

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

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AMENDED IN SENATE FEBRUARY 13, 2013

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AMENDED IN SENATE JANUARY 29, 2013

SENATE BILL

No. 54

Introduced by Senator Hancock

(Coauthors: Assembly Members Bonilla, *Campos*, Dickinson,
Roger Hernández, *Pan*, Skinner, and Williams)

December 21, 2012

An act to add Section 25536.7 to the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 54, as amended, Hancock. Hazardous materials management: stationary sources: skilled and trained workforce.

Existing law establishes an accidental release prevention program implemented by the Office of Emergency Services and the appropriate administering agency, as defined, in each city or county. Under existing law, stationary sources subject to ~~the~~ *this* accidental release prevention program ~~for the state~~ are required to prepare a risk management plan (RMP) when required under certain federal regulations or if the administering agency determines there is a significant likelihood ~~of that~~ *the use of regulated substances by a stationary source may pose* a regulated substances accident risk. Under existing law, the RMP is

required to be submitted to the California Environmental Protection Agency and to the administering agency. Existing law imposes criminal penalties upon a stationary source that knowingly violates requirements of the accidental release prevention program.

This bill would require an owner or operator of a stationary source that is engaged in certain activities with regard to petroleum and with one or more covered processes that is required to prepare and submit an RMP, when contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work at the stationary source, to require that its contractors and any subcontractors use a skilled and trained workforce to perform all onsite work within an apprenticeable occupation in the building and construction trades, including skilled journeypersons paid at least a rate equivalent to the applicable prevailing hourly wage rate. The bill would not apply to oil and gas extraction operations. Because the bill would make a knowing violation of these requirements a crime, and would otherwise impose new duties upon local agencies administering the program, the bill would impose a state-mandated local program.

This bill would require the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations to approve a curriculum of in-person classroom and laboratory instruction for approved advanced safety training for workers at high hazard facilities by January 1, 2016. The bill would define terms for purposes of the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The use of unskilled and untrained workers at chemical
- 4 manufacturing and processing facilities that generate, store, treat,
- 5 handle, refine, process, and transport hazardous materials is a risk
- 6 to public health and safety, and the risk to public health and safety

1 is particularly high when workers are employed by outside
2 contractors because they generally will be less familiar with the
3 operations of the facility and its emergency plans and the owner
4 or operator of the facility will have less incentive to invest in their
5 training.

6 (b) Requiring that workers employed by outside contractors at
7 these facilities be paid at least at a rate equivalent to the prevailing
8 journeyperson wage for the occupation, or be registered in an
9 approved apprenticeship program, is necessary to provide an
10 economic incentive for employers to use only the most skilled
11 workers to perform work that poses a risk to public health and
12 safety. The wage scale is also necessary to provide an economic
13 incentive for the workers to obtain the mandatory advanced safety
14 training required by Section 2 of this act.

15 (c) Requiring that apprentices be registered in programs
16 approved by the Chief of the Division of Apprenticeship Standards
17 is necessary to ensure that these workers are receiving the proper
18 training and on-the-job supervision and that the programs are
19 subject to proper oversight.

20 (d) The requirement that at least 60 percent of the
21 journeypersons working for a contractor be graduates of an
22 approved apprenticeship program is necessary to ensure that the
23 majority of the journeypersons will have had appropriate classroom
24 and laboratory instruction for their occupations. A phase-in for
25 this requirement will avoid disruption of the industry.

26 SEC. 2. Section 25536.7 is added to the Health and Safety
27 Code, to read:

28 25536.7. (a) (1) An owner or operator of a stationary source
29 that is engaged in activities described in Code 324110 or 325110
30 of the North American Industry Classification System (NAICS),
31 as that code read on January 1, 2014, and with one or more covered
32 processes that is required to prepare and submit an RMP pursuant
33 to this article, when contracting for the performance of
34 construction, alteration, demolition, installation, repair, or
35 maintenance work at the stationary source, shall require that its
36 contractors and any subcontractors use a skilled and trained
37 workforce to perform all onsite work within an apprenticeable
38 occupation in the building and construction trades. This section
39 shall not apply to oil and gas extraction operations.

1 (2) The Chief of the Division of Apprenticeship Standards of
2 the Department of Industrial Relations may approve a curriculum
3 of in-person classroom and laboratory instruction for approved
4 advanced safety training for workers at high hazard facilities. That
5 safety training may be provided by an apprenticeship program
6 approved by the chief or by instruction provided by the Chancellor
7 of the California Community Colleges. The chief shall approve a
8 curriculum in accordance with this paragraph by January 1, 2016,
9 and shall periodically revise the curriculum to reflect current best
10 practices. Upon receipt of certification from the apprenticeship
11 program or community college, the chief shall issue a certificate
12 to a worker who completes the approved curriculum.

13 (3) For purposes of paragraph (2) of subdivision (b) of Section
14 3075 of the Labor Code, a stationary source covered by this section
15 shall be considered in determining whether existing apprenticeship
16 programs do not have the capacity, or have neglected or refused,
17 to dispatch sufficient apprentices to qualified employers who are
18 willing to abide by the applicable apprenticeship standards.

19 (4) This section shall not apply to contracts awarded before
20 January 1, 2014, unless the contract is extended or renewed after
21 that date.

22 (5) (A) This section shall not apply to the employees of the
23 owner or operator of the stationary source or prevent the owner or
24 operator of the stationary source from using its own employees to
25 perform any work that has not been assigned to contractors while
26 the employees of the contractor are present and working.

