

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1316

INTRODUCER: Senator Gaetz

SUBJECT: Tower Cranes/Tower Crane Operators Certification

DATE: March 11, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|-------------------------|
| 1. | Oxamendi | Imhof | RI | Fav/2 amendments |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | GA | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates s. 489.1138, F.S., to give the Construction Industry Licensing Board (CILB) at the Department of Business and Professional Regulation (department) authority to regulate tower crane operators. The bill requires that tower cranes meet the standards of the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) or the applicable standards of the Power Crane and Shovel Association. The tower crane must also be certified by an organization that is determined by the department to meet the currently applicable ANSI/ASME standards or the accreditation requirements of the National Commission for Certifying Agencies.

The bill requires that a person operating a tower crane on a construction project must be certified as a crane operator. The certification must be made by the National Commission for the Certification of Crane Operators or any other organization determined by the board to offer an equivalent testing and certification program that meets the requirements of the ANSI/ASME current applicable standards or the accreditation requirements of the National Commission for Certifying Agencies.

The bill provides for state preemption of the regulation of tower cranes and tower crane operators. It prohibits local governments from enacting or enforcing any ordinance relating to matters within the scope of this section.

The bill provides an effective date of July 1, 2008.

This bill creates section 489.1138, Florida Statutes.

II. Present Situation:

Construction contractors are regulated under part I of ch. 489, F.S., and the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation. Contractors must either be certified (licensed by the state to contract statewide) or registered (licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only). Tower cranes and tower crane operators are not regulated by the State of Florida.

The Sunrise Act

Florida does not license or regulate tower cranes or tower crane operators. A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation 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; or
- Regulating a profession or occupation 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:

- 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;
- 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;
- 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;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria. A response to a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation.

In pertinent part, the response submitted by the proponents of the bill, the Florida Crane Owners Council and the Associated Builders and Contractors, provides:

- The potential for harm is clearly recognizable. Tower crane accidents, which may be attributable to the improper design, installation, erection, or operation of a tower crane can result (or have resulted) in injury, loss of life, or damage to property.
- Uniform statewide regulation is the most cost-effective means of protecting the public health and safety. Many construction contractors or subcontractors operate in a number of local jurisdictions. Uniform statewide regulation eliminates unnecessary costs of meeting different regulatory requirements in different jurisdictions.¹

According to the proponents the Miami-Dade County Commission has developed a proposed ordinance to regulate and provide standards for manufacture and installation of tower cranes and hoisting equipment. The proposed ordinance would also provide standards for the education and certification of crane operators. According to the proponents of the bill, the proposed Miami-Dade ordinance requires that tower cranes must be erected to Building Code standards applicable to permanent structures. The proponents of this bill have expressed the concern that regulation of tower cranes and tower crane operators by local governments would create unnecessarily costs.

Tower Crane Standards

Founded in 1880, the American Society of Mechanical Engineers (ASME) is a not-for-profit professional organization that promotes the art, science and practice of mechanical and multidisciplinary engineering and allied sciences.² ASME has developed standards and codes for a variety of cranes and hoists.³ American Society of Mechanical Engineers is also a founding member of the American National Standards Institute (ANSI), which is a private organization composed of over 200 organizations in the United States. The American National Standards Institute provides procedures for the accreditation of standards development, coordinates the development of standardization.⁴

The Association of Equipment Manufacturers (AEM) is a consolidation of the Construction Industry Manufacturers Association and Equipment Manufacturers Institute. According to information on its Internet site, AEM is an international trade and business development resource

¹ A copy of the sunrise questionnaire is on file with the Senate Regulated Industries Committee.

² For information about the American Society of Mechanical Engineers, see: <http://www.asme.org/about/> (Last visited March 7, 2008).

³ See ASME's product catalog of codes and standards at: <http://catalog.asme.org/home.cfm?TAB=Subject&CATEGORY=CS&TaxonomyItemID=3117> (Last visited March 7, 2008).

⁴ For information about the American National Standards Institute, see: http://www.ansi.org/standards_activities/overview/overview.aspx?menuid=3 (Last visited March 7, 2008). See also ASME International, Introduction to ASME Codes and Standards, available at <http://files.asme.org/ASMEORG/Codes/About/Links/1028.pdf> (Last visited March 7, 2008).

for companies that manufacture equipment, products and services used worldwide in the construction, agricultural, mining, forestry, and utility fields. AEM member companies manufacture a variety of equipment, including large earthmovers, and agricultural equipment.⁵

Founded in 1977, the National Organization for Competency Assurance (NOCA) develops and implements quality standards for credentialing organizations. It provides these standards for a wide variety of credentialing organizations.⁶ Although most of its member organizations appear to be in various health fields, the National Commission for the Certification of Crane Operators (NCCCO) is a member.⁷ The National Commission for the Certification of Crane Operators is a non-profit organization that administers certification programs for operators of mobile cranes, tower cranes and overhead cranes.

The International Assessment Institute provides examination services for the National Commission for the Certification of Crane Operators. According to the NCCCO, there are 15 states that have licensing requirements and six cities that have licensing requirements for crane operators.⁸

Eligibility for certification under the NCCCO's standards requires that a person:

- Be at least 18 years of age;
- Meet physical requirements;
- Comply with the NCCCO's substance abuse policy;
- Pass a written exam;
- Pass a practical exam.⁹

The Power Crane and Shovel Association (PCSA) represents the lattice boom and truck crane industry. Through its Crane Technical Committee, the PCSA recommends practices to the American National Standards Institute (ANSI) and International Organization for Standardization. The PCSA also operates a statistical reporting program.¹⁰

According to the department, crane operators are required to meet the jobsite safety requirements of the Occupational Health and Safety Administration, United States Department of Labor.

There are currently no state certification requirements for tower crane operators or other heavy equipment operators on construction projects in Florida.

⁵ For more information about the Association of Equipment Manufacturers, see: <http://www.aem.org/About/> (Last visited March 7, 2008).

⁶ For more information about the National Organization for Competency Assurance. see <http://www.noca.org/Home/tabid/36/Default.aspx> (Last visited March 7, 2008).

⁷ Information about the National Commission for the Certification of Crane Operators is available at the organizations website: <http://www.nccco.org/about/index.html> (Last visited March 6, 2008).

⁸ See <http://www.nccco.org/licensing/index.html> (Last visited March 6, 2008).

⁹ Additional information about the NCCCO's certification programs is available at: <http://www.nccco.org/certification/towercrane.html> (Last visited March 6, 2008).

¹⁰ For more information about the Power Crane and Shovel Association, see <http://www.aem.org/CBC/ProdSpec/PCSA/> (Last visited March 7, 2008).

III. Effect of Proposed Changes:

The bill creates s. 489.1138, F.S., to provide the Construction Industry Licensing Board at the Department of Business and Professional Regulation authority to regulate tower cranes and tower crane operators.

Definitions

Section 489.1138(1), F.S., defines the terms “tower crane” and “tower crane operator.”

The bill defines a “tower crane” as a mobile power-operated hoisting machine used in construction, maintenance, demolition, or excavation work. A tower crane also has a power-operated winch, load-line, and boom moving laterally. The bill further specifies that a tower crane is a temporary structure.

The bill defines a “tower crane operator” as a person engaged in operating a power crane.

Tower Cranes

Section 489.1138(2), F.S., requires that tower cranes meet the standards of the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) or the applicable standards of the Power Crane and Shovel Association (PCSA) to be operated in this state. The tower crane is deemed to meet those standards only if it has been certified by an organization determined by the department to meet the currently applicable ANSI/ASME standards or the accreditation requirements of the National Commission for Certifying Agencies.

This certification requirement only applies to tower cranes that are installed or erected on or after July 1, 2008.

The bill does not require registration of the tower crane with the department.

Tower Crane Operators

Section 489.1138(3), F.S., requires that a person operating a tower crane on a construction project must be certified as a crane operator. The certification may be by the National Commission for the Certification of Crane Operators. The certification may also be by any other organization determined by the board to offer an equivalent testing and certification program that meets the requirements of the ANSI/ASME current applicable standards or the accreditation requirements of the National Commission for Certifying Agencies.

Section 489.1138(4), F.S., requires that registered or certified contractors may not employ a tower crane operator unless he or she has met the certification requirements under this bill.

The bill does not require registration of the tower crane operators with the department.

Penalties

Section 489.1138(5), F.S., requires that any person licensed under pt. I, ch. 489, F.S., who intentionally violates the certification provisions of this bill is subject to discipline by the department under ss. 455.227 and 489.129, F.S.

Operation of Cranes by a Trainee

Section 489.1138(6), F.S., requires that a person undergoing training to qualify as a tower crane operator may operate a tower crane if they are under the direct supervision of a certified or registered tower crane operator.

Rulemaking

Section 489.1138(7), F.S., authorizes the department to adopt rules to administer this bill.

Preemption

Section 489.1138(8), F.S., provides for state preemption of the regulation of tower cranes and tower crane operators. It prohibits local governments from enacting or enforcing any ordinance relating to matters within the scope of this section.

