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Sub. 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, Brennan, Brent, Brewer, Brown, Denson, Galonski, McNally, Oelslager, Russo, Somani, Thomas, C., Weinstein

A BILL

To amend sections 121.083 and 121.084 and to enact
sections 4145.01, 4145.02, 4145.03, 4145.04,
4145.05, 4145.06, 4145.07, 4145.08, 4145.09,
4145.10, 4145.11, and 4145.12 of the Revised
Code to enact the Protect Ohio Workers Act
regarding construction services performed under
a contract at a stationary source.

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

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

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

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

pertaining to buildings, pressure piping, boilers, bedding, 16
upholstered furniture, and stuffed toys, steam engineering, 17
elevators, plumbing, licensed occupations regulated by the 18
department, and travel agents, as they apply to plans review, 19
inspection, code enforcement, testing, licensing, registration, 20
and certification. 21

(2) Exercise the powers and perform the duties delegated 22
to the superintendent by the director of commerce under Chapters 23
4109., 4111., ~~and 4115.~~, and 4145. of the Revised Code. 24

(3) Collect and collate statistics as are necessary. 25

(4) Examine and license persons who desire to act as steam 26
engineers, to operate steam boilers, and to act as inspectors of 27
steam boilers, provide for the scope, conduct, and time of such 28
examinations, provide for, regulate, and enforce the renewal and 29
revocation of such licenses, inspect and examine steam boilers 30
and make, publish, and enforce rules and orders for the 31
construction, installation, inspection, and operation of steam 32
boilers, and do, require, and enforce all things necessary to 33
make such examination, inspection, and requirement efficient. 34

(5) Rent and furnish offices as needed in cities in this 35
state for the conduct of its affairs. 36

(6) Oversee a chief of construction and compliance, a 37
chief of operations and maintenance, a chief of licensing and 38
certification, a chief of worker protection, and other designees 39
appointed by the director to perform the duties described in 40
this section. 41

(7) Enforce the rules the board of building standards 42
adopts pursuant to division (A)(2) of section 4104.43 of the 43
Revised Code under the circumstances described in division (D) 44

of that section. 45

(8) Accept submissions, establish a fee for submissions, 46
and review submissions of certified welding and brazing 47
procedure specifications, procedure qualification records, and 48
performance qualification records for building services piping 49
as required by section 4104.44 of the Revised Code. 50

(B) The superintendent may enter into a contract with a 51
municipal corporation, township, or county building department 52
certified by the board of building standards pursuant to 53
division (E) of section 3781.10 of the Revised Code, or a 54
municipal or county health district, to do any of the following 55
on behalf of the building department or health district: 56

(1) Exercise enforcement authority pursuant to section 57
3781.03 of the Revised Code; 58

(2) Accept and approve plans and specifications, and make 59
inspections, pursuant to section 3791.04 of the Revised Code; 60

(3) Enforce the rules adopted pursuant to division (A) (2) 61
of section 4104.43 of the Revised Code. 62

Sec. 121.084. (A) All moneys collected under sections 63
3783.05, 3791.07, 4104.07, 4104.18, 4104.44, 4105.17, 4105.20, 64
4145.09, 4169.03, and 5104.051 of the Revised Code, and any 65
other moneys collected by the division of industrial compliance 66
shall be paid into the state treasury to the credit of the 67
industrial compliance operating fund, which is hereby created. 68
The department of commerce shall use the moneys in the fund for 69
paying the operating expenses of the division and the 70
administrative assessment described in division (B) of this 71
section. 72

(B) The director of commerce shall prescribe procedures 73

for assessing the industrial compliance operating fund a 74
proportionate share of the administrative costs of the 75
department of commerce. The assessment shall be made in 76
accordance with those procedures and be paid from the industrial 77
compliance operating fund to the division of administration fund 78
created in section 121.08 of the Revised Code. 79

