

FISCAL NOTE
Requested by Legislative Council
01/15/2015

Revised

Bill/Resolution No.: HB 1351

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$5,000	\$0	\$5,000
Expenditures	\$0	\$0	\$140,000	\$5,000	\$140,000	\$5,000
Appropriations	\$0	\$0	\$140,000	\$5,000	\$140,000	\$5,000

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The Secretary of State is to be the registrar for crane operators. The agency does not know how many potential registrants there might be. But, based on the requirements, the agency would need at least one FTE and do related software programming to establish registration functionality.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The entire bill has a fiscal impact on the agency. The bill establishes a new duty for the agency that is not associated with the existing administrative responsibilities of the office. Therefore, the agency has no basis on which to determine how many registrants would be involved. However, in reviewing the variety of duties, the agency believes it would require one staff member devoted specifically to handle the registration and other requirements related to this legislation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Even though the agency knows that crane operators are currently working in the state, it has no basis on which to determine how many there are. Therefore, the agency has estimated the amount of revenue included in 1A on the basis that there are crane operators working within the state. The program is not included in the executive budget.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Because the agency believes that the program would require a FTE and software development, the amount stated in 1A is based on this possibility.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Because it is unknown whether the revenue placed in the agency's operating account would be sufficient to offset the cost of the program, it believed an appropriation as listed from the general fund would be required.

Name: Al Jaeger

Agency: Secretary of Statet

Telephone: 701-328-2900

Date Prepared: 01/26/2015

FISCAL NOTE
Requested by Legislative Council
01/15/2015

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- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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The entire bill has a fiscal impact on the agency. The bill establishes a new duty for the agency that is not associated with the existing administrative responsibilities of the office. Therefore, the agency has no basis on which to determine how many registrants would be involved. However, in reviewing the variety of duties, the agency believes it would require one staff member devoted specifically to handle the registration and other requirements related to this legislation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Because it has no basis on which to project the number of registrants, the agency can only guess the amount included in 1A. The program is not included in the executive budget.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Because the agency believes that the program would require a FTE and software development, the amount stated in 1A is based on this possibility.

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Name: Al Jaeger

Agency: Secretary of Statet

Telephone: 701-328-2900

Date Prepared: 01/21/2015

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1351

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Peace Garden Room, State Capitol

HB 1351

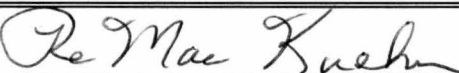
1/27/2015

Job Number 22589

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to criminal history background checks and certification of crane operators; to provide for a legislative management study; and to provide a penalty

Minutes:

Attachments #1-7

Representative Hatlestad~District 1-Williston, Bill Sponsor: Introduces HB 1351. (Attachment 1)

(2:43)

Representative Hanson: Was there a specific incident that lead you to sponsor the bill?

Representative Hatlestad: OSHA is setting forth more regulations. We wanted to take a proactive approach. The industry is very safety conscious.

Representative Hanson: Have you had folks from the industry ask for this bill?

Representative Hatlestad: Yes.

Representative Laning: Coming from my background almost everyone in a power plant would have to be certified. How extensive is the certification process?

Representative Hatlestad: Each of the areas does do certification. But I think they want a more universal procedure with the influx of companies so everyone is protected.

(5:00)

Deanette Piesik~CEO of TrainND Northwest, a division of Williston State College: Supports HB 1351. (Attachment 2). We are seeing great growth in North Dakota. We do provide a lot of training and testing services for crane operators in western North Dakota. People are concerned that there isn't some standard of testing and this is what this bill will provide.

We know there are some gaps in this bill. If we could offer an amendment for this bill by putting in a crane board made up of crane business owners from both general industry and construction, also some of the crane operators, and maybe the Association of General

Contractors. We think that will strengthen the legislation. It would give the industry a voice in setting policies and procedures. It would also give advice to the Secretary of State.

Chairman Keiser: Is there any certification process now?

Deanette Piesik: Yes. They take a written certification and a practical certification test. There are four nationally recognized certification organizations. They certify and authorize people within the state to provide those exams.

Chairman Keiser: The exams are already available. Does anyone else in our state require that of employers?

Deanette Piesik: I did visit with WSI looking for more statistics on crane injuries and deaths. It is not something they pull out on accident reports.

Representative M Nelson: What is the weakness in the certification groups? What problem do you want to fix?

Deanette Piesik: I don't know if there is a weakness in the certification process. Where we are lacking is that standardization that not everybody is being certified. OSHA is going to change that rule. We feel the State of North Dakota should respond before the federal government tells us what we have to do.

Representative Becker: You feel OSHA will come down with regulations. Anything we do is not going to change what they do?

Deanette Piesik: It's imperative to set in place the rules we want for this industry. I don't know that the federal rule will supersede the rule for our state. The federal rule is only going to look at construction. We have to consider the oil & gas industry and the cranes they use. That may not be regulated by OSHA.

Chairman Keiser: You reference that there is an increase in problems with cranes. Do you have any data?

Deanette Piesik: The problem we have is pulling out that data. It is not collected well within the state.

Representative Laning: There are 100's of different cranes, how are you going to tackle this?

Deanette Piesik: Correct. We identified the cranes in our area that are requiring certification. It would need to be updated on a regular basis.

Representative Kasper: What are the business owners not doing who hire the crane operators that this certification will solve?

Deanette Piesik: Most of the companies who are hiring people who do not have certification are getting them certified. Not all companies come to the state with certification.

(14:22)

Representative Amerman: Is there a shortage of crane operators. If we pass this bill, will this present a hurdle for operators?

Deanette Piesik: I don't think it will hinder hiring employees. Many states already require crane certification. So it would just be another licensing process that they would do with the Secretary of State.

Chairman Keiser: Why do we need someone else to do the criminal check?

Deanette Piesik: It's to make sure that companies are doing the background check. If companies can provide that information we wouldn't do it again.

Jeremy Mole (sp?), Senior Health Safety and Environmental Coordinator for Statoil and Gas, Williston, ND: Stands in support of this bill due to some recent non-injury potentially catastrophic situations that happened on our locations. A certified but inexperienced crane operator caused a serious mishap and nearly killed an individual. He was certified by a non-recognized national certifying agency. That is why we support this bill to ensure that any operator has gone through the nationally recognized certifying bodies to ensure the level of certification is adequate for our jobs. We do require all of our crane operators to be certified. If we hire a contractor, it is a statement in our policies that they will be certified.

Representative Lefor: How do you distinguish between the companies that are credible and the companies that are not in this certification process?

Also, if we don't do this on a state level, you are saying OSHA is going to do it anyway?

Jeremy Mole: For the first question, our procurement office uses a vetting agency known as ISNetwork. They have to upload and implement all of their documentation in order for us to be able to consider them as company. We are a large corporation so we have the resources and the finances. Not every company has the ability to do that.

The second question, there are federal OSHA standards already written and approved. They are being pushed back until the industry has the ability to get on board. We need something to fill the gap until that takes place. Their dates for implementation are 2017 and could be pushed back later. We want something now.

Representative Laning: Is there anything that prevents you as an employer from setting your own criteria and requiring certifications wherever you desire?

Jeremy Mole: There is nothing stopping us. We do require our crane operators to have certification. We support the bill for all industries to remain safe.

Representative Amerman: Your definitions say it doesn't include cranes used in manufacturing. Working at Bobcat we had many of the wheel-mounted cranes that we used to do work inside. Why is manufacturing exempt?

Jeremy Mole: I would have to defer to those who drafted the bill as well as industry experts on cranes. I agree. I don't think one is safer than the other.

Representative Frantsvog: When you need a crane, what type of specs do you require?

Jeremy Mole: We have experts on our staff who know the load, etc. and we hire for specific tasks. We only use specific vendors who know which cranes to send out.

Representative Frantsvog: If you are hiring for a specific task, where do you get that in state training versus national training.

Jeremy Mole: From my earlier example, we had a young operator who had gone through a week long class with no national certification. He was in the crane training and bypassed the safety features on the crane because the operator prior to him had also bypassed the same safety features. He turned away from the crane for one moment while he was running his fast line up on the crane. The hook and ball assembly on the crane contacted the top of the derrick causing it to break apart. We feel if he had the proper training and was nationally certified he would have had the knowledge to not bypass any safety features.

Representative Becker: The person who was training him, was he nationally certified at a level you deem appropriate.

Jeremy Mole: Yes, he was.

Chairman Keiser: How easy is it to know which certifiers are certified nationally.

Jeremy Mole: We go to OSHA or API that are industry standard recognized individuals. Yes, we put on our stamp of approval.

Chairman Keiser: So when you hired this operator, who screwed up?

Jeremy Mole: The subcontractor for that job. The trainee was not nationally certified. In the bill there is a spot about trainee vs. an operator. Both are covered under this bill.

Chairman Keiser: The criminal check, what is your issue?

Jeremy Mole: We support the background checks. If the company can verify that they are doing adequate background checks, we feel that is sufficient.

Representative M Nelson: Are the riggers certified?

Jeremy Mole: Yes they are. That is a critical aspect of crane operation.

(28:48)

Representative M Nelson: Is the crane operator trained in rigging also so he can recognize when something's not correct?

Jeremy Mole: We hold the crane operator responsible for that load. So he has to understand the rigging as well.

(29:26)

Mark Gjovig, CFO and Compliance Officer for Go Wireline, Williston, ND: We use cranes as an oilfield service company. We don't do any 3rd party work. This bill is large and broad. The background checks are a big concern. Most of us are doing them. I don't know if we need to hire an agency to do background checks, we can do it. There is a physical exam expected. I suggest that it would be the DOT physical because almost everyone operating the crane has to drive it. We are not sure how this will be enforced. We support the bill because we want everyone to have a level field.

In Minnesota they have a one-page law. You have to be certified by a national agency. Montana is the same way. They accept one of the four agencies or they have their own testing. I wouldn't recommend getting into your own testing. That is a big job.

Chairman Keiser: The criminal history check--What are the issues for crane operators relevant to criminal checks? What crime would be relevant to operating a crane?

Mark Gjovig: That is a problem with the background check. It should be specific to your own business.

Representative Amerman: How much can the cranes lift?

Mark Gjovig: In my business the average crane is a 26-45 ton crane. In the oil and gas business the minimum crane is probably a 26 ton crane on a tandem or triple axel.

Representative Amerman: In the definition, it says a machine on a carrier base that has a maximum lifting capacity of 2,000 pounds. Is "maximum" the right word?

Mark Gjovig: I think the 2,000 pounds is light. That should be raised. It should be a "minimum" weight. Who is going to be in charge? We know OSHA will override anything we do.

Matthew Shaw~Regulatory Affairs Coordinator for the National Commission for the Certification of Crane Operators (NCCCO): (Attachment 3).

(42:54)

Representative Laning: How do you train or certify an individual so they are competent on all those cranes and how long does this training take?

Matthew Shaw: We break cranes down into broad categories. The training is done more at the employer level or the training company level.

Matthew Shaw: NCCCO is strictly just for testing and certification. Our certifications are good for 5 years.

