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REPORT
110–232

PUBLIC SAFETY EMPLOYER-EMPLOYEE COOPERATION ACT OF 2007

JULY 13, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 980]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 980) to provide collective bargaining rights for public safety officers employed by States or their political subdivisions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Safety Employer-Employee Cooperation Act of 2007".

SEC. 2. FINDINGS AND DECLARATION OF PURPOSE.

Congress finds the following:

(1) Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. 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. As the first to arrive on scene, State and local public safety officers must be prepared to protect life and property and to preserve scarce and vital Federal resources, avoid substantial and debilitating interference with inter-

state and foreign commerce, and to protect the national security of the United States. Public safety employer-employee cooperation is essential in meeting these needs and is, therefore, in the National interest.

(3) The health and safety of the Nation and the best interests of public safety employers and employees may be furthered by the settlement of issues through the processes of collective bargaining.

(4) The Federal Government is in the position 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.

(5) The potential absence of adequate cooperation between public safety employers and employees has implications for the security of employees, impacts 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, and can affect interstate and intrastate commerce.

(6) 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 laws should be respected.

SEC. 3. DEFINITIONS.

In this Act:

(1) The term "Authority" means the Federal Labor Relations Authority.

(2) The term "public safety officer"—

(A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or emergency medical services personnel;

(B) includes an individual who is temporarily transferred to a supervisory or management position; and

(C) does not include a permanent supervisory or management employee.

(3) The term "firefighter" has the same meaning given the term "employee in fire protection activities" defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203(y)).

(4) The term "emergency medical services personnel" means an individual who provides out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(5) The term "law enforcement officer" has the same meaning given such term in section 1204(5) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(5)).

(6) The term "supervisory employee" has the meaning given such term, or a substantially equivalent term, under applicable State law on the date of enactment of this Act. In the absence of such State law on the date of enactment of this Act, 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 preponderance of employment time exercising such authority.

(7) The term "management employee" has the meaning given such term, or a substantially equivalent 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 in a position that requires or authorizes the individual to formulate, determine, or influence the policies of the employer.

(8) The terms "employer" and "public safety agency" mean any State, political subdivision of a State, the District of Columbia, or any territory or possession of the United States that employs public safety officers.

(9) The term "labor organization" means an organization composed in whole or in part of employees, in which employees participate, and the purpose of which is to represent such employees before public safety agencies concerning grievances, conditions of employment and related matters.

(10) The term "substantially provides" means substantial compliance with the rights and responsibilities described in section 4(b).

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). In making such determinations, the Authority shall consider the opinion of affected employers and labor organizations. Where the Authority is notified by an employer and an affected 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 its determination under this subsection.

(2) SUBSEQUENT DETERMINATIONS.—(A) 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) An employer or a labor organization may submit a written request for a subsequent determination, on the basis of a material change in State law or its interpretation. If the Authority determines 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.

(3) JUDICIAL REVIEW.—Any person 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 resides or transacts business or in District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in section 7123(c) 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 provide adequate rights and responsibilities unless such law fails to substantially provide rights and responsibilities comparable to or greater than each of the following:

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management and supervisory 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 bargaining 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 through State courts of—

(A) all rights, responsibilities, and protections provided by State law and enumerated in this subsection; and

(B) any written contract or memorandum of understanding.

(c) 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), such State shall be subject to the regulations and procedures described in section 5.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply in each State on the later of—

(A) 2 years after the date of enactment of this Act; or

(B) the date of the end of the first regular session of the legislature of that State that begins after the date of the enactment of this Act.

SEC. 5. ROLE OF THE AUTHORITY.

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

(b) ROLE OF THE FEDERAL LABOR RELATIONS AUTHORITY.—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 and 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 bargain in good faith;

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

(5) resolve exceptions to the awards of arbitrators;

(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;

(7) if the Authority finds that any State is not in compliance with the regulations prescribed under subsection (a), direct compliance by such State by order; and

(8) 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) PETITION BY AUTHORITY.—If a State fails to comply with a final order issued by the Authority, the Authority shall 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 section 7123(c) and (d) of title 5, United States Code, except that any final order of the Authority with respect to questions of fact shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

(2) RIGHT OF ACTION.—Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any interested party shall have the right to file suit against any political subdivision of a State, or, if the State has waived its sovereign immunity, against the State itself, in any district court of the United States of competent jurisdiction to enforce compliance with the regulations issued by the Authority pursuant to subsection (b), to enforce compliance with any order issued by the Authority pursuant to this section, or to enforce section 6 of this Act. The right provided by this paragraph 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 under paragraph (1).

SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

Notwithstanding any rights or responsibilities provided under State law or under regulations issued by the Authority under section 5—

(1) a public safety employer may not engage in a lockout of public safety officers;

(2) public safety officers may not engage in a strike against such public safety employer; and

(3) a labor organization may not call for a strike by public safety officers against their public safety employer.

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

This Act and the regulations issued under this Act shall not be construed to invalidate a certification, recognition, 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 officials) in effect on the day before the date of enactment of this Act, or the results of any election held before the date of enactment of this Act.

SEC. 8. CONSTRUCTION, COMPLIANCE, AND ENFORCEMENT.

(a) CONSTRUCTION.—Nothing in this Act or the regulations issued under 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 or jurisdiction that substantially provides greater or comparable rights and responsibilities described in section 4(b);

(2) to prevent a State from enforcing a State law which prohibits employers and labor organizations from negotiating provisions in a labor agreement that require union membership or payment of union fees as a condition of employment;

(3) to preempt any State law in effect on the date of enactment of this Act that substantially provides for the rights and responsibilities described in section 4(b) solely because—

(A) such State law permits an employee to appear in his or her own behalf with respect to his or her employment relations with the public safety agency involved;

(B) such State law excludes from its coverage employees of a state militia or national guard;

(C) such rights and responsibilities have not been extended to other categories of employees covered by this Act, in which case the Authority shall only exercise the powers provided in section 5 of this Act with respect to those categories of employees who have not been afforded the rights and responsibilities described in section 4(b); or

(D) 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;

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

(5) to require a State to rescind or preempt laws or ordinances of any of its political subdivisions if such laws substantially provide rights and responsibilities for public safety officers that are comparable to or greater than the rights and responsibilities enumerated in section 4(b) of this Act; or

(6) preempt any State law that substantially provides for the rights and responsibilities described in section 4(b) solely because such law does not require bargaining with respect to pension and retirement benefits.

(b) PARTIAL EXEMPTION.—A State may exempt from its State law, or from the requirements established under this Act, a political subdivision of the State that has a population of less than 5,000 or that employs fewer than 25 full time employees. For purposes of this subsection, the term "employees" includes each individual employed by the political subdivision except any individual elected by popular vote or appointed to serve on a board or commission.

(c) ENFORCEMENT.—Notwithstanding any other provision of the Act, and in the absence of a waiver of a State's sovereign immunity, the Authority shall have the exclusive power to enforce the provisions of this Act with respect to public safety officers employed by 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.

COVER PAGE

Provided by the Office of Legislative Counsel.

PURPOSE

COMMITTEE ACTION INCLUDING LEGISLATIVE HISTORY AND VOTES IN COMMITTEE

104TH CONGRESS

On April 7, 1995, the Public Safety Employer-Employee Cooperation Act was first introduced as the Public Safety Employer-Employee Relations Act of 1995, H.R. 1484 by Representative Dale Kildee (D–MI). It was referred to the Government Reform and Oversight Committee, and the House Committee on Economic and Educational Opportunities where it was referred to the Subcommittee on Employer-Employee Relations. H.R 1484 had 50 co-sponsors. Neither the Committee nor the Subcommittee took any action on the bill.

105TH CONGRESS

On April 21, 1997, the Public Safety Employer-Employee Cooperation Act of 1997 was re-introduced in the 105th Congress as H.R. 1173 by Representative Dale Kildee (D–MI), joined by Representative Robert Ney (R–OH) as a lead co-sponsor. H.R 1173 was referred to the House Committee on Education and the Workforce where it was referred to the Subcommittee on Employer-Employee Relations. The legislation had 204 co-sponsors, both Democratic and Republican. Neither full Committee nor the Subcommittee took any action on the bill.

106TH CONGRESS

On March 11, 1999, the Public Safety Employer-Employee Cooperation Act of 1999 was re-introduced by Representatives Dale Kildee (D–MI) and Robert Ney (R–OH) as H.R. 1093. It was referred to the House Committee on Education and the Workforce where it was referred to the Subcommittee on Employer-Employee Relations. H.R. 1093 garnered 247 co-sponsors both Democratic and Republican. A companion bill, S. 1016 was introduced in the Senate by Senator Mike DeWine (R–OH).

Subcommittee hearing on the Public Safety Employer-Employee Cooperation Act

On May 9, 2000, the Employer-Employee Relations Subcommittee led by Chairman John Boehner (R–OH), conducted the first legislative hearing on the Public Safety Employer-Employee Cooperation Act of 1999. The hearing featured testimony from witnesses, including: Representative Dale Kildee (D–MI); Dr. Frederick Nesbitt, the Director of Governmental Affairs for the International Association of Fire Fighters; Mr. Gilbert G. Gallegos, the National President of the Grand Lodge of the Fraternal Order of Police; Mr. Kenneth Lyons, National President of the International Brotherhood of Police Officers; Mr. R. Theodore Clark on behalf of the National Public Employer Labor Relations Association; Mayor Gene Kinsey of Grand Junction, Colorado; and Mr. George Costello, a Legislative Attorney of the Congressional Research Service. Testimony was submitted for the hearing record by Mr. Robert Scully, Executive Director of the National Association of Police Organizations.

H.R. 1093 received no further consideration after the May 9, 2000, Subcommittee hearing.

Senate hearing on the Public Safety Employer-Employee Cooperation Act

On July 25, 2000 the Senate Health, Education, Labor and Pensions (HELP) Committee led by Chairman James Jeffords held a hearing on S. 1016, the Public Safety Employer-Employee Cooperation Act. The hearing featured testimony from witnesses, including: Mr. Gerald Flynn, National Vice President for the International Brotherhood of Police Officers; Dr. Frederick H. Nesbitt, Director of Governmental Affairs for the International Association of Fire Fighters; Mr. Gilbert G. Gallegos, the National President of the Grand Lodge of the Fraternal Order of Police; Mr. R. Theodore Clark, on behalf of the National League of Cities, U.S. Conference

of Mayors, National Association of Counties, National Public Employer Labor Relations Association, and the International Personnel Management Association; Mr. Sam Cabral, President of the International Union of Police Associations, AFL–CIO and Mr. Reed Larson, President of the National Right to Work Committee. Testimony was submitted for the record by Mr. Robert T. Scully, Executive Director of the National Association of Police Organizations, the American Federation of State, County and Municipal Employees, and Mr. David S. Smith, Solicitor, Federal Labor Relations Authority.

