

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5B Florida Occupational Safety and Health State Plan

SPONSOR(S): Zika

TIED BILLS: IDEN./SIM. BILLS: SB 6-B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee		Fortenberry	Williamson

SUMMARY ANALYSIS

The federal Occupational Safety and Health Act of 1970 (OSH Act) established the Occupational Safety and Health Administration (OSHA) within the United States Department of Labor (DOL) and granted OSHA the authority to promulgate, modify, or revoke occupational safety and health standards that apply to private employers, federal agencies, and the United States Postal Service. The OSH Act requires employers to provide a safe workplace that does not present serious hazards and to follow all OSHA safety and health standards.

At the time that the OSH Act was passed, Congress recognized that some states already operated their own effective occupational safety and health programs. Therefore, the OSH Act provided the option for states to run "their own OSHA program" (state plan) with OSHA approval. OSHA requires state plans to include standards at least as effective as the federal OSHA standards. State plans must also cover state and local government employees, in addition to private employees. The OSH Act contains various criteria which, if met, require that OSHA approve a state plan.

The bill establishes that it would be in the state's best interest to explore the development of a state plan for Florida by finding that a state plan would enhance occupational safety and health by implementing practices and standards that reduce the incidence of employee accidents, occupational diseases, and fatalities. It also finds that a state plan would provide the state with the flexibility to meet the unique needs of its businesses and workforce.

The bill directs the Executive Office of the Governor (EOG) to develop a proposal for a state plan (proposal) to assert jurisdiction over occupational safety and health issues for government and private employees and to designate or hire appropriate staff to develop the proposal. The bill directs the Divisions of Risk Management and Workers' Compensation within the Department of Financial Services, the Department of Health, and the Department of Business and Professional Regulation, upon the EOG's request, to assist with the proposal. The bill requires the EOG to provide a status report to the President of the Senate and the Speaker of the House of Representatives by January 17, 2022, which contains at least the following:

- A timeline for completion of the proposal and the state plan, including establishment of an agency to oversee the state plan, legislation necessary to implement the state plan, and the scope of coverage with respect to employees covered under, and excluded from, the state plan.
- An explanation of whether the EOG needs to hire additional employees, consultants, or contractors to assist with the development of the proposal and the state plan and whether appropriation of additional funds is required to meet this need.

For the 2021-2022 fiscal year, the bill appropriates the nonrecurring sum of \$1 million to the EOG from the General Revenue Fund to implement the bill. The bill has no impact on state government revenues, local government revenues or expenditures, or a direct economic impact on the private sector.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Occupational Safety and Health Administration

The impetus for the passage of the federal Occupational Safety and Health Act of 1970 (OSH Act) was public outcry against deteriorating workplace safety conditions in the United States. In the 1960s, occupational injuries and illnesses increased in frequency and severity.¹ Disabling injuries increased 20 percent during that decade, and 14,000 workers died on the job each year.² In the 25 years prior to the passage of the OSH Act, more than 400,000 workers in the United States were killed by work-related accidents and diseases, and almost 50 million additional workers experienced disabling workplace injuries.³

The OSH Act established the Occupational Safety and Health Administration (OSHA) within the United States Department of Labor (DOL) and granted OSHA the authority to promulgate, modify, or revoke occupational safety and health standards that apply to private employers, federal agencies, and the United States Postal Service.⁴

OSHA has specific protections relating to potential hazards and other issues, including falls,⁵ hazard communication,⁶ respiratory protection,⁷ harmful chemicals,⁸ ladders and scaffolding,⁹ dangerous machines,¹⁰ dangers of working in confined spaces,¹¹ hazardous energy control,¹² and eye and face protection.¹³

If no specific rule applies, an employer is subject to the general duty clause of the OSH Act, which requires an employer to protect its workers from all serious recognized hazards, and allows OSHA to immediately recognize and respond to previously unknown dangers.¹⁴ While OSHA monitors high-risk industries more closely, its regulations apply to almost all industries.

OSHA has the authority to enforce employer compliance with its standards and with the general duty clause through the issuance of abatement orders, citations, and civil monetary penalties. The OSH Act does not cover state or local government agencies or units.

