

Assembly Bill No. 113

CHAPTER 7

An act to amend Sections 1149.3, 1160.3, 1164, 1164.3, and 1164.5 of, to amend, repeal, and add Sections 1142, 1156, 1156.5, and 1157 of, to add Section 1160.11 to, to repeal Sections 1156.35 and 1156.36 of, and to repeal and add Section 1156.37 of, the Labor Code, relating to employment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor May 15, 2023. Filed with Secretary of State May 15, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 113, Committee on Budget. Agricultural labor relations.

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. 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. 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 refers to the election by secret ballot process as a polling place election. Existing law establishes alternative procedures to the polling place election process to allow a labor organization to be certified as the exclusive bargaining representative of a bargaining unit of agricultural employees through either a labor peace election conducted by mail ballot, or a non-labor peace election, on petition and conducted as prescribed. Under existing law, the applicable procedure is dependent on whether an employer enrolls and agrees to a labor peace election for labor organization representation campaigns. Under existing law, a non-labor peace election requires a petition to be submitted to the board, as specified, including proof of majority support through authorization cards, petitions, or other appropriate proof of majority support of the currently employed employees and subject to investigation and certification by the board. Existing law

requires, 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, which the board is required to provide to the applicable labor organization.

Existing law establishes a schedule for agricultural employers to indicate to the board whether they agree to a labor peace compact. Existing law prohibits a labor peace compact from prohibiting an employer from communicating truthful statements to employees regarding workplace policies or benefits, as specified. Existing law requires 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.

Existing law repeals the above-described provisions on January 1, 2028.

This bill would establish, until January 1, 2028, a single alternative process that is, in most respects, the same as the non-labor peace election process of existing law, but it would instead be referred to as a Majority Support Petition. The bill would limit the authorization to file a Majority Support Petition to labor organizations that have a specified bargaining agreement covering agricultural employees in place as of the effective date of its provisions. Under the bill, a certification through Majority Support Petition would be a valid election for purposes of limiting board authority to direct elections, as specified. The bill would cap at 75 the number of Majority Support Petitions that result in the certification of a labor organization that are authorized to be conducted under its provisions before January 1, 2028. The bill would require an employer to respond to the board with regard to a Majority Support Petition, including by 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. The bill would require the board to provide this information immediately to the applicable labor organization.

This bill, until January 1, 2028, would also make various conforming changes to account for the Majority Support Petition process, including authorizing the board to certify labor organizations in this connection, establishing that representatives designated by the submission of authorization cards are exclusive agricultural employee representatives, and prohibiting the board from conducting reviews of a majority support petition for a specified period.

This bill would require the board, in specified situations, to order proceedings to determine the specific amount of a monetary remedy, and if the monetary remedy is continuing to accrue, the amount accrued as of the date of the board's order. The bill would specify when the board's order becomes final in these situations. The bill would make conforming amendments in this regard in connection with the processing of final board orders.

This bill would require an employer who petitions for a writ of review of a final board order, as specified, or who otherwise appeals, petitions, or

seeks to overturn or stay or modify any order of the board in which the board has ordered the payment of a monetary remedy to first post a bond with the board in the amount of the entire economic value of the order, as a condition of proceeding. The bill would prescribe the characteristics of the bond and a procedure in connection with its application. The bill would prescribe analogous bond requirements with respect to an employer who seeks review of a final order of the board pursuant to ordering into effect the terms of a mediator's report. The bill would require a mediator's report, in specified instances, to include a statement of the economic value of the collective bargaining agreement as determined by stipulation of the parties or by the mediator.

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.

This bill would appropriate \$10,000 for the 2022–23 fiscal year from the General Fund to the board to implement the provisions related to agricultural labor relations in the bill.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 1142 of the Labor Code is amended to read:

1142. (a) The principal office of the board shall be in Sacramento, but it may meet and exercise any or all of its power at any other place in California.

