A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Safety Employer-Employee Cooperation Act of 2010”.

SEC. 2. DECLARATION OF PURPOSE AND POLICY.

The Congress declares that the following is the policy of the United States:
(1) Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. Labor-management cooperation fully utilizes the strengths of both parties to best serve the interests of the public, operating as a team, to carry out the public safety mission in a quality work environment. In many public safety agencies, it is the union that provides the institutional stability as elected leaders and appointees come and go.

(2) State and local public safety officers play an essential role in the efforts of the United States to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualty incidents. State and local public safety officers, as first responders, are a component of our Nation’s National Incident Management System, developed by the Department of Homeland Security to coordinate response to and recovery from terrorism, major natural disasters, and other major emergencies. Public safety employer-employee cooperation is essential in meeting these needs and is, therefore, in the National interest.
(3) The Federal Government needs to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts through negotiations to settle their differences by mutual agreement reached through collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.

(4) The absence of adequate cooperation between public safety employers and employees has implications for the security of employees and can affect interstate and intrastate commerce. The lack of such labor-management cooperation can detrimentally impact the upgrading of police and fire services of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments. Additionally, these factors could have significant commercial repercussions. Moreover, providing minimal standards for collective bargaining negotiations in the public safety sector can prevent industrial strife between labor and manage-
ment that interferes with the normal flow of commerce.

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

SEC. 3. DEFINITIONS.

In this Act:

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

(2) CONFIDENTIAL EMPLOYEE.—The term “confidential employee” has the meaning given such term under applicable State law on the date of enactment of this Act. If no such State law is in effect, the term means an individual, employed by a public safety employer, who—

(A) is designated as confidential; and

(B) is an individual who routinely assists, in a confidential capacity, supervisory employees and management employees.

(3) EMERGENCY MEDICAL SERVICES PERSONNEL.—The term “emergency medical services personnel” means an individual who provides out-of-hospital emergency medical care, including an emer-
gency medical technician, paramedic, or first responder.

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

(5) FIREFIGHTER.—The term “firefighter” has the meaning given the term “employee engaged in fire protection activities” in section 3(y) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(y)).

(6) LABOR ORGANIZATION.—The term “labor organization” means an organization composed in whole or in part of employees, in which employees participate, and which represents such employees before public safety agencies concerning grievances, conditions of employment, and related matters.

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

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

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

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

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

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

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

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

(12) SUBSTANTIALLY PROVIDES.—The term
“substantially provides”, when used with respect to
the rights and responsibilities described in section
4(b), means compliance with each right and responsibility described in such section.

(13) SUPERVISORY EMPLOYEE.—The term “supervisory employee” has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual, employed by a public safety employer, who—

(A) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and

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

SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State
substantially provides for the rights and responsibilities described in subsection (b).

(2) CONSIDERATION OF ADDITIONAL OPINIONS.—In making the determination described in paragraph (1), the Authority shall consider the opinions of affected employers and labor organizations. In the case where the Authority is notified by an affected employer and labor organization that both parties agree that the law applicable to such employer and labor organization substantially provides for the rights and responsibilities described in subsection (b), the Authority shall give such agreement weight to the maximum extent practicable in making the Authority's determination under this subsection.

(3) LIMITED CRITERIA.—In making the determination described in paragraph (1), the Authority shall be limited to the application of the criteria described in subsection (b) and shall not require any additional criteria.

(4) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).
(B) PROCEDURES FOR SUBSEQUENT DETERMINATIONS.—Upon establishing that a material change in State law or its interpretation has occurred, an employer or a labor organization may submit a written request for a subsequent determination. If satisfied that a material change in State law or its interpretation has occurred, the Authority shall issue a subsequent determination not later than 30 days after receipt of such request.

(5) JUDICIAL REVIEW.—Any person or employer aggrieved by a determination of the Authority under this section may, during the 60-day period beginning on the date on which the determination was made, petition any United States Court of Appeals in the circuit in which the person or employer resides or transacts business or in the District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed.

(b) RIGHTS AND RESPONSIBILITIES.—In making a determination described in subsection (a), the Authority shall consider a State’s law to substantially provide the
required rights and responsibilities unless such law fails to provide rights and responsibilities comparable to or greater than the following:

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management employees, supervisory employees, and confidential employees, that is, or seeks to be, recognized as the exclusive bargaining representative of such employees.

