

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 549 (The Speaker, *et al.*) (By Request - Administration)
 Economic Matters

Fair Wage Act of 2023

This Administration bill establishes a State minimum wage rate of \$15.00 per hour beginning October 1, 2023, and indexes future minimum wages to inflation (up to 5.0%) each year beginning July 1, 2025. There are two conditions under which the minimum wage rate may not increase year-over-year, subject to specified processes: (1) if recent annual inflation is zero or negative, the minimum wage *must* remain the same for the next year; or (2) if a six-month change in employment is negative, the Board of Public Works (BPW) *may* temporarily suspend an increase for one year. The bill also repeals specified provider rate increases in fiscal 2025 and 2026, but the fiscal 2024 budget as introduced includes \$413.4 million for such purposes, contingent on legislation accelerating the implementation of the State minimum wage law. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: State expenditures (all funds) increase beginning in FY 2024, some significantly. Federal revenues increase beginning in FY 2024 for the federal share of provider reimbursements and may increase minimally to cover additional State payroll costs. Dollar amounts below reflect increased provider reimbursements in FY 2024 and 2025; amounts for FY 2024 are budgeted, contingent on enactment of the bill. Any increase in State tax revenues cannot be reliably projected but is expected to be minimal in the short term. **This bill eliminates mandated appropriations in FY 2025 and 2026.**

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
FF Revenue	\$195.2	\$97.6	-	-	-
GF Revenue	-	-	-	-	-
GF Expenditure	\$218.2	\$109.1	\$0	\$0	\$0
FF Expenditure	\$195.2	\$97.6	\$0	\$0	\$0
GF/SF/FF/HE/NB Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)/-	(-)/-	(-)/-

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

Local Effect: Local government expenditures increase, potentially significantly in some jurisdictions, beginning in FY 2024 to pay additional wages to employees. Any increase in

local government tax revenues cannot be reliably projected but is expected to be minimal in the short term.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment but notes the ongoing effects of indexing the minimum wage to inflation.

Analysis

Bill Summary:

Minimum Wage Rate Accelerated to \$15.00 Per Hour and Indexed to Inflation

Effective October 1, 2023, and through June 30, 2025, the State minimum wage rate is set at \$15.00 per hour.

For the 12-month period beginning July 1, 2025, and each subsequent 12-month period, the State minimum wage rate must be increased by the amount, rounded to the nearest 5 cents, that equals the product of:

- the State minimum wage rate in effect for the immediately preceding 12-month period; and
- the lesser of (1) the average percentage growth in the Consumer Price Index (CPI) for the immediately preceding 12-month period, as determined by the Commissioner of Labor and Industry or (2) 5.0%.

Beginning March 1, 2025, and each March 1 thereafter, the commissioner must determine and announce:

- the average percentage growth, if any, in the CPI based on the immediately preceding 12-month period for which data are available on March 1; and
- the State minimum wage rate effective for the 12-month period beginning the following July 1.

Conditions Under which the Minimum Wage Rate May Not Increase Year-over-year

If the commissioner determines that there is a decline or no growth in the CPI in the calculations above, the State minimum wage rate *must* remain the same as the rate that was in effect for the immediately preceding 12-month period.

Beginning March 1, 2025, and each March 1 thereafter, BPW must determine whether the seasonally adjusted total employment from the Current Employment Statistics series as reported by the U.S. Bureau of Labor Statistics for the most recent six-month period is

negative as compared with the immediately preceding six-month period. If employment is negative, BPW may temporarily suspend an increase in the minimum wage rate. In addition, BPW may consider State revenues over the preceding six months in determining whether to suspend the increase. If the board suspends the increase, then the minimum wage rate in effect for the current year stays in effect for the upcoming year. Subject to the requirement that employment be negative, BPW may suspend minimum wage rate increases an unlimited number of times. The provision is similar to that under current law, except BPW may only temporarily suspend the increase one time under current law.

Estimates for the minimum wage rate under the bill and current law are shown in **Exhibit 1**.

