

STORAGE NAME: h1151a.in

DATE: April 17, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1151

RELATING TO: Firefighter occupational health and safety

SPONSOR(S): Representative Waters

TIED BILL(S):

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

- (1) INSURANCE YEAS 13 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Effective July 1, 2000, Chapter 442, Florida Statutes, the "Florida Occupational Safety and Health Act," is repealed by Chapter 99-240, Laws of Florida. Firefighters and their employers are among those covered under this act.

HB 1151 would create the Florida Firefighters Occupational Safety and Health Act (the Act) under Chapter 633, Florida Statutes, to be administered by the Division of State Fire Marshal (division) within the Department of Insurance.

Firefighters, their employers, and insurers would be required to comply with this act. As part of the Act, the division would be:

- ◆ authorized to conduct safety inspections, consultations, and investigations.
- ◆ given the right of entry for the purposes of investigating, inspecting, examining, and ensuring compliance with the Act.
- ◆ required to identify individual employers that have a high frequency or severity of work-related injuries.
- ◆ required to coordinate with the federal government to avoid duplicate inspections.

Additionally, certain employers would be required to establish safety committees.

Amendment

On April 17, 2000, the Committee on Insurance adopted a "remove everything" amendment that is traveling with HB 1151. See Amendments section.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Effective July 1, 2000, Chapter 442, Florida Statutes, the "Florida Occupational Safety and Health Act," is repealed by Chapter 99-240, Laws of Florida. Firefighters and their employers are among those covered under this act.

In general, firefighters are regulated under Chapter 633, Florida Statutes, which is administered by the Division of State Fire Marshal.

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

¹ 29 U.S.C. s. 651

² 29 U.S.C. s. 667(a)

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 for 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.

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 also 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. 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 442.013, F.S., provides that an employer that violates or fails to implement a safety program could be fined from \$100 to \$5,000 a day for each violation.

Pursuant to s. 442.012, F.S., each public and private sector employer of 20 or more employees that has a high frequency or severity of work-related injuries is required to establish a safety committee. This workplace safety committee would be required to establish and administer safety activities.

Section 44.014, Florida Statutes, requires the division to cooperate with the federal government to avoid duplicate inspections. Under this section, 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

³ 29 U.S.C. s. 651

⁴ 29 U.S.C. s. 667(b)

⁵ Section 442.003, F.S.

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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.

C. EFFECT OF PROPOSED CHANGES:

Florida Firefighters Occupational Safety and Health Act (the Act)

Effective October 1, 2000, most of the provisions in Chapter 442, Florida Statutes, scheduled for repeal on July 1, 2000, would be transferred to the Division of State Fire Marshal (division) within the Department of Insurance. These provisions regarding workplace safety would be made applicable only to firefighters and their employers.

Private employers of firefighters would not be subject to the 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.

All expenses incurred in the administration of the Act would be dispersed from the Insurance Commissioner's Regulatory Trust Fund. Currently, Chapter 442, Florida Statutes is funded, in part, by the Workers' Compensation Administration Trust Fund.

Safety Inspections, Consultations, and Investigations

The division would be given the authority to conduct safety inspections and consultations; study and investigate certain occupational diseases, safety provisions, and the causes of injuries; investigate and prescribe safety devices, safeguards, or protections; and assist in the development and implementation of safety training programs.

Insurers would be required to provide safety consultations to policyholders and notify policyholders that consultations are available. The division would approve all safety and health programs and provide insurers with guidelines to such programs.

Right of Entry

The division would be authorized to enter a place of employment for the purposes of investigating, inspecting, examining, and ensuring compliance with the Act.

Employers with a High Frequency or Severity of Work-related Injuries

The division would be required to identify employers with a high frequency or severity of work-related injuries. Insurers could opt to cancel the coverage of those employers identified by the division, but not implementing a safety and health program.

Safety Committees

Employers with 20 or more employees and employers with fewer than 20 employees identified by the division as having a high frequency or severity of workplace injuries would be required to establish safety committees.