Sec. 4145.01. As used in this chapter: 80

(A) "Apprentice" means a person who is participating in a 81
registered apprenticeship program to learn a skilled occupation 82
pursuant to a registered apprenticeship agreement as defined in 83
section 4139.01 of the Revised Code or 29 C.F.R. 29.2. 84

(B) "Construction" means all service performed at a 85
stationary source, including maintenance, repair, assembly, 86
disassembly, alteration, demolition, modernization, installation 87
services, and capital improvements. 88

(C) "Contractor" means any person who undertakes 89
construction at a stationary source under a contract with an 90
owner or operator. 91

(D) "Owner or operator" means a person who owns or 92
operates a stationary source at which the person engages in 93
activities described in code 324110 of the 2017 north American 94
industry classification system and at which the person engages 95
in one or more covered processes for which the person is 96
required to prepare and submit a risk management plan under the 97
"Clean Air Act," 42 U.S.C. 7412. "Owner or operator" does not 98
include a person who controls the means of engaging in oil and 99
gas extraction operations. 100

(E) (1) "Registered apprenticeship program" means any of 101
the following programs: 102

(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; 103
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(b) An apprenticeship program registered by the department of job and family services under Chapter 4139. of the Revised Code; 109
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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. 112
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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. 116
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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. 121
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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. 124
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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. 127
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(H) "State apprenticeship agency" means the state government agency that is authorized by the United States 130
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department of labor to register and oversee apprenticeship 132
programs in the state. 133

(I) (1) "Stationary source" means any building, structure, 134
facility, or installation that emits or may emit any regulated 135
air pollutant or any pollutant listed under the "Clean Air Act," 136
42 U.S.C. 7412, except those emissions resulting directly from 137
an internal combustion engine for transportation purposes or 138
from a nonroad engine or nonroad vehicle as defined in the 139
"Clean Air Act," 42 U.S.C. 7550. 140

(2) "Stationary source" includes any building, structure, 141
facility, or installation described in division (I) (1) of this 142
section that is offline for an indefinite period of time for 143
purposes of being revamped, renewed, or repaired. 144

(J) "Subcontractor" means any person who undertakes 145
construction at a stationary source under a contract with any 146
person other than an owner or operator. 147

(K) "Apprenticeship records" includes an apprenticeship 148
agreement, a certificate of completion, documentation of hours 149
worked under supervision, and documentation of curriculum hours 150
or related instruction hours completed. 151

Sec. 4145.02. (A) An individual shall do both of the 152
following to be considered a class A skilled journeyman: 153

(1) Graduate from a registered apprenticeship program; 154

(2) Complete a thirty-hour training course in safety and 155
health hazard recognition and prevention approved by the 156
occupational safety and health administration of the United 157
States department of labor. 158

(B) An individual shall do both of the following to be 159

considered a class B skilled journeyperson: 160

(1) Acquire at least six thousand hours of experience in 161
the occupation or trade in which the individual is providing or 162
assigned to provide construction services at a stationary 163
source; 164

(2) Complete a thirty-hour training course in safety and 165
health hazard recognition and prevention approved by the 166
occupational safety and health administration of the United 167
States department of labor. 168

Sec. 4145.03. (A) An owner or operator that enters into a 169
contract on and after the effective date of this section for 170
construction services at a stationary source shall do both of 171
the following: 172

(1) Engage only a contractor that complies with division 173
(B) of this section; 174

(2) Require, in the contract that the owner or operator 175
enters into with the contractor, that the contractor shall use, 176
with respect to any subcontractor needed for the contract, a 177
subcontractor that complies with division (B) of this section. 178

(B) (1) Except as provided in division (B) (5) of this 179
section, a contractor that provides construction services at a 180
stationary source pursuant to a contract entered into on and 181
after the effective date of this section with an owner or 182
operator, and a subcontractor that provides construction 183
services with respect to that contract on behalf of the 184
contractor, shall use only the following individuals: 185

