

2005 DRAFTING REQUEST

Bill

Received: 01/14/2005

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Stephen Nass (608) 266-5715

By/Representing: Mike Mikalsen

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters: mshovers

Subject: Employ Priv - minimum wage

Extra Copies:

Submit via email: YES

Requester's email: Rep.Nass@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Preemption of local minimum wage ordinances

Instructions:

See Attached--draft companion to 05-1543/1.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/14/2005	kfollett 01/14/2005		_____			S&L
/1	mbarman 01/14/2005		pgreensl 01/14/2005	_____	lnorthro 01/14/2005	mbarman 01/14/2005	

FE Sent For:

at intro
1/26

<END>

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/1			pgreensl 01/14/2005	_____	Inorthro 01/14/2005		

FE Sent For:

<END>

Malaise, Gordon

From: Mikalsen, Mike
Sent: Thursday, January 13, 2005 1:45 PM
To: Malaise, Gordon
Subject: Drafting Request - Preemption of Local Minimum Wage Increases



Preemption living
wage05-15431...

Rep. Nass is requesting that you draft an Assembly Companion Bill to Senate draft LRB-1543/1. If you have any questions, please contact me.

Mike Mikalsen
Research Assistant
Office of Representative Steve Nass
31st Wisconsin Assembly District

(888) 529-0031 Toll-Free (Wisconsin Only)
(608) 266-5715

2005 - 2006 LEGISLATURE

7716/1

LRB-1543/1

GMM&MES:kjf:ks

1118/05
12/2/05

2005 BILL

Keegen

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

BILL

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:

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

2 **104.001 Statewide concern; uniformity.** (1) This chapter shall be
3 construed as an enactment of statewide concern for the purpose of providing a living
4 wage that is uniform throughout the state.

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

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

BILL

1 except to maintain strict conformity with this chapter and any rules promulgated
2 under this chapter.

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

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

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

9 **104.01 Definitions.** (intro.) The following terms as used in ss. 104.01 to
10 ~~104.12~~ this chapter shall be construed as follows:

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

12 104.01 (5) ~~The term “living wage” shall mean~~ “Living wage” means
13 compensation for labor paid, whether by time, piecework, or otherwise, sufficient to
14 enable the employee receiving ~~it~~ the compensation to maintain himself or herself
15 under conditions consistent with his or her welfare.

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

17 **104.02 Living wage** Living wage prescribed. Every wage paid or agreed
18 to be paid by any employer to any employee, except as otherwise provided in s.
19 104.07, shall be not less than a ~~living wage~~ living wage.

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

21 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
22 to pay any employee a wage lower or less in value than a ~~living wage~~ living wage is
23 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

24 **SECTION 6.** 104.04 of the statutes is amended to read:

BILL**SECTION 6**

1 **104.04 Classifications; department's authority.** The department shall
2 investigate, ascertain, determine, and fix such reasonable classifications, and shall
3 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
4 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,
5 classifications, and orders shall be made as provided under s. 103.005, and the
6 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
7 of ~~ss. 104.01 to 104.12~~ this chapter. In determining the ~~living-wage~~ living wage, the
8 department may consider the effect that an increase in the ~~living-wage~~ living wage
9 might have on the economy of the state, including the effect of a ~~living-wage~~ living
10 wage increase on job creation, retention, and expansion, on the availability of
11 entry-level jobs, and on regional economic conditions within the state. The
12 department may not establish a different minimum wage for men and women. Said
13 orders shall be subject to review in the manner provided in ch. 227.

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

15 **104.05 Complaints; investigation.** The department shall, within 20 days
16 after the filing of a verified complaint of any person setting forth that the wages paid
17 to any employee in any occupation are not sufficient to enable the employee to
18 maintain himself or herself under conditions consistent with his or her welfare,
19 investigate and determine whether there is reasonable cause to believe that the wage
20 paid to any employee is not a ~~living-wage~~ living wage.

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

22 **104.06 Wage council; determination.** If, upon investigation, the
23 department finds that there is reasonable cause to believe that the wages paid to any
24 employee are not a ~~living-wage~~, it living wage, the department shall appoint a wage
25 council, selected so as fairly to represent employers, employees, and the public, to

BILL

1 assist in its investigations and determinations. The ~~living-wage~~ living wage so
2 determined upon shall be the ~~living-wage~~ living wage for all employees within the
3 same class as established by the classification of the department.

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

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

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

12 104.07 (2) The department shall make rules, and, except as provided under
13 subs. (5) and (6), grant licenses to sheltered workshops, to permit the employment
14 of workers with disabilities who are unable to earn the ~~living-wage~~ living wage at
15 a wage that is commensurate with their ability and productivity. A license granted
16 to a sheltered workshop under this section subsection may be issued for the entire
17 workshop or a department of the workshop.

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

20 104.08 (2m) ~~All persons~~ Any person working in an ~~occupation~~ trade industry
21 for which a ~~living-wage~~ living wage has been established for minors, and who shall
22 have has no trade, shall, ~~if employed in an occupation which is a trade industry,~~ be
23 indentured under the ~~provisions of~~ s. 106.01.

24 **SECTION 12.** 104.08 (1m) (b) of the statutes is created to read:

BILL**SECTION 12**

1 104.08 (1m) (b) “Trade industry” means an industry involving physical labor
2 and characterized by mechanical skill and training such as render a period of
3 instruction reasonably necessary.

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

6 104.08 (1m) (intro.) ~~A “trade” or a “trade industry” within the meaning of ss.~~
7 ~~104.01 to 104.12 shall be a trade or~~ In this section:

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

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

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

16 104.08 (3) (b) The department may make exceptions to the operation of subs.
17 ~~(1) and (2) where~~ sub. (2m) when conditions make ~~their~~ its application unreasonable.

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

19 **104.10 Penalty for intimidating witness.** Any employer who discharges or
20 threatens to discharge, or in any way discriminates, or threatens to discriminate
21 against any employee because the employee has testified or is about to testify, or
22 because the employer believes that the employee may testify, in any investigation or
23 proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~ this chapter, is guilty
24 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for
25 each offense.

BILL

1 **SECTION 16.** 104.11 of the statutes is amended to read:

2 **104.11 Definition of violation.** Each day during which any employer shall
3 employ a person for whom a ~~living-wage~~ living wage has been fixed at a wage less
4 than the ~~living-wage~~ living wage fixed shall constitute a separate and distinct
5 violation of ~~ss. 104.01 to 104.12~~ this chapter.

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

7 **104.12 Complaints.** Any person may register with the department a
8 complaint that the wages paid to ~~employees~~ an employee for whom a ~~living-wage~~
9 living wage has been established are less than that ~~rate~~ living wage, and the
10 department shall investigate the matter and take all proceedings necessary to
11 enforce the payment of a wage that is not less than the ~~living-wage~~ living wage.
12 Section 111.322 (2m) applies to discharge and other discriminatory acts arising in
13 connection with any proceeding under this section.

14 **SECTION 18. Initial applicability.**

15 (1) This act first applies to an employee who is affected by a collective
16 bargaining agreement that contains provisions that are inconsistent with section
17 104.001 of the statutes, as created by this act, on the day on which the collective
18 bargaining agreement expires or is extended, modified, or renewed, whichever
19 occurs first.

20

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

-1716/1
LRB-1543/1dn
MES&GMM:kjf/6

January 7, 2005 Date

Representative Grothman:

Section 104.001, as created by this draft, contains a statement of legislative intent, and prohibits local units of government from enacting local minimum wage ordinances, but you should know that there is still some possibility that a city or village could claim that those statutes, if enacted, violate the state constitutional home rule provision.

Article XI, section 3, of the Wisconsin Constitution, as well as ss. 61.34 (1) and 62.11 (5) of the statutes, and numerous decisions of the Wisconsin Supreme Court give cities and villages extensive home rule authority. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633, 637 (1926).

The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that prohibiting cities and villages from enacting local minimum wage ordinances is state interference with an issue of local affairs which is not a matter of statewide concern, thus violating article XI, section 3, of the constitution.

You should know that even if this bill becomes law, cities and villages may not be subject to its provisions. In some cases, if a state law intrudes on an area of local concern, a city may elect not to be governed by the law. See *Ekern*, 642.

Although it is difficult to predict how a court would rule should this bill become law and should a legal challenge be filed, we thought you should at least be aware of these issues. Please let us know if you have any questions.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
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LRB-1716/1dn
MES&GMM:kjf:pg

January 14, 2005

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Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

Barman, Mike

From: Mikalsen, Mike
Sent: Friday, January 14, 2005 1:25 PM
To: LRB.Legal
Subject: Draft review: LRB 05-1716/1 Topic: Preemption of local minimum wage ordinances

It has been requested by <Mikalsen, Mike> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1716/1 Topic: Preemption of local minimum wage ordinances