

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 976 (Delegates Parrott and Arikan)
 Economic Matters

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 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. Additionally, the bill specifies subminimum wage rates.

Fiscal Summary

State Effect: General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$53,700 in FY 2020. State expenditures (all funds) potentially increase if counties choose to establish their own minimum wage rates above \$10.10 per hour; otherwise, State expenditures (all funds) may decrease. Any change in general fund and federal fund revenues cannot be reliably projected but is expected to be minimal.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	53,700	58,500	60,300	62,200	64,200
Net Effect	(\$53,700)	(\$58,500)	(\$60,300)	(\$62,200)	(\$64,200)

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

Local Effect: Local government expenditures potentially increase significantly for certain local jurisdictions if they choose to establish their own minimum wage at a rate above \$10.10 per hour; otherwise, local government expenditures may decrease beginning in FY 2020. Any change in local government tax revenues cannot be reliably projected but is expected to be minimal.

Small Business Effect: Meaningful.

Analysis

Bill Summary: An employer may pay an employee a wage that equals the lesser of \$10.10 per hour or 85% of the county minimum wage rate 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 lesser of \$10.10 per hour or 85% of the county minimum wage rate.

Current Law: The Commissioner of Labor and Industry, on the commissioner's own initiative or on receipt of a written complaint, may conduct an investigation of whether a local minimum wage law has been violated.

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA). 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 \$10.10 per hour.

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 a training wage and a disabled employee of a sheltered workshop under specified conditions.

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.

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 \$30.00 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. The State and local governments are not considered employers under the tip credit provisions of the Maryland Wage and Hour Law.

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 Maryland 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, 11 counties and Baltimore City 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. **Exhibit 1** shows the form of government for each Maryland county and Baltimore City.

Exhibit 1
Forms of County Governments in Maryland

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

* Although a municipality, Baltimore City operates under the charter home rule form of government.

Source: Department of Legislative Services

Prince George's County has a local minimum wage law of \$11.50 per hour. Montgomery County has a local minimum wage law of \$12.25 per hour for employers with 51 or more employees and \$12.00 per hour for employers with 50 or fewer employees. The county minimum wages 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. Montgomery County passed [legislation](#) in 2017 to gradually increase its minimum wage so that employers with 51 or more employees are required to pay a minimum wage of \$15.00 per hour effective July 1, 2021; mid-sized employers are required to pay a minimum wage rate of \$15.00 per hour effective July 1, 2023; and employers with fewer than 11 employees are required to pay a minimum wage of \$15.00 per hour effective July 1, 2024, and the county indexes the minimum wage rates to inflation. An employer may pay a wage equal to 85% of the county minimum wage to an employee younger than age 20 for the first six months that the employee is employed.

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

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setting a higher rate. Baltimore City still has its own minimum wage statute with an enforcement commission, which currently enforces the State minimum wage rate in the city.

State Revenues: The bill retains the State minimum wage of \$10.10, but explicitly requires employers to pay the higher of the federal minimum wage or a minimum wage set by a county. Therefore, this analysis assumes that, if a county does not set a minimum wage, employers in that county must pay the federal minimum wage of \$7.25.

General fund tax revenues may increase minimally if counties establish local minimum wages above a rate of \$10.10 per hour. If counties choose not to establish a minimum wage or choose to establish a rate between the federal minimum wage rate of \$7.25 and the current State minimum wage rate of \$10.10 per hour, general fund tax revenues may decrease minimally.

Federal fund revenues increase to cover the additional payroll costs incurred by the State for senior citizen aides if counties establish wage rates above \$10.10 per hour. Conversely, federal fund revenues decrease if counties establish wage rates below \$10.10 per hour or do not establish minimum wage laws.

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: The bill creates additional responsibilities for DLLR’s Division of Labor and Industry by allowing each county to set their own minimum wage rate. With the passage of the Montgomery and Prince George’s counties’ minimum wage laws, DLLR experienced a disproportionately large volume of inquiries and complaints related to the rates established by the counties. Hence, DLLR expects this bill to generate increased inquiries and complaints.

Thus, general fund expenditures increase by \$53,716 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of hiring one wage and hour investigator to respond to inquiries and investigate complaints. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes \$5,000 for DLLR to print updated labor law posters for employers.

Position	1
Salaries and Fringe Benefits	\$40,540
Printing Costs	5,000
Operating Expenses	<u>8,176</u>
Total FY 2020 State Expenditures	\$53,716

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Additional Staffing Costs

Allowing counties to set their own minimum wage rate will increase State expenditures (all funds) if counties choose to set wages higher than the wages that the State pays employees. The State grade 5, base salary, which is the lowest level in the standard salary schedule, will have an hourly rate of \$11.50 as of July 1, 2019. There are currently 87 senior citizen aides and 403 contractual employees within the Maryland Department of Health and the Department of Natural Resources who are paid the State minimum wage of \$10.10 per hour. Additionally, there are other positions in independent agencies and universities who are paid minimum wage rates. Thus, if a county sets a minimum wage above \$10.10 per hour, some State agencies would have to pay additional wages.

If counties do not establish their own minimum wage or establish a minimum wage rate below \$10.10 per hour, then the bill may generate cost savings. The State minimum wage rate would equal the federal minimum wage rate of \$7.25, instead of the current rate of \$10.10 per hour, if counties do not establish their own minimum wage. The Senior Community Service Employment Program requires senior citizen aides to be paid the established minimum wage rate, so federal fund expenditures decrease if counties set minimum wage rates below \$10.10. Other State agencies that pay employees the minimum wage could choose to lower employees' wages, but it is unknown to what extent they would do so.

Local Expenditures: The bill does not materially affect Montgomery and Prince George's counties since those counties already have a minimum wage rate. For other counties, it is unknown how many would establish a minimum wage rate. Local government expenditures could increase significantly for certain local jurisdictions if they choose to establish their own minimum wage at a rate above \$10.10.

If counties do not establish their own minimum wage or establish a rate below \$10.10 per hour, the Department of Legislative Services assumes local jurisdictions would likely continue to pay their full-time employees at their current wage rate. However, local jurisdictions may realize cost savings by paying new contractual and seasonal employees a lower wage rate.

Small Business Effect: Small businesses in the State that employ minimum wage or low-wage workers may experience significant increases in their labor costs if a local jurisdiction establishes a minimum wage rate above \$10.10 per hour. However, if counties

choose not to establish a minimum wage or choose to establish a rate of less than \$10.10 per hour, small businesses may experience a significant decrease in their labor costs.

Additional Information

Prior Introductions: A similar bill, HB 293 of 2014, received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 273, and another similar bill, SB 166 of 2014, each received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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