Representative Hanson: Which of the 12 states offer these laws?

Matthew Shaw: Two of them are bordering states--Minnesota and Montana both have requirements that use NCCCO certification as part of the requirement. Montana has a licensure requirement that uses certification as a prerequisite.

Representative Hanson: Would this bill be closer to Montana's law or Minnesota?

Matthew Shaw: Probably closer to Montana. Because the state is issuing a credential.

Opposition:

(45:34)

Al Jaeger~Secretary of State: (Attachment 4).

Our office is not opposed to safety. My role is to address the administrative requirements that would be placed on my agency by this bill. We have some questions and concerns.

You have asked about the criminal background check. My office licenses contractors. As a matter of routine we do not automatically run a background check. The bill alludes to the fact that if something moves us, we can do it. This is not common practice.

(51:55)

Chairman Keiser: When you mention the delay of implementation if your office would get it, what would be the date you would request it?

Al Jaeger: For my office it will probably take at least two years.

Chairman Keiser: If it takes you two years, that is 2017, when the federal kicks in. So you may not be the appropriate option for us.

Representative Kasper: If we took out your office and amended to put in a board, would you be able to accept the registrations?

Al Jaeger: We would still be doing some administrative work. I think we would be given the same responsibility. The board would kick it back to the administrator. I would still have some concerns.

Representative Kasper: If the bill was amended so the only duties your office would have would be to accept the certification and registration of the crane operators and the board's requirements would be to make sure they are certified with a background check, would that solve your concern?

Al Jaeger: Under state law, home inspectors have to be registered with the Secretary of State. The only requirement as part of the registration is that it would include that they have been certified by a national organization that was previously identified. Our function

solely is that we file that as a public record. We still don't enforce. If somebody has a problem with a home inspector, that is not an enforcement duty for us. We are an office of record. If it was to establish a type of public record of who is certified as a crane operator, I don't have a problem with that because I am not concerned about compliance.

(57:12)

Mark Dougherty~Represents 500 members of the Associated General Contractors (AGC) of North Dakota: (Attachment 5).

(1:05:20)

Representative M Nelson: Do OSHA regulations on cranes cover everyone without regard to size of their operation. If I am a one-man show with a crane, will I be under the OSHA regulations.

Mark Dougherty: Yes. It is an individual thing. Everyone operating a crane is required to be certified. They can't penalize you yet. You have to be working towards certification on a crane that lifts 2,000 pounds or more.

Representative Laning: When you certify a crane operator, do you certify them to a specific type of crane? There are so many different kinds of cranes.

Mark Dougherty: The NCCC program certifies to a particular type of crane. They have four major types of mobile cranes on the program and those are the ones that we use.

Chairman Keiser: Do we have an idea of the number of cranes operators working in North Dakota?

Mark Dougherty: I would have no idea. There are a lot.

Marvin Miller~President of Twin City Roofing, Inc in Mandan: (Attachment 6). Marvin was not here to testify but submitted testimony for opposition of HB 1351.

(1:08:00)

John Olson~BNSF Railroad: BNSF operates in 28 states and a couple of provinces. They have crane operators that travel across state lines all the time. Shares information from OSHA. (Attachment 7)

The American Association of Railroads sued OSHA because of its intending application to railroads for train operators and certifications. This said that they are covered under the Federal Railroad Administration and the Rail Safety Improvement Act of 2008. After that litigation, OSHA backed off regulating railroad employees especially crane operators.

The Minnesota statutes were mentioned. The statute provides for a requirement for a national accreditation. This also exempts railroads from the application of the Minnesota act.

Senior Counsel for BNSF, Fort Worth (Attachment 7, page 2) gave the opinion that state action should be displaced by what is going on with the FRA and the national act that requires safety in the railroad industry.

We believe this would be a maze of regulation and requirements if we have to answer to every state and get certification for our crane operators.

(1:11:13)

Al Henke, New Salem: I have been running cranes since 1979 shortly after high school. I do have an NCCCO certification card. I took the initial test which is not easy. I have to recertify every 5 years. That test is as hard as the original test.

There is a shortage of crane operators. Someone from out of state will probably turn a job down if he has to get a state license. The background check is nothing new. By the way this is written, why is it a crane operator? A backhoe operator doesn't need a background check?

The cranes that are running up and down the highway have to have the DOT as well. There are many cranes that don't go on a highway.

Chairman Keiser: Closed the hearing.

Representative Laning: I would like to hold this bill.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1351
1/27/2015
Job Number 22608

☐ Subcommittee
☐ Conference Committee

Re Mae Kuch

Explanation or reason for introduction of bill/resolution:

Relating to criminal history background checks and certification of crane operators; to provide for a legislative management study; and to provide a penalty
(Committee Work)

Minutes:

Representative Ruby: Moved Do Not Pass

Representative Kasper: Seconded the motion

Representative Laning: The way this is written it wouldn't work in an industrial type of atmosphere. Literally all of the mechanics, electricians run cranes. It is impossible to train anyone to run all kinds. They don't actually do training. They just certify. The certification is nothing more than a written test that says you know a crane goes up and down and sideways. You are not gaining anything. You need hand-on experience. That is where you get the safety application. This bill doesn't address that. It just encumbers the industry.

Chairman Keiser: There are 4 options, 1st-is to pass the bill, 2nd-design some form of registration certificate, 3rd-establish a regulatory board, and 4th a study. Do you want to study this issue? I do support the motion. In our company we have to train and certify all the forklift operators.

Representative Ruby: If there was a board, the guidelines would be to do at least what OSHA is doing. That will be the floor and they decide whether to go above that. It makes more of a mess for North Dakota.

Vice Chairman Sukut: I was part of the discussion when they started to talk about doing this. They were looking for a way to put a standardized test out there. They didn't realize the ramifications when they put this bill on the docket. I will have to vote "no" for the Do No Pass. I also understand where the committee is coming from.

Representative Louser: In reference to the Secretary of State comparing registration to home inspectors, about ten years ago there was an instance in Bismarck where a buyer hired an unlicensed home inspector and had a lot of problems with the report. A home inspector is now required to pass a national test, carry Errors and Omissions Insurance, and have a national certification. That is for a consumer hiring someone in a transaction. This is an employment situation. I don't think it is comparable. I asked the guy across the street from me who runs a crane service. He is opposed to this also.

Chairman Keiser: The crane operators wouldn't want to pay for this through a board.

A Roll Call vote was taken: Yes 13, No 1, Absent 1.

Do Not Pass carries.

Representative Rick C. Becker will carry the bill.

Date: Jan 27, 2015Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES**
BILL/RESOLUTION NO. 1351

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference Committee

Amendment LC# or Description: _____

Recommendation:

☐ Adopt Amendment☐ Do Pass☒ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider☐Motion Made By Rep Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut		x	Representative Louser	x	
Representative Beadle	Ab		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	x		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 13 No 1Absent 1Floor Assignment Rep R.C. Becker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1351: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).
HB 1351 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1351

Jan 27, 2015

HB 1351 Industry Business and Labor

Chairman Keiser and Members of the IBL Committee. Thank you for the opportunity to bring HB 1351 before you for your consideration.

For the record, my name is Patrick Hatlestad and I represent District One, most of the City of Williston.

HB 1351 contains requests regarding registration of crane operators, criminal background checks, supervision of trainees, certifications of operators, designations of occupational specialties, fees, written and practical examinations, and a request for a legislative management study asking for the regulation of non-regulated professions in the energy industry and report back to the 65th Legislative Assembly.

List below are the cliff notes for the bill.

SECTION 1: background checks, if required by the Secretary of State's office, of applicants for registration.

SECTION 2: amendments to 43-51-01 of NDCC with respect to crane operator and crane operator trainee registration.

SECTION 3: creation of Chapter 43-61 of NDCC.

43-61-01: Definitions of a crane and what is not included. Crane operator, immediate supervision, Registrar and trainee.

43-61-02 Required Registration and scope of operation and penalties for willfully violations of subsection 1. Registration fees, and penalty assessment (civil)

43-61-03.1 Registration designates operator's/trainee's specialty, if any. Operations requiring specialty designations.

43-61-03.2 Qualifications to register as a crane operator. 18, certification, physical exam, physically capable of operating a crane, background check (if required). Costs paid by applicant.

43-61-03.3 Qualifications to register as trainee: 18, passed written exam, approved physical exam, physically capable, possible background check, pay for costs.

43-61-03.4 To operate, Trainee under supervision of crane operator, within scope of registration.

43-61-03.5 Registration invalid if expires or becomes invalid.

43-61-03.6 Registration-crane operator 2 yrs. Able to renew.

43-61-03.7 Registration-trainee, 12 months leading to written exam, pass, register for 2 yrs.

43-61-04.1 Fees-established by registrar, not more \$300.

43-61-04.2 renewal of registration, registrar, not more \$200

43-61-04.3 fee \$, Sec. of State's operating fund.

43-61-05.1/2/3 defines the duties: forms (app/renewal), fees charged, stds of certifying organization, certification includes written and practical exam. Maintain list of CO & trainees, accept/reject applications, use AG go to court to collect penalties.

SECTION 4 : Legislative Management Study: study feasibility and desirability to regulate professions in energy industry not regulated. Single agency or board regulate? Findings/recommendations/legislation to 65th Legislative Assembly.

1st yr - projected \$ needs - \$125,000 - should carry self after that.

pg 2

Jan 27, 2015

2

Good morning, my name is Deanette Piesik, CEO at TrainND Northwest, a division of Williston State College. House Bill 1351 will and can save lives in North Dakota. Reduction of crane-related incidents will save lives, reduce bodily injury to the public, general industry, and construction workers; reduce property damage, increase efficiency and raise productivity of businesses in ND.

Although any machine or man-made activity may cause fatality, other bodily harm or property damage, the magnitude of the loads borne by cranes, the associated tension and stress on structural elements of cranes, the motor power required to operate winches, the mobility of cranes and other factors that are peculiar to cranes, lead to exceptional hazards and risk of harm arising from crane operation that warrant additional regulations.

A uniform standard of testing, certification, and licensure as a prerequisite to admission to the occupation of crane operator is necessary to reduce the incidence of error and promote a higher degree of conformity to safe crane operation.

The purpose of this legislation is to:

- Protect people from bodily harm by reducing the incidence of operator error through a process of objectively measured testing, certification, and licensure for the occupation of a crane operator.
- Protect people from bodily harm by establishing standards of conduct applied to crane operations.
- Protect crane operators and trainees from undue influence to engage in unsafe practices.
- Protect crane operators from unfair practices in the process of certification or recertification.
- Preserve the value of crane operator certification for the benefit of licensees, their employers and consumers of crane services.

The most common hazards leading to serious injuries and fatalities are crane tip-overs, being struck by a crane, electrocutions, being caught in between a crane and other equipment or objects, and falls from the equipment.

Crane Stories in ND

Crane Accident in Fargo, ND – 2 injured (6-7-10)

An accident at a construction project in West Fargo hospitalized two workers after they fell somewhere between 40 and 60 feet. Emergency responders say the victims were seriously hurt, but the situation was just inches from being much worse.

They were called here to Monsanto at 304 Center Street in West Fargo. Authorities say the victims were up on a platform doing some kind of work to the building.

When the crane tipped over and dropped the workers to the ground. Authorities say the two were wearing a protective harness, but still suffered multiple broken bones and internal injuries from the fall.

One worker suffered a broken leg and ribs, the other has a broken arm according to Monsanto officials. The injuries are non-life threatening.

When first responders arrived one of the victims was underneath the platform, they say luckily all of the weight of the platform did not fall off the worker. Authorities are unsure what caused the crane to tip.

Crane Accident in Grand Forks, ND – 1 dead (7-2-10)

A man has died after being crushed between two cranes at an LM Wind Power blade plant in North Dakota yesterday. 42 year old Joseph Schaff was working on one overhead crane when he was crushed between it and a second crane. He was taken to a hospital, where he was pronounced dead.

Crane Accident in Grand Forks, ND – 1 injured (10-13)

A construction worker who was helping load out a crane suffered a possible broken leg when part of the crane's lattice boom fell a few feet while it was being loaded onto a truck on the University of North Dakota campus. The injured worker was taken to a hospital in Grand Forks.

Crane Accident in Ryder, ND – 1 deceased (11-4-13)

A worker was killed after a fatal accident in Ryder involving a crane and a utility pole. Lee Edwards Helmers, 24, was identified as the deceased worker.

It's not clear exactly how the accident happened, but the news reports indicated that Helmers was helping lift a utility pole out of the ground near Highway 23 and Highway 28. The crew was using a truck crane to lift the pole when it suddenly slipped out of the device and fell to the ground.

The large pole then bounced back into the air, hitting Helmers in the process. He was critically injured and died at the scene. No other injuries were reported and the matter remains under investigation.

Near Miss Crane accident - West Fargo, North Dakota (6-15-14)

A construction crane tipped onto a funeral home under construction here on Wednesday.

The crane crushed part of the west side of the building but no one was injured when it fell, according to reports. The incident was reported late Wednesday morning.



Truck Utilities said that the crane was not actually lifting anything when it went over, however the boom was almost fully extended. Construction workers at the scene did not say what caused the crane to tip over.

The construction site at the southwest corner of Veterans Boulevard and 33rd Avenue is the future home of the Red River Funeral Home. The boom caused severe damage to the Funeral Home which was near completion.

A report released by The Center for Construction Research and Training provided recommendations to reduce and prevent future crane injuries and fatalities:

1. Crane operators should be certified by a nationally accredited crane operator testing organizations such as the National Commission for the Certification of Crane Operators (NCCCO).
2. Riggers who attach the load to the crane and signalperson who visibly or audibly direct the crane operator should be certified.
3. Crane inspectors should be certified.
4. Cranes should be inspected.
5. Thorough investigations of crane related fatalities need to be completed by OSHA (Occupational Safety and Health Administration).

Crane legislation can and will prevent injuries and death. The improper operation of a crane may cause a catastrophic event on a work site, resulting in fatality, other bodily harm and property damage. Thank you.

TESTIMONY BY THE
NATIONAL COMMISSION FOR THE CERTIFICATION OF CRANE OPERATORS
BEFORE THE COMMITTEE ON INDUSTRY, BUSINESS, AND LABOR
NORTH DAKOTA HOUSE OF REPRESENTATIVES
BISMARCK, NORTH DAKOTA

TUESDAY, JANUARY 27, 2015

Mr. Chairman and distinguished representatives: My name is Matthew Shaw and I am the Regulatory Affairs Coordinator for the National Commission for the Certification of Crane Operators (NCCCO). NCCCO is an independent, nonprofit, 501(c)6 organization formed in 1995 to establish and administer a nationwide program of certification for crane operators. NCCCO has developed fair and reliable examinations to test crane operators based on industry standards—most notably the ASME B30 American National Standard, and OSHA's crane regulations—that prescribe the knowledge and skills required for safe operation of cranes.

In the 20 years since its program was established, NCCCO has administered more than 875,000 examinations to more than 200,000 candidates in all 50 states.

We believe that certification is important to our industry for several reasons. Clearly, accidents cost the industry dearly—in terms of serious injury, property damage, lost time and litigation. Safety is one of the most important issues facing the construction industry, and proficiency of crane operators is key; no other piece of equipment used in construction today has the potential to do so much harm, if misused, as a mobile crane or tower crane. The industry, as reflected in its support of NCCCO over the last two

decades, has endorsed the belief that standardized assessment of the skills and knowledge required for safe crane operation is critical to improving worksite safety.

There is clear evidence that certification can, in fact, help achieve this. The state of California instituted a certification program in 2005 requiring national certification of mobile and tower crane operators. A study conducted by Cal-OSHA revealed a net result showing 80% decline in the death rate from crane operations, and a 57% drop in crane and rigging injuries and incidents. We believe that a similar pattern is beginning to emerge across the country.

When NCCCO was established as an independent organization to develop and administer tests, separate from training, it was predicated on the belief that a fair, objective assessment of the skills and knowledge of crane operators was critical to realizing the long-term benefits of crane operator certification. We also felt it was vitally important to involve representatives from all segments of construction and general industry, without any one special interest, whether union or non-union, labor or management, taking precedence. NCCCO subject matter experts are drawn from such industries as construction, steel erection, crane rental, petrochemical, energy and general industry, as well as training, manufacturing, insurance, OSHA and labor (the International Union of Operating Engineers (IUOE)). Just as importantly, NCCCO has succeeded in combining their expertise with that of examination development professionals, known as psychometricians to develop and administer tests.

