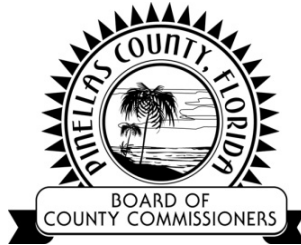


Board of County Commissioners

John Morroni, Chairman  
Charlie Justice, Vice Chairman  
Dave Eggers  
Pat Gerard  
Janet C. Long  
Karen Williams Seel  
Kenneth T. Welch



Mark S. Woodard, County Administrator  
James Bennett, County Attorney  
Ken Burke, Clerk of the Court and  
Comptroller

Pinellas County Board of County Commissioners  
315 Court Street, 5<sup>th</sup> Floor Assembly Room  
Clearwater, Florida 33756  
[www.pinellascounty.org](http://www.pinellascounty.org)

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Work Session	July 30, 2015	9:30 A.M.
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**AGENDA**

1. [Feedback regarding Amendments to Proposed Fiscal Year 2016 budget](#)
2. [Concurrence to finalize proposed millage rates for inclusion in the Truth in Millage \(TRIM\) notice](#)
3. [Wage Theft Recovery Program](#)
4. [Automated Agenda Update](#)

Order of items is subject to change. All times are approximate. Break may be taken.

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*Citizen's Comments Will Follow Presentation(s)*

*Any person wishing to speak regarding a work session topic must complete a comment card and give to the agenda staff at the staff table. The Chairman will call the speakers, one by one, to the podium to be heard. Each speaker may speak up to three minutes. Persons who have been authorized to represent a group of five or more individuals, who are present, should complete a comment card and may speak up to 10 minutes.*

Commission Work Session Date: July 30, 2015

Item No. : 1

**FEEDBACK REGARDING AMENDMENTS TO PROPOSED  
FISCAL YEAR 2016 BUDGET**

No Supporting Documentation

# PINELLAS COUNTY

## FY16 Proposed Millage Summary

<b>Taxing Authority</b>	<b>FY16 Taxable Value (DR420)</b>	<b>Proposed Millage</b>	<b>Rolled-back Rate</b>	<b>% Increase (Decrease)</b>	<b>Voting Threshold</b>
GENERAL FUND	63,693,960,831	5.2755	5.0041	5.4%	Simple Majority
HEALTH DEPARTMENT	63,693,960,831	0.0622	0.0588	5.8%	Simple Majority
EMERGENCY MEDICAL SERVICES	59,352,977,369	0.9158	0.8642	6.0%	Two-Thirds
MUNICIPAL SERVICES TAX DISTRICT	15,774,699,368	2.0857	1.9951	4.5%	Simple Majority
LIBRARY SERVICES	9,615,728,375	0.5000	0.4796	4.3%	Simple Majority
PALM HARBOR COMMUNITY SVC	3,666,879,046	0.5000	0.4744	5.4%	Simple Majority
FEATHER SOUND	273,377,883	0.5000	0.4706	6.2%	Simple Majority
EAST LAKE LIBRARY SERVICES	2,585,630,983	0.2500	0.2400	4.2%	Two-Thirds
EAST LAKE RECREATION SERVICES	2,585,630,983	0.2500	24.0%	4.2%	Two-Thirds
PINELLAS PLANNING COUNCIL	63,693,960,831	0.0160	0.0151	6.0%	Simple Majority
<b><u>FIRE DISTRICTS</u></b>					
BELLEAIR BLUFFS FIRE	314,145,906	1.7320	1.6636	4.1%	Simple Majority
CLEARWATER FIRE	953,641,476	3.2092	3.0446	5.4%	Two-Thirds
DUNEDIN FIRE	317,642,781	2.9222	2.7746	5.3%	Simple Majority
GANDY FIRE	54,331,089	2.2977	2.1539	6.7%	Simple Majority
LARGO FIRE	567,489,694	3.5609	3.4499	3.2%	Simple Majority
PINELLAS PARK FIRE	273,213,108	3.0163	2.9531	2.1%	Simple Majority
SAFETY HARBOR FIRE	72,147,797	2.8118	2.6567	5.8%	Simple Majority
TARPON SPRGS FIRE	183,453,145	2.3745	2.2488	5.6%	Simple Majority
SEMINOLE FIRE	2,446,651,467	1.9581	1.8592	5.3%	Simple Majority
HIGHPOINT FIRE	706,084,394	2.6700	2.6177	2.0%	Simple Majority
TIERRA VERDE FIRE	838,801,130	1.9118	1.8276	4.6%	Simple Majority
SOUTH PASADENA FIRE	123,454,760	0.9137	0.8501	7.5%	Simple Majority
AGGREGATE MILLAGE RATE		7.1099	6.8004	4.6%	




## Pinellas County Office of Human Rights

400 S. Fort Harrison Ave  
5<sup>th</sup> Floor  
Clearwater, FL 33756  
(727) 464-4880  
Fax: (727) 464-4157  
Text Phone/TDD: (727) 464-4062

To: Board of County Commissioners

Through: Mark Woodard, County Administrator  
Jack Loring, Workforce Development Manager

CC: Jim Bennett, Pinellas County Attorney  
Bill Berger, Director, OMB  
Michelle Wallace, Sr. Assistant County Attorney  
Carl Brody, Sr. Assistant County Attorney

From: Paul Valenti, Director of Human Rights 

Date: July 24, 2015

Re: **Board of County Commissioners' Workshop on Wage Theft,  
July 30, 2015**

The Board has asked staff to present information on wage theft, including the scope of the problem, current laws protecting workers from wage theft, and possible options for addressing the issue of wage theft within Pinellas County.

Staff has provided information to the Board to assist them in their deliberation as to what steps, if any, they might wish to pursue to address this issue. This included an Amended Memorandum dated June 3, 2015, and, upon suggestion of County Administrator Woodard, a flow chart of how each of three (3) different alternative proposals to address the problem of wage theft would operate in practice (which I sent by e-mail dated July 2, 2015).

In addition to those materials, staff believes information relating to the costs and outcomes of the "Miami-Dade County" and "Palm Beach County" models might further assist the Board in its deliberations<sup>1</sup>. To that end, please note the following information, as provided by Miami-Dade County and Palm Beach County:

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<sup>1</sup> As you recall, the "Miami-Dade County model" contemplates enforcement of a wage theft ordinance by an agency of local government, and is the model recently adopted by the City of St. Petersburg. The "Palm Beach County model" contemplates providing funding to a legal-aid organization (such as Gulf Coast Legal Services or Bay Area Legal Services) to assist claimants pursue recovery of disputed wages under current state and/or federal law. Each of these models were explained in the June 3, 2015, Amended Memorandum provided to the Board of County Commissioners. As stated above, flow-charts depicting how each of these alternatives would operate were provided to the Board by e-mail dated July 2, 2015.

Total Cost <sup>4</sup> :	<u>Miami-Dade County<sup>2</sup>:</u> \$100,409.11 (FY '13-'14)	<u>Palm Beach County<sup>3</sup>:</u> \$125,000 (2015 calendar year)
# of Claims Filed:	171 (2014 calendar year)	85 (1/1/15 -6/30/15)
# of Complainants Obtaining Relief:	81 (2014 calendar year)	47 (1/1/15 -6/30/15)
Total \$ Value of Wages Disputed:	\$1,357,624 (2014 calendar year)	Not Available/ Known
Total \$ Value of Wages Awarded:	\$168,400 (2014 calendar year)	\$35,332.38 (1/1/15 -6/30/15)
Average \$ Value of Wages Recovered Per Claim <sup>5</sup> :	\$984.80 (2014 calendar year)	\$751.75
Total \$ Value of Costs Awarded:	\$21,000 (2014 calendar year)	Not Applicable
Total \$ Value of Penalties Awarded <sup>6</sup> :	\$335,927 (2014 calendar year)	Not Applicable/ Known

<sup>2</sup> Supporting documentation from Miami-Dade County from which this data is compiled is attached hereto, collectively, as Exhibit A.

<sup>3</sup> Supporting documentation from Palm Bach County from which this data is compiled is attached as Exhibit B.

<sup>4</sup> For Miami-Dade County, total costs include costs associated with administrative hearings which are held before magistrates in a venue with supporting services (including video-recording of hearings) provided by the Miami-Dade County Clerk of Courts at a fixed cost of \$400.00 for a half-day of hearing(s), and \$800.00 for a full day of hearing(s).

<sup>5</sup> This figure is derived from dividing the total number of claims (171) by total wages awarded (\$168,400). Of course, some claimants received no recovery (either because they withdrew their complaints (8 complainants) or because at hearing, no violation of the ordinance was substantiated (24 complainants)). If instead one divides total wages awarded by the number of successful complaints/complainants, the average value of wages recovered per successful complaint rises to \$2,079.01.

<sup>6</sup> The Miami-Dade ordinance allows an award of penalties up to three times the amount of wages owed. Awarded penalties go to the complainant. Staff in Miami-Dade County suggests when penalties are added to wages recovered, the average award per complaint is \$3,450.40, and per successful complaint/complainant \$7,284.18.

As previously discussed, there are other considerations which may factor into your deliberations. These include:

- The City of St. Petersburg recently passed a wage theft recovery ordinance which closely follows the Miami-Dade County model, and staff has been hired to administer their program. In prior conversations with city staff, there were expressions of interest in discussing the possibility of an inter-local agreement on this subject. Staff believes the likelihood of fruitful conversations in these regards closely correlates to how substantially similar Pinellas County's policy choice correlates to what the City of St. Petersburg has enacted;
- In implementing their model, Palm Beach County was successful in having the Chief Administrative Judge for their judicial district adopt an administrative order creating a "Wage-Theft Division." Successfully pursuing the Palm Beach model may in part be contingent on a similar administrative order being adopted in the Sixth Judicial District in and for Pinellas County;
- At the Appointing Authorities meeting of July 23, 2015, Clerk of the Circuit Court Burke discussed funding issues tied to State of Florida budgeting which has stressed operations. Increased court activity may further stress the Clerk's staff, as well as the court system;
- Concerns relating to creating an additional government program which may burgeon in size and cost over time;
- Arguments that existing state and federal law are sufficient (which advocates for victims of wage theft vigorously dispute); and
- The County Attorney's Office has previously indicated their belief that the third option provided to the Board – a hybrid between the Miami-Dade and Palm Beach models which covers more employers to fill in the gaps in existing state and federal law, but providing for recovery through a private cause of action – would be without precedent in our Code of County Ordinances.

Staff has previously summarized other arguments in favor of, or against, each of the three (3) options outlined to you. These are found in my Amended Memorandum dated June 3, 2015, and flowcharts sent by e-mail on July 2, 2015.

I remain available at 4-4880 should you have further questions.

# Exhibit A

**Valenti, Paul V**

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**From:** Billington, Holly Beth (RER) [hbbillington@miamidade.gov]  
**Sent:** Wednesday, July 22, 2015 3:47 PM  
**To:** Valenti, Paul V  
**Subject:** Wage Theft Costs - FY 2013/2014

TOTAL PERSONNEL COSTS					\$ 65,354.38
TOTAL OVERHEAD ALLOCATION					\$ 25,454.73
TOTAL COSTS					\$ 90,809.11
		Cost per case	\$ 183.82		
TOTAL HEARING COSTS (12 Hearings @ \$800)					\$ 9,600.00
		Cost per Case (60 violation found)	\$ 160.00		
		Admin Fee Total	\$ 343.82		
TOTAL WAGE THEFT PROGRAM COSTS					\$ 100,409.11

Sincerely,  
Holly Beth Billington, Esq., Consumer Advocate  
Office of Consumer Protection  
Department of Regulatory and Economic Resources, Business Affairs Division  
601 NW 1st Court, 18th Floor  
Miami, FL 33136  
Phone: 786-469-2386  
Fax: 786-469-2303  
<http://www.miamidade.gov/business/consumer-protection.asp>

**miamidade.gov** 

**"Delivering Excellence Every Day"**

Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.



## EXHIBIT A

### 2014 WAGE THEFT QUARTERLY HEARING SUMMARY \*

January 1 - December 31, 2014

	1ST QUARTER	2ND QUARTER	3RD QUARTER**	4TH QUARTER	TOTALS
<b>NUMBER OF CASES</b>	<b>65</b>	<b>37</b>	<b>32</b>	<b>37</b>	<b>171</b>
Withdrawn prior to Hearing	6	1	1	0	8
Settled at the Hearing	9	1	2	1	13
Dismissed	18	11	7	12	48
Violation Found	11	14	14	21	60
No violation proven	6	8	6	4	24
Rescheduled	15	2	2	0	19
<b>WAGES AWARDED</b>	<b>\$ 18,018</b>	<b>\$ 43,167</b>	<b>\$ 54,392</b>	<b>\$ 52,823</b>	<b>\$ 168,400</b>
<b>PENALTIES AWARDED</b>	<b>\$ 36,036</b>	<b>\$ 86,334</b>	<b>\$ 107,911</b>	<b>\$ 105,646</b>	<b>\$ 335,927</b>
<b>ADMIN COSTS AWARDED</b>	<b>\$ 3,850</b>	<b>\$ 4,900</b>	<b>\$ 4,900</b>	<b>\$ 7,350</b>	<b>\$ 21,000</b>
<b>Direct Costs Expended for Administrative Hearings</b>	<b>\$ 2,400</b>	<b>\$ 2,400</b>	<b>\$ 2,400</b>	<b>\$ 2,400</b>	<b>\$ 9,600</b>

\* These summary figures are based on the cases heard at each scheduled hearing during the 2014 calendar year period, regardless of when the complaint was received.

\*\*The total wages and penalties awarded the 3rd quarter are reduced by the total of 2 awards vacated at hearings held during this quarter

8-Apr-15

## EXHIBIT B

### WAGE THEFT ANNUAL REPORT FOR THE PERIOD OF JANUARY 1 thru DECEMBER 31, 2014

	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	ANNUAL TOTAL
NUMBER OF COMPLAINTS FILED/OPENED OR REOPENED	90	126	111	141	468
NUMBER OF COMPLAINTS REFERRED OUT, INQUIRY ONLY or NO RESPONSE	22	36	33	42	133
NUMBER OF COMPLAINTS QUALIFIED	68	90	78	99	335
NUMBER OF COMPLAINTS UNABLE TO EFFECT SERVICE	9	10	8	12	39
NUMBER OF COMPLAINTS WITHDRAWN, NO MERIT, FORMAL BANKRUPTCY	14	12	7	11	44
NUMBER OF SUCCESSFUL CONCILIATIONS	22	27	38	25	112
NUMBER OF CASES WITH FINDING OF WAGE THEFT VIOLATION*	7	28	10	22	67
NUMBER OF CASES WITH NO FINDING OF WAGE THEFT VIOLATION*	15	13	14	11	53
CASES REMAINING OPEN FROM PERIOD	1	0	1	18	20
Value of Unpaid Wages Alleged	\$ 249,226	\$ 450,629	\$ 340,770	\$ 316,999	\$ 1,357,624
Value of Successful Conciliations	\$ 44,324	\$ 64,489	\$ 79,840	\$ 19,374	\$ 208,027
Amount of Unpaid Wages Awarded at Hearing	\$ 21,154	\$ 79,002	\$ 28,444	\$ 68,074	\$ 196,673
Amount of Penalties Awarded at Hearing.	\$ 42,307	\$ 158,003	\$ 56,887	\$ 136,148	\$ 393,346

\* The figures provided here do not match those found in Exhibit A, as the results in this chart reflect the outcome of a complaint received during the quarter, although it may have gone to hearing in a later quarter. Exhibit A reflects the outcome of cases that went to hearing during the quarter although the complaint may have been received in a previous quarter.

8-Apr-15

# Exhibit B

**Palm Beach County**  
**Wage Dispute Project Highlights**

(January 01, 2015 – June 30, 2015)

**Totals for the time period between January 1, 2015 – June 30, 2015:**

85 clients retained between January 1, 2015 – June 30, 2015 (36 Open, 49 Closed)

Of the 49 cases opened and closed between January 1, 2015 and June 30, 2015:

- 87.75% were closed before the 60 day mark (43 cases)
- 12.25% were closed after the 60 day mark (6 cases)

87 cases resolved between January 1, 2015 – June 30, 2015\*

Total number of clients receiving wages: **47**

Average time between intake and payment: **61.84 days**

Average recovery per client: **\$751.75**

Total amount of wages recovered: **\$35,332.38**

**NOTE:**

\*Of the 87 cases resolved during this measurement period, some are cases which began in the 2014 measurement period and closed in this measurement period.




