

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1709 CS PCB JU 05-01 State Minimum Wage
SPONSOR(S): Judiciary Committee, Representative Simmons and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	11 Y, 1 N	Hogge	Hogge
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Carlson	Carlson
2) Justice Council	10 Y, 0 N	Hogge	De La Paz
3)			
4)			
5)			

SUMMARY ANALYSIS

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 and provides for annual adjustments. The amendment prohibits retaliation against persons exercising rights under the amendment and provides an extensive set of remedies, including the use of class actions. Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature to "adopt any measures appropriate for the implementation of this amendment."

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." The bill accomplishes the following:

- In accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill limits the state minimum wage to employees eligible to receive the federal minimum wage;
- 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;
- It provides direction to the agencies for providing notice of the new state minimum wage;
- It requires employees to notify employers and give them 15 days to resolve any claims for unpaid minimum wages before filing suit;
- 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; and
- The bill restricts the authority of the Agency for Workforce Innovation (AWI), to that expressly provided for in the amendment and expressly authorized by the Legislature.

The fiscal impact of the bill on state and local government 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 be approximately \$150,000 in FY 2005-06 for employer notification responsibilities. Any fiscal impact resulting from the increase in the state minimum wage results from the amendment, not the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1709c.JC.doc
DATE: 4/19/2005

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. That provision is now codified at s. 24, art. X, State Constitution. 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.

The amendment prohibits retaliation against persons exercising rights under the amendment. The amendment provides for enforcement by creating 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 AWI to "adopt any measures appropriate for the implementation of this amendment." The amendment states that interpretations and guidance developed under the federal Fair Labor Standards Act be used in construing 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 and

provides that the minimum wage applies to hours worked in Florida. It also incorporates sections 213 and 214 of the Fair Labor Standards Act, which provide certain exemptions from the federal act.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

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.”

On April 6, 2005, the Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill. The amendment accomplishes the following:

- Limits application of the minimum wage to those hours worked in Florida;
- Incorporates by reference sections 213 and 214 of the Fair Labor Standards Act which provide certain exemptions from the federal act;
- Requires a notice of intent to bring suit for unclaimed wages to identify the actual or estimated work dates and hours for which payment is sought;
- Requires the statute of limitations to be tolled during the 15 day cure period;
- Requires any suit for unclaimed minimum wages to be consistent with the contents of the notice of intent to sue;
- Clarifies that a court cannot award economic damages on a claim for unpaid minimum wages not expressly authorized by the bill;
- Provides that the offer of judgment statute, s. 768.79, applies to all civil actions brought under s. 24, Art. X of the State Constitution;
- Provides that class actions may be initiated pursuant to Rule 1.220 and requires that the plaintiffs prove by a preponderance of the evidence, the individual identity of each class member and their individual damages;
- Provides a severability clause; and
- Makes various technical and grammatical changes.