(a) Class A skilled journeypersons; 186

(b) Class B skilled journeypersons; 187

<u>(c) Apprentices.</u>	188
<u>(2) The contractor or subcontractor shall follow the</u>	189
<u>following implementation schedule regarding the proportion of</u>	190
<u>the contractor's or subcontractor's employees performing those</u>	191
<u>construction services who shall be class A skilled</u>	192
<u>journeypersons, apprentices, or both:</u>	193
<u>(a) Beginning on January 1, 2024, at least sixty-five per</u>	194
<u>cent;</u>	195
<u>(b) Beginning on January 1, 2025, at least eighty per</u>	196
<u>cent.</u>	197
<u>(3) The contractor or subcontractor shall employ class B</u>	198
<u>skilled journeypersons for the remaining portion of the</u>	199
<u>contractor's or subcontractor's employees performing</u>	200
<u>construction services who are not required to be class A skilled</u>	201
<u>journeypersons or apprentices pursuant to division (B)(2) of</u>	202
<u>this section.</u>	203
<u>(4) The contractor or subcontractor shall ensure that all</u>	204
<u>class A and class B skilled journeypersons and apprentices</u>	205
<u>performing construction services at a stationary source</u>	206
<u>demonstrate proficiency in spoken English.</u>	207
<u>(5) An individual employed by a contractor or</u>	208
<u>subcontractor is not required to be a class A or class B skilled</u>	209
<u>journeyperson or apprentice pursuant to division (B)(1) of this</u>	210
<u>section if both of the following apply:</u>	211
<u>(a) The individual is employed as a project</u>	212
<u>superintendent, project manager, engineer, safety professional,</u>	213
<u>quality control professional, or clerical employee.</u>	214
<u>(b) The individual does not perform construction services.</u>	215

(C) (1) Divisions (A) and (B) of this section do not apply 216
under either of the following circumstances: 217

(a) An emergency during or after which compliance is 218
impracticable, including an emergency that requires immediate 219
action to prevent imminent harm to public health, public safety, 220
or the environment; 221

(b) When both of the following apply to the stationary 222
source that is the subject of a contract for construction 223
services: 224

(i) The stationary source is a petroleum refinery. 225

(ii) The petroleum refinery has a total operable capacity 226
of less than one hundred twenty thousand barrels of crude oil 227
per day. 228

(2) For purposes of division (C) (1) (b) (ii) of this 229
section, the total operable capacity of a refinery in operation 230
on or before the effective date of this section shall be based 231
on the report its owner or operator filed with the United States 232
department of energy pursuant to the "Federal Energy 233
Administration Act of 1974," 15 U.S.C. 772, covering January 1, 234
2023. 235

Sec. 4145.04. If an owner or operator believes that a 236
contractor or subcontractor is failing or has failed to comply 237
with the implementation schedule established under division (B) 238
of section 4145.03 of the Revised Code, the owner or operator 239
shall, not later than seven days after the date on which the 240
owner or operator first believes a contractor or subcontractor 241
is failing or has failed to comply with the implementation 242
schedule, provide written notice of the alleged noncompliance to 243
the director of commerce, and shall include both of the 244

following in the notice: 245

(A) A summary that describes the contractor's or 246
subcontractor's alleged noncompliance, including the applicable 247
dates of noncompliance and degree to which the contractor or a 248
subcontractor has allowed the proportion of the contractor's or 249
subcontractor's employees performing construction services to 250
deviate from the implementation schedule; 251

(B) The corrective actions, if any, that the owner or 252
operator has taken to ensure the contractor or subcontractor is 253
complying with the implementation schedule, and the date by 254
which the owner or operator expects the contractor or 255
subcontractor to comply with the implementation schedule. 256

Sec. 4145.05. (A) Each contractor and subcontractor 257
subject to section 4145.03 of the Revised Code shall maintain 258
the following records for a period of not less than five years 259
after the date on which construction services under the contract 260
have been completed: 261

(1) Payroll records for all individuals who performed 262
construction services; 263

(2) Apprenticeship records; 264

(3) Copies of the reports that each contractor and 265
subcontractor is required to submit under sections 4145.06 and 266
4145.07 of the Revised Code. 267

(B) The director of commerce or attorney general may 268
request to inspect the records described in division (A) of this 269
section at any time during the time period described in that 270
division. A contractor or subcontractor shall make the records 271
available not later than seven days from the date the director 272
or attorney general makes a request under this division. 273

<u>Sec. 4145.06. (A) A contractor subject to section 4145.03</u>	274
<u>of the Revised Code shall prepare a compliance report at the end</u>	275
<u>of each calendar quarter during which the contractor provided</u>	276
<u>construction services at a stationary source. The contractor</u>	277
<u>shall submit each report to the director of commerce not later</u>	278
<u>than thirty days after the date on which the calendar quarter</u>	279
<u>ends. The contractor shall submit a final report to the director</u>	280
<u>not later than thirty days after construction services under the</u>	281
<u>contract are completed. The contractor shall include in each</u>	282
<u>report all of the following information with respect to that</u>	283
<u>calendar quarter:</u>	284
<u>(1) The name and address of the contractor;</u>	285
<u>(2) The name and title of the individual preparing the</u>	286
<u>report on behalf of the contractor;</u>	287
<u>(3) The name and address of the owner or operator of the</u>	288
<u>stationary source at which construction services were performed;</u>	289
<u>(4) The name of the project and project number, if any;</u>	290
<u>(5) The total dollar value of the contract;</u>	291
<u>(6) The name and address of all subcontractors involved in</u>	292
<u>providing construction services at the stationary source;</u>	293
<u>(7) The total number of class A and class B skilled</u>	294
<u>journeypersons and apprentices who performed construction</u>	295
<u>services;</u>	296
<u>(8) The name and address of each registered apprenticeship</u>	297
<u>program from which class A skilled journeypersons graduated and</u>	298
<u>each registered apprenticeship program that provided training to</u>	299
<u>apprentices;</u>	300
<u>(9) Certification that the contractor has complied with</u>	301

<u>division (B) of section 4145.03 of the Revised Code;</u>	302
<u>(10) All of the following:</u>	303
<u>(a) The total number of class A skilled journeypersons who performed construction services;</u>	304 305
<u>(b) The total number of class B skilled journeypersons who performed construction services;</u>	306 307
<u>(c) The total number of apprentices who performed construction services;</u>	308 309
<u>(d) The numbers described in divisions (A) (10) (a) to (c) of this section represented as a per cent of the total number of class A and class B skilled journeypersons and apprentices who performed construction services.</u>	310 311 312 313
<u>(B) At the time a contractor submits a report to the director under division (A) of this section, the contractor shall provide a copy of the report to the owner or operator of the stationary source at which the contractor is providing construction services.</u>	314 315 316 317 318
<u>Sec. 4145.07. Each subcontractor subject to section 4145.03 of the Revised Code shall prepare a workforce report at the end of each calendar quarter during which the subcontractor provided construction services at a stationary source. The subcontractor shall submit each report to the contractor not later than ten days after the date on which the calendar quarter ends. The subcontractor shall include in each report all of the following information regarding individuals who performed construction services during that calendar quarter:</u>	319 320 321 322 323 324 325 326 327
<u>(A) The total number of class A and class B skilled journeypersons and apprentices who performed construction</u>	328 329

<u>services;</u>	330
<u>(B) The total number of class A skilled journeypersons and apprentices who performed construction services;</u>	331
<u>(C) The total number of class B skilled journeypersons who performed construction services and the means by which the subcontractor verified that each class B skilled journeyperson has satisfied the experience requirement under division (B) (1) of section 4145.02 of the Revised Code;</u>	332
<u>(D) The name and address of each registered apprenticeship program from which class A skilled journeypersons graduated and each registered apprenticeship program that provided training to apprentices.</u>	333
<u>Sec. 4145.08. (A) No owner or operator shall do any of the following:</u>	334
<u>(1) Fail to comply with division (A) of section 4145.03 of the Revised Code;</u>	335
<u>(2) Fail to comply with the notice requirement under section 4145.04 of the Revised Code within the time period specified in that section;</u>	336
<u>(3) Submit a written notice as described under section 4145.04 of the Revised Code that includes false or inaccurate information.</u>	337
<u>(B) No contractor or subcontractor shall do any of the following:</u>	338
<u>(1) Fail to comply with division (B) of section 4145.03 of the Revised Code;</u>	339
<u>(2) Fail to maintain the records specified in section</u>	340

