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HOUSE OF REPRESENTATIVES
REPORT
115–226

STRENGTHENING OVERSIGHT OF TSA EMPLOYEE MISCONDUCT ACT

JULY 17, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1351]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1351) to amend title 49, United States Code, to direct the Administrator of the Transportation Security Administration (TSA) to make certain improvements in managing TSA's employee misconduct, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Strengthening Oversight of TSA Employee Misconduct Act".

SEC. 2. TSA MISCONDUCT INSPECTION PLAN.

(a) IN GENERAL.—Section 44935 of title 49, United States Code, is amended—

(1) by redesignating the second subsection (i) (relating to accessibility of computer-based training facilities) as subsection (k); and

(2) by adding at the end the following new subsection:

"(l) TSA MISCONDUCT INSPECTIONS.—

"(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this subsection, the Administrator of the Transportation Security Administration (TSA) shall—

"(A) designate a senior official to implement a plan to oversee unannounced inspections at airports of agency actions taken to address TSA employee misconduct, including actions taken by managers at airports to address any such misconduct through corrective actions, up to and including removal from Federal service, in accordance with Department of Homeland Security and TSA policies;

"(B) on a biannual basis thereafter until September 30, 2023, the official specified in subparagraph (A) shall certify to the Administrator that the unannounced inspections referred to in such paragraph were completed across a sufficient number of airports such that all airports are—

"(i) inspected before such date; and

"(ii) provided adequate information regarding agency actions taken to address TSA employee misconduct;

"(C) designate a senior official other than the senior official designated pursuant to subparagraph (A) to review the results of such unannounced inspections to identify causes of any variances and overall trends in the way actions are taken in response to TSA employee misconduct and develop corrective actions and recommendations, up to and including removal from Federal service, as appropriate; and

"(D) direct the official described in subparagraph (C) to implement the corrective actions and recommendations specified in such subparagraph.

"(2) CONSOLIDATION AND COORDINATION.—Unannounced inspections under paragraph (1) of certain locations may be consolidated and coordinated with other relevant TSA offices, as determined appropriate by the Administrator of the TSA.

"(3) EXTENSION.—The Administrator of the TSA may extend the final date specified in paragraph (1)(B) for completing the unannounced inspections under paragraph (1) for not more than one additional fiscal year if exigent circumstances warrant. If the Administrator determines that such an extension is necessary, the Administrator shall provide to the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs,. the Committee on Commerce, Science, and Transportation, and the Committee on Appropriations of the Senate written justification regarding such circumstances prior to granting such extension.

"(4) DEPARTMENT OF HOMELAND SECURITY REVIEW.—

"(A) IN GENERAL.—On a biannual basis, the official specified in paragraph (1)(C) shall provide to the Chief Human Capital Officer of the Department of Homeland Security the results of unannounced inspections conducted pursuant to such paragraph.

"(B) IDENTIFICATION.—The Chief Human Capital Officer of the Department of Homeland Security may review the results of the unannounced inspections conducted pursuant to paragraph (1)(A) to, as appropriate, identify trends and make recommendations, to the Administrator of the TSA to address employee misconduct.

"(C) IMPLEMENTATION.—The Administrator of the TSA shall coordinate with the Chief Human Capital Officer of the Department of Homeland Se-

curity to implement any recommendations made pursuant to subparagraph (B) within the timeframes established by the Chief Human Capital Officer.

"(5) INFORMATION TO CONGRESS.—The Administrator of the TSA shall make the results of the unannounced inspections, including any recommended corrective actions for addressing variances, identified under this subsection readily available to—

"(A) the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives;

"(B) the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on Appropriations of the Senate; and

"(C) as appropriate, personnel of the Department of Homeland Security, as determined by the Administrator.

"(6) DEFINITIONS.—In this subsection:

"(A) ACTIONS.—The term 'actions' means consequences for employee misconduct, up to and including removal from Federal Service, established by TSA policy.

