

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 982

INTRODUCER: Senator Norman

SUBJECT: Wage Protection for Employees

DATE: March 20, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill preempts to the state any wage theft ordinances or regulations that exceed the designated state and federal laws.

This bill creates an undesignated section of law.

**II. Present Situation:**

Wage theft is when workers are paid below the minimum wage, not paid for overtime, forced to work off the clock, have their time cards altered, are misclassified as independent contractors, or are simply not paid a wage for work performed. In 2010 Miami-Dade County enacted a series of wage theft ordinances<sup>1</sup> in response to numerous instances of wage theft. A 2010 report by the Research Institute on Social and Economic Policy for the Florida Wage Theft Task Force analyzed documented wage violations in Miami-Dade and Palm Beach Counties. “The report found that from August 2006 to August 2010, there were 3,697 wage violations reported in the two counties, and those violations were worth about \$3.6 million in unpaid wages.”<sup>2</sup> Between the time of the ordinance’s passage in February, 2010, and November, 2010, Miami logged 423 wage complaints and collected nearly \$40,000 from employers.<sup>3</sup> The Florida Retail Federation has challenged the Miami-Dade ordinance alleging that it is unconstitutional for procedural reasons and that it is preempted by the Fair Labor Standards Act and Florida’s Minimum Wage

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<sup>1</sup> Chapter 22, Miami Code of Ordinances.

<sup>2</sup> Nirvi Shah, *In South Florida, Wage Theft at all Levels*, MIAMI HERALD (Nov. 16, 2010) available at <http://www.miamiherald.com/2010/11/16/1928207/in-south-florida-wage-theft-at.html#>.

<sup>3</sup> Cynthia S. Hernandez, RESEARCH INSTITUTE ON SOCIAL AND ECONOMIC POLICY, WAGE THEFT IN FLORIDA: A REAL PROBLEM WITH REAL SOLUTIONS 3 (2010).

Act.<sup>4</sup> The Palm Beach County Commission has considered enacting a similar ordinance, but has postponed a final vote pending the outcome of the Miami-Dade Case.<sup>5</sup>

### Federal Wage Regulation<sup>6</sup>

Both federal<sup>7</sup> and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.<sup>8</sup> Examples of federal laws include:

- **The Davis-Bacon and Related Acts<sup>9</sup>** - Applies to federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000; requires all contractors and subcontractors performing work on covered contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.
- **The McNamara-O'Hara Service Contract Act<sup>10</sup>** - Applies to federal or District of Columbia contracts in excess of \$2,500; requires contractors and subcontractors performing work on these contracts to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.
- **The Migrant and Seasonal Agricultural Workers Protection Act<sup>11</sup>** - Covers migrant and seasonal agricultural workers who are not independent contractors; requires, among other things, disclosure of employment terms and timely payment of wages owed.

<sup>4</sup> *Florida Retail Federation v. Miami-Dade County*, case no. 10-42326CA30 (Fla. 11th Jud. Cir. 2010).

<sup>5</sup> Jennifer Sorentrud, *Palm Beach County Commission Postpones Vote on Wage Theft Law but Directs Staff to Study and Report*, The Palm Beach Post, Feb. 1, 2011, <http://www.palmbeachpost.com/news/palm-beach-county-commission-postpones-vote-on-wage-1224613.html>.

<sup>6</sup> A list of examples of federal laws that protect employees is located at: <http://www.dol.gov/compliance/laws/main.htm> (Last visited February 23, 2011). Examples include: *The Davis-Bacon and Related Acts* (requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area); *The McNamara-O'Hara Service Contract Act* (The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement); *The Migrant and Seasonal Agricultural Workers Protection Act* (provides employment-related protections to migrant and seasonal agricultural workers); *The Contract Work Hours and Safety Standards Act* (requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek); *The Copeland "Anti-Kickback" Act* (prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract).

<sup>7</sup> A list of examples of federal laws that protect employees is located at: United States Department of Labor, Employment Laws Assistance, <http://www.dol.gov/compliance/laws/main.htm> (last visited Mar. 24, 2011).

<sup>8</sup> See United States Department of Labor, A Summary of Major DOL Laws, <http://www.dol.gov/opa/aboutdol/lawsprog.htm> (last visited Mar. 25, 2011).

<sup>9</sup> Pub. L. No. 107-217, 120 Stat. 1213 (codified as amended at 40 U.S.C. §§ 3141-48; the Davis-Bacon Act has also been extended to approximately 60 other acts).

<sup>10</sup> Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 351-58).

<sup>11</sup> Pub. L. No. 97-470, 96 Stat. 2583 (codified as amended at 29 U.S.C. §§1801-72).

- **The Contract Work Hours and Safety Standards Act<sup>12</sup>** - Applies to federal service contracts and federal and federally assisted construction contracts over \$100,000; requires contractors and subcontractors performing work on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.
- **The Copeland "Anti-Kickback" Act<sup>13</sup>** - Applies to federally funded or assisted contracts for construction or repair of public buildings; prohibits contractors or subcontractors performing work on covered contracts from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

The Fair Labor Standards Act (FLSA)<sup>14</sup> makes it illegal for an employee to be paid less than minimum wage or be required to work overtime without time and a half pay.<sup>15</sup> The FLSA applies to most classes of workers.<sup>16</sup> The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;<sup>17</sup>
- Criminal prosecutions by the United States Department of Justice;<sup>18</sup> or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.<sup>19</sup>

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.<sup>20</sup> The employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.<sup>21</sup>

### State Wage Regulation

Under the Florida Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.<sup>22</sup> Article X, s. 24(c) of the Florida Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." If an employer does not pay the state minimum wage, the Florida Constitution provides that an employee may:

bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full

<sup>12</sup> Pub. L. No. 87-581, 76 Stat. 357 (codified as amended at 40 U.S.C. §§ 3701-08).

<sup>13</sup> 18 U.S.C. § 874.

<sup>14</sup> 29 U.S.C ch. 8.

<sup>15</sup> 29 U.S.C. §207(a)(1).

<sup>16</sup> The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm> (Last visited February 24, 2011).

<sup>17</sup> 29 U.S.C. §216(c).

<sup>18</sup> 29 U.S.C. §216(a).

<sup>19</sup> 29 U.S.C. §216(b).

<sup>20</sup> 29 U.S.C. §216(b).

<sup>21</sup> 29 U.S.C. §216(b).

<sup>22</sup> See FLA. CONST. art. X, s. 24 (adopted in 2004); s. 448.110, F.S.

amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of \$1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.<sup>23</sup>

The current state minimum wage is \$7.25 per hour, which is the federal rate.<sup>24</sup> Federal law requires the payment of the higher of the federal or state minimum wage.<sup>25</sup>

### Preemption

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.<sup>26</sup> Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication nor by inference.<sup>27</sup> A local government cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.<sup>28</sup> Legislature can preempt counties' broad authority to enact ordinances and may do so either expressly or by implication.<sup>29</sup>

### III. Effect of Proposed Changes:

**Section 1** states that this act may be cited as the "Florida Wage Protection Act."

**Section 2** preempts to the state any wage theft ordinances or regulations that exceed the designated state and federal laws. A county, municipality, or political subdivision of the state may not adopt or maintain in effect any law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft.

The bill contains a Legislative intent section that declares that the theft of wages and the denial of fair compensation for work completed to be against the laws and policies of this state. The bill

<sup>23</sup> FLA. CONST art. X, s. 24(c).

<sup>24</sup> See Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida. <http://www.floridajobs.org/minimumwage/index.htm> (Last visited February 24, 2011).

<sup>25</sup> 29 U.S.C. §218(a).

<sup>26</sup> See, e.g., *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>27</sup> *Id.*

<sup>28</sup> *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>29</sup> *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

recognizes state and federal policies that seek to protect employees from predatory and unfair wage practices while also providing appropriate due process to employers.

**Section 3** of the bill 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.

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.)

None.

B. Amendments:

None.

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

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