

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 683

(Senator Garagiola, *et al.*)

Finance

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**Labor and Employment - Maryland Wage and Hour Law - Payment of Wages**

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This bill requires employers in the State, as of July 1, 2013, to pay the greater of the federal minimum wage or a State minimum wage of \$8.25 per hour to employees subject to federal or State minimum wage requirements. The bill provides for subsequent annual increases in the State's minimum wage.

The bill also expands the application of the Maryland Wage and Hour Law to additional industries or classes of workers, changes overtime laws for various industries, and alters the tip credit that employers can apply against the direct wages paid to tipped employees.

The bill takes effect June 1, 2013.

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**Fiscal Summary**

**State Effect:** State expenditures (all funds) increase by a total of \$2.1 million in FY 2014 due to additional staffing needs at the Department of Labor, Licensing, and Regulation (DLLR) and additional payroll costs for certain employees under the University System of Maryland (USM), the Maryland Department of Transportation (MDOT), and the Maryland Department of Aging (MDoA). Out-year expenditures reflect inflation and employee turnover as well as continued increases in the minimum wage. Federal fund revenues increase minimally to offset increased wages paid to senior citizen aides employed by MDoA. General fund revenues may increase minimally due to additional fines assessed against violators of the State's Wage and Hour Law. Any increase in general fund tax revenues to the State cannot be reliably projected but is expected to be minimal.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
FF Revenue	\$ .11	\$ .19	\$ .30	\$ .31	\$ .32
GF Expenditure	\$ .33	\$ .32	\$ .33	\$ .35	\$ .36
SF Expenditure	\$ .01	\$ .01	\$ .02	\$ .02	\$ .02
FF Expenditure	\$ .11	\$ .19	\$ .30	\$ .31	\$ .32
Higher Ed Exp.	\$ 1.65	\$ 1.30	\$ 2.09	\$ 2.15	\$ 2.21
Net Effect	(\$ 1.99)	(\$ 1.63)	(\$ 2.44)	(\$ 2.52)	(\$ 2.60)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Local government expenditures increase significantly for certain local jurisdictions to pay additional wages to minimum wage government employees. Any increase in local government tax revenues cannot be reliably projected but is expected to be minimal. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### *Minimum Wage Adjustment*

The bill specifies that, unless the federal minimum wage is set at a higher rate, the minimum wage of the State is \$8.25 per hour effective July 1, 2013. As of July 1, 2014, the State minimum wage is increased to the greater of the federal minimum wage or \$9.00 per hour, and, as of July 1, 2015, the State minimum wage will be the greater of the federal minimum wage or \$10.00 per hour.

In subsequent years, the State minimum wage must be adjusted by the Commissioner of Labor and Industry according to the Consumer Price Index (CPI) for the Washington-Baltimore Metropolitan area, or a successor index that is published by the federal Bureau of Labor Statistics. If the federal minimum wage increases by an amount greater than the amount calculated using the above method, the State's minimum wage increase must increase by the same amount as the federal minimum wage increase. If the CPI does not change during a given year, or decreases, the minimum wage remains at the same rate as that of the prior year. An increase in the State minimum wage must be rounded up to the nearest five cents.

### *Expanded Applicability of the Maryland Wage and Hour Law*

The bill specifies that the State's Wage and Hour Law applies to additional industries or classes of workers, including individuals who are (1) age 62 or older and work 25 hours or less per week; (2) employed in a motion picture or drive-in theatre; (3) employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; or (4) employed at a cafe, drive-in, drugstore, restaurant, or tavern that sells food and drink for on-site consumption and has a gross annual income of \$250,000 or less. The bill subjects these employees to the provisions of the Wage and Hour Law, including minimum wage and overtime requirements.

### *Changes to Provisions Related to the Payment of Overtime*

Under the bill, agricultural workers who are exempt from overtime provisions under the federal Fair Labor Standards Act (FLSA) may earn overtime pay for each hour over 48 hours that an employee works during one work; currently these individuals must work 60 hours per week before overtime compensation is required.

The bill specifies that employees of an institution designed to provide care for the elderly or intellectually, mentally, or physically disabled (other than a hospital) may earn overtime pay after working 40, instead of 48, hours in one week.

