

The Maryland Public Policy Institute



The Annapolis Report

A Review of the 2009 Legislative Session

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The Maryland Public Policy Institute

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THE ANNAPOLIS REPORT

A Review of the 2009 Legislative Session

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INTRODUCTION

WELCOME TO THE ANNAPOLIS REPORT: A Review of the 2009 Legislative Session. We hope you will find the following report to be useful and informative, and that it will help you gain a better understanding of what transpired during Maryland's 2009 legislative session.

The session began on January 14 and ended on April 13. During those 90 days, more than 2,600 bills were introduced, and more than 700 bills were passed by the General Assembly. The sheer volume of information combined with the complexity of many bills presents a formidable obstacle to interested citizens. Most Marylanders have neither time nor resources to examine all of the issues dealt with during the legislative session. Newspapers, television reporting, and talk radio all do their part to close this knowledge gap, but these media often focus only on the most popular issues of the day. This report aims to further reduce the knowledge gap by examining many of this year's important legislative issues in closer detail than is possible with other media.

The Annapolis Report differs from similar projects because we have chosen to assess the legislative session as a whole. Rather than single out individual legislators and praise or condemn them based on a small number of votes, we believe that a broader focus on the actions of the General Assembly will prove more helpful in informing Maryland's citizens. However, the report also includes direct links to roll call votes when applicable, so that interested readers can easily determine how their elected representatives voted on specific bills.

This report divides the selected bills into several subjects: budgetary matters, taxes, health, education, regulation, and ethics and transparency. Several bills that are not easily categorized but are nevertheless important are also included. The report card includes a grade for each subject, as well as an overall grade. The bulk of the report, however, consists of a concise analysis of each selected bill. We have striven to make these analyses incisive yet fair, and we hope they will prove useful to interested citizens.

THE ANNAPOLIS REPORT CARD

MARYLAND GENERAL ASSEMBLY
YEAR: 2009

SUBJECT	GRADE	SUBJECT	GRADE
BUDGETARY MATTERS	F	EDUCATION	A
TAXES	F	REGULATION	C
HEALTHCARE AND HEALTH INSURANCE	C	ETHICS AND TRANSPARENCY	B
		OVERALL	D

THE ANNAPOLIS REPORT CARD – SUBJECT EVALUATIONS

SUBJECT	COMMENTS
BUDGETARY MATTERS	<i>A massive structural deficit; band-aid on broken leg one-time balance transfers; continual raiding of special funds; wasteful grants funded by public debt ... extremely poor performance, resulting in an “F”</i>
TAXES	<i>The student did poorly, proposing numerous tax increases while also suggesting wasteful tax credits. A lack of focus on existing revenue sources combined with an ill-conceived tax amnesty program spelled a definite “F” in this subject.</i>
HEALTHCARE AND HEALTH INSURANCE	<i>Only mediocre performance. The one bright spot was the passage of a bill that allows more flexibility in the small group health insurance market, but this was overshadowed by the failure to pass a bill that would have reduced Medicaid fraud, as well as a spate of unrealistic, unaffordable proposals to completely overhaul the healthcare industry. “C.”</i>
EDUCATION	<i>Surprisingly good performance; proposed several inventive ideas, but often did not follow through. The passage of a bill to increase competition in the college textbook market carried the student to an “A.”</i>
REGULATION	<i>A middling grade. The administration’s attempt to re-regulate Maryland’s electricity market managed to pass the Senate, but received an unfavorable report in the House. A more expansive bill also received an unfavorable report in the House. Both bills are highly problematic, and would do little to address the State’s energy needs. “C.”</i>
ETHICS AND TRANSPARENCY	<i>The student did well in this subject; the passage of the State Funding Accountability Act, while not perfect, is a welcome event. There were a few missed opportunities to reveal payments from pharmaceutical companies to doctors, but these are offset by encouraging proposals to shut the revolving door and close campaign finance loopholes. “B.”</i>
OVERALL	<i>The student’s overall performance this year, accounting for the categories above as well as several miscellaneous bills, comes only to a “D.”</i>

METHODOLOGY

Selection. With over 2,600 bills introduced and over 700 bills passed this session, an exhaustive treatment of every bill would be impossible. Nor would it necessarily be helpful: many bills pertain to purely local issues, or are related to technical matters such as liquor licenses for special events. Thus, in constructing a legislative report card, we necessarily face the difficult question of which bills to include.

During the preliminary phase of this report, we examined a number of report cards and scorecards on various issues, at both the state and federal levels. In most cases, these publica-

tions can be divided into two approaches. The first approach is favored by narrowly-focused, special interest groups, and involves scouring the legislative session for any bills that relate to a particular area of interest, then proceeding to grade legislators based solely on those bills. For example, the Alaska Family Council’s Pro-Family Legislative Report Card for 2007-2008 grades House members using their votes on four family-related bills. Likewise, Equality California’s Legislative Scorecard for 2008 grades members of both chambers using their votes on five equality-related bills. While such publications and grades may be useful for single-issue

voters, they fail to give a complete picture of individual legislators’ activities, and they say very little about the legislative session as a whole.

The second, less common approach is to consider a much larger number of bills, sometimes several hundred, and grade legislators according to their votes on the selected bills. While this approach has the virtue of offering a more comprehensive picture of legislators, it also lacks the nuance of reports that use smaller selections: a favorable vote on an important bill can easily be outweighed by an unfavorable vote on a minor issue. For example, the Goldwater Institute’s 2008 Legislative Report Card for Arizona is based on the results of 237 recorded votes. The large number results from an attempt to reduce selection bias, and while the effort is admirable, as a result, legislators are graded according to their views on matters such as poultry husbandry and car towing practices.

Our report seeks to find a middle way between these two approaches. Because we are not a single-issue advocacy organization, we have the flexibility to examine any bill we believe merits attention. At the same time, we eschewed examining a large, unwieldy number of bills, in the belief that focused analyses of the most important issues will ultimately prove more helpful to Maryland’s citizens than a “mile-wide, inch-deep” approach.

We selected a total of 66 bills for inclusion in the report. Of these, 44 are cross-listed bills, meaning that identical or nearly identical versions were introduced in both the House of Delegates and the State Senate. In several instances, related but non-identical bills are grouped and analyzed together. The result is a report that examines 37 discrete legislative issues, with a focus on budgetary matters, taxes, healthcare and health insurance, education, regulation, and ethics and transparency. Of the 66 bills selected, 20 were passed, and 33 did not progress past a first reading. Including bills that made little or no progress is important, because it allows Marylanders to identify and support innovative legislative proposals in the next session, as well as identify more troublesome bills before they have a chance to gain ground.

Scoring. A bill’s score is the product of two factors: a coefficient (C) and a multiplier (M). The

TABLE 1 SCORING

BILL STATUS	CORRESPONDING MULTIPLIER
FIRST READING	1
REASSIGNED	1
UNFAVORABLE REPORT	2
SECOND READING	2
THIRD READING	3
PASSED	3

TABLE 2 GRADING

LETTER GRADE	CORRESPONDING PERCENTAGE
A	GREATER THAN OR EQUAL TO 80%, UP TO 100%
B	GREATER THAN OR EQUAL TO 60%, LESS THAN 80%
C	GREATER THAN OR EQUAL TO 40%, LESS THAN 60%
D	GREATER THAN OR EQUAL TO 20%, LESS THAN 40%
F	GREATER THAN OR EQUAL TO 0%, LESS THAN 20%

coefficient refers to the General Assembly’s final action on a bill, and can be either positive or negative. For example, a good bill that was passed would have a positive coefficient, whereas a bad bill that was passed would have a negative coefficient.

The multiplier is a measure of how far a bill progressed in the legislative session; the larger the multiplier, the more progress the bill made, and the more weight its score carries (for better or worse). All bills that are introduced receive a first reading, which corresponds to a multiplier of 1; a bill that receives a third reading and passes corresponds to a multiplier of 3, see Table 1.

This relatively simple two-factor scoring system allows for several nuances. First, any bill that is to become law must be passed by both chambers of the General Assembly. Therefore, cross-listed bills passed by both chambers have a total score of 6, reflecting the much greater importance of legislation that actually becomes law. Second, using a coefficient allows us to properly account for situations

where good or bad bills are rejected. Because the coefficient depends on the General Assembly's final action on a bill, if a chamber rejects a good bill in a floor vote, or a committee gives a good bill an unfavorable report, the coefficient, which started out positive, now becomes negative. This penalizes the legislature for rejecting good ideas; likewise, it could also reward the legislature for rejecting bad ideas, though this specific situation did not occur in this session's selected data.

For example, a good bill that passed would have a positive coefficient ($C = 1$) and a multiplier (M) of 3. The final score is thus simply $C \times M$:

$$1 \times 3 = 3$$

A bad bill that received a second reading would have a negative coefficient ($C = -1$) and a multiplier of 2 ($M = 2$). Again, the final score is given by $C \times M$:

$$-1 \times 2 = -2$$

Finally, consider a good bill ($C = 1$) that passed one chamber ($M = 3$), but only went as far as a first reading in the other chamber ($m = 1$). In this case, the total score is simply the sum of the scores in each chamber, or $(C \times M) + (C \times m)$:

$$(1 \times 3) + (1 \times 1) = 4$$

Grading. For each subject and for all bills, the individual scores are summed to form a raw score. Then, the raw score is converted to a percentage and assigned a letter grade. Unlike typical grade school report cards in which only the 65 percent to 100 percent range matters, our report card makes use of the entire percentage scale. Thus, a score between 100 percent and 80 percent is an "A"; between 80 percent and 60 percent a "B"; and so on, see Table 2.

For a detailed explanation of how raw scores are summed and converted to percentages, see Appendix A – Scoring and Grading Details, at the end of this report.

Grades. Legislators sometimes have a strong aversion to report cards or scorecards; one Maryland delegate has called them "worthless," and suggested that lobbyists select the bills that are included in such publications. A Gazette columnist told readers, "If you have a broad set of concerns it's not at all valuable," and other

General Assembly members complain that the publications are not detailed enough.

While the Annapolis Report seeks to address some of these shortcomings by selecting a broader range of bills, grading the legislative session as a whole, rather than individual legislators, and including an analysis of each bill, we stress that these letter grades cannot tell the whole story. We believe the most important information in this report is the analysis of each bill, as well as the direct links to related public information about the bills, available at the Maryland General Assembly's website.

You are encouraged to look at the legislative report card for 2009, but do not stop there. Be sure to read the rest of the report to learn more about each issue, and to understand why the General Assembly received these grades.

ANALYSIS

Budgetary Matters: F

Budget Bill for FY2010

HB100, SBI65:

<http://mlis.state.md.us/2009rs/billfile/HB0100.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0165.htm>

FISCAL & POLICY NOTE: NOT AVAILABLE

HOUSE STATUS: PASSED

SENATE STATUS: PASSED

SCORE: -6

Creating, amending, and eventually passing the state's budget is an enormously complex process. The budget documents are hundreds of pages long, and even the Department of Budget and Management's Budget Highlights publication is two hundred pages. It is thus a difficult task to succinctly present the most important portions of the state's budget in this analysis. Nevertheless, we chose to focus on a few major points in this year's budget, primarily because they are unique (the federal stimulus package), or because the governor and administration drew attention to them.

The American Recovery and Reinvestment Act: Stimulus or Life Support?

As most readers are no doubt aware, President Obama signed the American Recovery and Reinvestment Act into law in February of 2009. The Act provided billions of dollars in aid to state governments, with Maryland receiving approximately \$4.1 billion in federal funds. According to the O'Malley ad-

ministration's data, the majority of this funding is being spent in the areas of health and human services, education, and transportation.

But is calling this funding a stimulus accurate? The vast majority of the federal money, \$2.3 billion, to be exact, is being used to prop up existing programs, replacing state funding that would have been required. For example, according to state documents, "ARRA funds are being used statewide to support the health care provided to enrollees in their Maryland programs ... Aged, Blind and Disabled enrollees ... Families and Children ... [and] the Primary Adult Care program." The bulk of \$1.7 billion in federal funds will be used to pay for these programs. While we do not want to deny the importance of providing this care, it is questionable whether such spending is really an economic stimulus.

Likewise, the administration points to \$628 million in federal funding for shovel-ready infrastructure projects. Yet, well over \$100 million of that money is being spent on simple road resurfacing, a project that is unlikely to create many more jobs and that should not require federal aid for completion. Meanwhile, this year's budget redirects funds that were to be used for the InterCounty Connector, a major infrastructure project, instead using those funds to pay for general expenses.

Finally, the federal stimulus has arguably created an unhealthy dependence on federal funds to save the state from its budget crisis. When the state should be looking to cut costs, the O'Malley administration decided to expand Medicaid, a decision that would not likely have been feasible without additional federal funding. But what will happen when the federal funds disappear in a year or two? Maryland will be left with large, underfunded programs, and there will be no more outside help to pay for them.

Improving Education? According to the current administration, another major accomplishment in this year's budget is an overall increase in funding for education. In the governor's introductory letter to the state's Budget Highlights, he describes a \$68.3 million increase in funding compared with last year's budget. This implies that despite a tough economy and dismal revenue projections, the state considers education

important enough to ensure that our school systems remain properly funded.

However, this figure obscures the fact that this increase mainly results from growing payments to fund pension benefits for retired and soon-to-retain teachers. The total increase in such payments this year is over \$137 million. The governor justifies spending education dollars on pension benefits rather than aid to local school systems by arguing that "attracting and retaining the very best, high-quality teachers for our public education system" necessitates such expenses. Yet, according to a report released by the Abell Foundation and the Maryland Public Policy Institute in late 2006, "increased state spending on defined benefit pensions plans like Maryland's is unlikely to be a cost-efficient way to staff classrooms with qualified teachers." Because public school teachers have very high job mobility, defined benefit pension plans are unlikely to play a large role in attracting new teachers, or retaining current ones. Switching to a defined contribution pension plan, the kind that virtually every employer in the private sector adopted years ago, would be a better choice.

General Obligation Bond Funding: Robbing Peter to Pay Paul. This year's Budget Highlights proudly describes one of the state's most disturbing practices in attempting to balance the budget. According to the document, "Another strategy to achieve budget balance has included using general obligation bonds to pay for projects for which previous plans had allocated general funds." The document proceeds to give several instances of capital purchases for which funds had originally been set aside, but which now are being funded by bonds: the InterCounty Connector and new Medevac helicopters, for example.

In stodgy bureaucratic language, the document explains, "By using the State's bond capacity to fund projects that would normally be financed with general funds, the Governor is able to utilize those general funds to maintain support for critical State programs and services." In everyday language, the state had budgeted money for these projects, but found it could not pay for its normal programs and services, so has now decided to pay for the projects on credit.

This action resembles paying for operating expenses by borrowing money.

This practice is troublesome because in many instances, the funds that set aside were found in dedicated expense accounts. This is true for both the InterCounty Connector and the Medevac helicopters, both cases which will be discussed along with the next bill, the Budget Reconciliation and Financing Act. Furthermore, issuing more general obligation bonds means the state, and thus taxpayers, will have to spend more on debt service in future years.

Although the state's Spending Affordability Committee recommended that up to \$150 million in general obligation bonds "be used to relieve operating budget pressure and support projects that need immediate financing," in the very next paragraph of their report, they warn, "The committee is concerned that debt service requirements for GO bonds will potentially exceed the anticipated revenues to the Annuity Bond Fund in FY2010 and certainly in FY2011. Careful planning will be needed to meet debt service requirements given the current and projected status of the general fund and the Annuity Bond Fund." Since debt service for general obligations bonds is funded primarily through property taxes, Marylanders can expect either higher property taxes in the future, or increased pressure on the already tight general fund.

Conclusions. While Maryland continues to struggle with a persistent structural deficit and poor returns on revenue sources such as the motor fuel tax, state legislators and officials are looking eagerly to a potential new source of revenue: slot machines. According to the Spending Affordability Committee, the state expects to reduce its structural deficit from nearly \$1.3 billion this fiscal year, to just over \$800 million by 2014, with the caveat of "assuming full implementation of slots."

But this is not a clearly safe assumption. Bids for Maryland's slots operator licenses have been underwhelming. The slots situation is discussed in detail below, but without some action to make licenses more attractive, the state should rethink its assumption of free-flowing revenue from slot machines.

Budget Reconciliation and Financing Act of 2009

HB101, SBI66:

<http://mlis.state.md.us/2009rs/billfile/HB0101.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0166.htm>

FISCAL & POLICY NOTE:

[http://mlis.state.md.us/2009rs/fnotes/bil_0001/](http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb0101.pdf)

[hb0101.pdf](http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb0101.pdf)

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: -6

Article III, Section 52 of the Maryland Constitution requires that the governor present, and the state legislature pass, a balanced budget each year. In recent years, this led to an annual scramble to compensate for large deficits in the state's general fund. In FY2010, for example, the state is estimated to face a budget deficit of \$1.2 billion. While the governor and various state agencies have some authority to cut costs, major changes often require legislative authorization. This is the purpose of the Budget Reconciliation and Financing Act. This bill proposes over \$606 million in one-time transfers to the general fund, and over \$483 million in spending cuts, to help bring the deficit under control. All told, the bill is intended to balance the budget and provide a small (\$46 million) surplus by the end of FY2010.

While many spending cuts authorized by this bill are necessary and welcome belt-tightening measures, Maryland's habitual practice of using one-time balance transfers to plug budgetary holes is troublesome. In the first place, these one-time measures are temporary, band-aid on a broken leg-type solutions for an ongoing structural deficit. Without major reductions in the state's generous entitlement spending, as well as the revitalization of slowing revenue streams, the state will not be able to escape from consistent budget deficits. As noted above, slots revenue, at least under current conditions, will not be a panacea.

The following sections discuss several of the most important balance transfers and fund swaps enacted in this year's Budget Reconciliation and Financing Act.

Local Income Tax Reserve Account. The largest balance transfer by far this year is the nearly \$367 million the state transferred from the lo-

cal income tax reserve account to the general fund. This account is used to offset local income tax refunds owed to taxpayers; however, these refunds are paid from current revenues, rather than from this account. The reserve account is to be repaid over the course of a decade, with the funding for the repayment coming from reductions in the income tax revenue that would have been distributed to local governments. While this reserve account is one of the less critical sources the administration could have borrowed from, when next year's budget needs to be balanced, the governor will have to look elsewhere.

Also questionable is whether the state should be using the local income tax reserve account as a "rainy day" fund when the state already has a "rainy day" fund sitting pretty with nearly \$650 million. The income tax reserve account is designed to protect Maryland's taxpayers, but the state is likely afraid that dipping into the "rainy day" fund — and no one can deny that now would be an appropriate time to do so — would raise the cost of state borrowing, because rating agencies look to a fully-funded "rainy day" fund in determining bond ratings.

State Police Helicopter Replacement Fund.

The next largest balance transfer moves \$51.5 million from the State Police Helicopter Replacement Fund to the general fund. This money was to have been used "for the procurement of new helicopters, auxiliary helicopter equipment, ground support equipment, and other capital equipment," needs that are especially acute after the deadly crash in September 2008 of a Maryland State Police Medevac helicopter. Instead, as mentioned above, the state will now be issuing general obligations bonds for these purchases, thereby increasing debt service costs.

InterCounty Connector Funding. Although technically not a balance transfer, the bill changes the timing of funding for the InterCounty Connector (ICC), effectively resulting in a delayed transfer from the Transportation Trust Fund (TTF) to the general fund. In 2003, legislation was passed that moved \$314.9 million directly from the TTF to the general fund, with a promise of repayment. In 2006, \$50 million was repaid to the TTF, and the remaining

\$264.9 million was to be repaid in the form of funding for the ICC.

So far, of that \$264.9 million in promised funding, only \$53 million has been paid. Another \$53 million was scheduled to be paid in 2008, but was removed from the final budget. The total amount of funding owed to support the ICC now stands at \$211.9 million. This year, \$85 million was scheduled to be paid; however, in October 2008, \$20 million of funding was cut, and this bill eliminates the other \$65 million, meaning none of the funding promised for the ICC in 2009 will be delivered.

This bill simply increases the next two years' appropriations for the ICC to cover the \$85 million that will not be paid this year. However, recognizing that just as there was no money to pay for the ICC this year, there will likely be no money to pay for an even higher bill next year, the bill also authorizes the issuance of general obligation bonds to pay for the remaining \$211.9 million in funding due the ICC.

Thus, through a convoluted combination of broken promises and budgetary wizardry, the state has effectively taken over \$200 million directly from the TTF; a fund designed to pay for capital projects like the ICC, and now has to issue over \$200 million in bonds to pay for money it should not have borrowed in the first place. According to state treasurer Nancy Kopp, "Maryland does not use general obligation bond proceeds to close budget gaps or to fix cash flow problems." But by taking money from the TTF, failing to repay it, and finally issuing bonds instead of repayment, the state has done exactly that. The General Assembly should prevent this from happening again by passing the Transportation Trust Fund Act, discussed below.

Postretirement Health Benefits Trust Fund.

2009 marks the first year in which states are required to disclose as liabilities the amount of money they are expected to owe in the form of post-employment healthcare benefits. These benefits typically come in the form of state-paid health insurance premiums for state retirees, but they can also include dental, vision, and life insurance benefits, both for retirees and spouses. In Maryland's case, this amounts to a hefty \$14.85 billion. This figure represents the amount of money Maryland, given its current

funding practices for post-employment health-care benefits, could expect to spend for those benefits over the next thirty years. This enormous expense can be nearly halved were the state to responsibly invest in a trust fund, just as the state already does with normal pension benefits. Indeed, in 2004, the Postretirement Health Benefits Trust Fund was established for this very reason.

In the first quarter of 2009, the Postretirement Health Benefits Trust Fund held about \$117 million in assets, meaning the state's whopping \$14.85 billion liability is only 0.8 percent funded. To fully fund the plan in a reasonable amount of time, the state would be required to contribute over \$1 billion each year to the trust fund. Given the current financial status of the state and the overall economy, this is neither politically nor economically feasible. However, this bill goes one step further, and takes away the minimal funding that was being directed to the trust fund, robbing it of over \$140 million over the course of five years. This does nothing to address the state's enormous liability, and the money is being spent to pay for healthcare benefits for current employees and retirees; i.e., precisely the future costs that the trust fund is designed to guard against.

Some state legislators, such as Senator Donald Munson, discount talk of large post-retirement benefit liabilities, arguing that the numbers are misleading: "I think it's a phony issue to a large extent, because the state's not going out of business." While Munson is correct in that Maryland will not have to produce \$15 billion to pay for the liabilities all at once, legislators should not ignore that funding these liabilities now will save the state, and Maryland taxpayers, billions of dollars in the long run. Waiting to pay for the benefits until retirees need them will not only put pressure on the state's budget, it will also be more costly: future health insurance costs are only expected to increase.

Overall. The bill does include belt-tightening on the part of the government: state employees will not receive any performance bonuses, merit pay increases, or cost-of-living adjustments this fiscal year, saving the state some \$92 million. Such measures are only temporary, however. The administration and the General Assembly

should consider more permanent cost-cutting measures for the state's employees. They could start with prohibiting state employees from accumulating weeks of paid sick leave, a practice that encourages fibbing any time an employee does not feel like going in to work. Most important, the state must seriously consider switching from its costly defined benefit pension plans to less expensive and more sustainable defined contribution plans, which are the standard in the private sector.

Bond Bills

HB102, SBI67:

<http://mlis.state.md.us/2009rs/billfile/HB0102.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0167.htm>

FISCAL & POLICY NOTE: Not Available

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: -6

Each year, a number of bond bills that aim to support specific projects in the state are introduced in both chambers of the General Assembly. The money requested in such bills must be destined for use in capital projects, and must meet a number of other requirements, such as not being used for religious purposes. Individual projects must be sponsored by a member in each chamber of the General Assembly. While the guidelines for submitting bond bills state that "projects that serve a wide spectrum of the community or the State as well as an important public purpose are preferred," this guideline is broadly interpreted when it comes to authorizing bonds.

The bonds that are issued for approved projects are part of the larger capital budget for the year, and are general obligation (GO) bonds. GO bonds are sold by the state, thereby raising the necessary funds for capital projects and grants for specific projects; bonds sold in March of 2009 paid a single coupon rate of 5 percent for 15 years. Debt service for general obligation bonds is funded almost entirely through property taxes. The Commission on State Debt thus makes recommendations to the Board of Public Works about setting the appropriate property tax rate at an amount sufficient to meet the state's debt service requirements. For the past three years, the Commission has recommended that the rate not increase. But tucked away in Appendix F of this year's Budget High-

TABLE 3 SELECTED BOND BILL FUNDING

PROJECT	HOUSE AND SENATE FUNDING
NATIONAL CHILDREN'S MUSEUM	\$3.5 MILLION
OWINGS MILLS JEWISH COMMUNITY CENTER	\$275,000
THERAPEUTIC POOL FOR PEOPLE WITH DISABILITIES	\$350,000
FORMER ELLICOTT CITY POST OFFICE	\$150,000
COSCA REGIONAL SKATE PARK	\$250,000
GARRETT-JACOBS MANSION	\$200,000

lights is the disturbing note that for FY2008 to FY2014, “Property tax collections are not expected to keep up with debt service payments, thus requiring additional general funds effective FY 2011 and thereafter.” With the general fund already stretched thin, the other option for funding debt service may be an increase in property taxes.

This year, the House of Delegates and the Senate each awarded \$7.5 million in grants funded by bond bills, for a total of \$15 million. As the Maryland Public Policy Institute’s Marta Mossburg noted in an op-ed for the Washington Examiner, that is more than twice the amount Comptroller Peter Franchot estimates the state’s top fifty tax offenders owe. And because these grants are funded by bonds, servicing their debt will make the true cost much higher than \$15 million. Each year, dozens of projects are given grants that will be paid for by Marylanders for decades to come.

Mossburg wrote, “Whether these projects are worthy endeavors is not the question — who should pay for them is the issue. The answer should be private donors or local jurisdictions.” Grant requestors must already have some source of matching funds, either in the form of cash or in-kind contributions. Thus, even in these tough economic times, the requesting organizations have been able to identify other sources of funding. Cutting back on grants when the state is facing debt service requirements that will outpace property tax revenues is entirely reasonable, and will leave no one high and dry.

Table 3 shows just a few of the grants doled out by legislators this year; for a complete list, see the following document, available at the Maryland General Assembly’s website: http://mlis.state.md.us/2009RS/budget_docs/2009_bb_funding.pdf

Transportation Trust Fund Protection Act HB 140, SB 894:

<http://mlis.state.md.us/2009rs/billfile/HB0140.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0894.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb0140.pdf

HOUSE STATUS: Unfavorable Report

SENATE STATUS: First Reading

SCORE: -1

This bill would prohibit transfers from the Transportation Trust Fund, which supports the Maryland Department of Transportation’s operating and capital expenditures, to the general fund, except under extraordinary circumstances, and then only if repaid within five years.

The Constitution of Maryland requires that the state have a balanced budget, but finding the cash is a tough balancing act. This year’s budget included over \$600 million in transfers from special purpose funds to the general fund. This practice of “raiding” special funds means less money to pay for critical services such as transportation.

In 2003, former Governor Ehrlich moved approximately \$315 million from the Transportation Trust Fund to balance the state’s budget, accompanied by a promise that repayment would be made in the form of support for the InterCounty Connector project. Six years and another administration later, \$212 million has still not been repaid. This year’s budget cancelled an \$85 million payment that was supposed to have been made, instead adding it to next year’s payment. Anticipating no money in the general fund to make that payment, the budget also authorizes the issuing of bonds, thus adding to Maryland’s debt burden.

Without extra legislation protecting the Transportation Trust Fund, we can expect this sort of raiding to continue in the future. The

General Assembly once again missed an opportunity to ensure Maryland's transportation and infrastructure funding remains safe from the vicissitudes of budget shortfalls.

Professional Boards: Transfer of Funds, Repayment

HBI431:

<http://mlis.state.md.us/2009rs/billfile/HB1431.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb1431.pdf

HOUSE STATUS: Unfavorable Report

SCORE: -2

Similar to the previous bill, this bill would have prohibited transfers of money from professional funds to the general fund, unless the money were used for a purpose related to the profession, and only if the money were repaid the next year.

Professional funds are supported by fees from the professionals they regulate and oversee, and those funds should be used for purposes related to those professions. This year's budget includes numerous transfers from professional funds to the general fund to help balance the budget, including \$3 million from the Board of Physicians and \$2 million from the Maryland Health Care Commission Fund. Because of such raiding, the fees collected from professionals merely become an additional tax, rather than a fee that helps support and maintain the profession.

Taxes: F

Tax Amnesty Program

HBI08, SB 552:

<http://mlis.state.md.us/2009rs/billfile/HB0108.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0552.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0008/hb0108.pdf

http://mlis.state.md.us/2009rs/fnotes/bil_0002/sb0552.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: -6

SB552 creates a tax amnesty period that will last for two months, from September 1 to October 31, during which time delinquent taxpayers will not have to pay half the interest on unpaid taxes. Businesses with more than 500 employees are ineligible for amnesty.

Tax amnesty programs in general, and particularly this program, are poor policy. In practice, it is impossible to measure the increase in revenues directly attributable to the amnesty program, because there is no way of knowing how many delinquent payers would have paid up without the program. Additionally, the program requires forgoing part of the significant revenues associated with interest and penalties. During Maryland's last tax amnesty program, for example, fully one-third of revenues were from interest.

The General Assembly has chosen a particularly poor time to institute a tax amnesty program. As the Department of Legislative Services notes, because of the turbulent economy, fewer delinquent taxpayers will have the means or wherewithal to come forward. Whereas Maryland's previous two amnesty periods are estimated to have collected \$33 million and \$39 million, respectively, preliminary estimates suggest that this amnesty period may only net from \$5 million to \$10 million.

While that may sound significant, it is important to keep in mind that if the General Assembly had passed other measures, such as the data sharing provisions for tax enforcement discussed below, revenue increases are estimated to be over \$17 million for this fiscal year alone, and the state would not have forgone any of the interest owed on unpaid taxes. At a bare minimum, the General Assembly should have passed HB 108 instead, a version of the bill that would have provided funding for publicity and tax compliance personnel, and possibly doubled the revenues for this amnesty program.

Data Warehouse: Agency Data Sharing

HB 812, SB 249:

<http://mlis.state.md.us/2009rs/billfile/hb0812.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0249.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb0812.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: +2

Rather than an ill-timed tax amnesty program which necessitates forgoing millions of dollars in interest, the General Assembly would have done better to pass this bill, which allows the

TABLE 4 PROPOSED MOTOR FUEL TAX INCREASES

BILL	DESCRIPTION	NEW STATE TAX TOTAL
HB746	INCREASE BY 10¢ / GAL. (10.25¢ FOR DIESEL)	33.5¢ / GAL.
HB1214	INCREASE BY 5¢ / GAL.	28.5¢ / GAL.
SB722	INCREASE BY 5¢ / GAL.; CHANGE REVENUE ALLOCATION	28.5¢ / GAL.
HB423	INCREASE BY INDEXING TO CONSTRUCTION COST INDEX (CCI)	24.4¢ / GAL.; 26.8¢ BY FY 2014
HB747	INCREASE BY 0.5¢ / GAL.; INDEX TO CCI	24¢ / GAL.; 26.3¢ BY FY 2014

Comptroller to request information from other state agencies to aid in tax enforcement.

An \$87 million contract to replace the Comptroller's computer system was approved in late 2008, and according to the Comptroller's office, the new system helped bring in over \$3 million in January 2009 alone. However, the data sharing provisions made possible by this bill are necessary to effectively use the new system. Data sharing between agencies will allow for better enforcement of existing tax law, and does not require the collection of any new information. Because of the General Assembly's inaction, however, the Comptroller's ability to take full advantage of its new system will have to wait until the next legislative session.

Taxing Communications Services

HB1182:

<http://mlis.state.md.us/2009rs/billfile/hb1182.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb1182.pdf

HOUSE STATUS: Reassigned

SCORE: -1

In 2007, we had the "tech tax," an ill-conceived, poorly defined idea hatched to plug a hole in the state's budget. Even Comptroller Peter Franchot told legislators not to pass it, and the Maryland Chamber of Commerce warned of a "real possibility that Maryland-based tech companies would flee the state to avoid the tax." But instead of heeding the advice of the state's own officials and businesspeople, the General Assembly only learned its lesson after a harsh political backlash.

In 2009 comes a resurrection of sorts: a proposal from the House to begin taxing communication services under the state's 6 percent sales tax, a vast increase from the current 2 percent tax on gross receipts that applies only to telephone businesses. The new tax would apply to a

host of previously-exempt services: cell phones, cable TV, and Internet access, just to name a few. That could quickly add up to over \$100 a year in new taxes for a small family, and hundreds more for small businesses. In fact, according to the state's own analysis the tax increase would fall disproportionately on residences and small businesses, as larger businesses often have connections through private networks that would not be taxed.

The bill would also permit the Public Service Commission to agree to a statewide cable franchise. While this might ease negotiations for large cable providers, it will also mean less choice for citizens, who will no longer have any leverage to negotiate with cable providers at the local level.

Motor Fuel Tax Increases

HB423, HB746, HB747, HB1214, SB722:

<http://mlis.state.md.us/2009rs/billfile/hb0423.htm>

<http://mlis.state.md.us/2009rs/billfile/hb0746.htm>

<http://mlis.state.md.us/2009rs/billfile/hb0747.htm>

<http://mlis.state.md.us/2009rs/billfile/hb1214.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0722.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0003/hb0423.pdf

http://mlis.state.md.us/2009rs/fnotes/bil_0006/hb0746.pdf

http://mlis.state.md.us/2009rs/fnotes/bil_0007/hb0747.pdf

<http://mlis.state.md.us/2009rs/billfile/hb1214.htm>

http://mlis.state.md.us/2009rs/fnotes/bil_0002/sb0722.pdf

<http://mlis.state.md.us/2009rs/billfile/hb1214.htm>

http://mlis.state.md.us/2009rs/fnotes/bil_0002/sb0722.pdf

HOUSE STATUS: First Reading (all four House bills)
SENATE STATUS: First Reading

SCORE: -5

This session, five different bills were introduced that proposed increasing motor fuel taxes by various amounts: four in the House, and one in

the Senate. The current state motor fuel tax in Maryland is 23.5 cents per gallon for gasoline, and 24.25 cents per gallon for diesel. This is in addition to a federal tax of 18.4 cents per gallon for gasoline, and 24.4 cents per gallon for diesel. The following table describes the proposed increases for each bill (gasoline only), see Table 4.

Proposals to increase the motor fuel tax are doubtless a reaction to a slowdown in motor fuel consumption, itself a result of people choosing to drive fewer miles, and choosing to purchase and use more fuel efficient vehicles. But jacking up the gas tax in order to capture more revenue ignores basic market principles: when you increase the price of a product, people will buy less of it. Indeed, this is the very reason that increases in fuel taxes are proposed by people who want to reduce fuel consumption.

On the other hand, some of the alternative proposals to shore up transportation revenue in the face of declining motor fuel tax revenues are even less savory. One idea is to attach GPS devices to every vehicle, tracking the whereabouts of every state resident who drives, and then charge a tax by the mile. But instead of entertaining such a privacy-invading administrative nightmare, legislators and the administration would do better to stop using the Transportation Trust Fund as a piggy-bank to plug holes in the state's budget, and to explore innovative ideas like variable toll pricing.

Alcohol Tax Increases

HB791, SB729, HB1160:

<http://mlis.state.md.us/2009rs/billfile/hb0791.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0729.htm>

<http://mlis.state.md.us/2009rs/billfile/hb1160.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb0791.pdf

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb1160.pdf

HOUSE STATUS: First Reading (both House bills)

SENATE STATUS: First Reading

SCORE: -3

This session had two separate proposals to increase taxes on alcoholic beverages. The first bill was introduced in both chambers, and sought a 300 percent increase in taxes on distilled spirits, wine and beer; the second bill was only introduced in the House, and suggested a 150 per-

cent to 180 percent increase in these taxes. In both cases, the proposed new tax rates would have put Maryland's taxes far above the national average, and in many cases above the rates of neighboring states and the District of Columbia. This last fact is particularly important, because differences in regional tax rates on goods such as alcohol and tobacco can create opportunities for arbitrage, thus decreasing tax revenues.

According to the Department of Legislative Services, imposition of the higher tax rate could result in a 9 percent decrease in sales of distilled spirits; imposition of the lower tax rate could mean a 5 percent decrease in sales of distilled spirits. Reductions in the sales of wine and beer are also predicted. Any business retailing or wholesaling alcohol would be negatively affected by these tax increases, including many small businesses.

While Maryland's alcohol taxes are some of the lowest in the nation, the state does not need to act to change this in a knee-jerk fashion. Any increase in the alcohol tax must be weighed carefully: both the excise taxes and sales taxes of neighboring regions must be taken into account, as well as the negative effect of a tax increase on state businesses at a particularly dire economic time. Failure to consider all the factors will lead Maryland to the same place it found itself after a 100 percent increase in cigarette pack taxes: the Board of Revenue Estimates reported in December of last year that tobacco stamp sales were down 26 percent year-to-date, and sheepishly explained that the drop-off "can be attributed to a number of factors, including a decline in smoking, a possible increase in cross-border and Internet sales, and a possible increase in smuggling." But as the Board itself notes and the Tax Foundation points out,

Revenues from non-cigarette tobacco products are up 7.6 percent, suggesting a wave of smokers quitting isn't the culprit. If a person fills up a car trunk of cartons of cigarettes in Virginia, and illegally sells them in Maryland, the profit from the tax arbitrage could be over \$5,000. Quite lucrative. States should be wary of thinking that cigarette tax revenue is an endless source to be exploited.

Likewise, Maryland lawmakers must realize that hiking taxes on alcoholic beverages, while perhaps politically simple, will likely not generate the revenue they are seeking.

Snack Tax

SB40:

<http://mlis.state.md.us/2009rs/billfile/sb0040.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/sb0040.pdf

SENATE STATUS: First Reading

SCORE: -1

Yet another example of the General Assembly's confused approach to tax policy, this Senate bill would have imposed the state's 6 percent sales tax on "snack food," defined to include such items as potato chips and popcorn, but also "nuts and edible seeds." The moniker "snack tax" suggests that these foods should be taxed because they are undesirable or unhealthy, and indeed, the Department of Legislative Services estimates that sales of snack foods in Maryland would decline by 6 percent were this tax implemented. Yet the intent of the bill is clearly to provide more revenue for the state's general fund.

The bill's fiscal and policy note also mentions that small businesses such as convenience stores might suffer because of lost sales due to the increased tax. Had lawmakers had their way entirely this year, gas station convenience stores in particular would have been hit hard, facing motor fuel tax increases, high tobacco taxes from the 2008 increase, and snack taxes. The General Assembly needs to realize that relying on a host of tax increases such as this "snack tax" will do nothing to address Maryland's structural deficit, but will result in death by a thousand cuts for Maryland's businesses.

Tobacco Tax Stamp Encryption

HB528, SB491:

<http://mlis.state.md.us/2009rs/billfile/hb0528.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0491.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0008/hb0528.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: -2

Current law requires cigarette wholesalers to place tobacco tax stamps on cigarette packages. This bill would require such tax stamps to include encrypted information, and require vendors to purchase equipment capable of decrypting and reading such tax stamps.

If counterfeit tobacco tax stamps were a major issue in Maryland, a bill such as this might be justified. However, the opposite is true: according to the Department of Legislative Services, "no investigation or inspection to date has identified or seized counterfeit Maryland stamps." Oversight is not lacking, either: in FY 2008, the Comptroller's office conducted over 5,100 inspections.

California had been experiencing problems with counterfeit tobacco tax stamps and countered by adopting encrypted stamps; however, the encryption is not foolproof, and since then, counterfeit encrypted stamps have been discovered. If Maryland adopts this program, it will cost the state an additional \$700,000 each year, and force vendors to purchase new equipment capable of reading the stamps. Furthermore, there is absolutely no evidence that the program will alleviate a problem, because there is no evidence the problem exists in the first place. If anything, Internet purchases or cross-state purchases of cigarettes are likely more of a problem than counterfeit tax stamps.

Income Tax: Film Production Activity Credit

HB908, SB596:

<http://mlis.state.md.us/2009rs/billfile/hb0908.htm>

<http://mlis.state.md.us/2009rs/billfile/hb0596.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0008/hb0908.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: -2

Though perhaps this bill sounds reasonable at the outset, it represents a costly proposal that would subsidize Hollywood with no benefit to the state. The idea behind the bill is that Maryland, by providing tax incentives to filmmaking companies, will be able to attract film production along with its associated economic and job market benefits. Under current law, this is accomplished through a rebate program that is funded by an appropriation from the general fund. This bill proposes converting that rebate into a tax credit, and increasing the percentage of costs that qualify for the credit. The estimated effect on the state's general fund begins with a loss of \$250 million through FY2014, but the

Department of Legislative Services warns that losses could be much higher.

What would Marylanders get for that \$250 million? Not much. A study conducted of a larger program in Louisiana did find that employment in the film industry increased after enactment of the program; however, noted the study, “many jobs in the industry are often characterized by seasonal, short-term projects and not traditional full-time employment.” And Maryland’s Department of Legislative Services notes “the study likely over-estimates the net impact to the state as it did not consider any potential negative impacts from a decrease in state revenues.”

Maryland’s film industry is estimated to employ a little over 2,000 people, and the current rebate program throws nearly \$4 million a year at production companies. The bill’s fiscal and policy note offers a point for comparison: “an average of \$6 million has been appropriated to the biotechnology investment tax credit. The State biotechnology industry employed over 26,000 individuals in 2007.”

Even if Maryland offers the tax credit, there is no indication it will actually attract production activity that would not have occurred anyway. Data from previous years show no clear evidence of increased production activity in the time since the rebate was instituted. Furthermore, the proposed program is paltry compared to programs in other states: Louisiana provided \$115 million in tax credits during 2007; it is estimated that Connecticut will give out \$115 million in tax credits this year. Michigan expects to hand out \$150 million in tax credits in FY2010. In other words, other states have invested significant resources in attracting production activity to their regions. If any production occurs in Maryland, it will not likely result from this program.

This is not some kind boon for small business or independent filmmakers, either: to qualify for the tax credit, a company must have costs exceeding a half million dollars. The tax credit is also refundable, meaning that some companies might end up receiving direct payments from state coffers. Given the notorious practices of Hollywood accounting, you can be sure that film companies will find every way to increase their qualifying expenses. All in all, this program, were it to pass, could end up throwing millions at a few out-of-state film compa-

nies, create only paltry and temporary economic benefits, and come with a large reduction in tax revenues for the state at a time when it is facing an enormous deficit.

Income Tax:

Subtraction Modification for Federal Pensions SB236:

<http://mlis.state.md.us/2009rs/billfile/sb0236.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0006/sb0236.pdf

SENATE STATUS: First Reading

SCORE: -1

This bill proposes one of the most unjust and irresponsible income tax exemptions considered in the General Assembly: it would completely exempt 100 percent of federal pension income from the state’s income tax, at a cost of nearly \$1 billion through FY2014. Local revenue losses would be another \$600 million.

The exact purpose of the bill is unclear, other than political grandstanding. Rewarding federal employees for years of faithful service is commendable, and achieved by hefty benefits packages and pensions. Those in the private sector live with much less generous benefits throughout their careers, and make do with much less generous pension plans after retirement; yet this bill suggests that those taxpayers should pick up the tab for federal retirees who will not be paying state income taxes; it’s either that, or asking the state to swallow hundreds of millions of dollars in budget cuts, an unlikely occurrence.

Healthcare and Health Insurance: C

Maryland False Health Claims Act of 2009

HB304, SB272:

<http://mlis.state.md.us/2009rs/billfile/hb0304.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0272.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0004/hb0304.pdf

HOUSE STATUS: First Reading

SENATE STATUS: Third Reading Failed

SCORE: -2

This bill, modeled on the false claims acts adopted in many other states, would provide incentives for whistleblowers to report Medicaid fraud, potentially preventing the loss of millions

of dollars each year. According to the Maryland Department of Health and Mental Hygiene, 10 cents of every Medicaid dollar are lost to fraud or abuse. By enacting qualifying legislation, under federal law Maryland would also be eligible for an increased share of any recoveries made.

A similar bill was introduced in 2008, but also failed on third reading. That bill, however, was a broader false claims act, not limited solely to health-related claims. This year's bill failed by a single vote, likely due to intense lobbying from doctors, hospitals, and drug manufacturers. In the next legislative session, lawmakers should step up for the public good, and pass the False Health Claims Act. Even better, they could pass a broader false claims act.

More Flexible Health Insurance Options for Small Groups

HB674, SB637:

<http://mlis.state.md.us/2009rs/billfile/hb0674.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0637.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0004/hb0674.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: +6

Despite the politics surrounding health insurance costs, the General Assembly did make one modification that will result in more affordable health insurance premiums in the small group market. HB674 and SB637 change the state's rules regarding the Comprehensive Standard Health Benefit Plan (CSHBP). The CSHBP is an insurance plan that health insurers are required to offer to small businesses. Unfortunately, by prohibiting limitations on pre-existing conditions and requiring hefty "minimum" benefits, the plan has become too expensive: in 2007, the average premium for a plan based on the CSHBP was over \$4,500 for an individual, and over \$12,000 for a family. An actuarial evaluation conducted in late 2007 identified several problems with plan: artificial benefit floors and caps, and an inability on the part of insurers to accurately estimate risk, in part because of prohibitions on excluding pre-existing conditions.

This bill allows for exclusions of pre-existing conditions (so long as they are HIPAA-compliant), and removes the artificial benefit floor.

By giving insurers more flexibility in the plans they can offer to small businesses, premiums can be reduced, and those small businesses will be more likely to purchase health insurance for their employees.

The next challenge will be for state legislators and the O'Malley administration to take what they have learned from this bill and apply it more broadly. Indeed, they ought to take the state's own actuarial report at face value, which reports that "required services ... may inhibit the introduction of benefit plans that exclude low value services and providers while incentivizing the use of high value interventions." The state could start tackling the problem by cutting back on its sixty-six mandated health insurance benefits, mandates that include coverage for hair prostheses and acupuncture. Those sixty-six mandates make Maryland the third most mandate-happy state in the union. Individuals and employers should be free to choose a plan that works for them, rather than be forced to pay premiums to support a bloated standard plan cobbled together in Annapolis.

Health Care Affordability Act of 2009

HB951, SB813:

<http://mlis.state.md.us/2009rs/billfile/hb0951.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0813.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb0951.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: -2

The first of three off-the-wall proposals aimed at reforming healthcare this session, the Health Care Affordability Act would establish a single health insurance pool for all individuals, dependents of individuals, and small groups, as well as some larger businesses. By 2011, participating as an insurer of this new pool would be the only way a health insurer could offer coverage to individuals. The pool subsidizes coverage for low-income families, where low-income is defined as up to 400 percent of the federal poverty guidelines, or a family of four that makes \$88,200, that fall into either the individual or small group segments of the pool.

To pay for the risk associated with this pool, as well as the required subsidies, the bill pro-

poses several different tax increases and penalties for failure to obtain health insurance. Foremost among these is a new 2 percent payroll tax to be paid by all employers, including small businesses of all sizes, estimated to generate \$2.3 billion in new tax revenues. The bill does not permit employers to “deduct any payment from the wages of an employee.” However, employers cannot simply absorb such a large new cost without the effects being felt elsewhere. Employers will have to offset this tax increase by either increasing the prices of the goods and services they sell, by reducing wages or hiring fewer employees, or some combination of these. With the economy still dealing with the effects of the recession and Maryland facing its highest unemployment rate in years, forcing employers to raise prices and lay off people is hardly an appropriate method of funding health insurance reform.

Individuals will be required to purchase health insurance coverage from a carrier participating in the state’s pool or face stiff penalties, set at 50 percent of the average premium by 2012. Other tax increases include approximately 600 percent increases in taxes on distilled spirits and wine, and an approximately 1200 percent increase in taxes on beer. Interestingly, these proposed tax increases far outweigh the separate tax increases on alcoholic beverages proposed in HB791, SB729, and HB1160. While alcohol taxes have not increased in decades and are probably due for an increase to account for inflation, changes of this magnitude will undoubtedly harm sales for small businesses, and will likely not generate nearly as much tax revenue as anticipated, since consumers will alter their purchasing behavior to avoid the taxes.

Cigarette taxes increase by 38 percent from \$2.00 to \$2.75 a pack, and taxes for other tobacco products are raised from the current rate 15 percent of wholesale price to 90 percent. The same caveat about revenue applies here: Maryland has already seen less-than-expected tax revenue after its recent cigarette tax increase, since the higher taxes act as a deterrent to consumers. While this may be good for the health of Marylanders in the long term, this bill counts on the added revenue as a funding source for the insurance program. Maryland lawmakers apparently need a refresher course on the law of diminishing returns.

The bill expands Medicaid eligibility, despite estimates suggesting that 10 cents of every dollar spend on Medicaid are lost due to fraud and abuse. As the bill’s fiscal and policy note reports, Massachusetts, which enacted similar reforms in 2006, “has experienced budget difficulties due to the health care expansion, mainly due to the higher-than-expected number of enrollees in free or subsidized programs and lower-than-expected revenues from employer assessments.” While the bill purports to offer a choice of plans to individuals in the state’s new pool, these plans must be classified into three types, including a minimal basic plan. The state will be able to mandate the benefits that are included in this basic plan. Maryland’s current mandates have succeeded in keeping the individual health insurance market too expensive, and this bill would continue that misguided practice, resulting in less choice for Marylanders, rather than more.

Although this bill made little progress in the General Assembly, Congress is busy considering a federal version with many of the same vices. It too relies on a 2 percent payroll tax on employers, but 2 percent is the low end: it could increase to as much as 8 percent. While the current version of the bill exempts the smallest businesses from the tax, any business with a payroll larger than \$500,000 will be subject to the tax. While half a million may sound like a lot, it equates to about 13 employees making \$40,000 a year, or 10 employees making \$50,000.

Healthy Maryland Program

HB860, SB515:

<http://mlis.state.md.us/2009rs/billfile/hb0860.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0515.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb0860.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: -2

This bill essentially proposes a similar approach the one above, but on a smaller scale. It would require all individuals who do not have access to health insurance through their employer to join a single state health insurance plan, and require employers with more than 8 employees to contribute to the plan. Carriers would choose to participate as insurers for the state plan. As in the

previous bill, the state would determine minimum benefit levels and prohibit pre-existing condition limitations. The state's current mandate-heavy insurance requirements have already demonstrated this course of action is not ideal.

Under this bill, even the rates that carriers may charge are regulated. While this sounds like a guaranteed way to ensure affordable premiums, it will also likely be effective at deterring carriers from participating in the plan at all. The bill attempts to counter this by requiring carriers who participate in the small group market to also participate in this new program. An unanticipated side effect of this requirement may be to drive carriers out of the small group market as well.

Per-employee contributions for employers are not specified in this bill, meaning small businesses have no idea what the state will require them to pay into this health insurance plan. We can anticipate that it will be no small amount, however, leading to the same problems that imposing a payroll tax will in the previous bill.

Maryland Health Security Act of 2009

HB1186, SB881:

<http://mlis.state.md.us/2009rs/billfile/hb1186.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0881.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0006/hb1186.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: -2

Perhaps the most drastic change proposed this session, the Maryland Health Security Act would establish a single-payer health care system. This effectively does away with the traditional health insurance market as we know it, creating a single insurer: the state. All Marylanders would pay their premiums to the state, and the state, and only the state (thus the name "single payer") would pay health care providers for their services. Private health insurers would still be allowed to operate, but only to provide supplemental coverage, not duplicative coverage.

The bill's proposed changes would be so drastic that according to the fiscal and policy note, "There is [sic] insufficient data to reliably estimate the potential [fiscal] impact to the State." The changes would have to phased-in

over years. To give a frame of reference, however, consider that in 2006, "Maryland residents spent \$32.7 billion for health care services, averaging \$5,823 per person." Then consider that the entire budget for the state of Maryland in FY2010 is approximately \$31.7 billion. Switching to a single-payer system would thus mean doubling the state's budget, and also mean no choice for individuals looking for health insurance. One of the touted benefits of a single-payer system is portability: health insurance would no longer be linked to one's job, and indeed this would be a great benefit. However, the appropriate way to accomplish this is to remove the obstacles that prevent insurers from offering reasonably priced individual plans: i.e., remove unnecessary mandates and heavy-handed regulation that drive up individual premiums.

Education:A

College Textbook Competition and Affordability Act of 2009

HB 85, SB 183:

<http://mlis.state.md.us/2009rs/billfile/hb0085.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0183.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0005/hb0085.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: +6

Textbook cost is a significant factor in the affordability of higher education. Not only do today's students face steep hikes in tuition; in 2005, a Government Accountability Office report found the price of college textbooks had increased at more than twice the rate of inflation over an eighteen-year period. Furthermore, in the majority of cases textbooks do not count as qualified tax-deductible educational expenses according to the IRS's definitions.

This bill requires public colleges and universities to post detailed information about textbook selections online, including ISBN numbers and editions, well before classes begin. It also requires publishers to notify those in charge of textbook selections of the cost of various editions and packages, and requires publishers to make the components of "bundles" (which may include a textbook and additional materials, such as CD-ROMs or even calculators) available

separately. The bill implements some provisions of the federal Higher Education Opportunity Act of 2008, but goes beyond them.

By clearly indicating information about which books are required, and whether older, often significantly less expensive editions will suffice, this bill allows both online and off-campus bookstores to better compete with the official on-campus bookstores. Increased competition results in decreased textbook costs for students.

**Building Opportunities for All Students and Teachers (BOAST) in Maryland Tax Credit
HB 1259, SB 715:**

<http://mlis.state.md.us/2009rs/billfile/hb1259.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0715.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0009/hb1259.pdf

HOUSE STATUS: First Reading

SENATE STATUS: First Reading

SCORE: +2

The BOAST program would create a tax credit for 75 percent of a business's contributions to non-profits that offer scholarships to private K-12 schools, or that offer grants to public schools that adopt innovative educational programs. BOAST is a particularly good investment for all parties involved: students who receive scholarships through the program have the opportunity to attend high-performing private schools; as fewer students attend public schools, the state saves money; all the while, the state still captures 25 percent of the value of business contributions as tax revenue.

As the recent closing of Towson Catholic High School demonstrates, private schools are not immune to the broader economic downturn. Had the General Assembly passed the BOAST tax credit in 2008, Towson Catholic may not have been forced to close along with five other Catholic schools in Maryland. The bill made significant progress last year: it passed the Senate by a healthy margin, but remained in the House Ways and Means Committee. The General Assembly should pass BOAST to ensure that high-performing private schools do not have to close. Such closures hurt the schools as well as the state's bottom line, as Maryland's public schools will have to absorb (and pay for) new students who no longer attend private schools.

So that the total amount of tax credits does not overwhelm the state budget, the bill requires a cap on the total amount of money available for credits each year. Similar programs exist in several other states; in Pennsylvania, for example, nearly \$40 million worth of tax credits for scholarships to private K-12 schools were used this past year. Earlier, in 2006, Arizona offered \$12 million in tax credits for corporate contributions to scholarship organizations; the entire amount was used.

This legislative session, a scaled-down program similar to BOAST that would only have applied to pre-schools was also introduced as HB 603, the "Great Preschools Tax Credit Program," but went no further than a first reading.

Smart Start Scholarship Program

HB 602:

<http://mlis.state.md.us/2009rs/billfile/hb0602.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb0602.pdf

HOUSE STATUS: Unfavorable Report

SCORE: -2

This innovative, voucher-like program would have created a scholarship for up to 100 percent of the amount of state and local money spent educating a child, and allowed parents to use that scholarship to send their children to participating public or private pre-kindergarten programs. This would give parents more flexibility in choosing a pre-kindergarten program, and create further competition between different pre-kindergarten programs, public and private, potentially leading to improvements. Unfortunately, the bill received an unfavorable report in the House, resulting in a negative score.

Future versions of this bill could focus on providing these scholarships primarily to children who are currently attending public schools. As this bill is written, it would likely have the effect of granting scholarships to children already attending private schools.

Innovative Educational Measures

HB630, HBI325:

<http://mlis.state.md.us/2009rs/billfile/hb0630.htm>

<http://mlis.state.md.us/2009rs/billfile/hb1325.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb0630.pdf

http://mlis.state.md.us/2009rs/fnotes/bil_0005/hb1325.pdf

HOUSE STATUS: First Reading (both House bills)

SCORE: +2

Two bills were introduced this year that proposed innovative ways to promote parental involvement in children's education. Both of these bills create a financial incentive for parents to be aware of and encourage their child's attendance and activity at school.

The first bill, HB630 or the Restore Respect at School Act, would have prohibited parents from receiving tax credits for their dependent child if the child failed to meet certain minimal standards for completing homework assignments, behavior, and attendance. The homework requirements are not based on scores of any kind, but rather records of effort. Thus, they do not penalize children who may have learning disabilities or difficulty with particular subjects. Likewise, the attendance requirement is minimal, penalizing parents only if a child was absent and unexcused for more than 20 percent of the school year. While that may sound like too much to apply to many students, the Department of Legislative Services notes that in Baltimore City, 9.3 percent of students are "habitually truant," meaning they are "unlawfully absent for more than 20 percent of the school days within [a] marking period." The bill also has provisions to ensure that the tax credit cannot be denied to needy families.

The second bill, HB1325, focuses specifically on attendance, and would require parents to repay the state's Department of Education for each day their child is absent and unexcused. The rate of reimbursement per day varies by school system, and ranges from a low of \$5.58 in Worcester and Talbot counties to a high of \$27.88 in Allegany County. However, habitual absenteeism is highest in Baltimore City and Prince George's County, and in these systems, the reimbursement per day would be \$27.21 and \$22.65 respectively. While the fiscal and policy note points out that in some cases, parents may choose to write a note excusing their child from absence rather than pay the fine, this still accomplishes the purpose of making the

parent aware of the child's absence, and forcing some involvement on the part of the parent.

In the case of both bills, any money collected as penalties is to be used for specific education and truancy-related purposes, rather than being reverted to the general fund.

Regulation: C

Rate Regulation and Contracts for New Electric Generation Facilities

HB1530, SB844:

<http://mlis.state.md.us/2009rs/billfile/HB1530.htm>

<http://mlis.state.md.us/2009rs/billfile/SB0844.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb1530.pdf

HOUSE STATUS: First Reading

SENATE STATUS: Passed; House: Unfavorable Report

SCORE: -2

Overview. This year's legislative session saw two major proposals to re-regulate Maryland's electricity market; this bill, introduced by request of the O'Malley administration, is the first. The bill would require that any new power plants built in the state be owned by Maryland electric companies, and that these new power plants sell their electricity first to Maryland electric companies, and only then to buyers in other states.

Since electricity deregulation in Maryland required that electric companies divest themselves of electricity generating facilities, the bill would mean a return to electricity rate regulation for any new power plants built in the state. The Maryland Public Service Commission would have the power to set the maximum "just and reasonable" rates that electric companies would be permitted to charge. The bill includes some choice language, stating that "The General Assembly finds and declares that it is the goal of the State to return as soon as possible to a regulated electric market for all customer classes."

Maryland's Electricity Gap. It is clear that Maryland will face a gap between its anticipated demand for electricity and the total generating capacity available should the status quo continue. Depending on the progress of various transmission projects, this gap may be reached as early as 2011, and further shortages could be encountered by 2013. Thus, by that time, Mary-

land must find a way to close the gap between generation capacity and demand.

Since about 80 percent of every Marylander's electric bill is due to the wholesale cost of electricity, a cost that is no longer regulated, this bill aims to reduce the cost of electricity by ensuring that any new power plants constructed in the state will once again be regulated. However, there is no guarantee that any new power plants will be built: in the past decade, Maryland has only added 700 megawatts of generation capacity (the equivalent of a single power plant). In fact, were this bill to pass, there would likely be even less incentive for companies interested in constructing power plants in Maryland; power plants and their accompanying transmission and distribution lines are enormously expensive, and any new plants would be required to charge regulated rates. Investors are unlikely to be willing to risk large initial capital costs when their only reward is a rate set by the Public Service Commission. Thus, while the bill would in theory reduce the cost of electricity, it does nothing to actually ensure that new power plants will be constructed and that Maryland's gap between supply and demand will be closed.

A Different Solution. However, the gap can also be closed by addressing the demand side. Demand for electricity fluctuates greatly day to day and season to season, but total generation capacity must be capable of meeting the maximum "peak" demand, plus some margin of error for unexpected events and emergencies. Because there is no efficient way to store large amounts of electricity for an extended period of time, electricity must be generated in a "just in time" manner; therefore, to meet peak demand, hundreds of megawatts of generation capacity must be constructed, only to be used for a few hours every year. In fact, in Maryland and the eleven surrounding states that comprise the PJM Interconnection (our regional grid), three to four days each year account for a full 16 percent of peak demand.

Thus, by finding ways to reduce its peak demand, Maryland can close the gap between supply and demand for several years, giving time for transmission projects in other states to progress, and time for alternative energy technologies to improve. In fact, according to the Mary-

land Public Service Commission, "taking and maintaining control of Maryland's energy future will require us to continue our aggressive pursuit of cost-effective demand-side management and energy efficiency resources." Demand-side management includes technology such as advanced metering infrastructure (AMI, or meters that communicate with the electric company to report loads, outages, et cetera) and demand response equipment (equipment that permits the electric company to cycle off a customer's power-hungry appliances such as air conditioners and water heaters to avoid times of peak electricity demand). The PSC has described these sorts of responses as "low hanging fruit," saying that "there likely are significant quantities of untapped demand response ... that could be acquired quickly and relatively inexpensively to begin filling the gap."

BGE has already begun to implement a demand response initiative in the form of its Peak Rewards program. In exchange for allowing BGE to cycle off and on their air conditioner during times of peak demand, BGE customers receive a credit on their electric bill up to \$100. Other Maryland electric companies are still in the planning stages regarding demand response equipment, but if the General Assembly and administration focused on speeding up the installation of demand response technology across the state, we would be well on our way to closing Maryland's electricity gap.

Likewise, the installation of advanced meters will allow electric companies to more easily adopt variable pricing. In the wholesale market, electricity prices fluctuate, increasing when demand is high (such as on hot summer days), and decreasing when demand is low (e.g., at night). Yet, most customers pay a flat rate regardless when they use electricity. By adopting variable pricing, customers will have an incentive to modify their electricity usage: e.g., by running the washer and dryer at night, rather than in the afternoon. This saves the customer money and reduces peak demand, thereby obviating the need to construct additional generation capacity.

According to a study conducted at Carnegie Mellon that specifically examined the PJM Interconnection of which Maryland is a part,

"Pretending that consumers demand the same amount of electricity no matter what the price,

or that consumers cannot vary their demand as prices change has cost consumers dearly and led to large, unnecessary investments in peaking plants ... These under-utilized peak generation investments are a luxury that neither providers nor customers should have to pay for."

Conclusion. Instead of focusing on demand-side management, which the independent analyst retained by the PSC called the "most promising" option to close Maryland's energy gap, the administration's bill is fixated on supply. Yet by re-regulating any new power plants built in the state, the bill, if passed, would present an even greater obstacle to new generation capacity construction. Maryland has not been able to secure enough new generation capacity in the past decade in an unregulated market, yet the O'Malley administration believes that a regulated market will somehow be more attractive. Furthermore, both proposals to re-regulate the market could face significant legal hurdles with constitutionality and federal preemption.

Both the administration and the General Assembly should listen more carefully to the PSC's advice: pick the low hanging fruit of demand-side management first. This will delay Maryland's immediate capacity problems, and allow more time to focus on the reasons why Maryland has not attracted enough new generation capacity.

A return to regulation may be politically popular, but times have changed since deregulation occurred. Fuel costs have increased, demand has increased, and supply is constrained. There is no going back. The PSC has warned against basing Maryland's energy future on gut feelings, and suggested it already has all the authority it needs:

We cannot reconcile the perhaps visceral appeal of full re-regulation with the very real obstacles to and consequences from a strategy designed to turn back the clock. As economic and financial conditions change, we believe that ratepayers are better served if the Commission retains the ability – which it has now, under current law – to direct and guide the construction of future generation in Maryland to serve the best interests of Maryland ratepayers.

Maryland Electricity Reregulation and Energy Independence Act of 2009

HB1312, SB795:

<http://mlis.state.md.us/2009rs/billfile/HB1312.htm>

<http://mlis.state.md.us/2009rs/billfile/SB0795.htm>

FISCAL & POLICY NOTE:

[http://mlis.state.md.us/2009rs/fnotes/bil_0002/](http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb1312.pdf)

[hb1312.pdf](http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb1312.pdf)

HOUSE STATUS: Unfavorable Report

SENATE STATUS: First Reading

SCORE: +1

The other major proposal to re-regulate Maryland's electricity market was this bill, the Maryland Electricity Reregulation and Energy Independence Act. While similar in many ways to the administration's bill discussed above, this bill goes even further by including provisions that would allow the Public Service Commission (PSC) to require Maryland electric companies to purchase already-existing power plants, rather than require regulation of only new plants. The intent appears to be to return Maryland as much as possible to its pre-deregulation environment, in which electric companies also owned generating facilities, and the entire system fell under the regulatory rate-setting authority of the PSC.

This intent, however, contradicts the PSC's report on options for re-regulation that was presented to the General Assembly. The conclusions of both the PSC and an independent analyst were the same. The PSC wrote, "We cannot, however, recommend that the General Assembly pursue full re-regulation – the magnitude and uncertainty of the benefits, relative to the high cost of achieving the outcome do not clearly warrant the return to rate base regulation." The commission also warns of "other potentially serious risk factors that could create unanticipated, adverse consequences for Maryland's ratepayers."

Likewise, the independent analyst recommended against full re-regulation, warning that "the cost for Maryland ... would be very substantial for many years following the reacquisition of generation resources, both in terms of direct costs and assumed risks." While this bill does not immediately require a return to full re-regulation, the bill expresses the intent to return to a regulated market in language identical to the administration's bill, and authorizes the PSC to require electric companies to acquire existing power plants.

The bill argues that a return to re-regulation is necessary because, “After almost 10 years after the enactment of the electric industry restructuring law ... competitive retail electric markets have not developed,” and “retail electricity rates increased significantly following the expiration of rate caps and have continued to increase each year.” But these complaints ignore history. Rates indeed increased immediately following the expiration of rate caps, but not due to price gouging or profiteering, but to increases in the price of natural gas that fuels many of the region’s power plants, as well as the limits of the transmission lines Maryland uses to import power from outside the state. Lawmakers need to ask why a competitive retail market has not developed, why Maryland has been unable to attract new generation capacity, and why they believe that increasing regulatory burdens will attract new capacity.

Smart Grid Initiative

HBI072:

<http://mlis.state.md.us/2009rs/billfile/hb1072.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb1072.pdf

HOUSE STATUS: First Reading

SCORE: +1

According to Maryland’s Public Service Commission (PSC), “there is no doubt that energy efficiency and demand response programs yield the greatest bang for the ratepayer’s investment buck ... Demand-side initiatives must be an important weapon in Maryland’s reliability arsenal.” This bill would have required the PSC to create a pilot program to assess the well-known benefits of an advanced metering infrastructure (AMI), a critical part of demand-side management techniques. Advanced electric meters allow two-way communication between the electric company and a consumer’s electric meter; this aids the electric company is measuring peak demand, determining the scope of outages, and paves the way for variable pricing of electricity, which will save consumers money and obviate the need for expensive peaking power plants. AMI and other demand-side management options are discussed at length in the above analysis of the administration’s electricity re-regulation bill.

The benefits of AMI are well-documented. BGE has already implemented a pilot program, and according to this bill’s fiscal and policy note, PEPSCO and Delmarva Power already have proposals to install advanced meters throughout their service areas, and do not believe further pilot programs are necessary. Thus, instead of simply suggesting further testing, the General Assembly should encourage all electric companies serving Marylanders to adopt AMI, along with other proven demand-side management technologies. Such efforts will result in tangible positive results for the state’s energy supply.

Ethics and Transparency: B

State Funding Accountability Act

HB1192, SB556:

<http://mlis.state.md.us/2009rs/billfile/hb1192.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0556.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0002/hb1192.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: +6

One particularly bright spot in the legislative session was this bill, which increases transparency surrounding state grants. As noted in a 2009 report, definitive information about awardees and grant amounts for the state’s many grant-giving agencies is difficult to track down. Information was available for no more than \$50 million in grants in a given year; by contrast, the Office of Legislative Audits estimates that there were thousands of state grantees, receiving a total of \$900 million in FY2008.

The bill requires grantees who have received more than \$50,000 in state aid to provide a report to the state which describes the purpose of the grant, any matching funds obtained, estimates of the economic effect of the grant, and its effectiveness in serving state residents. These reports will be compiled and made available to the public on a searchable website serving as a one-stop location for all such grant information.

While the centralization of information required by this bill will be extremely helpful to those interested in keeping a close eye on state grants, the bill is not perfect: it applies only to grants of \$50,000 or more, and the language of the bill appears to exclude grantees who might

receive multiple smaller grants that total to more than \$50,000. For example, under this bill, an organization that receives two \$40,000 grants would not be required to file a report, despite having received \$80,000 in state aid. Furthermore, the bill includes no method by which the reports are checked for accuracy, meaning that grantees may be tempted to overstate the efficacy of their grants. Despite its flaws, however, the bill is a welcome step in the right direction.

Unfortunately, despite the bill's passing, the O'Malley administration recently reported that because of budget cuts, the searchable website has not been created, and the grant reports have not even been collected. At the very least, the administration could have required its grantees to file the reports required by this law; these reports would then have been available to the public under the Maryland Public Information Act. Instead, the administration's inaction has effectively neutered one of the best bills passed this legislative session.

Pharmaceutical Manufacturers – Disclosure of Advertising, Payments, and Gifts

HB1477, SB196:

<http://mlis.state.md.us/2009rs/billfile/hb1477.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0196.htm>

FISCAL & POLICY NOTE: Not Available for House bill

http://mlis.state.md.us/2009rs/fnotes/bil_0006/sb0196.pdf

HOUSE STATUS: Unfavorable Report

SENATE STATUS: Unfavorable Report

SCORE: -4

While the legislature battled for transparency surrounding state grants, the same cannot be said about transparency surrounding the marketing of pharmaceuticals to patients and doctors. Two bills were introduced that would have required drug companies to disclose the amounts spent on advertising their products, as well as any gifts or payments made to doctors.

The broader house bill, HB1477, would have required disclosure of all marketing and advertising costs in the state, as well as any gifts, honoraria, remunerations, or any kind of payments made to doctors (or any person able to prescribe medicine) for items like educational programs, entertainment, or travel, if the amount exceeded \$25. The bill provided protection for company

trade secrets, and did not require disclosure of scholarships or similar expenses.

The narrower Senate Bill, SB196, only required disclosure of payments made to licensed physicians, and only such payments as were made for “speeches, consulting, or conducting research.” However, the bill would have required the state to post the collected information online at least once each year.

The Senate bill's fiscal and policy note states that “some studies have shown that manufacturer payments can influence physicians' prescribing habits,” and adds that several states have already enacted similar disclosure laws. The General Assembly should see to it that the broader House version of this bill passes next year, and that it includes the online availability and disclosure provisions of the Senate bill as well.

Ethics – Closing the Revolving Door

HB475, SB695:

<http://mlis.state.md.us/2009rs/billfile/hb0475.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0695.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0005/hb0475.pdf

HOUSE STATUS: Passed

SENATE STATUS: First Reading

SCORE: +4

While state legislators may have missed some opportunities to promote transparency and close loopholes this session, one new proposal managed to pass the House before stalling in the Senate. HB475 deals with the so-called “revolving door”; i.e., the frequent occurrence of government officials who leave their positions to work in the private sector, and then lobby the position they used to occupy, or the department they formerly oversaw. In such situations, they are able to take advantage of a network of contacts and intimate knowledge of government workings. Often this benefits their new employer, but sometimes also at the expense of the public good. The bill would have prevented former state or public officials from working for pay on legislative matters in a period of one year after they left their public office.

“Official” is defined in such a way as to consider whether the person was elected or appointed, how much they were paid, and what decision-making power they held. Thus, the

bill would not apply to typical state employees, but only to those in higher positions of authority. Furthermore, the bill would not prevent a state employee from working for another state department or organization, or any unit of local government.

Campaign Finance – Closing a Loophole

HB170:

<http://mlis.state.md.us/2009rs/billfile/hb0170.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb0170.pdf

HOUSE STATUS: First Reading

SCORE: +1

HB170 would have required business entities such as LLCs that are owned entirely or primarily by the same people to count as a single entity for the purpose of campaign contributions. Under current law, a person or corporation cannot contribute more than \$4,000 to one recipient, or \$10,000 total. However, a campaign finance law loophole allows multiple LLCs or other partnerships owned by the same person to each contribute up to the maximum amount, thereby potentially allowing individuals to contribute many times more than the law intends.

According to the bill’s fiscal and policy note, “similar bills have been introduced in each of the last six regular sessions.” Two versions have been passed by the House, one in 2003, and one in 2005; however, both of those made no headway in the Senate. Those legislators who have introduced, sponsored, or helped to pass legislation designed to close this loophole deserve credit for their actions, but it speaks volumes that despite being aware of the loophole, the Assembly as a whole cannot muster the wherewithal to close it.

Miscellaneous

Slot Machines – Betting on an Ace in the Hole?

HB777, HB1268:

<http://mlis.state.md.us/2009rs/billfile/hb0777.htm>

<http://mlis.state.md.us/2009rs/billfile/hb1268.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0007/hb0777.pdf

http://mlis.state.md.us/2009rs/fnotes/bil_0008/hb1268.pdf

HOUSE STATUS: First Reading (both House bills)

SCORE: -2

Two bills related to slot machines (“video lottery terminals”) were introduced in the House this session. One, HB 1268, proposes a constitutional amendment to allow placing slots at BWI airport; the second, HB 777, contingent upon the first, would make available a license to operate up to 3,000 slot machines at the airport. If passed, the first bill’s amendment would then have to be ratified by voters in the November 2010 general election.

Neither bill went beyond a first reading, but they offer an opportunity to consider the larger role of slot machines in Maryland. Last November, more than 58 percent of Marylanders voted in favor of legalizing slots; supporters for slots outnumbered opponents in every single county as well as Baltimore City. The reasons are clear: slots have the potential to generate significant revenues for our cash-strapped state, revenues that are currently being lost to neighboring states like Delaware, Pennsylvania, and West Virginia. The Department of Legislative Services estimated that Marylanders were responsible for \$400 million in spending on slots each year in Delaware and West Virginia, and which does not even include Pennsylvania.

Maryland voters approved up to a total of 15,000 slot machines spread between five different locations. Currently, however, the state’s Video Lottery Facility Location Commission has only four complete applications for four different locations. This puts the state in a take-it-or-leave-it position: as there is only one applicant per location, there is no competition between the applicants. If the state rejects an applicant, there is no telling when another viable proposal will be offered.

Why so few applicants? As Marta Mossburg wrote in the Washington Examiner, the reason is likely a combination of hefty license application fees: \$3 million for every 500 slot machines specified in a proposal; and a fairly poor rate of return for interested investors: by law, they can receive a maximum of 33 percent of the gross revenues generated by their slot machines. Add in the yearly fee of \$425 per machine, and the fact that Maryland’s revenue distribution for operators is one of the most oppressive in the nation, and not surprisingly the state is having a hard time attracting investors to open up slot sites.

If Maryland wants to attract more applicants, state lawmakers will have to sweeten the deal

for potential investors. This means lowering the absurdly high application fees and allowing slots operators keep more revenue they generate. Maryland could even set up a progressive slot revenue tax system, where the tax rate starts low, but increases as the gross proceeds increase, a system that is used in many other states.

Time is of the essence, too: the sooner applications are approved, the sooner the applicant can start construction, and the sooner the state will receive revenue from the location. In this economic downturn, the estimated \$750 million in construction costs required to house 15,000 machines would help provide some much needed economic activity, as well as offer numerous construction jobs.

As it stands, the state is betting heavily on slots as a solution to its structural deficit. According to this past year's Spending Affordability Committee report, officials are counting on slots revenue to reduce the state's deficit from over \$1.2 billion to about \$800 million. But without competitive proposals for the five slot sites, Maryland cannot continue to count on future slots revenue to solve its budget crises.

State Purchase of Pimlico and Laurel Race-tracks, and Bowie and Preakness Properties

HB1578, SB1072:

<http://mlis.state.md.us/2009rs/billfile/hb1578.htm>

<http://mlis.state.md.us/2009rs/billfile/sb1072.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0008/hb1578.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: -6

Government-funded, or more accurately, taxpayer-funded bailouts of failing businesses are a popular item on the agenda these days. As Washington Examiner columnist Marta Mossburg noted, horse racing and the Preakness are looking to be "too Maryland to fail."

Magna Entertainment Corporation (MEC), owner of several racetracks in the U.S. as well as abroad, including the racetracks in Pimlico and Laurel, filed for bankruptcy this past March. But the O'Malley administration and state legislators, concerned that the sale of the racetracks during bankruptcy might result in the Preakness leaving Maryland, pushed through emergency legislation

authorizing the state to acquire the racetracks and related property by eminent domain.

Robert Brennan of the Maryland Economic Development Corporation (MEDCO), the quasi-state entity which would actually pony up the bonds should the state decide to purchase the property, suggested that the legislation was designed to protect the state's rights. But just because Maryland has the authority to acquire the property through eminent domain does not mean that doing so is a good idea.

First, if MEC ends up auctioning off its assets to the highest bidder during bankruptcy, the Preakness will not necessarily disappear from Maryland. In fact, one potential purchaser, Heritage Racing LLC, appears to have been formed "with the sole purpose of keeping the Preakness in Maryland."

Second, the state's right of eminent domain could end up clashing with the decision of the bankruptcy court, leading to more legal wrangling. If and when that is settled, lawmakers seem uncertain what they will do with the properties after acquiring them. Shaun Adamec, the Deputy Press Secretary for Governor O'Malley, indicated, "The state doesn't really have an interest in getting into the horseracing industry. It merely has an interest in keeping jobs in Maryland's economy."

The idea seems to be that once Maryland acquires the properties, it can then turn around and sell them to a private party on the condition that the Preakness remains in-state. It sounds good in theory, but considers a similar attempt to impose rules on the purchase of a valuable commodity that has been failing miserably: slots. With slots machines, the state has created innumerable rules and regulations: details such as exactly how many may be operated and where they may be placed, on top of hefty taxes and application fees. The result was disappointing bids for slots. What makes Governor O'Malley and the General Assembly think they will be able to do better with the Preakness?

Worst case, the state may not be able to find a qualified private party to take over the races who is also willing to keep the Preakness in Maryland. At that point, the only options will be to relax the restrictions on the sale, or for the state to run the operation itself, and thus embark on a fiscal and administrative nightmare, ensuring that Maryland taxpayers subsidize a failing industry.

As it turns out, the entire question may be moot: in mid-October, MEC stated that it will not consider bids during its bankruptcy auction that would move the Preakness out of state.

Maryland Economic Stimulus Act

HB669:

<http://mlis.state.md.us/2009rs/billfile/hb0669.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0009/hb0669.pdf

HOUSE STATUS: First Reading

SCORE: +1

The General Assembly passed up a great opportunity to enact a real economic stimulus this session by failing to act on HB669, the Maryland Economic Stimulus Act. This bill would have conformed certain aspects of Maryland's tax code to the federal tax code, and allowed small businesses in particular to deduct more expenses in the current year, and to depreciate capital expenditures more quickly than usual. These benefits would have reduced the state tax burden on businesses in the short term, and perhaps even have provided these businesses with an incentive to make property and capital expenditures now, thereby stimulating the economy. Sadly, this bill went no further than a first reading.

Taxpayer Protection Act

HB895:

<http://mlis.state.md.us/2009rs/billfile/hb0895.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0005/hb0895.pdf

HOUSE STATUS: First Reading

SCORE: +1

Many Marylanders may be unaware, but each year, irrespective of official tax hikes, our taxes increase. The culprit is inflation. The state's income tax brackets are set at specific levels that do not automatically change each year to compensate for inflation; they require legislative action to adjust them. Because inflation usually increases each year, the real purchasing power of the same amount of money declines. Yet while the same amount of money will buy you less and less, Marylanders' income taxes remain the same. This problem is informally known as "bracket creep."

This bill aims to rectify the problem by indexing the state's income tax brackets to the

Consumer Price Index, a common measure of inflation. Many other state brackets as well as the federal income tax brackets are already indexed to account for inflation; in fact, other parts of Maryland's tax code are already indexed in such a way. Altering Maryland's income tax brackets to account for inflation would not only align Maryland's tax code with federal and national practices, but would also do justice to Maryland taxpayers.

Increase in Unemployment Benefits

HB740, SB576:

<http://mlis.state.md.us/2009rs/billfile/hb0740.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0576.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0000/hb0740.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: -6

Because unemployment benefits are ultimately paid by employers in the form of unemployment taxes, any increase in benefits necessitates an increase in taxes on business. This is problematic during tough economic times: while many workers could certainly benefit from increased unemployment benefits, businesses are being forced to lay off workers while paying higher unemployment taxes when they can least afford them. The larger number of people drawing on the state's Unemployment Insurance Trust Fund also forces the state to use higher tax rates on employers.

The General Assembly could have offset the negative effect of increased unemployment benefits on businesses by offering them something else; for example, the Maryland Economic Stimulus Act, discussed above; instead, lawmakers failed to act on that opportunity.

Maryland Energy Conservation Building Standard Improvement Act

HB707:

<http://mlis.state.md.us/2009rs/billfile/hb0707.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0007/hb0707.pdf

HOUSE STATUS: Second Reading

SCORE: -2

HB707 would have required the Department of Housing and Community Development (DHCD)

to adopt an energy conservation code to be incorporated into building codes, thereby requiring new buildings to adhere to the stricter code. While the intent of adopting the code is to significantly decrease energy consumption, and thus costs, over the lifetime of a building, the Department of Legislative Services notes the bill “may significantly increase the cost of procuring construction materials and otherwise increase the cost of doing business.” Even the DHCD says that “increased construction costs may limit the ability for developers to build affordable housing in Maryland.”

Energy conservation is a good idea; in fact, Maryland’s less-than-stellar fuel tax revenues indicate more of the state’s citizens choose to drive less, and are purchasing more fuel-efficient vehicles. The difference is that in the case of driving and purchasing cars, Marylanders choose energy conservation on their own, rather than by state mandate. It makes sense for the state to mandate energy conservation codes for its own buildings, but rather than regulate the housing construction industry, legislators ought to let the market determine the demand for energy-efficient housing. If such housing truly saves money in the long run, people will take notice, and if they can afford it, they will pay the increased up-front cost.

Single-family home construction starts dropped precipitously in 2008, a casualty of the slow economy; the last thing we need is legislative interference that further increases the price of housing construction.

Freedom of Association and Assembly Protection Act of 2009

HB311, SB266:

<http://mlis.state.md.us/2009rs/billfile/hb0311.htm>

<http://mlis.state.md.us/2009rs/billfile/sb0266.htm>

FISCAL & POLICY NOTE:

http://mlis.state.md.us/2009rs/fnotes/bil_0001/hb0311.pdf

HOUSE STATUS: Passed

SENATE STATUS: Passed

SCORE: +6

Republicans and Democrats can agree that the State Police should not infiltrate peace activist groups and meetings of anti-death penalty protestors, and then label such groups as potential terrorists despite a lack of evidence of any illegal activity. Last summer, the Baltimore Sun

reported that documents obtained by the ACLU indicated the Maryland State Police spent over 280 hours spying on various citizens advocacy groups. This legislative session, the General Assembly passed Governor O’Malley’s bill unanimously, which is designed to prevent this sort of policy from reoccurring.

At the time the news was broken, State Police officials “said they did not curtail the protestors’ freedoms.” But an independent investigation later found the exact opposite, concluding that “the surveillance intruded upon the ability of law-abiding Marylanders to associate and express themselves freely.” After all, the likelihood of an undercover agent in the midst of a group of people would encourage one think twice before speaking frankly, regardless of any intentions of illegal activity.

Though the bill was not as strong as the ACLU had preferred, it is heartening to see some swift and decisive action on the part of the administration and lawmakers.

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APPENDIX A – SCORING AND GRADING DETAILS

The Methodology section describes the two-factor scoring system used in this report. This Appendix describes the system used to convert raw scores to percentages, and also includes the raw score tables.

The range of raw scores for a given set of bills runs from the negative total raw score to the positive total raw score; i.e., we add the multipliers for all selected bills. If the coefficient for every bill were negative, this would produce the maximum negative raw score; if every coefficient were positive, this would produce the maximum positive raw score. In mathematical notation, the range of raw scores (R) is simply:

$$[-R, R]$$

Where R is the sum of each bill’s multiplier (M), beginning with the first bill (b) and ending with the last bill in the set (B):

$$R = \sum_{b=1}^B M_b$$

The actual score of a given set of bills will fall within this possible range, but where exactly depends on the coefficients (C). Thus, the actual score (S) is calculated by adding up the score of each bill (C x M) in the set:

$$S = \sum_{b=1}^B C_b M_b$$

To convert the actual raw score (S) to a percentage (P), we use the following equation:

$$P = \frac{S + R}{2R}$$

Percentages are then assigned to letter grades according to the table in the Methodology section.

The following tables give the coefficients, multipliers, raw scores, and percentages used to calculate the grades for this report. **P = Passed, FR = First Reading**

BUDGETARY MATTERS				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 100	P	-1	3	-3
SB 165	P	-1	3	-3
HB 0101	P	-1	3	-3
SB 0166	P	-1	3	-3
SB 0167	P	-1	3	-3
HB 0102	P	-1	3	-3
HB 0140	UNFAVORABLE REPORT	-1	2	-2
SB 894	FR	1	1	1
HB 1431	UNFAVORABLE REPORT; WITHDRAWN	-1	2	-2
			RAW SCORES	23
			PERCENT	4%

TAXES				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 0108	P	-1	3	-3
SB 0552	P	-1	3	-3
HB 0423	FR	-1	1	-1
SB 0722	FR	-1	1	-1
HB 0746	FR	-1	1	-1
HB 0747	FR	-1	1	-1
HB 1214	FR	-1	1	-1
HB 528	FR	-1	1	-1
SB 491	FR	-1	1	-1
HB 0791	FR	-1	1	-1
SB 0729	FR	-1	1	-1
HB 1160	FR	-1	1	-1
HB 0812	FR	1	1	1
SB 0249	FR	1	1	1
HB 0895	FR	1	1	1
HB 0908	FR	-1	1	-1
SB 0596	FR	-1	1	-1
HB 1182	REASSIGNED	-1	1	-1
SB 0040	FR	-1	1	-1
RAW SCORES			23	-17
			PERCENT	13%

HEALTHCARE AND HEALTH INSURANCE				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 0304	FR	1	1	1
SB 0272	THIRD READING FAILED	-1	3	-3
HB 0674	P	1	3	3
SB 0637	P	1	3	3
HB 0860	FR	-1	1	-1
SB 0515	FR	-1	1	-1
SB 0813	FR	-1	1	-1
HB 951	FR	-1	1	-1
HB 1186	FR	-1	1	-1
SB 0881	FR	-1	1	-1
RAW SCORES			16	-2
			PERCENT	44%

EDUCATION				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 0085	P	1	3	3
SB 0183	P	1	3	3
HB 0602	UNFAVORABLE REPORT	-1	2	-2
HB 0630	FR	1	1	1
HB 1259	FR	1	1	1
SB 0715	FR	1	1	1
HB 1325	FR	1	1	1
RAW SCORES			12	8
			PERCENT	83%

ETHICS AND TRANSPARENCY				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 0170	FR	1	1	1
HB 0475	SENATE FR	1	4	4
HB 1192	P	1	3	3
SB 0556	P	1	3	3
HB 1477	UNFAVORABLE REPORT;WITHDRAWN	-1	2	-2
SB 0196	UNFAVORABLE REPORT	-1	2	-2
RAW SCORES			14	7
			PERCENT	73%

REGULATION				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 1530	FR	-1	1	-1
SB 0844*	P	-1	3	-3
SB 0844*	UNFAVORABLE REPORT	1	2	2
HB 1312	UNFAVORABLE REPORT	1	2	2
SB 0795	FR	-1	1	-1
HB 1072	FR	1	1	1
RAW SCORES			10	0
			PERCENT	50%

* SB 0844 is listed twice, despite having been originally cross-filed as HB 1530 in the House. This is because the House took action on the amended version of SB 0844 that passed the Senate, rather than the original version that had been cross-filed.

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OVERALL				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
HB 0085	P	1	3	3
SB 0183	P	1	3	3
HB 100	P	-1	3	-3
SB 165	P	-1	3	-3
HB 0101	P	-1	3	-3
SB 0166	P	-1	3	-3
SB 0167	P	-1	3	-3
HB 0102	P	-1	3	-3
HB 0108	P	-1	3	-3
SB 0552	P	-1	3	-3
HB 0140	UNFAVORABLE REPORT	-1	2	-2
SB 894	FR	1	1	1
HB 0170	FR	1	1	1
HB 0304	FR	1	1	1
SB 0272	THIRD READING FAILED	-1	3	-3
HB 0423	FR	-1	1	-1
SB 0722	FR	-1	1	-1
HB 0746	FR	-1	1	-1
HB 0747	FR	-1	1	-1
HB 1214	FR	-1	1	-1
HB 0475	SENATE FR	1	4	4
HB 528	FR	-1	1	-1
SB 491	FR	-1	1	-1
HB 0602	UNFAVORABLE REPORT	-1	2	-2
HB 0630	FR	1	1	1
HB 0669	FR	1	1	1
HB 0674	P	1	3	3
SB 0637	P	1	3	3
HB 0707	SECOND READING P	-1	2	-2
SB 0576	P	-1	3	-3
HB 0740	P	-1	3	-3
HB 0777	FR	-1	1	-1
HB 1268	FR	-1	1	-1
HB 0791	FR	-1	1	-1
SB 0729	FR	-1	1	-1
HB 1160	FR	-1	1	-1
HB 0812	FR	1	1	1
SB 0249	FR	1	1	1
HB 0860	FR	-1	1	-1

OVERALL, CONTINUED				
BILL NO.	STATUS	COEFFICIENT	MULTIPLIER	TOTAL
SB 0515	FR	-1	1	-1
HB 0895	FR	1	1	1
HB 0908	FR	-1	1	-1
SB 0596	FR	-1	1	-1
SB 0813	FR	-1	1	-1
HB 951	FR	-1	1	-1
HB 1182	REASSIGNED	-1	1	-1
HB 1186	FR	-1	1	-1
SB 0881	FR	-1	1	-1
HB 1192	P	1	3	3
SB 0556	P	1	3	3
HB 1259	FR	1	1	1
SB 0715	FR	1	1	1
HB 1325	FR	1	1	1
HB 1431	UNFAVORABLE REPORT; WITHDRAWN	-1	2	-2
HB 1477	UNFAVORABLE REPORT; WITHDRAWN	-1	2	-2
SB 0196	UNFAVORABLE REPORT	-1	2	-2
SB 1072	P	-1	3	-3
HB 1578	P	-1	3	-3
SB 0266	P	1	3	3
HB 311	P	1	3	3
SB 0040	FR	-1	1	-1
HB 1530	FR	-1	1	-1
SB 0844*	P	-1	3	-3
SB 0844*	UNFAVORABLE REPORT	1	2	2
HB 1312	UNFAVORABLE REPORT	1	2	2
SB 0795	FR	-1	1	-1
HB 1072	FR	1	1	1
RAW SCORES			122	-34
PERCENT			36%	

* SB 0844 is listed twice, despite having been originally cross-filed as HB 1530 in the House. This is because the House took action on the amended version of SB 0844 that passed the Senate, rather than the original version that had been cross-filed.

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