

119TH CONGRESS
1ST SESSION

S. _____

To provide collective bargaining rights for public safety officers employed by States or their political subdivisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HICKENLOOPER (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To provide collective bargaining rights for public safety officers employed by States or their political subdivisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Safety Em-
5 ployer-Employee Cooperation Act”.

6 **SEC. 2. PURPOSE AND POLICY.**

7 Congress declares that the following is the policy of
8 the United States:

1 (1) Labor-management relationships and part-
2 nerships are based on trust, mutual respect, open
3 communication, bilateral consensual problem solving,
4 and shared accountability. Labor-management co-
5 operation fully uses the strengths of both parties to
6 best serve the interests of the public: operating as a
7 team to carry out the public safety mission in a
8 quality work environment. In many public safety
9 agencies, it is the labor organization that provides
10 the institutional stability as elected leaders and ap-
11 pointees come and go.

12 (2) State and local public safety officers play an
13 essential role in the efforts of the United States to
14 detect, prevent, and respond to terrorist attacks and
15 to respond to natural disasters, hazardous materials,
16 and other mass casualty incidents. State and local
17 public safety officers, as first responders, are a com-
18 ponent of the National Incident Management Sys-
19 tem, developed by the Department of Homeland Se-
20 curity to coordinate response to and recovery from
21 terrorism, major natural disasters, and other major
22 emergencies. Public safety employer-employee co-
23 operation is essential in meeting these needs and is,
24 therefore, in the national interest.

1 (3) The Federal Government needs to encour-
2 age conciliation, mediation, and arbitration to aid
3 and encourage public safety employers and the rep-
4 resentatives of their employees to reach and main-
5 tain agreements concerning rates of pay, hours, and
6 working conditions and to make all reasonable ef-
7 forts through negotiations to settle their differences
8 by mutual agreement reached through collective bar-
9 gaining or by such methods as may be provided for
10 in any applicable agreement for the settlement of
11 disputes.

12 (4) The absence of adequate cooperation be-
13 tween public safety employers and employees has im-
14 plications for the security of employees and can af-
15 fect interstate and intrastate commerce. The lack of
16 such labor-management cooperation can detrimen-
17 tally impact the upgrading of law enforcement, fire,
18 and emergency medical services of local commu-
19 nities, the health and well-being of public safety offi-
20 cers, and the morale of law enforcement, fire, and
21 emergency medical service departments. Addition-
22 ally, these factors could have significant commercial
23 repercussions. Moreover, providing minimal stand-
24 ards for collective bargaining negotiations in the
25 public safety sector can prevent industrial strife be-

1 tween labor and management that interferes with
2 the normal flow of commerce.

3 (5) Many States and localities already provide
4 public safety officers with collective bargaining
5 rights comparable to or greater than the rights and
6 responsibilities set forth in this Act, and such State
7 and local laws should be respected.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) **AUTHORITY.**—The term “Authority” means
11 the Federal Labor Relations Authority.

12 (2) **CONFIDENTIAL EMPLOYEE.**—The term
13 “confidential employee”, with respect to the applica-
14 tion of this Act in a State—

15 (A) has the meaning given such term (or
16 a substantially equivalent term) under any ap-
17 plicable State law of such State on the date of
18 enactment of this Act; or

19 (B) if no such applicable State law is in ef-
20 fect in such State, means an individual, em-
21 ployed by a public safety employer, who—

22 (i) is designated as confidential; and

23 (ii) is an individual who routinely as-
24 sists, in a confidential capacity, any super-
25 visory employee or management employee.

1 (3) EMERGENCY MEDICAL SERVICES EM-
2 PLOYEE.—The term “emergency medical services
3 employee” means an individual who provides out-of-
4 hospital emergency medical care, including an emer-
5 gency medical technician, paramedic, or first re-
6 sponder.

7 (4) EMPLOY.—The term “employ” has the
8 meaning given the term in section 3 of the Fair
9 Labor Standards Act of 1938 (29 U.S.C. 203).

10 (5) FIREFIGHTER.—The term “firefighter” has
11 the meaning given the term “employee in fire protec-
12 tion activities” in section 3 of the Fair Labor Stand-
13 ards Act of 1938 (29 U.S.C. 203).

14 (6) LABOR ORGANIZATION.—The term “labor
15 organization” means an organization of any kind, in
16 which public safety officers participate and which ex-
17 ists for the purpose, in whole or in part, of dealing
18 with a public safety employer concerning grievances,
19 conditions of employment, and related matters.

20 (7) LAW ENFORCEMENT OFFICER.—The term
21 “law enforcement officer” has the meaning given
22 such term in section 1204 of the Omnibus Crime
23 Control and Safe Streets Act of 1968 (34 U.S.C.
24 10284).

1 (8) MANAGEMENT EMPLOYEE.—The term
2 “management employee”, with respect to the appli-
3 cation of this Act in a State—

4 (A) has the meaning given such term (or
5 a substantially equivalent term) under any ap-
6 plicable State law of such State on the date of
7 enactment of this Act; or

8 (B) if no such applicable State law is in ef-
9 fect in such State, means an individual em-
10 ployed by a public safety employer in a position
11 that requires or authorizes the individual to for-
12 mulate, determine, or influence the policies of
13 the public safety employer.

14 (9) PERSON.—The term “person” means an in-
15 dividual or a labor organization.

16 (10) PUBLIC SAFETY EMPLOYER.—

17 (A) IN GENERAL.—The term “public safe-
18 ty employer” means any State, or political sub-
19 division of a State, that employs a public safety
20 officer.

21 (B) APPLICABILITY.—For purposes of this
22 Act, a public safety employer shall be consid-
23 ered to be engaged in commerce or in an indus-
24 try or activity affecting commerce.

1 (11) PUBLIC SAFETY OFFICER.—The term
2 “public safety officer”—

3 (A) means an individual employed by a
4 public safety employer who is a law enforcement
5 officer, a firefighter, or an emergency medical
6 services employee;

7 (B) includes an individual who is tempo-
8 rarily transferred to a supervisory or manage-
9 ment position; and

10 (C) except as provided in subparagraph
11 (B), does not include—

12 (i) a supervisory employee;

13 (ii) a management employee; or

14 (iii) a confidential employee.

15 (12) STATE.—The term “State” means each of
16 the several States of the United States, the District
17 of Columbia, and any territory or possession of the
18 United States.

19 (13) SUBSTANTIALLY PROVIDES.—The term
20 “substantially provides”, when used with respect to
21 the rights and responsibilities described in section
22 4(b), means providing rights and responsibilities
23 that are comparable to or greater than each right
24 and responsibility described in such section.

1 (14) SUPERVISORY EMPLOYEE.—The term “su-
2 pervisory employee”, with respect to the application
3 of this Act in a State—

4 (A) has the meaning given such term (or
5 a substantially equivalent term) under any ap-
6 plicable State law of such State on the date of
7 enactment of this Act; or

8 (B) if no such applicable State law is in ef-
9 fect in such State, an individual, employed by
10 a public safety employer, who—

11 (i) has the authority in the interest of
12 the public safety employer, if the exercise
13 of such authority is not merely routine or
14 clerical in nature but requires the con-
15 sistent exercise of independent judgment,
16 to—

17 (I) hire, direct, assign, promote,
18 reward, transfer, furlough, lay off, re-
19 call, suspend, discipline, or remove
20 public safety officers;

21 (II) adjust the grievances of pub-
22 lic safety officers; or

23 (III) effectively recommend any
24 action described in subclause (I) or
25 (II); and

1 (ii) devotes a majority of time at work
2 to exercising such authority.

3 (15) UNFAIR LABOR PRACTICE.—The term
4 “unfair labor practice” means a practice described
5 in section 7116 of title 5, United States Code, ex-
6 cept that, in applying such section—

7 (A) “public safety officer” shall be sub-
8 stituted for “employee”;

9 (B) “public safety employer” shall be sub-
10 stituted for “agency”; and

11 (C) “this Act” shall be substituted for
12 “this chapter”.

13 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**
14 **ITIES.**

15 (a) DETERMINATION.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of enactment of this Act (except as
18 provided in paragraph (4)(B)), the Authority shall
19 make a determination for each State as to whether
20 a State substantially provides for each of the rights
21 and responsibilities described in subsection (b).

22 (2) CONSIDERATION OF ADDITIONAL OPIN-
23 IONS.—In making the determination described in
24 paragraph (1), the Authority shall consider the opin-
25 ions of affected public safety employers and labor or-

1 organizations. In the case where the Authority is noti-
2 fied by an affected public safety employer and labor
3 organization that both parties agree that the law ap-
4 plicable to such public safety employer and labor or-
5 ganization substantially provides for the rights and
6 responsibilities described in subsection (b), the Au-
7 thority shall give such agreement weight to the max-
8 imum extent practicable in making the Authority's
9 determination under paragraph (1).

10 (3) LIMITED CRITERIA.—In making the deter-
11 mination described in paragraph (1), the Authority
12 shall be limited to the application of the criteria de-
13 scribed in subsection (b).

14 (4) SUBSEQUENT DETERMINATIONS.—

15 (A) IN GENERAL.—A determination made
16 pursuant to paragraph (1) shall remain in ef-
17 fect unless and until the Authority issues a sub-
18 sequent determination, in accordance with the
19 procedures set forth in subparagraph (B).

20 (B) PROCEDURES FOR SUBSEQUENT DE-
21 TERMINATIONS.—A public safety employer or a
22 labor organization may submit to the Authority
23 a written request for a subsequent determina-
24 tion with respect to whether a material change

1 of State law (or an interpretation of such law)
2 has occurred.

3 (C) ISSUANCE OF SUBSEQUENT DETER-
4 MINATION.—If satisfied that a material change
5 in State law or its interpretation has occurred,
6 the Authority shall issue a subsequent deter-
7 mination under paragraph (1) not later than 30
8 days after receipt of such request.

9 (5) EXCEPTION.—The Authority shall not make
10 a determination under paragraph (1) that the laws
11 of a State do not substantially provide for each of
12 the rights and responsibilities described in sub-
13 section (b) on the basis that relevant State laws—

14 (A) permit an employee to appear on the
15 employee's own behalf with respect to the em-
16 ployee's employment relations with the public
17 safety employer involved;

18 (B) do not apply to a political subdivision
19 of the State if such political subdivision—

20 (i) has a population of fewer than
21 5,000 individuals; or

22 (ii) employs fewer than 25 full-time
23 employees (excluding any individual elected
24 by popular vote or appointed to serve on a
25 board or commission); or

1 (C) do not require bargaining with respect
2 to pension, retirement, or health benefits.

3 (6) JUDICIAL REVIEW.—Any person or public
4 safety employer aggrieved by a determination of the
5 Authority under paragraph (1) may, during the 60-
6 day period beginning on the date on which the deter-
7 mination was made, petition any United States
8 Court of Appeals in the circuit in which the person
9 or public safety employer resides or transacts busi-
10 ness or in the Court of Appeals for the District of
11 Columbia Circuit, for judicial review.

12 (b) RIGHTS AND RESPONSIBILITIES.—The rights and
13 responsibilities described under this subsection are the fol-
14 lowing:

15 (1) A right of public safety officers to form and
16 join a labor organization—

17 (A) which may exclude any management
18 employee, supervisory employee, or confidential
19 employee, and

20 (B) that is, or seeks to be, recognized as
21 the exclusive bargaining representative of such
22 public safety officers.

23 (2) A requirement that any public safety em-
24 ployer—

1 (A) recognize the labor organization of its
2 public safety officers (freely chosen by a major-
3 ity of the public safety officers);

4 (B) agree to bargain with such labor orga-
5 nization; and

6 (C) commit any agreements with such
7 labor organization to writing in a contract or
8 memorandum of understanding.

9 (3) A right of public safety officers to bargain
10 with respect to hours, wages, and terms and condi-
11 tions of employment.

12 (4) A right to binding interest arbitration as a
13 mechanism to resolve an impasse in collective bar-
14 gaining negotiations.

15 (5) A right to enforcement of all rights, respon-
16 sibilities, and protections enumerated in this sub-
17 section, and of any written contract or memorandum
18 of understanding between a labor organization and
19 a public safety employer, through—

20 (A) a State administrative agency, if the
21 State so chooses; or

22 (B) any court of competent jurisdiction.

23 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-
24 thority determines under subsection (a)(1) that a State
25 substantially provides each of the rights and responsibil-

ities described in subsection (b), then subsection (d) shall not apply and this Act shall not preempt the laws of such State.

(d) FAILURE TO MEET REQUIREMENTS.—

(1) IN GENERAL.—If the Authority determines under subsection (a)(1) that a State does not substantially provide for the rights and responsibilities described in subsection (b), then such State shall be subject to the regulations and procedures described in section 5 beginning on the later of—

(A) the date that is 2 years after the date of enactment of this Act;

(B) the date that is the last day of the first regular session of the legislature of the State that begins after the date the Authority makes a determination under subsection (a)(1); or

(C) in the case of a State receiving a subsequent determination under subsection (a)(4), the date that is the last day of the first regular session of the legislature of the State that begins after the date the Authority made the determination.

(2) PARTIAL FAILURE.—If the Authority determines under subsection (a)(1) that a State does not

1 substantially provide for the rights and responsibil-
2 ities described in subsection (b) because the State
3 law substantially provides for such rights and re-
4 sponsibilities for certain categories of public safety
5 officers covered by this Act but not others, the Au-
6 thority shall identify those categories of public safety
7 officers that shall be subject to the regulations and
8 procedures described in section 5, pursuant to sec-
9 tion 8(b)(3) and beginning on the appropriate date
10 described in paragraph (1), and those categories of
11 public safety officers that shall remain solely subject
12 to State law with respect to the rights and respon-
13 sibilities described in subsection (b).

14 **SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of enactment of this Act, the Authority shall issue
17 regulations, in accordance with the rights and responsibil-
18 ities described in section 4(b), establishing collective bar-
19 gaining procedures for public safety employers and public
20 safety officers that substantially provide for the minimum
21 standards described in section 4(b) for States described
22 in section 4(d).

23 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
24 THORITY.—In carrying out subsection (a), the Authority
25 shall—

1 (1) determine the appropriateness of units for
2 labor organization representation;

3 (2) supervise or conduct elections to determine
4 whether a labor organization has been chosen as an
5 exclusive representative by a voting majority of the
6 public safety officers in an appropriate unit;

7 (3) resolve issues relating to the duty to bar-
8 gain in good faith;

9 (4) conduct hearings and resolve complaints of
10 unfair labor practices;

11 (5) resolve exceptions to the awards of arbitra-
12 tors;

13 (6) protect the right of each employee to form,
14 join, or assist any labor organization or to refrain
15 from any such activity, freely and without fear of
16 penalty or reprisal, and protect each employee in the
17 exercise of such right; and

18 (7) take such other actions as are necessary
19 and appropriate to effectively administer this Act,
20 including issuing subpoenas requiring the attendance
21 and testimony of witnesses and the production of
22 documentary or other evidence from any place in the
23 United States, and administering oaths, taking or
24 ordering the taking of depositions, ordering re-

1 sponses to written interrogatories, and receiving and
2 examining witnesses.

3 (c) ENFORCEMENT.—

4 (1) AUTHORITY TO PETITION COURT.—The Au-
5 thority may petition any United States Court of Ap-
6 peals with jurisdiction over the parties, or the
7 United States Court of Appeals for the District of
8 Columbia Circuit, to enforce any final orders under
9 this section, and for appropriate temporary relief or
10 a restraining order.

