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## AB-616 Agricultural labor relations: labor representative elections: representation ballot card election. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

### ASSEMBLY BILL

**NO. 616**
**Introduced by Assembly Member Stone**
**(Principal coauthors: Assembly Members Gipson, Lorena Gonzalez, and Reyes)**
**(Principal coauthor: Senator Cortese)**
**(Coauthors: Assembly Members Aguiar-Curry, Arambula, Bennett, Berman, Carrillo, Chiu, Gabriel, Cristina Garcia, Eduardo Garcia, Holden, Jones-Sawyer, Kalra, Lee, Low, McCarty, Medina, Mullin, Quirk, Ramos, Luz Rivas, Robert Rivas, Salas, Santiago, Ting, Wicks, Calderon, Maisenschein, Ward, and Wood)**
**(Coauthors: Senators Allen, Becker, Durazo, Gonzalez, Hueso, Laird, Leyva, Limón, Skinner, Stern, Wieckowski, Wiener, Hertzberg, and Pan)**
**February 12, 2021**

An act to amend Sections 1156 and 1156.3 of, and to add Sections 1156.35 and 1162 to, the Labor Code, relating to labor relations.

### LEGISLATIVE COUNSEL'S DIGEST

AB 616, Stone. Agricultural labor relations: labor representative elections: representation ballot card election.

Existing law, the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, grants agricultural employees the right to form and join labor organizations and engage in collective bargaining with respect to wages, terms of employment, and other employment conditions, and authorizes employees to elect exclusive bargaining representatives for these purposes.

Existing law requires the Agricultural Labor Relations Board to certify the results of an election conducted by secret ballot of employees in a collective bargaining unit to designate a collective bargaining representative, unless the board determines there are sufficient grounds to refuse to do so. Existing law further provides that if the board refuses to certify an election because of employer misconduct that would render slight the chances of

a new election reflecting the free and fair choice of employees, the labor organization shall be certified as the bargaining representative for the bargaining unit.

This bill would refer to the secret ballot election as a polling place election. This bill would also permit agricultural employees, as an alternative election procedure, to select their labor representatives through a representation ballot card election by submitting a petition to the board supported by representation ballot cards signed by a majority of employees in the bargaining unit.

This bill would require the board to conduct an immediate investigation regarding the validity of the petition and the supporting representation ballot cards and, within 5 days after receiving a petition, to make an administrative decision as to whether the petition meets certain requirements and as to whether the labor organization submitted the requisite number of cards. The bill would require the board to certify the labor organization as the exclusive bargaining representative if the board determines that the labor organization has submitted the required number of representation ballot cards and the cards meet specified criteria.

Existing law authorizes a person aggrieved by the final order of the board granting or denying in whole or in part the relief sought for an unfair labor practice, to obtain a review of the order in a specified court of appeal by filing in the court a written petition requesting that the order of the board be modified or set aside.

This bill would require an employer who appeals or petitions for a writ of review of any order of the board involving make-whole, backpay, or other monetary awards to employees, to post an appeal bond in the amount of the entire economic value of the order, as specified, and would provide for the bond to be forfeited under specified conditions.

This bill would state that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 1156 of the Labor Code is amended to read:

**1156.** For the purpose of collective bargaining by the majority of the agricultural employees in the bargaining unit, a representative designated or selected by a secret ballot through either a polling place election pursuant to Section 1156.3, or by a representation ballot card election pursuant to Section 1156.35, shall be the exclusive representative of all the agricultural employees in the unit with respect to rates of pay, wages, hours of employment, or other conditions of employment. Any individual agricultural employee or a group of agricultural employees shall have the right at any time to present grievances to their agricultural employer and to have such 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 such adjustment.

### **SEC. 2.** 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. This election shall be called a polling place election. 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 held under this chapter ballots printed in English and Spanish. The board may also make available at the election ballots 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) Notwithstanding any other provision of law, if the board refuses to certify an election because of employer misconduct that, in addition to affecting the results of the election, would render slight the chances of a new election reflecting the free and fair choice of employees, the labor organization shall be certified as the exclusive bargaining representative for the bargaining unit.

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

(h) 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.

(i) (1) With regard to elections held pursuant to this section or Section 1156.7, the following time limits apply for action by the board, and agents acting pursuant to authority delegated by the board:

(A) (i) The board shall, within 21 days of the filing of election objections or the submittal of evidence in support of challenges to ballots, evaluate the election objections or challenged ballots and issue a decision determining which, if any, must be set for hearing.

(ii) The hearing on election objections or challenged ballots set pursuant to clause (i) shall be scheduled to commence within 28 days of the date of the board's decision to set a hearing.

(B) The investigative hearing examiner (IHE) appointed pursuant to Section 1145 shall issue a recommended decision within 60 days of the close of the hearing on the matters described in subparagraph (A). Upon mutual agreement of the parties, the IHE may extend the time period to issue a recommended decision by 30 days.

(C) The board shall issue a decision regarding the election objections or challenged ballots within 45 days of receipt of any exceptions to the decision of the IHE.

(2) The board may consolidate a challenged ballot hearing with a hearing on objections to an election.

(3) The board may grant extensions on the time limits specified in this subdivision upon a showing of good cause or by stipulation of all affected parties.

**SEC. 3.** Section 1156.35 is added to the Labor Code, to read:

**1156.35.** (a) As an alternative procedure to the polling place 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 representation ballot card election. A representation ballot card election permits a bargaining unit to summarily select a labor organization as its representative for collective bargaining purposes without holding a polling place election.

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

(1) That the number of agricultural employees currently employed by the employer named in the petition for representation ballot card election, as determined from the employer's payroll immediately preceding the filing of the petition for representation ballot card 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 representation ballot card election 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 for representation ballot card election.

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

(c) (1) The petition for representation ballot card election described in subdivision (b) shall be supported by representation ballot cards in individually sealed envelopes signed by more than 50 percent of the currently employed employees. The representation ballot cards shall be submitted together with the petition for representation, or mailed in separately to any board office. 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 representation ballot card election.

(2) The representation ballot cards shall be titled "Representation Ballot Cards for Certification of a Labor Organization."

(3) Each representation ballot card shall include both of the following:

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

(B) Sufficient space to provide all of the following information:

(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.

(4) The ballot card shall be placed in the sealed envelope provided by the board and the outer part of the envelope shall be signed by the employee who signed the ballot card. The ballot card shall be submitted directly to an office of the board in the envelope provided by the board or mailed to the board office.

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

(6) Upon the request of a labor organization, the board shall issue standardized representation ballot cards and postage paid envelopes with the board's office return address, to a labor organization for use with a petition for representation ballot card election, in accordance with the specifications of subdivision (c). The regional board offices shall maintain a record of the name, current address, and working telephone number of a labor organization that has requested the issuance of the ballot cards and envelopes, the number of ballot cards requested by each labor organization, and the date of the issuance of the ballot cards. This information shall be made available upon the request of any person.

(7) A representation ballot card is valid for the purpose of supporting a petition for representation ballot card election if it contains the name of the labor organization, the name of the employee, the employee's signature, and is in a sealed envelope. A labor organization representative may fill out all of the information contained in a representation ballot card, except for the employee's signature.

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

(d) A labor organization submitting a petition for a representation ballot card 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, and personally serve upon the labor organization that filed the petition, 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, 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. The employer shall organize the employees' names and addresses and other information by crew or department and shall provide the list to the board and petitioning labor organization in hard copy and electronic format. The employee's first name, middle name or initial, last name, address, city, state, ZIP Code, telephone number, classification, and crew or department shall be organized into separate columns. Immediately upon receiving the employer response and employee list, the board shall provide the response and employee list by hardcopy and electronic copy to the labor organization that filed the representation ballot card election petition. For each day an employer fails to provide a complete and timely response, the board shall assess a fine of up to ten thousand dollars (\$10,000).

(e) (1) Upon receipt of a petition for representation ballot card election, the board shall immediately commence an investigation regarding the validity of the petition and the supporting representation ballot 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 ballot cards required by paragraph (1) of subdivision (c). In making this determination, the board shall compare the names on the representation ballot 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 ballot card and the employee's name on the employer's list if the preponderance of the evidence, such as the employee's address, the name of the employee's foreman or forewoman, or evidence submitted by the labor organization or employee shows that the employee who signed the ballot card is the same person as the employee on the employer's list.

(2) If any challenge to the validity of a voter's identity would affect the outcome of the representation ballot card election and is deemed worthy of additional verification by the board, the board shall investigate the matter within seven days and the party making the challenge, the employee, and the labor organization shall have seven days to present evidence either verifying the validity or invalidity of the employee's identity on the representation ballot card. The board shall disclose to the labor organization that submitted the ballot card all evidence it has obtained regarding the matter. The board shall make the final determination and shall disclose to the labor organization that submitted the ballot card whether the card can be cured.

(3) The board shall return those representation ballot cards that it finds invalid to the labor organization that filed the petition for representation ballot card election, with an explanation as to why each representation ballot card was found to be invalid. To protect the confidentiality of the employees whose names are on the representation ballot cards, the board's determination of whether a particular ballot card is valid shall be final and not subject to appeal or review.

(4) If the board determines that the labor organization has submitted the required number of representation ballot 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.

(5) If the board determines that the labor organization has not submitted the requisite number of valid representation ballot cards, or that the representation ballot 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 ballot cards.

(f) (1) Within five days after the board certifies a labor organization through a representation ballot card 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 representation ballot card petition were false.

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

(C) The representation ballot card election was conducted improperly.

(D) Improper conduct affected the results of the representation ballot card election.

(2) Upon receipt of a petition objecting to certification, the board may administratively rule on the petitioner's objections or may choose to conduct a hearing to rule on the petitioner's objections. If the board decides to conduct a hearing on the objections, it shall mail a notice of the time and place of the hearing to the petitioner and the labor organization whose certification is being challenged. The board shall conduct the hearing within 14 days of the filing of an objection, unless an extension is agreed to by the labor organization. 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 representation ballot card election certification shall not diminish the duty to bargain or delay the running of the 90-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 representation ballot card election petition, the board shall order the employer to pay for all the costs and expenses incurred by a labor organization challenging a representation ballot card election.

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

(h) Once a labor organization has filed a representation ballot card election petition, no other representation ballot card 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 representation ballot card election petition should be certified. However, the board may consider a second representation ballot card petition 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. In those cases, the board shall expedite its investigation of the matter and render a decision on certification within three months of the filing of the first petition. If the board finds that a labor organization was unlawfully assisted, supported, created, or dominated by an employer, that labor organization's petition shall be dismissed and the second petition shall be considered. A labor peace agreement shall not be deemed unlawful by virtue of the fact that it was entered into pursuant to Section 26051.5 of the Business and Professions Code. Any labor organization that has been illegally assisted, supported, or dominated by an employer shall be disqualified from filing any further petitions with the board for a period of one year. That labor organization's representatives, agents, or officers shall similarly be disqualified from filing any further petitions with the board for a period of one year. A labor organization created by an

employer, along with its representatives, agents, or officers, shall be permanently barred from filing any further petitions.

(i) If an employer commits an unfair labor practice or misconduct, including vote suppression, during a labor organization's representation ballot card campaign, and the employer's unfair labor practice or misconduct would render slight the chances of a new representation ballot card campaign reflecting the free and fair choice of employees, the labor organization shall be certified by the board as the exclusive bargaining representative for the bargaining unit. For purposes of a finding of an unfair labor practice or misconduct under this part and under this section, a misrepresentation of fact or law by an employer, an employer's representative, or agent is an unfair labor practice or misconduct whether or not a labor organization has had an opportunity to respond to or correct the misrepresentation.

(j) If an employer disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against a worker during a labor organization's representation ballot card campaign, there shall be a presumption that the adverse action was retaliatory and illegal, and the employer shall escape liability for the illegal action only if the employer provides clear, convincing, and overwhelming evidence that the adverse action would have been taken in the absence of the representation ballot card campaign.

(k) For purposes of Section 1156.5, a representation ballot card election is a valid election.

**SEC. 4.** Section 1162 is added to the Labor Code, immediately following Section 1161, to read:

**1162.** (a) An employer who petitions for a writ of review in a court of appeal or the California Supreme Court or otherwise appeals, petitions, or seeks to overturn or stay or modify any order of the board under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 involving make-whole, backpay, or other monetary award or economic benefit to employees or a labor organization shall, as a condition to seeking review, appeal, modification, or stay, post a bond, in the amount of the entire economic value of the order as determined by the board, to ensure that employees or the labor organization receive the benefits of the order if the employer does not prevail.

(b) The bond shall consist of an appeal bond issued by a licensed surety or a cash deposit with the board in the amount of the order, decision, or award. The employer shall provide written notification to all of the parties of the posting of the bond. The bond shall be on the condition that, if any judgment is entered against the employer, the employer shall pay the amount owed pursuant to the judgment, and if the appeal, petition, or action is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the board unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, the bond is forfeited to the employee or employees or labor organization.

**SEC. 5.** The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.