

117TH CONGRESS  
1ST SESSION

# H. R. 5727

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2021

Mr. CARTWRIGHT (for himself, Mr. AGUILAR, Ms. ADAMS, Mrs. AXNE, Ms. BARRAGÁN, Ms. BASS, Mrs. BEATTY, Mr. BEYER, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOWMAN, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN, Ms. BROWNLEY, Mrs. BUSTOS, Mr. BUTTERFIELD, Mr. CARBAJAL, Mr. CASE, Mr. CASTEN, Mr. CASTRO of Texas, Ms. CHU, Mr. CICILLINE, Ms. CLARKE of New York, Mr. CLEAVER, Mr. CONNOLLY, Mr. COOPER, Mr. CORREA, Ms. CRAIG, Mr. CRIST, Mr. CROW, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DESAULNIER, Mrs. DINGELL, Mr. DOGGETT, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Ms. LEGER FERNANDEZ, Mr. FITZPATRICK, Mr. FOSTER, Mr. GALLEGO, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOMEZ, Mr. GOTTHEIMER, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HIGGINS of New York, Mr. HIMES, Mr. HORSFORD, Ms. HOULAHAN, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JONES, Mr. KAHELE, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. KILDEE, Mr. KIM of New Jersey, Mr. KIND, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHY, Ms. KUSTER, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mr. LEVIN of Michigan, Mr. LIEU, Mr. LOWENTHAL, Mrs. LURIA, Mr. LYNCH, Mr. MALINOWSKI, Mrs. CAROLYN B. MALONEY of New York, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCNERNEY, Ms. MENG, Mr. MORELLE, Mr. MOULTON, Mr. MRVAN, Mr. NEGUSE, Mr. NORCROSS, Ms. NORTON, Mr. PALLONE, Mr. PAPPAS, Mr. PAYNE, Mr. PERLMUTTER, Mr. PETERS, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Ms. ROYBAL-ALLARD, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN, Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHRADER, Ms. SCHRIER, Mr. DAVID SCOTT of Georgia, Mr. SHERMAN, Mr. SIRES, Mr. SMITH of New Jersey, Mr. SOTO, Ms. SPEIER, Ms. STANSBURY, Mr. STANTON, Ms. STEVENS, Ms. STRICKLAND, Mr. SUOZZI, Mr. SWALWELL, Ms. TITUS, Ms. TLAIB, Mr. TONKO,

Mrs. TORRES of California, Mr. TORRES of New York, Mrs. TRAHAN, Mr. TRONE, Ms. UNDERWOOD, Mr. VARGAS, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. YARMUTH, Ms. VELÁZQUEZ, Ms. OMAR, Mr. SMITH of Washington, Mr. JOHNSON of Georgia, Ms. ROSS, Ms. NEWMAN, Ms. SHERRILL, Mr. KHANNA, Mr. PANETTA, Mr. LEVIN of California, and Ms. MANNING) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, 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 Service Free-  
 5        dom to Negotiate Act of 2021”.

6        **SEC. 2. DEFINITIONS.**

7        (a) IN GENERAL.—In this Act:

8            (1) APPROPRIATE UNIT.—The term “appro-  
 9            priate unit” means a group of public employees or  
 10          a group of supervisory employees appropriate for  
 11          collective bargaining that share a community of in-  
 12          terest, as demonstrated by factors including whether  
 13          such group—

14                  (A) has a bargaining history or history of  
 15                  prior organization; and

1 (B) reflects the desires of the employees  
2 who are seeking or proposing representation by  
3 a labor organization regarding the employees to  
4 be included in such bargaining unit.

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

7 (3) COLLECTIVE BARGAINING.—The term “col-  
8 lective bargaining”, used with respect to public em-  
9 ployees, supervisory employees, and public employ-  
10 ers, means the performance of the mutual obligation  
11 of the representative of a public employer and the  
12 exclusive representative of public and supervisory  
13 employees in an appropriate unit of the employer to  
14 meet at reasonable times and to consult and bargain  
15 in a good-faith effort to reach agreement with re-  
16 spect to wages, hours, and other terms and condi-  
17 tions of employment affecting such employees and to  
18 execute a written document incorporating any collec-  
19 tive bargaining agreement reached, but the obliga-  
20 tion referred to in this paragraph does not compel  
21 either party to agree to a proposal or to make a con-  
22 cession (as described in section 8(d) of the National  
23 Labor Relations Act (29 U.S.C. 158(d))).

