

MEMORANDUM

October 22, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 
Josh Hamlin, Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount

Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount, sponsored by Councilmembers Elrich, Ervin and Council President Navarro, was introduced on October 1. A Health and Human Services Committee worksession is tentatively scheduled for November 21 at 9:30 a.m.

Bill 27-13 would:

- require certain private sector employers in the County to pay a minimum wage to employees working in the County;
- provide a credit for an employer who provides health insurance to employees working in the County;
- provide enforcement by the Office of Human Rights and the Human Rights Commission;
- authorize the Human Rights Commission to award relief for violations; and
- generally regulate the minimum wage paid to a private sector employee working in the County.

Background

Maryland's minimum wage is only \$7.25 per hour, or \$15,000 a year for a full-time, year round worker, and leaves a full-time earner and their families below the federal poverty line. Nineteen states have raised their minimum wages above Maryland's rate, including Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Missouri, Montana, New Mexico, Nevada, Ohio, Oregon, Rhode Island, Vermont, and Washington, as well as the District of Columbia.

In addition, the minimum standard of living in Montgomery County is higher than the minimum standard of living in many other counties in Maryland. Poverty level wages increases the need for the County to spend public money for the relief of these low wage earners and their families.

Bill 27-13 would establish 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 would be phased in over several years. The rate would be \$8.25 per hour on July 1, 2014, \$9.75 per hour on July 1, 2015, and \$12.00 per hour on July 1, 2016. During the phase-in period between July 1, 2014 and July 1, 2016, an employer would be able to pay the prior year rate for an employee's first 90 days on the job. Beginning on July 1, 2017, the \$12.00 rate would be raised by any increase in the Consumer Price Index on an annual basis. The County minimum wage would not apply to a worker who is not covered by the State minimum wage, a tipped employee, or a worker subject to an opportunity wage under the State or federal law.

Bill 27-13 would also encourage employers to provide health insurance by giving an employer a credit for the cost of the employer's share of the health insurance premium per employee. The County Office of Human Rights would be responsible for enforcement of the law. A worker would be able to file a complaint with the Office of Human Rights and obtain an adjudicatory hearing before the Human Rights Commission.

Legal Authority

Montgomery County can pass its own minimum wage 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 County Attorney's Office recently issued an opinion similarly concluding that the County has the authority to enact a County minimum wage. See ©9-12.

A Regional Approach

Similar bills have been introduced in Prince George's County and the District of Columbia that would increase the minimum wage in those jurisdictions to \$11.50 per hour over the next 3 years. Councilmember Elrich indicated that he will request an amendment to Bill 27-13 to reduce the minimum wage from \$12.00 per hour to \$11.50 per hour to be consistent with the bills in Prince George's County and the District of Columbia.

Fiscal and Economic Impact

The OMB and Finance Fiscal and Economic Impact Statement is at ©13-19. OMB estimated that the Office of Human Rights would need to hire an additional 3 investigators to handle minimum wage complaints at an annual cost of \$346,980. OMB also estimated that the civil citation revenue could reach \$87,500 to \$125,000 per year.

Finance noted that economists disagree on the potential economic impact of an increase in the minimum wage. In addition, available Bureau of Labor Statistics employment data does not single out Montgomery County. Finance was unable to predict the economic impact of the Bill.

This packet contains:	<u>Circle #</u>
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Bill No. 27-13
 Concerning: Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount
 Revised: September 17, 2013 Draft No. 5
 Introduced: October 1, 2013
 Expires: April 1, 2015
 Enacted: _____
 Executive: _____
 Effective: July 1, 2014
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Elrich, Ervin and Council President Navarro

AN ACT to:

- (1) require certain employers in the County to pay a minimum wage to certain employees working in the County;
- (2) provide a credit for certain employers who provide health insurance to employees working in the County;
- (3) provide enforcement by the Office of Human Rights and the Human Rights Commission;
- (4) authorize the Human Rights Commission to award certain relief; and
- (5) generally regulate the minimum wage paid to an employee working in the County for certain employers.