(b) Besides the principal office in Sacramento, as provided in subdivision (a), the board may establish offices in such other cities as it shall deem necessary. The board may delegate to the personnel of these offices such powers as it deems appropriate to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists, to direct an election by a secret ballot pursuant to the provisions of Chapter 5 (commencing with Section 1156), and to certify the results of such election, or to certify a labor organization pursuant to Section 1156.37 and to investigate, conduct hearings and make determinations relating to unfair labor practices. The board may review any action taken pursuant to the authority delegated under this section upon a request for a review of such action filed with the board by an interested party. Any such review made by the board shall not, unless specifically ordered by the board, operate as a stay of any action taken. The entire record considered by the board in considering or acting upon any such request or review shall be made available to all parties prior to such

consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

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

SEC. 2. Section 1142 is added to the Labor Code, to read:

1142. (a) The principal office of the board shall be in Sacramento, but it may meet and exercise any or all of its power at any other place in California.

(b) Besides the principal office in Sacramento, as provided in subdivision (a), the board may establish offices in such other cities as it shall deem necessary. The board may delegate to the personnel of these offices such powers as it deems appropriate to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists, to direct an election by a secret ballot pursuant to the provisions of Chapter 5 (commencing with Section 1156), and to certify the results of such election, and to investigate, conduct hearings and make determinations relating to unfair labor practices. The board may review any action taken pursuant to the authority delegated under this section upon a request for a review of such action filed with the board by an interested party. Any such review made by the board shall not, unless specifically ordered by the board, operate as a stay of any action taken. The entire record considered by the board in considering or acting upon any such request or review shall be made available to all parties prior to such consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

(c) This section shall be operative January 1, 2028.

SEC. 3. Section 1149.3 of the Labor Code is amended to read:

1149.3. (a) In cases that the board is required to determine the specific amount of a monetary remedy before issuing a final board order pursuant to Section 1160.3, the determination shall be completed within one year of any board order finding unfair labor practice liability and directing the payment of a monetary remedy.

(b) In cases that a determination is made concerning the amount of a monetary remedy that is continuing to accrue as described in Section 1160.3, and the board is required to determine any additional portion of the monetary remedy that has accrued after a final decision on employer liability, the board shall process to final board order a decision concerning the additional amount or amounts owed within one year of a final decision on employer liability, unless the board certifies to the parties that there is good cause for exceeding this time limit and provides a reasoned explanation for the assertion of good cause. For purposes of this subdivision, "final decision on employer liability" means the date when a board order determining the specific amount of a monetary remedy owed by a respondent found to have engaged in an unfair labor practice becomes final because no appeal was sought or the date when a reviewing court dismisses an employer's appeal or otherwise affirms the board's order.

(c) If an employer's liability and compliance proceedings are consolidated, the board shall act reasonably and without delay in reaching a final decision concerning the liability and amounts owed to workers, and shall explain to the parties any good cause for delay.

SEC. 4. Section 1156 of the Labor Code is amended to read:

1156. (a) Representatives designated by the submission of authorization cards or other proof of support or selected by a secret ballot by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining 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.

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

SEC. 5. Section 1156 is added to the Labor Code, to read:

1156. (a) Representatives designated or selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining 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.

(b) This section shall be operative January 1, 2028.

SEC. 6. Section 1156.35 of the Labor Code is repealed.

SEC. 7. Section 1156.36 of the Labor Code is repealed.

SEC. 8. Section 1156.37 of the Labor Code is repealed.

SEC. 9. 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 Majority Support 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 and have a collective bargaining agreement covering agricultural employees as defined in Section 1140.4 as of the effective date of this section may file a Majority Support Petition.

(b) A labor organization that wishes to represent a particular bargaining unit, as described in Section 1156.2, may be certified as that unit's bargaining representative by submitting to the board a Majority Support Petition. The petition shall allege all of the following:

(1) That the number of agricultural employees currently employed by the employer named in the Majority Support Petition, as determined from the employer's payroll immediately preceding the filing of the Majority Support Petition, 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 Majority Support Petition within the 12 months immediately preceding the filing of the petition.

(3) That the Majority Support Petition is not barred by an existing collective bargaining agreement.

(c) The Majority Support Petition 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 Majority Support Petition. The showing of support shall be submitted together with the Majority Support Petition.

(d) A labor organization submitting a Majority Support Petition 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 hardcopy 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 Majority Support Petition.

(e) (1) Upon receipt of a Majority Support Petition, 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 Majority Support Petition, 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 majority support 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 Support Petition were false.

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

(C) The majority support election was conducted improperly.

(D) Improper conduct affected the results of the majority support 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 majority support election certification shall not diminish the duty to bargain or delay the running of the 90-day period or 60-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 Majority Support Petition is filed until the board determines whether the labor organization filing the Majority Support Petition should be certified.

(h) Once a labor organization has filed a Majority Support Petition, no other Majority Support 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 Support Petition should be certified. However, the board may consider a second Majority Support 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 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 Majority Support 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 Majority Support Petition campaign, and the employer's unfair labor practice or misconduct would render slight the chances of a new majority support 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 Majority Support Petition campaign, there shall be a

presumption that the adverse action was retaliatory. The employer may rebut the presumption if they can provide clear and convincing evidence that the adverse action would have been taken in the absence of the Majority Support Petition campaign.

(l) For purposes of Section 1156.5, a certification through Majority Support Petition is a valid election.

(m) The number of Majority Support Petitions that result in the certification of a labor organization conducted under this part shall be limited to 75 certifications through January 1, 2028.

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

SEC. 10. Section 1156.5 of the Labor Code is amended to read:

1156.5. (a) The board shall not direct an election or conduct a review of any majority support petition in any bargaining unit where a valid election has been held or majority support petition has been reviewed by the board in the immediately preceding 12-month period.

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

SEC. 11. Section 1156.5 is added to the Labor Code, to read:

1156.5. (a) The board shall not direct an election in any bargaining unit where a valid election has been held in the immediately preceding 12-month period.

(b) This section shall be operative January 1, 2028.

SEC. 12. Section 1157 of the Labor Code is amended to read:

1157. (a) All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of a petition under this chapter shall be eligible to vote or have their submitted authorization card or other proof of support deemed valid. An economic striker shall be eligible to vote or have their authorization card or other proof of support deemed valid under such regulations as the board shall find are consistent with the purposes and provisions of this part in any election or certification proceeding, 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 or to submit an authorization card or other proof of support after this time.

(b) In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such 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, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

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

SEC. 13. Section 1157 is added to the Labor Code, to read:

1157. (a) All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition of such an election shall be eligible to vote. An economic striker shall be eligible to vote under such regulations as the board shall find 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.

(b) In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such 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, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

(c) This section shall be operative January 1, 2028.

SEC. 14. Section 1160.3 of the Labor Code is amended to read:

1160.3. The testimony taken by such member, agent, or agency, or the board in such 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. If, upon the preponderance of the testimony taken, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, to take affirmative action, including reinstatement of employees with or without backpay, and making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will 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. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If, upon the preponderance of the testimony taken, the board shall be of the opinion 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. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to the employee of any

backpay, if such 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, such member, or such 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 such parties, or within such further period as the board may authorize, such recommended order shall become the order of the board and become effective as therein prescribed. If exceptions have been filed and the board issues an order finding that the person named in the complaint has engaged in or is engaging in any unfair labor practice and directing payment of a monetary remedy, the board shall order further proceedings to determine the specific amount of the monetary remedy or, if the monetary remedy is continuing to accrue, the amount accrued as of the date of the board's order. In these cases, the board's order does not become final for purposes of Section 1160.8 until the board has issued its determination of the specific amount of the monetary remedy.

Until the record in a case shall have 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. 15. Section 1160.11 is added to the Labor Code, to read:

1160.11. (a) An employer who petitions for a writ of review of a final board order in the court of appeal or the California Supreme Court pursuant to Section 1160.8, or who otherwise appeals, petitions, or seeks to overturn or stay or modify any order of the board in which the board has ordered the payment of a monetary remedy shall first post a bond with the board in the amount of the entire economic value of the order as determined by the board as a condition to filing a petition for a writ of review or other court filing to ensure that employees receive the benefits of the order if the employer seeking review does not prevail. The employer shall post the bond with the board within 30 days from the date of the issuance of the board's order. The court shall dismiss any petition for a writ of review or other legal challenge where the petitioning employer did not timely comply with this section.

(b) The bond required under this section shall consist of an appeal bond issued by a licensed surety or a cash deposit with the board in the amount specified in subdivision (a) of this section. The employer shall provide written notification to all of the parties of the posting of the bond and shall also provide notice to the court at the time of the filing of the petition for a writ of review or other court filing. The bond shall be on the condition that, if the petition or other court filing is withdrawn, dismissed, or denied or if judgment is otherwise entered against the employer, the employer shall pay the amount owed pursuant to the board's order, or the judgment of the court if in a different amount, unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount 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 finality of the review proceeding or the execution of a settlement agreement, a portion of the bond equal to the amount owed, or the entire bond if the amount owed exceeds the bond, is forfeited to the board for appropriate distribution.

SEC. 16. Section 1164 of the Labor Code is amended to read:

1164. (a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following (1) 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11, (2) 90 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003, (3) 60 days after the board has certified the labor organization pursuant to subdivision (f) of Section 1156.3, or (4) 60 days after the board has dismissed a decertification petition upon a finding that the employer has unlawfully initiated, supported, sponsored, or assisted in the filing of a decertification petition a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. "Agricultural employer," for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation Service may include names chosen from its own mediators, or from a list of names supplied by the American Arbitration Association or the Federal Mediation Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the

exhaustion of the mediation process. The report shall also include a statement of the entire economic value of the collective bargaining agreement as determined by stipulation of the parties or by the mediator. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

(e) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings, including:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union's wage and benefit demands.

(3) The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) The corresponding wages, benefits, and terms and conditions of employment prevailing in comparable firms or industries in geographical areas with similar economic conditions, taking into account the size of the employer, the skills, experience, and training required of the employees, and the difficulty and nature of the work performed.

(5) The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed.

SEC. 17. Section 1164.3 of the Labor Code is amended to read:

1164.3. (a) Either party, within seven days of the filing of the report by the mediator, may petition the board for review of the report. The petitioning party shall, in the petition, specify the particular provisions of the mediator's report for which it is seeking review by the board and shall specify the specific grounds authorizing review by the board. The board, within 10 days of receipt of a petition, may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact, or (3) a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary or capricious in light of the mediator's findings of fact.

(b) If it finds grounds exist to grant review within the meaning of subdivision (a), the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board. If the board does not accept a petition for review or no petition for review is filed, then the mediator's report shall become a final order of the board.

(c) The board shall issue a decision concerning the petition and if it determines that a provision of the collective bargaining agreement contained in the mediator's report violates the provisions of subdivision (a), it shall,

within 21 days, issue an order requiring the mediator to modify the terms of the collective bargaining agreement. The mediator shall meet with the parties for additional mediation for a period not to exceed 30 days. At the expiration of this mediation period, the mediator shall prepare a second report resolving any outstanding issues and that includes a statement of the entire economic value of the collective bargaining agreement as determined by stipulation of the parties or by the mediator. The second report shall be filed with the board.

(d) Either party, within seven days of the filing of the mediator's second report, may petition the board for a review of the mediator's second report pursuant to the procedures specified in subdivision (a). If no petition is filed, the mediator's report shall take immediate effect as a final order of the board. If a petition is filed, the board shall issue an order confirming the mediator's report and order it into immediate effect, unless it finds that the report is subject to review for any of the grounds specified in subdivision (a), in which case the board shall determine the issues and shall issue a final order of the board.