11 (2) PRIVATE RIGHT OF ACTION.—Unless the
12 Authority has filed a petition for enforcement as
13 provided in paragraph (1) and except as provided in
14 section 8(b)(4) with respect to States, any party
15 may file suit in any appropriate district court of the
16 United States to enforce compliance with the regula-
17 tions issued by the Authority pursuant to this sec-
18 tion, or to enforce compliance with any order issued
19 by the Authority pursuant to this section.

20 **SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.**

21 (a) IN GENERAL.—Subject to subsection (b), a public
22 safety employer, public safety officer, or labor organization
23 may not engage in a lockout, sickout, work slowdown,
24 strike, or any other organized job action that will measur-
25 ably disrupt the delivery of emergency services and is de-

1 signed to compel a public safety employer, public safety
2 officer, or labor organization to agree to the terms of a
3 proposed contract.

4 (b) NO PREEMPTION.—Nothing in this section shall
5 be construed to preempt any law of any State or political
6 subdivision of any State with respect to strikes by public
7 safety officers.

8 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
9 **AGREEMENTS.**

10 The enactment of this Act shall not invalidate any
11 certification, recognition, result of an election, collective
12 bargaining agreement, or memorandum of understanding
13 that has been issued, approved, or ratified by any public
14 employee relations board or commission or by any State
15 or political subdivision or its agents and is in effect on
16 the day before the date of enactment of this Act.

17 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

18 (a) CONSTRUCTION.—Nothing in this Act shall be
19 construed—

20 (1) to preempt or limit the remedies, rights,
21 and procedures of any law of any State or political
22 subdivision of any State that provides comparable or
23 greater rights and responsibilities than the rights
24 and responsibilities described in section 4(b); or

1 (2) to prevent a State from enforcing any law
2 that prohibits public safety employers and labor or-
3 ganizations from negotiating provisions in a labor
4 agreement that require labor organization member-
5 ship or payment of labor organization fees as a con-
6 dition of employment.

7 (b) COMPLIANCE.—

8 (1) ACTIONS OF STATES.—Nothing in this Act
9 or the regulations promulgated under this Act shall
10 be construed to require a State to rescind or pre-
11 empt the laws or ordinances of any of the State’s
12 political subdivisions if such laws provide rights and
13 responsibilities for public safety officers that are
14 comparable to or greater than the rights and respon-
15 sibilities described in section 4(b).

16 (2) ACTIONS OF THE AUTHORITY.—Nothing in
17 this Act or the regulations promulgated under this
18 Act shall be construed to preempt—

19 (A) the laws or ordinances of any State or
20 political subdivision of a State, if such laws pro-
21 vide collective bargaining rights for public safe-
22 ty officers that are comparable to or greater
23 than the rights enumerated in section 4(b);

24 (B) the laws or ordinances of any State or
25 political subdivision of a State that provide for

1 the rights and responsibilities described in sec-
2 tion 4(b) with respect to certain categories of
3 public safety officers covered by this Act solely
4 because such rights and responsibilities have
5 not been extended to other categories of public
6 safety officers covered by this Act; or

7 (C) the laws or ordinances of any State or
8 political subdivision of a State that provide for
9 the rights and responsibilities described in sec-
10 tion 4(b), solely because such laws or ordi-
11 nances provide that a contract or memorandum
12 of understanding between a public safety em-
13 ployer and a labor organization must be pre-
14 sented to a legislative body as part of the proc-
15 ess for approving such contract or memo-
16 randum of understanding.

17 (3) LIMITED ENFORCEMENT POWER.—In the
18 case of a law described in paragraph (2)(B), the Au-
19 thority shall only exercise the powers provided in
20 section 5 with respect to those categories of public
21 safety officers who have not been afforded the rights
22 and responsibilities described in section 4(b).

23 (4) EXCLUSIVE ENFORCEMENT PROVISION.—
24 Notwithstanding any other provision of the Act, and
25 in the absence of a waiver of a State's sovereign im-

1 munity, the Authority shall have the exclusive power
2 to enforce the provisions of this Act with respect to
3 employees of a State.

4 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this Act.