



**House
Legislative
Analysis
Section**

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**STATE PREEMPTION OF LOCAL
MINIMUM WAGES**

**House Bill 4328 as introduced
Revised First Analysis (4-20-01)**

**Sponsor: Rep. Andrew Richner
Committee: Employment Relations,
Training and Safety**

THE APPARENT PROBLEM:

Historically, Congress and state legislatures have enacted minimum wage laws, and the hourly wage rate set in those laws is paid by employers for some lower-level jobs. During the past decade, some local governments have adopted ordinances to set wage rates for certain kinds of contractual work within their jurisdictions, and these ordinances are customarily called “living wage” ordinances. Generally, the ordinances define the term “living wage”, often indexing the definition to poverty standards set by the federal government, or sometimes pegging the local “living wage” to the Consumer Price Index (CPI), or to a regional price index to reflect inflation in the economy.

The contemporary and national “living wage” movement began when the city of Baltimore, Maryland, became the first municipality to enact a living wage ordinance in 1994. Since then, over 50 local governments across the nation have enacted some version of a living wage requirement.

In Michigan, seven local units of government have living wage laws. Detroit was the first municipality to pass a living wage ordinance, the result of a November 1998 ballot initiative that was passed by 81 percent of the voters. Then both the city of Ypsilanti and Ypsilanti Township passed living wage laws in 1999, as did the city of Warren in 2000, and the cities of Ferndale, Ann Arbor and Eastpointe in 2001.

A ‘living wage’ ordinance is different from both the ‘minimum wage’ and also a region’s ‘prevailing wage.’ In contrast to the ‘living wage’, the ‘minimum wage’ is the minimum amount a worker can be paid an hour under state or federal law. The ‘prevailing wage’ refers to an occupationally-based wage, in which half of all workers in the community in a particular job earn more, and half earn less. Generally, the ‘living wage’ that a community’s elected officials set by ordinance, or as in

the case of Detroit, that citizens set through an initiative petition, falls between the two—higher than the minimum wage, but lower than the prevailing wage. For example, currently the minimum wage is \$5.15 per hour. Detroit’s living wage is about \$8.44 with medical benefits (or about \$10.50 without medical benefits). A ‘prevailing wage’ for a particular job classification of generally unionized workers is customarily much higher than both (although it depends on the region). Further, a community’s ‘living wage’ set by ordinance should not be confused with the significantly higher ‘statewide self-sufficiency wage’ calculated by the Michigan League for Human Services to be \$15.72 per hour for a Michigan wage-earner with two children.

The proliferation of locally-established wage rates for contractual services causes difficulty for employers that bid on jobs throughout the state, because the wage rates in every work site location are not uniform. Further, when wage rates differ, the contractual reporting requirements among the various local units of government differ. Consequently, legislation has been proposed to prohibit local units of government from enacting living wage ordinances, and to void existing living wage ordinances.

THE CONTENT OF THE BILL:

The bill would amend the Minimum Wage Law of 1964 to prohibit local units of governments from enacting, maintaining, or enforcing (by charter, ordinance, purchase agreement, contract, regulation, rule, resolution), either directly or indirectly, a minimum wage requirement that was greater than that specified in the act. [Currently, the state (and federal) minimum wage is \$5.15 an hour.] The bill would apply to cities, counties, townships, villages, school districts, intermediate school districts, and any political subdivisions of the state.

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Under the bill, a local unit of government would not be prohibited from enacting, maintaining, or enforcing through a collective bargaining agreement or other means, a minimum wage requirement governing compensation paid by that local unit of government to its own employees. The bill further specifies that “contract” would not include a collective bargaining agreement negotiated between a local unit of government and the bargaining representative of the local unit of government’s employees.

Further, the bill specifies that it would not limit, restrict, or expand a prevailing wage required under Public Act 166 of 1965, the state’s prevailing wage law.

MCL 408.383

BACKGROUND INFORMATION:

“Living wages.” The term “living wage” usually applies to wages set by local ordinance that are higher than state or federal minimum wages and that cover certain employers. Some ordinances cover only businesses that contract with the municipality, others also cover businesses that receive public subsidies (such as tax abatements), and some cover the public entity itself. Cities and counties with higher costs of living tend to have higher living wage levels, which currently range from a low of \$6.25 in Milwaukee to a high of \$10.75 in San Jose.

A living wage usually is determined by reference to the federal poverty guidelines (which are different from, and more current than, the federal poverty thresholds) for a specific family size. An example of a living wage would be a wage level equal to what a full-year, full-time worker would need to earn to support a family of four at the poverty line, which for the year 2000 was \$17,690 a year or \$8.20 an hour. Some living wage levels are set to equal up to 130 percent of the poverty line, which is the maximum income a family can have and still be eligible for food stamps. Some living wage advocates have attempted to calculate a living wage based on a “self-sufficiency” income level, such as that needed to provide for a family’s basic needs; this kind of living wage is generally much higher than the federal poverty guidelines.

Living wage ordinances in Michigan. The Detroit living wage ordinance applies to all employers who receive over \$50,000 either in yearly city contracts or public financial assistance given for the purpose of economic development or job growth. The Detroit ordinance requires a minimum living wage equal to the federal

poverty line for a family of four (\$8.44 an hour during 2000) if the employer provides medical coverage, or 125 percent of the poverty level if no medical coverage is provided (\$10.50 an hour during 2000). To the greatest extent feasible, employers falling under the ordinance also must fill jobs created by the contracts or financial assistance with Detroit residents.

The living wage ordinance passed in 1999 by the city of Ypsilanti applies to service contracts or financial assistance over \$20,000 in a year, with a wage of \$8.50 an hour with benefits or \$10 an hour without benefits. Ypsilanti Township’s ordinance applies to contracts over \$10,000, also with a wage of \$8.50 an hour with benefits and \$10 an hour without benefits. The city of Warren’s living wage ordinance applies to service contractors receiving financial assistance over \$50,000, with a wage equal to the federal poverty level for a family of four with benefits, or 125 percent of the federal poverty level without benefits.

The most recent ordinances to implement living wage ordinances were adopted in the city of Ferndale in February 2001, and in Ann Arbor in March 2001. (A former mayor of Ann Arbor vetoed the city council’s first living wage proposal.) Further, the city of Eastpointe adopted a living wage ordinance on April 3, 2001. Reports indicate that living wage ordinances are being considered in Lansing and Grand Rapids. The city of Kalamazoo has decided against implementation of a living wage ordinance.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill could reduce local costs in municipalities that have enacted living wage ordinances in two ways. First, local administrative costs related to enforcing the living wage ordinance would be reduced. Second, to the extent that the preemption reduces wages paid by local contractors covered by the ordinance, local costs of contractual services could also fall.

On the revenue side, local income tax revenues, where applicable, could decrease in municipalities that currently have living wage ordinances. Again, this would depend upon the extent to which the preemption leads to lower wages paid by covered employers. For the same reasons, state income tax revenue could also decline, although the impact would likely be negligible on overall statewide income tax revenues. (3-2-01)

ARGUMENTS:**For:**

Proponents of the bill, which consist mainly of business interests and two nonprofit organizations in Detroit (the Salvation Army and Focus Hope), generally argue that ‘the market’ should be the ultimate determinant of wages and that there should be a uniform statewide wage, set by state, not local laws. They argue that living wage requirements create a “hostile” business environment that discourages economic investment in communities with such ordinances and drive out existing businesses by raising the cost of doing business in the community. They claim such ordinances can be particularly harmful to economically distressed areas trying to attract and keep new businesses, since the higher wages required by a living wage ordinance can discourage businesses from bidding on contracts. This chilling effect decreases (or eliminates) competition, which in turn can drive up costs and reduce quality.

For:

Monitoring and enforcing living wage ordinances creates additional costs. Those who would eliminate the ordinances say the local laws add overly burdensome and costly administrative requirements, and that these requirements are especially onerous for small businesses owned and operated by women and minorities. Further, the welter of ordinances in six communities creates a hodge-podge of different requirements across the state, and compliance costs are high for businesses that operate across political boundaries (especially when businesses already have to meet burdensome federal and state regulations).

For:

Those who favor the repeal and prohibition of living wage ordinances argue that local living wage laws hurt nonprofit community organizations that provide basic services to the poor and the needy because the higher wages mean that nonprofits have to lay off some workers in order to meet the wage requirements.

Response:

Most living wage ordinances have a waiver provision for nonprofit agencies. However, there is no waiver provision in the citizen-initiated ordinance adopted in the City of Detroit. Two nonprofit organizations in Detroit that pay low wages to some of their workers, the Salvation Army and Focus Hope, oppose the city’s ordinance. According to committee testimony, this is generally acknowledged to be a weakness of the ordinance, and for this reason the Detroit ordinance is now under review. The review has been delayed because the city charter prohibits amending any citizen-

initiated ordinance for a period of one year. When the year-long tamper-free requirement imposed by the city charter was met, the Detroit ordinance was scheduled for a March 26, 2001 public hearing. Some expect that an amendment will be adopted to provide a waiver for some nonprofit agencies.

For:

Those who oppose living wage ordinances and favor the bill argue that living wage laws increase citizens’ property taxes, because they increase a local government’s costs, which create a need for bigger budgets funded by more tax revenue.

For:

Proponents argue that living wage ordinances actually hurt the people they are intended to benefit -- the lowest-paid and least skilled workers -- because higher wages force businesses, and especially small businesses, to cut jobs. They argue that although poverty needs to be reduced, living wage ordinances are not the way to do this, and that promotion of job training and other educational opportunities would be more effective in increasing job opportunities and job advancement.

Response:

Education and skills have not caused the wage gap, and they cannot close it as efficiently as other policies can. According to the Jerome Levy Economics Institute of Bard College, there is no demonstrable evidence that the dramatic growth in wage inequality is attributable to a widening gap between the demand for and supply of more-skilled workers. Instead, about 50 percent of the growth of wage inequality between 1979 and 1993 occurred in the years 1981 and 1983, coinciding with the deepest recession in U.S. history since the Great Depression (and prior to the widespread proliferation of computer technology). The institute concludes that the recession and trade deficits of the early 1980s were responsible for the observed trends in wage disparities. Further, when the wage structure is changed as it was in that era, relative wage losses for those in the lower part of the distribution are not reversed when the business cycle turns upward; they persist for decades. The institute’s policy brief observes that government can perform its greatest service to workers by maintaining tight labor markets and avoiding policies that are sharply recessionary. In addition, government can support wages at the lower end of the distribution with policies to reverse the decline of institutional protections that have continued since the economic

crisis of the early 1980s. Such policies include maintaining the real value of the minimum wage and supporting protections for unions that preserve some balance between the bargaining power of workers and management.

Against:

Opponents of the bill argue that the state should not usurp yet another power of local governments -- especially one so basic as the decision of how to spend local tax money for contracted services. As the recent "local control" ballot proposal, Ballot Proposal 2, indicated, some local officials are concerned that the home rule powers granted by the Michigan constitution have been increasingly ignored by state officials, who have intervened in local matters inappropriately. Several recent state laws, for example, have ordered the state's more than 525 school districts statewide to cancel classes on the Friday before Labor Day; have restricted the authority of cities and townships to regulate local farms, including intensive animal operations; replaced Detroit's elected school board with an appointed board (and introduced a bill to do the same in Benton Harbor); and voted to end a decades-old practice in some cities that required public employees to live inside municipal boundaries. Some opponents of the bill also suggest that had the bill been acted upon before this November's election, Proposal 2 (which would have required a legislative 'super majority' vote to enact certain laws affecting local government) might well have passed.

Response:

Fully 67 percent of the state's voters voted 'No' on Proposal 2. Clearly they do not favor local control when it comes to matters of economic policy and employment standards.

Reply:

Proposal 2 failed because of its legislative 'super majority' provision (which would have required a super majority vote in the legislature in order to override local policies, but which also would have had the effect of placing extraordinary 'veto' power in the hands of a small minority of elected state legislators). Many citizens support local control but voted against the proposal because of that provision.

As the *Detroit News* observed in its editorial "Facing the Living Wage Dilemma" published on 3-8-01, "Living wage ordinances are economically destructive and unfair. But the issue is whether the state Legislature should be involved in preventing local communities from enacting self-destructive laws. This state has a tradition of local control. The principle of local control requires that cities, counties, and

townships should literally be free to be dumb. The House should let the matter die. The price of self-government is that local voters must pay the price for the bad policies of their local officials."

Against:

This bill should be amended to protect prevailing wage agreements. Without an amendment, this legislation jeopardizes 'prevailing wage' agreements that have been negotiated with employers regionally, by trade unions on behalf of workers. According to testimony, there are 36 prevailing wage agreements throughout the state, some of which are embodied in local ordinances. These agreements should not be undermined by this legislation.

Against:

The Detroit living wage policy should be exempt from the statewide ban. Of the six living wage ordinances in Michigan, the ordinance in Detroit poses a special case because it is a citizen-initiated law, placed on the ballot by citizen petition. Following a successful petition drive, fully 80 percent of the city's voters voted in favor of the proposal—157,000 people. That is more people than generally elect state representatives. The members of the state legislature have no business overriding the will of the voters in Detroit.

Against:

Opponents of the bill argue that living wage ordinances can benefit local economies by enabling local workers to reinvest their higher wages in their communities in the form of buying the basic necessities of life, such as paying for food, shelter, and medical care. They say that taxpayers' costs will be decreased because workers who are paid a living wage will no longer need public subsidization. They also argue that as a matter of simple social justice, full time workers ought to be able to earn enough money to support themselves and their families. Moreover, welfare reform policies are stressing the need for people to move from public assistance to paid employment. If the only available employment is at below-poverty level income, living wages are more important than ever for the most disadvantaged in society.

According to the Sugar Law Center for Economic and Social Justice, a project of the National Lawyers Guild, the living wage succeeds in bringing workers only to the very threshold of impoverished living conditions. Recognizing this fact, the Michigan League for Human Services has calculated a statewide *self-sufficiency wage*, which the league defines as the wage necessary to meet one's basic needs on an ongoing basis without

the help of public or private aid. The self-sufficiency wage for a Michigan wage-earner with two children is \$15.72 per hour. The law center points out that the significance of this calculation with respect to the living wage is that the figure is much higher than the \$10.44 hourly wage required by the Detroit ordinance. The center observes that while living wage ordinances are a step in the right direction, they are just that: a small but important step. It is imperative, then, that the legislature not interfere with the very necessary first efforts by local municipalities if any community is to achieve, ultimately, a life free from poverty for all its citizens.

Against:

The living wage rate that is embodied in the Detroit ordinance is about \$8.50 an hour with medical benefits, or \$10.44 an hour without. Annualized, that wage rate for a fulltime worker equals about \$18,000. The *total* annual living wage is, then, less than the \$20,000 *increase* in legislative pay that recently took effect. It is flat-out wrong for a legislator to accept a 36-percent, \$20,000 pay increase, and vote against an \$18,000 living wage for a worker whose job status may be lower, but who works equally hard.

Against:

Proponents of the bill ignore the fact that so-called 'artificial wage rates' constitute legitimate policy initiatives that aim to reduce poverty, and encourage employer-paid health care for workers. Already, state policies and programs sometimes require higher wage rates than the minimum wage, and some of those rates are specified in law. For example, under the terms of the Michigan Economic Growth Authority Act (Public Act 24 of 1995; MCL 202.808), employers who receive state tax breaks must pay an average of 150 percent of the federal minimum wage. For qualified high tech businesses, the jobs must pay 400 percent of the federal minimum wage. These are legitimate policy goals, and both state and local levels of government should be free to pursue them.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (3-6-01)

The Detroit Area Chamber of Commerce supports the bill. (3-6-01)

The Michigan Manufacturers Association supports the bill. (3-6-01)

The Michigan Health and Hospital Association supports the bill. (3-5-01)

The National Federation of Independent Business supports the bill. (3-6-01)

The Michigan Restaurant Association supports the bill. (4-17-01)

Detroit Renaissance supports the bill. (4-17-01)

The American Society of Employers supports the bill. (4-17-01)

The Lansing Regional Chamber of Commerce supports the bill. (4-17-01)

The International Brotherhood of Electrical Workers Local 58 (IBEW) opposes the bill. (3-6-01)

The Maurice and Jane Sugar Law Center for Economic and Social Justice opposes the bill. (3-6-01)

The Michigan State AFL-CIO (including Michigan Teamsters Council No. 43, Greater Detroit Building Trades, Michigan Building and Construction Trades Council, AFSCME Council 25, and UAW Michigan CAP) opposes the bill. (3-13-01)

A representative of Groundwork for a Just World and the Economic Justice Commission of the Episcopal Diocese Interfaith Council on Worker Issues testified in opposition to the bill. (3-13-01)

Ypsilanti Township opposes the bill. (4-17-01)

ACORN (the Association of Community Organizations for Reform Now) opposes the bill. (4-17-01)

The Michigan Chapter of the Associated General Contractors opposes the bill. (4-17-01)

Carpenters Local 1004 opposes the bill. (4-17-01)

The Michigan Federation of Teachers and School Related Personnel opposes the bill. (4-17-01)

The Michigan Education Association opposes the bill. (4-17-01)

The Michigan Chapter of the National Electrical Contractors Association opposes the bill. (4-17-01)

The United Auto Workers International Union opposes the bill. (4-17-01)

The SEIU Michigan State Council opposes the bill. (4-18-01)

The Michigan Road Builders Association opposes the bill. (4-17-01)

The Mid-Michigan Mechanical Contractors Association opposes the bill. (4-18-01)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.