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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 3/9/05 HB 178/aHLHRC

SHORT TITLE Clarify Minimum Wage for Tipped Employees SB _____

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Labor (DOL)
Office of Workforce Training Development (OWTD)
Economic Development Department (EDD)

SUMMARY

Synopsis of HLHRC Amendment

The House Labor Human Resources Committee amendment to House Bill 178 increases the minimum wage for tipped employees. The tips combined with the employer’s cash wage shall not equal less than \$5.60 per hour. Prior to the amendment the amount was the same as the minimum wage of \$5.15 per hour. The basic cash wage of \$2.13 per hour remains in all case, however, should a tipped worker not get the difference between the new wage and the basic cash wage, their employer would subsidize the difference (See “Synopsis” below). DOL notes this amendment was created by the New Mexico Restaurant Association as a resolution to the arithmetic error that now exists in statute and as a way of giving the lowest paid workers in their industry a little more income.

Also an “Applicability” section is added for the provisions of the act to begin after July 1, 2005.

Synopsis of Original Bill

House Bill 178 amends the calculation of a minimum wage for employees who receive tips by eliminating the reference to a tip credit cap. The bill requires a minimum hourly wage of \$5.15 made up from an employer's cash wage of \$2.13 with the remainder assumed to be tips earned by workers who routinely receive more than \$30.00 per month in tips.

Payment of time and a half is required for each hour worked over forty hours in a standard work week.

Significant Issues

DOL supports the passage of this legislation because of the conflict between limiting tip credits and cash wages to a total amount not equal to the mandated minimum wage. The Labor Department's Labor and Industrial Division will have to choose between two conflicting provisions for enforcement purposes. This will require judicial intervention if a dispute between employer and employee cannot be resolved at the administrative level.

OTHER SUBSTANTIVE ISSUES

EDD points out that the bill does not state in the event that the combined hourly rate and tipped income do not meet the minimum wage of \$5.15, that the employer is responsible to raise the minimum hourly wage of \$2.13 to an amount that when combined with tipped income equals \$5.15.

WB/sb