Workers' Rights under the OSH Act

A worker employed by an employer falling under OSHA's jurisdiction has the right to:

- Work under safe conditions that do not pose a serious threat to the worker's health and safety;
- Notify the employer about workplace hazards without fear of retaliation or discrimination;
- File a safety and health complaint with OSHA confidentially;

¹ OSHA's 30th Anniversary, <https://www.osha.gov/aboutosha/30-years> (last visited Nov. 4, 2021).

² *Id.*

³ *Id.*

⁴ Occupational Safety and Health Act of 1970 (OSH Act), (29 USC §651 et seq.; 29 CFR Parts 1900 to 2400), <https://www.osha.gov/laws-regs/oshact/completeoshact> (last visited Nov. 4, 2021).

⁵ OSH Act at 29 CFR 1926.501 and 29 CFR 1926.503.

⁶ OSH Act at 29 CFR 1910.1200.

⁷ OSH Act at 29 CFR 1910.134.

⁸ OSH Act at 29 CFR 1910.101 to 1910.106.

⁹ OSH Act at 29 CFR 1926.1053 and 29 CFR 1926.451.

¹⁰ OSH Act at 29 CFR 1910.212.

¹¹ OSH Act at 29 CFR 1910.146.

¹² OSH Act at 29 CFR 1910.147.

¹³ OSH Act at 29 CFR 1926.102.

¹⁴ OSH Act, *supra*, note 12.

- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to his or her workplace that is performed in a language and vocabulary that the worker understands;
- Review records of work-related injuries and illnesses that occur in the workplace;
- Receive copies of the results from tests and monitoring done to find and measure hazards in the workplace;
- Get copies of his or her own workplace medical records;
- Participate in an OSHA inspection and speak in private with the inspector;
- File a complaint with OSHA if the worker has been retaliated against by his or her employer as the result of requesting an inspection or exercising any of his or her other rights under the OSH Act;
- File a complaint if retaliated against for acting as a “whistleblower”; and
- Refuse hazardous work if:
 - Where possible, the worker asked the employer to eliminate the danger, and the employer failed to do so;
 - The worker refused to work in “good faith”;¹⁵
 - A reasonable person would agree that there is a real danger of death or serious injury; and
 - Due to the urgency of the hazard, there is not sufficient time to get the hazard corrected through regular enforcement channels, such as requesting an OSHA inspection.¹⁶

Employers’ Responsibilities under the OSH Act

The OSH Act requires employers to provide a safe workplace that does not present serious hazards and to follow all OSHA safety and health standards.¹⁷ The Act further requires employers to try to eliminate or reduce hazards first by making feasible changes in working conditions such as switching to safer chemicals or enclosing processes to trap harmful fumes rather than merely relying on personal protective equipment such as masks, gloves, or earplugs.¹⁸

Employers must also:

- Prominently display an official OSHA poster that describes rights and responsibilities under the OSH Act;
- Inform workers about hazards through training, labels, alarms, color-coded systems, chemical information sheets, and other methods;
- Train workers in a language and vocabulary they can understand;
- Keep accurate records of work-related injuries and illnesses;
- Perform tests in the workplace, such as air sampling, required by some OSHA standards;
- Provide hearing exams or other medical tests required by OSHA standards;
- Post injury and illness data and OSHA citations in a location visible to workers;
- Notify OSHA within 8 hours of a workplace fatality;
- Notify OSHA within 24 hours of any work-related inpatient hospitalization, amputation or loss of an eye; and
- Not retaliate against workers for exercising their rights under the law, including their right to report a work-related injury or illness.¹⁹

¹⁵ Refusal to work in “good faith” means the worker must genuinely believe that an imminent danger exists. Occupational Safety and Health Administration, *Workers’ Right to Refuse Dangerous Work*, <https://www.osha.gov/workers/right-to-refuse> (last visited Nov. 3, 2021).

