EXHIBIT B

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 450

(Chiu) – As Amended March 23, 2017

As Proposed to be Amended

SUBJECT: EMPLOYMENT REGULATION: IMMIGRATION WORKSITE ENFORCEMENT ACTIONS

KEY ISSUES:

1) SHOULD EMPLOYERS BE REQUIRED TO DEMAND THAT FEDERAL AGENTS CONDUCTING AN IMMIGRATION ENFORCEMENT ACTION AT THE EMPLOYER'S WORKPLACE PRESENT A WARRANT TO SEARCH THE PREMISES, OR A SUBPOENA TO INSPECT RECORDS HELD AT THE PREMISES?

2) SHOULD EMPLOYERS BE REQUIRED TO NOTIFY WORKERS AND THE LABOR COMMISSIONER, AS SPECIFIED, WHEN THEY KNOW THAT AN IMMIGRATION ENFORCEMENT ACTION WILL OCCUR AT THEIR WORKPLACE?

3) SHOULD THE LABOR COMMISSIONER, UPON RECEIVING NOTICE OF AN ACTION, BE AUTHORIZED TO INFORM AFFECTED WORKERS OF THEIR RIGHTS?

SYNOPSIS

This is one of many bills that have come before the Committee this session with the goal of protecting immigrants from an expected increase in federal immigration enforcement actions. This particular bill seeks to protect employees in the workplace by requiring employers to ensure that federal immigration agents have properly executed search warrants and subpoenas in order to search worksites or examine documents, as is already required under federal law. In addition, this bill requires employers, to the extent permitted under federal law, to notify employees of an immigration enforcement action that is to be conducted at the worksite and to notify the employee about the results of any immigration audit or inspection. The bill also requires the employer to notify the California Labor Commissioner within 24 hours of receiving notice of a planned enforcement action or, if the employer does not receive advance notice, to notify the Commissioner upon learning of the action. Finally, the bill authorizes the Commissioner, when notified that an enforcement action will occur, to provide affected employees with information about their rights under the law. The bill is co-sponsored by SEIU California and the California Labor Federation. The bill is opposed by several business, agricultural, and manufacturing groups who argue that this bill would deny a property owner the fundamental right to determine who may or may not enter the owner's property; that it will prevent businesses from cooperating with federal authorities when doing so would result in the least interruption of the business or workplace; and that it will unfairly place them in the crosshairs of competing state and federal policies objectives. While the opposition raises important and fundamental questions that warrant careful consideration, the Committee believes that the provisions of this bill are well within the legitimate powers of the state and are appropriately mindful of federal authority over immigration matters. The bill asserts the state's right and obligation to protect all California residents who call California home, raise families here, and work and contribute mightily to the state's economic prosperity and rich cultural tapestry. The author will take a number of clarifying amendments in this Committee. The bill summary and analysis reflect those amendments.

SUMMARY: Imposes various requirements on public and private employers with regard to federal immigration worksite enforcement actions. Specifically, **this bill**:

1) Prohibits an employer, or a person acting on behalf of an employer, from providing a federal immigration enforcement agent access to any non-public areas of a place of labor without a properly executed warrant, except as otherwise required by federal law.

2) Prohibits an employer, or a person acting on behalf of the employer, from providing a federal immigration

enforcement agent with the employer's employee records without a subpoena.

3) Requires an employer to provide an employee, and the employee's representative, a written notice of a federal immigration worksite enforcement action at the employer's worksite, unless prohibited by federal law. That notice must be in the language the employer normally uses to communicate employment information and contain the following:

    a) The name of the federal immigration agency conducting the enforcement action.

    b) The date that the employer received notice of the enforcement action.

    c) The nature of the enforcement action to the extent known.

    d) A copy of the notice of an immigration enforcement audit or inspection of I-9 Employment Eligibility Verification forms or other employment records, worksite investigations, worksite interviews of employees, worksite raids, or any other immigration worksite enforcement action to be conducted.

    e) Any other information that the Labor Commissioner deems material and necessary.

4) Requires an employer to provide to an affected employee, and to the employee's representative, a copy of the written federal immigration agency notice describing the results of an immigration enforcement audit or inspection and written notice of the obligations of the employer and the affected employee arising from the action, as specified. The notice shall contain the following information:

    a) A description of all deficiencies or other items identified in the written federal immigration audit or immigration enforcement action results notice.

    b) The time period for correcting any potential deficiencies identified by the federal immigration worksite enforcement action.

    c) The time and date of any meeting with the employer to correct deficiencies.

    d) Notice that the employee has the right to representation, as specified.

    e) Any other information that the Labor Commissioner deems material and necessary.

5) Requires an employer to notify the Labor Commissioner of a federal government immigration agency immigration enforcement action within 24 hours of receiving notice of the action and, if the employer does not receive advance notice, to immediately notify the Labor Commission upon learning of the action, unless prohibited by federal law.

6) Authorizes the Labor Commissioner, during a workplace enforcement action, to access the place of employment and provide the following information to employees affected by the action:

    a) An employee has the right to remain silent.

    b) An employee has the right to speak to a lawyer before answering any questions.

    c) An employee has the right to speak to his or her foreign consulate.

7) Requires an employer to notify the Labor Commissioner before conducting a self-audit or inspection of employment eligibility verification forms, and before checking the employee work authorization documents of a current employee, unless prohibited by federal law.

8) Prohibits an employer from checking the employment eligibility of a current employee, including conducting a self-audit or inspection of specified employment eligibility verification forms at a time or in a manner not required by specified federal law.

9) Requires the Labor Commissioner, upon a determination that an employee complainant or employee witness is

necessary to conduct an investigation or prosecution to issue a certification to the employee stating that he or she has submitted a valid complaint and is cooperating in the investigation and prosecution.

10) Prescribes penalties against employers for failure to satisfy requirements and prohibitions of not less than $10,000, and not more than $25,000, for each violation.

EXISTING LAW:

1) Provides, under federal law, that an immigration officer may not enter into the non-public areas of a business or a farm or other outdoor agricultural operation for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States, unless the officer has either a warrant or the consent of the owner. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained. Specifies that nothing in this provision prohibits an immigration officer from entering into any area of a business to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant or consent. (8 USC Section 1357; 8 CFR Section 287.8 (f) (2) and (4).)

2) Requires an employer to verify, through examination of specified documents, whether or not an individual is authorized to work in the United States. Specifies that if the document is presented and reasonably appears on its face to be genuine, then the employer has complied with this requirement and is not required to solicit or demand any other document. (8 USC Section 1324a (b).)

3) Makes it an unfair immigration-related employment practice for any person or entity to do any of the following:

    a) Discriminate against any individual, except as provided, with respect to the hiring, recruitment, or referral of the individual for employment or the discharging of the individual from employment.

    b) Request, with the intent of discriminating against an individual, more or different documents than are required under law or refuse to honor documents tendered which, on their face, reasonably appear to be genuine. (8 USC Section 1342a (a)(1)-(6).)

4) Prohibits an employer or any other person or entity from engaging in, or directing another person or entity to engage in, an unfair immigration-related practice against any person for the purpose of retaliating against that person for exercising his or her rights under state or local labor law. These protected rights include the following:

    a) Filing a complaint or informing any person of an employer's or other party's alleged violation of a state or local labor law, so long as the complaint or disclosure is made in good faith.

    b) Seeking information regarding whether an employer or other party is in compliance with state or local labor law.

    c) Informing a person of his or her potential rights and remedies under state or local labor law, or assisting him or her in asserting those rights. (Labor Code Section 1019 (a).)

5) Defines "unfair immigration-related practice," for purposes of state law, to mean any of the following practices when undertaken for retaliatory purposes, and not at the direction or request of the federal government:

    a) Requesting more or different documents than are required by federal law or refusing to honor required documents that on their face appear to be genuine.

    b) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required or authorized by federal law.

    c) Threatening to file or filing of a false police report, threatening to file or filing a false report or complaint with any state or federal agency, or threatening to contact or contacting immigration authorities. (Labor Code Section 1019 (b).)

6) Specifies that engaging in an unfair immigration-related practice against a person within 90 days of the person's exercise of a protected right shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights. (Labor Code Section 1019 (c).)

7) Permits an employee or any other person who is subject to an unfair immigration-related practice, where the unfair practice is retaliatory in nature, to bring a civil action for equitable relief and any applicable damages or penalties, and specifies that an employee or other person who prevails shall recover his or her reasonable attorney's fees. (Labor Code Section 1019 (d) (1).)

8) Prohibits an employer, in the course of satisfying federal immigration law, from requesting more or different documents than are required under federal immigration law; refusing to honor valid documents, as specified; or attempting to reinvestigate or reverify an incumbent employee's authorization to work using an unfair immigration-related practice. (Labor Code Section 1019.1.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: This bill, like others that have come before the Committee this session, is a response to recent federal Executive Orders and memoranda that have signaled the current administration's desire to step up immigration enforcement. The author contends that, should this occur, California will be profoundly affected, citing estimates of over 2.6 million undocumented immigrants in the state. Immigration workplace raids, the author believes, will present a number of problems. For example, the threat of immigration worksite raids decreases the likelihood that workers will report labor violations or exercise workplace rights. Employers, the author believes, to the detriment of their workers, take an overly permissive approach with immigration agents at the expense of the workers' due process and privacy rights. Generally, this bill seeks to ensure that all workers in California will enjoy the rights and protections afforded to them under California law "without fear of harassment, detention, or deportation." The author hopes to achieve this primarily by insisting that federal agents meet the full procedural requirements of federal law and by making affected workers aware of federal enforcement actions and cognizant of their rights during such actions.

Specifically, AB 450 will require employers to do the following: (1) ensure that federal immigration agents have properly executed warrants and subpoenas to search worksites or examine documents; (2) notify employees, to the extent permitted by federal law, about immigration enforcement actions and any results of such action; and (3) notify the California Labor Commissioner within 24 hours of receiving notice of a planned enforcement action or, if the employer does not receive advance notice, to notify the Commissioner upon learning of the action. The bill authorizes the Commissioner, once notified of an enforcement action, to take certain actions. Among other things, the Commissioner may elect to exercise its existing authority to enter any workplace to provide affected employees with information about their rights under the law. In addition, the bill refines existing state regulations regarding an employer's ability to perform audits or request re-verification or other documents of prospective or current employees. Existing state law already imposes limits on "unfair immigration related practices" that, consistent with federal law, imposes limits on the time, manner, or purposes of requesting work authorization documents. For example, existing state law generally prohibits employers from requesting more or different documentation than is required by federal law, or to request documents or re-verification for retaliatory purposes. This bill extends these basic objectives by prohibiting self-audits or inspection of related verification forms in a time or manner that is not required by federal law.

Existing Federal Law: Existing federal statutes and regulations set forth the procedures by which federal immigration officers conduct immigration enforcement actions, which include both worksite inspections (in which the agents search the non-public workplace premises) and demands to see records or documents, including I-9 work authorization forms and related documents. First, and perhaps most relevant to this bill, federal law and regulations prohibit an immigration officer from entering the non-public areas of a business or a farm for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States, unless the officer has either a warrant, or the consent of the owner, or some agent of the owner who has authority to grant consent. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained. (8 USC Section 1357; 8 CFR Section 287.8 (f) (2) and (4).) Second, federal agents sometimes come to the workplace not to search the premises, but to inspect business and employee records. In such a case, federal agents must provide the employer with a subpoena and a three-day notice before inspecting any records. This bill, therefore, is consistent with federal law except in that it eliminates the employer's ability to grant access to premises and records by consent. The Committee is not aware of any data as to how often immigration officers show up at a workplace with a warrant, or the number of times that immigration officers show up without a warrant assuming that employers will

grant consent, thereby obviating the need for a warrant. Nor is the Committee aware of any data on how often employers exercise their right to insist upon a warrant, and how often they grant consent in the absence of a warrant. Without this data, it is difficult to fully evaluate the impact of this bill.

