

CITY OF OAKLAND  
BILL ANALYSIS



2011 MAY -5 PM 5:12  
Date: May 19, 2011

Bill Number: SB 104 (as amended)

Bill Author: Senator Steinberg

**DEPARTMENT INFORMATION**

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**RECOMMENDED POSITION: SUPPORT**

**Summary of the Bill:**

Authorizes agricultural employees to select collective bargaining representation through a specified "majority signup election" process, in addition to the existing representation election process provided for under current law.

**Specifically, this bill:**

- 1) Creates an alternative procedure to the secret ballot election-the majority signup election-which would allow employees of a bargaining unit to select their representative for collective bargaining by submitting a petition that alleges the following:
  - a) That the number of agricultural employees currently employed by the employer is not less than 50% of the employer's peak agricultural employment for the current calendar year;
  - b) That no valid election has been conducted within the previous 12 months;
  - c) That no labor organization is currently certified as the exclusive representative of the agricultural employees named in the petition; and
  - d) That the petition is not barred by an existing collective bargaining agreement.
- 2) Requires that the petition must be accompanied with representation cards signed by more than 50% of the currently employed employees in the bargaining unit.
- 3) Specifies the content of representation cards used and requires the Agricultural Labor Relations Board (ALRB), upon request of a labor organization, to issue standardized representation cards for use with a petition for "majority signup election."
- 4) Requires the ALRB to keep the information on the cards confidential.
- 5) Requires a labor organization submitting a petition for a "majority signup election" to personally serve the petition on the employer the same day that the petition is filed with the ALRB.

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6) Requires the employer, within 48 hours after the petition is served, to file with ALRB its response to the petition, including a complete and accurate list of all employees in the bargaining unit.

7) Requires the ALRB to assess a fine of up to \$10,000 for each day an employer fails to provide a complete and timely response.

8) Requires the ALRB, upon receipt of a petition for "majority signup election," to immediately commence an investigation. Within five days of receipt of the petition, the ALRB shall make an administrative determination whether the petition requirements have been met and the labor organization has submitted the requisite number of representation cards by comparing the names on the cards to the names on the list submitted by the employer.

9) Specifies that if the ALRB determines that the labor organization has submitted the requisite number of representation cards and met other requirements, it shall immediately certify the labor organization as the exclusive bargaining representative. If the ALRB determines that the labor organization has not submitted the requisite number of cards, it shall grant the labor organization 30 days to submit additional representation cards.

10) States that an employer's duty to bargain with the labor organization begins immediately after the labor organization is certified.

11) Authorizes any person, within five days after ALRB certifies a labor organization, to submit an objection to the certification on one or more of the following grounds:

- a) Allegations in the majority signup petition were false;
- b) The ALRB improperly determined the geographical scope of the bargaining unit;
- c) The "majority signup election" was conducted improperly; or,
- d) Improper conduct affected the results of the "majority signup election."

12) Requires the ALRB to conduct a hearing upon an objection petition and, if it determines that any of the above allegations are true, to revoke the certification of the labor organization.

13) Provides that if the ALRB finds that an employer has willfully or repeatedly committed specified unfair labor practices, it may impose a civil penalty of up to \$20,000 for each violation.

14) Adds specified unfair labor practice charges to the list of charges to which the ALRB must give priority over all other cases, except cases of a similar character.

**Fiscal Impact:**

According to the Assembly Appropriations Committee, costs to conduct a majority sign-up election process will likely be minor and absorbable. While the majority sign-up process is expected to decrease costs, there is the potential for increased costs due to determining the validity of representation cards. In addition, there is potential revenue from the levying of the \$20,000 civil penalty for unfair labor practices.

**Positive Factors for Oakland**

Oakland's support for SB 104 – Fair Treatment for Farm Workers Act, a bill the United Farm Workers is sponsoring simply extends collective bargaining rights for California's farm workers that are currently afforded to the state public employees responsible for overseeing California's agricultural industry who work in the Department of Food and Agriculture, the Department of Pesticide Regulation, the Department of Water Resources, the State Water Resources Control Board, the California Exposition and State Fair, and the Agricultural Labor Relations Board.

