

Legislative Analysis



MINIMUM WAGE AMENDMENTS

Phone: (517) 373-8080
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Senate Bill 1171 as enacted
Public Act 368 of 2018
Sponsor: Sen. Sen. Dave Hildenbrand
House Committee: Michigan Competitiveness
Senate Committee: Government Operations
Complete to 3-11-19

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The legislature adopted an initiative petition creating the Improved Workforce Opportunity Wage Act on September 5, 2018, enacting it as 2018 PA 337.¹ Senate Bill 1171, enacted as 2018 PA 368, amends the Improved Workforce Opportunity Wage Act to do, among other things, the following:

- Reduce annual increases of Michigan's minimum wage prescribed under the Act. Under Senate Bill 1171, that wage will be \$10.10 per hour for 2022, rather than \$12 per hour for that year as under the Act.
- Remove a provision under which annual adjustments after 2022 are based on inflation. Senate Bill 1171 instead prescribes annual increases that bring the minimum wage to \$12.05 in 2030, with no statutory increases after that year.
- Eliminate language that increases the minimum wage for employees who receive tips in the course of their work from the current 38% of the general minimum wage to 100% of that wage by 2024. Senate Bill 1171 fixes the minimum wage rate for tipped employees at 38% of the general minimum wage.
- Eliminate other provisions regarding tipped employees, including employer record-keeping and notification requirements.

2018 PA 337, as amended by 2018 PA 368, takes effect March 29, 2019.

FISCAL IMPACT: See *Fiscal Information*, below, for a detailed discussion of the fiscal impact of the bill.

BACKGROUND INFORMATION:

The ballot question committee Michigan One Fair Wage proposed a law increasing both the Michigan minimum wage and the percentage of that wage that must be paid to tipped employees. On August 24, 2018, the Michigan Board of Canvassers certified that the initiative petition filed by the ballot question committee had an adequate number of signatures for it to move forward. The legislature received the initiative, which is titled the Improved Workforce Opportunity Wage Act, on August 27.

The Michigan Constitution of 1963 requires that the legislature either enact or reject an initiative without amendment within 40 days of receipt, meaning in this case that the legislature had until October 5 to act. The Constitution also allows the legislature to propose a different measure on the same subject if it rejects the proposal before it. If the legislature had rejected or failed to pass the initiative, it would have gone before the voters on the November 2018

¹ See the HFA analysis for a detailed description of the Improved Workforce Opportunity Wage Act (2018 PA 337): <http://legislature.mi.gov/documents/2017-2018/initiative/pdf/MinimumWageInitiativeAnalysis.pdf>

ballot. If the legislature had rejected the initiative and proposed an alternate measure, both measures would have gone before the voters. Instead, on September 5, the legislature approved the Improved Workforce Opportunity Wage Act as written. An enacted initiative is not subject to veto by the governor.²

THE CONTENT OF THE BILL:

The Improved Workforce Opportunity Wage Act largely replicates—with changes—the Workforce Opportunity Wage Act, 2014 PA 138, replacing and superseding that earlier minimum wage law without repealing it outright.³ The most notable differences between the two acts include provisions in the Improved Workforce Opportunity Wage Act that increase Michigan’s minimum hourly wage from the current \$9.25 an hour to \$12 an hour by January 1, 2022, and provisions that increase the percentage of that minimum wage that must be paid to a tipped employee from the current 38% to 100% by January 1, 2024.

Senate Bill 1171 revises those provisions of the Improved Workforce Opportunity Wage Act as described below.

Minimum Hourly Wage Rate

Under the Improved Workforce Opportunity Wage Act, the current general minimum wage of \$9.25 an hour increases according to the following schedule:

Beginning January 1, 2019:	\$ 10.00
Beginning January 1, 2020:	\$ 10.65
Beginning January 1, 2021:	\$ 11.35
Beginning January 1, 2022:	\$ 12.00

Beginning January 1, 2023, and on January 1 of each following year, the wage is adjusted by the rate of inflation, as calculated the previous October, based on the increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the previous 12 months, as published by the Bureau of Labor Statistics. There is no cap on the size of an increase. However, no such increase can take effect if Michigan’s unemployment rate for the year preceding the increase was 8.5% or higher.

