

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 205

Representatives Swearingen, Plummer

Cosponsors: Representatives Young, T., Abrams, Cutrona, Loychik, Pizzulli, Wiggam, Edwards, Hillyer, Carruthers, Schmidt, Click, Ghanbari, Johnson, Jones, Manning, Patton, Ray, Dobos, Williams, Demetriou, Creech, Hall, Sweeney, Upchurch, Rogers, Miranda, Grim

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, renewed, or repaired. 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 journeyperson: 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 journeyperson: 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) (5) 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 journeypersons; 187

(b) Class B skilled journeypersons; 188

<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, 2024, at least sixty-five per</u>	195
<u>cent;</u>	196
<u>(b) Beginning on January 1, 2025, 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) The contractor or subcontractor shall ensure that all</u>	205
<u>class A and class B skilled journeypersons and apprentices</u>	206
<u>performing construction services at a stationary source</u>	207
<u>demonstrate fluency in spoken English.</u>	208
<u>(5) An individual employed by a contractor or</u>	209
<u>subcontractor is not required to be a class A or class B skilled</u>	210
<u>journeyperson or apprentice pursuant to division (B)(1) of this</u>	211
<u>section if both of the following apply:</u>	212
<u>(a) The individual is employed as a project</u>	213
<u>superintendent, project manager, engineer, safety professional,</u>	214
<u>quality control professional, or clerical employee.</u>	215
<u>(b) The individual does not perform construction services.</u>	216

<u>(C) (1) Divisions (A) and (B) of this section do not apply</u>	217
<u>under any of the following circumstances:</u>	218
<u>(a) When a contractor or subcontractor requests qualified</u>	219
<u>individuals from a hiring hall or referral system that</u>	220
<u>dispatches individuals who are class A or class B skilled</u>	221
<u>journeypersons or apprentices, and because of workforce</u>	222
<u>shortages, the contractor or subcontractor is unable to obtain</u>	223
<u>sufficient qualified individuals within forty-eight hours after</u>	224
<u>the request;</u>	225
<u>(b) An emergency during or after which compliance is</u>	226
<u>impracticable, including an emergency that requires immediate</u>	227
<u>action to prevent imminent harm to public health, public safety,</u>	228
<u>or the environment;</u>	229
<u>(c) When both of the following apply to the stationary</u>	230
<u>source that is the subject of a contract for construction</u>	231
<u>services:</u>	232
<u>(i) The stationary source is a petroleum refinery.</u>	233
<u>(ii) The petroleum refinery has a total operable capacity</u>	234
<u>of less than one hundred twenty thousand barrels of crude oil</u>	235
<u>per day.</u>	236
<u>(2) For purposes of division (C) (1) (a) of this section,</u>	237
<u>Saturdays, Sundays, and legal holidays shall not be used in</u>	238
<u>calculating time.</u>	239
<u>(3) For purposes of division (C) (1) (c) (ii) of this</u>	240
<u>section, the total operable capacity of a refinery in operation</u>	241
<u>on or before the effective date of this section shall be based</u>	242
<u>on the report its owner or operator filed with the United States</u>	243
<u>department of energy pursuant to the "Federal Energy</u>	244
<u>Administration Act of 1974," 15 U.S.C. 772, covering January 1,</u>	245

2023. 246

Sec. 4145.04. If an owner or operator believes that a 247
contractor or subcontractor is failing or has failed to comply 248
with the implementation schedule established under division (B) 249
of section 4145.03 of the Revised Code, the owner or operator 250
shall, not later than seven days after the date on which the 251
owner or operator first believes a contractor or subcontractor 252
is failing or has failed to comply with the implementation 253
schedule, provide written notice of the alleged noncompliance to 254
the director of commerce, and shall include both of the 255
following in the notice: 256

(A) A summary that describes the contractor's or 257
subcontractor's alleged noncompliance, including the applicable 258
dates of noncompliance and degree to which the contractor or a 259
subcontractor has allowed the proportion of the contractor's or 260
subcontractor's employees performing construction services to 261
deviate from the implementation schedule; 262

