

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1125 Employers and Employees

**SPONSOR(S):** Local & Federal Affairs Committee, Civil Justice Subcommittee, Goodson

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 2 N, As CS	Cary	Bond
2) Local & Federal Affairs Committee	10 Y, 8 N, As CS	Baker	Rojas
3) Judiciary Committee			

### SUMMARY ANALYSIS

Federal law and state law provide protection from wage theft through various means, including the Federal Fair Labor Standards Act, Florida's minimum wage laws, and Florida's employment law. These laws may be enforced, depending on which one is violated, by an employee's filing a civil action, or by government sanctions and fines.

The bill:

- Provides that the regulation of wage theft is expressly preempted to the state, with an exemption for ordinances enacted on or before January 2, 2013.
- Allows a local government to create an indigents' program to assist persons with wage theft claims within an optional administrative process.
- Creates a civil cause of action and definition for wage theft, including provisions for types of allowable damages.
- Provides that the civil cause of action for wage theft is within county court jurisdiction, regardless of the amount in controversy.

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

The bill is effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

"Wage theft" is a general term used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Examples of wage theft may include:

- Employee is paid below the state or federal minimum wage.
- Employee is paid partial wages or not paid at all.
- Non-exempt employee is not paid time and half for overtime hours.
- Employee is misclassified as an independent contractor.
- Employee does not receive final paycheck after employment is terminated.

There are a variety of federal and state laws that protect employees from wage theft including, but not limited to, the federal Fair Labor Standards Act and Florida minimum wage law.

#### Worker Protection: Federal and State

Both federal<sup>1</sup> and state law provides protection to workers who are employed by private and governmental employers. Those protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.

#### *Federal Protection for Workers*

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime time hours worked.<sup>2</sup> The FLSA establishes standards for minimum wages,<sup>3</sup> overtime pay,<sup>4</sup> recordkeeping,<sup>5</sup>and child labor.<sup>6</sup> The FLSA applies to most classes of workers.<sup>7</sup> The FLSA provides that if an employee works more than 40 hours in a week, then the employer must pay at least time and half for those hours over 40.<sup>8</sup> A failure to pay is a violation of the FLSA.<sup>9</sup>

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<sup>1</sup> A list of examples of federal laws that protect employees is located at: <http://www.dol.gov/compliance/laws/main.htm> (Last visited March 7, 2013). Examples include: The Davis-Bacon and Related Acts (requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area); The McNamara-O'Hara Service Contract Act (requires contractors and subcontractors performing services on covered federal contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates contained in a predecessor contractor's collective bargaining agreement); The Migrant and Seasonal Agricultural Workers Protection Act (provides employment-related protections to migrant and seasonal agricultural workers); The Contract Work Hours and Safety Standards Act (requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek); The Copeland "Anti-Kickback" Act (prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract).

<sup>2</sup> 29 U.S.C ch. 8.

<sup>3</sup> 29 U.S.C. s. 206.

<sup>4</sup> 29 U.S.C. s. 207.

<sup>5</sup> 29 U.S.C. s. 211(c).

<sup>6</sup> 29 U.S.C. s. 212(c).

<sup>7</sup> The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Mar. 21, 2013).

<sup>8</sup> 29 U.S.C. s. 207(a)(1).

<sup>9</sup> There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see <http://www.dol.gov/compliance/guide/minwage.htm> (last visited March 21, 2013).

The FLSA also establishes a federal minimum wage in the United States.<sup>10</sup> The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.<sup>11</sup>

The FLSA provides for enforcement in three ways:

- civil actions by the federal government;<sup>12</sup>
- criminal prosecutions by the United States Department of Justice;<sup>13</sup> or
- private causes of action by employees, which includes individual lawsuits and collective actions.<sup>14</sup>

The FLSA provides that an employer who violates 29 U.S.C. § 206 (minimum wage) or 29 U.S.C. § 207 (maximum hours) is liable to the employee in the amount of the unpaid wages plus liquidated damages equal to the amount of the unpaid wages.<sup>15</sup> An employer who fails to pay according to law is also responsible for the employee's attorney fees and costs.<sup>16</sup>

### *State Protection of Workers*

It is likely a wage-earner may file an action in state court based on an oral or written contract with that employee's employer. Section 448.08, F.S., allows a court to award a prevailing party the costs and attorney fees of an unpaid wage claim. It is also likely that a wage-earner may file an action in state court based on unjust enrichment to recover for benefits rendered without receiving compensation.<sup>17</sup> See *Limits below for the statute of limitations.*

State law protects workers as well, including provisions for a state minimum wage. The state minimum wage was adopted as a constitutional amendment<sup>18</sup> and the Legislature implemented that constitutional amendment by s. 448.110, F.S.

Section 24(c), Art. X, State Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida."<sup>19</sup> If an employer does not pay the state minimum wage, the provision states that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld.<sup>20</sup> According to that constitutional provision, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs.

The current state minimum wage is \$7.79 per hour,<sup>21</sup> which exceeds the federal minimum wage of \$7.25 per hour.<sup>22</sup> Federal law requires the payment of the higher of the federal or state minimum wage.<sup>23</sup> In addition, any worker may sue for unpaid wages based on the employer's failure to pay under

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<sup>10</sup> 29 U.S.C. s. 206.

<sup>11</sup> 29 U.S.C. s. 218(a).

<sup>12</sup> 29 U.S.C. s. 216(c).

<sup>13</sup> 29 U.S.C. s. 216(a).

<sup>14</sup> 29 U.S.C. s. 216(b).

<sup>15</sup> 29 U.S.C. s. 216(b).

<sup>16</sup> 29 U.S.C. s. 216(b).

<sup>17</sup> See *Magwood v. Tate*, 835 So. 2d 1241, 1243 (Fla. 4th DCA 2003) (elements of a claim for unjust enrichment).

<sup>18</sup> See s. 24, Art. X, State Constitution (initiative petition adopted as constitutional amendment in 2004).

<sup>19</sup> The terms "Employer," "Employee," and "Wage" have the same meanings established by the FLSA and the implementing regulations of the FLSA. Section 24(b), Art. X, State Constitution.

<sup>20</sup> Section 24(e), Art. X, State Constitution.

<sup>21</sup> See Florida Department of Economic Opportunity website for information regarding the current minimum wage in the State of Florida, at <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (Last visited Mar. 21, 2013).

<sup>22</sup> <http://www.dol.gov/dol/topic/wages/minimumwage.htm> (last visited March 9, 2013).

<sup>23</sup> 29 U.S.C. s. 218(a).

the employee's contract.<sup>24</sup> If the worker wins, the court can award him or her the costs and attorney fees.<sup>25</sup>

Currently, s. 448.110, F.S., provides that presuit notice must be given to an employer prior to an action for a minimum wage claim. The employer has 15 days to resolve the claim. The statute of limitations is tolled during the 15 days.

### *Limits*

The statute of limitations on claims to recover "wages or overtime or damages or penalties concerning payment of wages and overtime" is two years.<sup>26</sup> The two-year period begins to run on the date the wages become due and payable.<sup>27</sup> A claim for unpaid salary, on the other hand, receives a four-year limitations period since it is a fixed monthly payment and an action founded on a statutory liability under the Florida Equal Pay Act.<sup>28</sup> As to the equitable theory of unjust enrichment, the limitations period on filing such an action is likely to be two years as well.<sup>29</sup>

Section 448.110, F.S., which relates to the state minimum wage, currently provides that the statute of limitations for an action for underpaid wages is the period of time specified in s. 95.11, F.S. There are variables which might change the claim depending upon the type of employment arrangement or the employer's mental state at the time of the violation, making the statute of limitations for unpaid wages range from one to five years, but a typical claim to recover wages must be made within two years.<sup>30</sup>

### Home Rule and Preemption

Sections 1 and 2, Art. VIII, State Constitution, establish two types of local governments: counties<sup>31</sup> and municipalities. The local governments have wide authority to enact various ordinances to accomplish their local needs.<sup>32</sup> In general, under home rule powers, a municipality may exercise its power for a municipal purpose except as otherwise provided by state law.<sup>33</sup> Charter counties may exercise all powers of local self-government not inconsistent with general law, or with special law approved by the electors' vote.<sup>34</sup> Non-charter counties have the power of self-government as provided in general or special law.<sup>35</sup>

Preemption exclusively reserves a topic or field for state regulation which local government might have otherwise legislated.<sup>36</sup> Florida law recognizes two types of preemption: express and implied.<sup>37</sup> Express preemption requires a specific legislative statement and cannot be implied or inferred.<sup>38</sup> Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

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<sup>24</sup> Section 448.105, F.S.

<sup>25</sup> See s. 448.08, F.S.

<sup>26</sup> Section 95.11(4)(c), F.S.

<sup>27</sup> *Richey v. Modular Designs, Inc.*, 879 So. 2d 665, 666 (Fla. 1st DCA 2004).

<sup>28</sup> Section 95.11(3)(f), F.S. (four year limitations period for actions founded on statutory liability); *Forehand v. International Business Machines Corp.*, 586 F. Supp. 9 (Middle District Fla. 1984).

<sup>29</sup> Section 95.11(6), F.S. states that the doctrine of laches precludes an action that is not commenced in the limitations period provided for the legal action concerning the same subject matter, here, unpaid wages.

<sup>30</sup> Section 95.11(4)(c), F.S.

<sup>31</sup> There are two different types of counties in Florida; a charter county and a non-charter county. See Section 1(f) and (g), Art. VIII, State Constitution.

<sup>32</sup> Article VIII of the state constitution establishes the powers of chartered counties, non-charter counties and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.

<sup>33</sup> Section 2(b), Art. VIII, State Constitution; s. 166.021(3), F.S.

<sup>34</sup> Section 1(g), Art. VIII, State Constitution.

<sup>35</sup> Section 1(f), Art. VIII, State Constitution.

<sup>36</sup> *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

The absence of express preemption does not bar a court from concluding state law has implicitly preempted a measure adopted by a local government. A court must find two elements to determine if a particular topic has been preempted by the Legislature:<sup>39</sup>

- the legislative scheme is so pervasive as to evidence an intent to preempt the particular area; and
- there are strong public policy reasons for finding an area to be preempted by the Legislature.

In order to determine whether a legislative scheme is pervasive, it is vital that a court view the power exercised by the Legislature, the object sought by the statute, and the character of the duties imposed by the statute.<sup>40</sup>

There is currently no express preemption by the federal or state government of wage laws. It is possible, however unlikely, that a court might find the numerous existing wage laws amount to an implied preemption of the field of wage legislation. If a competent court found federal preemption of wage legislation, then this bill would be ineffective to the extent it conflicted with federal law.

### Wage Theft as a Cause of Action

Currently, an unpaid or underpaid employee has a cause of action in contract or quasi-contract in all appropriate courts, depending upon the amount in controversy. There is also a cause of action for unpaid minimum wages in s. 448.110, F.S.

Currently, the jurisdiction of the small claims court is any amount up to and including \$5,000.<sup>41</sup> County court jurisdiction is limited to damages under \$15,000.<sup>42</sup> Circuit courts have exclusive jurisdiction to damages over \$15,000.<sup>43</sup> Jury trials are allowed at every level.

### Effect of Proposed Changes

#### Preemption

The bill preempts the topic of wage theft from local governments. However, a local ordinance for unpaid compensation enacted on or before January 2, 2013 survives preemption.

Currently, only Miami-Dade<sup>44</sup> and Broward<sup>45</sup> Counties are known to have specific wage theft ordinances. Miami-Dade County enacted its ordinance in 2010. Broward County enacted its ordinance in 2012. Both ordinances provide that a complaint may be filed with the county for wage theft, and the case is heard before a hearing officer. The hearing officer may enter an enforceable conciliation agreement. The ordinances also state that a separate civil action may be filed. Given dates of enactment, both the Broward and Miami-Dade county ordinances would survive the preemptive effect of the bill

#### Legislative authority for local government to establish administrative process

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<sup>39</sup> *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

<sup>40</sup> *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010); *see also Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984) (holding that the legislative scheme of the Public Records Act preempted the law relating to production of records for inspection).

<sup>41</sup> Florida Small Claims Rule 7.010.

<sup>42</sup> Section 34.01, F.S.

<sup>43</sup> Section 26.012(2)(a), F.S.

<sup>44</sup> Chapter 22, Miami-Dade County Code of Ordinances, adopted February 18, 2010. Chapter 22. sec. 3 of the Miami Dade County Code provides: "For any employer to fail to pay any portion of wages due to an employee, according to the wage rate applicable to that employee, within a reasonable time from the date on which that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a hearing examiner appointed by Miami-Dade County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that employer."

<sup>45</sup> Chapter 20 1/2, Broward County Code of Ordinances, adopted October 23, 2012.

The bill provides that a county, municipality, or political subdivision may establish a non-judicial administrative process to assist in settling wage claim disputes, but the process may not adjudicate the compensation dispute nor award damages. Rather, the bill places jurisdiction in the county courts.

#### *Local option to provide for indigent litigants*

The bill provides that the local government may submit a demand letter on behalf of the employee and may facilitate a resolution. Should the employer not respond to the employee's satisfaction, the local government may assist the employee in filling out an application to be declared indigent by the court. Alternatively, the local government may pay the filing fee on the employee's behalf. The bill does not appear to allow the local government to pay the filing fee on behalf of the employee if the application is denied by the court.

#### Jurisdiction and Venue

The bill amends s. 34.01, F.S., to provide jurisdiction to county courts for such an action.<sup>46</sup> The bill provides the value of the wage theft claim does not determine its jurisdiction.<sup>47</sup> An action to recover wages under this bill is governed by the Florida Small Claims Rules.<sup>48</sup>

This bill provides that an employee may file an action for wage theft in the county court in which the work was performed. The bill does not provide for a situation where an employee performs work for the same employer in multiple counties, in which case an employee would likely need to file a separate action in each county in which he or she performed work, as there does not appear to be a court rule that would allow a joinder of claims across multiple counties.<sup>49</sup>

#### Damages and Standard of Proof

The claimant must prove wage theft by a preponderance of the evidence.<sup>50</sup> Damages are limited to the actual compensation owed to the employee, and only economic damages may be awarded by the court. If an employee prevails in a claim for wage theft under this bill, he or she is not allowed to recover costs or attorney fees, unless provided otherwise by the employment contract.<sup>51</sup>

#### Presuit Notice Requirement

The bill requires that before initiating a civil action, an employee must notify the employer in writing of the intent to file a wage theft suit. The notice must provide the total amount the employee is owed and the actual or estimated work days and hours for which compensation is sought. The employer then has 15 days after he or she is served the notice to pay the total amount owed to the employee or otherwise resolve the complaint to the satisfaction of the employee.

#### Limits

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<sup>46</sup> The legislature provides jurisdiction to the courts. Section 1(b), Art. V, State Constitution, provides, "The county courts shall exercise the jurisdiction prescribed by general law."

<sup>47</sup> Generally, original jurisdiction of an action at law, that is not exclusively reserved for the circuit courts, is determined by the amount in controversy. See s. 34.01, F.S.

<sup>48</sup> Fla. Sm. Cl. R. 7.010 *et. seq.*; if a cause of action did not exist at the adoption of Florida's Constitution in 1845, then a right to a jury trial on that cause of action must be expressed by legislation. West's Fla. Practice Series s. 14:2 (Trial by jury-Entitlement), Judge Padovano.

<sup>49</sup> Fla. Small Claims Rule 7.020 states that certain Florida Rules of Civil Procedure always apply in small claims cases and that a court may order that a small claims action proceed under any additional Florida Rule of Civil Procedure. There does not appear to be a Florida Rule of Civil Procedure directly addressing the issue of joining claims arising across multiple counties.

<sup>50</sup> Black's Law Dictionary, 7th Ed., defines preponderance of evidence as "the greater weight of the evidence," a definition which the Florida Supreme Court favorably cited in *Gross v. Lyons*, 763 So.2d 276, 280 (Fla. 2000).

<sup>51</sup> In Florida, entitlement to attorney fees is generally based on statute or contract. See *Bloco, Inc. v. Porterfield Oil Co.*, 990 So. 2d 578, 580 (Fla. 2d DCA 2008).

Instead of the two year typical statute of limitations, the bill provides that an action for wage theft must be filed within one year after the last date work was performed for all wage theft claims. The bill does not provide for tolling the statute of limitations.

#### *Attorney fees*

Currently, s. 448.08, F.S., provides for an award of attorney fees and costs in addition to wages in the event of a successful claim for unpaid wages. The bill does not provide for attorney fees or costs of any prevailing party.

#### *Damages*

The bill prohibits an award of punitive or noneconomic damages.

### B. SECTION DIRECTORY:

Section 1: Amends s. 34.01, F.S. regarding jurisdiction of the county court.

Section 2: Creates s. 448.115, F.S. regarding civil actions for wage theft; preempting any ordinance, regulation, or provision by a political subdivision addressing unpaid compensation; providing a partial exemption from preemption.

Section 3: Provides that the bill takes effect upon becoming law.

## **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 does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 21, Art. I of the State Constitution requires the state to provide access to the courts. A reduction of a statute of limitations can implicate this provision as to a cause of action that existed prior to the effective date of the bill. An appellate court, upholding a bill that reduced a statute of limitations to one year, explained:

Although an amendment to a statute of limitations cannot extinguish an existing claim, it can, consistent with due process, shorten the limitation period applicable to the prior claim if the intent to make the amendment retroactive is clearly expressed, and if a reasonable time is allowed within which to seek enforcement of such claim.<sup>52</sup>

In *Bauld v. J.A. Jones Constr. Co.*, 357 So. 2d 401 (Fla. 1978), it was constitutional to shorten the limitations period on a claim that accrued prior to the act's effective date, while providing a one year grace period in which to bring the claim. The court stressed that before the act, the plaintiff had four years in which to file the claim, and after the act, the plaintiff had approximately three years and six months.<sup>53</sup> The court found it acceptable to shorten the plaintiff's claim in this way.<sup>54</sup>

The law disfavors implied retroactivity and presumes that legislation operates prospectively unless the face of the legislation shows an intent to apply retroactively.<sup>55</sup> This bill does not expressly make its application retroactive. However, if the bill were to be found to have a retroactive effect, then a constitutional analysis would likely follow: the bill does not appear to have a *Bauld*-type grace period and, as written, may violate the State Constitution as to claims that currently exist.

Section 24(c), Art. X of the State Constitution creates a cause of action for unpaid wages related to the minimum wage. That cause of action is different from the one created by this bill. Nothing in this bill can override the constitutionally-provided minimum wage claim.

B. RULE-MAKING AUTHORITY:

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<sup>52</sup> *Polk County BOCC v. Special Disability Trust Fund*, 791 So. 2d 581 (Fla. 1st DCA 2001).

<sup>53</sup> *See Bauld*, 357 So. 2d at 403.

<sup>54</sup> *Bauld* at 403.

<sup>55</sup> *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d 557, 559 (Fla. 1975).



The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

In March 2011, the Florida Retail Federation (FRF) filed suit to challenge the constitutionality of the Miami-Dade County ordinance.<sup>56</sup> The FRF alleged that the Miami-Dade ordinance created a court outside of the unified court system created by Florida Constitution;<sup>57</sup> violated the separation of powers<sup>58</sup> by allowing the executive branch<sup>59</sup> to perform a judicial function; and violated the right to a jury trial<sup>60</sup> because an issue involving back pay is a legal issue that entitles the defendant to a jury trial,<sup>61</sup> which the ordinance does not allow. The trial court dismissed the case without specifically addressing any of these issues.<sup>62</sup>

Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County.<sup>63</sup> Alachua County commissioners are also considering whether to enact a wage theft ordinance.<sup>64</sup>

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Civil Justice Subcommittee adopted one amendment removing the section pertaining to the Attorney General and eliminating the provision that prohibited a jury trial for a wage theft claim. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

On April 9, 2013, the Local & Federal Affairs Committee adopted one amendment. That amendment grandfathered both Miami-Dade and Broward counties' wage claim ordinances. The wage claim processes of those two counties survive preemption.

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<sup>56</sup> *Fla. Retail Fed'n, Inc. v. Miami Dade County*, No. 2010-42326-CA-01 (Fla. 11th Cir. Ct., Aug. 4, 2010).

<sup>57</sup> Section 1, Art. V, State Constitution, creates a supreme court, district courts of appeal, circuit courts, and county courts, and then proclaims, "No other courts may be established by the state, any political subdivisions or any municipality." The *Florida Bar Journal* published a commentary entitled *Judicial Reform – Now or Never* by one of the drafters of Art. V, sec. 1, in which former state Rep. Talbot "Sandy" D'Alemberte wrote, "The abolition of municipal courts has received considerable comment. The legislature thought that municipal courts, for the most part, are not independent of the city councils which appointed them; thus they are unable to dispense impartial, objective justice." 46 Fla. Bar Journal no. 2, page 68 (Feb. 1972).

<sup>58</sup> Section 3, Art. II, State Constitution, prohibits a person belonging to one branch from exercising any powers appertaining to either of the other branches.

<sup>59</sup> For the purpose of Separation of Powers analysis, a local government is considered a part of the executive branch. See *City of Miami v. Wellman*, 976 So. 2d 22, 26 (Fla. 3d DCA 2008).

<sup>60</sup> Section 22, Art. I, State Constitution, provides the right to a jury trial for all cases that traditionally afforded a jury trial at the time the original Florida constitution was adopted in 1845.

<sup>61</sup> Generally, cases involving legal, as opposed to equitable, relief are afforded a jury trial, according to *Metropolitan Dade County Fair Housing and Employment Appeals Bd. v. Sunrise Village Mobile Home Park, Inc.*, 511 So. 2d 962 (Fla. 1967). Back pay is considered to be a legal issue which should be afforded a jury trial according to *O'Neal v. Florida A & M Univ. ex rel. Bd. of Trustees for Florida A & M Univ.*, 989 So. 2d 11 (Fla. 1st DCA 2008).

<sup>62</sup> *Florida Retail Federation v. Miami-Dade County*, Case No. 10-42326CA30 (Fla. 11th Cir. Ct. Mar. 23, 2012, on file with Civil Justice Subcommittee staff and Local and Federal Affairs Committee staff.

<sup>63</sup> See Legal Aid Society of Palm Beach County, Inc., Wage Recovery Project November 16, 2012 Update, included in Palm Beach County Board of County Commissioner Agenda Item Summary Packet for Agenda Item 4A-2 at December 4, 2012 meeting. The packet is available online at <http://www.ordinancewatch.com/files/72011/LocalGovernment79272.pdf>, (last visited March 9, 2013).

<sup>64</sup> Gainesville Sun, Residents state their case for wage-theft ordinance, published January 8, 2013, <http://www.gainesville.com/article/20130108/ARTICLES/130109676> (last visited March 9, 2013).