By amending

Montgomery County Code
 Chapter 27, Human Rights and Civil Liberties
 Sections 27-7 and 27-8

By adding

Montgomery County Code
 Chapter 27, Human Rights and Civil Liberties
 Article XI, Minimum Wage

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

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

1 **Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article**
 2 **XI is added as follows:**

3 **27-7. Administration and enforcement.**

4 (a) *Filing complaints.* Any person subjected to a discriminatory act or
 5 practice in violation of this Article, or any group or person seeking to
 6 enforce this Article or [Article] Articles X or XI, may file with the
 7 Director a written complaint, sworn to or affirmed under the penalties of
 8 perjury, that must state:

- 9 (1) the particulars of the alleged violation;
- 10 (2) the name and address of the person alleged to have committed the
- 11 violation; and
- 12 (3) any other information required by law or regulation.

13 * * *

14 (f) *Initial determination, dismissal before hearing.*

15 (1) The Director must determine, based on the investigation, whether
 16 reasonable grounds exist to believe that a violation of this Article
 17 or [Article] Articles X or XI occurred and promptly send the
 18 determination to the complainant and the respondent.

19 (2) If the Director determines that there are no reasonable grounds to
 20 believe a violation occurred, and the complainant appeals the
 21 determination to the Commission within 30 days after the
 22 Director sends the determination to the complainant, the Director
 23 promptly must certify the complaint to the Commission. The
 24 Commission must appoint a case review board to consider the
 25 appeal. The board may hear oral argument and must:

- 26 (A) dismiss the complaint without a hearing;
- 27 (B) order the Director to investigate further; or

28 (C) set the matter for a hearing by a hearing examiner or the
29 board itself, and consider and decide the complaint in the
30 same manner as if the Director had found reasonable
31 grounds to believe that a violation of this Article or
32 [Article] Articles X or XI occurred.

33 (3) If the Director determines that there are reasonable grounds to
34 believe a violation occurred, the Director must attempt to
35 conciliate the matter under subsection (g).

36 * * *

37 **27-8. Penalties and relief.**

38 (a) *Damages and other relief for complainant.* After finding a violation
39 of this Article or [Article] Articles X or XI, the case review board may
40 order the payment of damages (other than punitive damages) and any
41 other relief that the law and the facts warrant, such as:

42 * * *

43 (2) equitable relief to prevent the discrimination or the violation of
44 [Article] Articles X or XI and otherwise effectuate the purposes
45 of this Chapter;

46 * * *

47 (4) any other relief that furthers the purposes of this Article or
48 [Article] Articles X or XI or is necessary to eliminate the effects
49 of any discrimination prohibited under this Article.

50 * * *

51 **ARTICLE XI. County Minimum Wage.**

52 **27-67. Findings and Definitions.**

53 (a) Findings.

- 54 (1) Many persons employed in the County are paid wages which are
 55 insufficient to sustain minimum standards of living in the County.
- 56 (2) Minimum standards of living in the County are higher than the
 57 minimum standards of living in many other areas of the State.
- 58 (3) Minimum wage standards in the County are necessary to:
- 59 (A) promote the health and welfare of County residents;
 60 (B) safeguard employers and employees against unfair
 61 competition;
 62 (C) increase the stability of industry in the County;
 63 (D) increase the buying power of employees in the County;
 64 and
 65 (E) decrease the need for the County to spend public money
 66 for the relief of employees who also live in the County.

67 (b) Definitions. As used in this Article:

68 Consumer Price Index means the Consumer Price Index for All Urban
 69 Consumers: All items in Washington-Baltimore, DC-MD-VA-WV
 70 (CMSA), as published by the United States Department of Labor,
 71 Bureau of Labor Statistics, or a successor index.

72 Director means the Executive Director of the Office of Human Rights
 73 and includes the Executive Director's designee.

74 Employ means to engage a person to work for compensation.

75 Employee means any person permitted or instructed to work or be
 76 present by an employer in the County and who is an employee subject
 77 to the minimum wage requirements of the Federal Act or the State Act.

78 Employer means any person, individual, proprietorship, partnership,
 79 joint venture, corporation, limited liability company, trust, association,

80 or other entity that employs 2 or more persons in the County. Employer
 81 does not include the United States, any State, or any local government.

