

College and University Professional Association for Human Resources (CUPA-HR)
International City/County Management Association (ICMA)
International Municipal Lawyers Association (IMLA)
International Public Management Association for Human Resources (IPMA-HR)
National Association of Counties (NACo)
National League of Cities (NLC)
National Public Employer Labor Relations Association (NPELRA)
National Sheriffs' Association (NSA)

Public Safety Employer-Employee Cooperation Act (H.R. 980) Policy Paper

On July 17, 2007 the House of Representatives passed the Public Safety Employer-Employee Cooperation Act (H.R. 980) by a vote of 314-97. The Public Safety Employer-Employee Cooperation Act requires all state and local governments to engage in collective bargaining with their police, fire and EMS personnel. Our associations, representing state and local government employers are opposed to the bill.

Our associations appreciate the vital role public safety officers have in keeping our citizens safe and thus are not opposed to collective bargaining. Rather, we believe this is an inherently state and local function and that states and localities should determine the scope of collective bargaining in their jurisdictions.

A Federal law is unnecessary because most state and local governments already have collective bargaining laws or have considered them recently.

All but two states, North Carolina and Virginia already have statewide collective bargaining laws or provide for some form of bargaining either at the option of the localities or for a subset of public safety officers.¹ Even in states without statewide collective bargaining laws, the legislatures and citizens of those states are often involved in debating the issue.

During the 2007 session, the Oregon legislature debated whether or not minimum staffing levels of fire departments and overtime could be included in collective bargaining. Beginning in 2008 such issues will be included in collective bargaining if they impact on-the-job safety (or have a significant impact in the case of minimum staffing levels). Individuals, associations, and firefighters weighed in on these discussions. The final compromise took into consideration the allocation of scarce local resources and allowed Oregon to consider the successes and failures in other states.

¹ Fifteen states allow localities to determine collective bargaining: Alabama*, Arkansas*, Arizona, Colorado, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, South Carolina*, Tennessee*, Texas, and West Virginia. *These states do not provide for legally enforceable contracts. Four states provide for bargaining for firefighters only: Idaho, Missouri, Utah and Wyoming Source: BNA Daily Labor Report, July 18, 2007.

In 2005, the Texas legislature passed a voluntary ‘meet and confer’ law for firefighters and police². In May 2007, the Missouri Supreme Court ruled that the state constitution allows public and private sector employees to engage in collective bargaining and held that public employers who engage in ‘meet and confer’ are legally bound by the terms of the resulting agreement and therefore cannot unilaterally change it³. The Missouri decision interprets the Missouri Constitution, and the federal law would interfere with decades of state constitutional law.

State and local governments are in the best position to allocate resources based upon their particular circumstances. Therefore, a one-size-fits-all solution is not appropriate.

State and local governments must work with limited budgets and they must determine how to best allocate resources. The Public Safety Employer-Employee Cooperation Act appears to give the Federal Labor Relations Authority (FLRA) broad power to decide what issues are subject to collective bargaining. In the Oregon example above, the legislature came to a compromise on whether or not minimum staffing levels and overtime must be the subject of bargaining. The state level is the appropriate place for this discussion to take place.

The federal government should not determine how state and local governments spend their limited resources; this bill has the potential to severely strain the treasuries of these jurisdictions. Funds would be diverted from their primary purpose – providing public safety – and diverted to administering collective bargaining.

Supporters of the legislation claim that it will not impact states that currently have collective bargaining laws; however, the text of the bill belies this assertion.

One argument that we have heard often is that bill does not affect the many states with statewide collective bargaining laws. However, the text of the bill does not say this; instead it gives the authority to determine whether or not a state is in compliance to the FLRA. Section 4(a) of H.R. 980, specifically states that the FLRA “shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b).”

Section 4(b) has five separate requirements including that States provide for the bargaining over wages, hours and terms and conditions of employment. The “terms and conditions of employment” is ambiguous. The FLRA has the authority to develop regulations further defining “terms and conditions” as well as other sections of the law. Until the FLRA does so, no one can know whether or not a state is in substantial compliance with the law. Do the terms and conditions of employment include health care, minimum staffing levels? The answers are not in H.R. 980.

H.R. 980 further grants the FLRA the authority to determine issues such as the appropriateness of units for labor organization representation. The scope of this provision is uncertain and these and other issues would have to be settled by the FLRA.

² The Texas law does not require a public agency to engage in meet & confer but it does illustrate that the state legislature is aware of and is debating the issue.

