

117TH CONGRESS  
1ST SESSION

# S. 2178

To provide collective bargaining rights for fire fighters and emergency medical services personnel employed by States or their political subdivisions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 22, 2021

Mr. HICKENLOOPER (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide collective bargaining rights for fire fighters and emergency medical services personnel employed by States or their political subdivisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fire Fighters and  
5 EMS Employer-Employee Cooperation Act”.

6 **SEC. 2. PURPOSE AND POLICY.**

7 It is the sense of Congress that the following is the  
8 policy of the United States:

1           (1) Labor-management relationships and part-  
2           nerships are based on trust, mutual respect, open  
3           communication, bilateral consensual problem solving,  
4           and shared accountability. Labor-management co-  
5           operation fully utilizes the strengths of both parties  
6           to best serve the interests of the public, operating as  
7           a team, to carry out the fire and EMS mission in  
8           a quality work environment. In many fire and EMS  
9           agencies, it is the labor organization that provides  
10          the institutional stability as elected leaders and ap-  
11          pointees come and go.

12          (2) State and local fire and EMS personnel  
13          play an essential role in the efforts of the United  
14          States to detect, prevent, and respond to terrorist  
15          attacks, and to respond to natural disasters, haz-  
16          ardous materials, and other mass casualty incidents.  
17          State and local fire and EMS personnel, as first re-  
18          sponders, are a component of the National Incident  
19          Management System, developed by the Department  
20          of Homeland Security to coordinate response to and  
21          recovery from terrorism, major natural disasters,  
22          and other major emergencies. Fire and EMS em-  
23          ployer-employee cooperation is essential in meeting  
24          these needs and is, therefore, in the National inter-  
25          est.

1           (3) The Federal Government needs to encour-  
2           age conciliation, mediation, and arbitration to aid  
3           and encourage employers and the representatives of  
4           their employees to reach and maintain agreements  
5           concerning rates of pay, hours, and working condi-  
6           tions, and to make all reasonable efforts through ne-  
7           gotiations to settle their differences by mutual agree-  
8           ment reached through collective bargaining or by  
9           such methods as may be provided for in any applica-  
10          ble agreement for the settlement of disputes.

11          (4) The absence of adequate cooperation be-  
12          tween fire and EMS employers and employees has  
13          implications for the security of employees and can  
14          affect interstate and intrastate commerce. The lack  
15          of such labor-management cooperation can detrimen-  
16          tally impact the upgrading of fire and emergency  
17          medical services of local communities, the health and  
18          well-being of fire and EMS personnel, and the mo-  
19          rale of fire and EMS departments. Additionally,  
20          these factors could have significant commercial re-  
21          percussions. Moreover, providing minimal standards  
22          for collective bargaining negotiations in the fire and  
23          EMS sector can prevent industrial strife between  
24          labor and management that interferes with the nor-  
25          mal flow of commerce.

1           (5) Many States and localities already provide  
2 fire and EMS personnel with collective bargaining  
3 rights comparable to or greater than the rights and  
4 responsibilities set forth in this Act, and such State  
5 and local laws should be respected.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

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

10          (2) **CONFIDENTIAL EMPLOYEE.**—The term  
11 “confidential employee” has the meaning given such  
12 term under applicable State law on the date of en-  
13 actment of this Act. If no such State law is in effect,  
14 the term means an individual, employed by a fire  
15 and EMS employer, who—

16                 (A) is designated as confidential; and

17                 (B) is an individual who routinely assists,  
18 in a confidential capacity, supervisory employ-  
19 ees and management employees.

20          (3) **EMERGENCY MEDICAL SERVICES PER-**  
21 **SONNEL.**—The term “emergency medical services  
22 personnel” means an individual who provides out-of-  
23 hospital emergency medical care, including an emer-  
24 gency medical technician, paramedic, or first re-  
25 sponder.

1           (4) EMPLOYER; FIRE AND EMS AGENCY; FIRE  
2           AND EMS EMPLOYER.—The terms “employer”, “fire  
3           and EMS agency”, and “fire and EMS employer”  
4           mean any State, or political subdivision of a State,  
5           that employs fire and EMS personnel.