"(B) UNANNOUNCED INSPECTIONS.—The term 'unannounced inspections' means a review of information without providing advanced notice to the party under review.".

(b) NO ADDITIONAL FUNDS AUTHORIZED.—No additional funds are authorized to carry out the requirements of this Act and the amendments made by this Act. Such requirements shall be carried out using amounts otherwise authorized.

PURPOSE AND SUMMARY

The purpose of H.R. 1351 is to amend title 49, United States Code, to direct the Administrator of the Transportation Security Administration (TSA) to make certain improvements in managing TSA's employee misconduct, and for other purposes.

H.R. 1351 is intended to better ensure consistency in the way TSA airport managers administer agency actions in response to employee misconduct and better position TSA to identify causes behind persistent employee misconduct. Specifically, H.R. 1351 requires the TSA Administrator to designate a senior official to oversee unannounced inspections at airports of agency actions taken to address employee misconduct to be completed at all airports within 5 fiscal years. The bill also requires the Administrator to designate a separate official to review the inspection results to identify causes of any variances or trends in the way actions are taken in response to TSA misconduct and to develop corrective actions to address such variances. H.R. 1351 also requires TSA to provide inspection results to the Department's Chief Human Capital Officer to review the results, identify trends, and make recommendations on ways to improve TSA employee misconduct. Finally, the bill requires the TSA Administrator to provide inspection results and any corrective actions to certain Congressional committees.

BACKGROUND AND NEED FOR LEGISLATION

In July 2016, the Majority staff of the Subcommittee on Oversight and Management Efficiency and the Subcommittee on Transportation Security released their findings from a joint investigation into TSA's efforts to address employee misconduct in a report entitled "Misconduct at TSA Threatens the Security of the Flying Public." In particular, the staff found that, according to TSA data, employee misconduct has grown over time-by almost 29 percent from Fiscal Year 2013 to 2015. Moreover, the report detailed that most disciplinary and non-disciplinary penalties are given by lower level managers at airport checkpoints with potentially very little over-

sight by the airport's Federal Security Director (FSD), much less by headquarters.

In order to ensure that TSA effectively delegates authority to the local level, TSA needs mechanisms to ensure that employees are adhering to guidance. If these are not implemented, TSA will likely be unable to ensure that misconduct declines over time. Although TSA has issued guidance related to employee conduct and expects that all employees review and adhere to it, it does not have mechanisms in place to ensure that the policy is implemented at the local level. H.R. 1351 seeks to establish a random inspection mechanism to ensure that local managers are administering discipline in a consistent and fair way.

HEARINGS

No hearings were specifically held on H.R. 1351. However, the Committee held an oversight hearing on TSA employee misconduct during the 114th Congress. On July 7, 2016, the Oversight and Management Efficiency Subcommittee and the Transportation Security Subcommittee held a joint hearing entitled "How Pervasive is Misconduct at TSA: Examining Findings from a Joint Subcommittee Investigation." The Subcommittees received testimony from Dr. Huban Gowadia, Deputy Administrator, Transportation Security Administration, U.S. Department of Homeland Security; and Mr. Andrew Oosterbaan, Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on May 3, 2017, to consider H.R. 1351, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by voice vote. The Committee took the following actions:

The Committee adopted H.R. 1351, as amended, by a recorded vote of 14 yeas and 10 nays (Roll No. 8).

The following amendment was offered:

An Amendment in the Nature of a Substitute offered by MR. PERRY (#1); was AGREED TO by a recorded vote of 14 yeas and 10 nays (Roll No. 7).

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. 1351 on May 3, 2017, and took the following votes:

ROLL CALL NO. 7

H.R. 1351

On agreeing to the Amendment in the Nature of a Substitute offered by Mr. Perry (#1).

Agreed to: 14 yeas and 10 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair	X		Mr. Thompson of Mississippi, Ranking Member		X
Mr. Smith of Texas			Ms. Jackson Lee		
Mr. King of New York	X		Mr. Langevin		X
Mr. Rogers of Alabama	X		Mr. Richmond		
Mr. Duncan of South Carolina	X		Mr. Keating		X
Mr. Marino	X		Mr. Payne		X
Mr. Barletta	X		Mr. Vela		X
Mr. Perry	X		Mrs. Watson Coleman		X
Mr. Katko			Miss Rice of New York		X
Mr. Hurd	X		Mr. Correa		X
Ms. McSally	X		Mrs. Demings		X
Mr. Ratcliffe	X		Ms. Barragán		X
Mr. Donovan					
Mr. Gallagher	X				
Mr. Higgins of Louisiana	X				
Mr. Rutherford	X				
Mr. Garrett	X				
Mr. Fitzpatrick					
			Vote Total:	**14**	**10**

ROLL CALL NO. 8

H.R. 1351

On ordering H.R. 1351 to be reported to the House with a favorable recommendation, as amended.
Agreed to: 14 yeas and 10 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair	X		Mr. Thompson of Mississippi, Ranking Member		X
Mr. Smith of Texas			Ms. Jackson Lee		
Mr. King of New York	X		Mr. Langevin		X
Mr. Rogers of Alabama	X		Mr. Richmond		
Mr. Duncan of South Carolina	X		Mr. Keating		X
Mr. Marino	X		Mr. Payne		X
Mr. Barletta	X		Mr. Vela		X
Mr. Perry	X		Mrs. Watson Coleman		X
Mr. Katko			Miss Rice of New York		X
Mr. Hurd	X		Mr. Correa		X
Ms. McSally	X		Mrs. Demings		X
Mr. Ratcliffe	X		Ms. Barragán		X
Mr. Donovan					
Mr. Gallagher	X				
Mr. Higgins of Louisiana	X				
Mr. Rutherford	X				
Mr. Garrett	X				
Mr. Fitzpatrick					
			Vote Total:	**14**	**10**

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. 1351, the Strengthening Oversight of TSA Employee Misconduct Act, 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, July 14, 2017.

Hon. MICHAEL MCCAUL,
Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1351, the Strengthening Oversight of TSA Employee Misconduct Act.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 1351—Strengthening Oversight of TSA Employee Misconduct Act

H.R. 1351 would require the Transportation Security Administration (TSA) to complete, by September 30, 2023, unannounced inspections at all airports of actions taken by TSA managers to address employee misconduct. The bill would specify procedures for TSA to follow in reporting the results of such inspections to both the Congress and the Department of Homeland Security (DHS) and would authorize TSA to implement any personnel-related recommendations that DHS makes after reviewing such results.

Based on an analysis of information from TSA, CBO estimates that inspecting all airports where TSA currently operates within the timeframe specified by the bill would require about five additional staff. Including increased administrative costs and travel expenses, CBO estimates that meeting the bill's inspection requirements would increase TSA's costs by $1 million annually and $5 million over the 2018–2022 period; that spending would be subject to the availability of appropriated funds. (That amount does not include any additional costs that the agency might incur to imple-

ment DHS-recommended changes to policies for addressing employee misconduct pursuant to reports of inspections carried out under the bill.)

Enacting H.R. 1351 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1351 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1351 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy 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. 1351 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The purpose of H.R. 1351 is to direct the Administrator of the Transportation Security Administration (TSA) to make certain improvements in managing TSA's employee misconduct, and for other purposes.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 1351 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

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(e), 9(f), or 9(g) of the Rule XXI.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1351 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1351 would require no directed rule makings.

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 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 this bill may be cited as the "Strengthening Oversight of TSA Employee Misconduct Act".

Sec. 2. TSA Misconduct Inspection Plan.

Section 2 requires the TSA Administrator to, within 60 days of enactment, designate a senior official to oversee unannounced inspections at airports of agency actions taken to address employee misconduct, including managers removing employees from service, if necessary. That official must certify to the Administrator on a biannual basis thereafter until Fiscal Year 2023 that the unannounced inspections were completed across a sufficient number of airports to ensure that all airports are inspected by the specified time period.

Section 2 also requires the Administrator to designate a separate official to review the inspection results to identify causes of any variances or trends in the way actions are taken in response to TSA misconduct and to develop corrective actions to address such variances. The Administrator is also required to ensure that the official conducting the unannounced inspections implements any recommendations made to address variances in the way actions are taken. The Administrator may determine, as appropriate, whether inspections may be consolidated with activities by other offices and such inspections should be coordinated with other relevant TSA offices. The Committee intends for the Administrator to safeguard against any unnecessary duplication in carrying out these inspections.

Additionally, Section 2 provides that the Administrator may extend date for completing the unannounced inspections by not more than one additional fiscal year, if warranted by exigent circumstances. Section 2 also requires TSA to provide inspection results biannually to the Department's Chief Human Capital Officer to ensure that TSA addresses employee misconduct. The Department's Chief Human Capital Officer may review the results, identify trends, and make recommendations on ways to improve TSA employee misconduct. Although the Administrator shall coordinate with the DHS Chief Human Capital Officer and implement recommendations, the Chief Human Capital Officer should consult with the Administrator on such recommendations and consider the cost and operational impacts of any such recommendations. The Committee intends for any recommendations made by the Chief Human Capital Officer to help the Administrator address employee misconduct.

Section 2 also requires the TSA Administrator to make inspection results and any corrective actions available to the Committees on Homeland Security, and Appropriations of the House of Rep-

resentatives; the Committees on Homeland Security and Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and, as appropriate, Department personnel. Section 2 includes definitions of actions and unannounced inspections to help TSA implement the bill's provisions. Finally, section 2 prohibits any additional funds from being authorized to carry out these provisions.

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, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE VII—AVIATION PROGRAMS

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PART A—AIR COMMERCE AND SAFETY

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SUBPART III—SAFETY

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CHAPTER 449—SECURITY

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

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§ 44935. Employment standards and training

(a) EMPLOYMENT STANDARDS.—The Under Secretary of Transportation for Security shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Under Secretary shall review issues related to human performance in the aviation security system to maximize that performance. When the

review is completed, the Under Secretary shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—(1) The Under Secretary—

(A) may train individuals employed to carry out a security program under section 44903(c) of this title; and

(B) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(2) The Under Secretary may authorize reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs. To the extent practicable, air travel reimbursed under this paragraph shall be on air carriers.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Under Secretary shall prescribe standards for educating and training—

(A) ground security coordinators;

(B) security supervisory personnel; and

(C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

(e) SECURITY SCREENERS.—

(1) TRAINING PROGRAM.—The Under Secretary of Transportation for Security shall establish a program for the hiring and training of security screening personnel.

(2) HIRING.—

(A) QUALIFICATIONS.—Within 30 days after the date of enactment of the aviation Transportation Security Act, the Under Secretary shall establish qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any provision of law, those standards shall require, at a minimum, an individual—

(i) to have a satisfactory or better score on a Federal security screening personnel selection examination;

(ii) to be a citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(iii) to meet, at a minimum, the requirements set forth in subsection (f);

(iv) to meet such other qualifications as the Under Secretary may establish; and

(v) to have the ability to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(B) BACKGROUND CHECKS.—The Under Secretary shall require that an individual to be hired as a security screen-

er undergo an employment investigation (including a criminal history record check) under section 44936(a)(1).

(C) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Under Secretary, in consultation with the heads of other appropriate Federal agencies, shall establish procedures, in addition to any background check conducted under section 44936, to ensure that no individual who presents a threat to national security is employed as a security screener.

(3) EXAMINATION; REVIEW OF EXISTING RULES.—The Under Secretary shall develop a security screening personnel examination for use in determining the qualification of individuals seeking employment as security screening personnel. The Under Secretary shall also review, and revise as necessary, any standard, rule, or regulation governing the employment of individuals as security screening personnel.

(f) EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—

(1) SCREENER REQUIREMENTS.—Notwithstanding any provision of law, an individual may not be deployed as a security screener unless that individual meets the following requirements:

(A) The individual shall possess a high school diploma, a general equivalency diploma, or experience that the Under Secretary has determined to be sufficient for the individual to perform the duties of the position.

(B) The individual shall possess basic aptitudes and physical abilities, including color perception, visual and aural acuity, physical coordination, and motor skills, to the following standards:

(i) Screeners operating screening equipment shall be able to distinguish on the screening equipment monitor the appropriate imaging standard specified by the Under Secretary.

(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment.

(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing.

(v) Screeners who perform pat-downs or hand-held metal detector searches of individuals shall have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(C) The individual shall be able to read, speak, and write English well enough to—

(i) carry out written and oral instructions regarding the proper performance of screening duties;

(ii) read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(iv) write incident reports and statements and log entries into security records in the English language.

(D) The individual shall have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program, except as provided in paragraph (3).

(2) VETERANS PREFERENCE.—The Under Secretary shall provide a preference for the hiring of an individual as a security screener if the individual is a member or former member of the armed forces and if the individual is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member of the armed forces.

(3) EXCEPTIONS.—An individual who has not completed the training required by this section may be deployed during the on-the-job portion of training to perform functions if that individual—

(A) is closely supervised; and

(B) does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(4) REMEDIAL TRAINING.—No individual employed as a security screener may perform a screening function after that individual has failed an operational test related to that function until that individual has successfully completed the remedial training specified in the security program.

(5) ANNUAL PROFICIENCY REVIEW.—The Under Secretary shall provide that an annual evaluation of each individual assigned screening duties is conducted and documented. An individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual—

(A) continues to meet all qualifications and standards required to perform a screening function;

(B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and

(C) demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(6) OPERATIONAL TESTING.—In addition to the annual proficiency review conducted under paragraph (5), the Under Secretary shall provide for the operational testing of such personnel.

(g) TRAINING.—

(1) USE OF OTHER AGENCIES.—The Under Secretary may enter into a memorandum of understanding or other arrangement with any other Federal agency or department with appropriate law enforcement responsibilities, to provide personnel,

resources, or other forms of assistance in the training of security screening personnel.

(2) TRAINING PLAN.—Within 60 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall develop a plan for the training of security screening personnel. The plan shall require, at a minimum, that a security screener—

(A) has completed 40 hours of classroom instruction or successfully completed a program that the Under Secretary determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction;

(B) has completed 60 hours of on-the-job instructions; and

(C) has successfully completed an on-the-job training examination prescribed by the Under Secretary.

(3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a security screener may not use any security screening device or equipment in the scope of that individual's employment unless the individual has been trained on that device or equipment and has successfully completed a test on the use of the device or equipment.

(h) TECHNOLOGICAL TRAINING.—

(1) IN GENERAL.—The Under Secretary shall require training to ensure that screeners are proficient in using the most up-to-date new technology and to ensure their proficiency in recognizing new threats and weapons.

(2) PERIODIC ASSESSMENTS.—The Under Secretary shall make periodic assessments to determine if there are dual use items and inform security screening personnel of the existence of such items.

(3) CURRENT LISTS OF DUAL USE ITEMS.—Current lists of dual use items shall be part of the ongoing training for screeners.

(4) DUAL USE DEFINED.—For purposes of this subsection, the term "dual use" item means an item that may seem harmless but that may be used as a weapon.

(i) LIMITATION ON RIGHT TO STRIKE.—An individual that screens passengers or property, or both, at an airport under this section may not participate in a strike, or assert the right to strike, against the person (including a governmental entity) employing such individual to perform such screening.

(j) UNIFORMS.—The Under Secretary shall require any individual who screens passengers and property pursuant to section 44901 to be attired while on duty in a uniform approved by the Under Secretary.

