BEFORE THE ENERGY AND PUBLIC UTILITIES COMMITEE
THE OHIO SENATE
SENATOR BILL REINEKE, CHAIR

HOUSE BILL 205
WRITTEN TESTIMONY OF MATT AUSTIN, AUSTIN LEGAL LLC
THE OHIO MANUFACTURERS' ASSOCIATION

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Chairman Reineke, Vice Chair McColley, Ranking Member Smith, and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to provide written testimony on House Bill 205.

My name is Matt Austin. I own the law firm Austin Legal. My firm specializes in labor relations. I have practiced labor relations law which encompasses relationships between employers and unions for 20 years. I am writing to testify on behalf of the Ohio Manufacturers Association.

The Ohio Manufacturers' Association strongly opposes House Bill 205.

This Bill seeks to regulate certain companies performing construction services in the petroleum refining industry in the name of safety. We can all agree that safety for refinery workers and their communities is important. House Bill 205, though, has less to do with safety and more with stripping private businesses of their ability contract.

As written, HB 205 is overly broad, unduly burdensome, gives union employees a virtual monopoly on performing work, will increase the cost for construction services, and seeks egregious monetary penalties for non-compliance with the statute.

1. Definitions are Overly-Broad

House Bill 205 requires an owner or operator that enters into a contract for construction services to use only companies that have skilled journeypeople. The Bill defines many of these terms in a way that forces companies to hire union labor.

A. Definition of "Construction".

For example, the definition of "construction" includes "maintenance, repair, assembly, disassembly, alteration, demolition, modernization, installation services, and capital improvements." Although proponent testimony for the bill repeatedly focused on "turnarounds" where the refinery is shut down for a month or more to allow hundreds of construction workers to perform work at the refinery, the bill never mentions turnarounds or shutdowns.

The Bill does not limit or define the performance of "maintenance, repair, assembly, disassembly, alteration, demolition, modernization, installation services, and capital improvements." As written, any activity performed by a covered employer that falls under these categories must comply with the journeyperson requirements.

This Bill would require an HVAC company performing routine maintenance on the air conditioner to meet the journeyperson quota in the same manner as the electrician installing new lighting in the cafeteria, the landscape company cutting the grass, the remodeling company modernizing front offices, and the asphalt company improving the parking lot. None of these remotely touch on safety at oil refineries, yet they are covered by House Bill 205.

B. Definition of "Journeypersons".

The term "journeypersons" in HB 205 is defined to exclude non-union personnel. A "Class A Skilled Journeyperson," is someone who graduated from a registered apprenticeship program.

In practice, when a construction union hires a worker, he or she is placed in the union's hiring hall. Companies that are signatory to a union's collective bargaining agreement request people from the hiring hall. The union is the employer, not the company that needs workers. The union places the worker with a company for the duration of that project. When the project is over, the person goes back to the hiring hall and waits to be assigned to another union company that needs workers for another project. When workers are "sitting on the bench" in the hiring hall awaiting to be assigned to a company for a project, the union typically has the person go through classroom and laboratory training so the worker's skills do not diminish. After four years, that person becomes a Class A Journeyperson as defined by House Bill 205.

Non-union companies do not define employees as Journeypersons and do not usually send employees to apprenticeship programs. They hire people, train their employees in-house, and, as the employee's skill improves, he or she is tasked with more responsibilities and can perform more jobs. Non-union companies commit to keeping their employees employed full time. Non-union construction employees are continuously working in the field without the need for a formal apprenticeship program.[1] Moreover, I am not aware of any non-union apprenticeships for refinery workers.

C. Definition of Journeyperson Quota.

The Journeyperson to non-Journeyperson quota in House Bill 205 further eliminates non-union companies from performing "construction" work. Starting in January 2024, at least 65% of employees working "construction" at oil refineries must be Class A Journeypersons. That percent increases to 80% in January 2025. Class B Journeypersons will round out the remaining 35% and 20% respectively.[2]

In summary, since HB 205 requires the overwhelming majority of people working in "construction" at "oil refineries" to be "journeypersons," it effectively restricts the owner's ability to contract with non-union companies to perform this work.

2. HB 205 will Cause a Labor Shortage of Qualified Workers.

Proponent testimony argued that HB 205 would be "an enormous opportunity to hire Ohio workers" who live in Ohio, shop in Ohio, and will reinvest in Ohio. Testimony also focused on out-of-state workers in Ohio necessitating the "Proficiency in English" requirement. Yet, HB 205 curiously does not have an Ohio residency requirement.

