

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29B
SPONSOR(S): Simmons
TIED BILLS:

State Minimum Wage

IDEN./SIM. BILLS: SB 18B

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Business Regulation Committee, 17 Y, 0 N, Hogge, Liepshutz. Row 2: Commerce Council, 13 Y, 0 N, Hogge, Bohannon. Rows 3-5 are empty.

SUMMARY ANALYSIS

On November 2, 2004, the voters approved Constitutional Amendment 5 (hereinafter referred to as "amendment"), creating a state minimum wage effective six months after the date enacted by the voters. This new state minimum wage took effect on May 2, 2005. The amendment sets the wage at \$6.15 per hour and provides for annual adjustments. The amendment prohibits retaliation against persons exercising rights under the amendment and provides an extensive set of remedies. Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature to "adopt any measures appropriate for the implementation of this amendment."

This bill incorporates provisions from the amendment and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act." The bill accomplishes the following:

- In accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill limits the state minimum wage to employees eligible to receive the federal minimum wage; it also incorporates by reference sections 213 and 214 of the federal Fair Labor Standards Act relating to the employment of workers with disabilities;
• It codifies the use of the U.S. Consumer Price Index for the South Region by the Agency for Workforce Innovation (AWI) as the applicable index for determining the annual adjustments to the state minimum wage;
• It provides direction to the agencies for providing notice of the adjusted state minimum wage;
• It requires employees to notify employers and give them 15 days to resolve any claims for unpaid minimum wages before filing suit;
• It limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages, and imposes certain measures pertaining to class action suits; and
• The bill restricts the authority of the AWI, to that expressly provided for in the amendment and expressly authorized by the Legislature.

The fiscal impact of the bill on state and local government is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to be \$168,129 for FY 2006-07 for employer notification responsibilities. However, AWI would only be required to implement these responsibilities to the extent funded in the General Appropriations Act. Any fiscal impact resulting from the increase in the state minimum wage results from the amendment, not this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The additional government included in the bill is almost exclusively a function of the amendment the bill is supplementing. It actually limits the ability of the Agency for Workforce Innovation (AWI) to exercise any authority related to the state minimum wage beyond that expressly provided in the amendment.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

On November 2, 2004, the voters approved Constitutional Amendment 5 (hereinafter referred to as "amendment"), creating a state minimum wage effective six months after the date enacted by the voters. This new state minimum wage took effect May 2, 2005. That provision is now codified at s. 24, art. X, State Constitution. The amendment sets the wage at \$6.15 per hour for "employees," as defined under the federal Fair Labor Standards Act (FLSA), with an annual adjustment based on the increase in the U.S. Consumer Price Index for urban wage earners. The amendment directs the AWI to publish the amount of the initial and adjusted state minimum wage.

The amendment prohibits retaliation against persons exercising rights under the amendment. The amendment provides for enforcement by creating a private cause of action with specific remedies, in addition to authorizing the attorney general or other designated official to bring a civil enforcement action. The amendment expressly authorizes class actions as a means to enforce the amendment.

Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature and the AWI to "adopt any measures appropriate for the implementation of this amendment." The amendment states that interpretations and guidance developed under the FLSA be used in construing the amendment.

The federal minimum wage stands at \$5.15 per hour and is established in section 6 of the FLSA. The FLSA defines key terms such as "employer" and "employee," establishes standards for employers and employees, identifies prohibited acts, and specifies penalties and enforcement measures.

Section 16 of the FLSA punishes willful violations with fines and subjects those that violate the act with payment of unpaid wages and liquidated damages. An employer that retaliates against an employee is also subject to "such legal or equitable relief as may be appropriate." The U.S. Secretary of Labor may also sue for injunctive relief against employers. As amended by the Portal-to-Portal Act, 61 Stat. 84, the court may modify the amount of liquidated damages if an employer shows to the "satisfaction of the court" that the conduct giving rise to the civil action occurred in "good faith" and based on "reasonable grounds."

Effect of Proposed Changes

This bill incorporates provisions from the amendment and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act."

One, in accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill provides that the state minimum wage only applies to employees eligible to receive the federal minimum

wage and provides that the minimum wage applies to hours worked in Florida. It also incorporates by reference sections 213 and 214 of the Fair Labor Standards Act, relating to the employment of workers with disabilities.

Two, it adopts the U.S. Consumer Price Index for the South Region as the applicable index for determining the annual adjustments to the state minimum wage. This is a codification of the index currently being used by the AWI for this purpose.

Three, it directs the AWI and the Department of Revenue to annually publish the adjusted state minimum wage on their respective internet homepage and requires the AWI to notify employers included in the unemployment compensation database of the adjusted state minimum wage to the extent funded in the General Appropriations Act.

Four, it requires employees to notify employers and give them 15 days to resolve any claims for unpaid wages before filing suit.

Five, it limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages consistent with federal provisions, and imposes certain measures pertaining to class action suits.

Finally, the bill restricts the authority of the AWI to that expressly provided for in the amendment and expressly authorized by the Legislature.

C. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., to include the statutes of limitation provided for in s. 24, Art. X, State Constitution.

Section 2. Creates s. 448.110, F.S., providing for the "Florida Minimum Wage Act."

Section 3. Designates ss. 448.01 – 448.110 as Part I of chapter 448, Florida Statutes, and entitled "Terms and Conditions of Employment."

Section 4. Provides a severability clause.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The fiscal impact of the bill on the state is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to be \$168,129 for FY 2006-07 and beyond for the required mailing to employers. However, AWI would only be required to implement these responsibilities to the extent funded in the General Appropriations Act. SEE II.D., FISCAL COMMENTS. Any additional fiscal impact on the state resulting from an increase in the minimum wage is a function of the amendment, not this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None

2. Expenditures:

Any fiscal impact on local government as employers results from the amendment, not the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any fiscal impact on employers results from the amendment, not the bill.

D. FISCAL COMMENTS:

The cost associated with the required mailing to employers assumes 449,258 employers multiplied by the cost of first class postage, printing, paper, and envelopes. The estimate for FY 2006-07 and beyond contemplates an increase in postage costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

- A. HOUSE PRINCIPLES ANALYSIS:

- B. EFFECT OF PROPOSED CHANGES:

- C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

- A. FISCAL IMPACT ON STATE GOVERNMENT:
 - 1. Revenues:

 - 2. Expenditures:

- B. FISCAL IMPACT ON LOCAL GOVERNMENTS:
 - 1. Revenues:

 - 2. Expenditures:

- C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- D. FISCAL COMMENTS:

III. COMMENTS

- A. CONSTITUTIONAL ISSUES:
 - 1. Applicability of Municipality/County Mandates Provision:

 - 2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES