

HOUSE BILL REPORT

HB 2022

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to construction crane safety.

Brief Description: Concerning construction crane safety.

Sponsors: Representatives Reed, Berry, Ryu, Ormsby, Reeves and Santos.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/12/24, 1/19/24 [DPS];
Appropriations: 1/31/24, 2/2/24 [DP2S(w/o sub LAWS)].

Brief Summary of Second Substitute Bill

- Requires a prime contractor to obtain a permit before performing any work involving the operation, assembly, disassembly, or reconfiguration of a tower crane.
- Establishes procedures and requirements for a valid permit, including requirements for safety conferences, inspections, and notifications.
- Creates criminal penalties for certain violations.
- Requires tower crane manufacturers and distributors to make certain information available regarding their tower cranes located in the state.
- Requires municipalities to align permit issuance for street closures and provide certain notices when a tower crane is being assembled, disassembled, or reconfigured.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Without recommendation. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Rude and Ybarra.

Staff: Trudes Tango (786-7384).

Background:

Washington Industrial Safety and Health Act.

Generally, workplace safety is governed by the federal Occupational Safety and Health Act (OSHA), which is administered by the Occupational Safety and Health Administration. Washington is a "state plan" state under federal OSHA. As a state plan state, Washington is authorized to assume responsibility for occupational safety and health in the state. The Department of Labor and Industries (Department) administers and enforces the Washington Industrial Safety and Health Act (WISHA) and adopts rules governing safety and health standards for workplaces covered by the WISHA. To maintain its status as a state plan state, Washington's safety and health standards must be at least as effective as standards adopted or recognized under OSHA.

Construction Crane Safety.

State law requires the Department to establish, by rule, a crane certification program and qualified crane operator requirements. Crane owners must ensure cranes are inspected and load-proof tested by a certified crane inspector at least annually and after any significant modification or repair of structural parts. Tower cranes and tower crane assembly parts must be inspected both prior to assembly and following erection of the tower crane. A certified crane inspector must notify the Department if the crane does not meet safety or health standards. Operation of a crane by a nonqualified crane operator is prohibited. The Department establishes, by rule, the requirements to be a qualified crane operator.

Summary of Substitute Bill:

Permit Requirements.

The prime contractor must obtain a permit from the Department prior to performing or allowing the performance of any work involving the operation, assembly, disassembly, or reconfiguration of a tower crane. The Department may allow exceptions. The prime contractor must possess an active and unrestricted permit at all times that a tower crane is present on a construction site.

Permit Application.

The application for a permit must include information needed to ensure safety and establish responsibility for the operation, assembly, disassembly, and reconfiguration of a tower

crane, including information such as:

- contact person's name and contact information for the overall project safety;
- names of the prime contractor, crane owner, crane users at the worksite, and assembly/disassembly director;
- a copy of the assembly/disassembly director's national assembly/disassembly director certification from an approved national accrediting organization;
- crane manufacturer and crane model;
- prime contractor's certification that: (1) the prime contractor will comply with all applicable requirements of the WISHA, and that the conditions, practices, means, methods, operations, or processes used or proposed to be used will be safe and healthful; (2) the prime contractor will post at the worksite the permit and the crane certification; and (3) all assembly, disassembly, and reconfigurations will be performed with a safety representative for the tower crane distributor or manufacturer present; and
- a written job plan.

Safety Permit Conference.

Before issuing a permit, the Department must complete a safety permit conference. The conference must require the presence of at least the following:

- permit applicant;
- assembly/disassembly director;
- safety representative for the tower crane distributor or manufacturer;
- representatives of the employees assembling, disassembling or reconfiguring the tower crane; and
- on public works projects, a representative of the governmental entity overseeing the project.

During the safety conference, the following must be evaluated:

- prior safety violations of the permit applicant and all entities required in the operation, assembly, disassembly, and reconfiguration of the tower crane;
- potential risks of the procedures and measures taken to minimize risks;
- written accident prevention programs;
- safety standards for tower cranes under the WISHA and applicable rules;
- written job plan; and
- written self-attestations of the experience and qualifications of employees directly involved with the permitted work.

Notifications and Inspections.

As a condition of a valid permit, the permit holder must notify the Department in advance of any assembly, disassembly, or reconfiguration of the tower crane in a time specified by the Department. The permit holder must receive the Department's confirmation to proceed.

As part of the permit process, the Department must inspect permitted activities, including the tower crane once assembled or reconfigured. A permit holder may not operate the tower

crane once assembled or reconfigured unless approved by the Department after initial inspection.

Tower cranes and parts must be inspected prior to and following every assembly, disassembly, and reconfiguration. Any issues identified must be tracked and corrected.

Permit Denial, Suspension and Revocation.

The Department must deny a permit if:

- the application fails to include all required elements;
- the safety conference is not held in compliance with the requirements; or
- the permit applicant has a record of safety and health violations that indicate the applicant may not be maintaining a safe worksite or operation.

The Department must suspend or revoke a permit if the permit holder:

- fails to comply with any requirements or OSHA standards involving tower cranes;
- fails to notify the Department in advance as required;
- fails to ensure that a safety representative was present during assembly, disassembly, or reconfiguration;
- fails to immediately correct deficiencies directly affecting the structural integrity of the tower crane, or fails to correct deficiencies directly affecting the safe operation of the tower crane; or
- refuses the Department entry to a worksite that contains activity for which a permit is required.

Administrative procedures are established for appealing the denial, suspension, or revocation of a permit.

Criminal Penalties.

An employer is guilty of a misdemeanor if the employer:

- allows any person to engage in the assembly, disassembly, or reconfiguration of a tower crane without direct supervision by a qualified assembly/disassembly director; or
- allows a tower crane to be assembled, disassembled, or reconfigured not in accordance with manufacturer operation instructions or written procedures from a registered professional structural engineer.

Rulemaking.

The Department must adopt rules that include, among other things:

- a process for determining when the Department will be present for the assembly, disassembly, and reconfiguration of a tower crane;
- requirements for the prime contractor to ensure that a qualified safety representative will be present during assembly, disassembly, and reconfiguration;
- requirements for the presence of an assembly/disassembly director at every assembly, disassembly, and reconfiguration and requirements for qualifications of an

- assembly/disassembly director;
- conducting inspections;
- establishing maximum allowable wind speed for tower crane assembly, disassembly, and reconfiguration;
- requirements for a written job plan; and
- establishing effective stop work procedures that ensure the authority of any employee to refuse or delay tasks related to a tower crane that the employee believes could reasonably result in serious physical harm or death.

The Department may adopt rules for permitting fees, and fees must be deposited in the industrial insurance trust funds.

Information from Manufacturers and Distributors.

Tower crane manufacturers and distributors must make certain operational and safety information about their tower cranes available upon request by any person, within a reasonable time and in a format as determined by the Department. The information must be written in English.

Street Closures and Notice.

When a worksite contains a tower crane, the municipality in which the tower crane is located must do the following before any assembly, disassembly, or reconfiguration occurs:

- align permit issuance for street closures with the definition of assembly/disassembly work zone;
- issue permits in a timely manner; and
- provide notice to residents and occupants of buildings within the assembly/disassembly work zone.

Assembly/disassembly work zone means the total area that the crane and/or components or attachments could reach if the crane were to collapse. Height of the crane, length of boom, attachments, and loads, must all be considered to calculate the area.

Miscellaneous.

Definitions are created for the following terms: (1) "assembly, disassembly, and reconfiguration"; (2) "crane owner"; (3) "crane user"; (4) "prime contractor"; and (5) "reconfiguration." The prime contractor is the person or entity that has overall responsibility for the construction of the project, its planning, quality, and completion, and serves as the site supervisor.

