

Army nominations beginning Brigadier General Lloyd J. Austin III and ending Brigadier General Barbara G. Fast, which nominations were received by the Senate and appeared in the Congressional Record on May 14, 2003.

Army nominations beginning Constance A. Bell and ending Yang Xia, which nominations were received by the Senate and appeared in the Congressional Record on November 25, 2003.

Army nominations beginning Brig. Gen. Conrad W. Ponder, Jr. and ending Col. George J. Smith, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Army nomination of Margot Krauss.

Army nominations beginning Mark S. Ackerman and ending Richard M. Whitaker, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Army nomination of Timothy G. Wright.

Army nominations beginning Ida F. Agamy and ending Kary B. Reed, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Army nomination of David J. King, Jr.

Army nominations beginning Michael G. Gray and ending Paul M. Saltysiak, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Army nominations beginning Terry R. Moren and ending Christopher Wodarz, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Army nomination of Amy E. Preen.

Navy nomination of Rear Adm. (Selectee) Albert M. Calland III.

Navy nomination of Rear Adm. James D. McArthur, Jr.

Navy nomination of Todd E. Bailey.

Navy nominations beginning Jennifer R. Flather and ending Marie E. Oliver, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Navy nominations beginning Wing Leong and ending Timothy R. White, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 2004.

Navy nominations beginning Jonathan Q. Adams and ending Stacey W. Yopp, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD ON JANUARY 22, 2004.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2265. Mr. BOND (for himself, Mr. INHOFE, Mr. JEFFORDS, and Mr. REID) proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

SA 2266. Mr. GREGG proposed an amendment to amendment SA 2265 proposed by Mr. BOND (for himself, Mr. INHOFE, Mr. JEFFORDS, and Mr. REID) to the bill S. 1072, supra.

SA 2267. Mr. DORGAN proposed an amendment to the bill S. 1072, supra.

SA 2268. Mr. GREGG proposed an amendment to amendment SA 2267 proposed by Mr. DORGAN to the bill S. 1072, supra.

#### TEXT OF AMENDMENTS

**SA 2265.** Mr. BOND (for himself, Mr. INHOFE, Mr. JEFFORDS, and Mr. REID) proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

On page 656, line 14, strike "movements" and insert "improvements".

On page 657, lines 18 and 19, strike "that is a public road".

On page 664, lines 18 and 19, strike "State transportation department under section 106" and insert "recipient of funds under this title".

On page 668, line 22, strike "Conduct of scenic" and insert "Scenic".

On page 680, strike lines 5 through 9 and insert the following:

"(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary shall set aside 1.5 percent of the funds authorized to be appropriated for the Interstate maintenance, national highway system, surface transportation, congestion mitigation and air quality improvement, highway safety improvement, and highway bridge programs authorized under this title to carry out the requirements of section 134."

On page 685, line 2, strike "replacement and rehabilitation".

On page 685, line 16, strike "1101(a)(14)" and insert "1101(13)".

On page 686, line 24, strike "1101(a)(14)" and insert "1101(13)".

On page 693, line 16, strike "in recommended alternatives" and insert "associated with the future development of the surface transportation system".

On page 693, lines 20 and 21, strike "system operations and management" and insert "transportation systems operations and management".

On page 702, line 10, insert "except as otherwise provided in section 120," before "the Federal share".

On page 702, line 22, strike "Federal-aid system" and insert "those qualifying".

On page 703, line 18, strike "The Federal share" and insert "Except as provided in section 120, the Federal share".

Beginning on page 705, strike line 15 and all that follows through page 706, line 23, and insert the following:

Section 120 of title 23, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

"(a) INTERSTATE SYSTEM PROJECTS.—Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost of the project."

(2) in subsection (b), by striking "shall be—" and all that follows and inserting "shall be 80 percent of the cost of the project."; and

(3) by striking subsection (d) and inserting the following:

"(d) INCREASED FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share payable under subsection (a) or (b) may be increased for projects and activities in each State in which is located—

"(A) nontaxable Indian land;

"(B) public land (reserved or unreserved);

"(C) a national forest; or

"(D) a national park or monument.

