

## **H.R. XXXX**

To enhance aviation security and the efficiency of the Federal Air Marshal workforce by making the Federal Air Marshal Program a collateral duty of Homeland Security Investigations, and for other purposes.

### **IN THE HOUSE OF REPRESENTATIVES**

**DECEMBER XX, 2023**

[Member] of [State] introduced the following bill; which was referred to the Committee(s) on [ ]

#### **A BILL**

To enhance aviation security and the efficiency of the Federal Air Marshal workforce by making the Federal Air Marshal Program a collateral duty of Homeland Security Investigations, and for other purposes.

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

#### **SECTION 1. SHORT TITLE**

This Act may be cited as the "Federal Air Marshal Service Reform and Reorganization Act".

#### **SEC. 2. SENSE OF CONGRESS**

It is the sense of Congress that the Federal Air Marshal Service is critical to aviation security and needs to be made more efficient

- 1) By making the Federal Air Marshal (FAM) Service a program managed under Homeland Security Investigations (HSI)
- 2) By assigning HSI agents to FAM program duties, and providing that agents should serve 5 years in this role at the beginning of their career when agents are more physically capable of maintaining the demanding flight schedule<sup>1</sup>. This provides a surge capacity of trained agents at times of heightened risk, and provides better opportunities to utilize FAMs in other HSI programs during periods of reduced risk.

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<sup>1</sup> "FAMs cannot sustain a career in an airborne position based on such factors such as the frequency of flying and their irregular schedules". GAO 06-203. "Air marshals' most common medical restrictions were due to mental health and cardiac conditions. Shift work schedules, like air marshals' flight schedules, can cause significant acute and chronic sleep deprivation which in turn can adversely affect their personal health, such as increasing the risk of heart disease." GAO-20-125.

- 3) By granting FAMs investigative authority at all aviation and transportation facilities and checkpoints. Currently, federal crimes occurring at transportation facilities and checkpoints are not addressed, and local law enforcement can only investigate crimes to the extent of local statute. FAMs under HSI will complement complex investigations by utilizing FAMs at airports and on board us flagged carriers to further HSI investigations of transnational criminal activities.<sup>2</sup>
- 4) By granting FAMs sole investigative authority to investigate and prosecute crimes committed within the special aircraft jurisdiction, and concurrent authority to investigate acts of terrorism at airports and within the special aircraft jurisdiction.
- 5) By granting FAMs sole investigative authority for aviation insider threats, granting them authority to access local LEO and stakeholder databases, and establishing an aviation ground worker call line for aviation workers to report suspicious activity.
- 6) By allowing FAMs that transition to HSI the ability to sunset in their current role as 1801 agents, and continue in flight security missions under HSI at their current pay rate.
- 7) By assigning FAMs to flights based on intelligence and risk, and providing corresponding briefings to the assigned FAMs.
- 8) By directing FAMs under HSI to train crew members in defensive measures.
- 9) By consolidating the TSA FFDO program within the FAM program under HSI.
- 10) By providing that all TSES assigned to the FAMS remain at TSA.
- 11) By increasing FAM program hiring standards through the reimplementation of higher marksmanship requirements<sup>3</sup>.
- 12) By reallocating a percentage of the aviation security fees collected by the federal government to implement the HSI FAM program.
- 13) By reducing the TSA budget and increasing the HSI budget by the amount currently allocated for TSA FAMS.

### **SEC. 3. TRANSFER OF FEDERAL AIR MARSHAL SERVICE TO IMMIGRATION AND CUSTOMS ENFORCEMENT**

- (a) Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall transfer all programs, operations, equipment, personnel, facilities and necessary items of the Federal Air Marshal Service under the authority of the Administrator of the Transportation Security Administration to the authority of the Director of Immigration and Customs Enforcement.
- (b) Upon completion of the transfer in subsection (a) the Director of Immigration and Customs Enforcement shall establish the Federal Air Marshal program within Homeland Security Investigations.

### **SEC. 4 CONVERSION OF FEDERAL AIR MARSHALS TO HOMELAND SECURITY INVESTIGATIONS**

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<sup>2</sup> <https://img1.wsimg.com/blobby/go/35b4b3df-dc41-441c-86ac-a28d07d531b1/downloads/FAMS%201811%20Committee%20Report%2002262020.pdf?ver=1649035167083>

<sup>3</sup> "FAMS significantly lessened their shooting qualifications to increase hiring." GAO-04-242.

Upon transfer to homeland security investigations, all Federal Air Marshals will:

- (a) Be placed in the General Schedule pay scale to the appropriate step based on time of service in accordance with 5U.S.C. 5376 and 5 U.S.C. 5332
  - (a) Providing that no Federal Air Marshal shall be subject to a reduction in pay.
- (b) No later than 2 years after the date of enactment of this Act:
  - a. be converted to Criminal Investigator series 1811 and receive the appropriate training to effect this conversion.
  - b. Allow converted Federal Air Marshals to elect to remain in 1801 series conducting in-flight security duties subject to the provisions set forth in SEC. 4 c-f of this Act.
- (c) Retirement Pay - Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the appropriate Congressional committees a proposal, including proposed legislative changes if needed, for determining a covered employee's average pay for purposes of calculating the employee's retirement annuity, consistent with title 5 United States Code, for any covered employee who retires within three years of the conversion date, in a manner that appropriately accounts for time in service and annual rate of basic pay following the conversion date.
- (d) Premium Pay - Notwithstanding section 5547 of title 5, United States Code, or any other provision of law, the Office of Personnel Management shall recognize the premium pay of a Federal Air Marshal or criminal investigator hired prior to the date of enactment of this Act, and consider such pay fully creditable for the purposes of calculating pay and retirement benefits.
- (e) Preservation Of Law Enforcement Availability Pay And Overtime Pay Rates For Federal Air Marshals.-
  - a. LEAP – Section 5545a of title 5, United States Code, is amended by adding at the end the following:
    - i. ‘The provisions of subsections (a)-(h) providing for availability pay shall apply to any Federal Air Marshal who is an employee of the Transportation Security Administration and converted to Homeland Security Investigations.’
  - b. OVERTIME - Section 5542 of such title is amended by adding at the end the following:
    - i. Notwithstanding any other provision of law, a Federal Air Marshal who is an employee of the Transportation Security Administration after conversion to Homeland Security Investigations shall receive overtime pay under this section, at such a rate and in such a manner, so that such Federal Air Marshal does not receive less overtime pay than such Federal Air Marshal would receive were that Federal Air Marshal subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938.”
- (f) Accrued Leave - Any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to a covered employee immediately before the conversion date shall remain available to the employee until used, subject to any limitation on accumulated leave under chapter 63 of title 5, United States Code.

## **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS**

- (a) Section 1402(c)(2) of the Homeland Security Act of 2002 (6 U.S.C. 513) is amended by striking 'Under Secretary of Transportation for Security' and replacing it with 'Director of Immigration and Customs Enforcement'.

(b) Chapter 449-Security of Title 49 U.S.C. is amended by striking 'Administrator of the Transportation Security Administration' and 'Administrator' where they appear and inserting 'Director of Immigration and Customs Enforcement'.

(c) 49 USC 44921 is amended by striking 'Administrator' where it appears and replacing it with 'Director'

(d) Subsection (1)(l) of 49 USC 44921 is amended by striking 'Administrator of the Transportation Security Administration' and inserting 'Director of Immigration and Customs Enforcement'.

(e) Subsection (1)(3) of 49 USC 44921 is amended by striking 'Transportation Security Administration' and inserting 'Homeland Security Investigations'.

(f) [TSA to HSI budget research if needed and appropriate]

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