In order to be certified through the NCCCO program, operators must demonstrate skills and knowledge which subject matter experts from the industry have judged necessary for safe crane operation. They do this through a written examination for a

specific type of crane, a practical test on the equipment, and confirmation of physical ability to perform on the job.

Test content has been determined through a comprehensive review of the work performed by crane operators (known as a “job analysis”), and the results validated by several hundred operators and experts across the country. Examination questions are all based on the specific knowledge that operators themselves consider critical to safe crane operation. To ensure fairness and reliability, all examinations are constructed to the rigorous professional standards of test development laid down by American National Standards Institute (ANSI) and the National Commission for Certifying Agencies (NCCA), which has accredited the CCO programs since 1997.

Federal OSHA, as well as several other government agencies, has officially recognized the NCCCO program as meeting its requirements for crane operator qualification, and will accept CCO certification as proof of training.

Although the CCO certification program was originally developed as a voluntary process, it has been increasingly adopted as a condition of hire by regional and national employers across the country, as well as project managers and facility owners, who have realized the benefit of using CCO certification as a risk management tool.

The successful application of the program has also caught the attention of legislatures in various states, twelve (12) of which have now adopted and/or recognized CCO certification. Additionally, in 2010 Federal OSHA adopted a national requirement for certification of crane operators working in construction that will take effect in 2017.

The success of the NCCCO program can in part be attributed to the sound methodology that has been employed at all stages of program development. This means, in effect, that an employer can be assured that operators carrying CCO certification cards have demonstrated they possess the fundamental knowledge and skills necessary for the safe operation of cranes—without relying on subjective recommendations or judgment, or experience alone. In turn, operators who earn the distinction of the CCO credential can take satisfaction that their skills have been recognized by an independent professional authority.

If this bill is enacted in North Dakota, it will find a solid foundation of existing experience. Since the CCO program of crane operation certification was introduced in 1996:

1. 199 written administrations have been held in 21 cities within North Dakota, hosted by 22 companies and industry organizations.
2. Companies that have tested through the CCO program represent the full range of crane users, including rental, contractors, distributors, labor, and non-union organizations.
3. There are 14 CCO-accredited Practical Examiners resident in the state, three (3) of whom are available “for hire” to administer tests at employers’ locations state-wide.
4. There are 59 CCO Practical Test Sites, registered by 50 companies or organizations, in 21 cities in North Dakota. A total of 289 cranes have been approved for testing on the “hands on” exam.

5. Through December 2014, over 2,400 candidates had been tested on the written exam, and almost 2,200 on the practical. The number of written and practical exams administered (all specialties) amounts to over 7,500.
6. Finally, to date, a total of almost 1,000 certifications have been issued to crane operators resident in the state of North Dakota, and several thousand more certifications have been issued to operators in surrounding states.

Mr. Chairman, that completes my testimony. I appreciate the opportunity to share these comments with you, and I remain available for any questions you or the Committee may have.

Matthew Shaw, Regulatory Affairs Coordinator
National Commission for the Certification of Crane Operators
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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 27, 2015

TO: Representative Kaiser and Members of the House Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: HB 1351 – Certification of Crane Operators

This bill would establish a new duty for the Secretary of State unlike any of the other duties of the agency. Therefore, the particular function identified in this bill is uncharted territory and it is unlikely that the agency would be able to implement its provisions by the legislation's effective date of July 1, 2015.

For example, the agency is currently in the process of developing a new software platform. It would be challenging to now add the needed functionality for administering this program to the agency's current AS/400 system. That is because programmers are no longer readily available for the obsolete RPG language used in the AS/400.

As the agency understands the requirements of the bill, it is believed that it would be necessary to add one staff member to administer the program and for that individual to have some understanding of the industry as it relates to crane operators. For example, the bill requires the registrar to identify and approve certifying organizations that are able to provide an accredited certification for crane operators and trainees. The agency would also be required to develop rules, which would take several months to implement.

In addition, the proposed legislation does not appear to specifically address how the Secretary of State would identify compliance with the registration requirements. The investigation and prosecution of a criminal violation, as identified on page 3, line 2, is the function of a State's Attorney.

If this type of registration is to be implemented, the Secretary of State recommends that only the study provisions in Section 4 of the bill be considered at this time. Even at that, being a crane operator is not a profession that is unique to the energy sector, as implied in that section. Any study would need to cover the same profession or skill set that exists throughout the entire state for the type of registration proposed in this bill.

Testimony – HB 1351
House Industry, Business & Labor Committee
January 27, 2015

Mr. Chairman and committee members, I am Mark Dougherty and I represent the 500 members of the AGC of North Dakota. Our membership is made up of general, specialty and sub-contractors along with construction material, equipment, tools and services suppliers.

I have also provided you with a copy of testimony provided by one of our members whose use of cranes and the need for crane operators is important to their business.

I am here to speak in opposition to HB 1351.

The bill requires the Secretary of State to create a system to conduct criminal history checks and register crane operators and trainees. The Secretary of State is also required by the bill to approve certifying organizations to be accepted as part of the registration requirements.

The AGC of North Dakota has been facilitating the certification of crane operators since 2003. We started in 2003 to help our members meet the requirements of Minnesota OSHA which required operators to be nationally certified in 2007. The Occupational Safety and Health Administration (OSHA) completed their final rule on Crane Operator Certification in 2010 and placed a requirement for compliance in November 2014. In December of 2014 OSHA decided to delay the compliance requirement until November of 2017 due to disagreement between the OSHA approved certifying organizations on some specific format differences in their certification programs and a realization the process of getting most of the existing operators certified in the time allowed was not going to be achievable.