S. 1016 received no further consideration after the July 25, 2000 HELP Committee hearing.

107TH CONGRESS

On April 4, 2001, the Public Safety Employer-Employee Cooperation Act of 2001 was re-introduced by Representatives Dale Kildee (D–MI) and Robert Ney (R–OH) as H.R. 1475. It was referred to the House Committee on Education and the Workforce where it was referred to the Subcommittee on Employer-Employee Relations. H.R. 1475 garnered 226 Democratic and Republican co-sponsors. Senator Judd Gregg (R–NH), joined by Senators Ted Kennedy (D–MA) and Evan Bayh (D–IN) introduced the Senate companion, S. 952 on May 24, 2001. S. 952 had 23 Democratic and Republican co-sponsors. The bill was referred to the Committee on Health, Education, Labor, and Pensions (HELP).

On September 19, 2001, Senate HELP Committee chairman Ted Kennedy (D–MA) reported S. 952 favorably out of Committee without amendment and without a written 2 report. On October 31, 2001 Senator Thomas Daschle (D–SD) offered the Public Safety Employer-Employee Cooperation Act as amendment number 2044 to H.R. 3061, the Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act of 2002. On November 6, 2001 Senator Daschle requested a vote to close debate on the amendment. The cloture vote was defeated by a vote of 56–44, and Senator Daschle subsequently withdrew the amendment.

108TH CONGRESS

On February 13, 2003, Representatives Dale Kildee and Robert Ney re-introduced the Public Safety Employer-Employee Cooperation Act of 2003, H.R. 814. The bill was referred to the House Committee on Education and the Workforce where it was referred to the Subcommittee on Employer-Employee Relations. H.R. 814 garnered 180 Democratic and Republican co-sponsors. Neither the full Committee nor the Subcommittee took any action on the bill.

On March 12, 2003, Senator Judd Gregg re-introduced the companion bill, S. 606. The bill had 28 Democratic and Republican cosponsors and was referred to the Committee on Health, Education, Labor and Pensions. Senator Gregg, the HELP Committee chairman and the sponsor of S. 606 reported the bill favorably out of Committee without amendment. No further action was taken on the bill.

109TH CONGRESS

On March 10, 2005, the Public Safety Employer-Employee Cooperation Act of 2005 was introduced by Representatives Dale Kildee (D–MI) and Bob Ney (R–OH) as H.R. 1249. It was referred to the House Committee on Education and the Workforce where it was referred to the Subcommittee on Employer-Employee Relations. H.R. 1249 garnered 121 co-sponsors, both Democratic and Republican. Senator Judd Gregg reintroduced the companion bill, S.513 on March 3, 2005 which had 21 Democratic and Republican cosponsors. Neither the House nor the Senate took further action on the Public Safety Employer-Employee Act of 2005.

110TH CONGRESS

On February 12 2007, the Public Safety Employer-Employee Cooperation Act of 2007 was introduced as H.R. 980 by Representative Dale Kildee (D–MI), joined by Representative John Duncan (R–TN). H.R. 980 has 271 Democratic and Republican cosponsors. The bill was referred to the House Committee on Education and Labor where it was referred to the Subcommittee on Health, Employment, Labor, and Pensions.

Subcommittee hearing on the H.R. 980

On June 5, 2007, the Subcommittee on Health, Employment, Labor, and Pensions (HELP), led by Chairman Robert Andrews (D–NJ), conducted a legislative hearing on H.R. 980, "Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007." This hearing consisted of two panels. The first panel included the bill's sponsor Representative Dale Kildee. The second panel consisted of: Mr. Kevin O'Connor Assistant to the General President of the International Association of Fire fighters; Mayor Wayne Seybold of Marion, Indiana; Mr. Paul Nunziato, a New York/New Jersey Port Authority Police Officer and Vice President of the Police Benevolent Association in New York City, New York; Professor William Banks of Syracuse University; and Mr. R. Theodore Clark, Jr., speaking on behalf of the National Public Employer Labor Relations Association; and Neil Reichenberg, Executive Director of International Public Management Association for Human Resources.

Full committee mark-up of the Public Safety Employer-Employee Cooperation Act of 2007

On June 20, 2007, the Committee on Education and Labor met to markup H.R. 980, the Public Safety Employer-Employee Cooperation Act of 2007. The Committee adopted by voice vote an amendment in the nature of a substitute offered by Mr. Kildee and reported the bill favorably as amended by a vote of 42–1 to the House of Representatives.

The Kildee amendment in the nature of a substitute contained minor technical changes, including the following modifications to H.R. 980:

- If an employer and an affected labor organization notify the Authority that a state's law substantially provides public safety officers with the basic bargaining rights as defined in Section 4(b), the Authority shall give such agreement weight to

the maximum extent practicable in making its determination under this subsection.

- When determining whether or not a state law complies with H.R. 980, the Authority shall consider whether the state substantially provides the rights and responsibilities comparable to or greater than each of the rights defined in Section 4(b)(1)–4(b)(5).
- The FLRA has the authority to supervise and conduct elections to determine whether a labor organization has been selected by a majority of employees.
- Neither public safety officers nor any labor organization representing those public safety employees may engage in a strike against such public safety employer.
- H.R. 980 shall not preempt any state law that substantially provides the rights in Section 4(b) solely because the law does not require bargaining with respect to pension and retirement benefits.

Representative Mark Souder (R–IN) offered an amendment in the nature of a substitute which would have required that employers or public safety agencies only be permitted to recognize a labor organization if that labor organization was chosen through a secret ballot election. H.R. 980, however, imposes no such requirement. It requires that public safety agencies recognize employees' freely-made majority choice and does not specify the process by which such recognition is achieved. So long as employees freely choose and the majority's choice is effectuated, the state or locality may decide how to discern 4 the employees' majority choice, whether via secret ballot elections, majority signup processes, or other means. Representative Souder withdrew his amendment.

SUMMARY

The Public Safety Employer-Employee Cooperation Act of 2007 would extend to public safety officers (i.e., fire fighters; law enforcement officers; and emergency medical services personnel) the right to bargain collectively with their employers.

In addition to guaranteeing the right of public safety officers to form and join a union, H.R. 980: (1) guarantees these workers the right to bargain collectively over hours, wages, and conditions of employment; (2) provides for enforcement of contracts through federal courts; (3) excludes management and supervisory employees (chiefs and assistant chiefs) but retains the right of fire lieutenants and captains, as well as police sergeants to join a bargaining unit; (4) protects all existing certification, recognitions, elections, collective bargaining agreements and memorandums of understanding; (5) outlaws strikes and provides for dispute resolution mechanisms, such as mediation, fact finding or arbitration to resolve disputes; (6) exempts all states with a state collective bargaining law for public safety officers equal to or greater than the bill's basic minimum standards; (7) provides states with two years to implement a basic collective bargaining law; (8) protects state right-to-work laws; (9) protects the rights of volunteer fire fighters; and (10) allows states to exempt localities with a population of less than 5,000 or that employ fewer than 25 full time employees.

Most states already meet or exceed the basic collective bargaining rights established under H.R. 980, and therefore would be

exempt from its provisions, so long as those rights are guaranteed. To the extent that a state or locality does not meet the minimum protections of H.R. 980, the Federal Labor Relations Authority (FLRA)[1] would administer the bill's provisions protecting the collective bargaining rights of public safety officers.

STATEMENT AND COMMITTEE VIEWS

The Committee on Education and Labor of the 110th Congress is committed to strengthening the middle class, ensuring the full protection of the rights of workers, and fostering cooperative labor-management relationships. On March 1, 2007, this Congress took a major step in that effort with the passage of the Employee Free Choice Act, H.R. 800.

The Public Safety Employer-Employee Cooperation Act is another step in that effort. It will ensure that all public safety employees have the right to discuss with their employers wages, benefits, health and safety issues, and finding ways to better protect the public safety. While states and cities and towns have historically managed their own labor relations, approximately twenty-one states do not provide full collective bargaining rights for all public safety officers. Given the demands and pressures of their jobs, public safety employees ought to have a strong voice at work.

The Public Safety Employer-Employee Cooperation Act is about giving every first responder a voice on critical issues like safety on the job and on whether public services are being provided in the most efficient and effective manner. It is intended to improve communication and cooperation between rank-and-file public safety employees and management in order to create more cohesive and coordinated operations. Strengthening the voice of public safety employees will improve public safety and provide greater security for our country.

Fundamental fairness

The right to collectively bargain is an internationally recognized human right. H.R. 980 provides fundamental fairness to the nation's public safety employees. It ensures that all public safety employees have the right to collectively bargain, a right that the vast majority of Americans already enjoy. American workers, including private sector employees,[2] transportation workers,[3] federal government employees[4] and congressional staff[5] already have the right to bargain collectively with employers. H.R. 980 will put public safety officers on equal footing with other employees and provide them with the legal right to negotiate with employers over basic issues such as hours, wages, workplace conditions, and health and safety issues.

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[1] The FLRA, created by the Federal Service Labor-Management Relations Statute is an independent agency responsible for administering the labor relations program for approximately 1.9 million nonpostal Federal employees worldwide. Approximately 1.1 million of these Federal employees are represented in 2,200 bargaining units. The Authority is charged by statute with establishing policies and guidelines relating to Federal sector labor-management relations; resolving disputes arising among Federal agencies, unions, and employees; and ensuring compliance with Title VII of the Civil Service Reform Act of 1978.

[2] 29 U.S.C. 151 et seq.

[3] 45 U.S.C. 151–188 (as a condition of federal financial assistance to the employer).

[4] 27 F.R. 551; 3 CFR, 1959–1963 Comp., p. 521.

[5] P.L. 104–1.

