

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 49**

May 3, 2005 – Offered by Representative NASS.

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 substitute amendment states that the provision of a living wage that is uniform throughout the state is a matter of statewide concern, that the enactment of a living wage ordinance by a city, village, town, or county would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the state minimum wage law, under which an employer may not pay an employee less than a living wage, and that, therefore, the state minimum wage law shall 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 substitute amendment prohibits a city, village, town, or county from enacting an ordinance establishing a

living wage and provides that a city, village, town, or county living wage ordinance that is in effect on the effective date of the substitute amendment is void.

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)** The legislature finds that the
3 provision of a living wage that is uniform throughout the state is a matter of
4 statewide concern and that the enactment of a living wage ordinance by a city,
5 village, town, or county would be logically inconsistent with, would defeat the
6 purpose of, and would go against the spirit of this chapter. Therefore, this chapter
7 shall be construed as an enactment of statewide concern for the purpose of providing
8 a living wage that is uniform throughout the state.

9 **(2)** A city, village, town, or county may not enact and administer an ordinance
10 establishing a living wage. Any city, village, town, or county living wage ordinance
11 that is in effect on the effective date of this subsection ... [revisor inserts date], is
12 void.

13 **(3)** This section does not affect any of the following:

14 (a) The requirement that employees employed on a public works project
15 contracted for by a city, village, town, or county be paid at the prevailing wage rate,
16 as defined in s. 66.0903 (1) (g), as required under s. 66.0903.

17 (b) An ordinance that requires an employee of a county, city, village, or town,
18 an employee who performs work under a contract for the provision of services to a
19 county, city, village, or town, or an employee who performs work that is funded by
20 financial assistance from a county, city, village, or town, to be paid at a minimum
21 wage rate specified in the ordinance.

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

2 **104.01 Definitions.** (intro.) The following terms as used in ss. 104.01 to
3 ~~104.12~~ this chapter shall be construed as follows:

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

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

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

10 **104.02 ~~Living-wage~~ Living wage prescribed.** Every wage paid or agreed
11 to be paid by any employer to any employee, except as otherwise provided in s.
12 104.07, shall be not less than a ~~living-wage~~ living wage.

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

14 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
15 to pay any employee a wage lower or less in value than a ~~living-wage~~ living wage is
16 guilty of a violation of ss. ~~104.01 to 104.12~~ this chapter.

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

18 **104.04 Classifications; department’s authority.** The department shall
19 investigate, ascertain, determine, and fix such reasonable classifications, and shall
20 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
21 carry out the purposes of ss. ~~104.01 to 104.12~~ this chapter. Such investigations,
22 classifications, and orders shall be made as provided under s. 103.005, and the
23 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
24 of ss. ~~104.01 to 104.12~~ this chapter. In determining the ~~living-wage~~ living wage, the
25 department may consider the effect that an increase in the ~~living-wage~~ living wage

1 might have on the economy of the state, including the effect of a ~~living-wage~~ living
2 wage increase on job creation, retention, and expansion, on the availability of
3 entry-level jobs, and on regional economic conditions within the state. The
4 department may not establish a different minimum wage for men and women. Said
5 orders shall be subject to review in the manner provided in ch. 227.

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

7 **104.05 Complaints; investigation.** The department shall, within 20 days
8 after the filing of a verified complaint of any person setting forth that the wages paid
9 to any employee in any occupation are not sufficient to enable the employee to
10 maintain himself or herself under conditions consistent with his or her welfare,
11 investigate and determine whether there is reasonable cause to believe that the wage
12 paid to any employee is not a ~~living-wage~~ living wage.

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

14 **104.06 Wage council; determination.** If, upon investigation, the
15 department finds that there is reasonable cause to believe that the wages paid to any
16 employee are not a ~~living-wage~~, it ~~living wage~~, the department shall appoint a wage
17 council, selected so as fairly to represent employers, employees, and the public, to
18 assist in its investigations and determinations. The ~~living-wage~~ living wage so
19 determined upon shall be the ~~living-wage~~ living wage for all employees within the
20 same class as established by the classification of the department.

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

22 104.07 (1) The department shall make rules, and, except as provided under
23 subs. (5) and (6), grant licenses, to any employer who employs any employee who is
24 unable to earn the ~~living-wage~~ theretofore determined upon ~~living wage~~ determined
25 by the department, permitting ~~such person~~ the employee to work for a wage which

1 shall be that is commensurate with the employee's ability and each. Each license so
2 granted shall establish a wage for the licensee.

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

4 104.07 (2) The department shall make rules, and, except as provided under
5 subs. (5) and (6), grant licenses to sheltered workshops, to permit the employment
6 of workers with disabilities who are unable to earn the ~~living-wage~~ living wage at
7 a wage that is commensurate with their ability and productivity. A license granted
8 to a sheltered workshop under this ~~section~~ subsection may be issued for the entire
9 workshop or a department of the workshop.

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

12 104.08 (2m) ~~All persons~~ Any person working in an ~~occupation~~ a trade industry
13 for which a ~~living-wage~~ living wage has been established for minors, and who ~~shall~~
14 ~~have~~ has no trade, ~~shall, if employed in an occupation which is a trade industry,~~ be
15 indentured under ~~the provisions of s. 106.01.~~

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

17 104.08 (1m) (b) “Trade industry” means an industry involving physical labor
18 and characterized by mechanical skill and training such as render a period of
19 instruction reasonably necessary.

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

22 104.08 (1m) (intro.) ~~A “trade” or a “trade industry” within the meaning of ss.~~
23 ~~104.01 to 104.12 shall be a trade or~~ In this section:

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

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

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

9 104.08 **(3) (b)** The department may make exceptions to the operation of subs.
10 ~~(1) and (2)~~ where sub. (2m) when conditions make their its application unreasonable.

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

12 **104.10 Penalty for intimidating witness.** Any employer who discharges or
13 threatens to discharge, or in any way discriminates, or threatens to discriminate
14 against any employee because the employee has testified or is about to testify, or
15 because the employer believes that the employee may testify, in any investigation or
16 proceeding relative to the enforcement of ss. ~~104.01 to 104.12~~ this chapter, is guilty
17 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for
18 each offense.

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

20 **104.11 Definition of violation.** Each day during which any employer shall
21 employ a person for whom a ~~living-wage~~ living wage has been fixed at a wage less
22 than the ~~living-wage~~ living wage fixed shall constitute a separate and distinct
23 violation of ss. ~~104.01 to 104.12~~ this chapter.

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

