

ASSEMBLY BILL

No. 3037

Introduced by Assembly Member Dymally

February 26, 2004

An act to amend Sections 6310, 6312, and 6401.7 of, to add Sections 6312.1, 6312.2, 6312.5, 6401.8, 6401.9, 6401.10, and 6401.11 to, and to repeal Section 6311 of, the Labor Code, and to amend Section 1103 of, and to add Chapter 1.5 (commencing with Section 1200) to Part 1 of Division 2 of, the Public Contract Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 3037, as introduced, Dymally. Employment: occupational safety and health.

Under existing law, it is unlawful to discharge or discriminate against an employee for making a complaint regarding employee safety or health, instituting or testifying in any proceeding under his or her rights, participating in an occupational health and safety committee, or refusing to perform work in violation of any occupational safety or health standard or safety order. Existing law further authorizes any employee who believes that he or she has been unlawfully discharged or otherwise discriminated against to file a complaint with the Labor Commissioner, and the Labor Commissioner is required to investigate those complaints.

This bill, instead, would make it an unlawful employment practice for an employer to subject an employee to an adverse employment action, as defined, because the employee filed a complaint relating to employee safety or health, instituted or testified in a proceeding under his or her rights, participated in an occupational health and safety committee, or refused to perform unsafe work, as defined. The bill

would provide for the employee to file a complaint of adverse employment action with the Division of Occupational Safety and Health and would set forth the minimum procedures for filing, investigating, and determining complaints of occupational safety and health discrimination. The bill would require the division to establish additional procedures and criteria for investigating and determining complaints and to file an annual report with the Legislature relating to employee safety and health grievances.

Under existing law, any employer who willfully refuses to rehire, promote, or otherwise restore an employee who has been determined to be eligible for rehiring or promotion, is guilty of a misdemeanor.

Because this bill would revise and expand the conditions under which an employer may be guilty of a misdemeanor, the bill would redefine this offense, thereby imposing a state-mandated local program.

Under existing law, an employee unlawfully discharged or discriminated against is entitled to reinstatement and reimbursement for lost wages.

This bill would provide that the employee is entitled to reinstatement, the recovery of a penalty at least 3 times the value of the employee's lost benefits and wages, and reasonable attorney's fees and costs.

Existing law requires every employer to establish an effective injury prevention program, and specifically permits employer and employee occupational safety and health committees to be included in the employer's injury prevention program.

This bill would require the injury and illness prevention program (IIPP) of an employer to include either a joint employer-employee occupational safety and health committee or an employer safety liaison, except as specified. The bill would require the Division of Occupational Safety and Health to adopt regulations to implement this new requirement on or before January 1, 2006, and to establish minimum criteria regarding committee duties and selection of employee representatives.

Existing law creates a presumption that an employer is in substantial compliance with the communication requirement of the employer's injury prevention program if the employer's occupational safety and health committee conforms with specified criteria.

This bill would require the Division of Workers' Compensation to establish criteria for a certificate of merit for employers with an effective IIPP with an effective joint employer-employee occupational safety and health committee. The certificate would entitle the employer



to additional incentives, including a 5% discount on the employer's workers' compensation premium and a presumption that an employer meets responsible bidding requirements for safety and health.

The bill would require employers to submit certificate applications under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would impose related responsible bidder requirements for public contracts, that would require demonstration of the effectiveness of the bidder's IIPP. The bill would require the Department of Industrial Relations to develop model guidelines for contractual language for public entities to assure that the successful bidder provides a safe and healthful work place.

Existing law requires every workers' compensation insurer to conduct a review of the IIPP of each of its insureds, as specified, to determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness.

This bill would additionally require insurers to conduct an on-site review, as specified, and to provide training assistance to certain employers. Insurers also would be required to develop and implement a series of targeted prevention programs, as specified.

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.

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 that
2 workplace deaths, injuries, and illnesses take a tremendous, tragic,
3 costly, and unnecessary toll in California. A significant means of
4 reducing the costs of workplace deaths, injuries, and
5 illnesses--personal and economic costs borne by the injured
6 worker and workers' compensation costs borne by the
7 employer--is to reduce their incidence. This requires a
8 multi-faceted approach involving education of both workers and
9 employers as to their respective rights and duties, encouragement



1 to work cooperatively, and ultimately strong government as well
2 as private enforcement efforts. To strengthen this multi-faceted
3 approach, it is the intent of the Legislature to focus on effective
4 means to assure that workers and employers can, at the workplace,
5 solve problems quickly and cooperatively, without workers
6 fearing retaliation. The Legislature believes labor-management
7 health and safety cooperation, so long as it includes
8 knowledgeable, independent worker participation, will reduce
9 workplace deaths, injuries, and illnesses. The Legislature believes
10 that employers who have effective cooperative programs should
11 be rewarded when, for example, they bid on government contracts.
12 It is also the intent of the Legislature to assure that workers have
13 effective and enforceable rights to secure safe and healthful
14 working conditions through meaningful participation in the
15 employer's injury and illness prevention program and further that
16 workers be protected against reprisals for participation in
17 occupational safety and health matters, including, but not limited
18 to, making complaints about hazardous conditions and refusing to
19 work in hazardous conditions. The following rights and remedies
20 shall be available and rigorously enforced.

21 SEC. 2. Section 6310 of the Labor Code is amended to read:

22 6310. (a) ~~No person shall discharge or in any manner~~
23 ~~discriminate against any employee because the employee has done~~
24 ~~any of the following~~ *It is an unlawful employment practice for an*
25 *employer to subject an employee to an adverse employment action*
26 *because any of the following has occurred:*

27 (1) ~~Made~~ *The employee filed, caused to be filed, or made*
28 *known his or her intention to file, any oral or written complaint to*
29 *the division, other governmental agencies having statutory*
30 *responsibility for or assisting the division with reference to*
31 *employee safety or health, his or her employer or any agent of his*
32 *or her employer, or his or her representative. The complaint shall*
33 *be in good faith about a working condition or practice that creates*
34 *a real and apparent hazard or is likely to cause death or serious*
35 *physical injury, or that the employee reasonably believes to be*
36 *unsafe or dangerous, whether or not there exists an occupational*
37 *safety and health standard or order that is being violated. The*
38 *complaint shall be with regard to one or more conditions or*
39 *practices affecting the employee, his or her fellow employees, or*
40 *the employees of another employer.*



1 (2) ~~Instituted~~ *The employee instituted or caused to be instituted*
2 *any proceeding under or relating to his or her rights or has testified*
3 *or is about to testify in the proceeding or because of the exercise*
4 *by the employee on behalf of himself, herself, or others of any*
5 *rights afforded him or her pursuant to this division.*

