

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The bill adds little in the way of additional government. The additional government included in the bill is almost exclusively a function of the constitutional amendment the bill is supplementing. It actually limits the ability of the Agency for Workforce Innovation (AWI) to exercise any authority related to the state minimum wage beyond that expressly provided in the amendment.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

On November 2, 2004, the voters approved Constitutional Amendment 5, creating a state minimum wage effective six months after the date enacted by the voters. The amendment sets the wage at \$6.15 per hour for "employees," as defined under the federal Fair Labor Standards Act (FLSA), with an annual adjustment based on the increase in the U.S. Consumer Price Index for urban wage earners. The amendment directs the AWI to publish the amount of the initial and adjusted state minimum wage. Retaliation against persons exercising rights under the amendment is expressly prohibited. Enforcement is provided through the creation of a private cause of action with specific remedies, in addition to authorizing the attorney general or other designated official to bring a civil enforcement action. The amendment expressly authorizes class actions as a means to enforce the amendment. Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature (and the Agency for Workforce Innovation) to "adopt any measures appropriate for the implementation of this amendment." The amendment indicates it is intended that interpretations and guidance developed under the federal Fair Labor Standards Act guide the construction of the amendment.

The federal minimum wage stands at \$5.15 per hour and is established in section 6 of the FLSA. The FLSA defines key terms such as "employer" and "employee," establishes standards for employers and employees, identifies prohibited acts, specifies penalties and enforcement measures.

Section 16 of the FLSA punishes willful violations with fines and subjects those that violate the act with payment of unpaid wages and liquidated damages. An employer that retaliates against an employee is also subject to "such legal or equitable relief as may be appropriate." The Secretary of Labor may also sue for injunctive relief against employers. As amended by the Portal-to-Portal Act, 61 Stat. 84, the court may modify the amount of liquidated damages if an employer shows to the "satisfaction of the court" that the conduct giving rise to the civil action occurred in "good faith" and based on "reasonable grounds."

Effect of Proposed Changes

This bill consolidates provisions from Constitutional Amendment 5 and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act."

One, in accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill limits the state minimum wage applies to employees eligible to receive the federal minimum wage.

Two, it adopts the U.S. Consumer Price Index for the south region as the applicable index for determining the annual adjustments to the state minimum wage.

Three, it provides direction to the AWI for publishing notice of the new state minimum wage and mailing notice to employers included on the unemployment compensation database..

Four, employees are required to notify employers and give them 15 days to resolve any claims for unpaid wages before filing suit.

Five, it limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages, and imposes certain requirements on class action suits.

Finally, the bill restricts the authority of the AWI to that expressly provided for in the amendment and expressly authorized by the Legislature.

C. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., providing a cross-reference relating to statutes of limitation.

Section 2. Creates s. 448.110, F.S., providing for the "Florida Minimum Wage Act."

Section 3. Designates ss. 448.01 – 448.110 as Part I of chapter 448, Florida Statutes, and entitled "Terms and Conditions of Employment."

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The fiscal impact of the bill on state is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to for internet posting to be nominal (\$90 for initial posting, and less than \$90 for updates), and \$150,159 for FY 2005-06, and \$168,129 for FY 2006-07 and beyond for the required mailing to employers. SEE II.D., FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Any fiscal impact on local government employers results from the amendment, not the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any fiscal impact on employers results from the amendment, not the bill.

D. FISCAL COMMENTS:

The cost associated with the required mailing to employers assumes 449,258 employers multiplied by the cost of first class postage, printing, paper, and envelopes. The increase in FY 2006-07 and beyond is due to an anticipated increase in postage costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, the Judiciary Committee adopted the following three amendments to the proposed committee bill which have been engrossed into the bill:

- an amendment requiring the Agency for Workforce Innovation to notify employers of the rate and effective date of the adjusted state minimum wage rate, by mail, using the state unemployment compensation database.
- an amendment limiting enforcement actions against individuals other than employers to violations of the prohibition against retaliation.
- for purposes of having liquidated damages waived or reduced, an amendment requiring an employer to prove good faith by a “preponderance of the evidence,” rather than making a showing “to the satisfaction of the court.”