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AB-2183 Agricultural labor relations: elections. (2021-2022)

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Assembly Bill No. 2183

CHAPTER 673

An act to add Sections 1160.10 and 1162 to, and to add and repeal Sections 1156.35, 1156.36, and 1156.37 of, the Labor Code, relating to employment.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2183, Stone. Agricultural labor relations: elections.

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 creates the Agricultural Labor Relations Board and prescribes its composition, duties, and powers. Existing law authorizes the board to hold hearings and conduct investigations and requires that certain procedures be the exclusive method of redressing unfair labor practices. Under existing law, any person who willfully resists, prevents, or interferes with a member of the board or its agents or agencies in the performance of their duties is guilty of a misdemeanor.

Existing law requires the 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 election by secret ballot process as a polling place election. The bill would establish alternative procedures to the polling place election and authorize a labor organization to be certified as the exclusive bargaining representative of a bargaining unit through either a labor peace election or a non-labor peace election, as prescribed, dependent on whether an employer enrolls and agrees to a labor peace election for labor organization representation campaigns. The bill would provide that a labor peace election or a non-labor peace election permits a bargaining unit to summarily select a labor organization as its representative for collective bargaining purposes without using the existing polling place process. Under the bill, a labor peace election would be a mail ballot election and a non-labor peace election would establish a process for the submission of a petition with proof of majority support, subject to certification by the board. Among other provisions, the bill would require for both alternative procedures that an employer respond to the board with regard to a petition, including providing a specified list of employees to the board. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would establish a schedule for agricultural employers to indicate to the board whether they agree to a labor peace compact, defined to mean an agreement by the employer to, among other things, 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 certain documents regarding organization are filed with the board. The bill would prohibit a labor peace compact from prohibiting an employer from communicating truthful statements to employees regarding workplace policies or benefits, as specified. The bill would require the board to develop an online web-based labor peace election process that will allow employers to indicate their labor peace choice online, and that will allow labor organizations to see whether a specific agricultural employer has agreed to a labor peace election campaign.

This bill would repeal the above provisions on January 1, 2028.

This bill would prescribe civil penalties to be imposed upon an agricultural employer who commits an unfair labor practice in an amount not to exceed \$10,000 for each violation, and would increase that sum to an amount not to exceed \$25,000 for specified violations. The bill would require the board to consider specified factors in determining the amount of a civil penalty pursuant to these provisions. The bill would also authorize the board to impose personal liability for these penalties upon a director or officer of an employer in certain circumstances.

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.

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.

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

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

SECTION 1. 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 either a labor peace election or a non-labor peace election, dependent on whether an employer enrolls and agrees to a labor peace election for labor organization representation campaigns. A labor peace election or a non-labor peace 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) Every agricultural employer in this state shall have the option to indicate to the board whether they agree to a labor peace compact for purposes of this section. For calendar year 2023, this choice shall be made during the time period of January 1, 2023, through February 1, 2023. For all subsequent years, an agricultural employer shall exercise this option in the 30 days prior to January 1 of the following year.

(c) As used in this section, "labor peace compact" means an agreement by the employer that includes all of the following provisions:

(1) 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.

(2) 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.

(3) An agreement not to engage in any captive audience meetings. For purposes of this paragraph "captive audience meeting" means any meeting or communication between an employer or employer's management, supervisors, representatives, or agents and one or more agricultural employees, whether voluntary or mandatory, or paid or unpaid, where there is any discussion of unions, union representation, unionization efforts, or other protected concerted activity, in any way.

(4) An agreement not to disparage the union in any written or verbal communications to employees or to the public.

(5) An agreement not to express any preference for one union over another union.

(d) A labor peace compact shall not prohibit an employer from communicating truthful statements to employees regarding workplace policies or benefits, providing that such communications make no reference to any union, unionization efforts, or other protected concerted activity.

(e) A labor peace compact shall 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. Where a petition for an election has been filed, the labor peace compact requirements shall continue until after an election concludes and the board issues a certification of the vote. A farm labor contractor shall be bound by the labor peace election choice of the agricultural employer for whom it performs work. 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 in the 30-day period prior to the commencement of the next calendar year in January. The board shall develop an online web-based labor peace election process that will allow employers to indicate their labor peace choice online, and that will allow labor organizations to see whether a specific agricultural employer has agreed to a labor peace election campaign. If an agricultural employer does not agree to a labor peace election campaign, the agricultural employer shall be deemed to be against that labor peace election choice

(f) If an agricultural employer agrees to a labor peace election campaign, then employees may make a choice regarding union representation through a mail ballot election as described in Section 1156.36. If an agricultural employer does not agree to a labor peace election campaign, then employees may make a choice regarding union representation through a non-labor peace election as described in Section 1156.37.

