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S. 4363

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2024

Ms. HIRONO (for herself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. BUTLER, Ms. CANTWELL, Mr. CARDIN, Mr. CASEY, Ms. DUCKWORTH, Mr. FETTERMAN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. KLOBUCHAR, Mr. LUJÁN, Mr. MARKEY, Mr. MERKLEY, Mrs. MURRAY, Mr. PADILLA, Ms. ROSEN, Mr. REED, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Ms. SMITH, Ms. STABENOW, Mr. VAN HOLLEN, Ms. WARREN, Mr. WELCH, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, 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 “Public Service Free-
5 dom to Negotiate Act of 2024”.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act:

3 (1) APPROPRIATE UNIT.—The term “appro-
4 priate unit” means a group of public employees or
5 a group of supervisory employees appropriate for
6 collective bargaining that share a community of in-
7 terest, as demonstrated by factors including whether
8 such group—

9 (A) has a bargaining history or history of
10 prior organization; and

11 (B) reflects the desires of the employees
12 who are seeking or proposing representation by
13 a labor organization regarding the employees to
14 be included in such bargaining unit.

15 (2) AUTHORITY.—The term “Authority” means
16 the Federal Labor Relations Authority.

17 (3) COLLECTIVE BARGAINING.—The term “col-
18 lective bargaining”, used with respect to public em-
19 ployees, supervisory employees, and public employ-
20 ers, means the performance of the mutual obligation
21 of the representative of a public employer and the
22 exclusive representative of an appropriate unit of
23 public and supervisory employees of the employer to
24 meet at reasonable times and to consult and bargain
25 in a good-faith effort to reach agreement with re-
26 spect to wages, hours, and other terms and condi-

1 tions of employment affecting such employees and to
2 execute a written document incorporating any collec-
3 tive bargaining agreement reached, but the obliga-
4 tion referred to in this paragraph does not compel
5 either party to agree to a proposal or to make a con-
6 cession (as described in section 8(d) of the National
7 Labor Relations Act (29 U.S.C. 158(d))).

8 (4) CONFIDENTIAL EMPLOYEE.—The term
9 “confidential employee” means an employee of a
10 public employer who acts in a confidential capacity
11 with respect to an individual who formulates or ef-
12 fectuates management policies in the field of labor-
13 management relations.

14 (5) COVERED PERSON.—The term “covered
15 person” means an individual or a labor organization.

16 (6) EMERGENCY SERVICES EMPLOYEE.—The
17 term “emergency services employee” means—

18 (A) a public employee providing out-of-hos-
19 pital emergency medical care, including an
20 emergency medical technician, paramedic, or
21 first responder; or

22 (B) a public employee providing other serv-
23 ices in response to emergencies that have the
24 potential to cause death or serious bodily in-
25 jury, including an employee in fire protection

1 activities (as defined in section 3(y) of the Fair
2 Labor Standards Act of 1938 (29 U.S.C.
3 203(y))).

4 (7) LABOR ORGANIZATION.—The term “labor
5 organization” means any organization of any kind
6 that is not under the control directly or indirectly by
7 a public employer in which such employees partici-
8 pate and which exists for the purpose, in whole or
9 in part, of dealing with public employers concerning
10 grievances, labor disputes, wages, rates of pay, hours
11 of employment, or conditions of work.

12 (8) LAW.—The term “law”, used with respect
13 to a State or a political subdivision thereof, includes
14 the application of the laws of such State or such po-
15 litical subdivision, including any regulations or ordi-
16 nances issued by such State or such political subdivi-
17 sion.

18 (9) LAW ENFORCEMENT OFFICER.—The term
19 “law enforcement officer” has the meaning given
20 such term in section 1204 of the Omnibus Crime
21 Control and Safe Streets Act of 1968 (34 U.S.C.
22 10284).

