

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 847 Preemption of Conditions of Employment
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Rommel and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	9 Y, 5 N	Willson	Cooper
2) Local, Federal & Veterans Affairs Subcommittee	10 Y, 5 N, As CS	Darden	Miller
3) Commerce Committee			

SUMMARY ANALYSIS

Florida municipalities and counties have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment is inconsistent with state law if the Legislature has preempted a particular subject area or the local enactment conflicts with a state statute. Where state preemption applies, a local government is precluded from exercising authority in that particular area.

Current law prohibits a political subdivision from requiring an employer to provide wage and employment benefits not required by state or federal law, providing uniformity throughout the state with regard to mandated wage and non-wage compensation. Under current law, "employment benefits" means anything of value that an employee may receive from an employer in addition to wages and salary, including:

- Health benefits;
- Paid or unpaid days off for holidays;
- Sick leave;
- Vacation;
- Retirement benefits; and
- Profit-sharing benefits.

Current law provides for specific exemptions to the broad state preemption, such as non-compliance to the extent necessary to allow receipt of federal funds or the ability of a political subdivision to establish minimum wages and benefits for its own employees and contractors.

The bill replaces the term "employment benefits" with the term "conditions of employment." The new term includes items within the previous term, as well as "those terms that form the basis of a relationship between an employer and a prospective or actual employee," including:

- Pre-employment screenings;
- Job classification determinations;
- Job responsibilities;
- Wages and the payment of wages;
- Hours of work; and
- Schedules and schedule changes.

The bill does not apply to an otherwise valid ordinance, order, rule, or policy of local government that prohibits discrimination in the conditions of employment based upon a prospective or actual employee's membership in enumerated classifications. The bill further does not apply to an otherwise and valid local government ordinance, order, rule, or policy, adopted before January 1, 2019, establishing an alternative dispute resolution mechanism to resolve an employee's claim against an employer for unpaid wages.

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

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

STORAGE NAME: h0847b.LFV

DATE: 3/26/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Home Rule

Municipalities and counties derive broad home rule authority from the Florida Constitution and general law, except as otherwise provided by law.

Noncharter Counties

A county without a charter has such power of self-government as provided by general or special law, and may enact county ordinances not inconsistent with general law.¹ General law authorizes counties “the power to carry on county government”² and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”³

Charter Counties

Pursuant either to general or special law, a county may adopt a charter subject to approval by the electors of the county.⁴ A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.⁵ In the event of a conflict between a county and municipal ordinance, the charter must provide which ordinance prevails.

Municipalities

The Florida Constitution provides that municipalities “shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.”⁶

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if the Legislature “has preempted a particular subject area” or the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.⁷ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁸ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁹ In cases where the Legislature expressly or specifically preempts an area, legislative intent is readily

¹ Art. VIII, s. 1(f), Fla. Const., ch. 125, Part I, F.S.

² S. 125.01(1), F.S.

³ S. 125.01(1)(w), F.S.

⁴ Art. VIII, ss. 1(c), 1(g), Fla. Const., s. 125.60, F.S.

⁵ Art. VIII, s. 1(g), Fla. Const.

⁶ Art. VIII, s. 2(b), Fla. Const.

⁷ James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

⁸ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

⁹ *Mulligan*, 934 So. 2d at 1243.

ascertained.¹⁰ In cases determining the validity of ordinances enacted in the face of state preemption, such ordinances usually are found null and void.¹¹

Local Wage Ordinances in Florida

In 2003, the Florida Legislature preempted the establishment of minimum wage to the state.¹² The law does not limit the authority of a political subdivision to establish a minimum wage for:

- Its employees;
- The employees of an employer contracting with the political subdivision;
- The employees of a subcontractor of such an employer; 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.

The law contains an exception for situations where compliance with the law would prevent a political subdivision from receiving federal funds. This allows compliance with the Davis-Bacon Act and related acts,¹³ which direct the United States Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. The Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of the federal funds.

2013 Revisions

A 2013 amendment prohibited Florida political subdivisions from mandating employers provide employment benefits not required by state or federal law.¹⁴ This provided uniformity throughout the state regarding mandated non-wage compensation. The amendment maintained the same exemptions and limitations as created in 2003.

Under current law, an “employee” is defined as any natural person who is entitled under state or federal law to receive a state or federal minimum wage. 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. A “political subdivision” is a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

“Employment benefits” are defined as anything of value that an employee may receive from an employer in addition to wages and salary. These include, but are not limited to:

- Health benefits;
- Paid or unpaid days off for holidays;
- Sick leave;
- Vacation;
- Retirement benefits; and
- Profit-sharing benefits.

The 2013 amending act also created the Employer-Sponsored Benefits Study Task Force, which was intended to conduct a study of employment benefits and make a recommendation regarding state preemption policy.¹⁵ The task force considered studies, testimony, and statistics over four months

¹⁰ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

¹¹ *See, e.g., Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹² Ch. 2003-87, s. 1, Laws of Fla. (codified as amended at s. 218.077, F.S.).

¹³ *See, e.g., 40 U.S.C. 3141 et seq.*

¹⁴ Ch. 2013-200, s. 1, Laws of Fla. (codified as amended at s. 218.077, F.S.).

¹⁵ *Id.*

before recommending that the state preempt local governments from setting minimum mandatory employer-sponsored benefits.¹⁶

In 2016, the Florida Retail Federation, Inc. and others sued the City of Miami Beach for enacting by ordinance a “City Minimum Living Wage,” raising the minimum wage for all employers subject to the city’s business tax receipt requirement and testing the state’s preemption powers.¹⁷ The city argued that article X, section 24(f) of the Florida Constitution¹⁸ nullified the preemption provision found in s. 218.077, F.S. The appellate court agreed with the Florida Retail Federation’s position that the plain text of the Florida Constitution did not affect the legislature’s authority to preempt municipal powers.

Effect of Proposed Changes

The bill replaces the term “employment benefits” with the term “conditions of employment.” The new term includes the items within the previous term, as well as “those terms that form the basis of a relationship between an employer and a prospective or actual employee, including”:

- Pre-employment screenings;
- Job classification determinations;
- Job responsibilities;
- Wages and the payment of wages;
- Hours of work; and
- Schedules and schedule changes.

The bill does not apply to an otherwise valid ordinance, order, rule, or policy to:

- Prohibit discrimination on the basis of a prospective or actual employee’s race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, familial status or marital status, or veteran status; or
- Establish an alternative dispute resolution mechanism to resolve an employee’s claim against an employer for unpaid wages, if the ordinance, order, rule, or policy was adopted before January 1, 2019.¹⁹

The bill amends the definition of “employee” to mean any natural person who “employed by an employer.”

The bill amends the definition of “employer” to mean any person who “engages in any activity, enterprise, or business and employs at least one employee.”

The bill provides that the regulation of conditions of employment is expressly preempted to the state, and that any political subdivision with an existing ordinance, regulation, or policy that is preempted by the bill is void.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S.; defining "condition of employment"; revising definitions; preempting to the state the right to regulate the conditions of employment by an employer; and conforming provisions to changes made by the act.

¹⁶ Workforce Florida, Inc., *Employer-Sponsored Benefits Study Task Force Final Report 3* (Jan. 15, 2014), <https://careersourceflorida.com/wp-content/uploads/2014/01/TaskForceBenefitsStudyFinalReport.pdf> (last visited Mar. 15, 2019).

¹⁷ *City of Miami Beach v. Florida Retail Federation, Inc.*, 233 So.3d 1236, 1238 (Fla. 3d DCA 2017), *rev. den.* No. SC17-2284 (Fla. Feb. 5, 2019).

¹⁸ Stating that “[t]his amendment provides for payment of a minimum wage and *shall not be construed to preempt* or otherwise limit the authority of the state legislature or *any other public body* to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits...” (emphasis added).

¹⁹ The ordinance, order, rule, or policy may provide for the recovery of liquidated damages, costs, and civil penalties for repeated violations.

Section 2: Voids certain ordinances, regulations, or policies that are preempted by the act.

Section 3: Provides that the bill shall take 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:

Private employers will not be required by political subdivisions to provide conditions of employment and related benefits not required by state or federal law, except in limited situations, and will have the expectancy of uniformity throughout the state with regard to mandated non-wage compensation and other conditions of employment.

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:

The bill neither requires nor provides authority for executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES