

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 609
SPONSOR(S): Evers
TIED BILLS:

Tower Crane and Tower Crane Operator Certification

IDEN./SIM. BILLS: SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	_____	<u>Livingston/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industries Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR). Contractors must either be certified (i.e., licensed by the state to contract statewide), or registered (i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only). The CILB is statutorily divided into two divisions. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II has jurisdiction over the remaining contractors under the CILB, such as, roofing, plumbing, air-conditioning, etc.

Section 11.62, F.S., the "Sunrise Act," establishes criteria for evaluating proposals to create the expansion of government regulation. The Act states that it is the intent of the Legislature that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; and no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation. The Sunrise Act requires proponents of regulation to provide information to the Legislature that establishes the need and effects of regulation.

Crane operators are not currently licensed or regulated by the state of Florida.

The bill creates a certification requirement for tower crane operators and provides for the creation of the program to be located in the DBPR. The bill creates a certification scheme, provides definitions, scope of practice, employment guidelines, accountability, rules, and penalties.

The bill specifies that the regulation of tower cranes and tower crane operators is expressly preempted to the state, and no county, municipality, or other political subdivision may enact or enforce any ordinance relating to tower crane operations.

Per the Department of Business and Professional Regulation, 2 FTE Investigation Specialist positions in the Division of Regulation would be needed to ensure compliance with the certification requirements proposed by this legislation. The legislation will provide no new revenues to cover expenditures. The department estimates costs to be \$150,025 in FY 2008-09 and \$113,249 in subsequent years.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government - The bill creates a certification program for tower crane operators.

Ensure lower taxes – The bill creates rule authority of the DBPR relating to implementation of the provisions of the bill. It could be anticipated that a fee structure to fund the program may be created as a part of the rules.

The bill establishes penalties for violations.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Construction contracting

Crane operators on construction projects are not currently licensed or regulated by the state.

Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the CILB within the DBPR. Contractors must either be certified (i.e., licensed by the state to contract statewide), or registered (i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only).

The CILB is statutorily divided into two divisions. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II has jurisdiction over the remaining contractors, often referred to as subcontractors, under the CILB, including roofing, plumbing, mechanical, sheet metal, air-conditioning, pool and spa, solar, pollutant storage systems, and underground utility contractors.

The “scope of work” for which licensure is required is specified in statute by definition. Each definition of the various professions is known as the “practice act” for that profession and establishes the guidelines for the individual practitioners.

Sunrise Act - s. 11.62, F.S.

According to s. 11.62, F.S., the “Sunrise Act,” it is the intent of the Legislature that:

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s.11.62, F.S., requires the Legislature to consider the following:

- I. Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- II. Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- III. Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- IV. Whether the public is or can be effectively protected by other means; and
- V. Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Effect of proposed changes

The bill defines "tower crane" to mean "a non-mobile, power-operated hoisting machine used in construction, maintenance, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally."

The bill prohibits a person from operating a tower crane on a construction project unless the person is certified as a crane operator by an approved organization. The DBPR is authorized by the bill to approve the certifying organization and determine qualifications for certification based on standards of testing and certification that meet the requirements of the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) current applicable standards and the accreditation requirements of the National Commission for Certifying Agencies.

Additionally, the bill prohibits a certified or registered contractor from employing or contracting for the services of a person for the purpose of operating a tower crane unless the person holds a current and valid certification.

A certified or registered contractor is subject to administrative fines that may be imposed by the DBPR.

The bill authorizes an exemption from certification for a person undergoing training for the purpose of qualifying for crane operator certification and, therefore, may operate a crane if the person is under the direct supervision of a crane operator who holds a current and valid certification.

The bill specifies that the regulation of tower cranes and tower crane operators is expressly preempted to the state, and no county, municipality, or other political subdivision may enact or enforce any ordinance relating to tower crane operations.

C. SECTION DIRECTORY:

Section 1. Creates s. 489.1138, F.S. to provide definitions; require a person to be certified in order to operate a crane on construction projects; provide for certification and standards; prohibit certain contractors from employing crane operators without certification; provide penalties; provide rulemaking.

Section 2. Creates s. 489.1139, F.S., to preempt the regulation of tower cranes and tower crane operators to the state.

Section 3. Effective date - upon becoming a law (for purposes of preemption) and Section 1 of the bill which creates the certification program is effective July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department would require 2 FTE positions in the Division of Regulation and is expected to incur expenses of \$150,025 in FY 2008-09 and \$113,249 in subsequent years.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Budget	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Salaries/Benefits # of FTE's 2 FTE	93,053	93,053	93,053
Salary Rate 68,928			
Other Personal Services	0	0	0
Expenses	13,400	13,400	13,400
Contract Services			
Operation of Motor Vehicles	6,000	6,000	6,000
HR Services/TR/DMS	796	796	796
Subtotal	113,249	113,249	113,249

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Budget	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Other Personal Services			
Expense	6,776	0	0
Operating Capital Outlay	2,000	0	0
Acquisition of Motor Vehicles	28,000	0	0
Subtotal	36,776	0	0

Non-Operating Expenditures	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Service Charge to GR (7.3% of revenue)	0	0	00
Indirect Costs (DBPR Administrative Overhead)	0	0	0
Other/Transfers	0	0	0
Subtotal	0	0	0
TOTAL EXPENDITURES	150,025	113,249	113,249

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

Per the Department of Business and Professional Regulation, 2 FTE Investigation Specialist positions in the Division of Regulation would be needed to ensure compliance with the certification requirements

proposed by this legislation. Both of these positions would also require vehicles for carrying out their inspections at construction sites. The legislation will provide no new revenues and will operate at a cost to the department of \$150,025 in FY 2008-09 and \$113,249 in subsequent years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

This bill gives broad rule authority to the DBPR in order to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES