

HOUSE BILL REPORT

ESHB 1817

As Amended by the Senate

Title: An act relating to ensuring for a skilled and trained workforce in high hazard facilities.

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).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/5/19, 2/19/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DPS(LAWS)].

Floor Activity:

Passed House: 3/6/19, 64-32.
Senate Amended.
Passed Senate: 4/10/19, 29-16.

Brief Summary of Engrossed Substitute Bill

- Requires owners and operators of facilities engaged in petroleum refining or petrochemical manufacturing to require their contractors and subcontractors to use a skilled and trained workforce to perform onsite work.
- Defines a "skilled and trained workforce" as a workforce where all the workers are registered apprentices or skilled journeypersons and the workforce meets certain apprenticeship graduation requirements.
- Requires workers to complete advanced safety training for workers at high-hazard facilities by January 1, 2022.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Joan Elgee (786-7106).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pollet, Ryu, Schmick, Senn, Stanford, Steele, Sullivan, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 9 members: Representatives Stokesbary, Ranking Minority Member; Chandler, Dye, Hoff, Kraft, Mosbrucker, Pettigrew, Springer and Sutherland.

Minority Report: Without recommendation. Signed by 2 members: Representatives MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member.

Staff: Jessica Van Horne (786-7288).

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

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 of Engrossed Substitute Bill:

An owner or operator of a stationary source that is engaged in 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 consistent with the prevailing hourly wage rate for a journeyperson in the applicable occupation and geographic area.

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; 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;

- 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.

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.

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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment: (1) (a) requires the Washington State Apprenticeship and Training Council to issue a decision within six months of acceptance of an application for a new apprenticeship program for workers in high hazards facilities; and (b) expires the provision requiring prioritization of new apprenticeship programs and a decision within six months on December 31, 2023; and (2) changes the pay requirement to be a skilled journey person from a rate consistent with the prevailing hourly wage rate to at least a rate commensurate with the wages typically paid for the occupation in the applicable geographic area. Provides further that the prevailing wage rate may be used to determine the rate but a contractor is not required to pay prevailing wage rates, and that the worker may not be paid less than an hourly 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) The first line of defense against a catastrophe is a trained workforce. California implemented similar legislation smoothly. This bill creates apprenticeship and career opportunities for people in this state. The goal is not to replace people or businesses but to operate these hazardous facilities safely. Training to work in a refinery is intensive. There have been discussions with opponents.

(Opposed) This bill is a solution looking for a problem. The refinery accident had nothing to do with training. The removal of the intent makes the bill unclear. Employees receive extensive training, which is audited. Restricting the labor force may make it hard to hire the safest workers. The California law has exemptions not present in the bill. There should be an exemption for specialty contractors. Well-established firms will be boxed-out.

Companies will do work in-house to avoid the prevailing wage requirements. Obtaining the work is very competitive and the bill will raise the cost of projects, which may end up out-of-state or not pursued. Only one path for training is provided. California has had many safety issues since their law passed. Conversations with proponents have started.

(Other) Removing the intent section is supported. Working in partnership with employees is important. Section 3 of the bill may abrogate existing contracts. The impact of the bill could be devastating since much of the work is done in rural areas, where there are few jobs. No position was taken on the California bill.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is a sound investment for the Workers' Compensation Trust Fund. Requiring a standard level of training and safety at high-hazard facilities will help prevent workplace injuries and accidents. The Department of Labor and Industries (Department), refinery owners, and contractors have all been consulted during the development of this bill. Stakeholders have worked together to clarify the directives for the Department, and as a result have lowered the fiscal impact of the bill. The provisions of the bill will help local communities and the environment.

(Opposed) This bill is unfair to non-union contractors. Non-union contractors have had little to no opportunities to provide input on this bill. There are issues with how a "skilled and trained workforce" is defined. There is currently no apprenticeship program for non-union contractors. There is also no way to determine whether non-union workers hold enough hours of on-the-job experience to meet an apprenticeship program's graduation requirements. Experienced contractors may have to enroll in an apprenticeship program just to be assessed in order to determine if they have the required experience to qualify as a skilled journeyman. This bill threatens family-wage jobs and may put contractors out of business. The bill is being rushed through the legislative process. There are ways to improve safety without adopting these requirements.

This bill mirrors current law in California. California did not approve additional apprenticeship programs for high-hazard facility work. Many non-union contractors were put out of business as a result. Building trades cannot meet the employment needs of these

facilities, which can peak at several thousand employees for short periods of time and then decrease to several hundred employees. Currently, non-union contractors employ out-of-state workers during peak periods. When the refineries need to decrease their workforce these employees find work in other states. State-specific employment requirements could reduce the use of out-of-state workers. There may be impacts to unemployment as employment needs at refineries peak and fall and as a result state workers are periodically hired and laid off. There are other potential negative safety and consumer impacts.

(Other) The refineries believe in collaborating with employees and contractors to promote safety and environmental integrity. This bill would significantly change how refineries work with contractors. It is appreciated that the proponents addressed potential prospective issues and the intent section of the bill. There continue to be concerns about which classes of jobs are subject to these requirements, and whether the bill will abrogate existing contracts. The potential negative impact on small local contractors should be considered further.

Persons Testifying (Labor & Workplace Standards): (In support) Neil Hartman, Washington State Building and Construction Trades Council; and Mark Keffler and Tracey Eixenberger, Boilermakers Union.

(Opposed) Jerry VanderWood, Associated General Contractors; Jeff Ten Pas, BAI Environmental Services; Ryan Likkel and Bryan Libolt, Western Refinery Services; and Kerry Clemenson and Rick Stumph, Matrix Service.

(Other) Greg Hanon, Western States Petroleum Association; and Cliff Webster, Chevron.

Persons Testifying (Appropriations): (In support) Neil Hartman, Washington State Building and Construction Trades Council.

(Opposed) James Rya; Jerry VanderWood, Associated General Contractors; and Ryan Likkel, Washington Refinery Services.

(Other) Greg Hanon, Western States Petroleum Association.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.