

Senate Bill No. 54

Passed the Senate September 11, 2013

Secretary of the Senate

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 54, 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 this accidental release prevention program 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 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The use of unskilled and untrained workers at chemical manufacturing and processing facilities that generate, store, treat, handle, refine, process, and transport hazardous materials is a risk to public health and safety, and the risk to public health and safety is particularly high when workers are employed by outside contractors because they generally will be less familiar with the operations of the facility and its emergency plans and the owner or operator of the facility will have less incentive to invest in their training.

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

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

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

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

25536.7. (a) (1) An owner or operator of a stationary source that is engaged in activities described in Code 324110 or 325110 of the North American Industry Classification System (NAICS), as that code read on January 1, 2014, and with one or more covered processes that is required to prepare and submit an RMP pursuant to this article, when contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work at the stationary source, shall 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. This section shall not apply to oil and gas extraction operations.

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

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

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

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

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

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

(A) To the extent that the contractor has requested qualified workers from the local hiring halls that dispatch workers in the apprenticeable occupation and, due to workforce shortages, the contractor is unable to obtain sufficient qualified workers within 48 hours of the request, Saturdays, Sundays, and holidays excepted. This section shall not prevent contractors from obtaining workers from any source.

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

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

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

(b) As used in this section:

(1) “Apprenticeable occupation” means an occupation for which the chief has approved an apprenticeship program pursuant to Section 3075 of the Labor Code.

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

(3) “Building and construction trades” has the same meaning as in Section 3075.5 of the Labor Code.

(4) “Chief” means the Chief of the Division of the Apprenticeship Standards of the Department of Industrial Relations.

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

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

(7) “Prevailing hourly wage rate” means the general prevailing rate of per diem wages, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, but does not include shift differentials, travel and subsistence, or holiday pay. Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker.

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

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

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

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

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

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

(A) All the workers are either registered apprentices or skilled journeypersons.

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

(ii) As of January 1, 2015, at least 45 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction,

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2013

Governor