

## CONCURRENCE IN SENATE AMENDMENTS

AB 1228 (Holden)

As Amended September 11, 2023

Majority vote

**SUMMARY**

Original Committee of Reference: L. &amp; E.

Repeals the Fast Food Accountability and Standards (FAST) Recovery Act on the condition that the referendum contesting the FAST Act is withdrawn by January 1, 2024. In the event of the referendum's withdrawal, this bill not only repeals the FAST Act but also reestablishes, until January 1, 2029, a modified version of the Fast Food Council (Council). This bill additionally outlines the Council's objectives, responsibilities, and constraints in relation to setting an hourly minimum wage and overseeing the adoption and evaluation of health, safety, and employment standards for fast food restaurant employees.

**Senate Amendments**

Current Committee Recommendation: Concur

- 1) Delete the prior version of the bill and instead replace it with a modified version of the Council established by the FAST Act, contingent upon the withdrawal of the referendum challenging the FAST Act by January 1, 2024.
- 2) Define the following for purposes of this bill:
  - a) "National fast food chain" means a set of limited-service restaurants consisting of more than 60 establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises where patrons generally order or select items and pay before consuming, with limited or no table service.
  - b) "Council" means the Fast Food Council.
  - c) "Fast food restaurant" means a limited-service restaurant in the state that is part of a national fast food chain.
    - i) Exempt, from the definition of "fast food restaurant," an establishment that on September 15, 2023, operates a bakery that produces for sale on the establishment's premises bread, as defined, so long as it continues to operate as a bakery, as specified.
    - ii) Exempt, from the definition of "fast food restaurant," a restaurant that operates within a grocery establishment, as defined, and the grocery establishment employer directly employs the individuals working in the restaurant.
  - d) "Fast food restaurant franchisee" means a person to whom a fast food restaurant franchise is granted.

- e) "Fast food restaurant franchisor" means a person who grants or has granted a fast food restaurant franchise.
  - f) "Fast food restaurant operator" means a person who operates a fast food restaurant.
  - g) "Working conditions" include, but are not limited to, wages, conditions affecting fast food restaurant employees' health and safety, security in the workplace, the right to take time off work for protected purposes, and the right to be free from discrimination and harassment in the workplace.
- 3) Establish the Council within the Department of Industrial Relations (DIR) and require the Council to consist of the following nine voting members:
- a) Two representatives of the fast food restaurant industry.
  - b) Two representatives of fast food restaurant franchisees or restaurant owners.
  - c) Two representatives of fast food restaurant employees.
  - d) Two representatives of advocates for fast food restaurant employees.
  - e) One unaffiliated member of the public who is not an owner, franchisee, officer, or employee in the fast food industry; who is not an employee or officer of a labor organization or a member of a labor organization representing fast food restaurant employees; and who has not received income from the fast food industry or any labor organization for a period of two years prior to appointment.
- 4) Provide that in addition to the nine voting members, the Council is required to include the following nonvoting members:
- a) One representative from the DIR.
  - b) One representative from the Governor's Office of Business and Economic Development (GO-Biz).
- 5) Require the Governor to appoint the representatives of fast food restaurant employees, fast food restaurant franchisees or restaurant owners, the fast food restaurant industry, and the member of the public.
- 6) Require the Speaker of the Assembly and the Senate Committee on Rules to each appoint one representative of an advocate for fast food restaurant employees.
- 7) Provide that appointments to the Council shall be at the will of each appointing power and each member of the Council shall serve for a term of four years, except that all terms shall end on the date this section becomes inoperative.
- 8) Require all terms that end prior to the date that this section becomes inoperative to end on January 1.
- 9) Require vacancies on the Council occurring prior to the expiration of a term to be filled by appointment for the unexpired term.

- 10) Prohibit a member of the Council from serving more than two consecutive terms.
- 11) Require the unaffiliated member to be the chairperson of the Council and make the chairperson responsible for convening the Council.
- 12) Require the chairperson to designate a member of the Council to act as chairperson in their absence.
- 13) Require each member of the Council to receive \$100 for each day of their actual attendance at meetings of the Council and other official business of the Council, in addition to their actual necessary traveling expenses incurred in the performance of their duty as a member of the Council.
- 14) Authorize the Council, subject to appropriation, to hire assistants, officers, experts, and other staff as needed and require all Council personnel to be overseen by the chairperson or a designated executive officer.
- 15) Require all meetings of the Council to be subject to the Bagley-Keene Open Meeting Act, as specified.
- 16) Provide that the Council's purposes are to, among other things, establish fast food restaurant minimum standards on wages, and develop fast food restaurant minimum standards on working hours, and other conditions adequate to ensure and maintain the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers.
- 17) Require the Council to provide direction to, and coordinate with, state agencies regarding the health, safety, and employment of fast food restaurant workers.
- 18) Require the Council to convene its first meeting by no later than March 15, 2024.
- 19) Provide that the Council is charged with developing minimum fast food restaurant employment standards, including, as appropriate, standards on wages, working conditions, and training, as are reasonably necessary or appropriate to protect and ensure the welfare, including the physical well-being and security, of fast food workers or to otherwise meet the purposes of this section.
  - a) Authorize the Council, in developing these standards, to take into account regional differences.
  - b) Prohibit the Council from making changes that are less protective or beneficial to the health, safety, or employment conditions, including wages, of fast food restaurant workers than the previous standards.
  - c) Provide that if there is a conflict between the standards, rules, or regulations set by the Council and those issued by another state agency, the Council's standards take precedence for fast food restaurant employees and render the conflicting standards inapplicable to fast food restaurant employees.
- 20) Require decisions by the Council regarding standards, rules, or regulations to be made by an affirmative vote of at least five of the Council members.

- 21) Require all standards, rules, and regulations developed by the Council to be issued, amended, or repealed, as applicable, in the manner prescribed in the Administrative Procedures Act, subject to the following provisions:
- a) With the exception of standards that fall within the jurisdiction of the Occupational Safety and Health Standards Board (Board) or the Civil Rights Council (CRC), the Labor Commissioner (LC) shall be responsible for issuing, amending, or repealing, as applicable, standards developed by the Council pursuant the Administrative Procedure Act.
  - b) The Council shall send proposed written standards to the LC and request that the LC prepare a notice of proposed rulemaking action regarding the proposed regulatory text.
  - c) When the LC receives a request to create a notice for proposed rulemaking action, the LC is required to assess whether the proposed standards align with the Council's authority and criteria outlined in Administrative Procedure Act.
    - i) If the LC determines that the standards align with the aforementioned criteria, the LC will proceed to prepare and submit the notice, along with the necessary materials, to the Office of Administrative Law, as required.
    - ii) If the LC determines that either the proposed standards are not consistent with the Council's authority, or not consistent with the criteria identified in the Administrative Procedure Act, the LC is required, within 60 days of receiving the Council's request to issue a notice of proposed rulemaking, to provide the Council with a written explanation of the reasons for that determination.
- 22) Exempt, from the requirements of 21), above, standards issued regarding the increase in the hourly wage for fast food restaurant employees.
- 23) Authorize the Council to develop written emergency standards and send the proposed standards to the LC and request that the LC promulgate those standards pursuant to the Administrative Procedures Act.
- 24) Require the hourly minimum wage for fast food restaurant employees to be \$20 per hour, effective April 1, 2024, and thereafter authorize the Council to establish minimum wages for fast food restaurant employees, to take effect on an annual basis, beginning on January 1, 2025, in accordance with the following procedures:
- a) The hourly minimum wage established by the Council may increase on an annual basis by no more than the lesser of the following, rounded to the nearest \$0.10:
    - i) 3.5%.
    - ii) The rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W).

- b) In establishing minimum wage increases subject to a), above, the Council may elect to set minimum wage standards that vary by region or to set a statewide minimum wage.
  - c) The hourly minimum wage established in 24), above, and all future hourly minimum wages established in 24), shall constitute the state minimum wage for fast food restaurant employees for all purposes under this code and the wage orders of the Industrial Welfare Commission (IWC) and state that the hourly minimum wage for fast food restaurant employees is enforceable by the LC, or by a covered worker through civil action, as specified.
  - d) DIR must align Wage Order No. 5-2001 and the Minimum Wage Order with the minimum hourly wage adopted by the Council and any other standards or requirements established by the Council and approved by the LC. Any existing provisions in Wage Order No. 5-2001 or the Minimum Wage Order that offer greater protections or benefits to fast food restaurant employees will remain in effect. The Council's hourly minimum wage decisions are considered wage orders and are exempt from certain requirements of the Administrative Procedure Act.
  - e) Any minimum wage established by the Council must be equal to or greater than any otherwise generally applicable state hourly minimum wage.
  - f) The Council shall not establish any minimum wage increase that takes effect commencing on a date after the 2029 calendar year. However, the Council may provide advice to any appropriate state agencies regarding minimum wage increases that would take effect commencing on a date on or after January 1, 2030.
- 25) Provide that minimum wage standards established by the Council are also subject to any suspension of increases in the statewide minimum wage, as specified.
- 26) State that the standards developed by the Council pursuant to 19) and 24), above, shall not alter or amend the requirements of the California Retail Food Code, as specified.
- 27) Require the Council to provide, upon request, information to the appropriate labor committees of the Legislature, in order to facilitate a review of the Council's performance and standards outlined in the provisions of this bill.
- a) Permit a review of the Council's performance to be conducted in a joint hearing held every three years or as otherwise designated by the appropriate labor committees of the Legislature.
- 28) State that nothing in the provisions of this bill shall be construed to give the Council the authority to create or amend statutes.
- 29) State that nothing in the provisions of this bill shall be construed to permit the Council to develop or promulgate regulations creating new paid time off benefits, such as paid sick leave or paid vacation.
- a) Specify that for purposes of 29), above, paid time off benefits do not include paid rest periods.

- 30) State that nothing in the provisions of this bill shall be construed to permit the Council to develop or promulgate regulations regarding predictable scheduling.
- a) Specify that for 30), above, predictable scheduling does not include reporting time pay.
- 31) Provide that in the event that the Council identifies minimum standards that are reasonably necessary for safeguarding the health and safety of fast food restaurant employees and that those standards fall within the purview of the Board, the Council shall petition the Board for the enactment, modification, or annulment of any occupational safety and health standard.
- a) Require the Board to consider and respond to the petition no later than six months following receipt of the petition, or no later than three months if the petition relates to an emergency, as specified.
  - b) Prohibit the Board from adopting a standard recommended by the Council if it reduces occupational safety and health protections for employees.
- 32) Provide that to the extent there are any minimum standards that the Council finds are reasonably necessary that fall within the jurisdiction of the CRC, the Council shall petition the CRC for the adoption, amendment, or repeal of any regulation under the jurisdiction of the CRC.
- a) Require the CRC to consider and respond to the petition no later than six months following receipt of the petition, or no later than three months if the petition relates to an emergency, as specified.
  - b) Prohibit the CRC from adopting a standard recommended by the Council that would reduce protections provided under the California Fair Employment and Housing Act (FEHA).
- 33) Require the Council to conduct a full review of the adequacy of the minimum fast food restaurant health, safety, and employment standards at least once every three years and upon that review, requires the Council to develop and seek the issuance of any fast food employment, health, or safety standard applicable to fast food restaurants.
- 34) Require the Council to hold public hearings, as specified, no less than every six months, providing the opportunity for the public to be heard on issues of fast food restaurant health, safety, and employment conditions.
- a) Require the Council to give advance notice of its meetings or hearings in a way that reasonably informs fast food restaurant workers, operators, owners, franchisors, franchisees, community members, and other interested parties about the chance to participate in these meetings or hearings.
  - b) Require meetings or hearings to rotate among different major metropolitan areas across the state in order to provide an equitable opportunity for participation by fast food restaurant workers, operators, owners, franchisors, franchisees, community members, and other stakeholders at least once per each three-year review.

- 35) Authorize the Council to coordinate with local agencies and request that they hold meetings or hearings that are open to the public, as specified, so that members of the public have the opportunity to be heard on issues of fast food restaurant health, safety, and employment conditions. After these local meetings, the Council may request information from local agencies, including any recommendations for action by the Council.
- 36) Require the minimum wage, maximum hours of work, and other working conditions developed by the Council in standards promulgated pursuant to this bill, to be the minimum wage, maximum hours of work, and the standard conditions of labor for fast food restaurant employees or a relevant subgroup of fast food restaurant employees for purposes of state law.
- a) State that, except for the sunset date of January 1, 2029, the provisions of this bill do not restrict the authority of local jurisdictions to exercise police powers in establishing more protective local standards.
  - b) Provide that the employment of a fast food restaurant employee for lower wages or for longer hours than those fixed by the minimum standards promulgated, pursuant to the provisions of this bill, or under any other working conditions prohibited by the minimum standards promulgated, pursuant to the provisions of this bill, is unlawful.
  - c) Require compliance with the minimum fast food restaurant employment standards, promulgated pursuant to the provisions of this bill, to be enforced by the LC, in a specified manner.
- 37) Require the LC to enforce, in a prescribed manner, any standards promulgated by the provisions of this bill, except for occupational safety and health violations and protections against discrimination or harassment, which are required to be enforced by the Division of Occupational Safety and Health (Cal/OSHA) and the Civil Rights Department (CRD), respectively.
- 38) Provide that a standard promulgated by the Council shall not supersede a standard covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and a regular hourly rate of pay not less than 30 percent more than the state minimum wage for those employees, if the agreement provides equivalent or greater protection than the standards established by the Council and if state law on the same issue authorizes an exception for employees covered by a collective bargaining agreement.
- 39) State that nothing in the provisions of this bill shall be construed to require local health departments to enforce standards issued by the Council.
- 40) Authorize the LC to issue rules, regulations, and guidance necessary for the enforcement of the provisions of this bill, as specified.
- 41) Preempt any local municipalities from establishing higher minimum wages by prohibiting any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees from being enacted or enforced by any city, county, or city and county, including charter cities, charter counties, and charter cities and counties. However, these provisions do not preclude any employer from establishing higher wage or compensation rates for its employees or contracted employees.

- 42) Specify that the above prohibition does not preclude a city, county, or city and county, including charter cities, charter counties, and charter cities and counties, from establishing a minimum wage that is generally applicable to all industries.
- 43) Provide that all provisions of this bill, with limited exceptions, become inoperative as of January 1, 2029, and the Council shall cease operations but specifies that any standards adopted by the appropriate agencies pursuant to these provisions shall not be impacted by the cessation of the Council.
- 44) Prohibit a fast food restaurant operator from discharging or in any manner discriminating against an employee due to the employee's participation in or providing testimony to any proceeding convened by the Council.
- a) Provide that the Council shall be deemed a governmental agency for the purposes of an employee's right to disclose information to a government or law information agency without retaliation from an employer.
- 45) Provide that provisions of the bill will only come into effect on January 1, 2024, if Referendum No. 1939 (Attorney General No. 22-0005) is withdrawn by its proponents before that date. If the referendum is not withdrawn by January 1, 2024, then provisions of this bill will become inactive and repealed on January 1, 2024.
- 46) Provide that the existing FAST Act will become inoperative and be replaced by the provisions outlined in this bill, effective January 1, 2024, contingent upon the withdrawal of Referendum No. 1939 (Attorney General No. 22-0005) by its proponents before January 1, 2024.
- 47) Find and declare, among other things, that establishing uniform statewide regulation of certain aspects of minimum wage for fast food restaurant workers is a matter of statewide concern and directs specified provisions to apply to all cities, including charter cities.

