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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 727 (as passed by the Senate)
Sponsor: Senator Robert Geake
Committee: Human Resources and Senior Citizens

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RATIONALE

The State's minimum wage rate currently is the same as the Federal minimum wage rate of \$3.35 an hour. Last fall, Congress amended the Fair Labor Standards Act to increase the Federal rate to \$3.85 per hour beginning April 1, 1990, and \$4.25 per hour beginning April 1, 1991. Other amendments to the Act included the provision for a training wage that is less than the minimum wage, and an increase in the "tip credit", i.e. the amount by which an employer may reduce the minimum wage paid to an employee when the employee's gratuities bring his or her total income up to the minimum wage level.

The Federal minimum wage had not been increased since 1981, and some apparently contended that inflation had eroded the purchasing power of the minimum wage workers, forcing them either to live at well below the poverty level or to apply for public assistance. After increasing the Federal minimum wage, however, Congress also established a training wage and increased the tip credit, ostensibly to help ease the burden of additional labor costs that could accrue to businesses because of the increase in the minimum wage, and to encourage businesses to hire and train young and unskilled workers.

In order to bring Michigan's minimum wage provisions into conformance with those of the Federal government, and to address, for those subject to the State law, some of the same issues concerning business' costs and workers' living standards that were addressed by the

Federal legislation, it has been suggested that Michigan's minimum wage provisions be amended to parallel the changes made in the Federal law.

CONTENT

The bill would amend the Minimum Wage Law to increase the minimum wage, establish a training wage, expand the category of persons exempt from the minimum wage requirement, require the Commissioner (i.e., the Director of Labor) to report to the Legislature on the effectiveness of the training wage, and increase the deduction from the minimum wage that an employer is entitled to receive for providing board, lodging, apparel and other services to the employee.

Specifically, the bill would increase the minimum wage from \$3.35 an hour to \$3.80 an hour beginning April 1, 1990, and to \$4.25 an hour beginning April 1, 1991. Further, the bill would allow an employer to pay an employee a training wage of at least 85% of the minimum hourly wage, but not less than \$3.35 per hour, for up to 90 days of employment after the date the employee was hired if all of the following circumstances existed:

- The employer did not lay off or reduce the wages of any other employee in the same or substantially similar position as a result of hiring an employee who was

S.B. 727 (3-28-90)

- paid a training wage.
- The amount of the training wages paid by the employer did not exceed 25% of the total wages paid by the employer for trainees and minimum wage employees in any calendar month.
- The employer informed the employee in writing before hiring the employee of the employer's intent to pay the training wage.

The bill would prohibit an employer from paying a training wage to an employee who was more than 19 years old or a migrant or seasonal agricultural worker as defined in the Federal Migrant and Seasonal Agricultural Worker Protection Act.

An employer wishing to hire an employee at a training wage would have to apply to the Commissioner for a separate authorization for the hiring of each employee at the training wage. The Commissioner would be required to issue the authorization if the employer agreed to do all of the following:

- Hire the employee to do productive work designed to provide training, technical, and other skills that were essential to his or her full and adequate performance.
- Provide to the employee and the Commissioner a copy of the training program.
- Post in a conspicuous place at the employment site a notice of the types of jobs for which the employer was providing a training wage.

An employer could not pay a new employee a training wage if the employee were already paid a training wage by another employer unless the new employer applied for and obtained an exception from the Commissioner. Upon application by an employer, the Commissioner, or his or her designee, would be required to grant an exception if the employer demonstrated to the Commissioner's satisfaction that the employee was employed in productive work as specified in the bill.

An employee would be required to provide to an employer proof of any other employment in which the employee was paid a training wage. An employer's good faith reliance on the

information provided by an employee regarding the previous payment of a training wage would be a complete defense to any civil or criminal action brought by any person for a violation of the bill or rules promulgated under it.

The Commissioner, not later than March 1, 1993, would be required to report to the chairpersons of the Senate and House standing committees responsible for legislation concerning labor on the effectiveness of the training wage as it applied to employees in this State who were not covered by the Federal minimum wage law.

