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110th Congress }
1st Session }

SENATE

{ REPORT
110-79

TO EXTEND THE DATE ON WHICH THE
NATIONAL SECURITY PERSONNEL SYSTEM
WILL FIRST APPLY TO CERTAIN DEFENSE
LABORATORIES

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 457

TO EXTEND THE DATE ON WHICH THE NATIONAL SECURITY PER-
SONNEL SYSTEM WILL FIRST APPLY TO CERTAIN DEFENSE LAB-
ORATORIES



JUNE 11, 2007.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 457]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 457) to extend the date on which the National Security Personnel System will first apply to certain defense laboratories, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 457 is to extend from October 1, 2008, to October 1, 2011, the earliest date on which the National Security Personnel System (NSPS) may become applicable with respect to certain Department of Defense (DOD) laboratories. On and after that date, if S. 457 is enacted, existing statute would subject the laboratories to the NSPS only to the extent that the Secretary determines that the flexibilities provided by the NSPS are greater than the flexibilities provided to the laboratories under other authorities.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 established the NSPS,¹ which is a new personnel management system under which the DOD was granted substantial authorities for managing its civilian workforce. However, that legislation also expressed a recognition of the work that the Defense laboratories had invested into developing alternative personnel systems under separate statutory authority, by excluding the laboratories from being covered by NSPS at least until that new system is implemented and evaluated. Specifically, the 2003 statute stated that the Defense laboratories would continue being governed by their separate statutory authorities before October 1, 2008, and on and after that date would come under the NSPS only to the extent that the Secretary of Defense “determines that the flexibilities provided by the National Security Personnel System are greater than the flexibilities provided” to the laboratories.²

However, the Department of Defense has implemented NSPS more slowly than was originally planned.³ The Department converted the first group of employees, approximately 11,000, into NSPS in April 2006, and those employees received their first pay adjustment in January 2007. A second group, of approximately 66,000 employees, referred to as Spiral 1.2, were converted to the NSPS performance management system between October 2006 and February 2007. Further slowing the Department’s implementation is a lawsuit filed by federal employee unions against provisions of the final NSPS regulations.⁴ As a result of the lawsuit, the Department has not converted any employees in bargaining units to the new system, further delaying Department-wide implementation of NSPS.

Furthermore, even after this partial implementation of the NSPS, an additional number of years will be needed to assess the program. In analogous situations, Congress has established through the demonstration project authority of title 5, United States Code, a five-year time period to test and evaluate new personnel practices.⁵ GAO also has reported that major change management takes between five and seven years.⁶ Evaluations of Defense Department demonstration projects conducted by the Office of Personnel Management, including the original Navy project at China Lake, have found that such projects require more than five years before employee approval has reached a 66 percent threshold.⁷

¹Title XI of Public Law 108–136 (Nov. 24, 2003), adding 5 U.S.C. §§9901 et seq.

²5 U.S.C. §9902(c).

³The Department’s original plan for implementation was described in testimony delivered on March 15, 2005, by the Honorable Charles Abell, Principle Deputy Under Secretary of Defense, testified before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia of the Senate Committee on Homeland Security and Governmental Affairs. Under the proposed plan that he described, the first Spiral of NSPS, including up to 300,000 employees, would be implemented as early as July 2005, and the NSPS would be fully implemented by 2008.

⁴The most recent decision in this litigation was *AFGE v. Gates*, No. 06–5113 (D.C. Cir., May 18, 2007).

⁵5 U.S.C. §4703.

⁶GAO–03–669, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*.

⁷U.S. Office of Personnel Management, “Summative evaluation 2002–DoD S&T Reinvention Laboratory Demonstration Program,” 2002.

Accordingly, S. 457 would provide the Secretary of Defense with the necessary years of data on NSPS to make a thorough and informed comparison of the flexibilities in NSPS and the laboratories personnel authority. Under the bill, the earliest date on which the NSPS might be made applicable to the Defense laboratories is extended from the current statutory date of October 1, 2008 to October 1, 2011. Even then, the laboratories may be made subject to NSPS on and after that date only to the extent that the personnel flexibilities provided under the NSPS are greater than the personnel flexibilities provided to the laboratories under their existing statutory authorities. In this way, the Committee seeks to ensure the Department has a complete understanding of NSPS before evaluating and comparing it to the personnel systems in place at its laboratories.

III. LEGISLATIVE HISTORY

On January 31, 2007, S. 457 was introduced by Senator Voinovich. Senators Bayh, Bingaman, Brown, Clinton, Domenici, Kennedy, Lieberman, Lott, Reed, and Sessions are cosponsors of S. 457. The legislation was referred to the Committee on Homeland Security and Governmental Affairs.

On February 15, 2007, by voice vote, the Committee on Homeland Security and Governmental Affairs ordered S. 457 reported favorably without amendment.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Extension of date of application of National Security Personnel System to Defense Laboratories

This section amends section 9902 of title 5, United States Code by replacing “October 1, 2008” with “October 1, 2011.”

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VI. ESTIMATED COST OF LEGISLATION

S. 457—A bill to extend the date on which the National Security Personnel System will first apply to certain defense laboratories

S. 457 would delay the implementation of the National Security Personnel System (NSPS) at certain defense laboratories until October 1, 2011. Under current law, the employees at those laboratories may not be brought into the NSPS before October 1, 2008.

The NSPS was authorized as part of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), and the new system is currently in the process of being implemented by the Department of Defense (DoD). In general, NSPS provides greater flexibility in the award of civilian pay raises and bonuses than the General Schedule. The original authority for the NSPS prohibits implementation of the new personnel system at certain defense lab-

oratories until October 1, 2008, in part because those laboratories already possess flexible hiring and compensation systems. The original delay in implementing the NSPS at those organizations was meant to allow time to study the flexibilities offered under the NSPS as compared to their current personnel systems. Based on information from DoD, those laboratories employ about 38,000 civilians.

Because the NSPS is supposed to be implemented in a manner that would not affect the total payroll of the compensation system it is designed to replace, CBO expects that enacting S. 457 would have no significant budgetary effect.

S. 457 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 Matt Schmit. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following 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, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

Subpart I—Miscellaneous

CHAPTER 99. DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

SEC. 9902. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM

* * * * *

(c) PERSONNEL MANAGEMENT AT DEFENSE LABORATORIES.—(1) The National Security Personnel System shall not apply with respect to a laboratory under paragraph (2) before **[October 1, 2008]** *October 1, 2011*, and shall apply on or after **[October 1, 2008]** *October 1, 2011*, only to the extent that the Secretary determines that the flexibilities provided by the National Security Personnel System are greater than the flexibilities provided to those laboratories pursuant to section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2721) and section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note), respectively.

* * * * *