



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Paul Luzzi

### **H.B. 86**

132nd General Assembly  
(As Introduced)

**Reps.** K. Smith and Craig, Leland, Sykes, Fedor, Sheehy, Boggs, Ashford, West, Antonio, Kent, Strahorn

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### **BILL SUMMARY**

- Increases the basic state minimum wage to \$10.10 per hour beginning January 1, 2019.
  - Increases the state minimum wage rate paid to employees under 16 years of age and employees of smaller businesses from \$7.25 per hour to \$10.10 per hour beginning January 1, 2019.
  - Increases the state minimum wage for tipped employees to \$5.05 per hour beginning January 1, 2019.
  - Requires these minimum wage rates to be adjusted annually based on the Consumer Price Index, in accordance with Ohio's constitutional minimum wage requirements.
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### **CONTENT AND OPERATION**

#### **State minimum wage**

The bill raises the state minimum wage rate payable to most employees to \$10.10 per hour beginning January 1, 2019.<sup>1</sup> Under current law, the basic state minimum wage is \$8.15 per hour. The basic state minimum wage is currently set pursuant to the Minimum Wage Amendment of the Ohio Constitution (MWA). The MWA requires the basic state minimum wage to be increased annually according to the Consumer Price Index or its successor index for all urban wage earners and clerical workers for all items

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<sup>1</sup> R.C. 4111.02.

as calculated by the federal government, rounded to the nearest five cents. However, the MWA allows laws to be passed that set the state minimum wage at a rate higher than the rate calculated pursuant to the MWA.<sup>2</sup> The bill sets a higher minimum wage rate while retaining the annual recalculation requirement.<sup>3</sup>

The bill also increases the minimum wage to \$10.10 per hour for employees who are under 16 years of age or who are employed by a business with gross annual receipts of \$299,000 or less in the preceding calendar year, adjusted annually based upon the Consumer Price Index. Currently, pursuant to MWA, these employees must be paid at least the federal minimum wage rate, which is \$7.25 per hour.<sup>4</sup>

Under continuing law, tipped employees may be paid less than, but not less than half, the basic state minimum wage rate if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the state minimum wage rate for all hours worked. Because the bill raises the state minimum wage to \$10.10 per hour, the minimum wage for tipped employees would also increase from \$4.08 per hour to \$5.05 per hour.<sup>5</sup>

The bill also eliminates the authority of the Director of Commerce to adopt rules permitting the employment of apprentices at a wage rate not less than 85% of the state minimum wage. The Director has not adopted these rules.<sup>6</sup>

## **Relationship between state and federal law**

The federal Fair Labor Standards Act<sup>7</sup> (FLSA) and Ohio's minimum wage laws both specify minimum wages that an employer must pay the employer's employees. An employer may be subject to one or both laws. The FLSA specifies that if an employer is subject to both laws, the employer is governed by the law that establishes the higher

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<sup>2</sup> Ohio Const., Art. II, Sec. 34a and Ohio Department of Commerce Division of Industrial Compliance, State of Ohio 2017 Minimum Wage, [http://www.com.ohio.gov/documents/dico\\_2017MinimumWageposter.pdf](http://www.com.ohio.gov/documents/dico_2017MinimumWageposter.pdf) (accessed September 27, 2017).

<sup>3</sup> R.C. 4111.02, with conforming changes in R.C. 4111.09 and 4111.14.

<sup>4</sup> R.C. 4111.02; Ohio Const., Art. II, Sec. 34a; 29 United States Code (U.S.C.) 206; Ohio Department of Commerce Division of Industrial Compliance, State of Ohio 2017 Minimum Wage, [http://www.com.ohio.gov/documents/dico\\_2017MinimumWageposter.pdf](http://www.com.ohio.gov/documents/dico_2017MinimumWageposter.pdf) (accessed September 27, 2017).

<sup>5</sup> R.C. 4111.02(A)(2); Ohio Const., Art. II, Sec. 34a; and Ohio Department of Commerce Division of Industrial Compliance, State of Ohio 2017 Minimum Wage, [http://www.com.ohio.gov/documents/dico\\_2017MinimumWageposter.pdf](http://www.com.ohio.gov/documents/dico_2017MinimumWageposter.pdf) (accessed September 27, 2017).

<sup>6</sup> R.C. 4111.07 (repealed).

<sup>7</sup> 29 U.S.C. 201 *et seq.*



minimum wage, or, for purposes of determining overtime, the lower maximum workweek.<sup>8</sup> Currently, Ohio has the same maximum workweek as specified in the FLSA (40 hours per week) but has a higher basic minimum wage (\$8.15 per hour) as compared to the basic minimum wage under the FLSA (\$7.25 per hour). Thus, employers subject to both laws pay the state rate under current law and under the bill.

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## HISTORY

ACTION	DATE
Introduced	02-22-17

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<sup>8</sup> 29 U.S.C. 218.

