

Senate Bill No. 789

Passed the Senate April 23, 2009

Secretary of the Senate

Passed the Assembly August 27, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1151.6, 1156, 1156.2, 1156.3, 1156.4, 1157, 1160.3, and 1160.6 of, and to add Section 1156.35 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 789, Steinberg. Labor representatives: elections.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board and the courts.

Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

By expanding the definition of unfair labor practices for infractions, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1151.6 of the Labor Code is amended to read:

1151.6. A person who willfully resists, prevents, impedes, or interferes with any member of the board or any of its agents or agencies in the performance of duties pursuant to this part is guilty of a misdemeanor, and shall be punished by a fine of not more than five thousand dollars (\$5,000).

SEC. 2. Section 1156 of the Labor Code is amended to read:

1156. (a) A representative designated or selected by a secret ballot pursuant to Section 1156.3, or by a majority signup election pursuant to Section 1156.35, for the purposes of collective bargaining by the majority of the agricultural employees in a bargaining unit shall be the exclusive representative of all the agricultural employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) An individual agricultural employee or a group of agricultural employees has the right at any time to present grievances to their agricultural employer and to have those grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at the adjustment.

SEC. 3. Section 1156.2 of the Labor Code is amended to read:

1156.2. A bargaining unit is all the agricultural employees of an employer. If the agricultural employees of an employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural

employees in which a secret ballot election or a majority signup election conducted.

SEC. 4. Section 1156.3 of the Labor Code is amended to read:

1156.3. (a) A petition that is either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit, may be filed by an agricultural employee or group of agricultural employees, or any individual or labor organization acting on behalf of those agricultural employees, in accordance with any rules and regulations prescribed by the board. The petition shall allege all of the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.

(3) That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the employer named in the petition.

(4) That the petition is not barred by an existing collective bargaining agreement.

(b) Upon receipt of a signed petition, as described in subdivision (a), the board shall immediately investigate the petition. If the board has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If, at the time the election petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of the petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

(c) The board shall make available, at any election or alternative selection process held under this chapter, either ballots or representation cards, as appropriate, and all materials used to select

labor representatives printed in English and Spanish. The board may also make available at the election or selection process ballots or representation cards, as appropriate, and all other election materials used to select labor representatives printed in any other language as may be requested by an agricultural labor organization or any agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where the choice is between labor organizations, shall provide the employee with the opportunity to vote against representation by a labor organization by providing an appropriate space designated “No Labor Organizations.”

(d) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

(e) (1) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) were incorrect, asserting that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

(2) Upon receipt of a petition under this subdivision, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. This hearing may be conducted by an officer or employee of a regional office of the board. The officer may not make any recommendations with respect to the certification of the election. The board may refuse to certify the election if it finds, on the record of the hearing, that any of the assertions made in the petition filed pursuant to this subdivision are correct, that the election was not conducted properly, or that misconduct affecting the results of the election occurred. The board shall certify the election unless it determines that there are sufficient grounds to refuse to do so.

(f) If no petition is filed pursuant to subdivision (e) within five days of the election, the board shall certify the election.

(g) The board shall decertify a labor organization if either of the following occur:

(1) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination on any basis listed in subdivision (a) of Section 12940 of the Government Code, as

those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(2) The United States Equal Employment Opportunity Commission finds, pursuant to Section 2000e-5 of Title 42 of the United States Code, that the labor organization engaged in discrimination on the basis of race, color, national origin, religion, sex, or any other arbitrary or invidious classification in violation of Subchapter VI of Chapter 21 of Title 42 of the United States Code during the period of the labor organization's present certification.

SEC. 5. Section 1156.35 is added to the Labor Code, to read:

1156.35. (a) As an alternative procedure to the secret ballot election process set forth in Section 1156.3, a labor organization may be certified as the exclusive bargaining representative of a bargaining unit through a majority signup election. A majority signup election permits a bargaining unit to summarily select a labor organization as its representative for collective bargaining purposes without holding a representation election.

(b) A labor organization that wishes to represent a particular bargaining unit, as defined in Section 1156.2, may be certified through a majority signup election as that unit's bargaining representative by submitting to the board a petition for majority signup election. The petition must allege the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition for majority signup election, as determined from the employer's payroll immediately preceding the filing of the petition for majority signup election, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That no valid election has been conducted among the agricultural employees of the employer named in the petition for majority signup election within the 12 months preceding the filing of the petition.

(3) That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the employer named in the petition for majority signup election.

(4) That the petition is not barred by an existing collective bargaining agreement.

(c) (1) The petition for majority signup election in subdivision (b) must be accompanied by representation cards signed by more than 50 percent of the currently employed employees. For purposes of this section, “currently employed employees” means those agricultural employees of the employer who were employed at any time during the employer’s last payroll period that ended prior to the filing of the petition for majority signup election.

(2) The representation cards must be titled “ALRB Representation Cards for Certification of a Labor Organization.”

(3) Each representation card must include the following:

(A) A statement that the employee signing it wishes to have a specified labor organization as his or her collective bargaining representative with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(B) A statement that no promises or threats were made to obtain the employee’s signature on the card.

(C) An acknowledgment that by signing the card the employee is manifesting a desire to be represented by a labor organization.

(D) An acknowledgment that the employee is aware of the toll-free telephone number of the Agriculture Labor Relations Board, which is available to complain about coercion or other unfair labor practices.

(E) Sufficient space for the following information: the name of labor organization; the name of the agricultural employer; the employee’s name, address, and telephone number; the name of the employee’s foreman; the signature of the employee; the name, address, telephone number, and the signature of the person witnessing that the employee signed the card; and the date when the card was signed.

(4) The board shall maintain the confidentiality and secrecy of the employee name on the representation card. The board shall give the representation card the same confidentiality and secrecy as a regular election ballot.

(5) Upon the request of a labor organization, the board shall issue standardized representation cards for use with a petition for majority signup election, in accordance with subdivision (c) of Section 1156.3.

(6) A representation card is valid, for the purpose of supporting a petition for majority signup election, if it contains the name of the labor organization, the name of the employee, and the

employee's signature. A labor organization may fill out all of the information contained in a representation card, except for the employee's signature.

(7) A representation card remains valid for 12 months after it is signed by an agricultural employee.

(d) A labor organization submitting a petition for a majority signup election shall personally serve the petition on the employer on the same day that the petition is filed with the board. Within 48 hours after the petition is served, the employer shall file with the board its response to the petition. As part of the response, the employer shall provide a complete and accurate list of the full names, current street addresses, and job classifications of all currently employed employees in the bargaining unit. The employer shall organize the employees' names and addresses and other information by crew or department and shall provide the list to the board in hard copy and electronic format. Immediately upon receiving the list, the board shall provide a hard copy and an electronic copy to the labor organization that filed the majority signup election petition.

(e) (1) Upon receipt of a petition for majority signup election, the board shall immediately commence an investigation regarding the validity of the petition and the accompanying representation cards. Within five days of receipt of the petition, the board shall make an administrative determination as to whether the requirements set forth in subdivision (b) are met by the petition and whether the labor organization submitting the petition has submitted the number of representation cards required by paragraph (1) of subdivision (c). In making this determination, the board shall compare the names on the representation cards submitted by the labor organization to the names on the list of currently employed employees provided by the employer. The board shall ignore discrepancies between the employee's name listed on the representation card and the employee's name on the employer's list if the preponderance of the evidence, such as the employee's address and the name of the employee's foreman, shows that the employee who signed the card is the same person as the employee on the employer's list.

(2) The board shall return those representation cards that it finds invalid to the labor organization that filed the petition for majority signup election, with an explanation as to why each representation

card was found to be invalid. To protect the confidentiality of the names on the representation cards, the board's determination of whether a particular card is valid shall be final and not subject to appeal or review.

(3) If the board determines that the labor organization has submitted the required number of representation cards and met the requirements set forth in this section and in Section 1156.4, it shall immediately certify the labor organization as the exclusive bargaining representative of the employees in the bargaining unit. An employer's duty to bargain with the labor organization commences immediately after the labor organization is certified.

(4) If the board determines that the labor organization has not submitted the requisite number of valid representation cards, or that the representation cards fail to meet the requirements set forth in this section or in Section 1156.4, the board shall notify the labor organization of the deficiency and grant the labor organization 30 days from the date it is notified to submit additional representation cards.

(f) (1) Within five days after the board certifies a labor organization through a majority signup election, any person may file with the board a petition objecting to the certification on one or more of the following grounds:

(A) Allegations in the majority signup petition were false.

(B) The board improperly determined the geographical scope of the bargaining unit.

(C) The majority signup election was conducted improperly.

(D) Improper conduct affected the results of the majority signup election.

(2) Upon receipt of a petition objecting to certification, the board shall conduct a hearing to rule on the petitioner's objections, and shall mail a notice of the time and place of the hearing to the petitioner and the labor organization whose certification is being challenged. If the board finds at the hearing that any of the allegations in the petition of the grounds set forth in paragraph (1) are true, the board shall revoke the certification issued under subdivision (e).

(3) The filing of a petition objecting to a majority signup election certification shall not diminish the duty to bargain or delay the running of the 180-day period set forth in subdivision (a) of Section 1164.

(4) If the board finds, after a hearing, that an employer has assisted, supported, created, or dominated a labor organization for the purpose of filing a majority signup election petition, the board shall order the employer to pay for all the costs and expenses incurred by a labor organization challenging a majority signup election.

(g) The board shall not permit the filing of an election petition pursuant to Section 1156.3 once a majority signup petition is filed until the board determinates whether the labor organization filing the majority signup election petition should be certified.

(h) Once a labor organization has filed a majority signup election petition, no other majority signup election petition shall be considered by the board with the same agricultural employer until the board determines whether the labor organization that filed the pending majority signup election petition should be certified.

(i) For purposes of Section 1156.5, a majority signup election is a valid election.

SEC. 6. Section 1156.4 of the Labor Code is amended to read:

1156.4. Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a representation petition, petition for majority signup election, or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.

In this connection, the peak agricultural employment for the prior season shall alone not be a basis for this determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics, which shall be applied uniformly throughout the State of California, and upon all other relevant data.

SEC. 7. Section 1157 of the Labor Code is amended to read:

1157. All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition for a representation election or a majority signup election shall be eligible to vote. An economic striker shall be eligible to vote under such regulations as the board finds are consistent with the purposes and provisions of this part in any election, provided that the striker who has been permanently

replaced shall not be eligible to vote in any election conducted more than 12 months after the commencement of the strike.

In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes that commenced prior to the effective date, the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective bargaining agreement or the commencement of a strike, provided that in no event shall the board afford eligibility to any striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

SEC. 8. Section 1160.3 of the Labor Code is amended to read:

1160.3. (a) The testimony taken by a member, agent, or agency, or the board in a hearing shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board, upon notice, may take further testimony or hear argument.

(b) If, based upon the preponderance of the testimony taken, the board finds that a person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on the person an order requiring that person to cease and desist from the unfair labor practice and to take affirmative action, including reinstatement of employees with or without backpay, making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and providing any other relief as would effectuate the policies of this part. Where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by the employee. The order may further require the person named in the complaint to make reports from time to time showing the extent to which the employer has complied with the order.

(c) If the board finds that an employer has willfully or repeatedly committed an unfair labor practice under subdivision (a) or (c) of Section 1153 while employees of the employer were seeking representation by a labor organization or after a labor organization was designated as a representative under Section 1156, the board

may, in addition to any order permitted by this section, impose a civil penalty of up to twenty thousand dollars (\$20,000) for each violation. The board shall determine the amount of any civil penalty imposed based upon the impact of the unfair labor practice on the charging party or on other persons seeking to exercise rights guaranteed by this part, or on the public interest.

(d) If, upon the preponderance of the testimony taken, the board finds that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. An order of the board shall not require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him or her of any backpay, if the individual was suspended or discharged for cause. In case the evidence is presented before a member of the board, or before an administrative law officer thereof, the member or administrative law officer, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, which shall be filed with the board, and, if no exceptions are filed within 20 days after service thereof upon the parties, or within a further period as the board may authorize, the recommended order shall become the order of the board and become effective as therein prescribed.

(e) Until the record in a case has been filed in a court, as provided in this chapter, the board may, at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

SEC. 9. Section 1160.6 of the Labor Code is amended to read:

1160.6. (a) Whenever it is charged that (1) an employer has, while the employees of that employer were seeking representation by a labor organization or during the period after a labor organization was recognized as a representative, discharged or otherwise discriminated against an employee in violation of subdivision (c) of Section 1153, threatened to discharge or to otherwise discriminate against an employee in violation of subdivision (a) of Section 1153, or engaged in any other unfair labor practice within the meaning of subdivision (a) of Section 1153 that significantly interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 1152,

or (2) a person has engaged in an unfair labor practice within the meaning of paragraph (1), (2), or (3) of subdivision (d), or of subdivision (g), of Section 1154, or of Section 1155, the preliminary investigation of the charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.

(b) If, after the investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe the charge is true and that a complaint should issue, he or she shall, on behalf of the board, petition the superior court in the county in which the unfair labor practice in question has occurred, is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. The officer or regional attorney shall make all reasonable efforts to advise the party against whom the restraining order is sought of his or her intention to seek an order at least 24 hours prior to doing so. In the event the officer or regional attorney has been unable to advise a party of his or her intent at least 24 hours in advance, he or she shall submit a declaration to the court under penalty of perjury setting forth in detail the efforts he or she has made. Upon the filing of a petition, the superior court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Upon the filing of a petition, the board shall cause notice thereof to be served upon any person involved in the charge, and that person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony. For the purposes of this section, the superior court shall be deemed to have jurisdiction of a labor organization either in the county in which the organization maintains its principal office, or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon an officer or agent shall constitute service upon the labor organization and make the organization a party to the suit. In situations where such relief is appropriate, the procedure specified herein shall apply to charges with respect to paragraph (4) of subdivision (d) of Section 1154.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor