

FINAL BILL REPORT

ESHB 1817

C 306 L 19
Synopsis as Enacted

Brief Description: Ensuring for a skilled and trained workforce in high hazard facilities.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Sells, Chapman, Gregerson, Ormsby and Morgan).

House Committee on Labor & Workplace Standards
House Committee on Appropriations
Senate Committee on Labor & Commerce

Background:

Apprenticeship programs enable individuals to learn trades and occupations through on-the-job training and related supplemental instruction. The Washington State Apprenticeship Training Council (WSATC) within the Department of Labor and Industries (Department) establishes standards for apprenticeship programs. Standards set by the WSATC address the allowable ratios of apprentice to journey-level workers and the type of work apprentices may do, among other matters. An employer may partner with an approved apprenticeship program or develop its own, subject to approval by the WSATC.

Under the Washington Industrial Safety and Health Act (WISHA), the Department may inspect and investigate work places to determine if the workplace is in compliance with safety and health standards. If the Department believes that an employer has violated a safety and health standard, the Department must issue a citation. Penalties are based on the gravity of the violation, adjusted by the employer's inspection history, the size of the workforce, and other factors. Maximum penalties are specified in statute for various types of violations, and a minimum penalty is specified for willful violations.

Under the Wage Payment Act (WPA) if an employer fails to pay an employee wages owed, the employee may file a wage complaint with the Department or bring a civil action in court. If the employee files an administrative wage complaint, the Department must investigate. The Department may seek wages owed and interest and in some cases, a civil penalty.

North American Industrial Classification System (NAICS) codes identify and classify entities based on their primary business activity. Businesses in NAICS code 324110 are primarily engaged in refining crude petroleum, and businesses in NAICS code 325110 are primarily

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engaged in manufacturing acyclic hydrocarbons or cyclic aromatic hydrocarbons or both from refined petroleum or liquid hydrocarbons (petrochemicals).

Certain bidding and other requirements apply to public works. The prevailing wage is the wage paid on public works in each trade or occupation and is established by the industrial statistician at the Department under standards in law.

Summary:

An owner or operator of a stationary source that is engaged in NAICS code 324110 or 325110 activities (petroleum refining or petrochemical manufacturing) must require its contractors and subcontractors to use a skilled and trained workforce to perform onsite work in an occupation for which an apprenticeship program has been approved by the WSATC, when contracting for the construction, alteration, installation, repair, or maintenance of the stationary source. The requirements do not make the work a public work.

Onsite work does not include ship and rail car support activities; environmental inspection and testing; security guard services; warranty work performed by an original equipment manufacturer under certain circumstances; industrial cleaning and inspection services not related to construction; certain safety services; non-construction catalyst loading, regeneration, and removal; chemical purging and cleaning; refinery byproduct separation and recovery; and work performed that is not in an apprenticeable occupation.

A skilled and trained workforce means all the workers are either registered apprentices or skilled journeypersons, and the following percentages of the skilled journeypersons are apprenticeship graduates:

- by January 1, 2021, at least 20 percent;
- by January 1, 2022, at least 35 percent;
- by January 1, 2023, at least 45 percent; and
- by January 1, 2024, at least 60 percent.

In addition, by January 1, 2022, all workers must have completed within the last three years at least 20 hours of approved advanced safety training for workers at high hazard facilities.

A skilled journeyperson means the worker:

- has either graduated from an apprenticeship program for the applicable occupation or has at least as many hours of on-the-job experience as would be required to graduate; and
- is being paid at least a rate commensurate with the wages typically paid for the occupation in the applicable geographic area. However, a worker may not be paid less than a rate consistent with the seventy-fifth percentile in the applicable occupation and geographic area in the most recent occupational employment statistics published by the Employment Security Department. The prevailing wage rate may be used but a contractor is not required to pay prevailing wage rates.

The skilled and trained workforce requirements apply to each contractor's and subcontractor's on-site workforce. The requirements do not apply to:

- oil and gas extraction operations;

- employees of the owner or operator of the stationary source;
- contractors that are unable to obtain sufficient qualified workers within 48 hours after requesting qualified workers from local hiring halls or apprenticeship programs due to workforce shortages; and
- emergencies that make compliance impracticable because they require immediate action to prevent harm to public health, safety, or to the environment.

In addition, an owner or operator may use its own employees to perform any work not assigned to contractors while the employees of the contractor are present and working.

The Department must approve a curriculum of in-person classroom and laboratory instruction for approved advanced safety training at high-hazard facilities. The training must be provided by a training provider approved by the Department and a training provider may include a registered apprentice program. Upon receipt of certification from the training provider, the Department issues a certificate to the worker. Training from other states may be accepted if the Department finds that the curriculum and documentation meet Washington requirements.

In consultation with the WSATC, the Department must prioritize consideration of new apprenticeship programs for workers in high-hazard facilities. Within six months of an application for a new program, the WSATC must issue a decision. These apprenticeship provisions expire December 31, 2023.

The penalties under the WISHA apply to the failure to comply with the skilled and trained workforce requirement except for the prevailing wage requirement, which is enforced under the WPA.

The requirements apply to work performed under contracts awarded, extended, or renewed on or after the effective date, as well as work under a contract awarded before the effective date if the work is performed more than one year after the effective date.

The Department has rule-making authority to implement the provisions.

Votes on Final Passage:

House	64	32	
Senate	29	16	(Senate amended)
House	58	36	(House concurred)

Effective: January 1, 2020