Exhibit 1
State Minimum Wages – Current Law and Estimates Under the Bill
Calendar 2023-2034

	<u>The Bill</u>	<u>Current Law</u>	
	<u>Employers of Any Size</u>	<u>Employers with 15 or More Employees</u>	<u>Employers with Fewer Than 15 Employees</u>
1/1/2023	N/A	\$13.25	\$12.80
10/1/2023	\$15.00	\$13.25	\$12.80
1/1/2024	\$15.00	\$14.00	\$13.40
1/1/2025	\$15.00	\$15.00	\$14.00
7/1/2025	\$15.35*	\$15.00	\$14.00
1/1/2026	\$15.35*	\$15.00	\$14.60
7/1/2026	\$15.70*	\$15.00	\$15.00
7/1/2027	\$16.05*	\$15.00	\$15.00
7/1/2028	\$16.40*	\$15.00	\$15.00
7/1/2029	\$16.75*	\$15.00	\$15.00
7/1/2030	\$17.15*	\$15.00	\$15.00
7/1/2031	\$17.55*	\$15.00	\$15.00
7/1/2032	\$17.95*	\$15.00	\$15.00
7/1/2033	\$18.35*	\$15.00	\$15.00
7/1/2034	\$18.80*	\$15.00	\$15.00

Note: Bolded amounts reflect statutory dates when the applicable minimum wage increases.

*Future year minimum wage rates under the bill are *estimated* using the U.S. Bureau of Labor Statistics Consumer Price Index for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area as projected by Moody’s Analytics, are rounded to the nearest 5 cents each year, and assume no actions are taken by the Board of Public Works to suspend annual increases as authorized under the bill in periods of negative employment growth.

Source: U.S. Bureau of Labor Statistics; Moody’s Analytics; Department of Legislative Services

Repeal of Specified Mandated Appropriations for Provider Rate Increases

Chapters 10 and 11 of 2019, which established the current trajectory toward a \$15.00 per hour minimum wage rate in the State, also established various mandated appropriations for certain service providers from fiscal 2021 through 2026. The bill repeals the mandates for fiscal 2025 and 2026, which were 4.0% rate increases over the prior year's legislative appropriations each year; however, the fiscal 2024 budget as introduced includes \$413.4 million (\$218.2 million general funds, \$195.2 million federal funds), contingent on legislation accelerating the implementation of the State minimum wage law. The additional contingent funding is an 8.0% increase.

Current Law:

Minimum Wage Requirements

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 increase the State minimum wage rate for employers with 15 or more employees in 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 on July 1, 2026. For additional information, please see the **Appendix – Maryland Wage and Hour Law**.

Provider Rate Increases

Under Chapters 10 and 11, the Governor must include additional funding amounts for specified service providers in annual budget bills from fiscal 2021 through 2026. Funds are provided in the budgets of the Development Disabilities Administration, Behavioral Health Administration, and Medicaid. The amounts initially varied by year and service provider type; however, funding must increase by 4.0% in fiscal 2025 and by 4.0% in fiscal 2026 across the various remaining appropriations.

Living Wage

Chapter 284 of 2007 made Maryland the first state to require State service contractors to pay their employees a “living wage.” Tier 1 areas are Baltimore City and Anne Arundel, Baltimore, Howard, Montgomery, and Prince George's counties. Tier 2 areas are all counties not in Tier 1. The living wage rates are adjusted annually for inflation by the Commissioner of Labor and Industry within the Maryland Department of Labor (MDL). Effective September 2022, the Tier 1 living wage is \$15.13, and the Tier 2 wage is \$11.36.

Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services. The living wage law does not apply to State contracts with nonprofit organizations.

Background: According to the Economic Policy Institute (EPI), 30 states plus the District of Columbia have adopted minimum wages higher than the federal minimum wage. Of those, 20 index their minimum wage rates to inflation, meaning that their minimum wage rates increase automatically based on some measure of inflation. In practice, the jurisdictions generally increase their minimum wage rates each year, most based on some measure of the CPI. Some states cap the annual increase, such as Vermont at 5.0%. Additional state-level information can be found on the minimum wage tracker on the EPI [website](#).

