

**AMENDMENT TO H.R. 5005, AS REPORTED**

**OFFERED BY \_\_\_\_\_**

In section 761(a) of the bill, redesignate paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and insert after the heading for subsection (a) the following:

1           (1) SENSE OF CONGRESS.—It is the sense of  
2           the Congress that—

3                   (A) it is extremely important that employ-  
4                   ees of the Department be allowed to participate  
5                   in a meaningful way in the creation of any  
6                   human resources management system affecting  
7                   them;

8                   (B) such employees have the most direct  
9                   knowledge of the demands of their jobs and  
10                  have a direct interest in ensuring that their  
11                  human resources management system is condu-  
12                  cive to achieving optimal operational effi-  
13                  ciencies;

14                  (C) the 21st century human resources  
15                  management system envisioned for the Depart-  
16                  ment should be one that benefits from the input  
17                  of its employees; and

18                  (D) this collaborative effort will help se-  
19                  cure our homeland.



In paragraph (4) of section 9701(b) of title 5, United States Code (as proposed to be added by section 761(a) of the bill), strike all that follows “by law” and insert “; and”.

In section 9701 of title 5, United States Code (as proposed to be added by section 761(a) of the bill), redesignate subsection (e) as subsection (g) and insert after subsection (d) the following:

1 “(e) PROVISIONS TO ENSURE COLLABORATION WITH  
2 EMPLOYEE REPRESENTATIVES.—

3 “(1) IN GENERAL.—In order to ensure that the  
4 authority of this section is exercised in collaboration  
5 with, and in a manner that ensures the direct par-  
6 ticipation of employee representatives in the plan-  
7 ning, development, and implementation of any  
8 human resources management system or adjust-  
9 ments under this section, the Secretary of Homeland  
10 Security and the Director of the Office of Personnel  
11 Management shall provide for the following:

12 “(A) NOTICE OF PROPOSAL, ETC.—The  
13 Secretary and the Director shall, with respect  
14 to any proposed system or adjustment—

15 “(i) provide to each employee rep-  
16 resentative representing any employees  
17 who might be affected, a written descrip-



1                   tion of the proposed system or adjustment  
 2                   (including the reasons why it is considered  
 3                   necessary);

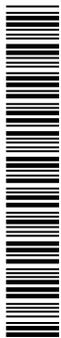
4                   “(ii) give each representative at least  
 5                   60 days (unless extraordinary cir-  
 6                   cumstances require earlier action) to re-  
 7                   view and make recommendations with re-  
 8                   spect to the proposal; and

9                   “(iii) give any recommendations re-  
 10                  ceived from any such representative under  
 11                  clause (ii) full and fair consideration in de-  
 12                  ciding whether or how to proceed with the  
 13                  proposal.

14                  “(B) PRE-IMPLEMENTATION REQUIRE-  
 15                  MENTS.—If the Secretary and the Director de-  
 16                  cide to implement a proposal described in sub-  
 17                  paragraph (A), they shall before  
 18                  implementation—

19                  “(i) give each employee representative  
 20                  details of the decision to implement the  
 21                  proposal, together with the information  
 22                  upon which the decision was based;

23                  “(ii) give each representative an op-  
 24                  portunity to make recommendations with  
 25                  respect to the proposal; and



1                   “(iii) give such recommendations full  
 2                   and fair consideration, including the pro-  
 3                   viding of reasons to an employee represent-  
 4                   ative if any of its recommendations are re-  
 5                   jected.

6                   “(C) CONTINUING COLLABORATION.—If a  
 7                   proposal described in subparagraph (A) is im-  
 8                   plemented, the Secretary and the Director  
 9                   shall—

10                   “(i) develop a method for each em-  
 11                   ployee representative to participate in any  
 12                   further planning or development which  
 13                   might become necessary; and

14                   “(ii) give each employee representative  
 15                   adequate access to information to make  
 16                   that participation productive.

17                   “(2) PROCEDURES.—Any procedures necessary  
 18                   to carry out this subsection shall be established by  
 19                   the Secretary and the Director jointly. Such proce-  
 20                   dures shall include measures to ensure—

21                   “(A) in the case of employees within a unit  
 22                   with respect to which a labor organization is ac-  
 23                   corded exclusive recognition, representation by  
 24                   individuals designated or from among individ-  
 25                   uals nominated by such organization;



1           “(B) in the case of any employees who are  
 2 not within such a unit, representation by any  
 3 appropriate organization which represents a  
 4 substantial percentage of those employees or, if  
 5 none, in such other manner as may be appro-  
 6 priate, consistent with the purposes of this sub-  
 7 section; and

8           “(C) the selection of representatives in a  
 9 manner consistent with the relative numbers of  
 10 employees represented by the organizations or  
 11 other representatives involved.

12       “(f) PROVISIONS RELATING TO APPELLATE PROCE-  
 13 DURES.—

14           “(1) SENSE OF CONGRESS.—It is the sense of  
 15 the Congress that—

16           “(A) employees of the Department of  
 17 Homeland Security are entitled to fair treat-  
 18 ment in any appeals that they bring in decisions  
 19 relating to their employment; and

20           “(B) in prescribing regulations for any  
 21 such appeals procedures, the Secretary of  
 22 Homeland Security and the Director of the Of-  
 23 fice of Personnel Management—



1                   “(i) should ensure that employees of  
2                   the Department are afforded the protec-  
3                   tions of due process; and

4                   “(ii) toward that end, should be re-  
5                   quired to consult with the Merit Systems  
6                   Protection Board before issuing any such  
7                   regulations.

8                   “(2) REQUIREMENTS.—Any regulations under  
9                   this section which relate to any matters within the  
10                  purview of chapter 77—

11                  “(A) shall be issued only after consultation  
12                  with the Merit Systems Protection Board; and

13                  “(B) shall ensure the availability of proce-  
14                  dures which shall—

15                  “(i) be consistent with requirements  
16                  of due process; and

17                  “(ii) provide, to the maximum extent  
18                  practicable, for the expeditious handling of  
19                  any matters involving the Department of  
20                  Homeland Security.