23 (10) MANAGEMENT EMPLOYEE.—The term
24 “management employee” means an individual em-
25 ployed by a public employer in a position the duties

1 and responsibilities of which require the individual to
2 formulate or determine the policies of the public em-
3 ployer.

4 (11) PUBLIC EMPLOYEE.—The term “public
5 employee”—

6 (A) means an individual, employed by a
7 public employer, who in any workweek is en-
8 gaged in commerce or is employed in an enter-
9 prise engaged in commerce;

10 (B) includes an individual who is tempo-
11 rarily transferred to a supervisory or manage-
12 ment position; and

13 (C) does not include—

- 14 (i) a supervisory employee;
15 (ii) a management employee;
16 (iii) a confidential employee; or
17 (iv) an elected official.

18 (12) PUBLIC EMPLOYER.—The term “public
19 employer” means an entity that—

20 (A) employs not less than 1 individual;

21 (B) is engaged in commerce; and

22 (C) is either—

- 23 (i) a State or the political subdivision
24 of a State; or

1 (ii) any authority, agency, school dis-
 2 trict, board or other entity controlled and
 3 operated by an entity described in clause
 4 (i).

5 (13) SUBSTANTIALLY PROVIDES.—The term
 6 “substantially provides”, used with respect to the
 7 rights and procedures described in section 3(b),
 8 means providing rights and procedures that are
 9 equivalent to or greater than each of the rights and
 10 procedures described in such section.

11 (14) SUPERVISORY EMPLOYEE.—The term “su-
 12 pervisory employee” means an individual, employed
 13 by a public employer, who in any workweek is en-
 14 gaged in commerce or is employed in an enterprise
 15 engaged in commerce and who—

16 (A) has the authority in the interest of the
 17 employer, if the exercise of such authority is
 18 not merely routine or clerical in nature but re-
 19 quires the consistent exercise of independent
 20 judgment, to—

21 (i) hire, promote, reward, transfer,
 22 furlough, lay off, recall, suspend, dis-
 23 cipline, or remove public employees;

24 (ii) adjust the grievances of public
 25 employees; or

1 (iii) effectively recommend any action
2 described in clause (i) or (ii); and

3 (B) devotes a majority of time at work to
4 exercising the authority under subparagraph
5 (A).

6 (b) FAIR LABOR STANDARDS ACT OF 1938
7 TERMS.—The terms “commerce”, “employ”, “enterprise
8 engaged in commerce”, and “State” have the meanings
9 given such terms in section 3 of the Fair Labor Standards
10 Act of 1938 (29 U.S.C. 203).

11 (c) STATE LAW.—If any term defined in this section
12 has a substantially equivalent meaning to a term (or a
13 substantially equivalent term) under applicable State law
14 on the date of the enactment of this Act, such term (or
15 substantially equivalent term) and meaning under such
16 applicable State law shall apply with respect to the term
17 defined under this Act with respect to such State.

18 **SEC. 3. FEDERAL MINIMUM STANDARDS.**

19 (a) DETERMINATION.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act (except as
22 provided in paragraph (4)(C)), the Authority shall
23 make a determination for each State as to whether
24 the laws of such State substantially provide for each
25 of the rights and procedures under subsection (b)

1 and not later than 30 days after the enactment of
2 this Act, the Authority shall establish procedures for
3 the implementation of this section.

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

17 (3) LIMITED CRITERIA.—In making the deter-
18 mination described in paragraph (1), the Authority
19 may only consider the criteria described in sub-
20 section (b).

21 (4) SUBSEQUENT DETERMINATIONS.—

22 (A) IN GENERAL.—A determination made
23 pursuant to paragraph (1) shall remain in ef-
24 fect unless and until the Authority issues a sub-

1 sequent determination, in accordance with the
2 procedures set forth in subparagraph (B).

3 (B) REQUEST.—A public employee, super-
4 visory employee, public employer, or a labor or-
5 ganization may submit to the Authority a writ-
6 ten request for a subsequent determination with
7 respect to whether a material change of State
8 law has occurred.

9 (C) ISSUANCE.—If satisfied that a mate-
10 rial change in State law has occurred, the Au-
11 thority shall issue a subsequent determination
12 described under paragraph (1) not later than
13 30 days after receipt of such request.

14 (5) JUDICIAL REVIEW.—Any covered person or
15 public employer aggrieved by a determination of the
16 Authority under this paragraph (1) may, during the
17 60-day period beginning on the date on which the
18 determination was made, petition any United States
19 Court of Appeals in the circuit in which the covered
20 person or public employer resides or transacts busi-
21 ness or in the Court of Appeals for the District of
22 Columbia Circuit, for judicial review. In any judicial
23 review of a determination made by the Authority de-
24 scribed in paragraph (1), the procedures contained

1 in subsections (c) and (d) of section 7123 of title 5,
2 United States Code, shall be followed.

3 (6) RULE OF CONSTRUCTION.—In making the
4 determination described in paragraph (1), the Au-
5 thority shall, as relevant, consider any requirement
6 imposed by a consent decree entered into by the De-
7 partment of Justice before, on, or after the date of
8 enactment of this Act as substantially providing for
9 the rights and procedures under subsection (b).

10 (b) FEDERAL MINIMUM STANDARD.—The collective
11 bargaining rights and procedures under this subsection
12 are as follows:

13 (1) A right of public employees and supervisory
14 employees—

15 (A) to self-organization;

16 (B) to form, join, or assist a labor organi-
17 zation or to refrain from any such activity;

18 (C) to bargain collectively through rep-
19 resentatives of their own choosing; and

20 (D) to engage in other concerted activities
21 for the purpose of collective bargaining or other
22 mutual aid (including the filing of joint, class,
23 or collective legal claims) or protection.

24 (2) A requirement for public employers to—

1 (A) recognize the labor organization of its
2 public employees and supervisory employees
3 (freely chosen in an election by a majority of
4 such employees voting in the appropriate unit
5 or chosen by voluntary recognition if that meth-
6 od is permitted under State law) without re-
7 quiring an election to recertify or decertify a
8 labor organization that is already recognized as
9 the representative of such employees unless not
10 less than 30 percent of such employees in the
11 bargaining unit freely sign a petition to decer-
12 tify such labor organization—

13 (i) not earlier than the date that is 1
14 year after the date of the election (or after
15 a voluntary recognition if permitted under
16 State law) of the representative;

17 (ii) not earlier than 1 year after the
18 expiration of a valid collective bargaining
19 agreement;

20 (iii) not during the term of a valid col-
21 lective bargaining agreement (except as
22 permissible under clause (iv)); or

23 (iv) during the 30-day period begin-
24 ning on the date that is 90 days before the
25 end of a valid existing contract;

1 (B) collectively bargain with such recog-
2 nized labor organization; and

3 (C) commit any agreements with such rec-
4 ognized labor organization to writing in a con-
5 tract or memorandum of understanding.

6 (3) An interest impasse resolution mechanism,
7 such as fact-finding, mediation, arbitration, or com-
8 parable procedures that culminate in binding resolu-
9 tion.

10 (4) Payroll deduction of labor organization fees
11 for any duly chosen representative of a public em-
12 ployee or supervisory employee pursuant to the
13 terms of an agreement between the labor organiza-
14 tion and such public or supervisory employee, which
15 shall remain in effect until revoked by such employee
16 in accordance with its terms.

17 (5) The prohibition of practices that interfere
18 with, restrain, or coerce public or supervisory em-
19 ployees in the exercise of rights guaranteed in para-
20 graph (1) or regulations issued thereunder.

21 (6) The enforcement of all relevant rights and
22 procedures provided by State law and enumerated in
23 this subsection.

