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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/09
LAST UPDATED 02/27/09 **HB** 768/aHJC

SPONSOR Martinez, R.

SHORT TITLE Hoisting Operator Licensure & Penalties **SB** _____

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate See Below	Indeterminate See Below	Recurring	Hoisting Operator's Safety Act Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below		Recurring	Hoisting Operator's Safety Act Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment states in categories where a specific number of hours of seat time are required, the experience must have been within the last three years.

The amendment adds that RLD may deny, suspend or revoke a license for violations of the rules and regulations adopted by RLD pursuant to the Hoisting Operators Safety Act or for a violation of the provisions of that act.

The amendment recreates the Hoisting Operators Licensure Examining Council as follows:

Members of the council are entitled to per diem and mileage as provided for non salaried public employees pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. The members of the council shall serve at the pleasure of the superintendent. The superintendent shall appoint at least five members to the council with consideration given to geographical representation and proportional representation of operator, contractor, labor and public members. The members of the council shall include at least:

1. one class I hoisting operator;
2. one contractor, as defined by Section 60-13-3 NMSA 1978, who employs at least one hoisting operator;
3. one representative of organized labor; and
4. two members from the public at large who are not licensed hoisting operators.

Synopsis of Original Bill

House Bill 768 amends several provisions of the Hoisting Operators Safety Act (act) with regard to licensure requirements, fees, enforcement provisions, conduct which is considered to be in violation of the act, disciplinary proceedings, and to allow members of the Hoisting Operators Licensure Examining Council (council) to be paid per diem and mileage.

The bill deletes provisions allowing a person who has successfully completed an in-house training course approved by the council to operate hoisting equipment without a license for one year after completion of the course. The bill also amends that section to provide that operating hoisting equipment without a license shall be considered unlicensed operation and shall subject the person who is operating the hoisting equipment and the employer or the employer's representative, who allows that person to operate hoisting equipment, to the penalties as provided in that act.

The bill also provides for a license for a Class I hoisting operator “with a conventional crane, hydraulic crane, or tower crane endorsement.” That section is also amended to provide that an applicant for a Class I license may complete an employer’s in-house training program approved by the council in lieu of taking a written examination. The bill amends that section to delete the current experience requirements for a Class I hoisting operator’s license, and enacts a requirement that an applicant for a Class I hoisting license has completed at least five hundred hours of seat time in the type of hoisting equipment for which the applicant seeks an endorsement and license, or has successfully passed a practical examination administered by a council approved examining vendor, or has completed an employer's in-house training course approved by the council in the type of hoisting equipment for which the applicant seeks an endorsement and license.

The bill prohibits a Class III hoisting operator from operating hoisting equipment unless under the direct supervision of a Class I or Class II hoisting operator who is properly licensed in the type of hoisting equipment being operated.

The bill also allows the RLD to issue a temporary hoisting operator license to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant is at least eighteen years of age; is participating in an in-house

training course approved by the council; and has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a hoisting operator.

The bill provides that a hoisting operator with a temporary license shall only operate hoisting equipment for the employer who provided the approved in-house training course and shall not operate hoisting equipment unless under the direct supervision of a Class I or Class II hoisting operator who is properly licensed in the type of hoisting equipment being operated. A temporary hoisting operator license is valid for two years and is not subject to extension or renewal. A person with a temporary hoisting operator license may be granted a class III license pursuant to that section except the requirement for passing a written examination shall be waived.

The bill deletes provisions stating that a person employed as a hoisting operator after their license has expired is guilty of a criminal misdemeanor, and provides that any license not renewed by the expiration date shall be considered expired and the licensee shall not operate hoisting equipment within the state until the license is renewed. Operating hoisting equipment with an expired license shall be considered unlicensed operation and subject the person who is operating the hoisting equipment to the penalties as provided in the act.

The bill also requires RLD to adopt and promulgate rules for renewal of an expired license. RLD may require the licensee to reapply as a new applicant.

The bill eliminates current provisions allowing the RLD to reprimand or fine a licensee or suspend or revoke the license of a licensee, pursuant to the findings of a hearing of the council, for negligent or reckless operation of hoisting equipment, violation of the rules and regulations adopted by the RLD or for any violation of the provisions of the Hoisting Operators Safety Act. The bill enacts provisions allowing the RLD to issue a cease and desist order against a person based upon reasonable cause that the person has violated the act or rule adopted under that act and the violation creates a health or safety risk for the community which requires immediate enforcement. If the person fails to comply with the cease and desist order within 24 hours, the RLD may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

The bill is also amended to provide that whenever the RLD possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the act or a rule adopted pursuant to that act, the RLD may seek temporarily or permanently to restrain or to enjoin the act or practice.

The bill is also amended to list actions that are considered to be a violation of the act; to allow the initiation of disciplinary proceedings conforming with the Uniform Licensing Act upon sworn complaint by any person, including RLD staff or a council member; and to allow the RLD to issue a citation to or levy a fine upon an individual or business for violations of the act upon terms and in amounts established by RLD rule.

The bill deletes provisions stating that a person who operates a crane without a hoisting operator's license is guilty of a criminal misdemeanor, and enacts a provision stating that a person who engages in unlicensed operation may be assessed an administrative penalty not to exceed \$10,000. The bill deletes provisions imposing criminal misdemeanor penalties on an employer or their representative who willingly or intentionally allows a person not licensed

under the act to operate hoisting equipment, and enacts provisions stating that a firm, partnership, corporation, association or other organization that knowingly violates the provisions of the act may be assessed an administrative penalty not to exceed \$25,000; and deletes a provision allowing the imposition of an administrative penalty not to exceed \$1,000.

