HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 433 Employment Regulations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Esposito
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 4 N	Thompson	Anstead
2) State Affairs Committee	14 Y, 6 N	Mwakyanjala	Williamson
3) Commerce Committee			

SUMMARY ANALYSIS

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, record keeping, and child labor protections for full and part-time workers in both the public and private sectors. The FLSA allows states to expand the rights of employers and employees. Florida generally follows federal law on overtime pay and occupational health and safety.

The Florida Minimum Wage Act, enacted in 2005, implements the minimum wage provisions in the State Constitution. Florida's wage and employment benefits law preempts the establishment of a minimum wage to the state. Thus, local governments cannot establish a minimum wage for private employers in their jurisdiction. Local governments are also prohibited from requiring private employers to provide employment benefits not required by state or federal law. However, local governments have limited authority to establish a minimum wage and to require specific employment benefits for their own employees and those of their vendors or contractors.

The Occupational Safety and Health Act of 1970 is the federal labor law governing occupational health and safety in the private sector and federal government. Currently, there are no specific federal or state laws that provide heat exposure protections for outdoor workers.

The bill:
- Prohibits local governments from preferring one contractor over another based on the wages or employment benefits provided by the contractor.
- Removes the ability of local governments to require a minimum wage for certain employees under the terms of a contract.
- Expressly preempts the regulation of the terms and conditions of employment to the state.
- Preempts the regulation of workplace heat exposure requirements to the state.
- Clarifies that the preemption of workplace heat requirements does not limit the authority of a local government to provide workplace heat exposure requirements for the employees of the local government, and does not apply if compliance will prevent the local government from receiving federal funds.

The bill does not appear to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.[1] In 1938, the FLSA established a minimum wage of $.25 an hour. The current federal minimum wage rate is $7.25 an hour, which went into effect July 24, 2009. The FLSA applies to employment within any state in the U.S., the District of Columbia, or any territory or possession of the U.S.[2]

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including individuals with disabilities, youth workers, tipped workers, and executive, administrative, and professional workers. The FLSA covers businesses if the business has annual sales of at least $500,000.[3] It also covers certain individual employees if such employee is engaged in interstate commerce.

The FLSA applies to all:[4]

- **Governments**: Federal, state, or local government agencies.
- **Hospitals**: Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.
- **Schools**: Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. It does not matter if the school or institution is public or private or operated for profit or not-for-profit.

The FLSA includes several exemptions from the federal minimum wage provisions, including:[5]

- Executive, administrative, and professional employees.
- 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 certain employers.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.[6]
- 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 FLSA was amended in 2014, concerning border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least $290 per week during the 2018 championship season

[1] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

[2] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713, (last visited Dec. 5, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.).

[3] The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least $500,000. Owners of rental properties are covered if they collect at least $500,000 annually in rent. 29 C.F.R.§§779.258-779.259.

[4] U.S. Department of Labor, Fair Labor Standards Act Advisor, https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited Dec. 5, 2023).

[5] 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

[6] *See* Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

from the federal minimum wage rate and overtime pay.[7] These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.[8]

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.[9] Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.[10]

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.[11] For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.[12] Prior to this date, Florida did not have a state minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.[13] The amendment also provides that "all working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services."[14]

On November 3, 2020, Florida voters again approved a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to $15 an hour by the year 2026.[15] Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase by $1 until the minimum wage reaches $15 per hour on September 30, 2026.[16] Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 to 2021.

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[7] *See* Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, The 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 Dec. 5, 2023). (When recounting salary scale per level of minor league baseball, the article notes "federally-recognized poverty line is $12,140 per year for single-individual households." According to the article, 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. These bonuses can range anywhere from $10,000 to several million dollars. "The 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."

[8] S. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (*See* Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941).

[9] 29 U.S.C. §218.

[10] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 8, 2023,* https://crsreports.congress.gov/product/pdf/R/R42713, (last visited Dec. 5, 2023).

[11] U.S. Department of Labor, Consolidated Minimum Wage Table, https://www.dol.gov/agencies/whd/mw-consolidated (last visited Dec. 5, 2023).

[12] Art. X, s. 24, Fla. Const.

[13] Art. X, s. 24(c), Fla. Const.

[14] Art. X, s. 24(a), Fla. Const.

[15] U.S. 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 Dec. 5, 2023).

[16] Department of Economic Opportunity, *Florida's Minimum Wage*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0_2 (last visited Dec. 5, 2023).

The Florida Constitution references the FLSA and specifically ties the meaning[17] of "employer," "employee," and "wage," to the meanings established under the FLSA and its implementing regulations.[18] It also indicates that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida's Constitution related to Section 24 and any implementing statutes or regulations.[19]

Florida Minimum Wage Act

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the Florida Constitution.[20] The Act designates the Department of Commerce (DC) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.[21]

The Act provides that, effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FLSA and its implementing regulations are eligible to receive the state minimum wage pursuant to the Florida Constitution and this statute. The provisions of ss. 213 and 214 of the federal FLSA, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.[22]

Local Wage Ordinances

The Florida Constitution authorizes counties to enact ordinances that are not inconsistent with state law,[23] while municipalities are authorized to enact ordinances on any subject that state law may address, except:[24]

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the Florida Constitution;
- Any subject expressly preempted to state or county government by the Florida Constitution or by law; or
- Any subject preempted to a county under a county charter.

In 2003, the Legislature preempted the establishment of minimum wages to the state.[25] However, a political subdivision (local government)[26] retains the authority to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for:[27]

- Its employees;
- The employees of an employer contracting to provide goods or services for the local government, or for the employees of a subcontractor of such an employer, under the terms of a contract with the local government; or

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[17] *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend*., 880 So. 2d 636, 641–42 (Fla. 2004). ("The proposed amendment does not state that it is adopting the FLSA's *definition* of the term "employee," but provides that it is adopting the *meaning* of the term "employee," which is a much broader concept.")

[18] Art. X, s. 24(b), Fla. Const.

[19] Art. X, s. 24(f), Fla. Const.

[20] Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

[21] S. 448.110(10), F.S. HB 5 (2023) renames the Department of Economic Opportunity as the Department of Commerce; SB 82 (2024), section 220, makes this conforming change in the Florida Minimum Wage Act.

[22] S. 448.110(3), F.S.

[23] S. 1(f) and (g), Art. VIII, Fla. Const.; *see also* s. 125.01, F.S.

[24] S. 2(b), Art. VIII, Fla. Const.

[25] S. 218.077(2), F.S. *See* s. 18(a) of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 218:

No provision of [the Fair Labor Standards Act] or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the federal act].

[26] "Political subdivision" is defined to mean a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. S. 218.077(1)(f), F.S.

[27] S. 218.077(3)(a), F.S.

- The employees of an employer receiving a direct tax abatement or subsidy from the local government, as a condition of the direct tax abatement or subsidy.

The preemption also does not apply to "a domestic violence or sexual abuse ordinance, order, rule, or policy adopted by a political subdivision."[28]

The law contains an exception for situations where compliance would prevent a local government from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,[29] which direct the federal Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.[30]

Additionally, local governments are prohibited from requiring an employer to provide employment benefits[31] not required by state or federal law. "

Despite these provisions, in 2016, the City of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. The ordinance applied to all employers operating within the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of $10.31 an hour and annual increases to $13.31 an hour effective January 2021. Subsequently, the ordinance was challenged on the grounds that it was preempted by state law and Florida's Third District Court of Appeals struck down the ordinance.

The court held that the Florida Constitution authorizes the Legislature to preempt municipal powers by statute. The court also rejected the city's principal argument that Art. X, s. 24 of the Florida Constitution, raising the state minimum wage, made the statute unconstitutional. In 2018, the Florida Supreme Court agreed to take up the case.[32] However, in 2019, the Florida Supreme Court issued an order that discharged jurisdiction over the case. As a result, the Third District's decision invalidating Miami Beach's local wage ordinance appears to currently stand.[33]

Workplace Heat Exposure

The Occupational Safety and Health Act of 1970 (OSH Act) is the federal labor law governing occupational health and safety in the private sector and federal government.[34] Under the OSH Act, two federal agencies are responsible for promoting occupational safety and health in the United States. The National Institute for Occupational Safety and Health (NIOSH) conducts research and recommends occupational safety and health standards.[35] The Occupational Safety and Health Administration (OSHA)[36] is responsible for the promulgation and enforcement of standards.[37]

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[28] S. 218.077(3)(b), F.S.

[29] *See, e.g.,* 40 U.S.C. 3141 *et seq.* The Davis-Bacon Act is a federal law that regulates prevailing wage rates on public works projects. The Act provides that all laborers and mechanics working on construction projects which are funded by the federal government shall not be paid a wage less than prevailing wage, as specified by the U.S. Department of Labor, in the locality in which work is performed.

[30] S. 218.077(4), F.S.

[31] "Employment benefits" is defined to mean anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits. S. 218.077(1)(d), F.S.

[32] *City of Miami Beach v. Florida Retail Federation, Inc.,* 233 So.3d 1236 at 1238 (Fla. 3d DCA 2017) (declined for review February 5, 2019).

[33] JDSUPRA, *Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No* (Feb. 14, 2019), https://www.jdsupra.com/legalnews/can-cities-set-a-local-minimum-wage-67192/ (last visited Dec. 5, 2023).

[34] Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 STAT. 1590, 91st Cong. (Jan. 1, 2004).

[35] 29 U.S.C. § 671.

[36] *See* Occupational Safety and Health Administration, *About Osha*, https://www.osha.gov/aboutosha (last visited Dec. 5, 2023).

[37] 29 U.S.C. § 655.

Currently, there are no specific laws in Florida that provide heat exposure protections for outdoor workers. NIOSH and OSHA provide certain recommendations that employers provide heat exposure protections.

In 2013, NIOSH published a document entitled "Preventing Heat-related Illness or Death of Outdoor Workers," which recommends that employers have a plan in place to prevent heat-related illness. The plan should include hydration (drinking plenty of water), acclimatization (getting used to weather conditions), and schedules that alternate work with rest. It recommends that employers should also train workers about the hazards of working in hot environments.[38]

OSHA does not currently have any specific heat exposure standards. In the absence of a specific standard, OSHA is authorized to enforce the "general duty clause" of the OSH Act, which requires each employer to provide a workplace that is free of "recognized hazards" causing or likely to cause "death or serious physical harm" to its employees.[39]

In 2011, OSHA launched a heat illness prevention campaign that includes guidance to employers and employees, a smartphone app that provides location-specific information on heat conditions and heat exposure prevention and first aid, and educational materials such as posters and pamphlets in English, Spanish, and other languages.[40]

On October 27, 2021, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for a potential standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.[41] OSHA solicited public comments on the ANPRM through January 26, 2022, and received over 1,000 comments on the ANPRM.

In March 2021, OSHA cited Valley Produce Harvesting and Hauling Company for a willful violation of the general duty clause by exposing sugar cane harvesting employees in Florida to "excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress" while working outdoors in September 2020. OSHA assessed the maximum allowable civil monetary penalty of $136,532 for this violation, which was later reduced through an informal settlement with the employer to $81,919.20. The citation provides, "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress."[42]

In April 2022, OSHA began a National Emphasis Program (NEP) of enforcement of the general duty clause and compliance assistance to focus on indoor and outdoor heat exposure. The NEP expands on OSHA's ongoing heat-related illness prevention initiative and campaign by creating a targeted enforcement component and reiterating its compliance assistance and outreach efforts. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.[43]

Local Heat Regulation

On November 11, 2023, the Miami-Dade County Board of County Commissioners considered a proposal that would require construction and agriculture companies with five or more employees to

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[38] NIOSH 1986, 2008, 2010; OSHA-NIOSH 2011.
[39] 29 U.S.C. § 654.
[40] Occupational Safety and Health Administration, Heat Illness Prevention, https://www.osha.gov/heat/ (last visited Dec. 5, 2023).
[41] 86 FR 59309.
[42] Occupational Safety and Health Administration, *Violation Detail*, https://www.osha.gov/ords/imis/establishment.violation_detail?id=1495595.015&citation_id=02001 (last visited Dec. 5, 2023).
[43] Occupational Safety and Health Administration, *OSHA Instruction*, https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf (last visited Dec. 5, 2023).

guarantee workers access to water and give them 10-minute breaks in the shade every two hours on days when the heat index equals or exceeds 95 degrees Fahrenheit. The proposal would also require employers to train workers to recognize the signs of heat illness, administer first aid, and call for help in an emergency. Enforcement includes a warning, fines of up to $2,000 per day per violation, and debarment of contractors from county work for certain repeated violations and unpaid penalties.[44] Consideration of the proposal has been deferred until March.[45] Some South Florida employers have expressed that they already provide such protections and Miami-Dade County would be the first local government in the nation to adopt such requirements.

Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[46] To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.[47] Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[48]

Where state preemption applies, a local government may not exercise authority in that area.[49] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the local government may declare the preempted ordinance void.[50]

<u>Effect of Proposed Changes</u>

Wage and Employment Benefits

The bill amends Florida's wage and employment benefits law by providing that a political subdivision may not:

- Maintain a minimum wage, other than a state or federal minimum wage.
- Seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision through its purchasing or contracting procedures.
- Use evaluation factors, qualification of bidders, or otherwise award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

The bill removes the ability of local governments to require a minimum wage for certain employees under the terms of a contract.

Regulation of Labor

The bill expressly preempts the regulation of the terms and conditions of employment to the state. The bill provides that unless expressly authorized by special or general law, a county, municipality, special district, or political subdivision may not adopt or enforce an ordinance, order, rule, or policy providing

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[44] Miami-Dade Legislative Item, File Number: 231773.
[45] Miami Herald, *After industry pressure, Miami-Dade puts heat protections for outdoor workers on ice*, https://www.miamiherald.com/news/local/environment/article281487003.html (last visited Dec. 6, 2023).
[46] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).
[47] *Mulligan*, 934 So. 2d at 1243.
[48] *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[49] *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[50] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).

any term or condition of employment that exceeds or conflicts with the requirements of federal or state law relating to any term or condition of employment. The bill provides that an ordinance, order, rule, or policy that violates this provision is void and unenforceable.

This appears to limit local government from regulating employment in any way, including having certain requirements for its own employees that are different from the state or federal law, unless those regulations are authorized by general or special law.

Workplace Heat Exposure Requirements

In addition to the preemption for all conditions of employment, the bill preempts the regulation of workplace heat exposure requirements to the state, and specifically indicates that the provision applies retroactively. Specifically, the bill provides that any local law, ordinance, resolution, regulation, rule, code, policy, or charter amendment adopted before, on, or after the effective date of this act which conflicts with this provision is void and prohibited.

The bill requires the DC to adopt rules relating to workplace heat exposure requirements if OSHA has not done so by July 1, 2028. The rules must be consistent with the standards of OSHA in effect at the time the DC adopts its rules, and modified as necessary to reflect workplace heat exposure considerations specific to the state. The Legislature must ratify such rules before they take effect.

The bill prohibits local governments from:

- Mandating or otherwise imposing heat exposure requirements on an employer, an employee, a contractor, or a subcontractor.
- Considering or seeking information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

The bill provides that it does not:

- Limit the authority of a local government to mandate or impose workplace heat exposure requirements for the employees of the local government.
- Apply if it is determined that compliance would prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the inconsistency with federal requirements.

The bill provides the following definitions:

- “Contractor” means an employer contracting with, or seeking to contract with, a local government to provide goods or services to, for the benefit of, or on behalf of the local government.
- “Employee” means a natural person, including a self-employed person, who receives any type of compensation or remuneration for providing services to an employer.
- “Employer” means a person who hires or contracts for the services of employees.
- “Heat exposure requirement” means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:
    - Employee monitoring and protection.
    - Water consumption.
    - Cooling measures.
    - Acclimatization and recovery periods or practices.
    - Posting or distributing notices or materials relating to heat exposure which inform employees how to protect themselves from such exposure.
    - Implementation and maintenance of heat exposure programs or training.
    - Appropriate first-aid measures or emergency responses related to heat exposure.
    - Protections for employees who report that they have experienced excessive heat exposure.
    - Reporting and recordkeeping requirements.

- "Local government" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.
- "Subcontractor" has the same meaning as in s. 448.095(1), F.S., which includes a person or an entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S., relating to wage and employment benefits requirements by political subdivisions; restrictions.

Section 2: Creates s. 448.077, F.S., relating to regulation of labor preempted to state.

Section 3: Amends s. 448.106, F.S., relating to workplace heat exposure requirements; preemption; rulemaking.

Section 4: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector to the extent that the preemptions supersede local ordinances. The bill may:

- Prevent businesses from losing local government contracts based on wages or employment benefits that they do not currently offer.
- Allow businesses that contract with local governments to pay their employees as they see fit.
- Prevent businesses from being required to provide costly terms and conditions of employment.
- Prevent businesses from being required to provide costly workplace heat exposure protections.
- Prevent workers from earning a wage that allows them to live in the area that they work.
- Create a negative fiscal impact for employers who provide workers' compensation insurance for their employees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the DC to adopt rules relating to workplace heat exposure requirements if OSHA has not done so by July 1, 2028.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Regulatory Reform & Economic Development Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Prohibited local governments from preferring one contractor over another based on wages or employment benefits.
- Removed the ability of local governments to require a minimum wage for certain contracted employees under the terms of a contract.
- Preempted all regulation of the terms and conditions of employment to the state.
- Preempted the regulation of workplace heat exposure requirements to the state.
- Provided clarifying language regarding the:
  - Authority of a local government to mandate or impose workplace heat exposure requirements for its employees; and
  - Exception for the distribution of federal funds to a local government.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.