Collective bargaining in the private and public sectors

For over 70 years, collective bargaining has allowed labor and management to work together to improve job conditions and enhance productivity. Through collective bargaining, labor and management have led the way on many critical improvements in today's workplace, such as health benefits, sick leave, and workplace safety. In the U.S., the right is protected by the National Labor Relations Act[6] for the private sector. Section 1 of the NLRA declares "it is the policy of the United States" to "encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organizing and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment, or other mutual aid or protection."[7]

While collective bargaining in the public sector was once a controversial issue, it is now widely accepted. On January 1962, President John F. Kennedy signed Executive Order 10988, "Employee-Management Cooperation in the Federal Service."[8] The Executive Order declares that "participation of employees in the formulation and implementation of personnel policies affecting them contributes to effective conduct of public business." The Federal Service Labor-Management Relations Statute likewise declares:

> Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations by their own choosing in decisions which affect them—safeguards the public interest, contributes to the effective conduct of public interest, and facilitates and encourages amicable settlements of disputes between employees and their employers involving conditions of employment.[9]

Over twelve years ago, Congress extended the right to collective bargaining to congressional employees, including the Capitol Police Force through the Congressional Accountability Act.[10] With the enactment of the Congressional Accountability Act, state and local government employees remain as one of the largest segments of the American workforce lacking the guaranteed right to enter into collective bargaining agreements with their employers.

Historically, states and localities have possessed the authority to manage their own labor relations. Consequently, protection for state and local public employees is a patchwork, riddled with holes. Many states have adopted their own labor-management relations statutes affording collective bargaining rights to state and local public employees. However, approximately twenty-one states do not fully protect the collective bargaining rights of public safety employees.[11]

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[6] 29 U.S.C. 151 et seq.

[7] *Id.*

[8] Executive Order 10988 was reaffirmed and strengthened by President Richard Nixon in 1970, and codified by Congress as part of the Civil Service Reform Act of 1978.

[9] 5 U.S.C. 71.7101(a)(1)(A)(B)(C).

[10] P.L. 104–1.

[11] North Carolina and Virginia prohibit bargaining altogether; Alabama, Arkansas, South Carolina, and Tennessee permit bargaining by local option but prohibit legally enforceable con-

Continued

Extending the right to collectively bargain has practical economic benefits for public safety employees, and it has major implications for homeland security and public safety. Workers who join together to collectively bargain are able to achieve better wages, benefits and working conditions. When compared to the rest of the nation, the pay, benefits and working conditions where public safety employees cannot collectively bargain tend to be substandard.[12] Bargaining in the public safety arena is unique in that it has an emphasis on health and safety issues. The primary concern for public safety officers at the bargaining table is how they can do their jobs more effectively and more safely.[13]

In a post–9/11 world, there has been a significant national policy emphasis on facilitating the ability of first responders to deal with, coordinate responses to, and prevent emergencies such as terrorist attacks or natural disasters, as well as these workers' responsibility for on-going day-to-day public safety issues. Ensuring that public safety officers can fulfill this need necessitates the right to a meaningful voice on the job. Providing collective bargaining rights to all public safety employees will improve first responders' ability to protect themselves, their families, communities and this country.

Collective bargaining protects the health and safety of public safety employees

Public safety employees serve in some of the country's most dangerous, strenuous and stressful jobs. Every year, more than 75,000 fire fighters are injured on the job. In his testimony before the HELP Subcommittee's hearing on June 5, 2007, Kevin O'Conner, Assistant to the General President of IAFF echoed this reality, "one-third of our members are injured in the line of duty. In 2007, approximately 100 of my brothers and sisters will pay the ultimate price. Thousands of times a day, in every corner of America, an alarm will ring in the firehouse and men and women will bravely put themselves in harm's way."[14] Sadly this point was brought home on June 18, 2007 when nine brave fire fighters in Charleston, South Carolina gave their own lives to save the lives of others. Having a voice on the job facilitates rank-and-file input into workplace safety and the efficient and effective provision of public safety services.

The American Federal of State, County and Municipal Employees (AFSCME) represents over 60,000 corrections officers and has decades of experience representing these employees in labor-management relations. AFSCME submitted a statement for the record

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tracts; Arizona, Colorado, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Texas and West Virginia permit bargaining by local option only; and Idaho, Missouri, Utah, and Wyoming require bargaining for fire fighters, but not for law enforcement.

[12] Public Safety Employer-Employee Cooperation Act of 1999, S. 1016, hearing before the Senate Health, Education, Labor and Pensions Committee, 106th Cong., 2nd Sess. (1999) (written testimony of Robert Scully, Executive Director, National Association of Police Organizations, at 1) [hereinafter Scully Testimony].

[13] The Public Employer-Employee Cooperation Act, Hearing Before the Subcommittee on Employer-Employee Relations, 106 Cong., 2nd Sess. (2000) (written testimony of Frederick H. Nesbitt, Director of Governmental Affairs, International Association of Fire Fighters, at 5) [hereinafter Nesbitt Testimony].

[14] Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007, hearing before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Kevin O'Connor, at 2) [hereinafter O'Connor Testimony].

of the July 25, 2000, Senate HELP Committee hearing on the Public Safety Employer-Employee Cooperation Act.[15] In the statement, AFSCME noted that corrections officers work in dangerous conditions with the most violent members of our society and they risk their lives to ensure that the public is held safe from these individuals. Experience "has demonstrated that the collective bargaining process is a tried and true method of improving communications among line corrections officers and upper management. The result is safety and more effective corrections systems." [16] H.R. 980 would extend collective bargaining rights to approximately 100,000 state and local government corrections officers who reside in states that deny public employees collective bargaining rights.[17]

Fire and police departments and local communities benefit immeasurably from productive partnerships between employers and employees, as does the federal government, which has a compelling interest in ensuring that public safety units are properly staffed, trained, and equipped to secure the homeland by protecting communities, and responding in times of crisis. States that do not recognize the right of public safety officers to collectively bargain experience recruitment and retention difficulties, and face diminished employee morale. These problems can result in diminished security and safety.

Gilbert Gallegos, National President of the Grand Lodge, Fraternal Order of Police notes that "public safety service is delivered by rank-and-file officers, therefore it is their observations and experiences which will refine the delivery of the service. To exclude them from having any input relating to their job—particularly when their lives are on the line is not only unfair to the officers, but also to the public they are sworn to protect." [18]

Collective bargaining benefits the lives of public safety officers and their families. In his May 9, 2000 testimony before the House Education Workforce Committee, Employer-Employee Relations Subcommittee hearing, Frederick Nesbitt, Director of Governmental Affairs for the International Association of Fire Fighters highlighted the stories of those who will benefit from the enactment of the Public Safety Employer-Employee Cooperation Act.[19] He discusses the plight of Matt Moseley and the Atlanta fire department. According to Dr. Nesbitt, the department was operating without adequate staffing, and fire fighters were forced to use defective breathing apparatus and the city government refused to meet with the fire fighter local union to hear their concerns. The city only agreed to work with the union after Moseley publicly discussed the problems facing the fire department.[20]

Nesbitt also discusses the story of Michael Regan of the Fairfax County Fire Department. Lieutenant Regan is part of an Urban Search and Rescue Team that is an integral part of our nation's re-

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[15] Public Safety Employer-Employee Cooperation Act of 1999, S. 1016, hearing before the Senate Health, Education, Labor and Pensions Committee, 106th Cong., 2nd Sess. (1999) (written testimony of the American Federation of State, County, and Municipal Employees, at 2) [hereinafter AFSCME Testimony].

[16] AFSCME Testimony, at 2.

[17] AFSCME Testimony, at 1.

[18] The Public Employer-Employee Cooperation Act, Hearing Before the Subcommittee on Employer-Employee Relations, 106 Cong., 2nd Sess. (2000) (written testimony of Gilbert Gallegos, National President of the Grand Lodge Fraternal Order of Police, at 3) [hereinafter Gallegos Testimony].

[19] Nesbitt Testimony, at 5.

[20] *Id.*

sponse to disaster abroad and at home. In addition to responding to the Pentagon attack on September 11, 2001, Lieutenant Regan has been sent by the federal government to places all over the world to find victims of natural disasters, and to rescue victims of terrorism. Despite the experience and expertise Lieutenant Regan has garnered throughout his career, he is still denied the right to use this experience to discuss and collectively bargain safety concerns with his employer, and potentially provide greater protection to the Fairfax County community.[21]

David Foote, a fire fighter in LeMay Township, Missouri was fired for telling a meeting of the local Republican Party about the fire department's refusal to replace unsafe personal protective gear. Foote filed suit and the court ordered that he be rehired and receive in excess of $400,000 in damages.[22]

Michael Staples, Assistant Fire Marshall in Arlington County, Virginia and President of the Arlington Professional Firefighters & Paramedics Association, Local 2800 (APFPA) of the IAFF reported that his department faces recruitment and retention difficulties because the Commonwealth of Virginia refuses to collectively bargain with public safety employees. The reality that fire fighters in nearby Maryland and Washington, D.C. are able to collectively bargain, makes it difficult for Virginia fire departments to recruit and retain experienced fire fighters. Inexperience and untested public safety departments can directly impact the safety of the fire fighters and that of the community.[23]

Law enforcement officers perform under strenuous conditions and often work long hours under difficult circumstances involving the potential use of deadly force. Each year, an average of 160 officers die in the line of duty, 62,552 officers are assaulted, and 21,433 suffer on-the-job injuries.[24] Collective bargaining gives police officers a voice in improving their working conditions, which not only affect the ability to recruit and retrain qualified law enforcement officers, but can directly jeopardize officer safety and increase the risk of serious injury or death.[25]

In his testimony before the Senate HELP Committee's July 25, 2000, hearing on the Public Safety Employer-Employee Cooperation Act, Robert Scully, Executive Director of the National Association of Police Organizations discussed the situation in a state where police officers did not have the right to collective bargaining. Officers in this state "were not always able to communicate with their superiors in life-threatening situations,"[26] because the municipality used radio transmitters that had limited coverage. Despite the evident safety risks, Officers fear losing their jobs so they often choose not to speak up. Scully testified that "history proves that the denial of the right of officers to collectively bargain and the absence of dispute-resolution mechanisms can cause poor employee morale, inadequate working conditions, and less effective law enforcement."[27]

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[21] *Id.*
[22] O'Connor Testimony, at 6.
[23] Briefing on H.R. 980, the Public Safety Employer-Employee Cooperation Act before the Education and Labor Committee staff, May 31, 2007.
[24] Scully Testimony, at 3.
[25] Scully Testimony, at 2.
[26] *Id.*
[27] *Id.*

Accordingly, the Public Safety Employer-Employee Cooperation Act ensures that collective bargaining is universally available to those public safety employees who want it. The purpose of the bill is to have laws in all fifty states that give public safety employees access to a bargaining process that fosters cooperation between first responders and their employers, and creates an atmosphere in which all parties are stakeholders in improving safety and making communities more secure. To achieve this goal, the Act simply requires that: public safety officers have the right to join a union; employers must recognize the union; the parties are required to bargain over hours, wages and terms of conditions of employment; impasse resolution mechanisms must be made available; and agreements can be enforced through state courts.