¹⁶ Occupational Safety and Health Administration, *Workers’ Rights*, <https://www.osha.gov/sites/default/files/publications/osha3021.pdf> (last visited Nov. 3, 2021); Occupational Safety and Health Administration, *Workers’ Right to Refuse Dangerous Work*, <https://www.osha.gov/workers/right-to-refuse> (last visited Nov. 3, 2021).

¹⁷ Occupational Safety and Health Administration, *Workers’ Rights*, <https://www.osha.gov/sites/default/files/publications/osha3021.pdf> (last visited Nov. 3, 2021)

¹⁸ *Id.*

¹⁹ *Id.*

OSHA Worksite Inspections

OSHA conducts on-site, telephonic, and facsimile inspections of worksites to enforce the OSH Act provisions that protects workers and their rights. Trained compliance officers conduct worksite inspections based on the following priorities:

- Imminent danger;
- A fatality or hospitalization;
- Worker complaints and referrals;
- Targeted inspections related to particular hazards with high injury rates; and
- Follow-up inspections.²⁰

OSHA initiates inspections without advance notice, regardless of whether the inspection is in response to a complaint or is a programmed inspection.²¹

In the 30 years since OSHA's establishment, workplace fatalities have declined by 60 percent, and occupational injury and illness rates have declined by 40 percent. During that same period, U.S. employment has nearly doubled from 56 million workers at 3.5 million worksites to 105 million workers at nearly 6.9 million worksites.²²

OSHA Injury and Illness Recordkeeping and Reporting

With the exception of certain low-risk industries,²³ OSHA requires many employers with over 10 employees to keep a record of serious work-related injuries and illnesses.²⁴ Minor injuries requiring first aid only do not need to be recorded.²⁵ Recording of injuries and illnesses aids in the evaluation of workplace safety, understanding industry standards, and implementing protections.²⁶ On a yearly basis, employers must post a summary of recordable injuries and illnesses in a place where it typically posts notices to employees.²⁷

State Plans

At the time that the OSH Act was passed, Congress recognized that some states already operated their own effective occupational safety and health programs.²⁸ Therefore, the OSH Act provided the option for states to run “their own OSHA program” (state plan) with OSHA approval.²⁹ States that choose to operate a state plan can receive up to 50 percent of the funding necessary to run their plans from OSHA once OSHA preliminarily approves the plans.³⁰ OSHA requires state plans to include standards at least as effective as the federal OSHA standards.³¹ State plans must also cover state and local government employees with their plans, in addition to private employees.³²

The OSH Act contains various criteria which, if met, require that OSHA approve a state plan.³³ In addition to having standards that are at least as effective as the federal standards, the criteria include, but are not limited to:

²⁰ *Id.*

²¹ *Id.*

²² OSHA's 30th Anniversary, *supra*, note 9.

²³ See United States Department of Labor, OSHA, *Non-Mandatory Appendix A to Subpart B—Partially Exempt Industries*, <https://www.osha.gov/recordkeeping/presentations/exempttable> (last visited Nov. 4, 2021).

²⁴ United States Department of Labor, OSHA, *OSHA Injury and Illness Recordkeeping and Reporting Requirements*, <https://www.osha.gov/recordkeeping> (last visited Nov. 8, 2021).

²⁵ *Id.*

²⁶ *Id.*

²⁷ 29 C.F.R. § 1904 (2016).

²⁸ OSHA's 30th Anniversary, *supra*, note 9.

²⁹ *Id.* See 29 U.S.C. § 667.

³⁰ OSHA's 30th Anniversary, *supra*, note 9.

³¹ *Id.*

³² *Id.*

³³ 29 U.S.C. § 667.

