

STORAGE NAME: h3907.fs

DATE: April 16, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3907

RELATING TO: Occupational safety and health

SPONSOR(S): Rep. Arnall

COMPANION BILL(S): SB 1956 (s), CS/SB 1626 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill would repeal the statement of legislative intent for the Florida Occupational Safety and Health Act. This would include language cited by the Division of Safety of the Department of Labor and Employment Security as the basis for the state safety consultation program and the public sector consultation program. The bill also would eliminate the authority of the division to make studies and investigations with respect to safety provisions, the cause of injuries, safety devices, and safeguards. The division would no longer have the right of entry into a place of employment "at any reasonable time" for the purpose of making inspections for the enforcement of the Florida Occupational Safety and Health Act. The mandated employee health and safety programs for employers with a high frequency and severity of accidents would be eliminated. The provision that allows a carrier or self-insurance fund to cancel the insurance contract of an employer that fails to implement a safety and health program as mandated by the division would also be eliminated.

Those private employers that are currently required to have a workplace safety committee, would be encouraged, but no longer required, to establish and administer a workplace safety committee. Public employers would still be required to establish and administer such committees.

The bill could have a positive fiscal impact of \$3.7 million in fiscal year 1998-99 on the Workers' Compensation Administration Trust Fund.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Regulation of Workplace Safety

Federal Law

The Occupational Safety and Health Act (OSH Act) was enacted by Congress in 1970. The stated purpose of the OSH Act is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."¹ The OSH Act provides for the promulgation and enforcement of safety and health standards in the workplace.

The OSH Act applies to all 50 states and obligates employers to provide a place of employment that is free from hazards that could cause death or injury to employees. The OSH Act is administered by the Secretary of Labor who sits as the head of the Occupational Safety and Health Administration (OSHA). As defined in the OSH Act, an "employer" is "any person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State." Therefore, the OSH Act generally covers private employers; it does not cover public employers.

States have authority over private sector employers in two instances under the OSH Act. One, a state may assert jurisdiction over "any occupational safety or health issue with respect to which no standard is in effect" under federal law.² The term "occupational safety and health standard" is defined as a standard which requires the "use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."³

Two, a state may assume responsibility for the development and enforcement of occupational safety and health standards to which a federal standard has been promulgated by submitting a state plan to OSHA for approval.⁴ If approved by the OSHA, these so-called "state-plan states" or "OSHA-approved states" are authorized to exercise regulatory authority over the development and enforcement of occupational safety and health standards in the private sector, in addition to the public sector. Florida is not a "state-plan state;" the OSHA retains jurisdiction over private sector occupational safety and health in Florida with respect to any safety or health issue for which a standard is in effect.

¹ 29 U.S.C. s. 651

² 29 U.S.C. s. 667(a)

³ 29 U.S.C. s. 651

⁴ 29 U.S.C. s. 667(b)

Florida Law

The Florida Occupational Safety and Health Act (Florida Act), created in Chapter 442, F.S., is intended to enhance occupational safety and health "through the implementation and maintenance of policies, procedures, practices, rules, and standards that reduce the incidence of employee accidents, occupational diseases, and fatalities."⁵ The Division of Safety (division) of the Department of Labor and Employment Security is authorized to adopt rules and to administer the provisions of Chapter 442, F.S.

Under the provisions of Chapter 442, F.S., the division conducts safety consultations and is granted the authority to study and investigate ways to improve workplace safety and reduce injuries. The division is granted the authority to inspect safety devices and determine the types of devices employers should adopt to prevent occupational accidents and diseases. The division has the authority to enter and inspect places of employment.

The division has the authority under s. 442.0105, F.S., to perform safety inspections of employers that have a high frequency of work related accidents. According to the division, these employers are identified through a cross-reference of workplace accident reports and workers' compensation claims. Examples of high hazard employers include amusement parks, meat packers, airports, sanitary services, nursing homes and public works. Employers that are identified as high frequency employers are required to implement a division-developed safety and health program.

