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 Commerce and Tourism

BILL:	SB 1492
INTRODUCER:	Senator Trumbull
SUBJECT:	Employment Regulations
DATE:	January 22, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 1492 amends the restrictions regarding wage and employment benefit requirements by political subdivisions by:

- Prohibiting political subdivisions from preferring one contractor over another based on the wages or employment benefits provided by the contractor.
- Removing the ability of political subdivisions to require a minimum wage other than state or federal minimum wage for certain contracted employees under the terms of a contract.

The bill also creates a new section of law regarding workplace heat exposure requirements by prohibiting a political subdivision from requiring an employer or contractor to meet or provide heat exposure requirements that are not already required under state or federal law, and prohibiting a political subdivision from giving preference in solicitations based upon employer heat exposure requirements. The bill does not limit the authority of a local government to provide workplace heat exposure requirements not otherwise required under state or federal law for direct employees of the political subdivision. These heat exposure provisions do not apply if compliance will prevent the political subdivision from receiving federal funds.

The effective date of the bill is July 1, 2024.

II. Present Situation:

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, record keeping, and child labor protections for full and part-time workers in both the private sector and federal, state and local employment. The FLSA allows states to expand the rights of employers and employees. In some instances, Florida law provides stronger protections for employees than federal law, including protections regarding discrimination based on marital status, minimum wage, and health coverage obligations for small employers. Florida generally follows federal law on overtime pay and occupational health and safety.

The Florida Minimum Wage Act (Minimum Wage Act), enacted in 2005, implements the minimum wage provisions in the State Constitution.

Florida's wage and employment benefits law preempts the establishment of a minimum wage to the state. Thus, local governments cannot establish a minimum wage for private employers in their jurisdiction. Local governments are also prohibited from requiring private employers to provide employment benefits not required by state or federal law. However, local governments have limited authority to establish a minimum wage and to require specific employment benefits for their own employees and those of their vendors or contractors.[1]

The Occupational Safety and Health Act of 1970 (OSHA Act) is the federal labor law governing occupational health and safety in the private sector and federal government. Currently, there are no specific federal or state laws that provide heat exposure protections for outdoor workers.

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.[2] In 1938, the FLSA established a minimum wage of $.25 an hour. The current federal minimum wage rate is $7.25 an hour, which went into effect July 24, 2009. The FLSA applies to employment within any state in the U.S., the District of Columbia or any territory or possession of the U.S.[3]

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including: individuals with disabilities, youth workers, tipped workers and executive, administrative and professional workers. The FLSA covers businesses if the business has annual sales of at least $500,000.[4] It also covers certain individual employees if such employee is engaged in interstate commerce.

Regardless of the dollar amount of revenues of a business, the FLSA applies to:[5]

- **Governments**: Federal, state, or local government agencies.
- **Hospitals**: Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. (It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.)

[1] *See* Section 218.077, F.S.
[2] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.
[3] Congressional Research Service, CRS Report R42713, The Fair Labor Standards Act (FLSA): An Overview, https://crsreports.congress.gov/product/pdf/R/R42713, (last visited Dec. 5, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.).
[4] The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least $500,000. Owners of rental properties are covered if they collect at least $500,000 annually in rent. 29 C.F.R.§§779.258-779.259.
[5] U.S. Department of Labor, Fair Labor Standards Act Advisor, *available at* https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited January 24, 2024).

- **Schools**: Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. (It does not matter if the school or institution is public or private or operated for profit or not-for-profit.)

The FLSA includes several exemptions from the federal minimum wage provisions, including:[6]

- Executive, administrative and professional employees;
- 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 certain employers;
- Casual babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents[7]; and
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The FLSA was amended in 2014, related to border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least $290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay.[8] These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.[9]

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.[10] Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.[11]

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage

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[7] *See* Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

[8] *See* Levi Weaver, On Minor-League Pay, MLB's Stance Doesn't Line Up with the Facts, ATHLETIC (April 4, 2018), *available at* https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts// (last visited January 22, 2024). (When recounting salary scale per level of minor league baseball, the article notes "federally -recognized poverty line is $12,140 per year for single-individual households." According to the article, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks. These bonuses can range anywhere from $10,000 to several million dollars. "The top 64 picks [in the MLB draft] last year all received a bonus of over $1,000,000 before taxes, but roughly 40% of players signed for one-time bonuses of $10,000 or less."

[9] Section 448.110, F.S., expressly references subsections 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, section 214 has not been amended since 1989. (See Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941.)

[10] 29 U.S.C. §218.

[11] Congressional Research Service, CRS Report R42713, The Fair Labor Standards Act (FLSA): An Overview, (March 2, 2023), *available at* https://crsreports.congress.gov/product/pdf/R/R42713, (last visited January 22, 2024).

and two states have a minimum wage that is below the federal minimum wage.[12] For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.[13] Prior to this date Florida did not have a law on minimum wage so the FLSA applied for covered workers.

Florida voters again on November 3, 2020, voted to approve a constitutional amendment related to the state's minimum wage, Amendment 2 to gradually increase the state's minimum wage to $15 an hour by the year 2026.[14]

Related to minimum wage, the Florida Constitution states, "All working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services."[15]

The Florida Constitution references the FLSA and specifically ties the meaning of certain terms, "Employer," "Employee," and "Wage," to have the meanings established under the FLSA and its implementing regulations.[16] It also indicates that case law, administrative interpretations, and other guiding standards developed under the FLSA must guide the construction of Florida's Constitution related to Section 24 and any implementing statutes or regulations.[17]

Florida Minimum Wage Act

The Minimum Wage Act was enacted in 2005 to implement the minimum wage provisions in the State Constitution.[18] The Minimum Wage Act designates the Florida Department of Commerce as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.[19]

The Minimum Wage Act provides that effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FSLA and its implementing regulations are eligible to receive the state minimum wage pursuant to the State Constitution and this statute. The provisions of ss. 213 and 214 of the FLSA, as interpreted by

[12] U.S. Department of Labor, Consolidated Minimum Wage Table, *available at* https://www.dol.gov/agencies/whd/mw-consolidated (last visited January 22, 2024).
[13] FLA. CONST. art. X, s. 24.
[14] U.S. 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 January 22, 2024).
[15] FLA. CONST. art. X, s. 24(a).
[16] FLA. CONST. art. X, s. 24(b).
[17] FLA. CONST. art. X, s. 24(f).
[18] Codified in Section 448.110, F.S.
[19] Section 448.110(1), F.S.

applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.[20]

Local Wage Ordinances

In Florida, the State Constitution authorizes counties to enact ordinances that are not inconsistent with state law.[21] The State Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except:[22]

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the State Constitution;
- Any subject expressly preempted to the state or county government by the State Constitution or by law; or
- Any subject preempted to a county under a county charter.

In 2003, the Legislature preempted the establishment of minimum wages to the state.[23] However, a political subdivision (local government) 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:[24]

- Its employees;
- The employees of an employer contracting to provide goods or services for the local government, or for the employees of a subcontractor of such an employer, under the terms of a contract with the local government; or
- The employees of an employer receiving a direct tax abatement or subsidy from the local governments, as a condition of the direct tax abatement or subsidy.

The preemption also does not apply to, "a domestic violence or sexual abuse ordinance, order, rule, or policy adopted by a political subdivision."[25]

The law contains an exception for situations where compliance would prevent a local government from receiving federal funds. This allows compliance with the Davis-Bacon and related acts, which direct the federal Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works.[26] Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.[27]

[20] Section 448.110(3), F.S.
[21] FLA. CONST. art. VIII, s. 1(f) and (g).
[22] FLA. CONST. art. VIII, s. 2(b).
[23] Section 218.077(2), F.S.
[24] Section 218.077(3)(a), F.S.
[25] Section 218.077(3)(b), F.S.
[26] *See*, e.g., 40 U.S.C. § 3141. The Davis-Bacon Act is a federal law that regulates prevailing wage rates on public works projects. The OSHA Act provides that all laborers and mechanics working on construction projects which are funded by the federal government shall not be paid a wage less than prevailing wage, as specified by the U.S. Department of Labor, in the locality in which work is performed.
[27] Section 218.077(4), F.S.

Additionally, local governments are prohibited from requiring an employer to provide employment benefits that are not required by state or federal law.[28] "A political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law."[29]

Despite these provisions, in 2016, the city of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. The ordinance applied to all employers operating with the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of $10.31 an hour and annual increases to $13.31 an hour effective January 2021. Subsequently, the ordinance was challenged on the grounds that it was preempted by Florida's wage and employment benefits law that preempts the establishment of minimum wages to the state, and Florida's Third District Court of Appeals struck down the ordinance.

