

109TH CONGRESS  
1ST SESSION

# S. 513

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

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IN THE SENATE OF THE UNITED STATES

MARCH 3, 2005

Mr. GREGG (for himself, Mr. KENNEDY, Ms. MIKULSKI, Mr. HARKIN, Mr. BINGAMAN, Mr. REED, Mrs. MURRAY, Mrs. LINCOLN, Mr. KERRY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

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

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 of 2005”.

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

7 The Congress declares that the following is the policy  
8 of 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 utilizes the strengths of both parties  
6           to best serve the interests of the public, operating as  
7           a team, to carry out the public safety mission in a  
8           quality work environment. In many public safety  
9           agencies it is the union that provides the institu-  
10          tional stability as elected leaders and appointees  
11          come and go.

12          (2) The Federal Government needs to encour-  
13          age conciliation, mediation, and voluntary arbitra-  
14          tion to aid and encourage employers and their em-  
15          ployees to reach and maintain agreements con-  
16          cerning rates of pay, hours, and working conditions,  
17          and to make all reasonable efforts through negotia-  
18          tions to settle their differences by mutual agreement  
19          reached through collective bargaining or by such  
20          methods as may be provided for in any applicable  
21          agreement for the settlement of disputes.

22          (3) The absence of adequate cooperation be-  
23          tween public safety employers and employees has im-  
24          plications for the security of employees and can af-  
25          fect interstate and intrastate commerce. The lack of

1 such labor-management cooperation can detrimen-  
2 tally impact the upgrading of police and fire services  
3 of local communities, the health and well-being of  
4 public safety officers, and the morale of the fire and  
5 police departments. Additionally, these factors could  
6 have significant commercial repercussions. Moreover,  
7 providing minimal standards for collective bar-  
8 gaining negotiations in the public safety sector can  
9 prevent industrial strife between labor and manage-  
10 ment that interferes with the normal flow of com-  
11 merce.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

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

16 (2) **EMERGENCY MEDICAL SERVICES PER-**  
17 **SONNEL.**—The term “emergency medical services  
18 personnel” means an individual who provides out-of-  
19 hospital emergency medical care, including an emer-  
20 gency medical technician, paramedic, or first re-  
21 sponder.

22 (3) **EMPLOYER; PUBLIC SAFETY AGENCY.**—The  
23 terms “employer” and “public safety agency” mean  
24 any State, political subdivision of a State, the Dis-  
25 trict of Columbia, or any territory or possession of

1 the United States that employs public safety offi-  
2 cers.

3 (4) FIREFIGHTER.—The term “firefighter” has  
4 the meaning given the term “employee engaged in  
5 fire protection activities” in section 3(y) of the Fair  
6 Labor Standards Act (29 U.S.C. 203(y)).

7 (5) LABOR ORGANIZATION.—The term “labor  
8 organization” means an organization composed in  
9 whole or in part of employees, in which employees  
10 participate, and which represents such employees be-  
11 fore public safety agencies concerning grievances,  
12 conditions of employment and related matters.

13 (6) LAW ENFORCEMENT OFFICER.—The term  
14 “law enforcement officer” has the meaning given  
15 such term in section 1204(5) of the Omnibus Crime  
16 Control and Safe Streets Act of 1968 (42 U.S.C.  
17 3796b(5)).

18 (7) MANAGEMENT EMPLOYEE.—The term  
19 “management employee” has the meaning given  
20 such term under applicable State law in effect on  
21 the date of enactment of this Act. If no such State  
22 law is in effect, the term means an individual em-  
23 ployed by a public safety employer in a position that  
24 requires or authorizes the individual to formulate,  
25 determine, or influence the policies of the employer.

1           (8) PUBLIC SAFETY OFFICER.—The term “pub-  
2       lic safety officer”—

3           (A) means an employee of a public safety  
4       agency who is a law enforcement officer, a fire-  
5       fighter, or an emergency medical services per-  
6       sonnel;

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

10          (C) does not include a permanent super-  
11       visory or management employee.

12          (9) SUBSTANTIALLY PROVIDES.—The term  
13       “substantially provides” means compliance with the  
14       essential requirements of this Act, specifically, the  
15       right to form and join a labor organization, the right  
16       to bargain over wages, hours, and conditions of em-  
17       ployment, the right to sign an enforceable contract,  
18       and availability of some form of mechanism to break  
19       an impasse, such as arbitration, mediation, or fact  
20       finding.