## Pinellas County Office of Human Rights

400 S. Fort Harrison Ave  
5<sup>th</sup> Floor  
Clearwater, FL 33756  
(727) 464-4880  
Fax: (727) 464-4157  
Text Phone/TDD: (727) 464-4062

### AMENDED MEMORANDUM

To: Board of County Commissioners

From: Paul Valenti, Director of Human Rights 

Through: Mark Woodard, County Administrator

CC: Jim Bennett, Pinellas County Attorney  
Bill Berger, Director, OMB  
Michelle Wallace, Sr. Assistant County Attorney  
Carl Brody, Sr. Assistant County Attorney

Date: June 3, 2015

**Re: Wage Theft Recovery Ordinance**

Commissioner Welch has asked staff to prepare a possible wage theft recovery ordinance for consideration by the Board of County Commissioners.

As there are options regarding which policy choice(s) the Board of County Commissioners may wish to follow in attempting to address wage theft within Pinellas County, this memorandum will attempt to:

- Provide a brief background on this topic;
- Discuss the scope of the wage theft problem – particularly in Pinellas County; and
- Discuss options (with associated pros and cons) for consideration by the Board of County Commissioners, with possible further action by staff.

**Background:**

Wage theft complaints have historically been addressed at the federal and state level.

The U.S. Department of Labor's jurisdiction of wage complaints extends to employers with gross sales in excess of \$500,000.00, or instances where interstate commerce, or an instrumentality of interstate commerce (such as use of a credit card by means of interstate wire communications), is implicated. This necessarily means smaller employers, such as small restaurants, landscaping companies, contractors, and many other service-oriented businesses, are not subject to federal law.

Even when federal jurisdiction flows from use of an instrumentality of interstate commerce, not all employees of the business are necessarily covered. For instance, while a waitress who works for a small restaurant which has less than \$500,000.00 in annual gross sales may obtain coverage by “swiping” a customer’s credit card, none of the “back-of-the-house” employees, such as cooks, bus-persons, or dishwashers will be covered as they are not using instrumentalities of interstate commerce.

Additionally, federal law offers protection only to the extent of the federal minimum wage, which is currently \$7.25 per hour. Thus, even when the U.S. Department of Labor has jurisdiction to assist employees in Pinellas County in recovering unpaid wages, their enforcement authority is limited to recovery of \$7.25 per hour, even if the promised wage is higher<sup>1</sup>.

The State of Florida stopped investigating wage theft complaints in 2000. Moreover, there is no indication Florida’s Attorney General’s Office has ever prosecuted a case against an employer under Florida’s current minimum wage law (which establishes a minimum wage of \$8.05 per hour).

A perverse consequence of the State of Florida’s lack of enforcement of its own minimum wage law is that while the nominal minimum wage in Florida is higher than the federal minimum wage, outside of jurisdictions which have enacted a wage theft recovery ordinance, or instances where the state minimum wage is enforced through private litigation, recovery of lost wages through the only available government enforcement agency may be limited to the lower federal minimum wage of \$7.25 per hour.

The City of St. Petersburg adopted a wage theft recovery ordinance on April 15, 2015, while the Hillsborough Board of County Commissioners recently rejected an ordinance similar to St. Petersburg’s on May 20, 2015. Other jurisdictions which have adopted a wage theft recovery ordinance include Miami-Dade County<sup>2</sup>, Broward County<sup>3</sup>, Alachua County<sup>4</sup>, and Osceola County<sup>5</sup>.

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<sup>1</sup> To be sure, the U.S. DOL seeks recovery of the promised wage, but if the employer refuses to pay this amount, federal law only guarantees payment at the federal minimum hourly rate.

<sup>2</sup> The first such ordinance adopted in Florida, effective in February of 2010.

<sup>3</sup> Adopted in October, 2012.

<sup>4</sup> Which became effective January 1, 2014.

<sup>5</sup> Adopted by the Osceola Board of County Commissioners in March, 2015.

Palm Beach County also considered a wage theft ordinance, ultimately deciding to provide approximately \$100,000.00 in legal aid funding to assist residents in pursuing such claims through the legal system<sup>6</sup>.

**Scope of Wage Theft Problem:**

According to a Florida International University study regarding wage theft<sup>7</sup>, from September 2008, through January 2011, Pinellas County had the fourth (4<sup>th</sup>) highest incidence of wage theft complaints in all of Florida, following only Miami-Dade, Hillsborough and Broward Counties. This study also reported that through this period, the U.S. DOL's Wage and Hour Division reported 3,615 complaints of wage theft in Pinellas County, recovery of \$1,874,978 in wages, and an average of recovered wages of \$519 per complainant.

In advocating the City of St. Petersburg's passage of a wage theft recovery ordinance, Council Member Darden Rice was quoted as stating that 15,000 wage theft reports were filed in Pinellas County from 2012 through 2014, which amounted to \$7.5 million in alleged wage theft<sup>8</sup>.

Staff is unaware of any specific study which has been conducted to capture all instances of wage theft solely within Pinellas County, though anecdotal evidence (additional to the data above) suggests the problem is wide-spread.

For instance, the Intake Officer for Pinellas County's Office of Human Rights suggests receiving an average of six (6) or seven (7) wage theft inquiries every month which are not associated with an alleged discriminatory basis for which the office currently has jurisdiction to investigate a complaint – most recently on Friday, May 29, 2015<sup>9</sup>.

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<sup>6</sup> This decision was made in December of 2012. There have been continued efforts in Palm Beach County to pursue enactment of a wage theft recovery ordinance since this time, though staff is unaware of any ordinance being passed by the Palm Beach County Board of County Commissioners as of the date of this memorandum. As indicated above, print media has reported that the Hillsborough Board of County Commissioners appears likely to follow this model going forward.

<sup>7</sup> Wage Theft: An Economic Drain on Florida – How Millions of Dollars are Stolen from Florida's Workforce, by Cynthia S. Hernandez and Carol Stepick, *Research Institute on Social and Economic Policy, Center for Labor Research and Studies, Florida International University*, January 25, 2012.