The State of Ohio simply does not have enough Class A journeypersons to perform construction work as defined by this Bill.

[1] The Bill also provides for Class B Journeypersons to perform work at oil refineries. But it defines a Class B Journeyperson as someone who has at least 6,000 hours of on-the-job training. Employees need to work nearly 4 years to accumulate 6,000 hours of experience.

[2] The parameters of using apprentices are unclear and undefined. While the Bill says apprentices may be used, it also says that after fulfilling the Class A journeypersons quota, "the contractor or subcontractor shall employ class B skilled journeypersons *for the remaining portion* of the contractor's or subcontractor's employees performing construction services who are not required to be Class A skilled journeypersons or apprentices…."

Union membership throughout the United States is at an all-time low. Roughly 12% of workers in the construction industry are in unions.[3] Less than 12% are journeypersons. Specialized trades and skills have even less journeypersons. This means HB 205 eliminates at least 90% of qualified companies that can perform construction work on oil refineries just because they are not signatory to a union contract.

3. Penalties for Non-Compliance are Draconian.

House Bill 205 requires copious recordkeeping and compliance reporting. This necessitates hours of work by front-office personnel for the owner or operator of a facility on a regular basis. The list of information required on each report is staggering.[4] Requiring companies to prepare these reports each time a company performs maintenance or repairs something on-site is absurd. As a reminder, the Bill is not limited to only shutdowns or turnarounds; it covers many other routine activities performed at oil refineries.

While an owner of a refinery will not be required to sign a union's collective bargaining agreement, a company that operates the refinery, like a facilities management company, would be required to fulfill the journeypersons quotas which means the facilities management company must be union. Any violation of the collective bargaining agreement could result in the owner and operator being jointly liable even if the owner was non-participatory in the decision that led to the breach of the collective bargaining agreement.

The owner and/or operator of a refinery is also charged with enforcing the statute and may be liable for the non-compliance by contractors and subcontractors. This places a nearly impossible burden on the owners / operators to ensure contractors and subcontractors follow HB 205. And non-compliance can cost up to $10,000 per day, per violation.

For example, if a contractor has the requisite 80% Class A Journeypersons on the job, but one person called in sick, that call-in drops the percent of Class A Journeypersons to below 80%. This is a violation of HB 205. The contractor (and owner and operator) can be penalized up to $10,000 each day the percent of Class A Journeypersons is below 80%. If that person missed a week of work, the penalty could be $50,000. If that person returns to work, but another person is out and the percent dropped again, it could mean another $50,000 penalty that week. This could be financially catastrophic for companies, especially during high sick times like flu season or high vacation times like summer and holidays.

For another example of how over-the-top the penalties are, an owner is liable if a subcontractor (hired by a general contractor) did not verify that Class B Journeypersons met the Bill's requirements to be a Class B Journeyperson. The Bill permits Class B Journeypersons to occasionally work on construction projects but only after having at least 6,000 hours of industry experience and only after filling the Class A Journeyperson quota. Contractors are responsible

[3] Department of Labor Bureau of Labor Statistics' annual Union Members Summary, Jan. 19, 2023. https://www.bls.gov/news.release/union2.nr0.htm

[4] Each report requires at least the following information: Name and address of contractor; Name and title of report preparer; Name and address of owner; Name of project and project number, if one; Total dollar value of the contract; Name and address of all subcontractors; Total number of Class A and B journeypersons and apprentices; Name and address of each registered apprenticeship program where Class A journeypersons graduated; Name and address of each registered apprenticeship program training apprentices; Certification that contractor complied with the 65% / 80% quotas.

for verifying the 6,000+ hours of experience. If the contractor cannot prove that it verified that each Class B Journeyperson has the requisite 6,000+ hours of experience (which may be impossible to do if the person worked for other companies that have since went out of business), the owner, operator, contractor, and subcontractor could all be liable for a $10,000 per day penalty.

These penalties add up quickly since each day is a separate violation. For example, a subcontractor that does not properly verify that four employees who have worked on the project for 20 days have the appropriate hours of experience could face an $800,000 penalty ($10,000 per day x 20 days x 4 employees). Attorney's fees are also recoverable for non-compliance should the Bill become law.

Mr. Chairman and members of the committee, thank you for the opportunity to provide this written testimony. If you have any questions, please do not hesitate to contact me at (614) 843-3041 or matt@mattaustinlaborlaw.com.