

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 965 (Delegate Beitzel, *et al.*)
 Economic Matters

Labor and Employment - Minimum Wage - Allegany County and Garrett County

This bill creates a new phase-in schedule for minimum wage rate increases applicable only to Allegany and Garrett counties. For these counties, the minimum wage reaches \$15.00 per hour on January 1, 2028.

Fiscal Summary

State Effect: The State realizes cost savings (all funds) of approximately \$9,900 in FY 2021 due to a lower minimum wage rate in Allegany and Garrett counties. Future years reflect personnel cost savings associated with the difference in minimum wage rates for Allegany and Garrett counties and the State minimum wage under current law. Revenues are not materially affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	0	(900)	(2,100)	(9,300)	(35,700)
GF/SF/FF Exp.	(9,900)	(40,000)	(83,200)	(181,000)	(369,700)
Net Effect	\$9,900	\$40,900	\$85,300	\$190,300	\$405,400

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

Local Effect: Allegany and Garrett counties may realize cost savings beginning in FY 2021. Local tax revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law: Exhibit 1 shows the State minimum wage rates under current law and as proposed under the bill for Allegany and Garrett counties.

Exhibit 1 Minimum Wage Rates under the Bill and Current Law

<u>Effective Date of Rate</u>	Current Law		Under the Bill
	Employers with 15 or More <u>Employees</u>	Employers with 14 or Fewer <u>Employees</u>	All Employers in Allegany and Garrett Counties
January 1, 2020	\$11.00	\$11.00	\$11.00
January 1, 2021	11.75	11.60	11.50
January 1, 2022	12.50	12.20	12.00
January 1, 2023	13.25	12.80	12.50
January 1, 2024	14.00	13.40	13.00
January 1, 2025	15.00	14.00	13.50
January 1, 2026	15.00	14.60	14.00
July 1, 2026	15.00	15.00	14.00
January 1, 2027	15.00	15.00	14.50
January 1, 2028	15.00	15.00	15.00

Source: Department of Legislative Services

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. Chapters 10 and 11 of 2019 increase the State minimum wage rate for employers with 15 or more employees in six increments until the full phase-in of \$15.00 per hour on January 1, 2025. For employers with 14 or fewer employees, the wage rate reaches full phase-in after eight increments on July 1, 2026. These rates apply unless the federal minimum wage rate is set at a higher level.

The Board of Public Works (BPW), however, may temporarily suspend one scheduled increase in the State minimum wage for one year between October 1, 2020, and October 1, 2024, if it determines that the seasonally adjusted total employment is negative as compared with the previous six-month period. If total adjusted employment is negative, BPW may also consider the recent performance of State revenues in making its determination.

An employer may pay 85% of the State minimum wage rate to employees younger than age 18.

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.

Under Maryland's Wage and Hour Law, an employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. 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; a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

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 2** shows the form of government for each Maryland county and Baltimore City.

Exhibit 2
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 \$13.00 per hour for employers with 51 or more employees and \$12.50 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 Fair Labor Standards Act 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 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 Maryland Department of Labor (MDL) 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. Likewise, tax revenues are not materially affected.

State Expenditures: The bill initially affects fewer than 100 State employees in Allegany and Garrett counties. By fiscal 2025, it affects fewer than 200 State employees. The State saves in labor costs associated with low-wage State employees in those counties under the bill. Current law has the minimum wage rate increasing to \$11.75 on January 1, 2021, so the State saves \$9,880 in the second half of fiscal 2021, which is based on the difference between an \$11.75 and an \$11.50 wage rate. By fiscal 2025, the State's savings are based on the difference between \$14.00 and \$13.00 for the first half of the fiscal year and the difference between \$15.00 and \$13.50 for the second half of the fiscal year. **Exhibit 3** shows some of the cost savings associated with State employees in fiscal 2021 through 2025 under the bill. The estimated cost savings assume BPW does not temporarily suspend a scheduled rate increase, which it is authorized to do so under current law.

MDL can implement and enforce the bill with existing resources.

Exhibit 3
Effect of Extending the Phase-in to a \$15 Minimum Wage Rate
State Employees in Allegany and Garrett Counties

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
SPMS Employees	(\$9,880)	(\$40,040)	(\$83,200)	(\$180,960)	(\$369,720)
MDOT Employees	-	-	-	(6,365)	(31,450)
MCE Employees	-	(850)	(2,125)	(2,975)	(4,250)
Total	(\$9,880)	(\$40,890)	(\$85,325)	(\$190,300)	(\$405,420)

MCE: Maryland Correctional Enterprises
MDOT: Maryland Department of Transportation
SPMS: State Personnel Management System

Source: Department of Legislative Services

Local Expenditures: Allegany and Garrett counties may realize cost savings from January 1, 2021, through January 1, 2028, due to having a longer phase-in to reach the \$15.00 per hour minimum wage rate.

Small Business Effect: Small businesses in Allegany and Garrett counties that employ minimum wage or low-wage workers may benefit from labor cost savings until January 1, 2028, due to a longer phase-in period to reach the \$15.00 per hour minimum wage rate.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 862 (Senator Edwards) - Finance.

Information Source(s): Allegany County; Department of Budget and Management; Maryland Department of Health; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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