<sup>8</sup> St. Pete Passes Ordinance to Combat Wage Theft, by Steven Girardi, *St. Petersburg Tribune*, April 16, 2015.

<sup>9</sup> As wage theft complaints without an associated allegation of discrimination are currently non-jurisdictional to the Office of Human Rights, historically staff has not recorded actual inquiries in this regard. Staff has, however, been instructed to start capturing this data going forward.

In addition, the Office of Human Rights receives two (2) to three (3) inquiries every month raising allegations of wage theft in addition to allegations of discrimination jurisdictional to our office.

Staff also contacted Gulf Coast Legal Services' Clearwater and St. Petersburg offices. Their Clearwater office advised they receive occasional inquiries regarding wage theft (having received two (2) such inquiries last week), but at present they provide no assistance in this regard. As of the date of this memorandum, we have not received a reply from their St. Petersburg office.

Staff has also contacted Bay Area Legal Services, and one large law firm which represents employees with wage theft complaints. As of the date of this memorandum, however, they also have not responded with any specific data regarding the number of complaints received.

Additionally, in a meeting with the U.S. Department of Labor's Tampa District Office, staff was advised they do not capture data of wage theft inquiries received for which they have no jurisdiction to investigate<sup>10</sup>. They indicated, however, that they routinely receive such inquiries from persons employed within Pinellas County, and would refer such complaints to Pinellas County should the Board of County Commissioners decide to enact an ordinance more comprehensive than current federal law<sup>11</sup>.

**Summary of Options Available to Board of County Commissioners:**

I believe the Board of County Commissioners has four (4) policy options for their consideration:

- 1) Maintain the status quo;
- 2) Adopt a wage theft recovery ordinance similar to those enacted in Miami-Dade, Broward, Alachua and Osceola Counties, as well as the City of St. Petersburg;
- 3) Follow the direction taken by Palm Beach County (and, as reported in the media, being considered by Hillsborough County), and fund a legal aid organization to conduct education and outreach on the issue of wage theft, and to assist persons in pursuing such claims under the existing regulatory and statutory landscape; or

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<sup>10</sup> As recited above, the U.S. DOL only has jurisdiction of wage complaints when an employer's gross annual sales exceed \$500,000.00, or in instances where interstate commerce, or an instrumentality of interstate commerce, is implicated.

<sup>11</sup> The U.S. Department of Labor's Miami District Office routinely refers wage complains not jurisdictional under federal law to Miami-Dade County's Office of Small Business Development, which has responsibility for administering Miami-Dade County's wage theft ordinance.



- 4) Adopt an ordinance more comprehensive than federal law, without the concomitant establishment and funding of an agency within Pinellas County government to enforce the same, opting instead to create a private cause of action enforceable in the state court system, and funding a legal aid organization to conduct education and outreach on the issue of wage theft, and to assist persons in pursuing such claims under the newly enacted ordinance.

To assist the Board of County Commissioners in its consideration of this issue, each option will be discussed in brief below, as will factors the Board of County Commissioners may wish to consider in its deliberations.

**Option 1 – Maintain the Status Quo:**

While such a policy determination would afford no additional relief to persons within Pinellas County who are victims of wage theft, it would represent the least costly alternative, conserving limited available funds for other initiatives and/or priorities the Board of County Commissioners believes to be more pressing, urgent, or desired.

Given the Board of County Commissioners has asked to be briefed on the issue of wage theft, however, I infer this to be the Board of County Commissioners' least favored option.

**Option 2 – Enact a Wage Theft Ordinance with Administration and Enforcement by an Agency of County Government, Following the Example of Miami-Dade and other Counties:**

This option contemplates enactment of a wage theft ordinance which is more comprehensive than federal law by:

- Covering more employers;
- Providing a forum for filing such complaints without cost to the complainant;
- Contemplating recovery of the wage promised to the complainant (as opposed to limiting recovery to the federal or state minimum wage);
- Mandating the attempted mediation of wage complaints with the goal of hoped for resolution;
- Providing for an administrative hearing process for complaints not resolved by mediation;
- Providing for recovery of administrative costs incurred by the county where a violation of the ordinance has been established at hearing; and
- Authorizing enforcement of administrative hearing orders through the judicial system.

This option would likely be the most expensive to implement and maintain given the necessary costs associated with administering and staffing the enforcement and hearing processes.

Additional costs under this option could arise in those instances when an order rendered at an administrative hearing was submitted for judicial enforcement.

Further, in rejecting this option, the Boards of County Commissioners in Palm Beach County and Hillsborough County discussed the spectre of creating a government program which burgeons in size and cost with the passage of time. They and others also expressed concern that this option is redundant to the regulatory and legal protections now in place.

Supporters of such an option suggest the status quo ill serves many victims of wage theft (particularly as many work in industries with lower wages and benefits, with a concomitant lack of resources and/or ability to vindicate their rights on their own), and protects honest businesses from any unfair advantage gained by unscrupulous competitors who benefit from not paying wages earned.

Additionally, should the Board of County Commissioners choose to pursue this option, staff would work diligently to maintain costs under the \$100,000.00 appropriation currently reflected in the decision package raised by Commissioner Welch<sup>12</sup>.

For example, staff would explore entering into an independent contractor relationship for the provision of mediation of disputes contemplated by this option<sup>13</sup>, and consider modeling administrative hearings under a wage theft recovery ordinance on the Magistrate process Pinellas County already has in place for code violations, the Special Magistrate process the Construction Licensing Board uses for cases against unlicensed contractors, or extending the relationship the Office of Human Rights already has in place with the State of Florida's Department of Administrative Hearings.

Additionally, potential recovery of costs would be explored in cases where a complainant receives an award pursuant to an administrative hearing.

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<sup>12</sup> Chairman Morroni also suggested this budget limitation when this topic was briefly discussed during the May 7, 2015, budget presentation by the Office of Human Rights.

<sup>13</sup> A model the Office of Human Rights recently had in place in regards to complaints of housing discrimination pursuant to a \$50,000.00 grant from HUD (as referenced during the May 7, 2015, budget presentation by the Office of Human Rights). As was noted at the May 26, 2015, meeting of Pinellas County's Affirmative Action Committee, this initiative has led to the mediated resolution of 80+% of cases in which mediation was attempted. A comparable mediation/conciliation success rate under a wage theft recovery ordinance would help mitigate administrative costs associated with the Board of County Commissioners pursuing this option.

Further, pursuing this option and enacting an ordinance substantially similar to the ordinance recently passed by the City of St. Petersburg affords the greatest possibility of entering into an inter-local agreement with the City of St. Petersburg to receive contributions to offset administrative costs to Pinellas County, while also helping achieve efficiencies gained through administering one county-wide ordinance as opposed to two local ordinances by two jurisdictions<sup>14</sup>.

**Option 3 - Fund a Legal Aid Organization to Conduct Education and Outreach on the Issue of Wage Theft, and to Assist Persons in Pursuing Claims under the Existing Regulatory and Statutory Landscape:**

This option would afford the Board of County Commissioners certainty of costs as they would set the limit of funding to the selected service provider.

Additionally, this option could negate concerns related to potential burgeoning costs by maintaining future funding at the initial base-line level.

Moreover, this would allow the Board of County Commissioners to explore funding other worthy initiatives with those monies saved by not staffing enforcement activity.

Finally, this option obviates any argument against perceived redundancies to existing regulatory and legal protections relating to wage theft.

Additionally, critics of this option argue that the limited funding allocated for this purpose necessarily limits the number of persons who may receive assistance – especially once said funding is exhausted by the recipient organization.

Other criticisms include the insufficiency of the existing regulatory and legal protections relating to wage theft<sup>15</sup>, the limited capacity of legal aid organizations to assist persons with marginal additions to their funding streams – especially in light of their already extended obligations with limited resources, and the lessened deterrent effect such an option would create vis-à-vis pursuing an ordinance with administration of an enforcement scheme by a local government agency.

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<sup>14</sup> The best opportunity to achieve such an inter-local agreement may be at present, as the City of St. Petersburg is still in the midst of implementing its own plan for administering their wage theft recovery ordinance.

<sup>15</sup> These deficiencies are touched upon above, and explored in greater detail in the FIU study referenced in footnote 7.

Finally, an ordinance drafted under this option would not be substantially similar to the ordinance adopted by the City of St. Petersburg. Staff believes this lessens the likelihood of entering into an inter-local agreement with the City of St. Petersburg that includes a provision for funding to help defray costs to the county.

**Option 4 - Adopt an ordinance more comprehensive than federal law, which creates a private cause of action enforceable in the state court system, while funding a legal aid organization to conduct education and outreach, and to assist persons in pursuing such claims under the ordinance:**

This option is hybrid between options 2 and 3.

This option would be less expensive than option 2, as there would be no need to fund agency administration and enforcement. Further, there would be no direct costs to Pinellas County associated with administrative hearings or judicial enforcement, as the private cause of action to be created by this option would be heard in already existing judicial fora. This in turn would allow the Board of County Commissioners to fund other worthy initiatives with the savings realized.

Additionally, as with option 3, this option could negate concerns related to potential burgeoning costs by maintaining future funding to a legal aid organization at the initial base-line level.

Moreover, this option is superior to options 1 or 3 as the ordinance could be drafted to cover employers which have less than \$500,000.00 in annual sales, and to allow recovery of the alleged promised wage (as opposed to limiting recovery to the state minimum wage)<sup>16</sup>.

Notwithstanding these advantages, this option is also susceptible to criticisms related to the limited capacity of legal aid organizations to assist persons when funding is exhausted, or with marginal additions to their funding streams, as well as the potential lessened deterrent effect such an option would create vis-à-vis pursuing an ordinance with administration and enforcement by local government.

Further, the County Attorney's Office has suggested they are unaware of a prior precedent where the Board of County Commissioners created a private cause of action without some level of administration or enforcement by local government.

Finally, an ordinance drafted under this option would not be substantially similar to the ordinance adopted by the City of St. Petersburg. Staff believes this lessens the likelihood of entering into an inter-local agreement with the City of St.

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<sup>16</sup> The County Attorney's Office has opined that adopting an ordinance which creates a private cause of action which is more comprehensive than existing state or federal law is within the legal authority of the Board of County Commissioners of Pinellas County.

Petersburg that includes a provision for funding to help defray costs to the county.