The City of Oakland recently went on record to support collective bargaining rights of workers in Wisconsin by stating, "All workers should have the right to bargain collectively to ensure they have a voice on the job and can work to improve their lives and provide for their families." Similarly, this bill would support the collective bargaining rights of farm workers in California.

**Negative Factors for Oakland**

**NONE**

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical (top priority for City lobbyist, city position required ASAP)
- Very important (priority for City lobbyist, city position necessary)
- Somewhat Important (City position desirable if time and resources are available)

\_\_\_ Minimal or \_\_\_ None (do not review with City Council, position not required)

**Known support:**

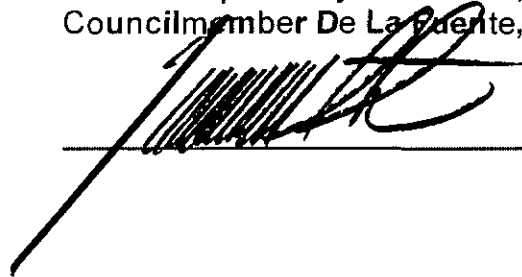
United Farm Workers (source)  
American Federation of State, County and Municipal Employees, AFL-CIO  
Brotherhood of Teamsters Local Union No. 70  
California Employment Lawyers Association  
California Federation of Teachers  
California Labor Federation  
California Nurses Association  
California Rural Legal Assistance Foundation  
California Teamsters Local 911  
California Teamsters Public Affairs Council  
International Longshore & Warehouse Union Ship Clerks' Association, Local 34  
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America  
National Nurses Organizing Committee  
Northern California District Council International Longshore & Warehouse Union  
Southern California District Council of Laborers  
Teamsters Local No. 481  
Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 399  
Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers of America Local Union No. 166  
The International Alliance of Theatrical State Employees Local 80  
United Food & Commercial Workers Union Local No. 324  
United Food & Commercial Workers Western States Council  
United Nurses Association of California/Union of Healthcare Professionals

**Known Opposition:**

Agricultural Council of California  
Associated Builders and Contractors of California  
California Association of Wine Grape Growers  
California Chamber of Commerce  
California Farm Bureau Federation  
California Grocers Association  
California Hotel & Lodging Association  
California Independent Grocers Association

California Manufacturers & Technology Association  
California Newspaper Publishers Association  
California Restaurant Association  
California Retailers Association  
Greater San Fernando Valley Chamber of Commerce  
National Right to Work Committee  
Palm Desert Chamber of Commerce

Respectfully Submitted,  
Councilmember De La Puente,



A handwritten signature in black ink, appearing to be 'De La Puente', is written over a horizontal line. The signature is stylized and includes a long, sweeping stroke that extends downwards and to the left.

**Introduced by Senator Steinberg**

January 12, 2011

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An act to amend Sections 1142, 1151.6, 1156, 1156.2, 1156.3, 1156.4, 1156.7, 1157, 1160.3, and 1160.6 of, and to add Section 1156.35 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 104, as introduced, Steinberg. Labor representatives: elections.

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

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

This bill would, instead, refer to the above-described secret ballot elections as elections occurring at polling sites. This bill would also permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria,

then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

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

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

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

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. It is the intent of the Legislature, in enacting this  
2 act, to provide farm workers, who work hard in the fields, with  
3 the same right to collective bargaining representation as that  
4 afforded to the state public employees responsible for overseeing  
5 California's agricultural industry who work in the Department of  
6 Food and Agriculture, the Department of Pesticide Regulation, the  
7 Department of Water Resources, the State Water Resources Control  
8 Board, the California Exposition and State Fair, and the  
9 Agricultural Labor Relations Board.

10 SEC. 2. Section 1142 of the Labor Code is amended to read:  
11 1142. (a) The principal office of the board shall be in  
12 Sacramento, but it may meet and exercise any or all of its power  
13 at any other place in California.

14 (b) Besides the principal office in Sacramento, as provided in  
15 subdivision (a), the board may establish offices in such other cities  
16 as it shall deem necessary. The board may delegate to the personnel  
17 of these offices such powers as it deems appropriate to determine  
18 the unit appropriate for the purpose of collective bargaining, to  
19 investigate and provide for hearings; to determine whether a

1 question of representation exists, to direct an election-by-a-secret  
2 ballot *at a polling site or by majority signup* pursuant to the  
3 provisions of Chapter 5 (commencing with Section 1156), and to  
4 certify the results of such election, and to investigate, conduct  
5 hearings and make determinations relating to unfair labor practices.  
6 The board may review any action taken pursuant to the authority  
7 delegated under this section upon a request for a review of such  
8 *the* action filed with the board by an interested party. Any such  
9 review made by the board shall not, unless specifically ordered by  
10 the board, operate as a stay of any action taken. The entire record  
11 considered by the board in considering or acting upon any-sueb  
12 request or review shall be made available to all parties prior to  
13 such consideration or action, and the board's findings and action  
14 thereon shall be published as a decision of the board.

15 SEC. 3. Section 1151.6 of the Labor Code is amended to read:

16 1151.6. ~~Any~~*A* person who ~~shall willfully resist, prevent,~~  
17 ~~impede, or interfere~~ *resists, prevents, impedes, or interferes* with  
18 any member of the board or any of its agents or agencies in the  
19 performance of duties pursuant to this part ~~shall be~~ *is* guilty of a  
20 misdemeanor, and shall be punished by a fine of not more than  
21 five thousand *dollars* (\$5,000)-dollars.

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

23 1156. ~~Representatives—~~*(a) A representative* designated or  
24 selected by a ~~secret ballot~~ *polling site election pursuant to Section*  
25 *1156.3, or by a majority signup election pursuant to Section*  
26 *1156.35*, for the purposes of collective bargaining by the majority  
27 of the agricultural employees in ~~the~~ *a* bargaining unit shall be the  
28 ~~exclusive—representatives~~ *representative* of all the agricultural  
29 employees in ~~such~~ *the* unit for the purpose of collective bargaining  
30 with respect to rates of pay, wages, hours of employment, ~~or~~  
31 *benefits, and other terms and conditions of employment.* ~~Any~~

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

40 SEC. 5. Section 1156.2 of the Labor Code is amended to read:



1 1156.2. ~~The~~ bargaining unit ~~shall be~~ *is* all the agricultural  
2 employees of an employer. If the agricultural employees of the *an*  
3 employer are employed in two or more noncontiguous geographical  
4 areas, the board shall determine the appropriate unit or units of  
5 agricultural employees in which a ~~secret-ballot~~ *polling site* election  
6 ~~shall be~~ *or a majority signup election shall be* conducted.

7 SEC. 6. Section 1156.3 of the Labor Code is amended to read:

8 1156.3. (a) A petition that is either signed by, or accompanied  
9 by authorization cards signed by, a majority of the currently  
10 employed employees in the bargaining unit, may be filed by an  
11 agricultural employee or group of agricultural employees, or any  
12 individual or labor organization acting on behalf of those  
13 agricultural employees, in accordance with any rules and  
14 regulations prescribed by the board. The petition shall allege all  
15 of the following:

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

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

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

28 (4) That the petition is not barred by an existing  
29 ~~collective-bargaining~~ *collective bargaining* agreement.

30 (b) Upon receipt of a signed petition, as described in subdivision  
31 (a), the board shall immediately investigate the petition. If the  
32 board has reasonable cause to believe that a bona fide question of  
33 representation exists, it shall direct a representation election-by  
34 ~~secret-ballot~~ *at a polling site* to be held, upon due notice to all  
35 interested parties and within a maximum of seven days of the filing  
36 of the petition. If, at the time the election petition is filed, a majority  
37 of the employees in a bargaining unit are engaged in a strike, the  
38 board shall, with all due diligence, attempt to hold a ~~secret-ballot~~  
39 *polling site* election within 48 hours of the filing of the petition.  
40 The holding of elections under strike circumstances shall take

1 precedence over the holding of other ~~secret~~ ballot *polling site*  
2 elections.

3 (c) The board shall make available, at any election *or alternative*  
4 *selection process* held under this chapter, *either* ballots *or*  
5 *representation cards, as appropriate, and all materials used to*  
6 *select labor representatives* printed in English and Spanish. The  
7 board may also make available at the election *or selection process*  
8 *ballots or representation cards, as appropriate, and all other*  
9 *election materials used to select labor representatives* printed in  
10 any other language as may be requested by an agricultural labor  
11 organization or any agricultural employee eligible to vote under  
12 this part. Every election ballot, except ballots in runoff elections  
13 where the choice is between labor organizations, shall provide the  
14 employee with the opportunity to vote against representation by  
15 a labor organization by providing an appropriate space designated  
16 "No Labor Organizations."

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

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

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

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

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

3 (1) The Department of Fair Employment and Housing finds that  
4 the labor organization engaged in discrimination on any basis listed  
5 in subdivision (a) of Section 12940 of the Government Code, as  
6 those bases are defined in Sections 12926 and 12926.1 of the  
7 Government Code, except as otherwise provided in Section 12940  
8 of the Government Code.

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

17 SEC. 7. Section 1156.35 is added to the Labor Code, to read:

18 1156.35. (a) As an alternative procedure to the polling site  
19 election process set forth in Section 1156.3, a labor organization  
20 may be certified as the exclusive bargaining representative of a  
21 bargaining unit through a majority signup election. A majority  
22 signup election permits a bargaining unit to summarily select a  
23 labor organization as its representative for collective bargaining  
24 purposes without holding a polling site election.

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

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

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

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

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

7 (c) (1) The petition for majority signup election in subdivision  
8 (b) shall be accompanied by representation cards signed by more  
9 than 50 percent of the currently employed employees. For purposes  
10 of this section, "currently employed employees" means those  
11 agricultural employees of the employer who were employed at  
12 any time during the employer's last payroll period that ended prior  
13 to the filing of the petition for majority signup election.

14 (2) The representation cards shall be titled "ALRB  
15 Representation Cards for Certification of a Labor Organization."

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

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

22 (B) Sufficient space for all of the following information:

23 (i) The name of the labor organization.

24 (ii) The name of the agricultural employer.

25 (iii) The employee's name, address, and telephone number.

26 (iv) The name of the employee's foreman or forewoman.

27 (v) The employee's crew number.

28 (vi) The signature of the employee.

29 (vii) The signature of the person witnessing that the employee  
30 signed the card.

31 (viii) The date when the card is signed.

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

36 (5) Upon the request of a labor organization, the board shall  
37 issue standardized representation cards for use with a petition for  
38 majority signup election, in accordance with subdivision (c) of  
39 Section 1156.3. The regional board offices shall maintain a record  
40 of the name, current address, and working phone number of the

1 labor organization that has requested the issuance of the cards; the  
2 number of cards requested; and the date of the issuance of the  
3 cards. This information shall be made available upon the request  
4 of any person.

5 (6) A representation card is valid, for the purpose of supporting  
6 a petition for majority signup election, if it contains the name of  
7 the labor organization, the name of the employee, and the  
8 employee's signature. A labor organization may fill out all of the  
9 information contained in a representation card, except for the  
10 employee's signature.

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

13 (d) A labor organization submitting a petition for a majority  
14 signup election shall personally serve the petition on the employer  
15 on the same day that the petition is filed with the board. Within  
16 48 hours after the petition is served, the employer shall file with  
17 the board, and personally serve upon the labor organization that  
18 filed the petition, its response to the petition. As part of the  
19 response, the employer shall provide a complete and accurate list  
20 of the full names, current street addresses, job classifications, and  
21 crew or department of all currently employed employees in the  
22 bargaining unit. The employer shall organize the employees' names  
23 and addresses and other information by crew or department and  
24 shall provide the list to the board and petitioning labor organization  
25 in hard copy and electronic format. The employees' first name,  
26 middle name or initial, last name, address, city, state, ZIP Code,  
27 classification, and crew or department shall be organized into  
28 separate columns. Immediately upon receiving the employer  
29 response and employee list, the board shall provide the response  
30 and employee list by hard copy and electronic copy to the labor  
31 organization that filed the majority signup election petition. For  
32 each day an employer fails to provide a complete and timely  
33 response, the board shall assess a fine of up to ten thousand dollars  
34 (\$10,000).