³ [*Independence-National Education Association, et al., v. Independence School District*](#), Docket No. SC87980, May 29, 2007.

The legislation may burden states that already have collective bargaining laws

H.R. 980 may negatively impact those states that already have statewide collective bargaining laws. For example, a union-friendly state like Michigan passed a law that specifies that police officers and state troopers earn promotions solely on the basis of merit and preventing unions from negotiating a seniority system (Firemen and Policemen Civil Services Systems Act, Section 38.512). Illinois prohibits negotiations over when police officers can use deadly force (Illinois Public Labor Relations Act, 5 ILCS 315).

H.R. 980 takes only state right-to-work laws and pension benefits off the bargaining table. Depending upon the regulations that the FLRA develops, nearly everything else could be on the bargaining table, threatening well-established state laws on a variety of topics, from merit-based pay to officer certification and more.

The Oregon League of Cities (OLC) has brought to our attention several concerns with H.R.980. First, Oregon has an administrative process to address labor disputes with strict standards for judicial review of cases. The system is far less cumbersome than going through the courts and the OLC believes that H.R. 980 would circumvent their established system.

Further, the OLC noted that the state certifies all police officers and officers are required to maintain their certification as a condition of continued employment. The process for revoking an officer's certification takes place outside of the collective bargaining/binding arbitration arena. If the state were required to bargain over the certification process the state's ability to protect the public from malfeasant police officers may be compromised. Finally, the OLC raised concerns about the status of certain employees who might be unintentionally covered by H.R. 980 for instance life guards are trained as first responders and could be considered EMS employees.

There is no evidence that this bill is necessary, nor is there evidence that mandating collective bargaining will ensure cooperation or improve service delivery.

The introduction to H.R. 980 includes a list of findings and a declaration of purpose. The first finding states that, “[l]abor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. In many public safety agencies unions provide the institutional stability as elected leaders and appointees come and go.”

While fostering labor management relationships is a noble goal, it is unlikely that federalizing collective bargaining will achieve it. Oftentimes even where collective bargaining rights are well established, the relationship is not characterized by trust and open communication. It is also unclear how giving the FLRA authority over states and local government collective bargaining is designed to achieve this goal. Nor is it clear that the FLRA, an agency unfamiliar with state and local issues is equipped to handle this expanded role.

Federalizing collective bargaining by establishing uniform, national standards could have the impact of being less efficient and effective than state and local laws. For instance, Montgomery County, Maryland has longstanding collective bargaining relationships and has fostered a spirit of partnership with labor unions representing its public safety employees according to Joe Adler, Director of the Office of Human Resources, Montgomery County. In the county, unfair labor practice issues and negotiable issues are resolved by the county's permanent umpire/labor

relations administrator sometimes within days and generally within a few weeks. Mr. Adler notes that in the federal sector it has taken the FLRA sometimes years to issue decisions in certain unfair labor practice cases. To the extent H.R. 980 might change the impasse resolution mechanism in Maryland and in other jurisdictions like it; it may not be an improvement.

The constitutionality of the bill is questionable. The authority of Congress to enact the bill under the Tenth Amendment to the Constitution or under the Commerce Clause is unclear.

When a similar bill was considered in 2000 by the House of Representatives, George Costello, legislative attorney for the Congressional Research Service testified that Congress likely lacked the authority to pass the law under Section of 5 of the 14th Amendment and that Supreme Court precedent for Congress' authority under the Commerce Clause was on shaky ground.⁴

For the above reasons, we urge you to oppose the Public Safety Employer-Employee Cooperation Act. The law is an intrusion upon State and local governments, it is unnecessary in light of existing state and local laws and is likely to be found unconstitutional by the courts. In addition, the bill is ambiguous and gives the FLRA too much authority over State and local governments and their citizens.

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⁴ *The Public Safety Employer-Employee Cooperation Act of 1999: Hearing on H.R. 1093 Before the Subcomm. On Employer-Employee Relations, Comm. On Education and the Workforce, 106th Cong. (2000)* (statement of George Costello, Legislative Attorney, American Law Division, Congressional Research Service) at <http://republicans.edlabor.house.gov/archive/hearings/106th/ee/pubssafety5900/costello.htm> ("Boerne, the *Florida Prepaid* decisions, and *Kimel* reveal that the current Supreme Court will not defer to congressional findings, but instead will independently determine whether there was a pattern of constitutional violations by states, and whether the legislative remedies are 'appropriate' in the sense of being proportionally tailored to redressing any such deprivations of constitutional rights").