Local Government Mandate Statement Kentucky Legislative Research Commission 2018 Regular Session

Part I: Measure Information

Bill Request #: 420
Bill #: SB 35 HCS 1
Document ID #: 7676
Bill Subject/Title: AN ACT relating to an exemption for wage and hours.
Sponsor: Senator John Schickel
Unit of Government: X City X County X Urban-County X Charter County X Consolidated Local X Government
Office(s) Impacted: Local governments that employ people to work in government-owned amusement or recreational establishments
Requirement: X Mandatory Optional
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

SB 35 HCS 1, **Section 1** would amend KRS 337.285 to exempt certain employers from the obligation to pay employees time and ½ for hours worked over 40 in a week. Under the bill amusement or recreational facility employers would not be required to pay their employees time and ½ if the facility (1) does not operate for more than 7 months in a calendar year, or (2) for the preceding year its average receipts for any 6 months of the year were not more than 33 1/3 of its average receipts for the other 6 months of the year. This language tracks that in the federal Fair Labor Standards Act ("FLSA"), at 29 U.S.C. 213(a)(3).

SB 35 HCS 1, **Section 2** would amend KRS 337.385 to establish a statute of limitations for findings of fact by the commissioner in an administrative proceeding, or on bringing a court action against an employer for violation of KRS Chapter 337. No such findings shall be issued and no court proceeding commenced later than 2 years from the date a cause of action accrues. Section 2 would establish an exception for an action based on a willful

violation by an employer, which must be brought no later than 3 years after the cause of action accrues.

SB 35 HCS 1 would have little or no fiscal impact on local governments.

The Kentucky League of Cities believes SB 35 HCS 1 would have no fiscal impact on city governments. Some establishments that might qualify to exempt workers under this legislation include city-owned golf courses, water parks, public pools, parks, and large recreational fields/centers. Most public pools and water parks already qualify for the exemption because they don't operate for more than 7 months of the year; most of the other listed city-owned establishments would qualify for the exemption under the average receipts provision of the bill. However, most cities already take advantage of this exemption under the federal FLSA. SB 35 HCS 1 would just codify a current federal FLSA provision into Kentucky statutes, resulting in no impact for cities. It is likely the impact would be the same for Kentucky counties. Establishing a time limit on the right to bring a cause of action against an employer for violations of Kentucky's wage and hour laws could result in some indeterminable savings to local government employers if a worker is foreclosed from bringing an action after 2 years, or after 3 years in the case of a willful violation. The statute of limitations could result in avoidance of litigation costs, liability, and payment of damages.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The local mandate statement, and fiscal impact on local governments, for SB 35 HCS 1 is the same as for SB 35 GA, with the exception that SB 35 HCS 1 adds a 2 or 3 year statute of limitations on bringing a claim for a violation.

SB 35 as introduced would amend KRS 337.010 to exclude from the definition of "employee" an employee of an amusement or recreational establishment that met the criteria described in Part II, (1) and (2), above, thereby exempting those workers from the requirement that "employees" receive time and ½ for overtime. SB 35 GA achieves the same goal without changing the definition of "employee." The GA version deleted all the original language and would not change the definition of the term "employee,' but would instead insert the same criteria provision (facility not open more than 7 months in a year or receipts for 6 months not more than 1/3 of receipts for the other 6 months of the year) as new subparagraph (f) in KRS 337.285.

Data Source(s): <u>Kentucky League of Cities; LRC staff</u>

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 3/22/18