



## 1997 ASSEMBLY BILL 839

February 25, 1998 - Introduced by Representatives GROTHMAN, ALBERS, BRANDEMUEHL and DUFF, cosponsored by Senators WELCH and ROESSLER. Referred to Committee on Labor and Employment.

1 **AN ACT to renumber and amend** 104.08 (1), 104.08 (2) and 104.08 (3); **to amend**  
2 104.01 (intro.), 104.03, 104.04, 104.10 and 104.11; and **to create** 104.001 and  
3 104.08 (1) (b) of the statutes; **relating to:** preemption of county, city, village or  
4 town living-wage ordinances.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a city or village, or a town that has authorized its board to exercise village powers, may determine its own local affairs, and a county may exercise any organizational or administrative power, subject only to the Wisconsin Constitution and to any enactment of the legislature that is of statewide concern and that affects every county, city, village or town with uniformity.

This bill requires that the state minimum wage law, under which an employer may not pay an employe 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 county, city, village or town to enact an ordinance establishing a living-wage only if the ordinance strictly conforms to the state minimum wage law.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

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

**ASSEMBLY BILL 839****SECTION 1**

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

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

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

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

23           (5) This section does not affect the requirement that employes employed on a  
24 public works project contracted for by a county, city, village or town be paid at the  
25 prevailing wage rate, as defined in s. 66.293 (1) (g), as required under s. 66.293.

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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.** 104.03 of the statutes is amended to read:

5           **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing  
6 to pay any employe a wage lower or less in value than a living-wage is guilty of a  
7 violation of ss. ~~104.01 to 104.12~~ this chapter.

8           **SECTION 4.** 104.04 of the statutes is amended to read:

9           **104.04 Classifications; department's authority.** The department shall  
10 investigate, ascertain, determine and fix such reasonable classifications, and shall  
11 impose general or special orders, determining the living-wage, and shall carry out  
12 the purposes of ss. ~~104.01 to 104.12~~ this chapter. Such investigations, classifications  
13 and orders shall be made as provided under s. 103.005, and the penalties specified  
14 in s. 103.005 (12) shall apply to and be imposed for any violation of ss. ~~104.01 to~~  
15 ~~104.12~~ this chapter. In determining the living-wage, the department may consider  
16 the effect that an increase in the living-wage might have on the economy of the state,  
17 including the effect of a living-wage increase on job creation, retention and  
18 expansion, on the availability of entry-level jobs and on regional economic conditions  
19 within the state. The department may not establish a different minimum wage for  
20 men and women. Said orders shall be subject to review in the manner provided in  
21 ch. 227.

22           **SECTION 5.** 104.08 (1) of the statutes is renumbered 104.08 (2) and amended  
23 to read:

24           104.08 (2) ~~All persons~~ Any person working in an ~~occupation a trade industry~~  
25 for which a living-wage has been established for minors, and who ~~shall have~~ has no

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1 trade, shall, if employed in an occupation which is a trade industry, be indentured  
2 under the provisions of s. 106.01

3 **SECTION 6.** 104.08 (1) (b) of the statutes is created to read:

4 104.08 (1) (b) "Trade industry" means an industry involving physical labor and  
5 characterized by mechanical skill and training such as render a period of instruction  
6 reasonably necessary.

7 **SECTION 7.** 104.08 (2) of the statutes is renumbered 104.08 (1) (intro.) and  
8 amended to read:

9 104.08 (1) (intro.) A "trade" or a "trade industry" within the meaning of ss.  
10 104.01 to 104.12 shall be a trade or In this section:

11 (a) "Trade" means an industry occupation involving physical labor and  
12 characterized by mechanical skill and training such as render a period of instruction  
13 reasonably necessary.

14 (3) (a) The department shall investigate, determine and declare what  
15 occupations and industries are included within the phrase a "trade" or a "trade  
16 industry".

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

19 104.08 (3) (b) The department may make exceptions to the operation of subs.  
20 (1) and sub. (2) where conditions make their its application unreasonable.

21 **SECTION 9.** 104.10 of the statutes is amended to read:

22 **104.10 Penalty for intimidating witness.** Any employer who discharges or  
23 threatens to discharge, or in any way discriminates, or threatens to discriminate  
24 against any employe because the employe has testified or is about to testify, or  
25 because the employer believes that the employe may testify, in any investigation or

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1 proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~ this chapter, is guilty  
2 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for  
3 each offense.

4 **SECTION 10.** 104.11 of the statutes is amended to read:

5 **104.11 Definition of violation.** Each day during which any employer shall  
6 employ a person for whom a living-wage has been fixed at a wage less than the  
7 living-wage fixed shall constitute a separate and distinct violation of ~~ss. 104.01 to~~  
8 ~~104.12~~ this chapter.

9 **SECTION 11. Initial applicability.**

10 (1) This act first applies to an employe who is affected by a collective bargaining  
11 agreement that contains provisions that are inconsistent with section 104.001 of the  
12 statutes, as created by this act, on the day after the collective bargaining agreement  
13 expires or on the day on which the collective bargaining agreement is extended,  
14 modified or renewed, whichever occurs first.

15 (END)