

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 10/20)

Fiscal Year FY 2023-34	Business Unit 7300	Department Agricultural Labor Relations Board	Priority No. ALRB-3
Budget Request Name 7300-007-BCP-2023-GB		Program General Counsel	Subprogram Click or tap here to enter text.

Budget Request Description
 Miscellaneous Workload (AB 2183)

Budget Request Summary

The ALRB requests \$1,113,000 in General Fund and 6.0 positions (3.0 Attorney III and 3.0 Field Examiner II positions) to address the increased workload and new demands that will be generated by the passage of AB 2183.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Click or tap here to enter text.	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO Click or tap here to enter text.	Date Click or tap to enter a date.

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. Click or tap here to enter text. **Project Approval Document:** Click or tap here to enter text.

Approval Date: Click or tap to enter a date.

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Brian Dougherty	Date 10/7/2022	Reviewed By Julia Montgomery	Date 10/7/2022
Department Director Victoria Hassid	Date 10/7/2022	Agency Secretary Natalie Palugyai	Date 10/10/2022

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE Dept. of Technology

PPBA Danielle Brandon	Date submitted to the Legislature 1/10/2023
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A. Budget Request Summary

The ALRB requests \$1,113,000 in General Fund and position authority for 3.0 Attorney III and 3.0 Field Examiner II positions to address the increased workload and new demands that will be generated by the passage of AB 2183. These positions would be added to the General Counsel program staff, who are responsible for conducting elections as well as for investigating unfair labor practices and prosecuting violations resulting from election activity and subsequent bargaining.

B. Background/History

Governor Newsom signed Assembly Bill 2183 into law on September 28, 2022. This new law is intended to remove barriers for agricultural workers to elect union representatives, thereby facilitating union elections and increasing access to this process by allowing farmworkers to sign petitions for majority support, rather than the existing system which requires a subsequent secret ballot election in the fields following a showing of majority support. AB 2183 requires the ALRB to determine the validity of majority support within an extremely expedited timeframe of 5 days. This determination requires decisions such as the geographic scope and size of the bargaining unit. Expedited time frames also exist for adjudicating challenges to majority support petitions and hearings are to be held in no later than 14 days from the date the majority support petition is filed. The ALRB is also charged with investigating unfair labor practices and election objections that result from election activity. Past contested elections at the ALRB have created a significant increase in ALRB's workload, given the number of unfair labor practice charges filed that must be investigated, prosecuted and adjudicated.

Resource History (Dollars in thousands)

Program Budget	PY – 3	PY – 2	PY-1	PY	CY
Authorized Expenditures	10,247	10,657	11,343	11,783	11,573
Actual Expenditures	9,300	10,552	10,729	10,865	11,573
Revenues	0	0	0	0	0
Authorized Positions	64	67	70	70	70.0
Filled Positions	52.3	54.3	58.5	62.6	65.0
Vacancies	11.7	12.7	11.5	7.4	5.0

C. State Level Consideration

The ALRB has exclusive jurisdiction over the issues and work covered by AB 2183. Other state departments and entities are therefore not implicated by this legislation or this Budget Change Proposal.

D. Justification

AB 2183 simplifies the election process for agricultural workers by eliminating some barriers unions had to overcome to become a certified representative of an agricultural workforce, such as the additional requirement of a secret ballot election following a showing of proof of majority support. We therefore anticipate an increase in the number of elections and resulting union certifications. This will also significantly increase

the number of election objections and unfair labor practice charges that will be filed, as is evidenced by the increase in workload generated by past elections the ALRB has handled in recent years. AB 2183 also places new requirements on the ALRB to conduct expedited investigations and hearings, which will require experienced staff to be able to conduct high-quality investigations, complex factual and legal analysis, effectively prosecute violations when appropriate, and to make correct determinations within a very short time frame. ALRB therefore needs the additional staff resources listed above to both meet the increased workload demands from cases that will be filed, as well as the new obligations to expedite investigations and hearings that this new law requires.

Unfair labor practice case filings and resulting workload significantly increase with election activity and union representation:

ALRB workload data shows a significant increase in case filings and staff time on unfair labor practice charge cases resulting from contested elections. The two most recent contested elections that the ALRB handled show this increase in workload. The ALRB conducted an election earlier this year at Sonoma Cho, LLC involving a bargaining unit of 15 employees. Conducting and overseeing the actual election took 204.75 hours. However, as noted previously, organizing and election activity result in an increase in related unfair labor practice charge filings. In Sonoma Cho workers filed three unfair labor practice charges alleging election interference and retaliation against workers who supported the union. The staff time spent on these three cases was 1704.71 hours, prior to the parties reaching a settlement agreement. If this case were to go to hearing, these hours would likely double, as staff would have had to prepare for hearing, conduct the hearing and write several post-hearing legal briefs. ALRB staff had to conduct expedited investigations of the charges in this case and conduct multiple witness interviews within an extremely short timeframe. ALRB attorneys also had to conduct legal research on several different complex legal issues.

The ALRB also held a contested election at Premiere Raspberries LLC in 2017 for a bargaining unit of 592 employees. Staff spent 571.63 hours on election-related activity, and 4,651.8 hours on the 39 unfair labor practice charges that were filed that related to the election and the union's certification. ALRB staff investigated and made determinations on numerous claims of election interference, coercion and retaliation filed against both the employer and the union. These 39 cases included multiple allegations including: intimidation of workers to gain votes, bribing workers to gain votes, unlawful suspension, firing and/or failure to recall workers who supported the union, forging of signatures, unlawful interrogation, surveillance of workers and interference by the employer, captive audience meetings (to unlawfully influence workers' votes), discipline of workers for supporting the union, employer's refusal to bargain with the union and other issues.

In addition to the workload resulting from election-related claims, the ALRB's workload is also very likely to increase from new case filings involving failure to bargain in good faith after a union is certified. Such cases require a very complex factual and legal analysis of all efforts the union and employer made in attempting to reach a collective bargaining agreement, and a decision as to whether the parties negotiated in good faith. When a decision is reached that a party engaged in bad faith bargaining, the regional office staff prepare calculations of the monetary amounts owed to workers and conduct a hearing to determine how much should be paid. These proceedings require significant staff resources. For example, in one such case, the ALRB held a hearing in August 2022 to determine amounts owed to workers whose employer the Board found engaged in bad faith bargaining. To date, ALRB regional office staff have entered 7,558.08 hours on this case, which includes hours for investigating and

prosecuting the initial allegations as well as the work in determining the amount owed to workers and resulting hearing. With an increase in the number of unions that will likely be certified representatives of agricultural workforces under AB 2183, it is very likely that more cases will be filed with the ALRB alleging bad faith bargaining that will require detailed investigations and prosecution when violations are found.

New requirements for expedited determinations will increase complexity and volume of work:

AB 2183 places new requirements on the ALRB to make complex determinations on an expedited basis, including whether there is proof of majority support and what the geographic scope is of the bargaining unit. ALRB staff will need to make determinations within 5 days of receiving the majority support petition. In addition, objections to certification (including improper geographic scope and improper conduct affecting results) must be investigated immediately and the ALRB must hold a hearing within 14 days from the date the objection is filed. In past election cases, these determinations have involved detailed investigative work and complex legal analysis, including (but not limited to):

- Whether specific employees are in the bargaining unit (based on type of work they do, where they work, whether they're an employee or contractor, whether they're a supervisor or other staff not in bargaining unit);
- Comparisons of the type of work performed and duties of employees in different non-contiguous geographic locations;
- Investigation into the type of duties performed by employees and how often;
- Comparison of wages paid to employees in different job categories and locations;
- Comparison of terms and conditions of employment for workers at different locations or in different job classifications;
- Inquiries into ownership of business entities and locations as well as the relationships among different entities;
- Investigation and legal research as to the nature of a business entity and whether it is an agricultural employer as defined by the Agricultural Labor Relations Act (especially common for cannabis operations);
- Investigation and legal research into whether certain categories of workers are considered agricultural employees as defined by the Agricultural Labor Relations Act and appropriately included within the bargaining unit;
- Evaluation of evidence regarding proof of employee support showing the employee who signed in support is the same person on the employer's list (this will likely involve interviews of employees and forepersons and evaluation of written documents);
- Investigation of the validity of signed authorization cards when disputed (may involve evaluation of signatures, interviewing witnesses, obtaining signed declarations);
- Investigation of claims of coercion, including witness interviews and credibility determinations;
- Verification of the accuracy of the employer's list by checking against payroll and investigating the number of eligible employees, interviewing witnesses and conducting legal research on employee eligibility; and
- Legal research into bargaining history and legislation regarding comprehensive bargaining units.

In addition, the new law requires that when a second majority support petition is filed that alleges the first petition was filed because of employer unlawful

assistance/domination of labor organization, the ALRB must conduct an expedited investigation and render a decision within 3 months of the filing of the first petition. These determinations will also require detailed factual investigations and may also require significant legal research, writing and analysis regarding what type of activity unlawful assistance.

Staffing request:

AB 2183 has a limit of 75 certifications through January 1, 2028. Since FY 2016-17, the ALRB has held 6 elections. Nonetheless, contested elections result in a significant increase in the ALRB's workload, as described above. This workload is further increased in relations to the size of the employer. Even a marginal increase in the number of elections and certifications resulting from this new law will therefore significantly increase the ALRB's workload and demand for experienced staff who can investigate, research and analyze complex issues under the expedited timelines required by this new law. Attorney IIIs and Field Examiner IIs will have more background, experience and expertise to be able to conduct the factual inquiries and needed legal research, writing and analysis of complex issues within the required timeframes Attorney IIIs will also be very helpful in serving as a lead in helping to train and review the work of entry level attorneys on the above-listed matters. This additional staff is also needed so that we may continue to move our other, non-election related unfair labor practice cases forward without undue delay.

E. Outcomes and Accountability

AB 2183 obligates ALRB to investigate and make determinations about the validity of majority support petitions as well as allegations of interference, coercion, retaliation and other unlawful activity within an extremely expedited timeframe. ALRB staff will prioritize this work as required by the law but if additional resources are not provided, ALRB's other investigations of unfair labor practices, prosecutions of violations and work in obtaining remedies for farmworkers and other stakeholders whose rights were violated will be significantly delayed and large backlogs will arise. This will in turn make it more difficult for ALRB to successfully prosecute violations as it will be more difficult to find witnesses and relevant documents, and to access memories of events that happened very remotely in time.

F. Analysis of All Feasible Alternatives

Alternative #1: Approve the request

Pro: ALRB will be able to meet its new obligations under AB 2183 while not unduly delaying investigations and work on other matters. ALRB will also have more senior staff that are able to more efficiently and effectively investigate the required matters and prosecute violations of the law.

Con: More general fund will be spent to support additional resources to the ALRB.

Alternative #2: Do not approve permanent resources

Pro: No further general fund expenditures will be spent to implement AB 2183.

Con: Without sufficient additional resources, ALRB will develop a significant backlog of cases not subject to the stringent timelines imposed by AB 2183 and ALRB will be hindered in its ability investigate cases in a timely manner. ALRB will also not have enough senior-level staff to perform the complex investigations, legal research, writing and analysis required by the determinations needed under this new law. This will overburden existing staff and result in a lesser quality work product.

Alternative #3: Approve limited-term funding to address this new workload.

Pro: ALRB would have access to temporary funding for new staff to address the new obligations that AB 2183 requires.

Con: ALRB will face challenges in recruiting and hiring high-quality staff for limited term positions, given the availability of permanent positions in the current job market. ALRB would not be able to engage in longer-term planning that would incorporate these additional resources.

G. Implementation Plan

ALRB will place a Field Examiner II in its field offices in Salinas, Oxnard and Visalia. Salinas and Visalia are regional offices that provide the main support for each of the regions they serve in California. The Oxnard office has historically received a high percentage of the unfair labor practice charge filings at the ALRB and is close to areas where there has been recent organizing activity (such as Santa Maria). ALRB will place the Attorney III positions among its offices, depending on where the best candidates are located.

H. Recommendation

Approve the \$1,113,000 in General Fund and 6.0 additional positions at ALRB to address the additional obligations and increased workload that will result from the passage of Assembly Bill 2183.

BCP Fiscal Detail Sheet

BCP Title: Miscellaneous Workload (AB 2183)

BR Name: 7300-007-BCP-2023-GB

Budget Request Summary

Personal Services

Personal Services	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
Positions - Permanent	0.0	6.0	6.0	6.0	6.0	6.0
Total Positions	0.0	6.0	6.0	6.0	6.0	6.0
Salaries and Wages Earnings - Permanent	0	636	636	636	636	636
Total Salaries and Wages	\$0	\$636	\$636	\$636	\$636	\$636
Total Staff Benefits	0	357	357	357	357	357
Total Personal Services	\$0	\$993	\$993	\$993	\$993	\$993

Operating Expenses and Equipment

Operating Expenses and Equipment	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
5301 - General Expense	0	60	60	60	60	60
5320 - Travel: In-State	0	60	60	60	60	60
Total Operating Expenses and Equipment	\$0	\$120	\$120	\$120	\$120	\$120

Total Budget Request

Total Budget Request	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
Total Budget Request	\$0	\$1,113	\$1,113	\$1,113	\$1,113	\$1,113

Fund Summary

Fund Source

Fund Source	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
State Operations - 0001 - General Fund	0	1,113	1,113	1,113	1,113	1,113
Total State Operations Expenditures	\$0	\$1,113	\$1,113	\$1,113	\$1,113	\$1,113
Total All Funds	\$0	\$1,113	\$1,113	\$1,113	\$1,113	\$1,113

Program Summary

Program Funding

Program Funding	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
6055 - General Counsel Administration	0	1,113	1,113	1,113	1,113	1,113
Total All Programs	\$0	\$1,113	\$1,113	\$1,113	\$1,113	\$1,113