

The Fight for \$15 in Maryland: Local Officials Should Prepare to Protect Local Democracy

Legislators in Annapolis will again consider whether to raise the state's minimum wage to \$15 in the 2019 legislative session. Maryland's local officials should be aware that the state minimum wage bill brings with it potentially significant consequences for the future of local democracy in the state. State legislators may seek to revoke counties' and cities' long-standing power to enact a local minimum wage. This fact sheet aims to provide context for Maryland's local lawmakers as this question approaches.

Nationwide, local governments have seen a rapid rise in preemption laws over an expanding range of issues. Together, these laws have begun to erode home rule in significant ways. Any effort to prevent local governments in Maryland from adopting a higher local minimum wage should be seen as part of a broader trend and threat to local democracy.

Separate from a local official's or local government's position on whether to raise the minimum wage, Maryland's local officials should be prepared to defend their long-standing home rule powers and tradition of innovative and responsive local democracy.

A Dramatic Increase in Preemption Laws Nationwide Threatens the Meaning and Future of Local Democracy in Maryland

- Across the country, countless cities, counties, and towns have historically relied on their basic home rule powers to address local problems and enact local solutions.
- In Maryland, local home rule has allowed counties and cities to adopt a wide range of local policies addressing things like consumer protection,¹ landlord-tenant protection,² local business licensing,³ food safety,⁴ taxicabs,⁵ air pollution,⁶ smoking,⁷ and discrimination.⁸
- When it comes to the minimum wage, both Montgomery County and Prince George's County have adopted a local minimum wage, with Montgomery County most recently adopting a \$15 minimum wage in 2017.⁹
- While state legislatures have used their power to preempt, or prohibit, local legislation on particular issues for decades, recent years have seen a dramatic rise in the use of state preemption laws across the nation to block local innovation on a wide range of issues.
- 25 states have passed laws to preempt local minimum wage laws.¹⁰ All but one were adopted after 2000, and more than half were adopted after 2012.¹¹
- According to the Local Solutions Support Center, 22 states have banned local paid sick days laws, 41 states ban local laws regulating ride-sharing companies, 43 states impose state

limits on local gun regulations, 20 states prohibit local regulation over 5G technology, 10 states prohibit local plastic bag bans, and 3 states now ban local soda taxes.¹² Other issues facing state preemption include “fair chance” laws designed to assist individuals with criminal records searching for jobs, fair scheduling laws, nutrition-related legislation, pesticide regulation, smoking or tobacco regulation, fire sprinkler requirements, local rent control efforts, local inclusionary zoning laws, and many more.¹³

- Academics, journalists, and organizations like NELP, the National League of Cities, and the Center for Media and Democracy have, at least in part, linked the rapid rise of preemption laws in recent years to aggressive special interest lobbying and copy-cat legislation advanced by the American Legislative Exchange Council (ALEC).¹⁴ ALEC has drafted “model” preemption bills to prohibit local minimum wage laws since at least 2002.¹⁵ On the issue of ride-sharing regulation, it is not surprising that 41 states have passed preemption laws when Uber and Lyft lobbyists outnumber the number of lobbyists for Amazon, Microsoft, and Walmart lobbyists, combined.¹⁶
- The rapid pace of new preemption laws on an ever-expanding set of issues threatens to significantly erode home rule powers and the role of local democracy in states across the country.

The Rise of Extreme and Punitive Preemption Laws Poses New Challenges and Risks for Local Leaders

