

**Department of Legislative Services**  
 Maryland General Assembly  
 2014 Session

**FISCAL AND POLICY NOTE**

House Bill 72 (Delegate Haynes)  
 Economic Matters

**Labor and Employment - State Minimum Wage Rate - Increase**

This bill requires employers in the State to pay the greater of the federal minimum wage or a State minimum wage of \$12.50 per hour to employees subject to federal or State minimum wage requirements.

The bill takes effect July 1, 2014.

**Fiscal Summary**

**State Effect:** State expenditures (all funds) increase by a total of \$38.8 million in FY 2015 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), the Department of Legislative Services (DLS), the Maryland Department of Aging (MDoA), and State Personnel Management System (SPMS). 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 2015	FY 2016	FY 2017	FY 2018	FY 2019
FF Revenue	\$0.88	\$0.88	\$0.88	\$0.88	\$0.88
GF Expenditure	\$5.07	\$5.05	\$5.07	\$5.09	\$5.11
SF Expenditure	\$0.88	\$0.88	\$0.88	\$0.88	\$0.88
Higher Ed Exp.	\$32.86	\$32.86	\$32.86	\$32.86	\$0
Net Effect	(\$37.92)	(\$37.90)	(\$37.92)	(\$37.94)	(\$5.11)

*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.

**Small Business Effect:** Meaningful.

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## Analysis

**Current Law:** The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (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 employers 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; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; 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; drivers employed by a taxicab operator; or specified air carrier employees under certain conditions. 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.

A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

### *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:** As shown in **Exhibit 1**, 21 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. Unless a state has a higher minimum wage rate, the federal minimum wage rate applies.

### *Federal Minimum Wage*

The federal minimum wage first established in 1938 has been incrementally increased and expanded to cover additional employees through subsequent amendments to FLSA. The last increase in the federal minimum wage was in July 2009. Recently, bills have been introduced in the U.S. Congress proposing to gradually increase the minimum wage to \$10.10 an hour and then index the minimum wage to the CPI, but none has been enacted. **Exhibit 2** shows the nominal and real values for each time the minimum wage was changed, expressed in terms of July 2013 dollars. The real value reflects the purchasing power of the minimum wage, taking inflation into consideration. When Maryland established a minimum wage rate of \$6.15 in January 2006, the real value of the minimum wage then was \$7.46, in 2013 dollars.

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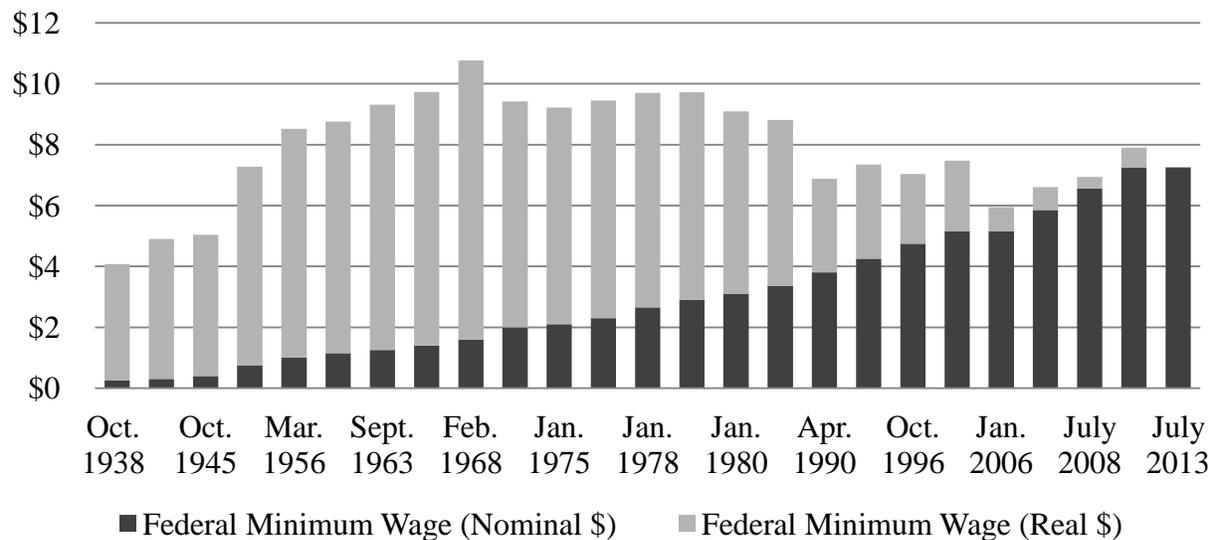
**Exhibit 1**  
**States with Higher than Federal Minimum Wage, 2014**

