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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 205  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Swearingen and Plummer

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### SUMMARY

- Requires a contractor or subcontractor that performs construction services on a building, structure, facility, or installation that emits or may emit certain regulated air pollutants (“stationary source”) to perform the services using individuals who demonstrate fluency in English and meet specific training requirements.
- Allows a contractor or subcontractor to complete the services using individuals who do not satisfy the requirements under certain conditions outside of the contractor’s or subcontractor’s control.
- Requires a contractor or subcontractor to keep records and file reports demonstrating that the contractor or subcontractor is using individuals that satisfy the bill’s training requirements to perform construction services at a stationary source.
- Requires an owner or operator of a stationary source to contract for construction services on the stationary source only with contractors who use individuals that satisfy the bill’s training requirements and subcontract with only subcontractors whose workers satisfy the requirements.
- Requires an owner or operator to, within a specific time period, provide written notice to the Director of Commerce when the owner or operator believes that a contractor or subcontractor is failing or has failed to use individuals that satisfy the bill’s training requirements.
- Subjects contractors, subcontractors, owners, and operators that violate the bill to civil penalties of up to \$10,000 per violation and requires the Director to investigate possible violations.
- Authorizes the Director to adopt rules to administer and enforce the bill.

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## DETAILED ANALYSIS

The bill, known as the High Hazard Training Certification (HHTC) Act, applies to construction services performed on “stationary sources,” which are buildings, structures, facilities, and installations that emit or may emit regulated air pollutants or any pollutant listed in the “Clean Air Act” other than emissions resulting directly from internal combustion engines. Its requirements apply to a stationary source even if the stationary source is offline for the purpose of being revamped, renewed, or repaired.<sup>1</sup>

Examples of stationary sources include certain factories, refineries, boilers, and power plants. The Clean Air Act directs the U.S. Environmental Protection Agency to control emissions from stationary sources by developing and implementing standards and guidelines.<sup>2</sup>

### Staffing requirements for construction at stationary sources

Unless one of the exceptions described below applies, the bill requires a contractor or subcontractor that performs construction services on a stationary source to use only the following individuals to perform the services:

- **Class A skilled journeypersons:** Individuals who graduate from a registered apprenticeship program and complete a 30-hour training course in safety and health hazard recognition and prevention approved by the federal Occupational Safety and Health Administration (OSHA);
- **Class B skilled journeypersons:** Individuals who complete the 30-hour OSHA approved safety and health hazard recognition and prevention training course and who acquire at least 6,000 hours of experience in the occupation or trade in which the individual is providing or assigned to provide construction services at the stationary source;
- **Apprentices:** Individuals who are participating in a registered apprenticeship program to learn a skilled occupation pursuant to a registered apprenticeship agreement.<sup>3</sup>

A “registered apprenticeship program” is any of the following programs:

- A program that trains an individual for a trade or occupation through paid on-the-job training and related instruction that has been registered by the U.S. Department of Labor’s Office of Apprenticeship as meeting certain minimum standards under federal law;

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<sup>1</sup> R.C. 4145.01(I) and Section 3.

<sup>2</sup> See 42 United States Code (U.S.C.) 85 *et seq.* and EPA, [Stationary Sources of Air Pollution](https://www.epa.gov/stationary-sources-air-pollution), which may be accessed by conducting a keyword “stationary source” search on the U.S. EPA website: <https://www.epa.gov/>.

<sup>3</sup> R.C. 4145.01(A), (F), and (G), 4145.02, and 4145.03(B)(1).

- An apprenticeship program registered by the Ohio Department of Job and Family Services (JFS);
- An apprenticeship program registered by a state apprenticeship agency of another state that has been authorized to register apprenticeship programs for federal purposes under that state’s laws.