(e) Either party, within seven days of the filing of the report by the mediator, may petition the board to set aside the report if a prima facie case is established that any of the following have occurred: (1) the mediator's report was procured by corruption, fraud, or other undue means, (2) there was corruption in the mediator, or (3) the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator. For the sole purpose of interpreting the terms of paragraphs (1), (2), and (3), case law that interprets similar terms used in Section 1286.2 of the Code of Civil Procedure shall apply. If the board finds that any of these grounds exist, the board shall within 10 days vacate the report of the mediator and shall order the selection and appointment of a new mediator, and an additional mediation period of 30 days, pursuant to Section 1164.

(f) (1) Notwithstanding Section 1164.9, within 60 days after the order of the board takes effect, even if a party seeks to challenge, appeal, overturn, modify, or stay in any manner any order of the board under these provisions, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located.

(2) To the extent that the board's decision in *Ace Tomato Co., Inc.* (2012) 38 ALRB No. 8, states that a party cannot enforce a board order while an appeal or challenge to the board order in any form is pending, this section abrogates that decision. During the pendency of any challenge, appeal, writ of review, or other action seeking to modify or overturn a board order, the parties shall be required to implement the terms of the board's order immediately upon issuance of the order.

(3) No final order of the board shall be stayed during any review under this chapter unless the court finds and states in its findings that (1) the appellant or petitioner has demonstrated, by clear and convincing evidence, that they will be irreparably harmed by the implementation of the board's order, and (2) the appellant or petitioner has demonstrated, by clear and

convincing evidence, a likelihood of success on appeal. For purposes of this section, the court deciding the stay shall provide written findings and analysis supporting the decision to grant a stay.

SEC. 18. Section 1164.5 of the Labor Code is amended to read:

1164.5. (a) Within 30 days after the order of the board takes effect, a party may petition for a writ of review in the court of appeal or the California Supreme Court. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the board to certify its record in the case to the court within the time specified. The petition for review shall be served personally upon the executive director of the board and the nonappealing party personally or by service.

(b) The review by the court shall not extend further than to determine, on the basis of the entire record, whether any of the following occurred:

(1) The board acted without, or in excess of, its powers or jurisdiction.
(2) The board has not proceeded in the manner required by law.
(3) The order or decision of the board was procured by fraud or was an abuse of discretion.

(4) The order or decision of the board violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(c) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(d) An employer who seeks review of a final order of the board pursuant to this chapter ordering into effect the terms of a mediator's report establishing the terms of a collective bargaining agreement between the employer and a labor organization, or who otherwise appeals, petitions, or seeks to overturn or stay or modify any order of the board pursuant to this chapter, shall first post a bond with the board in the amount of the entire economic value of the contract as determined by the board as a condition to filing a petition for a writ of review or other court filing to ensure that employees or the labor organization receive the economic benefits of the contract if the employer does not prevail. The employer shall post the bond with the board within 30 days after the order of the board takes effect. The court shall dismiss any petition for a writ of review or other court filing where the petitioning employer did not timely comply with this subdivision. For purposes of this subdivision, the "entire economic value of the contract" means the difference between the employees' existing wages and economic benefits and those set forth in the contract.

(e) The bond required under subdivision (d) shall consist of an appeal bond issued by a licensed surety or a cash deposit with the board in the amount specified in subdivision (d). The employer shall provide written notification to the labor organization of the posting of the bond and shall also provide notice to the court at the time of the filing of the petition for a writ of review or other court filing. The bond shall be on the condition that, if the petition or other court filing is withdrawn, dismissed, or denied or if judgment is otherwise entered against the employer, the employer shall pay the amount owed pursuant to the board's order or the judgment of the court

if in a different amount, unless the employer and labor organization 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 finality of the review proceeding or the execution of a settlement agreement, a portion of the bond equal to the amount owed, or the entire bond if the amount owed exceeds the bond, is forfeited to the board for appropriate distribution.

SEC. 19. 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. 20. 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.

SEC. 21. The sum of ten thousand dollars (\$10,000) is hereby appropriated for the 2022–23 fiscal year from the General Fund to the Agricultural Labor Relations Board to implement the provisions related to agricultural labor relations in this act.

SEC. 22. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.