The bill would expand the category of persons exempt from the minimum wage provisions to include an employee employed for not more than a total of 10 hours in excess of the maximum work week as specified by law, company policy, or the terms of an employee contract, if during those hours the employer were providing remedial education to an employee lacking a high school diploma or educational attainment at an eighth grade level as determined by standards set forth in rules promulgated by the Commissioner.

The Act currently requires the wage deviation board to determine the amount of the gratuities and the value to the employee of board, lodging, apparel or other items or services customarily furnished to an employee for his or her benefit, and establish a reasonable deduction for those items from the minimum wage paid by the employer. The total deduction or "tip credit" cannot exceed 25% of the hourly wage rate. The bill specifies that beginning April 1, 1990, the total deduction could not exceed 45% of the hourly wage rate or result in an hourly wage of less than \$2.51 an hour. Beginning April 1, 1991, the total deduction could not be more than 50% or result in an wage of less than \$2.51 an hour.

MCL 408.384 et al.

BACKGROUND

Federal Law

The Federal minimum wage law requires every employer to pay the Federal minimum wage rate to "each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is

employed in an enterprise engaged in commerce or in the production of goods for commerce".

"Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and, until April 1, 1990, is one of the following:

- An enterprise, other than an enterprise that comprises exclusively retail or service establishments, whose annual gross volume of sales made or business done is not less than \$250,000. (This is referred to as the "dollar volume test for enterprise coverage".)
- An enterprise that comprises exclusively one or more retail or service establishments, and whose annual gross volume of sales made or business done is not less than \$362,500. (This also is a "dollar volume test".) Retail and service establishments, other than laundry and dry cleaning establishments, hospitals, schools, and other health care or educational institutions, are exempt from the Federal minimum wage law if more than 50% of the establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and such an establishment is not an enterprise as defined in the Fair Labor Standards Act.
- An enterprise engaged in laundering, cleaning, or repairing clothing or fabrics.
- An enterprise engaged in the business of construction or reconstruction, or both.
- An enterprise engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of the institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit).

- An activity of a public agency.

The recently enacted amendments to the Federal minimum wage law provide that beginning April 1, 1990:

- The dollar volume test for enterprise coverage will be raised from \$250,000 (\$362,500 for retail firms) to \$500,000.
- The exemptions for small retail establishments will be repealed. Employees of such establishments will be subject to minimum wage and overtime pay provisions insofar as they are individually engaged in commerce or the production of goods for commerce in a workweek.
- Construction and laundry/dry cleaning enterprises, which previously were subject to enterprise coverage irrespective of their annual dollar volume of business, become subject to the \$500,000 test.
- Hospitals, schools, and public agencies continue to be subject to enterprise coverage without regard to their volume of business.
- Employees of firms that have an annual volume of business of less than \$500,000, including retail and service establishments, will be covered by the Fair Labor Standards Act in any workweek in which they are individually engaged in commerce, the production of goods for commerce, or a closely related activity.
- Any enterprise that ceases to be covered by virtue of the increase in the enterprise coverage dollar test must continue to pay its employees not less than \$3.35 per hour, and continues to be subject to the overtime pay and child labor provisions of the Fair Labor Standards Act.

State Law

The Michigan Minimum Wage Law generally prohibits an employer from paying an employee at a rate less than the minimum rate prescribed in the law. "Employee" means an individual not less than 18 years of age employed on the premises of the employer or at a fixed site designated by the employer, or a minor employed in an alcoholic beverage establishment under conditions specified in the

Youth Employment Standards Act. "Employee" also includes an individual employed to perform the practice of massage (myomassologist) as defined in the Occupational Code. "Employer" means a person, firm, or corporation, including the State and its political subdivisions, agencies, and instrumentalities, and a person acting in the interest of the employer, who employs two or more employees at any one time within a calendar year.

The provisions of the State Minimum Wage Law do not apply to:

- Any employer who is subject to the minimum wage provisions of the Federal Fair Labor Standards Act, except in any case in which application of the Federal minimum wage provisions would result in a lower minimum wage than provided for in the State law.
- Persons employed in summer camps for not more than four months.
- Handicapped employees covered by a blanket deviation certificate or other special certificate issued under the Fair Labor Standards Act.

FISCAL IMPACT

The bill would have an impact on those employers with gross annual receipts of less than \$500,000 that compensate employees at the minimum wage. The current wage of \$3.35 per hour would be increased by 13.4% to \$3.80 on April 1, 1990, and by an added 11.8% one year later. Employees could use a training wage equal to 85% of the base rate for 90 days provided, generally, that the employee was between 18 and 19 years old. (The Minimum Wage Law only regulates the minimum wage of employees aged 18 or older and minors aged 16 or older who are permitted to work in establishments that sell or manufacture liquor.) This could soften the effect of the increase in the minimum wage rate.

This bill contains the same provisions as the recently enacted Federal legislation. In 1987-88, the State of Michigan employed 192 people in full-time minimum wage jobs. This base rate of \$3.35 per hour increase to \$3.80 in April 1990 will increase the State payroll for these employees by 13.4%. If the same number of employees is evident in the 1989-90 fiscal

year as in 1987-88, the total State payroll will increase by \$939.60 for each employee, for a total increase of \$180,403. Since the number of short-term employees in the relative Civil Service classifications is not known, the precise impact on State government cannot be determined. Figures are not available for local governmental units.

Other provisions of this bill could reduce the wage level for minimum wage employees to as low as \$2.51 per hour for those employers with gross annual receipts lower than \$500,000. (Other firms are covered by the Federal statute.) An employer can deduct the value of services from the hourly rate. These services could include the following government-supplied benefits:

- Employer-furnished uniforms.
- Residential costs and living expenses.
- Provided meals.
- Other services provided without cost to employees.

Employee pay levels may also be reduced if it can be shown that gratuities (i.e., tips) represent a significant part of an employee's income.

Potentially, employer credits for these services could double with a maximum saving of \$1.29 per hour or \$2,693.52 annually for minimum wage employees. Savings could be greater for higher paid employees depending on the value of gratuities and services if this contingency were not addressed in a negotiated contract.

This bill would not increase the payroll costs of local governmental units since the State statutory minimum wage would not be higher than the Federal minimum wage of \$3.80 per hour.

ARGUMENTS

Supporting Argument

The bill would bring Michigan's Minimum Wage Law into conformance with the Federal minimum wage standards, encourage businesses to hire young and unskilled workers, and help restore to minimum wage earners some of their purchasing power that has been eroded significantly over the years by inflation and a frozen, subpoverty-level minimum wage.

Further, the bill would help alleviate the dependence of minimum wage earners on public assistance and could reduce the possibility that they will quit their minimum wage jobs and apply for welfare.

According to data supplied by the State Department of Labor, there are 180,000 workers in Michigan who earn \$3.35 per hour, 350,000 who earn less than \$4 per hour, and 542,000 who earn less than \$4.50 per hour. Of the workers who earn minimum wage, 70% are adults, 63% are women, 92% come from low-income families, and 70% are heads of households. A full-time minimum wage worker currently earns less than \$7,000, which is 10% under the poverty level if he or she just has one other person to support and 26% below the poverty level if there are several dependents. An individual with two dependents currently can earn 15% more on AFDC (Aid to Families with Dependent Children) than he or she can while working full-time at minimum wage. When the minimum wage rate cannot sustain a family at even the poverty level, the minimum wage-earning head of the household might quit that job and apply for welfare and other social services, knowing that with such aid he or she could better provide for the family. It is the taxpayer, then, who must subsidize the business community's failure to pay a living wage.

Supporting Argument

The training wage and tip credit provisions are very important to small, struggling new businesses that might not be able to afford the otherwise inflexible increase in their labor budgets that the new minimum wage levels would cause. Without such help, some businesses could find labor costs too great and could be forced to close before they had a fair chance to succeed, which would be a loss to the State and the businesses' communities, customers, and employees. The average wage for a tipped employee in Michigan is \$8.06 per hour during lunch hours (\$2.51 base wage plus \$5.55 in tips) and \$11.52 per hour during dinner hours (\$2.51 base wage plus \$9.01 in tips). The Internal Revenue Service treats tips as wages paid by employers. Therefore, each employer must pay Social Security, payroll, and Federal employment taxes on all tips. It is only fair that employees be granted a larger tip credit.

Response: If the tip credit were increased for employers as proposed, tipped employees would receive no benefit from the increase in the minimum wage. For example, if an employer chose to take the maximum tip credit of 45% in 1990, the minimum wage would have to be \$4.58 if tipped employees were to realize any increase in their base wage rate of \$2.51. (In other words, $\$4.58 \text{ minimum wage} - \text{tip credit of } (45\% \times \$4.58) = \$4.58 - \$2.06 = \$2.52 \text{ wage base.}$) If an employer chose to take the maximum tip credit of 50% in 1991, the minimum wage would have to be \$5.03 for tipped employees to realize an increase in their base wage. Tipped employees usually must pay their own medical benefits, are required to report a percentage of their income as tips for tax purposes, and are not guaranteed that they will receive any tips at all. Tipped employees work as hard as other workers and deserve to see their earnings increase after years of coping with dwindling purchasing power.

Supporting Argument

Small businesses are the largest employer of first-time employees who are less skilled than their more experienced counterparts. Since small businesses also must be especially competitive and efficiently managed to stay in business and often do not have the financial resources to adjust easily to increasing labor costs, the subminimum wage would make young people and unskilled workers more attractive to potential employers.

Opposing Argument

The tuition costs for public universities in Michigan are the fourth highest in the nation and even the new Federal minimum wage of \$4.25 an hour (in 1991) would not help much if these costs must be covered solely by a student's income. To finance one year at the University of Michigan, the most expensive public university in the State, students in 1988 would have had to work for 40 hours a week for nine and one-half months to cover the cost of their tuition and an additional \$300 a month for rent, books, food and other living expenses. Students at Northern Michigan University, the most affordable public university in the State, would have had to work full-time for eight months to afford one year of education. For these students, the minimum wage is not a living wage. The training wage proposed by the bill would make it even more difficult for

students to finance their college studies, especially if the students were depending on their wages to help cushion the economic hardship that will be inevitable if Federal student aid programs are reduced to the extent that has been proposed by the current administration.

Opposing Argument

Contrary to popular belief, businesses can afford to pay workers a higher minimum wage than that proposed by the bill; indeed, they cannot afford not to. Several studies have indicated that by the year 2000, the United States no longer will be able to compete economically or technologically if the majority of its workers have only a high school degree. Women and minorities, traditionally less educated than white males, increasingly are a larger percentage of the population and the work force. It is in the best interest of businesses to pay their workers a living wage that will enable them to pursue the higher education they so desperately need to make themselves and their employers competitive and successful.

Opposing Argument

The bill does not go far enough: the minimum wage should be higher than the levels proposed. While the minimum wage has remained at the same level for almost 10 years, the cost of living has increased by 54% and inflation has eaten away at workers' purchasing power, causing many to turn to government assistance to make ends meet. According to U.S. Department of Labor and Congressional Budget Office data, the minimum wage was equal to 104.6% of the poverty level for a family of three during the 1960s; and 102.6% of the poverty level during the 1970s. By 1989, however, the minimum wage fell to an estimated 70.5% of the Federal poverty level. Just to keep pace with inflation, the minimum wage today should be \$5.15. The increases proposed by the bill would raise the percentage only to 76.2% of the projected poverty level for 1990 and 81.5% of the level for 1991. The Congressional Budget Office's projected poverty levels for a family of three are \$10,369 for 1990 and \$10,836 for 1991. According to the U.S. Department of Health and Human Services' poverty income guidelines, in 1989 the poverty level for a family of four was \$12,100; in 1990 the projected level will be \$12,700 and in 1991,

the projected level will be \$13,200. A family of four receiving AFDC, on the other hand, will receive \$10,464 annually and, in addition, free health care, a benefit that many who work for minimum wage do not receive.

Response: According to some, the minimum wage was never meant to be used as a living wage to support a family. It was always intended to be simply a floor to help high school and college students earn some money to help pay educational expenses and obtain much needed work experience.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.