(B) The corrective actions, if any, that the owner or 263
operator has taken to ensure the contractor or subcontractor is 264
complying with the implementation schedule, and the date by 265
which the owner or operator expects the contractor or 266
subcontractor to comply with the implementation schedule. 267

Sec. 4145.05. (A) Each contractor and subcontractor 268
subject to section 4145.03 of the Revised Code shall maintain 269
the following records for a period of not less than five years 270
after the date on which construction services under the contract 271
have been completed: 272

(1) Payroll records for all individuals who performed 273
construction services; 274

<u>(2) Apprenticeship records;</u>	275
<u>(3) Copies of the reports that each contractor and subcontractor is required to submit under sections 4145.06 and 4145.07 of the Revised Code.</u>	276 277 278
<u>(B) The director of commerce or attorney general may request to inspect the records described in division (A) of this section at any time during the time period described in that division. A contractor or subcontractor shall make the records available not later than seven days from the date the director or attorney general makes a request under this division.</u>	279 280 281 282 283 284
<u>Sec. 4145.06. (A) A contractor subject to section 4145.03 of the Revised Code shall prepare a compliance report at the end of each calendar quarter during which the contractor provided construction services at a stationary source. The contractor shall submit each report to the director of commerce not later than thirty days after the date on which the calendar quarter ends. The contractor shall submit a final report to the director not later than thirty days after construction services under the contract are completed. The contractor shall include in each report all of the following information with respect to that calendar quarter:</u>	285 286 287 288 289 290 291 292 293 294 295
<u>(1) The name and address of the contractor;</u>	296
<u>(2) The name and title of the individual preparing the report on behalf of the contractor;</u>	297 298
<u>(3) The name and address of the owner or operator of the stationary source at which construction services were performed;</u>	299 300
<u>(4) The name of the project and project number, if any;</u>	301
<u>(5) The total dollar value of the contract;</u>	302

<u>(6) The name and address of all subcontractors involved in</u>	303
<u>providing construction services at the stationary source;</u>	304
<u>(7) The total number of class A and class B skilled</u>	305
<u>journeypersons and apprentices who performed construction</u>	306
<u>services;</u>	307
<u>(8) The name and address of each registered apprenticeship</u>	308
<u>program from which class A skilled journeypersons graduated and</u>	309
<u>each registered apprenticeship program that provided training to</u>	310
<u>apprentices;</u>	311
<u>(9) Certification that the contractor has complied with</u>	312
<u>division (B) of section 4145.03 of the Revised Code;</u>	313
<u>(10) All of the following:</u>	314
<u>(a) The total number of class A skilled journeypersons who</u>	315
<u>performed construction services;</u>	316
<u>(b) The total number of class B skilled journeypersons who</u>	317
<u>performed construction services;</u>	318
<u>(c) The total number of apprentices who performed</u>	319
<u>construction services;</u>	320
<u>(d) The numbers described in divisions (A) (10) (a) to (c)</u>	321
<u>of this section represented as a per cent of the total number of</u>	322
<u>class A and class B skilled journeypersons and apprentices who</u>	323
<u>performed construction services.</u>	324
<u>(B) At the time a contractor submits a report to the</u>	325
<u>director under division (A) of this section, the contractor</u>	326
<u>shall provide a copy of the report to the owner or operator of</u>	327
<u>the stationary source at which the contractor is providing</u>	328
<u>construction services.</u>	329

Sec. 4145.07. Each subcontractor subject to section 330
4145.03 of the Revised Code shall prepare a workforce report at 331
the end of each calendar quarter during which the subcontractor 332
provided construction services at a stationary source. The 333
subcontractor shall submit each report to the contractor not 334
later than ten days after the date on which the calendar quarter 335
ends. The subcontractor shall include in each report all of the 336
following information regarding individuals who performed 337
construction services during that calendar quarter: 338

(A) The total number of class A and class B skilled 339
journeypersons and apprentices who performed construction 340
services; 341

(B) The total number of class A skilled journeypersons and 342
apprentices who performed construction services; 343

