

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1124

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Preemption of Local Government Wage Mandates

DATE: February 3, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1124 creates the “Wage Mandate Preemption Act,” amending s. 218.077, F.S., which is the state’s preemption of local variations in minimum wage mandates. The bill amends the current preemption to prohibit political subdivisions from enacting, maintaining, or enforcing, by any means, a “wage mandate” in an amount greater than the state or the federal minimum wage rate, with some exceptions. “Wage mandate” is defined as any requirement enacted by a political subdivision which requires an employer to pay any or all of its employees a wage rate not otherwise required under state or federal law. The bill provides that any wage mandate in conflict with the state or federal minimum wage rate is void.

The bill further removes the existing statutory authority for political subdivisions to enact a wage mandate for employers, including subcontractors, who contract to provide goods or services to a political subdivision.

The bill takes effect upon becoming a law.

II. 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.

ss. 201, et seq.), establishing an initial federal minimum wage of \$0.25 per hour. The minimum wage for all covered, nonexempt employees has remained at \$7.25 per hour since 2009.¹ The Act includes several exemptions from the federal minimum hourly wage, including:²

- 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
- Causal 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.³

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 do not have an established minimum wage requirement: Alabama, Louisiana, Mississippi, South Carolina and Tennessee.

Twenty seven states, Puerto Rico, and the District of Columbia have minimum wage rates higher than the federal rate:⁴

- Alaska (\$10.34)
- Arizona (\$12.80)
- California (\$14.00)
- Colorado (\$12.56)
- Connecticut (\$13.00)
- Florida (\$10.00)
- Illinois (\$12.00)
- Maine (\$12.75)
- Maryland (\$12.50)
- Massachusetts (\$14.25)
- Michigan (\$9.87)
- Minnesota (\$10.33)

¹ U.S. Department of Labor, Minimum Wage, available at <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Jan. 19, 2022)

² U.S. Department of Labor, Fair Labor Standards Act Advisor available at: <https://webapps.dol.gov/elaws/whd/flsa/screen75.asp> (last visited Jan. 19, 2022)

³ U.S. Department of Labor, Tipped Employees, available at <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#1> (last visited Jan. 19, 2022)

⁴ U.S. Department of Labor, State Minimum Wage Laws, available at <https://www.dol.gov/agencies/whd/minimum-wage/state> (last visited Jan. 19, 2022)

- Missouri (\$11.15)
- Montana (\$9.20)
- Nebraska (\$9.00)
- Nevada (\$9.75)
- New Mexico (\$11.50)
- New Jersey (\$13.00)
- New York (\$13.20)
- Ohio (\$9.30)
- Oregon (\$12.75)
- Rhode Island (\$12.25)
- South Dakota (\$9.95)
- Vermont (\$12.55)
- Virginia (\$11.00)
- Washington (\$14.49)
- West Virginia (\$8.75)

Georgia 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.

The Florida Minimum Wage Act

Under the State Constitution, all 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.⁵ The amount of the minimum wage and the procedure for calculating increases in the minimum wage are established in the State Constitution.⁶ The State Constitution first provided for a minimum wage at an hourly rate of \$6.15, which became effective on May 2, 2005.⁷

On November 3, 2020, Florida voters approved Amendment 2, which amended the State Constitution to gradually increase the state's minimum wage to \$15.00 an hour by the year 2026.⁸ Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to \$10.00 per hour. Each year, thereafter, Florida's minimum wage will increase by \$1.00 until the minimum wage reaches \$15.00 per hour on September 30, 2026.⁹ Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it has been since 2005.

⁵ FLA. CONST. art. X, s. 24(a).

⁶ FLA. CONST. art. X, s. 24(c).

⁷ 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. Each adjusted state minimum wage rate takes effect on the following January 1.

⁸ United States Department of State, Notice of Increase to State of Florida's Minimum Wage, available at <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited Jan. 23, 2022).

⁹ Department of Economic Opportunity, Florida's Minimum Wage, available at https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notice/2021-minimum-wage/september-2021/florida-minimum-wage-september-2021-announcement.pdf?sfvrsn=c12151b0_4 (last visited Jan. 19, 2022).

The constitutional provision has been implemented by the Florida Minimum Wage Act.¹⁰ The statute establishes procedures with respect to civil actions alleging violations of its provisions. The Florida minimum wage provisions may be enforced by the bringing of a civil suit by an aggrieved person¹¹ or by the Attorney General.¹²

Power of Local Governments to Enact Minimum Wage Ordinances

Home Rule Power

The State Constitution grants local governments broad authority to take actions furthering citizens' health, welfare, safety, and quality of life. This "home rule" authority includes legislative powers to enact local laws. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹³ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.¹⁴ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.¹⁵

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute. A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.¹⁶

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁷ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁸

Implied preemption is a legal doctrine that addresses situations in which the Legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.¹⁹

¹⁰ Section 448.110, F.S.

¹¹ Section 448.110(6), F.S.

¹² Section 448.110(7), F.S.

¹³ FLA. CONST. art. VIII, s. 1(f).

¹⁴ FLA. CONST. art. VIII, s. 1(g).

¹⁵ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

¹⁶ James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Jan. 18, 2022).

¹⁷ *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).

¹⁸ *Mulligan*, 934 So. 2d at 1243.

¹⁹ Wolf and Bolinder, *supra*.

In cases determining the validity of ordinances enacted in the face of state preemption, such ordinances are found null and void.²⁰

Statutory Restriction of Minimum Wage Requirements

In 2003, the Legislature preempted the establishment of minimum wages to the state.²¹ However, a political subdivision²² retains the authority 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 employees;
- The employees of an employer contracting to provide goods or services for the political subdivision, or 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.²³

The law also provides an exception for domestic violence or sexual abuse ordinances, orders, rules, or policies adopted by a political subdivision.²⁴

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 and related acts,²⁵ which direct the Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.²⁶

Additionally, political subdivisions are prohibited from requiring an employer to provide employment benefits²⁷ not required by state or federal law.²⁸

III. Effect of Proposed Changes:

The bill amends s. 218.077, F.S., addressing preemption of local variations in minimum wage mandates. The bill renames the section the “Wage Mandate Preemption Act.” The bill provides new definitions, including the term “wage mandate” which is defined as “any requirement

²⁰ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

²¹ S. 218.077(2), F.S.

²² Defined as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. S. 218.077(1)(f), F.S.

²³ Section 218.077(3)(a), F.S.

²⁴ Section 218.077(3)(b), F.S.

²⁵ See, e.g., 40 U.S.C. 3141 *et seq.*

²⁶ Section 218.077(4), F.S.

²⁷ 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. S. 218.077(1)(d), F.S.

²⁸ Section 218.077(2), F.S.; However, federally authorized and recognized tribal governments are not prohibited from requiring employment benefits for a person employed within a territory over which the tribe has jurisdiction. S. 218.077(5), F.S.

enacted by a political subdivision which requires an employer to pay any or all of its employees a wage rate not otherwise required under state or federal law.”

The bill prohibits political subdivisions from enacting, maintaining, or enforcing by any means a wage mandate in an amount greater than the state minimum wage rate, calculated pursuant to s. 24(c), art. X of the Florida Constitution, or the federal minimum wage rate. The bill provides that any wage mandates in conflict with the state or federal minimum wage are void.

The bill further removes the existing statutory authority for political subdivisions to enact a wage mandate for employers, including subcontractors, who contract to provide goods or services to a political subdivision. Current law is maintained to allow a political subdivision to enact a wage mandate for employees of a political subdivision and for employers receiving a tax abatement or subsidy from a political subdivision.

The bill clarifies that the language does not limit, restrict, or expand a prevailing wage required under state law.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will no longer allow political subdivisions to establish a minimum wage other than a state or federal minimum wage or to require employment benefits not otherwise required under state or federal law for private employers that have contracts or subcontracts with a political subdivision. This change may lower operating costs for these private employers.

In certain circumstances, employees of such contractors may see a reduction in wages if said wages are tied to a local ordinance requiring the contractor or subcontractor to pay their employers a wage that exceeds the state or federal minimum wage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 218.077 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on February 2, 2022:

The CS amends rather than substantially rewrites s. 218.077, F.S. The CS removes the legislative findings provided in the bill and preserves current law allowing a political subdivision to enact a wage mandate for employees of an employer receiving a direct tax abatement or subsidy from a political subdivision.

B. Amendments:

None.