

## SB 54 Aims to Oust Non-Trades Contractors From Refinery Construction Work

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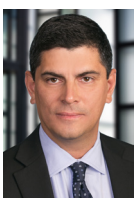
California Senate Bill 54 (“SB 54”), which is codified at California Health & Safety Code section 25536.7, became effective on January 1, 2014. It requires oil refiners in California to use a “skilled and trained workforce” when contracting for certain construction work at their refineries and to pay its contractors “prevailing wages” for such work. It is one of the first laws of its kind in the nation in that it requires private entities to pay “prevailing wages”—which are typically much higher than market wages and otherwise apply only to public works contracts—for work performed under private construction contracts.

SB 54 was sponsored by the powerful trade union, the California State Building Construction and Trades Council (“SBCTC”). In order for a contractor to be able to offer a “skilled and trained workforce,” the contractor’s employees must, with limited possible exceptions, be enrolled in or graduates of one of the apprenticeship programs that have been approved by the California Department of Apprenticeship Standards. Because the SBCTC controls the vast majority of the construction apprenticeship programs in California, a contractor that wishes to enter into new construction contracts with refineries must, as a practical matter, have an affiliation with the SBCTC. There may be other strategies to achieve compliance, although such strategies are yet unproven. Accordingly, as a result of the new law, many contractors that have historically performed construction work at the refineries may no longer be eligible to enter into contracts to perform that work.

But SB 54 is not particularly well-written. It has many grey areas and exceptions that may provide safe harbors for refiners and contractors, depending upon the scope and nature of their work within the refineries. For example, in order for SB 54 to apply, a contractor’s work must fall under “an apprenticeable occupation within the building and construction trades.” Because refinery work is so highly specialized and unique—and because California’s apprenticeship system was not created with refinery work in mind—it is often unclear whether a particular scope of refinery construction work falls within that statutory definition. Often times, the work performed by an individual refinery worker will cover multiple trades, some of which are covered and some of which are not. There are many other issues and complexities that can impact how and whether SB 54 applies to a particular contractor or refinery construction project.

In addition to the complexity created by the language of the statute itself, pending litigation creates further uncertainty. SB 54 is currently the subject of federal court litigation filed by non-SBCTC contractors in California seeking to invalidate the law on the grounds that it is unconstitutional and is preempted by other federal laws such as the National Labor Relations Act and ERISA. This litigation—which was filed in mid-2015—is not likely to be resolved for many months. In addition, while the litigation has been pending, the SBCTC is seeking to push through legislative amendments to SB 54 that could further impact its potential enforcement.

Assuming the law remains on the books in its present form, it promises to present ongoing challenges for refiners and contractors for many years to come.



Mr. Rodriguez is a litigation partner at Lewis Brisbois Bisgaard and Smith. He advises clients in connection with laws that affect the construction and refinery industries in California and represents them in litigation arising from such regulation. He has been tracking SB 54 and advising clients—both refiners and contractors—on its application since it was introduced in the California Legislature in mid-2013. If you would like to speak to Mr. Rodriguez about the law and its potential application or impact on your business, he can be reached at 916.646.8204 or by e-mail at [Chris.Rodriguez@lewisbrisbois.com](mailto:Chris.Rodriguez@lewisbrisbois.com).