The Maryland Public Policy Institute

The Annapolis Report

A Review of the 2011 Legislative Session

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The Maryland Public Policy Institute

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INTRODUCTION

Welcome to the third annual Annapolis Report, a review of Maryland's 2011 legislative session. The Annapolis Report is designed to be a concise, plain-language guide to many of the major topics addressed during the session: the state's budget, taxes, education, health insurance, regulation, energy, and more.

This year's 90-day session spanned January 12 to April 11. During that time, more than 2,300 bills were introduced, and several hundred were passed by the General Assembly and signed into law by the Governor. With so many bills, even perusing the titles of new legislation can be a time-consuming task. Our goal in producing this report is to condense the highlights of the session into an accessible format: we discuss the best and worst the session offered, topics of general importance throughout the state, and issues that are likely to affect many readers personally.

The Annapolis Report differs from many other projects in that it does not assess the performance of individual legislators; rather, its focus is the legislative session as a whole.

While voting records are available online, they are significantly less instructive than might be assumed. Committee votes present a more nuanced picture of voting in the General Assembly, but they can understate the complexity of much of the legislation the Assembly considers. For this reason, we focus on analyzing, interpreting, and condensing that legislation for our readers. While we include a scoring system and report overall scores for the entire session, the primary goal is for the analyses to educate and inform.

The bills considered are divided into 10 subject areas: budgetary matters and fiscal policy, taxes, education, healthcare and health insurance, regulation, energy, labor and collective bargaining, public pensions and retirement benefits, ethics and transparency, and miscellaneous topics. Immediately following this introduction is a general commentary, presentation of aggregate scores, and a brief discussion of the methodology used in the report. Following that is the bulk of the report: the analyses. The report concludes with an appendix describing the scoring process in detail.

SCORES

TABLE I GRADES & PERCENTAGES

SUBJECT	GRADE	SUBJECT	GRADE
BUDGET & FISCAL	C (52.0%)	ENERGY	A (80.0%)
TAXES	F (15.0%)	LABOR & COLLECTIVE BARGAINING	A (81.0%)
EDUCATION	A (84.0%)	PENSIONS & RETIREMENT	D (30.0%)
HEALTHCARE & HEALTH INSURANCE	B (78.0%)	ETHICS & TRANSPARENCY	C (42.0%)
REGULATION	B (75.0%)	**OVERALL**	**C (47.0%)**

Note: Miscellaneous legislation is not scored as a group, but is included in the overall score.

Comments

Budgetary Matters and Fiscal Policy

Faced with a structural deficit of nearly $2 billion and the expiration of significant federal monies, this year's budget once again relied heavily on fund transfers, one-time fixes, and issuing debt to relieve pressure on the operating budget. However, the session saw several positive developments. First, following a recommendation by the state's Spending Affordability Committee, the 2012 budget makes long-term changes that reduce the state's structural deficit by more than a third, to about $1.1 billion. Second, a successful pension reform effort decreases the annual cost of state employee benefits and improves the health of the state's pension funds.

Taxes

A significant increase in alcohol taxes that will primarily accrue to the general fund, combined with a windfall tax credit for film companies and a number of other proposed tax increases, resulted in a dismal score in the tax category.

Education

For the third year in a row, this report's highest score is in the area of education. This year, the high score is driven by the cautious limitations and strict requirements of Maryland's "DREAM" act, as well as some action on maintenance-of-effort issues and for-profit higher education institutions.

Healthcare and Health Insurance

Performance in this category is significantly improved from last year, primarily due to legislation that makes Maryland eligible for federal monies to assist in implementing federal healthcare reform. Even if the federal reforms are eventually modified or rejected by the courts, it makes sense to use federal funds when they are available. Regarding health insurance in the state, while two mandated benefits were added, the legislature rejected a number of other mandated benefits.

Regulation

The above-average score in the regulation category is due to new legislation permitting direct wine shipping to consumers, as well a few broad consumer protection efforts consistent with nationwide practices.

Energy

The General Assembly rejected a perennial and ill-considered attempt to reregulate the state's electricity market, as well as an attempt to impose surcharges on a large number of electricity customers in order to subsidize other energy projects. New legislation also seeks to expand awareness of alternative and potentially cheaper energy suppliers made available by deregulation. An Administration effort to promote the development of a large wind farm off the coast made no progress this session.

Labor and Collective Bargaining

The high score in this category is due almost entirely to legislation extending unemployment benefits that are funded with federal monies. Another bill made long-needed modifications to worker's compensation death benefits. These positive actions were tempered by the expansion of potentially costly collective bargaining rights and mandatory union dues to independent home care providers.

Public Pensions and Retirement Benefits.

While the legislature did pass a significant reform of pension and other retirement benefits, as part of the budget bills, those efforts are included in the scores for budgetary matters and fiscal policy. A large number of proposed reforms to the state's pension system were introduced this session, and several of these represent significant missed opportunities for a long-term overhaul of the state's management of retirement benefits.

Ethics and Transparency

This session's work on ethics and transparency is a story of missed opportunities. Rather than focus on implementing the recommendations of the attorney general's Advisory Committee on Campaign Finance and close well-known loopholes, legislators instead imposed stricter requirements on non-profits involved in campaign advocacy. Additionally, a bill designed to improve public access to electronic documents is undercut by a provision that allows government officials to redact important data from those documents.

Overall

Accounting for all of the above categories, as well as several miscellaneous bills dealing with gambling, horse racing, traffic safety, and other topics, the overall score comes to a "C."

METHODOLOGY

Selection

In constructing a legislative report card we face the difficult question of which bills to include. The sheer number of bills introduced during the legislative session precludes an exhaustive treatment of each one; nor would that necessarily be helpful, as many bills pertain to purely local issues or relate to technical matters such as liquor licenses for special events. Following the strategy developed in the original 2009 report, the report provides focused analyses of the most important issues, rather than examining a large, unwieldy number of bills. On the other hand, only analyzing a handful of bills can produce a skewed perspective of what happened during the legislative session. This report seeks a middle way. Since The Maryland Public Policy Institute is not a single-issue advocacy organization, we have broad flexibility to examine any bill we believe merits attention.

Selection of bills has a large effect on the overall scoring, but there is no entirely objective way to select bills for inclusion. Even a report that scored every single bill could not attain complete objectivity, since assessing the relative importance of bills always retains some subjectivity. This report attempts to include most passed legislation of moderate or high importance in our areas of interest, along with a number of bills that did not pass, to give the reader a sense of other proposals made in the legislative session. A strict focus on only the legislation that passed is unhelpful, since this year's failed bill may become next year's law.

This year's report examines more than 170 bills, many with both House and Senate versions. In some cases, there are several similar proposals and we have chosen to group the legislation together. This leaves us with about 64 discrete legislative issues. The report is organized by topics and subtopics, rather than by bill number; since so many bills are interconnected, it made more sense to organize the report in this manner rather than as a list of bills.

Further information on all bills, including those not treated in this report, may be found at the General Assembly's web site at http://mlis.state.md.us/. The legislative history, text of the bill, results of roll call votes, proposed amendments, and fiscal and policy notes are all found there. This report relies heavily on the analyses and collected data of the Department of Legislative Services (DLS). The first place to look for more detailed information about any given bill is its fiscal and policy note, if available. Written by non-partisan DLS staff, these notes provide a summary of the bill, estimated fiscal effects, a comparison of proposed and current law, and often comparisons with similar policies and legislation in other states.

Scoring and Grading

A bill is scored according to how much progress it made during the legislative session, the General Assembly's final action on the bill, and a weighting variable designed to capture the relative importance of the bill. For a detailed explanation of how scores and the weighting variable are calculated, see Appendix A: Scoring and Grading Details.

For each category and for all bills, the individual raw scores are summed to form a total raw score. Then, this total raw score is converted to a percentage and assigned a letter grade. Unlike typical grade school report cards wherein only the 65 percent to 100 percent range matters, our letter grades use 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. For a detailed explanation of how raw scores are summed and converted to percentages, see Appendix A: Scoring and Grading Details.

ANALYSIS

Budgetary Matters and Fiscal Policy

Operating Budget (HB 70)

The fiscal year 2012 operating budget totals over $34 billion, about $940 million more than the 2011 budget. The state is projected to end the fiscal year 2012 with a balance of $43 million.[1] In early September, Maryland realized a budget surplus that was $344 million higher than expected; however, as in prior years, the Governor's proposed budget grappled with a structural deficit of nearly $2 billion, and virtually all of the state's surplus is dedicated to tackling the structural deficit and adding to the state's Rainy Day Fund. Reversing a trend that began with the onset of recession in 2008, state revenues were projected to increase rather than decrease. Nevertheless, the attempt to balance the state's budget again relied heavily on one-time transfers from various special funds to the general fund.

Structural Deficit

Since 2007, the state has faced a significant structural deficit ("structural deficit" refers to an imbalance between projected revenues and projected spending). In both fiscal years 2011 and 2012, the gap has been about $2 billion. Efforts to reduce the structural deficit in recent years have been hampered by flat or declining tax revenues associated with the recession, as well as the increased costs of public services such as education and Medicaid, in addition to public pension and health insurance costs. The year 2012 presented a particular challenge with a large reduction in federal funds associated with the expiration of provisions of the American Recovery and Reinvestment Act (ARRA) (i.e., the federal stimulus package).

The state's Spending Affordability Committee (a group of 21 legislators from the General Assembly) recommended that this year's budget attempt to reduce the state's structural deficit by a third, and the budget actually exceeded that goal. This year, for the first time, the Committee specifically recommended a cut in the structural deficit; in prior years, it instead suggested growth targets for the budget.[2] The reduction was accomplished by a variety of actions, such as holding constant state education aid to counties, reducing Medicaid reimbursement rates, and increasing hospital assessments. Additional reductions in spending were achieved by public pension reform, replacing general funds with one-time federal funds, other one-time fund transfers, and replacing budgeted capital expenses with debt ($314 million). The structural deficit in future years is projected to remain around $1.1 billion, barring further attempts to reduce it.

The Budget Reconciliation and Financing Act (BRFA, **HB 72**, the bill dealing with budgetary decisions that require legislative approval) shifts costs associated with property tax assessment onto local governments, saving the state $35 million in 2012. Sixty million dollars are transferred from the Transportation Trust Fund (TTF) to the state's General Fund, scheduled to be repaid between 2014 and 2016, although past experience suggests that such repayments are likely to be repeatedly delayed. The BRFA also requires that any future borrowing from the TTF include a five-year repayment plan, but nothing would prevent such plans from being modified in the future. There is a total of $237 million in fund transfers, the largest being $90 million from the Bay Restoration Fund. Future plans indicate that this borrowed money will be replaced with debt, although given the fund's large projected deficit and the state's impending debt limit, such a plan may be in jeopardy.

Rainy Day Fund

The state's rainy day fund, an emergency fund that factors into the state's credit rating, is fully funded at the recommended amount of $681.5 million. Last year's balance was $633.5 million; $40 million of the difference was made up by borrowing from the state's Transportation Trust Fund. The borrowed money is scheduled to be replaced by increased title fees.[3] The state did not draw upon the rainy day fund to balance the budget; such a move could be negatively viewed by bond rating agencies, potentially leading to a credit downgrade for the state.

Human Resources
For the first time in three fiscal years, the budget did not require furloughs for state employees. While the budget does not allow for salary increases or merit pay, it does include a $750 bonus for all employees. The state's Voluntary Separation Program, a buyout option for current employees providing a lump-sum payment of $15,000 and health benefits for three months, resulted in 653 separations.

Public Pensions and Health Insurance
As part of the pension reform effort during this legislative session, the majority of current employees will be required to contribute 7 percent of their salaries to help fund pension benefits, up from 5 percent. New employees will also pay the 7 percent rate, but will receive a reduced benefit as well. Vesting time also increases for new employees, from the current five years to 10 years. Portions of the savings generated from these changes are invested in the state's pension funds to improve their dismal funding status, but portions are also credited to the general fund as a cost-saving measure.

Health insurance for both current and retired state employees will cost $936 million in the 2012 budget, over $50 million higher than last year. Costs would have increased even more had prescription drug benefits for retired state employees not been altered; the eventual plan is to discontinue prescription drug benefits for retirees eligible to be covered under Medicare. The General Assembly also modified the eligibility requirements for new employees' retiree health benefits, increasing the number of service years required in an attempt to begin constraining the state's unfunded $15.9 billion liability for such benefits.

Bond Bills
Every year the General Assembly is able to fund $15 million of individual projects submitted by various organizations and sponsored by individual delegates or senators. Most of these "bond bills" require the organization to have obtained funds matching the amount they request from the state; however, in many cases, the "match" may consist of funds that have already been spent, as well as donated services or materials. In some cases, no match is required at all, and the bond bill, if awarded, is simply a grant. Only a fraction of the approved bond bills have a statewide effect; most are localized and oriented to special interests. From our perspective, the question is not whether any individual project is a worthwhile endeavor; some undoubtedly are. The question is whether state dollars and associated debt service costs should be funding such projects while the state faces serious fiscal challenges. A full list of all the bond bills submitted this session, along with their sponsors and any funding awarded, can be found at the following address: http://mlis.state.md.us/2011RS/budget_docs/2011_bb_funding.pdf

Transportation Trust Fund
Several bills introduced this session sought to limit the use of Transportation Trust Fund (TTF) monies to transportation-related purposes. The TTF is funded primarily by motor fuel (gasoline and diesel) taxes; other significant revenue sources include title taxes and registration fees. While the TTF is designed to support the operating and capital costs of the state's Department of Transportation, its funds were continually borrowed and redirected in the past. The final report of the Blue Ribbon Commission on Maryland Transportation Funding contains a detailed breakdown of every fund transfer and repayment from the TTF to the state's general fund from 1984. In total, $1 billion has been diverted from the fund and never repaid, the vast majority since 2003. Meanwhile, according to the report, "the State's transportation system finds itself on the verge of financial collapse."[4] Until the TTF is protected from such diversions, Marylanders have no assurance the vehicle- and transportation-related taxes and fees they pay will actually support their intended purpose, nor can any increases in those taxes or fees be justified.

Both HB 518 and HB 591 would amend the state's constitution to prohibit transfers from the TTF to the state's general fund or another special fund, as well as protect the TTF's current sources of revenue. They differ in how exceptions are approved; **HB 518** requires a major catastrophe or state of emergency, as well as approval by a supermajority of the General Assembly, whereas **HB 591** requires voter approval by referendum. **SB 677** also proposes a constitutional amendment to protect the TTF, but does not contain provisions for exceptions.

While **HB 1001/SB 714** propose constitutional amendments to protect the TTF with exceptions for major catastrophes or states of emergency, these provisions are coupled with motor fuel tax and registration fee increases. The tax increase provisions of these bills are discussed in more detail in the tax section of the report below.

Taxes

Tax Increases

Alcohol Taxes

This legislative session saw a spate of proposed alcohol tax increases, one of which was eventually successful. Alcohol-specific taxes had not been increased in nearly four decades; this, combined with the more politically palatable nature of being a vice tax, has ensured continual pressure to increase taxes on alcohol over the past several legislative sessions.

While proposing completely infeasible increases in the excise taxes for liquor, wine, and beer of over 500 percent, 600 percent, and 1,100 percent respectively, **HB 121/SB 168** had one point in its favor: these bills dedicated all increased tax revenue to health-related causes. Although more than a third of the tax revenue would be dedicated to Maryland's rapidly expanding Medicaid costs, and any of the revenue could potentially displace general fund spending, the legislation's intent is evidently not only about revenue generation.

Unfortunately, such a large and sudden tax increase could seriously affect Maryland businesses, causing an estimated 14 percent reduction in liquor sales, and 6 percent reduction in beer sales.[5] Given that the proposed tax increase would leave Maryland with the second highest tax rates in the country (just behind Alaska), tax revenues would likely be lower than estimated due to purchasers shifting their activity to other states; and to the extent that higher prices reduce demand, sales tax revenues would also decline. Finally, considering Maryland's past experience with increased cigarette taxes, these estimates may significantly understate the actual decline in sales.

HB 780 proposed the so-called "dime a drink" tax, which would have imposed a 10 cent sales tax surcharge on every unit of alcohol sold in the state, regardless of type, size, or number of containers within a unit. Since the surcharge is applied to individual units, rather than based on volume or value, revenue projections are uncertain, but could approach $28 million annually. The bill contains no specific proposals for how the increased tax revenue should be used, instead viewing it simply as a mechanism to generate revenue for the state.

HB 1213 and **SB 994**, both passed and signed into law, raised the alcohol sales tax from 6 percent to 9 percent and specify supplementary appropriations to be paid out of the first year's increased tax revenues. In 2012, $15 million in revenues will be dedicated to the Development Disabilities Administration, and $47.5 million for public school construction projects. The remaining 2012 revenue, and all revenue from future years, will flow to the state's general fund.

Although the tax increase was primarily touted as a measure to improve public health, only a fraction of the first year's revenues – less than 18 percent – will be used for this purpose.[6] After 2012, the tax increase contains no provisions for public health or public school construction, and will likely be used to combat the state's deficit. As discussed above, actual revenues may prove less than estimated due to consumer price elasticity and increased out-of-state purchases; as it stands, the Department of Legislative Services predicts an 8 percent decrease in sales for liquor, and a 3 percent decrease for beer and wine for the more than 11,000 retailers that sell alcoholic beverages across the state.[7] Concerns have also been raised by businesses about the complexity of calculating the tax increase: it applies not only to the sale of alcohol, but also to alcohol-related services, such as the portion of a mandatory gratuity related to alcohol, or the fraction of catering services related to alcohol.[8]

Gasoline Taxes

HB 1059 suggests nearly doubling the state gasoline tax from its current level of 23.5 cents per gallon to 43.5 cents per gallon by 2014. This final rate would be 46 percent higher than the national average, as well as significantly higher than all surrounding states. While in later years the Transportation Trust Fund would benefit from the increased tax revenues, the bill appears to be an attempt to attack the state's current deficit with a large tax hike: during the first two years, the vast majority of the tax revenues will flow directly into the state's General Fund rather than be used for transportation infrastructure.

SB 451 also proposed increasing state gasoline taxes, but this time by imposing a 4 percent sales tax (the current state gasoline tax is an excise tax; this bill would impose a sales tax in addition to the excise tax). While the legislation was superior to HB 1059 in that it did not view the tax increase as a general source of revenue, it still would have put Maryland's fuel taxes out of line with neighboring states. Additionally, the bill would require that a portion of revenues be used to fund new mass transit projects, without considering whether those projects are actually desirable.

As noted above, HB 1001/SB 714 propose a constitutional amendment to protect the state's Transportation Trust Fund from revenue diversion and borrowing. However, these bills also propose significant tax and fee increases: motor fuel taxes would increase by 10 cents per gallon immediately, and in the future be indexed to inflation. Vehicle registration fees would also increase by 50 percent, effective immediately. The tax increase would set Maryland's state motor fuel tax higher than that of the surrounding states, as well as higher than the national average. Regarding tax policy, this bill has the advantage of restricting the use of the new revenues to transportation-related purposes, unlike HB 1059.

Tobacco Taxes

HB 853/SB 654 proposed increasing the cigarette tax from $2 to $3 per pack, as well as increasing taxes on other tobacco products. While the legislation directs a portion of the increased tax revenues towards tobacco cessation programs and Medicaid, approximately half of the revenue flows directly to the state's General Fund; thus, this bill appears to be based half on policy and half on revenue generation.

Maryland last increased cigarette taxes in 2007, from $1 to $2 per pack. According to the state's Board of Revenue Estimates, this 100 percent tax increase generated only a 7.8 percent increase in revenues, "as demand proved highly elastic – cigarette pack sales fell 27 percent between calendar years 2007 and 2008."[9] At the time of the tax increase, a fiscal analysis had forecast only an 18 percent decline in sales.[10] Based on this experience, actual tax revenues will likely be less than the bill's analysis projects. Additionally, it is not clear that a decline in sales indicates a decline in tobacco consumption; as the Board of Revenue Estimates and the Department of Legislative Services have suggested in the past, individuals likely purchase cigarettes from other states or over the Internet, or switching to less heavily taxed forms of tobacco consumption.

Tax Credits

HB 620, the Tax Credit Evaluation Act, would have established a regular process for evaluating the dozens of tax credits offered by the state, and required that such tax credits be reestablished by law, rather than automatically continue. The evaluation would be conducted every five years by the non-partisan Department of Legislative Services, and assess whether the tax credit in question achieved its original intent, whether it made sense to continue to offer the tax credit, and the tax credit's cost and benefit distribution . Public hearings on the evaluation's results would also be held.

Any costs associated with the evaluations would likely be immediately outweighed by the elimination of even one tax credit due to the process. Predictably, this bill faced strong opposition from special interest groups across the political spectrum: both the Maryland Chamber of Commerce and the Maryland Environmental Trust testified against the bill, citing concerns about transparency, predictability, and the effect on the state's business climate.[11] Yet establishing a formal review process would provide more transparency and procedural stability, not less, and a five-year sunset date is more predictable than a tax credit that could be revoked at any time. Watch for this bill to be reintroduced in next year's session.

HB 918 proposed repealing a tax credit that subsidized the purchase by public service companies of coal mined in Maryland. The credit was originally set to expire in 2020; unless altered or repealed before then, it will cost the state a total of $39 million. A similar repeal that also ultimately failed was proposed in the Administration's Budget Reconciliation and Financing Act (HB 72), and represents the third time the O'Malley Administration has attempted to repeal the credit. Supporters of the credit, first introduced in 1987, argue the subsidy is necessary to keep Western Maryland's coal industry competitive with its neighbors in West Virginia and Pennsylvania, but opponents question if state taxpayers, in a time of fiscal austerity, ought to be the ones footing the bill.[12]

HB 163 establishes a non-refundable tax credit for electric vehicle recharging equipment, valued up to $400 per unit. The total value of credits is capped at $400,000, $500,000, and $600,000 during the next three years, after which the credit expires. Reductions in tax revenue to the state's general fund are offset by infusions from the state's Strategic Energy Investment Fund, which is funded from the proceeds of carbon credit auctions. While the overall cost of the credit is small, it is not clear that adding an additional state-level subsidy to the various federal and state tax credits and subsidies already available for electric vehicles will have any appreciable effect on consumer behavior, especially given an extremely small number of qualifying electric vehicles currently available on the market.

SB 672 alters and expands a program subsidizing film production in Maryland, with a total value of more than $22 million over three years. While comparable programs exist elsewhere, many states have begun phasing out such programs, finding that dueling subsidies between states has left no one with a clear advantage.[13] Even when a state does manage to shift film production activity, legislative analyses suggest the tax credit may be a losing proposition, returning only 20 cents in tax revenue for every dollar invested.[14] Nonetheless, Maryland has decided to invest more heavily in subsidizing the film industry.

Corporate Taxes

Corporate Tax Rates

HB 855 proposed reducing the state's corporate income tax rate from 8.25 percent to 6 percent. While this particular proposal is fiscally and politically infeasible at this time, it does provide an opportunity to examine Maryland's business tax environment. Maryland's corporate income tax rate is the 15th highest in the country, and its overall business tax climate has been ranked one of the 10th worst in the country.[15] Maryland's swift decline in such rankings, from the middle of the pack in 2007 to near the bottom in the past several years, was in large part due to a significant increase in the corporate income tax during the 2007 special legislative session. While any tax decrease must be balanced against the state's fiscal realities, a corporate tax reduction would no doubt improve the state's business climate and potentially attract more business to the state.

Non-operational Income and Throwback Tax

SB 800 proposed modifications to the corporate income tax designed to capture so-called "non-operational income" as well as sales of property that currently go untaxed, known as a "throwback" tax. Both of these issues were considered in the final report of the Maryland Business Tax Reform Commission. The commission decided not to provide any recommendation on non-operational income, noting that although the change "could provide a small boost to revenues…the inherent one-time nature of these transactions makes budgeting for them all but impossible."[16] As for throwback, the commission warned that such a change might be considered uncompetitive, since the practice is out of line with Maryland's neighboring states.

Alternative Minimum Tax

SB 979 proposed implementing an alternative minimum tax (AMT), which would require corporations to pay an AMT in addition to corporate income tax if the AMT assessment exceeds the corporate income tax. However, if a corporation's income tax liabilities were higher than its AMT, the corporation could claim a credit against the income tax for the full value of the AMT paid in prior years. The amount of revenue that could be generated from this bill is unpredictable. The Maryland Business Tax Reform Commission recommended against imposing an AMT, since it primarily has the effect of accelerating tax revenue collection rather than actually increasing the total amount collected.[17]

Combined Reporting

Combined reporting is a method of calculating corporate income taxes that treats legally independent yet practically connected business units as one large unit for tax purposes. Rather than solely look at the income reported in Maryland, combined reporting would tally up the nationwide income of a business, then calculate what fraction of that income should be allocated to Maryland based on a number of factors.

About half of the states with a corporate income tax use the combined reporting method, versus the "unitary business" method Maryland uses.[18] Several of those states adopted combined reporting within the past decade in response to a number of high-profile tax evasion cases. Supporters of combined reporting argue that it will be more effective in combating tax evasion than legislation targeting specific types of tax havens, and that it ensures multi-state businesses pay a fair share of state taxes when compared to individuals or businesses operating only within the state. Opponents warn that the changes are unnecessary, will impose higher accounting costs on businesses, and will simply shift taxes from one sector to another.

The Comptroller has provided several analyses of projected revenues in prior tax years, had combined reporting been adopted. Estimates indicate that in 2006, combined reporting would have generated approximately $144 to $197 million in additional tax revenue; in 2007, the increase would have been $92 to $144 million.[19] The analyses stress that these estimates are not generalizable to current or future years, as the economic climate has changed drastically in the intervening time, and in some cases the sectors responsible for the additional revenue were those most affected by the recession.

In fact, more recent estimates included with the final report of the Maryland Business Tax Reform Commission suggest that had combined reporting been in effect in 2008, the state would have collected up to $51 million less in revenue than under current law, prompting the commission to overwhelmingly recommend against implementing combined reporting.[20] In justifying its recommendation, the commission noted the complex changes that combined reporting would require, as well as its potential to shift the tax burden among various industries and introduce additional volatility into corporate income tax revenues.

While the fiscal estimates for HB 731/SB 305, which propose the implementation of combined reporting, indicate significantly increased revenues in future years, these estimates are qualified by warnings that due to economic volatility and other factors, the actual effect on revenues could be less than expected, and potentially even negative.[21] Given current economic conditions, including the potential for revenue losses, a major shift in corporate tax policy seems unwise. In late August, a group of Maryland business leaders delivered just such a message to the Senate Budget and Taxation Committee, stressing that businesses "would be unlikely to locate in Maryland if there is anything to indicate the corporate tax structure could completely change in the near future."[22]

Other Issues

Property Tax Payment Schedule

In a victory for small businesses, HB 463, passed and signed into law, increases the maximum cutoff in property taxes from $50,000 to $100,000, for which a business can opt to make semiannual payments, rather than a lump sum payment. Originally, the bill would have eliminated the cutoff completely; however, due to opposition from the Maryland Association of Counties, it was amended to include the $100,000 cap.[23]

Estate Tax

HB 721/SB 764 proposed exempting up to $5 million of qualified agricultural property from Maryland's estate tax. The appropriateness of the estate tax is a contentious issue. Legislation introduced in 2010 proposed an increase in the general exemption from $1 million to $2 million (SB 591 of 2010). While this year's proposed legislation significantly increases the exemption, by limiting it only to agricultural property the fiscal effects are kept relatively small. Much of the debate about the estate tax revolves around its effects on farms and small businesses, although figures from the Congressional Budget Office indicate the number of small businesses and farmer filing estate taxes is relatively small (around 2 percent).[24] The Department of Legislative Services estimates that this bill would affect about 75 tax returns annually.[25]

SB 678 proposed broader changes to the estate tax, increasing the amount of the general exemption up to $4 million by 2014. Although the exemption amounts are lower than the proposal discussed above, this bill is not limited to agricultural property – any estate could benefit from the legislation. Tax revenues would decrease an average of $47 million annually over the next five years.

Millionaire's Tax

HB 1070 and SB 798 both proposed reinstating the "millionaire's tax" that expired at the end of last year. The tax created a new 6.25 percent income tax bracket for filers with more than $1 million in income; currently, the highest income tax bracket is 5.5 percent and applies to filers with more than $500,000 in income. The Senate version of the legislation would impose the tax until 2014, while the House version would impose it indefinitely.

Current estimates suggest the new bracket would increase tax revenues by about $77 million annually over the next five years. However, estimates prior to passage of the tax in 2008 significantly overstated the revenue; in fact, revenues from the bracket actually decreased in 2008.[26] Proposals to extend the tax beyond its December 2010 expiration ultimately failed during last year's legislative session amid concerns it had driven top earners out of Maryland. While some supporters of the tax invoked the notion of "shared sacrifice," noting that state employees would be making increased contributions to their pension plans, skepticism remained among members of the business community and officials in Montgomery County, which along with Baltimore County, accounts for two-thirds of Maryland taxpayers who fall into the bracket.[27]

Furthermore, the reimposition of the tax increase clearly will affect at least some small businesses. In 2008, about 25 percent of tax filers with incomes exceeding $1 million reported the majority of that income coming from business activities, such as sole proprietorships, LLCs, or similar structures.[28] Small businesses affected by the tax may also be less able than high-income individuals to change residence to another state.

Snack Tax

HB 716/SB 829 would have imposed a 6 percent "snack tax" on foods such as potato chips, pretzels, popcorn, and nuts. In general, retail food sales are exempt from the state sales tax; this bill would have eliminated the exemption for foods defined as "snack food," resulting in tax revenues of about $16 million annually.

Taxes imposed on sugary drinks and junk foods, while often supported by public health advocates, are also often ridiculed as evidence of government intrusion into the private decisions of individuals. Research also indicates such taxes may be especially regressive, as lower-income families are more likely to purchase the taxed items.[29] Industry interests have successfully lobbied against such taxes in other states; additionally, some legislative proposals seek to reduce industry opposition by, e.g., targeting only sodas while excluding sweetened fruit juice drinks, raising questions of rationality (such juice drinks may in fact contain more sugar than a typical soda) and fairness in the treatment of businesses.[30]

While a 2009 proposal simply viewed the tax as a means to increase state tax revenues, this year's legislation envisions using 40 percent of the revenue to provide grants to non-profits and public schools to assist in combating obesity. The rest of the tax revenue would flow into the state's general and transportation funds. To ensure that such targeted taxes continue to serve their intended purposes and do not simply turn into a mechanism for revenue generation, the entire amount of tax revenue should be devoted to such grants; the same caveat applies to the increased alcohol taxes adopted during this year's legislative session (see above).

Indexing State Income Tax Brackets

HB 618 proposed indexing the state's income tax brackets to the Consumer Price Index (CPI), a common measure of inflation. This measure would prevent effective tax increases due solely to inflation, rather than to an increase in actual wealth. Many other state income tax brackets, as well as the federal income tax brackets, are already indexed to account for inflation; 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 align the state's tax code with federal and national practices, as well as protect Maryland taxpayers from "bracket creep."

Local School Board Taxing Power

HB 1352 proposed granting local school boards the power to impose property taxes to fund local public schools. In most other states, local school systems have independent taxing authority. In Maryland, however, they must rely on appropriations made by county government, which weighs spending on education against other priorities. According to the bill's fiscal and policy note, were this or a similar bill to pass, the county government would no longer be able to rely on property taxes as a significant source of revenue, and the legislation could lead to property tax increases in some counties, potentially above caps that county residents have already approved.[31] Media coverage of the bill emphasized that any property taxes imposed by the school board would add to county property taxes rather than displace them.[32] While the bill was introduced late in this year's session, expect it to make a reappearance next year.

Education

Tuition for Undocumented Immigrants (a.k.a., the Maryland DREAM Act)

Perhaps the most controversial legislation of the session was SB 167, passed and signed into law, which effectively extends in-state tuition benefits to undocumented immigrants. The bill contains a variety of requirements that must be met to qualify for the benefits. The bill also extends the time period during which a veteran may file paperwork to qualify for in-state tuition.

The question of whether undocumented immigrants should receive in-state tuition benefits is set within a wider national debate about the country's overall immigration policy. While a number of other states have extended in-state tuition benefits to undocumented immigrants, several states have explicitly rejected such an approach, and some states that have extended such benefits have also considered repealing the extension.[33]

Federal law prohibits states from extending higher education benefits to undocumented immigrants that would be more advantageous than the benefits accorded to U.S. citizens. This has the effect of requiring undocumented immigrants to pay the significantly higher out-of-county or out-of-state tuitions at community colleges and public four-year colleges and universities.

SB 167 and similar legislation around the country avoids violating federal law by making in-state tuition benefits contingent on where a student graduated from high school, as well as other requirements. Students who cannot otherwise demonstrate legal residency must first attend a community college for the equivalent of two years (60 credits) before they will be allowed to transfer to a public four-year college or university. Additionally, these students are required to prove that either they or their parents/guardians have filed Maryland tax returns while they attended high school in the state, during their attendance at state institutions of higher education, and during any intervening gap. A similar bill, HB 253 of 2003, passed both houses but was vetoed by then-Governor Ehrlich in part because it lacked a requirement that eligible undocumented immigrants prove they have been filing state taxes.[34]

In terms of policy, supporters and opponents of this legislation disagree on a number of issues. Opponents argue that undocumented immigrants receive government benefits but do not pay their fair share of taxes, and that to offer in-state tuition benefits essentially validates and encourages illegal behavior. Supporters counter that undocumented immigrants do in fact pay a significant amount of taxes, both in terms of sales and excise taxes that everyone pays, and that undocumented immigrants can in fact file federal and state tax returns — IRS records from recent years suggest that hundreds of thousands of undocumented immigrants have been filing taxes nationwide in the hope that it might help their case should amnesty ever be offered.[35]

Furthermore, legal citizens, unlike undocumented immigrants, qualify for additional government benefits such as Medicare and Social Security benefits. Dueling reports on the tax revenue and government expenditures related to such legislation are inconclusive and often fraught with political bias.[36] Supporters rightly observe that forcing undocumented immigrants to pay out-of-state tuition essentially forecloses access to college education, since such immigrants are also ineligible for state and federal financial aid. This in the long run can harm the state's economy, as it prevents undocumented immigrants from earning the credentials necessary to move up in pay, and become more economically productive members of society. On the other hand, barring comprehensive federal reform, the employment options of undocumented immigrants will always be limited.

SB 167 has a number of commendable features. As mentioned above, it requires proof of consistent state tax filing for a number of years. Additionally, eligible students may not apply for spaces in the entering classes of four-year colleges and universities such as the University of Maryland, College Park. This alleviates some concerns that undocumented immigrants would be competing with legal state residents for in-state spots at the state's flagship universities. The legislation requires that undocumented immigrants be counted as out-of-state students when four-year institutions calculate their enrollment, ensuring these students will not be competing with legal state residents.

However, there are two serious implications: first, these students will compete with out-of-state residents for enrollment slots; and second, while being counted as out-of-state enrollees, they will pay in-state tuition rates, depriving the institution of the difference between out-of-state and in-state tuition. Potential tuition losses are impossible to estimate at this point, but the bill's fiscal and policy note indicates they may be significant at four-year institutions where out-of-state students comprise a significant portion of the student population (Towson, UMCP, and UM Eastern Shore).[37] Admission practices of the affected universities will be the primary determinant of these fiscal effects. The bill's other fiscal effects are related to state aid for community colleges based on enrollment, and could reach $3.5 million by 2016, or more if enrollment increases more quickly than expected.

In the wake of bill's passage, opponents successfully organized a petition to force the law to be voted on in a referendum during the November 2012 general election, thereby delaying implementation of the law. The petition organizers gathered nearly twice the 55,000 signatures required to force the referendum. Meanwhile, supporters of the legislation have filed a lawsuit challenging the petition's certification.[38]

Several other bills were introduced with the objective of prohibiting undocumented immigrants from receiving in-state tuition benefits; these included HB 401 and HB 655. Alternatively, HB 400 would have required recipients of state student financial assistance to demonstrate lawful presence in the United States. Under current law, recipients must be state residents, but the administrative office overseeing such financial assistance does not explicitly require proof of lawful presence. Should a version of HB 400 be passed in a future legislative session, it would not necessarily conflict with SB 167; it would be advisable to limit the award of state student financial assistance to lawful citizens even if undocumented immigrants are offered in-state tuition benefits, as this would ensure that lawful citizens retain some financial benefits over undocumented immigrants.

Maintenance of Effort

Maintenance of effort (MOE) refers to a state law that requires county governments and Baltimore City to fund their school systems with at least as much money per student as provided in the prior year. Failure to do so can result in the loss of scheduled increases in state education aid for the county.

Last year saw three counties apply for MOE waivers from the State Board of Education. All three waivers were denied. In the end, only one county faced a penalty, and the General Assembly passed legislation to nullify the penalty. This year, two counties applied for MOE waivers, both of which were granted. HB 44/SB 53 sought to codify the factors the State Board of Education uses in evaluating MOE waiver applications, and also expanded those factors to encompass fairly broad reasons for requesting a waiver, but it did not pass either house.[39] In the event a penalty is ever assessed and imposed on a county, HB 869, which was passed and signed into law, delays the penalty until the following fiscal year.

The impetus behind the MOE requirement is to ensure that counties do not simply use state aid for education to replace local spending on education, but rather use the state aid as a supplement. While the intent is reasonable, the implementation is less than perfect. First, the school system should not be penalized for the county's failure to provide enough funding to that school system. Reform of MOE will have to include a more properly targeted application of any penalty. Instead of withholding funding increases from the school system, for example, the state could require the county to contribute the amount of the penalty in funding for teachers' retirement payments, which the state normally pays.

Second, the design of MOE creates a ratchet mechanism: while counties are only required to meet last year's per-student funding, if they exceed it, they thereby set a new, higher bar for next year. The effect is that while funding may be generous in good years, when a tough year comes around, the prior year's funding determines the minimum level of funding for the current year. This has spurred the recent failure of several counties to meet MOE requirements. A better alternative would be to constrain the growth of the baseline to which the current year's funding is compared, perhaps by linking the baseline to a measure of inflation. Finally, MOE effectively prevents a county from reducing per-student spending.

Spending is not a proxy for the quality of education provided. Per-student funding might decrease for legitimate reasons, through increased administrative efficiency and cost-cutting programs, or in recent years via deflation, lack of salary increases, and declining enrollment. Yet the only way for a county to propose a decrease in per-student funding is to request a waiver from the State Board of Education. Until recently, no waivers had ever been requested.

If the General Assembly decides to take up comprehensive MOE reform in a future legislative session, it should ensure that 1) in accordance with the original intent of MOE, state funds are not simply replacing local funds, thereby shortchanging state taxpayers 2) MOE requirements do not penalize states for funding school systems beyond the minimum and 3) the requirements do not discourage spending reduction when appropriate.

Building Opportunities for All Students and Teachers (BOAST)

HB 932/SB 315, Building Opportunities for All Students and Teachers (BOAST) would create an income tax credit for 75 percent of a business's contributions to non-profits that offer scholarships to private K-12 schools or grants to public schools that adopt innovative educational programs, or support public school teachers in obtaining certification.

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. Meanwhile, the state still captures 25 percent of the value of business contributions as tax revenue.

Unlike last year, BOAST failed to progress either in the House or the Senate. By passing BOAST, the General Assembly will help ensure that high-performing private schools stay open. This measure is not simply a subsidy to private schools. The state's self-interest is to ensure the continued operation of private schools: students who leave private schools for public ones require the state to absorb (and pay) nearly $13,000 per student.[40]

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, $60 million worth of tax credits for scholarships to private K-12 schools were used this past year. Florida has also enacted a similar tax credit, awarding $106 million in credits last year; in exchange, an average $3,950 in scholarship funds were donated to nearly 29,000 students to attend over 1,000 private schools.[41] While Florida has a per-pupil spending amount below the national average, Maryland's amount is well above the average, so the potential returns to the program are even greater.

General Assembly Scholarships

Each year, in a little-known scholarship program, every state senator is allotted $138,000 and every delegate over $36,000 to distribute essentially as they see fit, with very few restrictions and almost no oversight. The scholarships have persisted for decades, are unique to Maryland, and have been a subject of continual criticism.[42] As in prior years, a bill (**SB 99**) was introduced during this session that would have completely eliminated the scholarships. However, rather than eliminating the funding, **HB 871/SB 229** suggested shifting the authority to award the scholarships to a state administrative agency. As we noted last year, at an annual cost of $11.7 million, shifting the funding would be prudent so that other scholarships programs do not have to be discontinued. For example, a fraction of the funds could be used to fund the Maryland Distinguished Scholar program, a merit-based award, which was discontinued in this year's budget. Shifting the funds to an existing award would also avoid the administrative costs associated with this legislation.

Other Issues

HB 525/SB 608 would have explicitly indicated that "ineffectiveness" constituted acceptable grounds for suspending or dismissing a teacher. According to the state's Attorney General, ineffectiveness as measured by student outcomes can theoretically already constitute grounds for disciplining a teacher, but explicitly including ineffectiveness would clarify the situation. Introduced by a former teacher, this legislation was opposed by the Baltimore City teachers' union.[43] As we reported last year, the state has already committed to establishing performance evaluations for teachers as part of **HB 1263/SB 899** (2010), the Education Reform Act of 2010. As such, ensuring there are consequences linked to the results of such performance evaluations is a sensible move.

HB 526/SB 610 would have required that public charter schools hire staff based on "mutual consent" with the local board of education. Currently, local school boards can place teachers in charter schools with little input from the charter school operator.[44]

HB 1067 would have increased the authority of the State Board of Education with respect to approving the applications of new public charter schools when those applications are denied by local boards of education, by giving the board more authority to regulate the application and review process. This legislation is crafted partly in response to difficulties faced by charter schools in gaining approval from local boards.[45]

SB 695, passed and signed into law, regulates the operation of for-profit institutions of higher education. Such institutions will be required to pay into a state-controlled special fund, which may be used to reimburse students of the institutions if the institution has breached its contract with the student, or violated state regulations. The required payments are capped at a maximum of $30,000 annually. The bill also prohibits the practice of institutions of higher education paying incentives to employees based on the successful enrollment of students.

For-profit institutions of higher education have been experiencing both increased enrollment as well as media and political attention in recent years. In 2010 and on the basis of an undercover investigation, the Government Accountability Office reported that for-profit colleges had encouraged fraud and engaged in deceptive and questionable marketing practices when interacting with students.[46] The report was later revised, and has prompted a lawsuit by the Coalition for Educational Success, an association of for-profit institutions of higher education.[47]

Health Insurance and Healthcare

Federal Healthcare Reform

Maryland decided to forge ahead with implementation of federal healthcare reform. **HB 166/SB 182** begin setting up a health insurance exchange; such exchanges are a centerpiece of the Patient Protection and Affordable Act, passed by Congress in 2010. Health insurance exchanges are designed to provide information to purchasers regarding the availability of certified health insurance plans, and facilitate cost and benefit comparison between such plans. Plans offered through exchanges will qualify for federal subsidies. If a state does not establish its own health insurance exchange, the federal government will establish one for it by 2013.

By opting to establish its exchange earlier than required by federal law, Maryland has become eligible for and received federal grants to assist with the costs of setting up the exchange. Federal monies are expected to cover the early costs associated with the exchange; however, it is supposed to be self-sustaining by 2015. Future revenues will be generated by fees or licenses that are as yet undefined. The original version of the legislation implementing the exchange was significantly scaled back; the passed version requires legislative and gubernatorial approval before the exchange is allowed to begin performing any of its core functions.

About a dozen other states have also received federal grants to assist with the establishment of exchanges, including states that are actively involved in legal challenges to the federal reforms.[48] Maryland's exchange implementation efforts are significantly circumscribed by the requirement for further approval, which will allow the state to take advantage of federal grants without facing severe consequences should the federal law be overturned by the courts.

HB 516/SB 107 was an alternative exchange implementation proposal that would have established the exchange as a non-profit, non-governmental agency. While this approach would have been preferable, there remains a possibility that the state's current exchange implementation will convert to a non-profit form at a later point.

HB 170/SB 183 implemented some requirements of federal healthcare reform, such as provisions that allow children and young adults to remain on their parents' policies until age 26, and provisions concerning limits on annual and lifetime benefits and medical loss ratios (loss ratios refer to the amount of money paid in claims versus the amount of money received in premiums).[49] While in theory states could refuse to implement these aspects of the federal law, the end result would be that the federal government would intervene to ensure the law's application.[50]

Mandated Coverage

This year's legislative session continued the trend of adding mandated benefits to the health insurance plans offered in the state. Mandated benefits force insurers to cover the conditions specified in a bill; while sometimes viewed as a consumer protection, they are often lobbied for by patient groups, as well as providers who want to ensure guaranteed payment from insurers for their services. While any individual mandate may not increase premium costs significantly, a large number of mandates can add a significant amount to the cost of health insurance, whether for individuals, small groups, and larger groups.[51] According to a 2008 Maryland Health Care Commission study, Maryland's mandated benefits are responsible for 18 percent of the cost of individual premiums, 17 percent of the cost of small group premiums, and 15 percent of the costs of group health insurance premiums.[52] In 2010, Maryland had the second-highest number of mandates in the country, just behind Rhode Island.[53]

Opposing mandated coverage of a given condition does not mean the condition should not be covered by any health insurance policy, but rather that health insurers should be able to offer a variety of policies, and allow individuals and businesses the freedom to choose between policies. For example, a non-smoker does not need to purchase a policy that offers smoking cessation benefits, yet state law mandates such coverage. In the analysis below, we comment on the mandated benefits that were signed into law, followed by a table indicating the variety of other mandated benefits that were considered during the session, but did not pass.

HB 452/SB 702 requires that when an insurance policy offers coverage for hearing aids for adults, the insurer must allow the insured to select a hearing aid that exceeds the maximum benefit provided in the policy, so long as the insured pays the difference in cost. When compared to most mandates, this one is unobjectionable: while affording insured individuals more choice, it also does not increase the expenses of policy providers, and thus the premiums paid by individuals.

HB 888/SB 701 requires insurers that cover prescription eye drops to also cover refills of prescription eye drops.

TABLE 2 OTHER MANDATED BENEFITS PROPOSED DURING THE 2011 LEGISLATIVE SESSION

HB 783/SB 759	AUTISM SPECTRUM DISORDERS
HB 446/SB 603	PREVENTIVE PHYSICAL THERAPY FOR INDIVIDUALS WITH MULTIPLE SCLEROSIS
SB 744	TELEMEDICINE SERVICE
HB 949/SB 879	TREATMENT OF BLEEDING DISORDERS
HB 811 AND SB 312	EXPANDED COVERAGE OF HABILITATIVE SERVICES

Other Issues

HB 815/SB 579 would have prevented any type of co-payment from ever exceeding half of the value of the covered benefit offered under a health insurance policy, with the exception of prescription drugs. Since co-payments are designed to control costs, they may vary according to the service received; imposing blanket restrictions for all types of services may undermine the purpose of having co-payments in the first place.

HB 251/SB 709 proposed capping any cost-sharing provisions (e.g., co-payments) for prescription drugs covered under a health insurance policy at $100 per month per drug. However, given that most insurance providers in the state already have caps in place for the drugs that would fall under the provisions of this bill, the practical effect of the legislation would have been limited had it passed.[54]

Regulation

HB 449 would have required detailed evaluations of the effects of proposed regulations on small businesses, as well as assessments of the possibility of excluding small businesses from such proposed regulations. Regulatory compliance can be especially burdensome for small businesses, posing a barrier to entry that hinders the further development of a competitive marketplace. Requiring agencies to explicitly and thoroughly consider the effects of their proposed regulations on small businesses would clearly benefit such businesses; any increased costs of evaluation would likely be outweighed by the benefits reaped by small businesses less encumbered by regulation.

Consumer Protection

HB 1085, passed and signed into law, bans the use of "discretionary clauses" in disability insurance policies sold in the state. Such clauses give insurers almost unlimited power to interpret the terms of an insurance policy, "nullifying the promise to pay and rendering the contract potentially illusory."[55] Maryland's legislation is in line with that of numerous other states that have also restricted the use of discretionary clauses in insurance policies.

HB 442/SB 309, also signed into law, imposes some information disclosure requirements on consumer arbitration businesses. Such businesses are increasingly employed to arbitrate disputes between consumers and other businesses that require consumers to sign contracts, such as credit card companies, mobile phone service providers, and brokerage firms. In the past several years, concerns have been voiced about bias and lack of transparency in such arbitration businesses. In, 2009 lawsuit against the National Arbitration Forum, a large arbitration business, resulted in a settlement requiring the NAF to cease doing business; in 2010, the FTC issued a report critical of widespread arbitration practices. This legislation requires arbitration businesses to publish information regarding disputes handled, as well as the outcome of such disputes.

HB 128/SB 75, passed and signed into law, expanded the scope of the Maryland Consumer Protection Act to include situations where a consumer sells goods to a merchant in exchange for debt reduction services.

Wine Shipping

This year saw the passage of legislation permitting direct shipping of wine to consumers, a topic on the General Assembly's agenda since 2008. **HB 1175/SB 248** allow both in-state and out-of-state wineries to obtain a permit and begin shipping wine directly to purchasers' homes. Persons accepting delivery of wine must prove they are of legal age.

The law only permits shipment from wineries, not from retailers; in part, this restriction is designed to prevent new out-of-state sales from displacing in-state sales that would have been made at retail locations. The assumption is that purchases made directly from wineries have more to do with the quality and characteristics of the product than simple price comparison. It is difficult to predict how many wineries will obtain permits and begin shipping to Maryland consumers; as such, projections of revenue from licenses and sales and excise taxes are uncertain, but suggest a modest amount of additional revenue.

Permitting direct shipping of wine from in-state and out-of-state wineries once again allows Maryland wineries to bypass wholesalers, as they were permitted to do before a 2005 Supreme Court case and subsequent 2006 decision by the state determined that Maryland's law at the time discriminated against out-of-state wineries.[56] So far, only a few wineries have applied for permits, but winery owners and the state's Comptroller suggest the slow start may be due to both the season as well as the learning curve involved with the permit application process.[57] **HB 234** and **HB 1079** both also proposed allowing direct shipping of wine, but specified different fees for the permits involved.

Use of Credit Reports and Credit History

Several bills this session were designed to restrict employer or business use of credit reports or credit histories in evaluating employees or applicants. Of these, **HB 87/SB 132** were passed and signed into law. The legislation prohibits employers from using a person's credit report or credit history in determining whether to offer or terminate employment, or set compensation or other details of employment. Exceptions exist for employers such as financial institutions and credit unions. The law does not prevent an employer from requesting the information if they have offered an applicant a job; it only restricts the purposes for which any information received may be used. Violations by employers can result in fines.

HB 934 proposed similar restrictions, but with different exemptions and stricter requirements on employers who chose to request credit reports or credit histories. HB 1083 proposed prohibiting automobile insurers from being able to use an applicant or customer's credit history in rating that person's risk or offering discounts or penalties. However, it would have allowed the insurance company to increase a person's renewal premium on the basis of his or her credit history. Both of these bills received unfavorable reports in committee.

Generally speaking, state-level regulation of the use of credit reports and credit history may not be necessary. The federal Fair Credit Reporting Act already requires employees or applicants to consent to credit checks, and offers individuals the opportunity to view and correct information contained in their credit reports. The federal Bankruptcy Act also prohibits employers from discriminating against job applicants who have declared bankruptcy. In Maryland, automobile insurers are already prohibited from using a customer's credit history as a basis for increasing their renewal premiums.

Furthermore, this type of additional regulation of employer or business decision-making presumes that employers or businesses will behave irrationally unless constrained by law. Rather than have legislators, far removed from the needs of any individual business, make such a decision, better to leave an employer or business to decide whether to seek a credit report or credit history and how to use such information . The assumption that employers or businesses explicitly seek financial information is not completely accurate, either: credit reports can help verify employment and residency information.[58]

Energy

Service Disruptions

In response to several significant power outages during the summer of 2010 and a major disruption in January 2011, several bills were introduced that would impose additional regulations and requirements on electric companies operating in the state. Particular ire was directed towards Pepco, a major electric service provider for the Washington, D.C. and Maryland metropolitan area. The disruption left hundreds of thousands of residents without power, and in some cases service took several days to restore, significantly longer than in other regions serviced by other providers.[59]

HB 391/SB 692, passed and signed into law, requires the Maryland Public Service Commission, the state's regulator of public utilities, to adopt standards regarding how electric companies handle power outages, including features of service restoration and customer communication, as well as preventive maintenance such as tree-trimming. In turn, electric companies must meet the adopted standards or face monetary penalties.

Public utilities operate in an uncompetitive, highly regulated environment. Therefore, normal market pressures do not create incentives to deliver high-quality service the way they would in other economic sectors. That said, it is not clear that this legislation will generate any additional pressure on electric companies like Pepco, which already faces regulatory pressure from the Public Service Commission. While other legislation introduced during the session would have had more severe consequences, this bill only requires the Public Service Commission to review the feasibility of such consequences and issue a report before next year's legislative session.

HB 1278 would have required electric companies that use bill stabilization adjustment to suspend the practice during extended power outages. Bill stabilization adjustment, also known as decoupling, smoothes the bills that customers receive by increasing them during periods of low usage, but decreasing them during periods of high usage. The technique can benefit consumers and providers, since it enhances the predictability of monthly bills and revenues. In the wake of the major disruptions discussed above, concern arose that bill stabilization adjustment could provide a perverse incentive for electric companies to delay restoring service.[60] The state's Public Service Commission is currently investigating this possibility ; rather than legislate such a change, better to see the outcome of the regulatory agency's investigation, which could produce a more finely crafted change to the practice of bill stabilization adjustment.

HB 1171/SB 749 would have required electric companies to develop a plan to restore service to high-priority customers such as the elderly or disabled before other customers. While attractive in theory, the regulation requires only a plan; actual implementation would be practically difficult and likely impossible to enforce.

SB 804 would have adopted punitive regulations requiring electric companies to reimburse customers for damages related to extended power outages, such as spoiled food or hotel expenses. In addition, the Public Service Commission would have the ability to impose significant financial penalties on electric companies if it decided a company's response to an extended outage was inadequate. This type of legislation, while likely to garner populist support, is based on unrealistic expectations.

Marcellus Shale Formation

This legislative session saw two significantly different proposals for regulation of drilling in the Marcellus Shale formation. The Marcellus Shale formation is a large unit of shale extending across several northeastern states. In Maryland, portions of the formation are located in Allegany, Garrett, and Washington counties. The formation contains vast reserves of natural gas which until recently were considered too expensive to extract. However, recent improvements in extraction technology have made drilling for natural gas in the formation economically viable.

The first proposal, HB 411/SB 422, had a lighter regulatory touch, requiring the state's environmental agency to develop unspecified regulations for natural gas exploration and production in the formation. Although unspecified, the regulations would not be permitted to differ significantly from existing regulations. They would include details about water testing, disposal of chemical and fluids used in the drilling process, and site cleanup. Although any additional regulation of drilling in the formation might discourage investment and job creation, this bill strikes a balance between public concern about safety and environmental effects while avoiding daunting regulatory hurdles for businesses interested in investing in Maryland's economy.

In contrast, HB 852/SB 634, which passed the House but made no progress in the Senate, would have taken the opposite approach, banning all drilling in the formation for at least two years until the state's environmental agency and Department of Natural Resources issue a study addressing a variety of safety and environmental concerns. While a careful examination of such concerns is warranted, delaying the investment and job creation associated with drilling in the formation until the production of a government report is not.[61] Since legally-mandated studies and reports are routinely delivered behind schedule, the two-year deadline could easily stretch into three years or more.

Wind Energy

HB 1054/SB 861 represent an Administration proposal to have the state's Public Service Commission force electric companies operating in the state to sign long-term contracts for the purchase of electricity from an offshore wind farm. The Commission would also solicit bids for a contract to build the wind farm. Supporters have touted the project's potential to bring jobs to the state, and union workers joined forces with clean energy advocates in a rally supporting the legislation earlier this year in Annapolis.[62] Critics of the project emphasize that its costs are extremely difficult to predict, and question the wisdom of heavily subsidizing such a project by guaranteeing revenues from Maryland ratepayers through a long-term contract.[63] If this or similar legislation were passed, customers in Maryland would pay higher electricity costs despite the fact that prices for conventional electricity are projected to remain flat over the next 25 years.[64]

HB 1227 would have allowed the state to provide up to $50 million in incentives to attract a manufacturer of wind turbines to the state. The funds would have been drawn from the state's "Sunny Day" fund: the Economic Development Opportunities Account. However, since the fund's current available balance is just $3 million, providing the full value of such incentives would require significant infusions from the state's general fund. Unlike the Invest Maryland program described below, monies from the Sunny Day fund are not expected to generate any direct financial return for the state; indeed, because the rate of loan forgiveness associated with the Sunny Day fund is so high, the Department of Legislative Services has assumed that any money provided as an incentive would be a grant. Even loans made to well-heeled multinational businesses have been forgiven; for example, last year, a $1 million loan to Morgan Stanley was forgiven.[65]

Deregulation

HB 597/SB 244 require the Public Service Commission to develop a web site and conduct an advertising campaign designed to make electricity customers aware of potentially lower-priced electricity suppliers available to them. As a result of deregulation, customers now may choose among competing electricity suppliers, but many customers are unaware of the option to switch suppliers; according to the Department of Legislative Services, less than 14 percent of customers have opted for competitive suppliers. The Commission originally hired a contractor to complete a multi-million dollar awareness campaign around the original time of deregulation, but the impact of the campaign was mitigated by other state energy policies that severely limited the benefits of choosing alternative electricity suppliers.

Reregulation

SB 521 represents the perennial effort of some lawmakers to return to a regulated electricity market. In this case, the bill would have required the Public Service Commission to develop a plan for returning to a regulated market for residential and small commercial customers. As we noted last year, a December 2008 Public Service Commission study concluded that a return to a pre-deregulation state would be risky and potentially involve significant costs and uncertainty for Maryland ratepayers.[66] This year's fiscal and policy note for the bill illustrates that little has changed since last year's similar proposals: "In the long run, it is unclear whether electricity purchased by residential and small commercial customers under a regulated market will be less expensive than electricity purchased in a competitive market."[67] Instead of pining for pre-deregulation days, lawmakers should focus on new solutions, such as encouraging new generation capacity in Maryland.

Surcharges and Subsidies

HB 662/SB 648 would have imposed an additional surcharge on a large number of electricity customers across the state. The legislation does not specify the surcharge amount, but it would apply to any customer that exceeds the average usage for their class by 25 percent or more. The revenue generated by the surcharge would be used to fund the state's Strategic Energy Investment Fund, and would fund a variety of unspecified programs to encourage the use of renewable and reusable energy sources. Such programs could consist of grants or subsidies for the installation of equipment, or low-interest loans.

While encouraging renewable and reusable energy sources is a worthy policy, such encouragement should not come at the expense of everyday electricity customers in the state. Budget legislation in recent years has altered the Strategic Energy Investment Fund's spending priorities, but Maryland ratepayers should not be forced to pay a "surcharge" (functionally equivalent to a tax) to make up the difference. Customers already pay a variety of surcharges, such as those related to demand response programs, and to pay for the costs of studies relating to power plants.

Since different households and businesses have different electricity consumption profiles, this bill would have affected hundreds of thousands of customers. For example, residential customers heating their homes with electricity rather than some other source like natural gas could easily be subject to the surcharge; likewise, any business with a higher electricity consumption profile, such as a laundromat, could also be subject to the surcharge. State and local government electricity expenses would also increase significantly under the bill. Given its broad scope and non-specific nature, this legislation represents a large subsidy to a few beneficiaries at the cost of increased electricity bills for many.

SB 304 proposed a similar idea, but specified the surcharge as $0.013 per kilowatt-hour, and applied it to any consumption exceeding 1,000 kWh a month. The revenues would have gone to a newly established special fund that would provide grants to fund renewable and reusable energy projects, as well as other related programs. According to the state's Public Service Commission, nearly 400,000 residential electric customers have monthly bills that exceed 1,000 kWh a month, and BGE's 1.1 million residential customers have an average usage of exactly 1,000 kWh a month.[68] Thus, hundreds of thousands of customers would be affected by the surcharge, which would generate a large amount of revenue for the special fund. Estimates suggest that revenues would approach $500 million over five years, money that would be used to offer subsidies to other individuals and businesses in the state.

Net Energy Metering

Rather than add surcharges to customers' bills and use the resulting tax revenues to subsidize other projects, HB 860/SB 380, passed and signed into law, encourages the adoption of renewable energy sources. By changing how net energy metering is calculated, this legislation will increase the value of renewable energy generation equipment such as solar panels. Net energy metering refers to the difference between the electricity consumed by a customer versus the amount of energy generated by that customer's renewable generation equipment. The legislation makes net energy metering more beneficial for customers with renewable generation equipment, without imposing taxes on other ratepayers, or offering narrowly beneficial subsidies to specific individuals or businesses.

Energy Performance Contracts

HB 1310 exempts energy performance contracts (EPCs) from the calculation of the state's tax-supported debt. EPCs are offered by energy service companies as a way for customers to upgrade infrastructure while simultaneously reducing energy costs; customers often also receive a guarantee that the reduction in costs will be adequate to finance the upgraded infrastructure.[69] In essence, future energy cost savings are used to finance current infrastructure upgrades. In Maryland's case, by law the financing payments may not exceed the amount of energy savings.

EPCs are a worthy procurement mechanism, and are considered to be capital leases and thus count towards the state's self-imposed debt limit. However, this bill seeks to eliminate EPCs from the calculation of the debt limit, thus creating $156 million in excess debt capacity for the state when the state should be seeking to avoid additional debt.[70]

Labor and Collective Bargaining

Unemployment Insurance

HB 1228 made changes to the state's unemployment insurance eligibility rules to ensure that unemployed workers eligible for extended benefits can receive those benefits. Extended benefits are federally funded unemployment benefits distributed to unemployed workers after other sources of unemployment benefits are exhausted. Altering the state's eligibility rules will qualify Maryland for over $264 million in federal funds. Since federal law does not allow federal funds to be used to pay for unemployment benefits for workers laid off from governmental entities, state expenses increase a small amount to pay for extended benefits for such workers.

Worker's Compensation

HB 417/SB 212 made changes to how worker's compensation death benefits are paid. The legislation was designed to address an unintended consequence of the current death benefits rules, which could provide lifetime benefits (approaching a total value of $2 million) for non-working total dependents while severely penalizing partial dependents (e.g., a spouse who held a part-time job) by capping total cumulative benefits at $75,000. Under the new law, the fraction of a family's total income earned by any dependents is considered when determining death benefits. Not only will this result in fairer compensation for surviving beneficiaries, but the change is also expected to result in a reduction in expenditures for the Injured Workers' Insurance Fund due to the elimination of windfall payments.

Collective Bargaining

In another expansion of collective bargaining, the Administration requested and received legislative endorsement of its current recognition of the American Federation of State, County, and Municipal Employees (AFSCME) union as the exclusive collective bargaining group for independent home care providers. Independent home care providers work with the elderly or disabled, and are paid directly by the state under the auspices of various programs. The union had already been recognized by an executive agreement signed in 2007, but legislative endorsement would preserve the current arrangement indefinitely.[71] Until now, independent home care providers were not required to join the union or pay service fees; as a result of HB 171, even non-union members will be required to pay unspecified service fees. Currently, about one-third of 4,500 eligible workers have chosen to be represented by the union.[72]

Since this bill codifies current policy, cost estimates are not included; to the extent that union bargaining raises costs, the amount the state must devote to the affected programs may increase significantly in the future. Last year, the state and the union entered into a contract that resulted in a 4 percent increase in payments under one of the affected programs. Payments under all four affected programs were approximately $160 million in 2010.

HB 673/SB 699 would have established collective bargaining rights over all aspects of employment for state law enforcement officers (e.g., Maryland State Police, Natural Resources Police, Park Rangers, MVA Police, etc.). Currently, these officers are represented by the State Law Enforcement Officers Labor Alliance (SLEOLA). This legislation represents in part an attempt by the union to codify the legal procedures invoked when officers have complaints filed against them. However, the bill would have also covered wages and benefits, and thus could significantly increase costs for the state. As with the home health care providers discussed above, and separate from this legislation, non-union members will be required to pay service fees to support the work of the union.[73]

HB 884 would have improved the transparency surrounding union service fees for non-union members, by prohibiting the state from automatically deducting such fees from a non-union member's paycheck. Although non-union members would still have been required to pay the service fees, by enforcing a separation between the fee and the paycheck, these employees would be able to transparently see how much the service fee cost them.

Minimum, Living, and Prevailing Wages

HB 988/SB 716 proposed increasing the state's minimum wage to $8.25 per hour in 2011, $9.00 per hour in 2012, $9.75 per hour in 2013, and thereafter indexing it to the Consumer Price Index. The bill would have also increased the minimum hourly rate paid to tipped employees and imposed overtime requirements on industries currently exempt from such requirements. This would present significant costs to a variety of businesses across the state: for example, under this bill, employer expenses for tipped employees would nearly double. Employers who cannot afford to face increased labor costs are likely to either lay off existing minimum wage employees, or refrain from hiring new ones, thereby potentially increasing unemployment. Since low-skilled, low-earning workers are those most likely to be earning the minimum wage, they will be most affected by any increased unemployment.

SB 222 proposed repealing the state's living wage law for certain state contractors. Since 2007, the state has required its service contractors to pay a government-determined hourly "living wage" to their employees. In 2008, this living wage was set at $11.30 in higher cost-of-living areas, and $8.50 elsewhere; in 2011, it was $12.28 and $9.23 respectively. Minimum wage-style laws have the potential to increase unemployment and harm low-skill workers, who must compete with better-skilled applicants for a smaller pool of jobs. However, since the state government's service needs are highly inelastic, its contractors are expected to pass on all of the cost increase of the living wage to the state.[74] The state has decided as a matter of policy to pay this above-market rate. Contractors are therefore not forced by market pressures to lay off employees; however, to the extent that the state pays an above-market rate for its service contracts, the additional money represents both a subsidy from state taxpayers and money that could be spent on additional market-rate contracts, thereby potentially employing additional workers.

Due to a lack of information concerning service contracts, as well as numerous exemptions from the requirement (by number, 40 percent of contracts are exempt; by value, nearly three-quarters are exempt) there is no detailed estimate of the fiscal effect of eliminating the living wage requirement. However, the Department of Legislative Services estimates that the living wage requirement increases the total cost of state service contracts by 7 percent to 19 percent. Eliminating the requirement could result in more than $2.5 million in cost savings, or more if the number of eligible contracts is greater than estimated.[75]

A related but broader bill, **SB 659**, would have repealed the state's prevailing wage law. Unlike living wages, "prevailing wages" are based on market rates for the same services in a given area, and a prevailing wage requirement is intended to stabilize wages and the construction industry by avoiding race-to-the-bottom bidding wars for public construction contracts. While early analytical literature suggested that prevailing wage requirements significantly increased the cost of public contracts, more recent empirical studies found little difference between the cost of contracts with or without the prevailing wage. However, as the bill's fiscal and policy note advises, the construction industry has been adversely affected by the economic downturn, so the effects of eliminating the prevailing wage requirement are difficult to predict. To some extent, the same argument made with respect to **SB 222** applies here: if the state overpays for labor costs in a construction contract, the difference represents both a public subsidy and money that could be spent on other construction projects, or saved to reduce the state's deficit. Thus, eliminating the prevailing wage requirement could benefit the state and its citizens.

SB 187, rather than eliminating the prevailing wage law, would have reduced the number of school construction projects that require the prevailing wage to be paid, potentially offering a portion of the benefits associated with completely eliminating the requirement.

Public Pensions and Retirement Benefits

Pension Reform

Pension reform was a hot topic this year, with nearly 20 reform-oriented bills introduced throughout the legislative session. The reforms finally adopted by the legislature were included in the budget bill, and are discussed above in the analysis of the 2012 budget. This section examines some smaller related changes, as well as a number of other proposals that were not adopted.

HB 727 changed the state's policy regarding cost-of-living adjustments (COLAs) in cases where the COLA would normally be negative due to decreases in the Consumer Price Index (CPI). During last year's legislative session, the General Assembly passed emergency bills to avoid reducing government retiree's pension benefits due to a negative COLA that would have resulted in about $6 less per month for the average beneficiary.[76] This year's legislation is designed to formally alter state policy should the CPI decrease again. Rather than simply swallowing the cost of not passing along negative COLAs, however, the legislation specifies that while retirees will not receive negative COLAs, if they were due to receive them, future positive COLAs will be adjusted downward in succeeding years to make up the difference. This ensures that the state's overall contribution to the pension system does not need to increase due to the changed treatment of COLAs.

SB 356 made minor changes to the pension system's provisions for military service credit in response to a case of abuse where a state employee, by creatively using such provisions, managed to retire with a pension based on 18 years of service despite having been employed with the state for fewer than five years. The legislation only applies prospectively, and so does not affect the pension received by the employee.

In a rare move, the Administration vetoed **HB 1312** for policy reasons. This bill, passed by both houses, was designed to address situations where former members of the state's pension system are entitled to either a refund of their contributions or pension benefits, but the members have failed to claim the refund or benefits though they have reached retirement age. The state is attempting to contact some 4,200 individuals in this position. To avoid future such situations, the legislation would have only paid benefits after a member filed for them; if an eligible member failed to file for the benefits, he or she could file at a later point, but would not receive benefits retroactively. The Governor vetoed the bill, concerned that although it does not apply to already-retired members, it would apply to former employees who left state service but who have not yet reached retirement age.

HB 303 proposed increasing the employee contribution rate for state pension system members to 7 percent. This would cause significant cost savings for the state, as its annual pension contributions would decrease by nearly $200 million annually. As discussed in the 2012 budget analysis, part of the adopted pension reform proposal involved adopting a higher contribution rate of 7 percent. This rate applies to all new members as well.

HB 494 would have increased the vesting period for most state pension system members from its current amount of five years to 10 years. It also would have increased the number of years required for retirement eligibility for a subset of pension system members. HB 305 would have increased the vesting period from five years to 15 years. Such changes would modestly reduce the state's pension liabilities. As discussed in 2012 budget analysis, similar changes were made as part of the larger pension reform adopted during the legislative session; the vesting period is now 10 years for new employees.

Defined Contribution Proposals

Several bills were introduced that, broadly considered, would have switched the state's pension system from a defined benefit (DB) plan to a defined contribution (DC) plan. DB plans are what most people think when they hear "pension," and were common in the private sector until the 1980s. Such plans promise a defined monthly benefit to be paid to a retiree, typically based on factors such as the number of employment years and an average final salary. While the retiree usually contributes, along with the employer, to fund the pension benefits over the course of employment, the benefit is not directly linked to investment performance; rather, the employer assumes the risk associated with investment performance, and ensures that the retiree will receive a guaranteed amount of income in retirement. DB plans are becoming increasingly rare outside of the public sector.

DC plans do not guarantee a defined benefit in retirement. Instead, the benefit amount is based on the investment performance of the contributions made throughout the retiree's employment. Employers often offer matching contributions to supplement the contributions employees make throughout their employment, although in recent years, many employers have been reducing or eliminating matching contributions in order to reduce costs. With DB plans, the employer assumes the bulk of the risk, while with DC plans, the employee assumes the risk associated with investment performance. For private sector jobs that offer retirement benefits, DC plans have become the standard. They also offer some benefits over DB plans in terms of portability.

Legislative proposals to make major changes in the pension system, such as a switch or conversion from a DB plan to a DC plan, are politically infeasible; such proposals are designed to draw attention to possibilities for reform and provide points for discussion, more than to actually attempt to change policy. In this spirit, we briefly describe the various proposals below.

SB 6 and **SB 735** propose closing all the state's DB pension plans to new employees. New employees will instead be required to join a DC plan. While current employees will remain in their existing DB pension plans, they will have the option to transfer to the new DC plan. The DC plan is funded by an employer contribution of 7.25 percent, with no employee contribution. Like most DC plans, employees will have a choice of investment options offered by the plan's administrators. Fiscal estimates are complicated by uncertainty regarding how many current employees might switch to the new DC plan. However, the bills' fiscal analyses suggest that the state would realize cost savings associated with the DC plan, which is less expensive to fund than the DB plan if all members of the state's pension plans are required to switch. As of 2009, two states (Alaska and Michigan) and the District of Columbia required all new employees to join a DC plan.[77]

HB 1155 proposed a similar approach, but would only close the state's DB pension plans for general state employees and teachers (e.g., excluding state police, law enforcement officers, correctional officers, and judges). New employees would be required to join a DC plan; however, since the bill would leave in place the more expensive pension plans associated with other state employees, total state retirement costs increase. This increase may be offset by the bill's provision to eliminate state prescription drug benefits for retirees eligible for Medicare, resulting in significant cost savings: an average of more than $150 million annually over four years. The bill would also require the state to use in-house investment managers in an attempt to reduce investment costs, which totaled $184 million in 2010. However, the costs associated with hiring qualified in-house managers are difficult to estimate.