Under Senate Bill 1171, the current general minimum wage of \$9.25 an hour will increase to \$9.45 beginning January 1, 2019, and then increase by a prescribed amount every following January 1 until it equals \$12.05 beginning January 1, 2030. There are no further increases after the wage reaches \$12.05.

Table 1 compares the general minimum wage under the Improved Workforce Opportunity Wage Act with that wage under Senate Bill 1171. (Note that the minimum wage under the Act includes adjustments for inflation beginning in 2023.)

² See <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-Article-II-9.pdf>

³ For purposes of this analysis, “currently,” “current law,” and “the current minimum wage” refer to the Workforce Opportunity Wage Act (2014 PA 138), which is in effect until March 29, 2019; “the Improved Workforce Opportunity Wage Act,” “the Act,” and “the initiative petition” refer to the Improved Workforce Opportunity Wage Act, 2018 PA 337, which takes effect March 29, 2019; and “Senate Bill 1171” and “the bill” refer to the amendments made to the Improved Workforce Opportunity Wage Act by 2018 PA 368, which also takes effect March 29, 2019.

Table 1: Minimum Wage Comparison

Calendar Year	Minimum Wage under the Act	Minimum Wage under SB 1171
2018	\$9.25	\$9.25
2019	\$10.00	\$9.45
2020	\$10.65	\$9.65
2021	\$11.35	\$9.87
2022	\$12.00	\$10.10
2023	\$12.25*	\$10.33
2024	\$12.51*	\$10.56
2025	\$12.76*	\$10.80
2026	\$13.02*	\$11.04
2027	\$13.29*	\$11.29
2028	\$13.57*	\$11.54
2029	\$13.86*	\$11.79
2030	\$14.16*	\$12.05

* Estimates based on inflation projections.

The bill also eliminates the inflation-adjustment provisions of the Act. It still provides that a regularly scheduled increase does not take effect if Michigan’s unemployment rate is 8.5% or higher for the year preceding the increase. An increase that is skipped under this provision takes effect in the first calendar year following a year for which the state’s unemployment rate is under 8.5%. For the years following that, increases are again keyed to the calendar year schedule prescribed in the bill.

Minimum Wage for Tipped Employees

Under current law, employees who receive tips in the course of their employment have a minimum hourly wage that is 38% of the general minimum wage, which currently equates to \$3.52 an hour. If the sum of that wage and the tips received does not at least equal the general minimum wage, the employer must make up the shortfall.

Under the Improved Workforce Opportunity Wage Act, the percentage of the general minimum wage that a tipped employee must be paid increases as follows:

- Beginning January 1, 2019: 48%
- Beginning January 1, 2020: 60%
- Beginning January 1, 2021: 70%
- Beginning January 1, 2022: 80%
- Beginning January 1, 2023: 90%
- Beginning January 1, 2024: 100%

That is, by 2024 there is no difference between a tipped employee minimum wage and the general minimum wage.

Senate Bill 1171 eliminates the increase in the percentage of the general minimum wage that a tipped employee must be paid and fixes that percentage at 38%.

Table 2 compares the tipped employee minimum wage under the Improved Workforce Opportunity Wage Act with that wage under Senate Bill 1171. (Note that, beginning in 2023, the general minimum wage under the Act will include adjustments for inflation; under the Act, it is the basis for the tipped employee wage.)

Table 2: Tipped Minimum Wage Comparison

Calendar Year	Tipped Minimum Wage under the Act	Tipped Minimum Wage under SB 1171
2018	\$3.52	\$3.52
2019	\$4.80	\$3.59
2020	\$6.39	\$3.67
2021	\$7.95	\$3.75
2022	\$9.60	\$3.84
2023	\$11.03*	\$3.93
2024	\$12.51*	\$4.01
2025	\$12.76*	\$4.10
2026	\$13.02*	\$4.20
2027	\$13.29*	\$4.29
2028	\$13.57*	\$4.39
2029	\$13.86*	\$4.48
2030	\$14.16*	\$4.58

* Estimates based on inflation projections.