The court held that the Florida Constitution authorizes the state legislature to preempt municipal powers by statute. The court also rejected the city's principal argument that Article X, Section 24 of the Florida Constitution, raising the state minimum wage, made the statute unconstitutional. In 2018, the Florida Supreme Court agreed to take up the case.[30] However, in 2019, the Florida Supreme Court issued an order that discharged jurisdiction over the case. As a result, the Third District's decision invalidating Miami Beach's local wage ordinance appears to currently stand.[31]

Workplace Heat Exposure

The OSHA Act, is the federal labor law governing occupational health and safety in the private sector and federal government.[32] Under the OSHA Act, two federal agencies are responsible for promoting occupational safety and health in the United States. The National Institute for Occupational Safety and Health (NIOSH) conducts research and recommends occupational safety and health standards.[33] The Occupational Safety and Health Administration (OSHA) is responsible for the promulgation and enforcement of standards.[34]

[28] "Employment benefits" is defined to mean 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. Section 218.077(1)(d), F.S.
[29] Section 218.077(2), F.S. Federally authorized and recognized tribal governments, however, are not prohibited from requiring employment benefits for a person employed within a territory over which the tribe has jurisdiction. Section 218.077(5), F.S.
[30] City of Miami Beach v. Florida Retail Federation, Inc., 233 So.3d 1236 at 1238 (Fla. 3d DCA 2017) (declined for review February 5, 2019).
[31] JDSUPRA, Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No (Feb. 14, 2019), *available at* https://www.jdsupra.com/legalnews/can-cities-set-a-local-minimum-wage-67192/ (last visited January 22, 2024).
[32] Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 STAT. 1590, 91st Cong. (Jan. 1, 2004).
[33] 29 U.S.C. § 671.
[34] 29 U.S.C. § 655.

Currently, there are no specific laws in Florida that provide heat exposure protections for outdoor workers. NIOSH and OSHA provide certain recommendations that employers provide heat exposure protections.

In 2013, NIOSH published "Preventing Heat-related Illness or Death of Outdoor Workers." This recommended standard recommends that employers have a plan in place to prevent heat-related illness. The plan should include hydration (drinking plenty of water), acclimatization (getting used to weather conditions), and schedules that alternate work with rest. It recommends that employers should also train workers about the hazards of working in hot environments.[35]

OSHA does not currently have any specific heat exposure standards. In the absence of a specific standard, OSHA is authorized to enforce the "general duty clause" of the OSHA Act, which requires each employer to provide a workplace that is free of "recognized hazards" causing or likely to cause "death or serious physical harm" to its employees.[36]

In 2011, OSHA launched a heat illness prevention campaign that includes guidance to employers and employees, a smartphone app that provides location-specific information on heat conditions and heat exposure prevention and first aid, and educational materials such as posters and pamphlets in English, Spanish, and other languages.[37]

On October 27, 2021, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for a potential standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.[38] OSHA solicited public comments on the ANPRM through January 26, 2022, and received over 1,000 comments on the ANPRM.

In March 2021, OSHA cited a company for a willful violation of the general duty clause by exposing sugar cane harvesting employees in Florida to "excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress" while working outdoors in September 2020. OSHA assessed the maximum allowable civil monetary penalty of $136,532 for this violation, which was later reduced through an informal settlement with the employer to $81,919.20. The citation provides, "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress."[39]

In April 2022, OSHA began a National Emphasis Program (NEP) of enforcement of the general duty clause and compliance assistance to focus on indoor and outdoor heat exposure. The NEP expands on OSHA's ongoing heat-related illness prevention initiative and campaign by creating a targeted enforcement component and reiterating its compliance assistance and outreach efforts.

[35] NIOSH 1986, 2008, 2010; OSHA-NIOSH 2011.
[36] 29 U.S.C. § 654.
[37] Occupational Safety and Health Administration, Heat Illness Prevention, *available at* https://www.osha.gov/heat/, (last visited January 22, 2024).
[38] 86 FR 59309.
[39] Occupational Safety and Health Administration, Violation Detail, *available at* https://www.osha.gov/ords/imis/establishment.violation_detail?id=1495595.015&citation_id=02001, (last visited January 22, 2024).

This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.[40]

Local Heat Regulation

On November 11, 2023, the Miami-Dade County Board of County Commissioners considered a proposal that would require construction and agriculture companies with five or more employees to guarantee workers access to water and give them 10-minute breaks in the shade every two hours on days when the heat index equals or exceeds 95 degrees Fahrenheit. The proposal would also require employers to train workers to recognize the signs of heat illness, administer first aid and call for help in an emergency. Enforcement includes a warning, fines of up to $2,000 per day per violation, and debarment of contractors from county work for certain repeated violations and unpaid penalties.[41]

According to reports:[42]

- The proposal was deferred until March, 2024.
- Some South Florida employers have expressed that they already provide such protections.
- Miami-Dade County would have been the only local government in the nation to adopt such requirements.

Preemption

A local government enactment may be inconsistent with state law if the:

- Local enactment conflicts with state statutes; or
- The Legislature has preempted the particular area of law that is the subject of the enactment.

Such state preemption precludes a local government from exercising authority in the preempted area.[43]

Florida law recognizes two types of state preemption: express and implied. Express preemption requires an express legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.[44] Implied preemption, on the other hand, exists where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the legislature.[45]

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[40] Occupational Safety and Health Administration, OSHA Instruction, *available at* https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf, (last visited January 22, 2024).
[41] Miami-Dade Legislative Item, File Number: 231773.
[42] Miami Herald, After industry pressure, Miami-Dade puts heat protections for outdoor workers on ice, *available at* https://www.miamiherald.com/news/local/environment/article281487003.html, (last visited January 22, 2024).
[43] Wolf, The Effectiveness of Home Rule: A Preemptions and Conflict Analysis, 83 Fla. B.J. 92 (June 2009), *available at* https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited January 22, 2024).
[44] *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).
[45] Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880 (Fla. 2010).

Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.[46]

III. Effect of Proposed Changes:

Wage and Employment Benefits

The bill amends Florida's wage and employment benefits law by providing that a political subdivision may not:

- "maintain" or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage.
- "through its purchasing or contracting procedures, seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision."
- "through the use of evaluation factors, qualification of bidders, or otherwise, award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision."

The bill also removes the exception that allows political subdivisions to establish a minimum wage or employment benefits not otherwise required under state or federal law for "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 with the political subdivision."

Workplace Heat Exposure Requirements

The bill prohibits political subdivisions from:

- Mandating or otherwise imposing heat exposure requirements on an employer or a political subdivision contractor.
- Considering or seeking information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

The bill provides that it does not:

- Limit the authority of a political subdivision to mandate or impose workplace heat exposure requirements for the employees of the local government.
- Apply if it is determined that compliance would prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the inconsistency with federal requirements.

The bill provides the following definitions:

- "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate.
- "Heat exposure requirement" means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to

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

heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:
  - Employee monitoring and protection.
  - Water consumption.
  - Cooling measures.
  - Acclimatization and recovery periods or practices.
  - Posting or distributing notices or materials that inform employees how to protect themselves from heat exposure.
  - Implementation and maintenance of heat exposure programs or training.
  - Appropriate first-aid measures or emergency responses related to heat exposure.
  - Protections for employees who report that they have experienced excessive heat exposure.
  - Reporting and recordkeeping requirements.
- "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

The bill provides an effective date of July 1, 2024.

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:

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective. The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.[47] When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the

[47] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

time the statute went into effect. The conclusion often depends on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that "[t]he distinction between substantive and procedural law is neither simple nor certain."[48] The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[49]

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[50] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[51]

Florida's contracts clause states that "no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[52] Regarding the impairment of an existing contract by the retroactive application of a statute, the Florida Supreme Court recently said:

> "[V]irtually no degree of contract impairment is tolerable." However, we also recognized that the holding that "virtually" no impairment is tolerable "necessarily implies that some impairment is tolerable." The question thus becomes how much impairment is tolerable and how to determine that amount. To answer that question, in *Pomponio* we proposed a balancing test that "allow[ed] the court to consider the actual effect of the provision on the contract and to balance a party's interest in not having the contract impaired against the State's source of authority and the evil sought to be remedied." "[T]his becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the State's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."
>
> An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. However, where the impairment is severe, "[t]he severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected." There must be a "significant and legitimate public purpose behind the regulation."[53]

[48] *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) (quoting *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000)).
[49] *Love*, at 184.
[50] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210, 1217 (Fla. 2004) (quoting *LaForet* 658 So. 2d 55, 61 (Fla. 1995)).
[51] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 2d DCA 1990).
[52] FLA. CONST. art. I, s. 10.
[53] *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1192 (Fla. 2017) (internal citations omitted for clarity).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate fiscal impact on the private sector to the extent that the preemptions supersede any existing local ordinances.

C. Government Sector Impact:

Indeterminate. The minimum wage provision will affect political subdivisions with minimum wage requirements for their contractors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 218.077 of the Florida Statutes.

This bill creates section 448.106 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.)

None.

B. Amendments:

None.