6 (3) ~~Participated~~ *The employee participated in an occupational*
7 *health and safety committee established pursuant to Section*
8 *6401.7.*

9 (4) *The employee refused to perform unsafe work, as defined in*
10 *subdivision (d), the performance of which may violate this code,*
11 *including Section 6400, any occupational safety or health*
12 *standard, or any safety order of the division.*

13 (b) ~~Any employee who is discharged, threatened with~~
14 ~~discharge, demoted, suspended, or in any other manner~~
15 ~~discriminated against in the terms and conditions of employment~~
16 ~~by his or her employer because the employee has made a bona fide~~
17 ~~oral or written complaint to the division, other governmental~~
18 ~~agencies having statutory responsibility for or assisting the~~
19 ~~division with reference to employee safety or health, his or her~~
20 ~~employer, or his or her representative, of unsafe working~~
21 ~~conditions, or work practices, in his or her employment or place~~
22 ~~of employment, or has participated in an employer-employee~~
23 ~~occupational health and safety committee, shall be entitled to~~
24 ~~reinstatement and reimbursement for lost wages and work benefits~~
25 ~~caused by the acts of the employer. Any An employer who violates~~
26 *subdivision (a) is liable for the following:*

27 (1) *Twenty-five thousand dollars (\$25,000) or three times the*
28 *value of the employee's lost benefits and wages, whichever is*
29 *greater, if the employee has been discharged.*

30 (2) *Five thousand dollars (\$5,000) or three times the value of*
31 *the employee's lost benefits and wages, whichever is greater, if the*
32 *employee has suffered an adverse employment action or actions*
33 *other than discharge.*

34 (3) *Reinstatement of the employee.*

35 (4) *Reasonable attorney's fees and costs.*

36 (c) *For purposes of this chapter, "adverse employment action"*
37 *means a discharge, demotion, or suspension of an employee, or an*
38 *action that threatens to discharge or in any other manner*
39 *discriminates against an employee in a term or condition of*
40 *employment.*



1 (d) For purposes of this section, “refused to perform unsafe
2 work” means a refusal to perform work under all of the following
3 conditions:

4 (1) The employee complained in good faith about a working
5 condition or practice that creates a real and apparent hazard or is
6 likely to cause death or serious physical injury, or that the
7 employee reasonably believes to be unsafe or dangerous, whether
8 or not there existed an occupational safety and health standard or
9 order that was being violated. The complaint shall be with regard
10 to one or more conditions or practices affecting the employee, his
11 or her fellow employees, or the employees of another employer.

12 (2) As soon as practicable, and immediately upon request, the
13 employee reported his or her refusal and reasons to his or her
14 immediate supervisor, foreperson, or any person in authority.

15 (3) The employee performed alternative work if requested by
16 the employer.

17 (e) Any employer who willfully refuses to rehire, promote, or
18 otherwise restore an employee or former employee who has been
19 determined to be eligible for rehiring—~~or~~, promotion, or
20 restoration by a grievance procedure, arbitration, or hearing
21 authorized by law, is guilty of a misdemeanor.

22 SEC. 3. Section 6311 of the Labor Code is repealed.

23 ~~6311. No employee shall be laid off or discharged for refusing
24 to perform work in the performance of which this code, including
25 Section 6400, any occupational safety or health standard or any
26 safety order of the division or standards board will be violated,
27 where the violation would create a real and apparent hazard to the
28 employee or his or her fellow employees. Any employee who is
29 laid off or discharged in violation of this section or is otherwise not
30 paid because he or she refused to perform work in the performance
31 of which this code, any occupational safety or health standard or
32 any safety order of the division or standards board will be violated
33 and where the violation would create a real and apparent hazard to
34 the employee or his or her fellow employees shall have a right of
35 action for wages for the time the employee is without work as a
36 result of the layoff or discharge.~~

37 SEC. 4. Section 6312 of the Labor Code is amended to read:

38 6312. Any employee who believes that he or she has been
39 ~~discharged or otherwise discriminated against~~ *subjected to an*
40 *adverse employment action* by any person in violation of Section



1 6310 or 6311 may file a complaint with the ~~Labor Commissioner~~
2 ~~division~~ pursuant to Section ~~98.7~~ 6312.2.

3 SEC. 5. Section 6312.1 is added to the Labor Code, to read:

4 6312.1. (a) Within 20 days of receipt of a complaint of an
5 adverse employment action in violation of Section 6310, the chief
6 of the division or his or her designee shall complete a preliminary
7 review to determine whether to proceed with a full investigation.

8 (b) No later than June 30, 2005, and before implementing this
9 section for preliminary review, the division shall develop
10 evaluation criteria for the preliminary review. The criteria, as well
11 as data and explanatory information regarding the matters to
12 which these criteria are applied, shall be included in the first annual
13 and in subsequent annual reports to the Legislature pursuant to
14 Section 6312.5. The decision of the division whether or not to
15 pursue a full investigation shall be without prejudice to the right
16 of a complainant to pursue or obtain any other legal remedy he or
17 she may have and is not intended to, and does not, affect existing
18 rights or remedies available to a complainant.

19 (c) This section shall remain in effect only until January 1,
20 2007, and as of that date is repealed, unless a later enacted statute,
21 that is enacted before January 1, 2007, deletes or extends that date.

22 SEC. 6. Section 6312.2 is added to the Labor Code, to read:

23 6312.2. (a) Any person who believes that he or she has been
24 discharged or otherwise discriminated against in violation of
25 Section 6310 may file a complaint with the division within six
26 months after the occurrence of the violation. The six-month period
27 may be extended by the chief of the division for good cause.

28 (b) The chief of the division or his or her designee shall assign
29 the complaint to an occupational safety and health discrimination
30 complaint investigator who shall prepare and submit a report to the
31 chief based on an investigation of the complaint. The chief may
32 designate his or her chief deputy, a regional manager, or division
33 counsel to receive and review the reports.

34 (c) No later than June 30, 2005, the chief shall establish
35 procedures for the investigation of occupational safety and health
36 discrimination complaints.

37 (d) Upon receipt of a complaint, the division shall provide to
38 each complainant both of the following:

39 (1) A summary of the procedures for processing the complaint.



1 (2) Notice that the complainant may file a separate, concurrent
2 complaint with the United States Department of Labor within 30
3 days after the occurrence of the violation.

4 (e) The procedures established pursuant to subdivision (c)
5 shall, at a minimum, comply with all of the following:

6 (1) The division shall provide the complainant and respondent
7 written notice of whether or not it shall proceed with that full
8 investigation and shall commence a full investigation within 20
9 days of the date of receipt of the complaint.

