Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 988 (Delegate Braveboy, *et al.*)
Economic Matters

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

This bill requires employers, as of July 1, 2011, 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, 2011.

Fiscal Summary

State Effect: General fund expenditures increase by a total of $335,100 in FY 2012 due to additional staffing needs at the Department of Labor, Licensing, and Regulation (DLLR) and additional payroll costs for State agencies. Potential increase in expenditures for the University System of Maryland (USM) due to additional payroll costs for certain student employees. General fund revenues may increase minimally due to additional fines assessed against violators of the State's Wage and Hour Law. Any increase in tax revenues to the State cannot be reliably projected but is expected to be minimal.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	-	-	-	-	-
GF Expenditure	$335,100	$450,500	$583,300	$591,900	$600,900
Higher Ed Exp.	-	-	-	-	-
Net Effect	($335,100)	($450,500)	($583,300)	($591,900)	($600,900)

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.

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, 2011. This rate is effective for 12 months. As of July 1, 2012, the minimum wage is increased to $9.00 per hour, and as of July 1, 2013, the minimum wage in the State will be $9.75 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 may remain at the same rate as that of the prior year. An increase in the State minimum wage must be rounded to the nearest 5 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 less than 25 hours 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 café, 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 (FSLA) 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 a bowling alley or an institution designed to provide care for the elderly or intellectually, mentally, or physically disabled (other than 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; country clubs; gas stations; 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 25% tip credit. Thus, under the bill an employer must pay a tipped employee an hourly wage of 75% of the minimum wage, or, as of July 1, 2011, about $6.19 per hour.

Current Law: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act 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 higher of the federal minimum wage, which is currently $7.25 per hour, or $6.15 per hour.

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.

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 the 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**, 17 states and the District of Columbia mandate a minimum wage higher than the federal minimum wage of $7.25 per hour.

Exhibit 1
States with Higher than Federal Minimum Wage, 2011

State	Rate	Increases and Indexation
Washington	$8.67	Increases annually based on cost-of-living formula
Oregon	$8.50	Increases annually based on cost-of-living formula
Connecticut	$8.25	Automatically increases to 0.5% above federal minimum wage if the federal rate equals or becomes higher than the state minimum
Illinois	$8.25	
Nevada	$8.25	Increases annually based on cost-of-living formula
Washington, DC	$8.25	Automatically increases to $1.00 above federal rate if the federal rate equals or becomes higher than the district minimum
Vermont	$8.15	Increases by 5% or the percentage increase of the Consumer Price Index
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
Alaska	$7.75	
Maine	$7.50	
New Mexico	$7.50	
Michigan	$7.40	
Ohio	$7.40	
Rhode Island	$7.40	
Colorado	$7.36	Increases or decreases annually based on cost-of-living formula
Montana	$7.35	Increases or decreases annually based on cost-of-living formula
Arizona	$7.35	Increases annually based on cost-of-living formula

Source: U.S. Department of Labor

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 advises that, by removing the longstanding exemptions of minimum wage and overtime requirements, it is possible as many as 42,000 additional employees in the State will 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 advises that the division cannot absorb the additional workload within existing resources and that staffing increases are needed to respond to additional complaints due to the expanded applicability of the State's Wage and Hour Law. Legislative Services concurs.

The staff needed to respond to and manage the additional workload created by the bill includes two 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 were historically not 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.

As a result of the additional staff and other operating expenses needed for enforcement of the State's Wage and Hour Law, general fund expenditures increase by $168,658 in fiscal 2012, which assumes a 30-day implementation delay so that DLLR staff are in place as of July 1, 2011, concurrent with the initial increase in the minimum wage.

Positions	3
Salaries and Fringe Benefits	$139,533
One-time Start-up Costs (including electronic licensing)	12,795
Ongoing Operating Expenses	16,330
Total FY 2012 State Expenditures for Enforcement	**$168,658**

Future year expenditures reflect salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Additional Staffing Costs

DBM advises that the State Personnel Management System (SPMS) employs 160 workers who are paid the minimum wage. These individuals work in part-time positions, primarily as senior citizen aides, but a few are summer student aides. These employees work an average of 20 hours per week. **Exhibit 2** displays the total wages that would be paid to these employees under current law and under the bill.

Exhibit 2
Effect of Minimum Wage on State Employees
Fiscal 2012-2016

	FY 2012	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Under Current Law					
	$1,206,400	$1,206,400	$1,206,400	$1,206,400	$1,206,400
Under the Bill					
	$1,372,800	$1,497,600	$1,622,400	$1,622,400	$1,622,400
Difference Due to the Bill					
	$166,400	**$291,200**	**$416,000**	**$416,000**	**$416,000**

Source: Department of Budget and Management, Department of Legislative Services

As depicted in Exhibit 2, general fund expenditures increase by $166,400 in fiscal 2012. General fund expenditures further increase in future years as the minimum wage increases. Estimated expenditures for fiscal 2015 and 2016 do not assume any further increase in the State minimum wage. These estimates assume a State minimum wage that is higher than the future federal minimum wage.

The University System of Maryland advises that some student employees are currently paid minimum wage. State expenditures may further increase as these employees must be paid additional wages.

Local Fiscal Effect: Many local jurisdictions, such as Baltimore City, 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, Charles County employs 252 workers who are currently paid the minimum wage. The county advises expenditures increase by about $269,000 in fiscal 2012 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. The City of Frederick and Frederick County each advise that they employ minimum wage workers and would also experience an increase in expenditures beginning in fiscal 2012.

Small Business Effect: Small businesses that employ minimum wage workers in the State experience increases in their labor costs due to the bill. 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 $6.19 per hour in fiscal 2012, $6.75 per hour in fiscal 2013, and $6.94 per hour in fiscal 2014.

Additional Information

Prior Introductions: None.

Cross File: SB 716 (Senator Garagiola, *et al.*) - Finance.

Information Source(s): Charles and Frederick counties; cities of Frederick and Baltimore; Maryland Association of Counties; University System of Maryland; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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