4145.05 of the Revised Code for the time period specified in 357
that section; 358

(3) Fail to make available the records specified in 359
section 4145.05 of the Revised Code within the time period 360
specified in that section; 361

(4) Fail to comply with the reporting requirements under 362
sections 4145.06 and 4145.07 of the Revised Code; 363

(5) Submit a report under section 4145.06 or 4145.07 of 364
the Revised Code that includes false or inaccurate information. 365

Sec. 4145.09. (A) Any person who believes an owner or 366
operator, contractor, or subcontractor has violated section 367
4145.08 of the Revised Code may file a written complaint with 368
the director of commerce. On receiving a complaint, the director 369
shall investigate the alleged violation. The director also may 370
investigate whether an owner or operator, contractor, or 371
subcontractor has violated section 4145.08 of the Revised Code 372
on the director's own initiative. 373

(B)(1) If the director determines after an investigation 374
that reasonable grounds exist that an owner or operator, 375
contractor, or subcontractor has violated section 4145.08 of the 376
Revised Code, the director shall proceed in accordance with the 377
notice and hearing requirements prescribed in Chapter 119. of 378
the Revised Code. 379

(2) After a hearing conducted under Chapter 119. of the 380
Revised Code, if the director determines an owner or operator, 381
contractor, or subcontractor has violated section 4145.08 of the 382
Revised Code, the director shall order the offending owner or 383
operator, contractor, or subcontractor to remedy the violation. 384
The offending owner or operator, contractor, or subcontractor 385

shall remedy the violation not later than thirty days after the 386
date on which the director issues the order. 387

(C) An offending owner or operator, contractor, or 388
subcontractor that fails to remedy a violation within the time 389
period specified in division (B) (2) of this section is subject 390
to the civil penalty specified in section 4145.10 of the Revised 391
Code. The attorney general, on behalf of the director, may bring 392
a civil action in any court of competent jurisdiction to enforce 393
the violation. If the attorney general is the prevailing party 394
in a civil action brought under this division, the court shall 395
award to the attorney general court costs and reasonable 396
attorney's fees. A civil penalty assessed under section 4145.10 397
of the Revised Code and any court costs and attorney's fees 398
recovered shall be paid into the state treasury to the credit of 399
the industrial compliance operating fund created under section 400
121.084 of the Revised Code. 401

Sec. 4145.10. Subject to section 4145.09 of the Revised 402
Code, an owner or operator, contractor, or subcontractor that 403
violates section 4145.08 of the Revised Code is subject to a 404
civil penalty of not more than ten thousand dollars for each 405
violation. Each day during which a violation of division (A) (1) 406
or (B) (1) of section 4145.08 of the Revised Code occurs 407
constitutes a separate violation. 408

Sec. 4145.11. (A) The director of commerce may adopt rules 409
in accordance with Chapter 119. of the Revised Code as necessary 410
to administer and enforce this chapter. 411

(B) The director shall do both of the following: 412

(1) Create and make available a form on which a contractor 413
shall include the information specified in section 4145.06 of 414

the Revised Code; 415

(2) Make publicly available on the department of 416
commerce's internet web site each compliance report a contractor 417
submits to the director under section 4145.06 of the Revised 418
Code not later than thirty days after the date on which the 419
contractor submits the report to the director. 420

Sec. 4145.12. The purpose of this chapter is to protect 421
public health and safety by requiring minimum training and skill 422
standards for persons performing construction services on 423
certain high hazard facilities where inferior or faulty work 424
practices can pose serious risks to the public and result in 425
potentially catastrophic consequences. 426

Section 2. That existing sections 121.083 and 121.084 of 427
the Revised Code are hereby repealed. 428

Section 3. This act shall be known as the Protect Ohio 429
Workers Act. 430

Section 4. The General Assembly finds the following: 431

(A) The General Assembly has long recognized our State 432
Government's duty to protect the public health, safety and 433
welfare. This Act falls within these powers and duties by 434
requiring certain training and qualification standards for 435
contractors performing construction work on high hazard 436
facilities. 437

(B) Public health and safety protections enacted under the 438
State's police powers have been repeatedly upheld by the courts. 439
For example, the Ohio Supreme Court has pointedly recognized 440
that the "[p]rotection and preservation of public health are 441
among the prime governmental concerns and functions of the state 442
as a sovereignty." *State ex. rel. Mowrer v. Underwood*, 137 Ohio 443

St. 1 (1940) (upholding state legislation relating to regulation 444
of health districts); *see also State v. Martin*, 168 Ohio St. 37 445
(1958) (upholding state regulation of well drilling to protect 446
water supply as a reasonable police power function). Federal 447
courts likewise have protected the sanctity of state police 448
powers for the sake of both public health and worker safety. 449
See Associated Builders & Contractors v. Michigan Department of 450
Labor and Economic Growth, 543 F.3d 275 (6th Cir. 2008) 451
(upholding apprenticeship training requirements in state trade 452
licensing law under state's police powers). 453

(C) In this Act, the General Assembly recognizes that use 454
of its police power is necessary to protect public health and 455
worker safety by requiring adherence to certain training and 456
certification standards by contractors performing work on high 457
hazard facilities, where faulty or inferior work practices can 458
pose serious risks to workers at these facilities and the 459
general public, resulting in potentially catastrophic 460
consequences. 461

(D) There are compelling grounds and public policy 462
justifications for this Act. Construction is an inherently 463
dangerous industry, wherein errors in project planning or 464
execution can result in serious health and safety risks. Geetha 465
M. Waehrer, Xiuwen S. Dong, Ted Miller, Elizabeth Haile, and 466
Yurong Men, *Costs of Occupational Injuries in Construction in* 467
the United States, 39 Accident Analysis and Prevention 1258 468
(2007) (construction is a high risk industry and accounts for 469
disproportionate share of work-related injuries). 470

(E) The risks inherent in construction are substantially 471
higher in high hazard facilities that handle dangerous materials 472
or substances insofar as unsafe work practices may cause 473

explosions, chemical spills and other hazardous conditions, 474
which may expose workers and the public, especially populations 475
in nearby communities, to dangerous conditions that can lead to 476
serious bodily injuries and death. 477

(F) Congress has addressed these dangers by enacting 478
section 112(r) of the "Clean Air Act," 42 U.S.C. 7412(r), under 479
which the U.S. Environmental Protection Agency requires owners 480
and operators of such facilities to implement "Risk Management 481
Plans" ("RMP") to prevent public health threats presented by 482
such facilities. See also 40 C.F.R. Part 68 and 59 Fed. Reg. 483
4233 and 4478. 484

(G) It has been well documented that petroleum refineries, 485
in particular, present acute risks of workplace accidents. The 486
U.S. Department of Labor, Occupational Safety and Health 487
Administration (OSHA) found that, since the agency began 488
monitoring safety management at these facilities in 1992, "no 489
other industry sector has had as many fatal or catastrophic 490
incidents related to the release of highly hazardous chemicals . 491
. . as petroleum refining. . . ." See Occupational Safety and 492
Health Administration, OSHA 3918-08 2017, *Process Safety* 493
Management for Petroleum Refineries (2017). 494

(H) In an attempt to address these risks, OSHA issued 495
regulations in 1992 for high hazard facilities that require 496
owners and operators to follow certain procedures for evaluating 497
safety performance of contractors and established requirements 498
for safety programs to ensure that contractor employees are 499
properly trained. See 29 C.F.R. 1910.119. 500

