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Read the report: <http://www.policymattersohio.org/MinimumWage2011.htm>**

## **Senate Bill Would Reduce Ohio Minimum-Wage Coverage, Violating the Ohio Constitution**

Thousands of Ohio workers who currently must be paid the state's minimum wage would no longer be protected under a budget bill working its way through the state Senate (House Bill 153). The bill would expand the categories of workers exempted from the state minimum wage – in violation of the minimum wage Constitutional amendment approved by Ohio voters in 2006.

In 2006, Ohio voters amended the State Constitution to enact a higher minimum wage that would be annually adjusted to match increases in the cost of living. The amendment specified that only very limited groups of workers are not covered by the state minimum wage, and clearly stated that only the exemptions set forth in the constitutional amendment would apply.

The Senate budget revision bill ignores these constitutional limits and purports to roll back minimum wage protections for any groups of workers that are not covered by the federal minimum wage, such as home care workers. Stripping the basic minimum wage protections would not only hurt thousands of working Ohioans, it directly conflicts with the 2006 voter-approved amendment and so would be unconstitutional. If the current measure is signed into law, it would likely lead to costly lawsuits and create uncertainty for employers and workers alike in Ohio.

“The voters spoke loud and clear in 2006 and passed a constitutional amendment that explicitly covered more workers than the federal minimum wage law,” said Zach Schiller, research director of Policy Matters Ohio. “The General Assembly cannot circumvent the will of the voters by creating exemptions that are not authorized by the constitutional amendment. Only Ohio's voters can rewrite the constitution.”

After Ohio voters approved the constitutional amendment in 2006, the Ohio legislature rushed through an implementation bill that attempted to water down the new minimum wage during the final days before Governor Ted Strickland, a minimum wage supporter, took office. The bill, signed by Governor Bob Taft in 2007, attempted to expand the categories of workers who would not be entitled to Ohio's minimum wage. It provided that workers would be exempt from Ohio's minimum wage if they fell under exemptions to the federal Fair Labor Standards Act **and** they were excluded from the definition of

employee under Ohio statute. This law also violated the constitutional amendment by creating exemptions not provided for in the amendment.

The new proposal, however, attempts to remove minimum wage protections for more significant categories of workers, rolling back protections for thousands of working Ohioans. Specifically, the Senate bill purports to expand the minimum wage exemption to all workers who are excluded **either** from the federal minimum wage or who were excluded under Ohio's pre-2006 definition of employee.

Among the workers who would no longer be covered under this proposal are home care workers – one of the state's top growth occupations, providing vital services to Ohio's elderly and disabled populations (Previously, only live-in home care workers were excluded). Certain agricultural workers would also lose minimum wage coverage under the legislation, along with police, firefighters, and some others. The precise number of workers affected is not known, but it numbers in the thousands. For example, there are nearly 80,000 personal-care or home-health aides in Ohio, and while many work in care facilities or live in customers' homes, many thousands do not and would lose minimum-wage coverage under the bill.

The proposed change in the law, now before the Senate Finance Committee, has been described by its sponsor, Sen. Bill Seitz, as a way to make sure the minimum wage law works as he intended when he sponsored the 2006 legislation attempting to weaken Ohio's minimum wage. But his intent is irrelevant, says Tsedeye Gebreselassie, a staff attorney at the National Employment Law Project.

“It's not the legislature's intent that matters here – it's the voters',” said Gebreselassie. “The legislature had no authority to create exemptions to the Ohio constitution's minimum wage amendment back in 2006, and it has no authority to expand them even further now.”

This bill follows similar efforts to weaken minimum wage laws in several states, including Maine, Missouri, Nevada and Florida. In Maine, the state legislature tried unsuccessfully to roll back minimum wage protections for teenage workers. In Missouri and Nevada, bills that would have eliminated voter-approved annual cost of living adjustments to the minimum wage similarly failed to move. In Florida, an attempt to weaken cost of living adjustments under the state's voter-approved minimum wage amendment was rejected by the courts.

To comply with Ohio's Constitution, the Senate budget bill should not include these new exemptions. The General Assembly should drop this language from the bill and fix Ohio law so it follows what the voters approved – and intended – In 2006.

*Policy Matters Ohio is a non-profit, non-partisan research institute with offices in Cleveland and Columbus.*

*The National Employment Law Project is a legal and policy advocacy organization that works on issues affecting low-wage workers.*

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