Section s. 442.013, F.S., provides that an employer that violates or fails to implement the safety program could be fined from \$100 to \$5,000 a day for each violation. According to the division, they have never fined an employer under this section.

Under s. 627.0915, F.S., an employer may receive a premium credit from its insurance carrier for implementing a safety program. According to the National Council of Compensation Insurers, the current credit was set in mid-1994 at 2 percent. Under s. 442.015, F.S., the credit can be revoked or the policy can be canceled if the employer does not implement a safety program recommended by the division. Under s. 627.212, F.S., an insurance carrier may impose a surcharge of not more than 10 percent on an employer that has been required to implement a safety program, but has failed to do so.

The term "employers" as used in the Florida Act includes both public and private employers. Therefore, on its face, the regulatory reach of the Florida Act extends to private employers and not just public employers. Considered in isolation, the application of this definition would appear to create a conflict with the terms of the federal OSH Act since that act generally restricts state authority to set and enforce standards to public sector employers. However, in that case, the federal supremacy clause presumably would operate to limit the application of the Florida Act to be consistent with the jurisdictional parameters set forth in the OSH Act. As a result, the Florida Act generally would apply only to *public* employers and not private employers except in those instances where the OSHA has not adopted a safety or health standard.

⁵ Section 442.003, F.S.

The Florida Act, however, does appear to recognize the supremacy of the OSH Act. While requiring the division to cooperate with the federal government to avoid duplicate inspections, s. 442.014, F.S., provides that a private sector employer is not subject to the Florida Act if the employer:

- is subject to regulations promulgated by the OSH Act and has adopted and implemented a written safety program that conforms to the OSH Act;
- has begun a safety committee, provided the employer has 20 or more employees; and
- has certified in writing to the division compliance with this section.

Safety Consultations

According to the Division of Safety, during the 1996-1997 year, 3,230 private sector safety consultations and 3,608 public sector consultations were performed by the division. These safety consultations include the identification of workplace hazards and a review of safety practices. The length of time it takes to complete a safety consultation depends on the size and complexity of the employer. According to the division, many of the employers that request consultations from the division are new employers.

The division operates three safety consultation programs: the federal 7(c)(1) program and the state consultation program. Under section 7(c)(1) of the OSH Act, the state contracts with OSHA for a grant to perform safety consultations for private sector employers. The grant is 90 percent federally-funded, with the state providing the remaining 10 percent from the Workers' Compensation Administration Trust Fund. The program has a staff of 24 full time employees for the current fiscal year. According to the division, the amount of the OSHA grant is approximately \$1.3 million annually. The division performed 1,392 inspections in 1996-1997 under this program.

The state consultation program is funded from the Workers' Compensation Administration Trust Fund. The division is appropriated \$1.4 million from this trust fund to perform safety consultations. This program has a staff of 34 full time employees for the current fiscal year. The division performed 1,838 consultations in 1996-1997 under this program.

The public sector program is also funded from the Workers' Compensation Administration Trust Fund. The division is appropriated \$2.3 from this trust fund to perform safety consultations. This program has a staff of 42 full time employees. The division performed 3,608 consultations in 1996-1997 under this program.

The division relies on the language in the legislative intent section of the Florida Act as the basis for its authority to perform state safety consultations.⁶ This section states that it is the intent of the Legislature for the division to "provide assistance to employers, employees, and insurance carriers." For consultations under the federal 7(c)(1) program, the division relies on the language in s. 442.014(4), F.S., which states that

⁶ Section 442.003, F.S.

nothing shall "restrict the Division of Safety from performing any duties pursuant to a written contract between the Division of Safety and the Federal Occupational Safety and Health Administration (OSHA)."

Safety Committees

The division has been granted the authority to prescribe the means of protection that must be adopted for worker protection including safety committees which are statutorily mandated pursuant to s. 442.012, F.S., for all public and private employers with more than 20 employees and for those public and private employers with 20 or fewer who are identified as "high frequency or severity" as defined in Rule 381-74.002, Florida Administrative Code. According to this rule, a high frequency employer is one who has had three or more compensable injuries over the past three calendar years, and who has an incidence rate greater than the average incidence rate for employers with the same Standard Industrial Classification [SIC] code.

