

116TH CONGRESS
1ST SESSION

S. 1394

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

IN THE SENATE OF THE UNITED STATES

MAY 9, 2019

Ms. BALDWIN (for herself, Ms. KLOBUCHAR, Mrs. MURRAY, Ms. STABENOW,
Ms. HIRONO, Mr. VAN HOLLEN, Mr. WYDEN, and Mr. MURPHY) intro-
duced the following bill; which was read twice and referred to the Com-
mittee on Health, Education, Labor, and Pensions

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”.

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 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) 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 our Nation's National Incident Manage-
19 ment System, developed by the Department of
20 Homeland Security to coordinate response to and re-
21 covery from terrorism, major natural disasters, and
22 other major emergencies. Public safety employer-em-
23 ployee cooperation is essential in meeting these
24 needs and is, therefore, in the National interest.

1 (3) The Federal Government needs to encour-
2 age conciliation, mediation, and arbitration to aid
3 and encourage employers and the representatives of
4 their employees to reach and maintain agreements
5 concerning rates of pay, hours, and working condi-
6 tions, and to make all reasonable efforts through ne-
7 gotiations to settle their differences by mutual agree-
8 ment reached through collective bargaining or by
9 such methods as may be provided for in any applica-
10 ble agreement for the settlement of disputes.

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

1 ment that interferes with the normal flow of com-
2 merce.

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” has the meaning given such
14 term under applicable State law on the date of en-
15 actment of this Act. If no such applicable State law
16 is in effect, the term means an individual, employed
17 by a public safety employer, who—

18 (A) is designated as confidential; and

19 (B) is an individual who routinely assists,
20 in a confidential capacity, supervisory employ-
21 ees and management employees.

22 (3) **EMERGENCY MEDICAL SERVICES PER-**
23 **SONNEL.**—The term “emergency medical services
24 personnel” means an individual who provides out-of-
25 hospital emergency medical care, including an emer-

1 agency medical technician, paramedic, or first re-
2 sponder.

3 (4) EMPLOYER; PUBLIC SAFETY AGENCY; PUB-
4 LIC SAFETY EMPLOYER.—The terms “employer”,
5 “public safety agency”, and “public safety em-
6 ployer” mean any State, or political subdivision of a
7 State, that employs public safety officers.

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

12 (6) LABOR ORGANIZATION.—The term “labor
13 organization” means an organization of any kind, in
14 which employees participate and which exists for the
15 purpose, in whole or in part, of dealing with employ-
16 ers concerning grievances, conditions of employment,
17 and related matters.

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

23 (8) MANAGEMENT EMPLOYEE.—The term
24 “management employee” has the meaning given
25 such term under applicable State law in effect on

1 the date of enactment of this Act. If no such appli-
2 cable State law is in effect, the term means an indi-
3 vidual employed by a public safety employer in a po-
4 sition that requires or authorizes the individual to
5 formulate, determine, or influence the policies of the
6 employer.

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

9 (10) PUBLIC SAFETY OFFICER.—The term
10 “public safety officer”—

11 (A) means an employee of a public safety
12 agency who is a law enforcement officer, a fire-
13 fighter, or an emergency medical services per-
14 sonnel;

15 (B) includes an individual who is tempo-
16 rarily transferred to a supervisory or manage-
17 ment position; and

18 (C) does not include a permanent super-
19 visory, management, or confidential employee.

20 (11) STATE.—The term “State” means each of
21 the several States of the United States, the District
22 of Columbia, and any territory or possession of the
23 United States.

24 (12) SUBSTANTIALLY PROVIDES.—The term
25 “substantially provides”, when used with respect to

1 the rights and responsibilities described in section
 2 4(b), means providing rights and responsibilities
 3 that are comparable to or greater than each right
 4 and responsibility described in such section.

5 (13) SUPERVISORY EMPLOYEE.—The term “su-
 6 pervisory employee” has the meaning given such
 7 term under applicable State law in effect on the date
 8 of enactment of this Act. If no such applicable State
 9 law is in effect, the term means an individual, em-
 10 ployed by a public safety employer, who—

11 (A) has the authority in the interest of the
 12 employer to hire, direct, assign, promote, re-
 13 ward, transfer, furlough, lay off, recall, sus-
 14 pend, discipline, or remove public safety offi-
 15 cers, to adjust their grievances, or to effectively
 16 recommend such action, if the exercise of the
 17 authority is not merely routine or clerical in na-
 18 ture but requires the consistent exercise of
 19 independent judgment; and

20 (B) devotes a majority of time at work to
 21 exercising such authority.