The success of collective bargaining in the public safety sector

Collective bargaining has proven the most effective and democratic means by which labor and management have achieved cooperation, improved employment conditions, developed fair and reasonable disciplinary procedures and increased productivity.[28]

The HELP Subcommittee heard from Paul Nunziato, a police officer with the Port Authority of New York and New Jersey Police Department during the Subcommittee's June 5, 2007 hearing on the Public Safety Employer-Employee Cooperation Act.[29] Officer Nunziato testified about his firsthand knowledge of the crucial role public safety officers play in our nation's counterterrorism and homeland security efforts. He testified that collective bargaining rights are critical to the protection of the health and welfare of public safety officers and their families. Officer Nunziato based these observations upon his own experience as a police officer who responded to the September 11, 2001 attack on the World Trade Center. While only 10 Port Authority police officers were working at the World Trade Center on September 11th, within minutes of the attack, police officers mobilized from all thirteen police commands to respond to the attacks. Of the 23 members of Officer Nunziato's rollcall at the PATH[30] command that day, 13 members lost their lives.[31]

The events of September 11th clearly demonstrated that collective bargaining agreements provide substantial security to police officers and their families. Officer Nunziato's partner, Donald McIntyre lost his life in the World Trade Center evacuation. In large part due to the benefits the union negotiated for its membership, Officer McIntyre's wife and two children will not have to worry about paying bills or receiving healthcare.[32] Officer Nunziato testified that this gave him and his fellow police officers a sense of security as they risk their lives on a daily basis.

The success of cooperative public sector workplace partnerships, which can be fostered through collective bargaining, was also evi-

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[28] *Id.*

[29] Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007, hearing before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Paul Nunziato) [hereinafter Nunziato Testimony].

[30] The PATH command center includes the subway system running between New York and New Jersey.

[31] The Port Authority Police Department suffered the worst single day loss of life of any law enforcement agency in the history of the United States.

[32] Nunziato Testimony, at 2.

denced in the findings of a Department of Labor task force report.[33] The task force analyzed nearly 50 examples of cooperative approaches to labor-management relationships and found that movement toward employee participation and cooperation between labor and management improves the delivery and quality of services.

Collective bargaining in the public safety sector improves the delivery of emergency services. In his testimony before the HELP Subcommittee's June 5, 2007, hearing, Kevin O'Connor highlighted the impact collective bargaining has for fire fighters. According to the Fire Chief of the Phoenix, Arizona Fire Department, "when labor and management leaders work together to build mutual trust, mutual respect, and a strong commitment to service, it helps focus the fire department on what is truly most important . . . providing excellent service to the customers and strong support to the members who serve them."[34] In New York City, a five-year collective bargaining agreement was ratified in 2006 to include a long-term solution to the Department's staffing shortage.

Before collective bargaining, the Omaha, Nebraska Fire Department lost one fire fighter in the line of duty every five years. The collective bargaining process has allowed fire fighters to address dangerous health hazards and obtain hearing protection equipment. In the twelve years that Omaha fire fighters have been able to collectively bargain, they have not lost a fire fighter.[35] In Miami, Florida, the local fire fighter union was able to offer data that convinced city leaders to establish one of the nation's foremost fire department-based emergency medical services (EMS) delivery models. The EMS system has reduced response times and reduced costs to taxpayers. According to Miami Fire Chief William Bryson, "the bottom line is collective bargaining worked to improve services in our city."[36]

Additionally, collective bargaining can help communities during difficult times. Wayne Seybold, Mayor of Marion, Indiana testified before the June 5, 2007 HELP Subcommittee and told the Subcommittee that at a critical moment in his community,[37] "the City of Marion's collective bargaining units were part of a team that were willing to make sacrifices for the betterment of the community."[38] He further testified that the City's relationship with the Marion Fire Department was anything but trusting in the beginning. However, since the City began collectively bargaining with the fire fighters, a sense of trust and respect has evolved, "by promoting such cooperation, our community enjoys a more effective and efficient delivery of emergency services."[39]

Protecting public safety employee collective bargaining laws

After the bill's enactment, the FLRA will have one-hundred and eighty days to review existing state laws to determine if individual

[33] "Working Together for Public Service: Final Report," U.S. Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation (1996).
[34] O'Connor Testimony, at 4.
[35] *Id.* at 5.
[36] *Id.*
[37] One of Marion, Indiana's largest manufacturing plants, Thomson Television Picture Tube plant closed in March 2004.
[38] Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007, hearing before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of Wayne Seybold) [hereinafter Seybold Testimony].
[39] Seybold Testimony, at 2.

states meet the minimal standards of collective bargaining. The only requirement is that they provide the rights and responsibilities comparable to or greater to each of the rights included within Section 4(b) of the Act. If the FLRA determines that states already provide these basic rights, they are exempt from any further oversight as long as they maintain their law.

In states where the localities are given the authority to determine and regulate the collective bargaining rights of public safety officers, those localities which do so would be treated in the same manner as the states. Under the Act, the FLRA would give these local ordinances the same deference as state laws. Therefore, if a state as described above opts not to enact a statewide law, FLRA's authority would be limited solely to those jurisdictions where public safety officers do not have minimum bargaining rights.

In determining whether a State law "substantially provides" for the rights and responsibilities enumerated in Section 4(b)(3), the Committee recognizes that many effective state bargaining laws contain limited exemptions from issues subject to bargaining, and directs the authority to allow such flexibility as long as the exclusions do not undermine the purposes of this Act. Some examples of such special provisions that the Committee believes are consistent with the intent of the legislation include exemptions for bargaining over: merit examinations (Connecticut); job reclassifications (Hawaii); promotions (Michigan); work performance standards (Nevada); residency requirements (Illinois); and use of technology (Delaware), among others.

Public safety employees serve an integral role in Homeland Security

The federal government has a compelling interest in protecting the rights of public safety officers as part of protecting homeland security. The Public Safety Employer-Employee Cooperation Act intends to help ensure the effective delivery of emergency services by establishing minimal standards for collective bargaining between public safety employees and their employers.

The federal government utilizes local emergency response personnel to carry out federal disaster response activities, both at home and abroad and it retains the authority to send local government employees anywhere they are needed. Since the terrorist attacks of September 11, 2001, Congress and the President have given significant attention to the role of first responders in the nation's homeland security efforts. President Bush issued the Homeland Security Presidential Directive–8 (HSPD–8) which declared it a federal responsibility to "strengthen preparedness capabilities of Federal, state, and local entities."[40] Congress has enacted numerous laws to aid first responders, recognizing the essential role that they play in the federal government's responsibility to protect homeland security.[41] September 11th demonstrated that the fed-

[40] Department of Homeland Security, HSPD–8 Overview, available at: http://www.ojp.usdoj.gov/odp/assessments/hspd8.htm (last visited June 25, 2007).

[41] Shortly after September 11, 2001, Congress created the new Department of Homeland Security (P.L. 107–296) and stipulated that the Department would be responsible with assisting states and localities with their homeland security efforts. The Office for Domestic Preparedness (ODP) awards equipment grants, administers training programs, and provides technical assistance. The office's authority extends from at least four different statutes, most of which provide general authority to federal entities to assist states and localities with terrorism preparedness (P.L. 104–132, P.L. 104–201; P.L. 107–56; P.L. 107–296). Funding for the Assistance to Fire

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eral government has a 13 vested interest in ensuring that public safety operations are properly staffed, trained and equipped.

Officer Nunziato articulated the inherent role public safety employees play in homeland security. Prior to September 11th, the vast majority of the Port Authority police officers worked steady eight hour tours on a four day on, two day off schedule. By the end of the day on September 11th, every officer was switched to twelve hour tours, seven days a week. Vacation and personal leave were cancelled. The schedule did not return to normal for three years.[42] September 11th demonstrated that homeland security is a vital federal government responsibility and first responders play an indispensable role in homeland security.

September 11th prompted active federal government involvement in local emergency response preparedness. The need for the federal government to provide support to first responders was further evidenced by the devastating affects of Hurricane Katrina. The 2006 congressional Failure of Initiative report found widespread lack of unity, poor coordination and cooperation, and delayed and duplicative efforts by responders immediately prior to and after landfall of the devastating storm.[43] The lack of cohesion among state and local emergency response personnel impaired their ability to organize their response activities effectively. The Public Safety Employer-Employee Cooperation Act will enhance cohesion among agencies across jurisdictions that will improve the delivery of critical services.

Constitutional authority

Requiring the states to provide collective bargaining rights to all public safety employees is a valid exercise of Congress' authority to regulate commerce pursuant to Article 1, Section 8 of the Constitution. It is well established that Congress may regulate labor management relations for employment in, or affecting interstate commerce[44] and there is little question that public safety employees' and their role in homeland security affects interstate commerce. The Supreme Court has acknowledged that Congress has considerable discretion to determine what activities affect interstate commerce, to the extent that it held events of purely local commerce (such as local working conditions) might, because of market forces,

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fighters Program (P.L. 106–398) which awards grants directly to local fire departments for fire fighter safety programs, training, equipment and facility improvements was raised from $100 million in FY 2001, to $900 million for FY 2003 and FY 2004 (P.L. 107–107) following the September 11th terrorist attacks. In addition, after September 11th Congress has passed legislation regarding technology, funding, spectrum access and other areas critical to first responders and emergency communications. The Homeland Security Act of 2002 (P.L. 107–296) addressed interoperable emergency communications capability; the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 458) expanded Congress' requirements for action in improving interoperability and public safety communications; Congress set a deadline of February 18, 2009 for the release of radio frequency spectrum for public safety radios as part of the Deficit Reduction Act of 2005 (P.L. 109–171). The Century Emergency Communications Act of 2006 created an Office of Emergency Communications and the position of Director who is required to take numerous steps to coordinate emergency communications planning, preparedness, and response, particularly at the state and regional level (P.L. 109–296, Title VI, Sec. 671(b) 'Title XVIII, 'Sec. 1801 '(c) '(7).

[42] Nunziato Testimony, at 3.

[43] Select Bipartisan to Investigate the Preparation for and Response to Hurricane Katrina, U.S. House of Representatives. Available at: http://katrina.house.gov/full__katrina__report.htm (last accessed June 25, 2007).

[44] NLRB v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937) (upholding the National Labor Relations Act, finding that by controlling industrial labor strife, Congress was preventing burdens from being placed on interstate commerce).

negatively affect interstate commerce, and thus could be regulated.[45]

The economic impact of terrorism and natural disasters is not limited to the locality where these events occur. Rather, such events have regional and national economic impacts for which the federal government must be responsive. In addition to the devastating loss of life of September 11th, the City of New York estimates that the economic costs from the attacks is somewhere between $83 billion and $95 billion. This estimate includes the one-time loss of wealth, which includes damage or destruction of the physical structures and loss of personal income, and also includes the loss of goods and services produced and sold.[46] Furthermore, it is estimated that that the economic loss from Hurricane Katrina and subsequent flooding in New Orleans is expected to exceed $100 billion.[47] By improving the cohesiveness and effectiveness of public safety employers and their employees, H.R. 980 assists in stemming these costs.

Congress' authority to provide collective bargaining rights to public safety employees is an extension of the Court's 1995 decision in Garcia v. San Antonio Metropolitan Transit Authority.[48] The Court in Garcia determined that Congress had the authority to extend wage and hour protections to state and local workers. If Congress determined that wage and hour protections should be extended to public sector workers, the Court reasoned that Representatives from those districts followed their constituents' policy preferences. Additionally, ensuring individual liberty would be advanced by permitting Congress to extent wage and hour protections. Over the last twelve years, the Public Safety Employer-Employee Cooperation Act has garnered the support of no less fifty and as many as two-hundred and seventy-four co-sponsors. It is clear that not only a majority of the Congress, but the majority in this country support extending collective bargaining rights to public safety officers.

In his testimony before the HELP Subcommittee's June 5, 2007 hearing, William Banks, Professor of Law at Syracuse University and director of its Institute for National Security and Counterterrorism, notes that the Court, in certain situations, has found that the Tenth Amendment limits Congress' ability to extend commerce-based regulations to public employees and employers.[49] However, this limitation applies when Congress attempts to "commandeer" state or local regulatory process, by requiring states and/or cities to adopt and implement a federal regulatory program.

The Public Safety Employer-Employee Cooperation Act does not "commandeer" state or local governments by requiring that they

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[45] U.S. v. Darby, 312 U.S. 100 (1941) (upholding the Fair Labor Standards Act as applied to a local employer); Wickard v. Filburn, 317 U.S. 111 (1942) (upholding federal limits on farm production as applied to a local farmer who grew wheat for family consumption).

[46] William C. Thompson, Jr., Comptroller for the City of New York. Remarks Prepared for Speech Before the Association for a Better New York. (Sept. 4, 2002). Available at: http://www.comptroller.nyc.gov/press/speeches/print/association__for__better__ny.shtm (last visited June 25, 2007).

[47] Risk Management Solutions, "RMS Expects Economic Loss to Exceed $100 Billion from Hurricane Katrina and the Great New Orleans Flood," Sept. 2, 2005. Available at: http://www.rms.com/NewsPress/PR__090205__HUKatrina.asp (last accessed June 25, 2007).

[48] 469 U.S. 528 (1985).

[49] Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007, hearing before the Subcommittee on Health, Employment, Labor & Pensions, 110th Cong., 1st Sess. (2007) (written testimony of William Banks, at 2) [hereinafter Banks Testimony].

enact or implement a federal regulatory program. The Act expressly places the onus on states that do not yet provide full collective bargaining rights for public sector employees to either provide the protections required in the Act, or to allow the FLRA to implement the Act.

The Public Safety Employer-Employee Cooperation Act is about fairness and national security. It will protect both our first responders and the communities they serve, making the nation safer and more secure.

SECTION-BY-SECTION ANALYSIS

Section 1. Provides that the short title of H.R. 980 is the "Public Safety Employer-Employee Cooperation Act of 2007."

Section 2. Articulates that the intent of the Act is to promote labor-management relationships and partnerships between public safety employers and public safety employees. A public safety employer/employee relationship based on trust, mutual respect, open communication, bilateral consensual problem solving and shared accountability plays an essential role in the efforts of the U.S. to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualty incidents. The absence of adequate cooperation between public safety employers and public safety employees has implications not only for national security, but for the security of public safety employees, and for their health and well-being.

Section 4(a)(1). Provides the timeline by which the Federal Labor Relations Authority ("Authority") shall review State collective bargaining laws to see if they meet minimum standards with respect to the bargaining rights for public safety officers. The Authority shall, no later than one-hundred and eighty days after the enactment make the determination as to whether a state substantially provides rights and responsibilities comparable or greater than those as defined in Section 4(b).

In addition, pursuant to Section 4(a)(2) the Authority can make a subsequent determination as to whether a state substantially complies with the Act if there is a subsequent change in state law or its interpretation. This request can be made in writing by an employer or labor organization. The Authority shall issue its determination within thirty days. Sec. 4(a)(2)(B). Any person aggrieved by the Authority's determination has sixty days following that determination to petition any U.S. Court of Appeals.[50]

Section 4(b). Defines the adequate rights and responsibilities a state must provide in order to substantially comply with the Act. The Authority shall consider a state's law to provide adequate rights and responsibility unless the state's law fails to substantially provide each of the following five minimum standards: (1) Granting public safety officers to right to form and join a labor organization and have it recognized as the exclusive bargaining representative of such employees; (2) Requiring public safety employer to recognize the employees' labor organization, 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 bar-

[50] An individual has the right to petition in the circuit in which the person resides or transacts business or in D.C. circuit for judicial review.

gaining over hours, wages, and terms and condition of employment; (4) Making an impasse resolution available if the parties are unable to reach an agreement, such as fact-finding, medication, arbitration, or comparable procedures; (5) Requiring enforcement through (A) state courts of all rights, and protections enumerated in this subsection; (B) any written contract or memorandum of understanding.

Nothing in Section 4(b) dictates to states the process for employees to choose to join a union. The Act only requires that the labor organization be "freely chosen by a majority of the employees." Employees may choose to join a union through a majority sign up process, a secret ballot election or any other process that reflects the free choice of employees. The Act does not require states or localities to adopt any specific means to discern that majority choice, so long as that free choice is protected.

Section 4(b) was amended from earlier versions of the Act to reduce the list of standards a state must comply with when determining whether or not a state substantially provides rights and responsibilities comparable to or greater than those provided through Section 4(b) of the Act. Reducing the number of minimum requirements intends to give states greater flexibility in implementing collective bargaining laws.

Section 5. Defines the role of the Authority in evaluating state collective bargaining laws, and in enforcing the Act in those states that do not meet minimum standards. The Authority, no later than 1 year after enactment, shall issue regulations establishing procedures providing the rights and responsibilities defined in 4(b) for those States that the Authority determines do not substantially provide for such rights and responsibilities for public safety employers and officers.

Section 5(b). In accordance with this Act and the regulations prescribed by the Authority, the Authority shall: (1) Determine the appropriateness of units for labor organization representation; (2) Supervise or conduct elections to determine if a labor organization has been selected as the exclusive bargaining representative by a majority of the employees in an appropriate unit; (3) Resolve issues relating to the duty to bargain in good faith; (4) Conduct hearings and resolve complaints of unfair labor practices; (5) Resolve exemptions to the awards of arbitrators; (6) Protect the rights of each employee to join, or assist any labor organization; (7) Take any actions necessary and appropriate to administer this Act.

Section 5(c)(1). Provides that the Authority has the right to petition to enforce the Act. The Authority may petition any U.S. Court of Appeals with jurisdiction over the parties to enforce any final orders and for temporary relief or a restraining order. Any interested party has the right to file suit against a municipality or local government in Federal court to enforce compliance with the regulations issued by the Authority.

Section 5(c)(2). Provides that any interested party has the right to file suit against any political subdivision of a state, or if the state has waived its sovereign immunity, against the state itself, in any U.S. district court. If the Authority subsequently brings suit to enforce compliance with any order issued by the Authority, the individual's petition shall terminate upon filing by the Authority.

Section 6. Provides that notwithstanding any right or responsibilities provided under State law, public safety employers, public safety employees and any labor organization representing those public safety employees are prohibited from engaging in strikes or lockouts.

Section 7. Provides that H.R. 980 does not invalidate a certification, recognition, collective bargaining agreement or memorandum of understanding which has been issued, approved or ratified by any public safety employee relations board or commission or by any State or political subdivisions or its agents.

Section 8(a). Limits the extent to which the Act can impose standards onto the states that relate to collective bargaining. Nothing in the Act shall: (1) Preempt or limit the remedies, rights and procedures of any State law or political subdivision that substantially provide greater or comparable rights and responsibilities described in Sec. 4(b). (2) Prevent a State from enforcing a Right-to-Work law that prohibits employers and labor organizations from negotiating provisions in labor agreements that require union membership or payment of union fees as a condition of employment; (3) Preempt any State law in effect on the date of enactment of the Act that substantially provides for the rights and responsibilities in Section 4(b) because the State law permits an employee to appear on his own with the public safety agency involved, excludes employees of a state militia or National Guard from its coverage, provides that a contract or memorandum of understanding between a public safety employer or labor organization must be presented to the State legislature as part of the approval process.

Section 8(a) further provides that nothing in the Act prohibits an employee from engaging in part-time employment or volunteer activities during off-duty hours; to 18 require a State to rescind or preempt the laws or ordinances of a State's political subdivision if it substantially provides the rights and responsibilities comparable or greater than those outlined in section 4(b) of this Act, or preempt any State law that substantially provides for the rights and responsibilities described in section 4(b) solely because the law does not require bargaining with respect to pension and retirement benefits.

Section 8(b). Provides for a partial exemption from the requirements under this Act, or a State may exempt from its State law, a political subdivision of the State with a population of less than 5,000 or that employs fewer than 25 full-time employees. The 25 employee exemption includes all full-time employees of the political subdivision, not limited to public safety employees. Employees elected by popular vote or appointed to serve on a board or commission are excluded.

Section 8(c). Provides the Authority with the exclusive power to enforce the provisions of this Act with respect to public safety officers employed by a State, notwithstanding any other provisions of this Act, and in the absence of a waiver of a State's sovereign immunity.

Section 8(a) was revised from earlier versions of the Act to expressly provide that H.R. 980 neither limits a state's ability to be "right to work," nor prohibits an individual from serving as a volunteer fire fighter. In addition, Section 8(b) was revised from earlier versions to address concerns raised by smaller jurisdictions

about the Act's implementation. It is the intent of the Act that communities with a population of less than 5,000 or that employs less than 25 full-time employees be exempt from H.R. 980.

Section 9. Provides that the authorization of funds shall be appropriated as may be necessary to carry out the Act.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report. Representative Souder introduced an amendment which would have required the states to conduct representational elections exclusively through secret ballot procedures. The amendment was withdrawn and no further action was taken on the amendment.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. The Committee believes that H.R. 980 will have no significant impact on the legislative branch.

REGULATORY IMPACT STATEMENT

The Committee has determined that H.R. 980 will have minimal impact on the regulatory burden.

(See CBO letter for further analysis)

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates.

(The CBO letter will address this issue)

EARMARK STATEMENT

H.R. 980 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

ROLL CALL

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 BILL: H.R. 980 DATE: 6/20/2007
AMENDMENT NUMBER ADOPTED: PASSED 42 AYES/1 NO
SPONSOR/AMENDMENT: FAVORABLY REPORTING THE BILL TO THE HOUSE AS AMENDED

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. SUSAN DAVIS	X			
Mr. DANNY DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Ms. SANCHEZ	X			
Mr. SARBANES	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. YARMUTH	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS				X
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS				X
Mr. MARCHANT				X
Mr. PRICE				X
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX				X
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG		X		
Mr. HELLER	X			
TOTALS	**42**	**1**		**6**

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 980 from the Director of the Congressional Budget Office:

JUNE 27, 2007.

Hon. GEORGE MILLER,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 980, the Public Safety Employer-Employee Cooperation Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs), who can be reached at 226–2860, Elizabeth Cove (for the state and local impact), who can be reached at 225–3220, and Paige Shevlin (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 980—Public Safety Employer-Employee Cooperation Act of 2007

Summary: H.R. 980 would establish federal standards regarding the collective bargaining and conflict resolution measures available to public safety personnel employed by state and local governments, the District of Columbia, and any U. S. territory or possession that employs such personnel. CBO estimates that implementing H.R. 980 would cost $44 million over the 2008–2012 period, subject to appropriation of the necessary funds. Enacting the bill would not affect direct spending or revenues.

H.R. 980 contains several intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Because of uncertainties about how employees would exercise the collective bargaining rights that would be authorized by the bill and, consequently, how state and local employers would be affected, CBO cannot estimate whether the costs of the intergovernmental mandates would exceed the threshold established in the act ($66 million in 2007, adjusted annually for inflation). CBO estimates that the direct costs of the private-sector mandates would be well below the annual threshold specified in UMRA ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 980 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
Federal Labor Relations Authority Spending Under Current Law:						
Estimated Authorization Level [a]	25	26	27	28	29	30
Estimated Outlays	25	26	27	28	29	30
Proposed Changes:						
Estimated Authorization Level	0	3	10	10	11	11
Estimated Outlays	0	3	9	10	11	11
Federal Labor Relations Authority Spending Under H.R. 980:						
Estimated Authorization Level	25	29	37	38	40	41
Estimated Outlays	25	29	36	38	40	41

[a] The 2007 level is the amount appropriated for that year for the Federal Labor Relations Authority. The 2008–2012 levels are CI30's baseline projections, assuming annual adjustments for anticipated inflation.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the start of fiscal year 2008, that the necessary amounts will be appropriated for each fiscal year, and that outlays will follow historical trends for similar activities.

H.R. 980 would extend collective bargaining rights to public safety personnel under certain conditions and would provide for federal administration of those rights in states that do not comply with the minimum standards in the bill. It would authorize the appropriation of such sums as may be necessary for the Federal Labor Relations Authority (FLRA) to adopt regulations implementing the bill, determine state compliance with the standards, and administer and enforce the standards where necessary. The bill would allow for judicial review of the FLRA's determinations and judicial enforcement of the new standards.

CBO estimates that the FLRA would spend an additional $3 million in 2008, subject to the availability of appropriated funds, to develop the regulations, determine state compliance with the standards, and respond to any judicial review of its determinations. Preliminary information from the FLRA suggests that about half of the existing state programs would not be in substantial compliance with the bill's standards. If the final determinations confirm that analysis, about 500,000 public safety officers would come under the FLRA's jurisdiction, which would increase the agency's workload by about 40 percent, beginning in 2009. CBO estimates that a workload increase of that magnitude would cost $10 million a year. Costs could be lower if states modify their laws and practices to comply with the standards in the legislation, but CBO has no basis for predicting whether states would make such changes.

Estimated impact on state, local, and tribal governments: H.R. 980 would preempt state authority to regulate the collective bargaining rights of its state and local public safety employees. The bill would require the FLRA to develop and implement regulations that grant certain public safety employees the right to collectively bargain in states where that authority does not meet a minimum level of coverage as determined by the FLRA. Such a preemption of state authority is a mandate under UMRA. Costs to states, if

any, from this mandate would be minimal because the FLRA also would be required to enforce the regulations.

As employers, certain state and local governments would be required to meet and bargain with the employees' exclusive representative should the employees choose to be represented by a collective bargaining unit. Such a requirement would be a mandate because those employers, under current law, are not required to meet and bargain with employees. The costs of complying with the mandate would include administrative activities that support the collective bargaining process and would vary by state depending on the level of collective bargaining rights currently extended to public safety employees in each state. Because we cannot predict how employees would respond to this new authority—that is, whether they would choose to organize a collective bargaining unit and what employment conditions they might ultimately negotiate—CBO cannot estimate the administrative costs that would result from this mandate.

Section 5 would require state or local governments, if subpoenaed, to provide testimony and documentary evidence to the FLRA as it enforces the collective bargaining system. Such a requirement would be a mandate as defined by UMRA. CBO cannot predict the degree to which this subpoena power would be exercised, but the cost of complying with the mandate is not likely to be significant.

Section 6 would prohibit public-sector employers from engaging in lockouts or any other actions designed to compel a public safety officer or labor union to agree to terms of a proposed contract. This prohibition would not impose costs on any state or local government because it would maintain regular staffing levels during instances of disagreement between labor and management.

Section 8 would prohibit states from preempting any local laws or ordinances that provide collective bargaining rights that are equal to or greater than the rights provided in the bill. This preemption, also a mandate under UMRA, would not impose any costs on state governments.

Because of the uncertainties about how the FLRA regulations would be implemented and how many public-sector employees would exercise their new rights to enter into collective bargaining agreements, CBO cannot determine whether the aggregate costs of the mandates contained in the bill would exceed the annual thresholds established by UMRA ($66 million in 2007, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 980 contains two private-sector mandates as defined by UMRA. Section 5 would require public safety officers or other private-sector entities, if subpoenaed, to provide testimony and evidence related to matters the FLRA would be empowered to investigate. Such a requirement would be a private-sector mandate as defined by UMRA. Although the precise number of individuals likely to be subpoenaed under this provision is uncertain, CBO expects that the direct cost of the mandate to private-sector entities would be well below the annual threshold established by UMRA ($131 million in 2007, adjusted annually for inflation).

Section 6 would prohibit labor organizations from engaging in strikes. Although this mandate could ultimately affect the strength

of a public safety union's bargaining power, CBO estimates that the mandate would impose no direct cost on private-sector entities.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Shevlin.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with Clause 3(c) of House rule XIII, the goal of H.R. 980 is to provide basic labor protections to public safety officers.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 980. The Committee believes that the 20 amendments made by this bill which extend collective bargaining rights to public safety employees are within Congress' authority under Article I, Section 8 of the U.S. Constitution.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 980. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not change existing law, it creates new law.

COMMITTEE CORRESPONDENCE

None.

MINORITY VIEWS

INTRODUCTION

Committee Republicans do not view the debate over H.R. 980, the "Public Safety Employer-Employee Cooperation Act of 2007," as a question of whether firefighters, police officers, emergency medical services employees, and other public safety workers and first responders should be permitted to organize. Rather, the question was—and always had been—whether the federal government should dictate to state, local, and municipal governments not only an obligation to permit organization and to require bargaining, but indeed, to set the minimum standards that such bargaining must entail. We recognize and agree that persons can, in good conscience, differ in their views as to the correct answer(s) to these questions.

We supported this bill during its consideration in the Committee on Education and Labor recognizing these facts, and with the express concerns we set forth and detail herein. As this bill continues to work its way through the legislative process, we are hopeful that efforts can be made to address the core concerns of federalism and states' rights raised by H.R. 980.

BACKGROUND

The National Labor Relations Act ("NLRA" or the "Act") generally affords a range of rights and protections to covered workers. Such workers are afforded, for example, the right to engage (or not engage) in collective activity; to vote in an election on the question of whether to join a union; to collectively bargain over the terms and conditions of their employment; and, subject to contractual and other restrictions, whether to engage in a work stoppage or strike.[1]

In deference to states' rights, and recognizing the unique needs of states and localities, employees of state and local governments have been expressly excluded from coverage under the NLRA since its enactment in 1939.[2] As such, the labor rights and protections of state and local employees are governed by various state and local laws. States vary in their application of labor laws to various public employees. Some states have adopted a comprehensive set of labor law protections for all public employees; others have adopted more limited codes of law, or laws applicable to specific sorts of public-employees; still other states prohibit collective bargaining for public-sector employees entirely.

Supporters of current law argue that the delegation of public-employee labor relations to states not only reflects long-standing and

[1] See generally Section 7 of the NLRA (29 U.S.C. § 157).

[2] See 29 U.S.C. § 152(2) (excluding, inter alia, states and political subdivisions from definition of "employer").

well-settled federal law, but is also a proper recognition of states' rights and local needs and interests. Supporters of an expanded federal role in state labor relations—such as that contemplated under H.R. 980—argue in response that the federal government should set minimum labor standards for employees, particularly those who may be called upon in situations in which there is a strong federal interest (such as, for example, a terrorist attack or hazardous waste contamination on federal property). There is no debate that H.R. 980 would provide for such an expanded federal role.

H.R. 980, THE "PUBLIC SAFETY EMPLOYER-EMPLOYEE COOPERATION ACT OF 2007"

On February 12, 2007, Representative Dale Kildee (D–MI), joined by Representative John J. Duncan, Jr. (R–TN), introduced H.R. 980, the 'Public Safety Employer-Employee Cooperation Act of 2007.'"

H.R. 980 would provide federal labor law standards for a range of public safety employees. H.R. 980 sets forth a list of federal labor law standards, and directs the Federal Labor Relations Authority ("FLRA" or the "Authority")[3] to review the labor laws of each of the fifty states. If the FLRA determines that a state's laws do not contain provisions "substantially similar" to the core labor provisions set forth in H.R. 980, a state is faced with two choices: (1) enact within a specified time period laws that conform to the federal standard; or (2) have federal labor law, administered by the FLRA, govern the rights of state and local firefighters and public safety officers.

More specifically, H.R. 980 provides that with respect to firefighters and public safety officers (defined to include law enforcement officers, firefighters, and emergency medical services personnel), the FLRA must, within 180 days of enactment, review the laws of each of the fifty states and make a determination as to whether each state's laws "substantially provide" the core labor rights described in the bill. To meet the federal standards set forth under H.R. 980, a state's labor law must "substantially provide" specified public-sector employees with rights "comparable to or greater than" the following:

- The right to form and join a union, and to have such union recognized as a collective bargaining representative of these employees;
- A requirement that public employers recognize and bargain with such union, and commit any agreement to a written contract or memorandum of understanding;
- The right to bargain specifically over hours, wages, and terms and conditions of employment;
- The right to a third-party impasse resolution mechanism, which may include mediation or binding arbitration; and
- The right to enforce these rights and any rights granted under a collective bargaining agreement by way of the state's court system.

[3] The FLRA is the federal agency tasked under the Civil Service Reform Act of 1978 with administering labor laws applicable to non-postal federal employees.

Within one year of the bill's date of enactment, the FLRA is required to promulgate federal regulations that provide the rights set forth above to public-sector firefighters and public safety personnel. If the Authority has determined that a state's laws do not meet these requirements, the federal regulations will become binding on that state one year later.[4]

H.R. 980's proponents estimate that 29 of 50 states currently have laws in place that would meet the federal standard; the 21 remaining states would be required to enact new state labor legislation, or face the prospect of regulation by the federal governments.[5] These analyses are by no means determinative, however: At the outset, every state's law would be subject to scrutiny and a determination by the FLRA as to whether it meets federal minimum standards. It is unclear how significantly a state law may be allowed to vary from federal "standards" before being subject to federal preemption.[6]

On June 5, 2007, the Subcommittee on Health, Employment, Labor, and Pensions held a legislative hearing entitled "Ensuring Collective Bargaining Rights for First Responders: H.R. 980, the 'Public Safety Employer-Employee Cooperation Act of 2007.'" Previously, the Subcommittee had considered this issue in 2000, when the Committee on Education and the Workforce's Subcommittee on Employer-Employee Relations (as the Committee on Education and Labor's Subcommittee on Health, Employment, Labor, and Pensions was then known) held a legislative hearing on a prior iteration of H.R. 980.[7]

REPUBLICAN VIEWS

Historically, a number of concerns have been raised with this legislation, or similar attempts to mandate federal labor law standards onto state or local employees. These concerns relate primarily to question of states' rights, federal mandates, and the practical consequences of the bill, as well as the constitutionality of efforts by the federal government to regulate a state's labor relations with its public employees. These concerns were expressed in testimony at the Subcommittee's hearing, and are set forth below.

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[4] Put more simply, states which are initially determined to not meet the federal standard are given the time from that first determination to the effective date of the federal regulations eighteen months later to enact or amend their state laws so as to bring them into compliance.

[5] H.R. 980's supporters' analyses indicate that the following states would be required to adopt some change to their state or local labor laws to meet the bill's requirements: Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. As noted above, however, it is not at all clear that the effects of H.R. 980 are limited to these states; indeed, at the outset, every state is subject to an initial review and determination of compliance by federal authorities.

[6] For example, H.8. 980 provides a "small employer" exemption for localities that employ less than 25 people; small employer exemptions in various state laws may vary up or down from that figure. It is unclear in this example what variance the FLRA would find reflects "substantial" compliance with HR. 980's federal requirements, or whether small deviations from the federal standard would be sufficient to result in federal preemption.

[7] *See* Committee on Education and the Workforce, Subcommittee on Employer-Employee Relations, Hearing on H.R. 1093, the "Public Safety Employer-Employee Cooperation Act of 1999," Serial No. 106–106 (May 9, 2000) (available online at http://webharvest.gov/congress109th/20061114005627/commdocs.house.gov/committees/edu/hedcew6-106.000/hedcew6-106.htm). Testimony and statements from the hearing are also available online at http://webharvest.gov/congress109th/20061114062813/edworkforce.house.gov/hearings/106th/eer/pubsafety5900/w15900.htm.

States' rights and Federal mandates

As a matter of federalism, H.R. 980 directly raises concern with states' rights, and the ability of state and local governments to establish a code of labor law that addresses local concerns, needs, and interests. Although H.R. 980's supporters argue that administration of state labor laws will be left to the states, as a practical matter, H.R. 980 represents a federalization of state labor law by the importation of specific "minimum" requirements under state law. More to the point, H.R. 980 would explicitly apply federal law to those states which do not adopt laws that meet these federal standards. Thus whether through direct regulation or the indirect establishment of mandatory standards, H.R. 980 interjects the federal government directly into the labor relations of states and their public employees. Equally important, as a practical matter, H.R. 980 would require states that do not currently bargain with public-sector safety employees to now do so, and could potentially expand the scope of such bargaining in states that do.

These concerns were summarized in testimony by Neil E. Reichenberg, Esq., CAE, the Executive Director of the International Public Management Association for Human Resources (IPMA–HR), who testified on behalf of that organization and the International Municipal Lawyers Association (IMLA).[8] As Mr. Reichenberg testified:

> IPMA–HR and IMLA recognize the important role that public safety employees have in providing vital services to citizens on a routine basis as well as their role as first responders in the event of a terrorist attack or natural disaster. We are not opposed to collective bargaining at the state and local government level but firmly believe that state and local governments are in the best position to determine the nature and extent of collective bargaining rights. We do not believe a federal "one size fits all" solution will improve the working conditions or the services provided by firefighters, police and emergency medical personnel, all of which are conducted in accordance with unique local conditions, governmental structures and revenue systems.

At the Subcommittee's hearing, R. Theodore Clark, testifying on behalf of the National Public Employer Labor Relations Association, testified that even one supportive of the right to collective bargaining for public safety employees—or agnostic on the point—may be concerned with H.R. 980:

> The needs of state and local government in the area of employer-employee relations, however, can best be determined on a state and local basis rather than by resort to federal legislation . . . .
>
> Lest there be any mistake about my position, let me emphatically state that I wholeheartedly support collective

[8] See Testimony of Neil E. Reichenberg, Esq., Subcommittee on Health, Employment, Labor, and Pensions Hearing "Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007" (June 5, 2007), available at: http://edlabor.house.gov/testimony/060507NeilReichenbergTestimony.pdf (hereinafter, "Reichenberg Testimony"), at 2.

> bargaining in the public sector where a majority of the employees in an appropriate bargaining unit have opted to be represented for the purposes of collective bargaining . . .
>
> [M]y opposition to federal collective bargaining legislation such as H.R. 980 is not because I oppose public sector collective bargaining, but rather because of my firm belief that the enactment of a federal collective bargaining law would severely limit the demonstrated innovative and creative abilities of the states and local jurisdictions to deal in a responsible manner with the many complex issues that public sector collective bargaining poses.[9]

Committee Republicans recognize and share the concerns expressed by these witnesses that irrespective of one's views as to the merit or propriety of collective bargaining by safety employees in the public sector, H.R. 980 represents an unprecedented federalization of what has traditionally been an area of law expressly reserved to states and localities.

Constitutional issues

Reflecting to some extent H.R. 980's insertion of the federal government in an area traditionally regulated by states, some have argued that H.R. 980 may not pass muster under the Constitution. More specifically, it is unclear whether H.R. 980 would be held to be a valid exercise of Congress's authority to adopt laws affecting interstate commerce by virtue of the Commerce Clause of the U.S. Constitution.[10] Similarly, the Tenth Amendment to the Constitution reserves to states those powers not expressly delegated to the federal government under the Constitution, while the Eleventh Amendment generally provides states with sovereign immunity from suit under federal law.[11]

At the Subcommittee's hearing on June 6, 2007, R. Theodore Clark testified that in his view, H.R. 980 would likely be held by the Supreme Court to be unconstitutional. As Mr. Clark explained:

> Finally, there is a substantial question concerning whether H.R. 980 passes constitutional muster. In my judgment, it does not. H.R. 980 defines the terms "employer" and "public safety employer" to "mean any State, political subdivision of a State, the District of Columbia, or any territory or possession of the United States that employs public safety officers." From the text of H.R. 980, it is clear that the purported constitutional basis for enacting H.R. 980 is the Commerce Clause. However, the Supreme Court in a series of decisions starting with the Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S.Ct. 1114 (1996), has unequivocally held that Congress does not have the authority to abrogate the Eleventh Amendment immunity of states under the Commerce Clause. There is abso-

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[9] Testimony of R. Theodore Clark, Subcommittee on Health, Employment, Labor, and Pensions Hearing "Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007" (June 5, 2007), available at: http://edlabor.house.gov/testimony/060507RTheodoreClarkTestimony.pdf (hereinafter, "Clark Testimony"), at 1–2 (emphasis added).

[10] *See* U.S. Constitution, Article I, Section 8, clause 3.

[11] *See* id., Amendments X, XI.

> lutely no doubt in my mind that the Supreme Court today would hold that Congress does not have the constitutional authority under the Commerce Clause to enact H.R. 980 vis-á-vis states and thereby abrogate their Eleventh Amendment immunity.
>
> Moreover, even if H.R. 980 were amended to specifically provide that Congress was unequivocally abrogating the Eleventh Amendment immunity of states pursuant to the Enforcement Clause of the Fourteenth Amendment, it is nevertheless quite clear that the Supreme Court would hold that Congress would not be acting pursuant to a valid grant of constitutional authority.[12]

Mr. Reichenberg also expressed the view of the organizations he represented that the constitutionality of H.R. 980 is questionable at best:

> The Supreme Court has in recent years limited the authority of Congress to pass laws abrogating states' immunity from lawsuits. In the case Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), the Court ruled that the Commerce Clause does not give Congress the authority to abrogate a state's Eleventh Amendment immunity to suit. Subsequent Supreme Court decisions have found states immune from suit under employment-related laws such as the Fair Labor Standards Act (FLSA), in Alden v. Maine, 527 U.S. 706 (1999), and the Americans with Disabilities Act (ADA) in Board of Trustees of the University of Alabama et al. v. Garrett et al., 531 U.S. 356, 369 (2001).
>
> Other Supreme Court opinions call into question the authority of Congress to pass laws affecting state and local activity. In U.S. v. Lopez, 514 U.S. 549 (1995), the Court found Congress exceeded its authority under the Commerce Clause in passing the Gun-Free School Zones Act of 1990, and in the case Flores v. City of Boerne, 521 U.S. 507 (1997), the Court found that Congress exceeded its power under Section 5 of the Fourteenth Amendment in passing the Religious Freedom Restoration Act (RFRA). Congress's authority to enact H.R. 980 is highly questionable.[13]

Committee Republicans recognize and share the concern that H.R. 980, as drafted, raises serious constitutional questions. At a minimum it limns Congressional authority to legislate within the confines of the Commerce Clause, and, as noted, in the views of many, exceeds that authority.

