January 16, 2015 – Introduced by Senators WIRCH, CARPENTER, ER PENBACH, HANSEN, HARRIS DODD, C. LARSON, RINGHAND, RISSER, SHILLING, L. TAYLOR, VINEHOUT and MILLER, cosponsored by Representatives MASON, BARNES, BERCEAU, BILLINGS, GENRICH, GOYKE, HEBL, HINTZ, JOHNSON, JORGENSEN, KAHL, KOLSTE, OHNSTAD, SARGENT, SHANKLAND, SINICKI, C. TAYLOR, YOUNG and ZEPNICK. Referred to Committee on Labor and Government Reform.

1 AN ACT to repeal 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., 104.001 (1), 104.001 (2), 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), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes; relating to: a state minimum wage, 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 will 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 and for tipped employees, however, the bill sets the minimum wages 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>$8.20 per hour</td>
</tr>
<tr>
<td>Minimum wage one year after effective date</td>
<td>$9.15 per hour</td>
</tr>
<tr>
<td>Minimum wage two years after effective date</td>
<td>$10.10 per hour</td>
</tr>
</tbody>
</table>

**Tipped employees**

<table>
<thead>
<tr>
<th>Current minimum wage</th>
<th>$2.33 per hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum wage on effective date</td>
<td>$3 per hour</td>
</tr>
</tbody>
</table>

Beginning three years after the bill’s effective date for employees generally and one year after the bill’s effective date for tipped employees, 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. For tipped
employees, the bill requires DWD to increase the minimum wage by 95 cents each year until the minimum wage for tipped employees equals 70 percent of the minimum wage for employees generally and then in subsequent years to revise the minimum wage for tipped employees so that the minimum wage for tipped employees remains equal to 70 percent of the minimum wage for employees generally, rounded 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.

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, 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 103.04; 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 statutes 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 (1) of the statutes is amended to read:

104.001 (1) The legislature finds that the provision of a living minimum wage that is uniform throughout the state is a matter of statewide concern and that the enactment of a living minimum 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 this chapter. Therefore, this chapter shall be construed as an enactment of statewide concern for the purpose of providing a living minimum wage that is uniform throughout the state.

**SECTION 9.** 104.001 (2) of the statutes is amended to read:
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104.001 (2) A city, village, town, or county may not enact and administer an ordinance establishing a living minimum wage. Any city, village, town, or county living minimum wage ordinance that is in effect on June 16, 2005, is void.

SECTION 10. 104.01 (intro.) of the statutes is amended to read:

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

SECTION 11. 104.01 (1) of the statutes is renumbered 104.01 (1m).

SECTION 12. 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 13. 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 14. 104.01 (5) of the statutes is repealed.

SECTION 15. 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 16. 104.01 (7m) of the statutes is created to read:

104.01 (7m) “Tipped employee” means an employee who in the course of employment customarily and regularly receives money or other gratuities from persons other than the employee’s employer.

SECTION 17. 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 18.** 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 19.** 104.035 of the statutes is created to read:

**104.035 Minimum wage; established.** (1) Employees generally. Except
as provided in subs. (2) to (4), the minimum wage is as follows:

(a) For wages earned before the first day of the 15th month beginning after
publication .... [LRB inserts date], $8.20 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], $9.15 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], $10.10 per hour.

(d) For wages earned beginning on the first day of the 39th month beginning
after publication .... [LRB inserts date], the amount determined by the department
by rule promulgated under sub. (5).
(2) Tipped Employees. Except as provided in subs. (3) and (4), if an employer of a tipped employee establishes by the employer's payroll records that, when adding the tips received by the tipped employee in a week to the wages paid to the tipped employee in that week, the tipped employee receives not less than the applicable minimum wage specified in sub. (1), the minimum wage for the tipped employee is as follows:

(a) For wages earned before the first day of the 15th month beginning after publication .... [LRB inserts date], $3 per hour.

(b) For wages earned beginning on the first day of the 15th month beginning after publication .... [LRB inserts date], the amounts determined by the department by rule promulgated under sub. (5).

(3) 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.

(4) Employment Exempted by Department. The department shall promulgate rules exempting from the minimum wage requirements under subs. (1) to (3) 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.

(5) Department to revise. (a) 1. Subject to par. (b), by the date specified in sub. (1) (d) or (2) (b), whichever is applicable, and annually thereafter, the department shall promulgate rules to revise the minimum wages established under subs. (1) and (2). Subject to subd. 2., the department shall determine those 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 wages then in effect by that percentage difference, and rounding that result to the nearest multiple of 5 cents.

2. In revising the minimum wage for tipped employees under sub. (2), each year the department shall increase that minimum wage by 95 cents or by the amount that is necessary for that minimum wage to equal 70 percent of the minimum wage under sub. (1) as determined under subd. 1., rounded to the nearest multiple of 5 cents, whichever is less. For years subsequent to the first year in which the minimum wage under sub. (2) equals 70 percent of the minimum wage under sub. (1) as determined under subd. 1., the department shall revise the minimum wage under sub. (2) by the
amount that is necessary for that minimum wage to remain equal to 70 percent of
the minimum wage under sub. (1) as determined under subd. 1., rounded to the
nearest multiple of 5 cents.

3. The department may use the emergency rule procedures under s. 227.24 to
promulgate the rules required under subds. 1. and 2. 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. or 2. 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.

(6) GENDER–SPECIFIC MINIMUM WAGE PROHIBITED.

SECTION 20. 104.04 (title) of the statutes is repealed.

SECTION 21. 104.04 of the statutes is renumbered 104.035 (6) and amended to
read:

104.035 (6) 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 22. 104.045 of the statutes is renumbered 104.045 (intro.) and
amended to read:

104.045 **Tipped employees Tips, meals, lodging, and hours worked.**
(intro.) The department shall by rule determine what amount of promulgate rules
governing all of the following:

1. The counting of tips or similar gratuities may be counted toward fulfillment
   of the employer’s obligation under this chapter.

SECTION 23. 104.045 (2) and (3) of the statutes are created to read:

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

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

SECTION 24. 104.05 of the statutes is repealed.

SECTION 25. 104.06 of the statutes is repealed.

SECTION 26. 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 27. 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 28. 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 29. 104.11 of the statutes is repealed.

SECTION 30. 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 a 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 31. 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 32. 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% greater 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 33. 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 34. 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 35. 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 36. Effective date.

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

(END)