AGC of North Dakota has certified approximately 50 to 75 individuals each year for the past 11 years and we continue to offer 3 programs per year with a maximum of 25 participants in each. The AGC of North Dakota uses one of the 4 OSHA approved certification organizations which makes our program OSHA compliant. The certification process required by OSHA consists of the candidate completing and passing a written exam which tests in common crane operating procedures and knowledge in a "Core Exam"; and items specific to each of 8 different crane types is tested in "Specialty Exams" created for each of the individual crane types. The candidates also must complete and pass a practical exam in which the operator has to operate a crane that meets the specialty requirements by moving the crane's headache ball with and without a weight through a test course and follow directions from a signal person who is the certifying organizations approved examiner. These two tests need to be completed within one year of each other. The cost for this program has settled in the neighborhood of \$1500 to \$2000 per operator in North Dakota and several surrounding states.

Crane operators in North Dakota and the rest of the country will need to be either certified or working towards certification by November 2017 as required by the OSHA final rule and we do not see the need for HB 1351. The OSHA final rule covers the approved certification required by HB 1351 and has since 2010.

The State of North Dakota requiring certification, criminal history checks and registration at this time seems to serve little purpose and is mostly a duplication of the existing National requirements. Further consequences of this bill coming into effect August 1, 2015 would be devastating to the construction industry in North Dakota. Due to the proposed State requirements in HB 1351 every experienced crane operator not certified under OSHA requirements at that time would not be able to legally operate a crane without being in violation of law and subject to civil penalty by the registrar. Should the registrar choose not to approve the certifying organizations most utilized in North Dakota at this time; existing operators certified through these organizations

would also be unable to work and lose their ability to make a living. The construction industry struggles now to hire, train and retain adequate numbers of crane operators to complete the existing project load; if this bill goes into effect many existing experienced crane operators would be immediately unqualified to work in North Dakota adding more pressure to an already stressed workforce system.

The proposed requirement for registration and criminal history checks of crane operator trainees which also requires the trainee to pass an approved certifying organization's written examination and provide proof of being physically capable of operating a crane will be a considerable challenge to a young person interested in entering the industry as a crane operator due in part to the cost. At this time our crane operator certification program cost to complete the written examination for one crane specialty would be \$1365 and is not an easy test for experienced operators to pass and would in my opinion be impossible to pass for someone with no crane operating experience, then add to that the \$300 registration fee and cost of the physical examination you've made it nearly impossible for a person to become a crane operator. So there in lays a catch 22 for a young wannabe crane operators. You have to be registered to operate a crane as a crane operator trainee but you likely won't be able to pass the required written certification examination without actual seat time in a crane.

North Dakota is currently certifying crane operators as required by HB 1351 under the existing OSHA requirements. To preclude duplicate regulation requirements and to not create a barrier of requirements for individuals to become crane operators the AGC of North Dakota strongly urges the House Industry Business & Labor Committee to give a Do Not Pass recommendation on HB 1351.

Thanks for the opportunity to provide testimony and I will stand for questions at this time.

January 27, 2015 6

Since
1927



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Jamestown, ND
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Dickinson, ND
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January 26, 2015

RE: HB 1351

Chairman Keiser and members of the committee,

My name is Marvin Miller and I am president of Twin City Roofing, Inc. in Mandan.

I am opposed to this measure.

The Occupational Safety and Health Administration already has rules and regulations in place that govern crane operators. These rules have been promulgated and are set to go into effect in 2017. They require training, written examinations and practical examinations in order for crane operators to become certified.

I see no reason why the State of North Dakota should go through the extra expense of registering crane operators or why we, as employers, should have to bear more costs than are already required by OSHA.

I urge the committee to recommend a "Do Not Pass" on this bill.

Marvin Miller

www.twincityroofingllc.com

Marv Miller
President

Scott Harr
Territory Manager



John "J.R." Markel
Territory Manager

Jason Geigle
Estimator

U.S. Dept. of Labor
OSHA, Washington, D.C.

John Olson

7

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM:

JM

JAMES G. MADDUX
Director
Directorate of Construction

HB 1351

Jan 27, 2015

SUBJECT:

Enforcement Guidance: Application of Crane Operator
Certification and Training Requirements in the Railroad Industry

Background: As you know, OSHA promulgated the final Cranes and Derricks in Construction standard on August 9, 2010. OSHA is engaged in ongoing litigation regarding the application of this standard to the railroad industry. OSHA's standard includes crane operator certification requirements that, for the most part, will not be in effect until 2014. However, OSHA's standard includes one operator certification requirement that is already in effect: employers in states or localities with existing crane operator certification/licensing requirements must comply with those state or local requirements.

On December 14, 2010, the Federal Railroad Administration (FRA) received recommendations from its federal safety advisory committee, that is, the Railroad Safety Advisory Committee (RSAC), to establish minimum training standards for each class and craft of safety-related railroad employee and their railroad contractor and subcontractor equivalents. RSAC completed this task with the expectation that FRA would draft a Notice of Proposed Rulemaking (NPRM) largely based on RSAC's recommendations. The FRA has recently submitted a draft NPRM to the Office of Management and Budget for review. If FRA exercises jurisdiction in this area through rulemaking, FRA may ultimately displace OSHA's crane operator certification and training requirements with respect to crane operators involved in work related to railroad operations.

A

Enforcement Guidance: In light of the ongoing litigation and the potential impact of the FRA's proposed rulemaking on OSHA's crane operator certification and training requirements in subpart CC, until further notice please do not issue any citations under the Cranes and Derricks in Construction standard, 29 CFR § 1926 Subpart CC, to any employer in the railroad industry for failure to comply with state or local crane-operator certification/licensing requirements. I will let you know if there is any change in this enforcement guidance.

If you have any questions or would like to discuss this matter further, please contact me at 202-693-1968 or Richard Ewell in the Office of the Solicitor at 202-693-5459.

pg 1

John M. Olson
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"Sweeney, Brian J" <Brian.Sweeney@bnsf.com>

Fwd: Crane Operations

January 23, 2015 10:42 AM

John: see attached. Looks like rails are out, so bill should reflect that.

Sent from my iPhone

Begin forwarded message:

From: "Ringelman, Ryan E" <Ryan.Ringelman@BNSF.com>

Date: January 23, 2015 at 10:36:14 AM CST

To: "Sweeney, Brian J" <Brian.Sweeney@bnsf.com>

Cc: "Pryor, David" <David.Pryor@BNSF.com>, "Schafer, Scott H" <Scott.Schafer@BNSF.com>

Subject: Crane Operations

OSHA actually released a rule covering crane operations several years ago. At the rulemaking phase, AAR challenged allocation of the rule to railroads. OSHA, in its final rule rejected a blanket exclusion (attached at this link https://www.osha.gov/FedReg_osha_pdf/FED20100809.pdf). Subsequently AAR challenged the rule, conducted countless meetings with OSHA/DOL and ended up with a settlement addressing rail specific concerns. OSHA is still working on releasing a follow-up rulemaking addressing these issues. However, as you will note below, OSHA has training requirements, which currently are pushed to 2017. Also, as noted in the second attachment above, there is a potential split on training/certification due to FRA occupation of the field as required by Congress under the RSIA. So I think state action should be displaced. Let me know if we need to discuss further – Scott is also a very valuable resource on this issue.

<http://www.liftandaccess.com/content/osha-extends-crane-operator-certification-deadline-nov-2017-construction-news>

Ryan E. Ringelman | BNSF Railway | Senior General Attorney |

✉ ryan.ringelman@bnsf.com | ☎ 817.352.2342 | 📠 817.352.2399

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:



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OSHA Extends Crane Operator Certification Deadline to Nov. 2017 | Construction News

Post date: 09/25/2014 - 2:07pm

The Occupational Safety and Health Administration today issued a final rule extending the deadline for crane operator certification requirements in the Cranes and Derricks in Construction final rule published Aug. 9, 2010 by three years to Nov. 10, 2017. The rule also extends by three years the employer's responsibility to ensure that crane operators are competent to operate a crane safely. The final rule becomes effective Nov. 9, 2014.

During the three-year period, OSHA will address operator qualification requirements for the cranes standards including the role of operator certification. The final cranes and derricks rule required crane operators on construction sites to meet one of four qualification/certification options by Nov. 10, 2014. After publishing the final rule, a number of parties raised concerns about the Standard's requirement to certify operators by type and capacity of crane and questioned whether crane operator certification was sufficient for determining whether an operator could operate their equipment safely on a construction site.

The agency published a Notice of Proposed Rulemaking on Feb. 12, 2014, proposing to extend both the deadline for operator certification and the employer duty to ensure competent crane operation for three years. After publishing the proposed rule, a hearing was requested and held in Washington, D.C. Comments from the hearing are available at <http://www.regulations.gov/#docketDetail;D=OSHA-2007-0066>.

OSHA analyzed the comments to the NPRM and the hearing testimony and decided to extend both the crane operator certification deadline and the existing employer duty for three years. OSHA has already begun the process of developing a standard to ensure crane operator qualifications.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

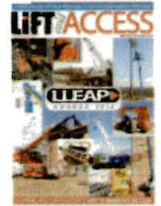
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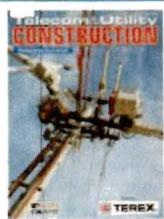
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and 20 matches for Railroad crane operator

182.6525 CRANE OPERATION.

Subdivision 1. **Certification required.** An individual may not operate a crane with a lifting capacity of five tons or more on a construction site unless the individual has a valid crane operator certificate received from a nationally recognized and accredited certification program. No employer, and no person who is under a contract to construct an improvement to land, may permit any employee, agent, or independent contractor to perform work in violation of this section. A crane operator certification required under this subdivision must be renewed by an accredited certification program every five years.

Subd. 2. **Exceptions.** The requirements of subdivision 1 do not apply to:

(1) a crane operator trainee or apprentice, if the individual is under the direct supervision of a crane operator who holds a valid crane operator certificate as required in subdivision 1;

(2) a person directly employed by a class 1 or 2 railroad who is qualified by the employing railroad as a crane operator or boom truck operator while performing work on property owned, leased, or controlled by the employing railroad ;

(3) a person who is employed by or performing work for a public utility, rural electric cooperative, municipality, telephone company, or industrial manufacturing plant;

(4) a person who is subject to inspection and regulation under the Mine Safety and Health Act, United States Code, title 30, sections 801 through 962;

(5) a person engaged in boating, fishing, agriculture, or arboriculture;

(6) a person who is a member of and performing work for a uniformed service or who is a member of and performing work for the United States Merchant Marine;

(7) a person who is operating a crane for personal use on premises owned or leased by that person; and

(8) a person who is operating a crane in an emergency situation.

Subd. 3. **Penalties.** An employer or general contractor may be cited by the commissioner for a violation of the certification requirements in this section. A citation is punishable as a serious violation under section 182.666.

History: 2005 c 87 s 1,3

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