6           (5) FIRE AND EMS PERSONNEL.—The term  
7           “fire and EMS personnel”—

8                   (A) means an employee of a fire and EMS  
9                   agency who is—

10                           (i) a firefighter;

11                           (ii) an emergency medical services  
12                           personnel; or

13                           (iii) an individual trained as a fire-  
14                           fighter who provides out-of-hospital emer-  
15                           gency medical care;

16                   (B) includes an individual who is tempo-  
17                   rarily transferred to a supervisory or manage-  
18                   ment position; and

19                   (C) does not include a permanent super-  
20                   visory, management, or confidential employee.

21           (6) FIREFIGHTER.—The term “firefighter” has  
22           the meaning given the term “employee in fire protec-  
23           tion activities” in section 3(y) of the Fair Labor  
24           Standards Act of 1938 (29 U.S.C. 203(y)).

1           (7) LABOR ORGANIZATION.—The term “labor  
2 organization” means an organization of any kind, in  
3 which employees participate and which exists for the  
4 purpose, in whole or in part, of dealing with employ-  
5 ers concerning grievances, conditions of employment,  
6 and related matters.

7           (8) MANAGEMENT EMPLOYEE.—The term  
8 “management employee” has the meaning given  
9 such term under applicable State law in effect on  
10 the date of enactment of this Act. If no such State  
11 law is in effect, the term means an individual em-  
12 ployed by a fire and EMS employer in a position  
13 that requires or authorizes the individual to formu-  
14 late, determine, or influence the policies of the em-  
15 ployer.

16           (9) PERSON.—The term “person” means an in-  
17 dividual or a labor organization.

18           (10) STATE.—The term “State” means each of  
19 the several States of the United States, the District  
20 of Columbia, and any territory or possession of the  
21 United States.

22           (11) SUBSTANTIALLY PROVIDES.—The term  
23 “substantially provides”, when used with respect to  
24 the rights and responsibilities described in section  
25 4(b), means providing rights and responsibilities

1 that are comparable to or greater than each right  
 2 and responsibility described in such section.

3 (12) SUPERVISORY EMPLOYEE.—The term “su-  
 4 pervisory employee” has the meaning given such  
 5 term under applicable State law in effect on the date  
 6 of enactment of this Act. If no such State law is in  
 7 effect, the term means an individual, employed by a  
 8 fire and EMS employer, who—

9 (A) has the authority in the interest of the  
 10 employer to hire, direct, assign, promote, re-  
 11 ward, transfer, furlough, lay off, recall, sus-  
 12 pend, discipline, or remove fire and EMS per-  
 13 sonnel, to adjust their grievances, or to effec-  
 14 tively recommend such action, if the exercise of  
 15 the authority is not merely routine or clerical in  
 16 nature but requires the consistent exercise of  
 17 independent judgment; and

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

20 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**  
 21 **ITIES.**

22 (a) DETERMINATION.—

23 (1) IN GENERAL.—Not later than 180 days  
 24 after the date of enactment of this Act, the Author-  
 25 ity shall make a determination as to whether a State

1 substantially provides for the rights and responsibil-  
2 ities described in subsection (b).

3 (2) CONSIDERATION OF ADDITIONAL OPIN-  
4 IONS.—In making the determination described in  
5 paragraph (1), the Authority shall consider the opin-  
6 ions of affected employers and labor organizations.  
7 In the case where the Authority is notified by an af-  
8 fected employer and labor organization that both  
9 parties agree that the law applicable to such em-  
10 ployer and labor organization substantially provides  
11 for the rights and responsibilities described in sub-  
12 section (b), the Authority shall give such agreement  
13 weight to the maximum extent practicable in making  
14 the Authority's determination under this subsection.

15 (3) LIMITED CRITERIA.—In making the deter-  
16 mination described in paragraph (1), the Authority  
17 shall be limited to the application of the criteria de-  
18 scribed in subsection (b) and shall not require any  
19 additional criteria.

