

110TH CONGRESS  
1ST SESSION

# S. 2123

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

OCTOBER 1, 2007

Mr. GREGG (for himself, Mr. KENNEDY, Mr. COLEMAN, Mr. DODD, Ms. COLLINS, Mr. HARKIN, Mr. DOMENICI, Ms. MIKULSKI, Mr. MARTINEZ, Mrs. MURRAY, Mr. SMITH, Mrs. CLINTON, Ms. SNOWE, Mr. OBAMA, Mr. SPECTER, Mr. SANDERS, Mr. BROWN, Mr. STEVENS, Mr. LIEBERMAN, Mr. SUNUNU, and Mr. PRYOR) 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 2007”.

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) 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 voluntary arbitra-  
3           tion to aid and encourage 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 police and fire services  
18          of local communities, the health and well-being of  
19          public safety officers, and the morale of the fire and  
20          police 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 **SEC. 3. DEFINITIONS.**

4       In this Act:

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

7           (2) **EMERGENCY MEDICAL SERVICES PER-**  
8       **SONNEL.**—The term “emergency medical services  
9       personnel” means an individual who provides out-of-  
10      hospital emergency medical care, including an emer-  
11      gency medical technician, paramedic, or first re-  
12      sponder.

13          (3) **EMPLOYER; PUBLIC SAFETY AGENCY.**—The  
14      terms “employer” and “public safety agency” mean  
15      any State, or political subdivision of a State, that  
16      employs public safety officers.

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

21          (5) **LABOR ORGANIZATION.**—The term “labor  
22      organization” means an organization composed in  
23      whole or in part of employees, in which employees  
24      participate, and which represents such employees be-

1 fore public safety agencies concerning grievances,  
2 conditions of employment, and related matters.

3 (6) LAW ENFORCEMENT OFFICER.—The term  
4 “law enforcement officer” has the meaning given  
5 such term in section 1204 of the Omnibus Crime  
6 Control and Safe Streets Act of 1968 (42 U.S.C.  
7 3796b).

8 (7) MANAGEMENT EMPLOYEE.—The term  
9 “management employee” has the meaning given  
10 such term under applicable State law in effect on  
11 the date of enactment of this Act. If no such State  
12 law is in effect, the term means an individual em-  
13 ployed by a public safety employer in a position that  
14 requires or authorizes the individual to formulate,  
15 determine, or influence the policies of the employer.

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

18 (9) PUBLIC SAFETY OFFICER.—The term “pub-  
19 lic safety officer”—

20 (A) means an employee of a public safety  
21 agency who is a law enforcement officer, a fire-  
22 fighter, or an emergency medical services per-  
23 sonnel;

1 (B) includes an individual who is tempo-  
2 rarily transferred to a supervisory or manage-  
3 ment position; and

4 (C) does not include a permanent super-  
5 visory or management employee.

6 (10) STATE.—The term “State” means each of  
7 the several States of the United States, the District  
8 of Columbia, and any territory or possession of the  
9 United States.

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

19 (12) SUPERVISORY EMPLOYEE.—The term “su-  
20 pervisory employee” has the meaning given such  
21 term under applicable State law in effect on the date  
22 of enactment of this Act. If no such State law is in  
23 effect, the term means an individual, employed by a  
24 public safety employer, who—

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

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

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

14 (a) DETERMINATION.—

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

23 (2) 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                   (3) 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. In any judicial re-  
22          view of a determination by the Authority, the proce-  
23          dures contained in subsections (c) and (d) of section  
24          7123 of title 5, United States Code, shall be fol-  
25          lowed.

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

5 (1) Granting public safety officers the right to  
6 form and join a labor organization, which may ex-  
7 clude management employees and supervisory em-  
8 ployees, that is, or seeks to be, recognized as the ex-  
9 clusive bargaining representative of such employees.

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

16 (3) Permitting bargaining over hours, wages,  
17 and terms and conditions of employment.

18 (4) Making available an interest impasse resolu-  
19 tion mechanism, such as fact-finding, mediation, ar-  
20 bitration, or comparable procedures.

21 (5) Requiring enforcement through State courts  
22 of—

23 (A) all rights, responsibilities, and protec-  
24 tions provided by State law and enumerated in  
25 this section; and

1 (B) any written contract or memorandum  
2 of understanding.

3 (c) FAILURE TO MEET REQUIREMENTS.—

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

10 (2) EFFECTIVE DATE.—Paragraph (1) shall  
11 take effect on the date that is 2 years after the date  
12 of enactment of this Act.

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

14 (a) IN GENERAL.—Not later than 1 year after the  
15 date of enactment of this Act, the Authority shall issue  
16 regulations in accordance with the rights and responsibil-  
17 ities described in section 4(b) establishing collective bar-  
18 gaining procedures for employers and public safety officers  
19 in States which the Authority has determined, acting pur-  
20 suant to section 4(a), do not substantially provide for such  
21 rights and responsibilities.

22 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-  
23 THORITY.—The Authority, to the extent provided in this  
24 Act and in accordance with regulations prescribed by the  
25 Authority, 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 selected as an  
5 exclusive representative by a voting majority of the  
6 employees 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. Any petition under this section  
11 shall be conducted in accordance with subsections  
12 (c) and (d) of section 7123 of title 5, United States  
13 Code.