"(2) AMOUNT.—

"(A) IN GENERAL.—The Federal share for States described in paragraph (1) shall be increased by a percentage of the remaining cost that—

"(i) is equal to the percentage that—

"(I) the area of all land described in paragraph (1) in a State; bears to

"(II) the total area of the State; but

"(ii) does not exceed 95 percent of the total cost of the project or activity for which the Federal share is provided.

"(B) ADJUSTMENT.—The Secretary shall adjust the Federal share for States under subparagraph (A) as the Secretary determines necessary, on the basis of data provided by the Federal agencies that are responsible for maintaining the data."

On page 718, strike lines 1 through 9 and insert the following:

"(2) ADMINISTRATIVE COSTS.—Of amounts made available under paragraph (1), the Secretary may use for the administration of this subchapter not more than \$2,000,000 for each of fiscal years 2004 through 2009.

"(3) COLLECTED FEES AND SERVICES.—In addition to funds provided under paragraph (2)—

"(A) all fees collected under this subchapter shall be made available without further appropriation to the Secretary until expended, for use in administering this subchapter; and

"(B) the Secretary may accept and use payment or services provided by transaction participants, or third parties that are paid by participants from transaction proceeds, for due diligence, legal, financial, or technical services.

On page 729, lines 21 and 22, strike "Administrator of General Services" and insert "Archivist of the United States".

On page 734, line 12, strike "organizations," and insert "organizations and metropolitan planning organizations,".

On page 734, line 15, insert "State and" before "local".

On page 736, lines 4 and 5, strike "receive funds under this section" and insert "obligate funds apportioned under section 104(b)(5) to carry out this section".

On page 738, line 2, strike "and pedestrians" and insert "pedestrians, and other highway users".

On page 738, line 24, strike "this section" and insert "section 104(b)(5)".

On page 740, lines 21 through 25, strike "accidents" each place it appears and insert "crashes".

On page 741, line 5, strike "The Federal share" and insert "Except as provided in sections 120 and 130, the Federal share".

On page 741, strike line 7 and insert the following: made available under this section shall be 90 percent.

"(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount that is equal to or greater than the percentage of all fatal crashes in the States involving bicyclists and pedestrians."

Beginning on page 741, strike line 24 and all that follows through page 742, line 6, and insert the following:

(i) in subparagraph (B), by striking "tobe" and inserting "to be";

(ii) by striking subparagraph (C);

(iv) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(v) in subparagraph (C) (as redesignated by clause (iv)), by adding at period at the end.

On page 742, between lines 9 and 10, insert the following:

(3) ADMINISTRATION.—Section 133(e) of title 23, United States Code, is amended in each of paragraphs (3)(B)(i), (5)(A), and (5)(B) of subsection (e), by striking “(d)(2)” each place it appears and inserting “(d)(1)”.

On page 742, line 10, strike “(3)” and insert “(4)”.

On page 742, between the matter following line 14 and line 15, insert the following:

(B) Section 104(g) of title 23, United States Code, is amended in the first sentence by striking “sections 130, 144, and 152 of this title” and inserting “sections 130 and 144”.

(C) Section 126 of title 23, United States Code, is amended—

(i) in subsection (a), by inserting “under” after “State’s apportionment”; and

(ii) in subsection (b)—

(I) in the first sentence, by striking “the last sentence of section 133(d)(1) or to section 104(f) or to section 133(d)(3)” and inserting “section 104(f) or 133(d)(2)”; and

(II) in the second sentence, by striking “or 133(d)(2)”.

On page 742, line 15, strike “(B)” and insert “(D)”.

On page 744, lines 15 and 16, strike “HIGHWAY FACILITIES” and insert “RAILWAY-HIGHWAY CROSSINGS”.

Beginning on page 744, strike line 17 and all that follows through page 745, line 6, and insert the following:

(1) FUNDS FOR RAILWAY-HIGHWAY CROSSINGS.—Section 130 of title 23, United States Code, is amended by striking subsection (e) and inserting the following:

“(e) FUNDS FOR RAILWAY-HIGHWAY CROSSINGS.—

“(1) IN GENERAL.—Before making an apportionment under section 104(b)(5) for a fiscal year, the Secretary shall set aside \$200,000,000 for the fiscal year to be apportioned to the States and made available for the elimination of hazards and the installation of protective devices at railway-highway crossings.

