Agenda Item 11
September 26, 2017
**Public Hearing**

# MEMORANDUM

September 22, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney
Gene Smith, Legislative Analyst

SUBJECT: **Public Hearing:** Bill 28-17, Human Rights and Civil Liberties – County Minimum Wage – Amount - Annual Adjustment

Bill 28-17, Human Rights and Civil Liberties – County Minimum Wage – Amount - Annual Adjustment, sponsored by Lead Sponsor Councilmember Elrich, and Co-Sponsors Councilmembers Leventhal, Riemer, Hucker and Navarro, was introduced on July 25. A Health and Human Services Committee worksession is tentatively scheduled for October 9 at 9:30 a.m.

Bill 28-17 would:

- increase the County minimum wage by a certain amount;
- require the Chief Administrative Officer to adjust the County minimum wage rate each year; and
- require the Office of Legislative Oversight to conduct an annual analysis of the impact of the County minimum wage.

## Background

In 2013, the Council enacted Bill 27-13,[1] which established a County minimum wage for private sector employees working in the County, unless the State or federal minimum wage is higher. The County minimum wage established under Bill 27-13, as amended, was phased in over several years. The rate was set at $8.40 per hour effective October 1, 2014, and increased to $9.55 per hour on October 1, 2015, $10.75 on July 1, 2016, and $11.50 per hour on July 1, of this year. There are no requirements in County law for further increases in the County minimum wage.

[1] The County minimum wage law has been amended twice since being established by Bill 27-13. Bill 59-14 modified some of the effective dates for increases, and Bill 24-15 modified the method for calculating the "tip credit" allowed to employers of tipped employees.

The County minimum wage does not apply to a worker who is exempt from the State or federal minimum wage, is under the age of 19 years and is employed no more than 20 hours per week, or subject to an "opportunity wage" under the State or federal law. Employers of tipped employees may include in the computation of their wage amount a "tip credit" not exceeding the County minimum wage less $4.00 per hour.

In 2014, the Maryland General Assembly enacted a law raising the State's minimum wage from $7.25 to $10.10 per hour over four years, with incremental increases to $8.25 in 2015, $8.75 in 2016, $9.25 in 2017, and $10.10 in 2018. The federal minimum wage is $7.25 hour and has not changed since 2009.[2] There is a nationwide effort to increase the minimum wage at the federal, state, and local levels to $15.00 per hour, which has thus far had some success.[3] California and New York have enacted statewide laws that would increase the minimum wage in those states to $15.00 per hour over a period of years. In addition, several local jurisdictions and the District of Columbia have passed laws gradually increasing their minimum wage to $15.00 per hour.

*Bill 12-16*

In January of this year, the Council enacted Bill 12-16,[4] which would have extended the incremental increases set in County law by Bill 27-13 to go up to $15 per hour. The scheduled increases under Bill 12-16 were based on the size of the employer: workers whose employers have 26 or more employees would reach $15.00 per hour by 2020[5] and those of employers with 25 or fewer employees by July 1, 2022.[6] Bill 12-16 would also have required, beginning in 2023, annual adjustments to the minimum wage by the annual average increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the previous calendar year.

Bill 12-16 also included a "safety-valve" provision that would allow the County Executive the ability to pause implementation of a scheduled increase under certain adverse economic conditions. These conditions included: if total private employment for Montgomery County decreased by 1.5 percent over the period from April 1 to June 30 of the previous year; total private employment for Montgomery County decreased by 2.0 percent over the period from January 1 to June 30 of the previous year; the Gross Domestic Product of the United States experienced negative growth for the preceding two quarters: or the National Bureau of Economic Research determined that the United States economy is in recession.

On January 23, 2017, the Executive vetoed Bill 12-16. In a memorandum explaining his veto (©8-10), he expressed support for "the effort to move toward $15 per hour" but indicated that the enacted Bill went "too far, too fast." The Executive expressed hope that a new bill, with broader

[2] A chart showing the federal minimum wage rates from 1938-2009 is at:
http://www.dol.gov/whd/minwage/chart.htm

[3] A summary of jurisdictions approving some form of minimum wage increase in 2016 is at:
http://raisetheminimumwage.com/21-states-localities-approved-minimum-wage-increases-in-2016/

[4] The packet for Council action on Bill 12-16 is at:
http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2016/Packets/20170117_6.pdf

[5] The scheduled increases in the minimum wage paid by employers of 26 or more employees under Bill 12-16 were: $12.50/hr. effective July 1, 2018; $13.75 in 2019; and $15.00 in 2020.

[6] The scheduled increases in the minimum wage paid by employers of 25 or fewer employees under Bill 12-16 were: $12.00/hr. effective July 1, 2018; $12.75 in 2019; $13.50 in 2020; $14.25 in 2021; and $15.00 in 2022.

support, could be introduced "in the near future," and called for a study, to be completed by July of this year, examining the anticipated fiscal and economic impact of an increased County minimum wage. In addition to the study, the Executive cited exemptions for small businesses and youth workers, and the provision for reaching a $15/hour minimum wage by 2022, as preconditions for him to fully agree with a new bill increasing the minimum wage.

*Bill 28-17*

Bill 28-17 would replicate the changes that would have been implemented under Bill 12-16, but with two key distinctions aimed at addressing issues that were raised during that Bill's consideration. Under Bill 28-17, two additional classes of employers would be subject to the slower phase-in schedule for smaller employers (i.e., $15.00/hr by 2022). This schedule would apply to employers who: (1) employ 25 or fewer employees; (2) have tax exempt status under Section 501(c)(3) of the Internal Revenue Code; or (3) provide "home health services" or "home or community-based services," as defined under federal Medicaid regulations (see ©11-19), and receive at least 75% of gross revenues through state and federal medical programs. The third group (Medicaid funded employers) would have to be determined eligible by the Office of Human Rights. Bill 28-17 would retain the annual adjustment based on increases in the Consumer Price Index and the requirement that the Office of Legislative Oversight provide the Council with an annual analysis of the impact of the County minimum wage on the local economy. The Bill also includes the "safety-valve" provisions of Bill 12-16, which allow the Executive to temporarily suspend scheduled increases during the phase-in.

## Legal Authority

Montgomery County can set its own minimum wage by law even though the State of Maryland has a minimum wage law. In *City of Baltimore v. Sitnick*, 254 Md. 303 (1969), the Maryland Court of Appeals upheld a city ordinance establishing a minimum wage standard that was higher than the State standard. In that case, the plaintiffs argued that State law had preempted the field of minimum wage. In rejecting that argument, the Court held that the City of Baltimore could pass its own minimum wage law based on the city's exercise of concurrent power because the city law did not conflict with the State law.