- Designating a state agency to administer the state plan;
- Providing a right of entry and inspection of all workplaces that are subject to the state plan;
- Containing assurances in the state plan that the state agency administering the plan will have the necessary authority and personnel to enforce the plan; and
- Continuing to make reports to the federal Secretary of Labor while under the state plan.³⁴

OSHA approved the first state plans for South Carolina, Montana, and Oregon in 1972.³⁵ Today, 21 states plus Puerto Rico operate their own state plans that cover private employees and government employees.³⁶ An additional five states and the United States Virgin Islands operate plans that cover only government employees.³⁷ OSHA estimates that 40 percent of workers in the United States are covered by state plans.³⁸

California's state plan (CA plan) exceeds federal standards in some areas. For example, the CA plan contains a standard designed to protect workers against heat illness, while the federal standards do not address heat-related illnesses.³⁹ In contrast, OSHA rejected an Arizona standard regarding construction fall protection that it deemed "not as effective as the federal standard."⁴⁰

Any state or United States territory may submit a state plan for approval by OSHA.⁴¹ The first step in the approval process is to submit a developmental plan to OSHA, which must contain state legislation, regulations and procedures for establishing occupational safety and health standards, enforcement systems, appeals processes, and sufficient staffing to implement the state plan.⁴² A developmental plan must also demonstrate that within three years the state will have the necessary infrastructure to be effective.⁴³

Once a state has submitted a developmental state plan, the state plan is eligible for certification, but the certification process does not confer any judgment on the effectiveness of the plan.⁴⁴ When OSHA determines that a state meets the statutory state plan requirements, OSHA and the state may enter into an Operational Status Agreement (Agreement) that outlines which employers will be under state or federal jurisdiction for occupational safety and health issues.⁴⁵ A plan may operate indefinitely under an Agreement without ever receiving final approval from OSHA, and the Agreement may be modified upon agreement by the state and OSHA.⁴⁶

OSHA may issue final approval to a state plan one year or more after certification.⁴⁷ If OSHA decides not to grant approval of a state plan, the state may request a hearing before an administrative law judge of the Occupational Safety and Health Review Commission.⁴⁸

History of Occupational Safety and Health Regulation in Florida

³⁴ *Id.*

³⁵ OSHA's 30th Anniversary, *supra*, note 9.

³⁶ United States Department of Labor, OSHA, *State Plans*, <https://www.osha.gov/stateplans/> (last visited Nov. 8, 2021).

³⁷ *Id.*

³⁸ Congressional Research Service (CRS), *OSHA State Plans: In Brief, with Examples from California and Arizona*, <https://crsreports.congress.gov/product/pdf/R/R43969>, (last visited Nov. 8, 2021).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ The DOL maintains an OSHA instruction manual of approximately 170 pages, which is designed to provide "OSHA offices and State Plans with the policies and procedures for establishing, monitoring, supporting, and withdrawing State Plans." OSHA Instruction, https://www.osha.gov/sites/default/files/enforcement/directives/CSP_01-00-005.pdf (last visited Nov. 8, 2021).

⁴² CRS, *supra*, note 52.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* For example, California has been operating under an Agreement since 1977, as it has never received OSHA's final approval for its state plan. An additional five states and Puerto Rico are also operating under Agreements rather than final approval.

⁴⁷ *Id.*

⁴⁸ *Id.*

While it has never operated an OSHA-approved state plan, the state maintained some of its own safety and health standards (state standards) from 1993 to 2000.⁴⁹ The state standards complemented the OSH Act and was administered by the Division of Safety (Division) within the Department of Labor and Employment Security (DLES). The Division was tasked with identifying employers with a high frequency or severity of work-related injuries, conducting safety inspections of those employers, and assisting those employers with implementing employee safety and health programs.⁵⁰ The Division was also required to study occupational diseases, including how to prevent and control them, and to study and investigate causes of injuries, including inspections of workplaces as necessary.⁵¹ The Division had the authority to prescribe what safety devices, safeguards, or other means of protection employers needed to have in place and to order reasonable standards and rules for construction, repair, and maintenance of places of employment.⁵²

In addition to specifying the duties of the Division, the state standards placed certain requirements on employers operating within the state. The state standards mandated that every employer, including public, quasi-public, and private employers, “furnish employment that [was] safe for employees...furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render...employment safe” and “do every other thing reasonably necessary to protect the lives, health, and safety of...employees.”⁵³ Each employer with 20 or more employees or employer with fewer than 20 employees that the Division identified as having a high frequency or severity of work-related injuries was required to establish a workplace safety committee.⁵⁴