## COMMENTS

### *Suspension of the Fast Food Accountability and Standards (FAST) Recovery Act*

AB 257 (Holden), Chapter 246, Statutes of 2022, termed the Fast Food Accountability and Standards Recovery Act or the FAST Recovery Act, proposes to, among other things, establish a Fast Food Sector Council to regulate California's fast food restaurants. The law was signed by Governor Newsom on September 5, 2022.

On January 24, 2023, a group known as the Save Local Restaurants coalition successfully gathered a sufficient amount of valid voter signatures, verified by the California Secretary of State, which allowed them to place a referendum to overturn the FAST Recovery Act on the 2024 ballot.<sup>1</sup> The qualification of the referendum for the 2024 ballot effectively suspends

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<sup>1</sup> Hussain, Suhauna. *Californians to vote on overturning a new law that could raise fast-food worker wages*. Los Angeles Times, January 2023.



implementation of the FAST Act until California voters decide whether or not to repeal the law in 2024.<sup>2</sup>

### *Fast Food Workers and Working Conditions*

According to a United States Bureau of Labor Statistics report from 2021, California is one of the states with the highest levels of employment in the fast food industry. California fast food and counter workers earn an average hourly mean wage of \$15.61 amounting to an annual mean wage of \$32,640.<sup>3</sup>

A report by the UC Berkeley Labor Center found that despite high levels of employment in the fast food industry, "People working in fast-food jobs are more likely to live in or near poverty. One in five families with a member holding a fast-food job has an income below the poverty line, and 43 percent have an income two times the federal poverty level or less. Even full-time hours are not enough to compensate for low wages. The families of more than half of the fast-food workers employed 40 or more hours per week are enrolled in public assistance programs."<sup>4</sup>

Additionally, another report by the Center for American progress found that "60 percent of fast-food workers in California are Latinx, more than 80 percent are nonwhite, two-thirds are women, and 20 percent have children. The typical fast-food worker brings in one-third of their family's income, and more than half of fast-food worker households spend more than 30 percent of their income on rent."<sup>5</sup>

According to a report by the UCLA Labor Center, "Fast-food workers face an array of workplace challenges. More than half experienced wage theft, such as being paid late or unpaid overtime rates, denied meal breaks or reimbursement for uniforms or equipment. Workers also reported insufficient hours to make ends meet. More than half experienced a health and safety hazard, and 43% were injured at work. Half of workers faced verbal abuse, particularly from customers. Many also witnessed or experienced violence or harassment, such as racial slurs, assault, and robbery."<sup>6</sup>

### **According to the Author**

"[This bill], as amended, creates a path forward to resolve employer community concerns around the content of AB 257 (2022) while preserving fast food workers' hard fought efforts to secure a seat at the table and means to raise standards. The joint liability provisions of [this bill] will be replaced with an updated version of AB 257's Fast Food Council that will go into effect providing the referendum is withdrawn by January 1, 2024."

### **Arguments in Support**

According to a coalition of labor and community advocates, "For the last decade, fast-food cooks, cashiers and baristas in California have been sounding the alarm on the poverty pay and

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<sup>2</sup> Ibid.

<sup>3</sup> U.S. Bureau of Labor Statistic. Occupational Employment and Wages, May 2021.

<sup>4</sup> Allegretto, Sylvia, et al. *Fast Food, Poverty Wages: The Public Cost of Low-Wage Jobs in the Fast Food Industry*. UC Berkeley Labor Center, October 2013.

<sup>5</sup> Madland, David. *Raising Standards for Fast-Food Workers in California*. Center for American Progress, April 2021.

<sup>6</sup> Justice, Brian, et al. *Fast Food Frontline: COVID-19 and Working Conditions in Los Angeles*. UCLA Labor Center, January 2022.

unsafe working conditions plaguing the industry. Fast-food workers and community allies across the state have demanded that workers get a seat at the table to resolve these critical issues. New amendments to [this bill], the Fast Food Franchisor Accountability Act, were introduced to build on what was won under AB 257. Contingent upon the fast-food industry dropping their referendum against AB 257, the amendments to [this bill] clear a path for fast-food workers to start making much-needed improvements to their wages and working conditions."