(2) Requiring public safety employers to recognize the employees’ labor organization (freely chosen by a majority of the employees), to agree to bargain with the labor organization, and to commit any agreements to writing in a contract or memorandum of understanding.

(3) Providing for the right to bargain over hours, wages, and terms and conditions of employment.

(4) Making available an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures.

(5) Requiring enforcement of all rights, responsibilities, and protections provided by State law and enumerated in this section, and of any written contract or memorandum of understanding between a
labor organization and a public safety employer, through—

(A) a State administrative agency, if the State so chooses; and

(B) at the election of an aggrieved party, the State courts.

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

(d) FAILURE TO MEET REQUIREMENTS.—

(1) IN GENERAL.—If the Authority determines, acting pursuant to its authority under subsection (a), 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 of the enactment of this Act; 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 makes a determination that a State does not substantially provide for the rights and responsibilities described in subsection (b) solely because the State law substantially provides for such rights and responsibilities for certain categories of public safety officers covered by the Act but not others, the Authority shall identify those categories of public safety officers that shall be subject to the regulations and procedures described in section 5, pursuant to section 8(b)(3) and beginning on the appropriate date described in paragraph (1), and those categories of public safety officers that shall remain subject to State law.

SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.

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

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

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

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

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

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

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

(6) protect the right of each employee to form,
join, or assist any labor organization, or to refrain
from any such activity, freely and without fear of
penalty or reprisal, and protect each employee in the
exercise of such right; and
(7) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

(c) ENFORCEMENT.—

(1) AUTHORITY TO PETITION COURT.—The Authority may petition any United States Court of Appeals with jurisdiction over the parties, or the United States Court of Appeals for the District of Columbia Circuit, to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code.

(2) PRIVATE RIGHT OF ACTION.—Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any party has the right to file suit in any appropriate district court of the United States to enforce compliance with the regula-
tions issued by the Authority pursuant to subsection (b), and to enforce compliance with any order issued by the Authority pursuant to this section. The right provided by this subsection to bring a suit to enforce compliance with any order issued by the Authority pursuant to this section shall terminate upon the filing of a petition seeking the same relief by the Authority.

SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

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

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

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

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

SEC. 8. CONSTRUCTION AND COMPLIANCE.

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

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

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

(3) to preempt or limit any State law in effect
on the date of enactment of this Act that provides
for the rights and responsibilities described in sec-
tion 4(b) solely because such State law permits an
employee to appear on the employee’s own behalf
with respect to the employee’s employment relations
with the public safety agency involved;
(4) to preempt or limit any State law in effect on the date of enactment of this Act that provides for the rights and responsibilities described in section 4(b) solely because such State law excludes from its coverage employees of a State militia or national guard;

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

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

(7) to prohibit a State from exempting from coverage under this Act individuals employed by the office of the sheriff in States that do not provide the rights and responsibilities described in section 4(b) for law enforcement officers prior to the date of enactment of this Act; or

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

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

(b) Compliance.—

(1) Actions of States.—Nothing in this Act or the regulations promulgated under this Act shall be construed to require a State to rescind or preempt the laws or ordinances of any of the State’s political subdivisions if such laws provide rights and responsibilities for public safety officers that are comparable to or greater than the rights and responsibilities described in section 4(b).

(2) Actions of the Authority.—Nothing in this Act or the regulations promulgated under this Act shall be construed to preempt—

(A) the laws or ordinances of any State or political subdivision of a State, if such laws provide collective bargaining rights for public safety officers that are comparable to or greater than the rights enumerated in section 4(b);

(B) the laws or ordinances of any State or political subdivision of a State that provide for
the rights and responsibilities described in section 4(b) with respect to certain categories of public safety officers covered by this Act solely because such rights and responsibilities have not been extended to other categories of public safety officers covered by this Act; or

(C) the laws or ordinances of any State or political subdivision of a State that provide for the rights and responsibilities described in section 4(b), solely because such laws or ordinances provide that a contract or memorandum of understanding between a public safety employer and a labor organization must be presented to a legislative body as part of the process for approving such contract or memorandum of understanding.

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

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

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.
To provide collective bargaining rights for public safety officers employed by States or their political subdivisions.  

A BILL

S. 3991

111TH CONGRESS

Calendar No. 662

DECEMBER 1, 2010