24 (4) CONFIDENTIAL EMPLOYEE.—The term  
25 “confidential employee” means an employee of a

1 public employer who acts in a confidential capacity  
2 with respect to an individual who formulates or ef-  
3 fectuates management policies in the field of labor-  
4 management relations.

5 (5) COVERED PERSON.—The term “covered  
6 person” means an individual or a labor organization.

7 (6) EMERGENCY SERVICES EMPLOYEE.—The  
8 term “emergency services employee” means—

9 (A) a public employee providing out-of-hos-  
10 pital emergency medical care, including an  
11 emergency medical technician, paramedic, or  
12 first responder; or

13 (B) a public employee providing other serv-  
14 ices in response to emergencies that have the  
15 potential to cause death or serious bodily in-  
16 jury, including an employee in fire protection  
17 activities (as defined in section 3(y) of the Fair  
18 Labor Standards Act of 1938 (29 U.S.C.  
19 203(y))).

20 (7) LABOR ORGANIZATION.—The term “labor  
21 organization” means any organization of any kind  
22 that is not under the control directly or indirectly by  
23 a public employer in which such employees partici-  
24 pate and which exists for the purpose, in whole or  
25 in part, of dealing with public employers concerning

1       grievances, labor disputes, wages, rates of pay, hours  
2       of employment, or conditions of work.

3           (8) LAW.—The term “law”, used with respect  
4       to a State or a political subdivision thereof, includes  
5       the application of the laws of such State or such po-  
6       litical subdivision, including any regulations or ordi-  
7       nances issued by such State or such political subdivi-  
8       sion.

9           (9) LAW ENFORCEMENT OFFICER.—The term  
10       “law enforcement officer” has the meaning given  
11       such term in section 1204 of the Omnibus Crime  
12       Control and Safe Streets Act of 1968 (34 U.S.C.  
13       10284).

14          (10) MANAGEMENT EMPLOYEE.—The term  
15       “management employee” means an individual em-  
16       ployed by a public employer in a position the duties  
17       and responsibilities of which require the individual to  
18       formulate or determine the policies of the employer.

19          (11) PUBLIC EMPLOYEE.—The term “public  
20       employee”—

21           (A) means an individual, employed by a  
22       public employer, who in any workweek is en-  
23       gaged in commerce or is employed in an enter-  
24       prise engaged in commerce;

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—

5 (i) a supervisory employee;

6 (ii) a management employee;

7 (iii) a confidential employee;

8 (iv) an elected official; or

9 (v) a law enforcement officer em-  
10 ployed by a public employer as defined in  
11 section 2(a)(12)—

12 (I) who has statutory authority  
13 to make arrests or apprehensions;

14 (II) who is authorized by the  
15 agency of the employee to carry fire-  
16 arms; and

17 (III) whose duties substantially  
18 include the engagement in or super-  
19 vision of the prevention, detection, or  
20 investigation of any person for any  
21 violation of law: *Provided*, That a law  
22 enforcement officer whose duties sub-  
23 stantially include the engagement in  
24 or supervision of corrections, proba-  
25 tion, parole, or juvenile detention

1 functions shall be a public employee  
2 under this Act.

3 (12) PUBLIC EMPLOYER.—The term “public  
4 employer” means an entity that—

5 (A) employs not less than 1 individual;

6 (B) is engaged in commerce; and

7 (C) is either—

8 (i) a State or the political subdivision  
9 of a State; or

10 (ii) any authority, agency, school dis-  
11 trict, board or other entity controlled and  
12 operated by an entity described in clause

13 (i).

14 (13) SUBSTANTIALLY PROVIDES.—The term  
15 “substantially provides”, used with respect to the  
16 rights and procedures described in section 3(b),  
17 means providing rights and procedures that are  
18 equivalent to or greater than each of the rights and  
19 procedures described in such section.

20 (14) SUPERVISORY EMPLOYEE.—The term “su-  
21 pervisory employee” means an individual, employed  
22 by a public employer, who in any workweek is en-  
23 gaged in commerce or is employed in an enterprise  
24 engaged in commerce and who—

1 (A) has the authority in the interest of the  
2 employer, if the exercise of such authority is  
3 not merely routine or clerical in nature but re-  
4 quires the consistent exercise of independent  
5 judgment, to—

6 (i) hire, promote, reward, transfer,  
7 furlough, lay off, recall, suspend, dis-  
8 cipline, or remove public employees;

9 (ii) adjust the grievances of public  
10 employees; or

11 (iii) effectively recommend any action  
12 described in clause (i) or (ii);

13 (B) devotes a majority of time at work to  
14 exercising the authority under subparagraph  
15 (A); and

16 (C) is not a law enforcement officer as de-  
17 scribed in paragraph (11)(C)(v).

