

As Reported by the House Commerce and Labor Committee

134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 235

Representatives Swearingen, Baldrige

Cosponsors: Representatives Edwards, Ghanbari, Stephens, Cutrona, Jones, Plummer, Troy, Johnson, White, Click, Ray, Patton, Abrams, Manning, Callender, Loychik, Fraizer, Hillyer, Stewart, Sheehy, Sobecki, Sweeney, Kelly, Galonski

A BILL

To amend sections 121.083 and 121.084 and to enact 1
sections 4145.01, 4145.02, 4145.03, 4145.04, 2
4145.05, 4145.06, 4145.07, 4145.08, 4145.09, 3
4145.10, 4145.11, and 4145.12 of the Revised 4
Code to enact the High Hazard Training 5
Certification (HHTC) Act regarding construction 6
services performed under a contract at a 7
stationary source. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 121.083 and 121.084 be amended 9
and sections 4145.01, 4145.02, 4145.03, 4145.04, 4145.05, 10
4145.06, 4145.07, 4145.08, 4145.09, 4145.10, 4145.11, and 11
4145.12 of the Revised Code be enacted to read as follows: 12

Sec. 121.083. (A) The superintendent of industrial 13
compliance in the department of commerce shall do all of the 14
following: 15

(1) Administer and enforce the general laws of this state 16

pertaining to buildings, pressure piping, boilers, bedding, 17
upholstered furniture, and stuffed toys, steam engineering, 18
elevators, plumbing, licensed occupations regulated by the 19
department, and travel agents, as they apply to plans review, 20
inspection, code enforcement, testing, licensing, registration, 21
and certification. 22

(2) Exercise the powers and perform the duties delegated 23
to the superintendent by the director of commerce under Chapters 24
4109., 4111., ~~and 4115.~~, and 4145. of the Revised Code. 25

(3) Collect and collate statistics as are necessary. 26

(4) Examine and license persons who desire to act as steam 27
engineers, to operate steam boilers, and to act as inspectors of 28
steam boilers, provide for the scope, conduct, and time of such 29
examinations, provide for, regulate, and enforce the renewal and 30
revocation of such licenses, inspect and examine steam boilers 31
and make, publish, and enforce rules and orders for the 32
construction, installation, inspection, and operation of steam 33
boilers, and do, require, and enforce all things necessary to 34
make such examination, inspection, and requirement efficient. 35

(5) Rent and furnish offices as needed in cities in this 36
state for the conduct of its affairs. 37

(6) Oversee a chief of construction and compliance, a 38
chief of operations and maintenance, a chief of licensing and 39
certification, a chief of worker protection, and other designees 40
appointed by the director to perform the duties described in 41
this section. 42

(7) Enforce the rules the board of building standards 43
adopts pursuant to division (A)(2) of section 4104.43 of the 44
Revised Code under the circumstances described in division (D) 45

of that section. 46

(8) Accept submissions, establish a fee for submissions, 47
and review submissions of certified welding and brazing 48
procedure specifications, procedure qualification records, and 49
performance qualification records for building services piping 50
as required by section 4104.44 of the Revised Code. 51

(B) The superintendent may enter into a contract with a 52
municipal corporation, township, or county building department 53
certified by the board of building standards pursuant to 54
division (E) of section 3781.10 of the Revised Code, or a 55
municipal or county health district, to do any of the following 56
on behalf of the building department or health district: 57

(1) Exercise enforcement authority pursuant to section 58
3781.03 of the Revised Code; 59

(2) Accept and approve plans and specifications, and make 60
inspections, pursuant to section 3791.04 of the Revised Code; 61

(3) Enforce the rules adopted pursuant to division (A) (2) 62
of section 4104.43 of the Revised Code. 63

Sec. 121.084. (A) All moneys collected under sections 64
3783.05, 3791.07, 4104.07, 4104.18, 4104.44, 4105.17, 4105.20, 65
4145.09, 4169.03, and 5104.051 of the Revised Code, and any 66
other moneys collected by the division of industrial compliance 67
shall be paid into the state treasury to the credit of the 68
industrial compliance operating fund, which is hereby created. 69
The department of commerce shall use the moneys in the fund for 70
paying the operating expenses of the division and the 71
administrative assessment described in division (B) of this 72
section. 73

(B) The director of commerce shall prescribe procedures 74

for assessing the industrial compliance operating fund a 75
proportionate share of the administrative costs of the 76
department of commerce. The assessment shall be made in 77
accordance with those procedures and be paid from the industrial 78
compliance operating fund to the division of administration fund 79
created in section 121.08 of the Revised Code. 80

Sec. 4145.01. As used in this chapter: 81

(A) "Apprentice" means a person who is participating in a 82
registered apprenticeship program to learn a skilled occupation 83
pursuant to a registered apprenticeship agreement as defined in 84
section 4139.01 of the Revised Code or 29 C.F.R. 29.2. 85

(B) "Construction" means all service performed at a 86
stationary source, including maintenance, repair, assembly, 87
disassembly, alteration, demolition, modernization, installation 88
services, and capital improvements. 89

(C) "Contractor" means any person who undertakes 90
construction at a stationary source under a contract with an 91
owner or operator. 92

(D) "Owner or operator" means a person who owns or 93
operates a stationary source at which the person engages in 94
activities described in code 324110 of the 2017 north American 95
industry classification system and at which the person engages 96
in one or more covered processes for which the person is 97
required to prepare and submit a risk management plan under the 98
"Clean Air Act," 42 U.S.C. 7412. "Owner or operator" does not 99
include a person who controls the means of engaging in oil and 100
gas extraction operations. 101

(E) (1) "Registered apprenticeship program" means any of 102
the following programs: 103

(a) A program that trains an individual for a trade or occupation through paid on-the-job training and related instruction that is registered with the United States department of labor as meeting the minimum standards established by the "National Apprenticeship Act of 1937," 29 U.S.C. 50, and 29 C.F.R. Part 29, Subpart A; 104
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(b) An apprenticeship program registered by the department of job and family services under Chapter 4139. of the Revised Code; 110
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(c) An apprenticeship program registered by the state apprenticeship agency of another state that has been authorized to register apprenticeship programs for federal purposes under the laws of that state. 113
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(2) "Registered apprenticeship program" may include any apprenticeship program subject to the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, et seq., as amended or an apprenticeship program supported through an employer's general funds. 117
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(3) "Registered apprenticeship program" does not include an industry-recognized apprenticeship program as described under 29 C.F.R. Part 29, Subpart B. 122
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(F) "Class A skilled journeyman" means an individual who satisfies the requirements of division (A) of section 4145.02 of the Revised Code. 125
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(G) "Class B skilled journeyman" means an individual who satisfies the requirements of division (B) of section 4145.02 of the Revised Code. 128
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(H) "State apprenticeship agency" means the state government agency that is authorized by the United States 131
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department of labor to register and oversee apprenticeship 133
programs in the state. 134

(I) (1) "Stationary source" means any building, structure, 135
facility, or installation that emits or may emit any regulated 136
air pollutant or any pollutant listed under the "Clean Air Act," 137
42 U.S.C. 7412, except those emissions resulting directly from 138
an internal combustion engine for transportation purposes or 139
from a nonroad engine or nonroad vehicle as defined in the 140
"Clean Air Act," 42 U.S.C. 7550. 141

(2) "Stationary source" includes any building, structure, 142
facility, or installation described in division (I) (1) of this 143
section that is offline for an indefinite period of time for 144
purposes of being revamped or renewed. 145

(J) "Subcontractor" means any person who undertakes 146
construction at a stationary source under a contract with any 147
person other than an owner or operator. 148

(K) "Apprenticeship records" includes an apprenticeship 149
agreement, a certificate of completion, documentation of hours 150
worked under supervision, and documentation of curriculum hours 151
or related instruction hours completed. 152

Sec. 4145.02. (A) An individual shall do both of the 153
following to be considered a class A skilled journeyman: 154

(1) Graduate from a registered apprenticeship program; 155

(2) Complete a thirty-hour training course in safety and 156
health hazard recognition and prevention approved by the 157
occupational safety and health administration of the United 158
States department of labor. 159

(B) An individual shall do both of the following to be 160

considered a class B skilled journeyman: 161

(1) Acquire at least six thousand hours of experience in 162
the occupation or trade in which the individual is providing or 163
assigned to provide construction services at a stationary 164
source; 165

(2) Complete a thirty-hour training course in safety and 166
health hazard recognition and prevention approved by the 167
occupational safety and health administration of the United 168
States department of labor. 169

