

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 676

INTRODUCER: Governmental Oversight and Accountability Committee; Commerce and Tourism Committee and Senator Martin

SUBJECT: Minimum Wage Requirements

DATE: April 18, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dike</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Dike</u>	<u>Yeatman</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 676 amends the Florida Minimum Wage Act to allow employees to opt out of receiving the minimum wage for work-study, internship, preapprenticeship, apprenticeship program, or other similar work-based learning opportunities by signing a waiver acknowledging that the employee is knowingly and voluntarily choosing to receive a lesser amount. Parents or guardians must sign the waiver for employees under 18 years of age.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect July 1, 2025.

II. Present Situation:

Federal Minimum Wage

The Fair Labor Standards Act (FLSA) prescribes federal standards for minimum wage, overtime, recordkeeping, and child labor.¹ As of 2009, the minimum wage that all covered, nonexempt employees must earn is \$7.25.² No state may enforce a minimum wage that is below the federal

¹ 29 U.S.C. s. 206; U.S. DEPT. OF LABOR, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage> (last visited Mar. 24, 2025).

² 29 U.S.C. s. 206.

minimum.³ As of 2021, around 85% of all wage and salary workers in the U.S. were covered by the FLSA.⁴

The FLSA applies to employees in two categories:

- Enterprise coverage—employees who work for enterprises, businesses or organizations doing at least \$500,000 of business per year, and hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies; or
- Individual coverage—Employees whose work involves the production of goods for commerce or engagement in interstate commerce and domestic workers.⁵

The FLSA includes several exemptions from the federal minimum hourly wage, that are not legally required to be paid at the minimum hourly wage rate, including:

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league’s championship season at a rate that is not less than a weekly salary equal to the minimum wage.⁶
- Tipped employees, as long as their tips, combined with the employer’s cash wage, equal at least the federal minimum wage (\$7.25). The minimum cash wage for tipped employees is \$2.13 per hour, with the employer able to claim a tip credit of up to \$5.12 per hour.⁷
- Learners, apprentices, and messengers employed primarily in delivering letters and messages, under special certificates issued by the Department of Labor.⁸

Under the FLSA, employers may pay subminimum wages for certain classes of workers, including:

- Youth employees under 20 years old for their first 90 days of employment.
- Student employees who receive a special certificate from the Department of Labor to work part-time in a vocational training program.

³ See U.S. Const. art. VI (the Supremacy Clause of the U.S. Constitution); U.S. DEPT. OF LABOR, *Minimum Wage*, available at <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Mar. 24, 2025).

⁴ Sarah A. Donovan, CONG. RSCH. SERV., *The Federal Minimum Wage: In Brief*, <https://crsreports.congress.gov/product/pdf/R/R43089> (last visited Mar. 24, 2025).

⁵ U.S. DEPT. OF LABOR, *supra* note 1.

⁶ 29 U.S.C. s. 213.

⁷ 29 U.S.C. s. 203(m)(2)(A).

⁸ 29 U.S.C. s. 214.

- Full-time students who receive a special certificate from the Department of Labor, who are employed in retail/service establishments, agricultural occupation, or an institution of higher education.
- Individuals with disabilities who receive a special certificate from the Department of Labor, whose earning capacity is impaired by a disability.⁹

The FLSA also exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for humanitarian purposes for non-profit food banks. There is also a recognized exception for individuals who volunteer their time freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.¹⁰

The FLSA preempts state law that would weaken its worker protections, including minimum wage rates.¹¹ However, state laws that impose greater worker protections supersede those provided for in the FLSA.¹² Florida law does not indicate or allow for wage exceptions for learners, apprentices, or messengers. Thus, the FLSA provisions apply for those workers.

Florida Minimum Wage

Constitutional Amendment

In 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision that established the state minimum wage,¹³ which provides that “all working Floridians are entitled to be paid a minimum wage [...]”¹⁴ and that “[e]mployers shall pay employees wages no less than the minimum wage for all hours worked in Florida.”¹⁵

In 2020, citizens again voted to amend the Florida Constitution to gradually increase the state minimum wage each year, starting at \$10.00 per hour and rising until it reaches \$15.00 per hour on September 30, 2026.¹⁶ Currently, the Florida minimum wage is \$13.00 per hour.¹⁷ Pursuant to the amendment, on September 30, 2027, and each following year on that date, Florida’s Department of Commerce must adjust the minimum wage for inflation.¹⁸

The Florida Constitution states that “implementing legislation is not required in order to enforce this amendment”, but that the legislature may by statute adopt any measures appropriate for the

⁹ U.S. Dep’t of Labor, *Subminimum Wage*, <https://www.dol.gov/general/topic/wages/subminimumwage> (last visited Mar. 25, 2025).

