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AMEND MINIMUM WAGE LAW

House Bill 4177 as enrolled
Public Act 2 of 1997
Sponsor: Rep. Bob Emerson
House Committee: Labor and
Occupational Safety
Senate Committee: none

Senate Bill 1 as enrolled
Public Act 1 of 1997
Sponsor: Sen. Loren Bennett
Senate Committee: Human Resources,
Labor, and Veterans Affairs
House Committee: Labor and Occupational
Safety

Second Analysis (3-26-97)

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). It has also been suggested that any legislation introduced to raise the minimum wage should also deal with several of the problems often raised in opposition to increasing the wage rate. In particular, suggestions have been made to allow employers to pay a training wage to young, inexperienced employees, to allow employees to take time off instead of pay for overtime hours under certain circumstances, and to allow for civil actions to be brought by the labor commissioner for failure to pay the minimum wage.

THE CONTENT OF THE BILLS:

Both bills would amend the Minimum Wage Law of 1964 to increase the state minimum wage. Currently, the Michigan minimum wage is set at \$3.35 per hour. Both bills would provide for two increases in the minimum hourly wage set by the state. Specifically, the bills would set those increases as follows: on May 1, 1997, the minimum wage would be increased to \$4.75; and on September 1, 1997, the wage would be increased to \$5.15. These changes would mirror the changes provided for in federal law with the exception of the effective dates, which are, under federal law, October

1, 1996 and September 1, 1997. Both bills would also remove language in the act that requires increases or decreases in the minimum hourly rate instituted after 1967 to reflect corresponding changes in the cost of living.

House Bill 4177. In addition, to the minimum wage provisions, House Bill 4177 would decrease the minimum age in the definition of "employee" from 18 to 16 years old. This would move the age closer to the lowest age that a person could work under the Youth Employment Act (14 years old) and federal law (also 14 years old). The bill would also remove language in the definition of employee that specifically includes individuals employed to provide the practice of massage. In addition, the bill would allow employees to receive compensatory time off instead of monetary overtime payment. The rate of time off would have to be no less than one and one-half hours for each hour of overtime worked and the provision of compensatory time off for overtime would be subject to the restrictions listed below.

Only those employers that allowed their employees at least ten days of leave per year without loss of pay could offer compensatory time off for overtime to their employees. If the employees were represented by a collective bargaining agent or other representative of the employees, compensatory time off would have to be provided in accordance with the collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representative of the employee. If the employees were not represented,

then the employer would have to adopt a plan for providing compensatory time off and provide a written copy of that plan to the employees. The plan would have to allow employees to provide their employer with an express, voluntary written request for time off instead of monetary compensation before the performance of the overtime assignment. Further, unless a collective bargaining agreement prohibited it and as long as the employees were given no less than 60 days notice, the employer could end its plan at any time.

Employers would be barred from conditioning an employee's employment on acceptance of or request for compensatory time off. Further, employers could not directly or indirectly intimidate, attempt to intimidate, or otherwise coerce their employees into either taking compensatory time off for overtime work instead of payment or vice versa, nor could an employer force an employee to use compensatory time off that he or she had already earned. In addition, employers could not discriminate between employees based upon an employee's decision to request or to not request compensatory time off instead of overtime pay. An employer who violated these restrictions would be subject to a civil fine of no more than \$1,000.

Employees could not accrue more than 240 hours of compensatory time off. Employers would have to provide each employee with a statement of the amount of compensatory time off that he or she had earned during each pay period in the employee's pay record. In addition, the employer would have to provide each employee with a record of the amount compensatory time off that he or she had earned or been paid for in a statement of earnings for the period in which compensatory time off had been earned or paid. Employees could use compensatory time off for any reason, as long as the employee's use of the time off would not unduly disrupt the operations of the employer.

An employee could request monetary compensation for earned compensatory time and the employer would have to pay the employee for the compensatory time within 30 days from the employee's request for payment. The amount paid for the compensatory time would have to be at a rate no less than the regular rate earned by the employee at the time the overtime work had been performed. Furthermore, an employee who left his or her employment (willingly or unwillingly) with unused compensatory time off would be entitled to be paid for his or her unused compensatory time at the same rate as above.

