

# Florida Public Task Force on Workplace Safety

Minutes of Meeting of December 2, 2008

Haskell Center Building

Jacksonville, Florida

10:00 A.M.—4:00 P.M.

## ***Participants***

### *Governor's appointees:*

Linda South, Chair  
Marianne Capozziello  
Mark Friend  
Paul Imbrone  
Mike Marinan

### *Project staff:*

Charlene Vespi, Coordinator  
Greg Bachman  
Charlie Cramer  
Stephanie Makar

### *Senate appointees:*

James Baiardi  
John Henshaw  
John Kozey  
Karen Phillips  
James Robertson

### *Court reporter:*

Diana C. Garcia  
Cynthia R. Green

## **Audience members**

### *House appointees:*

Scott Blaser  
Albert Huston  
Cindy Kane  
Danny Shaw  
Hastings Williams

## **Contents**

Opening of Meeting 3

Speakers and Discussion 3

David Krause, Florida Department of Health

Les Conley, Laborers International Union of North America

David Heidorn, American Society of Safety Engineers

Scott Blaser, Florida Municipal Association for Safety and Health

Doug Prentiss, Florida Water Environment Association

Robert Capelli, Lutz Volunteer Fire Rescue; Meisner Marine Construction

Reports and Discussion 7

Data Sets: Andrew Sabolic, Florida Division of Workers' Compensation

Survey of Public Entities: Greg Bachman, University of South Florida  
OSHA Consultation Program

Proposal Revision: Mark Friend, Embry-Riddle Aeronautical University

Speakers and Discussion 8

Audrey Gibson, Florida House of Representatives

Katherine Cox, American Federation of State, County, and Municipal  
Employees

Task Force Deliberation 10

Data Adequacy

Report Outline

Recommendations

After opening the meeting, Secretary South introduced and thanked Dr. Tom Bernard, chair of Environmental Occupational Health at the University of South Florida, who oversees the department staffing the task force. She also introduced Dave Balz, senior vice-president of Haskell Company. Mr. Balz welcomed the task force to the center and commended their work.

On Karen Phillips's motion, the November 14, 2008, minutes were approved with the correction that John Kozey is not a member of ASSE.

### ***Speakers and Discussion***

**Dr. David Krause**, State Toxicologist, Florida Department of Health: Dr. Krause distributed a position statement on occupational health from the Division of Environmental Health (DEH). The division will be seeking funding from the National Institutes for Occupational Health and Safety (NIOSH), as well as other agencies, for occupational safety and health surveillance. A surveillance system for injuries and diseases affecting the entire Florida workforce is critical to public health, particularly since the state safety bureau ended in 2000. DEH does not have a surveillance system but is participating in national meetings. It does analyze basic indicators, including pesticide injuries and adult blood lead testing.

If DEH receives funding for an occupational health and safety surveillance program, it will:

- collect and analyze, for both private and public sectors, standardized indicators of occupational health conditions to determine the magnitude and trends of hazards, diseases, injuries, and deaths
- establish two FTE positions for this work
- establish an advisory committee
- integrate collected data with data from existing surveillance (pesticide, lead)
- participate in a consortium of state programs
- publish a report that identifies high-risk activities resulting in costly or frequent injuries
- publish recommendations for reducing the hazards
- track changes in injury rates relating to implementation of health and safety programs and report them annually

**Discussion:** Dr. Krause explained that the NIOSH request for proposals should be published in January. NIOSH has ongoing funding and wants to support one or two additional states and expand currently funded state surveillance plans. If funded, Florida would use NIOSH's 13 basic indicators, refining them for Florida. Its method would be database surveillance, including workers' comp.

**Les Conley**, Laborers International Union of North America: Mr. Conley's union represents many public workers in Florida; overall it includes a million members in Canada, the United States, and the islands. He is a chemical applicator for the city of Orlando, with prior experience in steel working and construction.

Mr. Conley strongly urged the task force to adopt the OSHA standards as a starting place from which local governments could adopt their own health and safety plans and train workers. He recommended safety coordinators with at least half-time assignments. A successful program in his union is a management-worker council.

Mr. Conley cited examples of injuries resulting from no state safety requirements: the death of a worker in a front-end loader accident and workers' deteriorating health from years of applying pesticides in public gardens. He noted that statistics do not always capture the latter illnesses.

Mr. Conley believes that peer pressure in the workplace has an effect: When he follows chemical directions carefully, others observe and follow. However, that is insufficient. He also discussed public endangerment. A specific example is the potentially carcinogenic weed killer atrazine, used for agriculture and public greenspace. Agricultural workers cannot enter a treated area for 24 hours, yet the labeling on chemicals used in some cites specifies not to enter "until dry." He recommends improving the labeling on all chemicals up to agricultural standards.

Mr. Conley concluded that OSHA standards are vetted and and that local governments, with time and reasonable guidelines, will follow them if directed to do so.

**Discussion:** In Mr. Conley's union experience with a broad range of work sites, there is no consistency in safety training programs. He cited a pesticide bird kill that could have been avoided if OSHA standards had been followed.

**David Heidorn**, Manager, Government Affairs and Policy, American Society of Safety Engineers (ASSE): Mr. Heidorn's focus in testimony was the economic case for safety regulation. Substantial academic research does not yet exist. OSHA's research has concentrated on safety procedures. NIOSH is almost the only resource for occupational safety and health research, and ASSE is working with them to expand research.

He gave the committee the ASSE white paper, "Return on Investment for Safety, Health and Environmental Management Programs," which compiles the existing evidence about why companies invest in safety. Beyond the statistic that OSHA's implementation has reduced workplace fatalities from 14,000 to 6,000, despite a burgeoning workforce, employers' experience reveals that companies are not waiting for the academics: the best managers invest in safety and health and are rewarded for doing so. To the ASSE, the questions are:

- How can Florida allow its employers not to protect its workers in order to protect its bottom line, as does every other large employer?
- Why are Florida taxpayers probably paying more than they need in workers' comp, lost days, and nonproductive workers?

From the white paper, Mr. Heidorn noted that for-profit companies achieve significant economic return from investment in workplace safety. A survey of employers' reasons for the investment yielded the hierarchy:

1. cost of workers' compensation insurance
2. doing the right thing
3. increasing profitability

Mr. Heidorn emphasized that a small incentive, even the possibility of public questioning of workers' comp rates, can affect public employers' practices. He also noted that public employers want employees to be safe. Yet with increasingly reduced budgets, managers have no funds for safety. A tragedy like the Daytona explosion may result, with much higher costs and loss of life. The ASSE strongly urges the task force to support the proposal of Mark Friend.

**Scott Blaser**, representing the Florida Municipal Association for Safety and Health (FMASH): Mr. Blaser presented a proposal on behalf of the board of directors of FMASH, a not-for-profit organization created after the end of the Florida's Division of Safety. According to Statute 768.28, any public entity can be a member. The FMASH mission is to help safety and health personnel in local governments prevent accidents. Methods include an information website, training classes, sharing of experience and costs, and strategic partnerships.

FMASH proposes legislation directing the Florida Municipal Association for Safety and Health, along with other Florida safety and health organizations, to create a voluntary safety and health accreditation program. Points include:

- The modeling statute is 943.125, which in 1993 directed the Florida Sheriff's Association and the Florida Police Chief's Association to create a voluntary law enforcement accreditation program.
- The accreditation commission would comprise 15 members to include (as an example) representatives from four cities, towns or villages; two counties; two state departments; four other special taxing entities; and one representative each from FMASH, the Florida Association of Counties, and the Florida League of Cities. Members would serve a one-year term.
- Costs to public entities would be relative to size and number of employees, with no cost to very small entities.
- Assessors—those performing accreditations—would serve voluntarily, with any necessary room and board paid by the entity seeking accreditation.

- Accreditation will benefit employees by requiring a written safety plan and accountability. It will be a coveted award that improves morale.
- It will benefit the employer through in-depth operation reviews, cooperation and consistency with other public entities, streamlined operation, access to information, and objective measures for budget and personnel decisions.

**Discussion:** FMASH believes a behavioral-based rather than enforcement-based program would achieve “buy-in” faster and more cost effectively. He reported that 130 law enforcement agencies are accredited and that others want to emulate them. FMASH’s role would be instrumental only; if the accreditation commission succeeded, FMASH would dissolve. The law enforcement program had no start-up costs because commission members were volunteers. With growth, accreditation fees allowed hiring of staff; also, a state grant now funds some administration. Accreditation seekers do incur costs, but only voluntarily.

