

The Maryland Public Policy Institute



The Annapolis Report

A Review of the 2015 Legislative Session

THE ANNAPOLIS REPORT

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2015 Legislative Session*

BY JOHN J. WALTERS

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The Maryland Public Policy Institute

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INTRODUCTION

THE 2015 LEGISLATIVE SESSION was the first headed by a Republican governor after two terms of Governor Martin O'Malley. Although Governor Larry Hogan's plans to "Change Maryland" were based on a number of issues, the primary focus of these first 90 days was always the state budget and taxes.

Still, hundreds of bills went before the House and the Senate, just like they do every year. And, on April 14, 2015, Governor Hogan signed 121 of them into law.¹ Some of these will be of almost no consequence to anyone save small groups that are directly affected. Others will help determine which direction the state moves in the next year and beyond.

The primary source for this report is *The 90 Day Report*,² a 428-page document published by the Department of Legislative Services each year shortly after the close of the legislative session. *The Annapolis Report* makes no attempt to be a complete chronicle of every law debated, rejected, or passed by state legislators. Rather, its focus is on identifying those pieces of legislation that will influence the lives of Maryland residents and explaining them in as plain language as possible.

METHODOLOGY

Although assigning grades is a subjective process, efforts were made to consider the positives as well as the negatives and to take an honest look at the collection of new laws in each general category and their implication for the well-being and prosperity of the state as a whole. Victories as well as failures and missed opportunities are noted. This endeavor is based on the philosophy that only by paying careful attention and holding our government to a higher standard is progress made.

GRADING: GRADES BY SECTION

Money

GRADE: B

Although the state budget increases spending, the increase is more modest than what we have seen in recent years. Steps were taken to reduce the structural deficit, but it remains an ongoing concern that needs to be addressed in the near future. Troublingly, special funds (often ones earmarked for environmental cleanup) are still being plundered to fill budget gaps, and corporate welfare continues. And while the issue of underfunded public pensions was addressed by removing the corridor funding method, the issue of overpaying for underperformance remains.³

A legislative session without any new taxes or tax increases is certainly a victory, and there is some cause for optimism that the business climate will start to improve in the state now that it is being made a priority. Still, much remains to be done, and legislators devoted so much time to debating small-time bills that they didn't finalize the budget until the 11th hour.

Transportation

GRADE: D

Progress on transportation was largely gridlocked. A bill to stop the phase-in of the gas tax increase was blocked. No decision has been reached on funding the construction of the Red and Purple Lines. There will be some increased accountability over highway spending, but not the full re-evaluation of spending priorities that is necessary.⁴ A disproportionate amount of funding relative to usage still flows towards public transport.

Environment

GRADE: C

The "repeal" of the Rain Tax is something of a symbolic victory, as counties are free to continue to charge residents a stormwater remediation fee (although this is no longer required). A lot of money is being allocated towards cleanup efforts that may not be as effective as biting the bullet and simply dredging the Conowingo Dam.⁵

Healthcare

GRADE: D

Little of note happened in the healthcare arena, as changes mandated at the federal level still have

yet to be fully implemented. Many small bills were debated and some passed, but there was no challenge to legislation that would actually stand a chance of making healthcare and health insurance more affordable for Maryland residents.

Education

GRADE: C

A slight expansion of charter school autonomy is the main cause for celebration on the education front this year. Increased options for parents will hopefully push public schools to improve as they compete. Funding for education grows slightly, as it does every year. Mandated spending increases remain a cause for concern as they threaten to squeeze out funding for other important programs.⁶

Crime

GRADE: B

Passage of legislation further decriminalizing the medicinal and recreational use of marijuana by adults shows that Maryland is joining other states in recognizing that our police have more important things to worry about. Especially in the wake of the Baltimore City riots, legislation mandating increased accountability and transparency in policing should be viewed as a positive sign.

EXPLANATIONS BY SECTION

Money

Budget Fiscal Year (FY) 2016's budget grows by a relatively modest 1.5 percent, compared to 4.3 percent spending growth in FY 2015 and 3 percent in FY 2014. With the additional \$590.2 million in spending, the FY 2016 budget weighs in at \$40.5 billion.⁷

At the end of the year, it is estimated that \$27.7 million will remain in the General Fund (GF) and that the structural deficit will have been reduced by \$444 million to \$206 million. The budget also maintains at least 5 percent of the GF balance in the state's Rainy Day Fund (RDF): \$814.1 million.