<b><u>State</u></b>	<b><u>Rate</u></b>	<b><u>Increases and Indexation</u></b>
Washington	\$9.32	Increases annually based on inflation
Oregon	\$9.10	Increases annually based on inflation
Vermont	\$8.73	Increases annually by 5% or the percentage increase of the CPI
Connecticut	\$8.70	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 inflation
New Jersey	\$8.25	Increases annually based on inflation
California	\$8.00	Phasing up to \$10.00 by January 2016
Colorado	\$8.00	Increases annually based on inflation
Massachusetts	\$8.00	Automatically increases to \$0.10 above federal rate if the federal rate equals or becomes higher than the state minimum
New York	\$8.00	Phasing up to \$9.00 by January 2016
Rhode Island	\$8.00	
Ohio	\$7.95	Increases annually based on inflation
Florida	\$7.93	Increases annually based on cost-of-living formula
Arizona	\$7.90	Increases annually based on cost-of-living formula
Montana	\$7.90	Increases or decreases annually based on inflation
Alaska	\$7.75	
Maine	\$7.50	
Missouri	\$7.50	Increases or decreases annually based on cost-of-living formula
New Mexico	\$7.50	
Michigan	\$7.40	

Source: U.S. Department of Labor; National Conference of State Legislatures

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**Exhibit 2**  
**Federal Minimum Wage in Real and Nominal Dollars**  
**1938-2013**



Source: Congressional Research Service

*Local Jurisdiction Labor Laws*

Charter counties have the authority to establish a local minimum wage rate under the Express Powers Act. Currently, 10 counties exercise charter home rule: Anne Arundel, Baltimore, Cecil, Dorchester, Harford, Howard, Montgomery, Prince George’s, Talbot, and Wicomico, with Frederick County changing to charter home rule on December 1, 2014. Additionally, Baltimore City has police power, so it can establish and enforce a local minimum wage rate. Counties that exercise commission or code home rule have not been delegated the police power that charter counties and Baltimore City have, so they lack the legal authority to establish a local minimum wage.

Montgomery County and Prince George’s County passed local minimum wage laws in 2013, Montgomery County Bill 27-13 and Prince George’s County Bill CB-94-2013. Both bills phase in minimum wage increases over four years. The bills increase the minimum wage to \$8.40 per hour beginning October 1, 2014; \$9.55 per hour beginning October 1, 2015; \$10.75 per hour beginning October 1, 2016; and \$11.50 per hour beginning October 1, 2017. The county minimum wage for Montgomery and Prince George’s counties do not apply to an employee who is exempt from the minimum wage requirements of the Maryland Wage and Hour Law or the federal FLSA or to an employee who is younger than age 19 and is employed no more than 20 hours in a week.

Baltimore City enacted a city minimum wage rate in 1964, which was challenged in the State Court of Appeals in *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969). The court found that the State's minimum wage rate did not preempt Baltimore's minimum wage law since Baltimore's law supplemented the State law by setting a higher rate. Baltimore still has its own minimum wage statute, but it currently sets the minimum wage rate at the federal rate.

### *Characteristics of Minimum Wage Workers*

The U.S. Bureau of Labor Statistics (BLS) and the U.S. Census Bureau conduct the Current Population Survey (CPS), which includes tabulating characteristics on minimum wage earners. In 2012, 3.6 million workers nationwide were paid wages at or below the minimum wage, representing 4.7% of all hourly paid workers.

According to CPS, minimum wage workers tend to be young. About half of all workers earning minimum wage or less were younger than 25, and about 21% of teenagers earning hourly wages were paid the minimum wage or less. Among hourly wage workers without a high school diploma, approximately 10% earned the federal minimum wage or less. About 11% of part-time workers earning an hourly wage were paid the federal minimum wage or less, compared with about 2% of full-time workers.

BLS reports 67,000 workers in Maryland earned wages equal to or less than the federal minimum wage in 2012. Of those earning minimum wage or less, 61% were women. In the last decade, the percent of workers in Maryland earning at or below federal minimum wage has increased from 2.1% in 2003 to 5% in 2012, while, over the same time, median hourly earnings overall have risen from \$12.08 to \$14.17.

### *Minimum Wage Effects on the Economy*

There is much debate on how raising the minimum wage affects the economy. Positive impacts on the economy may include (1) increases in personal income; (2) decreases in employee turnover; (3) increases in local consumption; (4) higher labor force participation rates; (5) decreases in social welfare costs; and (6) higher levels of technological development, investment, and productivity.

However, on the downside, raising the minimum wage may (1) decrease demand for labor; (2) increase inflation from employers passing higher employee costs onto the consumer; (3) cause wage compression; (4) reduce local competitiveness; and (5) have disemployment effects. The disemployment effects happen when businesses hire fewer low-wage workers in response to an increase in the minimum wage; benefits to low-wage workers from increased wages are offset by a reduction in hours worked or increased unemployment.

**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 minimum wage only has a minimal effect on State income tax revenues. Any increase in personal income tax revenue is likely offset from diminished revenues from businesses with higher payroll expenses. 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.

DLLR anticipates investigating more violations of the State's Wage and Hour Law under the bill, so general fund revenues may increase minimally due to additional fines assessed against violators of the State's Wage and Hour Law.

### **State Expenditures:**

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

By 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 U.S. 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 the federal wage of \$7.25 but less than the State wage of \$12.50 per hour in fiscal 2015 and beyond.

DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in complaints prompted by a higher minimum wage.

The staff needed to respond to and manage the additional workload created by the bill includes an assistant Attorney General, 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 is set at a higher rate than the federal minimum wage (assuming the federal government does not raise the minimum wage correspondingly). DLLR estimates that at least 5,300 additional inquiries would be made each year and at least 1,000 complaints alleging minimum wage violations would be filed each year. 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 60 new formalized complaints must likely be investigated and processed each year by the division, with 10 of them requiring action in the court of appropriate jurisdiction. The volume could be much greater due to the number of employees affected on July 1, 2014.

In addition to investigating and processing complaints, DLLR advises that the additional staff will conduct outreach efforts to inform employers of the new minimum wage. Finally, additional administrative support is needed to handle phone and email inquiries, prepare and file wage orders, handle equipment and supplies, and manage complaint files. Legal staff is needed to provide advice, review wage orders, and plead cases.

General fund expenditures increase for DLLR by \$427,344 in fiscal 2015, which assumes that DLLR staff are in place as of July 1, 2014, concurrent with the initial increase in the minimum wage. This estimate reflects the cost of hiring three investigators, one office clerk, one assistant Attorney General, 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	6
Salaries and Fringe Benefits	\$364,791
One-time Start-up Costs	30,360
Operating Expenses	<u>32,193</u>
<b>Total FY 2015 State Expenditures</b>	<b>\$427,344</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 raising the minimum wage rate to \$12.50 impacts 19 agencies within SPMS. The bill affects 729 employees, who are in grade 5 (through step 4), grade 6 (through step 2), and grade 7 (through step 1). General fund expenditures increase \$2.5 million in fiscal 2015 as these employees must be paid higher wages. Future appointments in grades 5 through 7 would need to be placed in higher steps. Additionally, DBM advises that MDoA employs 149 part-time senior citizen aides who are paid the minimum wage. However, increased costs for these individuals are fully offset by an increase in federal fund revenues of \$880,466 in fiscal 2015 as the aides are paid with federal funds. Additionally, 1,310 contractual positions would have to be paid additional wages of \$1.8 million.

USM advises that 9,318 employees, the vast majority of which are students, are paid less than \$12.50 per hour. Higher education expenditures increase approximately \$32.9 million in fiscal 2015 as these employees must be paid higher wages. DLS estimates a \$27,000 increase in expenditures for wage increases of contractual employees. MDOT would pay an additional \$310,000 in higher wages to full-time, contractual, and union employees.

**Exhibit 3** displays the additional wages that would be paid to these employees in fiscal 2015 under the bill. State expenditures increase by \$37.5 million in fiscal 2015. These costs do not take into account any wage adjustments to internal salary ladders. An employer would likely increase wages for an employee who currently earns just above \$12.50 per hour and has more job responsibilities than a minimum wage employee. Any such wage adjustments further increase the State’s expenditures significantly.

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**Exhibit 3**  
**Effect of Minimum Wage on State Employees**  
**Fiscal 2015**

<u>Additional Staffing Costs</u>	<u>FY 2015</u>
MDOT employees	\$310,098
DLS employees	27,000
MD employees within SPMS	2,504,113
MD contractual employees within SPMS	1,798,975
Senior citizen aides	880,466
USM employees	32,855,912
<b>Increase in Expenditures</b>	<b>\$38,376,564</b>
Federal Fund Revenues	\$880,466
<b>Net Increase in Expenditures</b>	<b>\$37,496,098</b>

Source: Department of Legislative Services

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**Local Fiscal Effect:** Although some local jurisdictions, such as Baltimore City and Queen Anne’s County, require their employees to be paid according to living wage provisions, raising the minimum wage to \$12.50 will still have a significant impact to local jurisdictions. For example, Queen Anne’s County expenditures increase by approximately \$162,000 in fiscal 2015 for increased wages to 103 part-time contractual employees. Baltimore County estimates the bill affects 50 interns, causing the county’s

expenditures to increase by about \$42,500 annually. Carroll County estimates expenditures will increase \$915,000 for pay increases to 187 employees, including contractual employees, who are currently paid less than \$12.50. Dorchester County expenditures increase by \$123,200 for increased wages to 34 employees. Harford County employs 114 workers who will be affected by the bill. The county advises expenditures increase by approximately \$112,000 annually to pay higher wages to these workers. The City of Laurel estimates the bill will cost the city \$319,000, assuming the city maintains current staffing levels. Montgomery County's merit employees earn more than \$12.50, and the county established a county minimum wage of \$10.75 that phases up to \$11.50 per hour in October 2017, so the bill only has a minimal impact to Montgomery County.

**Small Business Effect:** Small businesses in the State, especially those that employ minimum wage workers, experience significant increases in their labor costs due to the bill. According to data from the U.S. Bureau of Labor Statistics, 25% of Maryland workers earn less than \$12 per hour, so *more than* 625,000 Maryland workers will be directly affected by the bill (as it affects workers earning less than \$12.50 an hour). The bill increases the minimum wage that employers must pay tipped employees from \$3.63 to \$6.25. Thus, payroll costs for small businesses, such as businesses in the hospitality industry, increase significantly due to the bill. Workers in food preparation and serving-related occupations, building and grounds cleaning and maintenance occupations, personal care and service occupations, and sales and related occupations earn median hourly wages of less than \$12.25, so these industries will be affected the most. There are approximately 200,000 Maryland workers in the food preparation and serving-related industry, of which more than 75% earn less than \$12 per hour (even more may be affected due to the \$12.50 threshold set by the bill).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Cecil, Dorchester, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Town of La Plata; City of Laurel; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Congressional Research Service; U.S. Department of Labor; U.S. Census Bureau; Department of Legislative Services

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