

Introduced by Senator Hancock

February 21, 2014

An act to amend Section 7870 of, and to add Sections 7872 and 7873 to, the Labor Code, relating to refineries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, as introduced, Hancock. Refineries: turnarounds.

Existing law, the California Refinery and Chemical Plant Worker Safety Act of 1990, states that its purpose is to prevent or minimize the consequences of catastrophic releases of toxic, flammable, or explosive chemicals. Existing law provides for the adoption of specified process safety management standards for, among others, refineries that handle acutely hazardous material. Existing law declares the intent of the Legislature for, among others, the Division of Occupational Safety and Health, to promote worker safety through implementation of training and process safety management, as defined, in refineries and other facilities as deemed appropriate. A violation of the act is a crime.

This bill would require every petroleum refinery employer to, every September 15, submit to the division a full schedule of planned turnarounds, meaning a planned, periodic shutdown of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment, for the following calendar year, as specified. Upon the request of the division, the bill would also require a petroleum refinery employer to provide access on site and provide the division with specified documentation relating to a planned turnaround within a certain period of time, as provided. This bill would prohibit any information that is submitted to the division that is identified as a trade secret from being released to the public, as specified.

Existing law requires the division to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties conducted pursuant to the act, and requires all revenue collected from these fees to be deposited into the Occupational Safety and Health Fund. Existing law requires the fees to be sufficient to support, at a minimum, the annual cost of 15 positions and requires the fees to be adopted by March 15, 2014.

This bill would instead authorize the Department of Industrial Relations to fix and collect reasonable fees to cover all necessary expenses, including administrative and indirect costs, for consultation, inspection, adoption of standards, participation in interagency efforts to improve safety in refineries and chemical plants, and other duties conducted pursuant to this act. This bill would require the Director of Industrial Relations to adopt reasonable rules and regulations governing the criteria and procedures to fix and collect the fees, including emergency regulations as necessary.

This bill would require the Director of Industrial Relations to recoup the full costs of extraordinary expenditures from the owner of a refinery by adding the amount expended to the next year's assessment for that facility as a result of the division's response to a hazardous material release or similar occurrence at a petroleum refinery.

This bill would authorize the department to hold in reserve any unexpended funds as a contingency fund for expenditures required by an emergency response to a hazardous material release or other emergency situation an unexpended funds, as provided.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7870 of the Labor Code is amended to read:

7870. (a) Notwithstanding the availability of federal funds to carry out the purposes of this part, ~~the division shall annually~~ *department may* fix and collect reasonable fees *to cover all necessary expenses, including administrative and indirect costs,* for consultation, inspection, adoption of standards, *participation in interagency efforts to improve safety in refineries and chemical plants,* and other duties conducted pursuant to this part. ~~The fees shall be adopted by March 31, 2014.~~ All revenue collected from these fees shall be deposited into the Occupational Safety and Health Fund. ~~The fees shall be sufficient to support, at a minimum, the annual cost of 15 positions.~~ The expenditure of these funds shall be subject to appropriation by the Legislature in the annual Budget Act or other measure. *Act. The director shall adopt reasonable rules and regulations governing the criteria and procedures to fix and collect the fees and to implement this section, including emergency regulations as necessary. All regulations previously adopted by the division pursuant to this section shall remain in effect until repealed or amended by the director.*

(b) *The emergency regulations adopted pursuant to this section shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law necessary for the immediate preservation of the public peace, health, safety, and general welfare.*

(c) *If, as a result of the division's response to a hazardous material release or similar occurrence at a petroleum refinery, the division is required to make extraordinary expenditures, including, but not limited to, transportation, meals, lodging, overtime, or other costs, the director shall recoup the full costs of such expenditures from the owner of the refinery by adding the amount expended to the next year's assessment for that facility. The director shall provide the owner of the refinery with an accounting of the costs for which reimbursement is being sought.*

(d) *In the event the funds collected pursuant to this section are not fully expended by the department in carrying out its duties*

1 *pursuant to this part, the balance shall be carried forward and*
2 *may, in the department's discretion, be credited against the*
3 *subsequent year's assessment or held in reserve as a contingency*
4 *fund for expenditures required by an emergency response to a*
5 *hazardous material release or other emergency situation.*

6 SEC. 2. Section 7872 is added to the Labor Code, to read:

7 7872. (a) For the purposes of this section, "turnaround" means
8 a planned, periodic shutdown, total or partial, of a refinery process
9 unit or plant to perform maintenance, overhaul, and repair
10 operations and to inspect, test, and replace process materials and
11 equipment. "Turnaround" does not include unplanned shutdowns
12 that occur due to emergencies or other unexpected maintenance
13 matters in a process unit or plant. "Turnaround" also does not
14 include routine maintenance, where routine maintenance consists
15 of regular, periodic maintenance on one or more pieces of
16 equipment at a refinery process unit or plant that may require
17 shutdown of such equipment.

18 (b) Every September 15, every petroleum refinery employer
19 shall submit to the division a full schedule of planned turnarounds
20 for the various units for the following calendar year.

21 (c) At the request of the division, at least 60 days prior to the
22 shutdown of a process unit or plant as part of a planned turnaround,
23 a petroleum refinery employer shall provide access on site and
24 allow the division to review and receive copies of, or, at the
25 division's discretion, submit in physical format or in electronic
26 format if available electronically, the following documentation for
27 the process unit or plant scheduled to be shut down for that
28 turnaround:

29 (1) Corrosion reports and risk-based inspection reports generated
30 since the last turnaround.

31 (2) Process Hazard Analyses generated since the last turnaround.

32 (3) Boiler permit schedules.

33 (4) All management of change records related to repairs, design
34 modifications, and process changes implemented since the last
35 turnaround or scheduled to be completed in the planned turnaround
36 referenced in this subdivision and identified in subdivision (b).

37 (5) Work orders scheduled to be completed in the planned
38 turnaround referenced in this subdivision and identified in
39 subdivision (b).

1 (6) Temporary repairs since the last turnaround, including, but
2 not limited to, clamps and encapsulations. For the purposes of this
3 section, “temporary repairs” shall be defined as repairs made to
4 piping systems in order to restore sufficient integrity to continue
5 safe operation until permanent repairs can be scheduled.

6 (d) The division may request additional information as necessary
7 to perform its responsibilities in this part pursuant to Section 6314.

8 (e) At the request of the division, at least 30 days prior to the
9 shutdown of a process unit or plant as part of a planned turnaround,
10 a petroleum refinery employer shall provide access on site and
11 allow the division to review and receive copies of, or, at the
12 division’s discretion, submit in physical format or in electronic
13 format if available electronically, notification and description of
14 any changes to the information or documents provided pursuant
15 to subdivision (c) and relevant supporting documents.

16 (f) By agreement with a petroleum refinery employer, the
17 division may modify the reporting period as to any individual item
18 of information.

19 (g) This section is not intended to limit or increase the division’s
20 authority in Part 1 (commencing with Section 6300) to prohibit
21 use of a place of employment, machine, device, apparatus, or
22 equipment or any part thereof that constitutes an imminent hazard
23 to employees.

24 (h) The division shall develop an electronic information
25 management system to facilitate monitoring of petroleum refineries
26 pursuant to this section.

27 (i) The Legislature finds and declares the purpose of this section
28 is to improve the ability of the state to conduct inspections of
29 petroleum refining operations.

30 SEC. 3. Section 7873 is added to the Labor Code, to read:

31 7873. (a) Any person providing information pursuant to
32 Section 7872 may, at the time of submission, identify all or a
33 portion of the information submitted to the division as a trade
34 secret and, to the extent feasible, segregate records designated as
35 a trade secret from the other records. Information that is so
36 identified at the time of submission shall not be released to any
37 member of the public, except that such information may be
38 disclosed to other officers or employees of the division concerned
39 with carrying out the purposes of the division or when relevant in
40 any proceeding of the division. This section does not prohibit the

1 exchange of properly designated trade secrets between public
2 agencies when those trade secrets are relevant and necessary to
3 the exercise of their jurisdiction if the public agencies exchanging
4 those trade secrets preserve the protections afforded that
5 information by this section. For purposes of this section, “public
6 agency” has the same meaning as that term is defined in Section
7 6252 of the Government Code.

8 (b) Any information not identified as a trade secret shall be
9 available to the public unless exempted from disclosure by other
10 provisions of law. The fact that information is claimed to be a trade
11 secret is public information. Upon receipt of a request for the
12 release of information that has been claimed to be a trade secret,
13 the division shall immediately provide written notice to the person
14 who submitted the information. Within 10 days from receipt of
15 the notice of the request for the release of the information claimed
16 to be a trade secret, the person claiming trade secrecy shall submit
17 to the division the legal and factual basis for the claim of trade
18 secrecy.

19 (c) Within 75 days after receiving the request for disclosure,
20 but not before 30 days following the later of (1) the notification
21 of the person who submitted the information or (2) the division’s
22 receipt of the basis for the claim of trade secrecy submitted
23 pursuant to subdivision (b), the division shall determine whether
24 or not the information claimed to be a trade secret is to be released
25 to the public. If the division decides to make the information public,
26 it shall provide the person who submitted the information 21 days’
27 notice prior to public disclosure of the information.

28 (d) If the person requesting the release of the information or the
29 person who submitted the information institutes proceeding for
30 injunctive or declaratory relief or a writ of mandate to order or
31 prohibit disclosure of trade secret information, the person
32 instituting the proceeding shall name the other person as a real
33 party in interest. Each party shall bear its own costs and attorney’s
34 fees.

35 (e) For the purposes of this section, “trade secret” means any
36 trade secret as defined in subdivision (d) of Section 3426.1 of the
37 Civil Code, any trade secret as defined in subdivision (d) of Section
38 6254.7 of the Government Code, and any other information
39 regarding the scheduling, duration, and type of work to be
40 performed during a turnaround that may provide economic value

1 to any person other than the petroleum refinery employer, including
2 the schedule submitted to the division pursuant to subdivision (b)
3 of Section 7872. Upon completion of a turnaround, the dates on
4 which that turnaround was conducted shall no longer be considered
5 a trade secret.

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

15 SEC. 5. The Legislature finds and declares that Section 3 of
16 this act, which adds Section 7873 to the Labor Code, imposes a
17 limitation on the public's right of access to the meetings of public
18 bodies or the writings of public officials and agencies within the
19 meaning of Section 3 of Article I of the California Constitution.
20 Pursuant to that constitutional provision, the Legislature makes
21 the following findings to demonstrate the interest protected by this
22 limitation and the need for protecting that interest:

23 The limitation upon the disclosure of information identified by
24 refineries as trade secrets is necessary to protect proprietary
25 business information of those refineries.