**Doug Prentiss**, Florida Water Environment Association: Mr. Prentiss explained that his group is a trade association for the wastewater industry. He asked the task force to consider the inclusion of trade associations in any development of draft recommendations 6 and 8, which involve mentoring and partnerships to promote workplace safety. His industry, for example, keeps historical data and conducts safety reviews and would be a valuable participant.

**Robert Capelli**, Volunteer Fire Chief, Lutz Volunteer Fire Rescue; Safety Manager, Meisner Marine Construction: Mr. Capelli, representing the Lutz Fire Rescue, is also a member of ASSE and Certified Safety Professionals (CSP). Mr. Capelli argued for recommending the most appropriate and stringent standards: (1) including both OSHA CFR 1910 and 1926 and (2) directing employers to follow any industry-specific regulation in the state—such as for firefighting—that may go beyond these CFRs. Private contractors follow OSHA 1926 and should not face a conflict of rules when working for public entities. In corporate practice, he said, when competing regulations exist, the more stringent requirement applies.

For fire departments, Mr. Capelli recommended uniform standards throughout the state specific to the occupation. He also raised the issue of whether volunteer firefighters are public employees. That should be defined, as OSHA has done, so that volunteers’ workplace safety requirements are clear.

Mr. Capelli noted that USF's SHARP Program is an excellent model for voluntary accreditation.

**Discussion:** Mr. Capelli’s volunteer fire department follows the OSHA HAZWOPER standard, Hillsborough County Fire Rescue rules, and NFPA 1500, an industry standard that most fire agencies are adopting. The necessary education and training are the right things to do for personnel and to achieve certification in Florida.

## ***Report and Discussion***

### **Data Sets**

**Andrew Sabolic**, Assistant Director, Florida Division of Workers' Compensation: Mr. Sabolic provided information requested after his presentation on November 14. His explanations and the committee's questions referred to graphs covering 2000 through 2007. Main points of discussion were:

- Lost-time cases per 1,000 employees declined for both private and public sectors.
- High-risk industries in the private sector were broken down into construction, manufacturing, and transportation. Injuries increased in construction, which had growth in jobs.
- Numbers of permanent disability injuries were presented for private and public sectors. Both sectors declined. When police and fire were segmented from other public occupations, both segments trended down.
- The top 10 causes of permanent total disabilities were very similar for the private and public sectors. The main cause is falling or slipping.

### **Survey of Public Entities**

**Greg Bachman**, University of South Florida's SafetyFlorida OSHA Consultation Program: Mr. Bachman presented results from the task force's electronic survey of public employers' safety management practices.

- 97 entities responded: 32 county, 30 city, 30 state agency, 7 school district. (Because of the sample size of 97, these numbers also generally represent percentages.)
- Positions of respondents: 40% safety director, 34% risk manager, 5% city manager, 2% county manager.
- Number of employees: 9% 50 or fewer; 35% 2,000 or more.
- A safety plan in place: 96% yes, 4% no.
- Safety plan based on OSHA CFR 1910: 79% yes, 15.6% no.
- Number of full-time equivalent (FTE) safety personnel: 54% one person, 21% 10 or more. (Respondents' comments indicate that the 54% may represent one FTE or less.)

### **Proposal Revision**

**Mark Friend**, Chair, Department of Applied Aviation Sciences, Embry-Riddle Aeronautical University: Mr. Friend had been asked to define how his proposal,

submitted at the meeting of November 14, differed from current state practice. He provided members with a revised proposal.

Mr. Friend reviewed for members that Statute 284.50 and Executive Order 2000-292, together, outline a safety management program for state-level agencies, specify voluntary compliance with standards from OSHA 1910 (with exceptions pertaining to firefighters), require an annual report, and direct other public entities to review their programs and attempt to keep them compliant with earlier law. He concluded that:

- A substantial framework for his proposal is in place.
- The task force should recommend that the legislature apply the standards for state agencies to all public entities, possibly adding OSHA 1926, as Mr. Capelli suggested.
- Include a recordkeeping provision and the incentive of an increased discount for workers' compensation premiums.

### ***Speakers and Discussion***

**Representative Audrey Gibson**, Florida House of Representatives, District 15, Duval County: Representative Gibson, the House sponsor of the bill creating the task force, greeted the members and asked for questions. Ms. Capozziello thanked Ms. Gibson for enabling work on the important issue of workplace safety. Secretary South, noting the task force's weighing of financial reality in its recommendations—particularly unfunded mandates—asked Representative Gibson for her perspective as a member of the legislature. Ms. Gibson replied that the sole duty of the task force is to develop recommendations that are best for protecting the public workforce. It falls on the legislature to decide about funding. The members should not “even think about the dollars and cents”; they are to deliver recommendations.

**Katherine Cox**, Assistant Director for Health and Safety, American Federation of State, County, and Municipal Employees (AFSCME): AFSCME represents 1.4 million public sector workers in the nation and some 20,000 in Florida. Ms. Cox read a letter from Kevin Radler, a 24-year employee of the Miami-Dade County Water and Sewer Department. As a line production plant operator, he was exposed to massive amounts of lime dust, resulting in permanent respiratory damage. In 2007 he was awarded long-term disability until he retires. He also cited a recent lime-silo explosion that sent workers to the hospital. Mr. Radler wrote that best practices are supposed to be followed but are not. His illness would have been detected early if OSHA and EPA standards had been met, along with regular medical surveillance. Without required OSHA guidelines, he believes more public workers will be hurt and killed.

Ms. Cox reported that 22 states implement OSHA for both private and public sectors (“state-plan states”) and receive up to a 50/50 federal funding match; three states (Connecticut, New York, New Jersey) implement public-sector-only OSHA plans; two states (Ohio and Illinois) cover public workers with non-OSHA plans.

Because no Florida agency has authority to oversee the health and safety of public workers, AFSCME must rely on voluntary guidelines that carry no enforcement power. Even the contract language it negotiates is often weak. The collective bargaining agreement with the state uses the vague term “‘reasonable effort’ to protect”; and while it requires employees to report unsafe conditions, there is no whistleblower protection or confidential reporting method. AFSCME finds it unconscionable that in Florida a worker's level of protection is dependent on whether the employer is public or private.

She noted the irony in the task force’s inability to find sound, readily comparable data about Florida’s public sector, while OSHA entities must collect data in a consistent format. She provided some national statistics from the Bureau of Labor Statistics, including a 2% rise in fatalities for government workers in 2006, and discussed hazardous occupations such as psychiatric workers and chemical handlers.

For AFSCME, the ideal option is that Florida be an OSHA state-plan, though that is unlikely. The committee has already discussed public-sector-only OSHA states. She drew attention to Ohio’s alternate approach, which legislatively requires the state to adopt all federal occupation safety and health laws, administered under the Ohio Workers’ Compensation Bureau. The bureau is mandated to “adequately ensure to the extent technologically feasible, and on the basis of the best available evidence, that no public employee will suffer material impairment of health or functional capacity as a result of the hazards dealt with by the rule.” A General Duty Clause guarantees safety protection in any setting for which no specific standard exists. Using the Workers’ Comp Bureau did not require new infrastructure and minimized cost.

AFSCME recommends that Florida adopt these core components in a state plan:

- the right to refuse work under unsafe conditions
- inspection and investigation
- authority to issue citations
- collection, compilation, and analysis of employment risk reduction statistics
- whistle blower protections for workers who report unsafe conditions

Ms. Cox emphasized the human lives that cannot be ignored. She submitted that the return on investment would be better employee morale, lower absentee rates, and reduced insurance costs. AFSCME welcomes the opportunity to work with the state on a plan.

**Discussion:** Points included:

- OSHA has no authority to enforce regulations within a state for the public sector, whatever the plan. The state is the enforcement authority.
- In a state-plan OSHA state, the state enforces for both the private and public sectors.
- An exception occurs in public hospitals. When OSHA promulgated the federal blood-borne pathogen standard, it could not cover public healthcare workers. After some time, an added clause covered facilities that accept Medicaid and Medicare (almost all public hospitals). For that standard, public sector workers are covered by federal law.

