



H.R. 413/S. 1611, the “Public Employer-Employee Cooperation Act”

During the opening days of the 111th Congress, Representatives Dale Kildee (D-MI) and John J. Duncan, Jr. (R-TN) introduced H.R. 413, the “Public Employer-Employee Cooperation Act.” In August 2009, Senators Judd Gregg (R-NH) and Edward M. Kennedy (D-MA) introduced the Senate companion bill, S. 1611. It was the last labor bill introduced by Senator Kennedy before his death.

The aim of the bill is to recognize the rights of law enforcement officers, firefighters, and other public safety officers to bargain collectively, without undermining existing State collective bargaining laws.

Frequently Asked Questions (FAQs) about H.R. 413/S. 1611:

What is the status of the bill?

The House bill, H.R. 413, was reintroduced during the very first week of the 111th Congress and was referred to the House Committee on Education and Labor.

The Senate companion bill, S. 1611, was introduced in August of last year and has been referred to the Committee on Health, Education, Labor and Pensions (HELP).

But didn't the bill pass in the last Congress?

In the 110th Congress, the legislation (H.R. 980) did pass the U.S. House of Representatives on 17 July 2007 by an overwhelming 314-97 vote, but it was not put to a final vote in the United States Senate.

In May 2008, the Senate did begin consideration of H.R. 980, and an attempt to filibuster it was made. Our Senate allies filed cloture on the motion to proceed to end the filibuster, which was successful. The 69-29 vote allowed the Senate to consider the bill, but opponents flooded the floor with hostile amendments and the bill was ultimately pulled from the floor. It was not reconsidered before the end of the 110th Congress.

Would the Public Safety Employer-Employee Cooperation Act supersede laws in states where law enforcement officers already have collective bargaining rights?

No. The legislation was carefully crafted to ensure that State and local laws that provide equal or greater collective bargaining rights than those outlined in the bill would be exempt from its effects.

Isn't collective bargaining a State issue? Why does the Federal government need to get involved? Why now?

Protecting the safety of the public is a legitimate and important Federal responsibility, and enhancing cooperation between public safety employers and employees is a means to that end. In 1995, Congress passed and President Clinton signed the Congressional Accountability Act, which for the first time recognized the right of Congressional employees to organize. The aim of that law was to ensure that "all laws that apply to the rest of the country also apply equally to the Congress." Our aim in passing the "Public Safety Employer-Employee Cooperation Act" is to equally apply these same rights to public safety employees who, with the passage of the Congressional Accountability Act, are virtually the only workers in America denied this basic right.

Does the legislation violate States' rights?

No. Congress routinely sets minimum expectations and requirements that must be met by State laws when the Federal government has an identified interest or responsibility. The safety of the public is a compelling interest for the Federal government. Further, this legislation is constructed in such a way that it preserves and protects the authority of the State to maintain and administer its own collective bargaining law. The legislation merely establishes very basic collective bargaining principles which State laws must meet. The implementation and enforcement of those laws are left entirely to the States.

In fact, the legislation has numerous built-in safeguards to protect existing State laws by including provisions which:

- presume that State laws are in compliance unless the FLRA affirmatively finds that they are not;
- limit the FLRA to evaluating State laws solely on the basis of the minimums provided for in this bill and prohibiting the creation of new requirements to be imposed on States; and
- require the FLRA to give "maximum weight" to an agreement between management and a labor organization that the State law complies with this legislation when reviewing existing State law.

Would the Public Safety Employer-Employee Cooperation Act cancel existing collective bargaining agreements?

No. The legislation expressly keeps intact all existing collective bargaining agreements or memorandums of understanding approved by any public employee relations board or by any State or locality.

Does the Public Safety Employer-Employee Cooperation Act repeal State right-to-work laws?

No. The legislation protects State right-to-work laws. Specifically, the legislation allows States to enforce laws that prevent employers and unions from requiring union fees as a condition of

employment. Many people assume that collective bargaining rights and right-to-work laws are mutually exclusive, but the fact is that the two can coexist. Many right-to-work States allow collective bargaining and all private sector employees in such States have bargaining rights. Public safety officers in these States deserve the same rights as other workers.

Is the Public Safety Employer-Employee Cooperation Act constitutional?