The bill also eliminates the following provisions of the Act pertaining to tipped employees:

- A provision that tips are the property of the employee who receives them, except under a voluntary tip-sharing agreement where tips are shared with other nonmanagerial employees in the chain of service.
- A provision that tips and service charges paid to an employee are in addition to, and may not count toward, the wages due to the employee.
- A requirement that employers must provide employees and consumers with written notice of their plan to distribute service charges.
- A requirement that employers must keep records showing compliance with the law governing tipped employee pay for at least three years after the date of an employee’s last pay period.
- A provision that the minimum wage for tipped employees applies only if the employee is informed by the employer of the relevant provisions of the Act in writing, at or before the time of hire, and gives his or her written consent. [The bill does not remove the entire provision, but only the underlined language.]

Other Changes

The bill includes a provision regarding junior ice hockey players that was added to the Workforce Opportunity Wage Act in December of 2017 but was not included in the Improved Workforce Opportunity Wage Act.⁴

The bill also removes language providing that the Improved Workforce Opportunity Wage Act does not affect 1965 PA 166, commonly referred to as the prevailing wage law, which was repealed by 2018 PA 171 in June of 2018.⁵

Finally, the bill makes several technical or editorial amendments for clarity or consistency, including correcting what appears to be an error made in compiling the initiative petition (in section 3) and italicizing the numbers of subparagraphs (e.g., in section 4a).

MCL 408.933 et al.

FISCAL INFORMATION:

State and Local Costs and Revenues

Although the potential impact of changes in the minimum wage on state and local tax revenues cannot be determined, it is likely to be small relative to total collections given the modest size of the cohort that would see the most significant impacts from an increase in the minimum wage. From a state and local government perspective, only a small portion of government employment is typically composed of minimum wage workers. Therefore, any changes in government labor costs due to an increasing minimum wage would likely be insignificant relative to overall expenditures.

State Medicaid Costs – Home Help and Health Care Workers

Reducing the annual rate of growth in the state's minimum wage under the Improved Workforce Opportunity Wage Act would reduce state Medicaid costs for adult home help workers and direct behavioral health care workers, as these workers are paid at or near the state's minimum wage.

Reducing the annual rate of growth in the state's minimum wage under the Improved Workforce Opportunity Wage Act would reduce state Medicaid costs, beginning at \$3.8 million Gross (\$1.3 million GF/GP) during FY 2018-19, and the reduction would grow annually as the state's minimum wage rate of growth is reduced. In FY 2021-22, reducing the state minimum wage from \$12 to \$10.10 would reduce state Medicaid costs by \$89.1 million Gross (\$31.6 million GF/GP). The federal funds that would be reduced are Medicaid matching funds; the current federal medical assistance percentage (FMAP) match rate is 64.45%.

It should be noted that the FY 2018-19 Department of Health and Human Services (DHHS) budget would not have to be revised, since the Medicaid costs from the passage of the Improved Workforce Opportunity Wage Act have not been incorporated into the FY 2018-19 DHHS budget.

⁴ <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0483-B03AE529.pdf>

⁵ This repeal was itself effected through enactment of an initiative petition. See the HFA analysis at: <http://legislature.mi.gov/documents/2017-2018/initiative/pdf/Prevailingwagerepealinitiative.pdf>

State Medicaid and Cash Assistance Caseloads

Reducing the annual rate of growth in the state's minimum wage under the Improved Workforce Opportunity Wage Act would increase public assistance caseloads and expenditures, as an individual's earned income directly affects an individual's eligibility and the cash assistance benefit amount.

Reduced wages would increase eligible Medicaid recipients by less than 1%, thus increasing Medicaid program costs by \$14.0 million Gross (\$2.7 million GF/GP) during FY 2018-19, and the increase would grow annually as the state's minimum wage rate of growth is reduced. In FY 2021-22, reducing the state minimum wage from \$12 to \$10.10 would increase Medicaid program costs by \$43.0 million Gross (\$9.0 million GF/GP). The federal funds that would be reduced are Medicaid matching funds; the current FMAP match rate is 64.45% for traditional Medicaid and 93.25% for Healthy Michigan Plan.