35 (e) (1) Upon receipt of a petition for majority signup election,  
36 the board shall immediately commence an investigation regarding  
37 the validity of the petition and the accompanying representation  
38 cards. Within five days of receipt of the petition, the board shall  
39 make an administrative determination as to whether the  
40 requirements set forth in subdivision (b) are met by the petition

1 and whether the labor organization submitting the petition has  
2 submitted the number of representation cards required by paragraph  
3 (1) of subdivision (c). In making this determination, the board shall  
4 compare the names on the representation cards submitted by the  
5 labor organization to the names on the list of currently employed  
6 employees provided by the employer. The board shall ignore  
7 discrepancies between the employee's name listed on the  
8 representation card and the employee's name on the employer's  
9 list if the preponderance of the evidence, such as the employee's  
10 address and the name of the employee's foreman or forewoman,  
11 shows that the employee who signed the card is the same person  
12 as the employee on the employer's list.

13 (2) The board shall return those representation cards that it finds  
14 invalid to the labor organization that filed the petition for majority  
15 signup election, with an explanation as to why each representation  
16 card was found to be invalid. To protect the confidentiality of the  
17 names on the representation cards, the board's determination of  
18 whether a particular card is valid shall be final and not subject to  
19 appeal or review.

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

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

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

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

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

1 (C) The majority signup election was conducted improperly.

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

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

12 (3) The filing of a petition objecting to a majority signup election  
13 certification shall not diminish the duty to bargain or delay the  
14 running of the 180-day period set forth in subdivision (a) of Section  
15 1164.

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

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

26 (h) Once a labor organization has filed a majority signup election  
27 petition, no other majority signup election petition shall be  
28 considered by the board with the same agricultural employer until  
29 the board determines whether the labor organization that filed the  
30 pending majority signup election petition should be certified.  
31 However, the board may consider a second majority signup petition  
32 if the second petition alleges that the first petition was filed because  
33 of the employer's unlawful assistance, support, creation, or  
34 domination of the labor organization that filed the first petition.  
35 In those cases, the board shall expedite its investigation of the  
36 matter and render a decision on certification within three months  
37 of the filing of the first petition. If the board finds that a labor  
38 organization was assisted, supported, created, or dominated by an  
39 employer, that labor organization's petition shall be dismissed and  
40 the second petition shall be considered. Any labor organization

1 that has been assisted, supported, created, or dominated by an  
2 employer shall be disqualified from tiling any further petitions  
3 with the board for a period of one year.

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

6 SEC. 8. Section 1156.4 of the Labor Code is amended to read:

7 1156.4. Recognizing that agriculture is a seasonal occupation  
8 for a majority of agricultural employees, and wishing to provide  
9 the fullest scope for employees' enjoyment of the rights included  
10 in this part, the board shall not consider a representation petition,  
11 *a petition for a majority signup election*, or a petition to decertify  
12 as timely tiled unless the employer's payroll reflects 50 percent  
13 of the peak agricultural employment for such employer for the  
14 current calendar year for the payroll period immediately preceding  
15 the tiling of the petition:

16 ~~In this connection, the~~ *petition. The* peak agricultural  
17 employment for the prior season shall alone not be ~~a~~ *the sole* basis  
18 for such *this* determination, but rather the board shall estimate  
19 peak employment on the basis of acreage and crop statistics, which  
20 shall be applied uniformly throughout the State of California, and  
21 upon all other relevant data.

22 SEC. 9. Section 1156.7 of the Labor Code is amended to read:

23 1156.7. (a) ~~No collective bargaining~~ *collective bargaining*  
24 agreement executed prior to the effective date of this chapter shall  
25 bar a petition for an election.

