

---

## 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: April 13, 1998 Revised: \_\_\_\_\_

Subject: Occupational Health and Safety

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmeling</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

---

### I. Summary:

This committee substitute eliminates various authorities prescribed to the Department of Labor and Employment Security's Division of Safety (division), including elimination of: mandated employee health and safety programs for employers with a high frequency or severity of work related injuries and penalties for failure to implement such programs; division authority to enter and inspect private employers; and, private sector employer penalties for refusal to admit for inspection. This committee substitute additionally provides authority for the division to perform voluntary inspections and consultations of public and private sector employers, and provides that the division may charge a fee for such service not to exceed \$500.

This committee substitute amends sections 442.006, 442.008, 442.013, 442.019, and repeals sections 442.003, 442.009, 442.0105, 442.015, and 442.017, Florida Statutes.

### II. Present Situation:

The Division of Safety of the Department of Labor and Employment Security (division) provides various safety services to public and private sector employers. The state and local governments share responsibility for the safety of public sector employees, and the division administers a public sector program that performs inspections and enforces safety standards for public sector employers. The federal Occupational Safety and Health Administration (OSHA) has primary jurisdiction for workplace safety in the private sector. OSHA has contracted with Florida for assistance in enforcing federal occupational safety and health standards for private sector employers. Under this contract, the division inspects private sector employers for compliance with OSHA safety standards. The division informs OSHA of violations that it detects that private sector employers do not correct so that OSHA can take enforcement actions.

Chapter 442, F.S., is known as the “Florida Occupational Safety and Health Act.” Section 442.003, F.S., provides legislative intent relating to occupational safety and health. Specifically, the intent of the Legislature is to enhance occupational safety and health in this state through the implementation and maintenance of policies, procedures, practices, rules, and standards that reduce the incidence of employee accidents, occupational diseases, and fatalities compensable under ch. 440, F.S., Florida’s Workers’ Compensation Law. This section further requires the division to develop a means by which it can identify individual employers with a high frequency or severity of work-related injuries; conduct safety inspections of those employers; and assist those employers in the development and implementation of employee safety and health programs. In addition, the division must administer the provisions of ch. 442, F.S.; provide assistance to employers, employees, and insurance carriers; and enforce the policies, rules, and standards set forth in ch. 442, F.S.

Section 442.006, F.S., requires the division to make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by ch. 442, F.S., and to make to the Legislature, employers and carriers such recommendations as it considers proper as to the best means of preventing injuries. In making such studies and investigations, the division and its authorized representatives may enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with ch. 442, F.S., and making inspections for the proper enforcement of the chapter. Any employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to allow investigation and inspection pursuant to s. 442.006(2), F.S., is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Section 442.008, F.S., requires the division to:

- Investigate and prescribe what safety devices, safeguards, or other means of protection must be adopted for the prevention of accidents in every employment or place of employment; determine what suitable devices, safeguards, or other means of protection for the prevention of occupational diseases must be adopted or followed in any or all such employments or places of employment; and adopt reasonable rules for the prevention of accidents and the prevention of occupational diseases;
- Ascertain, fix, and order such reasonable standards and rules for the construction, repair, and maintenance of places of employment as shall render them safe. Such rules and standards must be adopted in accordance with ch. 120, F.S.; and
- Assist employers in the development and implementation of employee safety training programs by contracting with professional safety organizations.

Section 442.009, F.S., authorizes the division and its authorized representatives to enter at any reasonable time any place of employment for the purpose of examining any tool, appliance, or machinery used in such employment and may make inspections for the proper enforcement of

ch. 442, F.S. Furthermore, an employer or owner may not refuse to admit any member of the division or its authorized representatives to any place of employment.

Section 442.0105, F.S., requires the division to develop a means by which it can identify individual employers whose employees have a high frequency or severity of work-related injuries. Once identified, the division must carry out safety inspections of the facilities and operations of these employers in order to assist them in reducing the frequency and severity of work-related injuries and develop safety and health programs for those employers. Carriers of workers' compensation insurance are required to distribute these safety and health programs to the employers identified by the division. Furthermore, those employers identified by the division as having a high frequency or severity of work-related injuries must implement a division-developed safety and health program. Employers may submit their own safety and health programs to the division for approval in lieu of using the division-developed safety and health program.

Section 442.011, F.S., requires each insurance carrier writing workers' compensation insurance in Florida, each employer qualifying as an individual self-insurer under s. 440.38, F.S., each self-insurance fund under s. 624.461, F.S., and each assessable mutual insurer under s. 628.6011, F.S., to provide safety consultations to each of its policyholders who request such consultations.

Section 442.013, F.S., provides for employer penalties if any employer violates or fails or refuses to comply with ch. 442, F.S., or with any rule adopted by the division, in accordance with ch. 120, F.S., for the prevention of injuries, accidents, or occupational diseases or with any lawful order of the division in connection with ch. 442, F.S., or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by the division under ch. 442, F.S., for the prevention of accidents or occupational diseases. The division may assess against the employer a civil penalty of not less than \$100, or more than \$5,000, for each day the violation, omission, failure, or refusal continues after the employer has been given notice thereof in writing. The total penalty for each violation may not exceed \$50,000.

Section 442.015, F.S., provides that if an employer that is found by the division to have a high frequency or severity of work-related injuries fails to implement a safety and health program, the carrier or self-insurer's fund that is providing coverage for the employer may cancel the contract for insurance with the employer. In the alternative, the carrier or fund may terminate any discount or deviation granted to the employer for the remainder of the term of the policy.