21          (10) SUPERVISORY EMPLOYEE.—The term “su-  
22       pervisory employee” has the meaning given such  
23       term under applicable State law in effect on the date  
24       of enactment of this Act. If no such State law is in

1 effect, the term means an individual, employed by a  
 2 public safety employer, who—

3 (A) has the authority in the interest of the  
 4 employer to hire, direct, assign, promote, re-  
 5 ward, transfer, furlough, lay off, recall, sus-  
 6 pend, discipline, or remove public safety offi-  
 7 cers, to adjust their grievances, or to effectively  
 8 recommend such action, if the exercise of the  
 9 authority is not merely routine or clerical in na-  
 10 ture but requires the consistent exercise of  
 11 independent judgment; and

12 (B) devotes a majority of time at work ex-  
 13 ercising such authority.

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

16 (a) DETERMINATION.—

17 (1) IN GENERAL.—Not later than 180 days  
 18 after the date of enactment of this Act, the Author-  
 19 ity shall make a determination as to whether a State  
 20 substantially provides for the rights and responsibil-  
 21 ities described in subsection (b). In making such de-  
 22 terminations, the Authority shall consider and give  
 23 weight, to the maximum extent practicable, to the  
 24 opinion of affected parties.

25 (2) SUBSEQUENT DETERMINATIONS.—

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

6           (B) PROCEDURES FOR SUBSEQUENT DE-  
7           TERMINATIONS.—Upon establishing that a ma-  
8           terial change in State law or its interpretation  
9           has occurred, an employer or a labor organiza-  
10          tion may submit a written request for a subse-  
11          quent determination. If satisfied that a material  
12          change in State law or its interpretation has oc-  
13          curred, the Director shall issue a subsequent  
14          determination not later than 30 days after re-  
15          ceipt of such request.

16          (3) JUDICIAL REVIEW.—Any State, political  
17          subdivision of a State, or person aggrieved by a de-  
18          termination of the Authority under this section may,  
19          during the 60 day period beginning on the date on  
20          which the determination was made, petition any  
21          United States Court of Appeals in the circuit in  
22          which the person resides or transacts business or in  
23          the District of Columbia circuit, for judicial review.  
24          In any judicial review of a determination by the Au-  
25          thority, the procedures contained in subsections (c)

1 and (d) of section 7123 of title 5, United States  
2 Code, shall be followed, except that any final deter-  
3 mination of the Authority with respect to questions  
4 of fact or law shall be found to be conclusive unless  
5 the court determines that the Authority's decision  
6 was arbitrary and capricious.

7 (b) RIGHTS AND RESPONSIBILITIES.—In making a  
8 determination described in subsection (a), the Authority  
9 shall consider whether State law provides rights and re-  
10 sponsibilities comparable to or greater than the following:

11 (1) Granting public safety officers the right to  
12 form and join a labor organization, which may ex-  
13 clude management and supervisory employees, that  
14 is, or seeks to be, recognized as the exclusive bar-  
15 gaining representative of such employees.

16 (2) Requiring public safety employers to recog-  
17 nize the employees' labor organization (freely chosen  
18 by a majority of the employees), to agree to bargain  
19 with the labor organization, and to commit any  
20 agreements to writing in a contract or memorandum  
21 of understanding.

22 (3) Permitting bargaining over hours, wages,  
23 and terms and conditions of employment.



1           (4) Requiring an interest impasse resolution  
2 mechanism, such as fact-finding, mediation, arbitra-  
3 tion or comparable procedures.

4           (5) Requiring enforcement through State courts  
5 of—

6                 (A) all rights, responsibilities, and protec-  
7 tions provided by State law and enumerated in  
8 this section; and

9                 (B) any written contract or memorandum  
10 of understanding.

11         (c) FAILURE TO MEET REQUIREMENTS.—

12           (1) IN GENERAL.—If the Authority determines,  
13 acting pursuant to its authority under subsection  
14 (a), that a State does not substantially provide for  
15 the rights and responsibilities described in sub-  
16 section (b), such State shall be subject to the regula-  
17 tions and procedures described in section 5.

18           (2) EFFECTIVE DATE.—Paragraph (1) shall  
19 take effect on the date that is 2 years after the date  
20 of enactment of this Act.

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

22         (a) IN GENERAL.—Not later than 1 year after the  
23 date of enactment of this Act, the Authority shall issue  
24 regulations in accordance with the rights and responsibil-  
25 ities described in section 4(b) establishing collective bar-

1 gaining procedures for public safety employers and officers  
2 in States which the Authority has determined, acting pur-  
3 suant to its authority under section 4(a), do not substan-  
4 tially provide for such rights and responsibilities.

