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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>SB35/aHCEDC</u>	Sponsor	<u>Steinborn</u>
Tracking Number	<u>.218495.1</u>	Committee Referrals	<u>SH PAC/STBTC</u>
Short Title	<u>Minimum Wage for Secondary School Students</u>		
Analyst	<u>Hathaway</u>	Original Date	<u>1/27/2021</u>
		Last Updated	<u>3/12/2021</u>

BILL SUMMARY

Synopsis of HCEDC Amendment

The House Commerce and Economic Development Committee (HCEDC) amendment to Senate Bill 35 (SB35) amends the definition of “employee” used in the Minimum Wage Act (Section 50-4-21 NMSA 1978). The proposed language strikes an exception that persons who are 18 years of age or under who are not students in a primary, secondary, vocational, or training school are not considered an employee. The amendment removes this exception so a person under the age of 18 years that is not a student is considered an employee in the Minimum Wage Act.

The provisions of SB35/aHCEDC change the definition of employee so that workers who are 18 or under, but not a student, would be eligible for the minimum wage available to nonstudent adults.

The amendment also renumbers sections of SB35 accordingly.

Synopsis of Bill

Senate Bill 35 (SB35) would amend existing law and remove the exception to the minimum wage requirement for secondary school students, which provides a lower minimum wage for students “regularly enrolled in secondary school.” In effect, this means high school students working after school hours or when school is not in session.

FISCAL IMPACT

SB35 does not include an appropriation.

The Workforce Solutions Department’s (WSD) analysis of SB35 states it would impact the Labor Relations Division of the department and require additional staff to investigate unfair wage claims submitted for secondary school students. WSD reports it currently employs six labor law administrators, and although the agency notes it is difficult to quantify the amount of claims and investigations required if SB35 was enacted, the agency anticipates the division would require at

least one additional staff member to assist. WSD reports the annual midpoint salary in a labor law administrator position is \$46,197 plus benefits.

The Public Education Department (PED) analysis of SB35 reports removal of a 50 cent reduction in minimum wage for high school students may possibly result in employees overall earning higher wages. The difference in minimum wage for high school students and nonstudent adults is actually \$2. Current minimum wage for adults is \$10.50 an hour and minimum wage for students is \$8.50 an hour. The state does not set a minimum wage for nonstudents 18 years or younger, although WSD reports they may be covered by federal, municipal, or county minimum wage laws. PED also notes minimum wage earners generally do not earn sufficient income to pay income taxes, so no fiscal impact is projected on state revenues.

Agency review from the Taxation and Revenue Department had not been received at the time of bill analysis.

SUBSTANTIVE ISSUES

Current Minimum Wage for Students. The current minimum wage for secondary students who work after school hours or when school is not in session is \$8.50 an hour, unless the student works in a job that generates at least \$30 a month in tips, in which case the student is eligible to receive the same minimum wage that nonstudent adults receive (See Section 50-4-22 NMSA 1978). SB35 would eliminate the separate lower minimum wage rate for students “regularly enrolled in secondary school” – high school students – making them eligible for the same minimum wage and scheduled increases as adults.

In 2019, the Legislature amended the New Mexico Minimum Wage Act (MWA) to provide for a separate minimum wage for secondary school students of \$8.50 an hour, lower than the minimum wage rate for employees over age 18. As of January 1, 2021, the adult minimum wage rate is \$10.50 an hour, with scheduled annual increases occurring through January 1, 2023, that will bring the adult rate to \$12 an hour. The current secondary school rate of \$8.50 an hour is not scheduled to increase per current law.

Research on Employed High School Students. Research about increasing the minimum wage for high school students is mixed, showing both positive and negative potential impacts.

Alexander Smith, Ph.D., an economics professor at the U.S. Military Academy at West Point, wrote in a 2014 paper about the educational effects of changes in the minimum wage, particularly dropout decisions of low socioeconomic (SES) status students. Smith found a 10 percent increase in the minimum wage lowers the likelihood of dropping out for low-SES teenagers by 0.5–0.9 percentage points, but has no effect on higher-SES teenagers. Smith also found evidence that minimum wage increases reduced the likelihood that low-SES teenagers will work substantial hours while still in school, asserting that this could allow teens to work fewer hours for the same amount of pay and give them more time to study, reducing the likelihood they would drop out of high school.

In contrast, other researchers found a higher minimum wage might cause employers to resist hiring higher-priced teenagers and that a minimum wage increase could decrease high school enrollment rates. In 2014, The Pew Research Center reported 16- to 24-year-olds made up nearly 50 percent of minimum wage earners with 24 percent of minimum wage workers being teenagers. An economics professor, Matthew Rousu, Ph.D., at Susquehanna University, noted in a 2014 article

the federal minimum wage may negatively impact workers between the ages of 16-19 because companies may be unwilling to pay a higher minimum wage to young workers with no skills or experience.

