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J. Kenneth Blackwell
Secretary of State

October 11, 2006

The Honorable J. Kenneth Blackwell
Ohio Secretary of State
180 E. Broad Street, 15th Floor
Columbus, Ohio 43215

Dear Secretary Blackwell:

Pursuant to section 3519.04 of the Ohio Revised Code your office requested the Office of Budget and Management to analyze the impact of the proposed constitutional amendment certified for the November 2006 ballot as State Issue 2. State Issue 2 would increase the minimum wage in Ohio from \$5.15 to \$6.85 per hour and require employers to keep and provide to the public certain employee records.

The proposed amendment would impact state and local governments in three primary areas: payroll, record keeping and administrative costs, and enforcement. Because most state and local government employees are already paid at a rate exceeding \$6.85 per hour, the payroll impact is expected to be moderate. State and local governments would, however, see increases in administrative and enforcement costs related to additional record keeping requirements and processing additional complaints against employers. The attached analysis describes each of these impacts in more detail.

I trust the attached analysis fulfills your request and the statutory requirements. Please contact me if you have any questions.

Sincerely,

Timothy S. Keen
Director

Attachment

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State Issue 2

Description of Proposal

The proposed constitutional amendment would increase the minimum wage in Ohio:

- The Ohio minimum wage would increase from \$5.15 to \$6.85 per hour in January 2007.
- On January 1 of each following year, the minimum wage would be adjusted by the percentage change of the Consumer Price Index (CPI) in the year ending on September 30.

The federal Fair Labor Standards Act (FLSA), which currently requires the minimum hourly wage as \$5.15, would apply to the following employees:

- Employees under sixteen.
- Employees of businesses whose previous year's gross receipts are \$250,000 or less. The gross receipt figure would be adjusted at the same time each year and by the same percentage as would the minimum wage.

In the following cases, hourly wages less than the established state minimum wage would be permitted:

- If an employee is paid tips and the tips and wages combined exceed the established minimum wage. The hourly wage may be less than the minimum wage but not less than half of that rate.
- For family members who are employees in a family owned and operated business.
- For individuals with mental or physical disabilities if the employers have a state issued license to do so.

The proposal also seeks to expand record keeping requirements. Under current state law, employers are required to keep certain records of their employees for three years and the records are accessible by the director of the Ohio Department of Commerce. The proposed amendment maintains this record keeping requirement and further clarifies the records shall be kept for three years following the last day of employment. Under the proposal, these records are not only open to public officials (as under current law) but also open to employees or any person representing employees.

Under both current law and the proposed amendment, the state is required to investigate and inspect an employer's compliance with the minimum wage requirements. Currently the law delegates such responsibilities to the director of the Ohio Department of Commerce.

A violation charge against an employer may be brought to courts under both current law and the proposed amendment. The proposed amendment specifies the time period within which a charge can be brought to a court and what financial responsibilities an employer has in cases where a violation is substantiated.

Summary of Fiscal Analysis

State and Local Government Expenditure Impact: If State Issue 2 is adopted, it potentially increases expenditures by the state and its political subdivisions for several reasons.

- As employers, the state and its subdivisions may increase payrolls due to the wage increases for employees who currently are paid below \$6.85 per hour. Increased payroll costs could result from increased hourly pay to part-time student workers if they are paid less than \$6.85 per hour in state government, higher education institutions, libraries and other subdivisions. A number of local governments may currently pay some employees below the proposed minimum wage. Overall, the payroll impact on the state and its political subdivisions should be moderate.
- Record keeping and other administrative costs could increase due to an expanded definition of employees and expanded access to employee records.
- The proposal would also potentially increase enforcement costs because the Ohio Department of Commerce and state courts may need to process increasing numbers of cases.

Components of Fiscal Analysis

Payroll Impact

Based on the Current Population Survey done by the Bureau of Labor Statistics (BLS) in 2005, approximately 60% of the American wage and salary workers were paid hourly. Among those, 2.5% were paid \$5.15 or less per hour. The following highlights are the characteristics of these low-wage earners:

- They tend to be young. Among those who made \$5.15 or less per hour, about half were under 25 and about a quarter were 16 to 19 years old.
- Part-time workers were about 6 times as likely as full-time workers to be paid \$5.15 per hour or less.
- By occupation, the low-wage earners were highly concentrated in the service area. About three in four were employed in service occupations, mostly in food preparation and food service.
- By industry, about three-fifths of low-wage earners were in leisure and hospitality, and many of them received tips in addition to their hourly wages.
- Workers in the private sector were more likely to be paid at or below \$5.15 per hour. Nationally, 1.0% of state employees and 1.2% of local government employees were paid \$5.15 per hour or less, while the percentage of private sector employees making \$5.15 per hour or less was 2.7%.
- In Ohio, 3.3% of hourly-paid employees earned \$5.15 or less. This exceeded the national average of 2.5%.

As low-paid workers tend to be concentrated in the service industry and the private sector, the payroll impact on the state and its political subdivisions should be limited if the minimum wage increases in Ohio.

- **State**—the increased minimum wage would add little cost to the State's payrolls because the current pay table indicates all pay ranges are above the proposed minimum wage. The only group that could be affected is certain high school and college interns.
- **Local Governments: Counties, Cities, Villages and Townships**—some local governments likely pay less than \$6.85 per hour to employees working in some ancillary jobs and/or working part time.
- **Universities**—some part-time student workers are likely to be paid less than \$6.85 per hour. They fall in two categories that the BLS identifies as more likely to be low-paid: young and working part-time.
- **School Districts**—the payroll impact on school districts is minimal.
- **Libraries, Hospitals, and Other Political Subdivisions**—the group that is potentially affected by this amendment would be part-time student workers if they are paid below \$6.85 per hour in any of the subdivisions.

Additional Administrative Costs

Both current law and the proposed amendment require that employers keep records of an employee's name, address, occupation, pay rate, hours worked each day, and each paid amount for at least three years. This requirement includes state government and political subdivisions. However, because the amendment proposes additional categories of employees and allows expanded access to such records, both the state and its political subdivisions, especially the subdivisions, would encounter extra administrative costs.

Extended Coverage of Employees

The amendment adopts the definition of "employee" from FLSA, which defines "employee" as any employed individual with some explicit exceptions. Current Ohio law contains the same broad definition and lists some exceptions as well. One of the categories currently excluded but that would be covered as an employee under the proposed amendment is "A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state." The Census Bureau's data show that in Ohio about 66,000 full-time and part-time local government employees worked in the police or fire protection agencies in March 2005. Because of the additional category of employees, the record keeping and administrative costs to the state and local governments would increase, especially to local governments.

The Office of Budget and Management also notices the ambiguity of the definition of "employee" in the proposed amendment, which could raise further questions or court cases if it is passed. The proposal states that "employee" has the same meaning as under the federal FLSA and yet at the same time provides that only the exemptions set forth in the amendment shall apply. This leaves ambiguity as to whether the exceptions set in the definition of "employee" by FLSA should also apply.

Expanded Access to Employee Records

Under current law, employers are required to provide access to employee records to the director of the Ohio Department of Commerce. The proposed amendment requires that such records be open to an employee or a person acting on behalf of an employee. For state and local governments, whose employee records are already subject to such requirements, this provision should have little impact outside of law enforcement.

Increased Enforcement Costs

The proposed amendment states that an employee, a person acting on behalf of an employee and any other interested party may file a complaint with the state for the violation of the provision and requires the state to investigate and resolve the complaint promptly. Currently the director of the Ohio Department of Commerce is delegated to investigate complaints.

When the state minimum wage is the same as the federal minimum wage, as is the current case, a person may choose to file a complaint with either the U.S Department of Labor or the Ohio Department of Commerce, and if a violation is substantiated, the back wages due to the employee would be the same. If, however, the state minimum wage is higher than the federal minimum wage, a person would likely prefer to file the complaint with the state, because he will receive higher back wages than if he filed the complaint at the federal level. The Ohio Department of Commerce indicates that the number of filed violations against the current minimum wage law have been increasing recently. With a higher minimum hourly wage of \$6.85, this trend would likely accelerate. Therefore, the enforcement costs would likely increase if the proposal is passed.