

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 980**  
**OFFERED BY MR. KILDEE**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Safety Em-  
3 ployer-Employee Cooperation Act of 2007”.

**4 SEC. 2. FINDINGS AND DECLARATION OF PURPOSE .**

5 Congress finds the following:

6 (1) Labor-management relationships and part-  
7 nerships are based on trust, mutual respect, open  
8 communication, bilateral consensual problem solving,  
9 and shared accountability. In many public safety  
10 agencies it is the union that provides the institu-  
11 tional stability as elected leaders and appointees  
12 come and go.

13 (2) State and local public safety officers play an  
14 essential role in the efforts of the United States to  
15 detect, prevent, and respond to terrorist attacks, and  
16 to respond to natural disasters, hazardous materials,  
17 and other mass casualty incidents. As the first to ar-  
18 rive on scene, State and local public safety officers

1        must be prepared to protect life and property and to  
2        preserve scarce and vital Federal resources, avoid  
3        substantial and debilitating interference with inter-  
4        state and foreign commerce, and to protect the na-  
5        tional security of the United States. Public safety  
6        employer-employee cooperation is essential in meet-  
7        ing these needs and is, therefore, in the National in-  
8        terest.

9            (3) The health and safety of the Nation and the  
10        best interests of public safety employers and employ-  
11        ees may be furthered by the settlement of issues  
12        through the processes of collective bargaining.

13            (4) The Federal Government is in the position  
14        to encourage conciliation, mediation, and voluntary  
15        arbitration to aid and encourage employers and the  
16        representatives of their employees to reach and  
17        maintain agreements concerning rates of pay, hours,  
18        and working conditions, and to make all reasonable  
19        efforts through negotiations to settle their dif-  
20        ferences by mutual agreement reached through col-  
21        lective bargaining or by such methods as may be  
22        provided for in any applicable agreement for the set-  
23        tlement of disputes.

24            (5) The potential absence of adequate coopera-  
25        tion between public safety employers and employees

1 has implications for the security of employees, im-  
2 pacts the upgrading of police and fire services of  
3 local communities, the health and well-being of pub-  
4 lic safety officers, and the morale of the fire and po-  
5 lice departments, and can affect interstate and  
6 intrastate commerce.

7 (6) Many States and localities already provide  
8 public safety officers with collective bargaining  
9 rights comparable to or greater than the rights and  
10 responsibilities set forth in this Act, and such State  
11 laws should be respected.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) The term “Authority” means the Federal  
15 Labor Relations Authority.

16 (2) The term “public safety officer”—

17 (A) means an employee of a public safety  
18 agency who is a law enforcement officer, a fire-  
19 fighter, or emergency medical services per-  
20 sonnel;

21 (B) includes an individual who is tempo-  
22 rarily transferred to a supervisory or manage-  
23 ment position; and

24 (C) does not include a permanent super-  
25 visory or management employee.

1           (3) The term “firefighter” has the same mean-  
2           ing given the term “employee in fire protection ac-  
3           tivities” defined in section 3 of the Fair Labor  
4           Standards Act (29 U.S.C. 203(y)).

5           (4) The term “emergency medical services per-  
6           sonnel” means an individual who provides out-of-  
7           hospital emergency medical care, including an emer-  
8           gency medical technician, paramedic, or first re-  
9           sponder.

10          (5) The term “law enforcement officer” has the  
11          same meaning given such term in section 1204(5) of  
12          the Omnibus Crime Control and Safe Streets Act of  
13          1968 (42 U.S.C. 3796b(5)).

14          (6) The term “supervisory employee” has the  
15          meaning given such term, or a substantially equiva-  
16          lent term, under applicable State law on the date of  
17          enactment of this Act. In the absence of such State  
18          law on the date of enactment of this Act, the term  
19          means an individual, employed by a public safety  
20          employer, who—

21                (A) has the authority in the interest of the  
22                employer to hire, direct, assign, promote, re-  
23                ward, transfer, furlough, lay off, recall, sus-  
24                pend, discipline, or remove public safety offi-  
25                cers, to adjust their grievances, or to effectively

1 recommend such action, if the exercise of the  
2 authority is not merely routine or clerical in na-  
3 ture but requires the consistent exercise of  
4 independent judgment; and

5 (B) devotes a preponderance of employ-  
6 ment time exercising such authority.

7 (7) The term “management employee” has the  
8 meaning given such term, or a substantially equiva-  
9 lent term, under applicable State law in effect on the  
10 date of enactment of this Act. If no such State law  
11 is in effect, the term means an individual employed  
12 by a public safety employer in a position that re-  
13 quires or authorizes the individual to formulate, de-  
14 termine, or influence the policies of the employer.

15 (8) The terms “employer” and “public safety  
16 agency” mean any State, political subdivision of a  
17 State, the District of Columbia, or any territory or  
18 possession of the United States that employs public  
19 safety officers.

20 (9) The term “labor organization” means an  
21 organization composed in whole or in part of em-  
22 ployees, in which employees participate, and the pur-  
23 pose of which is to represent such employees before  
24 public safety agencies concerning grievances, condi-  
25 tions of employment and related matters.

1           (10) The term “substantially provides” means  
2           substantial compliance with the rights and respon-  
3           sibilities described in section 4(b).

4 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**  
5 **ITIES.**

6           (a) DETERMINATION.—

7           (1) IN GENERAL.—Not later than 180 days  
8           after the date of enactment of this Act, the Author-  
9           ity shall make a determination as to whether a State  
10          substantially provides for the rights and responsibil-  
11          ities described in subsection (b). In making such de-  
12          terminations, the Authority shall consider the opin-  
13          ion of affected employers and labor organizations.  
14          Where the Authority is notified by an employer and  
15          an affected labor organization that both parties  
16          agree that the law applicable to such employer and  
17          labor organization substantially provides for the  
18          rights and responsibilities described in subsection  
19          (b), the Authority shall give such agreement weight  
20          to the maximum extent practicable in making its de-  
21          termination under this subsection.

22          (2) SUBSEQUENT DETERMINATIONS.—(A) A  
23          determination made pursuant to paragraph (1) shall  
24          remain in effect unless and until the Authority

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

3 (B) An employer or a labor organization may  
4 submit a written request for a subsequent deter-  
5 mination, on the basis of a material change in State  
6 law or its interpretation. If the Authority determines  
7 that a material change in State law or its interpreta-  
8 tion has occurred, the Authority shall issue a subse-  
9 quent determination not later than 30 days after re-  
10 ceipt of such request.

11 (3) JUDICIAL REVIEW.—Any person aggrieved  
12 by a determination of the Authority under this sec-  
13 tion may, during the 60-day period beginning on the  
14 date on which the determination was made, petition  
15 any United States Court of Appeals in the circuit in  
16 which the person resides or transacts business or in  
17 District of Columbia circuit, for judicial review. In  
18 any judicial review of a determination by the Au-  
19 thority, the procedures contained in section 7123(c)  
20 of title 5, United States Code, shall be followed.

21 (b) RIGHTS AND RESPONSIBILITIES.—In making a  
22 determination described in subsection (a), the Authority  
23 shall consider a State's law to provide adequate rights and  
24 responsibilities unless such law fails to substantially pro-

1 vide rights and responsibilities comparable to or greater  
2 than each of the following:

3 (1) Granting public safety officers the right to  
4 form and join a labor organization, which may ex-  
5 clude management and supervisory employees, that  
6 is, or seeks to be, recognized as the exclusive bar-  
7 gaining representative of such employees.

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

14 (3) Providing for bargaining over hours, wages,  
15 and terms and conditions of employment.

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 through State courts  
20 of—

21 (A) all rights, responsibilities, and protec-  
22 tions provided by State law and enumerated in  
23 this subsection; and

24 (B) any written contract or memorandum  
25 of understanding.