## The Minimum Wage Impact Study

As referenced in his veto message, the Executive commissioned a study of the impacts of increasing the County's minimum wage to $15 per hour (the "Study"). On August 1, 2017, the Executive forwarded the Study,[7] performed by PFM Group Consulting, LLC (PFM) to the Council (see ©20). Key impacts of the proposed minimum wage increase identified by the Study included a projected loss of approximately 47,000 jobs by 2022, an estimated loss of income of approximately $396.5 million from 2017 to 2022, a projected need for $10.0 million in additional funding in the County budget to address increased payroll costs, and a projected loss of income

[7] The full Study is at http://montgomerycountymd.gov/OPI/Resources/Files/2017/MC_Minimum-Wage-Impact-Analysis_7-31-2017.pdf

tax revenue of $40.9 million from FY2018 to FY2022. (See Executive Summary at ©21-28). The Study's projections were largely based on:

- Data from the County regarding its budget, contracts with outside vendors, and County workers.
- Feedback from County officials on the possible impact of the proposed increases gathered during interviews conducted in April and May 2017.
- Feedback from multiple County business owners and business community leaders gathered during interviews conducted in April and May 2017.
- Responses from an electronic survey of Montgomery County business owners conducted in May 2017.
- Feedback from multiple County non-profit employees and non-profit community leaders gathered during interviews conducted in May 2017.
- Responses from an electronic survey of Montgomery County non-profit leaders in May 2017.
- Third-party economic and demographic data and research from sources that include the United States Census Bureau (Census), the Bureau of Labor Statistics (BLS), the Center on Wage and Employment Dynamics (CWED), the National Employment Law Project (NELP), etc.
- Information from the websites and public documents of other cities and counties that have increased their minimum wage rates in recent years.

See pp. 14-17 of the Study for a description of the Study approach and methodology.

After reviewing the Study, Councilmembers had several questions about the Study, aimed at better understanding the Study's methodology and findings. These questions were forwarded to the Executive on August 15, 2017, with a request that PFM provide written answers by September 5, 2017 (see ©29-32). Also on August 15, the Executive sent a letter to PFM formally requesting that PFM review the methodology and findings of the Study (see ©33-34). In the letter, the Executive expressed concern about the projected number of jobs lost and economic impact, and noted that PFM itself had indicated that "there might be a problem with the methodology and calculation of the fiscal impact and resulting job impacts." The Executive requested that the review receive immediate attention.

On September 13, 2017, the Executive sent a memorandum to Council President Berliner laying out a suggested approach for moving forward with Bill 28-17 (see ©35-36). In the memorandum, the Executive noted the challenges faced in conducting the Study, and indicated that Executive Branch staff still had concerns about certain findings in the Study. Due to uncertainty over whether the concerns could be adequately addressed in a timely manner, the Executive recommended that the Council consider moving forward with an amended version of Bill 28-17.

The Executive recommends the following changes to the Bill:

- Amend the size of small employers to be 50 or fewer employees.
- Amend the timeline for reaching the $15 minimum wage to:

- July 1, 2022 for large employers; and
- July 1, 2024 for small employers and non-profits.

- Establish a 90-day period after employment during which an employer may pay a new employee 85% of the minimum wage.
- Enact a County opportunity wage so that the County is not automatically tied to the State opportunity wage, which is 85% of the State's minimum wage for workers under 20 years of age for the first 6 months of employment. The intent of the opportunity wage is to provide an incentive for employers to give opportunity for work experience to younger workers.


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Bill No. 28-17
Concerning: Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment
Revised: 07/13/2017 Draft No. 2
Introduced: July 25, 2017
Expires: January 25, 2019
Enacted: ____
Executive: ____
Effective: ____
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

# County Council
# For Montgomery County, Maryland

Lead Sponsor: Councilmember Elrich
Co-Sponsors: Councilmembers Leventhal, Riemer, Hucker and Navarro

**AN ACT** to:

(1) increase the County minimum wage by a certain amount;
(2) require the Chief Administrative Officer to adjust the County minimum wage rate each year;
(3) require the Office of Legislative Oversight to conduct an annual analysis of the impact of the County minimum wage; and
(4) generally amend the laws governing the minimum wage

By amending
Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Article XI. County Minimum Wage
Section 27-68

By adding
Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Article XI. County Minimum Wage
Section 27-70A

| | |
|---|---|
| **Boldface** | *Heading or defined term.* |
| Underlining | *Added to existing law by original bill.* |
| **[Single boldface brackets]** | *Deleted from existing law by original bill.* |
| Double underlining | *Added by amendment.* |
| **[[Double boldface brackets]]** | *Deleted from existing law or the bill by amendment.* |
| * * * | *Existing law unaffected by bill.* |

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec 1. Section 27-68 is amended and Section 27-70A is added as follows:**

**27-68. Minimum Wage Required.**

(a) *County minimum wage.* Except as provided in Subsection (b), an employer must pay wages to each employee for work performed in the County at least the greater of:

(1) the minimum wage required for that employee under the Federal Act;

(2) the minimum wage required for that employee under the State Act; or

(3) [$11.50] $15.00 per hour.

(b) *Annual adjustment.* The Chief Administrative Officer must adjust the minimum wage rate required under Subsection (a)(3), effective July 1, 2023, and July 1 of each subsequent year, by the annual average increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, or a successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of five cents, and must publish the amount of this adjustment not later than March 1 of each year.

(c) *Exclusions.* The County minimum wage does not apply to an employee who:

(1) is exempt from the minimum wage requirements of the State or Federal Act;

(2) is under the age of 19 years and is employed no more than 20 hours per week; or

(3) is subject to an opportunity wage under the State or Federal Act.

[(c)](d) *Retaliation prohibited.* A person must not:

(1) retaliate against any person for:

(A) lawfully opposing any violation of this Article; or

(B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this Article; or

(2) obstruct or prevent enforcement or compliance with this Article.

* * *

**27-70A. Annual impact analysis.**

The Office of Legislative Oversight must submit a report to the Council, by January 31 of each year, analyzing the impact of the County minimum wage on the local economy.

**Sec. 2. Transition.**

Notwithstanding Section 27-68, as amended in Section 1, except when the scheduled increases are suspended under subsection (e), the County minimum wage, until July 1, 2022, must be the greater of the minimum wage required under the Federal or State Act or:

(a) for an employer who employs 26 or more employees:

(1) effective July 1, 2018, $12.50 per hour;

(2) effective July 1, 2019, $13.75 per hour; and

(3) effective July 1, 2020, $15.00 per hour.

(b) for an eligible employer under subsection (c):

(1) effective July 1, 2018, $12.00 per hour;

(2) effective July 1, 2019, $12.75 per hour;

(3) effective July 1, 2020, $13.50 per hour; and

(4) effective July 1, 2021, $14.25 per hour.

(c) An employer is eligible for the implementation schedule in subsection (b) if the employer:

(1) employs 25 or fewer employees;

(2) has tax exempt status under Section 501(c)(3) of the Internal Revenue Code; or

(3) provides:

(A) "home health services" as defined by 42 C.F.R. § 440.70 or "home or community-based services" as defined by 42 C.F.R. § 440.180;

(B) receives at least 75% of gross revenues through state and federal Medicaid programs; and

(C) is certified by the Office of Human Rights as meeting the requirements of subparagraphs (A) and (B).

(d) For the purposes of subsections (a) and (b), an employer's number of employees must be calculated based upon the employer's average number of employees per calendar week during the preceding calendar year for each week at least one employee worked for compensation. For employers that did not have any employees during the preceding calendar year, the employer's number of employees must be calculated based upon the average number of employees who worked for compensation per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

(e) (1) On or before January 31 of each year beginning in 2018 through 2022, to ensure that economic conditions can support a minimum wage increase, the Director of Finance must determine and certify to the Executive and Council if:

(A) total private employment for Montgomery County decreased by 1.5% over the period from April 1 to June 30 of the previous year. The calculation must compare total private employment in June to total private employment in April, as reported by the Maryland State Department of Labor, Licensing, and Regulation's Quarterly Census of Employment and Wages data series;

(B) total private employment for Montgomery County decreased by 2.0% over the period from January 1 to June 30 of the previous year. The calculation must compare total private employment in June to total private employment in January, as reported by the Maryland State Department of Labor, Licensing, and Regulation's Quarterly Census of Employment and Wages data series;

(C) the Gross Domestic Product of the United States, as published by the U.S. Department of Commerce, has experienced negative growth for the preceding two quarters; or

(D) the National Bureau of Economic Research has determined that the United States economy is in recession.

(2) If, in any year, the Director of Finance certifies that a condition in subparagraphs (A) through (D) of paragraph (1) occurred, the Executive may, on or before February 10 of that year, suspend the minimum wage increases scheduled under subsections (a) and (b) for that year.

(3) If the Executive suspends the scheduled minimum wage increases for a year, all dates specified in subsections (a) and (b) that follow the temporary suspension must be postponed by an additional year.

(4) The Executive must not suspend scheduled minimum wage increases under this Section more than two times.

**Sec. 3. Effective Date.**

This Act takes effect on July 1, 2018.

## LEGISLATIVE REQUEST REPORT

Bill 28-17
*Human Rights and Civil Liberties – County Minimum Wage – Amount - Annual Adjustment*

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|---|---|
| **DESCRIPTION:** | The Bill would increase the County minimum wage that must be paid to certain employees working in the County for a private sector employer or the County government to $15.00 per hour by 2020 for employers with 26 or more employees. Employers who (1) employ 25 or fewer employees (2) have tax exempt status under Section 501(c)(3) of the Internal Revenue Code; or (3) provide "home health services" or "home or community-based services," as defined under federal Medicaid regulations and receive at least 75% of gross revenues through state and federal medical programs would be required to pay at least $15.00 per hour by 2022. It would also require annual adjustments to the County minimum wage each year beginning in 2023. |
| **PROBLEM:** | The existing County minimum wage of $11.50 per hour is insufficient to support a full-time worker in the County, and existing law does not provide for annual increases based on inflation. |
| **GOALS AND OBJECTIVES:** | To maintain a reasonable living wage for workers in the County when the State and federal minimum wage is insufficient. |
| **COORDINATION:** | Human Rights Commission, Office of Management and Budget, Department of Finance |
| **FISCAL IMPACT:** | To be requested. |
| **ECONOMIC IMPACT:** | To be requested. |
| **EVALUATION:** | To be requested. |
| **EXPERIENCE ELSEWHERE:** | To be researched. |
| **SOURCE OF INFORMATION:** | Josh Hamlin, Legislative Attorney, 240-777-7892 |
| **APPLICATION WITHIN MUNICIPALITIES:** | To be researched. |
| **PENALTIES:** | Class A civil citation and equitable relief. |

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
*County Executive*

MEMORANDUM

January 23, 2017

TO: Roger Berliner, President
County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Bill 12-16, Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment

There continues to be a great deal of discussion since the passage of Bill 12-16, Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment, and my position regarding this bill. I understand that there is a strong interest by some councilmembers to even reconsider the bill. However this is no longer a possibility since this bill has been signed and transmitted to the executive branch. At present, I have only three options: sign the bill and it becomes law as is, not sign the bill and it will go into effect without my signature or veto the bill. The only way to express my position regarding this bill at this time is to reluctantly veto and return it to you with what I believe is a more reasonable path to moving the County to a $15 wage.

That said, I wish to congratulate the County Council on the very full and thoughtful discussion it held on the bill. In particular, I want to commend Councilmember Elrich for his commitment to the issue. I respect his very principled position on a matter that is extremely important to our County and the nation as a whole.

As I have said on numerous occasions, I support the effort to move toward $15 per hour over an appropriate timeframe and under certain conditions. And that sentiment was expressed by you and your Council colleagues who voted against the bill. Indeed, the Council unanimously passed Bill 27-13, the 2013 Minimum Wage bill, and we celebrated together with a public bill signing ceremony. But this year's effort became much more contentious and divided resulting in only a 5-4 majority. Many believed it went too far, too fast, and I am disappointed that we did not find a broader consensus.

It is my hope that a modified bill can be introduced in the near future and, similar to the 2013 bill, receive greater support. Such an effort would send a stronger and clearer message to our County and to the rest of the State.

While the Council adopted several amendments intended to address some of the issues I raised in my November 22, 2016 memorandum, I do not believe they went far enough to address the very serious issues that I am concerned about or to gain more widespread support. I wish to thank the Council for adopting my recommendation for the so-called "off ramp" to address concerns about increasing the minimum wage during economic downturns. Other issues, however, were not addressed satisfactorily.

As mentioned previously, Montgomery County has already put itself in the forefront on the minimum wage issue and several other initiatives to assist our more vulnerable residents. Montgomery County's minimum wage is, and will continue to be, higher than both the federal and State minimum wage, as well as that in all surrounding jurisdictions except the District of Columbia. I remain concerned, however, about the competitive disadvantage Bill 12-16 would put the County in compared to our neighboring jurisdictions. Additionally, we must realize that Bill 27-13 would put our County in a different position compared to the few jurisdictions that have already passed a $15 minimum wage. Unlike Seattle or New York City, we are not a "destination city" that draws great numbers of business travelers or tourists that will be able to afford higher costs for short-term visits. Our residents will essentially shoulder the bulk of the cost. Also, in California the $15 minimum wage does not go effect until 2022, and there is an additional one-year phase-in for small businesses with less than 26 employees. For this reason and others, we must act in a more measured way based on the best information available and the potential unintended negative impacts to Montgomery County.

While some experts may disagree, I believe in an expeditious and timely study of relevant issues on the fiscal and economic impact of an increase in the minimum wage on Montgomery County, I maintain that a study will better inform the Council on the direct and indirect impacts on private employers' bottom line as well as the impact on County government. As you know, there are very few jurisdictions that provide the array of health and human services to help vulnerable populations at the same level that Montgomery County does. For example, all things remaining equal, if the Council continues the policy of providing financial support to our non-profit partners for imposed legislated wage adjustments, when the minimum wage reaches $15, there will be a significant financial impact to the County. The County's budget for Developmental Disability providers alone would be $21.1 million over the current FY17 base of $13.8 million. Based on our current budget projections, this would be a very difficult amount to absorb, and this does not address the challenge faced by all of our non-profit partners.

Another example of the financial impact of the increase in the minimum wage comes from our Medicaid providers. I will send to you separately a letter and data I received a few days ago. In sum, they estimate that the move to $15/hour will result in an approximate 5.5% increase in the cost of operations each year. Unlike some businesses, Medicaid providers cannot legally pass these increases on to the consumer and will be unable to absorb the significant increased costs.

It is my view that a study addressing these issues can be accomplished in a relatively short time. I propose that it be completed by no later than July of this year. This study would give the Council ample time to propose and enact a new bill long before the first new increment under Bill 12-16 would have taken effect.

In my November 22, 2016 memorandum, I urged the Council to consider a longer timeframe for raising the County minimum wage, noting that California would not reach $15 until 2022. While the Council provided an extension to 2022 for small employers (25 or fewer employees), the bill retained 2020 as the date for the County minimum to reach $15/hour for all other employers. I think that is too fast and believe we should not reach $15/hour for all employees until 2022. In addition, small employers will be hit particularly hard, and thus should be exempted entirely from the increased minimum wage requirement.

In summary, for me to fully agree with a bill, it should:

- Be based on an expeditious study on the direct and indirect financial impacts on private employers, non-profits and County government;
- Include an exemption for small business, the definition of which can be informed by the study;
- Include an exemption for youth workers; and,
- Provide for reaching $15/hour in 2022

It is clear that there is broad support in the community and on the Council for an increase in the minimum wage to $15/hour. The real questions are how quickly we get there and what exemptions should be made. By adopting a revised bill that addresses these issues, I believe we can work toward a broader consensus and a better outcome for Montgomery County residents and businesses.

Code of Federal Regulations
Title 42. Public Health
Chapter IV. Centers for Medicare & Medicaid Services, Department of Health and Human Services (Refs & Annos)
Subchapter C. Medical Assistance Programs
Part 440. Services: General Provisions (Refs & Annos)
Subpart A. Definitions

42 C.F.R. § 440.70

§ 440.70 Home health services.

Effective: July 1, 2016
Currentness

(a) "Home health services" means the services in paragraph (b) of this section that are provided to a beneficiary—

(1) At his place of residence, as specified in paragraph (c) of this section; and

(2) On his or her physician's orders as part of a written plan of care that the physician reviews every 60 days, except as specified in paragraph (b)(3) of this section.

(b) Home health services include the following services and items. Paragraphs (b)(1), (2) and (3) of this section are required services and items that must be covered according to the home health coverage parameters. Services in paragraph (b)(4) of this section are optional. Coverage of home health services cannot be contingent upon the beneficiary needing nursing or therapy services.

(1) Nursing service, as defined in the State Nurse Practice Act, that is provided on a part-time or intermittent basis by a home health agency as defined in paragraph (d) of this section, or if there is no agency in the area, a registered nurse who—

(i) Is currently licensed to practice in the State;

(ii) Receives written orders from the patient's physician;

(iii) Documents the care and services provided; and

(iv) Has had orientation to acceptable clinical and administrative recordkeeping from a health department nurse.

(2) Home health aide service provided by a home health agency,



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(3) Medical supplies, equipment, and appliances suitable for use in any setting in which normal life activities take place, as defined at § 440.70(c)(1).

(i) Supplies are health care related items that are consumable or disposable, or cannot withstand repeated use by more than one individual, that are required to address an individual medical disability, illness or injury.

(ii) Equipment and appliances are items that are primarily and customarily used to serve a medical purpose, generally are not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, and can be reusable or removable. State Medicaid coverage of equipment and appliances is not restricted to the items covered as durable medical equipment in the Medicare program.

(iii) A beneficiary's need for medical supplies, equipment, and appliances must be reviewed by a physician annually.

(iv) Frequency of further physician review of a beneficiary's continuing need for the items is determined on a case-by-case basis, based on the nature of the item prescribed;

(v) States can have a list of preapproved medical equipment supplies and appliances for administrative ease but States are prohibited from having absolute exclusions of coverage on medical equipment, supplies, or appliances. States must have processes and criteria for requesting medical equipment that is made available to individuals to request items not on the State's list. The procedure must use reasonable and specific criteria to assess items for coverage. When denying a request, a State must inform the beneficiary of the right to a fair hearing.

(4) Physical therapy, occupational therapy, or speech pathology and audiology services, provided by a home health agency or by a facility licensed by the State to provide medical rehabilitation services. (See § 441.15 of this subchapter.)

(c) A beneficiary's place of residence, for home health services, does not include a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities, except for home health services in an intermediate care facility for Individuals with Intellectual Disabilities that are not required to be provided by the facility under subpart I of part 483. For example, a registered nurse may provide short-term care for a beneficiary in an intermediate care facility for Individuals with Intellectual Disabilities during an acute illness to avoid the beneficiary's transfer to a nursing facility.

(1) Nothing in this section should be read to prohibit a beneficiary from receiving home health services in any setting in which normal life activities take place, other than a hospital, nursing facility; intermediate care facility for individuals with intellectual disabilities; or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Home health services cannot be limited to services furnished to beneficiaries who are homebound.

(2) Additional services or service hours may, at the State's option, be authorized to account for medical needs that arise in the settings home health services are provided.

(d) "Home health agency" means a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare, including the capitalization requirements under § 489.28 of this chapter.

(e) A "facility licensed by the State to provide medical rehabilitation services" means a facility that—

(1) Provides therapy services for the primary purpose of assisting in the rehabilitation of disabled individuals through an integrated program of—

(i) Medical evaluation and services; and

(ii) Psychological, social, or vocational evaluation and services; and

(2) Is operated under competent medical supervision either—

(i) In connection with a hospital; or

(ii) As a facility in which all medical and related health services are prescribed by or under the direction of individuals licensed to practice medicine or surgery in the State.

(f) No payment may be made for services referenced in paragraphs (b)(1) through (4) of this section, unless the physician referenced in paragraph (a)(2) of this section or for medical equipment, the allowed non-physician practitioner, as described in paragraph (f)(3)(ii) through (v), with the exception of certified nurse-midwives, as described in paragraph (f)(3)(iii) documents that there was a face-to-face encounter with the beneficiary that meets the following requirements:

(1) For the initiation of home health services, the face-to-face encounter must be related to the primary reason the beneficiary requires home health services and must occur within the 90 days before or within the 30 days after the start of the services.

(2) For the initiation of medical equipment, the face-to-face encounter must be related to the primary reason the beneficiary requires medical equipment and must occur no more than 6 months prior to the start of services.

(3) The face-to-face encounter may be conducted by one of the following practitioners:

(i) The physician referenced in paragraph (a)(2) of this section;

(ii) A nurse practitioner or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Act, working in collaboration with the physician referenced in paragraph (a) of this section, in accordance with State law;



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(iii) A certified nurse midwife, as defined in section 1861(gg) of the Act, as authorized by State law;

(iv) A physician assistant, as defined in section 1861(aa)(5) of the Act, under the supervision of the physician referenced in paragraph (a) of this section; or

(v) For beneficiaries admitted to home health immediately after an acute or post-acute stay, the attending acute or post-acute physician.

(4) The allowed non-physician practitioner, as described in paragraph (f)(3)(ii) through (v) of this section, performing the face-to-face encounter must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical findings must be incorporated into a written or electronic document included in the beneficiary's medical record.

(5) To assure clinical correlation between the face-to-face encounter and the associated home health services, the physician responsible for ordering the services must:

(i) Document the face-to-face encounter which is related to the primary reason the patient requires home health services, occurred within the required timeframes prior to the start of home health services.

(ii) Must indicate the practitioner who conducted the encounter, and the date of the encounter.

(6) The face-to-face encounter may occur through telehealth, as implemented by the State.

(g)(1) No payment may be made for medical equipment, supplies, or appliances referenced in paragraph (b)(3) of this section to the extent that a face-to-face encounter requirement would apply as durable medical equipment (DME) under the Medicare program, unless the physician referenced in paragraph (a)(2) of this section or allowed non-physician practitioner, as described in paragraph (f)(3)(ii) through (v) of this section documents a face-to-face encounter with the beneficiary consistent with the requirements of paragraph (f) of this section except as indicated in paragraph (g)(2) of this section.

(2) The face-to-face encounter may be performed by any of the practitioners described in paragraph (f)(3) of this section, with the exception of certified nurse-midwives, as described in paragraph (f)(3)(iii) of this section.

**Credits**

[43 FR 45224, Sept. 29, 1978, as amended at 45 FR 24888, April 11, 1980; 62 FR 47902, Sept. 11, 1997; 62 FR 49726, Sept. 23, 1997; 63 FR 310, Jan. 5, 1998; 81 FR 5566, Feb. 2, 2016]

SOURCE: 43 FR 45224, Sept. 29, 1978; 51 FR 41338, Nov. 14, 1986; 77 FR 29028, May 16, 2012, unless otherwise noted.

AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).



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Notes of Decisions (35)

Current through July 6, 2017; 82 FR 31277.

**End of Document**

Code of Federal Regulations
Title 42. Public Health
Chapter IV. Centers for Medicare & Medicaid Services, Department of Health and Human Services (Refs & Annos)
Subchapter C. Medical Assistance Programs
Part 440. Services: General Provisions (Refs & Annos)
Subpart A. Definitions

42 C.F.R. § 440.180

§ 440.180 Home and community-based waiver services.

Effective: March 17, 2014
Currentness

(a) Description and requirements for services. "Home or community-based services" means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this chapter.

(1) These services may consist of any or all of the services listed in paragraph (b) of this section, as those services are defined by the agency and approved by CMS.

(2) The services must meet the standards specified in § 441.302(a) of this chapter concerning health and welfare assurances.

(3) The services are subject to the limits on FFP described in § 441.310 of this chapter.

(b) Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

(1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Habilitation services.



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(7) Respite care services.

(8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

(9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

(c) Expanded habilitation services, effective October 1, 1997—

(1) General rule. Expanded habilitation services are those services specified in paragraph (c)(2) of this section.

(2) Services included. The agency may include as expanded habilitation services the following services:

(i) Prevocational services, which means services that prepare an individual for paid or unpaid employment and that are not job-task oriented but are, instead, aimed at a generalized result. These services may include, for example, teaching an individual such concepts as compliance, attendance, task completion, problem solving and safety. Prevocational services are distinguishable from noncovered vocational services by the following criteria:

(A) The services are provided to persons who are not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs).

(B) If the beneficiaries are compensated, they are compensated at less than 50 percent of the minimum wage;

(C) The services include activities which are not primarily directed at teaching specific job skills but at underlying habilitative goals (for example, attention span, motor skills); and

(D) The services are reflected in a plan of care directed to habilitative rather than explicit employment objectives.

(ii) Educational services, which means special education and related services (as defined in sections 602(16) and (17) of the Education of the Handicapped Act) (20 U.S.C. 1401 (16 and 17)) to the extent they are not prohibited under paragraph (c)(3)(i) of this section.

(iii) Supported employment services, which facilitate paid employment, that are—



(17)

(A) Provided to persons for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

(B) Conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and

(C) Defined as any combination of special supervisory services, training, transportation, and adaptive equipment that the State demonstrates are essential for persons to engage in paid employment and that are not normally required for nondisabled persons engaged in competitive employment.

(3) Services not included. The following services may not be included as habilitation services:

(i) Special education and related services (as defined in sections 602(16) and (17) of the Education of the Handicapped Act) (20 U.S.C. 1401 (16) and (17)) that are otherwise available to the individual through a local educational agency.

(ii) Vocational rehabilitation services that are otherwise available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(d) Services for the chronically mentally ill—

(1) Services included. Services listed in paragraph (b)(8) of this section include those provided to individuals who have been diagnosed as being chronically mentally ill, for which the agency has requested approval as part of either a new waiver request or a renewal and which have been approved by CMS on or after October 21, 1986.

(2) Services not included. Any home and community-based service, including those indicated in paragraph (b)(8) of this section, may not be included in home and community-based service waivers for the following individuals:

(i) For individuals aged 22 through 64 who, absent the waiver, would be institutionalized in an institution for mental diseases (IMD); and, therefore, subject to the limitation on IMDs specified in § 435.1009(a)(2) of this chapter.

(ii) For individuals, not meeting the age requirements described in paragraph (d)(2)(i) of this section, who, absent the waiver, would be placed in an IMD in those States that have not opted to include the benefits defined in § 440.140 or § 440.160.

**Credits**

[46 FR 48540, Oct. 1, 1981; 50 FR 10026, March 13, 1985; 59 FR 37716, July 25, 1994; 65 FR 60107, Oct. 10, 2000; 71 FR 39229, July 12, 2006; 72 FR 38690, July 13, 2007; 79 FR 3029, Jan. 16, 2014]

SOURCE: 43 FR 45224, Sept. 29, 1978; 51 FR 41338, Nov. 14, 1986; 77 FR 29028, May 16, 2012, unless otherwise noted.

AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Notes of Decisions (19)

Current through July 6, 2017; 82 FR 31277.

**End of Document**





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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
*County Executive*

MEMORANDUM

August 1, 2017

TO: Roger Berliner, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Minimum Wage Increase Impact Study

I am forwarding the report from Public Financial Management (PFM) Group Consulting, LLC, "Montgomery County, Maryland Minimum Wage Increase Impact Study." As I indicated in my message vetoing Bill 12-16, a study of the relevant issues of the impact of an increase in the County minimum wage would provide critical information for the Council as it considers new legislation.

The report addresses the following impacts: the impact on the County economy and labor market; the impact on the County government; the impact on County businesses; and the socioeconomic impacts. The report is comprehensive and compelling, and I would suggest that PFM present its findings to the Council in a briefing to address questions Council members might have about the report. Executive Branch staff are available to coordinate that briefing.

IL/ae

pfm

# Montgomery County, Maryland

## Minimum Wage Increase Impact Study

**July 31, 2017**

**PFM Group Consulting, LLC**
1735 Market St
43rd Floor
Philadelphia, PA 19103

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# Executive Summary

In April 2016, five members of the Montgomery County Council introduced Bill 12-16 to increase the County's minimum wage to $15.00 per hour by July 1, 2020.[1] The Council passed the bill on a 5-4 vote, but it was vetoed by County Executive Isiah Leggett, who called for additional study into the potential economic impact of the increase.

This study addresses issues raised by the County Executive from four perspectives: the impact on County government, the impact on the County workforce and budget, the impact on the County economy and businesses, and the socioeconomic impact. As the findings detail, there are significant potential benefits, as well as significant economic costs associated with moving to a higher County minimum wage as proposed by Bill 12-16.

There is a significant body of research around the impacts of an increase in the minimum wage. In general, the primary benefit from an increase in the minimum wage is heightened earnings that improve the standard of living for low-wage workers. This greater purchasing power leads to improved mental health, morale, and decreased stress. The broader impacts from increased earnings include a potential reduction of poverty and overall wage inequality. Additional research has shown a connection between a higher minimum wage and a reduction in hunger and food insecurity.

Conversely, as the impact analysis conducted for the study shows, an increase in the County minimum wage would increase personnel and contract costs to the County, as well as prompt job loss and a loss of income due to these job losses. The projected loss of jobs and income would result from the actions County business owners would be expected to take in response to an increase in the minimum wage. These would include laying off employees, cutting hours and benefits, reducing training programs, and, in the extreme, possible business closures or relocation.

In short, the benefits from a minimum wage increase have the potential to be significant. However, workers who lose their jobs or are not hired as a result will not experience them.

The specific impacts of a minimum wage increase may vary depending on a variety of factors. For example, a tight labor market might ameliorate the potential job losses, while an economic downturn might exacerbate projected job and income losses. As it relates to the minimum wage increase, the County might consider additional exemptions or exceptions for small businesses or non-profits, provide a different youth worker or training wage, or provide an "off ramp" provision that halts scheduled increases during an economic downturn. Each of these changes could alter the impact of the legislation on impacted individuals and businesses.

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[1] By 2022 for businesses with 25 or fewer employees

## Findings

Given the multiple potential impacts from an increase in the County minimum wage, the findings have been organized into broad categories. These encompass the impact on the County, local economy, County businesses, and socioeconomic impact.

### Impact on the County Economy

1. **Based on the study's assumptions, the County is projected to experience a loss of approximately 47,000 jobs by 2022 as a result of an increase in the minimum wage from its July 2017 level of $11.50 to $15.00 per hour.** The majority of the projected job loss – approximately 45,300 positions – will be experienced by workers in low-wage positions.

**Table 23: Direct Economic Impact - Jobs**

| Calendar Year | Direct Jobs Lost |
|---|---|
| 2017 | 18,318 |
| 2018 | 22,566 |
| 2019 | 35,587 |
| 2020 | 44,215 |
| 2021 | 44,797 |
| 2022 | 45,384 |

2. **As a result of the projected job losses, the aggregate estimated loss of income in the County would be approximately $396.5 million from 2017 to 2022.** This figure is the net amount after accounting for loss of income among those who have lost their jobs, and those who received a higher take home pay as a result of Bill 12-16. The aggregate income loss associated with job reductions arising from a higher minimum wage is consistently greater than the baseline income projection at the current minimum wage level, even accounting for the increased income for those who remain employed.

**Table 24: Direct and Indirect Economic Impacts - Income**

| Year | Direct Income Lost | Indirect Income Lost | Total Income Lost |
|---|---|---|---|
| 2017 | $240,785,166 | $39,681,395 | $280,466,561 |
| 2018 | $224,287,542 | $36,962,587 | $261,250,129 |
| 2019 | $329,383,264 | $54,282,362 | $383,665,626 |
| 2020 | $331,996,865 | $54,713,083 | $386,709,948 |
| 2021 | $336,195,663 | $55,405,045 | $391,600,709 |
| 2022 | $340,410,235 | $56,099,607 | $396,509,842 |

3. **Survey and focus group responses indicate that $11.00 per hour is approximately the market rate for Montgomery County where employers are able to attract and retain quality lower-wage employees.** Economic research shows that increasing the minimum wage beyond the market rate causes increased job loss as more people are seeking jobs but companies are looking to hire fewer employees. Given the current minimum wage in the County is $11.50 per hour, this suggests that current policy is reflective of the market, and not likely to cause substantial disruption if left in place. The market rate is specific to a particular location and will change over time.

## Impact on County Government

1. **The County budget is projected to require an additional cumulative funding of $10.0 million from FY2019 to FY2023 because of adjustments to the Minimum Wage/Seasonal Salary Schedule to reflect the new minimum wage and avoid wage compression.** This reflects the impact of adjustments for employees on the minimum wage/seasonal schedule. It does not include the costs for adjustments to the other County salary schedules, which are collectively bargained. Should these other schedules and employee pay be adjusted to avoid wage compression for higher-earning County employees, the total cost of the salary adjustment will increase. This will also increase the County's pension liability for eligible employees.

2. **The County would also experience a projected loss of income tax revenue of $40.9 million from FY2018 to FY2022.** These projections are based on the projected direct job losses among low-wage workers that will occur as a result of the minimum wage increase.

3. **The County is likely to see an increase in contract costs, as businesses subject to its Prevailing and Living Wage Statutes will pass on to the County its increased personnel costs driven by the minimum wage increase.** The project team was unable to quantify these costs due to data availability issues.

## Impact on County Businesses

1. **Survey responses and focus group feedback suggest that County businesses are likely to lay off employees, replace unskilled or lower-educated employees with more qualified employees, cut remaining employee hours and benefits, suspend existing plans to invest in new locations or hire additional employees, and, at worst, close their businesses in responses to rising personnel costs driven by a minimum wage increase. The survey results are summarized in the following table.**

**Table 33: How likely are you to do any of the following if the minimum wage increases to $15.00 per hour? (Employee Impacts)**

| | Very Unlikely | N/A/Don't Know | Very Likely |
|---|---|---|---|
| Reduce hiring | 24.3% | 12.5% | **63.2%** |
| Reduce hours per employee | 27.7% | 13.1% | **59.2%** |
| Reduce number of employees | 27.3% | 15.3% | **57.4%** |
| Decrease benefit offerings to hourly employees | 28.3% | 19.4% | **52.3%** |
| Increase experience required for employees | 33.8% | 16.0% | **50.1%** |
| Increase education required for employees | 42.9% | 21.1% | **36.0%** |
| Reduce training | 55.8% | 20.5% | **23.8%** |

Business owners indicated that the level of job loss would accelerate as the minimum wage rose, estimating that they would reduce their lower-wage workforce by an average of 23 percent should the minimum wage reach $15.00 per hour. This sentiment aligns with minimum wage impact analysis done by Neumark, which showed that low-wage workers are the cohort most likely to lose jobs as the minimum wage increases. This is compounded by the County's schedule of five increases over a period of time (compared to a one-time increase, as was evaluated in other studies). A recent study of Seattle's minimum wage ordinance, which also features a series of increases to $15.00 per hour, indicated that low-wage workers experienced a decline in both the hours worked and number of jobs.

2. **Prior research indicates that a minimum wage increase would have benefits for employers as well.** Higher earnings tend to improve employee morale, which would reduce turnover and the costs associated with hiring and training new employees. Additionally, research indicates that employee productivity can increase as the result of a wage increase, either through employees working "harder and smarter," replacement of unskilled labor with more qualified employees, or increased use of automation.

3. **Survey and focus group responses indicate philosophical support for minimum wage increases, particularly among representatives of non-profit organizations.** However, non-profit organizations raise significant concerns that increased personnel costs will force a reduction in critical community services. Given the low-wage worker job loss projections, these cuts may come at a time when demand for services among unemployed individuals in the County will be increasing.

4. **Non-profit organization feedback indicated that the proposed increases under Bill 12-16 would cause them to seek funding increases and look to new funding sources.** In many instances, funding formulas and other program constraints mean that there is little opportunity for non-profit organizations (and the programs they run) to pass along additional costs. Because new sources of grants and private funders are limited, this would mean that they would primarily rely on seeking additional funds from the County.

## Socioeconomic Impacts

1. **Research indicates that increasing the minimum wage would have socioeconomic benefits for employees.** Increased wages are associated with improved mental health, reduced hunger and decreased stress for workers and their families.

2. **Raising the minimum wage may also reduce wage inequality, particularly given the number of women working at or below the minimum wage level.** This may have a significant impact given the number of women who receive minimum wages.

3. **Non-profit and focus group feedback indicated that the proposed increases under Bill 12-16 would cause non-profits to seek funding increases and look to new funding sources.** This would include asking the County for additional funds as well as looking to grants and private funders.

4. **The business owners interviewed were often supportive of raising the minimum wage and providing a true living wage for their employees.** However, there were doubts that their organization could withstand the increase and remain profitable.

5. **The majority of minimum wage earners would continue to be eligible for social programs with a minimum wage increase to $15.00 per hour.** Workers currently eligible for program benefits while earning $11.50 per hour would remain eligible for the same program after raising the minimum wage beyond $11.50 per hour.

## Modifications to Minimum Wage Increase Structure

1. **There was support among County business owners for a subminimum wage rate for workers during their initial training period.** While most business owners indicated that the youth worker subminimum rate of 85 percent of the County minimum wage rate would be acceptable, to make the rate meaningful for them from a business perspective, they need the ability to pay that rate for more than the six months allowed under State law.

2. **While some benchmark jurisdictions have alternate phase-in schedules for their minimum wage increases, none of them completely exempt small businesses.** While a complete exemption for small businesses is not common, should the County consider altering the 2016 increase proposal to include one, it would need to weigh the impact of its definition of a "small business" against the desired breadth of impact it desires the increase to have.

## Conclusion

The proposed increase in the County minimum wage has the potential to provide some important benefits. An increase in earnings for low-wage County workers will have tangible positive impacts for low-income workers and their families. This should also lead to reductions in poverty, improvement in mental health and a reduction in hunger and stress among minimum wage workers. From the perspective of County employers, additional research shows a relationship between higher wages and employee productivity and morale, which would reduce turnover and the costs associated with hiring and training new employees.

At the same time, it is also projected that the wage increase will lead to a significant loss of low-wage jobs. This loss of jobs would lead to a loss of income among County residents. This also has the spillover effect of reduced income tax revenue for the County. Additionally, an increase in the minimum wage will lead to a cost for the County to bring its own salary schedules in line with the new wage rate to avoid wage compression. It may also require the County to increase its funding for non-profit organizations to ensure that they can maintain essential services.

Ultimately, the decision on how to proceed will require the weighing of multiple issues and impacts. It is likely that multiple stakeholders and policymakers will find support for their respective (even if dissimilar) positions from the findings and analysis within this study. This is, after all, a topic that has generated – and will continue to be the subject of – considerable debate. The project team believes that the economic, financial and socioeconomic analysis from this study will advance the discussion of key public policy issues in Montgomery County and beyond.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ROGER BERLINER
COUNCIL PRESIDENT
DISTRICT 1

CHAIRMAN
TRANSPORTATION, INFRASTRUCTURE
ENERGY & ENVIRONMENT COMMITTEE

August 15, 2017

TO: Isiah Leggett, County Executive

FROM: Roger Berliner, Council President

SUBJECT: Questions for PFM, re: Minimum Wage Impact Study

On July 31, 2017, the Council received the Minimum Wage Impact Study conducted by PFM, and the Council plans to meet with the consultants on September 19, 2017 to discuss the study.

Thank you for sharing your letter to PFM this morning asking them to re-evaluate the methodologies used in the study. As we discussed yesterday, attached are a list of questions for PFM from the Council for the purpose of better understanding the study, its methodologies, and its findings.

The Council requests that your staff forward these questions to PFM and that PFM provide written answers to the Council by September 5, 2017 to include in the packet and augment the discussion for the September 19 briefing. Thank you for your assistance with this matter.

c: Councilmembers
Bonnie Kirkland
Alex Espinosa

Attachment

STELLA B. WERNER OFFICE BUILDING · 100 MARYLAND AVENUE, 6TH FLOOR, ROCKVILLE, MARYLAND 20850
240-777-7828 OR 240-777-7900, TTY 240-777-7914, FAX 240-777-7989
WWW.MONTGOMERYCOUNTYMD.GOV

**Attachment**
**Montgomery County Council's Questions on PFM's Minimum Wage Increase Impact Study**

I. Data Collection

1) Did PFM consider alternative approaches to estimate the impact on the County's minimum wage increase?
    a. If so, please provide the approaches that were considered.
    b. Why did PFM choose the approach in the final report?
2) Can PFM provide the list of questions that were asked during the interviews and focus groups? If the set of questions were different for each, please provide both.
3) What sources were used to identify business owners for the interviews, focus groups, and surveys?
4) What types of supporting documentation were requested for substantiating claims by business owners?
5) Can PFM clarify how the electronic survey was administered?
    a. Was the survey design specified by the Executive or was it PFM's proposal?
    b. Were the survey questions or wording provided, edited, or approved by the Executive?
    c. How were businesses identified for the survey? In addition,
        i. How did PFM verify that the selected businesses had employees?
    d. What was PFM's process to ensure that the data collected was representative of the business population in Montgomery County? In addition,
        i. What efforts, if any, were made to contact immigrant businesses and/or business owners not proficient in English?
        ii. Was the survey available in other languages other than English?
    e. How did PFM control for reliability of the survey responses? In addition,
        i. How did PFM check that the respondents' responses were accurate?
        ii. How did PFM control for how its survey questions could illicit certain responses? Many questions appear leading (e.g., it is assumed that businesses will reduce training because of the increase in minimum wage, not increase it or keep it the same).
6) Was Table 16 on page 42 (i.e., the "Elasticity Exercise") provided to businesses through the electronic survey? The table is not included with the survey questions in the appendices.
    a. If the table was not provided with the survey, how was this question administered to County businesses?
        i. How were businesses identified to complete the table?
        ii. What was PFM's process to ensure that the data collected was representative of the population in Montgomery County?
        iii. How did PFM control for reliability of the survey responses?
    b. Why did the table begin at $11.50 per hour but retain the "cumulative [percent] increase" from $9.55?
    c. Did PFM calculate a margin of error for these responses? In other words, what confidence does PFM ascribe to the top-line projections?
        i. If so, can PFM provide the margin of error that was applied when calculating the direct impact from the minimum wage increase (i.e., was it 47,000 jobs lost + or - 500 jobs)?

II. Jobs - Direct Impact Calculation

1) How did PFM account for jobs in Frederick County when utilizing the Silver Spring-Frederick-Rockville dataset to estimate and project the number of "low-wage jobs" in Montgomery County?
2) Why was $9.55 chosen as the base rate for calculating the percent increase in the minimum wage?
3) Can PFM define what was meant by "usable response" on page 42? In addition,
   a. What process did PFM utilize to determine which survey responses were "usable" and those that were not "usable"?
4) Can PFM provide a step-by-step computation for analyses in Table 21 (i.e., the "Direct Impact") and clarify in writing how the derived elasticities were applied to determine the direct impact? It appears that the elasticities are applied as a direct percent reduction.
5) How does PFM justify its projected job loss when compared to the sample jurisdictions included on page 112, which detail a more subdued impact?
6) How did PFM account for the overall changes in the national and regional economy (e.g., national contraction or expansion in the labor market)?
7) Assuming the same derived elasticity, what would be the direct impact from the previous minimum wage bill in 2013? Including,
   a. How many businesses opened and closed?
   b. How many jobs were created or lost?
8) Did PFM consider if/how the impact would differ for low-income seniors?
   a. If so, can PFM provide details about how this population group would be impacted by the increase in minimum wage?

III. County Impact

1) Based on the projected impact for S-level County employees, can PFM provide an estimated impact or range of impact to the County for other salaried positions? Realizing that these schedules are negotiated, it still would be of benefit to the Council to recognize a potential range.
2) Did PFM request the HHS report that estimated the increase for County contract costs referenced on page 74?
   a. If so, why was it not provided to PFM?
   b. If not, why did PFM not request it but reference it?
   c. Based on PFM's analysis on prevailing wage requirements for the County's contracts, does PFM believe that the $20 million increase is reasonable?
3) What other options are available to the County that benefit low-wage workers but the cost is not born by the general population through a tax increase (e.g., EITC Program)?

IV. Data Requests

1) Can PFM provide a table that aggregates all responses for the business and non-profit surveys?
2) Can PFM provide the calculated number of "low-wage jobs" by occupation (Table 14) for 2017-2022?

V. Miscellaneous

1) Why was there no analysis on the costs of poverty, both from the household perspective and the County's fiscal perspective?
2) Why did PFM cite only one source (Neumark) for the foundation of its analysis when there is a large body of economic studies that suggest a minimum wage increase would have minimal or negligible impact?

3) Why does PFM only cite the Seattle report that suggest the result was a decrease in jobs and wages when there is another study suggesting the opposite?
4) Can PFM clarify how many jobs in Montgomery County currently earn minimum wage?
5) Did PFM's projections account for a potential rise in consumer spending following a rise in the minimum wage?

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
*County Executive*

August 15, 2017

Mr. Randall Bauer
Director
PFM Group Consulting, LLC
801 Grand Avenue, Suite 3300
Des Moines, IA 50309

Dear Mr. Bauer:

The purpose of this letter is to formally request that Public Financial Management (PFM) review the methodology and findings included in the report, "Minimum Wage Increase Impact Study," which was prepared for Montgomery County.

I have consistently expressed my concerns about the size of the fiscal impact especially as it relates to the number of job losses. In addition, we have received numerous inquiries from the public and from our County Council members about the job losses and how they could possibly be as high as those expressed in the conclusions of your report.

As a matter of fact, on July 7, 2017, before the report was finalized, Robert Hagedoorn with the County's Department of Finance expressed his concern in an email to PFM about the size of the economic impact and the amount of job losses included in your report. He requested at the time that you "please review the methodology and data input to make sure this is correct..." See the attached email.

And now today we have received word from your firm that there might be a problem with the methodology and calculation of fiscal impact and resulting job impacts. You have indicated that the job losses might be less than what is expressed in the report.

The County is scheduled to discuss and potentially act on the proposed legislation on this matter commencing on September 12, 2017, and therefore I am formally requesting a comprehensive review of the findings in your report. The $15 per hour minimum wage issue is an important policy decision that requires sound financial analysis. I am requesting your immediate attention to this review and I look forward to your response.

Sincerely,

Isiah Leggett

Isiah Leggett
County Executive

cc: Roger Berliner, MC County Council President
Dean Kaplan, Managing Director, PFM
Michael Nadol, Managing Director, PFM

**From:** Hagedoorn, Robert
**Sent:** Friday, July 07, 2017 8:07 AM
**To:** 'Randall Bauer' <BAUERR@pfm.com>; Hetman,Dennis <Dennis.Hetman@montgomerycountymd.gov>; Espinosa, Alexandre A. <Alex.Espinosa@montgomerycountymd.gov>; Kirkland, Bonnie <Bonnie.Kirkland@montgomerycountymd.gov>
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**Subject:** RE: Montgomery County Minimum Wage draft report

Good morning Randy,

thanks to everyone for a great draft report. I have one remaining issue and that is the size of the job impact from raising the minimum wage. Including a small indirect effect, the total negative impact in CY2022 is close to 47,000 jobs lost. That is about 8.5% of all resident employment in the County and appears very steep to me. I saw it yesterday when reading through the report but gave it some more thought last night and decided to raise it with you and your team. I fully expect job losses due to all the economic and business reasons clearly described in the report, but that number seems very high. How does it compare to other jurisdictions?

Can you please review the methodology and data input to make sure this is correct?

thanks, Rob

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*Robert Hagedoorn*
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*Montgomery County, MD*
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
*County Executive*

MEMORANDUM

September 13, 2017

TO: Roger Berliner, President
County Council

FROM: Isiah Leggett
County Executive

SUBJECT: Bill 28-17, Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment

The purpose of this memorandum is to transmit to the County Council a suggested approach on how to move forward on the consideration of establishing a $15 minimum wage on employers in the County. When I vetoed the original legislation, I recommended that we undertake a study of the relevant issues relating to the fiscal and economic impacts of increasing the minimum wage to $15 on our businesses, both large and small, on non-profit providers and on County government. I believed the study would help guide us to a better decision that could be based in part on the consultant's research and conclusions about the projected impacts on businesses and our economy.

Conducting an empirical study on this issue is highly challenging and has resulted in some confusion on methodology and long-term economic impacts. Because there are few communities that have adopted the minimum wage at the $15 level, there is very limited actual historical data to evaluate. The analytical basis relies on creating assumptions about what firms might do in the future. In addition, these challenges have been compounded by a performance issue with our consultant. As you know, after receiving the initial report from our consultant, Public Financial Management, Inc. (PFM), the firm discovered an error in its calculation of the economic impact and number of job losses that led them to revise the conclusions of the initial report. While PFM has addressed some of these concerns found in the initial report, my staff has a number of outstanding questions and concerns and continues working with PFM to resolve those concerns. Due to the uncertainty over whether those concerns and questions can be fully resolved in a timely manner, which could preclude addressing the overall issue now, I am recommending that the Council move forward with consideration of an amended version of Bill 28-17, Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment.

As you will recall, I vetoed the initial minimum wage legislation, Bill 12-16, before we even began considering a study. It was my belief then, and it is my belief now, that the bill was too much too fast. I felt that moving to a $15 minimum wage so quickly would put Montgomery County at a competitive disadvantage compared to our neighboring jurisdictions and lead to negative consequences. I also expressed my belief that because we are not a "destination city" that draws great numbers of business travelers and tourists for short-term visits like other jurisdictions that are moving to a $15 minimum wage, our residents would bear the burden of rising costs that would result.

It is my hope that properly modified, Bill 28-17 can move forward and garner the support of the Council and my signature. With this in mind, I would recommend the following:

- Amend the size of small employers to be 50 or fewer employees.
- Amend the timeline for reaching the $15 minimum wage to:
    - July 1, 2022 for large employers; and
    - July 1, 2024 for small employers and non-profits.
- Establish a 90-day period after employment during which an employer may pay a new employee 85% of the minimum wage.
- Enact a County opportunity wage so that the County is not automatically tied to the State opportunity wage, which is 85% of the State's minimum wage for workers under 20 years of age for the first 6 months of employment. The intent of the opportunity wage is to provide an incentive for employers to give opportunity for work experience to younger workers.

This is an issue of great importance to our community, and the Council should act expeditiously. By adopting a revised bill that addresses these issues, I believe we can work toward a broader consensus and a better outcome.

IL/bk