



receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage.

### **Minimum Wage Calculation**

AWI must calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, AWI must use the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region.<sup>3</sup> Neither the statute nor the Constitution specifically addresses deflation in the computation of the minimum wage.

In interpreting the intent of the Legislature to calculate a state minimum wage, AWI computes the percentage change in the CPI for the 12 months prior to September 1 and multiplies it times the prior year's computed Adjusted Real Wage Rate. This provides the amount to be added to, or subtracted from, the previous year's computed Adjusted Real Wage Rate.

The higher of the previous year's state minimum wage, the Adjusted Real Wage Rate, or the Federal minimum wage rate<sup>4</sup> becomes the state minimum wage for the year. The state minimum wage takes effect on the following January 1, unless a new Federal minimum wage rate is issued and that rate is higher. For example, on July 24, 2009, the new Federal minimum wage rate of \$7.25 became the new adjusted state minimum wage rate because it was higher than the state minimum wage rate at the time of \$7.21.

AWI's method for calculating the state minimum wage rate is currently the subject of a lawsuit. Florida Legal Services and the National Employment Law Project recently filed the lawsuit on behalf of four individual workers and three organizations that represent low-wage employees.<sup>5</sup> The plaintiffs claim that AWI should not have accounted for the decrease in the CPI (deflation) in 2009 when calculating future years' minimum wages. The case is currently pending.

### **III. Effect of Proposed Changes:**

This bill amends the state minimum wage statutes to provide greater specificity to AWI in its calculation of the state minimum wage. The bill clarifies that the state minimum wage cannot drop when there is deflation, but that AWI should account for deflation when computing future rates. Additionally, the bill clarifies the relationship between the Federal minimum wage and the state minimum wage.

Section 1 amends s. 448.109, F.S., to include a cross-reference.

Section 2 amends s. 448.110, F.S., to provide greater specificity to AWI as to how to calculate the state minimum wage. The bill specifies that the adjusted real wage rate is the only basis used to calculate the next year's adjusted real wage base. The adjusted real wage rate is calculated by first computing the rate of inflation by calculating the change in the CPI-W. Then this amount is multiplied against the previous year's adjusted real wage rate. The resulting amount is added or

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<sup>3</sup> Section 448.110(4)(a), F.S.

<sup>4</sup> 29 U.S.C. 206. See 29 U.S.C. 218(a), which permits a state minimum wage higher than the federal wage.

<sup>5</sup> Cadet, et. al. v. Florida Agency for Workforce Innovation, 37 2011 CA 000072 (2<sup>nd</sup> Cir. Fla., 2011).

subtracted from the previous year's adjusted real wage rate to result in the current year's adjusted real wage rate. This method allows for parity between the adjusted real wage rate and the cost of living.

The bill specifies that the higher of the adjusted real wage rate, the previous year's state minimum wage, and the Federal minimum wage is the new state minimum wage for the year.

The bill defines the terms "CPI-W," "adjusted real wage rate," and "Federal minimum wage rate" for purposes of the statute.

Section 3 provides an effective date of July 1, 2011.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None. This bill does not change the manner in which the state minimum wage is currently calculated.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Committee Substitute by Commerce and Tourism on April 12, 2011:**

This committee substitute did not change the substance of the bill, but instead added specificity to the statute that describes the calculation of the minimum wage.

- B. **Amendments:**

None.