**Les Conley:** Mr. Conley returned to answer additional questions from Mr. Robertson. Mr. Conley's experience is in the public sector as a worker in the field. He related that the employee in the front-end loader accident died of his injuries. He did not know whether OSHA investigated. In his workplace, regular safety meetings are not held for field workers. Employees sometimes must ask for meetings and education. Improvement in safety practices often follows accidents but is usually not sustained. Orlando's Division of Risk Management has tried to be proactive but with little support.

***Task Force Deliberation***

Chairwoman South reviewed the task force's charge under the statute. With testimony ended and data provided, the day's job was to develop a report. The task force ideally wants consensus on issues and recommendations but may not achieve it. Consensus will be considered a large number of members in agreement. If dissent is strong, it will be noted and explained.

**Data Adequacy:** Ms. South asked first for consensus on the adequacy of the information for making recommendations. Members said it was adequate. Scott Blaser did not dissent but qualified his assent: he does not believe the task force has sufficient information for very detailed recommendations.

**Report Outline:** The chair laid out an outline for the report and obtained consensus on it:

- brief history of the task force
- documentation of meeting dates, times, and places
- current state of public sector safety programs
- relevant data from the Division of Workers' Compensation
- survey of public entities' workplace safety programs
- recommendations

- appendices: legislation, minutes, requested reports, documents submitted by the public

**Recommendations:** The committee then worked through the draft list of recommendations from November 14 to arrive at final recommendations. A consensus position was that no difference exists between the workplace safety needs of public sector and private sector employers and employees. The members gave close attention to these issues and topics, among others:

- Florida as an OSHA state-plan or public-sector-only state
- current state economy
- costs and financing of any recommended program, including perceived unfunded mandates and ways to mitigate costs
- legislation versus executive order
- compliance without enforcement
- phase-in periods
- current workers' compensation requirements
- collecting data versus reporting data
- differences between insurance data (workers' comp) and safety/health data

All members agreed that they would sign their names to a final report that includes the recommendations below. Project staff will email members a document file of the recommendations (which were being graphically displayed before the whole group) within a draft final report. Members will submit any necessary corrections in the file to Charlene Vespi. During the December 18, 2008, conference call, task force members will finalize the report for the governor.

## **1. Apply OSHA standards CFR 1910 and CFR 1926**

- a. Majority recommendation (10 members): The State of Florida should pass legislation requiring all public employers and employees to comply with current OSHA standards CFR 1910 (General Industry) and CFR 1926 (Construction) within three years. The public entities encompass cities, counties, municipalities, school districts, special districts, and state agencies.
- b. Minority recommendation (four members): The State of Florida should request that all public employers and employees comply voluntarily with current OSHA standards CFR 1910 and CFR 1926 through an accreditation program for safety and health. Members noted that mandatory compliance would create an economic hardship for many cities and counties. Small and medium-sized entities do not have sufficient staffing or budgets for safety and health programs.

2. **Standardize data reporting:** The State of Florida should require all Florida public employers to collect and retain injury and illness data as incidents occur, using the OSHA Recordable Form 300 criteria.
  - a. Standardized reporting allows the U.S. Bureau of Labor Statistics to include Florida's public employers in its annual survey of injuries and fatalities. Because the bureau will produce a report of comparative data showing Days Absent Restricted Transferred (DART), the state will not have to create a data-collecting agency.
  - b. Public employers should retain records for seven years.
3. **Expand the annual Florida workers' compensation report:** The Florida Division of Workers' Compensation should expand its annual report to include a "state-of-the-State" report covering all public entities. This "report card" should list each public employer's workers' comp claim costs, injury totals, injury incident rate per 100 employees, and fatalities. This recommendation, in combination with recommendations 4 and 5, provides stimulus and means for improving workplace safety without legislated enforcement.
4. **Provide an 800 number for employers and employees:** The state should provide a toll-free telephone number for public employers and employees to (a) ask questions, (b) report perceived unsafe working conditions, and (c) request materials and assistance. The number will be a clearinghouse for safety and educational resources and other support.
5. **Develop a safety resource listing:** The state should compile and distribute list of professional mentors—groups and individuals—available to help public employers strengthen workplace safety programs. Sources of mentors are the American Society of Safety Engineers, Florida Municipal Association for Safety and Health, the University of South Florida, other universities, and Florida municipalities and counties with advanced safety programs. The task force has begun this resource list.

Secretary South adjourned the meeting.