

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1211 CS

Notification Regarding the State Minimum Wage

**SPONSOR(S):** Fields

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>12 Y, 0 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>Transportation &amp; Economic Development Appropriations Committee</u>	<u>20 Y, 0 N, w/CS</u>	<u>McAuliffe</u>	<u>Gordon</u>
3) <u>Commerce Council</u>		<u>Olmedillo</u>	<u>Randle</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

This bill creates a new section of law requiring each employer who must pay an employee the Florida minimum wage to display a poster in a conspicuous and accessible place at a worksite indicating the applicable wage. The bill requires the Agency for Workforce Innovation (AWI) to create the required posters in English and in Spanish and make them available to employers on or before December 1st of each year. Under this bill, each poster must contain specific language outlining the restrictions on employers, the rights of employees, and the penalties for non-compliance with Florida's minimum wage law. The bill also provides formatting, font and size requirements for the posters.

The bill provides an effective date of July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: Creates a new law to require posting notice of the state minimum wage.

#### B. EFFECT OF PROPOSED CHANGES:

##### ***Florida Minimum Wage Law***

During the 2005 Special Legislative Session (2005B), the Legislature passed, and the Governor approved, SB 18B creating the Florida Minimum Wage Act.<sup>1</sup> This bill implemented the provisions of s. 24, Art. X of the State Constitution which resulted from the passage of Constitutional Amendment #5 on the November 2, 2004, ballot. Senate Bill 18B replicated the provisions of the constitution and added additional provisions to do the following:

- Adopt the U.S. Consumer Price Index for the south region as the applicable index for determining the annual adjustments to the state minimum wage;
- Require the Agency for Workforce Innovation and the Department of Revenue to publish the annually updated minimum wage on their respective websites;
- Require employees to first notify employers before initiating a civil action to enforce their right to receive the state minimum wage;
- Allow employers 15 calendar days to resolve any claims for the unpaid wages before a suit may be filed;
- Limit the damages awarded to employees to only unpaid wages if the court determines the employer acted in good faith and had reasonable grounds for believing that their action was not in violation of the constitution;
- Restrict the court from awarding punitive damages;
- Impose restrictions on class action suits;
- Limit eligibility for the minimum wage to workers who are currently entitled to receive the federal minimum wage under the Fair Labor Standards Act (FLSA) and its associated implementing regulations; and
- Provide that the exemptions outlined in ss. 213 and 214 of FLSA are incorporated into the act by reference.

The Florida Minimum Wage Act does not contain a posting requirement for employers.

##### ***States' Minimum Wage Posting Requirement***

Currently, several states have minimum wage requirements that differ from the federal minimum wage of \$5.15 per hour and \$2.13 for tipped employees. As of January 2006, Florida's minimum wage is \$6.40 per hour and \$3.38 for tipped employees. Eighteen states (including Florida) and the District of Columbia have minimum wages that are higher than the federal minimum wage.<sup>2</sup> Fourteen of those states and the District of Columbia also require employers to post the state minimum wage and related information. The states that have minimum wages higher than the federal wage and adhere to a posting requirement include: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode

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<sup>1</sup> Chapter 2005-353, L.O.F.

<sup>2</sup> Those states include: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and Wisconsin. Information compiled from U.S. Department of Labor, *Minimum Wage Laws in the States*, <http://www.dol.gov/esa/minwage/america.html>. December 2006; National Conference of State Legislatures, *State Minimum Wages*, <http://www.ncsl.org/programs/employ/stateminimumwages2006.htm>. 6 March 2006.

Island, and Vermont. At least two states, Washington and Wisconsin, recommend that minimum wage information be posted, but do not require it.<sup>3</sup>

Almost all of the states that have a posting requirement provide the posters, free of charge, on their Department of Labor website where they can be downloaded by employers and viewed by the public.

### **Effects of Proposed Changes**

The bill sets forth requirements for AWI and employers with regard to posting the minimum wage.

The bill defines the terms “employer,” “employee,” and “wage,” consistent with the meanings assigned to them by the federal Fair Labor Standards Act. The bill also defines “Florida minimum wage” as the wage an employee is required to pay pursuant to s. 24, Article X of the State Constitution.

The bill requires each employer who must pay Florida’s minimum wage to prominently display a poster substantially similar to the one described in the bill, which details the Florida minimum wage, restrictions on employers, rights of employees and penalties for non-compliance.

The bill requires AWI to create and make available, on or before December 1 of each year, posters in English and Spanish regarding the minimum wage. The bill also provides the language that must be included in the posters as follows:

- The minimum wage as of January 1 of each year;
- That the minimum wage is calculated yearly on September 30 using the consumer price index and will take effect each January 1<sup>st</sup>;
- That retaliation by employers against employees who exercise their rights under the minimum wage law is prohibited. Those rights include:
  - filing a complaint regarding an employer’s noncompliance;
  - informing any person about an employer’s noncompliance; and
  - informing any person of his or her rights under s. 24, Article X of the State Constitution;
- That the employee must notify his or her employer of a violation and give the employer 15 days to resolve any claims for unpaid wages prior to filing a civil action to recover back wages;
- That an employee may file a civil action against an employer to recover back wages plus damages and attorney’s fees;
- That an employer who intentionally violates the minimum wage requirements may be subject to a fine of \$1,000 per violation, payable to the state;
- That the Attorney General or other official appointed by the Legislature may bring a civil action to enforce the minimum wage; and
- That further information may be obtained from s. 24, Article X of the State Constitution.

The bill also states that the required poster must be at least 8.5 inches in height by 11 inches in width. The letters of the poster must be conspicuous in size and the letters of the first line must be larger than the letters of any other line. In addition, the letters of the first sentence must be in bold type and larger than the letters in the remaining lines.

### **C. SECTION DIRECTORY:**

Section 1: Creates s. 448.109, F.S., providing specific minimum wage posting requirements.

Section 2: Provides an effective date.

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<sup>3</sup> Carrie Campbell, Commerce Committee staff, researched the existence of posting requirements in states having a wage higher than the federal rate.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Whether private businesses incur a cost in relation to this legislation depends on the method AWI chooses to disseminate this information to employers. Providing a free poster that may be downloaded would result in an indeterminable cost to employers who have internet access and the ability to print the posters.

### D. FISCAL COMMENTS:

The bill requires AWI to "make available" a poster to employers to post in the workplace regarding the Florida Minimum Wage. AWI estimates that the cost of developing a document, as specified in the proposed legislation, and posting the document to the agency's website to be downloaded and printed by an employer who required to post the document, is approximately \$120.00. Should AWI be required to design, print and mail posters to over 460,000 Florida employers, the agency has determined that cost to be a total of \$235,600 including printing and postage.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill on March 23, 2006. The amendment conforms the House bill to its Senate companion bill, making the following changes:

- It creates a new section of law, 448.109, which requires notice of the state minimum wage;
- It requires an employer to display a poster substantially similar to the 8.5 by 11 inch poster specified in the bill in every establishment where employees are employed;
- It removes a reference to filing of minimum wage complaints to the Agency for Workforce Innovation, which does not enforce or prosecute complaints relating to the minimum wage;
- It clarifies in the poster that an employee must meet the notice and 15 day resolution period before filing a civil action to recover back wages;
- It specifies a letter-sized poster to be used by employers; and
- It changes the effective date to January 1, 2007.

At the April 4, 2006 meeting, the Transportation and Economic Development Appropriations Committee approved HB 1211 with one amendment. The amendment clarifies that the notice to employees that must be posted by certain employers must state that the minimum wage for tipped employees is in addition to tips.