22 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**
 23 **ITIES.**

24 (a) DETERMINATION.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Author-
3 ity shall make a determination as to whether a State
4 substantially provides for the rights and responsibil-
5 ities described in subsection (b).

6 (2) CONSIDERATION OF ADDITIONAL OPIN-
7 IONS.—In making the determination described in
8 paragraph (1), the Authority shall consider the opin-
9 ions of affected employers and labor organizations.
10 In the case where the Authority is notified by an af-
11 fected employer and labor organization that both
12 parties agree that the law applicable to such em-
13 ployer and labor organization substantially provides
14 for the rights and responsibilities described in sub-
15 section (b), the Authority shall give such agreement
16 weight to the maximum extent practicable in making
17 the Authority’s determination under this subsection.

18 (3) LIMITED CRITERIA.—In making the deter-
19 mination described in paragraph (1), the Authority
20 shall be limited to the application of the criteria de-
21 scribed in subsection (b) and shall not require any
22 additional criteria.

23 (4) SUBSEQUENT DETERMINATIONS.—

24 (A) IN GENERAL.—A determination made
25 pursuant to paragraph (1) shall remain in ef-

1 fect unless and until the Authority issues a sub-
2 sequent determination, in accordance with the
3 procedures set forth in subparagraph (B).

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

14 (5) JUDICIAL REVIEW.—Any person or em-
15 ployer aggrieved by a determination of the Authority
16 under this section may, during the 60-day period be-
17 ginning on the date on which the determination was
18 made, petition any United States Court of Appeals
19 in the circuit in which the person or employer re-
20 sides or transacts business or in the District of Co-
21 lumbia Circuit, for judicial review.

22 (b) RIGHTS AND RESPONSIBILITIES.—In making a
23 determination described in subsection (a), the Authority
24 shall consider a State’s law to substantially provide the
25 required rights and responsibilities unless such law fails

1 to provide rights and responsibilities comparable to or
2 greater than each of the following:

3 (1) Granting public safety officers the right to
4 form and join a labor organization, which may ex-
5 clude management employees, supervisory employ-
6 ees, and confidential employees, that is, or seeks to
7 be, recognized as the exclusive bargaining represent-
8 ative of such employees.

9 (2) Requiring public safety employers to recog-
10 nize the employees' labor organization (freely chosen
11 by a majority of the employees), to agree to bargain
12 with the labor organization, and to commit any
13 agreements to writing in a contract or memorandum
14 of understanding.

15 (3) Providing for the right to bargain over
16 hours, wages, and terms and conditions of employ-
17 ment.

18 (4) Providing for binding interest arbitration as
19 a mechanism to resolve an impasse in collective bar-
20 gaining negotiations.

21 (5) Requiring enforcement of all rights, respon-
22 sibilities, and protections enumerated in this section,
23 and of any written contract or memorandum of un-
24 derstanding between a labor organization and a pub-
25 lic safety employer, through—

1 (A) a State administrative agency, if the
2 State so chooses; or

3 (B) any court of competent jurisdiction.

4 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-
5 thority determines, acting pursuant to its authority under
6 subsection (a), that a State substantially provides rights
7 and responsibilities described in subsection (b), then this
8 Act shall not preempt State law.

9 (d) FAILURE TO MEET REQUIREMENTS.—

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

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

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

24 (C) in the case of a State receiving a sub-
25 sequent determination under subsection (a)(4),

1 the date that is the last day of the first regular
2 session of the legislature of the State that be-
3 gins after the date the Authority made the sub-
4 sequent determination.

5 (2) PARTIAL FAILURE.—If the Authority makes
6 a determination that a State does not substantially
7 provide for the rights and responsibilities described
8 in subsection (b) solely because the State law sub-
9 stantially provides for such rights and responsibil-
10 ities for certain categories of public safety officers
11 covered by this Act but not others, the Authority
12 shall identify those categories of public safety offi-
13 cers that shall be subject to the regulations and pro-
14 cedures described in section 5, pursuant to section
15 8(b)(3) and beginning on the appropriate date de-
16 scribed in paragraph (1), and those categories of
17 public safety officers that shall remain solely subject
18 to State law with respect to the rights and respon-
19 sibilities described in subsection (b).

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

21 (a) IN GENERAL.—Not later than 1 year after the
22 date of enactment of this Act, the Authority shall issue
23 regulations, consistent with the rights and responsibilities
24 described in section 4(b), establishing collective bargaining
25 procedures for employers and public safety officers in

1 States which the Authority has determined, acting pursu-
2 ant to section 4(a), do not substantially provide for such
3 rights and responsibilities.