18 (b) FAIR LABOR STANDARDS ACT OF 1938  
19 TERMS.—The terms “commerce”, “employ”, “enterprise  
20 engaged in commerce”, and “State” have the meanings  
21 given such terms in section 3 of the Fair Labor Standards  
22 Act of 1938 (29 U.S.C. 203).

23 (c) STATE LAW.—If any term defined in this section  
24 has a substantially equivalent meaning to the term (or a  
25 substantially equivalent term) under applicable State law

1 on the date of the enactment of this Act, such term (or  
2 substantially equivalent term) and meaning under such  
3 applicable State law shall apply with respect to the term  
4 defined under this Act with respect to such State.

5 **SEC. 3. FEDERAL MINIMUM STANDARDS.**

6 (a) DETERMINATION.—

7 (1) IN GENERAL.—Not later than 180 days  
8 after the date of enactment of this Act, the Author-  
9 ity shall make a determination for each State as to  
10 whether the laws of such State substantially provide  
11 for each of the rights and procedures under sub-  
12 section (b) and not later than 30 days after the en-  
13 actment of this Act, the Authority shall establish  
14 procedures for the implementation of this section.

15 (2) CONSIDERATION OF ADDITIONAL OPIN-  
16 IONS.—In making the determination under para-  
17 graph (1), the Authority shall consider the opinions  
18 of affected public employees, supervisory employees,  
19 labor organizations, and public employers. In the  
20 case where the Authority is notified by an affected  
21 public employer and labor organization that both  
22 parties agree that the law applicable to such em-  
23 ployer and labor organization substantially provides  
24 for the minimum standards described in subsection  
25 (b), the Authority shall give such agreement weight

1 to the maximum extent practicable in making the  
2 Authority's determination under paragraph (1).

3 (3) LIMITED CRITERIA.—In making the deter-  
4 mination described in paragraph (1), the Authority  
5 may only consider the criteria described in sub-  
6 section (b).

7 (4) SUBSEQUENT DETERMINATIONS.—

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

13 (B) REQUEST.—A public employee, super-  
14 visory employee, public employer, or a labor or-  
15 ganization may submit to the Authority a writ-  
16 ten request for a subsequent determination with  
17 respect to whether a material change of State  
18 law has occurred.

19 (C) ISSUANCE.—If satisfied that a mate-  
20 rial change in State law has occurred, the Au-  
21 thority shall issue a subsequent determination  
22 not later than 30 days after receipt of such re-  
23 quest.

24 (5) JUDICIAL REVIEW.—Any covered person or  
25 public employer aggrieved by a determination of the

1 Authority under this paragraph (1) may, during the  
2 60-day period beginning on the date on which the  
3 determination was made, petition any United States  
4 Court of Appeals in the circuit in which the covered  
5 person or public employer resides or transacts busi-  
6 ness or in the Court of Appeals for the District of  
7 Columbia Circuit, for judicial review. In any judicial  
8 review of a determination made by the Authority de-  
9 scribed in paragraph (1), the procedures contained  
10 in subsections (c) and (d) of section 7123 of title 5,  
11 United States Code, shall be followed.

12 (b) FEDERAL MINIMUM STANDARD.—The collective  
13 bargaining rights and procedures under this subsection  
14 are as follows:

15 (1) A right of public employees and supervisory  
16 employees—

17 (A) to self-organization;

18 (B) to form, join, or assist a labor organi-  
19 zation or to refrain from any such activity;

20 (C) to bargain collectively through rep-  
21 resentatives of their own choosing; and

22 (D) to engage in other concerted activities  
23 for the purpose of collective bargaining or other  
24 mutual aid (including the filing of joint, class,  
25 or collective legal claims) or protection.

1 (2) A requirement for public employers to—

2 (A) recognize the labor organization of its  
3 public employees and supervisory employees  
4 (freely chosen in an election by a majority of  
5 such employees voting in the appropriate unit  
6 or chosen by voluntary recognition if that meth-  
7 od is permitted under State law) without re-  
8 quiring an election to recertify or decertify a  
9 labor organization that is already recognized as  
10 the representative of such employees unless not  
11 less than 30 percent of such employees in the  
12 bargaining unit freely sign a petition to decer-  
13 tify such labor organization—

14 (i) not earlier than the date that is 1  
15 year after the date of the election (or after  
16 a voluntary recognition if permitted under  
17 State law) of the representative;

18 (ii) not earlier than 1 year after the  
19 expiration of a valid collective bargaining  
20 agreement;

21 (iii) not during the term of a valid col-  
22 lective bargaining agreement (except as  
23 permissible under clause (iv)); or

1 (iv) during the 30-day period begin-  
2 ning on the date that is 90 days before the  
3 end of a valid existing contract;

4 (B) collectively bargain with such recog-  
5 nized labor organization; and

6 (C) commit any agreements with such rec-  
7 ognized labor organization to writing in a con-  
8 tract or memorandum of understanding.

9 (3) An interest impasse resolution mechanism,  
10 such as fact-finding, mediation, arbitration, or com-  
11 parable procedures that culminate in binding resolu-  
12 tion.

13 (4) Payroll deduction of labor organization fees  
14 for any duly selected representative of a public em-  
15 ployee or supervisory employee pursuant to the  
16 terms of an agreement between the labor organiza-  
17 tion and such public or supervisory employee, which  
18 shall remain in effect until revoked by such employee  
19 in accordance with its terms.

20 (5) The prohibition of practices that interfere  
21 with, restrain, or coerce public or supervisory em-  
22 ployees in the exercise of rights guaranteed in para-  
23 graph (1) or regulations issued thereunder.

1           (6) The enforcement of all relevant rights and  
2           procedures provided by State law and enumerated in  
3           this section.

4           (7) The enforcement of all rights and proce-  
5           dures provided by any written contract or memo-  
6           randum of understanding between a labor organiza-  
7           tion and a public employer, through—

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

9                   (B) at the election of an aggrieved party,  
10           the State courts, if so permitted under State  
11           law; or

12                   (C) a grievance resolution procedure culmi-  
13           nating in binding arbitration negotiated in such  
14           contract or memorandum.

15           (c) COMPLIANCE WITH RIGHTS AND PROCE-  
16 DURES.—If the Authority determines under subsection (a)  
17 that the laws of a State substantially provide each of the  
18 rights and procedures described in subsection (b), then  
19 subsection (d) shall not apply and this Act shall not pre-  
20 empt the laws of such State.

21           (d) FAILURE TO SUBSTANTIALLY PROVIDE.—

22                   (1) IN GENERAL.—If the Authority determines  
23           under subsection (a) that the laws of a State do not  
24           substantially provide for each of the rights and pro-  
25           cedures described in subsection (b), then such State

1 shall be subject to the rules and activities of the Au-  
2 thority under section 4 beginning on the later of—

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

5 (B) the date that is the last day of the  
6 first regular session of the legislature of the  
7 State that begins after the date of the enact-  
8 ment of this Act; or

9 (C) in the case of a State receiving a sub-  
10 sequent determination under subsection (a)(4),  
11 the date that is the last day of the first regular  
12 session of the legislature of the State that be-  
13 gins after the date the Authority made the de-  
14 termination.

15 (2) PARTIAL FAILURE.—If the Authority makes  
16 a determination that a State does not substantially  
17 provide for each of the rights and procedures de-  
18 scribed in subsection (b) because the State fails to  
19 substantially provide for all of such rights and pro-  
20 cedures with respect to any public or supervisory  
21 employees, the Authority shall identify—

22 (A) the categories of public or supervisory  
23 employees of such State that shall be subject to  
24 the rules and activities of the Authority under  
25 section 4, pursuant to section 7(b)(3), begin-

1           ning on the applicable date under paragraph  
2           (1);

3           (B) the categories of public employees and  
4           supervisory employees of such State that shall  
5           not be subject to the rules and activities of the  
6           Authority under section 4;

7           (C) the categories of rights and procedures  
8           described in subsection (b) for which the State  
9           does not substantially provide for certain public  
10          employees and supervisory employees; and

11          (D) the categories of rights and procedures  
12          described in such subsection for which the State  
13          substantially provides for all employees.

14 **SEC. 4. MINIMUM STANDARDS ADMINISTERED BY THE FED-**  
15 **ERAL LABOR RELATIONS AUTHORITY.**

16          (a) **IN GENERAL.**—Not later than 1 year after the  
17 date of enactment of this Act, the Authority shall issue  
18 rules and take such actions that the Authority determines  
19 appropriate to establish and administer collective bar-  
20 gaining rights and procedures that substantially provide  
21 for the minimum standards described in section 3(b) for  
22 States described in section 3(d).

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

1           (1) provide for the rights and procedures de-  
2           scribed in paragraphs (1) through (5) of section  
3           3(b);

4           (2) supervise or conduct elections to determine  
5           whether a labor organization has been selected as an  
6           exclusive representative by a majority of the public  
7           employees and supervisory employees voting in such  
8           election in an appropriate unit;

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

11          (4) conduct hearings and resolve complaints  
12          concerning violations of this Act or any rule or order  
13          issued by the Authority pursuant to this Act;

14          (5) resolve exceptions to the awards of arbitra-  
15          tors that violate or exceed the scope of public policy  
16          of this Act; and

17          (6) take such other actions as are necessary  
18          and appropriate to effectively administer this Act,  
19          including issuing subpoenas requiring the attendance  
20          and testimony of witnesses and the production of  
21          documentary or other evidence from any place in the  
22          United States, administering oaths, taking or order-  
23          ing the taking of depositions, ordering responses to  
24          written interrogatories, and receiving and examining  
25          witnesses.

1 (c) ENFORCEMENT.—

2 (1) IN GENERAL.—The Authority may issue an  
3 order directing compliance by any covered person or  
4 public employer found to be in violation of this sec-  
5 tion, and may petition any United States Court of  
6 Appeals with jurisdiction over the parties, or the  
7 United States Court of Appeals for the District of  
8 Columbia Circuit, to enforce any such final orders  
9 issued pursuant to this section or pursuant to rules  
10 issued under this section, and for appropriate tem-  
11 porary relief or a restraining order. Any covered per-  
12 son or public employer aggrieved by an order issued  
13 by the Authority under this section may, during the  
14 60-day period beginning on the date on which the  
15 order was issued petition any United States Court of  
16 Appeals in the circuit which the covered person or  
17 public employer resides or transacts business or in  
18 the Court of Appeals for the District of Columbia  
19 Circuit, for judicial review. Any petition or appeal  
20 under this section shall be conducted in accordance  
21 with subsections (c) and (d) of section 7123 of title  
22 5, United States Code.

23 (2) PRIVATE RIGHT OF ACTION.—

24 (A) FILING A CIVIL ACTION.—Unless the  
25 Authority has filed an order of enforcement as

1 provided in paragraph (1), any party may, after  
2 the 180-day period following the filing of a  
3 charge with the Authority pursuant to the rules  
4 of the Authority under this section, file a civil  
5 action against any named State administrator  
6 in an appropriate district court of the United  
7 States to enjoin such administrator to enforce  
8 compliance—

9 (i) with this Act or the rules issued by  
10 the Authority under this section; or

11 (ii) to enforce compliance with any  
12 order issued by the Authority.

13 (B) TIMING.—Any civil action brought  
14 under subparagraph (A) must be brought not  
15 later than the earlier of—

16 (i) the date that is 180 days after the  
17 expiration of the 180-day period in sub-  
18 paragraph (A); or

19 (ii) the date that is 180 days after the  
20 date that the Authority dismisses a charge  
21 described in subparagraph (A).

22 (C) NOTICE.—The party shall serve notice  
23 of the Federal lawsuit to the Authority.

24 (D) JURISDICTION AND ATTORNEYS'  
25 FEES.—A district court shall have jurisdiction

1 over the civil action filed under subparagraph  
2 (A) without regard to the amount in con-  
3 troversy or the citizenship of the parties and  
4 may award reasonable attorneys' fees.

5 **SEC. 5. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED**  
6 **WHEN EMERGENCY OR PUBLIC SAFETY SERV-**  
7 **ICES IMPERILED.**

8 (a) IN GENERAL.—Subject to subsection (b), any em-  
9 ployer, emergency services employee, or law enforcement  
10 officer subject to the rules and activities of the Authority  
11 under section 4 may not engage in a lockout, strike, or  
12 any other organized job action of which a reasonably prob-  
13 able result is a measurable disruption of the delivery of  
14 emergency or public safety services. No labor organization  
15 may cause or attempt to cause a violation of this sub-  
16 section.

17 (b) NO PREEMPTION.—Nothing in this section shall  
18 be construed to preempt any law of any State or political  
19 subdivision of any State with respect to strikes by emer-  
20 gency services employees or law enforcement officers.

