115TH CONGRESS
2D SESSION

S. _____

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

Ms. HIRONO (for herself, Mr. SCHUMER, Mrs. MURRAY, Mr. DURBIN, Mrs. GILLIBRAND, Ms. WARREN, Mr. REED, Ms. KLOBUCHAR, Mr. PETERS, Ms. BALDWIN, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Mr. MERKLEY, Mr. VAN HOLLEN, Mrs. FEINSTEIN, Mr. SANDERS, Mr. BROWN, Mr. MARKEY, Ms. SMITH, Mr. SCHATZ, Mr. MENENDEZ, Ms. STABENOW, Mr. BOOKER, Mr. WYDEN, Ms. HARRIS, Mr. CARPER, Mr. CASEY, Mr. COONS, Mr. CARDIN, Ms. CORTEZ MASTO, Ms. CANTWELL, and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on _____

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.

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 Service Freedom to Negotiate Act of 2018''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The denial by some public employers of the right of public employees to organize and the refusal by some public employers to accept the procedure of collective bargaining lead to strikes and other forms of strife or unrest. Such actions have the intent or the necessary effect of burdening or obstructing commerce by—

(A) impairing the efficiency, safety, or operation of the instrumentalities of commerce, which depend on stable government services and public infrastructure;

(B) materially affecting, restraining, or controlling the flow of goods into the channels of commerce, or the prices of such goods in commerce; or

(C) causing diminution of employment and wages in such volume so as to substantially impair or disrupt the market for goods flowing from or into the channels of commerce.

(2) The inequality of bargaining power between public employees, who do not possess full freedom of association or actual liberty of contract, and public employers substantially burdens and affects the flow

of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners and by negatively affecting the stabilization of competitive wage rates and decent working conditions.

(3) Experience in public employment indicates that the statutory protection of the rights of public employees to organize, act concertedly, and bargain collectively safeguards the public interest and promotes the free and unobstructed flow of commerce among the States by removing certain recognized sources of strife and unrest. Such protection facilitates and encourages the amicable settlement of disputes between public employees and their public employers involving wages, hours, and other terms and conditions of employment.

(4) To be most effective and stable, labor-management relationships in the public sector must be based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. In many public agencies, it is the union that provides the institutional stability as elected leaders and appointees come and go.

(5) State and local public employees play an essential role in the efforts of the United States to de-

tect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualty incidents. State and local public employees, as first responders, are a component of our Nation's National Incident Management System, developed by the Department of Homeland Security to coordinate response to and recovery from terrorism, major natural disasters, and other major emergencies. Effective and stable public employer-employee relationships are essential in meeting these needs and are, therefore, in both the National interest as well as in furtherance of the United States' obligation to safeguard the country under section 4 of article IV of the Constitution of the United States.

(6) Teachers and other education professionals (including paraprofessionals, custodians, administrative staff, cafeteria workers, specialized instructional support personnel, and others) work to provide quality education to every student. Students deserve the opportunity to reach their full potential in a well-resourced public school.

(7) Conflict between public employers and public employees has implications for the security of public employees and the public and affects inter-

state and intrastate commerce. Ineffective and unstable labor-management relations can detrimentally impact the upgrading of public services of local communities, the health and well-being of public employees, and the morale within public agencies. Additionally, these factors have significant commercial repercussions. Moreover, providing minimal standards for collective bargaining rights in the public sector can prevent industrial strife between labor and management that interferes with the normal flow of commerce. It is settled law that Congress has authority under the Commerce Clause of section 8 of article I of the Constitution of the United States to safeguard protections for employees of State and local governments.

(8) Many States and localities already have laws that provide public employees with collective bargaining rights comparable to or greater than the rights and responsibilities set forth in this Act, and such State and local laws should be respected.

(9) While the National Labor Relations Act (29 U.S.C. 151 et seq.) protects the rights of private-sector employees to form or join unions, act concertedly for the purpose of collective bargaining or other mutual aid or protection, and bargain col-

lectively with their employers, no Federal law protects these fundamental labor rights for employees of the States, including territories and possessions of the United States, and the political subdivisions thereof. The Federal Government needs to encourage conciliation, mediation, and dispute resolution to aid and encourage public employers and the representatives of their public 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.

(b) PURPOSE.—It is the purpose of this Act to—

(1) secure the rights of public employees to form or join unions, act concertedly for the purpose of collective bargaining or other mutual aid or protection, and bargain collectively with their employers; and

(2) reaffirm the policy of the United States to encourage the practice and procedure of collective bargaining, which safeguards the public interest and

promotes the free and unobstructed flow of commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) AUTHORITY.—The term ''Authority'' means the Federal Labor Relations Authority.

(2) COLLECTIVE BARGAINING.—The term ''collective bargaining'', with respect to public employees and public employers, means the performance of the mutual obligation of the representative of a public employer and the exclusive representative of public employees in an appropriate unit of the employer to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to wages, hours, and other terms and conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

(3) CONFIDENTIAL EMPLOYEE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''confidential employee'' means a public employee who acts in a

confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

(B) STATE LAW.—If the term ''confidential employee'', or a substantially equivalent term, has a substantially equivalent meaning under applicable State law to the meaning under subparagraph (A) on the date of the enactment of this Act, such term, or substantially equivalent term, and meaning under such applicable State law shall apply with respect to the term ''confidential employee'' under this Act for public employees and public employers in such State.

(4) EMERGENCY SERVICES EMPLOYEE.—The term ''emergency services employee'' means—

(A) a public employee providing out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder; or

(B) a public employee providing other services in response to emergencies that have the potential to cause death or serious bodily injury, including an employee in fire protection

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

(5) EMPLOY.—The term ''employ'' includes to suffer or permit to work.

(6) LABOR ORGANIZATION.—The term ''labor organization'', with respect to public employers and public employees, means any organization of any kind in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(7) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' has the meaning given such term in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284).

(8) MANAGEMENT EMPLOYEE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''management employee'' means an individual employed by a public employer in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the employer.

(B) STATE LAW.—If the term ''management employee'', or a substantially equivalent term, has a substantially equivalent meaning under applicable State law to the meaning under subparagraph (A) on the date of the enactment of this Act, such term, or substantially equivalent term, and meaning under such applicable State law shall apply with respect to the term ''management employee'' under this Act for public employees and public employers in such State.

(9) PERSON.—The term ''person'' means an individual or a labor organization.

(10) PUBLIC EMPLOYEE.—The term ''public employee''—

(A) means an individual, employed by a public employer, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce (as the terms ''commerce'', ''goods'', and ''enterprise engaged in commerce or in the production of goods for commerce'' are defined in section 3 of the Fair Labor Standards Act of 1938);

(B) includes an individual who is temporarily transferred to a supervisory or management position; and

(C) does not include a permanent supervisory employee, permanent management employee, or permanent confidential employee, or an elected official.

(11) PUBLIC EMPLOYER.—The term ''employer'' means any of the following that employs public employees:

(A) A State or the political subdivision of a State, including a territory or political subdivision of a territory.

(B) Any authority, agency, school district, board or other entity controlled and operated by an entity described in subparagraph (A).

(12) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, and any territory or possession of the United States.

(13) SUBSTANTIALLY PROVIDES.—The term ''substantially provide'' or ''substantially provides'', with respect to the rights and responsibilities described in section 4(b), means providing rights and responsibilities that are comparable to or greater

than each of the rights and responsibilities described in such section.

(14) SUPERVISORY EMPLOYEE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''supervisory employee'' means an individual, employed by a public employer, who—

(i) has the authority in the interest of the employer, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, to—

(I) hire, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public employees;

(II) adjust the grievances of public employees; or

(III) effectively recommend any action described in subclause (I) or (II); and

(ii) devotes a majority of time at work to exercising the authority under clause (i).

(B) STATE LAW.—If the term ''supervisory employee'', or a substantially equivalent term, has a substantially equivalent meaning under

applicable State law to the meaning under subparagraph (A) on the date of the enactment of this Act, such term, or substantially equivalent term, and meaning under such applicable State law shall apply with respect to the term ''supervisory employee'' under this Act for public employees and public employers in such State.

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).

