

**Florida Public Task Force on Workplace Safety**

**Minutes of Meeting of October 17, 2008**

**Orlando Marriott Airport Hotel**

**Orlando, Florida**

**10:00 A.M.—2:50 P.M**

***Participants***

*Governor's appointees:*

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

*Senate appointees:*

James Baiardi  
John Henshaw  
John Kozey  
Karen Phillips  
James Robertson

*House appointees:*

Scott Blaser  
Cindy Kane  
Hastings Williams  
Danny Shaw  
Albert Huston

*Project staff:*

Charlene Vespi, Coordinator  
Greg Bachman  
Stephanie Makar  
Michael Randell

*Court reporter:*

Diana C. Garcia

*Audience members*

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Secretary South opened the meeting and requested approval of the minutes of October 2, 2008. One correction was noted: in Mr. Marinan's section, the word "employees" should be "employers." Cindy Kane moved to accept, and the members passed, the amended minutes.

### ***Introduction of Members***

Members introduced themselves. See the minutes of October 2, 2008, for brief biographies of 11 of the 15 task force members. Offering their first introductions were Marianne Capozziello, president of the Polk Education Association and a member of the executive cabinet of the Florida Education Association; James Baiardi, president of the State Correctional Officers Chapter of the Florida Police Benevolent Association; Al Huston, representing the Florida Laborers' District Council and president of the local 1652 in South Florida; and Dan Shaw, president and CEO of Associated Builders and Contractors.

Chairwoman South noted that the task force's work is subject to the Florida open meetings law, also known as the Sunshine Act.

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

Ms. South opened the meeting to comment from the audience and to speakers previously scheduled on the agenda.

**Brian Burke**, Manager of Employees Safety/Loss Control, Risk Management Department, Palm Beach County Board of County Commissioners: Mr. Burke presented a brief history of the Florida Bureau of Industrial Safety and Health, disbanded in 2000, which was a subdivision of Workers' Compensation under the Department of Labor and Employment Security. The bureau, established just after World War II, promulgated standards prefiguring those of OSHA, which it later adopted. The bureau operated statewide, including inspections, assistance, and enforcement for public sector entities, in most cases annually.

Palm Beach County, atypical in Florida, has administered health and safety programs for 25 years. A nine-person staff (seven professionals) covers 30 county divisions and 6,500 employees. OSHA standards are the county's written safety policy. In Mr. Burke's view, and that of the risk management department, the state should mandate OSHA standards for the public sector.

In response to the task force's specific charges under the act (Chapter 2008-128), Mr. Burke believes that the core elements of a successful safety and health program are the same for public and private sectors: avoidance of injury and illness; that any state mandate for the public sector should consider a phase-in period for compliance; that the mandate should provide significant resources for

program development; and that attention to workplace safety and health is consistent with economic development—safety pays.

Mr. Burke asked the task force to consider standards other than those of OSHA—for example of the American Conference of Governmental Industrial Hygienists—but does not believe they should be state-mandated.

Concerning innovative ways to achieve public sector compliance with OSHA 29 CFR (Code of Federal Regulations) 1910, he emphasized the necessity of accommodating political and budgetary realities. A budget must be sufficient and also acceptable to the legislature and governor.

Details of an oversight organization—operation, tasks, powers—must be determined. Will the state program:

- include routine on-site inspections and audits
- have recordkeeping requirements (required in CFR 1904, not 1910)
- set inspection priorities by incident rates or other measures
- require notification of fatalities and serious injuries
- set a posting requirement
- have a right of entry to conduct inspections and accident investigations
- handle employee complaints
- use fines and penalties
- grant a general duty clause similar to OSHA or evaluate programs through submission of program and policy documents
- set alternate compliance methods for progressive, established public sector groups
- use a staff of state employees and/or consultants
- supply consultation, technical support, and education?

Mr. Burke emphasized that trained, skilled health and safety professionals are essential to a successful program. He believes their evaluations of OSHA compliance could greatly help the public sector but that routine inspections may be too costly. He also advocates that any new organization offer training and consultation, require fatality notification and right of entry for investigations, and supply follow-up recommendations. He does not recommend fines and penalties at this stage.

**Discussion:** Questions and discussion elicited additional information. Mr. Burke is unaware of another program in the state as large or advanced as Palm County's, which was begun in the early 1980s.