14 (2) PRIVATE RIGHT OF ACTION.—Unless the  
15 Authority has filed a petition for enforcement as  
16 provided in paragraph (1), any party has the right  
17 to file suit in a State court of competent jurisdiction  
18 to enforce compliance with the regulations issued by  
19 the Authority pursuant to subsection (b), and to en-  
20 force compliance with any order issued by the Au-  
21 thority pursuant to this section. The right provided  
22 by this subsection to bring a suit to enforce compli-  
23 ance with any order issued by the Authority pursu-  
24 ant to this section shall terminate upon the filing of  
25 a petition seeking the same relief by the Authority.

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

2 (a) PROHIBITION.—An employer, public safety offi-  
3 cer, or labor organization may not engage in a lockout,  
4 sickout, work slowdown, strike, or any other action that  
5 will measurably disrupt the delivery of emergency services  
6 and is designed to compel an employer, public safety offi-  
7 cer, or labor organization to agree to the terms of a pro-  
8 posed contract.

9 (b) MANDATORY TERMS AND CONDITIONS.—It shall  
10 not be a violation of subsection (a) for a public safety offi-  
11 cer or labor organization to refuse to carry out services  
12 that are not required under the mandatory terms and con-  
13 ditions of employment applicable to the public safety offi-  
14 cer or labor organization.

15 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**  
16 **AGREEMENTS.**

17 A certification, recognition, election-held, collective  
18 bargaining agreement or memorandum of understanding  
19 which has been issued, approved, or ratified by any public  
20 employee relations board or commission or by any State  
21 or political subdivision or its agents (management offi-  
22 cials) and is in effect on the day before the date of enact-  
23 ment of this Act shall not be invalidated by the enactment  
24 of this Act.

1 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

2 (a) CONSTRUCTION.—Nothing in this Act shall be  
3 construed—

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

10 (2) to prevent a State from enforcing a right-  
11 to-work law that prohibits employers and labor orga-  
12 nizations from negotiating provisions in a labor  
13 agreement that require union membership or pay-  
14 ment of union fees as a condition of employment;

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

22 (4) to preempt or limit any State law in effect  
23 on the date of enactment of this Act that provides  
24 for the rights and responsibilities described in sec-  
25 tion 4(b) solely because such State law excludes

1 from its coverage employees of a State militia or na-  
2 tional guard;

3 (5) to permit parties in States subject to the  
4 regulations and procedures described in section 5 to  
5 negotiate provisions that would prohibit an employee  
6 from engaging in part-time employment or volunteer  
7 activities during off-duty hours;

8 (6) to prohibit a State from exempting from  
9 coverage under this Act a political subdivision of the  
10 State that has a population of less than 5,000 or  
11 that employs less than 25 full-time employees; or

12 (7) to preempt or limit the laws or ordinances  
13 of any State or political subdivision of a State that  
14 provide for the rights and responsibilities described  
15 in section 4(b) solely because such law does not re-  
16 quire bargaining with respect to pension, retirement,  
17 or health benefits.

18 For purposes of paragraph (6), the term “employee” in-  
19 cludes each and every individual employed by the political  
20 subdivision except any individual elected by popular vote  
21 or appointed to serve on a board or commission.

22 (b) COMPLIANCE.—

23 (1) ACTIONS OF STATES.—Nothing in this Act  
24 or the regulations promulgated under this Act shall  
25 be construed to require a State to rescind or pre-

1       empt the laws or ordinances of any of its political  
2       subdivisions if such laws provide rights and respon-  
3       sibilities for public safety officers that are com-  
4       parable to or greater than the rights and responsibil-  
5       ities described in section 4(b).

6               (2) ACTIONS OF THE AUTHORITY.—Nothing in  
7       this Act or the regulations promulgated under this  
8       Act shall be construed to preempt—

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

14              (B) the laws or ordinance of any State or  
15       political subdivision of a State that provide for  
16       the rights and responsibilities described in sec-  
17       tion 4(b) with respect to certain categories of  
18       public safety officers covered by this Act solely  
19       because such rights and responsibilities have  
20       not been extended to other categories of public  
21       safety officers covered by this Act; or

22              (C) the laws or ordinances of any State or  
23       political subdivision of a State that provides for  
24       the rights and responsibilities described in sec-  
25       tion 4(b), solely because such laws or ordi-

1 nances provide that a contract or memorandum  
2 of understanding between a public safety em-  
3 ployer and a labor organization must be pre-  
4 sented to a legislative body as part of the proc-  
5 ess for approving such contract or memo-  
6 randum of understanding.

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

13 (4) EXCLUSIVE ENFORCEMENT PROVISION.—  
14 Notwithstanding any other provision of the Act, and  
15 in the absence of a waiver of a State’s sovereign im-  
16 munity, the Authority shall have the exclusive power  
17 to enforce the provisions of this Act with respect to  
18 employees of a State or political subdivision of a  
19 State.

20 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums  
22 as may be necessary to carry out the provisions of this  
23 Act.

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