(2) CONSIDERATION OF ADDITIONAL OPINIONS.—In making the determination described in paragraph (1), the Authority shall consider the opinions of affected public employees, labor organizations, and public employers. In the case where the Authority is notified by an affected public employer and 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 Author-

ity shall give such agreement weight to the maximum extent practicable in making the Authority's determination described in paragraph (1).

(3) LIMITED CRITERIA.—In making the determination described in paragraph (1), the Authority shall be limited to the application of the criteria described in subsection (b) and shall not use any additional criteria.

(4) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—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) PROCEDURES FOR SUBSEQUENT DETERMINATIONS.—Upon establishing that a material change in State law or its interpretation has occurred, a public employee, public employer, or a labor organization may submit a written request for a subsequent determination. If satisfied 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.

(5) JUDICIAL REVIEW.—Any person or public employer 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 or public employer resides or transacts business or in the Court of Appeals for the District of Columbia Circuit, for judicial review. In any judicial review of a determination made by the Authority described in paragraph (1), the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed.

(b) RIGHTS AND RESPONSIBILITIES.—The rights and responsibilities described in this subsection are each of the following:

(1) Granting public employees the right to self-organization, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(2) Requiring public employers to—

(A) recognize the labor organization of its public employees (freely chosen in an election

by a majority of such employees voting in the appropriate unit), without requiring an election to recertify a labor organization that is already recognized as the representative of such employees unless not less than 30 percent of such employees in the appropriate unit freely sign a petition to decertify such labor organization;

(B) collectively bargain with such recognized labor organization; and

(C) commit any agreements with such recognized labor organization to writing in a contract or memorandum of understanding.

(3) Making available an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures and providing for the payroll deduction of labor organization fees to any duly-selected representative of public employees pursuant to the terms of an authorization executed by such public employees.

(4) Requiring enforcement of all rights, responsibilities, and protections provided by State law and enumerated in this section, and of any written contract or memorandum of understanding between a labor organization and a public employer, through—

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

(B) at the election of an aggrieved party, the State courts; or

(C) in the case of an alleged violation, misinterpretation, or misapplication of the contract or memorandum of understanding, a grievance resolution procedure negotiated in such contract or memorandum.

(c) COMPLIANCE WITH REQUIREMENTS.—If the Authority determines, acting pursuant to its authority under subsection (a), that a State substantially provides for the rights and responsibilities described in subsection (b), then subsection (d) shall not apply.

(d) 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), then such State shall be subject to the regulations and procedures described in section 5 beginning on the later of—

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

(B) the date that is the last day of the first regular session of the legislature of the State that begins after the date of the enactment of this Act; or

(C) in the case of a State receiving a subsequent determination under subsection (a)(4), the date that is the last day of the first regular session of the legislature of the State that begins after the date the Authority made the determination.

(2) PARTIAL FAILURE.—If the Authority makes a determination that a State does not substantially provide for the rights and responsibilities described in subsection (b) solely because the State law substantially provides for such rights and responsibilities for certain categories of public employees but not others, the Authority shall identify—

(A) those categories of public employees that shall be subject to the regulations and procedures described in section 5, pursuant to section 8(b)(3), beginning on the applicable date under paragraph (1); and

(B) those categories of public employees that shall not be subject to the regulations and procedures described in section 5.

SEC. 5. MINIMUM STANDARDS ADMINISTERED BY THE FEDERAL LABOR RELATIONS AUTHORITY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Authority shall issue regulations in accordance with the rights and responsibilities described in section 4(b) establishing collective bargaining procedures for public employers, labor organizations, and public employees in States which the Authority has determined, acting pursuant to 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) protect the right of public employees to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, protect the right of public employees to bargain collectively through representatives of their own choosing, and protect the right of public employees to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the public

employees voting in such election in an appropriate unit, and provide for the payroll deduction of labor organization fees to any such duly-elected exclusive representative pursuant to the terms of an authorization executed by a public employee;

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

(4) require public employers to—

(A) recognize the labor organization of its public employees (freely chosen by a majority of such employees voting in the appropriate unit) as the exclusive representative of such employees;

(B) bargain in good faith with such labor organization concerning public employees' wages, hours, and other terms and conditions of employment, which shall include a procedure for the settlement of grievances culminating in binding arbitration in any agreement and a procedure for resolving any impasses in collective bargaining; and