According to the International Franchise Association, the National Restaurant Association and Save Local Restaurants, "this agreement reflects the best interest of workers, local franchised restaurant owners and restaurant brands by: 1) protecting the franchise business model that provides opportunities for thousands of diverse Californians to become small business owners; 2) providing meaningful wage increases for workers; and 3) eliminating significant – and potentially existential – threats, costs, and regulatory burdens targeting local restaurants in California."

### **Arguments in Opposition**

The American Association of Franchisees and Dealers, in opposition, state, "In significant disregard to hearing the voices of small business franchisee owners, the negotiated settlement was made between the International Franchise Association (IFA), the National Restaurant Association (NRA), and the Service Employees International Union (SEIU). If signed, the result would be onerous to the franchisee community who would have to bear the primary brunt of this settlement, which would not only significantly increase labor costs thereby forcing franchisees to increase costs to consumers; this, in turn, also benefits franchisors with a larger royalty base. The AAFD views this development as a prime example of behind-the-scenes political maneuvering, raising concerns about transparency and fairness. Given these circumstances, the AAFD cannot endorse legislation crafted behind closed doors, which disproportionately affects its members and lacks transparency in its decision-making process. It also sets a dangerous precedent when minimum wage legislation targets franchised establishments and specifically quick service restaurants."

### **FISCAL COMMENTS**

According to the Senate Appropriations Committee, "Assuming Referendum No. 1939 (Attorney General No. 22-0005) has been withdrawn by its proponents by January 1, 2024, this bill would have the following fiscal impacts:

The Department of Industrial Relations (DIR) preliminarily estimates that, at a minimum, it would incur net annual administrative costs of \$4 million to implement the provisions of the bill. Cost drivers would include staffing the Fast Food Council, legal workload, and operational costs resulting from internal and public meetings (Labor Enforcement and Compliance Fund, and Occupational Safety and Health Fund).

This bill would result in one-time General Fund savings to the Secretary of State (SOS) for reduced printing and mailing costs resulting from the referendum's removal from the statewide ballot. SOS estimates that each additional page in the statewide ballot pamphlet costs \$123,000. Assuming eight pages would have been needed for the referendum, savings to SOS would be \$984,000.

Administrative costs to the Civil Rights Council, within the California Civil Rights Department, have yet to be identified, and would depend on future interaction with the Fast Food Council (General Fund)."

## VOTES

### **ASM LABOR AND EMPLOYMENT: 5-2-0**

**YES:** Kalra, Haney, Ortega, Reyes, Ward

**NO:** Flora, Chen

### **ASM JUDICIARY: 6-3-2**

**YES:** Maienschein, Connolly, Haney, Kalra, Reyes, Robert Rivas

**NO:** Essayli, Dixon, Sanchez

**ABS, ABST OR NV:** Pacheco, Papan

### **ASM APPROPRIATIONS: 11-4-1**

**YES:** Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

**NO:** Megan Dahle, Dixon, Mathis, Sanchez

**ABS, ABST OR NV:** Robert Rivas

### **ASSEMBLY FLOOR: 42-22-16**

**YES:** Addis, Arambula, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Haney, Hart, Holden, Jackson, Jones-Sawyer, Kalra, Lee, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Schiavo, Ting, Ward, Weber, Wicks, Wood, Zbur, Rendon

**NO:** Alanis, Bains, Chen, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Hoover, Lackey, Low, Mathis, Stephanie Nguyen, Jim Patterson, Joe Patterson, Ramos, Sanchez, Ta, Waldron, Wallis

**ABS, ABST OR NV:** Aguiar-Curry, Alvarez, Bauer-Kahan, Juan Carrillo, Grayson, Irwin, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Blanca Rubio, Soria, Valencia, Villapudua, Wilson

## UPDATED

VERSION: September 11, 2023

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