

**Public Safety Employer-Employee Cooperation Act of 2009  
(Introduced in House)**

111th CONGRESS

1st Session

**H. R. 413**

To provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

**IN THE HOUSE OF REPRESENTATIVES**

**January 9, 2009**

Mr. KILDEE (for himself and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Education and Labor

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**A BILL**

To provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Public Safety Employer-Employee Cooperation Act of 2009'.

**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 interstate 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 in States subject to the regulations and procedures described in section 5 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.

## **H.R.1972**

### **Law Enforcement Officer's Procedural Bill of Rights Act of 2009 (Introduced in House)**

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**April 2, 2009**

Mr. STUPAK (for himself and Mr. PAULSEN) introduced the following bill; which was referred to the Committee on the Judiciary

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#### **A BILL**

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Law Enforcement Officer's Procedural Bill of Rights Act of 2009'.

#### **SEC. 2. FINDINGS; DECLARATION OF PURPOSE AND POLICY.**

(a) Findings- Congress finds that--

- (1) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their legitimate enforcement of the laws, demoralizing many rank and file officers in communities and States;
- (2) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly in relation to law enforcement and homeland security;
- (3) in light of Congressional authorization of local law enforcement officers to act across State lines for Homeland Security purposes during emergencies, and in connection with mutual aid agreements

among the States, there is a need to provide stability and continuity in policing operations and safeguard the rights and protections of law enforcement officers who may be called upon to act beyond their local jurisdictions;

(4) the rights of law enforcement officers to engage in or refrain from political activity while off-duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are protected by the first amendment of the United States Constitution;

(5) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(6) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure--

(A) the due process rights of law enforcement officers;

(B) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and

(C) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and

(7) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) Declaration of Purpose and Policy- Congress declares that it is the purpose of this Act and the policy of the United States to--

(1) protect the due process rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

### **SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS RIGHTS OF OFFICERS.**

The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782 et seq.) is amended--

(1) by redesignating part JJ, as added by section 952 of Public Law 110-315 (relating to Loan Repayment for Prosecutors and Public Defenders), as part LL, and moving such part so that such part follows part KK;

(2) in part LL, as so redesignated and moved by paragraph (1), by redesignating section 3001 as section 3021; and

(3) by adding at the end the following new part:

## ***` PART MM--DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS RIGHTS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS***

### ***` SEC. 3031. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS RIGHTS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.***

*` (a) Definitions- In this section:*

*` (1) DISCIPLINARY ACTION- The term `disciplinary action' means any adverse personnel action taken against a law enforcement officer in response to an alleged violation of any rule, regulation, policy, procedure, or directive by such officer, and shall include suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, denial of promotion, unpaid leave from employment, or other adverse actions.*

*` (2) DISCIPLINARY HEARING- The term `disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer which may result in disciplinary action.*

*` (3) SUMMARY SUSPENSION- The term `summary suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer, others, or the property of others.*

*` (4) INVESTIGATION- The term `investigation' means an action taken to determine whether a law enforcement officer violated a rule, regulation, policy, procedure, or directive, which may include--*

*` (A) asking questions of any other law enforcement officer or nonlaw enforcement officer;*





` (1) IN GENERAL- Any law enforcement officer who is the subject of an investigation shall be notified of the investigation not less than 24 hours before the commencement of questioning or before otherwise being required to provide information to an investigating agency.

` (2) CONTENTS OF NOTICE- Notice given under paragraph (1) shall include--

` (A) the nature and scope of the investigation;

` (B) a description of any allegation contained in a written complaint;

` (C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

` (D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

` (e) Rights of Law Enforcement Officers Prior to and During Questioning Incidental to an Investigation- If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

` (1) COUNSEL AND REPRESENTATION-

` (A) IN GENERAL- Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

` (B) PRIVATE CONSULTATION- During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

` (C) UNAVAILABILITY OF COUNSEL- If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

` (2) REASONABLE HOURS AND TIME- The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, or during the normal waking hours for the law enforcement officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the law enforcement officer being interrogated, the law enforcement officer shall be compensated for

any such off-duty time in accordance with regular department procedures.

` (3) PLACE OF QUESTIONING- Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place--

` (A) at the office of the individual conducting the investigation on behalf of the law enforcement agency employing the officer under investigation; or

` (B) the place at which the officer under investigation reports for duty.

` (4) IDENTIFICATION OF QUESTIONERS- Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of--

` (A) the name, rank, and command of each officer or other individual who will conduct the questioning; and

` (B) the relationship between each such individual conducting the questioning and the law enforcement agency employing the officer under investigation.

` (5) NO MORE THAN TWO QUESTIONERS- All questions directed to the law enforcement officer under interrogation shall be asked by and through no more than two interrogators at one time.

` (6) REASONABLE TIME PERIOD- Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time, taking into consideration the gravity and complexity of the issue being investigated, and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

` (7) NO THREATS, FALSE STATEMENTS, OR PROMISES TO BE MADE-

` (A) IN GENERAL- Except as provided in subparagraph (B), the law enforcement officer shall not be subjected to offensive language, threats, misleading statements, or promises of a reward in attempts to induce the officer to answer any question, give any statement, or otherwise provide information.

` (B) EXCEPTION- The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if--

` (i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

` (ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

` (8) COERCION- No statement made during interrogation by a law enforcement officer under duress, coercion, or threat shall be admissible in any subsequent civil proceeding against that officer.

` (9) CRIMINAL CHARGES- If prior to or during the interrogation of a law enforcement officer it is deemed that the officer may be charged with a criminal offense, the officer shall be immediately informed of his or her constitutional rights, and shall be entitled to counsel. Disciplinary action based solely on criminal charges shall not be made final until the criminal investigation of such charges has been completed, and all court proceedings are concluded.

` (10) RECORDING-

` (A) IN GENERAL- All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation, free of charge, before any subsequent period of questioning or the filing of any charge against that officer.

` (i) Except as provided in clause (ii) a transcribed copy of any notes made by a stenographer and any reports of complaints made by investigators or other persons, shall be made available to the law enforcement officer.

` (ii) Clause (i) does not apply if the notes or reports have been deemed to be confidential by the investigating agency.