In addition, existing federal law requires employers to verify that all of their employees are eligible to work in the United States, and permits various documents or combinations of documents to be used to demonstrate citizenship, legal permanent resident status, or, if neither a citizen nor a permanent legal resident, authorization to work in the United States. Federal law also protects against abuse of these requirements by making it an "unfair immigration-related practice" to request more or different documents than are required under law, or refuse to honor documents tendered which, on their face, reasonably appear to be genuine, if these additional requests or refusals are for the purpose of discrimination or intimidation.

U.S. v. Arizona: ***Federal Preemption and State Police Power:*** U.S. immigration policy has, since at least the late nineteenth century, been the exclusive domain of the federal government. (*Chy Lung v. Freeman* (1876) 92 U.S. 275.) Nonetheless, the states, in the exercise of their police powers, may enact laws and regulations that impact immigrants and immigration, so long as those laws do not conflict with or frustrate the purpose of federal law. The U.S. Supreme Court spoke most recently on the tensions between state law and federal immigration policy in *United States v. Arizona* (2012), a decision that upheld some parts, but struck down other parts, of Arizona's SB 1070. Convinced that the federal government was not doing enough to enforce immigration laws, the Arizona legislature passed and Arizona Governor Jan Brewer signed, SB 1070. That measure, among other things, (1) created a state-law crime for being unlawfully present in the United States, (2) created a state-law crime for working or seeking work while not authorized to do so, (3) required state and local officers to verify the citizenship or alien status of anyone who was lawfully arrested or detained, and (4) authorized warrantless arrests of aliens believed to be removable from the United States. A federal district court enjoined all of these provisions, and the U.S. Ninth Circuit Court confirmed the district court ruling. Arizona appealed to the U.S. Supreme Court. The Supreme Court ruled that (1) and (2) were pre-empted because they created new state-law crimes that directly conflicted with federal registration requirements and enforcement provisions, respectively. The Court ruled that (4) was preempted because it usurped the federal government's authority to use discretion in the removal process. However, the Court upheld (3) because it simply allowed state law enforcement officials to *communicate* with federal immigration officials during otherwise lawful arrests and detentions. (*United States v. Arizona* (2012) 565 U.S. 1092.)

If constitutional law is, as Berkeley Law Professor John Yoo has suggested, just "politics by other means," the proponents of this bill will likely argue that AB 450 is more like the provisions in SB 1070 that the U.S. Supreme court upheld. Opponents will likely argue that AB 450 is more like the parts of SB 1070 that the U.S. Supreme Court struck down. [John Yoo, "The Continuation of Politics by Other Means: Original Understanding of the War Powers," 84 Cal. L. Rev. 167 (1986.)] However, in striking down three of the four provisions in SB 1070, the Court stressed that those three provisions directly "conflicted" with federal law: that is, the federal government sets the standards of who can be lawfully present in the United States; the federal government establishes the framework about who is authorized to work in the United States; and the federal government has the exclusive power to arrest persons for purposes of deportation, unless the federal government formally enlists the support of and authorizes state officials to act as immigration officers. (8 USC 1357 (g).) AB 450 does not "conflict" with any federal law, as that term is understood in federal preemption analysis. Under that analysis, a state law conflicts with a federal law if it is impossible to comply with both laws and fundamentally frustrates the purpose of federal law. (*Gade v. National Solid Wastes Mgmt. Associations* (1992) 505 U.S. 88.) Existing federal law already requires immigration agents to obtain a warrant to search a worksite and a subpoena to access employee records, unless the employer grants consent. This bill effectively takes away the employer's option to grant consent. Taking away this option to consent may or may not be fair to the employer, or it may or may not be good policy, but it does not "conflict" with federal law as that term is used in federal preemption analysis. That is, it is still possible for the employer to comply with both state and federal law. If the employer complies with the state law by asking to see a warrant, he or she is not violating any federal law. The employer, by asking to see a warrant, is simply doing something that he or she clearly has a right to do under federal law.

Policy and Fairness Concerns Raised by the Opposition: Even if AB 450 is not preempted by federal law, it does not mean that it is good policy or that it does not raise other concerns about the due process and property rights of employers. Perhaps the most fundamental argument raised by the opposition is that this bill takes away the employer's fundamental right, as a property owner, to determine who can and cannot enter the owner's property. As every first year law student learns, one of the "sticks" in the property rights "bundle" is the "right to exclude," and the necessary corollary of the right to exclude is the right to say who shall be allowed entry. However, the other thing that every first year law student learns is that property rights, like all other rights, are not absolute. This is especially true when it comes to the state's "police power" – which *Black's Law Dictionary* defines as the "power of

the State to place restrictions on the personal freedom and *property rights* of persons for the protection of the public safety, health, and morals." (5th Ed., p. 1041.) One existing example of how state police power infringes upon property rights, especially the "right to exclude," is the provision of the Labor Code that gives the Labor Commission "free access" to any workplace in order to enforce labor laws. (Labor Code Section 90 and 90.5.) One of the opponents directly asks: Can the state prohibit an employer from giving consent to federal agents to enter the employer's workplace? The answer appears to be "yes."

Returning with "an Attitude". In addition, opponents raise a number of other points about the practical consequences of this bill. In particular, opponents argue that there are often good reasons for an employer to provide consent, rather than demand that federal agents obtain a warrant to enter non-public areas of their premises. For example, given that the employer is dealing with a federal agency that has the power, and some discretion, to impose penalties, employers do not want to antagonize federal agents if they believe they have complied with immigration employment requirements and have nothing to hide. Most employers prefer that workplace enforcement actions take place with as little disruption as possible, and under certain circumstances, it might be least disruptive for them to grant consent. In addition, opponents fear that demanding a warrant will be seen by federal agents as non-cooperation. This non-cooperation will only delay, not prevent, the enforcement action; and will simply mean that immigration agents will return with a warrant and "an attitude." This is a reasonable concern. However, as the author and co-sponsors reasonably point out, federal agents will not see the employers as being "un-cooperative" if they know – which they will – that the demand is required by state law. Indeed, in some cases, this bill would provide an employer who is not prepared, or simply does not want, to grant access to federal agents with a valid reason for withholding consent: they are required to do so by state law.

The Problem of Employees Granting Access: Another practical problem which opponents point to concerns the likelihood that it will often be an employee, rather than an employer, who is confronted with the question of whether to grant consent or demand a warrant. Consider, for example, the 18-year old waiter or waitress in a restaurant who is confronted with several uniformed and armed ICE officers who demand access to the kitchen, or some other place that is not open to the public. Suppose further that the employer is not on the premises. Even if the employer informed his employees of their legal obligations under this bill, would the young employee, confronted with federal officers, be likely to demand a warrant? Would the young employee know, if a warrant were presented, whether the warrant was valid and properly executed? Clearly, the author does not intend for the employee to be subjected to a fine for allowing access, and one of the author's amendments addresses that issue. However, this leaves a related issue unresolved. If the young employee granted access without a warrant, would the employer be subject to the substantial $10,000 to $25,000 fine, even if the employer had provided training to employees to ask for a warrant, but in the pressure of the moment, the employee was not brave or calm-minded enough to ask for one? Perhaps this means that the employer will need to designate a managerial-level person, to whom federal agents would be directed, and it would be the employer's responsibility to ensure that that person understood the law. *Nonetheless, the Committee may wish to explore with the author whether an employer who provides reasonable training to employees and managers should be subject to a lesser fine in the event that access is granted by an employee, despite the training.*

Proposed Author Amendments: The author will take amendments in this Committee that will address some, but by no means all, of the opposition's other practical concerns. For example, the prohibition on granting access to the workplace without a warrant will be amended to clarify that an employer can only demand a warrant in order for immigration officers to search the "non-public" areas of the workplace. In other words, immigration agents are free —under current law, as well as under the provisions of the bill—to enter that part of the workplace that is open to the general public. This amendment not only is consistent with the federal warrant requirement, but also addresses a concern raised by some opponents who argue that agents could not even enter the premises to provide the employer with a subpoena for records unless they also had a warrant to enter the property in the first place. This clearly was not the intent of the author, and this amendment will make that clear.

The author will also amend the bill to clarify that the civil penalty does not apply to an employee who grants access without a warrant or subpoena.

Finally, the amendments remove provisions of the bill in print that purported to give authority to the Labor Commissioner, upon receiving notice of an enforcement action, to access workplaces to conduct "investigations." The Commissioner already has authority to access any workplace to conduct investigations on any matter within the Commission's jurisdiction. Therefore, the author will delete these provisions as they are redundant and potentially confusing. However, the bill retains those provisions which authorize the Commissioner to access the workplace to inform workers of their rights, and maintains the provisions that require the employer to provide certain notices to the Labor Commissioner, regarding immigration enforcement actions and employer self-audits.

The specific amendments are as follows:

- On page 3, line 4, after "to" insert: *any non-public areas of*
- On page 3, line 7, delete "or a person acting on behalf of the employer"
- On page 3, line 20, delete "or a person acting on behalf of the employer"
- On page 6 line 10 delete "The employer shall provide access to the Labor" and delete lines 11-13.
- On page 6, line 19, insert a period after "action" and delete "and shall provide access to Labor" and delete lines 20-22.
- On page 6, line 23 delete "or a person acting on behalf of the employer"
- On page 6, line 33 delete "(1)"
- On page 7, delete lines 3-11
- On page 7, line 20, delete "The employer shall provide access to the Labor" and delete lines 21-23.

***ARGUMENTS IN SUPPORT**:* According to the author:

> Immigration worksite raids present a number of problems. They decrease the likelihood of undocumented workers reporting labor violations or exercising workplace rights. Further, when ICE acts on information provided by unscrupulous employers seeking to intimidate workers, the government becomes complicit in the infringement of workers' labor rights. The promise of increased worksite raids also creates the fear that employers may take misguided steps, outside of what is required under federal or state law, which could violate workers' due process rights, labor rights, or their privacy rights. For example, employers unnecessarily allowing access to a worksite could cause all workers, citizen and undocumented, to be detained in harsh conditions at a worksite or could lead to the exposure of confidential personal information held by the employer.
>
> Past experience with worksite raids demonstrates the likelihood of raids violating employee due process. ICE has routinely violated basic constitutional rights, such as the 4th amendment's protections against unreasonable search and seizure. ICE has detained all workers, without any individualized suspicion, regardless of status when conducting workplace raids. For example, in prior worksite raids, ICE has used individual arrest warrants and administrative warrants to question and detain every single worker - including U.S. citizens & lawfully present workers - in a workplace without individualized suspicion.
>
> In California, workers have reported employers threatening to call immigration authorities when workers attempt to exercise their rights to minimum wages, meal breaks, or organizing activities that are protected by California law regardless of status.

The California Labor Federation and SEIU California, the co-sponsors of this bill, claim that "millions of union members are immigrants and worksite immigration raids undermine workers' rights in significant ways: they drive down wages and labor conditions for all workers, regardless of immigration status; they interfere with workers' ability freely to exercise their workplace rights; they incentivize employers to employ undocumented workers in substandard conditions because the threat of immigration enforcement prevents workers from complaining; they undermine the efforts of the state to enforce labor and employment laws."

The California Immigrant Policy Center (CIPC), like many of the supporters of this bill, point to the recent presidential election and change in policy that it portends. CICP writes: "Recent executive actions by the federal Government have confirmed that all undocumented immigrants are enforcement priorities. California has already seen a jump in immigration enforcement action that have torn apart families and terrorized local communities. It is

widely anticipated that worksite raids will increase as part of the deportation activities prioritized by the federal government. Immigrants are the backbone of so many California industries and widespread worksite raids will be disruptive and cause confusion and potential chaos. Guidelines for employers and clear protections for employees is critical to reduce the harm of worksite enforcement activities."

Worksafe argues that "California will be greatly impacted by a policy shift toward workplace raids. Over 2.6 million undocumented immigrants reside in California. Undocumented workers make up 45 percent of California's agricultural workforce and 21 percent of construction. In fact, almost 1 in every 10 workers in California is undocumented." Given this likely impact for California, in particular, Worksafe concludes that California "has an obligation to ensure that any worksite enforcement is conducted hand-in-hand with labor enforcement and worker protections. California should adopt policies that promote, rather than suppress, workers' ability to exercise their workplace rights without fear of reprisal. Employers should have clear rules about how to respond to worksite raids. Additionally, the Labor Commissioner must have the necessary tools to protect workers' rights in the face of increased federal enforcement."

***ARGUMENTS IN OPPOSITION**:* The California Manufacturers and Technology Association (CMTA) argue that AB 450 "would place manufacturers in the precarious position of having to choose which government body to comply with or face hefty penalties and potential legal consequences." CMTA adds that, under this bill, "a manufacturer who is in full compliance with federal immigration laws but elects to cooperate with enforcement agents because they determine at the time that the best course of action to minimize impact on business operations and preserve the safety of all their workers could end up being subject to steep fines [of $10,000 to $25,000 per violation.] Additionally, the response demanded under the bill could arguably be deemed "illegal" under federal law and ultimately place the employer or someone acting on their behalf (i.e. shift supervisor, operations manager, receptionist, etc.) in legal jeopardy for noncompliance with a federal enforcement action." CMTA also objects to the provision in the bill that permits the Labor Commissioner, upon notice of an action, to "enter the work facility and conduct a wall-to-wall investigation of worksite absent any evidence." Finally, CMTA asserts that "as immigration law is exclusively the jurisdiction of the federal government, it is questionable whether AB 450 offends the Supremacy Clause of the United States Constitution and would thereby be preempted by federal law."

The Society for Human Resource Management (SHRM) writes that "from the human resource professional's perspective, AB 450, while well intentioned, will add a host of unnecessary burdensome requirements, create many logistical challenges, and could possibly force human resource professionals to decide between abiding by federal law or state law." SHRM claims that most employees, who will often be the ones to interact with immigration officers, typically lack the knowledge to identify a proper warrant or subpoena and training these employees would require major undertaking. SHRM believes that employees "will also be put in a position of having to make impulsive judgments to decide whether ICE access is specifically allowed by federal law, and could face consequences under federal or state law if they are wrong." SHRM argues that, "If ICE officers overstep the bounds of federal law, ICE officers should be held accountable. It is unfair to hold any employee liable for the missteps of a federal agency. "

SHRM also argues that requiring an employer to provide an employee, and the employee's representative, a written notice of an immigration worksite enforcement action to be conducted by a federal immigration agency at the employer's worksite "would require employers to provide notice to all employees whose I-9s are on file at the location where the inspection occurs, with written notice that the inspection will occur. This could be the entire workforce for the company, as well as those who have left the company in the last year. Along the same lines, SHRM argues that the bill's requirement for the employer to notify the Labor Commissioner before conducting a self-audit is overly burdensome. SHRM believes the bill as currently drafted requires an

employer to notify the state every time they re-verify an employee who needs to be re-verified for a legitimate reason.

The California Chamber of Commerce, writing on behalf of several business groups, opposes for many of the same reasons cited by CMTA and SHRM. The Chamber generally contends that the bill "places the employer in a no-win situation between federal immigration enforcement and state enforcement by punishing employers – rather than providing tools and resources for employees when federal immigration enforcement appears at their workplace regardless of whether a violation of law has been committed by the employer." The Chamber adds: “While the intent of the bill is to protect the rights of workers, the bill instead places employers who are not violating worker rights in serious legal jeopardy. The bill does not differentiate between good and bad employers; instead, it assumes the employer has committed violations by opening the door to an inspection by the Labor Commissioner where no just cause is present."

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO (co-sponsor)
SEIU California (co-sponsor)
Asian American Advancing Justice-California
California Immigrant Policy Center
California Professional Firefighters
California Rural Legal Assistance Foundation
State Building and Construction Trades Council

United Farm Workers
Western Center on Law & Poverty
Worksafe

Opposition

Agricultural Council of California
Associated General Contractors of California
Association of California Egg Farmers
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Employment Law Council
California Farm Bureau Federation
California Grain and Feed Association
California League of Food Processors
California Manufacturers and Technology Association
California Pear Growers Association
California Professional Association of Specialty Contractors
California Retailers Association
California Seed Association
California Warehouse Association
Family Business Association of California
Family Winemakers of California
National Federation of Independent Businesses
Official Police Garages of Los Angeles
Society for Human Resource Management
Western Carwash Association
Western Growers Association
Wine Institute

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