Finally, receipt of or eligibility for the payment of money for earned compensatory time could not be used by either an employer (to oppose a terminated

employee's application for unemployment compensation) or by the state (to deny unemployment compensation or to diminish a terminated employee's entitlement to unemployment compensation benefits under the Michigan Employment Security Act).

Senate Bill 1. In addition to the overlapping provisions increasing the minimum wage listed above, Senate Bill 1 would also allow for a training wage to be paid to younger employees, set the wages of tipped employees at \$2.65 per hour, and allow the labor commissioner to bring certain civil actions and provide fines for certain violations.

Training wage. Specifically, 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.

Rate scales for workers unable to meet normal production standards. 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."

Tipped employees. 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. (This amounts to a minimum wage of \$2.52 an hour.) 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 it makes such a determination. Further, under the act, the wages of

employees who receive gratuities cannot be reduced unless the gratuities are proven to be 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. Neither bill could take effect unless both were enacted.

MCL 408.382 et al.

BACKGROUND INFORMATION:

The Minimum Wage Law of 1964 sets the minimum hourly wage rate that employers must pay to their employees in Michigan. In certain cases, however, employers are governed by the federal minimum wage law. The state's minimum wage law supersedes the federal law in cases where the minimum hourly wage established by the state's law is greater than the federal minimum hourly wage. However, the Michigan act is superseded by the federal minimum wage law in cases where the employer is: 1) engaged in interstate

commerce; 2) has a gross annual dollar volume of \$500,000; 3) a hospital or health care facility that cares for the sick, aged or mentally ill; 4) a pre-school, elementary or secondary school, or college; 4) an agricultural employer who employs 500 man days of agricultural labor in a quarter for the current or previous year; 5) a federal, state, or local government; or 6) any enterprise covered by the Fair Labor Standards Act on March 31, 1990. (This refers to those employers who were subject to the federal minimum wage law in 1990 when the gross annual dollar volume requirement was raised from \$362,500 to \$500,000. Those businesses that had a gross dollar volume of \$362,500 or more but less than \$500,000 were required under federal law to continue to pay at least \$3.35 an hour, but were not required to pay the new federal minimum).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, because the bills would increase the personal incomes of tipped and non-tipped minimum wage earning employees, state and local government revenues would increase. However, any change would be minimal due to the limited number of jobs that would be affected. (4-7-97)

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 bills 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 bills 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:

The marketplace (or at least employers), not the government, should determine wages. It is an immoral and improper abuse of governmental authority to order raises in the minimum wage. Raising the minimum wage could lead to further inflation and could force employers to reduce their workforces. The businesses affected by Michigan’s Minimum Wage Law are primarily small family-owned businesses and 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 (from 25 percent below the general minimum wage, or \$2.52 an hour, to a fixed \$2.65 an hour) 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.

For:

Many workers complain that while increases in income are more than welcome what they really need is more time, particularly time off from work in order to spend time with their families, catch up on work around the house, and simply to relax. The bills’ provisions will allow employees the option under certain circumstances

to take compensatory time off instead of payment for overtime hours. This will provide another option for both employers and employees to deal with overtime payments that in many cases could benefit both the employer and the employee.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Against:

The compensatory time off provisions pose the potential for increased litigation and the risk that employees will suffer as a result of the provisions. It would be difficult for employees to establish that an employer violated any of the provisions and even if the violations could be proven, the employee would be forced to sue his or her employer in order get the employer to obey the bills' provisions. Employers who choose not to follow the restrictions provided in the bill would be able to force employees to choose between their jobs and attempting to force the employer to comply. In addition, the bills do not define a number of important terms, thus increasing the risk of litigation to establish definitions. For example, an employee may not use compensatory time off if it will "unduly disrupt" the employer's operations; what degree of disruption would be considered undue? The bills could be improved by providing employees with more discretion, thus decreasing the risk that employers could abuse the system.

Analyst: W. Flory