Other research also suggests raising the minimum wage could decrease high school enrollment rates. A 2009 study found a higher minimum wage leads to higher drop-out rates for Hispanic students but found no significant effects for other groups. This study, however, only looked at Maryland, and therefore may be limited in its applicability to other areas. Its findings have also not been replicated to date.

Current State Law on Employing Teenagers in New Mexico. As provided in the Child Labor Act (Chapter 50, Article 6 NMSA 1978), the minimum age for employment in New Mexico is [14 years old](#). At age 14, children may work in specified occupations outside of school hours for limited periods of time until they turn 16 years of age. There are no hour or time restrictions for minors age 16 and older. Children over the age of 14 and under the age of 16 must also procure and file a work permit to be employed. A work permit is required for children under the age of 16 years at all times. Work permits may be issued by school superintendents, school principals, designated school officers, or the director, or director's designee, of the Labor and Industrial Division of the Department of Workforce Solutions (DWS). Work permits are issued for one year and renewed annually. A work permit is no longer required once a child turns 16 years old.

There are prohibited occupations for all minors until they turn 18 years of age, with various prohibitions for children under 16 and again under 18 years of age. These prohibitions align with the federal Fair Labor Standards Act (FLSA) and generally include occupations deemed dangerous or risky to minors. Among these prohibitions are jobs such as manufacturing, mining, construction, logging, excavation, using power-driven machinery, and acting as a motor-vehicle driver. For a complete list of prohibited occupations, DWS has compiled this information in an [online brochure](#) about employing children and teenagers. These prohibited occupations are also listed in Section 50-6-4 NMSA 1978 and Section 50-6-7 NMSA 1978.

Minors 14 and 15 years of age may not be employed:

- 1) During school hours;
- 2) Before 7:00am or after 7:00pm (except from June 1 through Labor Day, when evening hours are extended to 9:00pm);
- 3) More than three hours a day on a school day;
- 4) More than 18 hours a week in a school week;
- 5) More than 8 hours a day on a non-school week; and
- 6) More than 40 hours a week in a non-school week.

There are some exceptions to the Child Labor Act as noted in [Section 50-6-17 NMSA 1978](#). This section of law notes a child under the age of 16 may be employed without obtaining a work permit and without restrictions on age or time of employment if the child is employed:

- 1) By a parent in an occupation other than manufacturing, mining, or any other occupation that is hazardous or detrimental to health;
- 2) As an actor or performer in motion pictures, television, theater, or radio productions; or
- 3) To sell or deliver newspapers with the parent's consent, so long as the employment does not overlap with required presence at school.

The provisions of SB35/aHCEDC would apply to secondary school students. In effect, this means high school students working after school hours or when school is not in session.

The HCEDC amendment to SB35 amends the definition of “employee” in the Minimum Wage Act. The definition is amended so that persons who are eighteen years of age or under who are not students in a primary, secondary, vocational, or training school are stricken from the definition. If SB/aHCEDC were adopted, such employees would be considered employees under the Minimum Wage Act and would therefore be eligible for the higher minimum wage available to adult workers that are not students. As of January 1, 2021, the adult minimum wage rate is \$10.50 an hour, with scheduled annual increases occurring through January 1, 2023, that will bring the adult rate to \$12 an hour.

ADMINISTRATIVE IMPLICATIONS

WSD’s analysis of SB35/aHCEDC states it would impact the Labor Relations Division of the department and require additional staff. If SB35/aHCEDC was enacted, the agency anticipates the division would require at least one additional staff member to assist.

OTHER SIGNIFICANT ISSUES

SB35/aHCEDC does not eliminate the exemption from the minimum wage for individuals 18 years or under who are not students. There is no current statewide minimum wage that covers those specific individuals, although they may be covered by federal, municipal, or county minimum wage laws. Currently, the federal minimum wage is \$7.25 an hour.

RELATED BILLS

Relates to House Bill 110 (HB110), which would increase the minimum wage for all employees in phases, provide for an annual cost-of-living increase in that minimum wage beginning in 2025, and repeal Section 50-4-23 NMSA 1978, which provides for reduced minimum wage for persons with disabilities. HB110 would also eliminate the separate lower minimum wage rate for secondary students, as well as the separate minimum wage rate for tipped workers and the exemption from the minimum wage for nonstudents age 18 years and younger.

SOURCES OF INFORMATION

- LESC Files
- Workforce Solutions Department (WSD)
- Public Education Department (PED)
- Children, Youth and Families Department (CYFD)
- Human Services Department (HSD)

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