



180 5<sup>th</sup> St. E. Ste. 260  
St. Paul, MN 55101

651-293-1283  
NFIB.com/MN  
Twitter: @NFIB\_MN

May 15, 2022

### **Senate File 4091 Conference Committee**

Dear Members of the Conference Committee on Senate File 4091,

The National Federation of Independent Business (NFIB) is the largest small business organization in Minnesota, with over 10,000 members in every corner of the state. Over 75% of our members have fewer than 10 employees and our mission is to advocate for Main Street.

Across our state, Main Street businesses are struggling. A third of NFIB members report that sales are still below pre-pandemic levels. Record inflation, worker shortages and supply chain issues are ravaging bottom lines and making it hard for small businesses to keep their doors open.

#### **NFIB MN supports the following provisions:**

**Energy Reliability:** NFIB MN urges the committee to adopt Senate Article 1, Section 23, which ensures small businesses can continue accessing reliable and affordable energy sources.

**Paperwork Improvements:** The conference committee can help small employers by adopting the Senate's improvements to the employer notification requirement found in Senate Article 3, Secs. 13 and 14. These changes give Main Street businesses and family farmers – most of whom handle payroll, accounting, and human resources on their own – more flexibility while still ensuring employees are informed about pay and terms in a timely manner.

#### **Respectfully, NFIB MN opposes the following provisions:**

**\$1 Billion, 24-Week Paid Leave Mandate:** The House bill establishes a state-run, 24-week paid leave program funded by a new \$1 billion per year payroll tax. It will increase labor costs, exacerbate the worker shortage, and make it harder for small businesses to compete.

This mandate supersedes all benefit arrangements that don't meet its extensive criteria. It eliminates flexibility and negotiating power for both employer and employee, since not all employees are looking for the same mix of compensation and benefits. In fact, according to a 2020 study by the Employee Benefits Research Institute (EBRI), more employees prefer less paid leave and higher wages (25%) than prefer more paid leave and lower wages (17%).<sup>1</sup>

---

<sup>1</sup> Employee Benefits Research Institute, "2021 Workplace Wellness Survey," [https://www.ebri.org/docs/default-source/wbs/wws-2021/2021-workplace-wellness-short-report.pdf?sfvrsn=c4553b2f\\_6](https://www.ebri.org/docs/default-source/wbs/wws-2021/2021-workplace-wellness-short-report.pdf?sfvrsn=c4553b2f_6), accessed 3/14/2022.

Further, this mandate will likely cost much more than expected because projections used to estimate the cost are low compared to real utilization data from other states. The chart below shows the program’s cost growing exponentially if the average user takes more leave weeks or earns more money than estimated in the 2020 fiscal note. For example, if the average user made the state’s median household income and took 12 weeks of leave, the cost would nearly triple.

Scenario	Avg. Weeks	Avg. Weekly Benefit	Total Utilization	Total Payments	Admin Cost & Assistance	Payroll Tax
Fiscal Note Estimated Income	6.6	\$598	198,682	\$780,568,922.00	\$47,917,345	0.60%
Median Per Capita Income	6.6	\$625.39	198,682	\$820,074,657.47	\$47,917,345	0.62%
Median Household Income	6.6	\$960.96	198,682	\$1,260,108,001.15	\$47,917,345	0.94%
Median Per Capita Income	12	\$625.39	198,682	\$1,491,044,831.76	\$47,917,345	1.11%
Median Household Income	12	\$960.96	198,682	\$2,291,105,456.64	\$47,917,345	1.68%

Higher costs and payroll taxes are not idle concerns. After just two years, the state of Washington was forced to increase its paid leave payroll tax by 50% due to higher-than-expected payments.

**Sick Leave Mandate.** The House proposal upends existing employment relationships for small businesses across Minnesota by imposing a new unfunded labor mandate, onerous new paperwork requirements, and staggering 900% penalty increases.