(I) In 2017, OSHA announced a National Emphasis Program 501
for inspecting facilities with highly hazardous chemicals. The 502
directive detailed the numerous fatal and/or catastrophic safety 503

incidents that occurred just since 2010, including the 504
following: 505

(1) "A heat exchanger catastrophically ruptured, which 506
caused an explosion and fire killing seven workers." 507

(2) "A crew was realigning pumps due to a pump seal leak 508
in an isomerization unit when flammable materials were released, 509
formed a vapor cloud and ignited. The fire killed one worker and 510
hospitalized three with burn injuries." 511

(3) "An explosion killed two workers attempting to light a 512
boiler at a fluid catalytic cracking unit." 513

(4) "Ignition of a release of flammable materials killed 514
one contract worker attempting to install a blind flange on a 515
knockout drum." 516

(5) "An eight-inch-diameter pipe catastrophically 517
ruptured, releasing flammable, high-temperature light gas oil, 518
which then formed a large vapor cloud that ignited. The ensuing 519
explosion and fire caused minor injuries to six workers and 520
hospitalized approximately 20 residents of the community near 521
the refinery." 522

Occupational Safety and Health Administration, Directive 523
No. CPL 03-00-021, OSHA Instruction, *PSM Covered Chemical* 524
Facilities National Emphasis Program (January 17, 2017). 525

(J) A review of the most recently available OSHA data 526
reveals that unacceptable levels of risk persist in this sector. 527
Specifically, there has been a recent surge in "serious" OSHA 528
safety violations at petroleum refineries—an increase of 78% in 529
2019 over the previous year. Federal law defines a "serious" 530
safety violation as one having a "substantial probability [of 531
causing] death or serious physical harm" that an employer knew 532

or should have known to exist. Section 17 of the "Occupational Safety and Health Act of 1970," 29 U.S.C. 666. 533
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(K) The other main federal agency that oversees the high hazard sector of the construction industry is the U.S. Chemical Safety and Hazard Investigation Board (CSB), which is responsible for investigating serious accidents at high hazard facilities. 535
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Over the past several years, CSB has conducted several investigations at high hazard facilities in which it categorically determined that "insufficient safety requirements for contractor selection and oversight were found to be causal" to the accidents in question." United States Chemical Safety and Hazard Investigation Board, *Contractor Safety Digest, The Importance of Contractor Selection and Oversight* (2018). 540
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(L) In addition to the considerable challenges highlighted above, safety threats are likely to increase due to critical, unprecedented craft labor shortages. These conditions underscore the need for greater scrutiny over contractor qualifications generally and especially in the high hazard sector. Ben DuBose, *ECF '16: Energy Contractors Need Newcomers to Ease Labor Shortage*, Hydrocarbon Processing (March 1, 2016) (craft shortage primary factor in 65% failure rate among mega-projects in Gulf Coast Region); Gavin Aronsen, *Labor Shortage Delays DuPont Plant Completion*, Ames Tribune (January 9, 2015) (shortage of qualified workers delayed the completion of a \$200 million DuPont ethanol plant in Iowa). 547
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(M) Acting in response to these growing risks and related concerns, Washington State, California, Minnesota, and New Jersey have enacted legislation to require contractors on certain high hazard facilities, including petroleum refineries, 559
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to require construction contractors to ensure their craft 563
workforce meets minimum apprenticeship training and experience 564
requirements as a means of ensuring the use of properly trained, 565
safety-conscious employees at these facilities. 566

(N) These statutes are based on growing concerns regarding 567
the eminent dangers of the petroleum refinery sector, as well as 568
extensive public policy findings, which recognize that 569
established apprenticeship training programs in the construction 570
industry are most reliable and effective means for ensuring 571
proper qualifications of craft labor personnel due to the in- 572
depth skill and safety training they provide. 573