In contrast to the previous bill, **HB 1326** would have required the state to rely solely on independent, external investment firms to manage the assets of the state's pension system. The fiscal effects of this change are difficult to estimate; while the state would save money by eliminating its internal investment division (the investment division's 21 employees receive on average over $95,000 in annual salary and benefits), it would also realize increased costs associated with hiring additional external investment firms.[78]

HB 843 would have established an optional DC plan so that new employees could choose between membership in the standard DB plan or the new DC plan. Since the DC plan is optional and limited to general state employees and teachers, rather than all state employees, the cost savings associated with a mandatory DC plan are not realized, and fiscal estimates are impossible to make, since it is uncertain how many or what kind of employees will opt for the DC plan rather than the DB plan. At least six states offer DC plans as an alternative option to standard DB plans, and participation ranges from 3 percent to 26 percent, with an average of about 17 percent.[79]

HB 1289 would convert the pension system for general state employees and teachers to a hybrid DB/DC system. The change would be effective for both current and future employees, although it would only apply to service credit earned going forward. Employees would pay a reduced contribution rate for the DB portion of the hybrid plan, but also receive reduced service credit; however, they would also qualify for matching contributions from the state for the DC portion of the plan. The state will begin to recognize cost savings after the first year, since the cost to the state of the employee contribution match is more than offset by the savings associated with the reduced DB contribution. At least four states offer a hybrid DB/DC plan which new employees are required to join.[80]

HB 1290 would convert the pension system for general state employees and teachers to a DC system. This change would be effective for both current and future employees; changes for current employees would only apply to service credit earned going forward. The bill also includes provisions that phase in a cost shift of employer contributions from the state to localities, discussed below.

HB 1317 proposed converting the pension system for general state employees and teachers to a cash balance plan. This change would have affected both current and new employees, but like similar proposals discussed above, would only apply to service credit earned prospectively. A cash balance plan combines features of both DB plans and DC plans, although it is not a hybrid plan. While a cash balance plan is for legal purposes a DB plan, and investment gains or losses do not directly affect the benefits offered to members, members' benefits are drawn from individual accounts, much in the way a DC plan functions.[81] Unlike a DC plan, members cannot control the investment of their assets, which is managed by plan administrators; however, the employer also bears a risk associated with offering a guaranteed return to members regardless of investment performance.

While the bill's fiscal and policy note mistakenly claims that no states offer their employees a cash balance plan, Nebraska has required its primary government employees to participate in a cash balance plan since 2003.82 This bill specifies employee and employer contributions of 5 percent of salary each, and guarantees a return of 5 percent annual compound interest. The bill also includes provisions that phase in a cost shift of employer contributions from the state to localities, discussed below. Some union leaders have criticized cash balance plans as failing to provide enough income in retirement, but this risk can be substantially reduced if members purchase an annuity. The bill requires a member's benefits to be payable in a lump sum or as an annuity.

HB 1344 would halt participation in the current pension system for general state employees and teachers, and offer those employees and new employees a choice between a DC plan and a cash balance plan. Estimates of the bill's fiscal effects are uncertain, since it is unknown what fraction of employees would choose the DC plan versus the cash balance plan. In any case, state pension liabilities are expected to decrease significantly, along with the state's annual retirement costs.

HB 1211 would permit general state employees and teachers with at least 15 years of service to end their participation in the state's pension system, and receive a rollover distribution payable to an eligible retirement plan (e.g., an IRA, annuity plan, etc.). The distribution would be the total of the employee's contributions and the employer's contributions, with added interest. Under worst-case assumptions of the fiscal analysis, the state's annual retirement costs could increase by an average of $24 million over four years. However, providing this option to current employees allows them more choice with respect to their vested benefits.

Cost-Shifting of Teacher Pension Contributions to Localities

HB 1290, HB 1317, SB 628, and SB 629 all contain provisions that would have begun the process of shifting the cost of teacher pensions from the state to local county governments. Currently, the state pays the full cost of employer contributions for teachers' pensions, although local governments employ teachers and set the salaries and compensation on which pension benefits are based. To remove some of the pressure of growing pension costs from the state, these bills would have shifted increasing increments of the costs to the counties, with the ultimate goal of sharing costs equally between the counties and the state.

Estimated savings to the state are large, exceeding $100 million in early years, and more in later years; such savings also represent new costs for localities. While cost-shifting does not directly address the factors contributing to increased pension costs like additional pension reform might, it does provide counties with an incentive to seek ways to reduce pension costs. As it stands now, counties have little incentive to keep teacher pension costs in check, since they do not have to foot the bill for them. More legislative effort on this issue is expected during the 2011 special session.

Ethics and Transparency

Campaign Finance

This session presented numerous opportunities to reform the state's campaign finance laws by closing a variety of loopholes identified in January 2011 by the attorney general's Advisory Committee on Campaign Finance.[83] Unfortunately, while a variety of legislation was introduced addressing some of these issues, the only bill passed by the General Assembly is one that will impose onerous disclosure requirements on private organizations. Meanwhile, loopholes that allow a single individual to make multiple contributions via different limited liability corporations (the "LLC loophole") and that allow wealthy "sham" candidates to shift unlimited amounts of money to other candidates on the same slate remain on the books (the "slate loophole").[84]

HB 93, passed and signed into law, requires any individual or organization spending $10,000 or more on campaign materials distributed via print media, advertising, radio, television, or the Internet in an election cycle to file a detailed report containing information such as the amount and date of each expense, as well as the name of each person who made a donation greater than $51 to the individual or organization. The legislation also mandates that the individual or organization provide a link to the report directly from their web site's homepage, and that information disclosed in the report be included in the reports issued to the organization's members or shareholders. SB 446 was a similar but less detailed version of this legislation; it did not specify a threshold amount.

While much of the media coverage surrounding this legislation reports that it applies to corporations and unions, the legislation in fact applies to any kind of organization, whether organized to support a candidate or a ballot initiative. Although the bill's general intent may be positive, it may apply to a broad swath of individuals and organizations; indeed, the office of the state prosecutor stated that "the bill creates an entirely new class of expenditures and persons who would be subject to reporting requirements and would probably more than double the volume of election law complaints."[85] As a result, the office will need to hire additional employees to cope with new violations and complaints.

HB 322 and SB 339 would have closed a loophole that currently allows individuals to exceed the limitations on maximum contributions to candidates by donating through multiple limited liability corporations (LLCs) and other business entities. Currently, the maximum contribution an individual can make is $4,000 to one candidate, with a total limit of $10,000 in a four-year election cycle. The Advisory Committee on Campaign Finance specifically identified this loophole in its January 2011 report, citing one instance where an individual was able to donate $62,000 to a single candidate by using

16 different LLCs.[86] HB 723/SB 663 would also have closed this loophole, but contained broader provisions that expanded the scope of the law beyond formal business entities.

HB 481 was introduced to address the practice of "lump sum" contributions. While candidates are required to explicitly report on donors who cumulatively contribute more than $51, donations less than this amount can be grouped together and reported as a single entry in the candidate's campaign finance report. This bill would have capped the amount that candidate could report as a lump sum at $25,000 in a single election cycle. Since only five candidates exceeded this cap in the 2010 election cycle, and lump sum contributions accounted for only 3 percent of overall campaign contributions in that same cycle, the bill's practical effect would have been limited.[87] A better approach would have been to focus on loopholes that have already been identified and are known to be widely abused, such as the LLC loophole or the slate loophole.

Public Information

HB 37/SB 740, passed and signed into law, requires public records be provided to requestors in a searchable electronic format when possible. Requestors can be charged fees for the creation or furnishing of the electronic copy. This legislation may expand access to public information, especially to visually impaired individuals who benefit from electronically formatted documents. The "searchable" qualification is especially important, allowing individuals to sift through large amounts of public information in a timely fashion. Unfortunately, the legislation also explicitly allows public officials to remove metadata from the electronic copies they make available. Such metadata is no less a matter of public record than the document itself, and should not be excluded from public access. In 2009, the Arizona Supreme Court ruled that Arizona state agencies were required to treat such metadata in exactly the same way as any other public information.[88] Despite requests to amend the bill to remove the metadata provisions, they remained in the final text.[89]

HB 644/SB 492 would have required local boards of education to make school board budget information available online for public inspection, searchable by individual school. Cost estimates for developing the web site vary widely; Baltimore City's web site may already meet the requirements of the bill, and Allegany County estimates its internal costs would be around $5,000, whereas the state's Department of Information Technology suggested based on its prior experience that internal costs could be as high as $100,000.

HB 638/SB 389 proposed requiring the state's Department of Information Technology to post the details of all loans totaling $25,000 or more on a publicly accessible web site. Currently, the Maryland Funding Accountability and Transparency web site (available at www.spending.dbm.maryland.gov) contains information on payments of $25,000 or more made to vendors, as well as grants and loans of $50,000 or more. Since the web site already exists, the costs of expanding its coverage would be minor.

HB 48 was passed by both chambers, but they could not reconcile differences between the two versions, and the bill did not become law. Its primary provision required that notice of public meetings be posted on a publicly accessible web site, rather than only in writing. Notice would also have to be posted in a public location. Requiring online notice of public meetings represents an increase in transparency, as an ever-increasing number of citizens rely on the Internet as a source of information and news.

Other Issues

HB 818 sought to prohibit pharmaceutical manufacturers from giving gifts of any value to health care professionals. Exceptions would be made for free samples of products, academic or clinical literature, scholarships, research assistance, etc. Given that the federal Physician Payment Sunshine Act, enacted as part of federal health care reform in 2010, will require all gifts to be reported and publicly searchable through the Department of Health and Human Services, state-level regulation of gifts would merely introduce additional complexity to regulatory compliance.[90]

HB 46 passed the House, but made no progress in the Senate. The bill was designed to prohibit state officials from using their positions to suggest to others that they employ a given lobbyist or lobbying firm.

Miscellaneous

Slot Machines and Gambling

A variety of legislation related to slot machines and other forms of gambling was introduced during this session. Two bills were passed; **SB 512** loosens the requirements relating to proposals for a slot machine license in Allegany County. Last year, the General Assembly passed legislation designed to entice slot machine operators to the county by raising their statutory profit limit, but only if an operator also purchased troubled Rocky Gap Lodge and Golf Resort from the state. The resort has long been the subject of criticism for being a money drain, consistently failing to operate profitably, and accumulating millions of dollars in debt that are still being paid off. Even after the profit limit was increased, no applications for the license were received. This year's bill increases the profit limit yet again. Normally, it is set at 33 percent of proceeds. Last year's legislation increased this to 33.5 percent for five years; this year makes it 50 percent for 10 years, and allows the slot machines to be housed in the lodge itself. While increasing the profit limit will result in less tax revenue for the state than originally envisioned, with no current operator there is no tax revenue at all. Additionally, it is in the state's interest for a private operator to take over the money-losing lodge and resort.

HB 868/SB 373 were passed and signed into law to prevent future disputes between the various business interests competing for slot machine licenses in the state. After one gaming company was awarded a license in late 2009 for a location at Arundel Mills, a concerted effort to subject the award to a referendum (allegedly supported by a competing gaming company) succeeded in delaying the start of construction until voters approved the original plans.[91] This legislation would prevent such occurrences in the future, avoiding additional delays in slot machine-related tax revenue, as well as local jobs related to the industry.

HB 488/SB 706 proposed allowing up to 2,500 slot machines to be installed at BWI airport, and having state revenues from these machines distributed primarily to the Transportation Trust Fund, rather than the Education Trust Fund, as is the case with other locations. Currently, only two other airports in the United States, both in Nevada, have slot machines. This bill would have been contingent upon a constitutional amendment proposed in **HB 495/SB 707**. Another expansion was proposed in **HB 1021**, which contingent upon voter approval would have permitted up to 2,500 slot machines to be installed at a newly licensed location in Frederick County.

From a policy standpoint, there are good reasons to place slot machines at an airport rather than some other facility, especially inside the security zone where only ticketed passengers are permitted. Many patrons at the airport will be non-residents, and may only have the chance to patronize the machines at the airport. This potential revenue gain for operators and the state would not divert business from other slot facilities in the state. However, since the state is required to purchase, lease, and maintain slot machines, adding additional machines represents a significant initial capital outlay, potentially $50 million to $100 million. It would be better policy to permit a private business to assume the risk for such a venture.

The legislation's revenue redirection provision attempts to shore up the financial position of the Transportation Trust Fund (TTF); however, a better solution to this problem would be for the state to stop borrowing from the TTF to balance the budget, as it has done in previous years, and as various other legislation introduced this year envisioned. Estimates indicate that adding slots at BWI as this bill proposes could generate about $18 million in revenue for the Transportation Trust Fund annually, beginning in 2016. This is less than one-half of one percent of the TTF's annual revenue. By comparison, since 2003, over $737 million has been borrowed from the TTF to balance the state's budget. While this borrowing comes with a promise of repayment, in some cases that repayment has come in the form of new debt issues, and thus does not really represent true repayment.

Horse Racing

HB 429 envisioned altering the distribution of revenues from slot machines, redirecting up to $100 million from the "Purse Dedication Account" (a subsidy for the horse breeding and racing industry) to public school construction and teacher pension contributions. The revenues could only be used to supplement regular appropriations for these purposes; however, since the state has routinely failed to contribute the full amount of its annual pension costs, ensuring that additional revenues act only as a "supplement" will be difficult or impossible. The bill's attempt to redirect revenue from an industry subsidy to more legitimate state purposes is sensible, but should not divert attention from the rising costs associated with teacher pensions.

HB 1049, passed and signed into law, represents the Administration's attempt to prop up the struggling Maryland horse racing industry. By shifting slot machine revenue away from an account dedicated to racetrack upgrades, the legislation directs that revenue to subsidize the operating costs of several horse racetracks throughout the state. The funds subsidizing the operating costs of the racetracks come from slot machine revenue, which began flowing with the opening of Hollywood Casino in Perryville last September, and increased when a second casino, Ocean Downs, opened in Berlin in January.[92] However, that this revenue had to be redirected from capital improvements to operating expenses raises serious questions about the sustainability of the state's horse racing industry, and whether the funds could serve the state's citizens better in some other capacity.

This bill also authorizes the state or the city of Bowie to purchase the Bowie Training Center from its current operators, rather than allow those operators to directly sell the training center to the buyer of their choice. HB 557/SB 491 would have authorized the same thing. If the state does purchase the facility, this would suggest that no buyer acceptable to the state was willing to purchase it, and that the state would have to hold and potentially operate the facility indefinitely and at an unknown cost until it found an acceptable purchaser. Meanwhile, in June, the two gaming companies that own the Maryland Jockey Club, the racetracks at Pimlico and Laurel, and the training center, transferred ownership to a business entity established by Frank Stronach, the CEO of one of the companies.[93]

Use of Mobile Phones while Driving

Several bills were introduced to restrict the use of mobile phones while driving. HB 196/SB 424, the only legislation to actually pass, now bans the reading of text messages while driving. Due to a loophole, previous legislation banned only the composition of text messages while driving, and an attempt to expand the ban during last year's legislative session ultimately failed. The prohibition remains a primary offense, meaning that violators can be cited without the need for a police officer to observe any additional violation.

HB 221 would have closed the loophole permitting the composition of text messages, but also would have prohibited minors from using mobile phones while driving even if they used a hands-free device. Legislation passed during last year's session specifically required drivers to use a hands-free device to operate a mobile phone while driving. HB 222 proposed similar changes, but would have also required primary enforcement of hands-free device use, rather than secondary enforcement as is currently the case.

HB 373 and HB 854 were written to change the requirement for use of hands-free devices from secondary enforcement to primary enforcement, but the bills would also have prohibited minors having learner's permits from using mobile phones in any capacity, even if they used a hands-free device.

Free Public Transportation for State Employees

HB 985 would have permitted legislative and judicial branch employees of the state government to ride free on MTA public transportation such as Baltimore buses, the Metro subway, and the Light Rail. Employees of the state's executive branch already ride for free; estimates indicate that the cost of providing this benefit is approximately $1.5 million annually, or 2 percent of the total revenues generated by such public transportation. Since the legislative and judicial branches employ far fewer workers than the executive branch, the additional cost of extending the benefit would be small; however, given its general fiscal situation, the state should reconsider whether to offer this benefit at all, let alone expand it.

Other Issues

HB 173, passed and signed into law, established the Invest Maryland Program. Spearheaded by the Administration, this bill creates a venture capital fund that will be used to invest in small businesses throughout the state. The fund is capitalized by the proceeds from an auction of tax credits sold to insurance companies. The majority of the funds received will be distributed to selected private venture capital businesses, allowing private firms to make investment decisions rather than the state. A nine-member board will oversee the selection and operation of the firms. In order to be eligible to receive investment funds, a small business (less than 250 employees) must be based primarily within Maryland, and be engaged in some other businesses than professional services (i.e., accounting, financial services, law, medicine), banking, insurance, or retail.

While in general this type of state-sponsored investment program should be viewed with skepticism, Maryland's program has several commendable features. First, it is funded through a competitive auction of tax credits rather than from current year appropriations. Additionally, and in contrast to a model followed by several other states, profitable firms receiving investment funds would be required to return both the principal as well as 80 percent of profits. Finally, Maryland's program, while excluding some classes of businesses, does not specifically focus on any particular sector, thus permitting freedom to invest where most appropriate.

HB 28/SB 858 and HB 380 sought to explicitly prohibit undocumented immigrants from receiving public benefits by requiring state or local government agencies to verify the lawful status of anyone being provided a public benefit. Public benefits are broadly defined to include contracts or grants, licenses, as well as most other forms of governmental assistance that involve payments, such as welfare, disability, or food benefits. Exempted benefits include services such as emergency health care, disaster relief, and immunizations for communicable diseases.

Since undocumented immigrants are already ineligible for most of these benefits (e.g., unemployment, Social Security, food stamps, welfare, etc.), the legislation's primary effect would be to force government agencies to implement additional verification procedures, in some cases at significant cost. Many other public benefits that are provided to undocumented immigrants are non-excludable, meaning that it is infeasible to limit their provision to lawful residents only. Such benefits include public transportation, police and fire services, and public libraries. This legislation would eliminate one major public benefit: the right of undocumented immigrants to claim worker's compensation. In 2005, the state Court of Appeals ruled in *Design Kitchen and Baths v. Lagos* that Maryland's worker's compensation law applies regardless of legal residency. However, denying eligibility for worker's compensation to undocumented immigrants could create a perverse incentive for employers to hire such immigrants, especially for dangerous or high-risk jobs.

This session saw two related proposals for requiring the use of the federal E-Verify program. HB 761/SB 390 would require all State contractors, subcontractors, and grantees to use the federal E-Verify program. The E-Verify program is free for employers, and is designed to provide more secure employment status verification than the paper-based federal I-9 form. The program's enrollment and accuracy has improved with time; requiring its use for recipients of state contracts would help to ensure public funds are not inadvertently being directed to undocumented workers. While this bill would only apply to contracts valued at $100,000 or more, HB 760 would have applied to contracts valued at $10,000 or more.

SB 729 proposed a massive reorganization of the state's public transit administration. It would have established two new transit authorities, one covering Baltimore City and Baltimore County, and the other covering Montgomery and Prince George's Counties; these authorities would have then overseen development of the planned Red Line and Purple Line, respectively. The transit authorities would be separate from the state's Department of Transportation, and would have broad power to levy taxes and issue bonds.

SB 961, passed and signed into law, removes the requirement that the state's Transportation Authority lease the gas stations at Maryland House and Chesapeake House (rest stops on Interstate 95 north of Baltimore) to more than one person or operator. This restriction was designed to ensure that a single operator would not have a monopoly on the gas stations at those rest stops. The Maryland Transportation

Authority seeks to redevelop the stops with a public-private partnership, raising the possibility that a single private developer could control both stops for the duration of a 35-year lease; while the legislative analysis of this law suggests this could result in more revenue for the state (although no specific calculations are available), monopoly control will also likely result in higher prices and poorer service for travelers. Late last year, the authority halting bidding on a previous request for proposals, opting to start from scratch this year; currently, new proposals are due in late 2011.[94]

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APPENDIX A – SCORING AND GRADING DETAILS

Scoring

We begin with a relatively simple two-factor scoring system. The first factor, a coefficient (C), represents our judgment of the General Assembly's final action on a bill, and can either be positive or negative. For example, a good bill that was passed would have a positive coefficient (C = 1), whereas a bad bill that was passed would have a negative coefficient (C = -1). In rare instances, bills are assigned a neutral coefficient (C = 0); this occurs when a bill is too complex to give a simple positive or negative consideration, or when out of two or more positive (negative) proposals, one was accepted (rejected) over the other(s).

The second factor, a multiplier (M), is a measure of how far a bill progressed during the legislative session. The larger the multiplier, the more progress the bill made, and the more weight its score carries (for better or worse). For example, 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. Table 2 shows how a bill's status corresponds to a given multiplier:

TABLE 3 MULTIPLIER VALUES

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

This relatively simple two-factor scoring system nevertheless allows for some nuance. First, any bill that is to become law must be passed by both chambers of the General Assembly; such bills would receive 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 in which good or bad bills are rejected. Since 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 would normally be positive, instead becomes negative. This penalizes the legislature for rejecting good ideas; likewise, it also rewards the legislature for rejecting bad ideas.

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 x M:

$$1 \times 3 = 3$$

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

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

Weighting

The original Annapolis Report's scoring system did not attempt to differentiate between bills that made the same amount of progress during the session. For example, every bill that passed and became law was given the same weight as every other bill. Both last year's and this year's reports attempt to address this drawback by incorporating an objective measure of relative importance into the scoring system. Specifically, the report incorporates a weighting variable derived from the estimated fiscal effects of each bill. This weighting variable (W) is used to adjust the unweighted scores, giving more weight to bills with larger fiscal effects than those with minor fiscal effects. While fiscal effects are not the only way of assessing relative importance, they are consistent, objective, and widely available.

Scores are calculated as discussed above, with the additional inclusion of the weighting variable (W). For example, a good bill (C = 1) that passes one chamber (M = 3) and has a weight of 3 (W = 3) would be scored as C x M x W:

$$1 \times 3 \times 3 = 9$$

The weighting variable is derived from the "Fiscal Summary" included in the fiscal and policy notes provided for many bills. The summaries are produced by the state's Department of Legislative Services, and calculate estimated revenues and expenses to general, special, and federal funds, as well as the net fiscal effect of most bills for the fiscal years 2012 to 2016.

Our weighting variable sums the total amount of revenues and expenses for each fiscal year. Summing revenues and expenses is necessary because relying only on the net fiscal effect would hide the effect of taxation that is offset by spending. For example, a bill that raises $10 million in taxes and requires $10 million in expenditures would have a net fiscal effect of $0, but our report would consider it to have $20 million worth of "weight."

We do not differentiate between revenues and expenses for the purpose of weighting; i.e., a bill that involves $10 million in spending would receive the same weight as one involving $10 million in revenues. We use the dollar estimates as-is from fiscal year 2012, but the figures from 2013 to 2016 are discounted at an annual rate of 5 percent. Discounting the estimates for future years is a standard practice reflecting the difference between the future value and present value of money. Since a sum of money invested today will generally be worth more in the future, the future value of both revenues and expenses equates to slightly lower present values.

The present values for all five years are summed to obtain the total present value. Some bills lack a fiscal summary, either because the fiscal effects are too difficult to predict or because the bill does not have a direct fiscal effect on government operations. To obtain weights for these bills, we estimate the bill's fiscal effect as either small, moderate, or large by analyzing its fiscal provisions and comparing it to similar legislation. Small effect bills are assigned the 25th percentile fiscal estimate for all bills that have estimates; moderate effect bills are assigned the 50th percentile estimate; and large effect bills are assigned the 75th percentile fiscal estimate.

At this point we have weights for every selected bill. However, these weights cover an extremely large range and have a high variance. For example, without any further treatment, HB 72, the Budget Reconciliation and Financing Act (BRFA), would be weighted several thousand times more heavily than the median bill. Untreated weights would allow the scoring to hang completely on the outcome of a few large-fiscal effect bills. To avoid this situation, we use a standard natural logarithmic transformation to reduce variance in the weights. The result is that large fiscal effect bills still command significantly more weight, but not so much that they overwhelm all other bills. For example, after the transformation, the BRFA is weighted only 2.55 times as heavily as the median bill, but five to 10 times as heavily as some very small fiscal effect bills.

Now that the transformed weights have been obtained, we simply include them in the original scoring system: i.e., we multiply each bill's coefficient (C) by its multiplier (M), and then by its transformed weight (W): C x M x W. If the bill was cross-listed or passed in both chambers, this is done for each chamber, and the two scores are summed. This gives us the transformed weighted raw score.

Grading

For each category and for all bills, the individual raw scores are summed to form a total raw score. Then, this total 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 letter grades make 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:

TABLE 4 LETTER GRADES AND CORRESPONDING PERCENTAGES

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%

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 sum the multiplier (M) times the weight (W) 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_b) times its weight (W_b), beginning with the first bill (b) and ending with the last bill in the set (B):

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

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 x W) in the set:

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

To convert the actual 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 Table 4.

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