[An NFIB study](#) of a similar mandate in Colorado found it would cost over 14,000 jobs and decrease output by nearly \$6 billion in the first five years, with half of the loss borne by small employers.<sup>2</sup>

Given that many small businesses currently offer paid leave, it's important for legislative efforts not to disrupt existing employment arrangements that work for employer and employee or to impose an unfair burden on small businesses that makes it harder for them to compete.

**New Energy Tax.** NFIB Minnesota members strongly oppose the new, uncapped energy tax imposed in the House bill, which will fund subsidies for electric cars, planes, boats, bicycles, and other modes of transport. Energy costs are consistently a top concern in NFIB member surveys, and this new tax would make the problem worse for small businesses. One utility alone recently sought to add a \$150 million tax on its customers to fund EV subsidies.

Tax incentives for EVs benefit the few at the expense of many, and EV rebates often result in giving a subsidy to those who would have bought one without it. A 2021 report by the National Bureau of Economic Research on federal EV credits found: “... 70 percent of the credits were obtained by households that would have bought an EV without the credits.”<sup>3</sup>

Subsidies for electric buses are also concerning given the state’s expensive and poor experience to date. Metro Transit officials say that buses don’t work for long routes, and Minneapolis Public Schools rejected electric buses due to their higher relative cost, limited range, and other factors.

Let’s let car makers, not taxpayers, solve the biggest hurdles preventing widespread adoption of EVs: high cost, low range, cold weather depletion and long charging times.

<sup>2</sup> Chow, M., “Effects of a Paid Sick and Safe Time Mandate on CO Small Businesses,” NFIB Research Foundation, Aug. 2011.

<sup>3</sup> Xing, Leard, Li, “What Does An Electric Vehicle Replace” (Working Paper 25771), National Bureau of Economic Research, April 2019 (Revised February 2021), <http://www.nber.org/papers/w25771>

**New Green Bank.** NFIB Minnesota opposes the creation of a “Minnesota Green Innovation Finance Fund.” This new, taxpayer-funded green bank would have the ability to provide loans, loan guarantees and other financing mechanisms in support of projects that are high risk or not financially viable to private lenders. Among other high-risk, subprime ventures which the new green bank could finance is redundant electric vehicle charging station projects.

**Increased Commercial Building Costs.** The House bill includes several provisions that will increase commercial building costs and eliminate flexibility for small businesses.

Requiring a minimum number of EV chargers in new commercial parking spaces disregards customer preference and the price of installing and operating chargers. Small business owners don’t need their parking spots and customer relationships further micromanaged by the state.

An ever-stricter state energy code, and unnecessary patchwork of local commercial construction regulations, will increase building costs for small businesses, despite Minnesota already having one of most stringent energy codes in the country. Forcing small employers to rely heavily or solely on electricity for energy means a very expensive energy future.

**Noncompete Agreements:** This House provision gives an advantage to larger, well-funded corporations by allowing them to continue protecting their interests through noncompete agreements while effectively prohibiting small businesses and start-ups from doing the same.

When done properly, Minnesota courts have long agreed that non-compete agreements are a valid tool for protecting legitimate employer interests such as confidential information, customer lists and specialized training. A valid non-compete must provide compensation and be limited in duration, scope of activity and geographic area. Even advocates for restrictions acknowledge that “Minnesota has a well-developed body of case law in this area that is fair to both sides.”

This vague proposal leaves a legal vacuum that would create needless uncertainty for employers and employees alike. And its overly broad definition of “covenant not to compete” jeopardizes other agreements that restrict the use of trade secret or confidential information.

**Red Tape & Higher Penalties.** The House bill’s onerous new paperwork requirements and higher penalties are punitive and simply add to the frustration of many small farmers and Main Street businesses around our state.

Sincerely,



John L. Reynolds  
Minnesota State Director  
National Federal of Independent Business  
[john.reynolds@nfib.org](mailto:john.reynolds@nfib.org)  
(651) 293-1283