



## Daily Labor Report®

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**145 DLR A-11**

### ***Representation Elections***

#### **GOP Senators Propose NLRA Amendment Fixing Minimum Time to Representation Votes**

Sen. Jim DeMint (R-S.C.) and six co-sponsors proposed legislation (S. 1425) July 27 that would prevent the National Labor Relations Board from conducting an election to resolve a question of union representation of workers less than 40 calendar days after the board received a petition for such an election.

The "Fair Representation in Elections Act" would amend the National Labor Relations Act to add the 40-day minimum and would also require the board to provide at least 14 days of advance notice before conducting a pre-election hearing on representation case issues.

The NLRB is presently considering proposed rule revisions aimed at reducing the current median time of 38 days from a petition to an election and allowing a hearing to be scheduled on seven days notice (137 DLR AA-1, 7/18/11; 138 DLR A-1, 7/19/11). The Senate bill would preclude the board from achieving those goals and would make other changes in its representation case procedures.

#### **Bill Would Make Changes on Elections, Voter Lists**

Section 9(b) of the NLRA, the existing provision that describes the NLRB's determination of bargaining units in representation cases, would be amended under the proposed legislation to specify that the board determination of "the unit appropriate for the purposes of collective bargaining" would have to be made prior to an election. The board's rulemaking proposal would allow certain issues in representation cases to be resolved after polling occurred.

The bill would add new language to the NLRA precluding the board from conducting an election unless and until "a hearing is conducted before a qualified hearing officer in accordance with due process on any and all material, factual issues regarding jurisdiction, statutory coverage, appropriate unit, union inclusion or exclusion, or eligibility of individuals" and such issues are resolved by an NLRB regional director or the board.

S. 1425 also provides that "[n]o election results shall be final and no labor organization shall be certified" under the NLRA unless and until the board has "ruled on—(i) each pre-election issue not resolved before the election; and (ii) the resolution, following a hearing conducted in accordance with due process, of each issue pertaining to the conduct or results of the election."

But a provision in the current text of the NLRA, Section 9(c)(4), allows parties to waive a hearing "for the purpose of a consent election in conformity with regulations and rules of decision of the Board," and S. 1425 apparently would not preclude such agreements.

In setting conditions for an employer to provide an employee list to the NLRB in an election case, the bill would require the list to be submitted "within 7 days following the Board's determination of the appropriate unit or following any agreement between the employer and the labor organization regarding the eligible voters."

The employee list described in S. 1425 is "a list of names and home addresses" of eligible voters. The board's pending rulemaking proposal would require an employer to file and serve such a list within two days after an NLRB direction of election and would require the employer to make available to parties, including labor unions, not only names and home addresses but also "available telephone numbers, available email addresses, work locations, shifts, and job classifications of all eligible voters."

The bill is co-sponsored by Sens. Lindsey Graham (R-S.C.), Jim Risch (R-Idaho), Marco Rubio (R-Fla.), David Vitter (R-La.), Orrin G. Hatch (R-Utah), and Tom Coburn (R-Okla.).

A statement by DeMint on the legislative proposal, planned for July 28, was not immediately available.

*By Lawrence E. Dubé*

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*Text of S. 1425 may be accessed at <http://op.bna.com/dlrcases.nsf/r?Open=ldue-8k7taf>.*

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ISSN 1522-5968

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112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the National Labor Relations Act to ensure fairness in election procedures with respect to collective bargaining representatives.

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IN THE SENATE OF THE UNITED STATES

Mr. DEMINT (for himself, Mr. GRAHAM, Mr. RISCH, Mr. RUBIO, Mr. VITTER, Mr. HATCH, and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the National Labor Relations Act to ensure fairness in election procedures with respect to collective bargaining representatives.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Representation  
5 in Elections Act of 2011”.

6 **SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELA-**  
7 **TIONS ACT.**

8 Section 9 of the National Labor Relations Act (29  
9 U.S.C. 159) is amended—

1 (1) in subsection (b), by inserting “prior to an  
2 election” after “in each case”; and

3 (2) in subsection (c)—

4 (A) in the flush matter following para-  
5 graph (1)(B)—

6 (i) by inserting “of 14 days in ad-  
7 vance” after “appropriate hearing upon  
8 due notice”;

9 (ii) by inserting “, and a review of  
10 post-hearing appeals,” after “the record of  
11 such hearing”; and

12 (iii) by adding at the end the fol-  
13 lowing: “No election shall be conducted  
14 less than 40 calendar days following the  
15 filing of an election petition. The employer  
16 shall provide the Board a list of employee  
17 names and home addresses of all eligible  
18 voters within 7 days following the Board’s  
19 determination of the appropriate unit or  
20 following any agreement between the em-  
21 ployer and the labor organization regard-  
22 ing the eligible voters.”; and

23 (B) by adding at the end the following:

24 “(6)(A) No election shall take place after the filing  
25 of any petition unless and until—

1           “(i) a hearing is conducted before a qualified  
2 hearing officer in accordance with due process on  
3 any and all material, factual issues regarding juris-  
4 diction, statutory coverage, appropriate unit, unit in-  
5 clusion or exclusion, or eligibility of individuals; and

6           “(ii) the issues are resolved by a Regional Di-  
7 rector, subject to appeal and review, or by the  
8 Board.

9           “(B) No election results shall be final and no labor  
10 organization shall be certified as the bargaining represent-  
11 ative of the employees in an appropriate unit unless and  
12 until the Board has ruled on—

13           “(i) each pre-election issue not resolved before  
14 the election; and

15           “(ii) the resolution, following a hearing con-  
16 ducted in accordance with due process, of each issue  
17 pertaining to the conduct or results of the election.”.