10 (A) If the complainant failed to provide sufficient information
11 to process the complaint, the division shall notify the complainant
12 as soon as possible and instruct the complainant regarding what
13 additional specific information is needed to process the complaint.

14 (B) Upon commencement of a full investigation, a written
15 notice shall inform the complainant and respondent of the nature
16 of the complaint, their respective rights and responsibilities, and
17 all procedures involved in resolving the complaint, as established
18 pursuant to subdivision (c).

19 (2) The division shall issue subpoenas, upon a showing of good
20 cause, for additional evidence in any form or to compel testimony
21 from a witness.

22 (3) The investigation shall be conducted by an inspector,
23 investigator, or attorney designated by the division, who shall
24 obtain and consider, at a minimum, all of the following
25 information:

26 (A) Written statements and transcripts of oral statements
27 submitted by the complainant in response to questioning by the
28 division, which shall include all the elements of a prima facie case.

29 (B) Written statements submitted by the respondent.

30 (C) Written statements or transcripts of oral statements
31 submitted by the complainant in response to questioning by the
32 division, which shall include questioning the complainant
33 regarding evidence that might tend to rebut statements offered by
34 the respondent.

35 (D) Documents subpoenaed from the respondent or any other
36 relevant source to support or rebut the evidence of the complainant
37 or the respondent.

38 (E) Written statements or transcripts of oral statements given
39 by witnesses who have information concerning the alleged
40 violation. The identity of a witness shall remain confidential



1 unless the identification of the witness becomes necessary to
2 proceed with the investigation or to prosecute an action to enforce
3 a determination.

4 (4) At any time before the chief, or his or her designee, issues
5 his or her report or decision, he or she may hold an investigative
6 hearing if, in his or her opinion, a hearing is necessary. All formal
7 declarations, documentary evidence, and any investigative reports
8 that have previously been filed shall be made a part of the record.
9 The complainant and the respondent shall have the opportunity to
10 review the record. The complainant and the respondent shall have
11 the right to be present, to present further evidence, and to present
12 and cross-examine witnesses. The division shall issue, serve, and
13 enforce subpoenas on behalf of itself, the complainant, or the
14 respondent to compel the attendance of witnesses or to produce
15 evidence at the hearing.

16 (5) The person conducting the investigation shall submit to the
17 chief or his or her designee, a written investigation report
18 summarizing the findings of the investigation and all the
19 information obtained pursuant to paragraphs (1) to (4), inclusive.
20 The investigation report shall include recommended findings of
21 fact and conclusions of law, and shall also include attachments of
22 all statements and documents obtained in the investigation.

23 (6) The chief shall notify the complainant and respondent of his
24 or her determination not later than 60 days after the filing of the
25 complaint. The notice shall inform the parties of their right to
26 request a copy of all reports, attachments, statements, documents,
27 and hearing transcripts.

28 (f) (1) If the chief determines a violation has occurred, he or
29 she shall promptly notify the complainant and respondent, direct
30 the respondent to cease and desist from the violation, and take any
31 action deemed necessary to remedy the violation. These actions
32 may include, but are not limited to, where appropriate, rehiring or
33 reinstatement, reimbursement of lost wages and benefits and
34 interest thereon, payment of reasonable attorney's fees associated
35 with any hearing held by the chief in investigating the complaint,
36 the posting of notices to employees, and the specific penalties set
37 forth in subdivision (b) of Section 6310 for matters charging a
38 violation of that section.

39 (2) If the respondent does not comply with the order within 10
40 days following notification of the chief's determination, the chief



1 shall bring an action promptly against the respondent in a court of
2 competent jurisdiction. The chief shall petition the court for
3 appropriate temporary relief or a restraining order unless he or she
4 determines good cause exists for not doing so. If the chief prevails
5 in this action, the court shall award reasonable attorney's fees,
6 court costs, and investigative costs to the chief. Fees and costs that
7 are awarded to the chief shall be retained by the chief and used to
8 fund investigations of complaints filed pursuant to Section 6310.

9 (3) If the chief fails to bring an action in court promptly, the
10 complainant may bring an action against the chief in any
11 appropriate court for a writ of mandate to compel the chief to bring
12 an action in court against the respondent. If the complainant
13 prevails in his or her action for a writ, the court shall award the
14 complainant court costs and reasonable attorney's fees,
15 notwithstanding any other law.

16 (4) Regardless of any delay in bringing an action in court, the
17 chief shall not be divested of jurisdiction.

18 (5) In any action, the court may permit the claimant to intervene
19 as a party plaintiff to the action and shall have jurisdiction, for
20 cause shown, to restrain the violation and to order all appropriate
21 relief. Appropriate relief includes, but is not limited to, rehiring or
22 reinstatement of the complainant, reimbursement of lost wages
23 and benefits and interest thereon, the specific penalties set forth in
24 subdivision (b) of Section 6310 for matters charging a violation of
25 that section, and any other compensation or equitable relief as is
26 appropriate under the circumstances of the case.

27 (g) (1) If the chief determines that no violation has occurred,
28 he or she shall notify the complainant and respondent and dismiss
29 the complaint.

30 (2) The chief may direct the complainant to pay reasonable
31 attorney's fees associated with any hearing held by the chief if the
32 chief finds the complaint was frivolous, unreasonable, groundless,
33 and brought in bad faith.

34 (3) The complainant may, after notification of the chief's
35 determination to dismiss a complaint, bring an action in an
36 appropriate court, which shall have jurisdiction to determine
37 whether a violation occurred and, if so, to restrain the violation and
38 order all appropriate relief to remedy the violation. Appropriate
39 relief includes, but is not limited to, rehiring or reinstatement of the
40 complainant, reimbursement of lost wages and benefits and



1 interest thereon, the specific penalties set forth in subdivision (b)
2 of Section 6310 for matters charging a violation of that section,
3 and other compensation or equitable relief as is appropriate under
4 the circumstances of the case.

5 (4) When dismissing a complaint, the chief shall advise the
6 complainant of his or her right to bring an action in an appropriate
7 court if he or she disagrees with the determination of the chief, and
8 in the case of an alleged violation of Section 6310, to file a
9 complaint against the state program with the United States
10 Department of Labor.

11 (5) The timely filing of a complaint against the state program
12 with the United States Department of Labor shall stay the chief's
13 dismissal of the division complaint until the United States
14 Secretary of Labor makes a determination regarding the alleged
15 violation. Within 15 days of receipt of that determination, the chief
16 shall notify the parties whether he or she will reopen the complaint
17 filed with the division or whether he or she will reaffirm the
18 dismissal.