24 (7) The enforcement of all rights and proce-
25 dures provided by any written contract or memo-

1 random of understanding between a labor organiza-
 2 tion and a public employer, through—

3 (A) a State agency, if the State so chooses;

4 (B) at the election of an aggrieved party,
 5 the State courts, if so permitted under State
 6 law; or

7 (C) a grievance resolution procedure culmi-
 8 nating in binding arbitration negotiated in such
 9 contract or memorandum.

10 (c) COMPLIANCE WITH RIGHTS AND PROCE-
 11 DURES.—If the Authority determines under subsection
 12 (a)(1) that the laws of a State substantially provide each
 13 of the rights and procedures described in subsection (b),
 14 then subsection (d) shall not apply and this Act shall not
 15 preempt the laws of such State.

16 (d) FAILURE TO SUBSTANTIALLY PROVIDE.—

17 (1) IN GENERAL.—If the Authority determines
 18 under subsection (a)(1) that the laws of a State do
 19 not substantially provide for each of the rights and
 20 procedures described in subsection (b), then such
 21 State shall be subject to the rules and activities of
 22 the Authority under section 4 beginning on the later
 23 of—

24 (A) the date that is 2 years after the date
 25 of enactment of this Act;

1 (B) the date that is the last day of the
2 first regular session of the legislature of the
3 State that begins after the date of the enact-
4 ment of this Act; or

5 (C) in the case of a State receiving a sub-
6 sequent determination described under sub-
7 section (a)(4), the date that is the last day of
8 the first regular session of the legislature of the
9 State that begins after the date the Authority
10 made the determination.

11 (2) PARTIAL FAILURE.—If the Authority deter-
12 mines under subsection (a)(1) that a State does not
13 substantially provide for each of the rights and pro-
14 cedures described in subsection (b) because the
15 State fails to substantially provide for all of such
16 rights and procedures with respect to any public or
17 supervisory employees, the Authority shall identify—

18 (A) the categories of public or supervisory
19 employees of such State that shall be subject to
20 the rules and activities of the Authority under
21 section 4, pursuant to section 7(b)(4), begin-
22 ning on the applicable date under paragraph
23 (1);

24 (B) the categories of public employees and
25 supervisory employees of such State that shall

1 not be subject to the rules and activities of the
2 Authority under section 4;

3 (C) the categories of rights and procedures
4 described in subsection (b) for which the State
5 does not substantially provide for certain public
6 employees and supervisory employees; and

7 (D) the categories of rights and procedures
8 described in such subsection for which the State
9 substantially provides for all employees.

10 **SEC. 4. MINIMUM STANDARDS ADMINISTERED BY THE FED-**
11 **ERAL LABOR RELATIONS AUTHORITY.**

12 (a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this Act, the Authority shall issue
14 rules and take such actions that the Authority determines
15 appropriate to establish and administer collective bar-
16 gaining rights and procedures that substantially provide
17 for the minimum standards described in section 3(b) for
18 States described in section 3(d).

19 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
20 THORITY.—

21 (1) IN GENERAL.—In carrying out subsection
22 (a), the Authority shall—

23 (A) provide for the rights and procedures
24 described in paragraphs (1) through (5) of sec-
25 tion 3(b);

1 (B) supervise or conduct elections to deter-
2 mine whether a labor organization has been
3 chosen as an exclusive representative by a ma-
4 jority of the public employees and supervisory
5 employees voting in such election in an appro-
6 priate unit;

7 (C) determine the appropriateness of units
8 for labor organization representation;

9 (D) conduct hearings and resolve com-
10 plaints concerning violations of this Act or any
11 rule or order issued by the Authority pursuant
12 to this Act;

13 (E) resolve exceptions to the awards of ar-
14 bitrators that violate or exceed the scope of
15 public policy of this Act; and

16 (F) take such other actions as are nec-
17 essary and appropriate to effectively administer
18 this Act, including issuing subpoenas requiring
19 the attendance and testimony of witnesses and
20 the production of documentary or other evi-
21 dence from any place in the United States, ad-
22 ministering oaths, taking or ordering the taking
23 of depositions, ordering responses to written in-
24 terrogatories, and receiving and examining wit-
25 nesses.