Section 442.017, F.S., authorizes the division and its authorized representatives to enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with ch. 442, F.S., and conducting inspections for the proper enforcement of ch. 442, F.S. An employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to allow investigation and inspection pursuant to this paragraph, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Section 442.019, F.S., provides that failure of an employer or carrier to comply with ch. 442, F.S., or with any rules adopted under such chapter constitutes grounds for the division to seek remedies, including injunctive relief, for compliance by making appropriate filings with the Circuit Court of Leon County.

### III. Effect of Proposed Changes:

**Section 1** of the committee substitute amends s. 442.006, F.S., limiting the division in making studies and investigations with respect to safety provisions and the causes of injuries in public sector places of employment only. In making such studies and investigations, the division and its authorized representatives are limited to entering and inspecting only public sector places of employment. This section further limits penalties to public sector employers who refuse to admit any member of the division or its authorized representative or to allow investigation and inspection of such employer.

**Section 2** of the committee substitute amends s. 442.008, F.S., limiting division authority to investigate and prescribe employer adoption of certain means of protection, adopt reasonable rules for the prevention of accidents/occupational diseases, and ascertain, fix, and order standards and rules for the construction, repair, and maintenance in public sector places of employment only. This section authorizes the division to provide voluntary inspections and consultations of public and private sector employers, and provides that the division may charge a fee for such service not to exceed \$500.

**Section 3** of the committee substitute amends s. 442.013, F.S., limiting penalties to any public employer who violates or fails or refuses to comply with ch. 442, F.S., or with any rule adopted by the division, in accordance with ch. 120, F.S., for the prevention of injuries, accidents, or occupational diseases or with any lawful order of the division in connection with ch. 442, F.S., or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by the division under ch. 442, F.S., for the prevention of accidents or occupational diseases.

**Section 4** of the committee substitute amends s. 442.019, F.S., providing that failure of a public sector employer or carrier to comply with ch. 442, F.S., or with any rules adopted under such chapter constitutes grounds for the division to seek remedies, including injunctive relief, for compliance by making appropriate filings with the Circuit Court of Leon County.

**Section 5** of the committee substitute repeals ss. 442.003 (legislative intent), 442.009 (right of entry), 442.0105 (employers whose employees have a high frequency of work-related injuries), 442.015 (failure to implement a safety and health program), and 442.017, F.S., (refusal to admit; penalty).

**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:

As a result of this committee substitute, reductions in the division's administrative expenses, as established in s. 442.016, F.S., and the ability of the division to charge for voluntary consultations, could reduce assessments against insurance companies writing compensation insurance in the state and self-insurers, and thus reduce workers' compensation costs to employers.

Private sector employers who request consultations from the division may be subject to a charge for this service.

C. Government Sector Impact:

As a result of this committee substitute, reductions in the division's administrative expenses, as established in s. 442.016, F.S., and the ability of the division to charge for voluntary consultations, could reduce assessments against insurance companies writing compensation insurance in the state and self-insurers, and thus reduce workers' compensation costs to employers.

Public sector employers who request consultations from the division may be subject to a charge for this service.

In Report No. 97-25, Review of the Division of Safety, Department of Labor and Employment Security (December 1997), the Office of Program Policy Analysis and

Government Accountability (OPPAGA) estimated the provisions found in this committee substitute would produce an annual cost savings of \$1.4 million.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In Report No. 97-25, Review of the Division of Safety, Department of Labor and Employment Security (December 1997), the Office of Program Policy Analysis and Government Accountability (OPPAGA) found:

- The division has not carried out its statutory mandate to ensure that private sector employers implement safety programs and committees. However, this mandate appears to be unworkable and may not result in the best use of state funds; and
- As an alternative to enforcing this requirement, the division provides voluntary consultation services to private sector employers. However, this activity duplicates services provided by the federal Occupational Safety and Health Administration and workers' compensation insurance carriers. Due to a lack of outcome measures, the division cannot show that its alternative provides a benefit in improving workplace safety.

And concluded and recommended:

- That the Legislature should change the Division of Safety's private sector responsibilities mandated by ch. 442, F.S. The requirement that the division monitor and enforce the use of safety programs and committees is controversial and problematic to enforce. The division's current emphasis on providing voluntary consultation service to employers is not consistent with legislative intent, duplicates services provided by OSHA and private workers' compensation insurance carriers, and may not represent a good use of limited state resources;
- That the division's role in enforcing state workplace safety standards be changed or eliminated. Specifically, the division should examine its activities and develop options for consideration by the 1998 Legislature. These alternatives should be developed in consultation with stakeholders such as representatives of employee groups, industries, and insurance carriers. One potential role for the division could be to analyze statewide and industry-specific injury data to identify potential accident prevention factors. This information could then be given to businesses and workers' compensation insurance carriers to help resolve safety problems. This option would likely require fewer resources than the division's current activities; and
- If the division is unable to develop viable alternatives to its current role, the Legislature should amend ss. 442.0105 and 442.012, F.S., to rescind the separate state safety standards

and eliminate funding for the Division's State Consultation service. This would produce an annual cost savings of \$1.4 million. This reduction in expense, which is paid through assessments on workers' compensation insurance policies, could be used to support other activities that provide more cost-effective outcomes or to be used to reduce the workers' compensation assessment rate and, thus, provide a tax cut to businesses.

**VIII. Amendments:**

None.

---

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

---