

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 655 Political Subdivisions
SPONSOR(S): State Affairs Committee, Precourt
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 7 N	Nelson	Rojas
2) State Affairs Committee	12 Y, 5 N, As CS	Stramski	Camechis

SUMMARY ANALYSIS

In 2003, the Florida Legislature prohibited political subdivisions from requiring employers to pay a minimum wage other than the *federal* minimum wage. This law did not limit the authority of a local government to establish a minimum wage for its own employees or employees of its contractors.

The term “political subdivision” is defined in statute as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

HB 655 amends current law to prohibit political subdivisions from requiring an employer to provide employment benefits or a minimum wage that is not required by state or federal law. The term “employment benefits” is defined as 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. The term “employer” is defined as any person who is required to pay a state or federal minimum wage to the person’s employees.

This bill also prohibits a political subdivision from:

- Requiring, as part of a contract with the political subdivision, a minimum wage or employment benefit for employees of a political subdivision’s contractors or subcontractors; or
- Awarding contract preferences based upon the wages or benefits provided to employees.

The bill specifies that it does not:

- Limit the authority of a political subdivision to establish a minimum wage or provide employment benefits not otherwise required under state or federal law *for its own employees*;
- Apply to any domestic violence ordinance, order, rule, or policy; or
- Apply to any contracts entered into or procurements issued before July 1, 2013.

The bill removes the provision of s. 218.077, F.S. that states that the section does not limit the authority of a political subdivision to provide a tax abatement or subsidy to an employer that provides employee benefits not required by state or federal law as a condition of the tax abatement or subsidy.

Lastly, the bill provides that a living wage ordinance in place on July 1, 2013, remains in effect through July 1, 2016, when it is repealed by operation of law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal and State Minimum Wage Laws

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (29 U.S.C. s. 201, *et seq.*), establishing an initial federal minimum wage of \$0.25 per hour.¹ The minimum wage for all covered, nonexempt employees has remained at \$7.25 per hour since 2009. The Act includes several exemptions from the federal minimum wage, including:

- 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; and
- casual babysitters and persons employed as companions for the elderly or infirm.

Employers also must pay tipped employees (e.g., servers in restaurants), who customarily and regularly receive more than \$30 per month in tips, the federal minimum wage of \$7.25 per hour. The employer may account for tips received by a tipped employee as part of the wage rate, but must also pay the employee a base wage of at least \$2.13 per hour.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.

According to the United States Department of Labor, five states—Alabama, Louisiana, Mississippi, South Carolina and Tennessee—do not have an established minimum wage requirement. Nineteen states and the District of Columbia have minimum wage rates higher than the federal rate: Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington. Four states—Arkansas, Georgia, Minnesota and Wyoming—have minimum wage rates lower than the federal minimum wage. If an employee is subject to both a state and federal minimum wage law, the employee is entitled to the higher of the two minimum wages.³

The purpose of s. 448.110, F.S., the “Florida Minimum Wage Act,” enacted in 2005, is to provide measures appropriate for the implementation of s. 24, Art. X of the State Constitution,⁴ in accordance with authority granted to the Legislature pursuant to s. 24(f), Art. X of the State Constitution. To implement s. 24, Art. X of the State Constitution, the Department of Economic Opportunity is designated as the state Agency for Workforce Innovation.

The Department of Economic Opportunity annually calculates an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In

¹ <http://www.dol.gov/oasam/programs/history/flsa1938.htm>.

² The Fair Labor Standards Act of 1938, as amended.

³ <http://www.dol.gov/whd/minwage/america.htm>.

⁴ This provision of the State Constitution was proposed by Initiative Petition filed with the Secretary of State on August 7, 2003, and adopted in 2004. Its stated public policy is that: “[a]ll 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.”

calculating the adjusted state minimum wage, the Department of Economic Opportunity uses the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. Each adjusted state minimum wage rate takes effect on the following January 1. The Florida minimum wage was raised on January 1, 2013, from \$7.67 to \$7.79 per hour.

The Living Wage and Local Wage Ordinances in Florida

Since the early 1990s, more than 120 local governments across the country have enacted “living wage” laws. These laws typically establish wage standards in excess of state or federal minimum wage for businesses that receive contracts or subsidies from local governments.⁵

Living wage proponents argue that wages should be high enough to allow workers to meet basic needs (i.e., “living wages”). Proponents further note that the federal government has generally neglected the minimum wage, and that local governments have contributed to the problem, following a trend of cutting costs by contracting out services to firms who may pay lower wages and offer fewer benefits than public employment. These advocates additionally maintain that economic development efforts have channeled public funds in the form of tax breaks or incentives to businesses without regard to the quality of the jobs those businesses provide.⁶ Opponents contend that minimum wage requirements result in increased costs to employers together with increased unemployment.⁷

Several Florida local governments have enacted living-wage laws that mandate higher hourly pay than the state’s minimum wage, including Broward County, the City of Gainesville, Miami Beach, Miami/Dade County, Orlando and Palm Beach County.⁸

Power of Local Governments to Enact Minimum Wage Ordinances

Prior to the 1968 revision of the Florida Constitution, which authorized local home rule powers for both cities and charter counties, local governments had only those powers expressly granted by law. The power of self-government granted to non-charter counties in ch. 125, F.S., was extremely broad. In 1973, the Legislature enacted the Municipal Home Rules Power Act, now codified in ch. 166, F.S. This Act ensured that municipalities retained governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services.

The State Constitution permits counties to enact ordinances that are not inconsistent with state law.⁹ The Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except:¹⁰

- annexation, merger, and exercise of extraterritorial power;
- a subject expressly prohibited by the State Constitution;
- a subject expressly preempted to state or county government by the State Constitution or by law; or
- a subject preempted to a county under a county charter (s. 166.021(3), F.S.).

State preemption precludes a local government from exercising authority in a particular area. Generally, a local government may pass a more stringent regulation than one provided by statute. However, a local government may not enact such an ordinance if the Legislature expressly prohibits regulation or if the imposition of regulation frustrates the purpose of a statute.¹¹

⁵ http://www.nelp.org/content/content_issues/category/living_wage_laws/.

⁶ *The Economic Impact of Local Living Wages* by Thompson and Chapman; <http://www.epi.org/publication/bp170/>.

⁷ http://epionline.org/lw_faq.cfm.

⁸ <http://www.businessmanagementdaily.com/2768/local-ordinances-in-florida>.

⁹ Section 1(f) and (g), Art. VIII of the State Constitution; *see*, also, s. 125.01, F.S.

¹⁰ Section 2(b), Art. VIII of the State Constitution.

¹¹ *See, Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826 (Fla. 1st D.C.A. 1996).

Statutory Restriction of Minimum Wage Requirements

In 2003, the Florida Legislature enacted ch. 2003-87, L.O.F. The introductory language to this chapter law provided that:

- promoting the economic growth and prosperity of its citizens is among the most important responsibilities of the state;
- this economic growth and prosperity depends upon maintaining a stable business climate that will attract new employers to the state and allow existing employers to grow;
- with regard to worker wages, federal minimum wage provisions strike the necessary balance between the interests of workers and their employers;
- allowing each local government to establish minimum wage levels in their individual jurisdictions higher than those required by federal law would threaten to drive businesses out of these communities and out of the state in search of a more favorable and uniform business environment;
- higher minimum wage standards differing from one locale to another would encourage residents to conduct their business in jurisdictions where wage costs, and hence prices, are lower; and
- such artificial constraints would disrupt Florida's economy and threaten the public welfare.

Codified as s. 218.077, F.S., this law prohibits local governments from establishing minimum wage levels in their individual jurisdictions. The law specifically does not limit the authority of a political subdivision to establish a minimum wage for:

- its employees;
- the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract; or
- the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

Further, the law does not apply if it is determined that compliance would prevent receipt of federal funds by the political subdivision.¹² For example, this provision exempts wages required to be paid in connection with the Davis-Bacon and Related Acts (40 U.S.C. s. 276a), which apply to federally-funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts, and the Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Examples of the Acts related to Davis-Bacon wage determinations are the Federal-Aid Highway Acts, and the Housing and Community Development Act of 1974.¹³

¹² Section 218.077(4), F.S.

¹³ <http://www.dol.gov/whd/govcontracts/dbra.htm>.

Effect of Proposed Changes

HB 655 amends s. 218.077, F.S., to prohibit Florida political subdivisions¹⁴ from requiring an employer to provide employment benefits not required by state or federal law.¹⁵ This language prevents a local government from requiring additional employee benefits within its jurisdiction.

An "employer" is defined as any person who is required under state or federal law to pay a state or federal minimum wage to the person's employees. The term "political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

"Employment benefits" means 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.

The bill also specifically prohibits a political subdivision from requiring a minimum wage or employment benefits for the employees of employers of contractors and prohibits a political subdivision from awarding contract preferences based on the wages or employment benefits provided to employees. However, the bill does not limit the authority of a political subdivision 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 its own employees.

The bill provides that a living wage ordinance that is in place on July 1, 2013, remains in effect through July 1, 2016, when it is repealed by operation of law.

The bill specifies that it does not:

- limit the authority of a political subdivision to establish a minimum wage or provide employment benefits not otherwise required under state or federal law *for its own employees*
- apply to any domestic violence ordinance, order, rule, or policy; or
- apply to any contracts entered into or procurements issued before July 1, 2013.

The bill removes the provision of s. 218.077, F.S. that states that the section does not limit the authority of a political subdivision to provide a tax abatement or subsidy to an employer that provides employee benefits not required by state or federal law as a condition of the tax abatement or subsidy.

Lastly, the bill preserves current statutory language providing that the law does not apply if it is determined that compliance would prevent receipt of federal funds by the political subdivision.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S., providing and revising definitions; prohibiting political subdivisions from requiring employers to provide certain employment benefits; prohibiting political subdivisions from requiring, or awarding preference on the basis of, certain wages or employment benefits when contracting for goods or services; providing for effect and repeal of certain ordinances; conforming provisions to constitutional requirements relating to the state minimum wage.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹⁴ "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Section 218.077(1)(e), F.S.

¹⁵ Most employee benefits are provided voluntarily by employers. For example, federal or Florida laws do not require vacation leave, sick pay, paid holidays, or life insurance plans.

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: Employers will no longer be subject to local ordinances requiring payment of employee wages or employment benefits in excess of state or federal requirements.

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: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: None.

Other Comments: Generally, local governments are opposed to state preemption and the erosion of home rule powers. Specifically, the bill would preclude local governments from taking into account local factors, such as varying costs of living, in determining applicable minimum wages.¹⁶ The Florida League of Cities, representing the state's municipal governments, has indicated that it opposes this bill.

The Florida Chamber of Commerce has indicated that the preemption of sick leave requirements is one of its legislative priorities.¹⁷

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2013, the State Affairs Committee adopted a proposed amendment to House Bill 655 and reported the bill favorably as amended. The amendment:

- removes a prohibition on political subdivisions from requiring a minimum wage, other than a state or federal minimum wage, or employment benefits not otherwise required by state or federal law, for

¹⁶ For example, the Living Wage Calculator maintained by the Massachusetts Institute of Technology indicates that a living wage, defined as a minimum estimate of the cost of living for a low wage family, is 46 percent higher in Broward County than in Columbia County for a single adult. <http://livingwage.mit.edu/states/12/locations> (last visited March 4, 2013).

¹⁷ <http://www.orlandosentinel.com/news/local/breakingnews/os-sick-time-florida-chamber-20130116,0,828943.story>.

the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision as a condition of the tax abatement or subsidy that was included in the original bill;

- provides that a living wage ordinance that is in place on July 1, 2013, remains in effect through July 1, 2016, when it is repealed by operation of law;
- provides that the bill does not apply to any domestic violence ordinance, order, rule, or policy; and
- provides that the bill does not apply to any contracts entered into or procurements issued before July 1, 2013.