B. EFFECT OF PROPOSED CHANGES:

The bill would repeal the statement of legislative intent for the Florida Occupational Safety and Health Act. This would include language cited by the Division of Safety of the Department of Labor and Employment Security as the basis for the state safety consultation program and the public sector consultation program. The bill also would eliminate the authority of the division to make studies and investigations with respect to safety provisions, the cause of injuries, safety devices, and safeguards. The division would no longer have the right of entry into a place of employment "at any reasonable time" for the purpose of making inspections for the enforcement of the Florida Occupational Safety and Health Act. The mandated employee health and safety programs for employers with a high frequency and severity of accidents would be eliminated. The provision that allows a carrier or self-insurance fund to cancel the insurance contract of an employer that fails to implement a safety and health program as mandated by the division would also be eliminated.

Those private employers that are currently required to have a workplace safety committee, would be encouraged, but no longer required, to establish and administer a workplace safety committee. Public employers would still be required to establish and administer such committees.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The division would no longer have the authority to adopt rules necessary to implement sections of Florida Statutes that would be repealed.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Private-sector employers would be encouraged, rather than required, to establish a workplace safety committee.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 442.012, F.S. Repeals ss. 442.003, 442.006, 442.008, 442.009, 442.0105, 442.013, 442.015, 442.017, 442.019, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 442.012, F.S., to eliminate the requirement for private employers to establish workplace safety committees. This section would give employers the discretion to establish or not establish such committees.

Section 2 repeals the following:

- s. 442.003, F.S., regarding legislative intent;
- s. 442.006, F.S., relating to investigations by the division
- s. 442.008, F.S., relating to the authority of the division to investigate safety devices;
- s. 442.009, F.S., allowing the division the right of entry to a place of employment;
- s. 442.0105, F.S., relating to the establishment of safety programs by employers that have a high rate of injuries;
- s. 442.013, F.S., providing for employer penalties for failure to comply with Chapter 442;
- s. 442.015, F.S., relating to the cancellation of insurance for the failure to implement a safety and health program;
- s. 442.017, F.S., allowing for a penalty for employers that refuse to admit division representatives; and
- s. 442.019, F.S., relating to compliance.

Section 3 provides that this acts shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The elimination of the basis of the authority relied upon by the division in administering the state safety consultation program and the public sector consultation program would have a recurring positive fiscal impact to the Workers' Compensation Administration Trust Fund of approximately \$3.7 million beginning

fiscal year 1998-99, assuming the Legislature would have provided funding at fiscal year 1997-98 levels.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See III.A.2., above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Private sector employers could experience an increase in workers' compensation costs if they decide not to establish a safety committee. Also, elimination of mandatory safety committees could result in elimination of the 2 percent premium credit provided for under s. 627.0915, F.S.

2. Direct Private Sector Benefits:

Private sector employers may experience a decrease in costs related to the elimination of workplace safety committees.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of HB 3907 intends to offer a strike-everything amendment to the bill. This amendment would expressly limit the authority of the division to make studies and investigations, prescribe what safety devices must be adopted, implement training programs, and enforce penalties for failure or refusal to comply with the provisions of chapter 442 to public sector employers.

The legislative intent language that gives the division the authority to "provide assistance to employers, employees and insurance carriers" would be repealed. This language has been cited by the Division of Safety of the Department of Labor and Employment Security as the basis for the state safety consultation program and the public sector consultation program.

The amendment also would eliminate the following sections:

- the division's right of entry under s. 442.009, F.S.;
- the mandated employee health and safety programs for employers with a high frequency or severity of injuries under s. 442.0105, F.S.;
- authority of a carrier or self-insurance fund to cancel the insurance contract of an employer that fails to implement a safety and health program as mandated by the division under s. 442.015; and
- the compliance provision of s. 442.019, F.S.

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VII. SIGNATURES:

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