26 (b) ~~A collective bargaining~~ *collective bargaining* agreement  
27 executed by an employer and a labor organization certified as the  
28 exclusive bargaining representative of his *or her* employees  
29 pursuant to this chapter shall be a bar to a petition for an election  
30 among such *those* employees for the term of the agreement, but  
31 in any event ~~such~~ *the* bar shall not exceed three years, provided  
32 that both the following conditions are met:

33 (1) The agreement is in writing and executed by all parties  
34 thereto.

35 (2) It incorporates the substantive terms and conditions of  
36 employment of such *the* employees.

37 (c) Upon the tiling with the board by an employee or group of  
38 employees of a petition signed by 30 percent or more of the  
39 agricultural employees in a bargaining unit represented by a  
40 certified labor organization which is a party to a valid



1 ~~collective-bargaining~~ *collective bargaining* agreement, requesting  
2 that ~~such~~ *the* labor organization be decertified, the board shall  
3 conduct ~~an a~~ *polling site* election ~~by-secret-ballot~~ pursuant to the  
4 applicable provisions of this chapter, and shall certify the results  
5 to ~~such~~ *the* labor organization and employer.

6 However, ~~such~~ *a* ~~the~~ petition shall not be deemed timely unless  
7 it is filed during the year preceding the expiration of a  
8 ~~collective-bargaining~~ *collective bargaining* agreement which would  
9 otherwise bar the holding of an election, and when the number of  
10 agricultural employees is not less than 50 percent of the employer's  
11 peak agricultural employment for the current calendar year.

12 (d) Upon the filing with the board of a signed petition by an  
13 agricultural employee or group of agricultural employees, or any  
14 individual or labor organization acting in their behalf, accompanied  
15 by authorization cards signed by a majority of the employees in  
16 an appropriate bargaining unit, and alleging all the conditions of  
17 paragraphs (1), (2), and (3), the board shall immediately investigate  
18 ~~such~~ *the* petition and, if it has reasonable cause to believe that a  
19 bona fide question of representation exists, it shall direct ~~an a~~  
20 *polling site* election ~~by-secret-ballot~~ pursuant to the applicable  
21 provisions of this chapter:

22 (1) That the number of agricultural employees currently  
23 employed by the employer named in the petition, as determined  
24 from his *or her* payroll immediately preceding the filing of the  
25 petition, is not less than 50 percent of his peak agricultural  
26 employment for the current calendar year.

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

31 (3) That a labor organization, certified for an appropriate unit,  
32 has ~~a collective-bargaining~~ *collective bargaining* agreement with  
33 the employer which would otherwise bar the holding of an election  
34 and that this agreement will expire within the next 12 months.

35 SEC. 10. Section 1157 of the Labor Code is amended to read:

36 1157. (a) All agricultural employees of the employer whose  
37 names appear on the payroll applicable to the payroll period  
38 immediately preceding the filing of the petition ~~of such an~~ *for a*  
39 *representation election or a majority signup* election shall be  
40 eligible to vote. An economic striker shall be eligible to vote under

1 such regulations as the board shall find *finds* are consistent with  
2 the purposes and provisions of this part in any election, provided  
3 that the striker who has been permanently replaced shall not be  
4 eligible to vote in any election conducted more than 12 months  
5 after the commencement of the strike.

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

19 SEC. 11. Section 1160.3 of the Labor Code is amended to read:

20 1160.3. (a) The testimony taken by such a member, agent, or  
21 agency, or the board in such a hearing shall be reduced to writing  
22 and filed with the board. Thereafter, in its discretion, the board,  
23 upon notice, may take further testimony or hear argument. ~~If,~~

