

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 Governmental Operations 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.			BI	
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 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, counties, and municipalities comply with Occupational Safety and Health Administration standards.

This bill creates an unnumbered 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

The Financial Services Commission (commission) is created within the Department of Financial Services, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, who serve as the agency head of the Financial Services Commission.² The commission is not subject to control, supervision, or direction by the Department of Financial Services. Within the commission is the Office of Insurance Regulation, which is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code or ch. 636, F.S.³

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.⁴

Occupational Safety & Health Administration (OSHA) Standards

Federal occupational safety and health standards are codified at 29 C.F.R. s. 1910. 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

¹ Section 20.03(8), F.S.

² Section 20.121(3), F.S.

³ Section 20.121(3)(a)1., F.S.

⁴ News Release of U.S. Chemical Safety and Hazard Investigation Board, May 24, 2007.

U-Y	[Reserved]
Z	Toxic and Hazardous Substances

By definition, OSHA standards do not apply to the United States, or any State or political subdivision of a State.⁵

Executive 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.

During the 2000 Regular Session, the Legislature considered but did not pass Senate Bill 1206, which would have created the Florida Task Force on Workplace Safety within the Department of Insurance, tasked to develop findings and issue recommendations on innovative ways in which the state may employ state or federal resources to reduce the incidence of employee accidents, occupational diseases, and fatalities compensable under the workers' compensation law. The Governor issued Executive Order No. 2000-292 on September 25, 2000, directing fourteen state agencies to "voluntarily comply" with Subparts C through T and Subpart Z of the Occupational Safety and Health Standards, 29 CFR Part 1910, as revised July 1, 1993, with the exception of those OSHA standards pertaining to firefighters and fire departments inconsistent with any rules promulgated by the Department of Insurance. The Executive 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 does not specify generally applicable safety standards for state agencies and political subdivisions.

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, to 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, as revised July 1, 1993, except for those standards pertaining to firefighters and fire departments that are inconsistent with any rules adopted by the office.

The Task Force must be appointed by July 15, 2008, hold its first meeting by August 15, 2008, and consist of the following 15 members:

- Governor appointee representing a statewide business organization;
- Governor appointee representing organized labor;
- Governor appointee whose work focuses on safety, health, and environmental issues;
- Governor appointee representing the executive branch of state government;
- Governor appointee who is an academic having demonstrated knowledge of pertinent issues related to occupational safety and health;

⁵ 29 U.S.C. s. 652(5).

- Senate President appointee representing a statewide business organization;
- Senate President appointee representing organized labor;
- Senate President appointee whose work focuses on safety, health, and environmental issues;
- Senate President appointee from the Florida Association of Counties;
- Senate President appointee active in private-sector business;

- House Speaker appointee representing a statewide business organization;
- House Speaker appointee representing organized labor;
- House Speaker appointee whose work focuses on safety, health, and environmental issues;
- House Speaker appointee from the Florida League of Cities;
- House Speaker appointee active in private-sector business;

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

The task force will be located within the University of South Florida Safety Florida Consultation Program, and staffed with existing employees of that office. Task force members will serve without compensation, but are 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 must submit a report and recommendations to the Governor, CFO, and the Legislature by January 1, 2009, and will 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:

As drafted, the bill may require OSHA compliance, and governmental entities may incur additional costs associated with meeting those requirements.

The University of South Florida Safety Florida Consultation Program would be responsible for the travel and per diem of Task Force members.

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 [named governmental entities] *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 18 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:

The bill exempts from the OSHA compliance provisions those standards pertaining to firefighters and fire departments which are inconsistent with any rules adopted by the [undefined] office. Exempting standards from a statutory requirement on the basis of an adopted rule raises the issues of a potential legislative delegation problem. 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.⁶

⁶ *Avatar Development Corp. v. State*, 723 So.2d 199, 202 (Fla. 1998), citing *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

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.