82 Federal Act means the federal Fair Labor Standards Act of 1938, as
 83 amended.

84 Health insurance means insurance coverage that is part of an employer
 85 benefit package that pays for medical expenses incurred by an employee
 86 and an employee's family either by reimbursing the employee or by
 87 paying the care provider directly.

88 State Act means the Maryland Wage and Hour Law, as amended.

89 Wage means all compensation that is due to an employee for
 90 employment.

91 **27-68. Minimum Wage Required.**

92 (a) County minimum wage. Except as provided in Subsection (d), an
 93 employer must pay wages to each employee working in the County at
 94 least the greater of:

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

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

99 (3) the County minimum wage of \$12 per hour, as adjusted under
 100 Subsection (b), less any health insurance credit under Subsection
 101 (c).

102 (b) Annual adjustment. The Chief Administrative Officer must adjust the
 103 minimum wage rate required under Subsection (a)(3), effective July 1,
 104 2017, and July 1 of each subsequent year, by the annual average
 105 increase, if any, in the Consumer Price Index for the previous calendar
 106 year. The Chief Administrative Officer must calculate the adjustment to

107 the nearest multiple of 5 cents, and must publish the amount of this
 108 adjustment not later than March 1 of each year.

109 (c) Health insurance credit. An employer who provides health insurance to
 110 any employee who works in the County may reduce the County
 111 minimum wage payable under paragraph (a)(3) to any employee who is
 112 eligible to receive health insurance by all or part of the per-employee
 113 hourly cost of the employer’s share of the premium for that insurance.

114 (d) Exclusions. The County minimum wage does not apply to an employee
 115 who:

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

118 (2) is a tipped employee under the State Act; or

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

120 **27-69. Enforcement.**

121 A covered employee who was paid a wage rate less than the County minimum
 122 wage in violation of this Article may file a complaint with the Director under Section
 123 27-7.

124 **Sec. 2. Transition.**

125 Notwithstanding Section 27-68(a)(3), as added in Section 1, the County
 126 minimum wage must be:

127 (a) effective July 1, 2014, \$7.25 per hour for an employee during the
 128 employee’s first 90 days of employment and \$8.25 per hour beginning
 129 on the employee’s 91st day of employment;

130 (b) effective July 1, 2015, \$8.25 per hour for an employee during the
 131 employee’s first 90 days of employment and \$9.75 per hour beginning
 132 on the employee’s 91st day of employment; and

133 (c) effective July 1, 2016, \$9.75 per hour for an employee during the
134 employee's first 90 days of employment and \$12.00 per hour beginning
135 on the employee's 91st day of employment.

136 **Sec. 3. Effective Date.**

137 This Act takes effect on July 1, 2014.

138 *Approved:*

139 _____
Nancy Navarro, President, County Council Date

140 *Approved:*

141 _____
Isiah Leggett, County Executive Date

142 *This is a correct copy of Council action.*

143 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 27-13

Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount

DESCRIPTION: The Bill would establish a County minimum wage that must be paid to certain employees working in the County for a private sector employer. The Bill would also encourage an employer to provide health insurance to its employees by providing a credit against the County minimum wage based upon the cost per employee for the insurance. If the State or federal minimum wage is greater than the County minimum wage, an employer would still need to satisfy the State or federal law.

PROBLEM: The State and federal minimum wage of \$7.25/hour is insufficient to support a full-time worker in the County.

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

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney, 240-777-7895

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class A civil citation and equitable relief.

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Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: James Stowe, Director
Office of Human Rights

FROM: Erin J. Ashbarry 
Associate County Attorney

VIA: Marc P. Hansen, County Attorney

DATE: October 11, 2013

RE: Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount

RECEIVED
MONTGOMERY COUNTY
OCT 15 PM 2:05

Bill 27-13 amends the County's Human Rights law to set a minimum wage paid to by employers to employees for work in the County, and provides for enforcement by the Office of Human Rights and the Human Rights Commission.

In our view, this law would withstand legal challenge. This law would survive a challenge on the issue of preemption by Federal or State minimum wage laws: the Federal minimum wage law expressly preserves local laws that may set higher rates, and the Court of Appeals found State law did not preempt a local minimum wage law in *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969). The County needs to ensure, however, that its law is clearly crafted to be a local law, applying only to work performed in the County for employers in the County.

Both the Federal and State government have minimum wage laws. The Federal minimum wage rate of \$7.25 is set forth in the Fair Labor Standards Act ("FLSA").¹ This is also the minimum wage rate in effect under the State of Maryland's Wage and Hour Law.² Notably, bills failed in the Maryland General Assembly's 2013 session that would have raised the State's

¹ See 29 U.S.C. § 206(a)(1) (2012). The \$7.25 minimum wage rate has been in effect since July 2009. See *id.*

² See generally, Md. Code Ann., Labor & Empl. §§ 3-401 – 431 (2008 Repl. Vol.); see *id.* § 413(b)(1) (setting a minimum wage at the greater of \$6.15 or the minimum wage under the FLSA).

minimum wage.³

The County's proposed law, which sets a minimum wage rate of \$12.00 per hour with increases phased in thereafter, would not be subject to federal preemption because the FLSA expressly contemplates that State and local jurisdictions may enact higher wage rates.⁴

The question of whether the State's minimum wage law preempts a local minimum wage law was resolved by the Court of Appeals in *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969). The Court found that Maryland's minimum wage rate did not preempt Baltimore's minimum wage law, as Baltimore's law supplemented the State law by setting a higher rate. See *Sitnick*, 254 Md. at 317. Baltimore's minimum wage law is still in effect and enforced.⁵

Since the *Sitnick* decision, the Court of Appeals reviewed the issue of implied preemption⁶ by State law on many occasions and developed a detailed analysis. In reviewing this issue today, the Court would look to "the primary indicia of a legislative purpose to pre-empt an entire field of law," by reviewing "the comprehensiveness with which the General Assembly has legislated the field."⁷ Secondly, the Court would examine:

- 1) Whether local laws existed prior to enactment of the state laws governing the same subject matter;
- 2) Whether the state laws provide for pervasive administrative regulation;
- 3) Whether the local ordinance regulates an area in which some local control has traditionally been allowed;

³ See S.B. 683, H.B. 1204, "Labor and Employment - Maryland Wage and Hour Law - Payment of Wages" Gen. Assem., Reg. Sess. (Md. 2013). The Senate Bill received an unfavorable vote before the Senate Finance Committee on March 20, 2013.

⁴ See 29 U.S.C. § 218(a) (2012) ("No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act...").

⁵ See generally Baltimore, Md., Code §§ 1-1 - 6-3 (2010); *id.* § 3-1 (setting minimum wage for "every employer operating and doing business in Baltimore City" at a rate "not less than the minimum wage required by the Fair Labor Standards Act"); *id.* §§ 2-1 - 2-6 (establishing Wage Commission to receive and investigate wage law violations); *id.* §§ 4.1 - 4.11 (establishing enforcement protocols for the minimum wage law).

⁶ State law may preempt local law in one of three ways: preemption by conflict, express preemption, or implied preemption. See *Altadis U.S.A., Inc. v. Prince George's County*, 431 Md. 307, 311, 65 A.3d 118, 120 (2013). As the Court in *Sitnick* found a local minimum wage law that set a higher rate did not create a conflict with State law, and there is no express statement in the State's Wage and Hour Law that indicates it supersedes all local laws, a reviewing court would likely proceed using the Court of Appeals' implied preemption analysis.

⁷ See *Allied Vending, Inc. v. Bowie*, 332 Md. 279, 299, 631 A2d 77 (1993) (citations omitted).

- 4) Whether the state law expressly provides concurrent legislative authority to local jurisdictions or requires compliance with local ordinances;
- 5) Whether a state agency responsible for administering and enforcing state law has recognized local authority to act in the field;
- 6) Whether the particular aspect of the field sought to be regulated by the local government has been addressed by the state legislation; and
- 7) Whether a two-tiered regulatory process existing if local laws are not preempted would engender chaos and confusion.⁸

Under these factors, the County's minimum wage law is valid and not preempted by the State's Wage and Hour Law. Baltimore's minimum wage law has been in effect since 1966 and enforced concurrently with the State's minimum wage law. Additionally, the State agency that oversees enforcement of the Wage and Hour Law expressly recognizes local authority to act in the field in its publications, which identify Baltimore as jurisdiction in which an individual may pursue a violation of minimum wage laws.⁹ Under the analysis developed by the Court of Appeals after *Sitnick*, the ongoing existence for four decades of minimum wage laws and enforcement schemes at both the State and local level weighs in favor of finding that the State did not preempt the field of minimum wage regulation.¹⁰

To avoid any claim that the minimum wage law is not a local law designed to regulate only within the County, the County should be clear in the law, its legislative history, and its enforcement that the law only applies to employers in the County and for work performed in the County.¹¹

⁸ See *Allied Vending, Inc. v. Bowie*, 332 Md. 279, 299-300, 631 A.2d 77 (1993) (citations omitted).

⁹ See *The Maryland Guide to Wage Payment and Employment Standards*, published by the Employment Standards Service of the Maryland Division of Labor and Industry, Department of Labor, Licensing and Regulation, available at <http://www.dlir.state.md.us/labor/wagepay/wpmedies.shtml#jurisdiction> (identifying Baltimore as a potential jurisdiction in which a claimant may file a claim).

¹⁰ The Court of Appeals in *Sitnick* also noted that "[t]here is a presumption of statutory construction that the Legislature acts with the knowledge of existing laws on the subject matter under construction." See *Sitnick*, 254 Md. at 322, 255 A.2d at 385. The Court found that General Assembly's silence on Baltimore's 1966 minimum wage law in its 1967 and 1968 sessions undermined any argument that the State intended to preempt the field of minimum wage regulation. See *id.* at 308, 322, 255 A.3d at 378, 385. Four decades' worth of General Assembly sessions without a repeal of Baltimore's minimum wage law only adds more weight to the view that the State did not intend to preempt local minimum wage laws.

¹¹ See, e.g., *Holiday Universal, Inc. v. Montgomery County*, 377 Md. 305, 833 A.2d 518 (2003) (holding County law was invalid under Maryland Constitution because of its substantial territorial affect outside the County and was not a local law). Baltimore's minimum wage law is clearly restricted to employees and employers in Baltimore City. See Baltimore, Md. Code §§ 1-1 (2010) (defining employer as certain entities or individuals employing 2 or more persons "in the City of Baltimore"); *id.* § 3.1 (requiring payment of minimum wage by "every employer operating and doing business in Baltimore City" to "each employee in the City" (emphasis added)).

James Stowe
October 11, 2013
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If you have any concerns or questions concerning this memorandum please call me.

Enclosure (bill)

cc: Kathleen Boucher, Assistant CAO
Robert H. Drummer, Senior Legislative Attorney



ROCKVILLE, MARYLAND

MEMORANDUM

October 21, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:ha

c: Fariba Kassiri, Assistant Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
Robert Hagedoorn, Department of Finance
David Platt, Department of Finance
James Stowe, Human Rights Commission
Pam Jones, Department of General Services
Philip Weeda, Office of Management and Budget
Henri Apollon, Office of Management and Budget

Fiscal Impact Statement

Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount

1. Legislative Summary.

Bill 27-13 would establish a minimum wage in the County for private sector employees working in the County unless the State or federal minimum wage is greater than the County's minimum wage. The County's minimum wage would be phased in over several years. The minimum wage would start at \$8.25 per hour beginning on July 1, 2014, increase to \$9.75 per hour beginning on July 1, 2015, and increase to \$12.00 per hour beginning on July 1, 2016. Beginning on July 1, 2017, the \$12.00 rate would be raised by any increase in the Consumer Price Index on an annual basis. The bill provides a credit to employers who provide health insurance to employees in the County. The bill authorizes the Director of the Office of Human Rights to enforce its provisions and the Human Rights Commission to award relief for any violations.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

A person may file a complaint with the Director of the Office of Human Rights for a violation of the wage requirements in this bill. According to the Office of Human Rights, a similar program in the city of Baltimore's Office of Civil Rights and Wage Enforcement has three investigators enforcing its living wage law and investigates between 175 and 250 complaints each year. It is unknown how many complaints would be filed in Montgomery County each year so the effect on the Office of Human Rights' caseload cannot be determined at this time. The Office would need to monitor its workload for a period of time to assess the legislation's actual impact. Assuming the city of Baltimore's experience, however, the County's cost could be \$346,980 annually for three investigators and an office services coordinator.¹

The Office of Human Rights would be authorized to assess civil penalties of \$500 each for violations of the minimum wage requirement. It is unknown how many complaints would result in civil penalties, but assuming 175 to 250 complaints annually, fine revenue could be up to \$87,500 to \$125,000 per year. This is an upper limit estimate since it is possible that not all complaints would result in the assessment of a penalty.

The bill would not affect the County's contracts subject to the living wage or prevailing wage requirements since they are both above the minimum wage requirement in this bill.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Assuming the complaint rate noted above, expenditures over six years could be \$2,081,880 and revenues could be between \$525,000 and \$750,000.

¹ Two grade 23 Investigator II positions, one grade 25 Investigator III, and one grade 16 Office Services Coordinator, all at mid-point. The cost estimate includes group insurance, retirement, and payroll taxes. According to the Office of Human Rights, the skill set needed to investigate and enforce the minimum wage requirement is different than the Office's existing complement of investigators, therefore, the implementation of this legislation will require some level of additional staffing.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.
Not applicable.
5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.
Not applicable.
6. An estimate of the staff time needed to implement the bill.
See number 2.
7. An explanation of how the addition of new staff responsibilities would affect other duties.
See number 2.
8. An estimate of costs when an additional appropriation is needed.
See number 2.
9. A description of any variable that could affect revenue and cost estimates.
The number of complaints, resulting investigations, and assessment of civil penalties are the primary variables that could affect the County's revenues and costs.
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
See number 2.
11. If a bill is likely to have no fiscal impact, why that is the case.
Not applicable.
12. Other fiscal impacts or comments.
Not applicable.
13. The following contributed to and concurred with this analysis:
James Stowe, Office of Human Rights
Pam Jones, Grace Denno, Department of General Services
Phil Weeda, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

10/21/13
Date

Economic Impact Statement
Bill 27-13, Human Rights and Civil Liberties –
County Minimum Wage – Dollar Amount

Background:

This legislation would:

- Require certain private sector employers in the County to pay a minimum wage to employees working in the County,
- Provide a credit for an employer who provides health insurance to employees working in the County,
- Provide enforcement by the Office of Human Rights and the Human Rights Commission,
- Authorize the Human Rights Commission to award relief for violations; and
- Generally regulate the minimum wage paid to a private sector employee working in the County.

Bill 27-13 (Bill) would establish a minimum wage in the County for private sector employees working in the County unless the State or Federal minimum wage is greater than the County's minimum wage. The County's minimum wage would be phased in over several years. The minimum wage would start at \$8.25 per hour beginning on July 1, 2014, increase to \$9.75 per hour beginning on July 1, 2015, and increase to \$12.00 per hour beginning on July 1, 2016. Beginning on July 1, 2017, the \$12.00 rate would be raised by any increase in the Consumer Price Index on an annual basis.

1. The sources of information, assumptions, and methodologies used.

The sources of information include various economic studies that analyzed the effects of increasing the minimum wage on employment. Those studies include the following:

- David Card and Alan B. Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania", *The American Economic Review*, Volume 84, Number 4, September 1994.
- David Neumark and William Wascher, "Minimum Wages and Employment: A Review of Evidence from the New Minimum Wage Research, NBER Working Paper Series, National Bureau of Economic Research, November 2006.
- Olli Ropponen, "Reconciling the Evidence of Card and Krueger (1994) and Neumark and Wascher (2000)", Discussion Paper No. 325, Helsinki Center of Economic Research, April 2011.

Economic Impact Statement
Bill 27-13, Human Rights and Civil Liberties –
County Minimum Wage – Dollar Amount

- Saul D Hoffman and Diane M. Trace, “NJ and PA Once Again: What Happened to Employment When the PA-NJ Minimum Wage Differential Disappeared?”, *Eastern Economic Journal*, Volume 35, 2009.
- John P. Fornby, John A. Bishop, Hoseong Kim, “The Redistributive Effects and Cost Effectiveness of Increasing the Federal Minimum Wage”, Employment Policy Institute, October 2009.

There is disagreement among economists as to the economic impact of minimum wages. This disagreement is based on two models of economic analysis:

- The “neoclassical” model of demand and supply that by requiring a minimum wage above the equilibrium wage established by the demand and supply of labor would result in unemployment. The result, it is argued by some economists, is there would be a greater number of individuals willing to work at the higher wage rate while a lower number of jobs would be available at that rate.
- An alternative model to the “neoclassical” model is that low-wage labor markets are characterized as *monopsonistic* competition whereby employers have significantly more *market power* than do workers. This monopsony could be the result of pricing power by the employer, that is, he or she is able to pass along the increase in the wage rate through higher prices. This ability to pass on the wage increase is attributed to the *elastic/inelastic* demand for the product by the consumers.

Card and Krueger argued that the negative employment effects on the minimum wage laws range from minimal to non-existent. In subsequent research, Neumark and Wascher analyzed the effect of increases in the minimum wage for large fast food restaurant chains that were followed by decreases in employment.

Ropponen reconciled the differences between Card-Krueger conclusion and Neumark-Wascher conclusion. Both studies, according to Ropponen, lead to the conclusion that the conditional employment effects are positive for small fast-food restaurants but negative for big fast-food restaurants. He suggests that the effect of an increase in the minimum wage on employment is based on the location of restaurants and a demand side effect: An increase in the minimum wage would have multiplier effect on the local economy, that is, the increase in wages would result in an increase spending by the employees.

Alan Blinder, former Vice Chairman of the Board of Governors of the Federal Reserve System, suggests three reasons minimum wages do not affect employment: higher wages may reduce turnover and therefore training costs, raising the minimum wage may eliminate the problem of recruiting workers at a higher wage than current workers, and minimum wage earners represent a small portion of the employer’s cost that an increase is relatively insignificant to the employer’s total cost of production.

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Based on 2012 data from the Bureau of Labor Statistics (BLS) and the Maryland Department of Labor, Licensing and Regulation, there were 67,000 employees in Maryland earning at or below the minimum wage which represents just 2.3% of the total state workforce as measured by the labor force series data. Since the 2012 data are based on a survey of households nationwide, there is no specific data on minimum wage employees in Montgomery County. Based on BLS data, minimum wage employees are typically in the leisure and hospitality industry, retail, and education and health services. In terms of occupations, nearly 44% are in food preparation and serving related occupations nationwide.

2. A description of any variable that could affect the economic impact estimates.

- The ability of the employer to pass the increase of the minimum wage to his or her customers
- The share of minimum wage earners to total employment for a particular business
- The elastic/inelastic demand for the business's product or service
- The costs of retraining workers
- The extent to which higher minimum wages induce greater spending in the local economy

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

As stated previously, there is no consensus among economists on the effects of the minimum wage and employment. Based on the review of the research, it is not certain whether an increase in the minimum wage would increase or decrease employment. This uncertainty is based on the following factors presented in Section 2:

- The ability of the employer to compensate for the increase in the minimum wage by passing such increase onto customers with higher prices
- The proportion of the wage costs among workers earning the minimum wage to the total costs of production
- The multiplier effect of increasing the minimum wage on the local economy

Finally, in the research studies presented above, the conclusions are based on the datasets used to determine the effect of the minimum wage on employment, the statistical methods used to reach those conclusions, and the model used as the theoretical framework to conduct the analysis.

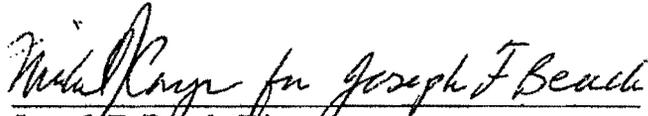
4. If a Bill is likely to have no economic impact, why is that the case?

It is uncertain whether increasing the minimum wage would increase or decrease employment among low-wage workers. As stated in Section 3, the economic impact

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would be based on the assumptions and the characteristics and location of those businesses that would be required to raised the minimum wage.

5. **The following contributed to and concurred with this analysis:** David Platt and Rob Hagedoorn, Finance.



Joseph F. Beach, Director
Department of Finance

10/18/13
Date