He does not have benchmarking data for comparison with other Florida or other states' public sector programs (for example, Total Incident Rate [TIR] or Days Away Rate [DART]). Palm Beach County tracks first reports of injuries. To his knowledge, TIR and DART are not collected for Florida public entities except

through workers' comp records. The private sector has the OSHA 300 requirements, the postings in February, and other performance markers. Palm Beach County, he believes, should improve in recordkeeping, in tracking near misses and other occurrences.

Without more data, Mr. Burke also cannot produce a cost-return analysis. In individual workers' compensation cases, the savings due to his department's safety programs seem significant.

The earlier Florida safety bureau did not impose fines and penalties. It worked with public entities to correct, in most cases, violations of standards. Publicizing infractions has an effect in itself. Mr. Burke does not recommend fines and penalties at this early stage because most public entities need help instead. He proposes a cooperative rather than adversarial approach initially, similar to OSHA's. Fines are more appropriate for recalcitrant, repeated offenses. One member raised the question of the legality of fines to publicly funded entities, which could be seen as taxing the taxpayers twice.

The direct budget for Palm Beach County risk management is about one million dollars. It covers all 6,500 employees, but some departments demand more resources, for example, movement of traffic (MOT) training for road crews, a state requirement.

Mr. Burke does not believe the former safety bureau's organization—major state districts and many satellite offices—is a viable model in today's climate. Small municipalities and counties may operate from human resource offices. Professionalism is still crucial: write a sound policy, rules, and procedures; get upper management support; institute assessment, evaluation, control of hazards, and extensive training programs targeting at least the most significant issues of the municipality.

**Gary Visscher**, Board Member, U.S. Chemical Safety and Hazard Investigation Board (CSB): Mr. Visscher is one of four board members of the CSB, which investigates, under federal mandate, serious chemical fires in the U.S. The CSB investigated the January 2006 fire and explosion of a methanol tank at Bethune Point Wastewater Treatment Plant in Daytona Beach, which killed two public employees and severely injured a third. The workers were cutting away portions of a damaged roof that covered a tank of methanol. Two workers were on the roof using a torch; one was in the cab of a crane, removing the cut portions.

The CSB issued a report, with recommendations, to the State of Florida, an impetus for creating the current task force. Mr. Visscher introduced Manuel Gomez, a CSB staff member who heads the recommendations.

Mr. Visscher played a video that accompanied the CSB written report. [The 7–8 minute video, “Public Worker Safety” (March 13, 2007), is available at the CSB web site, [www.chemsafety.gov](http://www.chemsafety.gov), and on YouTube.]

Mr. Visscher summarized the board’s findings and recommendations, which included:

- The public workers were doing routine work.
- Florida does not require public entities to provide workers with safety training or to comply with OSHA safety standards, as it does the private sector.
- The Daytona Beach workers had no training in the hazards of hot welding and of methanol. Employees received about one hour of safety training in each of the two years before the accident.
- Flaws in the tank, installed in 1993, and inadequate inspection were also causes of the accident and heightened its severity: highly corrosive aluminum plates in the flame arrester, PVC piping and valves rather than steel, no plate inspections since installation.
- The CSB recommended that
  - Florida enact workplace health and safety programs for all public employees at least as effective as OSHA’s
  - the city of Daytona adopt such standards until state laws are in place
  - the National Fire Protection Association and OSHA further restrict use of plastic in piping systems for flammable liquids
  - the State of Florida consider becoming a state-plan state under section 18(b) of the OSHA act and that funding be provided to make the existing private-sector consultation program available to public sector employees

Mr. Visscher recognized that everyone wants workplace safety and health for public employees but that implementation is difficult with straitened budgets. However, the upfront costs of a safety program should be viewed in terms of final effects. It is both the right and the fiscally sound thing to do. Safety advocates possess evidence that good safety procedures ultimately save money in terms of lower workers' compensation, lower insurance, less absenteeism and time off, and fewer lawsuits. The evidence comes from the private sector; data are difficult to find for the public side. He encouraged the task force to investigate other states’ experiences with OSHA coverage, including those with public-sector-only coverage. He mentioned OSHSPA, the Occupational Safety and Health State Plan Association.

The advantages of becoming a state plan under section 18 of OSHA are some federal funding along with OSHA support and accountability. He believes rules and procedures are more likely to be used if they are required, not voluntary.

**Discussion:** Mark Friend stated that the State of Florida currently incurs an estimated \$693 million annually in direct costs for injuries to public sector

employees. Mr. Visscher said that CSB did not determine the cost for injuries of the Daytona Beach accident. Lawsuits are still pending.

Hastings Williams noted that, while Florida does not require OSHA standards for the public workplace, many Florida public entities enforce fire prevention codes that address all of the National Fire Protection Association (NFPA) standards. They also piggyback on OSHA standards in certain areas such as hazardous chemicals and welding. He wanted the record clear that the Florida State Fire Marshal's codes do cover many public employees.

Marianne Capozziello noted that, beyond major tragic accidents, Florida's public workers do not benefit from across-the-board OSHA protections in ordinary workplaces such as buildings.

Mr. Visscher corroborated that Florida public employees cannot benefit from OSHA consultants, who are primarily federally funded. To become a state-plan state under OSHA section 18, Florida would undergo an extensive approval process. Once approved, states are eligible for up to 50/50 federal/state funding by meeting benchmarks. He does not think any states receive a full 50/50. The line item for OSHA state plans this year is \$90 million for 23 or 24 states. Most cover both private and public sectors. The four public-sector-only OSHA states are New Jersey, New York, Virgin Islands, and Connecticut.

The CSB recommendations in the Daytona Beach report did not specify enforcement; it said, "assured compliance." The issues of fines, penalties, and compliance arise in all states as well as at the federal level. The task force should, if possible, research these experiences. Some state-plan states use fines and penalties; some do not; some have switched policies. Federal OSHA does enforcement vis-à-vis other federal agencies but does not issue fines and penalties.

Mr. Visscher personally believes that Florida should look closely at whether it will be easier to establish a program without sanctions. Though sanctions are powerful, publicized reports can foster compliance. Paul Imbrone pointed out that, in the private sector, reductions in insurance rates are also incentives for compliance.

Mr. Visscher clarified that, to his knowledge, Florida does not have data about the total number of public workplace accidents, including serious injuries and amputations. Employers in the private sector are required to keep those data. In the public sector, only OSHA state-plan states must do so.

**Edwin Grandberry, Jr.**, Member, American Society of Safety Engineers (ASSE): Mr. Grandberry represents 1,400 practicing ASSE members in Florida. He noted a private-public safety collaboration between Pratt and Whitney Aircraft and Palm Beach County that occurred some 25 years ago. Pratt and Whitney helped the

county develop its safety program. Brian Burke has worked for the state, the county, and Pratt and Whitney.

Mr. Grandberry reported 35 public sector fatalities in Florida in 2007, according to workers' compensation data, and 10,000 disabling injuries to public employees annually. The ASSE deplors these tragedies and pursued creation of the task force. He emphasized the three e's of safety engineering—education, engineering, and enforcement—and believes education and training are key. The Daytona Beach workers had not been taught the low flammability of methanol or the need to use fire blankets to catch sparks.

He agrees that there is no difference in public and private sector safety needs and believes that public entities will realize insurance premium savings through proper safety programs. He also concurred that the Florida State Fire Marshal follows all NFPA and OSHA protocols.

Mr. Grandberry noted that ASSE's 33,000 national and worldwide members have expertise in all health, safety, and environmental fields and offered to be a conduit to their information for the task force.

**Discussion:** Questions elicited that of Florida's 35 deaths in 2007, 25 were in local government, six in state government, and four in public administration. Of the total, 17 were in transportation areas. Construction data were not included because workers are private sector. OSHA and the U.S. Bureau of Labor Statistics compile those statistics.

The task force briefly discussed the status of National Fire Protection Association standards across the state. Mr. Grandberry explained that these are consensus standards, not law, as is OSHA.

About private-public partnerships in developing safety programs, Mr. Grandberry mentioned as exemplary models DuPont, United Technologies (Hartford, Connecticut), and Rohm and Haas Chemical Company (Pennsylvania).

As best-of-practice state programs, Mr. Friend suggested Kentucky and possibly North Carolina. Mr. Hastings agreed and added South Carolina. Secretary South hopes to identify the top three in-state and out-of-state programs, research them if time allows, and use their experience as a platform to design Florida's program.

John Henshaw explained the distinction between state-plan states, which administer OSHA for both the private and public sectors (federal OSHA does not go into the state), and those states which limit their OSHA oversight to public entities. These public-sector-only states, which may be good models for Florida, are the Virgin Islands, New York, Connecticut, and New Jersey. Mr. Henshaw suggested New Jersey.

A member of the audience supplied the figure of 362 fatalities in the private sector in Florida for 2007 (Workers' Compensation web site).

### ***Task Force Deliberation***

Secretary South thanked the House of Representatives sponsors of the task force: Representatives Audrey Gibson, Joyce Cusak, and Ed Homan. The sponsors may present at a future meeting.

Ms. South initiated a discussion of the task force's process and goals in the face of a December deadline for its report. She presumes the ultimate goal is that the governor and legislature initiate action based on the recommendations. Public workers' safety must improve.

However, it is a daunting task to move from a report to the writing of a bill, finding sponsors, factoring in multiple public entities (local and state), and working out funding. She warned that it might be too late to place a bill on the 2009 legislative agenda; also, 2009 budgets have been submitted for review. The task force must focus on a reasonable plan so that momentum is maintained. The afternoon's discussion should center on the report's shape, elements, needed information, and a plan to discover it.

The task force members then reviewed and expanded on previous discussion.

***Financing:*** Implementing OSHA-quality standards is not revenue-neutral for public entities; dollar savings, if achieved, lie in the future. A law without an accompanying appropriation will face legislative hurdles as an unfunded mandate.

Whether the state pursues status as an OSHA public-sector state or as a state-plan state, the process requires two years for approval. The state must bear the cost of beginning a safety system from which to achieve benchmarks for matching federal funding. This system must follow OSHA guidelines; i.e., it cannot be a patchwork of best practices throughout the state. It must also be administered by the state: local and state entities cannot report directly to OSHA.

***OSHA and Other Models:*** The general consensus was that Florida is unlikely to become an OSHA state-plan state. One reason is the dramatic change the private sector would face.

John Kozey observed that the discussion seemed to be presenting OSHA implementation as the goal, though other options exist. Secretary South concurred that other models may achieve OSHA results; no decisions have been made in this fact-finding stage.

Mr. Kozey noted that Martin County, like Palm Beach County, has its own employee safety plan, implemented in 2002. The mandatory training, along with optional training, reduced insurance claims for 2003. He believes existing state programs may help other public entities as much or more than a federal system. Differences do exist in scale, operations, and procedures between local/state public entities and private companies.

Jim Robertson raised the possibility, as a first step toward the task force's goal, of a simpler partnership to raise awareness and share information. Mr. Henshaw noted that it would require a hub entity, which Mr. Robertson suggested might be the Florida League of Cities.

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

**Benjamin S. Shippen, Jr.**, Economic Consultant, ERS Group. Using slides and a printed report, Mr. Shippen presented data on the growth rates of public sector occupations, particularly the fastest-growing and largest occupations and their Days Away Rates (DART).

The data source for occupations was the Agency for Workforce Innovation. All figures—for 2007 as well as for 2015 projections—were extrapolated from known 2005 data; they are estimations. The data cover all public sector jobs: local, state, federal.

Florida has some 1.1 million public sector employees, projected to grow to 1.24 million in 2015. Of that 12% growth rate, or 133,000 new employees, 40,000 are teachers. The largest occupational group in the state is teachers, and its growth rate dominates, especially at the local level.

Local government, which includes public school teachers, makes up about 70% of the workforce and is growing faster, at 15.1%, than the state overall. At the state level, too, the growth of postsecondary teachers predominates, accounting for about one-third of overall growth. The teacher growth rate in the federal sector is small.

The next largest Florida occupation group is protective services: police, detectives, etc.

In absolute numbers of employees, as well as growth rates, other public occupations drop off sharply.

Concerning the Days Away Rate per occupation, data are not available for the public sector. No average DART for the public sector exists. The Bureau of Labor Statistics (BLS) told Mr. Shippen that public sector occupation data for 2008 will

be available in one year, covering the four OSHA public-sector states and some other 18(b) states.

For his analysis, Mr. Shippen used BLS private-sector data. Employee data were taken from workplaces, aggregated into industries, and then disaggregated into occupations similar to those of the public sector.

The most recent statistics cover 2006, for which the average DART in private industry is 127.8. (The DART is a standardized calculation of full-time employees' annual days away from work due to illness or injury).

In Florida's largest public sectors, only about 10 occupations exceed a DART of 100. Most of the populous jobs have low rates: teachers and instructors are 13.4, secondary school teachers 28.4, elementary school teachers 44.5. Police and sheriff's patrol officers are about 406, detectives and criminal investigators 400, correctional officers and jailers just under 400.

**Discussion:** Asked whether these data present an accurate picture of Florida's public sector safety record versus that of Florida's private sector—in other words, are public employees at more or less risk?—Mr. Shippen said that the public DART rates are only a reasonable approximation. They are actually private sector DART rates applied to public sector occupations. BLS statistics are needed. Members expressed reluctance to make any assessments of public sector performance based on the extrapolations. Mr. Henshaw also pointed out that OSHA and state Workers' Compensation gather and report different kinds of data.

Mr. Shippen said that, the DART data aside, his other report data do show where the bulk of public occupations lie and may be useful in guiding some plans. Dangerous jobs such as working with chemicals may require more focus, but most public jobs are not as hazardous. Mr. Henshaw commented that government is a particular kind of industry itself and cannot be compared to others. (Later in the discussion, Mr. Shippen explained that the Agency for Workforce Innovation's future-projection model did not account for the recent sharp economic downturn. However, Secretary South felt that the projections through 2015 were statistically useful because the economy should grow over eight years.)

Members expressed concern that they must have good current and projected data—for example, workers' comp claims, their costs, and local-county-state breakdowns—to recommend an economically viable business model for Florida.

Charlene Vespi reported that the Florida Division of Workers' Compensation will present a report at next month's meeting in Ft. Lauderdale. It should supply the task force with a detailed breakdown of public sector injury incidents and costs. In addition, there is an interagency council that covers all state agencies under

the governor's control. It reports on types of injuries and their costs and can also specify how much Florida, as a self-insurer, budgets into reserves for claims.

Mr. Henshaw asked whether these data will include projections of future costs. Secretary South said that perhaps this calculation could be made working with unemployment compensation; it will be labor-intensive to pull data from individual insurance companies offering workers' comp to local public employees. Karen Phillips offered that the National Council on Compensation Insurance (NCCI) tracks that information, whether for the state's self-insurance or private insurers. The Florida NCCI contact is Lori Lovgren.

Task force members asked to receive the described data before the Ft. Lauderdale meeting.

**Carol Westmoreland**, Florida League of Cities: Ms. Westmoreland acknowledged the importance of the goal to keep workers safe and prevent tragedies but also the task's complexity and its fiscal and legal restraints. For those reasons, she suggests the task force begin with the end in mind: what will the report look like, what are its elements, what are necessary steps to effect each element? Much is unknown—especially, the “state of the state” eight years after Executive Order 2000292 disbanded the Bureau of Industrial Safety and Health and encouraged local governments to take over. She hopes the task force will review that history, gather data and model programs, focus its scope, and evaluate creative solutions.

Creativity and consensus building are fundamental because municipal governments have no surplus money. She requested that the task force ask local governments and other public entities what they need in these areas. The public sector is different from the private. Its board of directors are the taxpayers. Its control of funding is limited. Taxpayers can tell a government to do more with less. They can also protest an expenditure for a program they did not know was a priority, especially if it replaces an expenditure they support. These observations, Ms. Westmoreland said, are not complaints, but the financial limits are real. The Florida League of Cities wants to work with the task force and together explore options.

**Discussion:** Asked what the League expects of the task force in relation to fiscal responsibility, Ms. Westmoreland emphasized flexibility in reaching the goal of safety for employees: be open and cooperative and do not forget the funding issue.

### ***Task Force Deliberation***

Members agreed that the workplace safety needs of private-sector employers and public-sector employers do not differ, though the compositions of the workforces do.

Reviewing and analyzing the day's proceedings, members outlined the scope of work and potential elements of the report.

**Data Overview:** In order to produce a report and recommendations of substance, the task force needs extensive facts. (Florida has 1,200 local governments alone.) It must establish the state-of-the-state concerning public workplace safety and health. It cannot assume, for example, that Florida's workplace safety is inferior to other states that implement OSHA standards.

The group requires data on Florida's programs and their performance (including financial outcomes), as well as on those of other states, particularly public-sector OSHA states. The data categories must be consistent ("apples to apples") for accurate comparisons and benchmarks.

Data for Florida's public entities are scarce and unstandardized since Executive Order 2000-292, which in 2000 ended the state safety bureau and asked only for voluntarily compliance with OSHA standards. Other states' data have yet to be requested. Collection and analysis of all pertinent data, resulting in specific recommendations for the State of Florida, cannot be completed by January 2009.

**Phased Approach:** Consequently, the task force favors a phased approach to meeting the goal set forth by the act (Executive Order 2008-128). Working ideas of the approach are:

- Data collection from other states and Florida
- A year's time frame for Florida collection
- Analysis/comparison of data sets
- State-of-the-state report, including recommendations of the steps to ensure workplace safety (these steps may also be phased)
- A legislative guarantee for the phases of collection, analysis, and report, i.e., a guarantee that this task force or another will complete the work

The group also discussed requiring public entities to comply with OSHA standards from January 2009, though without oversight, and encouraging them to seek mentoring from the private sector.

**Work Groups:** The task force will create work groups for data collection, to include Secretary South and her staff, other state staff as needed, task force members, stakeholders, and other contacts of the members.

**Types and Sources of Data:** The task force requires data about workplace safety and health for Florida's state agencies, counties, municipalities, schools, and special districts/entities (such as water, fire, utilities).

It also needs data for one or more of the four public-sector OSHA states. Several members recommended New Jersey, which will be used hereafter for convenience.

The task force should:

- Collect workers' compensation data from New Jersey, including expenditures and policy rates, TIR (Total Incident RATE), DART (Days Away Rate), fatalities.
- Investigate New Jersey's process in becoming a public-sector OSHA state nine years ago: its rationales for the change (including cost-benefit) and subsequent outcomes.
- Collect existing empirical Florida workplace safety data, including economic. Sources include:
  - Division of Workers' Compensation (which will present at the next meeting).
  - State agency safety coordinators (Secretary South and staff)
  - Florida League of Cities
  - Florida Municipal Association for Safety and Health (member Scott Blaser, Executive Director)
  - Public Risk Underwriters (member Paul Marinan, Safety and Risk Control Manager)
  - National Council on Compensation Insurance
  - Association of Counties
  - Association of School Districts
  - Florida Department of Education
- Survey public entities about safety programs and outcomes, for example, injury rates, top 10 types of illnesses and injuries, program components, medical plan participation.

**Clarification of Task Force Act:** Mr. Hastings requested confirmation from members that the act creating the task force— Chapter 2008-128— specifies, in Section 1 (1), the application of OSHA standards to each Florida state department and agency and to each county government and municipality. The standards are “subparts C through T and subpart Z of the Occupational Safety and Health Administration Standards, 29 CFRs 1910, as revised July 1, 1993, with the exception of standards pertaining to firefighters and fire departments.”

Members concurred, also noting the act's wording that the task force find “ways by which the state may effectively ensure” that each entity “complies” with the standards. The order does not specify mandates, enforcement, or inspection.

Secretary South will speak with the legislators and their staff about the intent of Section 1 (1).

**Summary of Actions:**

- Secretary South will mobilize data collection from state agencies and divisions.
- Secretary South will mobilize data collection from New Jersey or other public-sector or state-plan OSHA states, with help from task force members.
- Members will tap their relevant databases, including those of stakeholder associates, such as the League of Cities.
- Charlene Vespi will create an electronic survey to elicit data not in repositories.
- Task force members will aid Charlene in obtaining contacts for the survey and in urging their haste in compliance.
- Charlene will send members electronic links to Executive Order 2000-292 and to the OSHA standards specified in Chapter 2008-128.
- Hastings Williams will send electronic links to information about North Carolina, Kentucky, and other states implementing OSHA standards.
- Secretary South will send collected information to task force members, to the extent possible, before the November 14 meeting in Ft. Lauderdale.

The meeting was adjourned.