COMMITTEE CONSIDERATION OF H.R. 980

H.R. 980 was considered by the full Committee on Wednesday, June 20, 2007. An Amendment in the Nature of a Substitute was offered by Representative Kildee and adopted by voice vote. A second amendment was offered by Representative Souder and withdrawn by unanimous consent. While the Kildee Amendment incor-

[12] Clark Testimony at 15–16.
[13] Reichenberg Testimony at 10–11.

porated a number of changes and improvements in the underlying text, Committee Republicans remain concerned that core issues of federalism and states' rights remain in this bill, and urge that these issues are addressed as this bill is readied for the House Floor, and in any legislative action beyond.

Amendment in the Nature of a Substitute

The Committee adopted by voice vote an Amendment in the Nature of a Substitute offered by Representative Kildee, the bill's sponsor. The Kildee Amendment incorporates a number of important changes to the text of H.R. 980 as introduced, several of which were highlighted at the Subcommittee's June 5, 2007 hearing.

Committee Republicans are pleased that both sides of the aisle were able to work in a cooperative fashion in crafting these changes. The deliberative process through which the Committee has addressed H.R. 980, including a legislative hearing devoted to its specific provisions, underscores the value of and need for regular order and deliberate consideration of significant legislation before the Committee.

Specifically, the Substitute does the following:

Levels the Playing Field for All Parties. Concern was raised at the hearing that in making a determination as to whether a state's law passed federal muster and "substantially provided" the federal minimum standards set forth in the bill, the views of just one affected party—unions representing employees—were to be given undue weight by the FLRA. The Substitute addresses this issue and levels the playing field by providing that the views of all affected parties—employers and unions representing employees—will be afforded equal importance, and given weight by the FLRA in making its determination where the parties agree that state law substantially provides the minimum standards set forth in the bill.

Presumes State Law Complies with Federal Standards. Supporters of H.R. 980 have steadfastly maintained that it is the intent of the legislation to displace as little state law as possible, and that where a question of whether a state's labor law "substantially complies" with the federal standard is close, the default presumption should be that it does. To make this expressed intention explicit, section 4(b) of the Substitute provides that a state's labor laws are presumed to be in compliance with federal standards unless the FLRA affirmatively finds to the contrary.

Ensures State Law is Not Preempted Solely Because It Excludes Pension and Retirement Benefits from the Scope of Bargaining. At the hearing, the Subcommittee heard extensive testimony expressing concern that the bill might unintentionally preempt a range of states' laws simply because those laws exclude from the scope of bargaining the issue of pension and retirement benefits. As R. Theodore Clark explained:

> Perhaps the best examples of the impact of H.R. 980 on existing state laws is the likely interpretation of the term "hours, wages, and terms and conditions of employment," i.e., the scope of mandatory bargaining specified in Section 4(b)(3). Take the issue of pensions. Normally, the pensions are considered a form of compensation and thus fall within the mandatory scope of bargaining. Because of the enor-

> mous costs that have ensued as a result of negotiations over public sector pensions, a number of states have specifically excluded pensions from the scope of bargaining. For example, the New York Taylor Law specifically provides that the scope of negotiations "shall not include any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees or their beneficiaries" and that "[n]o such retirement benefits shall be negotiated pursuant to this Article, and any benefits so negotiated shall be void." It was the near bankruptcy of New York City and several other New York cities in the late 1970's, brought on in part by overly generous negotiated increases in pension benefits, that prompted the New York legislature to adopt this ban on negotiations over pensions. Under H.R. 980, however, the federal law would presumably preempt inconsistent state law.[14]

To address this concern, the Substitute expressly provides in section 8(a)(6) that the bill shall not be construed to preempt "any State law that substantially provides for the rights and responsibilities described in section 4(b) solely because such law does not require bargaining with respect to pension and retirement benefits" (emphasis added). We reaffirm that H.R. 980 is not intended to preempt such laws.

With respect to the general scope of the phrase "terms and conditions of employment," we note that, consistent with the purpose of this bill, it is the intent of Committee Republicans that the FLRA interpret that term holistically, and not give undue focus to the exclusion of discrete or limited items from the required scope of bargaining under existing state law. In that light, we note our concurrence with the Majority that:

> In determining whether a State law "substantially provides" for the rights and responsibilities enumerated in Section 4(b)(3), the Committee urges the Authority to avoid an overbroad, all-inclusive interpretation of "terms and conditions of employment." The Committee recognizes that many effective state bargaining laws contain reasonable exemptions from issues subject to bargaining, and directs the authority to allow such flexibility as long as the exclusions do not undermine the purposes of this Act.[15]

Conforms the Definition of Supervisory Employee to that Contained in the Federal Labor Relations Act. The Substitute modifies the definition of "supervisory employee" in the bill to conform the definition to that of the Federal Labor Relations Act, and to delete a requirement that an employee spend the "majority" of his or her time on supervisory duties. The proportion of time that a supervisory employee must devote to supervisory duties to be considered a "supervisor" under the National Labor Relation Act is currently under significant scrutiny, and is the subject of debate and legislation presently before the Committee. Eliminating the "majority" re-

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[14] Clark Testimony at 4–5.
[15] Majority Views, ante, at ____.

quirement in favor of existing language under the Federal Labor Relations Act is intended to make clear the Committee's view that this controversy should not be imported into this new legislation, and that the term "supervisory employee" shall be construed as it is currently under the Federal Labor Relations Act.

On this point, the Substitute also makes clear that the applicable state law definition of "supervisory employee" and "management employee" shall apply, or in the absence of those exact terms, substantially equivalent ones. It is not the intent of the Committee that a federal definition of "supervisory employee" preempt a state definition of "supervisor" simply by virtue of semantics or word choices made by state legislators who could not know that federal law would later look to these distinctions.

Provides a Mechanism for Enforcement of the Bill's No-Strike Clause. In the past, critics have noted that although the legislation forbids a union or public safety employees from engaging in a strike (or a covered employer from locking out employees), those provisions had no effective enforcement mechanism. The Substitute addresses this point by including in section 5(c)(2) an express right for aggrieved parties to enforce by way of court the provisions contained in section 6 (prohibiting strikes or lockouts).

Ensures States Are Afforded Adequate Time to Conform Their Laws If They So Choose. As drafted, H.R. 980 would have provided that in some instances where a state legislature meets infrequently, and that state's laws were found to not "substantially comply" with the federal standards set forth in H.R. 980, the state would have had insufficient time to amend its laws if it so chose, and thus be subject to direct federal regulation. The Substitute directly addresses that concern, by providing that the federal regulations set forth in the bill shall not become effective until the later of: (a) two years after the date of the bill's enactment; or (b) the date of the end of the first regular session of the legislature that begins after the date of enactment of the bill. In this way, every state can be certain that its legislature is given the opportunity to address the impact of H.R. 980 on the state level, rather than be subject to direct federal regulation.

Provides for Meaningful Judicial Review of FLRA Determinations. Finally, the Substitute ensures that courts will be able to provide meaningful review to determinations made by the Federal Labor Relations Authority by deleting a presumption of law that, in the view of many, tipped the scale too far in the Authority's favor. Specifically, the Substitute makes clear that only findings of fact by the FLRA shall be entitled to deference in administrative review proceedings, but that findings of law shall receive de novo scrutiny by reviewing courts.

Committee Republicans view the changes contained in the Substitute as improving the underlying text of H.R. 980, while recognizing that they do not address larger concerns with federalism and states' rights that have been raised with respect to the bill.

The Souder Amendment: Preserving the Right to a Secret Ballot

As was made plain earlier this year, when the Committee considered H.R. 800, the deceptively-named "Employee Free Choice Act,"

Committee Republicans are united in their belief that the right to a private ballot is sacrosanct, and the cornerstone of our democracy. In the context of whether employees wish to form and join a union, the right to vote on that question—free of harassment, coercion, or intimidation—and the right to have one's vote known only to oneself—not an employer, not a coworker, and not a union—has been among the most vital protections that federal labor law affords to workers.

It was in that spirit that Representative Souder offered an amendment to ensure that public safety employees who would be given the opportunity to organize under this bill would always have the right to do so by way of secret ballot. The Souder Amendment did two things. First, it provided that the federal regulations promulgated by the FLRA under this bill would in no instance require recognition of a union by way of card check, thus preserving the right to a secret-ballot election where one is requested. Second, the Souder Amendment would have provided, on a prospective basis, that no state could impair the right to a secret ballot with respect to the organization of public safety employees as defined in this bill, or otherwise require that such recognition be granted on the basis of an inherently unreliable "card check."

The issues raised by the Souder Amendment touch on the fundamental tenets of our nation's labor law, and continue to be debated in other pieces of legislation at this writing. Republicans are united in their commitment to the right to a secret-ballot election. Recognizing that the text of H.R. 980, as amended by the Substitute, does not expressly impair that right, the Souder Amendment was withdrawn.

It goes without saying that should subsequent iterations of the bill threaten or impair the right of employees to a secret-ballot election, any such provision would be met with the strongest opposition by Committee Republicans.

CONCLUSION

As we noted at the outset, Committee Republicans do not view the debate over H.R. 980 as a question of whether firefighters, police officers, emergency medical services employees, and other public safety workers and first responders should be permitted to organize. Rather, the question was—and always had been—whether the federal government should dictate to state, local, and municipal governments not only an obligation to permit organization and to bargain, but indeed, the minimum standards that such bargaining must entail. We supported this bill in Committee recognizing these facts, and with the express concerns we noted above. As this bill continues to work its way through the legislative process, we urge that every effort be made to address the core concerns of federalism and states' rights raised by H.R. 980.

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