21 **SEC. 6. EXISTING COLLECTIVE BARGAINING UNITS AND**  
22 **AGREEMENTS.**

23 The enactment of this Act shall not invalidate any  
24 certification, recognition, result of an election, collective

1 bargaining agreement, or memorandum of understanding  
2 that—

3           (1) has been issued, approved, or ratified by  
4           any public employee relations board or commission,  
5           or by any State or political subdivision or an agent  
6           or management official of such State or political  
7           subdivision; and

8           (2) is in effect on the day before the date of en-  
9           actment of this Act.

10 **SEC. 7. EXCEPTIONS.**

11           (a) IN GENERAL.—The Authority shall not make a  
12 determination under section 3(a) that the laws of a State  
13 do not substantially provide for the rights and procedures  
14 under section 3(b) on the basis that relevant State laws—

15           (1) permit a public or supervisory employee to  
16           appear on the employee’s own behalf with respect to  
17           the relationship of the public employee with the pub-  
18           lic employer involved;

19           (2) do not cover public or supervisory employees  
20           of the State militia or national guard;

21           (3) do not apply to a political subdivision of a  
22           State if—

23                   (A) such political subdivision has a popu-  
24                   lation of fewer than 5,000 people or employs  
25                   fewer than 25 public employees; and

1 (B) the State in which such political sub-  
2 division is located notifies the Authority that  
3 such subdivision is exempt from such laws be-  
4 fore the date on which the Authority makes the  
5 determination; or

6 (4) do not require bargaining with respect to  
7 pension or retirement income benefits; or

8 (5) prohibit employers and labor organizations  
9 from negotiating provisions in a labor agreement  
10 that require membership in the labor organization or  
11 the payment of fees to the union as a condition of  
12 employment.

13 (b) COMPLIANCE.—

14 (1) ACTIONS OF STATES.—Nothing in this Act  
15 shall be construed to require a State to rescind or  
16 preempt the laws of any political subdivision of the  
17 State if such laws substantially provide for the  
18 rights and procedures described in section 3(b).

19 (2) ACTIONS OF THE DISTRICT OF COLUM-  
20 BIA.—Nothing in this Act or in the rules issued  
21 under this Act shall be construed—

22 (A) to require the District of Columbia to  
23 rescind—

24 (i) section 501 of the District of Co-  
25 lumbia Government Comprehensive Merit

1 Personnel Act of 1978 (1-605.01, D.C. Of-  
2 ficial Code), establishing the Public Em-  
3 ployee Relations Board of the District of  
4 Columbia; or

5 (ii) section 502 of such Act (1-605.02,  
6 D.C. Official Code), establishing the power  
7 of the Board;

8 (B) to preempt the laws described in sub-  
9 paragraph (A); or

10 (C) to limit or alter the powers of the gov-  
11 ernment of the District of Columbia pursuant  
12 to the District of Columbia Home Rule Act.

13 (3) ACTIONS OF THE AUTHORITY.—Nothing in  
14 this Act shall be construed to preempt—

15 (A) the laws of any State or political sub-  
16 division of a State that substantially provide for  
17 the rights and procedures described in section  
18 3(b);

19 (B) the laws of any State or political sub-  
20 division of a State that substantially provide for  
21 the rights and procedures described in section  
22 3(b), solely because such laws provide that a  
23 contract or memorandum of understanding be-  
24 tween a public employer and a labor organiza-  
25 tion must be presented to a legislative body as

1 part of the process for approving such contract  
2 or memorandum of understanding; or

3 (C) the laws of any State or political sub-  
4 division of a State that permit or require a pub-  
5 lic employer to recognize a labor organization  
6 on the basis of signed authorizations executed  
7 by employees designating the labor organization  
8 as their representative.

9 (4) LIMITED ENFORCEMENT POWER.—In the  
10 case of a law described in section 3(d)(2), the Au-  
11 thority shall only exercise the authority under sec-  
12 tion 4 with respect to the categories of public or su-  
13 pervisory employees for whom State law does not  
14 substantially provide the rights and procedures de-  
15 scribed in section 3(b).

16 **SEC. 8. SEVERABILITY.**

17 If any provision of this Act or the application thereof  
18 to any person or circumstance is held invalid, the remain-  
19 der of this Act, or the application of that provision to per-  
20 sons or circumstances other than those as to which it is  
21 held invalid, is not affected thereby.

22 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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