

# State Labor Department Analysis Reveals Flaws in Republican Trifecta Bill

## *Agency Confirms Plan Hurts WA Minimum Wage Tip Workers in a Variety of Occupations*

WASHINGTON, DC – Thursday, the Washington State Department of Labor and Industries released an analysis of the pending federal estate tax proposal showing that the Republican “trifecta bill” would nullify an employer’s obligation to pay the minimum wage to tip workers under Washington state law. Earlier Thursday, U.S. Senators Maria Cantwell (D-WA) and Patty Murray (D-WA) announced their opposition to the plan citing concerns for Washington state workers, confirmed in a letter from the Department of Labor.

**“Under our preliminary analysis, this proposal appears to nullify an employer’s obligation to pay the employers minimum wage rate...with regard to tipped employees,”** the Washington State Department of Labor wrote. **“This means that Washington workers who receive tips – typically service industry workers – would see a decrease in income.”**

The preliminary analysis by the Department of Labor comes in response to a request by Senators Cantwell and Murray for an examination of the pending estate tax proposal’s effect on tip workers. The nonpartisan Congressional Research Service also previously concluded the “trifecta bill” provision creating a federal tip penalty would preempt minimum wage laws in states like Washington.

*[The full text of the letter from the State Department of Labor follows below]*

August 3, 2006

Dear Senators Murray and Cantwell:

Your office asked me to respond to an inquiry as to how the proposed HR 5970 would affect workers in the state of Washington.

As you know, Washington State does not recognize tips as part of the minimum wage. Tipped employees are entitled to the full minimum wage, currently \$7.63 an hour. Additionally, Initiative 688, passed overwhelmingly by voters in 1998, tied the minimum wage to the Consumer Price Index, to be recalculated and adjusted each year.

The proposed bill, Section 402 of HR 5970, which amends the Fair Labor Standards Act to add a paragraph that states:

(2) Notwithstanding any other provision of this Act, any State or political subdivision of a State which on or after the date of enactment of the Estate Tax and Extension of Tax Relief Act of 2006 excludes all of a tipped employee's tips from being considered as wages in determining if such tipped employee has been paid the applicable minimum wage rate, may not establish or enforce the minimum wage rate provisions of such law, ordinance, regulation, or order in such State or political subdivision thereof with respect to tipped employees unless such law ordinance, regulation, or order is revised or amended to permit such employee to be paid wage by the employee's employer in an amount not less than an amount equal to –

- (A) the cash wage paid such employee which is required under such law, ordinance, regulation, or order on the date of enactment of the Estate Tax and Extension of Tax Relief Act of 2006; and
- (B) an additional amount on account of tips received by such employee which amount is equal to the difference between the cash wage described in subparagraph (A) and the minimum wage rate in effect under such law, ordinance, regulation, or order, or the minimum wage rate in effect under section 6(a), whichever is higher.

Under our preliminary analysis, this proposal, in effect, appears to nullify an employer's obligation to pay the minimum wage rate in RCW 49.46.020 with regard to tipped employees. This means that Washington workers who receive tips – typically service industry workers – would see a decrease in income. However, the proposal does give states the right to amend their laws to specifically reinstate their current minimum wage rate laws. Until and unless the Washington State Legislature amends the minimum wage act to reinstate the current minimum wage rate provision for tipped employees, it would diminish workers' rights in Washington State.

I trust that this is useful information. Please let me know if I can be of further assistance.

Sincerely,

Gary K. Weeks  
Director

Cc: Governor Christine O. Gregoire  
Doug Clapp, Washington D.C. Office  
Karen Lee, Commissioner  
Employment Security Department

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