Sec. 4145.03. (A) An owner or operator that enters into a 170
contract on and after the effective date of this section for 171
construction services at a stationary source shall do both of 172
the following: 173

(1) Engage only a contractor that complies with division 174
(B) of this section; 175

(2) Require, in the contract that the owner or operator 176
enters into with the contractor, that the contractor shall use, 177
with respect to any subcontractor needed for the contract, a 178
subcontractor that complies with division (B) of this section. 179

(B) (1) Except as provided in division (B) (4) of this 180
section, a contractor that provides construction services at a 181
stationary source pursuant to a contract entered into on and 182
after the effective date of this section with an owner or 183
operator, and a subcontractor that provides construction 184
services with respect to that contract on behalf of the 185
contractor, shall use only the following individuals: 186

(a) Class A skilled journeymen; 187

(b) Class B skilled journeymen; 188

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| <u>(c) Apprentices.</u> | 189 |
| <u>(2) The contractor or subcontractor shall follow the</u> | 190 |
| <u>following implementation schedule regarding the proportion of</u> | 191 |
| <u>the contractor's or subcontractor's employees performing those</u> | 192 |
| <u>construction services who shall be class A skilled</u> | 193 |
| <u>journeypersons, apprentices, or both:</u> | 194 |
| <u>(a) Beginning on January 1, 2023, at least sixty-five per</u> | 195 |
| <u>cent;</u> | 196 |
| <u>(b) Beginning on January 1, 2024, at least eighty per</u> | 197 |
| <u>cent.</u> | 198 |
| <u>(3) The contractor or subcontractor shall employ class B</u> | 199 |
| <u>skilled journeypersons for the remaining portion of the</u> | 200 |
| <u>contractor's or subcontractor's employees performing</u> | 201 |
| <u>construction services who are not required to be class A skilled</u> | 202 |
| <u>journeypersons or apprentices pursuant to division (B)(2) of</u> | 203 |
| <u>this section.</u> | 204 |
| <u>(4) An individual employed by a contractor or</u> | 205 |
| <u>subcontractor is not required to be a class A or class B skilled</u> | 206 |
| <u>journeyperson or apprentice pursuant to division (B)(1) of this</u> | 207 |
| <u>section if both of the following apply:</u> | 208 |
| <u>(a) The individual is employed as a project</u> | 209 |
| <u>superintendent, project manager, engineer, safety professional,</u> | 210 |
| <u>quality control professional, or clerical employee;</u> | 211 |
| <u>(b) The individual does not perform construction services.</u> | 212 |
| <u>(C)(1) Divisions (A) and (B) of this section do not apply</u> | 213 |
| <u>under any of the following circumstances:</u> | 214 |
| <u>(a) When a contractor or subcontractor requests qualified</u> | 215 |
| <u>individuals from a hiring hall or referral system that</u> | 216 |

dispatches individuals who are class A or class B skilled 217
journeypersons or apprentices, and because of workforce 218
shortages, the contractor or subcontractor is unable to obtain 219
sufficient qualified individuals within forty-eight hours after 220
the request; 221

(b) An emergency during or after which compliance is 222
impracticable, including an emergency that requires immediate 223
action to prevent imminent harm to public health, public safety, 224
or the environment; 225

(c) When both of the following apply to the stationary 226
source that is the subject of a contract for construction 227
services: 228

(i) The stationary source is a petroleum refinery. 229

(ii) The petroleum refinery has a total operable capacity 230
of less than one hundred twenty thousand barrels of crude oil 231
per day. 232

(2) For purposes of division (C)(1)(a) of this section, 233
Saturdays, Sundays, and legal holidays shall not be used in 234
calculating time. 235

(3) For purposes of division (C)(1)(c)(ii) of this 236
section, the total operable capacity of a refinery in operation 237
on or before the effective date of this section shall be based 238
on the report its owner or operator filed with the United States 239
department of energy pursuant to the "Federal Energy 240
Administration Act of 1974," 15 U.S.C. 772, covering January 1, 241
2021. 242

Sec. 4145.04. If an owner or operator believes that a 243
contractor or subcontractor is failing or has failed to comply 244
with the implementation schedule established under division (B) 245

of section 4145.03 of the Revised Code, the owner or operator 246
shall, not later than seven days after the date on which the 247
owner or operator first believes a contractor or subcontractor 248
is failing or has failed to comply with the implementation 249
schedule, provide written notice of the alleged noncompliance to 250
the director of commerce, and shall include both of the 251
following in the notice: 252