5 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-  
6 THORITY.—The Authority, to the extent provided in this  
7 Act and in accordance with regulations prescribed by the  
8 Authority, shall—

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

11 (2) supervise or conduct elections to determine  
12 whether a labor organization has been selected as an  
13 exclusive representative by a majority of the employ-  
14 ees in an appropriate unit;

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

17 (4) conduct hearings and resolve complaints of  
18 unfair labor practices;

19 (5) resolve exceptions to the awards of arbitra-  
20 tors;

21 (6) protect the right of each employee to form,  
22 join, or assist any labor organization, or to refrain  
23 from any such activity, freely and without fear of  
24 penalty or reprisal, and protect each employee in the  
25 exercise of such right; and

1           (7) take such other actions as are necessary  
2           and appropriate to effectively administer this Act,  
3           including issuing subpoenas requiring the attendance  
4           and testimony of witnesses and the production of  
5           documentary or other evidence from any place in the  
6           United States, and administering oaths, taking or  
7           ordering the taking of depositions, ordering re-  
8           sponses to written interrogatories, and receiving and  
9           examining witnesses.

10           (c) ENFORCEMENT.—

11           (1) AUTHORITY TO PETITION COURT.—The Au-  
12           thority may petition any United States Court of Ap-  
13           peals with jurisdiction over the parties, or the  
14           United States Court of Appeals for the District of  
15           Columbia Circuit, to enforce any final orders under  
16           this section, and for appropriate temporary relief or  
17           a restraining order. Any petition under this section  
18           shall be conducted in accordance with subsections  
19           (c) and (d) of section 7123 of title 5, United States  
20           Code, except that any final order of the Authority  
21           with respect to questions of fact or law shall be  
22           found to be conclusive unless the court determines  
23           that the Authority’s decision was arbitrary and ca-  
24           pricious.

1           (2) PRIVATE RIGHT OF ACTION.—Unless the  
2 Authority has filed a petition for enforcement as  
3 provided in paragraph (1), any party has the right  
4 to file suit in a State court of competent jurisdiction  
5 to enforce compliance with the regulations issued by  
6 the Authority pursuant to subsection (b), and to en-  
7 force compliance with any order issued by the Au-  
8 thority pursuant to this section. The right provided  
9 by this subsection to bring a suit to enforce compli-  
10 ance with any order issued by the Authority pursu-  
11 ant to this section shall terminate upon the filing of  
12 a petition seeking the same relief by the Authority.

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

14           A public safety employer, officer, or labor organiza-  
15 tion may not engage in a lockout, sickout, work slowdown,  
16 or strike or engage in any other action that is designed  
17 to compel an employer, officer, or labor organization to  
18 agree to the terms of a proposed contract and that will  
19 measurably disrupt the delivery of emergency services, ex-  
20 cept that it shall not be a violation of this section for an  
21 employer, officer, or labor organization to refuse to pro-  
22 vide services not required by the terms and conditions of  
23 an existing contract.

1 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**  
2 **AGREEMENTS.**

3 A certification, recognition, election-held, collective  
4 bargaining agreement or memorandum of understanding  
5 which has been issued, approved, or ratified by any public  
6 employee relations board or commission or by any State  
7 or political subdivision or its agents (management offi-  
8 cials) in effect on the day before the date of enactment  
9 of this Act shall not be invalidated by the enactment of  
10 this Act.

11 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

12 (a) CONSTRUCTION.—Nothing in this Act shall be  
13 construed—

14 (1) to invalidate or limit the remedies, rights,  
15 and procedures of any law of any State or political  
16 subdivision of any State or jurisdiction that provides  
17 collective bargaining rights for public safety officers  
18 that are equal to or greater than the rights provided  
19 under this Act;

20 (2) to prevent a State from enforcing a right-  
21 to-work law that prohibits employers and labor orga-  
22 nizations from negotiating provisions in a labor  
23 agreement that require union membership or pay-  
24 ment of union fees as a condition of employment;

25 (3) to invalidate any State law in effect on the  
26 date of enactment of this Act that substantially pro-

1 vides for the rights and responsibilities described in  
2 section 4(b) solely because such State law permits  
3 an employee to appear on his or her own behalf with  
4 respect to his or her employment relations with the  
5 public safety agency involved;

6 (4) to permit parties subject to the National  
7 Labor Relations Act (29 U.S.C. 151 et seq.) and the  
8 regulations under such Act to negotiate provisions  
9 that would prohibit an employee from engaging in  
10 part-time employment or volunteer activities during  
11 off-duty hours; or

12 (5) to prohibit a State from exempting from  
13 coverage under this Act a political subdivision of the  
14 State that has a population of less than 5,000 or  
15 that employs less than 25 full time employees.

16 For purposes of paragraph (5), the term “employee” in-  
17 cludes each and every individual employed by the political  
18 subdivision except any individual elected by popular vote  
19 or appointed to serve on a board or commission.

20 (b) COMPLIANCE.—No State shall preempt laws or  
21 ordinances of any of its political subdivisions if such laws  
22 provide collective bargaining rights for public safety offi-  
23 cers that are equal to or greater than the rights provided  
24 under this Act.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated such sums  
3 as may be necessary to carry out the provisions of this  
4 Act.

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