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FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 2/26/05 HB _____

SHORT TITLE Clarify Minimum Wage for Tipped Employees SB 899

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)
 Attorney General Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 899 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

This bill revises the calculation under Section 50-4-22 of the Minimum Wage Act (Sections 50-4-1 et seq.) with regard to minimum wages for employees who receive more than \$30.00/month in tips. The AGO indicates the current minimum wage for those employees is \$2.125 per hour.

This bill would change that to \$2.13 per hour. Current law allows an employer to consider tips as part of wages, and take “credit” for those tips against the minimum wage salary of \$2.125/hour, but that “credit” may not exceed 50% of \$2.125/hour or \$1.0625/hour. Current law therefore requires employers to pay at least \$1.0625/hour regardless of the amount of tips earned. It also allows employers to take a credit of up to \$1.0625/hour for those tips, regardless of the amount of tips actually earned. This bill would change that calculation to provide that tips combined with salary cannot be less than \$5.15/hour.

Current law seems to allow a credit against the \$2.125/hour minimum, up to \$1.0625/hour, and also requires the payment of at least \$1.0625/hour, regardless of the amount of tips actually earned. This bill appears to require a base minimum wage salary of \$2.13/hour for those making over \$30.00/month in tips. It then appears to allow employers to take a credit against that base minimum wage salary (\$2.13/hour) for tips received, as long as those tips, plus any salary paid, equal \$5.15/hour.

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 note that this creates an administrative problem as they need to choose between two conflicting provisions for enforcement purposes. The department must seek judicial intervention if a dispute between employer and employee cannot be resolved at the administrative level.

OTHER SUBSTANTIVE ISSUES

This bill, according to EDD, does not provide a standardized mechanism to determine probable amount of tips received by employees and depends totally on employee reporting. Tipped employees are required by Federal Tax Laws to report a minimum percentage of gross sales during their shift.(In 2004 it was 8%) Employers are accountable for paying payroll taxes on that amount.

WB/sb:lg