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AB-55 Hazardous materials management: stationary sources. (2017-2018)

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Assembly Bill No. 55

CHAPTER 608

An act to amend Section 25536.7 of, and to add Section 25536.9 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 09, 2017. Filed with Secretary of State October 09, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 55, Thurmond. Hazardous materials management: stationary sources.

Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. Existing law requires every county to apply to the secretary to be certified to implement the unified program and allows a city or local agency to implement the unified program as a unified program agency. Existing law requires a stationary source, as defined, engaging in activities with certain substances present in more than a threshold quantity to prepare and submit a risk management plan, if the unified program agency makes a determination that there is a significant likelihood of a regulated substances accident risk.

Existing law requires owners and operators of certain stationary sources, when contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work at one of these stationary sources, to require that its contractors and any subcontractors use a skilled and trained workforce, including skilled journeypersons, to perform all onsite work within an apprenticeable occupation in the building and construction trades. Existing law exempts an owner or operator from that requirement if the contract was awarded before January 1, 2014, unless the contract is extended or renewed after that date. Existing law requires a worker, among other requirements, to have completed, within the prior 2 calendar years, at least 20 hours of approved advanced safety training for workers at high hazard facilities to qualify as a "skilled journeyperson" for purposes of performing this work on or after January 1, 2018.

This bill would instead require a worker to have completed, within the prior 3 calendar years, at least 20 hours of this approved advanced safety training to qualify as a "skilled journeyperson" for purposes of performing this work on or after July 1, 2018.

This bill would require, on or before February 1, 2018, an owner or operator who claims the exemption for a contract awarded before January 1, 2014, to file with the unified program agency a complete copy of the contract and a 2nd copy of the contract that has been redacted only to the extent necessary to protect sensitive information and that includes the identity of the contractor, the scope of the work covered by the contract, the date of execution of the contract, and the term of the contract. The bill would specify that the unredacted copy of the contract is not a public record and would require the unified program agency to keep that copy confidential. The bill would require the redacted copy to be a public record available for inspection from the unified program agency. Because the bill would add to the duties of a unified program agency and because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25536.7 of the Health and Safety Code is amended 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 (10) of subdivision (b), subparagraph (C) of paragraph (10) of subdivision (b), and subparagraph (B) of paragraph (11) 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 (11) 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. This section does not preclude the use of an alternative workweek schedule adopted pursuant to Section 511 or 514 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) "Graduate of an apprenticeship program" means either of the following:

(A) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(B) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(7) "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.

(8) "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.

(9) "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.

(10) "Skilled journeyperson" 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 journeyperson in the applicable occupation and geographic area.

(C) The worker has completed within the prior three 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 July 1, 2018.

(11) "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.

(ii) As of January 1, 2015, at least 45 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation.

(iii) As of January 1, 2016, at least 60 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation.

SEC. 2. Section 25536.9 is added to the Health and Safety Code, to read:

25536.9. On or before February 1, 2018, an owner or operator of a stationary source that claims that it is exempt from the requirement in paragraph (1) of subdivision (a) of Section 25536.7 pursuant to the exception in paragraph (4) of subdivision (a) of Section 25536.7 shall file with the administering agency a complete copy of the contract described in paragraph (4) of subdivision (a) of Section 25536.7 and a second copy of that contract that has been redacted only to the extent necessary to protect sensitive information and that shall include the identity of the contractor, the scope of the work covered by the contract, the date of execution of the contract, and the term of the contract. The complete copy of the contract that is not redacted is not a public record and shall be kept confidential by the administering agency. The redacted copy of the contract shall be a public record available for inspection from the administering agency.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 25536.9 to the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To protect sensitive information contained in complete and unredacted copies of contracts submitted to an administering agency pursuant to Section 25536.9 of the Health and Safety Code, it is necessary to maintain those copies as confidential information by the administering agency.

SEC. 4. 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.