(A) A summary that describes the contractor's or 253
subcontractor's alleged noncompliance, including the applicable 254
dates of noncompliance and degree to which the contractor or a 255
subcontractor has allowed the proportion of the contractor's or 256
subcontractor's employees performing construction services to 257
deviate from the implementation schedule; 258

(B) The corrective actions, if any, that the owner or 259
operator has taken to ensure the contractor or subcontractor is 260
complying with the implementation schedule, and the date by 261
which the owner or operator expects the contractor or 262
subcontractor to comply with the implementation schedule. 263

Sec. 4145.05. (A) Each contractor and subcontractor 264
subject to section 4145.03 of the Revised Code shall maintain 265
the following records for a period of not less than five years 266
after the date on which construction services under the contract 267
have been completed: 268

(1) Payroll records for all individuals who performed 269
construction services; 270

(2) Apprenticeship records; 271

(3) Copies of the reports that each contractor and 272
subcontractor is required to submit under sections 4145.06 and 273
4145.07 of the Revised Code. 274

(B) The director of commerce or attorney general may 275
request to inspect the records described in division (A) of this 276
section at any time during the time period described in that 277
division. A contractor or subcontractor shall make the records 278
available not later than seven days from the date the director 279
or attorney general makes a request under this division. 280

Sec. 4145.06. (A) A contractor subject to section 4145.03 281
of the Revised Code shall prepare a compliance report at the end 282
of each calendar quarter during which the contractor provided 283
construction services at a stationary source. The contractor 284
shall submit each report to the director of commerce not later 285
than thirty days after the date on which the calendar quarter 286
ends. The contractor shall submit a final report to the director 287
not later than thirty days after construction services under the 288
contract are completed. The contractor shall include in each 289
report all of the following information with respect to that 290
calendar quarter: 291

(1) The name and address of the contractor; 292

(2) The name and title of the individual preparing the 293
report on behalf of the contractor; 294

(3) The name and address of the owner or operator of the 295
stationary source at which construction services were performed; 296

(4) The name of the project and project number, if any; 297

(5) The total dollar value of the contract; 298

(6) The name and address of all subcontractors involved in 299
providing construction services at the stationary source; 300

(7) The total number of class A and class B skilled 301
journeypersons and apprentices who performed construction 302

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| <u>services;</u> | 303 |
| <u>(8) The name and address of each registered apprenticeship</u> | 304 |
| <u>program from which class A skilled journeypersons graduated and</u> | 305 |
| <u>each registered apprenticeship program that provided training to</u> | 306 |
| <u>apprentices;</u> | 307 |
| <u>(9) Certification that the contractor has complied with</u> | 308 |
| <u>division (B) of section 4145.03 of the Revised Code;</u> | 309 |
| <u>(10) All of the following:</u> | 310 |
| <u>(a) The total number of class A skilled journeypersons who</u> | 311 |
| <u>performed construction services;</u> | 312 |
| <u>(b) The total number of class B skilled journeypersons who</u> | 313 |
| <u>performed construction services;</u> | 314 |
| <u>(c) The total number of apprentices who performed</u> | 315 |
| <u>construction services;</u> | 316 |
| <u>(d) The numbers described in divisions (A) (10) (a) to (c)</u> | 317 |
| <u>of this section represented as a per cent of the total number of</u> | 318 |
| <u>class A and class B skilled journeypersons and apprentices who</u> | 319 |
| <u>performed construction services.</u> | 320 |
| <u>(B) At the time a contractor submits a report to the</u> | 321 |
| <u>director under division (A) of this section, the contractor</u> | 322 |
| <u>shall provide a copy of the report to the owner or operator of</u> | 323 |
| <u>the stationary source at which the contractor is providing</u> | 324 |
| <u>construction services.</u> | 325 |
| <u>Sec. 4145.07. Each subcontractor subject to section</u> | 326 |
| <u>4145.03 of the Revised Code shall prepare a workforce report at</u> | 327 |
| <u>the end of each calendar quarter during which the subcontractor</u> | 328 |
| <u>provided construction services at a stationary source. The</u> | 329 |
| <u>subcontractor shall submit each report to the contractor not</u> | 330 |

later than ten days after the date on which the calendar quarter 331
ends. The subcontractor shall include in each report all of the 332
following information regarding individuals who performed 333
construction services during that calendar quarter: 334

