

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.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 652

INTRODUCER: Governmental Operations Committee and Senator Lynn

SUBJECT: Task Force on Workplace Safety

DATE: March 27, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Fav/CS
2.	Johnson	Deffenbaugh	BI	Favorable
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates the Florida Public Task Force on Workplace Safety, within the University of South Florida Safety Florida Consultation Program, to issue recommendations regarding innovative ways by which the state may effectively ensure that agencies and local governments comply with Occupational Safety and Health Administration standards.

The University of South Florida Safety Florida Consultation Program (program) would be responsible for the administration and staffing of the task force, travel expenses, and per diem for task force members. These costs are estimated to be \$100,000. The bill does not provide an appropriation for this task force. Due to restrictions on the use federal grant money, which funds the program, and the absence of discretionary funds, the program does not currently have funding for the task force.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Organizational Structure of the Executive Branch

Chapter 20, F.S., specifies the organizational structure of the executive branch of state government. A “task force” means an advisory body created without specific statutory enactment for a time not to exceed 1 year, or created by specific statutory enactment for a time not to exceed 3 years, and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.¹

Federal Occupational Safety & Health Administration Standards

Federal occupational safety and health standards are codified at 29 C.F.R. s. 1910.² The Occupational Safety and Health Administration is located within the U.S. Department of Labor. The act applies to private sector employers and specifically excludes OSHA’s authority over state and local government.³ The act encourages states to assume responsibility for occupational safety and health programs under the state’s own plan, which must be approved by OSHA. Each state plan must include coverage of public employees of the state, and it must be at least as effective as OSHA’s protection of private sector employees. There are currently 22 states and jurisdictions operating complete state plans (covering both the private and public sector). Connecticut, New Jersey, New York, and the Virgin Islands cover public-sector employment only.

State Agencies and Occupational Safety

Chapter 99-240, L.O.F., reorganized the former Department of Labor and Employment Security, abolished the Division of Safety (division) within the department, and repealed ch. 442, F.S., the Florida Occupational Safety and Health Act. Before its repeal, s. 442.20(2), F.S., provided that the division could adopt by rule various OSHA standards, for application to public sector employers. The division adopted such rules in Chapter 38I-20, F.A.C.; those rules applicable to public sector employers are now repealed.

In 2000, the Governor issued an executive order directing fourteen agencies to voluntarily comply with Subparts C through T and Subpart Z of the Occupational Safety and Health Standards, 29 CFR Part 1910, with the exception of those OSHA standards pertaining to firefighters and fire departments inconsistent with any rules adopted by the Department of Insurance.^{4 5} The order states that it will continue in effect until superseded by action of the Florida Legislature. The Legislature has not acted on occupational safety standards; Florida law

¹ Section 20.03(8), F.S.

² The areas regulated by the Subparts of part 1910 are as follows: A. General; B. Adoption and Extension of Established Federal Standards; C. [Removed and Reserved]; D. Walking - Working Surfaces; E. Means of Egress; F. Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms; G. Occupational Health and Environmental Control; H. Hazardous Materials; I. Personal Protective Equipment; J. General Environmental Controls; K. Medical and First Aid; L. Fire Protection; M. Compressed Gas and Compressed Air Equipment; N. Materials Handling and Storage; O. Machinery and Machine Guarding; P. Hand and Portable Powered Tools and Other Hand-Held Equipment; Q. Welding, Cutting, and Brazing; R. Special Industries; S. Electrical; T. Commercial Diving Operations.

³ Public Law 91-596.

⁴ Ch. 2002-404, L.O.F., abolished the Department of Insurance and transferred many of its programs, including the Division of State Fire Marshal, to the Department of Financial Services.

⁵ Executive Order No. 2000-292.

does not specify generally applicable safety standards for state agencies and political subdivisions.

University of South Florida Safety Florida Consultation Program for Private Employers

The University of South Florida Safety Florida Consultation Program was established in 2000. The focus of this program is to provide occupational safety and health educational outreach and services to small businesses within the State of Florida. According to representatives of the program, the Department of Financial Services provides \$214,944 in funding to the program through the Workers' Compensation Administration Trust Fund, which enables the program to draw down \$1,977,000 from the federal government for providing consultations. Federal money represents 90 percent of the funding for this program. Since the inception of the program, more than 6,000 employers have received on-site consultations.

Explosion at Bethune Point Wastewater Plant

On January 11, 2006, two municipal workers died, and another was seriously injured, in an explosion at the Bethune Point Wastewater Plant, owned and operated by the City of Daytona Beach. After an investigation, the U.S. Chemical Safety and Hazard Investigation Board noted that no Florida state laws or regulations exist to require municipalities to implement safe work practices or communicate chemical hazards to municipal employees.⁶

III. Effect of Proposed Changes:

The bill creates the Florida Task Force on Workplace Safety, within the Safety Florida Consultation Program at the University of South Florida. The task force would develop findings and issue recommendations regarding innovative ways by which the state may effectively ensure that each agency, county, and municipality comply with subparts C through T and subpart Z of the OSHA Standards, 29 C.F.R. s. 1910, except for those standards pertaining to firefighters and fire departments that are inconsistent with any rules adopted by the office.

The task force, comprised of 15 members, must be appointed by July 15, 2008, and hold its first meeting by August 15, 2008. The Senate President, the Speaker of the House of Representatives, and the Governor would appoint five members each representing the following areas:

- Statewide business organization;
- Organized labor;
- Safety, health, and environmental issues;
- Executive branch of state government; and
- An academic having demonstrated knowledge of pertinent issues related to occupational safety and health

The Governor must name one of his appointees as the chair of the task force. The task force must address the following issues:

- Differences in workplace safety needs of private-sector and public-sector employers;
- The relationship between federal and state activities related to workplace safety; and

⁶ News Release of U.S. Chemical Safety and Hazard Investigation Board, May 24, 2007.

- The impact of public-sector workplace safety and health on the economic-development efforts of the state.

The task force would be staffed with existing employees of the Safety Florida Consultation Program at the University of South Florida. Task force members would be entitled to reimbursement for per diem and travel expenses. The task force may obtain information and assistance from any officer in the state. The task force is required to submit a report and recommendations to the Governor, Chief Financial Officer, and the Legislature by January 1, 2009, and would be dissolved upon submission of the report.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The University of South Florida Safety Florida Consultation Program would be responsible for the administration and staffing of the task force, travel expenses, and per diem for task force members. These costs are estimated to be \$100,000.

Since the current funding for Safety Florida Consultation Program is provided through state and federal matching funds, which are restricted for the provision of safety consultations and other specified uses, the use of these funds for this task force could jeopardize federal funding. The program does not have any discretionary funds that could be used for the task force.

VI. Technical Deficiencies:

The provision creating the task force can be read to require OSHA compliance. The bill creates the task force to develop findings and issue recommendations “regarding innovative ways by which the state may effectively ensure that each state department and agency and local government “complies” with OSHA standards. Use of the word “complies” implies a requirement. If the intent of the bill is merely to create the task force, the language should be modified, to eliminate any doubt.

Line 34 refers to “office,” but does not define which office. The reference should be specific to the entity that adopts rules relating to safety standards for firefighters.

VII. Related Issues:

In its reference to state compliance with OSHA, the bill provides an exception for those standards pertaining to firefighters and fire departments which are inconsistent with any rules adopted by the [undefined] office. If the bill is read as requiring OSHA compliance and this provision is read as an exception from a statutory requirement based on an adopted rule, this may raise an issue of an unconstitutional delegation of legislative authority. Fundamental and primary policy decisions must be made by the Legislature, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.⁷

VIII. Additional Information:

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

CS by Governmental Operations on March 27, 2008:

The committee substitute removes the legislative intent section of the bill, moves the task force from the Office of Insurance Regulation (OIR) to the University of South Florida, deletes an inaccurate reference to the OIR in regards to rules relating to firefighters, and gives two appointees that would have been appointed by the Chief Financial Officer to the Senate President and House Speaker.

- B. **Amendments:**

None.

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

⁷ *Avatar Development Corp. v. State*, 723 So.2d 199, 202 (Fla. 1998), citing *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).