Effective Date

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Under certain circumstances, a statute may unconstitutionally relinquish to non-government organizations the authority to set appropriate standards. An invalid delegation of authority violates the principal of separation of powers in Art. II, s. 3, Fla. Const.¹¹ When assigning to an agency a regulatory responsibility, the legislature must

¹¹ *Gallagher v. Motors Insurance Corp.*, 605 So.2d 62 (Fla. 1992).

provide the agency with adequate standards and guidelines when delegating the duties.¹² The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.¹³

The bill relinquishes to non-government organizations the authority to set the appropriate minimum standards for certification of tower cranes and tower crane operators. Legislation can adopt provisions of legislation or administrative rules from jurisdictions outside of Florida such as federal and state laws and rules that exist at the time the Legislation is enacted. These laws and rules may not be adopted to incorporate subsequent changes in the legislation and rules from outside this state.¹⁴ Legislation may adopt codes or standards from non-governmental entities, but the legislative adoption must be limited to the codes and standards that were in effect at the time the law was enacted, but also cannot adopt subsequent changes to the codes and standards made by the non-government entities after the Florida legislation is enacted.¹⁵ The bill may constitute and unconstitutional delegation of authority because it fails to provide the state agency with any standards by which to judge the appropriateness of the minimum standards.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tower crane operators will be subject to the cost of obtaining the required certifications. According to the proponents of the bill, there are approximately 350 tower cranes and 500 tower crane operators who would be subject to the bill, and approximately 45 to 50 percent of the tower cranes in use in Florida are certified and are operated by certified tower crane operators. According to the proponents, private sector training providers are widely available, including at least nine Florida-based providers. The proponents also represent that the cost of training and examination is typically approximately \$2,000.

C. Government Sector Impact:

The department states that it will incur costs associated with board review and approval of organizations that apply to provide crane operator certification. It states that there will significant cost associated with the investigation and prosecution of contractors who hire uncertified crane operators. The department estimates costs at \$150,025 in FY 2008-2009, including \$36,776 non-recurring, and \$113,249 in FY 2009-2010.

¹² *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So.2d 357 (Fla. 1st DCA 1996).

¹³ *Florida Home Builders Association v. Division of Labor*, 367 So. 219 (Fla. 1979).

¹⁴ *Adoue v. State*, 408 So. 2d 567, 569 (Fla. 1982); *Friemuth v. State*, 272 So. 2d 473, 476 (Fla. 1976).

¹⁵ *Galaxy Fireworks, Inc. v. City of Orlando*, 842 So. 2d 160, 167 (Fla. 5th DCA 2003); *State, Dept. of Children and Family Services v. L.G.*, 801 So. 2d 1047, 1052 (Fla. 1st DCA 2001).

The department explains that the certification requirements in the bill will require an inspection program to verify that the requirements are met by crane operators and to detect uncertified cranes. The department also represents that investigations into the operation of a crane without certification would be required. In terms of personnel, the department represents that it will require two Investigation Specialist II positions to inspect the crane operators for compliance with the certification requirement, and it will also need two vehicles and their cost of operation for the investigators to travel to construction sites to conduct inspections.

Amendment barcode number 386374 limits the certification requirements for tower cranes and tower crane operators to certification by the American Society of Engineers and the National Commission for the Certification of Crane Operators, respectively. Amendment barcode number 278380 eliminates the department's authorization to adopt rules to administer this bill. These amendments appear to eliminate the fiscal impact related to rule making and the department's need to determine the sufficiency of other testing and certification programs. The department's analysis did not differentiate between the department's costs for rule making and enforcement. According to the department, there would be no revenues to support the investigation and prosecution of violations under the bill. Also according to the department, it would need two full time employees to enforce and prosecute these provisions. The department's personnel costs for these two employees is estimated at \$93,053 in FY 2008-2009 and FY 2009-2010.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 386374 by Regulated Industries Committee on March 11, 2008

This amendment limits the certification requirement for tower cranes to certification by the American Society of Engineers. It deletes the reference to applicable standards of the American National Standards Institute. It also deletes the option for tower cranes to be certified by the applicable standards of the Power Crane and Shovel Association. It deletes the provision that a tower crane is deemed to meet those standards only if it has been certified by an organization determined by the department to meet the currently applicable American National Standards Institute/American Society of Mechanical

Engineers standards or the accreditation requirements of the National Commission for Certifying Agencies.

This amendment extends to July 1, 2009, the date after which this certification requirement is applicable to tower cranes that are installed or erected. It amends s. 489.1138(3), F.S., to provide a July 1, 2009, effective date for this subsection.

This amendment limits the certification requirement for tower crane operators to certification by the National Commission for the Certification of Crane Operators. It deletes the option for certification of tower crane operators by an organization determined by the board to offer an equivalent testing and certification program that meets the requirements of the ANSI/ASME current applicable standards or the accreditation requirements of the National Commission for Certifying Agencies.

Barcode 278380 by Regulated Industries Committee on March 11, 2008

This amendment deletes the department's authorization to adopt rules to administer this bill.