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THIRD READING

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Bill No: AB 2183  
Author: Stone (D), Kalra (D) and Reyes (D), et al.  
Amended: 8/22/22 in Senate  
Vote: 21

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SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 6/22/22  
AYES: Cortese, Durazo, Laird, Newman  
NO VOTE RECORDED: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 8-1, 6/28/22  
AYES: Umberg, Cortese, Durazo, Hertzberg, McGuire, Stern, Wieckowski,  
Wiener  
NOES: Jones  
NO VOTE RECORDED: Borgeas, Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/22  
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski  
NOES: Bates, Jones

ASSEMBLY FLOOR: 49-22, 5/25/22 - See last page for vote

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**SUBJECT:** Agricultural labor relations: elections

**SOURCE:** United Farm Workers

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**DIGEST:** This bill (1) allows agricultural employers to choose whether to enroll into a “Labor Peace Election”, as defined, as an alternative to the existing selection process for exclusive representation; (2) establishes a mail ballot election process by which agricultural employers may select their collective bargaining representation, if their employer agrees to a Labor Peace Agreement, as defined; (3) imposes a new penalty as specified for employers who engage in unfair labor practices, as defined; and (4) requires an employer who petitions for a writ of review in a court of appeal or who otherwise seeks to overturn or modify any order

of the ALRB to post a bond in the amount of the entire economic value of the order as determined by the ALRB.

*Senate Floor Amendments* of 8/22/22 provide for an alternative “Labor Peace Election” where each agricultural employer would indicate in the last month of the year whether they agree to a labor peace compact for the coming year, as defined; allow agricultural employees to choose their collective bargaining representatives by mail ballot election, described below, if their employer agrees to a Labor Peace Election; and establish a sunset date of January 1, 2028 for the mail-in ballot and Labor Peace Election provisions of AB 2183.

### **ANALYSIS:**

Existing law:

- 1) Defines “agriculture” to include farming in all its branches, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities and any practices by a farmer or on a farm in conjunction with farming operations, including preparation for market and delivery to storage. (Labor Code §1140.4)
- 2) Clarifies that the bargaining unit is all agricultural employees of an employer. If these employees are employed in two or more noncontiguous areas, the Agricultural Labor Relations Board (ALRB) determines the appropriate unit or units of agricultural employees. (Labor Code §1156.2)
- 3) Allows an agricultural employee or labor organization acting on behalf of agricultural employees to submit a petition to the ALRB. The petition must allege all of the following:
  - a) That the number agricultural employees currently employed by the employer named in the petition is not less than 50 percent of the employer’s peak agricultural employment for the current calendar year.
  - b) That no valid election has been conducted by employees of the named employer within the 12 months immediately preceding the filing of the petition.
  - c) That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the named employer.
  - d) That the petition is not barred by an existing collective bargaining agreement. (Labor Code §1156.3 (a))

- 4) Requires, upon receipt of a petition signed by at least a majority of the agricultural employees in the employ of the named employer, the ALRB immediately investigate the petition. If the board determines that a bona fide question of representation exists, a representation election by secret ballot must be held within 7 days. (Labor Code §1156.3 (b))
- 5) Requires that representatives selected by secret ballot by a majority of agricultural employees for the purposes of collective bargaining be considered the exclusive representatives of that bargaining unit with respect to rates of wages, hours of employment or other conditions of employment. (Labor Code §1156)
- 6) Allows any person to file a signed petition with the ALRB asserting that allegations within the original petition were incorrect, that the ALRB improperly determined the geographic scope of a bargaining unit or objecting to the conduct of the election. The ALRB may refuse to certify the election if it finds that any of the assertions made in such a petition are correct or if it finds that the election was not conducted properly. (Labor Code §1156.3 (2))
- 7) Requires that the ALRB decertify a labor organization if either of the following occur:
  - a) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination based on a protected class.
  - b) The United States Equal Employment Opportunity Commission finds that the labor organization engaged in discrimination on the basis of a protected class.
- 8) Requires that the ALRB certify a labor organization as an exclusive representative if an employer is found to have engaged in misconduct that would diminish the chance that a new election would be free and fair. (Labor Code §1156.3 (f))
- 9) Allows the ALRB, upon finding reasonable cause to believe that any person has engaged in or is engaging in an unfair labor practice, petition the superior court in the county where the unfair labor practice occurred for appropriate temporary relief or restraining order. (Labor Code §1157.3)

- 10) Requires that employers maintain accurate payroll lists that contain the names and addresses of all their employees and make such lists available to the ALRB upon request. (Labor Code §1160.4)

This bill:

- 1) Designates the election procedure outlined within Labor Code §1156.3 to be called a Polling Place Election.
- 2) Allows each Agricultural Employer to indicate to the ALRB whether they agree to a labor peace compact, as defined by this bill. This choice is made in the 30 days prior to Jan 1 of each year.
- 3) Allows an employer to, as an alternative to the above Polling Place Election, enroll in a Labor Peace Election or a Non-Labor Peace Election. As part of a Labor Peace Election, an employer agrees to the following:
  - a) A bargaining unit may select a labor organization as its representation without holding a polling place election.
  - b) The employer will make no statements for or against union representation to its employees or publicly, including not disparaging a union in any written or verbal communications.
  - c) The employer will voluntarily allow labor organizations access to private worksites, as specified.
  - d) The employer will not engage in “captive audience meetings”, as defined.
  - e) The employer will not express preference for one union over another union.
- 4) Allows agricultural employees to make a choice regarding union representation through a mail ballot election, if their employer agrees to a labor peace election. To that end, allows a labor organization to submit a petition for representation ballot card election to the ALRB. The petition must allege all of the following:
  - a) That the number agricultural employees currently employed by the employer named in the petition is not less than 50 percent of the employer’s peak agricultural employment for the current calendar year.
  - b) That no valid election has been conducted by employees of the named employer within the 12 months immediately preceding the filing of the petition.

- c) That the petition is not barred by an existing collective bargaining agreement.

The petition must be supported by individually sealed mail ballots representing at least 50% of currently employed employees, as defined. The labor organization must serve the employer on the same day the petition is filed with the ALRB and the employer must respond within 48 hours. As part of this response, the employer must provide a complete and accurate list of the full names, current street addresses, telephone numbers, job classifications, and crew or department of all currently employed employees in the bargaining unit employed as of the payroll period immediately preceding the filing of the petition, as specified.

- 5) Allows an agricultural employee or their authorized labor representative to submit a Voting Kit Request Form prior to the submission of a petition for mail ballot election. Only labor organizations which have filed LM-2 forms for the preceding 2 years may request kits for employees. This request form must include the following information:
  - a) The name, phone number, physical address, and mailing address of the agricultural employee.
  - b) The name, phone number, physical address, and mailing address of the person submitting the request form.
  - c) The name of an agricultural employer or farm labor contractor to be associated with the voting kit.
  - d) A physical or post office box address where the board will mail the voting kit.

Any labor organization representative submitting a Voting Kit Request Form must also submit a document specifying that the agricultural employer has authorized them to submit the request form. This document must be signed by the agricultural employer.

- 6) Requires each voting kit to be mailed to the designated recipient within 2 business days of ALRB receipt of a Voting Kit Request Form. Each voting kit must contain instructions for mail ballot elections, a standardized mail ballot, and postage paid envelopes with the ALRB's return address. Each mail ballot will be titled "Mail Ballots for Certification of a Labor Organization" and include the following:

- a) The opportunity to vote for representation by a labor organization, designated by “Yes Union”, followed by a statement indicating that the employee signing it wishes to have a specified labor organization as the employee’s collective bargaining representative.
  - b) The opportunity to vote against representation by a labor organization, designated by “No Union”.
  - c) Sufficient space for the following:
    - i) The name of the labor organization.
    - ii) The name of the agricultural employer or farm labor contractor used by the agricultural employer.
    - iii) The employee’s name.
    - iv) The signature of the employee.
    - v) The date.
    - vi) The signature of the person witnessing that the employee signed the ballot card or assisting them in filling out the ballot card, or both.
- 7) Requires that for a mail ballot described above to be valid, it must be placed in the sealed envelope provided by the ALRB, be signed on the outside by the employee, and be submitted directly to the ALRB. A labor organization representative may fill out the information, except for the employee signature. Each valid ballot remains valid for 180 days.
- 8) Requires the ALRB to make an administrative decision pertaining to the validity of a submitted petition and whether the requisite number of ballots have been submitted within 5 days of that petition being submitted. Requires the ALRB to notify the labor organization if they fail to submit the requisite number of ballots and allow 30 days from that notification for the collection of additional ballots.
- 9) Allows any person to file a complaint with the ALRB within 5 days of the certification of a labor organization that alleges one of the following bases for objection:
- a) Allegations in the non-labor peace petition were false.
  - b) The ALRB improperly determined the geographical scope of the bargaining unit.
  - c) The non-labor peace election was conducted improperly.
  - d) Improper conduct affected the results of the non-labor peace election.