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

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

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

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

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

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

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

18 (2) PRIVATE RIGHT OF ACTION.—Unless the
19 Authority has filed a petition for enforcement as
20 provided in paragraph (1), any party has the right
21 to file suit in any appropriate district court of the
22 United States to enforce compliance with the regula-
23 tions issued by the Authority pursuant to this sec-
24 tion, or to enforce compliance with any order issued
25 by the Authority pursuant to this section. The right

1 provided by this subsection to bring a suit to enforce
2 compliance with any order issued by the Authority
3 pursuant to this section shall terminate upon the fil-
4 ing of a petition seeking the same relief by the Au-
5 thority. Enforcement against a State shall be pursu-
6 ant to section 8(b)(4).

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

8 (a) IN GENERAL.—Subject to subsection (b), an em-
9 ployer, public safety officer, or labor organization may not
10 engage in a lockout, sickout, work slowdown, strike, or any
11 other organized job action that will measurably disrupt the
12 delivery of emergency services and is designed to compel
13 an employer, public safety officer, or labor organization
14 to agree to the terms of a proposed contract.

15 (b) NO PREEMPTION.—Nothing in this section shall
16 be construed to preempt any law of any State or political
17 subdivision of any State with respect to strikes by public
18 safety officers.

19 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
20 **AGREEMENTS.**

21 A certification, recognition, election-held, collective
22 bargaining agreement, or memorandum of understanding
23 that has been issued, approved, or ratified by any public
24 employee relations board or commission or by any State
25 or political subdivision or its agents and is in effect on

1 the day before the date of enactment of this Act shall not
2 be invalidated by the enactment of this Act.

3 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

4 (a) CONSTRUCTION.—Nothing in this Act shall be
5 construed—

6 (1) to preempt or limit the remedies, rights,
7 and procedures of any law of any State or political
8 subdivision of any State that provides comparable or
9 greater rights and responsibilities than the rights
10 and responsibilities described in section 4(b);

11 (2) to prevent a State from enforcing a right-
12 to-work law that prohibits employers and labor orga-
13 nizations from negotiating provisions in a labor
14 agreement that require labor organization member-
15 ship or payment of labor organization fees as a con-
16 dition of employment;

17 (3) to preempt or limit any State law in effect
18 on the date of enactment of this Act that provides
19 for the rights and responsibilities described in sec-
20 tion 4(b) solely because such State law permits an
21 employee to appear on the employee's own behalf
22 with respect to the employee's employment relations
23 with the public safety agency involved;

24 (4) to prohibit a State from exempting from
25 coverage under this Act a political subdivision of the

1 State that has a population of less than 5,000 or
2 that employs less than 25 full-time employees; or

3 (5) to preempt or limit the laws or ordinances
4 of any State or political subdivision of a State that
5 provide for the rights and responsibilities described
6 in section 4(b) solely because such law or ordinance
7 does not require bargaining with respect to pension,
8 retirement, or health benefits.

9 For purposes of paragraph (4), the term “employee” in-
10 cludes each and every individual employed by the political
11 subdivision except any individual elected by popular vote
12 or appointed to serve on a board or commission.

13 (b) COMPLIANCE.—

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

22 (2) ACTIONS OF THE AUTHORITY.—Nothing in
23 this Act or the regulations promulgated under this
24 Act shall be construed to preempt—

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

6 (B) the laws or ordinances of any State or
7 political subdivision of a State that substan-
8 tially provide for the rights and responsibilities
9 described in section 4(b) with respect to certain
10 categories of public safety officers covered by
11 this Act solely because such rights and respon-
12 sibilities are not substantially provided to other
13 categories of public safety officers covered by
14 this Act; or

15 (C) the laws or ordinances of any State or
16 political subdivision of a State that provide for
17 the rights and responsibilities described in sec-
18 tion 4(b), solely because such laws or ordi-
19 nances provide that a contract or memorandum
20 of understanding between a public safety em-
21 ployer and a labor organization must be pre-
22 sented to a legislative body as part of the proc-
23 ess for approving such contract or memo-
24 randum of understanding.

1 (3) LIMITED ENFORCEMENT POWER.—In the
2 case of a law described in paragraph (2)(B), the Au-
3 thority shall only exercise the powers provided in
4 section 5 with respect to those categories of public
5 safety officers who are not substantially provided the
6 rights and responsibilities described in section 4(b).

7 (4) EXCLUSIVE ENFORCEMENT PROVISION.—
8 Notwithstanding any other provision of this Act, and
9 in the absence of a waiver of a State’s sovereign im-
10 munity, the Authority shall have the exclusive power
11 to enforce the provisions of this Act with respect to
12 employees of a State.

13 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated such sums
15 as may be necessary to carry out the provisions of this
16 Act.

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