

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 521 State Preemption of the Regulation of Hoisting Equipment

SPONSOR(S): Community & Military Affairs Subcommittee and Business & Consumer Affairs Subcommittee and Artiles

TIED BILLS: **IDEN./SIM. BILLS:** SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N, As CS	Collins	Creamer
2) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Gibson	Hoagland
3) Economic Affairs Committee	16 Y, 1 N	Collins	Tinker

SUMMARY ANALYSIS

The bill amends s. 489.113, F.S., to preempt to the state and prohibit all local regulation of hoisting equipment, unless the regulation is otherwise federally preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926. Local regulation that is prohibited and preempted to the state includes, but is not limited to, local worksite regulation regarding hurricane preparedness or public safety. The bill does not apply to the regulation of elevators under ch. 399, F.S., or the regulation of airspace height restrictions under ch. 333, F.S.

The bill has no fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Occupational Safety and Health Act and the Regulation of Hoisting Equipment

The Occupational Safety and Health Act of 1970 (hereinafter the OSH Act) created the Occupational Safety and Health Administration (hereinafter OSHA), a federal agency that promulgates standards related to workplace health and safety.¹ The Supreme Court has held that Congress intended to establish “uniform, federal occupational and health standards” in the OSH Act to avoid “duplicative, and possibly counterproductive regulation.”² The Court has further held that “the OSH Act precludes any state regulation of an occupational or health issue, with respect to which a federal standard has been established, unless a state plan has been submitted.”³ This applies regardless of whether the state law requirement serves a dual purpose and has another nonoccupational purpose.⁴

The OSH Act allows a state that desires to assume responsibility for development and enforcement of occupational safety and health standards relating to any occupational safety or health issue, where a federal standard has been promulgated, to do so by submitting a state plan for the development of such standards and their enforcement.⁵

However, unless a state plan has been submitted and approved, the OSH Act prohibits state and local governments from promulgating regulation related to workplace health or safety if an applicable OSHA standard is already in place.⁶ Conversely, if a relevant OSHA standard is not in place, the OSH Act does not federally preempt state or local regulation regarding workplace health or safety.⁷ As a result, regulation of workplace health and safety that is not addressed by existing OSHA standards generally may be promulgated by state and local governments.

Currently, the state does not regulate the operations of mobile or tower cranes on construction sites or license crane operators, nor does it provide for hurricane or high-wind event standards or plans relating to on-site crane use. However, OSHA’s occupational health and safety standards apply to both construction worksites and employees engaged in construction work.⁸

OSHA standards include general requirements for construction work involving cranes, derricks, material hoists, personnel hoists, and elevators.⁹ OSHA regulations require compliance with the manufacturer’s specifications and limitations applicable to the operation of all cranes, derricks, hoists, and elevators, and where the manufacturer’s specifications are not available- the limitations assigned to the equipment are to be based on the determinations of a qualified engineer competent in the field.¹⁰

OSHA regulations also contain requirements for the inspection and certification of crane and hoisting equipment and standards for hand signals to crane and derrick operators.¹¹ Further, by incorporating the mandatory rules of the applicable American Society of Mechanical Engineers (“ASME”) standards,

¹ 29 U.S.C. § 651.

² *Gade v. National Solid Waste Management Association*, 505 U.S. 88, 102 (1992).

³ *Id.*

⁴ 505 U.S. 88 (1992).

⁵ 29 U.S.C. s. 667(b).

⁶ *See Gade v. National Solid Waste Management Association*, 505 U.S. 88, 98-99 (1992).

⁷ 29 U.S.C. s. 667(a).

⁸ 29 C.F.R. s. 1910.12(a).

⁹ 29 C.F.R. s. 1926.550 & 1926.552.

¹⁰ *Id.*

¹¹ *See Associated Builders v. Miami-Dade Co.*, No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff’d*, 594 F.3d 1321 (11th Cir. 2010).

OSHA standards include inspection of cranes and standards for crane operator qualifications and certifications.

Miami-Dade County Ordinance Relating to the Safety of Hoisting Equipment

In March of 2008, Miami-Dade County passed and adopted an ordinance that set binding regulations for the construction, installation, operation, and use of tower cranes, personnel, and material hoists.¹² The ordinance was subsequently challenged as being preempted by the OSH Act and OSHA standards based on the argument that it regulated occupational safety and health standards governed by federal standards.¹³ Miami-Dade County defended the provisions as valid saying it had targeted public safety rather than occupational safety.¹⁴

The United States District Court permanently enjoined the County from implementing certain provisions of the ordinance relating to wind load standards finding that the standards directly affected occupational safety and therefore were preempted by the federal standards, even if the ordinance served a dual purpose and addressed public safety issues as well.¹⁵ The District Court also found that other parts of the Miami-Dade ordinance relating to public safety and hurricane preparedness were not preempted because the scope of OSHA's standards as they relate to cranes and hoists did not include regulation regarding hurricane preparedness or public safety.¹⁶ The decision of the District Court was later affirmed by the 11th Circuit Court of Appeals finding that the Miami-Dade ordinance was preempted by OSHA with regard to wind load standards for tower cranes and hoists.¹⁷

Effect of Proposed Changes:

The bill amends s. 489.113(11), F.S., to prohibit and preempt to the state any local acts, laws, ordinances, or regulations, including but not limited to, a local building code or building permit requirement, of a county, municipality, or other political subdivision that pertains to hoisting equipment including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work that is not already preempted by OSHA under 29 C.F.R. parts 1910 and 1926.

The bill specifically states that the prohibition and preemption includes, but is not limited to, local worksite regulation regarding hurricane preparedness or public safety. However, the prohibition and state preemption does not apply to the regulation of elevators under ch. 399, F.S., also known as the "Elevator Safety Act", or the regulation of airspace height restrictions in ch. 333, F.S.

SECTION DIRECTORY:

Section 1: the bill creates subsection (11) of s. 489.113, F.S., to preempt all local regulation of hoisting equipment to the state, unless otherwise federally preempted by the OSH Act, and provides that the subsection does not apply to the regulation of elevators und ch. 399, F.S., or the regulation of airspace height restrictions in ch. 333, F.S.

Section 2: provides that the bill is effective upon becoming a law.

¹² Miami-Dade County, FL, Ordinance No. 08-34.

¹³ See *Associated Builders v. Miami-Dade Co.*, No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321 (11th Cir. 2010).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Associated Builders v. Miami-Dade Co.*, No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321, 1325 (11th Cir. 2010).

¹⁷ *Associated Builders v. Miami-Dade Co.*, 594 F. 3d 1321 (11th Cir. 2010).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Business & Consumer Affairs Subcommittee adopted a proposed committee substitute to the bill. The analysis has been updated to reflect this amendment.

On January 31, 2012, the Community & Military Affairs Subcommittee adopted an amendment to make a technical change and to provide that the bill does not apply to the regulation of airspace height restrictions in ch. 333, F.S. The analysis has been updated to reflect this amendment.