FISCAL IMPLICATIONS

The bill increases initial license fees from \$75 to \$200; to allow the RLD to set administrative or reinstatement fees not to exceed one thousand dollars \$1,000 and to provide that all licensing fees are nonrefundable.

RLD notes that the increase in license fees and penalties may result in additional revenue to the Hoisting Operator's Safety Act Fund and provide sufficient resources to adequately staff the program.

The bill also allows members of the council to receive per diem and mileage pursuant to the Per Diem and Mileage Act.

SIGNIFICANT ISSUES

The AGO provided the following:

The bill deletes provisions in the current act which allow for unlicensed hoisting operation for a period of one year after a person completes an in-house training program. It substitutes a "temporary license" for those provisions. The bill also contains several provisions relating to unlicensed operation; enforcement of the act; and administrative fines and penalties. It eliminates criminal penalties for violations of the act and removes the council from the disciplinary process.

Section 4 of the bill amends NMSA Section 60-15-9 to provide for reinstatement or administrative fees not to exceed \$1,000. Although this new provision appears to apply to operators who allow their licenses to expire and then apply for reinstatement, it is not clearly limited to those circumstances.

The act, as amended by this bill contains several provisions governing unlicensed hoisting crane operations. For example, Section 1 of the bill, which amends NMSA Section 60-15-4, provides that operating hoisting equipment without a license shall be considered unlicensed activity and subject the operator and their employer to penalties as provided in the act. Section 3 of the bill amends NMSA Section 60-15-8 to provide that operating hoisting equipment with an expired license is considered unlicensed operation. Section 5 of the bill amends NMSA Section 60-15-11 to enact a new subsection C(1) which provides that operating hoisting equipment "in construction, demolition, or excavation work in this state without possessing a valid license..." is a violation of the act. Section 6 of the bill amends NMSA Section 60-15-13 and establishes penalties for "unlicensed operation". Those provisions governing unlicensed activities could be consolidated, and should be reviewed to ensure that the terms used are consistent.

Section 5 of the bill adds a new subsection 60-5-11D providing that disciplinary proceedings conform to the provisions of the Uniform Licensing Act. However, a similar provision in the bill deletes provisions in the current act which allow for unlicensed hoisting operation for a period of one year after a person completes an in-house training program. It substitutes a “temporary license” for those provisions. The bill also contains several provisions relating to unlicensed operation; enforcement of the act; and administrative fines and penalties. It eliminates criminal penalties for violations of the act and removes the council from the disciplinary process.

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The act, as amended by this bill, will contain several provisions governing unlicensed hoisting crane operation throughout its provisions. For example, Section 1 of the bill, which amends NMSA Section 60-15-4, provides that operating hoisting equipment without a license shall be considered unlicensed activity and subject the operator and their employer to penalties as provided in the act. Section 3 of the bill amends NMSA Section 60-15-8 to provide that operating hoisting equipment with an expired license is considered unlicensed operation. Section 5 of the bill amends NMSA Section 60-15-11 to enact a new subsection C(1) which provides that operating hoisting equipment “in construction, demolition, or excavation work in this state without possessing a valid license...” is a violation of the act. Section 6 of the bill amends NMSA Section 60-15-13 and establishes penalties for “unlicensed operation”. Those provisions governing unlicensed activities could be consolidated, and should be reviewed to ensure that the terms used are consistent.

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enact a new subsection C(1) which provides that operating hoisting equipment “in construction, demolition, or excavation work in this state without possessing a valid license...” is a violation of the act. Section 6 of the bill amends NMSA Section 60-15-13 and establishes penalties for “unlicensed operation”. Those provisions governing unlicensed activities could be consolidated, and should be reviewed to ensure that the terms used are consistent.

Section 5 of the bill adds a new subsection 60-5-11D providing that disciplinary proceedings conform to the provisions of the Uniform Licensing Act. However, a similar provision contained in NMSA Section 60-15-12 is not amended by this act.

The bill also contains several provisions relating to “administrative penalties”, which may not be consistent or which may be redundant. For example, Section 6 of the bill which amends NMSA Section 60-15-13, provides for administrative penalties not to exceed \$10,000 against a person engaging in unlicensed operation; and provides for an administrative penalty not to exceed \$25,000 against an employer or an organization which knowingly violates *any* provision of the act or rules adopted under the act; and provides that a licensee who violates any provision of the act may be assessed an administrative penalty not to exceed one thousand dollars for each day a violation occurs not to exceed \$10,000. The bill also adds a new subsection 60-15-13E which allows the RLD to issue a citation or “fine” to an “individual or business” for violations of the provisions of the act, and allows the department to establish those fines by rule. The bill uses the terms “fines” and “administrative penalties”, and appears to give the RLD the discretion to establish those amounts by rule, notwithstanding the stated amounts in the bill.

Further, that new subsection allows the RLD to issue “a citation and fine” in the first sentence, then refers to “the amount of such fines *and terms of such orders*”. A citation is not the same as an order.

The bill also uses different terms to describe the same persons or entities. The bill uses the terms “licensee”, “person”, and “individual” to apparently describe the same person. It also uses the terms “employer” etc., and “business” to describe the same entity. Those references should be consistent.

If this bill is not enacted the Hoisting Operators Safety Act will continue to allow unlicensed hoisting operation for a period of one year after completing an in-house training course.

ADMINISTRATIVE IMPLICATIONS

RLD states that they may need additional resources to adequately provide staff to ensure the provisions in this bill.

DW/svb