

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 696
Finance

(Senator Klausmeier)

Labor and Employment - Minimum Wage Rate - Payment and Adoption

This bill requires employers in the State 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. An employer may pay full-time students or employees who have never been previously employed by any employer a training wage of \$7.25 for six months if the employee is not subject to the federal minimum wage; if the employee is subject to the federal minimum wage and the wage is less than the State wage, the training wage is the federal minimum wage. If the employee who is being paid a training wage has not been employed previously by an employer, the employer may only pay the training wage for the first six months that the employee is employed. Additionally, a county may not adopt a minimum wage law, but this provision does not apply to a minimum wage law adopted by a county before January 1, 2014.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: State expenditures (all funds) increase by a total of \$3.9 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 of the University System of Maryland (USM) and the Maryland Department of Aging (MDoA). Out-year expenditures reflect inflation and employee turnover. 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 due to higher incomes cannot be reliably projected but is expected to be minimal.

(\$ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
FF Revenue	\$.16	\$.16	\$.16	\$.16	\$.16
GF Expenditure	\$.43	\$.41	\$.43	\$.45	\$.47
FF Expenditure	\$.16	\$.16	\$.16	\$.16	\$.16
GF/SF/FF Exp.	\$.06	\$.06	\$.06	\$.06	\$.06
Higher Ed Exp.	\$3.27	\$3.27	\$3.27	\$3.27	\$3.27
Net Effect	(\$3.77)	(\$3.75)	(\$3.76)	(\$3.78)	(\$3.80)

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.

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.

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. Charter counties have the authority to establish a training wage so long as the training wage is the greater of the federal minimum wage or the State minimum wage. 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.

Under FLSA, an employer may pay a minimum wage of \$4.25 an hour for newly hired employees younger than age 20 during their first 90 consecutive calendar days after being hired by their employer. Additionally, an employer may pay full-time students employed in retail or service stores, agriculture, or colleges and universities an hourly wage rate of 85% of the federal minimum wage if the employer obtains a certificate from the U.S. Department of Labor (DOL).

Background: According to the Maryland Workforce Exchange, approximately 11% of Marylanders currently searching for jobs have less than one year of work experience, and only 5% of companies advertising jobs online in Maryland require less than one year of experience.

Other states have training or youth wages set below their state’s minimum wage. For example, Iowa allows an “initial employment wage” of \$6.35 per hour for the

first 90 days of employment. Illinois has a minimum wage for employees younger than age 18 of \$7.75 per hour, while the minimum wage for those older than 17 is \$8.25 per hour.

As shown in **Exhibit 2**, 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

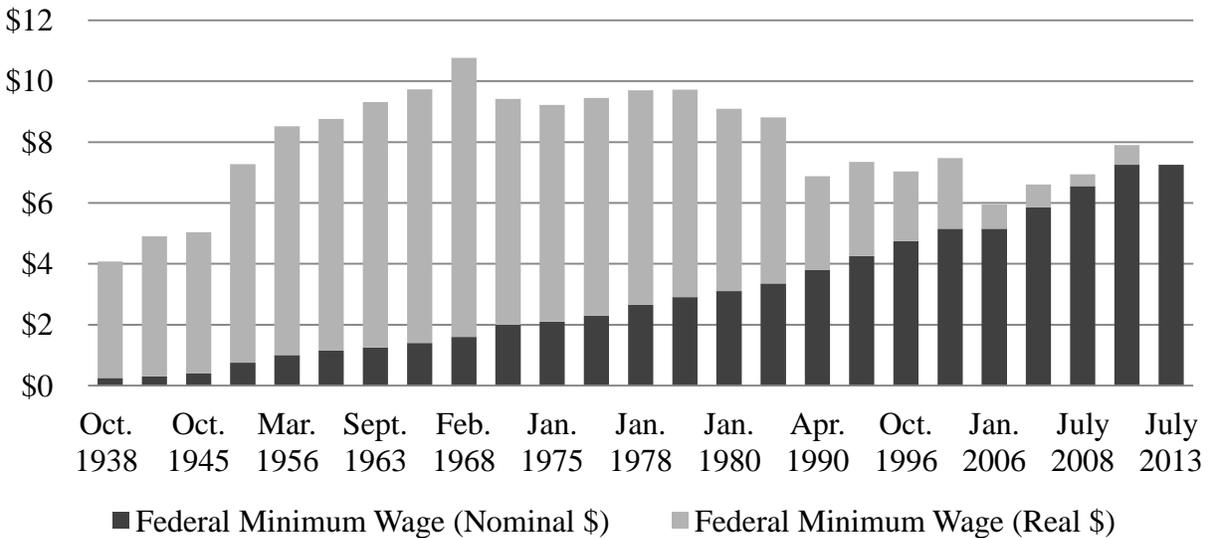
The federal minimum wage first established in 1938 has been incrementally increased and expanded to cover additional employees through subsequent amendments to FLSA. The last increase in the federal minimum wage was in July 2009. Recently, bills have been introduced in the U.S. Congress proposing to 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 3** 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.

Exhibit 2
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

Exhibit 3
Federal Minimum Wage in Real and Nominal Dollars
1938-2013



Source: Congressional Research Service

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 small 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. To the extent that payroll spending for employers increases, general fund tax revenues from employers may decrease as they can deduct payroll from taxable income.