The legislation was drafted consistent with United States Supreme Court rulings relating to the Tenth Amendment, the Commerce Clause, the Fourteenth Amendment, and State sovereign immunity. Constitutional scholars have carefully reviewed the legislation and testified before Congress that the bill passes constitutional muster.

Does the Public Safety Employer-Employee Cooperation Act mandate binding arbitration?

No. The legislation leaves the issue of binding arbitration entirely to the States. Currently, some States allow for binding arbitration, but other States have effective collective bargaining laws that prohibit binding arbitration.

Does the Public Safety Employer-Employee Cooperation Act impose an unfunded mandate on our nation's States and cities?

No. The legislation simply establishes a process for discussions between public safety officers and their employers. It does not cost local governments any money and does not require local governments to agree to anything it does not want or cannot afford. Further, there is nothing in this proposal to compel the employer to agree to anything. At the end of the day, fiscal decisions remain firmly the prerogative of the employer. In fact, language in the legislation specifically protects the local government's respective legislative body's authority to approve or disapprove funding for any negotiated accords.

If the Public Safety Employer-Employee Cooperation Act becomes law, will firefighters and law enforcement officers be more likely to go on strike?

No. The legislation expressly prohibits strikes and would not preempt any existing State prohibitions on strikes.

How will the bill work if enacted?

If the legislation becomes law as introduced in the Senate, then the FLRA, bound by the provisions described above, would then review existing State law and determine if the law would "substantially provide" for the following rights and responsibilities:

- the right to form and join a labor organization that serves as, or seeks to serve as, the exclusive bargaining representative for non-management and non-supervisory public safety employees;
- a requirement that the public safety employer recognize the employees' labor

organization, agree to bargaining;

- the right to bargain over hours, wages, and the terms and conditions of employment;
- the availability of an “interest impasse resolution mechanism such as fact-finding, mediation, arbitration, or comparable procedures”; and
- a requirement of enforcement through State courts of “all rights, responsibilities, and protections provided by State law,” including any written contract or memorandum of understanding.

If the FLRA determines that a State does not “substantially provide” for the rights and responsibilities enumerated above, then a State has two years (from the date of the law’s enactment) or “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” to comply or the FLRA will issue regulations which will provide for the aforementioned rights and responsibilities. These regulations will enable the FLRA to:

- determine the appropriateness of units for labor organization representation;
- 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;
- resolve issues relating to the duty to bargain in good faith;
- conduct hearings and resolve complaints of unfair labor practices;
- resolve exceptions to the awards of arbitrators;
- 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;
- direct compliance by such State by order if the FLRA finds that the State is not in compliance with the regulations it issued; and
- take other actions as are necessary and appropriate to effectively administer the Public Safety Employer-Employee Cooperation Act.

Any determination made by the FLRA will remain in effect until such time as a subsequent determination is made. An employer or labor organization may submit a request for a subsequent determination on the basis of a material change in State law or its interpretation. If the FLRA determines that such a material change has taken place, a subsequent determination will be made not later than thirty (30) days after the request.

This bill and regulations issued by the FLRA under the authority of this legislation will not 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) that is in effect on the day before the date of enactment, or the results of any election held before the date of enactment.

The bill would not preempt any law of any State or political subdivision of any State or jurisdiction that substantially provides greater or comparable rights and responsibilities as described in above, or 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 (*i.e.* “right-to-work”).

The bill would also not preempt any State law in effect on the date of enactment that substantially provides for the rights and responsibilities described above solely because:

- 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;
- such State law excludes from its coverage employees of a state militia or national guard;
- such State law does not require bargaining with respect to pension and retirement benefits;
- such rights and responsibilities have not been extended to other categories of employees covered by this legislation, in which case the FLRA shall only exercise the authority granted it by this bill with respect to those categories of employees who have not been afforded the aforementioned rights and responsibilities;
- 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.

Further, if a State provides collective bargaining rights for some, but not all, public safety employees described in the bill, the FLRA will be required to specify those categories of employees to eliminate any confusion over which groups of employees would come under the FLRA regulations.

In addition, the bill would not permit parties subject to the National Labor Relations Act to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours or 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 above.

Finally, a State may exempt from its State law, or from the requirements established by this bill, a political subdivision of the State that has a population of less than 5,000 or that employs fewer than 25 full time employees.