

# 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.)

Prepared By: Judiciary Committee

BILL: CS/CS/SB 786

INTRODUCER: Judiciary Committee, Commerce and Consumer Services Committee and Senator Hill

SUBJECT: Notification Regarding the State Minimum Wage

DATE: March 30, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	Fav/CS
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## I. Summary:

This bill requires each employer who must pay an employee the Florida minimum wage to display a poster substantially similar to the one which the Agency for Workforce Innovation (AWI) is directed to create in a conspicuous and accessible place in every establishment where employees are employed. The bill requires AWI to create the required posters in English and in Spanish and make them available to employers on or before December 1<sup>st</sup> 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.

This bill creates 448.109, Florida Statutes.

## II. Present Situation:

### Florida Minimum Wage Law

During the 2005 Special Legislative Session (2005B), the Legislature passed, and the Governor approved, SB 18-B 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 18-B 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;

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

- 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 the 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 act does not contain a posting requirement for employers.

### **States' Minimum Wage Posting Requirements**

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 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. However, it appears that none of the states that require posters prescribe the exact language in their statutes that the posters must contain as is proposed by this bill.

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<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*, at <http://www.dol.gov/esa/minwage/america.htm> (January 1, 2006); National Conference of State Legislatures, *State Minimum Wages*, at <http://www.ncsl.org/programs/employ/stateminimumwages2006.htm> (January 2006).

<sup>3</sup> Staff of the Senate Committee on Commerce and Consumer Services researched the existence of posting requirements in states having a wage higher than the federal rate.

### III. Effect of Proposed Changes:

This bill sets forth requirements for Agency for Workplace Innovation (AWI) and employers with regard to posting the minimum wage and describes the components that each poster should contain. The bill also directs the employer to place the poster in a conspicuous and accessible place in every establishment where employees are located.

**Section 1** creates s. 448.109, F.S. Subsection (1) states that the definitions of the terms “employer,” “employee,” and “wage,” as used in the bill, will have the meanings assigned to them by the federal Fair Labor Standards Act. This subsection also defines “Florida minimum wage” as the wage an employer is required to pay pursuant to s. 24, Article X of the State Constitution.

Subsection (2) requires each employer who must pay Florida’s minimum wage to prominently display a poster detailing the wage, restrictions on employers, rights of employees, and penalties for non-compliance in the manner described in subsection (3).

Paragraph (3)(a) requires AWI to create and make available, on or before December 1 of each year, posters in English and Spanish regarding the minimum wage. This paragraph also provides the language that must be included in the posters. The posters must state:

- The minimum wage and the minimum wage amount for tipped workers, in addition to tips, 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;
- That retaliation by employers against employees who exercise their rights under the minimum wage law is prohibited. Those protected rights include filing a complaint or 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 prior to filing a civil action against an employer to recover back wages, an employee must give the employer 15 days to resolve any claims for those wages, and that any civil action includes recovery for 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.

Paragraph (3)(b) states that the required poster must be 8.5 by 11 inches in size. The text of the poster must be conspicuous in size, and the text of the first line must be larger than the letters of any other line. In addition, the text of the first sentence must be in bold type and larger than the text in the remaining lines.

**Section 2** of the bill provides an effective date of January 1, 2007.

**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:

Whether private businesses incur a cost in relation to this legislation depends on the method the Agency for Workforce Innovation (AWI) chooses to disseminate this information to employers. Providing a free poster that may be downloaded would result in an indeterminate cost to employers who have Internet access and the ability to print size 8.5 by 11 inch posters.

## C. Government Sector Impact:

This bill requires AWI to “make available” to employers a poster to post in the workplace regarding the Florida Minimum Wage. The bill does not specify a particular means of fulfilling the requirement. 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 is 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.<sup>4</sup> At this time, AWI is planning on developing the document and posting it on the Internet.<sup>5</sup>

**VI. Technical Deficiencies:**

None.

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<sup>4</sup> Information provided by legislative affairs staff at the Agency for Workforce Innovation on March 27, 2006.

<sup>5</sup> *Id.*

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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**VIII. Summary of Amendments:**

None.

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