

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 2183 (Stone, et al.)

As Amended August 22, 2022

Majority vote

SUMMARY

Provides that, as an alternative to a polling place election, a labor organization may be certified as the exclusive bargaining representative of a bargaining unit of agricultural employees through either a labor peace election or a non-labor peace election until January 1, 2028.

Senate Amendments

- 1) Delete prior version of this bill.
- 2) Provide that, as an alternative to a polling place election, a labor organization may be certified as the exclusive bargaining representative of a bargaining unit through either a labor peace election (also known as a compact) or a non-labor peace election.
- 3) Provide that every agricultural employer in California shall have the option, on an annual basis, to indicate to the Agricultural Labor Relations Board (ALRB) whether they agree to a labor peace compact. If an agricultural employer does not agree to a labor peace election, then employees may make a choice regarding union representation through a non-labor peace election.
- 4) Define labor peace compact to mean an agreement by the employer that includes all of the following provisions:
 - a) An agreement to make no statements for or against union representation to its employees or publicly, in any written or oral form, at any time during employee hire, rehire, or orientation, or after a Notice of Intent to Organize, Notice to Take Access, or petition for any type of election is filed.
 - b) An agreement by the employer to voluntarily allow labor organization access as previously permitted under this part prior to the June 23, 2021, decision of the United States Supreme Court in *Cedar Point Nursery v. Hassid* (2021) 141 S.Ct. 2063.
 - c) An agreement not to engage in any captive audience meetings, as defined.
 - d) An agreement not to disparage the union in any written or verbal communications to employees or to the public.
 - e) An agreement not to express any preference for one union over another union.
- 5) Require a labor peace compact to be followed during employee hire, re-hire, or orientation, or after a Notice of Intent to Organize, Notice to Take Access, or petition for any type of election is filed.

- 6) Provide that a labor peace election choice shall remain valid for one year or for the duration of a mail ballot election campaign, whichever is longer, and shall automatically renew for successive years, unless revoked, as specified.
- 7) Provide that a labor peace election is conducted by mail ballot. An agricultural employee or an authorized labor organization representative, as specified, may request the ballots by submitting a "Voting Kit Request Form." A voting kit shall include, among other things, voting instructions for a mail ballot election and a standardized mail ballot.
- 8) Outline the information required on a ballot for it to be considered valid.
- 9) State that a labor organization's request to be certified by mail ballot shall be supported by a petition, as specified, and by mail ballots in individually sealed envelopes signed by more than 50 percent of currently employed employees.
- 10) Outline the process for the agricultural employer to be served with the petition and for the ALRB to investigate its' validity.
- 11) Describe the process, upon certification of a labor organization through mail ballot election, for any person to file an objection to the certification.
- 12) Provide various forms of relief if an employer commits an unfair labor practice or misconduct or takes adverse action against a worker during a mail ballot campaign.
- 13) Provide that a non-labor peace election is commenced by a labor organization filing a petition with the ALRB alleging that a majority of the employees in the bargaining unit wish to be represented by that organization. The petition shall describe the geographical area that constitutes the unit claimed to be appropriate and shall be accompanied by proof of majority support, through authorization cards, petitions, or other appropriate proof of majority support.
- 14) State that only labor organizations that have filed LM-2 forms for the preceding two years with the federal government may petition for a non-labor peace election.
- 15) Outline the process for the agricultural employer to be served with the petition and for the ALRB to investigate its' validity.
- 16) Describe the process, upon certification of a labor organization through proof of majority support, for any person to file an objection to the certification.
- 17) Provide various forms of relief if an employer commits an unfair labor practice or misconduct or takes adverse action against a worker during a non-labor peace election campaign.
- 18) Specify that civil penalties may be assessed in the event an employer commits an unfair labor practice.
- 19) Require an employer that seeks to appeal, petition, overturn or stay or modify any order of the ALRB involving make-whole, back pay, or other monetary award to employees or a labor organization to post a bond in the amount of the entire economic value of the order, as specified.

20) Add that the above provisions sunset on January 1, 2028, and as of that date are repealed.

COMMENTS

The Legislature enacted the ALRA in 1975 to fill a gap in fundamental labor protections provided by the National Labor Relations Act (NLRA), which exempts agricultural workers such as farm workers. At that time, the Legislature declared that the statute was necessary to "ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations."¹ Paramount to the Act are its provisions safeguarding the right of farm workers to full freedom of association, self-organization, designation of representatives of their own choosing, and negotiation of the terms and conditions of their employment.

According to the Author

"Excluded from federal labor laws, farmworkers in California rely on the Legislature to amend the Agriculture Labor Relations Act (ALRA) for increased labor and collective bargaining protections. AB 2183 would modernize the ALRA to allow farm workers to choose if they want to vote at a physical location, or vote by mailing or dropping off a representation ballot card to the Agricultural Labor Relations Board (ALRB) office.

The Legislature has enacted a series of changes that have successfully made it easier for Californians to participate in statewide elections, including mail-in voting. These changes were made based on the simple premise that facilitating the exercise of an existing right is inherently a good thing to do. 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."

Arguments in Support

The United Farm Workers, are in support and contend, "the state has updated how Californians vote for their local, state, and federal elected officials by making it easier to register to vote, increasing the amount of time to vote, adding more ways and access to vote, allowing someone else to turn in their ballot.

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.

AB 2183 would update how a farm worker exercises their existing right to vote for union representation.

Under the bill, ballots will continue to remain secret, farm workers will have a choice to vote at a "polling place" as they do now, or they can receive assistance in filling out and returning their "representation ballot card" as long as the person who assists them co-signs the representation ballot card and returns it to the state agency overseeing farm worker union elections, the Agricultural Labor Relations Board, in a sealed and signed envelope."

Arguments in Opposition

The California Farm Bureau Federation is in opposition and states, "This bill would strip agricultural employees of their rights to express their sentiments about unionization in secret-

¹ Stats. 1975, 3d Ex. Sess., ch.1, § 1, p. 4013.

ballot elections conducted by the Agricultural Labor Relations Board, free from fear, intimidation, coercion, or trickery exerted by anyone interested in the outcome.

The time-honored method of determining employee choice by secret balloting would be replaced by one of two methods to be selected not by employees but by their employers, who would face the dilemma of choosing between giving up their free-speech and property rights to allow for a flawed mail-ballot scheme or keeping those rights but acquiescing to an unsupervised card-check scheme.

As to one "choice," employers would agree to "labor peace compacts" under which they would sacrifice their Constitutional free-speech rights to express to employees their opinions about unionization. They would also forgo their Constitutional property rights by "voluntarily" having to allow union agents onto their worksites. Under the associated mail-ballot scheme, union agents could pressure employees to authorize the agents to have voting kits mailed to the agents, who could then "assist" (direct) the employees in completing their ballots. As with the bill's prior scheme, this one invites misconduct by union agents, who have a vested interest in the outcome.

As to the alternative "choice," employers who keep their free-speech and property rights by declining to agree to "labor peace compacts" would pave the way unionization through completely unsupervised card check."

FISCAL COMMENTS

According to the Senate Appropriations Committee, ALRB estimates that based on current election activity, costs to implement the bill would likely be absorbable. However, if election activity increases in the future, ALRB notes that it would require staff resources to ensure timely processing and review of representation ballot card election petitions. Additionally, the current version of the bill contains provisions (in particular, those related to personal liability and civil penalties) that versions of the bill in previous years did not, potentially leading to additional workload. Thus, the bill could result in costs exceeding \$50,000 in a future year (General Fund). Additionally, the bill could result in penalty revenues to the State; the magnitude is unknown but probably minor.

VOTES:**ASM LABOR AND EMPLOYMENT: 5-2-0****YES:** Kalra, Jones-Sawyer, Reyes, Ward, Lee**NO:** Flora, Seyarto**ASM APPROPRIATIONS: 12-4-0****YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson**NO:** Bigelow, Megan Dahle, Davies, Fong**ASSEMBLY FLOOR: 49-22-7****YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon**NO:** Bigelow, Chen, Choi, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron**ABS, ABST OR NV:** Berman, Cooper, Irwin, O'Donnell, Quirk-Silva, Blanca Rubio, Villapudua**UPDATED**

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