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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11
LAST UPDATED 03/18/11 **HB** 393/aHLC/aSFI#1

SPONSOR Martinez, R.

SHORT TITLE Hoisting Operator Licensure Requirements **SB** _____

ANALYST Wilson/Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$40.0	\$40.0	Recurring	Hoisting Operator Safety Act Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$3.0-\$4.0	\$3.0-\$4.0	\$6.0-\$8.0	Recurring	Hoisting Operator Safety Act Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Regulation & Licensing (RLD)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor Amendment #1 reduces administrative penalties for 1) an employer, firm, partnership, corporation, association or other organization that knowingly violates the provisions of the Hoisting Operators Safety Act (the Act) and 2) any license hoisting operator who violates a provision of the Act from an amount not to exceed \$10,000 to an amount not to exceed \$5,000.

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to House Bill 393 removes

language that would entitle members of the Hoisting Operators Licensure Examining Council to collect per diem and mileage pursuant to the Per Diem and Mileage Act

Synopsis of Original Bill

House Bill 393 amends several provisions of the Hoisting Operators Safety Act (Act) with regard to licensing requirements, renewal, fees, stop work orders, enforcement provisions.

HB 393 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 393 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 at least 500 hours of seat time in the type of hoisting equipment for which the applicant seeks an endorsement and license, or has successfully passed an examination administered by a Council approved vendor, or has completed an in-house training course approved by the Council.

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. HB 393 also allows the RLD to issue a temporary hoisting operator license to an applicant who has met certain criteria. 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 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.

Deleted are provisions that a person employed as a hoisting operator after their license has expired is guilty of a misdemeanor. HB 393 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 the license is renewed. 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 renewal of an expired license. RLD may require the licensee to reapply as a new applicant.

The bill rewrites the provisions to suspend or revoke a license and adds authority for 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 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.

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 also allows RLD to issue a citation with a fine to an individual or business for violations of the Act or rule.

HB 393 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 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 \$10,000.

FISCAL IMPLICATIONS

HB 393 increases initial license fees from \$75 to up to \$200. 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 will also allow

RLD states that because the Hoisting Operator Safety Act Fund has no funds, they intend to reimburse only the one out of town member. Since the bill reads that members of the Council are entitled to per diem and mileage pursuant to the Per Diem and Mileage Act, this may not be possible.

SIGNIFICANT ISSUES

The amendments contained in HB 393 were discussed and put forth by the Council. These changes strengthen the language in the Act. The amendments also protect public health and add emergency powers such as the authority to issue stop and desist orders.

The bill is also being amended to meet the new Occupational Safety and Health Administration (OSHA) Federal Law. HB 393 provides authority to the Council to approve examination and training programs that meet the federal Occupational Safety and Health Administration's requirements.

The AGO provided the following:

Section 4 of the bill amends NMSA Section 60-15-9 to provide for reinstatement or administrative fees not to exceed \$1000. 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.

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

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 and business to describe the same entity. Those references

should be consistent.

The bill allows the RLD to issue a citation and fine in the first sentence and then refers to the amount of such fines and terms of such orders. A citation is not the same as an order.

ADMINISTRATIVE IMPLICATIONS

RLD believes HB 393 will make the Act clearer and easier to administer.

TECHNICAL ISSUES

The Act, as amended by this bill, contains several provisions governing unlicensed hoisting crane operation throughout its provisions. The AGO suggests the following provisions governing unlicensed activities could be consolidated and should be reviewed to ensure that the terms used are consistent.

- Section 1 of the bill, which amends NMSA Section 60-15-4, to provide 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 providing 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”.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Act will not be amended to strengthen its provisions. If this bill is not enacted the Act will continue to allow unlicensed hoisting operation for a period of one year after completing an in-house safety training course. The Act will be out of compliance with the federal law if it is not amended.

MD/mew:svb