

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

Senate Bill 273 (Senator Glassman)
 Finance

Labor and Employment - Minimum Wage - Establishment by Counties

This bill authorizes a county to establish a minimum wage rate for employees working in the county. The bill requires employers in the State, as of October 1, 2014, to pay the greater of the federal minimum wage or the minimum wage established by the county in which the employee is working. If the county in which an employee is working has not established a minimum wage, then the minimum wage for that employee is the federal minimum wage.

Fiscal Summary

State Effect: General fund expenditures increase by \$328,100 in FY 2015 due to additional staffing needs at the Department of Labor, Licensing, and Regulation (DLLR). State expenditures (all funds) potentially increase for additional payroll costs to the extent counties choose to establish their own minimum wage rates and State employees work in those counties. Any increase in general fund tax revenues to the State cannot be reliably projected, but it is expected to be minimal. General fund revenues may increase minimally due to additional fines assessed against violators of local minimum wage laws.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	328,100	408,500	426,800	445,900	465,900
Net Effect	(\$328,100)	(\$408,500)	(\$426,800)	(\$445,900)	(\$465,900)

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

Local Effect: Montgomery County expenditures decrease by \$350,000 and revenues decrease between \$87,500 and \$125,000 annually. Prince George’s County advises that its enforcement costs could decrease by about \$385,000 annually. There is no impact to other local jurisdictions unless other counties choose to establish their own minimum wage. Local government expenditures potentially increase significantly for certain local

jurisdictions to pay additional wages to minimum wage government employees if they choose to establish their own minimum wage. Any increase in local government tax revenues cannot be reliably projected but is expected to be minimal.

Small Business Effect: Potential meaningful.

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.

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.

Local Jurisdiction Labor Laws

Maryland counties operate under three forms of government: commission; charter home rule; and code home rule. Commission counties cannot enact local laws in areas where the General Assembly has not expressly granted authority, while charter counties have the authority to enact local laws. Code counties have authority to enact some local laws, but their power is not as extensive as charter home rule so the General Assembly must pass some local laws for code counties.

Charter counties have the authority to establish a local minimum wage rate under the Express Powers Act. The act grants a charter county council the authority to pass any

ordinance, resolution, or bylaw, not inconsistent with State law, which may aid in executing and enforcing powers under the Express Powers Act or may aid in maintaining the peace, good government, health, and welfare of the county. A charter county may exercise these powers to the extent that the powers are not preempted by or in conflict with public general law. Currently, 10 counties exercise charter home rule.

Counties that exercise commission or code home rule have not been delegated the police power that charter counties have, so they lack the legal authority to establish a local minimum wage. Baltimore City has police power, so it can establish and enforce a local minimum wage rate. **Exhibit 1** shows the form of government for each Maryland county.

Exhibit 1
Forms of County Governments in Maryland

<u>Charter</u>	<u>Commission</u>	<u>Code</u>
Anne Arundel	Calvert	Allegany
Baltimore	Carroll	Caroline
Cecil	Frederick ¹	Charles
Dorchester	Garrett	Kent
Harford	St. Mary's	Queen Anne's
Howard	Somerset	Worcester
Montgomery	Washington	
Prince George's		
Talbot		
Wicomico		

¹Frederick County will become a charter home rule county on December 1, 2014.

Source: Department of Legislative Services

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.

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 67,000 workers in Maryland earn wages equal to or less than the federal minimum wage. 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. Additionally, some cities in states like California and New Mexico have a citywide minimum wage that is higher than the federal and state minimum wage. 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.

Exhibit 1
States with Higher than Federal Minimum Wage, 2014

<u>State</u>	<u>Rate</u>	<u>Increases and Indexation</u>
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

State Revenues: General fund tax revenues potentially increase minimally if counties establish local minimum wages. Individuals earning minimum wages likely have low, if any, State income tax liability so establishing county minimum wages only has a minimal impact on State income tax revenues. Any increase in personal income tax revenue may be offset by lower income tax revenue from businesses with higher payrolls. Given that establishing a county minimum wage higher than the federal minimum wage boosts the

purchasing power of minimum wage workers and generates new consumer spending, general fund sales tax revenues potentially 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 setting the minimum wage at the greater of the federal minimum wage or the minimum wage established by a county, 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 \$7.25 but less than the minimum wage established by counties.

The staff needed to respond to and manage the additional workload created by the bill includes an administrator, an assistant Attorney General, three full-time "wage and hour" investigators, and one office clerk. It is unknown how many counties will choose to establish minimum wage rates above the federal minimum wage rate. If counties other than Montgomery and Prince George's counties choose to establish minimum wage rates above the federal minimum wage rates, DLLR may need additional staff. DLLR advises that inquiries into wage and hour violations are expected to increase significantly due to the bill because county minimum wages may be set at a higher rate than the federal minimum wage. DLLR estimates that as many as 1,600 complaints per year may be received alleging minimum wage violations if all counties choose to establish county minimum wage rates. 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 90 new formalized complaints must likely be investigated and processed each year by the division, with 10 of them requiring action within the court of appropriate jurisdiction.

In addition to investigating and processing complaints, DLLR advises that the additional staff will conduct outreach efforts to inform employers of the new requirements. 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 \$328,100 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring three investigators, one office clerk, one assistant Attorney General, and one administrator to investigate complaints and enforce local minimum wage increases under 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	\$273,595
One-time Start-up Costs	30,360
Operating Expenses	<u>24,145</u>
Total FY 2015 State Expenditures	\$328,100

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 allowing counties to set their own minimum wage rate will impact State employees if counties choose to set wages higher than the wages that the State pays. The State grade 5, base salary, which is the lowest level in the standard salary schedule, has an hourly rate of \$10.67 so if a county set a minimum wage above that rate, some State agencies would have to pay additional wages. Additionally, DBM advises that some contractual and temporary employees, primarily within the Department of Natural Resources and the Department of Health and Mental Hygiene, earn hourly wages at or just above minimum wage, so if counties establish higher minimum wage rates, expenditures (all funds) may increase. The Maryland Department of Aging (MDoA) employs 149 part-time senior citizen aides, who are paid the federal minimum wage, but if counties established minimum wages higher than the federal minimum wage rate, this additional cost would be fully offset by an increase in federal fund revenues as the aides are paid with federal funds.

Local Expenditures: It is unknown how many counties would establish a minimum wage for their counties. Some local jurisdictions, such as Baltimore City and Queen Anne's counties, require their employees to be paid according to living wage provisions, while other counties choose to pay employees above minimum wage. Thus, many local jurisdictions would likely not be impacted if they established minimum wage rates, assuming they are set below wage rates that they are currently paying.

The bill preserves the ability for charter counties to establish their own minimum wage rates. Montgomery and Prince George's counties are the only counties with a county minimum wage. Currently, these counties must enforce their county minimum wage laws, but under the bill, the State must enforce their county minimum wages. Thus, Montgomery and Prince George's counties' expenditures for enforcing minimum wages decrease. Montgomery County estimates it will cost the county \$346,980 annually for three investigators and an office services coordinator to enforce its local minimum wage laws, so the county expenditures decrease \$346,980 in fiscal 2015 from not enforcing its local minimum wage laws. Prince George's County advises it would have similar decreases in expenditures – about \$385,000 annually. However, Montgomery County also expects to generate between \$87,500 and \$125,000 of revenue annually from civil penalties of \$500 each for violations of its local minimum wage laws. Under the bill, since the county does not enforce its local minimum wage, it loses revenue from not collecting civil penalties on violations of local minimum wage laws.

Small Business Effect: Small businesses that employ minimum wage workers in counties that establish their own minimum wages experience increases in their labor costs due to the bill. Payroll costs for small businesses, such as businesses in the hospitality industry, could increase significantly due to the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 293 (Delegate Parrott, *et al.*) - Economic Matters. SB 166 (Senator Colburn – Finance) is also identical.

Information Source(s): Baltimore, Dorchester, Garrett, Howard, Kent, Montgomery, Prince George's, Washington, and Worcester counties; Baltimore City; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Maryland Department of Transportation; University System of Maryland; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of Legislative Services

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