State Revenues: General fund tax revenues may increase minimally from increasing the State's minimum wage beginning in fiscal 2024. Individuals earning at or near the minimum wage rate 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 and potentially from a decrease in demand for labor. Given that raising the minimum wage boosts the purchasing power of minimum wage workers and generates new consumer spending, general fund sales tax revenues may increase minimally beginning in fiscal 2024.

Federal fund revenues increase beginning in fiscal 2024 for the federal share of provider reimbursements and may increase minimally to cover some additional State payroll costs.

State Expenditures:

Administrative Costs

MDL can implement and enforce the bill with existing resources, and BPW can likewise determine employment growth each year and decide whether to suspend a scheduled increase in the State minimum wage rate with existing resources.

Minimum Wage Rate Accelerated to \$15.00 Per Hour and Indexed to Inflation

The effect of the changes to the State minimum wage rate on State expenditures are predominantly due to the annual indexing of the wage rate to inflation beginning July 1, 2025, and not the acceleration to \$15.00 per hour as of October 1, 2023, as discussed below.

Acceleration to \$15.00 Per Hour on October 1, 2023: Generally, most State entities already pay at least \$15.00 per hour. The Department of Budget and Management reports that all State regular and temporary employees within the State Personnel Management System are paid \$15.00 per hour or more. Likewise, the Judiciary and DLS report their employees are paid \$15.00 per hour or more. The University System of Maryland (USM) Board of Regents increased the minimum wage for nonexempt hourly workers to \$15.00 effective January 1, 2022, but some other exempt employees, mostly undergraduate student workers, are paid less than \$15.00 per hour at some institutions. Therefore, higher education expenditures increase by an unknown but relatively modest amount in fiscal 2024 and 2025 to pay any remaining workers a \$15.00 minimum wage. *For illustrative purposes*, Salisbury University was the only USM institution to provide an estimate of the cost: \$366,000 in fiscal 2024 (but no estimate for fiscal 2025). Likewise, federal expenditures for senior citizen aides increase minimally in fiscal 2024 and 2025. The total effect diminishes from fiscal 2024 through 2025 as the minimum wage increases to \$15.00 per hour under current law.

To the extent that the State contracts with service providers who employ low wage or minimum wage workers, State expenditures increase from fiscal 2024 through 2025 or 2026 (if the State contracts with businesses with fewer than 15 employees). As the Tier 1 living wage is now more than \$15.00, the effect on State contract costs is limited to vendors paying living wages in Tier 2 jurisdictions. The effect diminishes from fiscal 2024 through 2026 as the minimum wage increases to \$15.00 per hour for businesses with fewer than 15 employees under current law.

Indexing Minimum Wage to Inflation Beginning in Fiscal 2026: As the State minimum wage rate increases with inflation each year, the gap between the rate under current law and the rate under the bill grows. For example, under the estimate shown in Exhibit 1, which assumes 2.2% to 2.5% annual growth out of a limit of 5.0%, the minimum wage rate increases to \$18.35 per hour in the 10 years following the original acceleration to \$15.00 per hour on October 1, 2023. These annual increases to the minimum wage rate put upward pressure on State expenditures in a variety of ways. For example:

- While there are few State employees earning the minimum wage currently, that may not be the case as the minimum wage increases with inflation. State employees earning at or just above the minimum wage rate each year must automatically earn the new minimum wage rate the following year, an increase of up to 5.0%.
- State employees earning near the minimum wage rate must be compensated each year at some proportion of the minimum wage increase to avoid wage compression.
- Costs for goods and services procured by the State will increase as higher labor costs in private industry are reflected in prices, including through the Living Wage Law.

Therefore, State expenditures (all funds) and higher education expenditures increase, potentially significantly, beginning in fiscal 2026 due to the annual indexing of the minimum wage rate. The amount is unknown and depends on the level of inflation actually experienced, but it could be significant – particularly in future years. Any such increase may be partially offset by any general salary increases and merit or step increases that would otherwise be provided to State employees absent the bill.

Provider Rate Increases

The bill repeals mandated 4.0% provider rate increases for fiscal 2025 and 2026. However, the fiscal 2024 budget as introduced includes an additional \$413.4 million for such purposes, contingent on legislation accelerating the implementation of the State minimum wage law. The contingent funding is an 8.0% increase on top of the fiscal 2024 mandated increases, which brings fiscal 2024 expenditures for provider reimbursements under the bill to the approximate level of fiscal 2026 expenditures under current law. Therefore, the bill's overall effect is to increase expenditures for provider reimbursements by \$413.4 million in fiscal 2024 (\$218.2 million general funds, \$195.2 million federal funds), and by half of that amount in fiscal 2025 (\$109.1 million general funds, \$97.6 million federal funds). Expenditures for provider reimbursements under the bill generally realign with expenditures for provider reimbursements under current law beginning in fiscal 2026.

Local Expenditures: Generally, expenditures increase significantly in fiscal 2024 and 2025 for local governments to pay employees (typically part-time or contractual employees) the accelerated minimum wage rate of \$15.00 per hour.

The Maryland Association of Counties advises that the difference in increased pay and expense will vary among counties and positions, but generally, counties will have increased wage expenses for several classes of employees, especially in Parks and Recreation and Public Works departments. These increases extend to part-time and seasonal employees, such as those staffing county parks or pools during the summer season. The effect diminishes from fiscal 2024 through 2025 as the minimum wage increases to \$15.00 per hour under current law.

Beginning in fiscal 2026, local governments are affected in much the same way as the State government: upward pressure on expenditures due to the annual indexing of the minimum wage rate, which affects the wages of employees earning the minimum wage, those just above minimum wage, and the costs of goods and services procured by the local government.

Montgomery and Howard counties may not be greatly affected by the changes, particularly through fiscal 2025, as both currently have local minimum wage laws that exceed the State minimum wage law.

Local Revenues: Local revenues from income taxes associated with higher wages paid under the bill increase beginning in fiscal 2024, potentially offset from diminished revenues from businesses with higher payroll expenses and potentially from a decrease in demand for labor. The amounts are likely minimal, particularly in the short term.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 555 (The President, *et al.*) (By Request - Administration) - Finance and Budget and Taxation.

Information Source(s): Department of Budget and Management; Maryland Department of Labor; Board of Public Works; Maryland Department of Transportation; Judiciary (Administrative Office of the Courts); University System of Maryland; Baltimore City Community College; Morgan State University; Baltimore City; Prince George's County; Maryland Association of Counties; Maryland Municipal League; U.S. Bureau of Labor Statistics; Economic Policy Institute; Moody's Analytics; Department of Legislative Services

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rh/mcr

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Appendix – Maryland Wage and Hour Law

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 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 on July 1, 2026.

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. BPW has not exercised this authority.

The Acts specify that, unless the federal minimum wage is set at a higher rate, the State minimum wage for employers with 15 or more employees is as follows:

- \$13.25 per hour as of January 1, 2023;
- \$14.00 per hour as of January 1, 2024; and
- \$15.00 per hour as of January 1, 2025.

The State minimum wage for an employer that employs 14 or fewer employees is as follows:

- \$12.80 per hour as of January 1, 2023;
- \$13.40 per hour as of January 1, 2024;
- \$14.00 per hour as of January 1, 2025;
- \$14.60 per hour as of January 1, 2026; and
- \$15.00 per hour as of July 1, 2026.

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; certain farm workers; and covered employees under the Secure Maryland Wage Act.

Generally, 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.

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.

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Fair Wage Act of 2023

BILL NUMBER: HB549/SB555

PREPARED BY: Myles Hicks

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Small businesses that are currently paying employees less than \$15 per hour will need to raise wages. Small businesses will likely benefit from increased economic activity due to higher wages.