

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates the Florida Public Task Force on Workplace Safety within the Safety Florida Consultation Program at the University of South Florida.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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 one year, or created by specific statutory enactment for a time not to exceed three years. It is 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 administration standards are codified at 29 C.F.R. s. 1910.² The Occupational Safety and Health Administration (OSHA) 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 a minimum, as effective as OSHA’s protection of private sector employees. Currently, there are 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.⁴

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the former Department of Labor and Employment Security, abolished the Division of Safety within the department, and repealed the Florida Occupational Safety and Health Act.⁵ Before its repeal, s. 442.20(2), F.S., provided that the division could adopt by rule various OSHA standards,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 The division adopted such rules in chapter 38I-20, F.A.C.; those rules applicable to public sector employers are now repealed.

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 The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/SB 652, Senate Banking and Insurance Committee, March 27, 2008, at 2 (on file with the Senate Banking and Insurance Committee).

⁵ The Florida Occupational Safety and Health Act was codified as chapter 442, F.S.

In 2000, the Governor issued an executive order⁶ directing 14 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.⁷ The order states 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.

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 the program is to provide occupational safety and health educational outreach and services to small businesses within 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.⁸ 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.⁹

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.¹⁰

EFFECT OF BILL

The bill creates the Florida Public Task Force (task force) on Workplace Safety within the University of South Florida Safety Florida Consultation Program. It is staffed with existing employees of that program office.

The task force is charged with developing findings and issuing recommendations regarding innovative ways by which the state may effectively ensure that state agencies and county and city governments comply with subparts C through T and subpart Z of the OSHA Standards, 29 C.F.R. s. 1910, as revised July 1, 1993. The bill, however, creates an exception for those standards pertaining to firefighters and fire departments that are inconsistent with any rules adopted by the Office of Insurance Regulation.

The task force is composed of 15 members who must be appointed by July 15, 2008. The task force must hold its first meeting by August 15, 2008. The Governor must appoint the following five members, including the chair of the task force:

- A representative of a statewide business organization;
- A representative of organized labor;
- A professional whose work focuses on safety, health, and environmental issues;
- A representative of the executive branch of state government; and

⁶ Executive Order No. 2000-292.

⁷ 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.

⁸ The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/SB 652, Senate Banking and Insurance Committee, March 27, 2008, at 3.

⁹ *Id.*

¹⁰ News Release of U.S. Chemical Safety and Hazard Investigation Board, May 24, 2007.

- An academic having demonstrated knowledge of issues pertinent to occupational safety and health.

The President of the Senate must appoint the following five members:

- A representative of a statewide business organization;
- A representative of organized labor;
- A professional whose work focuses on safety, health, and environmental issues;
- A member of the Florida Association of Counties; and
- A person active in private-sector business.

The Speaker of the House of Representatives must appoint the following five members:

- A representative of a statewide business organization;
- A representative of organized labor;
- A professional whose work focuses on safety, health, and environmental issues;
- A member of the Florida League of Cities; and
- A person active in private-sector business.

Members serve without compensation; however, s. 20.052(4), F.S., authorizes members to receive only per diem and reimbursement for travel expenses.

The task force must address the differences in the 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 must submit a report and recommendations to the Governor, Chief Financial Officer, and Legislature by January 1, 2009. It dissolves upon submission of the report.

C. SECTION DIRECTORY:

Section 1 provides a statement of legislative intent.

Section 2 creates the Florida Public Task Force on Workplace Safety within the University of South Florida Safety Florida Consultation Program.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The University of South Florida Safety Florida Consultation Program would be responsible for the administration and staffing of the task force and travel expenses and per diem for task force members. These costs are estimated to be \$100,000.¹¹

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.

Furthermore, the bill does not provide an appropriation for this task force.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to: require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; and reduce the authority that municipalities have to raise revenue.

2. Other:

In its reference to state compliance with OSHA, the bill provides an exception for those standards pertaining to firefighters and fire departments that are inconsistent with any rules adopted by the Office of Insurance Regulation. 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.¹²

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 28-30 and 39-42 of the bill reference "standards pertaining to firefighters and fire departments that are inconsistent with any rules adopted by the Office of Insurance Regulation." The bill should

¹¹ The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/SB 652, Senate Banking and Insurance Committee, March 27, 2008, at 4.

¹² *Avatar Development Corp. v. State*, 723 So.2d 199, 202 (Fla. 1998), citing *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

reference the Division of State Fire Marshal, because the Division is directed to adopt rules under the Florida Firefighter Occupational Safety and Health Act.¹³

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

¹³ The Act covers ss. covers 633.801 – 633.821, F.S.