

Regular Session, 2014

HOUSE BILL NO. 969

BY REPRESENTATIVE HUNTER

EMPLOYMENT/WAGES-MINIMUM: Provides with respect to minimum wage for federal contractors and subcontractors

1 AN ACT

2 To enact Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 23:671 through 676, relative to minimum wage; to provide with respect to  
4 the presidential executive order to raise the minimum wage for federal contractors  
5 and subcontractors; to provide for procedures for the determination of an annual  
6 increase; to provide with respect to tipped employees; to provide for enforcement;  
7 to provide for exceptions; to provide for procedures; and to provide for related  
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950,  
11 comprised of R.S. 23:671 through 676, is hereby enacted to read as follows:

12 CHAPTER 6-A. MINIMUM WAGE FOR FEDERAL CONTRACTORS

13 AND SUBCONTRACTORS

14 §671. Minimum wage for federal contractors and subcontractors; establishment

15 A. On February 12, 2014, the president of the United States released an  
16 executive order which provided that in order to promote economy and efficiency in  
17 procurement by contracting with sources who adequately compensate their workers,  
18 parties who contract with the federal government shall compensate employees at a  
19 rate of ten dollars and ten cents per hour.

1           B. Raising the pay of low-wage workers increases morale, productivity, and  
2           the quality of work. Raising pay lowers turnover and its accompanying costs, and  
3           reduces supervisory costs. These savings and quality improvements will lead to  
4           improved economy and efficiency in government procurement.

5           C. To establish a minimum wage for federal contractors and subcontractors.  
6           executive departments and agencies shall, to the extent permitted by law, ensure that  
7           new contracts, contract-like instruments, and solicitations include a clause, which the  
8           contractor and any subcontractors shall incorporate into lower-tier subcontracts  
9           specifying, as a condition of payment, that the minimum wage to be paid to workers,  
10          including workers whose wages are calculated pursuant to special certificates issued  
11          under 29 U.S.C. 214(c), in the performance of the contract or any subcontract  
12          thereunder, shall be at least:

13                 (1) Ten dollars and ten cents per hour beginning January 1, 2015.

14                 (2)(a) Beginning January 1, 2016, and annually thereafter, the minimum  
15                 wage amount shall be determined by the United States Secretary of Labor. The  
16                 amount shall be published by the secretary at least ninety days before such new  
17                 minimum wage is to take effect and shall be not less than the amount in effect on the  
18                 date of such determination and increased from such amount by the annual percentage  
19                 increase in the Consumer Price Index or its successor publication, as determined by  
20                 the Bureau of Labor Statistics and rounded to the nearest multiple of five cents.

21                 (b) In calculating the annual percentage increase in the Consumer Price  
22                 Index, the secretary shall compare such Consumer Price Index for the most recent  
23                 month, quarter, or year available with the Consumer Price Index for the same month  
24                 in the preceding year, the same quarter in the preceding year, or the preceding year,  
25                 respectively.

26                 (c) Nothing shall excuse noncompliance with any applicable federal or state  
27                 prevailing wage law, or any applicable law or municipal ordinance establishing a  
28                 minimum wage higher than the minimum wage established pursuant to the order.

1        §672. Tipped employees

2                A.(1) For workers who are tipped employees pursuant to 29 U.S.C. 203(t),  
3        the hourly cash wage that shall be paid by an employer to such workers shall be at  
4        least four dollars and ninety cents per hour, beginning on January 1, 2015.

5                (2) For each succeeding one-year period until the hourly cash wage under  
6        this Section equals seventy percent of the wage in effect pursuant to R.S. 23:671, an  
7        hourly cash wage equal to the amount determined for the preceding year, increased  
8        by the lesser of ninety-five cents or the amount necessary for the hourly cash wage  
9        to equal seventy percent of the wage pursuant to R.S. 23:671.

10               (3) For each subsequent year, seventy percent of the wage in effect pursuant  
11       to R.S. 23:671 rounded to the nearest multiple of five cents.

12               B. When a worker does not receive a sufficient additional amount on account  
13       of tips when combined with the hourly cash wage paid by the employer such that  
14       their wages are equal to the minimum wage pursuant to R.S. 23:671, the cash wage  
15       paid by the employer shall be increased such that the wages of the tipped employee  
16       equal the minimum wage.

17               C. If the wage required to be paid under the Service Contract Act, 41 U.S.C.  
18       6701 et seq., or any other applicable law or regulation is higher than the wage  
19       required by this Chapter, the employer shall pay additional cash wages sufficient to  
20       meet the highest wage required to be paid.

21        §673. Regulations and Implementation

22               A. The secretary of the United States Department of Labor shall issue  
23       regulations by October 1, 2014, to the extent permitted by law and consistent with  
24       the requirements of the Federal Property and Administrative Services Act, to  
25       implement the requirements of the executive order,

26               B. The Federal Acquisition Regulatory Council shall issue regulations in the  
27       Federal Acquisition Regulation to provide for inclusion of the contract clause in  
28       federal procurement solicitations and contracts subject to the executive order.

1           C. Within sixty days of the secretary of the United States Department of  
2           Labor issuing regulations, agencies shall take steps, to the extent permitted by law,  
3           to exercise any applicable authority to ensure that contracts as described in R.S.  
4           23:671, entered into after January 1, 2015, consistent with the effective date of such  
5           agency action, comply with the requirements set forth in the executive order.

6           D. Any regulations issued pursuant to this Section should, to the extent  
7           practicable and consistent with the presidential order, incorporate existing  
8           definitions, procedures, remedies, and enforcement processes under the Fair Labor  
9           Standards Act, 29 U.S.C. 201 et seq., the Service Contract Act, 41 U.S.C. 6701 et  
10          seq., and the Davis-Bacon Act, 40 U.S.C. 3141 et seq.

11          §674. Enforcement

12           A. The secretary of the United States Department of Labor has the authority  
13           for investigating potential violations of and obtaining compliance with the executive  
14           order.

15           B. The executive order creates no rights under the Contract Disputes Act,  
16           and disputes regarding whether a contractor has paid the wages prescribed by the  
17           order, to the extent permitted by law, shall be disposed of only as provided by the  
18           secretary in regulations issued pursuant to the order.

19          §675. Severability

20           If any provision of the executive order, or applying such provision to any  
21           person or circumstance, is held to be invalid, the remainder of the order and the  
22           application of the provisions of such to any person or circumstance shall not be  
23           affected thereby.

24          §676. General Provisions

25           A. Nothing in the executive order shall be construed to impair or otherwise  
26           affect the authority granted by law to an agency or the head thereof or the functions  
27           of the director of the Office of Management and Budget relating to budgetary,  
28           administrative, or legislative proposals.

1           B. The executive order shall be implemented consistent with applicable law  
2           and subject to the availability of appropriations.

3           C. The order is not intended to, and does not create any right or benefit,  
4           substantive or procedural, enforceable at law or in equity by any party against the  
5           United States, its departments, agencies, or entities, its officers, employees, or  
6           agents, or any other person.

7           D. The order shall apply only to a new contract or contract-like instrument,  
8           as defined by the secretary of the United States Department of Labor in the  
9           regulations issued pursuant to the order if any of the following apply:

10           (1) It is a procurement contract for services or construction.

11           (2) It is a contract or contract-like instrument for services covered by the  
12           Service Contract Act.

13           (3) It is a contract or contract-like instrument for concessions, including any  
14           concessions contract excluded by Department of Labor regulations at 29 C.F.R.  
15           4.133(b).

16           (4) It is a contract or contract-like instrument entered into with the federal  
17           government in connection with federal property or lands and related to offering  
18           services for federal employees, their dependents, or the general public and the wages  
19           of workers under such contract or contract-like instrument are governed by the Fair  
20           Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

21           E. For contracts or contract-like instruments covered by the Service Contract  
22           Act or the Davis-Bacon Act, the order shall apply only to contracts or contract-like  
23           instruments at the thresholds specified in those statutes. For procurement contracts  
24           where workers' wages are governed by the Fair Labor Standards Act, this order shall  
25           apply only to contracts or contract-like instruments that exceed the micro-purchase  
26           threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the  
27           order pursuant to regulations or actions taken pursuant to the order.

28           F. The order shall not apply to grants, contracts, and agreements with and  
29           grants to Indian Tribes under the Indian Self-Determination and Education

1 Assistance Act, Public Law 93-638, as amended, or any contracts or contract-like  
2 instruments expressly excluded by the regulations issued pursuant the order.

3 G. Independent agencies are strongly encouraged to comply with the  
4 requirements of the order.

5 §676. Effective Date

6 A. The provisions of this Chapter shall apply to covered contracts where the  
7 solicitation for such contract has been issued on or after January 1, 2015, consistent  
8 with the effective date for the action taken by the Federal Acquisition Regulatory  
9 Council pursuant to the order or for contracts where an agency action is taken  
10 pursuant to the order, January 1, 2015, consistent with the effective date for such  
11 action.

12 B. The order shall not apply to contracts or contract-like instruments entered  
13 into pursuant to solicitations issued on or before the effective date for the relevant  
14 action taken pursuant to the order.

15 C. For all new contracts and contract-like instruments negotiated between  
16 the date of the order and the effective dates set forth in this Chapter, agencies are  
17 strongly encouraged to take all steps that are reasonable and legally permissible to  
18 ensure that individuals working pursuant to those contracts and contract-like  
19 instruments are paid an hourly wage of at least ten dollars and ten cents per hour.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Hunter

HB No. 969

**Abstract:** Provides for a minimum wage of \$10.10 per hour for federal contractors and subcontractors.

Proposed law mirrors the presidential executive order issued by President Obama on February 12, 2014, which requires that employers who are contractors or subcontractors with the federal government shall pay their employees a wage of \$10.10 per hour beginning Jan. 1, 2015.

Proposed law provides that beginning Jan. 1, 2016, and annually thereafter, the minimum wage will be raised annually by an amount determined by the secretary of the USDOL by using the Consumer Price Index (CPI).

Proposed law provides the procedure that the secretary is to use to calculate the annual raise of the minimum wage.

Proposed law requires that tipped employees shall earn \$4.90 per hour beginning Jan. 1, 2015.

Proposed law provides that the minimum wage rate for tipped employees shall rise annually by 70% or \$0.95, whichever is lesser, until it reaches an amount equal to 70% of the annual federal minimum wage required for federal contractors and subcontractors.

Proposed law provides that when tipped workers do not earn the required amount between the base pay and tips, the employer shall pay the difference.

Proposed law requires the secretary of the USDOL to issue regulations necessary for the implementation of the executive order.

Proposed law provides that proposed law does not create a right of action against the United States.

Proposed law provides that the wages of workers under the contracts or contract-like instruments are governed by the FLSA, the Service Contract Act, or the Davis-Bacon Act.

Proposed law provides that proposed law does not apply to grants, contracts and agreements with and grants to Indian Tribes.

Proposed law encourages independent agencies to comply with the provisions of the order.

(Adds R.S. 23:671-676)