

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 892

INTRODUCER: Senator Martin

SUBJECT: State Minimum Wage

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 892 amends s. 448.110, F.S., the Florida Minimum Wage Act (FMWA), to incorporate the federal Fair Labor Standards Act (FLSA) “as amended.” This will incorporate two exemptions from the FLSA’s minimum wage requirements that became law after the Florida Legislature adopted the FMWA, and were therefore not incorporated as part of the FMWA. This bill will exempt border patrol agents and salaried baseball players from the Florida Minimum Wage Act.

The bill expresses that it is intended to clarify existing law.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect upon becoming law.

II. Present Situation:

Federal Minimum Wage

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (FLSA) which prescribes standards for minimum wages, overtime pay, recordkeeping, and child labor.¹ The minimum wage for all covered, nonexempt employees has remained at \$7.25 per hour since 2009.²

The Wage and Hour Division of the United States Department of Labor enforces the federal Fair Labor Standards Act, including the federal minimum wage. It is a violation of FLSA to fire or in

¹ 29 U.S.C. 201, et seq. See generally U.S. Department of Labor, Wage and Hour Division., *Compliance Assistance – Fair Labor Standards Act (FLSA)*, <http://www.dol.gov/whd/flsa/index.htm> (last visited March 20, 2023).

² U.S. Department of Labor, *Minimum Wage*, <https://www.dol.gov/general/topic/wages/minimumwage> (last visited March 20, 2023).

any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.³

The FLSA includes several exemptions from the federal minimum hourly wage; the following employees are not legally required to be paid at the minimum hourly wage rate:⁴

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
- Casual babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents; and
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league’s championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The United States Congress intended for all employees in America to be protected by the FLSA unless they are expressly exempted.

Since its initial passage in 1938, the United States Congress has subsequently amended the FLSA over 20 times, including most recently in 2018.⁵

Florida Minimum Wage

Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision that established the state minimum wage.⁶

Under the State 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.⁷ The amount of the minimum wage and the procedure for calculating increases in the minimum wage are established in the State Constitution.⁸ The State Constitution specifically incorporates the *meanings* of the terms “employer,” “employee,” and “wage” as established by FLSA and its implementing regulations.⁹

³ U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)*, available at: <http://www.dol.gov/whd/regs/compliance/whdfs77a.pdf> (last visited March 20, 2023).

⁴ 29 U.S.C. § 213.

⁵ U.S. Department of Labor, *History of Changes to the Minimum Wage Law*, available at <https://www.dol.gov/agencies/whd/minimum-wage/history> (last visited March 20, 2023).

⁶ FLA. CONST. art. X, s. 24.

⁷ FLA. CONST. art. X, s. 24(a).

⁸ FLA. CONST. art. X, s. 24(c).

⁹ FLA. CONST. art. X, s. 24(b).

The use of the term “meanings” has been found to have the effect of incorporating not only the FLSA’s definitions of those terms, but also the FLSA’s exemptions as they existed at the time of the amendment’s adoption.¹⁰

The 2004 amendment also states that “[i]t is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.”¹¹

On November 3, 2020, Florida voters approved Amendment 2, which amended the State Constitution to institute a \$10.00 per hour minimum wage that increases by \$1.00 annually, until the state’s minimum wage reaches \$15.00 an hour in 2026.¹² Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it has been since 2005. This constitutional amendment was limited to Article X, s. 24(c) and did not amend any other portion of Article X, s. 24.

Florida Statute

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the 2004 constitutional provisions.¹³ The Act establishes procedures with respect to civil actions alleging violations of its provisions. The Florida minimum wage provisions may be enforced by the bringing of a civil suit by an aggrieved person¹⁴ or by the Attorney General.¹⁵

Section 448.110(3), F.S., provides that the Act is limited to “[o]nly those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations.” In addition, the Act provides that “[t]he provisions of ss. 213 and ss. 214 of the Federal Fair Labor Standards Act...are incorporated herein.”¹⁶

Post 2005 FLSA Exemption Amendments

In 2005, the FLSA included 17 exemptions from its minimum wage requirements.

In 2014, Congress amended the FLSA to exempt border patrol agents.¹⁷

In 2018, Congress again amended the FLSA to exempt a minor league baseball players¹⁸ as long as the players were paid pursuant to a contract that provides for a weekly salary for services

¹⁰ *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004); *Senne v. Kansas City Royals Baseball Corp.*, 591 F.Supp. 3d 453, 497 (2022).

¹¹ FLA. CONST. art. X, s. 24(f).

¹² United States Department of State, *Notice of Increase to State of Florida’s Minimum Wage*, <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited March 3, 2023). *See also*, Department of Economic Opportunity, *Florida’s Minimum Wage*, [florida-minimum-wage-september-2021-announcement.pdf](https://www.floridajobs.org/florida-minimum-wage-september-2021-announcement.pdf) (floridajobs.org) (last visited March 20, 2023).

