2015 ASSEMBLY BILL 264

June 10, 2015 – Introduced by Representatives SARGENT, SUBECK, HESSELBEIN, JOHNSON, BOWEN, BERCEAU, GÖYKE, STUCK, BROSTOFF, OHNSTAD, POPE, BARNES, KESSLER, YOUNG, SINICKI, C. TAYLOR and RIEMER, cosponsored by Senators WIRCH, C. LARSON, MILLER, RISER, HARRIS DODD and RINGHAND. Referred to Committee on Small Business Development.

AN ACT to repeal 104.001, 104.01 (5), 104.04 (title), 104.05, 104.06 and 104.11; to renumber 104.01 (1); to renumber and amend 104.04 and 104.045; to consolidate, renumber and amend 104.02 and 104.03; to amend 49.141 (1) (g), 103.06 (1) (b) 5., 103.06 (1) (c) 5., 103.06 (3) (a) 4., 103.06 (4) (a) 1., 103.67 (2) (fm) 3., 103.70 (2) (b) 3., 104.01 (intro.), 104.01 (8), 104.07 (1) and (2), 104.08 (2m), 104.10, 104.12, 234.94 (5), 234.94 (8), 800.09 (1j), 800.095 (1) (d) and 895.035 (2m) (c); and to create 104.01 (1d), 104.01 (1g), 104.01 (5m), 104.035 and 104.045 (1) and (2) of the statutes; relating to: a state minimum wage, permitting the enactment of local living wage ordinances, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, providing an exemption from rule-making procedures, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau
Currently, the state minimum wage law requires that employers pay a living wage to their employees. Under that law, the Department of Workforce Development...
(DWD) has provided, by rule, minimum wages for various types of employees, including employees, generally; minor employees; opportunity employees, who are defined as employees under 20 years of age in their first 90 days of employment with a particular employer; tipped employees; agricultural employees; camp counselors; golf caddies; students employed at independent colleges and universities for less than 20 hours per week; student learners employed in bona fide school training programs; and individuals who are unable to earn the standard minimum wage because of a disability. DWD has exempted, by rule, from the minimum wage law employees who perform less than 15 hours per week of casual employment, such as baby-sitting or lawn mowing, in and around an employer’s home; employees who provide companionship services to elderly or infirm individuals; and elementary and secondary school students performing work-like activities in their schools. DWD has also promulgated rules providing allowances against the minimum wage for employers that provide meals or lodging for their employees.

This bill repeals references to and provisions for a living wage and replaces them with provisions requiring a minimum wage, described as follows. Under this bill, DWD must continue to provide the exemptions listed above as well as separate minimum wages for opportunity employees, agricultural employees, camp counselors, golf caddies, students employed at independent colleges and universities for less than 20 hours per week, student learners employed in bona fide school training programs, and individuals who are unable to earn the standard minimum wages because of a disability. For employees generally, however, including tipped employees, the bill sets the minimum wage as follows:

**Employees generally**

<table>
<thead>
<tr>
<th>Current minimum wage</th>
<th>$7.25 per hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum wage on effective date</td>
<td>$8.50 per hour</td>
</tr>
<tr>
<td>Minimum wage one year after effective date</td>
<td>$10 per hour</td>
</tr>
<tr>
<td>Minimum wage two years after effective date</td>
<td>$11.50 per hour</td>
</tr>
<tr>
<td>Minimum wage three years after effective date</td>
<td>$13 per hour</td>
</tr>
<tr>
<td>Minimum wage four years after effective date</td>
<td>$14 per hour</td>
</tr>
<tr>
<td>Minimum wage five years after effective date</td>
<td>$15 per hour</td>
</tr>
</tbody>
</table>

Beginning six years after the bill’s effective date, the bill requires DWD annually to promulgate rules revising the minimum wages established under the bill by determining the percentage difference between the consumer price index for the preceding 12-month period (year) and the consumer price index for the year before the preceding year, adjusting the minimum wages then in effect by that percentage difference, and rounding that result to the nearest multiple of five cents. DWD, however, is not required to revise the general minimum wage if the consumer price
index for the preceding year has not increased over the consumer price index for the year before the preceding year.

Finally, current law prohibits a city, village, town, or county from enacting and administering an ordinance establishing a living wage. This bill eliminates that prohibition.

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. 49.141 (1) (g) of the statutes is amended to read:

49.141 (1) (g) “Minimum wage” means the state minimum hourly wage under ch. 104. s. 104.035 (1) or the federal minimum hourly wage under 29 USC 206 (a) (1), whichever is applicable.

SECTION 2. 103.06 (1) (b) 5. of the statutes is amended to read:

103.06 (1) (b) 5. For purposes of maintaining records under sub. (3) (a) 4. as required under rules promulgated under s. 104.04 104.035, an employee, as defined in s. 104.01 (2).