(g) If an agricultural employer violates its labor peace election campaign choice in any way during a mail ballot campaign, a labor organization may still be certified as representative of the affected bargaining unit, as outlined in Section 1156.36. If an agricultural employer violates its labor peace election campaign choice in any way and there is no certification through a mail ballot election or election objections process, the petitioning labor organization may conduct a non-labor peace election following the labor peace compact violation. A violation of a labor peace compact shall be determined by the board based on an administrative investigation regarding whether an employer made any statements for or against union representation to its employees or publicly, or whether it denied access to a labor organization. If the board requires a hearing to determine whether a violation occurred, the board shall expedite that hearing.

(h) As used in this section "polling place election" means the election process described in subdivision (b) of Section 1156.3.

(i) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 2. Section 1156.36 is added to the Labor Code, to read:

1156.36. (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 labor peace election conducted by mail ballot. A labor peace election permits a bargaining unit to select a labor organization as its representative for collective bargaining purposes without holding a polling place election through use of board-issued mail ballots.

(b) (1) Prior to the submission of a petition for mail ballot election as described in subdivision (c), an agricultural employee or an authorized labor organization representative, as described below, may submit a "Voting Kit Request Form" with the board. The Voting Kit Request Form shall include: (A) the name, telephone number, physical address, and mailing address of the person submitting the Voting Kit Request Form; (B) the name, telephone number, physical address, and mailing address of the agricultural employee for whom the voting kit is being requested; (C) the name of an agricultural employer or farm labor contractor to be associated with the voting kit; and (D) a physical or post office box address where the board shall mail the voting kit. Within two business days of receiving a Voting Kit Request Form, the board shall mail a voting kit to the agricultural employee at the address listed in the form. Only labor organizations that have filed LM-2 forms for the preceding two years with the federal government may request voting kits for agricultural employees, and agricultural employees may submit a request for a single voting kit for themselves. Any labor organization representative submitting a Voting Kit Request Form shall also submit a document specifying that an agricultural employee has authorized the labor organization to submit the Voting Kit Request Form on their behalf, and such authorization must be signed by the agricultural employee on whose behalf the Voting Kit Request Form is being submitted.

(2) Voting kits shall include a form containing voting instructions for mail ballot elections, a standardized mail ballot, and postage paid envelopes with the board's office return address. The name and contact information of a designated staff person in the board regional office shall be provided at the bottom of the instructions form. All voter kits shall be marked with key codes assigned to the agricultural employee receiving the voter kit.

(3) The mail ballots shall be titled "Mail Ballots for Certification of a Labor Organization." Each mail ballot shall include the following:

(A) The opportunity to vote for representation by a labor organization by providing an appropriate space designated "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 with respect to rates of pay, wages, hours of employment, benefits, and other terms and conditions of employment.

(B) The opportunity to vote against representation by a labor organization by providing an appropriate space designated "No Union."

(C) 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 mail ballot. The board shall give the mail ballot the same confidentiality and secrecy as a polling place election ballot.

(6) A mail ballot is valid for the purpose of supporting a petition for mail ballot 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 mail ballot, except for the employee's signature.

(7) A mail ballot remains valid for 180 days after it is signed by an agricultural employee.

(c) A labor organization that wishes to represent a particular bargaining unit, as defined in Section 1156.2, may be certified through a mail ballot election as that unit's bargaining representative by submitting to the board a petition for mail ballot 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 mail ballot election, as determined from the employer's payroll immediately preceding the filing of the petition for mail ballot 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 mail ballot election within the 12 months immediately preceding the filing of the petition.

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

(d) The petition for mail ballot election described in subdivision (c) shall be supported by mail ballots in individually sealed envelopes 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 mail ballot election. The mail ballots may be submitted together with the petition for representation or mailed in separately to any board office.

(e) A labor organization submitting a petition for a mail ballot 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 mail ballot election petition.

(f) (1) Upon receipt of a petition for mail ballot election, the board shall immediately commence an investigation regarding the validity of the petition and the supporting mail ballots. Within five days of receipt of the petition, the board shall make an administrative determination as to whether a bona fide question of representation exists, whether the requirements set forth in subdivision (c) are met by the petition, and whether the labor organization submitting the petition has submitted the number of mail ballots required by subdivision (d). In making this determination, the board shall compare the names on the mail ballots 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 mail ballot 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 the board makes an initial determination that the showing is insufficient, the board may allow an additional 10 days for a petitioner to perfect its proof of support.

(3) Within three days of determining that a bona fide question of representation exists and the requirements of subdivisions (c) and (d) are met, the board shall mail voting kits to all agricultural employees on the employee list specified in subdivision (e) at the address listed on such employee list. The board shall exclude from this mailing any agricultural employees who have submitted a prepetition Voting Kit Request Form pursuant to paragraph (1) of subdivision (b) and who have submitted a mail ballot to the board prior to the filing of the petition for mail ballot election pursuant to subdivision (c).

(4) If any challenge to the validity of a voter's identity would affect the outcome of the mail ballot 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 mail ballot. 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.

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

(6) Thirty days following the voting kit mailing pursuant to paragraph (3), the board shall tally mail ballots received by the board. If the board determines that a majority of mail ballots received by the board at the time of the tally support certification of a labor organization and the requirements set forth in this section and in Section 1156.4 have been met, 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.

(g) (1) Within five days after the board certifies a labor organization through a mail ballot 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 mail ballot petition were false.

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

(C) The mail ballot election was conducted improperly.

(D) Improper conduct affected the results of the mail ballot 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 mail ballot 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.

(h) The board shall not permit the filing of an election petition pursuant to any other sections in this part once a mail ballot petition is filed until the board determines whether the labor organization filing the mail ballot election petition should be certified.

(i) Once a labor organization has filed a mail ballot election petition, no other mail ballot 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 mail ballot election petition should be certified. However, the board may consider a second mail ballot 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 unlawfully 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 assisted, supported, created, or dominated by an employer, along with its representatives, agents, or officers, shall be permanently barred from filing any further petitions.

(j) If an employer commits an unfair labor practice or misconduct, including vote suppression, during a labor organization's mail ballot campaign, and the employer's unfair labor practice or misconduct would render slight the chances of a new mail ballot 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.

(k) If an employer disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against a worker during a labor organization's mail ballot 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 mail ballot campaign.

(l) For purposes of Section 1156.5, a mail ballot election is a valid election.

(m) As used in this section, "polling place election" means the election process described in subdivision (b) of Section 1156.3.

(n) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 3. Section 1156.37 is added to the Labor Code, to read:

1156.37. (a) A labor organization may become the exclusive representative for the agricultural employees of an appropriate bargaining unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment by filing a Non-Labor Peace Election Petition with the board 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. 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.

(b) A labor organization that wishes to represent a particular bargaining unit, as described in Section 1156.2, may be certified through a non-labor peace election as that unit's bargaining representative by submitting to the board a petition for non-labor peace 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 non-labor peace election, as determined from the employer's payroll immediately preceding the filing of the petition for non-labor peace 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 non-labor peace election within the 12 months immediately preceding the filing of the petition.

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

(c) The petition for non-labor peace election described in subdivision (b) shall be supported by a proof of majority support, through authorization cards, petitions, or other appropriate proof of majority support of the currently employed employees, as determined from the employer's payroll immediately preceding the filing of the petition for non-labor peace election. The showing of support shall be submitted together with the petition for non-labor peace election.

(d) A labor organization submitting a petition for a non-labor peace 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 non-labor peace election petition.

(e) (1) Upon receipt of a petition for non-labor peace election, the board shall immediately commence an investigation regarding the validity of the petition and the proof of support submitted. 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 provided proof of majority support. In making this determination, the board shall compare the names on the proof of support 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 proof of support 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 proof of support is the same person as the employee on the employer's list.

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

(3) If the board determines that the labor organization has submitted proof of majority support and met the requirements set forth in this section, 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 proof of majority support, 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 support.

(f) (1) Within five days after the board certifies a labor organization through a non-labor peace 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 non-labor peace election petition were false.

(B) The board 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.

(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 non-labor peace 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.

(g) The board shall not permit the filing of any other election petition once a non-labor peace petition is filed until the board determines whether the labor organization filing the non-labor peace election petition should be certified.

(h) Once a labor organization has filed a non-labor peace election petition, no other non-labor peace 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 non-labor peace election petition should be certified. However, the board may consider a second non-labor peace election 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 unlawfully 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 assisted, supported, created, or dominated by an employer, along with its representatives, agents, or officers, shall be permanently barred from filing any further petitions.

(i) In any case where two or more labor organizations are seeking to represent the same bargaining unit through a non-labor peace election petition, the most recent proof of support shall prevail.

(j) If an employer commits an unfair labor practice or misconduct, including vote suppression, during a labor organization's non-labor peace election campaign, and the employer's unfair labor practice or misconduct would render slight the chances of a new non-labor peace election 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.

(k) If an employer disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against a worker during a labor organization's non-labor peace election 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 non-labor peace election campaign.

(l) For purposes of Section 1156.5, a non-labor peace election is a valid election.

(m) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 4. Section 1160.10 is added to the Labor Code, immediately following Section 1160.9, to read:

1160.10. (a) (1) Any employer who commits an unfair labor practice shall, in addition to any remedy ordered by the board, be subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(2) In cases involving violations of subdivision (c) or (d) of Section 1153, or involving any violation of Section 1153 that results in the discharge of an employee or other serious economic harm to an employee, the board shall double the amount of the penalty to an amount not to exceed twenty-five thousand dollars (\$25,000).

(b) In determining the amount of any civil penalty to be imposed under this section, the board shall consider the following:

(1) The gravity of the unfair labor practice.

(2) The impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this part, and on the public interest.

(3) The financial circumstances of the employer.

(c) If the board determines, based on the particular facts and circumstances of a case, that imposing personal liability on a director or officer of an employer, a civil penalty pursuant to this section may also be assessed against a director or officer of the employer who directed or committed the violation, had established a policy that led to the violation, or had actual or constructive knowledge of, and the authority to prevent, the violation and failed to do so.

SEC. 5. 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 this part 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. 6. 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.

SEC. 7. 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.