“(2) APPORTIONMENT.—Funds set aside under paragraph (1) shall be apportioned to the States in accordance with the formula provided in section 104(b)(5).”.

On page 745, strike lines 15 through 24 and insert the following:

(3) EXPENDITURE OF FUNDS.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

“(k) EXPENDITURE OF FUNDS.—Funds made available to carry out this section shall be available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g).”.

On page 746, strike lines 1 through 8 and insert the following:

(1) IMPLEMENTATION.—Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned under section 104(b)(5) of title 23, United States Code (as added by subsection (b)) to carry out section 148 of that title, only if, not later than October 1 of the second fiscal year after the date of enactment of this Act, a State has developed and implemented a State strategic highway safety plan as required under section 148(c) of that title.

On page 747, line 18, strike “104(b)” and insert “104(b)(3)”.

On page 753, line 11, strike “The Federal share” and insert “Except as provided in sections 120 and 130, the Federal share”.

On page 819, line 17, strike “120(b)” and insert “120”.

On page 824, line 18, strike “120(b)” and insert “120”.

On page 824, line 24, strike “120(b)” and insert “120”.

On page 825, line 23, strike “120(b)” and insert “120”.

On page 838, line 12, strike “(l)” and insert “(k)”.

On page 839, line 2, strike “apportioned” and insert “set aside”.

On page 839, strike lines 9 through 16 and insert the following:

until expended.”; and

On page 839, line 17, strike “(l)” and insert “(k)”.

On page 840, line 9, strike “1601(b)” and insert “1522”.

On page 880, lines 22 and 23, strike “not more than 2 percent of the”.

On page 890, line 1, strike “apportioned” and insert “available”.

Beginning on page 891, strike line 15 and all that follows through page 892, line 8, and insert the following:

“(A) IN GENERAL.—In this subsection, the term ‘value engineering analysis’ means a systematic process of review and analysis of a project, during the concept and design phases, by a multidisciplinary team of persons not involved in the project, that is conducted to provide recommendations such as those described in subparagraph (B) for—

“(i) providing the needed functions safely, reliably, and at the lowest overall cost; and

“(ii) improving the value and quality of the project.

On page 901, line 13, strike “CONGESTION.—” and insert “CONGESTION”.

On page 905, line 17, strike “grassland” and insert “grasslands”.

On page 906, strike line 17 and insert the following:

“(2) FOREST HIGHWAYS.—

“(1) On page 910, line 3, insert “and” after the semicolon.

On page 910, strike lines 4 through 11.

On page 910, line 12, strike “(D)” and insert “(C)”.

On page 912, strike lines 16 and 17 and insert the following:

(1) in subsection (a)(1), by inserting “refuge roads, recreation roads,” after “parkways.”;

On page 920, strike lines 1 through 3 and insert the following:

“(i) the Department of Agriculture; or

“(ii) the Department of the Interior;

On page 929, line 21, strike “1101(a)(7)” and insert “1101(7)”.

On page 930, line 8, strike “1101(a)(7)” and insert “1101(7)”.

On page 933, line 11, strike “The Federal share” and insert “Except as provided in section 120, the Federal share”.

On page 937, line 17, strike “The Federal share” and insert “Except as provided in section 120, the Federal share”.

On page 942, line 11, strike “1101(a)(15)” and insert “1101(15)”.

On page 942, line 18, strike “1101(a)(15)” and insert “1101(15)”.

On page 943, lines 4 and 5, strike “For purposes of this section,” and insert “For the purpose of imposing any penalty under this title or title 49.”.

On page 943, lines 5 and 6, strike “104(b), 144, and 206” and insert “104(b) and 144”.

On page 943, line 14, strike “2003” and insert “1997”.

On page 943, line 17, strike “2003” and insert “1997”.

On page 946, line 14, strike “The Federal share” and insert “Except as provided in section 120, the Federal share”.

On page 947, line 2, strike “PILOT”.

On page 947, line 7, strike “pilot”.

On page 947, line 15, strike “are—” and insert “are to—”.

On page 947, line 16, strike “to”.

On page 947, line 18, strike “to”.

On page 947, line 22, strike “to provide” and insert “provide”.

On page 947, line 24, strike “to examine” and insert “examine”.

On page 956, line 12, strike “ASSISTANCE” and insert “SHARE”.

On page 964, lines 9 and 10, strike “titles I, III, and V” and insert “title I”.

On page 965, line 24, strike “subsection” and insert “section”.

On page 971, line 9, strike “apportioned” and insert “authorized”.

On page 971, line 11, insert “under section 507 of title 23, United States Code” before the period at the end.

On page 977, strike lines 3 through 8 and insert the following:

- (1) \$426,200,000 for fiscal year 2004;
- (2) \$435,200,000 for fiscal year 2005;
- (3) \$443,200,000 for fiscal year 2006;
- (4) \$450,200,000 for fiscal year 2007;
- (5) \$456,200,000 for fiscal year 2008; and
- (6) \$463,200,000 for fiscal year 2009.

On page 978, in the matter following line 10, strike “Subchapter I—Surface Transportation” and insert the following:

“SUBCHAPTER I—SURFACE TRANSPORTATION

On page 978, in the matter following line 10, insert after the item relating to section 510 the following:

“511. Multistate corridor operations and management.

On page 981, line 20, insert “and appropriate” after “practicable”.

On page 989, strike lines 11 through 15 and insert the following:

“(15) the improvement of surface transportation planning;

“(16) environmental research;

“(17) transportation system management and operations; and

“(18) any other surface transportation research

On page 996, line 13, insert “and innovation” after “technology”.

On page 996, lines 16 and 17, strike “innovative technologies” and insert “technology and innovation”.

On page 1004, line 23, strike “expended by” and insert “available for expenditure by”.

On page 1017, line 16, strike “ENVIRONMENT” and insert “ENVIRONMENTAL”.

On page 1017, line 19, strike “environment” and insert “environmental”.

On page 1025, strike lines 9 and 10 and insert the following:

“(D) planning and environment;

“(E) policy; and

“(F) asset management.

On page 1025, line 15, strike “highway” and insert “surface transportation”.

On page 1025, line 19, strike “highway” and insert “surface transportation”.

On page 1055, line 9, strike “2004” and insert “2005”.

On page 1057, line 22, strike “22”.

On page 1060, strike line 12 and insert the following:

(d) ALLOCATIONS.—

On each page on which “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003” appears, strike “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003” and insert “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004”.

**SA 2266.** Mr. GREGG proposed an amendment to amendment SA 2265 proposed by Mr. BOND (for himself, Mr. INHOFE, Mr. JEFFORDS, and Mr. REID) to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

At the appropriate place in the amendment insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Safety Employer-Employee Cooperation Act of 2003.”

#### SEC. 2. DECLARATION OF PURPOSE AND POLICY.

The Congress declares that the following is the policy of the United States:

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

(2) The Federal Government needs to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employers and 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.

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

#### SEC. 3. DEFINITIONS.

In this Act:

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

(2) **EMERGENCY MEDICAL SERVICES PERSONNEL.**—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.

(3) **EMPLOYER; PUBLIC SAFETY AGENCY.**—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.

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

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

(6) **LAW ENFORCEMENT OFFICER.**—The term “law enforcement officer” has the 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)).

(7) **MANAGEMENT EMPLOYEE.**—The term “management employee” has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual 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) **PUBLIC SAFETY OFFICER.**—The term “public safety officer”—

(A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or an 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.

(9) **SUBSTANTIALLY PROVIDES.**—The term “substantially provides” means compliance with the essential requirements of this Act, specifically, the right to form and join a labor organization, the right to bargain over wages, hours, and conditions of employment, the right to sign an enforceable contract, and availability of some form of mechanism to break an impasse, such as arbitration, mediation, or fact finding.

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

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

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

#### SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

(a) **DETERMINATION.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b). In making such determinations, the Authority shall consider and give weight, to the maximum extent practicable, to the opinion of affected parties.

(2) **SUBSEQUENT DETERMINATIONS.**—

(A) **IN GENERAL.**—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) **PROCEDURES FOR SUBSEQUENT DETERMINATIONS.**—Upon establishing that a material change in State law or its interpretation has occurred, an employer or a labor organization may submit a written request for a subsequent determination. If satisfied that a material change in State law or its interpretation has occurred, the Director shall issue a subsequent determination not later than 30 days after receipt of such request.

(3) **JUDICIAL REVIEW.**—Any State, political subdivision of a State, or 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 the District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed, except that any final determination of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority’s decision was arbitrary and capricious.

(b) **RIGHTS AND RESPONSIBILITIES.**—In making a determination described in subsection (a), the Authority shall consider whether

State law provides rights and responsibilities comparable to or greater than the following:

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management and supervisory employees, that is, or seeks to be, recognized as the exclusive bargaining representatives 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) Permitting bargaining over hours, wages, and terms and conditions of employment.

(4) Requiring 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 section; 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 take effect on the date that is 2 years after the date of enactment of this Act.

#### SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Authority shall issue regulations in accordance with the rights and responsibilities described in section 4(b) establishing collective bargaining procedures 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 or conduct elections to determine whether a labor organization has been selected as an exclusive 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 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; and

(7) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

(c) **ENFORCEMENT.**—

(1) **AUTHORITY TO PETITION COURT.**—The Authority may petition any United States

Court of Appeals with jurisdiction over the parties, or the United States Court of Appeals for the District of Columbia Circuit, to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code, except that any final order of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

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

#### SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

A public safety employer, officer, or labor organization may not engage in a lockout, sickout, work slowdown, or strike or engage in any other action that is designed to compel an employer, officer, or labor organization to agree to the terms of a proposed contract and that will measurably disrupt the delivery of emergency services, except that it shall not be a violation of this section for an employer, officer, or labor organization to refuse to provide services not required by the terms and conditions of an existing contract.

#### SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

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

#### SEC. 8. CONSTRUCTION AND COMPLIANCE.

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

(1) to invalidate or limit the remedies, rights, and procedures of any law of any State or political subdivision of any State or jurisdiction that provides collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act;

(2) to prevent a State from enforcing a right-to-work law that 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 invalidate 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 such State law permits an employee to appear on his or her own behalf with respect to his or her employment relations with the public safety agency involved; or

(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; or

(5) to prohibit a State from exempting from coverage under this Act a political sub-

division of the State that has a population of less than 5,000 or that employs less than 25 full time employees.

For purposes of paragraph (5), the term "employee" includes each and every individual employed by the political subdivision except any individual elected by popular vote or appointed to serve on a board or commission.

(b) COMPLIANCE.—No State shall preempt laws or ordinances of any of its political subdivisions if such laws provide collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act.

#### 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.

**SA 2267.** Mr. DORGAN proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit program, and for other purposes; as follows:

On page 880, after the item following line 6, insert the following:

#### SEC. 1621. EXEMPTION FROM CERTAIN HAZARDOUS MATERIALS TRANSPORTATION REQUIREMENTS.

(a) DEFINITION OF ELIGIBLE PERSON.—In this section, the term "eligible person" means an individual or entity that is eligible to receive benefits in accordance with section 1001D of the Food Security Act of 1985 (7 U.S.C. 1308-3a).

(b) EXEMPTION.—Subject to subsection (c), part 172 of title 49, Code of Federal Regulations, shall not apply to an eligible person that transports or offers for transport a fertilizer, pesticide, or fuel for agricultural purposes, to the extent determined by the Secretary.

(c) APPLICABILITY.—Subsection (b) applies to—

(1) security plan requirements under subpart I of part 172 of title 49, Code of Federal Regulations (or a successor regulation); and

**SA 2268.** Mr. GREGG proposed an amendment to amendment SA 2267 proposed by Mr. DORGAN to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit program, and for other purposes; as follows:

At the appropriate place, add the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Safety Employer-Employee Cooperation Act of 2003".

#### SEC. 2. DECLARATION OF PURPOSE AND POLICY.

The Congress declares that the following is the policy of the United States:

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

(2) The Federal Government needs to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employers and their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts through negotia-

tions 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.

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

#### SEC. 3. DEFINITIONS.

In this Act:

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

(2) EMERGENCY MEDICAL SERVICES PERSONNEL.—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.

(3) EMPLOYER; PUBLIC SAFETY AGENCY.—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.

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

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

(6) LAW ENFORCEMENT OFFICER.—The term "law enforcement officer" has the 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)).

(7) MANAGEMENT EMPLOYEE.—The term "management employee" has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual 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) PUBLIC SAFETY OFFICER.—The term "public safety officer"—

(A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or an 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 supervisor or management employee.

(9) SUBSTANTIALLY PROVIDES.—The term "substantially provides" means compliance with the essential requirements of this Act, specifically, the right to form and join a labor organization, the right to bargain over wages, hours, and conditions of employment, the right to sign an enforceable contract, and availability of some form of mechanism to break an impasse, such as arbitration, mediation, or fact finding.

(10) SUPERVISORY EMPLOYEE.—The term “supervisory employee” has the meaning given such term under applicable State law in effect on the date

enactment of this Act. If no such State law is in effect, the term means an individual, employed by a public safety employer, who—

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

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

#### SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

##### (a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b). In making such determinations, the Authority shall consider and give weight, to the maximum extent practicable, to the opinion of affected parties.

##### (2) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) PROCEDURES FOR SUBSEQUENT DETERMINATIONS.—Upon establishing that a material change in State law or its interpretation has occurred, an employer or a labor organization may submit a written request for a subsequent determination. If satisfied that a material change in State law or its interpretation has occurred, the Director shall issue a subsequent determination not later than 30 days after receipt of such request.

(3) JUDICIAL REVIEW.—Any State, political subdivision of a State, or 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 the District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed, except that any final determination of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority’s decision was arbitrary and capricious.

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

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management 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) Permitting bargaining over hours, wages, and terms and conditions of employment.

(4) Requiring 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 section; 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 take effect on the date that is 2 years after the date of enactment of this Act.

#### SEC. 5 ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Authority shall issue regulations in accordance with the rights and responsibilities described in section 4(b) establishing collective bargaining procedures 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 organizations representation;

(2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive 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 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; and

(7) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

##### (c) ENFORCEMENT.—

(1) AUTHORITY TO PETITION COURT.—The Authority may petition any United States Court of Appeals with jurisdiction over the parties, or the United States Court of Appeals for the District of Columbia Circuit, to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code, except that any final order of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority’s decision was arbitrary and capricious.

(2) PRIVATE RIGHT OF ACTION.—Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any party

has the right to file suit in a State court of competent jurisdiction to enforce compliance with the regulations issued by the Authority pursuant to subsection (b), and to enforce compliance with any order issued by the Authority pursuant to this section. The right provided by this subsection to bring a suit to enforce compliance with any order issued by the Authority pursuant to this section shall terminate upon the filing of a petition seeking the same relief by the Authority.

#### SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

A public safety employer, officer, or labor organization may not engage in a lockout, sickout, work slowdown, or strike or engage in any other action that is designed to compel an employer, officer, or labor organization to agree to the terms of a proposed contract and that will measurably disrupt the delivery of emergency services, except that it shall not be a violation of this section for an employer, officer, or labor organization to refuse to provide services not required by the terms and conditions of an existing contract.

#### SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

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

#### SEC. 8. CONSTRUCTION AND COMPLIANCE.

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

(1) to invalidate or limit the remedies, rights, and procedures of any law of any State or political subdivision of any State or jurisdiction that provides collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act;

(2) to prevent a State from enforcing a right-to-work law that 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 invalidate 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 such State law permits an employee to appear on his or her own behalf with respect to his or her employment relations with the public safety agency involved; or

(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; or

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

For purposes of paragraph (5), the term “employee” includes each and every individual employed by the political subdivision except any individual elected by popular vote or appointed to serve on a board or commission.

(b) COMPLIANCE.—No State shall preempt laws or ordinances of any of its political subdivisions if such laws provide collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act.

#### 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.