



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4091/2

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2009 ASSEMBLY BILL 885

March 23, 2010 – Introduced by Representative SINICKI. Referred to Committee on Labor.

1 AN ACT **to amend** 104.04; **to repeal and recreate** 104.06; and **to create** 15.227
2 (1) and 19.85 (1) (ej) of the statutes; **relating to:** creation of a wage council to
3 study and make recommendations concerning increases in the living wage,
4 providing an exemption from emergency rule procedures, and granting
5 rule-making authority.

Analysis by the Legislative Reference Bureau

Under the current state minimum wage law, employers are required to pay to their employees a living wage, which is defined as compensation that is sufficient to enable an employee to maintain himself or herself under conditions consistent with his or her welfare. Under that law, the Department of Workforce Development (DWD) is required to investigate and determine the living wage. If, upon investigation, DWD finds that there is reasonable cause to believe that the wages paid to any employee are not a living wage, DWD must appoint a wage council, selected so as fairly to represent employers, employees, and the public, to assist DWD in its investigations and determinations. In determining the living wage, DWD 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.

This bill creates a permanent wage council in DWD consisting of five representatives of employers, including a representative of an association that is

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primarily composed of small businesses, appointed by the secretary of workforce development (secretary) for three-year terms; five representatives of employees appointed by the secretary for three-year terms; the chairpersons and ranking minority party members of one senate standing committee and one assembly standing committee concerned with labor issues, appointed as are the members of standing committees in their respective houses; and five representatives of the public interest appointed by the secretary for three-year terms.

The bill requires the wage council, early in each regular session of the legislature, to convene for the purpose of studying the need for an increase in the living wage and making recommendations to DWD for any changes in the living wage that may be necessary to ensure that the wages paid to any employee are a living wage. The wage council, in conducting that study and making those recommendations, and DWD, in revising the living wage, must consider any changes in the consumer price index and the effect of those changes on the real income of employees in this state. The wage council and DWD may also 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.

Under the bill, the wage council must submit a report of its findings and recommendations, together with an explanation for those findings and recommendations, to the secretary, the governor, the speaker of the assembly, the senate majority leader, and the minority leaders of each house of the legislature and to the standing committee of each house of the legislature that is concerned with labor issues. DWD must consider the findings and recommendations of the wage council and, if DWD approves those findings and recommendations, DWD, using emergency rule-making procedures, may promulgate rules to revise the living wage without providing evidence that the emergency rule is necessary to preserve the public peace, health, safety, or welfare and without a finding of emergency.

Finally, under the bill, the biennial living wage revision procedure specified in the bill does not preclude DWD from promulgating rules to increase the living wage at other times if, upon investigation, DWD finds that there is reasonable cause to believe that the wages paid to any employee are not a living wage. If DWD makes that finding, DWD must convene the wage council, which must study the need for an increase in the living wage and report its recommendations as provided in the bill.

For further information see the **state** 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.** 15.227 (1) of the statutes is created to read:
- 2 15.227 (1) WAGE COUNCIL. There is created in the department of workforce
- 3 development a wage council consisting of all of the following members:

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1 (a) Five representatives of employers, including a representative of an
2 association that is primarily composed of small businesses, appointed by the
3 secretary of workforce development for 3-year terms.

4 (b) Five representatives of employees appointed by the secretary of workforce
5 development for 3-year terms.

6 (c) The chairpersons and ranking minority party members of one senate
7 standing committee and one assembly standing committee concerned with labor
8 issues, appointed as are the members of standing committees in their respective
9 houses.

10 (d) Five representatives of the public interest who do not have the
11 qualifications of the members described in pars. (a) to (c) appointed by the secretary
12 of workforce development for 3-year terms.

13 **SECTION 2.** 19.85 (1) (ej) of the statutes is created to read:

14 **19.85 (1) (ej)** Deliberating by the wage council in a meeting at which all
15 employer members of the council or all employee members of the council are
16 excluded.

17 **SECTION 3.** 104.04 of the statutes is amended to read:

18 **104.04 Classifications; department's authority.** The department, with the
19 assistance of the wage council as provided in s. 104.06, shall investigate, ascertain,
20 determine, and fix such reasonable classifications, and shall impose general or
21 special orders, determining the living wage, and shall carry out the purposes of this
22 chapter. Such investigations, classifications, and orders shall be made as provided
23 under s. 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be
24 imposed for any violation of this chapter. In determining the living wage, the
25 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 and the wage council shall use the procedures specified in s. 104.06. A living wage determined under this section shall be the living wage for all employees within the same class as established by the classification of the department. 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 4. 104.06 of the statutes is repealed and recreated to read:

104.06 Wage council; determination of living wage. (1) LIVING WAGE

STUDY AND RECOMMENDATIONS. (a) Early in each regular session of the legislature, the wage council shall convene for the purpose of studying the need for an increase in the living wage and making recommendations to the department for any changes in the living wage that may be necessary to ensure that the wages paid to any employee are a living wage.

(b) The wage council, in conducting the study and making the recommendations under par. (a), and the department, in revising the living wage under sub. (3), shall consider all of the following:

1. The percentage difference between the consumer price index, as defined in s. 111.397 (2) (d) 1., for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the most recent even-numbered year before the preceding year, except that the wage council may not consider that percentage difference if the consumer price index for the 12-month period ending on December 31 of the preceding year did not

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1 increase over the consumer price index for the 12-month period ending on December
2 31 of the most recent even-numbered year before the preceding year.

3 2. The effect that any change in the consumer price index might have on the
4 real incomes of employees in this state, unless the department is precluded from
5 considering such a change under subd. 1.

6 (c) The wage council, in conducting the study and making the
7 recommendations under par. (a), and the department, in revising the living wage
8 under sub. (3), may also consider the effect that an increase in the living wage might
9 have on the economy of the state, including the effect of a living wage increase on job
10 creation, retention, and expansion; on the availability of entry-level jobs; and on
11 regional economic conditions within the state.

12 (d) If the wage council recommends an increase in the living wage for a class
13 of employees for whom the living wage is determined on an hourly basis, the wage
14 council shall recommend the same increase for all classes of employees for whom the
15 living wage is determined on a hourly basis.

16 **(2) REPORT OF FINDINGS AND RECOMMENDATIONS.** The wage council shall submit
17 a report of its findings and recommendations, together with an explanation for those
18 findings and recommendations, to the secretary, the governor, the speaker of the
19 assembly, the senate majority leader, and the minority leaders of each house of the
20 legislature and to the standing committee of each house of the the legislature that
21 is concerned with labor issues under s. 13.172 (3).

22 **(3) RULES REVISING LIVING WAGE.** The department shall consider the findings
23 and recommendations of the wage council and, if the department approves those
24 findings and recommendations, the department, using the procedures under s.
25 227.24, may promulgate rules to revise the living wage. Notwithstanding s. 227.24

1 (1) (a), (2) (b), and (3), the department may promulgate an emergency rule under s.
2 227.24 revising the living wage without providing evidence that the emergency rule
3 is necessary to preserve the public peace, health, safety, or welfare and without a
4 finding of emergency.

5 **(4) OTHER LIVING WAGE INCREASES NOT PRECLUDED.** The biennial living wage
6 revision procedure specified in subs. (1) to (3) does not preclude the department from
7 promulgating rules to increase the living wage at other times if, upon investigation,
8 the department finds that there is reasonable cause to believe that the wages paid
9 to any employee are not a living wage. If the department makes that finding, the
10 department shall convene the wage council, which shall study the need for an
11 increase in the living wage as provided in sub. (1) and report its findings and
12 recommendations as provided in sub. (2).

SECTION 5. Nonstatutory provisions.

14 **(1) WAGE COUNCIL; INITIAL TERMS.** Notwithstanding the length of terms specified
15 for the members of the wage council specified under section 15. 227 (1) (a), (b), and
16 (d) of the statutes, as created by this act, the initial members specified in those
17 paragraphs shall be appointed for the following terms:

18 (a) One of the initial members specified under section 15.227 (1) (a) of the
19 statutes, as created by this act, one of the initial members specified under section
20 15.227 (1) (b) of the statutes, as created by this act, and one of the initial members
21 specified under section 15.227 (1) (d) of the statutes, as created by this act, shall be
22 appointed for a terms that expires on June 1, 2011.

23 (b) Two of the initial members specified under section 15.227 (1) (a) of the
24 statutes, as created by this act, two of the initial members specified under section
25 15.227 (1) (b) of the statutes, as created by this act, and two of the initial members

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1 specified under section 15.227 (1) (d) of the statutes, as created by this act, shall be
2 appointed for a terms that expires on June 1, 2012.

3 (c) Two of the initial members specified under section 15.227 (1) (a) of the
4 statutes, as created by this act, two of the initial members specified under section
5 15.227 (1) (b) of the statutes, as created by this act, and two of the initial members
6 specified under section 15.227 (1) (d) of the statutes, as created by this act, shall be
7 appointed for a terms that expires on June 1, 2013.

8 **SECTION 6. Effective date.**

9 (1) WAGE COUNCIL. This act takes effect on January 1, 2011.

10 (END)