24 (b) *If, based* upon the preponderance of the testimony taken,  
25 the board shall be of the opinion *finds* that any a person named in  
26 the complaint has engaged in or is engaging in any such unfair  
27 labor practice, the board shall state its findings of fact and shall  
28 issue and cause to be served on such *the* person an order requiring  
29 such *that* person to cease and desist from such *the* unfair labor  
30 practice; and to take affirmative action, including reinstatement  
31 of employees with or without backpay, and making employees  
32 whole, when the board deems such relief appropriate, for the loss  
33 of pay resulting from the employer's refusal to bargain, and to  
34 provide such *providing any* other relief as ~~with~~ *would* effectuate  
35 the policies of this part. Where an order directs reinstatement of  
36 an employee, backpay may be required of the employer or labor  
37 organization, as the case may be, responsible for the discrimination  
38 suffered by him *the employee*. ~~Such~~ *The* order may further require  
39 such *the person named in the complaint* to make reports from time

1 to time showing the extent to which *it the employer* has complied  
2 with the order. ~~If;~~

3 (c) *If the board finds that an employer has willfully or repeatedly*  
4 *committed an unfair labor practice under subdivision (a) or (c) of*  
5 *Section 1153 while employees of the employer were seeking*  
6 *representation by a labor organization or after a labor*  
7 *organization was designated as a representative under Section*  
8 *1156, the board may, in addition to any order permitted by this*  
9 *section, impose a civil penalty of up to twenty thousand dollars*  
10 *(\$20,000) for each violation. The board shall determine the amount*  
11 *of any civil penalty imposed based upon the impact of the unfair*  
12 *labor practice on the charging party or on other persons seeking*  
13 *to exercise rights guaranteed by this part, or on the public interest.*

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

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

37 SEC. 12. Section 1160.6 of the Labor Code is amended to read:

38 1160.6. (a) *Whenever it is charged that any (d) an employer*  
39 *has, while the employees of that employer were seeking*  
40 *representation by a labor organization or during the period after*

1 *a labor organization was recognized as a representative,*  
2 *discharged or otherwise discriminated against an employee in*  
3 *violation of subdivision (c) of Section 1153, threatened to discharge*  
4 *or to otherwise discriminate against an employee in violation of*  
5 *subdivision (a) of Section 1153, or engaged in any other unfair*  
6 *labor practice within the meaning of subdivision (a) of Section*  
7 *1153 that significantly interfered with, restrained, or coerced*  
8 *employees in the exercise of the rights guaranteed in Section 1152,*  
9 *or (2) a person has engaged in an unfair labor practice within the*  
10 *meaning of paragraph (1), (2), or (3) of subdivision (d), or of*  
11 *subdivision (g), of Section 1154, or of Section 1155, the*  
12 *preliminary investigation of—such the charge shall be made*  
13 *forthwith and given priority over all other cases except cases of*  
14 *like character in the office where it is tiled or to which it is referred.*  
15 *If;*

16 *(b) If, after such the investigation, the officer or regional attorney*  
17 *to whom the matter may be referred has reasonable cause to believe*  
18 *such the charge is true and that a complaint should issue, he or she*  
19 *shall, on behalf of the board, petition the superior court in the*  
20 *county in which the unfair labor practice in question has occurred,*  
21 *is alleged to have occurred, or where the person alleged to have*  
22 *committed the unfair labor practice resides or transacts business,*  
23 *for appropriate injunctive relief pending the final adjudication of*  
24 *the board with respect to the matter. The officer or regional attorney*  
25 *shall make all reasonable efforts to advise the party against whom*  
26 *the restraining order is sought of his or her intention to seek—such*  
27 *an order at least 24 hours prior to doing so. In the event the officer*  
28 *or regional attorney has been unable to advise—such a party of his*  
29 *or her intent at least 24 hours in advance, he or she shall submit*  
30 *a declaration to the court under penalty of perjury setting forth in*  
31 *detail the efforts he or she has made. Upon the tiling of—any—such*  
32 *a petition, the superior court shall have jurisdiction to grant such*  
33 *injunctive relief or temporary restraining order as it deems just*  
34 *and proper. Upon the tiling of—any—such a petition, the board shall*  
35 *cause notice thereof to be served upon any person involved in the*  
36 *charge, and—such that person, including the charging party, shall*  
37 *be given an opportunity to appear by counsel and present any*  
38 *relevant testimony. For the purposes of this section, the superior*  
39 *court shall be deemed to have jurisdiction of a labor organization*  
40 *either in the county in which—such the organization maintains its*

1 principal office, or in any county in which its duly authorized  
2 officers or agents are engaged in promoting or protecting the  
3 interests of employee members. The service of legal process upon  
4 such *an* officer or agent shall constitute service upon the labor  
5 organization and make *the* organization a party to the suit.  
6 In situations where such relief is appropriate, the procedure  
7 specified herein shall apply to charges with respect to paragraph  
8 (4) of subdivision (d) of Section 1154.

9 SEC. 13. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

MAY -5 PM 5:12

Approved as to Form and Legality

City Attorney's Office

**OAKLAND CITY COUNCIL**  
**RESOLUTION No. \_\_\_\_\_ C.M.S.**

**DRAFT**

Introduced by Councilmember Ignacio De La Fuente

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**Resolution Supporting Senate Bill 104 (Steinberg) "Fair Treatment Of Farm Workers Act"  
Which Authorizes Agricultural Employees To Select Collective Bargaining  
Representation Through A Specified "Majority Signup Election" Process, In Addition To  
The Existing Representation Election Process Provided For Under Current Law**

**WHEREAS**, SB 104 authorizes agricultural employees to select collective bargaining representation through a specified "majority signup election" process, in addition to the existing representation election process provided for under current law; and

**WHEREAS**, SB 104 creates an alternative procedure to the secret ballot election-the majority signup election-which would allow employees of a bargaining unit to select their representative for collective bargaining by submitting a petition; and

**WHEREAS**, SB 104 requires that the petition must be accompanied with representation cards signed by more than 50% of the currently employed employees in the bargaining unit; and

**WHEREAS**, SB 104 specifies the content of representation cards used and requires the Agricultural Labor Relations Board (ALRB), upon request of a labor organization, to issue standardized representation cards for use with a petition for "majority signup election."; and

**WHEREAS**, SB 104 requires the ALRB to keep the information on the cards confidential; and

**WHEREAS**, SB 104 requires a labor organization submitting a petition for a "majority signup election" to personally serve the petition on the employer the same day that the petition is filed with the ALRB; and

**WHEREAS**, SB 104 requires the ALRB to assess a fine of up to \$10,000 for each day an employer fails to provide a complete and timely response; and

**WHEREAS**, SB 104 requires the ALRB, upon receipt of a petition for "majority signup election," to immediately commence an investigation. Within five days of receipt of the petition, the ALRB shall make an administrative determination whether the petition requirements have been met and the labor organization has submitted the requisite number of representation cards by comparing the names on the cards to the names on the list submitted by the employer; and

**WHEREAS**, SB 104 specifies that if the ALRB determines that the labor organization has submitted the requisite number of representation cards and met other requirements, it shall immediately certify the labor organization as the exclusive bargaining representative; and

**WHEREAS**, SB 104 states that an employer's duty to bargain with the labor organization begins immediately after the labor organization is certified; and

**WHEREAS**, SB 104 authorizes any person, within five days after ALRB certifies a labor organization, to submit an objection to the certification; and

**WHEREAS**, SB 104 requires the ALRB to conduct a hearing upon an objection petition and, if it determines that any of the above allegations are true, to revoke the certification of the labor organization; and

**WHEREAS**, SB 104 provides that if the ALRB finds that an employer has willfully or repeatedly committed specified unfair labor practices, it may impose a civil penalty of up to \$20,000 for each violation; and

**WHEREAS**, SB 104 adds specified unfair labor practice charges to the list of charges to which the ALRB must give priority over all other cases, except cases of a similar character; and

**RESOLVED**: The City of Oakland declares its support for SB 104 (Steinberg); and be it

**FURTHER RESOLVED**: That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011

**PASSED BY THE FOLLOWING VOTE:**

**AYES-** BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

**NOES-**

**ABSENT-**

**ABSTENTION-**

**ATTEST:** \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California