1 (2) RULE OF CONSTRUCTION.—In providing for
2 the rights and procedures under paragraph (1)(A),
3 nothing in this Act shall be construed as super-
4 seding, or creating or imposing any requirement in
5 conflict with, any consent decree entered into by the
6 Department of Justice before, on, or after the date
7 of enactment of this Act.

8 (c) ENFORCEMENT.—

9 (1) IN GENERAL.—The Authority may issue an
10 order directing compliance by any covered person or
11 public employer found to be in violation of this sec-
12 tion, and may petition any United States Court of
13 Appeals with jurisdiction over the parties, or the
14 United States Court of Appeals for the District of
15 Columbia Circuit, to enforce any such final orders
16 issued pursuant to this section or pursuant to rules
17 issued under this section, and for appropriate tem-
18 porary relief or a restraining order. Any covered per-
19 son or public employer aggrieved by an order issued
20 by the Authority under this section may, during the
21 60-day period beginning on the date on which the
22 order was issued petition any United States Court of
23 Appeals in the circuit which the covered person or
24 public employer resides or transacts business or in
25 the Court of Appeals for the District of Columbia

1 Circuit, for judicial review. Any petition or appeal
2 under this section shall be conducted in accordance
3 with subsections (c) and (d) of section 7123 of title
4 5, United States Code.

5 (2) PRIVATE RIGHT OF ACTION.—

6 (A) FILING A CIVIL ACTION.—Unless the
7 Authority has filed an order of enforcement as
8 provided in paragraph (1), any party may, after
9 the 180-day period following the filing of a
10 charge with the Authority pursuant to the rules
11 of the Authority under this section, file a civil
12 action against any named State administrator
13 in an appropriate district court of the United
14 States to enjoin such administrator to enforce
15 compliance—

16 (i) with this Act or the rules issued by
17 the Authority under this section; or

18 (ii) to enforce compliance with any
19 order issued by the Authority.

20 (B) TIMING.—Any civil action brought
21 under subparagraph (A) shall be brought not
22 later than the earlier of—

23 (i) the date that is 180 days after the
24 expiration of the 180-day period in sub-
25 paragraph (A); or

1 (ii) the date that is 180 days after the
2 date that the Authority dismisses a charge
3 described in subparagraph (A).

4 (C) NOTICE.—The party shall serve notice
5 of the Federal lawsuit to the Authority.

6 (D) JURISDICTION AND ATTORNEYS'
7 FEES.—A district court shall have jurisdiction
8 over the civil action filed under subparagraph
9 (A) without regard to the amount in con-
10 troversy or the citizenship of the parties and
11 may award reasonable attorneys' fees.

12 **SEC. 5. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED**
13 **WHEN EMERGENCY OR PUBLIC SAFETY SERV-**
14 **ICES IMPERILED.**

15 (a) IN GENERAL.—Subject to subsection (b), any em-
16 ployer, emergency services employee, or law enforcement
17 officer, subject to the rules and activities of the Authority
18 under section 4, may not engage in a lockout, strike, or
19 any other organized job action of which a reasonably prob-
20 able result is a measurable disruption of the delivery of
21 emergency or public safety services. No labor organization
22 may cause or attempt to cause a violation of this sub-
23 section.

24 (b) NO PREEMPTION.—Nothing in this section shall
25 be construed to preempt any law of any State or political

1 subdivision of any State with respect to strikes by emer-
2 gency services employees or law enforcement officers.

3 **SEC. 6. EXISTING COLLECTIVE BARGAINING UNITS AND**
4 **AGREEMENTS.**

5 The enactment of this Act shall not invalidate any
6 certification, recognition, result of an election, collective
7 bargaining agreement, or memorandum of understanding
8 that—

9 (1) has been issued, approved, or ratified by
10 any public employee relations board or commission,
11 or by any State or political subdivision or an agent
12 or management official of such State or political
13 subdivision; and

14 (2) is in effect on the day before the date of en-
15 actment of this Act.

16 **SEC. 7. EXCEPTIONS.**

17 (a) IN GENERAL.—The Authority shall not make a
18 determination under section 3(a)(1) that the laws of a
19 State do not substantially provide for the rights and proce-
20 dures under section 3(b) on the basis that relevant State
21 laws—

22 (1) permit a public or supervisory employee to
23 appear on the employee's own behalf with respect to
24 the relationship of the public employee with the pub-
25 lic employer involved;

1 (2) do not cover public or supervisory employees
2 of the State militia or national guard;

3 (3) do not apply to a political subdivision of a
4 State if—

5 (A) such political subdivision has a popu-
6 lation of fewer than 5,000 people or employs
7 fewer than 25 public employees; and

8 (B) the State in which such political sub-
9 division is located notifies the Authority that
10 such subdivision is exempt from such laws be-
11 fore the date on which the Authority makes the
12 determination; or

13 (4) do not require bargaining with respect to
14 pension or retirement income benefits.

15 (b) COMPLIANCE.—

16 (1) ACTIONS OF STATES.—Nothing in this Act
17 shall be construed to require a State to rescind or
18 preempt the laws of any political subdivision of the
19 State if such laws substantially provide for the
20 rights and procedures described in section 3(b).

21 (2) ACTIONS OF THE DISTRICT OF COLUM-
22 BIA.—Nothing in this Act or in the rules issued
23 under this Act shall be construed—

24 (A) to require the District of Columbia to
25 rescind—

1 (i) section 501 of the District of Co-
2 lumbia Government Comprehensive Merit
3 Personnel Act of 1978 (1–605.01, D.C.
4 Official Code), establishing the Public Em-
5 ployee Relations Board of the District of
6 Columbia; or

7 (ii) section 502 of such Act (1–
8 605.02, D.C. Official Code), establishing
9 the power of the Board;

10 (B) to preempt the laws described in sub-
11 paragraph (A); or

12 (C) to limit or alter the powers of the gov-
13 ernment of the District of Columbia pursuant
14 to the District of Columbia Home Rule Act
15 (Public Law 93–198; 87 Stat. 774).

16 (3) ACTIONS OF THE AUTHORITY.—Nothing in
17 this Act shall be construed to preempt—

18 (A) the laws of any State or political sub-
19 division of a State that substantially provide for
20 the rights and procedures described in section
21 3(b);

22 (B) the laws of any State or political sub-
23 division of a State that substantially provide for
24 the rights and procedures described in section
25 3(b), solely because such laws provide that a

1 contract or memorandum of understanding be-
2 tween a public employer and a labor organiza-
3 tion must be presented to a legislative body as
4 part of the process for approving such contract
5 or memorandum of understanding; or

6 (C) the laws of any State or political sub-
7 division of a State that permit or require a pub-
8 lic employer to recognize a labor organization
9 on the basis of signed authorizations executed
10 by employees designating the labor organization
11 as their representative.

12 (4) LIMITED ENFORCEMENT POWER.—In the
13 case of a law described in section 3(d)(2), the Au-
14 thority shall only exercise the authority under sec-
15 tion 4 with respect to the categories of public or su-
16 pervisory employees for whom State law does not
17 substantially provide the rights and procedures de-
18 scribed in section 3(b).

19 **SEC. 8. SEVERABILITY.**

20 If any provision of this Act or the application thereof
21 to any person or circumstance is held invalid, the remain-
22 der of this Act, or the application of that provision to per-
23 sons or circumstances other than those as to which it is
24 held invalid, is not affected thereby.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums

3 as may be necessary to carry out this Act.

○