(C) commit any agreements to writing in a contract or memorandum of understanding;

(5) prohibit practices which interfere with, coerce, or intimidate public employees in the exercise

of rights guaranteed in paragraph (1) or regulations issued thereunder;

(6) conduct hearings and resolve complaints concerning violations of any regulation or order issued by the Authority pursuant to this Act;

(7) resolve exceptions to the awards of arbitrators; 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, administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

(c) ENFORCEMENT.—The Authority may issue an order directing compliance by any person or public employer found to be in violation of this section, and may 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 such final orders issued pursuant to this section or pursuant to regulations issued under this section, and for appropriate temporary relief or a restraining order. Any petition

under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code.

SEC. 6. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED WHEN EMERGENCY OR PUBLIC SAFETY SERVICES IMPERILED.

(a) IN GENERAL.—Subject to subsection (b), any employer, emergency services employee, or law enforcement officer to which section 5 applies may not engage in a lockout, strike, or any other organized job action of which a reasonably probable result is a measurable disruption of the delivery of emergency or public safety services. No labor organization may cause or attempt to cause a violation of this subsection.

(b) NO PREEMPTION.—Nothing in this section shall be construed to preempt any law of any State or political subdivision of any State with respect to strikes by emergency services employees or law enforcement officers.

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

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

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

(2) is in effect on the day before the date of enactment of this Act.

SEC. 8. EXCEPTIONS; RULES OF CONSTRUCTION.

(a) IN GENERAL.—Section 4(d), and the regulations and procedures under section 5, shall not apply—

(1) solely because a State law permits a public employee to appear on the employee's own behalf with respect to the employee's employment relations with the public employer involved;

(2) solely because a State law excludes from its coverage public employees of a State militia or national guard;

(3) to a political subdivision of a State if —

(A) such political subdivision has a population of fewer than 5,000 people or employs fewer than 25 public employees; and

(B) the State in which such political subdivision is located notifies the Authority of the State's request that such political subdivision be exempt from such sections; or

(4) solely because the laws or ordinances of a State or political subdivision of a State permit or require a public employer to recognize a labor organization on the basis of signed authorizations executed by public employees designating the labor organization as their representative.

(b) COMPLIANCE.—

(1) ACTIONS OF STATES.—Nothing in this Act or the regulations promulgated under this Act shall be construed to require a State to rescind, or preempt, the laws or ordinances of any political subdivision of the State, if such laws or ordinances provide rights and responsibilities for public employees that are comparable to or greater than the rights and responsibilities described in section 4(b).

(2) ACTIONS OF THE DISTRICT OF COLUMBIA.—Nothing in this Act or the regulations promulgated under this Act shall be construed—

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

(i) section 501 of the District of Columbia Government Comprehensive Merit Personnel Act (1–605.01, D.C. Official Code), establishing the Public Employee

Relations Board of the District of Columbia; or

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

(B) to preempt the laws described in subparagraph (A); or

(C) to limit or alter the powers of the government of the District of Columbia pursuant to the District of Columbia Home Rule Act (Public Law 93–198; 1–201.01 et seq., D.C. Official Code).

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

(A) the laws or ordinances of any State or political subdivision of a State, if such laws or ordinances provide collective bargaining rights for public employees that are comparable to or greater than the rights enumerated in section 4(b);

(B) the laws or ordinances of any State or political subdivision of a State that substantially provide for the rights and responsibilities described in section 4(b) with respect to certain

categories of public employees solely because such rights and responsibilities have not been extended to other categories of public employees covered by this Act;

(C) the laws or ordinances of any State or political subdivision of a State that substantially provide for the rights and responsibilities described in section 4(b), solely because such laws or ordinances provide that a contract or memorandum of understanding between a public 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; or

(D) the laws or ordinances of any State or political subdivision of a State that permit or require a public employer to recognize a labor organization on the basis of signed authorizations executed by public employees designating the labor organization as their representative.

(4) LIMITED ENFORCEMENT POWER.—In the case of a law described in section 4(d)(2), the Authority shall only exercise the powers provided in section 5 with respect to those categories of public employees for whom the State does not substantially

provide the rights and responsibilities described in section 4(b).

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.