(O) Widespread recognition of the value of apprenticeship 574
training generally has also promoted at least 14 states have 575
passed incorporating critical apprenticeship training components 576
into their public works programs. See 2020 Va. Acts Chapter 176; 577
Colo. Rev. Stat. Ann. 24-92-115; Title 26 Me. Rev. Stat. 3501 578
and 3502; Assembly No. 3666 of the 218th New Jersey Legislature; 579
N.J. Ann. Stat. 52:38-5; N.M. Stat. Ann. 13-4D-4; Wash. Rev. 580
Code 39.04.320; Ind. Code 5-30-5-3; Md. State Finance and 581
Procurement Code 17-601 to 17-606 and 17-6A-06; Wyo. Stat. 16-6- 582
902; Chapter 30 Ill. Comp. Stat. 500/30-22; R.I. Gen. Laws 37- 583
13-3.1; Title 8 Cal. Code of Reg. 230.1; Cal. Labor Code 1777.5; 584
Haw. Rev. Stat. 103-55.6; N.Y. Consolidated Law Service, Labor 585
Law 816-b; and Code of Md. Reg. 01.01.2013.05. 586

(P) The apprenticeship training provisions relate to skill 587
and safety training standards developed for craft labor 588
apprenticeship programs established under the "National 589
Apprenticeship Act of 1937," 29 U.S.C. 50, et seq. 590
Apprenticeship training is a system in which workers are fully 591
trained through organized, formally registered apprenticeship 592

standards, designed in accordance with established quality, 593
safety and performance standards approved and monitored by the 594
U.S. Department of Labor and state labor agencies, including the 595
Ohio Department of Job and Family Services. United States 596
Department of Commerce and Case Western Reserve University, *The* 597
Benefits and Costs of Apprenticeship: A Business Perspective 598
(2016) (apprenticeship programs are widely supported by 599
contractors and other employers as highly cost-effective due to 600
higher productivity of trained workers, improved safety, 601
improved project quality, more reliable project staffing, and 602
reduction in employee turnover). 603

(Q) In order to be approved under applicable federal 604
regulations, an apprenticeship program must have an organized, 605
written plan that contains provisions addressing "safety 606
training for apprentices on the job and in related instruction" 607
in addition to numerous other standards for acquiring critical 608
skills in a given trade. Apprentices receive a combination of 609
extensive on-the-job training, combined with classroom and shop 610
instruction, and must pass specific skill-level tests after each 611
year before they can proceed to the next year in programs that 612
typically involve a 3 to 5 curriculum. See 29 C.F.R. 29.5. 613

(R) In educating workers in the construction industry, the 614
training used to develop skills in the respective trades is 615
inextricably linked to safety training since performing many 616
functions or tasks safely requires that the work correctly. 617
Executing tasks in construction properly also requires that they 618
be carried out in accordance with a number of complex industry 619
codes and standards. See, e.g., Farzad Minooei, *Towards a* 620
Deeper Understanding of the U.S. Workforce Development System 621
in the Construction Industry (2018) (Ph.D. dissertation, 622
University of Colorado) ("A skilled workforce is essential to 623

safety, productivity and sustainability of construction and 624
maintenance activities"). Conversely, the use of workers 625
with inadequate training can seriously undermine project safety. 626
See, e.g., Hossein Karimi, Timothy R.B. Taylor, Paul M. Goodrum, 627
and Cidambi Srinivasan, Quantitative Analysis of the Impact of 628
Craft Worker Availability on Construction Project Safety 629
Performance, 16 Construction Innovation 307 (2016) ("When a 630
project is executed by less qualified craft workers, increases 631
in human errors, less familiarity with safety procedures and 632
legislations and inadequate safety training will be the factors 633
that adversely influence safety performance."). 634

(S) In view of these factors, the General Assembly finds 635
that the use of apprenticeship training standards on 636
construction projects for high hazard facilities provides the 637
most effective means for addressing growing public safety 638
threats and should be incorporated into the project planning 639
system used for these facilities. 640