

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 4 (Delegate Glenn)
 Economic Matters

Maryland Wage and Hour Law - 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 \$10.10 per hour to employees subject to federal or State minimum wage requirements beginning July 1, 2015, instead of being gradually phased in under current law to \$10.10 by July 1, 2018.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: State expenditures (all funds) increase by a total of \$10.9 million in FY 2016 and by \$5.5 million in FY 2018 mostly due to additional payroll costs – primarily for higher education student employees. Federal fund revenues increase minimally to offset increased wages paid to senior citizen aides employed by the Maryland Department of Aging (MDoA). Any increase in general fund tax revenues to the State cannot be reliably projected but is expected to be minimal.

(\$ in millions)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
FF Revenue	\$0.29	\$0.21	\$0.13	\$0	\$0
GF Expenditure	\$0.10	\$0.07	\$0.05	\$0	\$0
FF Expenditure	\$0.29	\$0.21	\$0.13	\$0	\$0
GF/SF/FF Exp.	\$0.32	\$0.26	\$0.18	\$0	\$0
Higher Ed Exp.	\$10.21	\$7.84	\$5.17	\$0	\$0
Net Effect	(\$10.63)	(\$8.18)	(\$5.41)	\$0.00	\$0.00

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

Local Effect: Local government expenditures increase significantly from FY 2016 through 2018 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 \$8.00 per hour. Under Chapter 262 of 2014, the State minimum wage is scheduled to increase on an incremental basis over four years to:

- \$8.25 per hour as of July 1, 2015;
- \$8.75 per hour as of July 1, 2016;
- \$9.25 per hour as of July 1, 2017; and
- \$10.10 per hour as of July 1, 2018.

However, an employer may pay an employee a wage that equals 85% of the State minimum wage for the first six months that the employee is employed if the employee is younger than age 20. Additionally, an employer of an amusement or a recreational establishment, including a swimming pool, that meets specified conditions may pay an employee a wage that equals the greater of \$7.25 or 85% of the State minimum wage. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop. 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; salesmen and those who work on commission; an employer's immediate family; drive-in 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 has an annual gross income of \$400,000 or less; 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.

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

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 equal to the State minimum wage, less \$3.63. Thus, the tip credit increases as the minimum wage increases, and the wage paid by employers to tipped employees remains \$3.63, as long as their wages plus tips equal the minimum wage.

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 the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

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

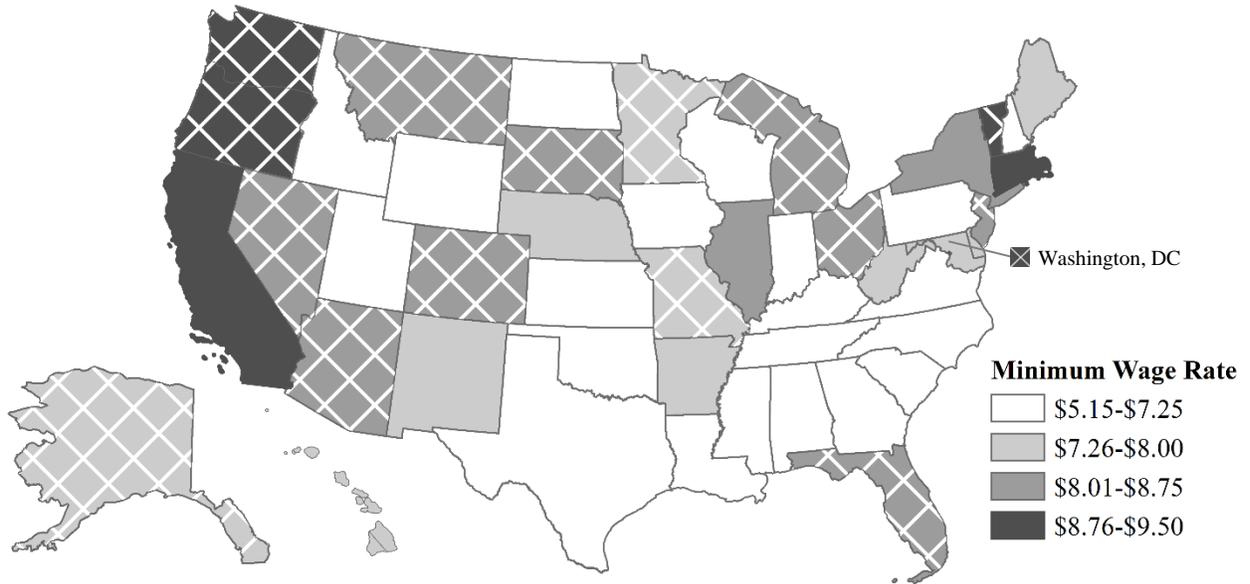
With some exceptions, similar to State law, FLSA requires that a worker be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. There are two ways in which an employee can be covered by FLSA: "enterprise coverage" and "individual coverage."

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**, 29 states, including Maryland, and the District of Columbia mandate a minimum wage higher than the federal minimum wage of \$7.25 per hour, with rates ranging from \$0.25 to \$2.25 above the federal rate. Five states have no mandated minimum wage, another two have a minimum wage set lower than the federal minimum wage, and the remaining 14 states use the federal minimum wage. Unless a state has a higher minimum wage rate, the federal minimum wage rate applies. The map also shows the 15 states and the District of Columbia that currently, or will in a future year, index the state minimum wage rates to a measure of inflation. As **Exhibit 2** illustrates, 6 states currently use the Consumer Price Index for All Urban Consumers (CPI-U), and 5 states use the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Additionally, in the next several years, 4 more states will index the minimum wage to CPI-U, and Minnesota will use a non-CPI measure to index its minimum wage. In addition to Maryland, within the next several years, Connecticut, Hawaii, Massachusetts, Vermont, and the District of Columbia will have minimum wage rates at or above \$10.10.

Exhibit 1
State Minimum Wage Rate in 2015



Note: Pattern indicates states that index the minimum wage to inflation.

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

Exhibit 2
States with Higher than Federal Minimum Wage, 2015

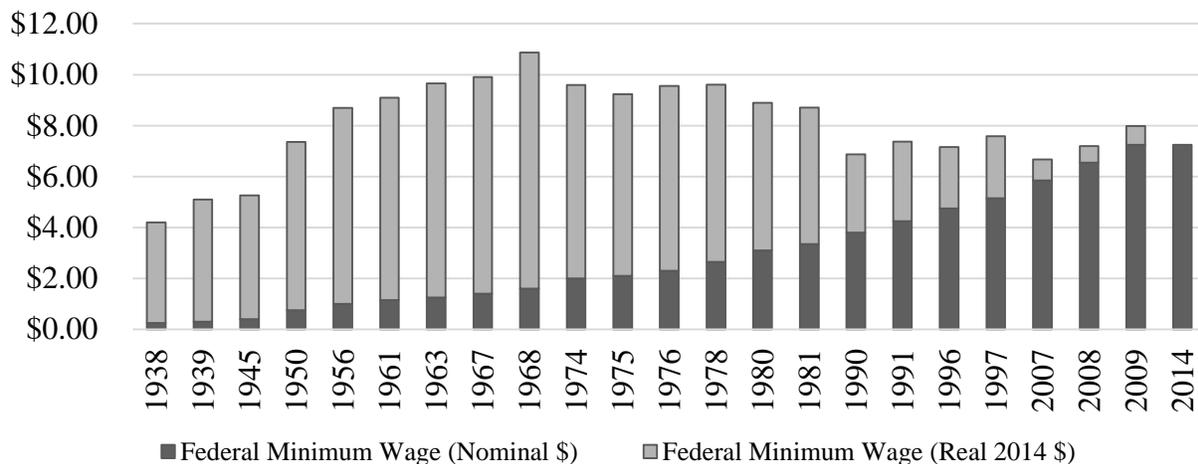
<u>State</u>	<u>Rate</u>	<u>Index</u>	<u>Increases and Indexation</u>
District of Columbia	\$9.50	CPI-U	Phasing up to \$11.50 by July 2016 and then indexed annual increases. Automatically increases to \$1.00 above federal rate if the federal rate equals or becomes higher than the district minimum
Washington	\$9.47	CPI-W	Increases annually based on inflation
Oregon	\$9.25	CPI-U	Increases annually based on inflation
Connecticut	\$9.15		Phasing up to \$10.10 by January 2017. Automatically increases to 0.5% above federal minimum wage if the federal rate equals or becomes higher than the state minimum
Vermont	\$9.15	CPI-U	Phasing up to \$10.50 by January 2018. Increases annually thereafter by inflation, not to exceed 5%
California	\$9.00		Phasing up to \$10.00 by January 2016
Massachusetts	\$9.00		Phasing up to \$11.00 by January 2017. Automatically increases to \$0.10 above federal rate if the federal rate equals or becomes higher than the state minimum
Rhode Island	\$9.00		
New York	\$8.75		Increasing to \$9.00 by January 2016
South Dakota	\$8.50	CPI-U	Increases annually based on inflation
New Jersey	\$8.38	CPI-W	Increases annually based on inflation
Illinois	\$8.25		
Nevada	\$8.25	CPI-U	Increases annually based on inflation
Colorado	\$8.23	CPI-U	Increases or decreases annually based on inflation
Michigan	\$8.15	CPI-U	Phasing up to \$9.25 by January 2018 and then increases annually based on inflation, not to exceed 3.5%
Ohio	\$8.10	CPI-W	Increases annually based on inflation
Arizona	\$8.05	CPI-U	Increases annually based on inflation
Florida	\$8.05	CPI-W	Increases annually based on inflation
Montana	\$8.05	CPI-U	Increases or decreases annually based on inflation
Maryland	\$8.00		Phasing up to \$10.10 by July 2018
Minnesota	\$8.00	non-CPI	Phasing up to \$9.50 by August 2016 for large businesses and then indexed annual increases
Nebraska	\$8.00		Increasing to \$9.00 by January 2016
West Virginia	\$8.00		Increasing to \$8.75 by December 2015
Alaska	\$7.75	CPI-U	Phasing up to \$9.75 by January 2016 and then indexed annual increases
Delaware	\$7.75		Increasing to \$8.25 by June 2015
Hawaii	\$7.75		Phasing up to \$10.10 by January 2018
Missouri	\$7.65	CPI-W	Increases or decreases annually based on inflation
Arkansas	\$7.50		Phasing up to \$8.50 by January 2017
Maine	\$7.50		
New Mexico	\$7.50		

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

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 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 2014 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 \$7.54, in 2014 dollars.

Exhibit 3
Federal Minimum Wage in Real and Nominal Dollars
1938-2014



Source: Congressional Research Service, Bureau of Labor Statistics

Local Jurisdiction Labor Laws

Charter counties have the authority to establish a local minimum wage rate under the Express Powers Act. Currently, 11 counties exercise charter home rule: Anne Arundel, Baltimore, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico counties. 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 2013, 3.3 million workers nationwide were paid wages at or below the federal minimum wage, representing 4.3% of all hourly paid workers.

According to CPS, minimum wage workers tend to be young. About one-half of all workers earning minimum wage or less were younger than 25, and about 20% of teenagers earning an hourly wage 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 10% 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 66,000 workers in Maryland earned wages equal to or less than the federal minimum wage in 2013. 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 may be 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 in fiscal 2016 through 2018. 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.

The Department of Labor, Licensing, and Regulation (DLLR) does not anticipate investigating a significant increase in violations of the State's Wage and Hour Law under the bill, so general fund revenues are not materially affected.

State Expenditures: General fund expenditures for DLLR increase \$5,400 in fiscal 2016 for information technology and printing costs related to its employer and employee outreach program.

Additional Staffing Costs

Exhibit 4 displays the additional wages that must be paid to State employees in fiscal 2016 through 2018 under the bill. State expenditures increase by \$10.9 million in fiscal 2016. Current law has the minimum wage rate increasing to \$8.75 in fiscal 2017, so State expenditures increase by \$8.4 million in fiscal 2017, which is the difference between \$8.75 and a \$10.10 wage rate. In fiscal 2018, the minimum wage rate is set to be \$9.25 under current law, so State expenditures increase by \$5.5 million in fiscal 2018. These costs do not take into account any wage adjustments to internal salary ladders. The State may increase wages for an employee who currently earns just above \$10.10 per hour and has

more job responsibilities than a minimum wage employee. Any such wage adjustments further increase the State's expenditures significantly.

Exhibit 4
Effect of \$10.10 Minimum Wage on State Employees
Fiscal 2016-2018

<u>Additional Staffing Costs</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Senior Citizen Aides	\$288,700	\$210,700	\$132,700
USM Employees	9,516,000	7,314,500	4,828,000
DNR Contractuals	239,700	197,100	140,000
DHMH Contractuals	84,900	64,000	42,900
Other Contractual Employees within SPMS	45,700	34,600	22,700
Non-Executive Branch Employees	717,800	549,400	360,200
DLS Employees	22,800	20,200	14,000
Increase in Expenditures	\$10,915,600	\$8,390,500	\$5,540,500
Federal Fund Revenues	288,700	210,700	132,700
Net Increase in Expenditures	\$10,626,900	\$8,179,800	\$5,407,800

DHMH: Department of Health and Mental Hygiene SPMS: State Personnel Management System
DLS: Department of Legislative Services USM: University System of Maryland
DNR: Department of Natural Resources

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

Specifically, the Department of Budget and Management (DBM) advises that raising the minimum wage rate to \$10.10 on July 1, 2015, impacts 11 agencies within the State Personnel Management System (SPMS). MDoA employs 147 part-time senior citizen aides who are paid minimum wage; MDoA, therefore, incurs increased wage payments. However, this cost is fully offset by an increase in federal fund revenues of \$288,700 in fiscal 2016 and by \$132,700 in fiscal 2018 as the aides are paid with federal funds. The Department of Natural Resources employs 292 contractual employees who are paid below \$10.10 per hour, so expenditures increase by as much as \$240,000 in fiscal 2016 and by as much as \$140,000 in fiscal 2018. The Department of Health and Mental Hygiene has 261 contractual employees who have to be paid additional wages, so expenditures increase by \$84,900 in fiscal 2016 and by \$42,900 in fiscal 2018. Additionally, DBM advises that 46 contractual and temporary employees within other agencies in SPMS are affected by the bill, so general fund expenditures increase by as much as \$45,700 in fiscal 2016 and by

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as much as \$22,700 in fiscal 2018 for these other contractual and temporary employees, depending on employee turnover. Outside of the Executive Branch, DBM advises 1,655 contractual employees, mostly employees at Baltimore City Community College, Morgan State University, and St. Mary's College of Maryland, have to be paid additional wages of \$717,800 in fiscal 2016 and \$360,200 in fiscal 2018.

In addition, the University System of Maryland advises that 7,466 employees, the vast majority of whom are students, are paid less than \$10.10 per hour. Higher education expenditures increase approximately \$9.5 million in fiscal 2016, \$7.3 million in fiscal 2017, and \$4.8 million in fiscal 2018 as these employees must be paid higher wages. The Department of Legislative Services estimates a \$22,800 increase in expenditures in fiscal 2016, a \$20,200 increase in fiscal 2017, and a \$14,000 increase in fiscal 2018 for wage increases of contractual employees. The Maryland Department of Transportation pays one temporary work study student minimum wage. This additional cost is minimal, and it can be absorbed with existing resources.

Local Fiscal Effect: The Maryland Association of Counties estimates county personnel costs increase by approximately \$50,000 for counties with a population of fewer than 150,000 residents but greater increases for larger counties without similar local minimum wage provisions. 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.

However, some counties are affected by the higher minimum wage. Anne Arundel County estimates expenditures increase by approximately \$100,000 in fiscal 2016 to pay 245 seasonal employees additional wages. Baltimore County estimates approximately 100 part-time and temporary employees and interns are directly affected, with the county paying additional wages of approximately \$104,000 in fiscal 2016 and \$48,000 in fiscal 2018. Nevertheless, Baltimore County advises expenditures may increase by as much as \$2.0 million to make wage adjustments to internal salary ladders. Charles County estimates expenditures increase by approximately \$118,000 in fiscal 2016 and by \$62,000 in fiscal 2018 to pay employees additional wages. Frederick County pays all classified employees above \$10.10, but the county employs 371 nonclassified contractual employees who are paid below \$10.10, so county expenditures increase by approximately \$33,000 in fiscal 2016. Somerset County estimates expenditures increase by approximately \$6,000 in fiscal 2016 to pay employees additional wages.

Montgomery and Prince George's counties each established a county minimum wage of \$8.40 that phases up to \$9.55 per hour in October 2015 and up to \$11.50 per hour in October 2016, so the bill only has a minimal impact to Montgomery and Prince George's counties. 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, Maryland-National Capital Park and Planning Commission and Montgomery College experience a significant increase in expenditures for increased payroll expenses.

The Maryland Municipal League advises that accelerating the minimum wage increase likely impacts cities and towns with significant numbers of part-time and seasonal workers and rural municipalities in areas of the State where lower wage scales predominate.

Small Business Effect: Small businesses in the State that employ minimum wage or low wage workers experience increases in their labor costs due to the bill. According to data from CPS, approximately 487,500 of Maryland workers earn less than \$10.10 per hour, so almost 1 in 5 Maryland workers may be directly affected by the bill.

Exhibit 5 shows the number of Maryland workers who are paid up to \$10.10 per hour as of December 2014, according to data accessed through CPS. These numbers provide a snapshot of Maryland and may not accurately portray the number of seasonal employees who earn \$10.10 or less per hour. Additionally, not all of these individuals receive an increase in wages under the bill, as some are not covered by FLSA or State law or work for a unit of government.

Exhibit 5
Number of Employees Earning \$10.10 or Less Per Hour
December 2014

	<u>\$8.25 or Less</u>	<u>\$8.26-\$8.75</u>	<u>\$8.76-\$9.25</u>	<u>\$9.26-\$10.10</u>	<u>Total</u>
Maryland Workers	181,700	69,000	58,600	178,200	487,500

Source: Current Population Survey

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; Maryland Municipal League; Maryland Chamber of Commerce; Department of Budget and Management; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; University System of Maryland; National Conference of State Legislatures; U.S. Department of Labor; U.S. Census Bureau; Congressional Research Service; Department of Legislative Services

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