The budget meets the recommendations from the Spending Affordability Committee, a team tasked with limiting the rate of spending growth so that it does not outpace the growth of the state economy. However, it does not permanently solve one key problem that has plagued the state for years: the chronic structural deficit,

which is the imbalance between how much the state wants to spend and how much it takes in via tax revenue. It is estimated that the deficit will rise to \$284 million by FY 2017, and \$635 million by FY 2020.⁸

Primary causes of the structural deficit are increases in upcoming expenses over which budget makers have little control: \$167 million in additional debt service, \$105 million in additional education spending, \$75 million to restore state salaries (the 2 percent general salary increase of January 1, 2015 was rescinded), and \$70 million in grants to local schools that used to be discretionary but now are mandatory. For these increases to go through without increasing the structural deficit, state revenues would have to grow 5.7 percent by FY 2017; they are forecasted to grow by only 4 percent.⁹

The Budget Bill, House Bill (HB) 70,¹⁰ allocates 40.8 percent to state agencies, 28.4 percent to entitlements, 19.9 percent to local government, 7.3 percent to PAYGO capital¹¹ (capital spending not funded by issuing additional debt), 3.4 percent to debt service, and 0.1 percent to the reserve fund.¹²

Although the Hogan administration promised an end to “budgetary gimmicks,” some amount of gimmickry remains. HB 72,¹³ the Budget Reconciliation and Financing Act (BRFA), enables the transfer of \$184.7 million to the GF to help balance the budget.¹⁴ Although this amount is smaller than the \$523.3 million in fund transfers under former-Governor O’Malley’s watch in FYs 2014/2015, it still shows a somewhat disquieting willingness to plunder special funds like the Local Income Tax Reserve Account.¹⁵

State Workforce The state workforce decreases by 297 positions, 0.4 percent of the 80,807 total. The estimated payroll for FY 2016 is \$7.3 billion—an increase of 1.5 percent driven by an increase in the cost of employee and retiree health insurance.¹⁶ The Employee and Retiree Health Insurance Account had been running a surplus until 2013, when payments were reduced. Now, it is expected to be short over \$30 million by the end of this FY.¹⁷

The most significant changes to spending on personnel were contributions to the pension funds for public employees. The BRFA repeals

the corridor funding method as of FY 2017. This funding method, which has been in place since 2002 and began to be gradually phased out in 2013, was projected to restore public employee pension funds to full actuarial funding by 2024. With the corridor method instead being phased out completely next year, it is estimated that full actuarial funding will instead be restored by the end of FY 2017.¹⁸

Without a doubt, fully funding public pensions is a step in the right direction. However, the assumption that the funds will be 100 percent healthy in just a few short years is merely an assumption. Restoring these funds completely will require a substantial annual supplemental contribution, and while that contribution is being maintained, it has been reduced from \$150 million to \$75 million. Just two years ago it was \$300 million. If the annual contribution keeps getting halved every year, proper solvency will be delayed, if it is attained at all.

Taxes The Hogan administration certainly delivered on its promise to avoid any new taxes or tax increases, during the 2015 legislative session, with the exception of a provision in the BRFA that limits the Earned Income Tax Credit to state residents and a couple small clarifications to niche taxes (like the sales tax on the total cost of hotel rooms paid by a consumer) that could slightly increase revenues.¹⁹

Three bills would have expanded tax credits to certain state residents, but all failed. Senate Bill (SB) 590²⁰ would have exempted businesses with less than \$10,000 in assessed value from property taxes on business-owned personal property. SB 594²¹ would have allowed retirement income for emergency personnel to qualify for the state pension exclusion. And HB 487²² would have provided a 60 percent tax credit for contributions made by a business entity to a nonprofit that provides funding for schools.

One bill did succeed in expanding tax credits for military, a target group for the Hogan administration. SB 592²³ expands the state income tax exemption for military retiree income from \$5,000 to \$10,000.

Another beneficial bill for homeowners in financial trouble in Baltimore City, HB 1035,²⁴ expands the redemption opportunities for homeowners who owe unpaid taxes or water/sewer

bills up to \$750 (formerly \$250) so their houses won't get sold out from under them. Last yet, 2,236 of the 6,690 properties sold at auction were occupied at the time of the sale. This bill could limit the number of families that end up displaced due to a temporary period of insolvency.

State Economy Making the Maryland economy more attractive to potential investors who would then add to future tax revenues should be a high priority for the Hogan administration. Undoubtedly, reversing the trend of Maryland consistently ranking poorly for business attractiveness²⁵ due to high state taxes will take some time.

To get the ball rolling, the Maryland Economic Development and Business Climate Commission (called the Augustine Commission, for short), was formed in early 2014.²⁶ At the Commission's recommendations, HB 943²⁷ restructured the four main entities responsible for economic development in the state. What impact this will have on the state tax climate remains to be seen.

Three bills were passed that establish programs to help spur some amount of economic development. HB 942²⁸ begins a two-year pilot for a state apprenticeship program, SB 896²⁹ establishes a fund for no-interest loans to veterans who own small businesses, and SB 582³⁰ curiously requires the Department of Labor, Licensing, and Regulation to establish a pilot program for small business development by ex-convicts.

Corporate welfare still finds its place in the state budget, despite difficult economic times. HB 180³¹ ensures that operator losses at Ocean Downs Race Course and Rosecroft Raceway will continue to be subsidized with gambling revenues through 2019. And SB 905³² repeals the ending date for film tax credits.

Many bills that will affect only one industry were also passed. SB 868³³ establishes a regulatory framework for companies such as Uber and Lyft, classifying them as "transportation networks" and regulating them through the Public Service Commission.³⁴ HB 587³⁵ slightly lessens the licensing requirements for barber-stylists. SB 328³⁶ extends the license period for private detectives from two to three years. HB 871³⁷ establishes penalties for violators of the Maryland Individual Tax Preparers Act. HB 1056³⁸ makes the continuing education requirements for Real

Estate Professionals stricter. And HB 1160³⁹ repeals the requirement that 85 percent of a horse racing licensee's employees be U.S. citizens and state residents for at least two years.

This is, by no means, a comprehensive list. The modifications to local alcohol taxes alone comprise 25 pages in *The 90 Day Report*.⁴⁰ They are mentioned to provide an example of the type of bills that are presented to the Senate and the House and take time that very likely should be spent on more important things.

Transportation

Failed Initiatives Although an attempt was made to stop the phase-in of increased taxes on gasoline and remove the provision that the gas tax rate be indexed to inflation, both SB 589⁴¹ and HB 483⁴² failed to pass. This means that the provisions in HB 1515⁴³ from the 2013 Legislative Session will continue as scheduled: the 1 percent tax on the retail price of motor fuel will rise to 3 percent in July 2015 and—if the federal government doesn't legalize the collection of sales tax on all online purchases—it will increase to 5 percent in July 2016.

Several other failed bills would have altered the distribution of highway user revenue to provide more money and autonomy to local governments.⁴⁴ An attempt to transition to more local spending would be a step in the right direction, but one that Maryland legislators are not quite ready to take. Much like the attempted repeal of the gas tax increase, it seems likely that this battle will be fought again next year.

Red and Purple Lines No decision has yet been reached on either the Red Line (14 miles of light rail track connecting Baltimore County to Baltimore City) or Purple Line (16 miles of light rail track connecting Montgomery County and Prince George's County). The Red Line is projected to cost just under \$3 billion and the Purple Line about \$500 million less.⁴⁵

The Maryland Economic Development and Business Climate Commission's chair, Norman Augustine (hence the committee's nickname), sent a brief letter to Governor Hogan recommending he support construction of the Purple Line.⁴⁶ But with the average cost overrun on public transport projects during the past three decades an impressive 44 percent⁴⁷ and rid-

ership estimates that are likely to be twice (or thrice) the reality,⁴⁸ careful study is more than warranted before moving forward.

Capital Spending Over \$2.6 billion of the \$4.2 billion capital budget is devoted to transportation.⁴⁹ The Maryland Public Policy Institute has regularly advocated for a reevaluation of transportation spending priorities, as well as stricter oversight of how money gets spent. HB 913⁵⁰ prohibits the State Highway Administration from giving any funding to a local jurisdiction that fails to file an annual report on how those funds are being spent. Optimistically, this is the first step towards better use of the ample funds devoted to transportation infrastructure each year through increased accountability.

Just over one billion dollars of the capital budget is funded by issuing General Obligation (GO) bonds, as authorized by HB 71.⁵¹ The final authorized total can be seen as a compromise: \$50 million above what Governor Hogan suggested in his budget and \$50 million below what the SAC recommended as the upper limit.⁵² Estimates for the next three years hold new GO bond debt fairly constant at just over \$1 billion annually.⁵³

Environment

Rain Tax “Repeal” One of Governor Hogan’s campaign trail claims was that he would repeal the so-called Rain Tax, and after six failed attempts, the Senate finally passed SB 863.⁵⁴ However, repealing the Rain Tax is easier said than done. The legislation repeals the requirement that 10 specified Maryland counties enact a stormwater remediation fee, but allows them to continue to do so if they choose. Removing the tax is also contingent on identifying other funds for stormwater cleanup projects to replace the loss of revenue.⁵⁵ As usual, once a tax has been instituted and revenue starts to be collected, legislators act as if removing the tax entirely is utterly out of the question.