The provisions do not apply to cranes used on marine vessels and at ports, terminals and marine facilities or in maritime activities regulated by the Department.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill:

- makes changes to the items the prime contractor must include in a permit application and in a safety conference;
- removes the provision making it a crime for allowing a person to act as an assembly/disassembly director when the person is not qualified, and relocates the criminal provision into the current statute related to crimes for violating the WISHA;
- restores current law requiring crane owners, rather than crane suppliers, to ensure cranes are inspected and tested;
- specifies that any issues identified during inspection of the crane must be tracked and corrected, rather than logged with a mitigation plan;
- makes it discretionary, rather than mandatory, for the Department to charge fees for permits, and specifies that fees must be deposited into the industrial insurance trust funds;
- specifies that tower crane manufacturers and distributors must provide information to any person who requests, rather than making it "available to the public";
- removes the height threshold in the provision pertaining to a municipality's duties and clarifies when a municipality must align permit issuance with assembly/disassembly work zone provisions;
- requires the municipality to issue permits in a timely manner allowing for sufficient time to safely conduct assembly, disassembly, or reconfiguration, and to provide notice to residents and occupants in buildings within the zone, rather than requiring the permit holder to provide notice; and
- makes explicit that the provisions do not apply to cranes used on marine vessels and at ports or in maritime activities regulated by the Department.

Appropriation: None.

Fiscal Note: Requested on January 22, 2024.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill addresses key safety issues to create a more robust law. The bill is a response to a devastating crane incident in Seattle in which bystanders and workers died and which was entirely preventable. The Department of Labor and Industries (Department) has done a lot of work in rulemaking since then, and this bill addresses areas that cannot be done by rule. The bill establishes a permit program similar to California's program with notification requirements and clear identification of who is in charge of crane operations. It empowers the Department to make sure safety instructions are followed. The provisions allowing a worker to stop work if there are safety concerns and requiring cities to permit street closures are necessary. Current civil penalties are insufficient and criminal penalties for key safety violations will help with compliance. Requiring manufacturers to provide

operational and safety instructions for their cranes will provide transparency and give workers much needed safety information.

(Opposed) As drafted, the bill would apply to cranes at ports and marine facilities. Cranes on marine vessels should not be included.

(Other) There are concerns with the permitting process and the Department's ability to process permits in a timely fashion. The process should not prohibit or slow down getting work done on projects. There are already civil penalties for violations of the safety standards and criminal penalties should be used only if violations are conjunctive. There needs to be more stakeholder work on the permitting requirements.

Persons Testifying: (In support) Representative Julia Reed, prime sponsor; Heather Kurtenbach, Ironworkers Local 86; Santosh Devasia; Andrea and Henry Wong; and William Singhose.

(Opposed) Amber Carter, Columbia River Steamship Operators' Association.

(Other) Dean Stoneburner; Josh Swanson; and Jerry VanderWood, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 22 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Minority Report: Without recommendation. Signed by 7 members: Representatives Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dye, Rude, Sandlin and Schmick.

Staff: Ryan Blake (786-7303).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

As compared to the substitute bill, the second substitute bill:

- delays the effective date of the act to January 1, 2025;
- postpones the requirement until January 1, 2026, for when prime contractors must

- obtain permits;
- specifies that a permit may be issued to a prime contractor following the filing of a completed application, compliance with the safety conference and other requirements, payment of the permit fee, and determination by the Department of Labor and Industries (Department) that the applicant has met all qualifications;
- requires the Department to issue a permit within five working days of the safety conference if the application materials and safety conference materials are complete;
- provides that if the materials are not complete, the prime contractor must be given a written list of outstanding materials before leaving the conference;
- requires the Department to either issue a permit within five working days of receiving outstanding materials or deny the permit;
- allows the Department to issue conditional permits, including when specific information is not yet available;
- provides that the assembly/disassembly director's certification must be included in the permit application beginning either January 1, 2027, or 12 months after an assembly/disassembly director program is approved, whichever is later;
- requires the presence of a "technical representative" rather than "safety representative" of the tower crane distributor or manufacturer; and
- makes technical changes.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Second Substitute Bill: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) The bill is in response to an incident in 2019 in which bystanders and workers died. The incident was preventable, and the bill is meant to address causes of that incident. The Department doesn't have the authority to develop rules addressed by the bill. Tragedies like the one in 2019 would have been avoided with the proposed bill. The bill would allow workers to voice concerns without fear of retaliation.

(Opposed) None.

(Other) The Department should be given authority to develop a permit program through rules rather than in statute to incorporate stakeholder feedback.

Persons Testifying: (In support) Heather Kurtenbach, Ironworkers Local 86; and Andrea and Henry Wang/Wong.

(Other) Jerry VanderWood, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying: None.