

Assembly Bill No. 578

Passed the Assembly June 2, 2015

Chief Clerk of the Assembly

Passed the Senate September 8, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 143.1, 6450, and 6451 of, and to add Section 6450.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, Low. Occupational safety and health.

Existing law establishes the Occupational Safety and Health Standards Board in the Department of Industrial Relations to adopt, amend, or repeal employment safety standards and laws. Existing law authorizes the board, upon the application of an employer, to grant a permanent variance from an occupational standard or order after specified notice and hearing requirements are met. The California Occupational Safety and Health Act of 1973 also authorizes an employer to apply to the Division of Occupational Safety and Health, that enforces employment safety laws, for a temporary order granting a variance from an occupational safety or health standard and requires the order to be granted only if the employer's application satisfies specified requirements. Existing law provides that a temporary order may be granted only after notice to employees and an opportunity for a hearing. Existing law specifies the information that an application for a temporary order is required to contain.

This bill would require an employer to also give notice to workers at the place of employment who will be affected by a permanent or temporary variance, or representatives of affected workers, who may be affected by or exposed to the hazards by the permanent or temporary variance from an occupational safety and health standard. The bill would require any affected worker, or representative of affected workers, upon request, to be granted party status to the variance proceedings. The bill would require the variance application to include a certification that the employer has given notice to affected workers as required. Because a violation of the new requirements for employers would be a crime under certain circumstances, this bill would impose a state-mandated local program.

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 a specified reason.

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

SECTION 1. Section 143.1 of the Labor Code is amended to read:

143.1. (a) The board shall conduct hearings on such requests for a permanent variance after employees or employee representatives of the applicant are properly notified. The applicant shall also give notice to workers at the place of employment who will be affected by the permanent variance, or representatives of affected employees who may be affected by, or exposed to, hazards by the permanent variance from an occupational safety and health standard. The applicant shall provide certification that the affected employees have been given notice of the request for a permanent variance.

(b) Upon request to the board, affected employees or their representatives shall be granted party status to the variance proceeding.

(c) All board decisions on a permanent variance shall be final except for a rehearing or judicial review provided for by law.

SEC. 2. Section 6450 of the Labor Code is amended to read:

6450. (a) Any employer may apply to the division for a temporary order granting a variance from an occupational safety or health standard. A temporary order shall be granted only if the employer files an application that meets the requirements of Section 6451, and establishes the following:

(1) The employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date.

(2) The employer is taking all available steps to safeguard employees against the hazards covered by the standard.

(3) The employer has an effective program for coming into compliance with the standard as quickly as practicable.

(b) Any temporary order issued under this section shall prescribe the practices, means, methods, operations, and processes the employer is required to adopt and use while the order is in effect and state in detail a program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and other affected workers as described in Section 6450.5 and an opportunity for a hearing. However, the division may issue one interim order for a temporary variance upon submission of an application showing that the employment or place of employment will be safe for employees and other affected workers pending a hearing on the application for a temporary variance. A temporary order shall not be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice provided that the requirements of this section are met and an application for renewal is filed before the expiration date of the order. A single renewal of an order shall not remain in effect for longer than 180 days.

SEC. 3. Section 6450.5 is added to the Labor Code, to read:

6450.5. The employer shall also give notice to workers at the place of employment who will be affected by the temporary variance, or representatives of affected workers, who may be affected by or exposed to the hazard covered by the standard, by the temporary variance from an occupational safety and health standard. Upon request to the division, or to the standards board upon appeal pursuant to Section 6455, any affected worker, or representative of affected workers, shall be granted party status to the variance proceedings.

SEC. 4. Section 6451 of the Labor Code is amended to read:

6451. An application for a temporary order under Section 6450 shall contain all of the following:

(a) A specification of the standard or portion thereof from which the employer seeks a variance.

(b) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor.

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard.

(d) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and will take, with dates specified, to come into compliance with the standard.

(e) A certification that the employer has informed employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the division for a hearing.

(f) A certification that the employer has given notice as required in Section 6450.5.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only 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 _____, 2015

Governor