

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2183 (Stone) – As Amended March 24, 2022

Policy Committee: Labor and Employment

Vote: 5 - 2

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill permits agricultural employees to select their collective bargaining representatives through a representation ballot card election, as an alternative election procedure to a polling place election. Specifically, this bill:

- 1) Provides a process by which a labor organization may request an employer's employee list through the Agricultural Labor Relations Board (ALRB) and the ALRB must give notification to the employer about a labor organization's intention to organize that employer's employees.
- 2) Requires the ALRB to issue standardized representation ballot cards and pre-paid postage envelopes, upon the request of a labor organization, to a labor organization to use.
- 3) Provides a process the ALRB must follow to investigate the validity of a petition for representation ballot card election, certify the election results and handle objections to any certification. An employer that fails to provide a complete and timely response to the ALRB during this process must be assessed a fine of up to \$10,000.
- 4) Requires the ALRB to impose a civil penalty of up to \$10,000 per violation upon an employer that commits an unfair labor practice, which must be doubled, up to a cap of \$25,000, if the violation stems from discrimination against or discharge of an employee. The ALRB may also assign a director or officer of the employer personal liability for the civil penalty, if the ALRB determines the person directed or committed the violation, established a policy that led to the violation or knowingly failed to prevent the violation.
- 5) Requires an employer, who appeals or petitions for a writ of review of any order of the ALRB involving a monetary award to employees, to post an appeal bond in the entire economic value of the order.

FISCAL EFFECT:

The ALRB estimated, based on current election activity at the time, similar prior legislation would have resulted in absorbable costs to manage any representation ballot card election. However, if election activity increased in future years, the ALRB estimated additional staff resources would be needed. In comparison, this bill includes new provisions that would increase ALRB workload, most notably, civil penalty and personal liability provisions; thus, generating additional costs of an unknown, but likely significant amount, in excess of \$150,000.

COMMENTS:

- 1) **Purpose.** The author notes recent changes enacted by the Legislature, such as mail-in voting, have successfully made it easier for Californians to participate in elections. According to the author, this bill “applies that same principle and extends voting flexibilities to farm workers as they exercise their longstanding right to vote in union representation elections.”
- 2) **Support and Opposition.** Labor organizations in support of this bill, such as the United Farm Workers, argue that how farmworkers exercise their right to vote for union representation should be updated, similar to how “California law was also changed to allow all state and local public workers – including teachers, firefighters, nurses, and staff – to vote to have a union by simply signing a union representation card.” Agricultural employer associations in opposition to this bill, led by the Western Growers Association, argue that unlike the regular mail-in balloting process for state elections, “a union seeking recognition under the AB 2183 ‘ballot card’ process may choose which workers receive a ballot...some farmworkers included in the bargaining unit will never have a chance to express a preference for or against representation.”
- 3) **Agriculture Labor Relations Act (ALRA).** The ALRA was enacted in 1975 to fill a gap in fundamental labor protections provided by the National Labor Relations Act, which exempts agricultural workers. The ALRA safeguards the right of farmworkers to full freedom of association, self-organization, designation of representatives of workers’ own choosing and negotiation of the terms and conditions of workers’ employment. Existing law to designate a bargaining representative requires a secret ballot election conducted in person at a polling place, generally on the employer’s property. This bill updates the designation process to allow a representation ballot card election, mirroring modern vote-by-mail practices in California, while maintaining the secrecy of each ballot and existing procedures by the ALRB to investigate any questions about the election’s validity.
- 4) **Prior Legislation.** AB 616 (Stone) was nearly identical to this bill, except AB 616 did not contain details regarding how a labor organization may request an employer’s employee list through the ALRB or civil penalty provisions. AB 616 was vetoed by the Governor, who stated:

This bill contains various inconsistencies and procedural issues related to the collection and review of ballot cards.

Significant changes to California’s well-defined agricultural labor laws must be carefully crafted to ensure that both agricultural workers’ intent to be represented and the right to collectively bargain is protected, and the state can faithfully enforce those fundamental rights.

Therefore, I am directing the Labor and Workforce Development Agency to work collaboratively with the [ALRB] and all relevant stakeholders to develop new policies for legislative consideration to address this issue.