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 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 \$8.25 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 (unless that rate changes correspondingly). Moreover, the bill establishes a training wage for specified employees, which may lead to even more inquiries and additional responsibilities for DLLR. DLLR estimates that up to 6,500 additional inquiries would be made each year and up to 1,600 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, up to 90 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.

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>
Total FY 2015 State Expenditures	\$427,344

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, it employs summer and work study student workers who earn minimum wage. Any additional cost for these individuals is minimal and can be absorbed with existing resources. Also, DBM advises that MDoA employs 149 part-time senior citizen aides who are paid the minimum wage. However, this cost is fully offset by an increase in federal fund revenues of \$155,385 in fiscal 2015 as the aides are paid with federal funds. Temporary employees are occasionally employed; however the number of temporary employees fluctuates frequently. The overall impact on State departments for temporary employees is likely minimal, and any such impact has not been accounted for in this estimate. Additionally, DBM advises that several hundred contractual employees within the State Personnel Management System (SPMS) – primarily within the Department of Natural Resources and the Department of Health and Mental Hygiene – are affected by the bill. Expenditures (all funds) increase by approximately \$63,000 in fiscal 2015 for these contractual employees.

USM advises that 2,413 student employees are currently paid minimum wage, and 1,640 employees, of which the vast majority are students, earn hourly wages below \$8.25. Higher education expenditures increase by \$3.3 million in fiscal 2015 as USM advises that the State higher education institutions do not plan to pay their employees training wages, but rather the State minimum wage rate of \$8.25. USM's expenditures could be significantly less if the institutions elect to pay full-time students training wages. The Maryland Department of Transportation (MDOT) pays six part-time student interns minimum wage. This additional cost is minimal and MDOT advises it can be absorbed with existing resources.

Exhibit 4 displays the additional wages that would be paid to these employees under the bill. As depicted in Exhibit 4, expenditures increase by approximately \$3.3 million in fiscal 2015.

Exhibit 4
Effect of Minimum Wage on State Employees
Fiscal 2015

<u>Additional Staffing Costs</u>	<u>FY 2015</u>
MD contractual employees within SPMS	\$63,316
Senior citizen aides	\$155,385
USM employees	\$3,274,370
Increase in Expenditures	\$3,493,071
Federal Fund Revenues	\$155,385
Net Increase in Expenditures	\$3,337,686

Source: Department of Legislative Services

Local Expenditures: Some local jurisdictions, such as Baltimore City and Queen Anne’s County, require their employees to be paid according to living wage provisions. Even counties without living wage provisions tend to pay employees above minimum wage. Harford County has very few employees who are paid minimum wage, so it expects only a \$500 increase in the county’s total salaries and fringe expenditures. Thus, many local jurisdictions currently pay all employees wages higher than those required by the bill. However, according to the Maryland Association of Counties, several mid-size counties employ approximately 40 entry-level salaried employees and between 100 and 200 part-time summer staff for recreational and community programs at the minimum wage, so these counties incur additional costs to pay these employees higher wages. Additionally, Wicomico County estimates expenditures increase by approximately \$31,000 to pay higher wages to more than 600 part-time employees.

Montgomery and Prince George’s counties have local minimum wages set above the minimum wage rates proposed in the bill. These local minimum wage laws take effect October 1, 2014, so the State minimum wage is higher than the local minimum wage for only the first three months of fiscal 2015. The local minimum wage rate does not apply to State employees, employees in certain municipalities, and employees who are younger than age 19 and work no more than 20 hours in a week, so the bill does not affect many employees in Montgomery and Prince George’s counties. However, Montgomery and Prince George’s counties pay employees at the Maryland-National Capital Park and Planning Commission, which is a bi-county agency empowered by the State, so, according to the commission’s legal opinion, its employees are exempt from the local

minimum wage laws. Under the bill, expenditures for Montgomery and Prince George's counties increase by more than \$141,000 in fiscal 2015 to pay additional wages to approximately 900 commission employees.

Preventing a county from adopting a local minimum wage law after December 31, 2013, does not have a significant effect on counties. Since only charter counties have the authority to establish local minimum wage laws under current law, only charter counties are affected. However, Montgomery and Prince George's counties are the only counties that have recently chosen to use their authority to set their local minimum wage rates above the State minimum wage rate, and these county minimum wage laws are grandfathered in the bill.

Small Business Effect: Small businesses that employ minimum wage workers in the State experience increases in their labor costs due to the bill. According to data extracted from CPS, more than 200,000 employees working in the State earn hourly wages of \$8.25 or less.

To the extent that higher wages increase worker productivity, businesses would be less affected by the provisions of the bill. Additionally, minimum wage workers tend to have a low saving rate so increasing their wages could lead to additional consumer spending for small businesses.

To pay an employee a training wage, a business would have to hire a worker who has never been previously employed in order to pay that worker a training wage for the first six months of employment. Since most workers have prior work experience and many jobs require prior work experience, small businesses would only be able to pay training wages to few, if any, employees. To the extent that businesses employ full-time students, they do not incur additional costs because businesses may pay full-time students the federal minimum wage.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany, Harford, Montgomery, Prince George's, and Wicomico counties; Baltimore City; Maryland Association of Counties; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Congressional Research Service; U.S. Department of Labor;

U.S. Census Bureau; National Conference of State Legislatures; Department of Legislative Services

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