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LEGISLATIVE ACTION

Senate

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House

Senators Soto and Diaz de la Portilla moved the following:

1 **Senate Amendment to Substitute Amendment (275158) (with**
2 **title amendment)**

3
4 Delete lines 6 - 73

5 and insert:

6 Section 1. Section 448.111, Florida Statutes, is created to
7 read:

8 448.111 Local regulation of wage theft.-

9 (1) DEFINITIONS.-As used in this section, the term:

10 (a) "Legal services organization" means an organization
11 that provides free or low-cost legal services to qualified



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12 persons and meets the minimum standards established by The
13 Florida Bar for providing such services, including a legal
14 practice clinic operated by an accredited Florida law school.

15 (b) "Wage theft" means an illegal or improper underpayment
16 or nonpayment of an individual employee's wage, salary,
17 commission, or other similar form of compensation within a
18 reasonable time after the date on which the employee performed
19 the work to be compensated. A wage theft occurs when an employer
20 fails to pay a portion of the wages, salary, commissions, or
21 other similar forms of compensation due to an employee within a
22 reasonable time after the date on which the employee performed
23 the work, according to the current applicable rate and the pay
24 schedule of the employer established by policy or practice.

25 (2) LOCAL ORDINANCES.—Upon the determination by a county
26 that a local solution to wage theft is necessary, the county
27 shall adopt a local ordinance that includes one of the following
28 processes:

29 (a) Legal services organization process.—The county may
30 partner with a local legal services organization for the purpose
31 of establishing a local process through which claims of wage
32 theft shall be addressed by the legal services organization. The
33 county may partner with a legal services organization located in
34 that county or in an adjoining county.

35 1. An individual who has experienced wage theft may contact
36 the legal services organization for assistance in recovering
37 wages. The legal services organization shall determine whether
38 the individual has a bona fide claim for unpaid wages.

39 2. The legal services organization shall notify the
40 employer and provide the employer with an opportunity to resolve



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41 the matter of unpaid wages in the manner deemed most appropriate
42 to each claim. The notification may occur by telephone, written
43 correspondence, or any other means deemed appropriate by the
44 legal services organization.

45 3. The legal services organization shall work with the
46 employee and employer to resolve the issue informally but
47 expeditiously. The informal resolution may include obtaining
48 attorney fees and costs from the employer.

49 4. The legal services organization shall file court actions
50 as appropriate and refer unresolved claims to local pro bono or
51 other counsel for resolution.

52 5. The county shall establish a reporting mechanism through
53 which the county receives regular reports regarding the legal
54 services organization's work on cases of wage theft. The county
55 may require periodic reports.

56 (b) Administrative process.—The county may establish an
57 administrative process that gives the parties involved the
58 opportunity to negotiate a resolution with regard to the wages
59 in question.

60 1. The county shall establish a system that provides for:

61 a. A complaint process by which a complaint, which must
62 allege a wage theft violation, may be submitted to the county by
63 or on behalf of an aggrieved employee; and

64 b. Service of the complaint and written notice on the
65 respondent employer alleged to have committed a wage theft
66 violation, which sets forth the allegations made in the
67 complaint and the rights and obligations of the parties. Such
68 rights and obligations shall include the right of the respondent
69 to file an answer to the complaint and the rights of both



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70 parties to a conciliation process and to a hearing on the matter
71 before a county hearing officer. The hearing officer must have
72 either a legal background or specialized training in the subject
73 matter. The final determination of a hearing officer is subject
74 to appeal to a court of competent jurisdiction.

75 2. The system established must encourage the parties to
76 conciliate the charges and resolve the matter. A hearing officer
77 may not be appointed unless the matter is not resolved using the
78 process established in this paragraph.

79 3. If a preponderance of the evidence demonstrates a wage
80 theft violation, the hearing officer shall order the employer to
81 pay wage theft restitution to the affected employee along with
82 liquidated damages and any administrative costs.

83 4. The regulation of wage theft through local ordinance
84 shall be limited to requiring that employers pay their employees
85 for work performed at the agreed upon rate of pay plus any
86 penalties as set forth herein and establishing a fair procedure
87 and program to review and enforce wage agreements.

88 5. Any wage recovery system established pursuant to this
89 paragraph must provide that an employee who is not timely paid
90 wages, final compensation, or wage supplements by his or her
91 employer as required is entitled to recover through a claim
92 filed in a process or program established under this paragraph
93 in the employee's county of employment or in a civil action, but
94 not both.

95 6. The county shall establish a reporting mechanism through
96 which the county receives regular reports regarding cases of
97 wage theft. The county may require periodic reports.

98 7.a. Upon a finding of wage theft, the employer shall be



99 liable for the actual back wages due and owing and may be liable
100 for administrative costs in an amount not to exceed \$1,500. If
101 the employer is found to have acted in good faith or if the
102 hearing officer has reason to believe that the act or omission
103 was not intentional or was not wage theft, the administrative
104 costs against the employer may be waived. In addition,
105 liquidated damages shall be awarded to the employee but are
106 limited to twice the amount a respondent employer is found to
107 have unlawfully failed to pay the complainant employee.

108 b. In addition to the actual back wages due and liquidated
109 damages, an employer found to have committed a second violation
110 shall be fined \$1,000 and an employer found to have committed a
111 third and subsequent violation shall be fined \$2,000. An
112 employer who commits a second or subsequent violation may be
113 liable for administrative costs in an amount not to exceed
114 \$2,500.

115 8. Any claim brought under this paragraph is subject to a
116 statute of limitations of 1 year from the last date upon which
117 wages were due to the employee for the wage theft incident that
118 is the subject of the wage theft claim.

119 (3) FUNDING.—The county may dedicate county funds to assist
120 the legal services organization process or the administrative
121 process under subsection (2) in addressing claims of wage theft.

122 (4) CURRENT ORDINANCES.—A local ordinance governing wage
123 theft which was enacted on or before January 1, 2014, is not
124 preempted by this section.

125
126 ===== T I T L E A M E N D M E N T =====

127 And the title is amended as follows:



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128 Delete lines 81 - 89
129 and insert:
130 An act relating to local regulation of wage theft;
131 creating s. 448.111, F.S.; defining terms; requiring a
132 county that decides to create a local solution to wage
133 theft to adopt one of two processes and specifying the
134 requirements of those processes; providing an
135 exception for an ordinance enacted by a specified
136 date;