(A) The total number of class A and class B skilled 335
journeypersons and apprentices who performed construction 336
services; 337

(B) The total number of class A skilled journeypersons and 338
apprentices who performed construction services; 339

(C) The total number of class B skilled journeypersons who 340
performed construction services and the means by which the 341
subcontractor verified that each class B skilled journeyperson 342
has satisfied the experience requirement under division (B) (1) 343
of section 4145.02 of the Revised Code; 344

(D) The name and address of each registered apprenticeship 345
program from which class A skilled journeypersons graduated and 346
each registered apprenticeship program that provided training to 347
apprentices. 348

Sec. 4145.08. (A) No owner or operator shall do any of the 349
following: 350

(1) Fail to comply with division (A) of section 4145.03 of 351
the Revised Code; 352

(2) Fail to comply with the notice requirement under 353
section 4145.04 of the Revised Code within the time period 354
specified in that section; 355

(3) Submit a written notice as described under section 356
4145.04 of the Revised Code that includes false or inaccurate 357
information. 358

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| <u>(B) No contractor or subcontractor shall do any of the</u> | 359 |
| <u>following:</u> | 360 |
| <u>(1) Fail to comply with division (B) of section 4145.03 of</u> | 361 |
| <u>the Revised Code;</u> | 362 |
| <u>(2) Fail to maintain the records specified in section</u> | 363 |
| <u>4145.05 of the Revised Code for the time period specified in</u> | 364 |
| <u>that section;</u> | 365 |
| <u>(3) Fail to make available the records specified in</u> | 366 |
| <u>section 4145.05 of the Revised Code within the time period</u> | 367 |
| <u>specified in that section;</u> | 368 |
| <u>(4) Fail to comply with the reporting requirements under</u> | 369 |
| <u>sections 4145.06 and 4145.07 of the Revised Code;</u> | 370 |
| <u>(5) Submit a report under section 4145.06 or 4145.07 of</u> | 371 |
| <u>the Revised Code that includes false or inaccurate information.</u> | 372 |
| <u>Sec. 4145.09. (A) Any person who believes an owner or</u> | 373 |
| <u>operator, contractor, or subcontractor has violated section</u> | 374 |
| <u>4145.08 of the Revised Code may file a written complaint with</u> | 375 |
| <u>the director of commerce. On receiving a complaint, the director</u> | 376 |
| <u>may investigate the alleged violation. The director also may</u> | 377 |
| <u>investigate whether an owner or operator, contractor, or</u> | 378 |
| <u>subcontractor has violated section 4145.08 of the Revised Code</u> | 379 |
| <u>on the director's own initiative.</u> | 380 |
| <u>(B) (1) If the director determines after an investigation</u> | 381 |
| <u>that reasonable grounds exist that an owner or operator,</u> | 382 |
| <u>contractor, or subcontractor has violated section 4145.08 of the</u> | 383 |
| <u>Revised Code, the director shall proceed in accordance with the</u> | 384 |
| <u>notice and hearing requirements prescribed in Chapter 119. of</u> | 385 |
| <u>the Revised Code.</u> | 386 |

(2) After a hearing conducted under Chapter 119. of the 387
Revised Code, if the director determines an owner or operator, 388
contractor, or subcontractor has violated section 4145.08 of the 389
Revised Code, the director shall order the offending owner or 390
operator, contractor, or subcontractor to remedy the violation. 391
The offending owner or operator, contractor, or subcontractor 392
shall remedy the violation not later than thirty days after the 393
date on which the director issues the order. 394

(C) An offending owner or operator, contractor, or 395
subcontractor that fails to remedy a violation within the time 396
period specified in division (B)(2) of this section is subject 397
to the civil penalty specified in section 4145.10 of the Revised 398
Code. The attorney general, on behalf of the director, may bring 399
a civil action in any court of competent jurisdiction to enforce 400
the violation. If the attorney general is the prevailing party 401
in a civil action brought under this division, the court shall 402
award to the attorney general court costs and reasonable 403
attorney's fees. A civil penalty assessed under section 4145.10 404
of the Revised Code and any court costs and attorney's fees 405
recovered shall be paid into the state treasury to the credit of 406
the industrial compliance operating fund created under section 407
121.084 of the Revised Code. 408

