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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 235
134th General Assembly

Fiscal Note & Local Impact Statement

Revised

[Click here for H.B. 235's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Swearingen and Baldrige

Local Impact Statement Procedure Required: No

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Highlights

- The bill requires that individuals who are contracted or subcontracted to perform construction services at stationary sources on behalf of owners or operators of petroleum refineries to meet certain training standards. According to the 2017 U.S. Economic Census, there are four petroleum refineries in the state.
- The Department of Commerce's Division of Industrial Compliance would incur costs for investigating violations under the bill. These costs would be paid from the Industrial Compliance Operating Fund (Fund 5560).
- The bill establishes a maximum civil penalty of \$10,000 for each violation. Each day a contractor or subcontractor fails to comply with the bill's staffing requirements at a stationary source and each day an owner or operator is party to a contract that violates the bill counts as separate violations. Penalties are deposited into Fund 5560.
- The bill may minimally increase the Office of the Attorney General's workload if it acts on behalf of the Department of Commerce to enforce violations. The bill requires a court to award court costs and reasonable attorney fees to the Attorney General when it is the prevailing party in court. Awards and fees will also be deposited into Fund 5560.

Detailed Analysis

Department of Commerce

The Department of Commerce's Division of Industrial Compliance may incur costs to investigate violations of the bill's requirements that apply to contractors or subcontractors who perform construction services at stationary sources under a contract with an owner or operator

of petroleum refineries. Specifically, the bill allows the Department – but does not require it – to investigate complaints it receives or conduct an investigation on its own initiative for suspected violations under the bill. Any cost incurred by the Department will ultimately depend on the number of investigations conducted by the Division, a number which is unknown. According to the 2017 U.S. Economic Census, there are four petroleum refineries in the state, as described in more detail below.¹ To help offset the potential investigation costs, the bill establishes a maximum civil penalty of \$10,000 for each violation (each day counts as a separate violation). Penalties will be deposited into the Industrial Compliance Operating Fund (Fund 5560). Fund 5560 is used by the Division to regulate individuals and companies who build, modify, and maintain structures and building systems within Ohio, and also to enforce Ohio’s wage laws.

Specifically, the bill requires a contractor or subcontractor that performs construction services on a stationary source to use only class A skilled journeypersons, class B skilled journeypersons, and apprentices with certain trainings to perform those services (consult the LSC bill analysis for the list of training specifications for each individual). Additionally, the bill requires a contractor or subcontractor, with certain exemptions, to have the following proportion of these individuals performing construction services over the next three years: (1) beginning on January 1, 2022, at least 45% class A skilled journeypersons or apprentices and 55% class B skilled journeypersons, (2) beginning on January 1, 2023, at least 65% class A skilled journeypersons or apprentices and 35% class B skilled journeypersons, and (3) beginning on January 1, 2024, at least 80% class A skilled journeypersons or apprentices and 20% class B skilled journeypersons. It also requires contractors or subcontractors to maintain certain records.

Additionally, the bill requires owners and operators of these stationary sources to (1) engage only with a contractor that complies with the bill’s staffing requirements for construction services at stationary sources, and (2) specify in the contract that the contractor use only subcontractors that comply with the bill’s staffing requirements. If an owner or operator believes the contractor is not adhering to the staffing implementation schedule outlined in the bill, the owner or operator must notify the Department of Commerce in writing.

Number of stationary sources statewide

According to the Ohio Environmental Protection Agency (EPA), there are approximately 20,000 stationary sources in the state. But given the definitions under the bill, it appears to apply to stationary sources that are owned or operated by the four petroleum refineries in the state. The bill defines stationary source as “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 or renewed. However, the bill limits the definition of “owner or operator” of a stationary source to a person engaged in activities described in code 324110 of the 2017 North American Industry Classification System (Petroleum Refineries) 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

¹ <https://data.census.gov/cedsci/table?q=EC1731BASIC&g=0400000US39&n=N0600.00&tid=ECNBASIC2017.EC1731BASIC> (filtered results for North American Industry Classification System (NAICS) 324110, accessed January 21, 2021).

plan under the Clean Air Act. It does not include a person who controls the means of engaging in oil and gas extraction operations. Further, the bill defines a contractor who undertakes construction at a stationary source under a contract with an *owner or operator*.

Attorney General

The bill may minimally increase the Attorney General's workload. On behalf of the Department of Commerce, the Attorney General may enforce a violation of the bill's requirements by suing in a court of competent jurisdiction. Given the option to correct a violation, few violations are likely to be litigated. The bill's civil penalty is generally expected to induce a violator to remedy the issue within the permitted timeframe.

If a case is referred and the Attorney General prevails in the suit, the court is required to award court costs and reasonable attorney's fees to the Attorney General. Court costs and attorney fees will also be deposited into Fund 5560. According to the Attorney General, most cases would be handled internally by in-house counsel. Highly technical violations may require special counsel to be appointed. In these situations, the Department of Commerce would be responsible for paying special counsel fees.