1 (c) FAILURE TO MEET REQUIREMENTS.—

2 (1) IN GENERAL.—If the Authority determines,  
3 acting pursuant to its authority under subsection  
4 (a), that a State does not substantially provide for  
5 the rights and responsibilities described in sub-  
6 section (b), such State shall be subject to the regula-  
7 tions and procedures described in section 5.

8 (2) EFFECTIVE DATE.—Paragraph (1) shall  
9 apply in each State on the later of—

10 (A) 2 years after the date of enactment of  
11 this Act; or

12 (B) the date of the end of the first regular  
13 session of the legislature of that State that be-  
14 gins after the date of the enactment of this Act.

15 **SEC. 5. ROLE OF THE AUTHORITY.**

16 (a) IN GENERAL.—Not later than 1 year after the  
17 date of the enactment of this Act, the Authority shall issue  
18 regulations establishing procedures which provide the  
19 rights and responsibilities described in section 4(b) for  
20 public safety employers and officers in States which the  
21 Authority has determined, acting pursuant to its authority  
22 under section 4(a), do not substantially provide for such  
23 rights and responsibilities.

24 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-  
25 THORITY.—The Authority, to the extent provided in this

1 Act and in accordance with regulations prescribed by the  
2 Authority, shall—

3 (1) determine the appropriateness of units for  
4 labor organization representation;

5 (2) supervise and conduct elections to deter-  
6 mine whether a labor organization has been selected  
7 as an exclusive representative by a voting majority  
8 of the employees in an appropriate unit;

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

11 (4) conduct hearings and resolve complaints of  
12 unfair labor practices;

13 (5) resolve exceptions to the awards of arbitra-  
14 tors;

15 (6) protect the right of each employee to form,  
16 join, or assist any labor organization, or to refrain  
17 from any such activity, freely and without fear of  
18 penalty or reprisal, and protect each employee in the  
19 exercise of such right;

20 (7) if the Authority finds that any State is not  
21 in compliance with the regulations prescribed under  
22 subsection (a), direct compliance by such State by  
23 order; and

24 (8) take such other actions as are necessary  
25 and appropriate to effectively administer this Act,

1 including issuing subpoenas requiring the attendance  
2 and testimony of witnesses and the production of  
3 documentary or other evidence from any place in the  
4 United States, and administering oaths, taking or  
5 ordering the taking of depositions, ordering re-  
6 sponses to written interrogatories, and receiving and  
7 examining witnesses.

8 (c) ENFORCEMENT.—

9 (1) PETITION BY AUTHORITY.—If a State fails  
10 to comply with a final order issued by the Authority,  
11 the Authority shall petition any United States Court  
12 of Appeals with jurisdiction over the parties or the  
13 United States Court of Appeals for the District of  
14 Columbia Circuit to enforce any final orders under  
15 this section, and for appropriate temporary relief or  
16 a restraining order. Any petition under this section  
17 shall be conducted in accordance with section  
18 7123(c) and (d) of title 5, United States Code, ex-  
19 cept that any final order of the Authority with re-  
20 spect to questions of fact shall be found to be con-  
21 clusive unless the court determines that the  
22 Authority's decision was arbitrary and capricious.

23 (2) RIGHT OF ACTION.—Unless the Authority  
24 has filed a petition for enforcement as provided in  
25 paragraph (1), any interested party shall have the

1 right to file suit against any political subdivision of  
2 a State, or, if the State has waived its sovereign im-  
3 munity, against the State itself, in any district court  
4 of the United States of competent jurisdiction to en-  
5 force compliance with the regulations issued by the  
6 Authority pursuant to subsection (b), to enforce  
7 compliance with any order issued by the Authority  
8 pursuant to this section, or to enforce section 6 of  
9 this Act. The right provided by this paragraph to  
10 bring a suit to enforce compliance with any order  
11 issued by the Authority pursuant to this section  
12 shall terminate upon the filing of a petition seeking  
13 the same relief by the Authority under paragraph  
14 (1).