A registered apprenticeship program may include any apprenticeship program subject to the “Employee Retirement Income Security Act of 1974” or an apprenticeship program supported through an employer’s general funds. However, a registered apprenticeship program does not include an Industry-Recognized Apprenticeship Program (IRAP). An IRAP was an apprenticeship developed or delivered by a trade or industry group, corporation, nonprofit organization, educational institution, union, or joint labor-management organization that resulted in an industry-recognized credential. The U.S. Department of Labor published a rule rescinding IRAPs on September 26, 2022.<sup>4</sup>

The bill also requires a contractor or subcontractor to ensure that all class A and class B skilled journeypersons and apprentices performing services at a stationary source demonstrate fluency in spoken English.<sup>5</sup> The Equal Employment Opportunity Commission (EEOC), the agency that enforces federal employment discrimination laws, has adopted a regulation stating that requiring employees to speak only English *at all times* in the workplace presumptively violates federal anti-discrimination law. The EEOC has, however, determined an English-only rule may be appropriate in emergencies or other situations in which employees must speak a common language to promote safety.<sup>6</sup>

### **Implementation schedule**

A contractor or subcontractor must comply with the following implementation schedule with respect to the proportion of employees who meet the classifications described above:

- Beginning on January 1, 2024, at least 65% class A skilled journeypersons or apprentices and 35% class B skilled journeypersons;
- Beginning on January 1, 2025, at least 80% class A skilled journeypersons or apprentices and 20% class B skilled journeypersons.<sup>7</sup>

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<sup>4</sup> R.C. 4145.01(E) and R.C. 4139.01, not in the bill; *see also* 29 U.S.C. 1001, *et seq.*, 29 Code of Federal Regulations (C.F.R.) 29.2 and 29.20., and [US Department of Labor to Refocus on Proven Registered Apprenticeship Model, Rescind Industry-Recognized Apprenticeship Program](#) which may be accessed by conducting a keyword “rescind industry-recognized apprenticeship program” search on the U.S. Department of Labor website: [www.dol.gov](http://www.dol.gov).

<sup>5</sup> R.C. 4145.03(B)(4).

<sup>6</sup> See 29 C.F.R. 1606.7 and [What do I need to know about...English-Only Rules](#), which can be accessed by conducting a keyword “English-only rules” search on the U.S. Department of Labor’s website: [dol.gov](http://dol.gov).

<sup>7</sup> R.C. 4145.03(B)(2) and (3).

## Exceptions

The bill exempts an individual from the requirement to be a class A or class B skilled journeyman or apprentice if the individual is employed as a project superintendent, project manager, engineer, safety professional, quality control professional, or clerical employee and the individual does not perform construction services.

Additionally, a contractor or subcontractor is not required to comply with the bill's staffing requirements and implementation schedule under any of the following circumstances:

- The contractor or subcontractor requests qualified individuals from a hiring hall or referral system that dispatches individuals who are class A or class B skilled journeymen or apprentices and, because of workforce shortages, the contractor or subcontractor is unable to obtain sufficient qualified individuals within 48 hours (not including Saturdays, Sundays, or legal holidays) after the request;
- An emergency during or after which compliance is impracticable, including an emergency that requires immediate action to prevent imminent harm to public health, public safety, or the environment;
- The contractor or subcontractor is performing construction services on a petroleum refinery that has a total operable capacity of less than 120,000 barrels of crude oil per day.

For purposes of the last exception listed above, the total operable capacity of a petroleum refinery in operation on or before the bill's effective date is based on the report its owner or operator filed with the U.S. Department of Energy pursuant to the Federal Energy Administration Act of 1974, covering January 1, 2023.<sup>8</sup>

## Recordkeeping

The bill requires each contractor and subcontractor that performs construction services on a stationary source to keep the following records for a period of not less than five years after the construction services have been completed:

- Payroll records for all individuals who performed construction services;
- Apprenticeship records;
- Copies of the reports described below.

The Director of Commerce or the Attorney General may request to inspect the records any time during the five years a contractor or subcontractor must keep them. A contractor or subcontractor must make the records available no later than seven days from the date the Director or Attorney General makes the request.<sup>9</sup>

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<sup>8</sup> R.C. 4145.03(B)(5) and (C), by reference to 15 U.S.C. 772.