20 (4) SUBSEQUENT DETERMINATIONS.—

21 (A) IN GENERAL.—A determination made  
22 pursuant to paragraph (1) shall remain in ef-  
23 fect unless and until the Authority issues a sub-  
24 sequent determination, in accordance with the  
25 procedures set forth in subparagraph (B).



1 (B) PROCEDURES FOR SUBSEQUENT DE-  
2 TERMINATIONS.—Upon establishing that a ma-  
3 terial change in State law or its interpretation  
4 has occurred, an employer or a labor organiza-  
5 tion may submit a written request for a subse-  
6 quent determination. If satisfied that a material  
7 change in State law or its interpretation has oc-  
8 curred, the Authority shall issue a subsequent  
9 determination not later than 30 days after re-  
10 ceipt of such request.

11 (5) JUDICIAL REVIEW.—Any person or em-  
12 ployer aggrieved by a determination of the Authority  
13 under this section may, during the 60-day period be-  
14 ginning on the date on which the determination was  
15 made, petition any United States Court of Appeals  
16 in the circuit in which the person or employer re-  
17 sides or transacts business or in the District of Co-  
18 lumbia Circuit for judicial review.

19 (b) RIGHTS AND RESPONSIBILITIES.—In making a  
20 determination described in subsection (a), the Authority  
21 shall consider a State's law to substantially provide the  
22 required rights and responsibilities unless such law fails  
23 to provide rights and responsibilities comparable to or  
24 greater than the following:

1           (1) Granting fire and EMS personnel the right  
2 to form and join a labor organization, which may ex-  
3 clude management employees, supervisory employ-  
4 ees, and confidential employees, that is, or seeks to  
5 be, recognized as the exclusive bargaining represent-  
6 ative of such employees.

7           (2) Requiring fire and EMS employers to recog-  
8 nize the employees' labor organization (freely chosen  
9 by a majority of the employees), to agree to bargain  
10 with the labor organization, and to commit any  
11 agreements to writing in a contract or memorandum  
12 of understanding.

13           (3) Providing for the right to bargain over  
14 hours, wages, and terms and conditions of employ-  
15 ment.

16           (4) Making available an interest impasse resolu-  
17 tion mechanism, such as fact-finding, mediation, ar-  
18 bitration, or comparable procedures.

19           (5) Requiring enforcement of all rights, respon-  
20 sibilities, and protections enumerated in this section,  
21 and of any written contract or memorandum of un-  
22 derstanding between a labor organization and a fire  
23 and EMS employer, through—

24                   (A) a State administrative agency, if the  
25 State so chooses; or

1 (B) any court of competent jurisdiction.

2 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-  
3 thority determines, acting pursuant to its authority under  
4 subsection (a), that a State substantially provides rights  
5 and responsibilities described in subsection (b), then this  
6 Act shall not preempt State law.

7 (d) FAILURE TO MEET REQUIREMENTS.—

8 (1) IN GENERAL.—If the Authority determines,  
9 acting pursuant to its authority under subsection  
10 (a), that a State does not substantially provide for  
11 the rights and responsibilities described in sub-  
12 section (b), then such State shall be subject to the  
13 regulations and procedures described in section 5 be-  
14 ginning on the later of—

15 (A) the date that is 2 years after the date  
16 of enactment of this Act; or

17 (B)(i) in the case of a State receiving an  
18 initial determination under subsection (a)(1),  
19 the date that is the last day of the first regular  
20 session of the legislature of the State that be-  
21 gins after the date the Authority makes the de-  
22 termination under such subsection; or

23 (ii) in the case of a State receiving a sub-  
24 sequent determination under subsection (a)(4),  
25 the date that is the last day of the first regular

1 session of the legislature of the State that be-  
2 gins after the date the Authority makes the de-  
3 termination under such subsection.

4 (2) PARTIAL FAILURE.—If the Authority makes  
5 a determination that a State does not substantially  
6 provide for the rights and responsibilities described  
7 in subsection (b) solely because the State law sub-  
8 stantially provides for such rights and responsibil-  
9 ities for certain categories of fire and EMS per-  
10 sonnel covered by this Act but not others, the Au-  
11 thority shall identify those categories of fire and  
12 EMS personnel that shall be subject to the regula-  
13 tions and procedures described in section 5, pursu-  
14 ant to section 8(b)(3) and beginning on the appro-  
15 priate date described in paragraph (1), and those  
16 categories of fire and EMS personnel that shall re-  
17 main solely subject to State law with respect to the  
18 rights and responsibilities described in subsection  
19 (b).

20 **SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.**

21 (a) IN GENERAL.—Not later than 1 year after the  
22 date of enactment of this Act, the Authority shall issue  
23 regulations, in accordance with the rights and responsibil-  
24 ities described in section 4(b), establishing collective bar-  
25 gaining procedures for employers and fire and EMS per-

1 sonnel in States that the Authority has determined under  
2 section 4(a) do not substantially provide for such rights  
3 and responsibilities.

4 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-  
5 THORITY.—The Authority, to the extent provided in this  
6 Act and in accordance with regulations prescribed by the  
7 Authority, shall—

8 (1) determine the appropriateness of units for  
9 labor organization representation;

10 (2) supervise or conduct elections to determine  
11 whether a labor organization has been selected as an  
12 exclusive representative by a voting majority of the  
13 employees in an appropriate unit;

14 (3) resolve issues relating to the duty to bar-  
15 gain in good faith;

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

18 (5) resolve exceptions to the awards of arbitra-  
19 tors;

20 (6) protect the right of each employee to form,  
21 join, or assist any labor organization, or to refrain  
22 from any such activity, freely and without fear of  
23 penalty or reprisal, and protect each employee in the  
24 exercise of such right; and

1           (7) take such other actions as are necessary  
2           and appropriate to effectively administer this Act,  
3           including issuing subpoenas, requiring the attend-  
4           ance and testimony of witnesses and the production  
5           of documentary or other evidence from any place in  
6           the United States, and administering oaths, taking  
7           or ordering the taking of depositions, ordering re-  
8           sponses to written interrogatories, and receiving and  
9           examining witnesses.

10       (c) ENFORCEMENT.—

11           (1) AUTHORITY TO PETITION COURT.—The Au-  
12           thority may petition any United States Court of Ap-  
13           peals with jurisdiction over the parties, or the  
14           United States Court of Appeals for the District of  
15           Columbia Circuit, to enforce any final orders under  
16           this section, and for appropriate temporary relief or  
17           a restraining order.

18           (2) PRIVATE RIGHT OF ACTION.—

19           (A) IN GENERAL.—Except as provided in  
20           subparagraph (B) and unless the Authority has  
21           filed a petition for enforcement as provided in  
22           paragraph (1), any party has the right to file  
23           suit in any appropriate district court of the  
24           United States to enforce compliance with the  
25           regulations issued by the Authority pursuant to

1 this section, or to enforce compliance with any  
2 order issued by the Authority pursuant to this  
3 section. The right provided by this subpara-  
4 graph to bring a suit to enforce compliance with  
5 any order issued by the Authority pursuant to  
6 this section shall terminate upon the filing of a  
7 petition seeking the same relief by the Author-  
8 ity.

9 (B) EXCLUSIVE ENFORCEMENT.—In the  
10 case a State has not waived its sovereign immu-  
11 nity, the Authority shall have the exclusive  
12 power to enforce the provisions of this Act  
13 against such State as an employer.

14 **SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.**

15 (a) IN GENERAL.—Subject to subsection (b), an em-  
16 ployer, fire and EMS personnel, or labor organization may  
17 not engage in a lockout, sickout, work slowdown, strike,  
18 or any other organized job action that will measurably dis-  
19 rupt the delivery of emergency services and is designed  
20 to compel an employer, fire and EMS personnel, or labor  
21 organization to agree to the terms of a proposed contract.

