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FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/13
 SPONSOR Martinez, R. LAST UPDATED 02/04/13 HB 101/aHBIC
 SHORT TITLE Hoisting Operators Licenses and Penalties SB _____
 ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$165.0				Hoisting Operators Safety Fund or General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 New Mexico Environment Department (NMED)

SUMMARY

Synopsis of HBIC Amendment

The amendment makes minor changes in language that does not change the original intent of the bill.

Synopsis of Original Bill

House Bill 101 amends several provision of the Hoisting Operators Safety Act (Act) with regard to licensing requirements, renewal, fees, stop work orders, enforcement provisions.

HB 101 requires operators of hoisting equipment have a license and holds their employer and the employer's representative responsible under the Act if they do not. The bill deletes provisions allowing a person who has successfully completed an in-house training course approved by the Hoisting Operators Licensure Examining Council (Council) to operate hoisting equipment without a license for one year after completion of the course.

HB 101 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 deletes 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 within the past three years, 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, has successfully passed an examination administered by a Council approved vendor, or has completed an in-house training course by an approved vendor. It also states that the operator must have a physical examination, including substance abuse testing, within the twelve-month period preceding the date of the application showing that the applicant is in satisfactory physical condition to operate and perform the functions of a class I hoisting operator.

A class II hoisting operator who seeks to become licensed as a class I operator shall keep a log of seat time to ensure it accumulates over five-hundred hours under the direct supervision of a class I operator.

RLD shall issue a license to a class III hoisting operator who files a completed application, accompanied by the required fee, submits evidence that the applicant is at least eighteen years of age, has passed examination prescribed by RLD or has taken an in-house training class by a provider approved by the council, has had a physical examination including substance abuse testing all within the twelve-month period preceding the date of the application and is under the direct supervision of a Class I or Class II hoisting operator.

Deleted are provisions that a person employed as a hoisting operator after their license has expired is guilty of a misdemeanor. HB 101 instead 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 a new license is issued. The licensee would have to reapply as a new applicant. Operating hoisting equipment with an expired license shall be considered unlicensed operation and subject the person to the penalties as provided in the Act. The bill also requires RLD to adopt and promulgate rules for the Hoisting Operators Safety Act.

The bill rewrites the provisions to suspend or revoke a license and adds authority to RLD to issue a cease and desist order against a person who has violated the Act or rules and the violation creates a health or safety risk for the community. If the licensee fails to comply with the cease and desist order within 24 hours, RLD may bring a suit for a temporary restraining order and for injunction relief.

The bill is also amended to list actions that are considered to be a violation of the Act and to allow the initiation of disciplinary proceedings conforming to the Uniform Licensing Act. The bill allows RLD to issue a citation with a fine to a license or employer for violations of the Act or rule.

HB 101 deletes provisions that a person who operates a crane without a 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 \$1,000. The bill deletes provisions imposing criminal misdemeanor penalties on an employer or their representatives who willingly or intentionally allows a person not licensed under the act to operate 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 \$5,000.

RLD superintendent shall appoint at least five members to the council with consideration given geographical representation and proportional representation of operator, contractor, labor and public members. The duties of the council include reviewing and approving applications, qualifications and examinations of applicants for licensure. Approving examinations and training programs that meet the requirements of the federal occupational safety and health administration, United States Department of Labor or occupational health and safety bureau of the Environment Department.

FISCAL IMPLICATIONS

RLD estimates the annual cost of enforcing the provisions in the bill as \$165.0 (see Administrative Implications below). If revenues to the Hoisting Operators Safety Fund are not adequate to support that level of expenditure, then an appropriation from the general fund or increase in fees may be required to fully carry out the provisions of the bill.

RLD reported there is no information available for either fund balance or annual revenues for the Hoisting Operators Safety Fund. Section 60-15-15 NMSA 1978 states “The fund shall be administered by the department, and money in the fund is appropriated to the department for the purpose of carrying out the provisions of the Hoisting Operators Safety Act. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent or the superintendent's authorized representative.”

SIGNIFICANT ISSUES

RLD notes that the bill’s provisions were discussed and put forth by the Hoisting Council. The amendments add emergency powers such as the authority to issue stop and desist orders. HB 101 provides authority to the Council to approve examination and training programs that meet the federal Occupational Safety and Health Administration’s requirements.

The NMED reports their agency regulates occupational health and safety with regard to hoisting operations within the state, through incorporation of federal Occupational Health and Safety Administration (OSHA) regulations, including requirements that crane operators be trained and certified. This bill expands licensing requirements under the Hoisting Act with the apparent intent to make the Act more consistent with OSHA requirements. The bill adds language allowing an employer to conduct ‘in-house’ training approved by the Hoisting Operators Licensure Examining Council (Council) as part of the licensing process. This is consistent with OSHA regulations with respect to in-house training; however, the approval process for the Council is unspecified, making it difficult to determine whether the process will meet OSHA requirements.

ADMINISTRATIVE IMPLICATIONS

RLD comments that the bill goes beyond the usual scope of traditional administrative penalties and authorizes RLD to bring suit to obtain a temporary restraining order and for injunctive relief when there is non-compliance with a stop work order. It asks for RLD to adopt and promulgate

rules, rather than requiring the Hoisting Council to do so, as is customary. It asks the Department, rather than the Council, to issue stop work orders.

RLD currently has a portion of one FTE dedicated to the Hoisting Council. In order to fulfill the obligations imposed by this legislation, RLD would require inspectors for compliance purposes, a budget and legal counsel to bring suit in district court and staff to assist in the promulgation of rules. Under current law, the Department issues and renews licenses and has the authority to issue fines, reprimands, and to suspend or revoke a license. This is the usual scope of responsibility for a regulatory agency and that which this agency has for our 30 boards and commissions. The proposed measure would go in a different direction, requiring 2 FTEs with budget impact of \$140,000 /yr and \$25,000 for professional services to implement the requirements of the legislation.

MW/svb:bm