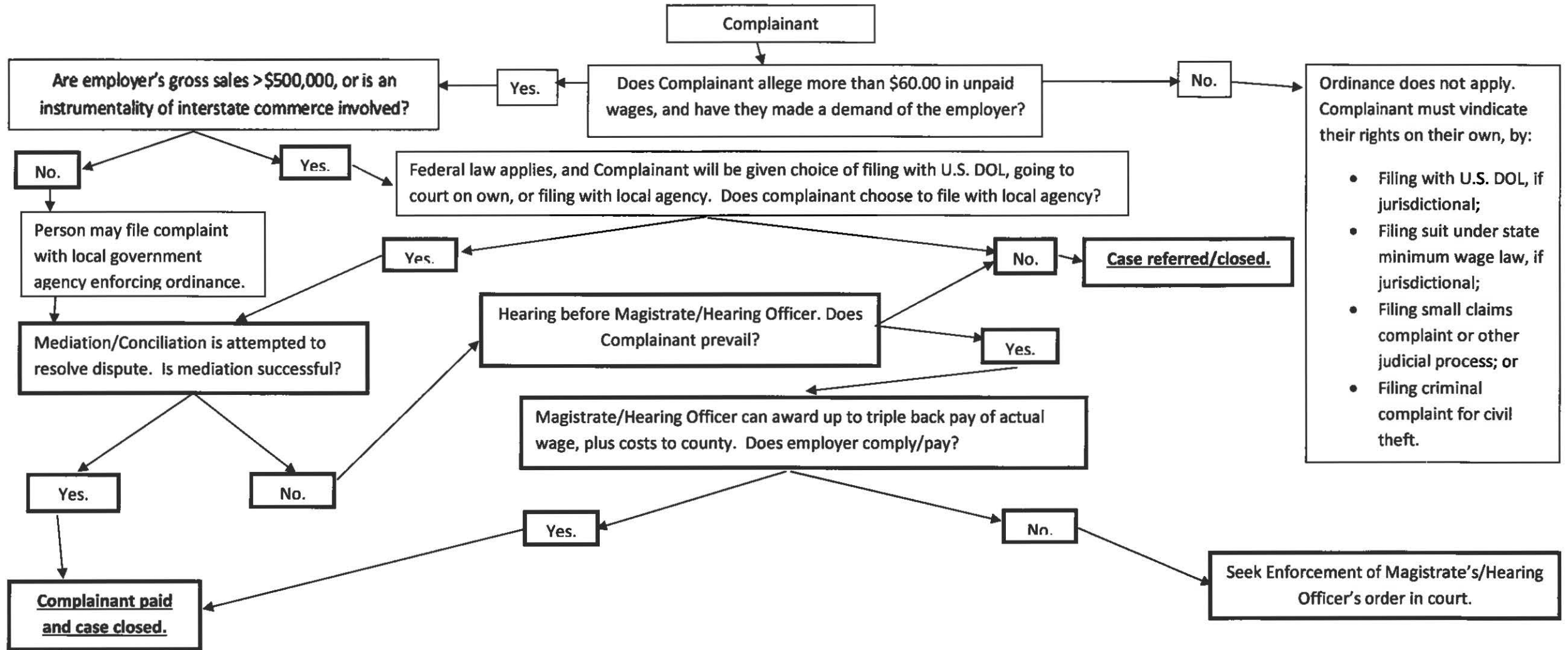
**Conclusion:**

As the legislative body for Pinellas County, it is the prerogative of the Board of County Commissioners to weigh competing costs and benefits, as well as competing funding needs versus funding capacity, related to the consideration of adopting a wage theft recovery ordinance.

Staff is wary of inadvertently accreting to itself the prerogative of policy determination by advocating a particular option for a wage theft recovery ordinance without further input and direction from the Board. This memorandum is an attempt by staff to provide factors the Board may wish to consider. Others may provide additional factors for your consideration.

I remain available at (727) 464-4880 to answer any questions you may have.

### Option 2 – Miami-Dade County Model:



#### Arguments in favor:

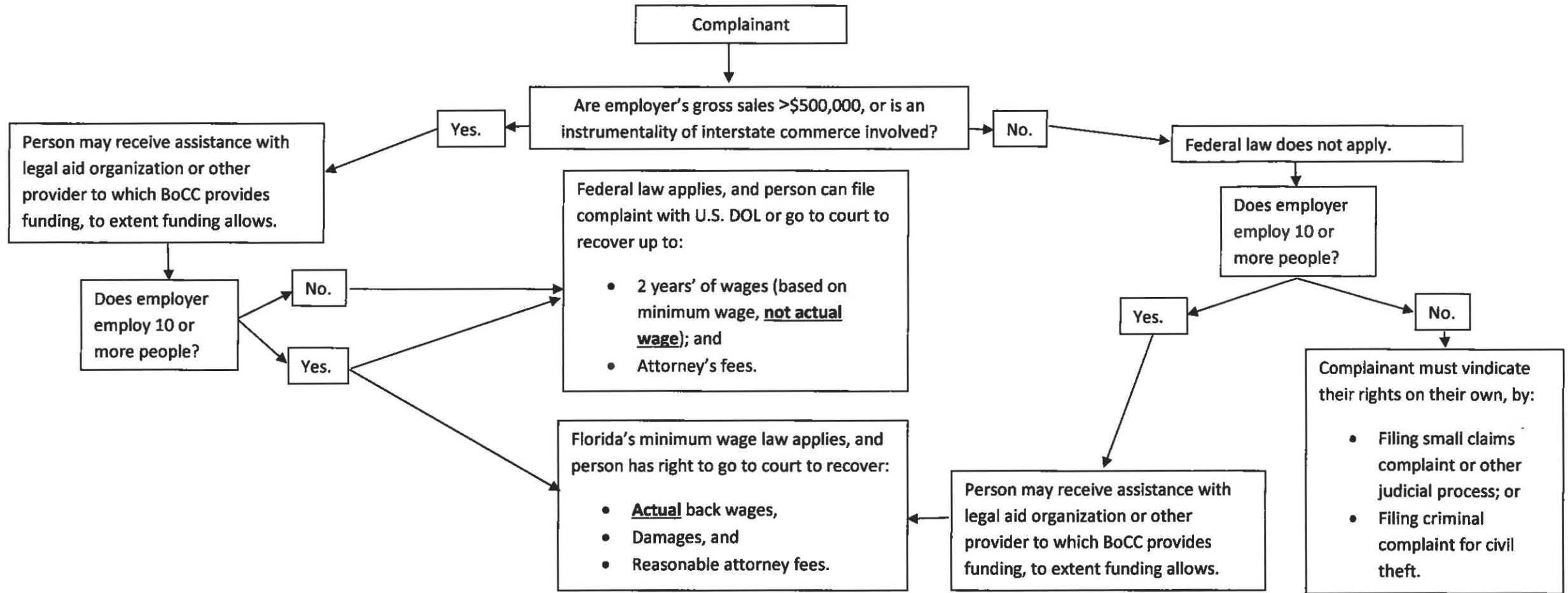
- Allows for recovery of costs to county upon prevailing at hearing.
- Smaller employers, where numerous problems exist, are covered.
- Levels playing field for honest employers.
- Supporters say it is actually more economical than Palm Beach County Model
- Supporters argue it provides greatest deterrent effect against wage theft.

#### Arguments against:

- Creates new government program/increases government.
- Expands law far beyond current contours at state and federal level.
- Opponents argue it costs more than Palm Beach County model.
- Opponents argue it is an additional regulatory burden on job creation.
- Opponents argue it facilitates/encourages meritless claims.



### Option 3 – Palm Beach County Model:



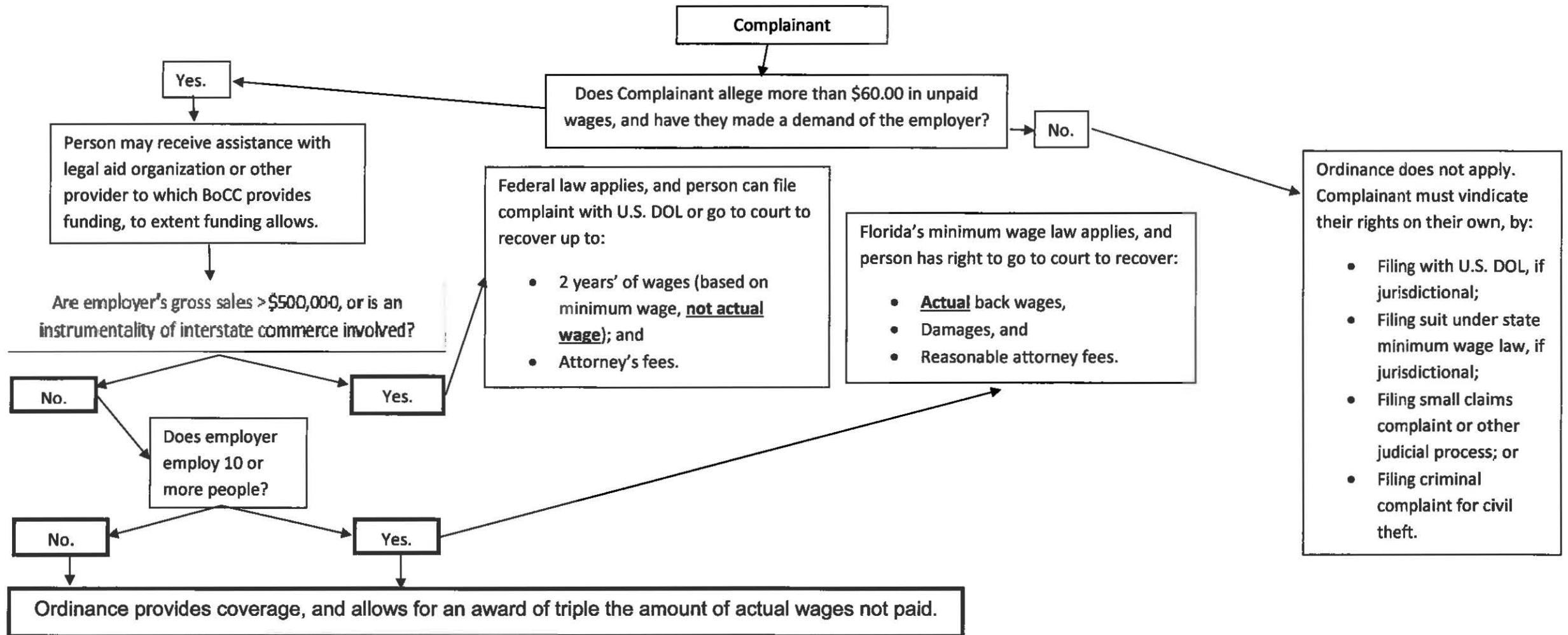
#### Arguments in favor:

- No growth in government.
- No ordinance required/Legal and regulatory scheme remain as at present.
- BoCC Can set funding at any level desired.
- Program can be ended without need to repeal ordinance.

#### Arguments against:

- Persons to be assisted limited by funding to provider.
- Smaller employers, where numerous problems exists, remain uncovered.
- Increased costs/workload to judicial system.
- No recovery of costs.

#### Option 4 – Modified Palm Beach County Model:



#### Arguments in favor:

- No growth in government.
- Smaller employers, where numerous problems exist, are covered.
- Costs remain fixed at funding level BoCC approves.
- Allows greater efforts to proceed while collecting data on whether more comprehensive ordinance scheme (as in Miami-Dade County) is needed.
- BoCC can defund legal aid organization while still allowing private cause of action to exist, without needing to repeal or amend ordinance.

#### Arguments against:

- Persons to be assisted could be limited by funding to provider.
- CAO states creation of cause of action w/out government role unprecedented.
- Increased costs/workload to judicial system with newly created cause of action.
- Opponents argue option costs more as it allows no recovery of costs to county.
- Opponents argue it has lower deterrent effect against wage theft.



Commission Work Session Date: July 30, 2015

Item No. : 4

## AUTOMATED AGENDA UPDATE

No Supporting Documentation