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INCREASE STATE MINIMUM WAGE

Senate Bill 1 (Substitute H-1)
First Analysis (2-19-97)

Sponsor: Sen. Loren Bennett
Senate Committee: Human Resources, Labor, and Veterans Affairs
House Committee: Labor and Occupational Safety

THE APPARENT PROBLEM:

Recently Congress increased the federal minimum wage rate. Although Michigan's minimum wage law affects a far smaller percentage of workers than its federal counterpart, there are those who feel the wage rate should be increased to correspond with the recent changes in the federal minimum wage and to help workers cope with increases in the cost of living since the state rate was last increased (to $3.35 per hour in 1981). House legislation (House Bill 4180) that would have raised the state minimum wage passed the House last session but died in Senate committee. This session, legislation to increase the minimum wage was reintroduced in the House (House Bill 4177) and introduced in the Senate (Senate Bill 1). Both bills simultaneously passed their houses of origin on February 12, 1997. Reportedly, a compromise has been reached between the two versions of the proposal.

THE CONTENT OF THE BILL:

The bill would amend the Minimum Wage Law of 1964 (MCL 408.384 et al.) to do all of the following:

** Increase the state minimum wage to $4.75 on May 1, 1997, and to $5.15 on September 1, 1997;

** Allow employers to pay a "training" wage of $4.25 an hour to new employees who were less than 20 years old for their first 90 days of employment;

** Freeze the wages of tipped employees at $2.65 an hour if their tips amounted to at least the difference between $2.65 and the state minimum wage;

** Allow the labor commissioner to bring civil actions against employers, for non-payment of the minimum wage, on behalf of all employees at the same worksite; and

** Subject employers who failed to pay the minimum wage or who violated the act's compensatory time provision to civil fines of up to $1,000 (in addition to bearing current civil liabilities).

<u>Minimum wage</u>. In addition to increasing the state minimum wage on May 1, 1997, and again on September 1, 1997, the bill would delete a provision in the act that currently requires that all changes to the state minimum wage after 1967 "reflect corresponding increases or decreases in the cost of living."

<u>Training wage</u>. The bill would add a new section to the act that would allow employers to pay a new employee who was under 20 years old a "training hourly wage" of $4.25 an hour -- in lieu of the minimum hourly wage -- for the first 90 days of that employee's employment. Employers would be prohibited from displacing (terminating or reducing hours, wages, or employment benefits of) employees to hire someone at a "training" wage. A person who violated this section of the bill would be subject to a civil fine of up to $1,000.

<u>Rate scales for workers unable to meet normal production standards</u>. Currently, the act allows the "wage deviation board" to establish a suitable scale of wages for "apprentices, learners, physically and mentally handicapped persons who are clearly unable to meet normal production standards." The rate scales for such workers may be less than the regular minimum wage rate for "experienced and nonhandicapped workers." The bill would amend the language of this provision, substituting "the director of the Department of Consumer and Industry Services" (formerly the departments of Labor and of Commerce), "persons with physical or mental disabilities" for "physically and mentally handicapped persons," and "workers who are experienced and who are not disabled" for "experienced and nonhandicapped workers."

<u>Tipped employees</u>. Currently, the act allows the "wage deviation board" to establish a deduction of up to 25 percent of the minimum wage paid by employers for employees who receive gratuities (so-called "tipped"

employees) or who receive board and lodging, clothing, or other items or services customarily furnished to employees for their benefit. The act requires the wage deviation board to determine (on its own or in response to a petition from an interested party) the amount of gratuities and the value to an employee of board, lodging, apparel, or other items or services customarily furnished to the employee for his or her benefit. The board also may grant a stay of present employment situation until they make such a determination. Under the act, the wages of employees who receive gratuities, further, cannot be reduced under the act unless the gratuities are proven gratuities as indicated by the employee's declaration for federal insurance contribution act (FICA) purposes and he or she was informed by the employer of these provisions.

The bill would delete the current wage deviation board provisions and instead set the minimum hourly wage of tipped employees (employees who received gratuities in the course of their employment) at $2.65 an hour if their gratuities equaled or exceeded the difference between $2.65 an hour and the minimum hourly wage established by the act. (The bill would define "gratuities" to mean tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered and that the employee reported to the employer for FICA purposes.)

Compliance, penalties. Under the act, if any employer pays an employee less than the state minimum wage, the employee may, within three years, either bring a civil suit to recover the difference plus an equal additional amount ("as liquidated damages"), costs and reasonable attorney fees, or file a claim with the "commissioner" (the director of the Department of Consumer and Industry Services), who must investigate the claim. If the commissioner determines that there is reasonable cause to believe that the employer has violated the act and cannot obtain voluntary compliance within a "reasonable" period of time, he or she must bring a civil suit under the act's provisions.

The bill would allow the commissioner to investigate and file civil actions on behalf of all of the employer's employees who were "similarly situated" at the same work site and who hadn't brought a civil action under the act. The bill also would subject employers who paid less than the minimum wage or who violated the act's compensatory time provision to civil fines of up to $1,000.

Tie-bar. The bill could not take effect unless House Bill 4177 was enacted.

HOUSE COMMITTEE ACTION:

The House Committee on Labor and Occupational Safety adopted a substitute (H-1) for the Senate-passed version of the bill. The House substitute deleted language in the Senate-passed version that would have allowed compensatory time in lieu of cash for overtime (these provisions, with changes, were added to House Bill 4177) and that would have allowed federal exemption of the state law. The House substitute also deleted changes to the definition section (section 2, which instead would be amended by House Bill 4177), and added a new section (originally in House Bill 4177) that would allow employers to pay new workers younger than 20 years old a reduced, "training" wage for the first 90 days of employment.