- State preemption laws have not only begun to chip away at the very concept of home rule and local democracy—these laws have also taken on a newly extreme and punitive approach that, in some cases, even imposes personal liability on local legislators or threatens the revocation of state funding for local governments.
- A 2012 Kentucky state law, for example, allows private individuals to sue local officials for violating a state gun preemption law and includes possible criminal liability.¹⁷
- A Florida law makes local officials liable in civil proceedings for up to \$5,000 for knowingly and willfully violating the state’s gun preemption law by “impinging upon [the state’s] exclusive occupation of the field.”¹⁸ The statute also subjected local officials to “removal from office by the governor,” and while a court has found that the provision cannot apply to county commissioners, the court did not rule out applying this provision to other local officials.¹⁹
- A 2017 Texas law concerning local sanctuary ordinances allows for the removal of a local official from office for adopting, enforcing, or endorsing a local policy that “prohibits or materially limits the enforcement of immigration laws.”²⁰ The law also imposes penalties of up to \$25,500 on local governments that violate the preemption law for each day that the local government violates the law.²¹
- Arizona enacted a law in 2016 that allows the state government to take away state funding from localities that are believed to have violated a state preemption law.²² The law has led to at least 10 investigations into local laws on a range of issues, including “firearms, marijuana cultivation, policing, truck regulation, and a plastic bag ban.”²³
- A growing number of state preemption bills have also unabashedly sought to decimate local authority. A 2016 Oklahoma bill that was not adopted into law, for example, provided “that a municipality may not act with respect to any subject regulated under state law unless ‘expressly authorized by statute.’”²⁴

- A 2015 Texas bill sought to preempt local regulation of “the use of private property, all local authority over any activity licensed by the state, and any local law setting higher standards than state law on the same subject.”²⁵
- A thus far unsuccessful 2017 Florida bill aimed to prohibit “all local regulation of ‘commerce, trade, and labor.’”²⁶

As Maryland Considers a \$15 Minimum Wage Bill, Local Officials Should Oppose Efforts to Preempt Local Minimum Wage Laws as Part of a Broader Threat to Home Rule and Democracy

- Maryland has a strong tradition of home rule law that has allowed for innovation, meaningful local democracy, and local solutions that address local problems.
- Maryland’s local leaders have an opportunity to recognize the threat of piecemeal preemption and protect local authority from further and unnecessary legislative encroachment.
- Maryland local governments and residents successfully opposed a bill in 2018 that would have banned local laws regulating the placement and design of cell phone structures in residential areas.²⁷ However, when the state legislature enacted a statewide paid sick leave law, the final law preempted local paid sick leave ordinances enacted after January 1, 2017, instead of simply setting a floor that local governments could choose to supplement, as had previously been the case.²⁸ Notably, this type of concession was made in Wisconsin when Democratic Governor Jim Doyle agreed to ban local minimum wage laws in 2005 as part of a deal to raise the state minimum wage.²⁹ Local leaders now realize this was a bad deal in the long-term—Marcelia Nicholson, a member of the Milwaukee County Board of Supervisors, for example, sees the result as a “race to the bottom.”³⁰ The state’s minimum wage is now \$7.25 per hour, the same rate as the federal minimum wage rate.³¹
- For those cities and counties facing especially high costs of living, protecting the local power to raise the minimum wage preserves the ability to raise the local minimum wage in the future.³² In high-cost regions, like the Maryland suburbs of Washington, D.C., which include Prince George’s County, single workers and parents already need substantially more than \$15 to make ends meet.³³
- Even if a particular city or county in Maryland would oppose raising the minimum wage locally, it is important that local governments protect their ability to pass laws that support their residents’ most important needs, such as health, a clean environment, and good jobs.

Conclusion

Ultimately, for Maryland’s local leaders, a bill to enact a \$15 minimum wage statewide carries important implications for their communities’ workers, their local and state economies, and the future of local democracy in the state. The statewide \$15 minimum wage bill under consideration will likely involve efforts in Annapolis to revoke localities’ existing power to enact local minimum wage laws. Aside from a particular local official’s views on whether raising the minimum wage is the right solution to their community’s needs, local officials in Maryland will need to decide whether to actively protect their long-standing home rule powers and tradition of innovative and responsive local democracy. As this fact sheet aims to demonstrate, the risks of not defending local authority in the current environment are arguably higher than ever before.

Endnotes

- ¹ See, e.g., Anne Arundel County Code, art. 10, tit. 8 (Consumer Protection); Baltimore County Code, art. 13, tit. 10 (Miscellaneous Provisions and Consumer Protection); Montgomery County Code, ch. 11 (Consumer Protection).
- ² See, e.g., Anne Arundel County Code, art. 10, tit. 9 (Landlord and Tenant Rights); Calvert County Code, ch. 75 (Minimum Livability Code); Carroll County Code, tit. XVII, ch. 171 (Livability Code); Charles County Code, ch. 81 (Minimum Livability Code); Talbot County Code, ch. 88 (Minimum Livability Code); Montgomery County Code, ch. 29 (Landlord-Tenant Relations).
- ³ See, e.g., Anne Arundel County Code, art. 11 (Licenses); Baltimore County Code, art. 21 (Permits, Licenses, and Business Regulation); Carroll County Code, tit. XI, ch. 110 (Business Licensing); tit. 6 (Licenses); Harford County Code, ch. 157 (Licenses and Permits); Montgomery County Code, ch. 30 (Licensing and Regulations Generally); Prince George's County Code, subtit. 5 (Businesses and Licenses).
- ⁴ See, e.g., Anne Arundel County Code, art. 11, tit. 6 (Food Service Facilities); Baltimore County Code, art. 21, tit. 8 (Food Trucks); Prince George's County Code, subtit. 12, div. 2 (Food Service Facilities).
- ⁵ See, e.g., Anne Arundel County Code, art. 11, tit. 15 (Taxicabs); Baltimore County Code, art. 21, tit. 17 (Vehicles for Hire); Wicomico County Code, ch. 205 (Taxicabs); Harford County Code, ch. 232 (Taxicabs); Talbot County Code, ch. 174 (Taxicabs); Montgomery County Code, ch. 53 (Taxicabs); Prince George's County Code, subtit. 20 (Taxicabs and Limousines).
- ⁶ See, e.g., Baltimore County, art. 13, tit. 2 (Air Pollution); Harford County Code, ch. 109, § 109-12 (Air Quality Control); Prince George's County Code, subtit. 19, div. 1 (Air Pollution).
- ⁷ See, e.g., Baltimore County Code, art. 13, tit. 8 (Smoking in Public Places); Harford County Code, ch. 149, art. II (Smoking and Sale of Tobacco Products in County Buildings); Talbot County Code, ch. 159 (Smoking and Tobacco Products); Montgomery County Code, ch. 24, art. II (Smoking, Tobacco, and Nicotine).
- ⁸ See, e.g., Baltimore County Code, art. 29, tit. 2 (Human Relations, Prohibited Practices); Harford County Code, ch. 95 (Discriminatory Practices); Montgomery County Code, ch. 27, art. I (Commission on Human Rights).
- ⁹ Montgomery County Code, ch. 27, art. XI; Prince George's County Code, subtit. 13A, div. 2.
- ¹⁰ National Employment Law Project, Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws (July 2017) at 2, <https://s27147.pcdn.co/wp-content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf>.
- ¹¹ NELP analysis of state laws that expressly preempt local minimum wage laws.
- ¹² Local Solutions Support Center, State Interference Primer: An Introduction to the Growing Threat of "New Preemption" (on file with author).
- ¹³ Richard Briffault, The Challenge of the New Preemption, *Stanford Law Review* (June 2018), Volume 70, <https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/06/70-Stan.-L.-Rev.-1995.pdf>.
- ¹⁴ See, e.g., Lori Riverstone-Newell, The Rise of State Preemption Laws in Response to Local Policy Innovation, *The Journal of Federalism* volume 47, number 3, pp. 405–406 (May 2017), <https://academic.oup.com/publius/article/47/3/403/3852645> (discussing how "[r]ecent preemption efforts can be understood, at one level, as part of longstanding campaigns waged by industry groups hoping to stop or limit progressive local policies in order to create a friendlier business environment for themselves"); National League of Cities, Civil Rights in an Era of Preemption: A State-by-State Analysis (2018) at 3, <https://www.nlc.org/sites/default/files/2017-03/NLC-SML%20Preemption%20Report%202017-pages.pdf>; Bryce Covert, "Red state legislatures are taking away workers' raises and paid leave," *ThinkProgress*, Mar. 28, 2017, <https://thinkprogress.org/iowa-minimum-wage-paid-sick-leave-preemption-44168f0a223/>; Mary Bottari, The Center for Media and Democracy's PRWatch, The ALEC-backed War on Local Democracy (Mar. 31, 2015), <https://www.prwatch.org/news/2015/03/12782/alec-backed-war-local-democracy>.
- ¹⁵ National Employment Law Project, Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws (July 2017) at 3, <https://s27147.pcdn.co/wp-content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf> (citing American Legislative Exchange Council, Living Wage Mandate Preemption Act, <https://www.alec.org/model-policy/living-wage-mandate-preemption-act/>).
- ¹⁶ Joy Borkholder et al., National Employment Law Project and Partnership for Working Families, Uber State Interference: How Transportation Network Companies Buy, Bully, and Bamboozle Their Way To Deregulation (Jan. 2018) at 19, <https://s27147.pcdn.co/wp-content/uploads/Uber-State-Interference-How-Transportation-Network-Companies-Buy-Bully-Bamboozle-Their-Way-to-Deregulation.pdf>.
- ¹⁷ Richard Briffault, The Challenge of the New Preemption, *Stanford Law Review* (June 2018) at 2003, Volume 70, <https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/06/70-Stan.-L.-Rev.-1995.pdf>.
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ *Id.* at 2004 (noting also that the law was partially invalidated by *City of El Cenizo v. Texas*, No. 17-50762, 2018 WL 2121427 (5th Cir. May 8, 2018)).
- ²¹ *Id.* at 2004.
- ²² "Under SB 1487, any state legislator may request the state attorney general to investigate and report a claim that a local official action violates state law. On finding a violation, the attorney general must notify the offending local government and, if the local government 'fail[s] to resolve the violation within thirty days,' must notify the state treasurer, 'who shall withhold and redistribute [to other localities] state shared monies' until the violation is resolved. If the attorney general concludes merely that the local measure '[m]ay violate' state law, the attorney general must immediately bring a special action in the state supreme court to determine the issue. However, in order to contest the action, the defendant local government must 'post a bond equal to the amount of state shared

revenue' it received in the preceding six months—a requirement that virtually no locality would be able to meet." *Id.* at 2005.

²³ *Id.* at 2006.

²⁴ *Id.* at 2007.

²⁵ *Id.* at 2007.

²⁶ *Id.* at 2007.

²⁷ Katherine Shaver, "Maryland lawmaker cancels bill to limit local control over new cellular facilities," *The Washington Post*, Mar. 21, 2018, https://www.washingtonpost.com/local/trafficandcommuting/maryland-lawmaker-cancels-bill-to-limit-local-control-over-new-cellular-facilities/2018/03/21/91243428-2d2c-11e8-8688-e053ba58f1e4_story.html?utm_term=.1f110d5a66e9.

²⁸ Md. Code Ann., Lab. & Empl. § 3-1302; Marni von Wilpert, Economic Policy Institute, "State and local policymakers should beware preemption clauses," *Working Economics Blog*, Jan. 18, 2018, <https://www.epi.org/blog/state-and-local-policymakers-should-beware-preemption-clauses-snuck-into-legislation/>.

²⁹ Todd Richmond, "Wisconsin's minimum wage set to go up finally," *AP Alert – Political*, May 29, 2005.

³⁰ Em Westerlund et al., "Minnesota: Please don't join Wisconsin and Iowa in stripping cities of their power," *MinnPost*, May 17, 2017, <https://www.minnpost.com/community-voices/2017/05/minnesota-please-don-t-join-wisconsin-and-iowa-stripping-cities-their-power>.

³¹ United States Department of Labor, Minimum Wage Laws in the States (Updated January 1, 2019), <https://www.dol.gov/whd/minwage/america.htm> (last viewed Jan. 30, 2019).

³² See National Employment Law Project, Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws (July 2017), <https://s27147.pcdn.co/wp-content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf>.

³³ Single workers working full-time in Prince George's County, for example, need an hourly wage of over \$20 today to make ends meet. See Economic Policy Institute, Family Budget Calculator, <https://www.epi.org/resources/budget/>. Single parents with one child in Prince George's County need even more to do the same. *Id.*