¹⁰ U.S. Dep’t of Labor, Wage and Hour Division, *Fact Sheet 71: Internship Programs Under the Fair Labor Standards Act*, <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships> (last visited Mar. 25, 2025).

¹¹ 29 U.S.C. s. 218.

¹² Congressional Research Services, *CRS Report R42713, The Fair Labor Standards Act (FLSA): An Overview, Updated March 8, 2023*, <https://crsreports.congress.gov/product/pdf/R/R42713>, (last visited March 25, 2025).

¹³ See FLA. CONST. art. X, § 24.

¹⁴ FLA. CONST. art. X, § 24(a).

¹⁵ FLA. CONST. art. X, § 24(c).

¹⁶ *Id.*

¹⁷ U.S. DEPT. OF LABOR, *State Minimum Wage Laws*, <https://www.dol.gov/agencies/whd/minimum-wage/state> (last visited Mar. 24, 2025).

¹⁸ FLA. CONST. art. X, § 24.

implementation of this amendment. It continues by enumerating the state legislature's implementing authority to: establish additional remedies or fines for violations of this amendment raise the applicable minimum wage rate, reduce the tip credit, or *extend coverage of the minimum wage to employers or employees not covered by this amendment*. (emphasis added)

In the “definitions” section of article X, section 24 of the Florida Constitution, the terms “employer,” “employee,” and “wage” are deemed to “have the same *meaning* as those established under the FLSA and its implementing regulations.”¹⁹ This constitutional provision further states in section (f) that the case law, administrative interpretations, and other guiding standards under the FLSA *shall guide* the construction and implementation of Florida's constitutional minimum wage.²⁰ As a result, the FLSA and its exceptions and exemptions are incorporated into the Florida minimum wage amendment.²¹

The FLSA defines:²²

- Employer as “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of an officer or agency of such labor organization.”
- Employee as “any individual employed by an employer.”

The FLSA requires for-profit employers to pay employees for their work. However, interns and students may not fit the definition of an employee under the FLSA—in which case the FLSA does not require compensation for their work. Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.²³ This determination is made on a case-by-case basis.

This test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts²⁴ have identified the following seven factors as part of the test:

- The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee— and vice versa.
- The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

¹⁹ *Emphasis added*.

²⁰ FLA. CONST. art. X, § 24(f).

²¹ Op. Att’y Gen. Fla. 2005-64 (2005); *see also In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636 (Fla. 2004).

²² 29 U.S.C. s. 203.

²³ E.g., *Benjamin v. B & H Educ., Inc.*, --- F.3d ---, 2017 WL 6460087, at *4-5 (9th Cir. Dec. 19, 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-12 (11th Cir. 2015); *see also Walling v. Portland Terminal Co.*, 330 U.S. 148, 152-53 (1947); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).

²⁴ *Schumann v. Collier Anesthesia, PA*, 803 F.3d 1199 (11th Cir. 2015) (Adopting a modified version of the “primary beneficiary” test, which examines the “economic reality” of the relationship between the intern and employer to determine who benefits most.)

- The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
- The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
- The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
- The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

Therefore, labels of employment positions such as “intern,” “student worker,” and “apprentice” do not alone transform the job into a non-employee position under the FLSA. In virtue of Florida’s construction of its constitutional minimum wage provision, the FLSA’s meaning of employee is incorporated into Florida law.

Florida Statute

The Florida Minimum Wage Act (Act), s. 448.110, F.S., implements the requirements of the constitutional amendment in statute.²⁵ The Act only applies to individuals entitled to receive federal minimum wage under the FLSA.²⁶ It also specifies that ss. 213 and 214 of the FLSA, which set forth exceptions and exemptions to the minimum wage, are incorporated into Florida minimum wage law.²⁷

Additionally, as directed by the Florida Constitution’s minimum wage amendment, the Act provides a cause of action for individuals against employers who do not follow minimum wage requirements, retaliate against an employee for exercising their rights, or otherwise violate the Act.²⁸ Any individual and the Attorney General are also authorized to bring civil actions against employers who violate it, which may result in injunctive relief or fines paid to the state.²⁹

²⁵ Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

²⁶ Section 448.110(3), F.S.

²⁷ *Id.* However, section 213 of the FLSA was amended in 2014 and 2018, concerning border patrol agents and minor league baseball players, respectively. Because a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments thereto, these specific FLSA amendments are not a part of Florida’s minimum wage law. See *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

²⁸ Section 448.110(5)-(6), F.S., which implements FLA. CONST. art. X, § 24(d), prohibiting such retaliation.

²⁹ Section 448.110(7), F.S., which implements FLA. CONST. art. X, § 24(e), providing for enforcement of the constitutional minimum wage provision.

Non-FLSA Requirements for Work-Based Learning Opportunities

The federal government's work-study program provides part-time employment to certain students who attend higher education institutions.³⁰ A student is eligible to take part in this program if they are a full-time student accepted at or enrolled in an eligible institution and otherwise meet the eligibility requirements of 34 C.F.R. 668.32; have a demonstrated financial need; and are enrolled at an institution of higher education.³¹ The student may work for qualifying employers or the education institution itself.³² Further, the student participating in a work-study program must be paid at least the minimum wage rate under the FLSA.³³

Additionally, the federal government sets forth labor standards and governs registration of apprenticeship programs under the National Apprenticeship Act.³⁴ Each employer registered with a state apprenticeship program must pay at least the minimum wage under the FLSA, or a higher wage if required by applicable state law.³⁵ Each state has a registered apprentice program which must be approved by the Office of Apprenticeship at the U.S. Department of Labor.³⁶ Florida's apprenticeship program provides work-based learning opportunities for people who are at least 16 years old to gain trade skills while still in school.³⁷ The Florida Department of Education has developed standards for apprenticeable trades to establish programs with public schools and the Florida College System.³⁸ These trades include plumbing, heating and air conditioning technicians, teaching, cybersecurity, and more.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 448.110, F.S., to provide that an employer is not subject to the minimum wage requirements of this section for certain employees who choose to opt out of the minimum wage. The covered employees are those who are employed in a structured work-study, internship, preapprenticeship program, apprenticeship program, or other similar work-based learning opportunity. Such employees may opt out of receiving the minimum wage by signing a waiver, which must state that the employee is knowingly and voluntarily choosing to work for an amount lower than the minimum wage. If the employee is under 18 years old, a parent or guardian of the employee must sign the waiver on behalf of the employee.

The bill also releases the state from adherence to the FLSA and any of its regulations or interpretations where an employee voluntarily waives his or her right to receive the state minimum wage in the context of the state's incorporation of the FLSA's minimum wage exceptions provided for in its ss. 213 (exemptions) and 214 (exceptions as provided for in employment under special certificates).

³⁰ 20 U.S.C. § 1087-51; 34 C.F.R. § 675.1.

³¹ 34 C.F.R. § 675.9.

³² 34 C.F.R. §§ 675.20-675.21.

³³ 34 C.F.R. § 675.24.

³⁴ See 29 U.S.C. ss.50 et seq; 29 C.F.R. 29.

³⁵ 29 C.F.R. § 29.5.

³⁶ 29 C.F.R. 29.3.

³⁷ See ss. 446.011-446.092, F.S.

³⁸ Section 446.011, F.S.

³⁹ Florida Dept. of Education, *Florida's Annual Apprenticeship and Preapprenticeship Report 2023-2024*, <https://www.fldoe.org/academics/career-adult-edu/research-evaluation/annual-app-reports.stml> (last visited Mar. 25, 2025).

The bill contains a severability clause providing that if any provision is held invalid, that provision is severable and does not affect the validity of other provisions.

While the bill modifies the statutory structure of the state minimum wage, the State Constitution is unamended and is the controlling authority on the requirements of the state minimum wage.

See Section IV, Constitutional Issues, for a discussion of the constitutional issues implicated.

Section 2 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Under article X, section 24 of the Florida Constitution, “employers shall pay Employee Wages no less than the Minimum Wage for all hours worked in Florida.” When interpreting the meaning of a statute or constitutional provision, courts will abide by the plain language of the text if it is unambiguous.⁴⁰ The language of the constitutional mandate dictates that employers must pay the established, hourly minimum wage to employees. If an employee signs a waiver stating that they opt out of minimum wage requirements, the employer continues to be bound by its duty to pay the minimum wage for all hours worked in Florida, pursuant to the State Constitution. The Constitution contemplates *any person’s* ability to “file a complaint or inform any person about any party’s alleged noncompliance with this amendment.” The State Constitution further allows both an aggrieved employee and the state attorney general or other official designated by the state legislature to bring an enforcement civil action. This implies a

⁴⁰*McCloud v. State*, 260 So. 3d 911, 914-15 (Fla. 2018); *Garcia v. Andonie*, 101 So. 3d 339 (Fla. 2012) (“Constitutional analysis must begin with examination of explicit language of provisions in question and, where the language is unambiguous and addresses the matter at issue, the provision should be enforced as written.”).

vested interest of the whole public in ensuring the payment of a minimum wage to an employee.

“The Constitution of Florida provides within itself the only methods for its amendment or revision. Thus, the Constitution cannot be modified, amended or repealed by legislative enactments, executive usurpation, or judicial interpretation, except by amendment.”⁴¹

There is no exception or exemption from the minimum wage specified in the state constitution, other than those incorporated from the FLSA.⁴² A Florida appellate decision⁴³ on an appeal from a denial of unemployment compensation benefits, the court found that since “the Florida Statutes expressly adopt the FLSA, as interpreted and implemented by federal law, ‘[n]o one can doubt but that to allow waiver of statutory [minimum] wages by agreement would nullify the purposes of the [FLSA].’”⁴⁴

Some constitutional rights can be waived, such as the right to remain silent in police interrogation or the right to a homestead exemption.⁴⁵ While it is true that “most personal constitutional rights may be waived... an individual cannot waive a right designed to protect both the individual and the public.”⁴⁶ Further, an individual may only forego a constitutional right if “it was the product of free and deliberate choice rather than intimidation, coercion, or deception.”⁴⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows employers (both private and public) to pay less than the minimum wage to an employee who opts out of receiving it, in the context of a structured work-study, internship, preapprenticeship, or apprenticeship program, or other similar work-based learning opportunity. This may result in increased savings for the employer. However, other employers who do not offer such work-based learning opportunities may be disadvantaged based on the differential personnel costs.

⁴¹ *Throw v. Republic Enterprise Systems, Inc.*, case no.: 8:06-cv-724-T-30TBM, 2006 U.S. Dist. LEXIS 46215, 2006 WL 1823783 (M.D. Fla. June 30, 2006), *quoting Sparkman v. State ex rel. Scott*, 58 So.2d 432, 432 (Fla. 1952).

⁴² See Art. X, § 24(f), FLA. CONST. (“It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.”).

⁴³ *Martinez v. Ford Midway Mall, Inc.*, 59 So. 3d 168 (Fla. 3d DCA 2011).

⁴⁴ *Id.* at 173, citing *Brooklyn Savings Bank v. O’Neill*, 324 U.S. 697, 707 (1945).

⁴⁵ See *Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007); *Hartwell v. Blasingame*, 564 So. 2d 543 (Fla. 2d DCA 1990), *approved*, 584 So. 2d 6 (Fla. 1991).

⁴⁶ *Chames*, 972 So. 2d at 860.

⁴⁷ *Sliney v. State*, 699 So. 2d 662, 668 (Fla. 1997).

C. **Government Sector Impact:**

The bill is not expected to affect state and local government revenues and expenditures.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

“Internship” does not appear to have a standardized definition in Florida law, so it may be unclear what types of internships will be eligible for the minimum wage opt-out.

The Legislature’s authority to adopt law regarding the minimum wage is limited by article X, section 24(f) of the Florida Constitution, which enumerates specific acts the legislature may take in implementing the amendment (establish additional remedies or fines for violations, raise the applicable minimum wage, reduce the tip credit, or extend the minimum wage to employers or employees who are not covered by the amendment). The provision of a waiver of the minimum wage requirements does not appear to fall into any of the specific acts provided for.

VIII. **Statutes Affected:**

This bill substantially amends s. 448.110, F.S.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 25, 2025:

The CS releases the state from adherence to the FLSA and any of its regulations or interpretations where an employee voluntarily waives his or her right to receive the state minimum wage in the context of the state’s incorporation of the FLSA’s minimum wage exceptions provided for in its ss. 213 (exemptions) and 214 (exceptions as provided for in employment under special certificates).

CS by Commerce and Tourism on March 10, 2025:

The committee substitute creates a provision that employees may waive their right to minimum wage by signing a waiver with specified language; provides that parents of minors must sign the waiver for employees under 18 years old; and adds a severability clause to the bill.

B. **Amendments:**

None.