Reduced wages would increase Family Independence Program (FIP) costs by approximately \$1.0 million GF/GP during FY 2018-19, and the increase would grow annually as the state minimum wage rate of growth is reduced. In FY 2021-22, reducing the state minimum wage from \$12 to \$10.10 would increase FIP costs by approximately \$5.0 million GF/GP.

It should be noted that the FY 2018-19 DHHS budget would not have to be revised, since the caseload reductions from the passage of the Improved Workforce Opportunity Wage Act have not been incorporated into the FY 2018-19 DHHS budget.

ARGUMENTS:

For:

Proponents of the bill argued that the increases to the minimum wage that the legislature enacted as 2018 PA 337 are too steep for businesses to accommodate without hardship and disruption. They pointed out that Michigan's minimum wage law was revised as recently as 2014, and that the state's current minimum wage of \$9.25 is higher than that of the neighboring states of Illinois (\$8.25), Indiana (\$7.25), Ohio (\$8.55 generally or \$7.25 for small businesses), and Wisconsin (\$7.25).⁶ If businesses have a choice about where to locate, they said, Michigan's higher minimum wage will put the state at a competitive disadvantage in attracting those employers and their jobs. Proponents noted that the bill keeps the initiative petition's goal of a \$12 minimum wage, but delays attaining that goal until 2030, instead of 2022.

For:

Proponents of the bill argued that eliminating the tipped minimum wage (that is, requiring tipped employees to be paid the general minimum wage) would increase the labor costs of restaurant owners by over 240% and could mean the loss of 14,000 restaurant jobs in Michigan. They also cited surveys suggesting that, with tips, Michigan restaurant servers make an average of \$17 an hour and that a majority of servers prefer the tipping system of compensation.

Response:

Opponents of the bill maintained that the tipping system of server compensation is a practice that allows businesses to shift to customers the burden of paying their employees a fair wage. Although employers are required to make up the difference if an employee's wages and tips total less than the minimum wage, critics held, this provision is not consistently enforced.

⁶ See <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx> (Note that Illinois enacted legislation in February of 2019 that will phase in a minimum wage increase to \$15 an hour by 2025.)

Critics also noted that servers are paid the lower wage even at times of day, or in performing tasks, when there are no customers to tip them. Finally, the bill's opponents cited studies suggesting that the tipping system of compensation perpetuates and amplifies racial and gender inequities in pay, opportunity, and customer service.

Against:

Critics argued that the bill would effectively nullify an initiative whose appearance on the ballot had widespread support among voters. In explanations of their “no” votes on the bill, several opponents made the following statement on the House floor:

The people of the state of Michigan have, through our Constitution, reserved to themselves the power to initiate and enact laws. Over 370,000 of our fellow citizens exercised that constitutional right when they signed an initiative petition to enact the Improved Workforce Opportunity Wage Act and ensure that all Michiganders have a chance to earn one fair wage. Those same citizens were wrongly denied the right to vote on this initiated law by a cynical, political act of the Legislature earlier this year. Today, the House compounds that injury by cutting the wages of hardworking Michiganders and gutting this hard-won initiated law.

Against:

Opponents also argued that Senate Bill 1171 is unconstitutional because it seeks to amend an initiated law in the same legislative session in which it was adopted by the Legislature. In 1964, Attorney General Frank Kelley wrote that “the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963.”⁷

Response:

On December 3, 2018, Attorney General Bill Schuette reversed the earlier opinion, finding that the Michigan Constitution does not prohibit the legislature from adopting and then amending a legislatively enacted initiated law during the same legislative session.⁸ While Kelley stated that such an act would violate the “spirit and letter” of the initiative process, Schuette found that the absence of an express prohibition leads to the logical conclusion that it is permitted.

Legislative Analyst: Rick Yuille
Fiscal Analysts: Jim Stansell
Kevin Koorstra
Kent Dell

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

⁷ OAG, 1964, No. 4303, p 311 (March 6, 1964). <http://www.ag.state.mi.us/opinion/datafiles/1960s/op03082.pdf>

⁸ OAG, 2018, No. 7306 (December 3, 2018).

https://content.govdelivery.com/attachments/MIAG/2018/12/07/file_attachments/1120064/%237306.pdf