

Ensuring Enforcement of Wage and Hour Laws for all Working Floridians by Establishing a Division of Labor Standards

The problem:

Florida is one of just four states in the U.S. — and the only state in the South — to enshrine the right to a minimum wage in its constitution, the highest level of state law.¹ However, without enforcement, Florida's \$15 wage under Amendment 2 cannot be fully realized. Research has found that the Attorney General's Office has largely abandoned its responsibility to enforce Florida's constitutionally mandated minimum wage.^{2,3,4} Employers failing to pay the mandated minimum wage is one of many forms of *wage theft*.⁵

Some are under the impression that the U.S. Department of Labor's Wage and Hour Division (WHD) is sufficient for enforcing the minimum wage; however, WHD is only empowered to enforce the federal minimum wage.⁶ Thus, where a state has a minimum wage that exceeds the federal rate, as Florida does, WHD can only recover up to \$7.25 per hour owed to aggrieved workers. A state mechanism similar to WHD is needed to enforce the higher minimum wage and ensure compliance with the state law. Such a mechanism often takes the form of an administrative labor standards enforcement agency, usually housed within a Department of Labor. Until 2002, Florida had one, the Department of Labor and Employment Security. Most of its duties were transferred to other departments,⁷ but wage and hour enforcement was never its primary role. As such, wage theft has gone unchecked statewide as long as Florida has had a minimum wage (2005).

How HB 1199/SB 1388, "Department of Labor," addresses the problem:

The legislation would establish a state Division of Labor Standards (DOLS) within the Department of Commerce (DOC) to mitigate wage theft and deter employers from misclassifying employees as independent contractors to skirt wage laws. It would also expand the DOC's primary duties, designating it as "the state's chief agency for business recruitment and expansion, employee protection, and economic development."⁸ DOLS — instead of the Attorney General's Office — would have sole discretion over whether to pursue an employer for claims of violating wage and hour laws. DOLS would be tasked with:

- developing and overseeing mechanisms through which workers can make complaints;
- protecting workers against employer retaliation and adverse action;
- requiring employer record-keeping of compliance with wage and hour laws;
- conducting investigations, legal proceedings, and obtaining evidence; and
- assessing damages, fines, and penalties — including back pay to workers — when appropriate.

The legislation would also establish the DOLS Community Advisory Board to hold the division accountable. Representatives from the DOLS, Departments of Commerce and Education, Florida Chamber of Commerce, small business, and labor organizations will make up the board.

Why now is the time to pass HB 1199/SB 1388

- **Florida's gradual hike to a \$15 minimum wage has begun.** Wage theft rates shot up after Florida's 2005 minimum wage increase. A recent analysis⁹ expects similar wage theft rates amid Amendment 2's passage.

- **Businesses deserve better.** Minimum wage violations force law-abiding employers to compete with artificially low labor costs, which give employers who cheat their workers a competitive advantage.
- **Wage theft is bad for the economy.** By design, minimum wage policies benefit people with low incomes. These workers are much more likely to spend their increased pay (especially locally)¹⁰ than their higher-earning peers are. This remains true even as businesses moderately increase prices¹¹ to account for increased labor costs. They can't do that if their pay is taken from them. Unsurprisingly, wage theft also increases the percentage of workers living in poverty and on public assistance.¹² Research has found¹³ that if current wage theft trends persist, Florida stands to lose \$152 million in sales tax revenue by 2026, when the \$15 minimum wage is fully phased in. This equates to \$25.3 million, on average, in lost sales tax revenue per year.

For more info:

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¹ Colorado, Ohio, and New Jersey are the other three states with minimum wage rights in their constitutions. See Table A-1 in “State Minimum Wages: An Overview,” Congressional Research Service, December 22, 2020, <https://sgp.fas.org/crs/misc/R43792.pdf>.

² Cynthia S. Hernandez and Carol Stepick, “Wage Theft: How Millions Of Dollars Are Stolen From Florida’s Workforce,” Research Institute On Social And Economic Policy, Florida International University, January 26, 2012, <https://risep.fiu.edu/research-publications/workers-rights-econ-justice/wage-theft/2012/wage-theft-how-millions-of-dollars-are-stolen-from-floridas-workforce/>.

³ Marianne Levine, “Behind The Minimum Wage, A Sweeping Failure To Enforce The Law,” *Politico*, February 18, 2018, <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644>.

⁴ Alexis P. Tsoukalas et al., “Florida Policymakers Need to Reassess How the Minimum Wage is Enforced,” Florida Policy Institute and Rutgers University, March 4, 2021, <https://www.floridapolicy.org/posts/florida-policymakers-need-to-reassess-how-the-minimum-wage-is-enforced>.

⁵ Daniel J. Galvin, “Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance,” *Perspectives on Politics*, Vol. 14, No. 2, June 2016, <https://doi.org/10.1017/S1537592716000050>.

⁶ Fair Labor Standards Act of 1938, 29 U.S.C. § 211(a).

⁷ “Committee On Commerce, Identification, Review, And Recommendations Relating To Obsolete Statutory References To The Former Florida Departments Of Labor And Employment Security, And Commerce,” The Florida Senate, October 2010, <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-107cm.pdf>.

⁸ Lines 97-99 of HB 1199; 96-98 of SB 1388

⁹ Tsoukalas et al.

¹⁰ Daniel Cooper, María José Luengo-Prado, and Jonathan A. Parker, “The Local Aggregate Effects of Minimum Wage Increases,” National Bureau of Economic Research, Working Paper No. 25761, April 2019, <https://doi.org/10.3386/w25761>

¹¹ Elisa Minoff et al. “Bare Minimum: Why We Need To Raise Wages For America’s Lowest-Paid Families,” Georgetown Law Center On Poverty and Inequality; The Leadership Conference Education Fund, April 2018, <https://www.georgetownpoverty.org/issues/employment/bare-minimum/>.

¹² David Cooper and Teresa Kroeger, “Employers Steal Billions From Workers’ Paychecks Each Year,” Economic Policy Institute, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>

¹³ Tsoukalas et al.