- 10) Requires that the ALRB choose to either rule administratively or conduct a hearing to rule on a petitioner's objection to an election within 14 days of filing. If the board finds the allegations in the objection to be true, the election certification must be revoked.
- 11) Prohibits another mail ballot election petition from being considered by the ALRB with the same agricultural employer until the board determines whether the labor organization that filed the pending representation ballot card election petition should be certified. Allows the ALRB to consider a second petition only if the second petition alleges that the first petition was filed because of the employer's unlawful assistance, support, creation, or domination of the labor organization that filed the first petition.
- 12) Requires that the ALRB certify a labor organization as the exclusive representative of an agricultural bargaining unit if it is found that the agricultural employer committed an unfair labor practice during the organization's campaign.
- 13) Establishes a sunset date of Jan 1, 2028 for provisions 1)-12) of this bill.
- 14) Imposes a maximum \$10,000 penalty on an employer who commits an unfair labor practice, as defined.
  - a) This penalty is doubled if it involves a violation of subdivision (c) or (d) of Labor Code Section 1153, up to a maximum of \$25,000
  - b) In determining the amount of the civil penalty, the ALRB must consider the following:
    - i) The gravity of the unfair labor practice.
    - ii) The impact of the unfair labor practice on the charging party.
    - iii) The financial circumstances of the employer.
- 15) Creates a rebuttable presumption that an employer who disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against a worker during a labor organization's campaign that the action was retaliatory and illegal. The employer may rebut this by providing clear, convincing, and overwhelming evidence that the adverse action would have been taken in the absence of the campaign.

- 16) Requires an employer who petitions for a writ of review in a court of appeal or who otherwise seeks to overturn or modify any order of the ALRB involving make-whole, back-pay or other monetary award to post a bond in the amount of the entire economic value of the order as determined by the ALRB.
- 17) Requires the bond required above to consist of an appeal bond and orders that bond forfeited if the employer fails to pay the amount owed due to a final judgment following appeal within 10 days.

## Comments

*Need for this bill?* The agricultural sector of California remains one of the most profitable industries in the world, generating more than \$49 billion in 2020, while agricultural workers frequently suffer from higher rates of poverty, compared to other professions.. After amendments, AB 2183 provides for an alternative path to the current collective bargaining representative election process. As described above, each December an agricultural employer will have the opportunity to enroll in a labor peace compact, which is an agreement not to disparage unions in written or verbal statements and to allow union organizers more leeway to speak to employees.

As referenced in this bill, the case of Cedar Point Nursery v. Hassid, is especially relevant to the fate of AB 2183. Many question how labor unions can effectively organize in the wake of a ruling that so drastically curtails their ability communicate with employees; more still wonder if that is by design.

AB 2183 does add a new penalty to employers who engage in unfair labor practices, as defined, and require employers to post a bond in order to challenge an ALRB ruling involving a monetary award. These are positive changes and hopefully will curb employer attempts to adversely affect unionization campaigns that are demonstrably common. However, huge incentives to stop employees from collective bargaining remain, combined with the vanishingly small chance that employers will ever be investigated or caught.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

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.”

**SUPPORT:** (Verified 8/22/22)

United Farm Workers (source)  
ACLU California Action  
AFSCME  
Alliance for Boys and Men of Color  
California Alliance for Retired Americans  
California Catholic Conference  
California Federation of Teachers AFL-CIO  
California Immigrant Policy Center  
California Labor Federation  
California Nurses Association  
California Professional Firefighters  
California Rural Legal Assistance Foundation, Inc.  
California School Employees Association  
California State Council of Service Employees International Union  
California State Legislative Board, Sheet Metal, Air, Rail and Transportation  
California Teachers Association  
California Teamsters Public Affairs Council  
Central Coast Alliance United for a Sustainable Economy  
Courage California  
Dolores Huerta Foundation  
Earthjustice  
Mi Familia Vota  
National Association of Social Workers, California Chapter  
UAW Local 2865  
UAW Local 5810  
United Food and Commercial Workers, Western States Council  
Workers - Transportation Division  
Writers Guild of America West

**OPPOSITION:** (Verified 8/22/22)

African American Farmers of California

Agricultural Council of California  
Association of California Egg Farmers  
California Association of Winegrape Growers  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Ginners and Growers Association  
California Farm Bureau  
California Farm Labor Contractor Association  
California Food Producers  
California Fresh Fruit Association  
California Grain & Feed Association  
California Grocers Association  
California Manufacturers & Technology Association  
California Pear Growers Association  
California Restaurant Association  
California Retailers Association  
California Seed Association  
California Strawberry Commission  
Carlsbad Chamber of Commerce  
Chamber of Commerce Alliance of Ventura and Santa Barbara Counties  
Citrus Heights Chamber of Commerce  
Citrus Heights Regional Chamber of Commerce  
Construction Employers' Association  
Family Winemakers of California  
Far West Equipment Dealers Association  
Fountain Valley Chamber of Commerce  
Fresno Chamber of Commerce  
Garden Grove Chamber of Commerce  
Glendora Chamber of Commerce  
Greater Bakersfield Chamber of Commerce  
Greater Coachella Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Greater Riverside Chambers of Commerce  
Greater San Fernando Valley Chamber of Commerce  
Grower-Shipper Association of Central California  
Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties  
Hayward Chamber of Commerce  
Housing Contractors of California  
La Cañada Flintridge Chamber of Commerce  
Milk Producers Council

National Federation of Independent Business  
Nisei Farmers League  
North Orange County Chamber of Commerce  
Oceanside Chamber of Commerce  
Official Police Garage Association of Los Angeles  
Pleasanton Chamber of Commerce  
Rancho Cordova Area Chamber of Commerce  
Rancho Mirage Chamber of Commerce  
Redondo Beach Chamber of Commerce  
San Gabriel Valley Economic Partnership  
Santa Maria Valley Chamber of Commerce  
Simi Valley Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Tulare Chamber of Commerce  
Ventura County Agricultural Association  
West Ventura County Business Alliance  
Western Agricultural Processors Association  
Western Growers Association  
Wine Institute

**ARGUMENTS IN SUPPORT:** The United Farm Workers, the sponsor of the bill, write in support:

“The ALRA acknowledged from its inception the imbalance of power and the inherent unfairness between the agricultural employer and a farm worker. The ALRA is and always was meant for the benefit and protection of a farm worker. In fact, the ALRA explicitly encourages and protects: "the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” (Labor Code Section 1140.2)

“While ballots will continue to remain secret, farm workers will have a choice in voting 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 ALRB in a sealed and signed envelope.

“National approval for unions is the highest it has been since 1965 at 68% but workers face many obstacles to forming a union at their workplace. We need to

make it easier, not harder, for workers to vote in union elections and have the representation they are legally entitled to. AB 2183 is a step in the right direction and would allow farmworkers to vote in union elections like Californians vote in elections.”

**ARGUMENTS IN OPPOSITION:** The California Chamber of Commerce writes in opposition:

The August 22, 2022 amendments confirm that the bill proponents’ goal has never really been about mail-in voting, it has always been to implement card check and force unionization in the agriculture industry. AB 2183 now simply provides that a labor organization will be certified through card check as long as the union shows “proof of majority support,” which can be achieved with any “appropriate proof” the union chooses. The only means of not being subject to card check is forced union submission for employers and farmworkers through an involuntary submission to a position of labor neutrality. The employer would be forced to: Not make any statements for or against union representation to its employees or publicly, voluntarily allow labor unions access to its property, not engage in any meetings with employees at which there is any discussion of unions, not disparage any union, and not express preference for a union.

This forced labor neutrality is merely to leverage employers to waive significant rights. For example, a recent Supreme Court decision<sup>1</sup> struck down a California law mandating union access to employer property as an unconstitutional taking absent just compensation. Rather than providing that just compensation, this workaround is coercing employers into voluntarily letting the unions onto their property. The employer must also waive its First Amendment rights to speak about the union. These requirements are also unrealistic to implement. An employer would never be allowed to mention unions at all to their employees. This means an employer cannot convey any policies concerning unions or organization activity or respond at all if asked about unions or organizing. The employer could also never raise union misconduct without violating the forced labor neutrality. The employer is also required to make a decision about whether to waive these rights each year, even if there is no interest in unionization. Their decision will be posted on a public website for unions to view. Worse, even if the employer submits to this neutrality position, there is still no secret ballot election required. Instead, a union would be installed as a

bargaining unit's representative merely by submitting a petition to the ALRB along with "ballot cards" signed by a majority of affected workers. As in AB 616, vetoed last year by Governor Newsom, this is being portrayed as mail-in voting, but in actuality the union would have the right to request these cards for workers and fill out the cards for them. That language makes clear that the unions have no intention of workers filling these ballots out privately at home or having the ALRB be the ones overseeing the election – the union wants complete control. Unlike in a secret ballot election where employees enter a private booth without any coercion to cast their vote and under the protection of ALRB oversight, the very candidate they are voting for can fill out their ballot for them and turn it in. It is evident that the proposed 2028 sunset is to force the Legislature to consider full card check in all scenarios in five years, regardless of the existence of any labor neutrality.

ASSEMBLY FLOOR: 49-22, 5/25/22

AYES: 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

NOES: Bigelow, Chen, Choi, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Berman, Cooper, Irwin, O'Donnell, Quirk-Silva, Blanca Rubio, Villapudua

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556  
8/24/22 14:14:20

\*\*\*\* END \*\*\*\*