27 (B) *An apprenticeship program approved by the chief may*
28 *enroll, with advanced standing, applicants with relevant prior*
29 *work experience at a stationary source that is subject to this*
30 *section, in accordance with the approved apprenticeship standards*
31 *of the program.*

32 (6) The criteria of subparagraph (A) of paragraph (9) of
33 subdivision (b), subparagraph (C) of paragraph (9) of subdivision
34 (b), and subparagraph (B) of paragraph (10) of subdivision (b)
35 shall not apply to either of the following:

36 (A) To the extent that the contractor has requested qualified
37 workers from the local hiring halls that dispatch workers in the
38 apprenticeable occupation and, due to workforce shortages, the
39 contractor is unable to obtain sufficient qualified workers within
40 48 hours of the request, Saturdays, Sundays, and holidays excepted.

1 This section shall not prevent contractors from obtaining workers
2 from any source.

3 (B) To the extent that compliance is impracticable because an
4 emergency requires immediate action to prevent harm to public
5 health or safety or to the environment, but the criteria shall apply
6 as soon as the emergency is over or it becomes practicable for
7 contractors to obtain a qualified workforce.

8 (7) The requirement specified in paragraph (1) for a skilled and
9 trained workforce, as defined in paragraph (10) of subdivision (b),
10 shall apply to each individual contractor's and subcontractor's
11 onsite workforce.

12 (8) *This section does not make the construction, alteration,*
13 *demolition, installation, repair, or maintenance work at a*
14 *stationary source that is subject to this section a public work,*
15 *within the meaning of Chapter 1 (commencing with Section 1720)*
16 *of Part 7 of Division 2 of the Labor Code.*

17 (b) As used in this section:

18 (1) "Apprenticeable occupation" means an occupation for which
19 the chief has approved an apprenticeship program pursuant to
20 Section 3075 of the Labor Code.

21 (2) "Approved advanced safety training for workers at high
22 hazard facilities" means a curriculum approved by the chief
23 pursuant to paragraph (2) of subdivision (a).

24 (3) "Building and construction trades" has the same meaning
25 as in Section 3075.5 of the Labor Code.

26 (4) "Chief" means the Chief of the Division of the
27 Apprenticeship Standards of the Department of Industrial Relations.

28 (5) "Construction," "alteration," "demolition," "installation,"
29 "repair," and "maintenance" have the same meanings as in Sections
30 1720 and 1771 of the Labor Code.

31 (6) "Onsite work" shall not include catalyst handling and
32 loading, chemical cleaning, or inspection and testing that was not
33 within the scope of a prevailing wage determination issued by the
34 Director of Industrial Relations as of January 1, 2013.

35 (7) "Prevailing hourly wage rate" means the general prevailing
36 rate of per diem wages, as determined by the Director of Industrial
37 Relations pursuant to Sections 1773 and 1773.9 of the Labor Code,
38 but does not include shift differentials, travel and subsistence, or
39 holiday pay. Notwithstanding subdivision (c) of Section 1773.1
40 of the Labor Code, the requirement that employer payments not

1 reduce the obligation to pay the hourly straight time or overtime
2 wages found to be prevailing shall not apply if otherwise provided
3 in a bona fide collective bargaining agreement covering the worker.

4 (8) “Registered apprentice” means an apprentice registered in
5 an apprenticeship program approved by the chief pursuant to
6 Section 3075 of the Labor Code who is performing work covered
7 by the standards of that apprenticeship program and receiving the
8 supervision required by the standards of that apprenticeship
9 program.

10 (9) “Skilled journeyman” means a worker who meets all of
11 the following criteria:

12 (A) The worker either graduated from an apprenticeship program
13 for the applicable occupation that was approved by the chief, or
14 has at least as many hours of on-the-job experience in the
15 applicable occupation that would be required to graduate from an
16 apprenticeship program for the applicable occupation that is
17 approved by the chief.

18 (B) The worker is being paid at least a rate equivalent to the
19 prevailing hourly wage rate for a journeyman in the applicable
20 occupation and geographic area.

21 (C) The worker has completed within the prior two calendar
22 years at least 20 hours of approved advanced safety training for
23 workers at high hazard facilities. This requirement applies only to
24 work performed on or after January 1, 2018.

25 (10) “Skilled and trained workforce” means a workforce that
26 meets both of the following criteria:

27 (A) All the workers are either registered apprentices or skilled
28 journeymen.

29 (B) (i) As of January 1, 2014, at least 30 percent of the skilled
30 journeymen are graduates of an apprenticeship program for the
31 applicable occupation that was either approved by the chief
32 pursuant to Section 3075 of the Labor Code or located outside
33 California and approved for federal purposes pursuant to the
34 apprenticeship regulations adopted by the federal Secretary of
35 Labor.

36 (ii) As of January 1, 2015, at least 45 percent of the skilled
37 journeymen are graduates of an apprenticeship program for the
38 applicable occupation that was either approved by the chief
39 pursuant to Section 3075 of the Labor Code or located outside
40 California and approved for federal purposes pursuant to the

1 apprenticeship regulations adopted by the federal Secretary of
2 Labor.

3 (iii) As of January 1, 2016, at least 60 percent of the skilled
4 journeypersons are graduates of an apprenticeship program for the
5 applicable occupation that was either approved by the chief
6 pursuant to Section 3075 of the Labor Code or located outside
7 California and approved for federal purposes pursuant to the
8 apprenticeship regulations adopted by the federal Secretary of
9 Labor.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act or because costs that may be
15 incurred by a local agency or school district will be incurred
16 because this act creates a new crime or infraction, eliminates a
17 crime or infraction, or changes the penalty for a crime or infraction,
18 within the meaning of Section 17556 of the Government Code, or
19 changes the definition of a crime within the meaning of Section 6
20 of Article XIII B of the California Constitution.