¹³ Chapter 2005-353, L.O.F.

¹⁴ Section 448.110(6), F.S.

¹⁵ Section 448.110(7), F.S.

¹⁶ Section 448.110(3), F.S. Sections 213 and 214 of the FLSA include general exemptions from the FLSA and special circumstances that relate to employment under special certificates.

¹⁷ S.1691 – 113th Congress (2013-2014): Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong. (2014).

¹⁸ H.R. 1625 – 115th Congress (2017-2018): Save America’s Pastime Act, Pub. L. No. 115-141, 132 Stat. 348 (2018).

performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage for a workweek of 40 hours, regardless of the total hours the employee devotes to baseball-related activities.¹⁹

Currently in Florida, there are 12 minor league baseball teams that are affiliated with Major League Baseball (MLB). There are approximately 500 players currently rostered, employed, and being paid by the 12 Florida Minor League Baseball teams.²⁰ Additionally, 15 MLB teams conduct major and minor league spring training in Florida at thirteen different spring training facilities.

These two amendments were the only amendments made to ss. 213 of the FLSA since Florida passed its minimum wage law in 2005.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 448.110, F.S., to incorporate subsequent amendments to the FLSA “as amended,” which updates the FMWA to align with the FLSA as it exists on the effective date of this Act. Specifically, the FMWA will incorporate the FLSA's border patrol agent and minor league baseball players' exemptions.

Although the bill refers to the “FLSA, as amended” this change cannot incorporate future changes made by Congress to the FLSA. The Legislature may not delegate its constitutional duties to another branch of government²² and cannot, by reference, adopt or incorporate any federal law that has not yet been enacted.²³

Section 448.110, F.S., is the implementing language for Florida's 2004 minimum wage constitutional amendment language. It is unclear whether this bill, by amending s. 448.110, F.S., affects the 2020 minimum wage constitutional language, enconced in article X, s. 24(c) of the Florida Constitution, which requires that employers pay employees “no less than the Minimum Wage for all hours worked in Florida.”

Section 2 states that the bill is intended to clarify existing law.

The bill takes effect upon becoming law.

¹⁹ See Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), <https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts/> (last visited March 1, 2023) (recounting salary scale per level of minor league baseball, while noting that the “federally-recognized poverty line is \$12,140 per year for single-individual households”). A not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks, bonuses that can range anywhere from \$10,000 to several million dollars. See *id.* (reporting that “[t]he top 64 picks [in the MLB draft] last year all received a bonus of over \$1,000,000 before taxes, but roughly 40% of players . . . signed for one-time bonuses of \$10,000 or less”).

²⁰ See Michael Avallone, *Then and now: Florida State League*, MiLB.com, <https://www.milb.com/news/florida-state-league-overview> (last visited March 3, 2023).

²¹ Section 448.110, F.S., expressly references s. 214 of the FLSA (in addition to ss. 213) however, s. 214 has not been amended since 1989.

²² See FLA. CONST. art. II, s. 3.

²³ *State v. Welch*, 279 So.2d 11 (Fla. 1973); *Florida Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 21 So.2d 599 (Fla. 1945); *Abbott Labs v. Mylan Pharm., Inc.*, 15 So.3d 642 (Fla. 1st DCA 2009).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

It is unclear what effect the post-2005 FLSA exemptions have on the application of Florida's constitutional minimum wage provisions (both the 2004 and 2020 constitutional amendments). One court has opined that section 213(a)(19) of the FLSA—the minor league baseball player exemption—is not incorporated into either the constitutional or statutory minimum wage provisions of Florida law.²⁴ Specifically, the Court noted that Florida's voters did not intend to incorporate future exemptions to the FLSA as adopted by Congress when they voted to implement Amendment 5 to the Florida Constitution in 2004.²⁵

However, the constitution “is not designed to provide detailed instructions for the method of its implementation. This must of necessity be left up to the legislature.”²⁶ The resulting question, then, is whether the 2004 constitutional minimum wage amendment granted the Legislature ongoing implementing authority when it stated the “[t]he state legislature may by statute...adopt any measures appropriate for the implementation of this amendment.”

This issue may be moot, because Article X, s. 24(f) of the Florida Constitution limits consideration of the following as guides for the construction of the minimum wage amendment and any implementing statutes or regulations:

- Case law;
- Administrative interpretation; and
- Other guiding standards developed under the federal FLSA.

²⁴ *Senne v. Kansas City Royals Baseball Corp.*, 591 F.Supp. 3d 453, 494-500 (2022).

²⁵ *Id.* at 498.

²⁶ *Johns v. May*, 402 So.2d 1166, 1169 (Fla. 1981).

This specifically excludes laws adopted by Congress. Both exemptions added by the bill were adopted as laws by Congress.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The owners of minor league baseball teams may pay less to their salaried players.

C. Government Sector Impact:

The bill is not expected to impact state and local government revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill is intended to clarify section 448.110 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.