[(i)] *(k)* ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES.—The Under Secretary shall work with air carriers and airports to ensure that computer-based training facilities intended for use by security screeners at an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation are conveniently located for that airport and easily accessible.

(l) TSA MISCONDUCT INSPECTIONS.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this subsection, the Administrator of the Transportation Security Administration (TSA) shall—

(A) designate a senior official to implement a plan to oversee unannounced inspections at airports of agency actions taken to address TSA employee misconduct, including actions taken by managers at airports to address any such misconduct through corrective actions, up to and including removal from Federal service, in accordance with Department of Homeland Security and TSA policies;

(B) on a biannual basis thereafter until September 30, 2023, the official specified in subparagraph (A) shall certify to the Administrator that the unannounced inspections referred to in such paragraph were completed across a sufficient number of airports such that all airports are—

(i) inspected before such date; and

(ii) provided adequate information regarding agency actions taken to address TSA employee misconduct;

(C) designate a senior official other than the senior official designated pursuant to subparagraph (A) to review the results of such unannounced inspections to identify causes of any variances and overall trends in the way actions are taken in response to TSA employee misconduct and develop corrective actions and recommendations, up to and including removal from Federal service, as appropriate; and

(D) direct the official described in subparagraph (C) to implement the corrective actions and recommendations specified in such subparagraph.

(2) CONSOLIDATION AND COORDINATION.—Unannounced inspections under paragraph (1) of certain locations may be consolidated and coordinated with other relevant TSA offices, as determined appropriate by the Administrator of the TSA.

(3) EXTENSION.—The Administrator of the TSA may extend the final date specified in paragraph (1)(B) for completing the unannounced inspections under paragraph (1) for not more than one additional fiscal year if exigent circumstances warrant. If the Administrator determines that such an extension is necessary, the Administrator shall provide to the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs,. the Committee on Commerce, Science, and Transportation, and the Committee on Appropriations of the Senate written justification regarding such circumstances prior to granting such extension.

(4) DEPARTMENT OF HOMELAND SECURITY REVIEW.—

(A) IN GENERAL.—On a biannual basis, the official specified in paragraph (1)(C) shall provide to the Chief Human Capital Officer of the Department of Homeland Security the results of unannounced inspections conducted pursuant to such paragraph.

(B) IDENTIFICATION.—The Chief Human Capital Officer of the Department of Homeland Security may review the results of the unannounced inspections conducted pursuant to paragraph (1)(A) to, as appropriate, identify trends and

make recommendations, to the Administrator of the TSA to address employee misconduct.

(C) IMPLEMENTATION.—The Administrator of the TSA shall coordinate with the Chief Human Capital Officer of the Department of Homeland Security to implement any recommendations made pursuant to subparagraph (B) within the timeframes established by the Chief Human Capital Officer.

(5) INFORMATION TO CONGRESS.—The Administrator of the TSA shall make the results of the unannounced inspections, including any recommended corrective actions for addressing variances, identified under this subsection readily available to—

(A) the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives;

(B) the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on Appropriations of the Senate; and

(C) as appropriate, personnel of the Department of Homeland Security, as determined by the Administrator.

(6) DEFINITIONS.—In this subsection:

(A) ACTIONS.—The term "actions" means consequences for employee misconduct, up to and including removal from Federal Service, established by TSA policy.

(B) UNANNOUNCED INSPECTIONS.—The term "unannounced inspections" means a review of information without providing advanced notice to the party under review.

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DISSENTING VIEWS

On behalf of Committee Democrats, I submit these dissenting views with respect to H.R. 1351, the "Strengthening Oversight of TSA Employee Misconduct Act," a bill premised on unsubstantiated claims of wide-scale misconduct within the transportation security officer (TSO) workforce that, if enacted, could result in limited Transportation Security Administration (TSA) auditing resources being diverted from investigating security-related concerns.

The TSO workforce has been effective at protecting the flying public since federalization of their duties following the terrible events of 9/11. The TSO workforce is the face of TSA and are the DHS employees the public is most likely to encounter. In 2016, the TSO workforce screened more than 2 million passengers per day (738 million in total).[1] The men and women that serve on TSA's frontlines stopped over 3,000 firearms from being brought on planes in carry-on bags in 2016.[2]

There is no evidence to support the premise of H.R. 1351—that the TSO workforce is more likely to engage in misconduct than other federal workers and, thus, specific legislation requiring heightened scrutiny for this workforce is unwarranted. It is important to keep in mind that amongst government agencies, TSA consistently ranks near the bottom for best places to work, ranking 303 out of 305 in 2016.[3] With their notoriously low workforce morale, a bill such as H.R. 1351 that singles out the agency, risks further demoralizing TSOs and creating an atmosphere of fear and mistrust.

Beyond insulting the TSO workforce, H.R. 1351, as drafted, has fundamental flaws that, according to TSA, sow confusion about what the agency would actually be mandated to do. Specifically, in advance of the Full Committee's consideration of this measure, TSA communicated to the Committee that it is unsure of whether it would be expected to divert its limited inspection resources away from its risk-based review of security operations and administrative matters, including personnel matters, to conduct unannounced audits of documentation on how misconduct is managed at each airport in the United States.

Further, to carry out an effective audit, TSA indicated that there needs to be coordination with the leadership within an audited airport to ensure that needed documents are available for review. TSA told the Committee, informally, that the unannounced audit regime is a recipe for waste since, under TSA's "hub and spoke model" documents are centrally housed at certain airports. Furthermore, the

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[1] TSA Releases 2016 Statistics. National Press Release. January 12, 2017. *https: http://blog.tsa.gov/2017/01/tsa-year-in-review-record-amount-of.html.*

[2] *Id.*

[3] "Best Places to Work in the Federal Government." December 2016. Accessed July 14, 2017. *http://bestplacestowork.org/BPTW/rankings/detail/HS10.*

bill fails to recognize that each incident of misconduct is unique by nature and requires a detailed analysis in order to make informed decisions. Identifying the number of instances of misconduct does not identify causation. Simply collecting paperwork from airports across the country cannot paint an accurate picture of all incidents and is a misguided approach to oversight.

Further, as drafted, it is unclear which entities and persons would be responsible for carrying out the mandated inspections. H.R. 1351 offers no guidance on which office within TSA would be responsible for the unannounced inspections. It only states that a "senior official" would be responsible.

TSA's Audits and Inspections Division has an inspection program that utilizes a risk-based approach to focus on higher impact operational and administrative areas. The Committee was told by TSA that if the Audits and Inspections Division is tasked with performing the new unannounced inspection regime, it could result in approximately 20% of their project work, from the date of passage through the subsequent 5 years, needing to be abandoned until the requirements of the bill are met.

This bill is unnecessary as there are already extensive procedures in place at TSA to handle misconduct. For almost 16 years, TSA has maintained its own disciplinary procedures and already has several senior officials, including the Chief Human Capital Officer and the Director of Employee Relations, whose duties include tracking disciplinary actions. Moreover, TSA's Office of Professional Responsibility Appellate Review Board tracks and oversees disciplinary actions. Additionally, Congress already has the authority to request information on TSA disciplinary actions, and TSA has provided such information repeatedly.

H.R. 1351 is vague, confusing for TSA, wasteful, and could result in limited homeland security resources being improperly diverted. Most importantly, it lacks a well-reasoned rationale and is based on false notions about the degree to which there are discipline issues within the TSO workforce. The men and women of TSA should be supported by Congress, not put down, as they endeavor every day, often in stressful and understaffed environments, to ensure that the American flying public is secure.

For all these reasons, on behalf of Committee Democrats, I strongly dissent against H.R. 1351 and urge my colleagues in the House of Representatives to stand with the over 44,000 TSOs nationwide and reject H.R. 1351.

BENNIE G. THOMPSON.