In addition, the House substitute would do the following:

** change the effective dates of the wage increase to May 1, 1997 (instead of July 1, 1997) and September 1, 1997 (instead of January 1, 1998),

** increase the wage for tipped employees to $2.65 an hour (instead of $2.52),

** treat violations of the compensatory time provision of the act similarly to non-payment of the minimum wage, and

** tie-bar the bill to House Bill 4177, which would amend some of the same sections of the state Minimum Wage Law, but which also would provide for compensatory time in lieu of cash for overtime (with provisions added to address concerns raised in the House) and change the definition of "employee" to include individuals not less than 14 (instead of 18) years old.

The House substitute for Senate Bill 1, and House Bill 4177 as passed by the House, both would amend sections 4, 4a, 7, and 7a of the Minimum Wage Law. In addition, Senate Bill 1 (H-1) would amend section 13 of the act and would add a new section 4b (originally added in House Bill 4177) to the act. House Bill 4177 as passed by the House also would amend section 2 (originally amended in Senate Bill 1) of the act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would affect approximately 60,000 tipped employees currently earning an average hourly wage of $3.57 an hour and approximately 70,000 non-tipped employees currently earning an average hourly wage of $3.35 an hour. The bill (with House Bill 4177) would result in minimal increases in revenues to state and local governments from taxes on the increased incomes of the affected employees. (2-19-97)

ARGUMENTS:

For:
The minimum wage has not been raised since January 1, 1981; in the intervening 16 years, the cost of living has increased considerably. The money that a minimum wage earner receives buys far less now than it did back in 1981. The purpose of minimum wage legislation is to provide workers with at least a minimum standard of living. At $3.35 an hour, a full time worker would make only $6,968 in a year. At $5.15 per hour, the same worker would make $10,712 a year. The bill (along with House Bill 4177) would help to bring Michigan's minimum wage into line with both increases in the cost of living and the increases in the federal minimum wage. In addition, the bill would make the minimum wage more of a living wage and would help to decrease the degree to which people being paid the minimum wage needed to rely upon public assistance.

For:
The bill would help some businesses to lower their employment costs by providing a training wage for inexperienced, younger employees by allowing the employer to pay less than the regular minimum wage for employees under the age of 20 during the first 90 days of their employment. Allowing for a training wage could encourage businesses to hire younger, untrained workers that employers might otherwise be less willing to employ because of the higher minimum wage

Response:
The bill would unfairly allow employers to pay a reduced wage to summer employees. In particular, this "training wage" provision could adversely affect college students who work during their summer vacations to help put themselves through school particularly adversely, since summer vacations usually only last about three months.

Against:
Some opponents of the bill argue that the marketplace (or at least employers), not the government, should determine wages. Some also believe that it is an immoral and improper abuse of governmental authority to order raises in the minimum wage. They argue that raising the minimum wage could lead to further inflation and could force employers to reduce their workforces. They point out that the businesses affected by Michigan's Minimum Wage Law are primarily small family-owned businesses and argue that these businesses should have the flexibility to pay the lower wages currently allowed in Michigan's law. If Michigan matches the federally-required minimum wage, the exemption these smaller businesses receive from the federal law is essentially made moot. These smaller businesses work with a smaller margin of profit than the larger businesses subject to the federal law and thus may be far more adversely affected by an increase in the amount that they must pay their employees. Although most small businesses in Michigan already pay more than the minimum wage, they should have the flexibility provided in Michigan's current law to set wage levels that are appropriate to their businesses. Furthermore, according to the National Federation of Independent Businesses, most minimum wage earners are not the working poor, but are predominately part-time second wage earners from middle class families.

Against:
The bill would require an increase in wages for tipped employees that opponents of the bill claim could increase labor costs for employers of tipped employees by $150 million per year. Opponents of raising the minimum payroll wage of tipped employees say that the $2.52 hourly wage already is higher than what is required in each of the states bordering Michigan, and nearly 20 percent higher than the $2.13 per hour payroll wage that is required by the federal government. Most of this increase, moreover, would go to servers employed in restaurants who are already making well over the minimum wage due to the tips they receive. The increase in costs for labor due to this increase in tipped wages could drive some employers out of business, or cause a significant increase in the prices of their products.

Current law requires employers to pay at least $2.52 per hour to their tipped employees and this is only allowed when the tipped employee receives enough hourly tip income to make the total of tip and payroll income equal to or greater than the minimum wage amount. As a result, it is unnecessary to increase the minimum wage for tipped workers. Under the current system, a tipped employee's tip income and payroll wage must combine to equal the minimum wage or better. If the employee does not receive tip income that is sufficient, when combined with the payroll wage, to meet the minimum wage, then the employer must increase the employee's payroll wage until the combination of tips and wages is equal to the minimum wage.

Furthermore, it should be noted that since tips are usually based on a percentage of the cost of the meal or service provided by the employee, the amount of money received by tipped employees has increased in accordance with the increases in the prices of the meals or services.

Opponents of this provision further argue that increasing the minimum payroll wages for all tipped workers would have “devastating” consequences for the Michigan restaurant industry, costing the industry prohibitive increases in labor costs and forcing the industry to shift payroll dollars from the true entry-level positions -- such as dishwashers and cooks -- to the bartenders, waiters, and waitresses who already earn considerably more than the new minimum wage. Increasing the minimum payroll wage of tipped employees makes no economic sense and is something that the highly competitive restaurant industry can ill afford.

Response:

According to the House Fiscal Agency, the approximately 60,000 tipped employees in the state currently earn an average hourly wage -- from both payroll income and income from tips -- of $3.37 an hour, a scant two cents an hour above the current minimum wage. It is only fair that if non-tipped employees are going to see an increase in the minimum wage, tipped employees also be afforded the modest increase proposed by the bill.

POSITIONS:

There are no positions on the bill.

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