19 (h) The chief shall notify the complainant and respondent of his
20 or her determination under paragraph (1) of subdivision (f) or
21 paragraph (1) of subdivision (g), not later than 60 days after the
22 filing of the complaint. Determinations by the chief under
23 subdivision (f) or (g) may be appealed by the complainant or
24 respondent to the Director of Industrial Relations within 10 days
25 following notification of the chief's determination. The appeal
26 shall set forth specifically and in full detail the grounds upon which
27 the appealing party considers the chief's determination to be unjust
28 or unlawful, and every issue to be considered by the director. The
29 director may consider any issue relating to the initial
30 determination and may modify, affirm, or reverse the chief's
31 determination. The director's determination shall supersede the
32 determination of the chief. The director shall notify the
33 complainant and respondent of his or her determination within 10
34 days of receipt of the appeal.

35 (i) The rights and remedies provided by this section do not
36 preclude an employee from pursuing any other rights and remedies
37 under any other law. Nothing in this section is intended to, nor does
38 it, affect existing rights or remedies available to a complainant.

39 SEC. 7. Section 6312.5 is added to the Labor Code, to read:



1 6312.5. The division shall file an annual report with the
2 Legislature by December 1 of each year. This report shall provide
3 an accounting of all matters involving Sections 6310 to 6312,
4 inclusive, and shall report statistics so as to coincide with the
5 federal Occupational Safety and Health Administration fiscal
6 year. The report shall include, but not be limited to, information
7 regarding cases filed, investigated, dismissed, settled, heard, or
8 appealed, the caseload of the division, the timeliness of
9 dispositions, and other information the Legislature may request in
10 advance of the report. The Legislature shall direct the division as
11 to any additional items to include in the report by October 1 of the
12 year the report is due. The Legislature may hold a hearing on the
13 report and obtain additional information after the report is
14 submitted.

15 SEC. 8. Section 6401.7 of the Labor Code is amended to read:

16 6401.7. (a) Every employer shall establish, implement, and
17 maintain an effective injury *and illness* prevention program. The
18 program shall be written, except as provided in subdivision (e),
19 and shall include, but not be limited to, *all of* the following
20 elements:

21 (1) Identification of the person or persons responsible for
22 implementing the program.

23 (2) The employer's system for identifying and evaluating
24 workplace hazards, including scheduled periodic inspections to
25 identify unsafe conditions and work practices.

26 (3) The employer's methods and procedures for correcting
27 unsafe or unhealthy conditions and work practices in a timely
28 manner.

29 (4) An occupational health and safety training program
30 designed to instruct employees in general safe and healthy work
31 practices and to provide specific instruction with respect to
32 hazards specific to each employee's job assignment.

33 (5) The employer's system for communicating with employees
34 on occupational health and safety matters, including provisions
35 designed to encourage employees to inform the employer of
36 hazards at the worksite without fear of reprisal.

37 (6) The employer's system for ensuring that employees comply
38 with safe and healthy work practices, which may include
39 disciplinary action.



1 (b) The employer shall correct unsafe and unhealthy conditions
2 and work practices in a timely manner based on the severity of the
3 hazard.

4 (c) The employer shall train all employees when the training
5 program is first established, all new employees, and all employees
6 given a new job assignment, and shall train employees whenever
7 new substances, processes, procedures, or equipment are
8 introduced to the workplace and represent a new hazard, and
9 whenever the employer receives notification of a new or
10 previously unrecognized hazard. Beginning January 1, 1994, an
11 employer in the construction industry who is required to be
12 licensed under Chapter 9 (commencing with Section 7000) of
13 Division 3 of the Business and Professions Code may use
14 employee training provided to the employer's employees under a
15 construction industry occupational safety and health training
16 program approved by the division to comply with the requirements
17 of subdivision (a) relating to employee training, and shall only be
18 required to provide training on hazards specific to an employee's
19 job duties.

20 (d) The employer shall keep appropriate records of steps taken
21 to implement and maintain the program. Beginning January 1,
22 1994, an employer in the construction industry who is required to
23 be licensed under Chapter 9 (commencing with Section 7000) of
24 Division 3 of the Business and Professions Code may use records
25 relating to employee training provided to the employer in
26 connection with an occupational safety and health training
27 program approved by the division to comply with the requirements
28 of this subdivision, and shall only be required to keep records of
29 those steps taken to implement and maintain the program with
30 respect to hazards specific to an employee's job duties.

31 (e) (1) The standards board shall adopt a standard setting forth
32 the employer's duties under this section, on or before January 1,
33 1991, consistent with the requirements specified in subdivisions
34 (a), (b), (c), and (d). The standards board, in adopting the standard,
35 shall include substantial compliance criteria for use in evaluating
36 an employer's injury *and illness* prevention program. The board
37 may adopt less stringent criteria for employers with few
38 employees and for employers in industries with insignificant
39 occupational safety or health hazards.



1 (2) Notwithstanding subdivision (a), for employers with fewer
2 than 20 employees who are in industries that are not on a
3 designated list of high hazard industries and who have a workers'
4 compensation experience modification rate of 1.1 or less, and for
5 any employers with fewer than 20 employees who are in industries
6 that are on a designated list of low hazard industries, the board
7 shall adopt a standard setting forth the employer's duties under this
8 section consistent with the requirements specified in subdivisions
9 (a), (b), and (c), except that the standard shall only require written
10 documentation to the extent of documenting the person or persons
11 responsible for implementing the program pursuant to paragraph
12 (1) of subdivision (a), keeping a record of periodic inspections
13 pursuant to paragraph (2) of subdivision (a), and keeping a record
14 of employee training pursuant to paragraph (4) of subdivision (a).
15 To any extent beyond the specifications of this subdivision, the
16 standard shall not require the employer to keep the records
17 specified in subdivision (d).

18 (3) The division shall establish a list of high hazard industries
19 using the methods prescribed in Section 6314.1 for identifying and
20 targeting employers in high hazard industries. For purposes of this
21 subdivision, the "designated list of high hazard industries" shall
22 be the list established pursuant to this paragraph.

23 For the purpose of implementing this subdivision, the
24 Department of Industrial Relations shall periodically review, and
25 as necessary revise, the list.

26 (4) For the purpose of implementing this subdivision, the
27 Department of Industrial Relations shall also establish a list of low
28 hazard industries, and shall periodically review, and as necessary
29 revise, that list.

30 ~~(f) The standard adopted pursuant to subdivision (e) shall~~
31 ~~specifically permit employer and employee occupational safety~~
32 ~~and health committees to be included in the employer's injury~~
33 ~~prevention program. The board shall establish criteria for use in~~
34 ~~evaluating employer and employee occupational safety and health~~
35 ~~committees. The criteria shall include minimum duties, including~~
36 ~~the following:~~

37 ~~(1) Review of the employer's (A) periodic, scheduled worksite~~
38 ~~inspections, (B) investigation of causes of incidents resulting in~~
39 ~~injury, illness, or exposure to hazardous substances, and (C)~~
40 ~~investigation of any alleged hazardous condition brought to the~~



1 ~~attention of any committee member. When determined necessary~~
2 ~~by the committee, the committee may conduct its own inspections~~
3 ~~and investigations.~~

4 ~~(2) Upon request from the division, verification of abatement~~
5 ~~action taken by the employer as specified in division citations.~~

6 ~~If an employer's occupational safety and health committee~~
7 ~~meets the criteria established by the board, it shall be presumed to~~
8 ~~be in substantial compliance with paragraph (5) of subdivision (a).~~

9 ~~(g) The division shall adopt regulations specifying the~~
10 ~~procedures for selecting employee representatives for~~
11 ~~employer-employee occupational health and safety committees~~
12 ~~when these procedures are not specified in an applicable collective~~
13 ~~bargaining agreement. No employee or employee organization~~
14 ~~shall be held liable for any act or omission in connection with a~~
15 ~~health and safety committee.~~

16 ~~(h) The employer's injury and illness prevention program, as~~
17 ~~required by this section, shall cover all of the employer's~~
18 ~~employees and all other workers who the employer controls or~~
19 ~~directs and directly supervises on the job to the extent these~~
20 ~~workers are exposed to worksite and job assignment specific~~
21 ~~hazards, in conformity with subdivision (b) of Section 6400.~~
22 ~~Nothing in this subdivision shall affect diminish the obligations of~~
23 ~~a contractor or other employer which that controls or directs and~~
24 ~~directly supervises its own employees on the job.~~

25 ~~(i)~~

26 ~~(g) Where a contractor supplies its employee to a state agency~~
27 ~~employer on a temporary basis, the state agency employer may~~
28 ~~assess a fee upon the contractor to reimburse the state agency for~~
29 ~~the additional costs, if any, of including the contract employee~~
30 ~~within the state agency's injury and illness prevention program.~~

31 ~~(j)~~

32 ~~(h) (1) The division shall prepare a Model Injury and Illness~~
33 ~~Prevention Program for Non-High-Hazard Employment, and shall~~
34 ~~make copies of the model program prepared pursuant to this~~
35 ~~subdivision available to employers, upon request, for posting in~~
36 ~~the workplace. An employer who adopts and implements the~~
37 ~~model program prepared by the division pursuant to this paragraph~~
38 ~~in good faith shall not be assessed a civil penalty for the first~~
39 ~~citation for a violation of this section issued after the employer's~~
40 ~~adoption and implementation of the model program.~~



1 (2) For purposes of this subdivision, the division shall establish
2 a list of non-high-hazard industries in California, that may include
3 the industries that, pursuant to Section 14316 of Title 8 of the
4 California Code of Regulations, are not currently required to keep
5 records of occupational injuries and illnesses under Article 2
6 (commencing with Section 14301) of Subchapter 1 of Chapter 7
7 of Division 1 of Title 8 of the California Code of Regulations.
8 These industries, identified by their Standard Industrial
9 Classification Codes, as published by the United States Office of
10 Management and Budget in the Manual of Standard Industrial
11 Classification Codes, 1987 Edition, are apparel and accessory
12 stores (Code 56), eating and drinking places (Code 58),
13 miscellaneous retail (Code 59), finance, insurance, and real estate
14 (Codes 60–67), personal services (Code 72), business services
15 (Code 73), motion pictures (Code 78) except motion picture
16 production and allied services (Code 781), legal services (Code
17 81), educational services (Code 82), social services (Code 83),
18 museums, art galleries, and botanical and zoological gardens
19 (Code 84), membership organizations (Code 86), engineering,
20 accounting, research, management, and related services (Code
21 87), private households (Code 88), and miscellaneous services
22 (Code 89). To further identify industries that may be included on
23 the list, the division shall also consider data from a rating
24 organization, as defined in Section 11750.1 of the Insurance Code,
25 the Division of Labor Statistics and Research, including the logs
26 of occupational injuries and illnesses maintained by employers on
27 Form CAL/OSHA No. 200, or its equivalent, as required by
28 Section 14301 of Title 8 of the California Code of Regulations, and
29 all other appropriate information. The list shall be established by
30 June 30, 1994, and shall be reviewed, and as necessary revised,
31 biennially.

32 (3) The division shall prepare a Model Injury and Illness
33 Prevention Program for Employers in Industries with Intermittent
34 Employment, and shall determine which industries have
35 historically utilized seasonal or intermittent employees. An
36 employer in an industry determined by the division to have
37 historically utilized seasonal or intermittent employees shall be
38 deemed to have complied with the requirements of subdivision (a)
39 with respect to a written injury *and illness* prevention program if
40 the employer adopts the model program prepared by the division



1 pursuant to this paragraph and complies with any instructions
2 relating thereto.

3 ~~(k)~~

4 (i) With respect to any county, city, city and county, or district,
5 or any public or quasi-public corporation or public agency therein,
6 including any public entity, other than a state agency, that is a
7 member of, or created by, a joint powers agreement, subdivision
8 (d) shall not apply.

9 ~~(l) Every workers' compensation insurer shall conduct a
10 review, including a written report as specified below, of the injury
11 and illness prevention program (HPP) of each of its insureds
12 within four months of the commencement of the initial insurance
13 policy term. The review shall determine whether the insured has
14 implemented all of the required components of the HPP, and
15 evaluate their effectiveness. The training component of the HPP
16 shall be evaluated to determine whether training is provided to line
17 employees, supervisors, and upper level management, and
18 effectively imparts the information and skills each of these groups
19 needs to ensure that all of the insured's specific health and safety
20 issues are fully addressed by the insured. The reviewer shall
21 prepare a detailed written report specifying the findings of the
22 review and all recommended changes deemed necessary to make
23 the HPP effective. The reviewer shall be an independent licensed
24 California professional engineer, certified safety professional, or
25 a certified industrial hygienist.~~

26 SEC. 9. Section 6401.8 is added to the Labor Code, to read:

27 6401.8. (a) On or before January 1, 2006, the division shall
28 adopt regulations to require joint employer and employee
29 occupational safety and health committees or safety liaisons to be
30 included in the employer's injury and illness prevention program,
31 except as provided in subdivision (b). The division shall establish
32 minimum criteria for employer and employee occupational safety
33 and health committees or safety liaisons, including both of the
34 following:

35 (1) Employers with 50 or more employees shall have a joint
36 employer-employee occupational safety and health committee.

37 (2) Employers with fewer than 50 employees shall have at least
38 an employee and employer safety liaison.

39 (b) (1) Subdivision (a) shall not apply to the following:



1 (A) Any employer with an experience modification rate of less
2 than 1.1 in an industry that is either on the list of non-high-hazard
3 industries in California, as established pursuant to paragraph (2)
4 of subdivision (h) of Section 6401.7, or on the low hazard industry
5 list, as established pursuant to paragraph (4) of subdivision (e) of
6 Section 6401.7.

7 (B) Any employer with fewer than 10 employees unless either
8 of the following applies:

9 (i) The employer's workers' compensation premium
10 classification assigned to the greatest portion of the payroll for the
11 employer is a premium rate in the top 25 percent of all premium
12 rates for all classes pursuant to rules of the Insurance
13 Commissioner.

14 (ii) The employer is on a designated list of high hazard
15 industries established pursuant to paragraph (3) of subdivision (e)
16 of Section 6401.7.

17 (2) Paragraph (1) shall not apply to any employer if, in the last
18 two years from the date of the most recent incident, the employer
19 has had any workplace death or any serious injury, illness, or
20 accident. "Serious injury, illness, or accident" means the
21 employee was admitted to the hospital, suffered the loss of any
22 member of the body, suffered any serious degree of permanent
23 disfigurement, or required surgery for acute trauma.

24 (c) Employers exempted pursuant to subdivision (b) may
25 institute a joint employer-employee occupational safety and health
26 committee or safety liaison in order to apply for a certificate of
27 merit pursuant to Section 6401.9.

28 (d) (1) In determining employment levels under subdivisions
29 (a) and (b), the employer shall count all permanent, contract,
30 temporary, and seasonal workers under the employer's direction
31 and control, and shall base the number on peak employment.

32 (2) Temporary services employers and labor contractors shall
33 determine employment levels based upon the total number of
34 workers over which the employer or contractor exercises direction
35 and control.

36 (e) For agriculture, the agricultural employer shall establish the
37 committee and include representatives of labor contractors when
38 those subcontractors are active at the premises.

39 (f) For multiemployer nonpermanent workplaces, the general
40 or prime or principal contractor shall establish the committee and



1 include representatives of each subcontractor when those
2 subcontractors are active at the premises.

3 (g) For multiemployer permanent workplaces, the facility shall
4 establish the committee and include representatives of each
5 subcontractor when those subcontractors are active at the
6 premises.

7 (h) The duties of the joint employer-employee occupational
8 safety and health committee or safety liaison shall be addressed by
9 the minimum criteria established pursuant to subdivision (a), and
10 shall include, among other things, all of the following:

11 (1) Review of the employer's injury and illness prevention
12 program.

13 (2) Participation in and review of any periodic, scheduled
14 worksite inspections, including evaluating the effectiveness of
15 new safety equipment and health and safety procedures. For
16 multiemployer nonpermanent workplaces, the committee or
17 liaison shall review the work to be done in the next period for all
18 trades and crafts, the associated safety and health hazards that cross
19 craft lines, and may make recommendations to all employers
20 involved.

21 (3) Participation in and review of any investigation of causes
22 of incidents involving near-misses or death, injury, illness, or
23 exposure to hazardous substances.

24 (4) Participation in and review of any investigation of any
25 alleged hazardous condition or complaints.

26 (5) Participation in follow-up, abatement, and reporting back
27 to complainants regarding the complaints and, upon the request of
28 the division, regarding citations issued by the division.

29 (6) Development of a system for encouraging employees to
30 bring complaints or problems to the attention of the committee or
31 team, including anonymous complaints.

32 (7) Additional inspections and investigations by the committee
33 or liaison, when determined necessary by the committee or liaison.

34 (8) Recommendations to the employer regarding corrective
35 actions to be implemented within a specified time period. If a
36 recommendation is not implemented, the employer shall provide
37 a written explanation.

38 (9) Quarterly meetings if the employer is on the low hazard list,
39 monthly meetings if the employer is on the high hazard list or has



1 an experience modification rate of greater than 1.25, or weekly
2 meetings for multiemployer nonpermanent workplaces.

3 (10) A written agenda for each meeting, accurate and thorough
4 committee meeting minutes, and documentation of all other
5 activities.

6 (11) Authority to stop an activity if a hazard that constitutes an
7 imminent danger to life or health is believed to exist. The
8 committee or liaison may also recommend to the employer that
9 work stop under other appropriate circumstances. If a
10 recommendation is not followed, the employer shall provide a
11 written explanation.

12 (i) The structure of the joint employer-employee occupational
13 safety and health committee or safety liaison shall be addressed by
14 the minimum criteria established pursuant to subdivision (a), and
15 shall include, among other things, all of the following:

16 (1) An equal number of employer and employee
17 representatives. The employer and employees may agree to a
18 greater number of employee representatives.

19 (2) At least two employee and two management members for
20 the first 50 employees, and at least one additional employee and
21 one additional management member for each subsequent 50
22 employees. The employer and employees may agree to a
23 maximum of 20 members or more in workplaces where over 20
24 members would be required pursuant to this paragraph.

25 (3) Reasonable efforts to ensure representation of various
26 shifts, trades and crafts, unions, and work activities.

27 (4) Majority vote on all recommendations to the employer.

28 (5) Annual rotation of the chair between labor and
29 management.

30 (j) The committee or liaison member-selection process shall be
31 addressed by the minimum criteria established pursuant to
32 subdivision (a), and shall include, among other things, all of the
33 following:

34 (1) The employer shall designate management representatives
35 and direct their activities. The responsible person identified
36 pursuant to paragraph (1) of subdivision (a) of Section 6401.7 shall
37 be among the management representatives.

38 (2) If there is a collective bargaining agreement, the employee
39 representatives shall be selected according to internal union
40 procedures. If there are multiple unions at the same workplace,



1 each union shall be entitled to at least one representative, unless the
2 unions decide among themselves to allocate representation in
3 another manner. If there are union and nonunion workers at the
4 same workplace, the union representative shall serve as
5 representative for all the employees.

6 (3) If there is no union representative, all of the following shall
7 apply:

8 (A) The employee representatives shall be nonsupervisory
9 employees selected randomly from among volunteers, or chosen
10 by secret ballot in an election supervised by the State Mediation
11 and Conciliation Service according to its procedures.

12 (B) If possible, at least one-half of the employee members of
13 the committee or liaison shall have been employed at least 24
14 months with the present employer.

15 (C) The terms of employee representatives shall be three years,
16 and an employee representative may be reelected or serve again if
17 randomly chosen from among all volunteers.

18 (D) The terms of employee representatives shall be staggered
19 or alternated.

20 (k) All committee or liaison members shall be trained
21 regarding the basics of occupational safety and health and
22 effective adult learning methods, as follows:

23 (1) Each member shall initially receive a minimum of 32 hours
24 of health and safety training to help them become effective liaison
25 or committee members. The content of this training shall include
26 all of the following:

27 (A) Hazard identification and control.

28 (B) Incident investigation techniques.

29 (C) Principles of effective worker training and education.

30 (D) Mechanics of committee operations, including committee
31 rights and duties.

32 (E) Workers' rights with respect to occupational safety and
33 health.

34 (F) An overview of this standard and other relevant standards.

35 (2) Each member shall receive a minimum of eight hours of
36 refresher health and safety training every three years.

37 (3) Each member shall be permitted to take educational leave
38 for a period of two normal working days, up to a maximum of 16
39 hours per year, which includes the required eight hours of refresher
40 training every three years, for the purposes of attending workplace



1 safety and health training seminars, programs, or courses of
2 instruction.

3 (4) Training shall be provided by the Worker Occupational
4 Safety and Health Training and Education Program (WOSHTEP),
5 the division, a union, or an approved trainer. The division shall
6 approve all training providers and curriculum and may further
7 define training requirements. The training shall be provided at
8 employer expense, without loss of pay or other benefits, and
9 during work hours. Refresher training shall be tailored to meet the
10 needs of specific industries, occupations, or hazards, and shall
11 include new laws and regulations. Upon satisfactory completion
12 of any training program, each member shall receive a certificate
13 of completion indicating the date and type of program.

14 (l) Each member shall be compensated with his or her regular
15 wages and benefits while attending any safety and health meeting,
16 doing related safety and health work, or receiving safety and health
17 training.

18 (m) Complete documentation of the activities of the committee
19 or liaison shall be included with the employer's injury and illness
20 prevention program and made available for inspection and
21 copying by the division or any other government agency, upon
22 request, and by employees or their representatives at reasonable
23 times and in a reasonable manner. Medical or other personal
24 information regarding a worker shall be available only to
25 government agencies authorized by law to obtain that information
26 and other authorized requesters with the permission of the affected
27 employee.

28 (n) The names of all committee or liaison members shall be
29 permanently and prominently posted. The committee's agenda,
30 outstanding action items, and proposed and actual resolutions of
31 health and safety concerns, shall be posted until 30 days after the
32 item has been resolved.

33 (o) No committee or liaison member shall be laid off during his
34 or her tenure or within one year of the end of tenure unless he or
35 she is the last person in his or her class or category on the job,
36 except as otherwise provided by a collective bargaining
37 agreement.

38 (p) Upon application, the division may approve any safety
39 committee that is innovative or different in form or function, if the



1 committee meets the intent of this section and the regulations
2 promulgated by the division.

3 (q) The committee or liaison shall act in an advisory capacity
4 to the employer, and individual employee participants do not
5 assume the employer's exclusive responsibility for providing a
6 safe and healthful workplace or any related liability. No employee
7 or employee organization shall be held liable for any act or
8 omission in connection with the activities of a committee or
9 liaison.

10 (r) The division, in consultation with the State Mediation and
11 Conciliation Service and other affected parties, shall adopt
12 regulations specifying the procedures for selecting employee
13 representatives for joint employer-employee occupational safety
14 and health committees or safety liaisons if there is no collective
15 bargaining agreement between the employer and any union
16 representing the employees.

17 SEC. 10. Section 6401.9 is added to the Labor Code, to read:

18 6401.9. (a) On or before January 1, 2006, the Division of
19 Workers' Compensation, in cooperation with the Division of
20 Occupational Safety and Health and the Department of Insurance,
21 shall establish criteria for a certificate of merit based on whether
22 an employer has an effective injury and illness prevention program
23 (IIPP), including an effective joint employer-employee
24 occupational safety and health committee or safety liaison.

25 (b) An eligible employer may apply for a certificate of merit
26 that shall entitle the employer to a 5-percent discount from the
27 insurance carrier or group self-insurance fund beyond any
28 experience modification rate or other discount standard to the
29 workers' compensation insurance industry. An eligible employer
30 may also use the certificate of merit to meet one of the
31 qualifications for a responsible bidder pursuant to Sections 1200
32 and 1201 of the Public Contract Code.

33 (c) The criteria for the certificate of merit shall include, at a
34 minimum, all of the following:

35 (1) No employer shall be eligible for a certificate unless the
36 employer has in place an effective IIPP and an effective joint
37 employer-employee occupational safety and health committee or
38 safety liaison.

39 (2) If an employer is not required to have a committee or
40 liaison, he or she may voluntarily implement a committee or



1 liaison in order to take advantage of the incentives described in
2 subdivision (b).

3 (3) The employer shall not be eligible to apply for a certificate
4 of merit until the committee or liaison has been operating
5 effectively for at least six months.

6 (d) The employer shall submit an application, under penalty of
7 perjury, for an initial certificate or biannual renewal certificate to
8 the Division of Workers' Compensation. The application form
9 shall be accompanied by documentation as determined by the
10 Division of Workers' Compensation in cooperation with the
11 Division of Occupational Safety and Health and the Department
12 of Insurance.

13 (e) The criteria for the certificate of merit shall conform with,
14 among other criteria to be determined by the Division of Workers'
15 Compensation in cooperation with the Division of Occupational
16 Safety and Health and the Department of Insurance, the size of the
17 employer, whether the employer is on a high or low hazard
18 industry list, the lost-workday case incident rate, and the
19 employer's experience modification rate, if any.

20 SEC. 11. Section 6401.10 is added to the Labor Code, to read:

21 6401.10. (a) Every workers' compensation insurer shall
22 conduct a review, including a written report as specified in
23 subdivision (g), of the injury and illness prevention program
24 (IIPP) of each of its insureds at the beginning of the second year
25 of insurance for an employer who has been with the insurance
26 company for one preceding year. The review shall determine
27 whether the insured has implemented all of the required
28 components of the IIPP, and evaluate their effectiveness.

29 (b) Additionally, the insurer shall conduct an on-site review at
30 the beginning of the third year for an employer who has been with
31 the insurance company for the two preceding years. The on-site
32 review shall include a hazard evaluation and specify not only the
33 general and specific hazards, but also shall do all of the following:

34 (1) Identify conditions that are not in compliance and
35 recommend a timetable for compliance.

36 (2) Identify areas that need improvement and recommend a
37 timetable for improvement.

38 (3) Make specific recommendations to achieve compliance and
39 improvement.



1 (4) Identify what assistance the insurer will provide to the
2 insured to bring the insured into compliance or to improve the
3 insured's IIPP.

4 (c) The training component of the IIPP shall be evaluated to
5 determine whether training is provided to line employees,
6 supervisors, and upper level management, and effectively imparts
7 the information and skills each of these groups needs to ensure that
8 all of the insured's specific health and safety issues are fully
9 addressed by the insured.

10 (d) If the insured and insurer have signed at least a three-year
11 contract, and upon request, any insured who is required to or who
12 has elected to implement a joint employer-employee occupational
13 safety and health committee or safety liaison, shall receive
14 assistance from his or her insurer in training the committee
15 members.

16 (e) The insurer shall communicate annually with the insured in
17 order to offer assistance to the insured to improve the effectiveness
18 of the insured's IIPP and to inform the insured of the services of
19 the division's consultation service.

20 (f) Upon the request of the insured, if the insured and insurer
21 have signed at least a three-year contract, and the insured's
22 experience modification rate, if any, is greater than 1.4, the insurer
23 shall conduct an on-site review annually with the insured to
24 improve the effectiveness of the insured's IIPP.

25 (g) The reviewer shall prepare a detailed written report
26 specifying the findings of the initial and all subsequent reviews
27 and all recommended changes deemed necessary to make the IIPP
28 effective.

29 (h) The reviewer shall be an independent licensed California
30 professional engineer, certified safety professional, certified
31 industrial hygienist, or a safety and health representative with the
32 insurance carrier who has three years' experience as a safety and
33 health representative.

34 SEC. 12. Section 6401.11 is added to the Labor Code, to read:
35 6401.11. All insurers, individually or through an association
36 of which the insurer is a member, shall, for high-frequency injuries
37 in various industries, develop and implement a series of targeted
38 prevention programs, including feasible interventions, to assist
39 employers. These programs shall be made available to all insureds.
40 In order to select the targeted prevention programs, the insurer or



1 an association in which the insurer is a member, shall annually
 2 determine the top four high-frequency injuries in various
 3 industries for the three previous years. These findings, as well as
 4 the analysis that provides the basis for the findings, shall be
 5 provided to the division and made available to the public.

6 SEC. 13. Section 1103 of the Public Contract Code is
 7 amended to read:

8 1103. “Responsible bidder,” as used in this part, means a
 9 bidder who has demonstrated the attribute of trustworthiness, as
 10 well as quality, fitness, capacity, and experience to satisfactorily
 11 perform the public works contract, *in compliance with Chapter*
 12 *1.5 (commencing with Section 1200).*

13 ~~The Legislature finds and declares that this section is~~
 14 ~~declaratory of existing law.~~

15 SEC. 14. Chapter 1.5 (commencing with Section 1200) is
 16 added to Part 1 of Division 2 of the Public Contract Code, to read:

17

18 CHAPTER 1.5 BIDDER INJURY AND ILLNESS PREVENTION
 19 PROGRAM

20

21 1200. A public entity subject to this code shall require bidders
 22 to be responsible with respect to worker occupational safety and
 23 health. To that end, the bidder, or its component parts if the bidder
 24 is a joint venture, shall be required to submit information as set
 25 forth in subdivision (a) of Section 1201 regarding the effectiveness
 26 of its injury and illness prevention program (IIPP) for a period of
 27 at least four years, or for whatever period less than four years the
 28 bidder has been in business, prior to the date of bid, in a form
 29 specified by the public entity. A certificate of merit issued pursuant
 30 to Section 6401.9 of the Labor Code shall demonstrate
 31 presumptively that the employer has an effective IIPP and may be
 32 submitted in lieu of the information required by subdivision (a) of
 33 Section 1201. The certificate of merit shall also satisfy any
 34 requirements for prequalification that the entity may establish.

35 1201. (a) A public entity subject to this code shall require that
 36 each prospective bidder for a contract that does not have a
 37 certificate of merit issued pursuant to Section 6401.9 of the Labor
 38 Code, submit the following information in order for the entity to
 39 evaluate the effectiveness of the bidder’s injury and illness
 40 prevention program:



1 (1) A copy of the prospective bidder’s written injury and illness
2 prevention program.

3 (2) The bidder’s history of occupational safety and health. The
4 history shall include, but not be limited to, at least a four-year
5 review prior to the date of the bid, or for whatever period less than
6 four years the bidder has been in business, of both of the following:

7 (A) The bidder’s history of worker injuries and illnesses as
8 reflected by workers’ compensation costs, lost work days, injury
9 litigation, doctor’s first reports, employer’s reports, and Log 300
10 forms.

11 (B) The bidder’s history of safety and health violations as
12 established by citations, special orders, and orders to take special
13 action, as well as any information memorandum issued by the
14 Division of Occupational Safety and Health, federal Occupational
15 Safety and Health Administration, or other occupational safety
16 and health agencies in other states or federal jurisdictions.

17 (b) Information submitted pursuant to subdivision (a) shall be
18 a public record except with respect to any individual’s personal
19 identifiers.

20 (c) For purposes of this section, “bidder” includes all entities
21 holding active licenses required by the bid, if any, including the
22 component licenses for any joint ventures, and including other
23 entities that may be considered to be substantially the same
24 business by virtue of overlapping corporate or other business
25 structure.

26 (d) A public entity may establish a process for prequalifying
27 prospective bidders for purposes of this section. Any
28 prequalification pursuant to this process shall be valid for one
29 calendar year following the date of the initial prequalification. As
30 part of any prequalification process established pursuant to this
31 subdivision, the entity also shall establish an appeal process
32 whereby prospective bidders may appeal the failure to prequalify
33 and the public may appeal the granting of prequalification to a
34 prospective bidder.

35 1202. (a) A public entity subject to this code shall include a
36 provision in the contract of each successful bidder to provide a safe
37 and healthful workplace.

38 (b) The Department of Industrial Relations, in collaboration
39 with affected state and local agencies and interested parties, shall
40 develop model guidelines for contractual language for public



1 entities to assure that the successful bidder provides a safe and
2 healthful workplace.

3 SEC. 15. It is the intent of the Legislature that any costs to the
4 Division of Occupational Safety and Health that may result from
5 transferring occupational safety and health retaliation cases from
6 the Division of Labor Standards Enforcement to the Division of
7 Occupational Safety and Health due to the enactment of this statute
8 shall be paid from grants available under subdivision (g) of Section
9 672 of Title 29 of the United States Code.

10 SEC. 16. No reimbursement is required by this act pursuant
11 to Section 6 of Article XIII B of the California Constitution
12 because the only costs that may be incurred by a local agency or
13 school district will be incurred because this act creates a new crime
14 or infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.