22 (b) NO PREEMPTION.—Nothing in this section shall  
23 be construed to preempt any law of any State or political  
24 subdivision of any State with respect to strikes by fire and  
25 EMS personnel.

1 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**  
2 **AGREEMENTS.**

3 A certification, recognition, election-held, collective  
4 bargaining agreement, or memorandum of understanding  
5 that has been issued, approved, or ratified by any public  
6 employee relations board or commission or by any State  
7 or political subdivision or its agents and is in effect on  
8 the day before the date of enactment of this Act shall not  
9 be invalidated by the enactment of this Act.

10 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

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

13 (1) to preempt or limit the remedies, rights,  
14 and procedures of any law of any State or political  
15 subdivision of any State that provides comparable or  
16 greater rights and responsibilities than the rights  
17 and responsibilities described in section 4(b);

18 (2) to prevent a State from enforcing a right-  
19 to-work law that prohibits employers and labor orga-  
20 nizations from negotiating provisions in a labor  
21 agreement that require labor organization member-  
22 ship or payment of labor organization fees as a con-  
23 dition of employment;

24 (3) to preempt or limit any State law in effect  
25 on the date of enactment of this Act that provides  
26 for the rights and responsibilities described in sec-



1 tion 4(b) solely because such State law permits an  
2 employee to appear on the employee's own behalf  
3 with respect to the employee's employment relations  
4 with the fire and EMS agency involved;

5 (4) to prohibit a State from exempting from  
6 coverage under this Act a political subdivision of the  
7 State that has a population of less than 5,000 or  
8 that employs less than 25 full-time employees, in-  
9 cluding each individual employed by the political  
10 subdivision, except not including any individual  
11 elected by popular vote or appointed to serve on a  
12 board or commission; or

13 (5) to preempt or limit the laws or ordinances  
14 of any State or political subdivision of a State that  
15 provide for the rights and responsibilities described  
16 in section 4(b) solely because such law or ordinance  
17 does not require bargaining with respect to pension  
18 or retirement.

19 (b) COMPLIANCE.—

20 (1) ACTIONS OF STATES.—Nothing in this Act  
21 or the regulations promulgated under this Act shall  
22 be construed to require a State to rescind or pre-  
23 empt the laws or ordinances of any of the State's  
24 political subdivisions if such laws provide rights and  
25 responsibilities for fire and EMS personnel that are

1 comparable to or greater than the rights and respon-  
2 sibilities described in section 4(b).

3 (2) ACTIONS OF THE AUTHORITY.—Nothing in  
4 this Act or the regulations promulgated under this  
5 Act shall be construed to preempt—

6 (A) the laws or ordinances of any State or  
7 political subdivision of a State, if such laws pro-  
8 vide collective bargaining rights for fire and  
9 EMS personnel that are comparable to or  
10 greater than the rights enumerated in section  
11 4(b);

12 (B) the laws or ordinances of any State or  
13 political subdivision of a State that provide for  
14 the rights and responsibilities described in sec-  
15 tion 4(b) with respect to certain categories of  
16 fire and EMS personnel covered by this Act  
17 solely because such rights and responsibilities  
18 have not been extended to other categories of  
19 fire and EMS personnel covered by this Act; or

20 (C) the laws or ordinances of any State or  
21 political subdivision of a State that provide for  
22 the rights and responsibilities described in sec-  
23 tion 4(b), solely because such laws or ordi-  
24 nances provide that a contract or memorandum  
25 of understanding between a fire and EMS em-

1            ployer and a labor organization must be pre-  
2            sented to a legislative body as part of the proc-  
3            ess for approving such contract or memo-  
4            randum of understanding.

5            (3) LIMITED ENFORCEMENT POWER.—In the  
6            case of a law or ordinance described in paragraph  
7            (2)(B), the Authority shall only exercise the powers  
8            provided in section 5 with respect to those categories  
9            of fire and EMS personnel who have not been af-  
10          fforded the rights and responsibilities described in  
11          section 4(b).

12 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

13          There are authorized to be appropriated such sums  
14 as may be necessary to carry out the provisions of this  
15 Act.

○