SECTION 3. 103.06 (1) (c) 5. of the statutes is amended to read:

103.06 (1) (c) 5. For purposes of maintaining records under sub. (3) (a) 4. as required under rules promulgated under s. 104.04 104.035, an employer, as defined in s. 104.01 (3).

SECTION 4. 103.06 (3) (a) 4. of the statutes is amended to read:

103.06 (3) (a) 4. That the employer is maintaining records of the hours worked by its employees, the wages paid to those employees, any deductions from those wages, and any other information that the employer is required to keep under rules promulgated under s. 103.02 or 104.04 104.035, and is listing deductions from wages as required under s. 103.457.
SECTION 5. 103.06 (4) (a) 1. of the statutes is amended to read:

103.06 (4) (a) 1. Enter and inspect any place of business or place of employment and examine and copy any records that the employer is required to keep under rules promulgated under s. 103.02 or 104.04, 104.035; any books, registers, payroll records, records of wage withholdings, records of work activity and hours of work, and records or indicia of the employment status of persons performing work for the employer; and any other records relating to compliance with the requirements specified in sub. (3) (a).

SECTION 6. 103.67 (2) (fm) 3. of the statues is amended to read:

103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ch. 104 s. 104.035 or under federal law, whichever is greater, for the work.

SECTION 7. 103.70 (2) (b) 3. of the statutes is amended to read:

103.70 (2) (b) 3. The minor is paid the applicable minimum wage under ch. 104 s. 104.035 or under federal law, whichever is greater, for the work.

SECTION 8. 104.001 of the statutes is repealed.

SECTION 9. 104.01 (intro.) of the statutes is amended to read:

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

SECTION 10. 104.01 (1) of the statutes is renumbered 104.01 (1m).

SECTION 11. 104.01 (1d) of the statutes is created to read:

104.01 (1d) “Agricultural employee” means an employee who is employed in the operation of farm premises, as described in s. 102.04 (3).

SECTION 12. 104.01 (1g) of the statutes is created to read:

104.01 (1g) “Consumer price index” means the average of the consumer price index over each 12-month period for all urban consumers, U.S. city average, all
items, not seasonally adjusted, as determined by the bureau of labor statistics of the U.S. department of labor.

SECTION 13. 104.01 (5) of the statutes is repealed.

SECTION 14. 104.01 (5m) of the statutes is created to read:

104.01 (5m) “Opportunity employee” means a person under 20 years of age who is in the first 90 consecutive days of employment with his or her employer.

SECTION 15. 104.01 (8) of the statutes is amended to read:

104.01 (8) The term “wage” and the term “wages” shall each mean “Wage” means any compensation for labor measured by time, piece, or otherwise.

SECTION 16. 104.02 and 104.03 of the statutes are consolidated, renumbered 104.02 and amended to read:

104.02 Living Minimum wage prescribed; requirement to pay. 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 the applicable minimum wage established under s. 104.035. 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 the applicable minimum wage established under s. 104.035 is guilty of a violation of this chapter.

SECTION 17. 104.035 of the statutes is created to read:

104.035 Minimum wage; established. (1) EMPLOYEES GENERALLY. Except as provided in subs. (2) and (3), the minimum wage is as follows:

(a) For wages earned before the first day of the 15th month beginning after publication .... [LRB inserts date], $8.50 per hour.
(b) For wages earned beginning on the first day of the 15th month beginning after publication .... [LRB inserts date], and ending on the last day of the 26th month beginning after publication .... [LRB inserts date], $10 per hour.

(c) For wages earned beginning on the first day of the 27th month beginning after publication .... [LRB inserts date], and ending on the last day of the 38th month beginning after publication .... [LRB inserts date], $11.50 per hour.

(d) For wages earned beginning on the first day of the 39th month beginning after publication .... [LRB inserts date], and ending on the last day of the 50th month beginning after publication .... [LRB inserts date], $13 per hour.

(e) For wages earned beginning on the first day of the 51st month beginning after publication .... [LRB inserts date], and ending on the last day of the 62nd month beginning after publication .... [LRB inserts date], $14 per hour.

(f) For wages earned beginning on the first day of the 63rd month beginning after publication .... [LRB inserts date], and ending on the last day of the 74th month beginning after publication .... [LRB inserts date], $15 per hour.

(g) For wages earned beginning on the first day of the 75th month beginning after publication .... [LRB inserts date], the amount determined by the department by rule promulgated under sub. (4).

(2) Minimum wage established by department. The department shall promulgate rules providing the minimum wage for all of the following:

(a) Opportunity employees.

(b) Agricultural employees.

(c) Camp counselors.

(d) Golf caddies.
(e) An employee or worker with a disability covered under a license under s. 104.07.

(f) A student learner.

(g) A student employed by an independent college or university for less than 20 hours per week.

(3) Employment exempted by department. The department shall promulgate rules exempting from the minimum wage requirement under subs. (1) and (2) all of the following:

(a) A person engaged in casual employment in and around an employer’s home on an irregular or intermittent basis for not more than 15 hours per week.

(b) A person who resides in the home of an employer who, due to advanced age or physical or mental disability, cannot care for his or her own needs, for the purpose of companionship and who spends not more than 15 hours per week on general household work for the employer.

(c) An elementary or secondary school student performing student work-like activities in the student’s school.

(4) Department to revise. (a) 1. Subject to par. (b), by the date specified in sub. (1) (g) and annually thereafter, the department shall promulgate rules to revise the minimum wages established under sub. (1). Subject to subd. 2., the department shall determine the revised minimum wages by calculating the percentage difference between the consumer price index for the 12-month period ending on the last day of the last month for which that information is available and the consumer price index for the 12-month period ending on the last day of the month 12 months prior to that month, adjusting the minimum wage then in effect by that percentage difference, and rounding that result to the nearest multiple of 5 cents.
2. The department may use the emergency rule procedures under s. 227.24 to promulgate the rules required under subd. 1. Notwithstanding s. 227.24 (1) (a) and (3), the department may promulgate those rules as emergency rules without providing evidence that promulgating those rules as emergency rules is necessary to preserve the public peace, health, safety, or welfare and without a finding of emergency. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., the department is not required to prepare a statement of the scope of those rules or to submit those rules in final draft form to the governor for approval. A revised minimum wage determined under subd. 1. shall first apply to wages earned on the first day of the 3rd month beginning after the month of publication .... [LRB inserts date], of the year in which the wage is revised and, notwithstanding s. 227.24 (1) (c) and (2), shall remain in effect until that same date the following year.

(b) Paragraph (a) 1. does not apply if the consumer price index for the 12-month period ending on the last day of the last month for which that information is available has not increased over the consumer price index for the 12-month period ending on the last day of the month 12 months prior to that month.

(5) GENDER-SPECIFIC MINIMUM WAGE PROHIBITED.

SECTION 18. 104.04 (title) of the statutes is repealed.

SECTION 19. 104.04 of the statutes is renumbered 104.035 (5) and amended to read:

104.035 (5) The department shall investigate, ascertain, determine, and fix such reasonable classifications, and shall impose general or special orders, determining the living wage, and shall carry out the purposes of 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 this chapter. In determining the living wage, the department may consider the effect that an increase in the living wage might have on the economy of the state, including the effect of a 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 20.** 104.045 of the statutes is renumbered 104.045 (intro.) and amended to read:

104.045 **Tipped employees Meals, lodging, and hours worked.** (intro.) The department shall by rule determine what amount of tips or similar gratuities may be counted toward fulfillment of the employer’s obligation under this chapter. promulgate rules governing all of the following:

**SECTION 21.** 104.045 (1) and (2) of the statutes are created to read:

104.045 (1) The deduction of meals or lodging provided by an employer to an employee from the employer’s obligation under this chapter.

(2) The determination of hours worked by an employee during which the employee is entitled to the minimum wage established under s. 104.035.

**SECTION 22.** 104.05 of the statutes is repealed.

**SECTION 23.** 104.06 of the statutes is repealed.

**SECTION 24.** 104.07 (1) and (2) of the statutes are amended to read:

104.07 (1) The department shall make promulgate rules, and, except as provided under subs. (5), (6), and (7), grant licenses a license to any employer who employs any employee who is unable to earn the living wage determined by the department, permitting the employee to work for a wage that for whom the minimum
wage established under s. 104.035 is not commensurate with the employee’s ability. Each license so granted shall establish a wage for the licensee any such employees of the licensee.

(2) The department shall make promulgate rules, and, except as provided under subs. (5), (6), and (7), grant licenses a license to a sheltered workshops workshop, 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 subsection may be issued for the entire workshop or a department of the workshop.

SECTION 25. 104.08 (2m) of the statutes is amended to read:

104.08 (2m) Any person working in a trade industry for which a living minimum wage has been established for minors, and who has no trade, shall be employed under an apprentice contract under s. 106.01.

SECTION 26. 104.10 of the statutes is amended to read:

104.10 Penalty for intimidating witness. Any employer who discharges or threatens to discharge, or who 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 this chapter, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of may be fined $25 for each offense.

SECTION 27. 104.11 of the statutes is repealed.

SECTION 28. 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 an employee for whom a living minimum wage has
BEEN ESTABLISHED UNDER S. 104.035 ARE LESS THAN THAT LIVING MINIMUM WAGE, AND THE
DEPARTMENT SHALL INVESTIGATE THE MATTER AND TAKE ALL PROCEEDINGS NECESSARY TO
ENFORCE THE PAYMENT OF THAT MINIMUM Wage THAT IS NOT LESS THAN THE LIVING WAGE.
SECTION 111.322 (2M) APPLIES TO DISCHARGE AND OTHER DISCRIMINATORY ACTS ARISING IN
CONNECTION WITH ANY PROCEEDING UNDER THIS SECTION.

SECTION 29. 234.94 (5) OF THE STATUTES IS AMENDED TO READ:

234.94 (5) “PRIMARY EMPLOYMENT” MEANS WORK WHICH THAT PAYS AT LEAST THE
MINIMUM WAGE AS ESTABLISHED UNDER CH. 104, S. 104.035 (1) OR UNDER FEDERAL LAW,
WHICHEVER IS GREATER, OFFERS ADEQUATE FRINGE BENEFITS, INCLUDING HEALTH INSURANCE,
AND IS NOT SEASONAL OR PART TIME.

SECTION 30. 234.94 (8) OF THE STATUTES IS AMENDED TO READ:

234.94 (8) “TARGET GROUP” MEANS A POPULATION GROUP FOR WHICH THE
UNEMPLOYMENT LEVEL IS AT LEAST 25% HIGHER THAN THE STATEWIDE
UNEMPLOYMENT LEVEL, OR A POPULATION GROUP FOR WHICH THE AVERAGE WAGE RECEIVED IS
LESS THAN 1.2 TIMES THE MINIMUM WAGE AS ESTABLISHED UNDER CH. 104, S. 104.035 (1)
OR UNDER FEDERAL LAW, WHICHEVER IS GREATER. NO POPULATION GROUP IS REQUIRED TO BE
LOCATED WITHIN A CONTIGUOUS GEOGRAPHIC AREA TO BE CONSIDERED A TARGET GROUP.

SECTION 31. 800.09 (1j) OF THE STATUTES IS AMENDED TO READ:

800.09 (1j) IF THE COURT ORDERS THE DEFENDANT TO PERFORM COMMUNITY SERVICE
WORK IN LIEU OF MAKING RESTITUTION OR OF PAYING THE FORFEITURE, SURCHARGES, FEES AND
COSTS, OR BOTH, THE COURT MAY ORDER THAT THE DEFENDANT PERFORM COMMUNITY SERVICE
WORK FOR A PUBLIC AGENCY OR A NONPROFIT CHARITABLE ORGANIZATION THAT IS APPROVED BY
THE COURT AND AGREED TO BY THE PUBLIC AGENCY OR NONPROFIT CHARITABLE ORGANIZATION.
COMMUNITY SERVICE WORK MAY BE IN LIEU OF RESTITUTION ONLY IF ALSO AGREED TO BY THE
PERSON TO WHOM RESTITUTION IS Owed. THE NUMBER OF HOURS OF COMMUNITY SERVICE WORK
required may not exceed the number determined by dividing the amount owed on the forfeiture by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment s. 104.035 (1). The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

**SECTION 32.** 800.095 (1) (d) of the statutes is amended to read:

800.095 (1) (d) That the defendant perform community service work for a public agency or nonprofit charitable organization approved by the court and agreed to by the agency or nonprofit charitable organization. If the community service work is in lieu of restitution, then the person to whom restitution is owed must agree; the defendant shall be given credit at the rate of not less than the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment s. 104.035 (1) for each one hour of community service completed. The defendant shall be given a written statement of the community service order. Nothing in this paragraph makes the defendant an employee or agent of the court or the municipality. The defendant shall be responsible for providing the court with proof that the community service hours have been completed.

**SECTION 33.** 895.035 (2m) (c) of the statutes is amended to read:

895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and 938 may order that the juvenile perform community service work for a public agency or nonprofit charitable organization that is designated by the court in lieu of making restitution or paying the forfeiture or surcharge. If the parent agrees to perform community service work in lieu of making restitution or paying the forfeiture or surcharge, the court may order that the parent perform community service work for a public agency or a nonprofit charitable organization that is designated by the court.
Community service work may be in lieu of restitution only if also agreed to by the public agency or nonprofit charitable organization and by the person to whom restitution is owed. The court may utilize any available resources, including any community service work program, in ordering the juvenile or parent to perform community service work. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the restitution, forfeiture, or surcharge by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment s. 104.035 (1). The court shall ensure that the juvenile or parent is provided with a written statement of the terms of the community service order and that the community service order is monitored.

SECTION 34. Effective date.

(1) MINIMUM WAGE. This act takes effect on the first day of the 3rd month beginning after publication.