Sec. 4145.10. Subject to section 4145.09 of the Revised 409
Code, an owner or operator, contractor, or subcontractor that 410
violates section 4145.08 of the Revised Code is subject to a 411
civil penalty of not more than ten thousand dollars for each 412
violation. Each day during which a violation of division (A)(1) 413
or (B)(1) of section 4145.08 of the Revised Code occurs 414
constitutes a separate violation. 415

Sec. 4145.11. (A) The director of commerce may adopt rules 416

in accordance with Chapter 119. of the Revised Code as necessary 417
to administer and enforce this chapter. 418

(B) The director shall do both of the following: 419

(1) Create and make available a form on which a contractor 420
shall include the information specified in section 4145.06 of 421
the Revised Code; 422

(2) Make publicly available on the department of 423
commerce's internet web site each compliance report a contractor 424
submits to the director under section 4145.06 of the Revised 425
Code not later than thirty days after the date on which the 426
contractor submits the report to the director. 427

Sec. 4145.12. The purpose of this chapter is to protect 428
public health and safety by requiring minimum training and skill 429
standards for persons performing construction services on 430
certain high hazard facilities where inferior or faulty work 431
practices can pose serious risks to the public and result in 432
potentially catastrophic consequences. 433

Section 2. That existing sections 121.083 and 121.084 of 434
the Revised Code are hereby repealed. 435

Section 3. This act shall be known as the High Hazard 436
Training Certification (HHTC) Act. 437

Section 4. The General Assembly finds the following: 438

(A) The General Assembly has long recognized our State 439
Government's duty to protect the public health, safety and 440
welfare. This Act falls within these powers and duties by 441
requiring certain training and qualification standards for 442
contractors performing construction work on high hazard 443
facilities. 444

(B) Public health and safety protections enacted under the 445
State's police powers have been repeatedly upheld by the courts. 446
For example, the Ohio Supreme Court has pointedly recognized 447
that the "[p]rotection and preservation of public health are 448
among the prime governmental concerns and functions of the state 449
as a sovereignty." *State ex. rel. Mowrer v. Underwood*, 137 Ohio 450
St. 1 (1940) (upholding state legislation relating to regulation 451
of health districts); *see also State v. Martin*, 168 Ohio St. 37 452
(1958) (upholding state regulation of well drilling to protect 453
water supply as a reasonable police power function). Federal 454
courts likewise have protected the sanctity of state police 455
powers for the sake of both public health and worker safety. 456
See Associated Builders & Contractors v. Michigan Department of 457
Labor and Economic Growth, 543 F.3d 275 (6th Cir. 2008) 458
(upholding apprenticeship training requirements in state trade 459
licensing law under state's police powers). 460

(C) In this Act, the General Assembly recognizes that use 461
of its police power is necessary to protect public health and 462
worker safety by requiring adherence to certain training and 463
certification standards by contractors performing work on high 464
hazard facilities, where faulty or inferior work practices can 465
pose serious risks to workers at these facilities and the 466
general public, resulting in potentially catastrophic 467
consequences. 468

(D) There are compelling grounds and public policy 469
justifications for this Act. Construction is an inherently 470
dangerous industry, wherein errors in project planning or 471
execution can result in serious health and safety risks. Geetha 472
M. Waehrer, Xiuwen S. Dong, Ted Miller, Elizabeth Haile, and 473
Yurong Men, *Costs of Occupational Injuries in Construction in* 474
the United States, 39 Accident Analysis and Prevention 1258 475

(2007) (construction is a high risk industry and accounts for 476
disproportionate share of work-related injuries). 477

(E) The risks inherent in construction are substantially 478
higher in high hazard facilities that handle dangerous materials 479
or substances insofar as unsafe work practices may cause 480
explosions, chemical spills and other hazardous conditions, 481
which may expose workers and the public, especially populations 482
in nearby communities, to dangerous conditions that can lead to 483
serious bodily injuries and death. 484

(F) Congress has addressed these dangers by enacting 485
section 112(r) of the "Clean Air Act," 42 U.S.C. 7412(r), under 486
which the U.S. Environmental Protection Agency requires owners 487
and operators of such facilities to implement "Risk Management 488
Plans" ("RMP") to prevent public health threats presented by 489
such facilities. See also 40 C.F.R. Part 68 and 59 Fed. Reg. 490
4233 and 4478. 491

(G) It has been well documented that petroleum refineries, 492
in particular, present acute risks of workplace accidents. The 493
U.S. Department of Labor, Occupational Safety and Health 494
Administration (OSHA) found that, since the agency began 495
monitoring safety management at these facilities in 1992, "no 496
other industry sector has had as many fatal or catastrophic 497
incidents related to the release of highly hazardous chemicals . 498
. . as petroleum refining. . . ." See Occupational Safety and 499
Health Administration, OSHA 3918-08 2017, *Process Safety* 500
Management for Petroleum Refineries (2017). 501

(H) In an attempt to address these risks, OSHA issued 502
regulations in 1992 for high hazard facilities that require 503
owners and operators to follow certain procedures for evaluating 504
safety performance of contractors and established requirements 505

for safety programs to ensure that contractor employees are 506
properly trained. See 29 C.F.R. 1910.119. 507

(I) In 2017, OSHA announced a National Emphasis Program 508
for inspecting facilities with highly hazardous chemicals. The 509
directive detailed the numerous fatal and/or catastrophic safety 510
incidents that occurred just since 2010, including the 511
following: 512

(1) "A heat exchanger catastrophically ruptured, which 513
caused an explosion and fire killing seven workers." 514

(2) "A crew was realigning pumps due to a pump seal leak 515
in an isomerization unit when flammable materials were released, 516
formed a vapor cloud and ignited. The fire killed one worker and 517
hospitalized three with burn injuries." 518

(3) "An explosion killed two workers attempting to light a 519
boiler at a fluid catalytic cracking unit." 520

(4) "Ignition of a release of flammable materials killed 521
one contract worker attempting to install a blind flange on a 522
knockout drum." 523

(5) "An eight-inch-diameter pipe catastrophically 524
ruptured, releasing flammable, high-temperature light gas oil, 525
which then formed a large vapor cloud that ignited. The ensuing 526
explosion and fire caused minor injuries to six workers and 527
hospitalized approximately 20 residents of the community near 528
the refinery." 529

Occupational Safety and Health Administration, Directive 530
No. CPL 03-00-021, OSHA Instruction, *PSM Covered Chemical* 531
Facilities National Emphasis Program (January 17, 2017). 532

(J) A review of the most recently available OSHA data 533

reveals that unacceptable levels of risk persist in this sector. 534
Specifically, there has been a recent surge in "serious" OSHA 535
safety violations at petroleum refineries—an increase of 78% in 536
2019 over the previous year. Federal law defines a "serious" 537
safety violation as one having a "substantial probability [of 538
causing] death or serious physical harm" that an employer knew 539
or should have known to exist. Section 17 of the "Occupational 540
Safety and Health Act of 1970," 29 U.S.C. 666. 541

(K) The other main federal agency that oversees the high 542
hazard sector of the construction industry is the U.S. Chemical 543
Safety and Hazard Investigation Board (CSB), which is 544
responsible for investigating serious accidents at high hazard 545
facilities. 546

Over the past several years, CSB has conducted several 547
investigations at high hazard facilities in which it 548
categorically determined that "insufficient safety requirements 549
for contractor selection and oversight were found to be causal" 550
to the accidents in question." United States Chemical Safety and 551
Hazard Investigation Board, *Contractor Safety Digest, The* 552
Importance of Contractor Selection and Oversight (2018). 553

(L) In addition to the considerable challenges highlighted 554
above, safety threats are likely to increase due to critical, 555
unprecedented craft labor shortages. These conditions underscore 556
the need for greater scrutiny over contractor qualifications 557
generally and especially in the high hazard sector. Ben DuBose, 558
ECF '16: Energy Contractors Need Newcomers to Ease Labor 559
Shortage, Hydrocarbon Processing (March 1, 2016) (craft shortage 560
primary factor in 65% failure rate among mega-projects in Gulf 561
Coast Region); Gavin Aronsen, *Labor Shortage Delays DuPont* 562
Plant Completion, Ames Tribune (January 9, 2015) (shortage of 563

qualified workers delayed the completion of a \$200 million 564
DuPont ethanol plant in Iowa). 565

(M) Acting in response to these growing risks and related 566
concerns, Washington State, California and New Jersey have 567
enacted legislation to require contractors on certain high 568
hazard facilities, including petroleum refineries, to require 569
construction contractors to ensure their craft workforce meets 570
minimum apprenticeship training and experience requirements as a 571
means of ensuring the use of properly trained, safety-conscious 572
employees at these facilities. 573

