

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 54

SPONSOR: Comprehensive Planning Committee, Senator Constantine and others

SUBJECT: Local Government

DATE: April 7, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute prohibits the political subdivisions of the state from requiring employers to pay a minimum wage other than a federal minimum wage, or from requiring employers to apply a federal minimum wage to wages that are exempt under federal law. However, the committee substitute allows political subdivisions to establish a minimum wage for their employees, for employees of contractors and subcontractors under contract with the political subdivision, and for employees of employers receiving direct tax abatements or subsidies from the political subdivision.

This committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Federal and State Minimum Wage Laws

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (29 U.S.C. ss. 201, et seq.). The federal act established an initial federal minimum wage of \$0.25 per hour. During the 64-year history of the federal minimum wage, Congress has amended the minimum wage rate 25 times. In 1996, Congress increased the minimum wage from \$4.25 per hour to \$4.75 per hour, beginning October 1, 1996, and from \$4.75 per hour to \$5.15 per hour, beginning September 1, 1997. The federal minimum wage for all covered, nonexempt employees has remained at \$5.15 per hour since 1997. The federal act includes several exemptions from the federal minimum wage, including:¹

¹ Section 13 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 213; Wage and Hour Division, U.S. Department of Labor, *Handy Reference Guide*, at <http://www.dol.gov/esa/regs/compliance/whd/hrg.htm#1>.

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year; and
- Casual babysitters and persons employed as companions for the elderly or infirm.

Employers must also pay tipped employees (e.g., servers in restaurants) who customarily and regularly receive more than \$30 per month in tips the federal minimum wage of \$5.15 per hour. The employer, however, may account for tips received by a tipped employee as part of the wage rate, but must also pay the employee a base wage of at least \$2.13 per hour.²

The Wage and Hour Division of the United States Department of Labor enforces the federal Fair Labor Standards Act, including the federal minimum wage.

According to the United States Department of Labor, Florida is one of seven states with no state minimum wage law.³ These other states are Alabama, Arizona, Louisiana, Mississippi, South Carolina, and Tennessee. Eleven states and the District of Columbia have minimum wage rates higher than the federal rate: Alaska, California, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Oregon, Rhode Island, Vermont, and Washington. Three states (Kansas, New Mexico, and Ohio) have minimum wage rates lower than the federal minimum wage. If an employee is subject to both a state and federal minimum wage law, the employee is entitled to the higher of the two minimum wages.

National Living Wage Campaign

The “living wage” campaign is a national effort seeking local governments to require that employers pay minimum wages in excess of the federal minimum wage. According to the Economic Policy Institute, a living wage is usually the wage a full-time worker would need in order to produce a family income ranging from 100 percent to 130 percent of the federal poverty level.⁴ The institute cites that the wage rates specified in living wage ordinances typically range between \$6.25 and \$12.00 per hour. By contrast, the Employment Policies Institute cites that living wage proponents seek wage rates between \$13.62 and \$19.27 per hour.⁵ One of the living wage proponents, the New Party, advocates wage rates between \$6.50 and \$7.50 per hour, together with health care benefits.⁶ The Association of Community Organizations for Reform Now (ACORN) reports that at least 103 local governments nationwide have adopted a living

² Section 3(m) and (t) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 203(m) and (t); Wage and Hour Division, *supra*, at n.1.

³ U.S. Department of Labor, *Minimum Wage Laws in the States*, at <http://www.dol.gov/esa/minwage/america.htm>

⁴ Economic Policy Institute, *Living Wage: Facts at a Glance*, at <http://www.epinet.org/Issueguides/livingwage/livingwagefacts.html>.

⁵ Employment Policies Institute, *What is the Living Wage?*, at http://www.epionline.org/livingwage/lw_what.cfm.

⁶ New Party, *The Living Wage Campaign*, at <http://www.newparty.org/livwag/livwag.html>.

wage ordinance, requiring employers that receive government contracts or public subsidies to pay a minimum wage higher than the federal minimum wage.⁷

Local Living Wage Ordinances in Florida

In Florida, the City of Miami Beach, and Miami-Dade, Broward, and Palm Beach Counties have enacted ordinances addressing “living wages.”

In May 1999, the Board of County Commissioners of Miami-Dade County enacted the county’s “living wage” ordinance, which requires the county government and certain of its service contractors and subcontractors to pay employees a living wage of no less than \$8.56 per hour if employer-paid health care benefits are provided, or \$9.81 per hour without health care benefits (s. 2-8.9, *Code of Metropolitan Dade County, Florida*). The ordinance covers the following categories of county service contracts valued at more than \$100,000 per year:

- Food preparation and/or distribution;
- Security services;
- Routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing, and recycling;
- Clerical or other non-supervisory office work, whether temporary or permanent;
- Transportation and parking services including airport and seaport services;
- Printing and reproduction services; and
- Landscaping, lawn, and/or agricultural services.

In April 2001, the City of Miami Beach enacted a living wage ordinance similar to Miami-Dade County’s ordinance. The city’s ordinance requires the city and certain of the city’s service contractors with contracts valued at more than \$100,000 per year, and their subcontractors, to pay employees a living wage of no less than \$8.56 an hour if employer-paid health care benefits are provided, or no less than \$9.81 without health care benefits, indexed annually (ss. 2-407–2-409, *Code of the City of Miami Beach, Florida*). The city’s ordinance applies to similar categories of service contracts as the county’s ordinance, but also included park and public place maintenance.

In October, 2002, Broward County enacted a living wage ordinance that requires pay of \$9.47 per hour for nearly 400 county employees starting in October 2003. It also will apply to employees of service-oriented companies that do more than \$100,000 annually in business with the county (\$10.82 without health benefits).⁸

In February, 2003, Palm Beach County enacted a living wage ordinance that requires pay of \$9.47 an hour plus health benefits for some county government workers and county-hired construction contractors.⁹

At least seven other living wage campaigns have been identified in Florida: Alachua County, Gainesville, Tampa, Orlando, Jacksonville, South Miami, and Coral Gables.¹⁰

⁷ Asso. of Community Organizations for Reform Now, *Victories*, at <http://www.acorn.org/acorn10/livingwage/victories.htm>.

⁸ Miami Herald, October 10, 2002.

⁹ Ft. Lauderdale Sun Sentinel, Feb. 26, 2003.

Power of Local Governments to Enact Minimum Wage Ordinances

The federal Fair Labor Standards Act does not preempt state laws or municipal ordinances from establishing a higher minimum wage. *See* s. 18(a) of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 218:

No provision of [the Fair Labor Standards Act] or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the federal act].

In Florida, the State Constitution permits counties to enact ordinances that are not inconsistent with state law.¹¹ The State Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except¹²:

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the State Constitution;
- Any subject expressly preempted to state or county government by the State Constitution or by law; or
- Any subject preempted to a county under a county charter (s. 166.021(3), F.S.).

If a conflict exists between a county ordinance and an ordinance of a municipality located within the county, in charter counties, the county charter would specify whether the county ordinance or the municipal ordinance prevails.¹³ In non-charter counties, the county ordinance does not apply in those municipalities with municipal ordinances that conflict with the county ordinance.¹⁴

Florida has no state minimum wage. There is no current law that preempts local ordinances or that prohibits a local government in this state from establishing a minimum wage that exceeds the federal minimum wage.

III. Effect of Proposed Changes:

Section 1 prohibits the political subdivisions of the state from requiring employers to pay a minimum rate of compensation for employment – a “minimum wage” – other than a federal minimum wage required under federal law, including the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. ss. 201, et seq.). This section also prohibits a political subdivision from requiring employers to apply a federal minimum wage to wages that are exempt from the minimum wage under federal law. These provisions apply to each “political subdivision,” which is defined as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

¹⁰ Living Wage Resource Center, Association of Community Organizations for Reform Now, *Living Wage Campaigns Underway*, at <http://www.livingwagecampaign.org/pages/currentcampaigns.htm> (last modified July 2002).

¹¹ Section 1(f) and (g), Art. VIII of the State Constitution; *see also* s. 125.01, F.S.

¹² Section 2(b), Art. VIII of the State Constitution.

¹³ Section 1(g), Art. VIII of the State Constitution.

¹⁴ Section 1(f), Art. VIII of the State Constitution.

However, these provisions do not limit the authority of a political subdivision to establish a minimum wage other than a federal minimum wage:

- For employees of the political subdivision;
- For employees of an employer (or employees of a subcontractor of the employer) contracting to provide goods or services for the political subdivision under the terms of a contract with the political subdivision; or
- For employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the abatement or subsidy.

In addition, the act will not apply if it is determined that compliance with this act would prevent receipt of federal funds to a political subdivision.

The following definitions are provided:

- “Employee” means any natural person who is entitled under federal law to receive a federal minimum wage;
- “Employer” means any person who is required under federal law to pay a federal minimum wage to the person’s employees;
- “Employer contracting to provide goods or services for the political subdivision” means a person contracting with the political subdivision to provide goods or services to, for the benefit of, or on behalf of, the political subdivision in exchange for valuable consideration, and includes a person leasing or sub-leasing real property owned by the political subdivision;
- "Federal minimum wage" means a minimum wage required under federal law, including the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq;
- "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law; and
- “Wage” means that compensation for employment to which any federal minimum wage applies.

Section 2 provides that this act does not prohibit a federally authorized and recognized tribal government from establishing a minimum wage in excess of the federal minimum wage for natural persons employed within any territory over which the tribe has jurisdiction.

Section 3 provides that the committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute prevents an employer from being required to pay a minimum wage other than a federal minimum wage, or to apply a federal minimum wage to wages exempt from the minimum wage, except if the employer provides goods or services under contract with a political subdivision or receives a direct tax abatement or subsidy from a political subdivision.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.