 (D) any TSA personnel management pol-  
2 icy, letter, guideline, and directive, including the  
3 2019 Determination, shall cease to be effective;

4 (E) any human resources management sys-  
5 tem established or adjusted under chapter 97 of  
6 title 5, United States Code, with respect to cov-  
7 ered employees or covered positions shall cease  
8 to be effective; and

9 (F) covered employees and covered posi-  
10 tions shall be subject to the provisions of title  
11 5, United States Code.

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

15 (A) chapter 71 and chapter 77 of title 5,  
16 United States Code, shall apply to covered em-  
17 ployees carrying out screening functions pursu-  
18 ant to section 44901 of title 49, United States  
19 Code; and

20 (B) any policy, letter, guideline, or direc-  
21 tive issued under section 111(d) of the Aviation  
22 and Transportation Security Act (49 U.S.C.  
23 44935 note) related to matters otherwise cov-  
24 ered by such chapter 71 or 77 shall cease to be  
25 in effect.

1 (d) SAFEGUARDS ON GRIEVANCES AND APPEALS.—

2 (1) IN GENERAL.—In carrying out this Act, the  
3 Secretary shall take such actions as are necessary to  
4 provide an opportunity to each covered employee  
5 with a grievance or appeal pending within Transpor-  
6 tation Security Administration on the date of the en-  
7 actment of this Act or initiated during the transition  
8 period described in subsection (c) to have such griev-  
9 ance or appeal removed to proceedings pursuant to  
10 title 5, United States Code, or continued within the  
11 Administration.

12 (2) AUTHORITY.—With respect to any griev-  
13 ance or appeal continued within the Administration  
14 pursuant to paragraph (1), the Administration may  
15 consider and finally adjudicate such grievance or ap-  
16 peal notwithstanding any other provision of this Act.

17 **SEC. 4. TRANSITION RULES.**

18 (a) NONREDUCTION IN PAY AND COMPENSATION.—  
19 Under pay conversion rules as the Secretary may prescribe  
20 to carry out this Act, a covered employee converted from  
21 a TSA personnel management system to the provisions of  
22 title 5, United States Code, pursuant to section 3(c)(1)(F)  
23 shall not be subject to any reduction in either the rate  
24 of adjusted basic pay payable or law enforcement avail-  
25 ability pay payable to such covered employee.



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

5 (1) any annual leave, sick leave, or other paid  
6 leave accrued, accumulated, or otherwise available to  
7 a covered employee immediately before the conver-  
8 sion date shall remain available to the employee  
9 until used, notwithstanding any limitation on accu-  
10 mulated leave under chapter 63 of title 5, United  
11 States Code; and

12 (2) part-time personnel carrying out screening  
13 functions under section 44901 of title 49, United  
14 States Code, continue to pay Federal Employees  
15 Health Benefits premiums on the same basis as full-  
16 time Transportation Security Administration em-  
17 ployees.

18 **SEC. 5. CONSULTATION REQUIREMENT.**

19 (a) EXCLUSIVE REPRESENTATIVE.—

20 (1) IN GENERAL.—

21 (A) Beginning on the date chapter 71 of  
22 title 5, United States Code, begins to apply to  
23 covered employees pursuant to section 3(c)(2),  
24 the labor organization certified by the Federal  
25 Labor Relations Authority on June 29, 2011,

1 or any successor labor organization, shall be  
2 treated as the exclusive representative of full-  
3 and part-time non-supervisory Transportation  
4 Security Administration personnel carrying out  
5 screening functions under section 44901 of title  
6 49, United States Code, and shall be the exclu-  
7 sive representative for such personnel under  
8 chapter 71 of title 5, United States Code, with  
9 full rights under such chapter.

10 (B) Nothing in this subsection shall be  
11 construed to prevent covered employees from  
12 selecting an exclusive representative other than  
13 the labor organization described under para-  
14 graph (1) for purposes of collective bargaining  
15 under such chapter 71.

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

22 (3) CURRENT AGREEMENT.—Any collective bar-  
23 gaining agreement covering such personnel in effect  
24 on the date of enactment of this Act shall remain in  
25 effect until a collective bargaining agreement is en-

1           tered into under such chapter 71, unless the Admin-  
2           istrator and exclusive representative mutually agree  
3           to revisions to such agreement.

4           (b) **CONSULTATION PROCESS.**—Not later than seven  
5           days after the date of the enactment of this Act, the Sec-  
6           retary shall consult with the exclusive representative for  
7           the personnel described in subsection (a) under chapter  
8           71 of title 5, United States Code, on the formulation of  
9           plans and deadlines to carry out the conversion of full-  
10          and part-time non-supervisory Transportation Security  
11          Administration personnel carrying out screening functions  
12          under section 44901 of title 49, United States Code, under  
13          this Act. Prior to the date such chapter 71 begins to apply  
14          pursuant to section 3(c)(2), the Secretary shall provide (in  
15          writing) to such exclusive representative the plans for how  
16          the Secretary intends to carry out the conversion of such  
17          personnel under this Act, including with respect to such  
18          matters as—

- 19                   (1) the anticipated conversion date; and  
20                   (2) measures to ensure compliance with sections  
21           3 and 4.

22          (c) **REQUIRED AGENCY RESPONSE.**—If any views or  
23          recommendations are presented under subsection (b) by  
24          the exclusive representative, the Secretary shall consider  
25          the views or recommendations before taking final action

1 on any matter with respect to which the views or rec-  
2 ommendations are presented and provide the exclusive  
3 representative a written statement of the reasons for the  
4 final actions to be taken.

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

6 Nothing in this Act may be considered—

7 (1) to repeal or otherwise affect—

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

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

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

16 **SEC. 7. PROPOSAL ON HIRING AND CONTRACTING RE-**  
17 **STRICTIONS.**

18 Not later than one year after the date of enactment  
19 of this Act, the Secretary shall submit a plan to the appro-  
20 priate congressional committees on a proposal to uni-  
21 formly apply, for the purposes of hiring and for author-  
22 izing or entering into any contract for service, the restric-  
23 tions in section 70105(c) of title 46, United States Code,  
24 and section 44936 of title 49, United States Code.

1 **SEC. 8. COMPTROLLER GENERAL REVIEWS.**

2 (a) REVIEW OF RECRUITMENT.—Not later than one  
3 year after the date of the enactment of this Act, the Comp-  
4 troller General shall submit to Congress a report on the  
5 efforts of the Transportation Security Administration re-  
6 garding recruitment, including recruitment efforts relating  
7 to veterans and the dependents of veterans and members  
8 of the Armed Forces and the dependents of such members.  
9 Such report shall also include recommendations regarding  
10 how the Administration may improve such recruitment ef-  
11 forts.

12 (b) REVIEW OF IMPLEMENTATION.—Not later than  
13 60 days after the conversion date, the Comptroller General  
14 shall commence a review of the implementation of this Act.  
15 The Comptroller General shall submit to Congress a re-  
16 port on its review no later than one year after such conver-  
17 sion date.

18 **SEC. 9. SENSE OF CONGRESS.**

19 It is the sense of Congress that—

20 (1) the Transportation Security Administra-  
21 tion's personnel system provides insufficient benefits  
22 and workplace protections to the workforce that se-  
23 cures the nation's transportation systems and that  
24 the Transportation Security Administration's work-  
25 force should be provided protections and benefits  
26 under title 5, United States Code; and

1           (2) the provision of these title 5 protections and  
2           benefits should not result in a reduction of pay or  
3           benefits to current Transportation Security Adminis-  
4           tration employees.

5 **SEC. 10. ASSISTANCE FOR FEDERAL AIR MARSHAL SERV-**  
6   **ICE.**

7           (a) **IN GENERAL.**—The Administrator may commu-  
8           nicate with the organization representing a significant  
9           number of Federal Air Marshals, to the extent provided  
10          by law, to address concerns regarding Federal Air Mar-  
11          shals related to the following:

- 12                   (1) Mental health.  
13                   (2) Suicide rates.  
14                   (3) Morale and recruitment.  
15                   (4) Any other personnel issues the Adminis-  
16          trator determines appropriate.

17          (b) **INAPPLICABILITY OF FACCA.**—The Federal Advi-  
18          sory Committee Act (5 U.S.C. App.) shall not apply under  
19          this section.

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

22          The Administrator, in coordination with the Director  
23          of the Centers for Disease Control and Prevention and the  
24          Director of the National Institute of Allergy and Infec-  
25          tious Diseases, shall ensure that covered employees are

- 1 provided proper guidance regarding prevention and protec-
- 2 tions against the COVID-19 National Emergency, includ-
- 3 ing appropriate resources.

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.”.