Failure by an employer to comply with the requirements of the state standards resulted in the assessment of a civil penalty not to exceed \$50,000 per violation,⁵⁵ as well as the ability for the Division to seek compliance by bringing a case in the Circuit Court of Leon County.⁵⁶ If an employer found to have a high frequency or severity of work-related injuries failed to implement a safety and health program, that employer’s workers’ compensation insurance carrier could cancel its contract.⁵⁷ Furthermore, if an employer refused to admit staff of the Division to conduct an inspection or investigation, the employer committed a second degree misdemeanor.⁵⁸

In 1999, the Legislature enacted ch. 99-240, Laws of Fla., which abolished the Division, and repealed ch. 442, F.S., the Florida Occupational Safety and Health Act, effective July 1, 2000. The state also began the process of dissolving the DLES in 2000.

Current Status and Development of a Florida Occupational Safety and Health Plan

In 2010, the Florida Department of Health (DOH) received federal funding to begin an occupational health and safety program, which is intended to “characterize work-related injuries and illnesses and to use this information to inform prevention activities that will improve the health and safety of Florida’s workforce.”⁵⁹ However, following the repeal of the state standards, OSHA has remained the only entity having authority over safety and health issues for private employees in the state. While OSHA does not cover government employees in this state, government employees do receive the protections and benefits available through the workers’ compensation system.

Effect of the Bill

⁴⁹ See ch. 442, F.S. (1998), which was known as the “Florida Occupational Safety and Health Act.”

⁵⁰ S. 442.003, F.S. (1998).

⁵¹ Ss. 442.005–442.006, F.S. (1998).

⁵² S. 442.008, F.S. (1998).

⁵³ S. 442.007, F.S. (1998).

⁵⁴ S. 442.012, F.S. (1998).

⁵⁵ S. 442.013, F.S. (1998).

⁵⁶ S. 442.019, F.S. (1998).

⁵⁷ S. 442.015, F.S. (1998).

⁵⁸ S. 442.017, F.S. (1998).

⁵⁹ Racial & Ethnic Disparity Work-Related Health Disparities, Florida, 2010, at pg. 3, <http://www.floridahealth.gov/environmental-health/occupational-health-surveillance/racial-disparity2.pdf> (last visited Nov. 10, 2021).

The bill establishes that it would be in the state's best interest to explore the development of a state plan for Florida by finding that a state plan would enhance occupational safety and health by implementing practices and standards that reduce the incidence of employee accidents, occupational diseases, and fatalities. It also finds that a state plan would provide the state with the flexibility to meet the unique needs of its businesses and workforce. While there is some discretion for the state to determine the scope of coverage of certain employees, a state plan would cover government employees in Florida, in addition to private ones.

The bill directs the Executive Office of the Governor (EOG) to develop a proposal for a state plan (proposal) to assert state jurisdiction over occupational safety and health issues for government and private employees and to designate or hire appropriate staff to develop the proposal. The bill also directs the Divisions of Risk Management and Workers' Compensation within the Department of Financial Services, the Department of Health, and the Department of Business and Professional Regulation, upon the EOG's request, to assist with the development of the proposal.

The bill requires the EOG to provide a status report to the President of the Senate and the Speaker of the House of Representatives by January 17, 2022, which contains at least the following information:

- A timeline for completion of the proposal and a state plan, including establishment of an agency to oversee the state plan, legislation necessary to implement the state plan, and the scope of coverage with respect to employees covered under, and excluded from, the state plan.
- An explanation of whether the EOG needs to hire additional employees, consultants, or contractors to assist with the development of the proposal and state plan and whether appropriation of additional funds is required to meet this need.

B. SECTION DIRECTORY:

Section 1. Provides legislative intent and directs the EOG to develop a proposal for a state plan to assert jurisdiction over occupational safety and health issues for government and private employees.

Section 2. Provides for an appropriation.

Section 3. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For the 2021-2022 fiscal year, the bill appropriates the nonrecurring sum of \$1 million to the EOG from the General Revenue Fund for the purposes of carrying out the tasks required by the bill. The bill also provides that in its report to the Legislature, the EOG may ask for additional funds as necessary to hire personnel to complete the development of the proposal for a state plan.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.