(C) The total number of class B skilled journeypersons who 344
performed construction services and the means by which the 345
subcontractor verified that each class B skilled journeyperson 346
has satisfied the experience requirement under division (B) (1) 347
of section 4145.02 of the Revised Code; 348

(D) The name and address of each registered apprenticeship 349
program from which class A skilled journeypersons graduated and 350
each registered apprenticeship program that provided training to 351
apprentices. 352

Sec. 4145.08. (A) No owner or operator shall do any of the 353
following: 354

(1) Fail to comply with division (A) of section 4145.03 of 355
the Revised Code; 356

(2) Fail to comply with the notice requirement under 357
section 4145.04 of the Revised Code within the time period 358

specified in that section; 359

(3) Submit a written notice as described under section 4145.04 of the Revised Code that includes false or inaccurate information. 360
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(B) No contractor or subcontractor shall do any of the following: 363
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(1) Fail to comply with division (B) of section 4145.03 of the Revised Code; 365
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(2) Fail to maintain the records specified in section 4145.05 of the Revised Code for the time period specified in that section; 367
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(3) Fail to make available the records specified in section 4145.05 of the Revised Code within the time period specified in that section; 370
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(4) Fail to comply with the reporting requirements under sections 4145.06 and 4145.07 of the Revised Code; 373
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(5) Submit a report under section 4145.06 or 4145.07 of the Revised Code that includes false or inaccurate information. 375
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Sec. 4145.09. (A) Any person who believes an owner or operator, contractor, or subcontractor has violated section 4145.08 of the Revised Code may file a written complaint with the director of commerce. On receiving a complaint, the director shall investigate the alleged violation. The director also may investigate whether an owner or operator, contractor, or subcontractor has violated section 4145.08 of the Revised Code on the director's own initiative. 377
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(B) (1) If the director determines after an investigation that reasonable grounds exist that an owner or operator, 385
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contractor, or subcontractor has violated section 4145.08 of the 387
Revised Code, the director shall proceed in accordance with the 388
notice and hearing requirements prescribed in Chapter 119. of 389
the Revised Code. 390

(2) After a hearing conducted under Chapter 119. of the 391
Revised Code, if the director determines an owner or operator, 392
contractor, or subcontractor has violated section 4145.08 of the 393
Revised Code, the director shall order the offending owner or 394
operator, contractor, or subcontractor to remedy the violation. 395
The offending owner or operator, contractor, or subcontractor 396
shall remedy the violation not later than thirty days after the 397
date on which the director issues the order. 398

(C) An offending owner or operator, contractor, or 399
subcontractor that fails to remedy a violation within the time 400
period specified in division (B)(2) of this section is subject 401
to the civil penalty specified in section 4145.10 of the Revised 402
Code. The attorney general, on behalf of the director, may bring 403
a civil action in any court of competent jurisdiction to enforce 404
the violation. If the attorney general is the prevailing party 405
in a civil action brought under this division, the court shall 406
award to the attorney general court costs and reasonable 407
attorney's fees. A civil penalty assessed under section 4145.10 408
of the Revised Code and any court costs and attorney's fees 409
recovered shall be paid into the state treasury to the credit of 410
the industrial compliance operating fund created under section 411
121.084 of the Revised Code. 412

Sec. 4145.10. Subject to section 4145.09 of the Revised 413
Code, an owner or operator, contractor, or subcontractor that 414
violates section 4145.08 of the Revised Code is subject to a 415
civil penalty of not more than ten thousand dollars for each 416

violation. Each day during which a violation of division (A) (1) 417
or (B) (1) of section 4145.08 of the Revised Code occurs 418
constitutes a separate violation. 419

Sec. 4145.11. (A) The director of commerce may adopt rules 420
in accordance with Chapter 119. of the Revised Code as necessary 421
to administer and enforce this chapter. 422

(B) The director shall do both of the following: 423

(1) Create and make available a form on which a contractor 424
shall include the information specified in section 4145.06 of 425
the Revised Code; 426

(2) Make publicly available on the department of 427
commerce's internet web site each compliance report a contractor 428
submits to the director under section 4145.06 of the Revised 429
Code not later than thirty days after the date on which the 430
contractor submits the report to the director. 431

Sec. 4145.12. The purpose of this chapter is to protect 432
public health and safety by requiring minimum training and skill 433
standards for persons performing construction services on 434
certain high hazard facilities where inferior or faulty work 435
practices can pose serious risks to the public and result in 436
potentially catastrophic consequences. 437

Section 2. That existing sections 121.083 and 121.084 of 438
the Revised Code are hereby repealed. 439

Section 3. This act shall be known as the High Hazard 440
Training Certification (HHTC) Act. 441

Section 4. The General Assembly finds the following: 442

(A) The General Assembly has long recognized our State 443
Government's duty to protect the public health, safety and 444

welfare. This Act falls within these powers and duties by 445
requiring certain training and qualification standards for 446
contractors performing construction work on high hazard 447
facilities. 448

(B) Public health and safety protections enacted under the 449
State's police powers have been repeatedly upheld by the courts. 450
For example, the Ohio Supreme Court has pointedly recognized 451
that the "[p]rotection and preservation of public health are 452
among the prime governmental concerns and functions of the state 453
as a sovereignty." *State ex. rel. Mowrer v. Underwood*, 137 Ohio 454
St. 1 (1940) (upholding state legislation relating to regulation 455
of health districts); *see also State v. Martin*, 168 Ohio St. 37 456
(1958) (upholding state regulation of well drilling to protect 457
water supply as a reasonable police power function). Federal 458
courts likewise have protected the sanctity of state police 459
powers for the sake of both public health and worker safety. 460
*See Associated Builders & Contractors v. Michigan Department of 461
Labor and Economic Growth*, 543 F.3d 275 (6th Cir. 2008) 462
(upholding apprenticeship training requirements in state trade 463
licensing law under state's police powers). 464

(C) In this Act, the General Assembly recognizes that use 465
of its police power is necessary to protect public health and 466
worker safety by requiring adherence to certain training and 467
certification standards by contractors performing work on high 468
hazard facilities, where faulty or inferior work practices can 469
pose serious risks to workers at these facilities and the 470
general public, resulting in potentially catastrophic 471
consequences. 472

(D) There are compelling grounds and public policy 473
justifications for this Act. Construction is an inherently 474

dangerous industry, wherein errors in project planning or 475
execution can result in serious health and safety risks. Geetha 476
M. Waehrer, Xiuwen S. Dong, Ted Miller, Elizabeth Haile, and 477
Yurong Men, *Costs of Occupational Injuries in Construction in* 478
the United States, 39 Accident Analysis and Prevention 1258 479
(2007) (construction is a high risk industry and accounts for 480
disproportionate share of work-related injuries). 481

(E) The risks inherent in construction are substantially 482
higher in high hazard facilities that handle dangerous materials 483
or substances insofar as unsafe work practices may cause 484
explosions, chemical spills and other hazardous conditions, 485
which may expose workers and the public, especially populations 486
in nearby communities, to dangerous conditions that can lead to 487
serious bodily injuries and death. 488

(F) Congress has addressed these dangers by enacting 489
section 112(r) of the "Clean Air Act," 42 U.S.C. 7412(r), under 490
which the U.S. Environmental Protection Agency requires owners 491
and operators of such facilities to implement "Risk Management 492
Plans" ("RMP") to prevent public health threats presented by 493
such facilities. See also 40 C.F.R. Part 68 and 59 Fed. Reg. 494
4233 and 4478. 495

(G) It has been well documented that petroleum refineries, 496
in particular, present acute risks of workplace accidents. The 497
U.S. Department of Labor, Occupational Safety and Health 498
Administration (OSHA) found that, since the agency began 499
monitoring safety management at these facilities in 1992, "no 500
other industry sector has had as many fatal or catastrophic 501
incidents related to the release of highly hazardous chemicals . 502
. . . as petroleum refining. . . ." See Occupational Safety and 503
Health Administration, OSHA 3918-08 2017, *Process Safety* 504

Management for Petroleum Refineries (2017). 505

(H) In an attempt to address these risks, OSHA issued 506
regulations in 1992 for high hazard facilities that require 507
owners and operators to follow certain procedures for evaluating 508
safety performance of contractors and established requirements 509
for safety programs to ensure that contractor employees are 510
properly trained. See 29 C.F.R. 1910.119. 511

(I) In 2017, OSHA announced a National Emphasis Program 512
for inspecting facilities with highly hazardous chemicals. The 513
directive detailed the numerous fatal and/or catastrophic safety 514
incidents that occurred just since 2010, including the 515
following: 516

(1) "A heat exchanger catastrophically ruptured, which 517
caused an explosion and fire killing seven workers." 518

(2) "A crew was realigning pumps due to a pump seal leak 519
in an isomerization unit when flammable materials were released, 520
formed a vapor cloud and ignited. The fire killed one worker and 521
hospitalized three with burn injuries." 522

(3) "An explosion killed two workers attempting to light a 523
boiler at a fluid catalytic cracking unit." 524

(4) "Ignition of a release of flammable materials killed 525
one contract worker attempting to install a blind flange on a 526
knockout drum." 527

(5) "An eight-inch-diameter pipe catastrophically 528
ruptured, releasing flammable, high-temperature light gas oil, 529
which then formed a large vapor cloud that ignited. The ensuing 530
explosion and fire caused minor injuries to six workers and 531
hospitalized approximately 20 residents of the community near 532
the refinery." 533

Occupational Safety and Health Administration, Directive 534
No. CPL 03-00-021, OSHA Instruction, *PSM Covered Chemical* 535
Facilities National Emphasis Program (January 17, 2017). 536

(J) A review of the most recently available OSHA data 537
reveals that unacceptable levels of risk persist in this sector. 538
Specifically, there has been a recent surge in "serious" OSHA 539
safety violations at petroleum refineries—an increase of 78% in 540
2019 over the previous year. Federal law defines a "serious" 541
safety violation as one having a "substantial probability [of 542
causing] death or serious physical harm" that an employer knew 543
or should have known to exist. Section 17 of the "Occupational 544
Safety and Health Act of 1970," 29 U.S.C. 666. 545

(K) The other main federal agency that oversees the high 546
hazard sector of the construction industry is the U.S. Chemical 547
Safety and Hazard Investigation Board (CSB), which is 548
responsible for investigating serious accidents at high hazard 549
facilities. 550

Over the past several years, CSB has conducted several 551
investigations at high hazard facilities in which it 552
categorically determined that "insufficient safety requirements 553
for contractor selection and oversight were found to be causal" 554
to the accidents in question." United States Chemical Safety and 555
Hazard Investigation Board, *Contractor Safety Digest, The* 556
Importance of Contractor Selection and Oversight (2018). 557

(L) In addition to the considerable challenges highlighted 558
above, safety threats are likely to increase due to critical, 559
unprecedented craft labor shortages. These conditions underscore 560
the need for greater scrutiny over contractor qualifications 561
generally and especially in the high hazard sector. Ben DuBose, 562
ECF '16: Energy Contractors Need Newcomers to Ease Labor 563

Shortage, Hydrocarbon Processing (March 1, 2016) (craft shortage 564
primary factor in 65% failure rate among mega-projects in Gulf 565
Coast Region); Gavin Aronsen, *Labor Shortage Delays DuPont* 566
Plant Completion, Ames Tribune (January 9, 2015) (shortage of 567
qualified workers delayed the completion of a \$200 million 568
DuPont ethanol plant in Iowa). 569

(M) Acting in response to these growing risks and related 570
concerns, Washington State, California, Minnesota, and New 571
Jersey have enacted legislation to require contractors on 572
certain high hazard facilities, including petroleum refineries, 573
to require construction contractors to ensure their craft 574
workforce meets minimum apprenticeship training and experience 575
requirements as a means of ensuring the use of properly trained, 576
safety-conscious employees at these facilities. 577

(N) These statutes are based on growing concerns regarding 578
the eminent dangers of the petroleum refinery sector, as well as 579
extensive public policy findings, which recognize that 580
established apprenticeship training programs in the construction 581
industry are most reliable and effective means for ensuring 582
proper qualifications of craft labor personnel due to the in- 583
depth skill and safety training they provide. 584

(O) Widespread recognition of the value of apprenticeship 585
training generally has also promoted at least 14 states have 586
passed incorporating critical apprenticeship training components 587
into their public works programs. See 2020 Va. Acts Chapter 176; 588
Colo. Rev. Stat. Ann. 24-92-115; Title 26 Me. Rev. Stat. 3501 589
and 3502; Assembly No. 3666 of the 218th New Jersey Legislature; 590
N.J. Ann. Stat. 52:38-5; N.M. Stat. Ann. 13-4D-4; Wash. Rev. 591
Code 39.04.320; Ind. Code 5-30-5-3; Md. State Finance and 592
Procurement Code 17-601 to 17-606 and 17-6A-06; Wyo. Stat. 16-6- 593

902; Chapter 30 Ill. Comp. Stat. 500/30-22; R.I. Gen. Laws 37- 594
13-3.1; Title 8 Cal. Code of Reg. 230.1; Cal. Labor Code 1777.5; 595
Haw. Rev. Stat. 103-55.6; N.Y. Consolidated Law Service, Labor 596
Law 816-b; and Code of Md. Reg. 01.01.2013.05. 597

(P) The apprenticeship training provisions relate to skill 598
and safety training standards developed for craft labor 599
apprenticeship programs established under the "National 600
Apprenticeship Act of 1937," 29 U.S.C. 50, et seq. 601
Apprenticeship training is a system in which workers are fully 602
trained through organized, formally registered apprenticeship 603
standards, designed in accordance with established quality, 604
safety and performance standards approved and monitored by the 605
U.S. Department of Labor and state labor agencies, including the 606
Ohio Department of Job and Family Services. United States 607
Department of Commerce and Case Western Reserve University, *The* 608
Benefits and Costs of Apprenticeship: A Business Perspective 609
(2016) (apprenticeship programs are widely supported by 610
contractors and other employers as highly cost-effective due to 611
higher productivity of trained workers, improved safety, 612
improved project quality, more reliable project staffing, and 613
reduction in employee turnover). 614

(Q) In order to be approved under applicable federal 615
regulations, an apprenticeship program must have an organized, 616
written plan that contains provisions addressing "safety 617
training for apprentices on the job and in related instruction" 618
in addition to numerous other standards for acquiring critical 619
skills in a given trade. Apprentices receive a combination of 620
extensive on-the-job training, combined with classroom and shop 621
instruction, and must pass specific skill-level tests after each 622
year before they can proceed to the next year in programs that 623
typically involve a 3 to 5 curriculum. See 29 C.F.R. 29.5. 624

(R) In educating workers in the construction industry, the 625
training used to develop skills in the respective trades is 626
inextricably linked to safety training since performing many 627
functions or tasks safely requires that the work correctly. 628
Executing tasks in construction properly also requires that they 629
be carried out in accordance with a number of complex industry 630
codes and standards. See, e.g., Farzad Minooei, *Towards a* 631
Deeper Understanding of the U.S. Workforce Development System 632
in the Construction Industry (2018) (Ph.D. dissertation, 633
University of Colorado) ("A skilled workforce is essential to 634
safety, productivity and sustainability of construction and 635
maintenance activities"). Conversely, the use of workers 636
with inadequate training can seriously undermine project safety. 637
See, e.g., Hossein Karimi, Timothy R.B. Taylor, Paul M. Goodrum, 638
and Cidambi Srinivasan, *Quantitative Analysis of the Impact of* 639
Craft Worker Availability on Construction Project Safety 640
Performance, 16 *Construction Innovation* 307 (2016) ("When a 641
project is executed by less qualified craft workers, increases 642
in human errors, less familiarity with safety procedures and 643
legislations and inadequate safety training will be the factors 644
that adversely influence safety performance."). 645

(S) In view of these factors, the General Assembly finds 646
that the use of apprenticeship training standards on 647
construction projects for high hazard facilities provides the 648
most effective means for addressing growing public safety 649
threats and should be incorporated into the project planning 650
system used for these facilities. 651