

# SENATE BILL REPORT

## SB 5698

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As of January 28, 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:** Senators Keiser, Takko, Salomon, Hobbs, Palumbo, Mullet and Saldaña.

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/29/19.

**Brief Summary of Bill**

- Requires owners and operators of facilities that are 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.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**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.

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*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.*

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 that an employer has violated a safety or health standard, L&I 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 that 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 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.

A skilled and trained workforce means all the workers are either registered apprentices or skilled journeypersons; and the workforce meets the following apprenticeship graduation requirements:

- by 2020, at least 30 percent of the skilled journeypersons must be graduates of an apprenticeship program for the applicable occupation;
- by 2021, at least 45 percent of the skilled journeypersons must be graduates of an apprenticeship program for the applicable occupation; and
- by 2022, at least 60 percent of the skilled journeypersons must be graduates of an apprenticeship program for the applicable occupation and all workers must have completed at least 20 hours of approved advanced safety training for workers at high hazard facilities within the last two years.

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 that would be required to graduate from an apprenticeship program;
- is being paid at least a rate equivalent to the prevailing hourly wage rate for a journeyperson in the applicable occupation and geographic area; and
- has completed at least 20 hours of approved advanced safety training for workers at high hazard facilities within the last two years.

The requirements of the bill do not apply to:

- oil and gas extraction operations;
- employees of the owner or operator of the stationary source, nor does the bill prevent an owner or operator from using its own employees to perform any work that not been 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 or 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 may be provided by a registered apprentice program approved by the supervisor of apprenticeship.

Failure to comply with the skilled and trained workforce requirement is a violation of the Washington Industrial Safety and Health Act and is subject to civil penalties. Failure to comply with the prevailing hourly wage requirements of the bill is a violation of the Wage Payment Act and is also subject to civil penalties.

**Appropriation:** None.

**Fiscal Note:** Requested on January 27, 2019.

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

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