
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 17, 1998 Revised: _____

Subject: Division of Safety (Rule Authorizing Bill)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Section 120.536(2), F.S., requires the Legislature to determine whether specific legislation should be enacted authorizing rules, or portions thereof, identified and deemed necessary by an agency. The Division of Safety of the Department of Labor and Employment Security reported such rules to the Joint Administrative Procedures Committee.

The committee substitute provides the statutory authorization for many of these rules, which the agency deems necessary, that currently exceed the agency's rulemaking authority. This bill addresses the division's rules relating to:

- ◆ Investigations by the division;
- ◆ Recordkeeping requirements for public-sector employers;
- ◆ Workplace-safety program requirements for help-supply-services companies;
- ◆ Adoption of federal regulations and standards; and
- ◆ References to federal officials in adopted federal standards refer to the Director of Safety.

However, the committee substitute does not authorize rulemaking for the following rules identified by the division as exceeding statutory authority: 1) the notice of death reporting requirements, already required to be submitted to the Division of Workers' Compensation; 2) right of entry, 3) the annual reporting requirements for carriers, and 4) certain definitions. The committee substitute eliminates the annual reporting requirement, limits the rulemaking authority of the division for investigative procedures solely to investigations of public-sector employers only, provides rulemaking authority to the division for the adoption of federal standards for specified standards for public-sector employers only, and does not authorize the division to prescribe rules to authorize right of entry to a place of employment without delay.

This bill substantially amends the following sections of the Florida Statutes: 442.006, 442.008, 442.011, 442.20, and 627.0915.

II. Present Situation:

During the 1996 Legislative Session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority, if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted, pursuant to s. 120.536, F.S.

Rules not included on the list submitted by the agency, along with rules adopted after October 1, 1996, could be challenged on grounds of exceeding the agencies rulemaking authority after November 1, 1997. Rules included on the submitted list may not be challenged on such grounds until July 1, 1999. Thus, while the statutes direct the 1998 Legislature to consider whether legislation authorizing identified rules should be enacted and while agencies must begin the rule repeal process for identified rules before January 1, 1999, rules identified as exceeding the new rulemaking authority are not subject to challenge on such grounds until July 1, 1999, after the 1999 legislative session.

The following is a summary of rules, cross-referenced to the section of the bill that addresses the rule:

Section 1:

38I-60.005 Division Investigations

Provides procedures for investigations for compliance, complaints, and fatalities. (The committee substitute limits rulemaking authority to investigative procedures of public-sector employers.)

Section 2:

38I-60.090 Recordkeeping Responsibilities of Public Sector Employers

Requires every public sector employer to maintain a log and summary of occupational injuries, diseases, and illnesses and notice of injury records for three calendar years.

Section 4:

38I-20.008 References to Director, Division of Safety

Provides that references to the Assistant Secretary of OSHA and to the Director of the National Institute for Occupational Safety and Health and their representatives, for purposes of these rules, refer and mean the Director of the Division of Safety, or his or her representative.

38I-20.003 General Industry Safety and Health Standards

Adopts federal Occupational Safety and Health Standards for volunteer fire fighters and fire departments operated by the state or its political subdivisions, safety and health regulations for construction, agriculture, marine terminals, shipyard employment, longshoring, personnel hoists and employee elevators for construction and demolition operations. The committee substitute provides rulemaking authority to the division for the adoption of specified, federal standards for public-sector employers only.

Section 5:

38I-17.005 Client Employer Training Requirements of Help Supply Services Company Employees

Requires clients of such companies to comply with the essential requirements of a workplace-safety program as a condition of receiving a safe workplace workers' compensation premium credit.

The following six rules identified by the Department of Labor and Employment Security as exceeding statutory authority are not addressed in the bill:

1. 38I-10.011 Annual Report

Requires each workers' compensation carrier, group self-insurance fund, and individual self-insurer to file an annual report with the division on its safety program and consultation activities. (However, the annual reporting requirement is eliminated in section 3 of the proposed committee substitute.)

2. 38I-20.002 Definitions for Safety and Health Standards

Adopts definitions contained in s. 440.02, F.S., including employer and adds definitions for division, OSHA, safe and safety, and safety and health standard or standard.

3. 38I-50.003 Notice of Death Reports

Requires an employer to notify the division and provide specific information within 24 hours of any employee injury resulting in death. This appears to duplicate similar reporting requirements of the Division of Workers' Compensation.

4. 38I-50.004 Record of Death

Requires an employer to maintain and provide such records to the division on request of employee injuries resulting in death for 5 years. This appears to duplicate similar reporting requirements of the Division of Workers' Compensation.

5. 38I-60.002 Definitions for Safety and Health Compliance

Adopts definition of occupational disease contained in s. 440.151(2), F.S., and the definitions contained in s. 440.02, F.S., and adds definitions for abatement date, act, calendar year, employer, establishment, fatality, hazard, illness, imminent danger, investigation, private sector, public sector, serious incident, violation, and workplace.

6. 38I-60.004 Right of Entry

Requires an employer to allow the division, without delay to enter and to inspect any place of employment at any reasonable time for assuring compliance with the Act.

III. Effect of Proposed Changes:

Section 1. Amends s. 442.006, F.S., relating to investigations by the division, to authorize the division by rule to adopt procedures for conducting investigations of public-sector employers only under chapter 442, F.S.

Section 2. Amends s. 442.008, F.S., relating to division authority, to require the division to adopt rules prescribing record keeping requirements for public-sector employers, which may include rules for maintaining a log and summary of occupational injuries, diseases, and illnesses and for producing, on request, a notice of injury and employee accident investigation records, and prescribing a retention schedule for such records.

Section 3. Amends s. 442.011, F.S., relating to carrier consultations, to eliminate the annual reporting by carriers, individual self-insurers, and each self-insurance fund of their safety and health programs and consultations to the division.

Section 4. Amends s. 442.20, F.S., relating to workplace safety, to allow the division by rule to adopt OSHA federal regulations and other standards for public-sector employers. The section also provides that specified references to federal officials in adopted federal standards refer to the Director of the Division of Safety or his or her designee.

Section 5. Amends s. 627.0915, F.S., relating to workers' compensation rate filings, drug-free workplace, and safe employers, to authorize the division by rule to require that the client of a help-supply-services company comply with the essential requirements of a workplace-safety program as a condition for receiving a safety program premium credit.

Section 6. The act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill codifies existing definitions of terms presently used in the rules and forms and procedures presently required by the division for the administration of chapter 440, F.S. No additional fiscal impact is anticipated. Two reporting requirements are eliminated, as discussed below.

Senate Bill 1346 authorized the division by rule to require a 24-hour notice of death report from employers which duplicates current reporting requirements of the Division of Workers' Compensation, under s. 440.185(3), F.S., however, the committee substitute does not require the report.

Senate Bill 1346 authorized the division by rule to require carriers, individual self-insurers, and group self-insurance funds to file an annual report with the division regarding their safety program and consultation activities; however, this reporting requirement is eliminated in the committee substitute.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