(N) These statutes are based on growing concerns regarding 574
the eminent dangers of the petroleum refinery sector, as well as 575
extensive public policy findings, which recognize that 576
established apprenticeship training programs in the construction 577
industry are most reliable and effective means for ensuring 578
proper qualifications of craft labor personnel due to the in- 579
depth skill and safety training they provide. 580

(O) Widespread recognition of the value of apprenticeship 581
training generally has also promoted at least 14 states have 582
passed incorporating critical apprenticeship training components 583
into their public works programs. See 2020 Va. Acts Chapter 176; 584
Colo. Rev. Stat. Ann. 24-92-115; Title 26 Me. Rev. Stat. 3501 585
and 3502; Assembly No. 3666 of the 218th New Jersey Legislature; 586
N.J. Ann. Stat. 52:38-5; N.M. Stat. Ann. 13-4D-4; Wash. Rev. 587
Code 39.04.320; Ind. Code 5-30-5-3; Md. State Finance and 588
Procurement Code 17-601 to 17-606 and 17-6A-06; Wyo. Stat. 16-6- 589
902; Chapter 30 Ill. Comp. Stat. 500/30-22; R.I. Gen. Laws 37- 590
13-3.1; Title 8 Cal. Code of Reg. 230.1; Cal. Labor Code 1777.5; 591
Haw. Rev. Stat. 103-55.6; N.Y. Consolidated Law Service, Labor 592
Law 816-b; and Code of Md. Reg. 01.01.2013.05. 593

(P) The apprenticeship training provisions relate to skill 594
and safety training standards developed for craft labor 595
apprenticeship programs established under the "National 596
Apprenticeship Act of 1937," 29 U.S.C. 50, et seq. 597
Apprenticeship training is a system in which workers are fully 598
trained through organized, formally registered apprenticeship 599
standards, designed in accordance with established quality, 600
safety and performance standards approved and monitored by the 601
U.S. Department of Labor and state labor agencies, including the 602
Ohio Department of Job and Family Services. United States 603
Department of Commerce and Case Western Reserve University, *The* 604
Benefits and Costs of Apprenticeship: A Business Perspective 605
(2016) (apprenticeship programs are widely supported by 606
contractors and other employers as highly cost-effective due to 607
higher productivity of trained workers, improved safety, 608
improved project quality, more reliable project staffing, and 609
reduction in employee turnover). 610

(Q) In order to be approved under applicable federal 611
regulations, an apprenticeship program must have an organized, 612
written plan that contains provisions addressing "safety 613
training for apprentices on the job and in related instruction" 614
in addition to numerous other standards for acquiring critical 615
skills in a given trade. Apprentices receive a combination of 616
extensive on-the-job training, combined with classroom and shop 617
instruction, and must pass specific skill-level tests after each 618
year before they can proceed to the next year in programs that 619
typically involve a 3 to 5 curriculum. See 29 C.F.R. 29.5. 620

(R) In educating workers in the construction industry, the 621
training used to develop skills in the respective trades is 622
inextricably linked to safety training since performing many 623
functions or tasks safely requires that the work correctly. 624

Executing tasks in construction properly also requires that they 625
be carried out in accordance with a number of complex industry 626
codes and standards. See, e.g., Farzad Minooei, *Towards a* 627
Deeper Understanding of the U.S. Workforce Development System 628
in the Construction Industry (2018) (Ph.D. dissertation, 629
University of Colorado) ("A skilled workforce is essential to 630
safety, productivity and sustainability of construction and 631
maintenance activities"). Conversely, the use of workers 632
with inadequate training can seriously undermine project safety. 633
See, e.g., Hossein Karimi, Timothy R.B. Taylor, Paul M. Goodrum, 634
and Cidambi Srinivasan, *Quantitative Analysis of the Impact of* 635
Craft Worker Availability on Construction Project Safety 636
Performance, 16 *Construction Innovation* 307 (2016) ("When a 637
project is executed by less qualified craft workers, increases 638
in human errors, less familiarity with safety procedures and 639
legislations and inadequate safety training will be the factors 640
that adversely influence safety performance."). 641

(S) In view of these factors, the General Assembly finds 642
that the use of apprenticeship training standards on 643
construction projects for high hazard facilities provides the 644
most effective means for addressing growing public safety 645
threats and should be incorporated into the project planning 646
system used for these facilities. 647