

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 555

(The President, *et al.*) (By Request - Administration)

Finance and Budget and Taxation

Economic Matters

Fair Wage Act of 2023

This Administration bill accelerates the increase in the State minimum wage rate for all employers to \$15.00 per hour beginning January 1, 2024. 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: General fund expenditures increase by \$218.2 million and \$109.1 million in FY 2024 and 2025, respectively, for provider reimbursements; federal expenditures and revenues likewise increase to reflect the federal share of the reimbursements. Amounts for FY 2024 are budgeted, contingent on enactment of the bill. State expenditures (all funds) increase, likely modestly, from FY 2024 through 2026 due to acceleration of the minimum wage rate, as discussed below. Any increase in State tax revenues from FY 2024 through 2026 cannot be reliably projected but is expected to be minimal. The Maryland Department of Labor (MDL) can implement and enforce the bill with existing resources. **This bill eliminates mandated appropriations in FY 2025 and 2026.**

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF Revenue	-	-	-	\$0	\$0
FF Revenue	\$195.2	\$97.6	\$0	\$0	\$0
GF Expenditure	\$218.2	\$109.1	\$0	\$0	\$0
FF Expenditure	\$195.2	\$97.6	\$0	\$0	\$0
GF/SF/FF/HE/NB Exp.	-	-	-	\$0	\$0
Net Effect	(\$218.2)	(\$109.1)	(-)/-	\$0.0	\$0.0

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, in FY 2024 and 2025 to pay additional wages to employees. Any increase in local government tax revenues cannot be reliably projected but is expected to be minimal.

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. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Minimum Wage Rate Accelerated to \$15.00 Per Hour

Effective January 1, 2024, the State minimum wage rate is set at \$15.00 per hour for all employers, as shown in **Exhibit 1**. The bill also repeals the Board of Public Works' authority to temporarily suspend a scheduled increase in the State minimum wage rate, as the bill repeals future scheduled increases due to the acceleration.

Exhibit 1 State Minimum Wages – Current Law and Under the Bill

	<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
1/1/2024	\$15.00	14.00	13.40
1/1/2025	15.00	15.00	14.00
1/1/2026	15.00	15.00	14.60
7/1/2026+	15.00	15.00	15.00

N/A: not applicable

Source: 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 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.

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 due to accelerating the increase in the State's minimum wage beginning in the second half of fiscal 2024 and extending through fiscal 2026. 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. However, 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.

Federal fund revenues increase in fiscal 2024 and 2025 for the federal share of provider reimbursements. Federal fund revenues are not otherwise materially affected.

State Expenditures: 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). The total effect diminishes across that time 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 across that time as the minimum wage increases to \$15.00 per hour under current law.

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.

Montgomery and Howard counties, as employers, are not affected by the change because both jurisdictions have local minimum wage rates that will be \$15.00 or more per hour for large employers as of January 1, 2024.

Local Revenues: Local revenues from income taxes associated with higher wages paid under the bill increase – beginning in the second half of fiscal 2024 and extending through fiscal 2026 – but any such increase may be offset from diminished revenues from businesses with higher payroll expenses as well as a potential decrease in demand for labor. The amounts are likely minimal.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 721 and HB 698 of 2022.

Designated Cross File: HB 549 (The Speaker, *et al.*) (By Request - Administration) - Economic Matters.

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); Maryland Department of Health; 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; Department of Legislative Services

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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: SB555/HB549

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.