Finally, the bill repeals the provision that exempts certain employers from overtime requirements, including hotels; motels; restaurants; gas stations; private country clubs; and certain not-for-profit entities that provide at-home care to aged or sick individuals, the disabled, or individuals with a mental disorder. Taxicab operators must also receive overtime compensation under the bill.

### *Reduction of the Tip Credit*

Under the bill, an employer who employs a worker who receives tips may claim a 30% tip credit. Thus, under the bill an employer must pay a tipped employee an hourly wage of 70% of the minimum wage or, as of July 1, 2013, about \$5.78 per hour.

### *Penalties*

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to twice the difference as liquidated damages; and (3) legal fees. The court *must* award these difference in wages,

damages, and counsel fees if the court determines that an employee is entitled to recovery.

**Current Law:** The Maryland Wage and Hour Law is the State complement to the federal FLSA of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently \$7.25 per hour, or \$6.15 per hour. The State and local governments are considered employees under the Wage and Hour Law.

The Maryland Wage and Hour Law, and minimum wage requirements, do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16 or older than age 61; salesmen and those who work on commission; an employer's immediate family; movie theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption; and certain farm workers. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop.

Employers are required to pay an overtime wage of at least 1.5 times the usual hourly wage. This requirement does not apply to an employer that is subject to federal rail laws; a hotel or motel; a restaurant; a gasoline service station; a bona fide private country club; a nonprofit entity primarily engaged in providing temporary at-home care services; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, parts person, or salesperson, under certain conditions; or drivers employed by a taxicab operator. An employer has to compute the wage for overtime on the basis of each hour over 40 hours that an employee works during one work week. Specific exemptions apply for farm work, bowling establishments, and infirmaries.

The employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than \$30 a month in tips. The tip credit is currently 50% of the minimum wage or about \$3.63 per hour.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover the difference between the wage paid to the employee

and the wage required. The court *may* award to an employee legal fees if the court determines that an employee is entitled to recovery.

### *Fair Labor Standards Act*

With some exceptions, similar to State law, FLSA requires that a worker be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. There are two ways in which an employee can be covered by FLSA: “enterprise coverage” and “individual coverage.”

*Enterprise Coverage:* Employees who work for certain businesses or organizations are covered by FLSA. These enterprises, which must have at least two employees, are (1) those that have an annual dollar volume of sales or business done of at least \$500,000 or (2) hospitals, businesses that provide medical or nursing care, schools and preschools, and government agencies.

*Individual Coverage:* Even where there is no enterprise coverage, employees may be covered by FLSA if their work regularly involves them in interstate commerce. FLSA covers individual workers who are engaged in commerce or in the production of goods for commerce. Examples of employees who are involved in interstate commerce include those who (1) produce goods that will be sent out of state; (2) regularly make telephone calls to persons located in other states; (3) handle records of interstate transactions; (4) travel to other states for work; or (5) perform janitorial work where goods are produced for shipment to another state. Also, domestic service workers (*i.e.*, housekeepers, full-time baby sitters, and cooks) are normally covered by FLSA. However, many agricultural workers are not subject to FLSA minimum wage and overtime standards.

**Background:** The U.S. Bureau of Labor Statistics reports 65,000 workers in Maryland earn wages equal to or less than the prevailing federal minimum wage. As shown in **Exhibit 1**, 19 states and the District of Columbia mandate a minimum wage higher than the federal minimum wage of \$7.25 per hour. Five states have no mandated minimum wage, another four have a minimum wage set lower than the federal minimum wage, and the remaining states, like Maryland, use the federal minimum wage.

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**Exhibit 1**  
**States with Higher than Federal Minimum Wage, 2013**

<u>State</u>	<u>Rate</u>	<u>Increases and Indexation</u>
Washington	\$9.19	Increases annually based on cost-of-living formula
Oregon	\$8.95	Increases annually based on cost-of-living formula
Vermont	\$8.60	Increases by 5% or the percentage increase of the CPI
Connecticut	\$8.25	Automatically increases to 0.5% above federal minimum wage if the federal rate equals or becomes higher than the state minimum
District of Columbia	\$8.25	Automatically increases to \$1.00 above federal rate if the federal rate equals or becomes higher than the district minimum
Illinois	\$8.25	
Nevada	\$8.25	Increases annually based on cost-of-living formula
California	\$8.00	
Massachusetts	\$8.00	Automatically increases to \$0.10 above federal rate if the federal rate equals or becomes higher than the state minimum
Ohio	\$7.85	Increases annually based on the CPI
Arizona	\$7.80	Increases annually based on cost-of-living formula
Montana	\$7.80	Increases or decreases annually based on cost-of-living formula
Florida	\$7.79	Increases annually based on cost-of-living formula
Colorado	\$7.78	Increases or decreases annually based on cost-of-living formula
Alaska	\$7.75	
Rhode Island	\$7.75	
Maine	\$7.50	
New Mexico	\$7.50	
Michigan	\$7.40	
Missouri	\$7.35	Increases or decreases annually based on cost-of-living formula

Source: U.S. Department of Labor

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**State Revenues:** General fund tax revenues increase minimally from increasing the State's minimum wage. Individuals earning minimum wage likely have low, if any, State income tax liability so raising the minimal wage only has a minimal effect on State income tax revenues. Given that raising the minimum wage boosts the purchasing power of minimum wage workers and generates new consumer spending, general fund sales tax revenues increase minimally.

## **State Expenditures:**

### *Expanded Enforcement of Wage and Hour Law Required*

By expanding the applicability of the State's Wage and Hour Law and increasing the State's minimum wage, the bill creates additional enforcement responsibilities for DLLR's Division of Labor and Industry. DLLR has not exercised its authority to investigate complaints about minimum wage payments and overtime compensation and to review wage records to enforce compliance since the budget cuts of 1991 effectively reduced available staff for this purpose from 34 to 6. Instead, since State and federal laws are similar, it has been referring complainants to the Employment Standards Administration at the federal Department of Labor (DOL). DOL investigators enforce FLSA, not the State's Wage and Hour Law, so DLLR would be responsible for pursuing complaints against employers accused of paying employees more than \$7.25 but less than \$8.25 per hour in fiscal 2014.

DLLR advises that, by removing the longstanding exemptions of minimum wage and overtime requirements, as many as 42,000 additional employees in the State may be subject to the Wage and Hour Law. Thus, State investigators must expand enforcement to additional industries and locations within the State to enforce minimum wage and overtime compensation requirements in workplaces formerly exempted from such laws. DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in complaints due to the expanded applicability of the State's Wage and Hour Law.

The staff needed to respond to and manage the additional workload created by the bill includes an administrator, three full-time "wage and hour" investigators, and one office clerk. DLLR advises that inquiries into wage and hour violations are expected to increase significantly due to the bill because the State minimum wage will likely be set at a higher rate than the federal minimum wage. DLLR estimates that roughly 2,000 complaints per year may be received alleging minimum wage or overtime violations. Based on prior experience, DLLR advises that the majority of employers in violation will voluntarily come into compliance with the bill's provisions after being contacted by division staff. However, at least 100 new formalized complaints must be investigated and processed each year by the division. Additional complaints may be received regarding the adjusted tip credit and the inclusion of a multitude of previously exempted workers in the agricultural industry. DLLR advises that enforcing the additional requirements and investigating complaints emanating from canneries, "crab-picking" facilities, poultry farms, and other agricultural facilities may be particularly labor-intensive for division investigators.

In addition to investigating and processing complaints, DLLR advises that the additional staff will conduct outreach efforts to inform employers, especially in sectors that historically have not been covered by wage and hour laws, of the new requirements. Finally, additional administrative support is needed to handle phone and email inquiries, write work orders, handle equipment and supplies, and manage complaint files.

General fund expenditures increase for DLLR by \$333,643 in fiscal 2014, which assumes a 30-day implementation delay from the bill's June 1 effective date so that DLLR staff are in place as of July 1, 2013, concurrent with the initial increase in the minimum wage. This estimate reflects the cost of hiring three investigators, one office clerk, and one administrator to investigate complaints and enforce the State's Wage and Hour Law. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5
Salaries and Fringe Benefits	\$273,845
One-time Start-up Costs	22,210
Operating Expenses	<u>37,588</u>
<b>Total FY 2014 State Expenditures</b>	<b>\$333,643</b>

Future year expenditures reflect annual increases and employee turnover as well as annual increases in ongoing operating expenses.

*Additional Staffing Costs*

The Department of Budget and Management (DBM) advises that, on rare occasions, summer and work study student workers who earn minimum wage are employed by the State Personnel Management System (SPMS). This additional cost is minimal and can be absorbed with existing resources. Also, DBM advises that SPMS employs 104 part-time senior citizen aides through MDoA who are paid the minimum wage. However, this cost is fully offset by an increase in federal fund revenues of \$108,160 in fiscal 2014 as the aides are paid with federal funds.

USM advises that some student employees are currently paid minimum wage. Higher education expenditures increase \$1.65 million in fiscal 2014 as these employees must be paid additional wages. MDOT pays four employees minimum wage; thus, Transportation Trust Fund expenditures increase \$8,320 in fiscal 2014 in order to comply with the bill.

**Exhibit 2** displays the additional wages that would be paid to these employees under the bill. As depicted in Exhibit 2, expenditures increase by \$1.7 million in fiscal 2014. Expenditures further increase in future years as the minimum wage increases. Estimated



expenditures for fiscal 2017 and 2018 assume a 3% annual increase for inflation, and all estimates assume a State minimum wage that is higher than the federal minimum wage.

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**Exhibit 2**  
**Effect of Minimum Wage on State Employees**  
**Fiscal 2014-2018**

<u>Additional Staffing Costs</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
MDOT employees	\$8,320	\$14,560	\$22,880	\$23,566	\$24,273
Senior citizen aides	\$108,160	\$189,280	\$297,440	\$306,363	\$315,554
USM students	\$1,651,108	\$1,299,133	\$2,087,824	\$2,150,459	\$2,214,972
<b>Increase in Expenditures</b>	<b>\$1,767,588</b>	<b>\$1,502,973</b>	<b>\$2,408,144</b>	<b>\$2,480,388</b>	<b>\$2,554,880</b>
Federal Fund Revenues	\$108,160	\$189,280	\$297,440	\$306,363	\$315,554
<b>Net Increase in Expenditures</b>	<b>\$1,659,428</b>	<b>\$1,313,693</b>	<b>\$2,110,704</b>	<b>\$2,174,025</b>	<b>\$2,239,246</b>

Source: Department of Legislative Services

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**Local Fiscal Effect:** Many local jurisdictions, such as Baltimore City and Queen Anne’s County, require their employees to be paid according to living wage provisions. Thus, many local jurisdictions currently pay all employees wages higher than those required by the bill. However, several local jurisdictions surveyed indicate that some government employees are paid the current minimum wage. For example, Montgomery County employs 818 workers who will be affected by the bill. The county advises expenditures increase by about \$853,000 in fiscal 2014 and by \$2,984,000 in fiscal 2016 to pay higher wages to these workers. The bill affects 175 part-time Charles County employees in fiscal 2014, and by fiscal 2016, 234 part-time Charles County employees will be paid the minimum wage. The county’s expenditures increase by about \$70,000 in fiscal 2014 to pay higher wages to these workers. County expenditures increase by higher amounts in future years due to the subsequent increases in the level of the State minimum wage.

**Small Business Effect:** Small businesses that employ minimum wage workers in the State experience increases in their labor costs due to the bill. The Economic Policy Institute estimates 536,000 Maryland workers receive \$778 million in additional wages over the phase-in period. The effect of such increases is especially meaningful for employers who were previously not subject to the Wage and Hour Law, such as employers of certain farm workers. Furthermore, the reduction of the tip credit increases the minimum wage that employers must pay tipped employees. Thus, payroll costs for small businesses, such as businesses in the hospitality industry, increase significantly due to the bill. Currently, tipped employees must be paid \$3.63 per hour. Under the bill,

such employees must be paid \$5.78 per hour in fiscal 2014, \$6.30 per hour in fiscal 2015, and \$7.00 per hour in fiscal 2016.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1204 (Delegate Braveboy, *et al.*) - Economic Matters.

**Information Source(s):** Charles, Montgomery and Queen Anne's counties; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; U.S. Department of Labor; Ohio General Assembly; Economic Policy Institute; Department of Legislative Services

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