

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 346

INTRODUCER: Senator Rouson

SUBJECT: State Preemption of the Regulation of Hoisting Equipment

DATE: March 11, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	Imhof	RI	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 346 deletes the provision in current law that preempts regulation of certain hoisting equipment that is not preempted by federal law to the state.

The bill has an effective date of July 1, 2025.

**II. Present Situation:**

**Regulation of Hoisting Equipment**

The federal government, through the Occupational Safety and Health Administration (OSHA), generally regulates hoisting equipment.<sup>1</sup>

Florida currently does not regulate the operation 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.

In 2012, CS/HB 521 created s. 489.113(11), F.S., which prohibited any local act, law, ordinance, or regulation pertaining to the regulation of hoisting equipment and hoisting equipment operators in Florida. It preempted the regulation of that equipment, not already preempted by the federal government to the state.

**Occupational Safety and Health Act and Regulation of Hoisting Equipment**

The Occupational Safety and Health Act of 1970 (the OSH Act) created the Occupational Safety and Health Administration (OSHA), a federal agency that promulgates standards related to

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<sup>1</sup> 29 CFR s. 1926.552.

workplace health and safety.<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup> This applies regardless of whether the state law requirement serves a dual purpose and has another non-occupational purpose.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> As a result, regulation of workplace health and safety that is not addressed by existing OSHA standards generally may be adopted 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.<sup>9</sup>

OSHA standards include general requirements for construction work involving cranes, derricks, material hoists, personnel hoists, and elevators.<sup>10</sup> OSHA regulations require compliance with the manufacturer’s specifications and limitations applicable to the operation of all cranes, derricks, hoists, and elevators. In cases 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.<sup>11</sup>

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.<sup>12</sup> Further, by incorporating the mandatory rules of the applicable American Society of Mechanical Engineers

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<sup>2</sup> 29 U.S.C. § 651.

<sup>3</sup> *Gade v. National Solid Waste Management Association*, 505 U.S. 88, 102 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> 505 U.S. 88 (1992).

<sup>6</sup> 29 U.S.C. s. 667(b).

<sup>7</sup> *See Gade v. National Solid Waste Management Association*, 505 U.S. 88, 98-99 (1992).

<sup>8</sup> 29 U.S.C. s. 667(a).

<sup>9</sup> 29 C.F.R. s. 1910.12(a).

<sup>10</sup> 29 C.F.R. s. 1926.550 & s. 1926.552.

<sup>11</sup> *Id.*

<sup>12</sup> *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).

(ASME) standards, 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 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.<sup>13</sup> The ordinance was subsequently challenged as being preempted by the OSH Act and OSHA standards that regulated occupational safety and health standards.<sup>14</sup> Miami-Dade County defended the provisions as valid saying it had targeted public safety rather than occupational safety.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

### ***Post Associated Builders v. Miami-Dade Co.***

In January 2025 Miami-Dade County passed a resolution urging the Florida Legislature to repeal the preemption in current law and allow local governments to regulate and enforce crane safety in matters that are not preempted to the federal government, citing specifically **hurricane preparedness**.<sup>19</sup>

### **III. Effect of Proposed Changes:**

**Section 1** of the bill deletes the section of law that preempts regulations of certain hoisting equipment that is not preempted by federal law, to the state.

**Section 2** of the bill provides an effective date of July 1, 2025.

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<sup>13</sup> Miami-Dade County, FL, Ordinance No. 08-34.

<sup>14</sup> *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).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Associated Builders v. Miami-Dade Co.*, 594 F. 3d 1321 (11th Cir. 2010).

<sup>19</sup> Miami-Dade County, FL, Resolution No. R-67-25.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill repeals the following sections of the Florida Statutes: 489.113.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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