

SENATE BILL REPORT

SB 5462

As Reported By Senate Committee On:
Commerce & Trade, February 26, 2003
Ways & Means, March 10, 2003

Title: An act relating to the provision of greater predictability and consistency in the state wage and hour laws.

Brief Description: Adopting federal definitions for state wage and hour laws.

Sponsors: Senators Mulliken, Honeyford, Hale, Hewitt, T. Sheldon, Swecker and McCaslin.

Brief History:

Committee Activity: Commerce & Trade: 2/12/03, 2/26/03 [DPS-WM, DNP].
Ways & Means: 3/6/03, 3/10/03 [DPS (CT), DNP].

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 5462 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

Minority Report: Do not pass.

Signed by Senators Franklin and Keiser.

Staff: Jennifer Ziegler (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5462 as recommended by Committee on Commerce & Trade be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Hale, Honeyford, Johnson, Parlette, Roach and Sheahan.

Minority Report: Do not pass.

Signed by Senators Brown, Doumit, Fairley, Fraser, Poulsen, Regala and B. Sheldon.

Staff: Brian Sims (786-7431)

Background: The Department of Labor and Industries is responsible for enforcing the state Minimum Wage Act. The federal Fair Labor Standards Act (FLSA) governs overtime and minimum wage requirements for employees.

In 2000, the Washington Supreme Court issued a decision in *Drinkwitz v. Alliant Techsystems*. As part of the decision, the court concluded that the FLSA may provide

guidance in interpreting the state Minimum Wage Act, but the court is not bound by the FLSA.

Any employer who pays an employee less than the wages required under the minimum wage law is liable for the full amount of wages and for attorney's fees allowed by the court. Failure to comply with the provisions of the Minimum Wage Act constitutes a gross misdemeanor.

Upon receiving information that an employer is violating wage payment laws, the department may conduct an investigation and order the payment of all wages. Failure to provide workplace access to the department or to provide the department with requested wage information, constitutes a misdemeanor.

Summary of Substitute Bill: The terms and provisions of the state Minimum Wage Act must be given the same meaning as comparable terms and provisions under the FLSA, unless the Legislature has expressly established a different standard. In the absence of a specific state provision, federal law shall control in any minimum wage action. Federal law is not controlling if any state law or formal department rule is expressly contrary to the provision of federal law.

An employer is not liable for minimum wage or overtime payments if the employer proves that he or she acted with a good faith reliance on any department rule or administrative practice of the department governing the particular class of employers.

The department may issue civil penalties of no less than \$100 and no more than \$1,000 for violations of minimum wage and wage collection laws. The employment standards enforcement account is established and civil penalties must be deposited in the account.

The director or director's representative must notify an employer prior to conducting an inspection. The department must also notify the employer that he or she may refuse to admit the department.

The department is prohibited from assessing penalties if an employee pursues a private right of action against the employer. The department may adopt rules to implement the wage enforcement statutes. The department must adopt any rules by December 1 of each year and may not implement those rules until the end of the next year's regular legislative session.

Substitute Bill Compared to Original Bill: Civil penalties for wage payment violations are authorized. An employment standards account is established and civil penalties must be deposited in the account. The department must notify employers prior to conducting inspections. The department may not assess penalties if an employee pursues a private right of action against the employer. The department must adopt any rules regarding the wage enforcement statutes by December 1 of each year and may not implement those rules until the end of the next legislative session.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There are a significant number of unclear laws and policies. The only option is a case-by-case approach, which does not provide employers with much guidance. Employers need consistency. Current law allows the department to conduct inspections without providing notice to the employer.

Testimony Against: The state Constitution mandates protection of workers. State laws are carefully crafted and work together well. Federal provisions may change on a daily basis. The department will have to work on rules to clarify all federal questions.

Testified: Amber Balch, AWB (pro); Victoria Marincin, Pacific Cargo Co. LLC (pro); Dan Fazio, Farm Bureau (pro); Robby Stern, WSLC (con); Patrick Woods, Elaine Fischer, Labor and Industries (con); Mary Johnson, NFIB (pro); Larry Shannon, WSTLA (con).