



## **H.R. 980/S. 2123, the “Public Employee-Employer Cooperation Act”**

On 17 July 2007, the United States House of Representatives considered and passed H.R. 980, the “Public Employer-Employee Cooperation Act.” The measure is now pending before the U.S. Senate.

A companion bill, S. 2123, was introduced by Senators Judd Gregg (R-NH) and Edward M. Kennedy (D-MA) on 1 October 2007. There are no substantive differences between the two bills.

These two Senators also worked to have S. 2123 introduced as an amendment to H.R. 2914, the “Farm, Nutrition, and Bioenergy Act,” known as the “farm bill,” which was considered on the floor just before the end of the First Session.

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. 980/S. 2123:**

#### ***What is the status of the bill?***

The bill was considered and adopted by the U.S. House of Representatives on 17 July 2007 on an overwhelming 314-97 vote. The bill is now pending in the Senate and has been placed on that body’s legislative calendar.

The Senate companion bill, S. 2123, was introduced by Senators Judd Gregg (R-NH) and Edward M. Kennedy (D-MA) and was referred to the Committee on Health, Education, Labor, and Pensions, which is chaired by Senator Kennedy. The bill has twenty (20) original cosponsors.

#### ***Wasn’t the bill offered as an amendment to another bill in the Senate? What happened?***

Yes. Senator Gregg offered his legislation as an amendment to S. Amdt. 3500—the substitute, or manager’s amendment—to H.R. 2419, which was known as the “farm bill.” The farm bill was

originally considered by the Senate the week before Thanksgiving and no non-germane amendments were permitted for consideration on the floor. As a result of this decision, Senator Gregg's amendment, S. Amdt. 3615, could not be debated. Ultimately, the Senate failed to invoke cloture and the farm bill was pulled from the floor.

However, during the Thanksgiving recess, Senate leadership reached an agreement to reconsider the legislation, with amendments limited to twenty (20) for both the majority and minority. The FOP won an agreement from Senate leadership from both sides of the aisle to allow the collective bargaining bill to be offered as an amendment to the farm bill so Senators Gregg and Kennedy asked Senator Tom Harkin (D-IA), the Chairman of the Committee on Agriculture, Nutrition, and Forestry to offer the amendment. Senator Harkin, as the author of the farm bill, would be managing the debate on the legislation on the floor and readily agreed to offer S. Amdt. 3830, the Harkin-Kennedy-Gregg Amendment, to his own bill.

The unanimous consent agreement which governed debate on the farm bill required that all amendments considered must receive sixty (60) affirmative votes to pass.

The FOP whip count estimated that we had sixty-two (62) votes in favor of the amendment, including forty-eight (48) of the forty-nine Democrats, both Independent Senators, and eleven (11) Republican Senators.

The debate on the farm bill and all of its amendments lasted a full week and, regrettably, our amendment (along with several others) came into a direct scheduling conflict with the campaign commitments of five (5) Senators running for President, including a debate involving four (4) Senate Democrats that took place in the middle of the day on Thursday. We immediately began working with these Senate offices and with Senate leadership in an effort to reach an agreement on holding the vote on the amendment at a time when these Senators would be present.

However, Senators Michael B. Enzi (R-WY), Ranking Member of the Committee on Health, Education, Labor and Pensions (HELP), and Jim DeMint (R-SC), took advantage of the absence of these Senators and blocked any agreement to hold the vote at a time certain by offering hostile "second degree" amendments. This obstacle, combined with bad weather in the middle of the country which could have negatively affected travel, precluded any definitive plans of the Senators on the campaign trail from committing to return to the Senate for votes on Friday or even Saturday.

Our members should be assured that we are very confident that we have sixty (60) votes or more in favor of our collective bargaining bill. However, the absence of Senators Joseph R. Biden, Jr. (D-DE), Hillary R. Clinton (D-NY), Christopher J. Dodd (D-CT), and Barack H. Obama (D-IL) imposed a four (4) vote handicap that we did not feel we could overcome. As a result, Senators Gregg and Kennedy reluctantly asked Senator Harkin to withdraw the amendment from consideration. A few hours later, the Senate successfully invoked cloture and passed the farm bill on a 74-19 vote.

***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 which 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 who are 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.

***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 attorneys 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.

***How will the bill work if enacted?***

If the legislation becomes law as it was passed in the House (*i.e.*, without further amendment in the Senate), then the Federal Labor Relations Authority (FLRA) will have 180 days to determine whether a State "substantially provides" 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.

In determining whether or not a State “substantially provides” for these rights and responsibilities, the FLRA is required to consider the opinions of the affected employers, employees, and labor organizations. If an employer and an affected labor organization jointly agree that the current State law “substantially provides” for these rights and responsibilities, the FLRA will give this agreement “weight to the maximum extent practicable” in making its determination.

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” 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.

The bill specifically prohibits strikes and lockouts. Additionally, a labor organization cannot call

for a strike against the employer.

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.

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.

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.