Coordination with the Federal Government

The division would be required to cooperate with, make its records available to, and avoid duplicating inspections made by any agency of the federal government charged with enforcing workplace safety.

Compliance

Employers that violate or fail to comply with the Act could be subject to certain penalties.

Employees could be discharged or disciplined for failure to comply with the Act.

Insurers that violate or fail to comply with the Act could be assessed a civil penalty.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The division may expect revenues as the result of the collection of fines imposed for violations of the Act.

2. Expenditures:

The Division of State Fire Marshal within the Department of Insurance expects the following impact on the Insurance Commissioner's Regulatory Trust Fund to implement the Act:

	<u>FY 00-01</u>	<u>FY 01-02</u>	<u>FY 02-03</u>
Salaries and benefits 7 FTEs	(\$220,000)	(\$227,000)	(\$235,000)
Expenses	(\$105,000)	(\$105,000)	(\$105,000)
Vehicles	(\$126,000)	0	0
<u>Operating Capital Outlay</u>	<u>(\$28,000)</u>	<u>0</u>	<u>0</u>
<u>Total</u>	<u>(\$479,000)</u>	<u>(\$332,000)</u>	<u>(\$340,000)</u>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

While there would be no new expenditures incurred by local governments due to HB 1151 because firefighters and their employers are currently required to comply with Chapter 442, Florida Statutes, that chapter is scheduled for repeal on July 1, 2000. As a result, expenditures that local governments might not have to incur after July 1, 2000, in the absence of this bill, would be continued into the future.

Because of the various costs that could be involved in the organization of safety committees (i.e., employers must pay employees their hourly wage for participating and this amount may vary) and the costs that could be incurred by the purchase of various safety devices, the fiscal impact of HB 1151 is indeterminate.

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While there would be no new fiscal impact on insurers and private sector employers of firefighters due to HB 1151 because insurers and employers of firefighters are currently required to comply with Chapter 442, Florida Statutes, that chapter is scheduled for repeal on July 1, 2000. As a result, expenditures that private sector employers might not have to incur after July 1, 2000, would be continued into the future.

Because of the various costs that could be involved in the organization of safety committees (i.e., employers must pay employees their hourly wage for participating and this amount may vary) and the costs that could be incurred by the purchase of various safety devices, the fiscal impact of HB 1151 is indeterminate.

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county

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

The bill does not reduce the amount of state tax shared with counties and municipalities

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

Current rules that have been adopted by the Division of Safety within the Department of Labor and Employment Security under Chapter 442, Florida Statutes, would be transferred to the division and made applicable only to insurers, firefighters, and their employers.

C. OTHER COMMENTS:

The definition of the term "employer" includes private sector employers, and depending on the application of the Act, could conflict with the federal OSH Act.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17, 2000, the Committee on Insurance adopted a “remove everything” amendment that is traveling with the bill. This amendment would exclude firefighters, firefighter employers, and firefighter places of employment from the safety provisions of Chapter 442, Florida Statutes. As in the bill, the powers and duties of the Division of Safety as they relate to firefighters, firefighter employers, and firefighter places of employment would be transferred to the Division of State Fire Marshal within the Department of Insurance. In addition to creating new sections in Chapter 633, Florida Statutes, other than transferring sections from Chapter 442, differences between the bill as filed and this amendment include:

- ◆ Under the amendment, firefighter employers would not be subject to fiscal penalties for refusing to admit a representative of the division to a place of employment or making false statements to an insurer, as they are in the bill. These actions would be punishable as a second degree misdemeanor, as under Chapter 442, Florida Statutes.
- ◆ The amendment would remove the confidentiality clause from the Firefighter Occupational Safety and Health Act.
- ◆ The amendment would not include the investigation of toxic substances in the workplace in Chapter 633, Florida Statutes. The investigation of toxic substances in the workplace would remain under the Division of Safety within the Department of Labor and Employment Security.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge