

112TH CONGRESS  
1ST SESSION

# H. R. 3094

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2011

Mr. KLINE (for himself, Mr. McKEON, Mr. WILSON of South Carolina, Ms. FOXX, Mr. HUNTER, Mr. ROE of Tennessee, Mr. THOMPSON of Pennsylvania, Mr. WALBERG, Mr. DESJARLAIS, Mr. ROKITA, Mr. BUCSHON, Mr. GOWDY, Mrs. ROBY, Mr. ROSS of Florida, and Mr. KELLY) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

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 “Workforce Democracy  
5 and Fairness Act”.

6 **SEC. 2. TIMING OF ELECTIONS.**

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

1           (1) in subsection (b) by striking the first sen-  
2           tence and inserting the following: “In each case,  
3           prior to an election, the Board shall determine, in  
4           order to assure to employees the fullest freedom in  
5           exercising the rights guaranteed by this Act, the  
6           unit appropriate for the purposes of collective bar-  
7           gaining. Unless otherwise stated in this Act, the unit  
8           appropriate for purposes of collective bargaining  
9           shall consist of employees that share a sufficient  
10          community of interest. In determining whether em-  
11          ployees share a sufficient community of interest, the  
12          Board shall consider (1) similarity of wages, bene-  
13          fits, and working conditions; (2) similarity of skills  
14          and training; (3) centrality of management and com-  
15          mon supervision; (4) extent of interchange and fre-  
16          quency of contact between employees; (5) integration  
17          of the work flow and interrelationship of the produc-  
18          tion process; (6) the consistency of the unit with the  
19          employer’s organizational structure; (7) similarity of  
20          job functions and work; and (8) the bargaining his-  
21          tory in the particular unit and the industry. To  
22          avoid the proliferation or fragmentation of bar-  
23          gaining units, employees shall not be excluded from  
24          the unit unless the interests of the group sought are  
25          sufficiently distinct from those of other employees to

1 warrant the establishment of a separate unit.  
2 Whether additional employees should be included in  
3 a proposed unit shall be based on whether such addi-  
4 tional employees and proposed unit members share  
5 a sufficient community of interest, with the sole ex-  
6 ception of proposed accretions to an existing unit, in  
7 which the inclusion of additional employees shall be  
8 based on whether such additional employees and ex-  
9 isting unit members share an overwhelming commu-  
10 nity of interest and the additional employees have  
11 little or no separate identity.”; and

12 (2) in subsection (c)(1) in the matter following  
13 subparagraph (B)—

14 (A) by inserting “, but in no circumstances  
15 less than 14 calendar days after the filing of  
16 the petition” after “hearing upon due notice”;

17 (B) by inserting before the last sentence  
18 the following: “An appropriate hearing shall be  
19 one that is non-adversarial with the hearing of-  
20 ficer charged, in collaboration with the parties,  
21 with the responsibility of identifying any pre-  
22 election issues and thereafter making a full  
23 record thereon. Pre-election issues shall include,  
24 in addition to unit appropriateness, the Board’s  
25 jurisdiction and any other issue the resolution

1 of which may make an election unnecessary or  
2 which may reasonably be expected to impact the  
3 election’s outcome. Parties may raise independ-  
4 ently any issue or assert any position at any  
5 time prior to the close of the hearing.”;

6 (C) in the last sentence—

7 (i) by inserting “and a review of post-  
8 hearing appeals” after “record of such a  
9 hearing”; and

10 (ii) by inserting “to be conducted as  
11 soon as practicable but not less than 35  
12 calendar days following the filing of an  
13 election petition” after “election by secret  
14 ballot”; and

15 (D) by adding at the end the following:

16 “Not earlier than 7 days after final determina-  
17 tion by the Board of the appropriate bargaining  
18 unit, the Board shall acquire from the employer  
19 a list of all eligible voters to be made available  
20 to all parties, which shall include the employee  
21 names, and one additional form of personal em-  
22 ployee contact information (such as telephone  
23 number, email address or mailing address) cho-  
24 sen by the employee in writing.”.

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