<sup>9</sup> R.C. 4145.05.

## Reports

### Contractor compliance reports

A contractor subject to the bill's staffing requirement must prepare a quarterly compliance report for each calendar quarter during which the contractor provided construction services at a stationary source. The contractor must submit each report to the Director not later than 30 days after the last day of the calendar quarter and a final report to the Director not later than 30 days after construction services under a contract are completed. Each report must include all of the following information with respect to the calendar quarter covered by the report:

- The contractor's name and address;
- The name and title of the individual preparing the report on behalf of the contractor;
- The name and address of the owner or operator of the stationary source at which construction services were performed;
- The name of the project and project number, if any;
- The total dollar value of the contract;
- The name and address of all subcontractors involved in providing construction services at the stationary source;
- The total number of class A and class B skilled journeypersons and apprentices who performed construction services;
- 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;
- A certification that the contractor complied with the bill's staffing requirements and implementation schedule;
- All of the following:
  - The total number of class A skilled journeypersons who performed construction services;
  - The total number of class B skilled journeypersons who performed construction services;
  - The total number of apprentices who performed construction services;
  - The numbers of class A and class B skilled journeypersons and apprentices represented as a percent of the total number of class A and class B skilled journeypersons and apprentices who performed construction services.

When the contractor submits a report to the Director, the contractor must provide a copy to the owner or operator of the stationary source at which the services were provided.<sup>10</sup>

The Director must create and make available a form on which a contractor can include the information required in the contractor's compliance report. Not later than 30 days after a report is submitted to the Director, the Director must publicly post it on the Department of Commerce's website.<sup>11</sup>

### **Subcontractor workforce report**

Not later than ten days after the end of each calendar quarter, a subcontractor subject to the bill's staffing requirement must submit a workforce report to each contractor for which the subcontractor provided construction services at a stationary source. Each report must include the following information regarding individuals who performed construction services during that calendar quarter:

- The total number of class A and class B skilled journeypersons and apprentices who performed construction services;
- The total number of class A skilled journeypersons and apprentices who performed construction services;
- 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 to be considered a class B skilled journeyperson;
- 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.<sup>12</sup>

### **Owner and operator obligations**

An owner or operator of a stationary source that contracts for construction services at the stationary source on or after the bill's effective date must do both of the following:

- Engage only a contractor that complies with the bill's staffing requirements for construction services at stationary sources;
- Require, in the contract, that the contractor use only subcontractors that comply with the bill's staffing requirements when providing services at the stationary sources.<sup>13</sup>

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<sup>10</sup> R.C. 4145.06.

<sup>11</sup> R.C. 4145.11(B).

<sup>12</sup> R.C. 4145.07.

<sup>13</sup> R.C. 4145.03(A).

If an owner or operator believes that a contractor or subcontractor has failed to comply with the implementation schedule described above, the owner or operator must notify the Director in writing. The notice must be provided no later than seven days after the date on which the owner or operator first believes a contractor or subcontractor has failed to comply. The owner or operator must include all of the following in the notice:

- A summary describing the contractor's or subcontractor's alleged noncompliance, including the applicable dates of noncompliance and degree to which the contractor or subcontractor has allowed the proportion of the contractor's or subcontractor's employees performing construction services to deviate from the implementation schedule;
- The corrective actions, if any, that the owner or operator has taken to ensure the contractor or subcontractor is complying with the implementation schedule, and the date by which the owner or operator expects the contractor or subcontractor to comply with the implementation schedule.<sup>14</sup>

## Prohibitions

The bill prohibits the owner or operator of a stationary source from doing any of the following:

- Failing to enter a contract that complies with the requirements described in "**Owner and operator obligations**," above;
- Failing to provide written notice to the Director within the specified time when the owner or operator believes that a contractor or subcontractor has failed to comply with the bill's staffing requirements;
- Submitting a notice to the Director that contains false or inaccurate information.

The bill also prohibits a contractor or subcontractor from doing any of the following:

- Failing to comply with the bill's staffing requirements for construction services at stationary sources;
- Failing to maintain the records required by the bill;
- Failing to make the required records available for inspection by the Director or the Attorney General within the required timeframe;
- Failing to file the reports required by the bill or submitting a false or inaccurate report.<sup>15</sup>

An owner or operator, contractor, or subcontractor that violates any of the prohibitions listed above is subject to a civil penalty of not more than \$10,000 for each violation. Each day a

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<sup>14</sup> R.C. 4145.04.

<sup>15</sup> R.C. 4145.08.

contractor or subcontractor fails to comply with the bill's staffing requirements at a stationary source counts as a separate violation. Each day an owner or operator is party to a contract that violates the bill counts as a separate violation.<sup>16</sup>

## **Enforcement**

Any person who believes an owner or operator, contractor, or subcontractor has violated the prohibitions described above may file a written complaint with the Director. On receiving a complaint, the Director must investigate the alleged violation. The Director also may investigate whether an owner or operator, contractor, or subcontractor has violated the bill's prohibitions on the Director's own initiative.

If the Director determines after an investigation that reasonable grounds exist to believe a violation has occurred, the Director must provide notice and hold a hearing in compliance with the Administrative Procedure Act.<sup>17</sup>

After a hearing, if the Director determines a violation has occurred, the Director must order the offender to correct the violation. The offender must remedy the violation not later than 30 days after the Director issues the order. An offender that fails to remedy a violation within the time period specified is subject to the civil penalty described above. The Attorney General may, on behalf of the Director, sue in a court of competent jurisdiction to enforce a violation. If the Attorney General prevails in a suit, the court must award court costs and reasonable attorney's fees to the Attorney General.

A civil penalty assessed under the bill and any court costs and attorney's fees recovered are paid into the state treasury to the credit of the Industrial Compliance Operating Fund created under continuing law. The fund is used to pay the Division of Industrial Compliance's proportionate share of the Department of Commerce's administrative costs.<sup>18</sup>

The bill authorizes the Director to adopt rules, in accordance with the Administrative Procedure Act, to administer and enforce the bill.<sup>19</sup>

The Director may delegate the Director's enforcement duties under the bill to the Superintendent of the Industrial Compliance. The Superintendent must exercise the Director's powers and perform the delegated duties.<sup>20</sup>

## **Purpose and findings**

The bill states that its purpose is to protect public health and safety by requiring minimum training and skill standards for persons performing construction services on certain

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<sup>16</sup> R.C. 4145.10.

<sup>17</sup> R.C. Chapter 119.

<sup>18</sup> R.C. 4145.09, with conforming change in R.C. 121.084.

<sup>19</sup> R.C. 4145.11(A).

<sup>20</sup> R.C. 121.083.



high hazard facilities where inferior or faulty work practices can pose serious risks to the public and result in potentially catastrophic consequences. The bill also contains a detailed list of legislative findings. LSC staff did not verify the substance of those findings.<sup>21</sup>

## Additional definitions

The bill defines the following terms:

- “Construction” means all service performed at a stationary source, including maintenance, repair, assembly, disassembly, alteration, demolition, modernization, installation services, and capital improvements;
- “Contractor” means any person who undertakes construction at a stationary source under a contract with an owner or operator;
- “Owner or operator” means a person who owns or operates a stationary source at which the person engages in activities described in code 324110 of the 2017 North American Industry Classification System and at which the person engages in one or more covered processes for which the person is required to prepare and submit a risk management plan under the “Clean Air Act,” but does not include a person who controls the means of engaging in oil and gas extraction operations;
- “Subcontractor” means any person who undertakes construction at a stationary source under a contract with any person other than an owner or operator.
- “Apprenticeship records” includes an apprenticeship agreement, a certificate of completion, documentation of hours worked under supervision, and documentation of curriculum hours or related instruction hours completed.<sup>22</sup>

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## HISTORY

Action	Date
Introduced	06-06-23

ANHB0205IN-135/ks

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<sup>21</sup> R.C. 4145.12 and Section 4.

<sup>22</sup> R.C. 4145.01.