

SENATE BILL REPORT

ESHB 1817

As Passed Senate - Amended, April 10, 2019

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: Passed House: 3/06/19, 64-32.

Committee Activity: Labor & Commerce: 3/21/19, 3/28/19 [DPA, w/oRec, DNP].

Floor Activity:

Passed Senate - Amended: 4/10/19, 29-16.

Brief Summary of Bill (As Amended by Senate)

- 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 the Department of Labor and Industries to approve a curriculum for approved advanced safety training at high hazard facilities.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Walsh and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Minority Report: Do not pass.

Signed by Senator King, Ranking Member.

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.

Staff: Jarrett Sacks (786-7448)

Background: Apprenticeship Programs. 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), which is part of the Department of Labor and Industries (L&I), establishes standards for apprenticeship programs and approves training programs. Standards set by WSATC address the allowable ratios of apprentice to journey-level workers and the type of work apprentices may do. An employer may partner with an approved apprenticeship program or develop its own, subject to approval by WSATC.

North American Industrial Classification System. North American Industrial Classification System (NAICS) codes identify and classify companies based on their primary business activity. Many federal and state agencies use NAICS codes to collect and analyze data regarding economic activity and industry trends. The Department of Revenue assigns NAICS codes to every registered business in the state.

NAICS code 324110 means the business is primarily engaged in refining crude petroleum. NAICS code 325110 means the business is primarily engaged in manufacturing acyclic hydrocarbons or cyclic aromatic hydrocarbons or both from refined petroleum or liquid hydrocarbons.

Washington Industrial Safety and Health Act Penalties. Washington is a state plan state for purposes of the federal Occupational Safety and Health Administration (OSHA). As a state plan state, Washington assumes responsibility for occupational safety and health in the state under the Washington Industrial Safety and Health Act (WISHA). To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized by OSHA. L&I, through the Division of Occupational Safety and Health (DOSH), administers WISHA.

L&I may inspect and investigate work places. If L&I believes an employer has violated a safety or health standard, it must issue a citation. The citation identifies the violation, a time for abatement, and the penalty. To determine the penalty, DOSH calculates a base penalty based on the gravity of the violation and then adjusts the base penalty based on the employer's inspection history, the size of the workforce, and other factors. Maximum penalties are specified in statute for various types of violations, as well as a minimum penalty for willful violations.

In 2018, the Legislature passed SHB 1953, which provided that if the state is required to have a higher maximum penalty to qualify a state plan under OSHA, then the maximum civil penalty is the higher maximum penalty required under OSHA.

The 2018 maximum penalty levels set by OSHA are:

- for willful violations, a minimum penalty of \$9,239 to a maximum of \$129,336;
- for repeat violations, a maximum penalty of \$129,336; and
- for serious and other-than-serious violations, as well as failure to abate, a maximum penalty of \$12,934.

Wage Payment Act Penalties. The state Minimum Wage Act, Wage Payment Act, and other laws establish standards for the payment of wages. Generally, it is unlawful for an employer to withhold an employee's wages or to willfully pay an employee less than the employer is required to pay. If the employer fails to pay an employee wages owed, the employee may file a wage complaint with L&I or bring a civil action in court. If the employee files an administrative wage complaint, L&I must investigate. If L&I determines the employer's wage violation was willful, L&I may, under certain circumstances, order the employer to pay a civil penalty. The civil penalty for a willful violation is a minimum of \$1,000 or an amount equal to 10 percent of the total amount of unpaid wages, whichever is greater. Willful means a knowing and intentional act that is neither accidental nor the result of a bona fide dispute.

Summary of Amended Bill: An owner or operator of a stationary source that is engaged in petroleum refining or petrochemical manufacturing, when contracting for the construction, alteration, installation, repair, or maintenance of the stationary source, must require their contractors and subcontractors to use a skilled and trained workforce to perform onsite work within an apprenticeable occupation.

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;
- inspection services not related to construction; 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. The prevailing wage rate may be used

to determine the appropriate rate of pay, but a contractor is not required to pay prevailing wage rates. A worker may not be paid less than an hourly rate consistent with the 75th percentile in the applicable occupation and geographic area in the most recent occupational employment statistics published by the Employment Security Department.

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.

L&I 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 L&I and a training provider may include a registered apprentice program. Upon receipt of certification from the training provider, L&I issues a certificate to the worker. Training from other states may be accepted if L&I finds that the curriculum and documentation meet Washington requirements.

In consultation with the WSATC, L&I must prioritize consideration of new apprenticeship programs for workers in high-hazard facilities. WSATC must make determinations on applications for new state registered apprenticeship programs within 6 months of the acceptance of a completed application.

Failure to comply with the skilled and trained workforce requirement is a WISHA violation and is subject to civil penalties. Failure to comply with the wage rate requirements of the bill is a violation of the Wage Payment Act and is also subject to civil penalties.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Changes to the bill allow for exclusions for specialty workers and for a longer implementation for a smoother transition. The bill is key to long term safety at these facilities. After California passed its bill, there was an increase in safety. The work requires a skilled, trained, and safe workforce. Some contractors cut costs by hiring low cost unskilled labor from other areas.

CON: These facilities are already safe and there is no data to support the bill. Contractors are already selected based on their safety record and they have frequent audits. The bill will eliminate competition between the union and non-union contractors. The bill establishes a prevailing wage for the private sector for the first time, which may be preempted by federal law. The bill discriminates against out of state workers who may be from federal apprenticeship programs but not state apprenticeship programs. This may violate the Commerce Clause of the U.S. Constitution. If the Legislature can require these things of this industry, it may happen to other industries, which worries business.

OTHER: The changes to the bill are an improvement. The committee should consider the testimony from the contractors who do the work.

Persons Testifying: PRO: Neil Hartman, Washington State Building and Construction Trades Council; Tiffany Huff, Compliance Investigator, NWLECET; Michael Hulst, CH Murphy Clark Ullman; Michael Transue, Mechanical Contractors Association; Cory Elliott, Pacific Northwest Regional Council of Carpenters.

CON: Cary Clemenson, Refinery Worker; Stephanie Arnold, Refinery Worker; Rick Stumph, Refinery Worker; Bobbette Halterman, Western Refinery Services; Jeff Ten Pas, BAI Environmental Services; Ryan Likkell, Western Refinery Services; James King, Independent Business Association.

OTHER: Jerry Vanderwood, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying: No one.