

Florida Senate Bill 2106: Slashing Minimum Wage for Florida's Tipped Workers Is Bad Policy and Unconstitutional; Suggestions That Florida's Tipped Wage Is Hurting Businesses Are Unfounded

- **Tipped workers make up a significant portion of the low-wage workforce.** They work as parking attendants, car wash workers, nail salon workers, baggage porters and bellhops. The largest numbers are employed in food service, such as waitresses, waiters, bussers, and food delivery workers.
- [SB 2106](#), which would slash Florida's tipped minimum wage from \$4.65 to \$2.13 per hour, is **plainly unconstitutional**. It violates Florida's minimum wage constitutional amendment, which was enacted with the support of an overwhelming 72% of the state's electorate in 2004. This constitutional provision (1) defines Florida's tipped minimum wage as \$3.02 less than the full state minimum wage, (2) provides that the full minimum wage automatically increases each year to keep pace with the increase in the cost of living, and (3) explicitly prohibits the state legislature from weakening the minimum wage. Moreover, the constitution specifies that the legislature "may reduce" the \$3.02 figure in order to *raise* the tipped minimum wage, but nowhere does it authorize the legislature to increase this \$3.02 figure, and thus reduce the tipped minimum wage, as the legislature now proposes to do. See Fla. Const., sect. 24(f).
- At \$4.65 per hour, Florida's current tipped minimum wage is **comparable to or lower than** the tipped minimum wage in many other states:
 - Arizona and Colorado have approximately **the same tipped minimum wage as Florida**.
 - Alaska, California, Connecticut, Hawaii, Illinois, Minnesota, Montana, Nevada, New York, Oregon and Washington all have **higher tipped minimum wages than Florida**.
 - In fact, seven of these states require that tipped workers be paid the *full* minimum wage – with any tips received being in addition to, not instead of, the minimum wage. These include states like Washington (\$9.04) and Oregon (\$8.80) that not only have the highest minimum wages in the country, but also index their minimum wages.
 - Moreover, many of these states – like Arizona, Alaska, and Nevada, along with Florida – are among the top growth states for restaurant jobs nationally, according to National Restaurant Association projections.
- There is no evidence that Florida's tipped minimum wage is harming Florida's restaurant, tourism, and other industries where tipped workers are prevalent. In reality, **Florida' restaurant industry is thriving**:

- **Florida is the #3 fastest growing state for restaurant jobs**, according National Restaurant Association (NRA) projections for 2012-2022.
 - **Florida is also the #3 fastest growing state for restaurant sales**, according to National Restaurant Association projections for 2012.
 - In 2011, [the NRA noted](#), “in the states, the restaurant industries in Texas and Florida will show the strongest job growth over the next 10 years at roughly 17 percent.”
 - **Restaurant jobs are growing faster than other jobs.** Indeed, national job growth in the restaurant industry has significantly outpaced job growth in other industries, with the [NRA projecting](#) that the industry will add jobs at rate of 2.4 percent in 2012, compared with the 1.8 percent expected for the national economy.
 - **Restaurant industry profits are healthy.** For many of the major restaurant chains, corporate profits have fully rebounded and in some cases, are higher than they were even before the recession. For example, Darden Restaurants, Inc., the 9th largest employer of low-wage workers nationally which operates major chains such as Red Lobster, Olive Garden, LongHorn Steakhouse, The Capital Grille, Bahama Breeze and Seasons 52, is enjoying higher profits than before the recession, according to NELP analysis of Standard & Poor’s data.
- Cutting Florida’s tipped minimum wage will **hurt working families** and **weaken Florida’s economy**. Cutting the tipped minimum wage will cut earnings for hundreds of thousands of workers, and **reduce the consumer spending** that is vital for keeping Florida’s economy growing.
 - While business lobbyists sometimes suggest that tipped workers earn good incomes after tips are included, that is simply not the case for the vast majority of tipped workers. According to the Bureau of Labor Statistics, the median wage overall for waiters and waitresses was just \$8.97 in 2011, which results in a full-time annual salary below the federal poverty level for a family of three. As a result, **tipped workers have three times the poverty rate** as the workforce as a whole. While a relatively small number of waitresses, waiters and bartenders at high end establishments may earn good incomes, the restaurant industry overall is one of the nation’s lowest wage sectors. The overwhelming majority of waiters, waitresses, and tipped workers in other industries (like car wash attendants and nail salon workers) earn very low wages.
 - A decent tipped minimum wage provides some measure of protection for workers whose tips fluctuate widely depending on shift, season, and other factors.
 - Although SB 2106 purports to require employers to “guarantee” that their tipped employees will earn enough tips to bring them up to at least 130 percent of the state’s minimum wage, the reality is that such a guarantee is **largely unenforceable**. The [widespread problems with minimum wage compliance and enforcement](#) are well documented:
 - A [January 2012 study](#) by Florida International University estimates that nearly 60-90 million dollars are stolen from Florida’s workforce due to wage violations and that key pillars of Florida’s economy, including tourism and retail, have the highest numbers of reported wage violations.

- Investigation and enforcement of the minimum wage is virtually non-existent. Florida is one of the very few states [without a state enforcement agency](#) dedicated to investigating and enforcing the minimum wage. The state attorney general has not brought a *single* case to enforce the state minimum wage since its passage in 2004. And SB 862/HB 609, which would prevent cities and counties from addressing wage theft, would only [make matters worse](#).
- Federal enforcement of minimum wage suffers from very scarce resources, with the average employer having just a [.001% chance](#) of being investigated by the federal department of labor in any given year.

*** For more information, please contact Tsedeye Gebreselassie, NELP Staff Attorney, at tsedeye@nelp.org or Paul Sonn, NELP Legal Co-Director, at psonn@nelp.org