AN ACT to renumber and amend 104.08 (1), 104.08 (2) and 104.08 (3); to amend
104.01 (intro.), 104.01 (5), 104.02, 104.03, 104.04, 104.05, 104.06, 104.07 (1),
104.07 (2), 104.10, 104.11 and 104.12; and to create 104.001 and 104.08 (1m)
(b) of the statutes; relating to: preemption of city, village, town, or county
living wage ordinances.

Analysis by the Legislative Reference Bureau

Under current constitutional and statutory home rule provisions, a city or
village may determine its own local affairs subject only to the Wisconsin Constitution
and to any enactment of the legislature that is of statewide concern and that affects
every city or village with uniformity.

This bill requires that the state minimum wage law, under which an employer
may not pay an employee less than a living wage, be construed as an enactment of
statewide concern for the purpose of providing a living wage that is uniform
throughout the state. As such, the bill permits a city, village, town, or county to enact
an ordinance establishing a living wage only if the ordinance strictly conforms to the
state minimum wage law.
For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 104.001 of the statutes is created to read:

104.001 Statewide concern; uniformity. (1) This chapter shall be construed as an enactment of statewide concern for the purpose of providing a living wage that is uniform throughout the state.

(2) A city, village, town, or county may enact and administer an ordinance establishing a living wage only if the ordinance strictly conforms to this chapter and any rules promulgated under this chapter. Except as provided in sub. (3), a city, village, town, or county may not administer an ordinance establishing a living wage unless that ordinance strictly conforms to this chapter and any rules promulgated under this chapter.

(3) A city, village, town, or county that has a living wage ordinance in effect on the effective date of this subsection .... [revisor inserts date], may maintain and administer that ordinance if the department reviews the ordinance and determines that the ordinance strictly conforms to this chapter and any rules promulgated under this chapter. If the department determines that any part of the existing ordinance does not strictly conform to this chapter and any rules promulgated under this chapter, the city, village, town, or county may amend the ordinance and submit the amended ordinance to the department for a determination of whether the amended ordinance strictly conforms to this chapter and any rules promulgated under this chapter. A city, village, town, or county may not amend a living wage ordinance
except to maintain strict conformity with this chapter and any rules promulgated
under this chapter.

(4) A county ordinance enacted under this section does not apply within any
city, village, or town that has enacted or enacts an ordinance under this section.

(5) This section does not affect the requirement that employees employed on
a public works project contracted for by a city, village, town, or county be paid at the
prevailing wage rate, as defined in s. 66.0903 (1) (g), as required under s. 66.0903.

SECTION 2. 104.01 (intro.) of the statutes is amended to read:

104.01 Definitions. (intro.) The following terms as used in ss. 104.01 to
104.12 this chapter shall be construed as follows:

SECTION 3. 104.01 (5) of the statutes is amended to read:

104.01 (5) The term “living-wage” shall mean “Living wage” means
compensation for labor paid, whether by time, piecework, or otherwise, sufficient to
enable the employee receiving it the compensation to maintain himself or herself
under conditions consistent with his or her welfare.

SECTION 4. 104.02 of the statutes is amended to read:

104.02 Living-wage Living wage prescribed. Every wage paid or agreed
to be paid by any employer to any employee, except as otherwise provided in s.
104.07, shall be not less than a living-wage living wage.

SECTION 5. 104.03 of the statutes is amended to read:

104.03 Unlawful wages. Any employer paying, offering to pay, or agreeing
to pay any employee a wage lower or less in value than a living-wage living wage is
guilty of a violation of ss. 104.01 to 104.12 this chapter.

SECTION 6. 104.04 of the statutes is amended to read:
104.04 Classifications; department’s authority. The department shall investigate, ascertain, determine, and fix such reasonable classifications, and shall impose general or special orders, determining the living-wage living-wage, and shall carry out the purposes of ss. 104.01 to 104.12 this chapter. Such investigations, classifications, and orders shall be made as provided under s. 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation of ss. 104.01 to 104.12 this chapter. In determining the living-wage living-wage might have on the economy of the state, including the effect of a living-wage living-wage increase on job creation, retention, and expansion, on the availability of entry-level jobs, and on regional economic conditions within the state. The department may not establish a different minimum wage for men and women. Said orders shall be subject to review in the manner provided in ch. 227.

SECTION 7. 104.05 of the statutes is amended to read:

104.05 Complaints; investigation. The department shall, within 20 days after the filing of a verified complaint of any person setting forth that the wages paid to any employee in any occupation are not sufficient to enable the employee to maintain himself or herself under conditions consistent with his or her welfare, investigate and determine whether there is reasonable cause to believe that the wage paid to any employee is not a living-wage living-wage.

SECTION 8. 104.06 of the statutes is amended to read:

104.06 Wage council; determination. If, upon investigation, the department finds that there is reasonable cause to believe that the wages paid to any employee are not a living-wage, the department shall appoint a wage council, selected so as fairly to represent employers, employees, and the public, to
assist in its investigations and determinations. The living-wage determined upon shall be the living-wage for all employees within the same class as established by the classification of the department.

**Section 9.** 104.07 (1) of the statutes is amended to read:

104.07 (1) The department shall make rules, and, except as provided under subs. (5) and (6), grant licenses, to any employer who employs any employee who is unable to earn the living-wage determined by the department, permitting such person the employee to work for a wage which shall be commensurate with the employee's ability and each. Each license so granted shall establish a wage for the licensee.

**Section 10.** 104.07 (2) of the statutes is amended to read:

104.07 (2) The department shall make rules, and, except as provided under subs. (5) and (6), grant licenses to sheltered workshops, to permit the employment of workers with disabilities who are unable to earn the living-wage at a wage that is commensurate with their ability and productivity. A license granted to a sheltered workshop under this section subsection may be issued for the entire workshop or a department of the workshop.

**Section 11.** 104.08 (1) of the statutes is renumbered 104.08 (2m) and amended to read:

104.08 (2m) All persons Any person working in an occupation a trade industry for which a living-wage has been established for minors, and who shall have no trade, shall, if employed in an occupation which is a trade industry, be indentured under the provisions of s. 106.01.

**Section 12.** 104.08 (1m) (b) of the statutes is created to read:
104.08 (1m) (b) “Trade industry” means an industry involving physical labor
and characterized by mechanical skill and training such as render a period of
instruction reasonably necessary.

**SECTION 13.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.) and
amended to read:

104.08 (1m) (intro.) A “trade” or a “trade industry” within the meaning of ss.
104.01 to 104.12 shall be a trade or In this section:

(a) “Trade” means an industry occupation involving physical labor and
characterized by mechanical skill and training such as render a period of instruction
reasonably necessary.

(3) (a) The department shall investigate, determine, and declare what
occupations and industries are included within the phrase a “trade” or a “trade
industry”.

**SECTION 14.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and
amended to read:

104.08 (3) (b) The department may make exceptions to the operation of subs.
(1) and (2) where sub. (2m) when conditions make their application unreasonable.

**SECTION 15.** 104.10 of the statutes is amended to read:

**104.10 Penalty for intimidating witness.** Any employer who discharges or
threatens to discharge, or in any way discriminates, or threatens to discriminate
against any employee because the employee has testified or is about to testify, or
because the employer believes that the employee may testify, in any investigation or
proceeding relative to the enforcement of ss. 104.01 to 104.12 this chapter, is guilty
of a misdemeanor, and upon conviction thereof shall be punished by a fine of $25 for
each offense.
SECTION 16. 104.11 of the statutes is amended to read:

104.11 Definition of violation. Each day during which any employer shall employ a person for whom a living-wage living wage has been fixed at a wage less than the living-wage living wage fixed shall constitute a separate and distinct violation of ss. 104.01 to 104.12 this chapter.

SECTION 17. 104.12 of the statutes is amended to read:

104.12 Complaints. Any person may register with the department a complaint that the wages paid to employees an employee for whom a living-wage living wage has been established are less than that rate living wage, and the department shall investigate the matter and take all proceedings necessary to enforce the payment of a wage that is not less than the living-wage living wage. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

SECTION 18. Initial applicability.

(1) This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions that are inconsistent with section 104.001 of the statutes, as created by this act, on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

(END)