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. Brown, Mr. Schatz, Mr. Blumenthal, Mrs. Gillibrand, Mr. Reed, Mr. Whitehouse, Mr. Durbin, Mr. Booker, Mr. Cardin, Ms. Smith, Ms. Hassan, Mr. Menendez, Ms. Stabenow, Ms. Cantwell, Ms. Baldwin, Ms. Harris, Mr. Casey, Mrs. Shaheen, Mr. Van Hollen, Ms. Cortez Masto, Mr. Coons, Mr. Carper, Mr. Sanders, Ms. Klobuchar, Mr. Wyden, Mr. Peters, Ms. Warren, Mr. Merkley, Mr. Markey, Ms. Rosen, Mr. Udall, and Ms. Duckworth) 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 2019”.

SEC. 2. DEFINITIONS.

(a) In General.—In this Act:

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

(2) Appropriate unit.—The term “appropriate unit” means a bargaining unit of public employees or supervisory employees that share a community of interest, have a bargaining history or history of prior organization, and represent the desires of employees seeking representation.

(3) Collective bargaining.—The term “collective bargaining”, used with respect to public employees, supervisory 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 and supervisory 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 bar-
gaining agreement reached, but the obligation re-
ferred to in this paragraph does not compel either
party to agree to a proposal or to make a concession
(as described in section 8(d) of the National Labor
Relations Act (29 U.S.C. 158(d))).

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

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

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

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

(B) a public employee providing other serv-
ices in response to emergencies that have the
potential to cause death or serious bodily in-
jury, 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)).
(7) EMPLOY.—The term "employ" has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(8) LABOR ORGANIZATION.—The term "labor organization" means any organization of any kind that is not under the control directly or indirectly by a public employer in which such 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.

(9) LAW.—The term "law", used with respect to a State or a political subdivision thereof, includes the application of the laws of such State or such political subdivision, including any regulations or ordinances issued by such State or such political subdivision.

(10) 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).

(11) MANAGEMENT EMPLOYEE.—The term "management employee" means an individual employed by a public employer in a position the duties
and responsibilities of which require the individual to formulate or determine the policies of the employer.

(12) Public employee.—

(A) In general.—The term “public employee”—

(i) means, except as provided in clause (iii), an individual, employed by a public employer, who in any workweek is engaged in commerce or is employed in an enterprise engaged in commerce;

(ii) includes an individual described in clause (i) who is temporarily transferred to a supervisory or management position; and

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

(B) Commerce; enterprise engaged in commerce.—For the purpose of this paragraph, the terms “commerce” and “enterprise engaged in commerce” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(13) Public employer.—The term “public employer” means any of the following that employs individuals:
(A) A State or the political subdivision of
a State, including a territory or political sub-
division of a territory.

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

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

(15) SUBSTANTIALLY PROVIDE OR SUBSTAN-
TIALY PROVIDES.—The term “substantially pro-
vide” or “substantially provides”, used with respect
to the rights and procedures described in section
3(b), means providing rights and procedures that
are equivalent to or greater than each of the rights
and procedures described in such section.

(16) SUPERVISORY EMPLOYEE.—

(A) IN GENERAL.—Except as provided in
subparagraph (B), the term “supervisory em-
ployee” means an individual, employed by a
public employer, who in any workweek is en-
gaged in commerce or is employed in an enter-
prise engaged in commerce and who—
(i) has the authority in the interest of the employer, if the exercise of such 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) COMMERCE; ENTERPRISE ENGAGED IN COMMERCE.—For the purpose of this paragraph, the terms “commerce” and “enterprise engaged in commerce” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(b) STATE LAW.—If any term defined in this section has a substantially equivalent meaning to the term (or a substantially equivalent term) under applicable State law 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 defined under this Act with respect to such State.

SEC. 3. FEDERAL MINIMUM STANDARDS.

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination for each State as to whether the laws of such State substantially provide for each of the rights and procedures under subsection (b) and not later than 30 days after the enactment of this Act, the Authority shall establish procedures for the implementation of this section.

(2) CONSIDERATION OF ADDITIONAL OPINIONS.—In making the determination under paragraph (1), the Authority shall consider the opinions of affected public employees, supervisory 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 procedures described in subsection (b), the Authority shall give such agreement weight
to the maximum extent practicable in making the
Authority’s determination under paragraph (1).

(3) LIMITED CRITERIA.—In making the deter-
mination described in paragraph (1), the Authority
may consider the criteria described in subsection (b)
and not any other criteria.

(4) SUBSEQUENT DETERMINATIONS.—

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

(B) REQUEST.—A public employee, super-
visory employee, public employer, or labor organ-
ization may submit to the Authority a written
request for a subsequent determination under
paragraph (1) with respect to a State if a mate-
rial change of law in the State has occurred.

(C) ISSUANCE.—Not later than 30 days
after receipt of a request under subparagraph
(B), the Authority shall issue a subsequent de-
termination under paragraph (1) if satisfied
that a material change of law in the State has
occurred.
(5) **JUDICIAL REVIEW.**—Any covered person or public employer aggrieved by a determination of the Authority under paragraph (1) 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 covered 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 under paragraph (1), the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed.

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

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

(A) to self-organization;

(B) to form, join, or assist a labor organization or to refrain from any such activity;

(C) to bargain collectively through representatives of their own choosing; and

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

(2) A requirement for 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 or chosen by voluntary recognition if that method is permitted under State law), without requiring an election to re-certify 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—

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

(ii) if a valid collective bargaining agreement covering such employees and labor organization expires, not earlier than the date that is 1 year after the expiration of such agreement; and

(iii) not during the term of a valid collective bargaining agreement covering such
employees and labor organization, except
for the 30-day period beginning on the
date that is 90 days before the expiration
of such agreement;
(B) collectively bargain with such recog-
nized labor organization; and
(C) commit any agreements with such rec-
ognized labor organization to writing in a con-
tract or memorandum of understanding.

(3) An interest impasse resolution mechanism
that includes a procedure for the settlement of griev-
ances (including fact-finding, mediation, and arbitra-
tion) and culminates in binding arbitration.

(4) Payroll deduction of labor organization fees
for any duly-selected representative of public employ-
ees and supervisory employees pursuant to the terms
of an authorization executed by such public employ-
ees.

(5) The enforcement of all relevant rights and
protections provided by the law in the applicable
State and enumerated in this section, and of any
written contract or memorandum of understanding
between a labor organization and a public employer,
(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, mis-
interpretation, or misapplication of the contract
or memorandum of understanding, a grievance
resolution procedure negotiated in such contract
or memorandum.

(c) COMPLIANCE WITH RIGHTS AND PROCEDUREs.—If the Authority determines under subsection (a)
that the laws of a State substantially provide each of the
rights and procedures described in subsection (b), then
subsection (d) shall not apply.

(d) FAILURE TO SUBSTANTIALLY PROVIDE.—

(1) IN GENERAL.—If the Authority determines
under subsection (a) that the laws of a State do not
substantially provide for each of the rights and pro-
cedures described in subsection (b), then such State
shall be subject to the rules and activities of the Au-
thority under section 4 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 each of the rights and procedures described in subsection (b) because the State fails to substantially provide for all of such rights and procedures with respect to all public employees or supervisory employees, the Authority shall identify—

(A) the categories of public employees or supervisory employees of such State that shall be subject to the rules and activities of the Authority under section 4, pursuant to section 7(b)(4), beginning on the applicable date under paragraph (1);

(B) the categories of public employees and supervisory employees of such State that shall not be subject to the rules and activities of the Authority under section 4;
(C) the categories of rights and procedures described in subsection (b) for which the State does not substantially provide for certain public employees and supervisory employees; and

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

SEC. 4. 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 rules and take such actions that the Authority determines appropriate to establish and administer collective bargaining rights and procedures that substantially provide for the rights and procedures described in section 3(b) for States described in section 3(d).

(b) Role of the Federal Labor Relations Authority.—In carrying out subsection (a), the Authority shall—

(1) protect the right of public employees—

(A) to self-organization;

(B) to form, join, or assist any labor organization or to refrain from any such activity;

(C) to bargain collectively through representatives of their own choosing; and
(D) to engage in other concerted activities
for the purpose of collective bargaining or other
mutual aid (including the filing of joint class or
collective legal claims) 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 and supervisory employees voting in such
election in an appropriate unit;

(3) provide for the payroll deduction of labor
organization fees to any such duly-elected exclusive
representative pursuant to the terms of an author-
ization executed by a public employee or supervisory
employee;

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

(5) require public employers to—

(A) recognize the labor organization of its
public employees or supervisory 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’ or
supervisory employees’ terms and conditions of
employment, which shall include a procedure for
the settlement of grievances culminating in
binding arbitration in any agreement and a pro-
cedure for resolving any impasses in collective
bargaining; and

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

(6) prohibit practices which interfere with, co-
erce, or intimidate public employees or supervisory
employees in the exercise of rights guaranteed in
paragraph (1) or regulations issued thereunder;

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

(8) resolve exceptions to the awards of arbitra-
tors that violate or exceed the scope of public policy;
and

(9) 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 order-
ing the taking of depositions, ordering responses to
written interrogatories, and receiving and examining
witnesses.

(c) Enforcement.—

(1) In general.—The Authority may issue an
order directing compliance by any covered person or
public employer found to be in violation of this sec-
tion, 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 rules
issued under this section, and for appropriate tem-
porary relief or a restraining order. Any covered per-
son or public employer aggrieved by an order issued
by the Authority under this section may, during the
60-day period beginning on the date on which the
order was issued, petition any United States Court
of Appeals, in the circuit which the covered person
or public employer resides or transacts business or
in the Court of Appeals for the District of Columbia
Circuit, for judicial review. Any petition or appeal
under this section shall be conducted in accordance
with subsections (e) and (d) of section 7123 of title
5, United States Code.

(2) Private right of action.—
(A) **FILING A CIVIL ACTION.**—Unless the Authority has filed an order of enforcement as provided in paragraph (1), any party may, after the 180-day period following the filing of a charge with the Authority pursuant to the rules issued by the Authority under this section, file a civil action against any named State administrator in an appropriate district court of the United States to enjoin such administrator to enforce compliance—

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

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

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

(i) the date that is 180 days after the expiration of the 180-day period described in subparagraph (A); or

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

(C) **NOTICE.**—A party filing a civil action under subparagraph (A) shall provide notice of
such action to the Authority not later than the
date of the filing of such action.

(D) JURISDICTION AND ATTORNEYS’
FEES.—An appropriate district court of the
United States in which a civil action under sub-
paragraph (A) is filed shall have jurisdiction
over such action without regard to the amount
in controversy or the citizenship of the parties
and may award reasonable attorneys’ fees.

SEC. 5. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED
WHEN EMERGENCY OR PUBLIC SAFETY SERVICES
IMPERILED.

(a) IN GENERAL.—Subject to subsection (b), any em-
ployer, emergency services employee, or law enforcement
officer subject to the rules and activities of the Authority
under section 4 may not engage in a lockout, strike, or
any other organized job action of which a reasonably prob-
able 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 sub-
section.

(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 emer-
gency services employees or law enforcement officers.
SEC. 6. 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. 7. EXCEPTIONS.

(a) IN GENERAL.—The Authority shall not make a determination under section 3(a) that the laws of a State do not substantially provide for the rights and procedures under section 3(b) on the basis that relevant laws in the State—

(1) permit a public employee or supervisory employee to appear on the employee’s own behalf with respect to the relationship of the public employee or supervisory employee with the public employer involved;

(2) do not cover public employees or supervisory employees of the State militia or national guard; or
(3) do not apply 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 that such subdivision is exempt from such laws before the date on which the Authority makes the determination.

(b) Compliance.—

(1) Actions of States.—Nothing in this Act shall be construed to require a State to rescind or preempt the laws of any political subdivision of the State if such laws substantially provide for the rights and procedures described in section 3(b).

(2) Actions of the District of Columbia.—Nothing in this Act or in the rules issued 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 of 1978 (1–605.01, D.C. Official Code), establishing the Public Em-
ployee 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 shall be construed to preempt—

(A) the laws of any State or political subdivision of a State that substantially provide for the rights and procedures described in section 3(b);

(B) the laws of any State or political subdivision of a State that substantially provide for the rights and procedures described in section 3(b), solely because such laws 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
(C) the laws of any State or political sub-
division of a State that permit or require a pub-
lic employer to recognize a labor organization
on the basis of signed authorizations executed
by employees designating the labor organization
as their representative.

(4) LIMITED ENFORCEMENT POWER.—In the
case of a law described in section 3(d)(2), the Au-
thority shall only exercise the authority under sec-
tion 4 with respect to the categories of public em-
ployees or supervisory employees for whom State law
does not substantially provide the rights and proce-
dures described in section 3(b).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums
as may be necessary to carry out this Act.