

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 579
 Economic Matters

(Delegate Kramer, *et al.*)

Finance

**Commissioner of Labor and Industry - Authority - Enforcement of Local
 Minimum Wage Laws**

This bill requires the Commissioner of Labor and Industry to enforce a local minimum wage law. The commissioner has the same powers and duties in enforcing a local minimum wage law as the commissioner has in enforcing the State’s Wage and Hour Law. The commissioner, on his own initiative or on receipt of a written complaint, may investigate whether a local minimum wage law has been violated. Additionally, the commissioner may delegate any power or duty of the commissioner to enforce a local minimum wage law.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$359,900 in FY 2015 due to additional staffing needs. General fund revenues may increase minimally due to additional fines assessed against violators of local minimum wage laws.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	359,900	408,500	426,800	445,900	465,900
Net Effect	(\$359,900)	(\$408,500)	(\$426,800)	(\$445,900)	(\$465,900)

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

Local Effect: Expenditures for Montgomery and Prince George’s counties decrease from no longer having to enforce their local minimum wage laws. Revenues from imposition of fines also decrease.

Small Business Effect: None.

Analysis

Current Law: In response to complaints received, the Commissioner of Labor and Industry may investigate all labor laws enacted in Title 3 of the Labor and Employment Article. Additionally, the commissioner may investigate, on the commissioner's own initiative, labor laws involving the employment of minors, the State's Wage and Hour Law, and workplace fraud. If the commissioner determines that specified labor laws have been violated, the commissioner must try to resolve the issue informally by mediation or ask the Attorney General to bring an action on behalf of the applicant or employee.

Maryland Wage and Hour 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.

The Commissioner of Labor and Industry must enforce the State's Wage and Hour Law. The commissioner may delegate any power or duty of the commissioner relating to the State's Wage and Hour Law. The commissioner is authorized to ascertain wages, negotiate with employers to obtain evidence of a wage and hour violation, issue subpoenas under specified circumstances, inspect employers' wage records, and ask the Attorney General to bring an action on behalf of a job applicant or employee. 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. 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.

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. Montgomery County and Prince George's County are responsible for enforcing their local minimum wage laws.

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

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.

State Fiscal Effect: 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 the U.S. Department of Labor (DOL). DOL investigators enforce FLSA, not the State's Wage and Hour Law or local minimum wage laws, so DLLR would be responsible for pursuing complaints against employers accused of paying employees less than a county minimum wage.

DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in complaints due to local minimum wage laws.

The staff needed to respond to and manage the additional workload created by the bill includes an administrator, an assistant Attorney General, 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 Montgomery and Prince George’s counties minimum wages are set at a higher rate than the federal minimum wage. DLLR estimates that as many as 1,600 complaints per year may be received alleging minimum wage violations, but it is unknown how many of those complaints might originate from Montgomery and Prince George’s counties. 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 90 new formalized complaints must likely be investigated and processed each year by the division, with 10 of them requiring action within the court of appropriate jurisdiction. 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 \$359,858 in fiscal 2015, which assumes a 90-day implementation delay from the bill’s June 1 effective date so that DLLR staff are in place by September 1, just prior to the effective dates for minimum wage increases in Montgomery and Prince George’s counties. This estimate reflects the cost of hiring three investigators, one office clerk, one assistant Attorney General, and one administrator to investigate complaints and enforce local minimum wage increases under 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	\$302,778
One-time Start-up Costs	30,360
Operating Expenses	<u>26,720</u>
Total FY 2015 State Expenditures	\$359,858

Future year expenditures reflect annual increases and employee turnover as well as annual increases in ongoing operating expenses.

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.

Local Effect: Montgomery and Prince George’s counties’ expenditures decrease beginning in fiscal 2015 from not having to enforce their local minimum wage laws. Montgomery County estimates it will cost the county \$346,980 annually for

three investigators and an office services coordinator to enforce its local minimum wage laws, so the county expenditures decrease by \$346,980 in fiscal 2015 from not enforcing its local minimum wage laws. Prince George's County advises that its savings are similar to those in Montgomery County – about \$385,000 annually. However, Montgomery County also expects to generate between \$87,500 and \$125,000 of revenue annually from civil penalties of \$500 each for violations of its local minimum wage laws. Under the bill, since the county does not enforce its local minimum wage, it loses revenue from not collecting civil penalties on violations of local minimum wage laws.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery, Prince George's, Washington, and Worcester counties; Baltimore City; Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Department of Legislative Services

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