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

16 Notwithstanding any rights or responsibilities pro-  
17 vided under State law or under regulations issued by the  
18 Authority under section 5—

19 (1) a public safety employer may not engage in  
20 a lockout of public safety officers;

21 (2) public safety officers may not engage in a  
22 strike against such public safety employer; and

23 (3) a labor organization may not call for a  
24 strike by public safety officers against their public  
25 safety employer.

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

3 This Act and the regulations issued under this Act  
4 shall not be construed to invalidate a certification, recogni-  
5 tion, collective bargaining agreement, or memorandum of  
6 understanding which has been issued, approved, or ratified  
7 by any public employee relations board or commission or  
8 by any State or political subdivision or its agents (manage-  
9 ment officials) in effect on the day before the date of en-  
10 actment of this Act, or the results of any election held  
11 before the date of enactment of this Act.

12 **SEC. 8. CONSTRUCTION, COMPLIANCE, AND ENFORCE-**  
13 **MENT.**

14 (a) CONSTRUCTION.—Nothing in this Act or the reg-  
15 ulations issued under this Act shall be construed—

16 (1) to preempt or limit the remedies, rights,  
17 and procedures of any law of any State or political  
18 subdivision of any State or jurisdiction that substan-  
19 tially provides greater or comparable rights and re-  
20 sponsibilities described in section 4(b);

21 (2) to prevent a State from enforcing a State  
22 law which prohibits employers and labor organiza-  
23 tions from negotiating provisions in a labor agree-  
24 ment that require union membership or payment of  
25 union fees as a condition of employment;

1           (3) to preempt any State law in effect on the  
2           date of enactment of this Act that substantially pro-  
3           vides for the rights and responsibilities described in  
4           section 4(b) solely because—

5                   (A) such State law permits an employee to  
6                   appear in his or her own behalf with respect to  
7                   his or her employment relations with the public  
8                   safety agency involved;

9                   (B) such State law excludes from its cov-  
10                  erage employees of a state militia or national  
11                  guard;

12                  (C) such rights and responsibilities have  
13                  not been extended to other categories of em-  
14                  ployees covered by this Act, in which case the  
15                  Authority shall only exercise the powers pro-  
16                  vided in section 5 of this Act with respect to  
17                  those categories of employees who have not  
18                  been afforded the rights and responsibilities de-  
19                  scribed in section 4(b); or

20                  (D) such laws or ordinances provide that a  
21                  contract or memorandum of understanding be-  
22                  tween a public safety employer and a labor or-  
23                  ganization must be presented to a legislative  
24                  body as part of the process for approving such  
25                  contract or memorandum of understanding;

1           (4) to permit parties subject to the National  
2 Labor Relations Act (29 U.S.C. 151 et seq.) and the  
3 regulations under such Act to negotiate provisions  
4 that would prohibit an employee from engaging in  
5 part-time employment or volunteer activities during  
6 off-duty hours;

7           (5) to require a State to rescind or preempt  
8 laws or ordinances of any of its political subdivisions  
9 if such laws substantially provide rights and respon-  
10 sibilities for public safety officers that are com-  
11 parable to or greater than the rights and responsibil-  
12 ities enumerated in section 4(b) of this Act; or

13           (6) preempt any State law that substantially  
14 provides for the rights and responsibilities described  
15 in section 4(b) solely because such law does not re-  
16 quire bargaining with respect to pension and retire-  
17 ment benefits.

18       (b) PARTIAL EXEMPTION.—A State may exempt  
19 from its State law, or from the requirements established  
20 under this Act, a political subdivision of the State that  
21 has a population of less than 5,000 or that employs fewer  
22 than 25 full time employees. For purposes of this sub-  
23 section, the term “employees” includes each individual em-  
24 ployed by the political subdivision except any individual

1 elected by popular vote or appointed to serve on a board  
2 or commission.

3 (c) ENFORCEMENT.—Notwithstanding any other pro-  
4 vision of the Act, and in the absence of a waiver of a  
5 State’s sovereign immunity, the Authority shall have the  
6 exclusive power to enforce the provisions of this Act with  
7 respect to public safety officers employed by a State.

8 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated such sums  
10 as may be necessary to carry out the provisions of this  
11 Act.