State legislators seem to be heavily favoring local stormwater remediation projects as the primary means of cleaning up the Chesapeake Bay. Perhaps this is because they truly believe it will make a difference, or because it allows them to look busy doing something while ignoring larger sources of pollution, such as the

Conowingo Dam. Research shows that dredging the dam could have a profoundly positive impact on the health of the Bay, but to do so would require a steep up-front cost.⁵⁶

At any rate, money is being plowed into local storm drain cleanup. SB 133⁵⁷ expands the acceptable uses of the Bay Restoration Fund to include combined sewer overflows and sewer rehabilitation. And SB 863, the same bill that repeals the Rain Tax, allows up to 25 percent of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (CACBTF) to be used as matching funds for local stormwater remediation projects.

Plundering Continues At the same time, the state continues to loot and pillage from special funds that are supposed to be used for environmental preservation and cleanup. The BRFA robs the Waterway Improvement Fund of \$2.2 million in 2015 and more than doubles the amount of fund money that can be used for administrative expenses (instead of waterway improvement) in 2016.⁵⁸ The CACBTF will lose \$8.6 million to the GF in FY 2016.⁵⁹ And Program Open Space, a frequent favorite for fund transfers during O’Malley’s time in office, will see over \$37 million of its budget go missing next year, along with \$10 million this year.⁶⁰

When special funds are plundered for use in the GF, taxpayers should take notice. We often accept new taxes or tax increases because they are sold to us as if the additional tax revenue will be used only for a specific purpose (like Chesapeake Bay cleanup) that is well worth the price. When, instead, money is used to fund general government largesse, and when this becomes a regular occurrence, we should view any and all future calls for necessary tax increases with suspicion.

Other Pollution Several bills were introduced that would have made hydraulic fracturing (commonly referred to as “fracking”) more difficult in the state of Maryland, had any of them passed.⁶¹ Notably, SB 458⁶² would have classified fracking as “an ultra hazardous and abnormally dangerous activity.” Another environmentally-minded bill, SB 257,⁶³ would have tightened provisions governing phosphorous pollution from agriculture. Like the fracking bills, it too failed.

One bill that made it through the House to Governor Hogan's desk was HB 216.⁶⁴ Beginning at the end of 2018, the manufacture and sale of beauty products (excluding those prescribed by a doctor) containing "synthetic plastic microbeads" will be illegal in the state of Maryland. Much like the myriad changes to alcohol laws, this bill nicely illustrates how legislators seem to need a lesson in priorities.

Healthcare

Medicaid Thanks to a slow-down in new Medicaid enrollees after the spike caused by passage of the Patient Protection and Affordable Care Act (ACA), the state budget for Medicaid falls 6 percent (\$561 million) to \$8.8 billion. Enrollment is still growing by 3.6 percent annually, but just last year enrollment was growing by 8.9 percent.⁶⁵

To balance out the increase in Medicaid benefit recipients, payments to providers are being cut⁶⁶ and a few other cost-containment measures are being implemented.⁶⁷ Although the cuts to reimbursements are small, they will affect the bottom line of all medical care providers who accept Medicaid. This could mean they will stop accepting Medicaid coverage, or that they will make up the difference by increasing patient volume and decreasing time spent with each patient.

The Senate passed SB 556⁶⁸ to bring existing Maryland health insurance law into compliance with the new regulations contained in the ACA. The most significant alteration will be the list of "essential health benefits" that must be covered by all health insurance plans (regardless of consumer preference). Since these essential benefits have yet to be fully defined by the federal government, and since they likely will not be defined before 2017, Maryland residents hopefully have at least two years before they should expect their monthly premiums to increase.

Tweaks and Small Changes The Maryland legislature made numerous small changes to existing healthcare regulations. SB 743⁶⁹ requires that a new birth certificate be issued to transgender individuals stating the corrected sex. HB 970 and SB 723⁷¹ made some minor alterations to the licensing of midwives and nurse practitioners, while HBs 591⁷² and 657⁷³ give pharmacists slightly more latitude to do their jobs.

HB 179⁷⁴ prevents individuals who failed the physical therapist exam six times from taking it a seventh, and HB 201⁷⁵ allows those who made the cut to issue legal handicapped tags to Maryland drivers. SB 201⁷⁶ expands on background checks for childcare program administrators. SB 575⁷⁷ makes minor clarifications to the tiers of certified alcohol and drug counselors. SB 596⁷⁸ modifies the frequency of inspections for healthcare facilities. And SB 792⁷⁹ prohibits discrimination of potential recipients of organ transplants.

While probably beneficial on a limited scope, none of these changes will have the power to have any real effect on the seemingly ever-increasing cost of medical care. Leaving aside that healthcare is a heavily-regulated industry, and that following—and proof of following—regulations increases costs, one of the main drivers of excess medical costs in the state are Certificates of Need (CONs).⁸⁰ These are permits that must be granted before any new medical facility can be created or expanded.

Any economist will tell you that the quickest way to increase the cost of an item is to restrict its supply. By keeping medical care a scarce resource, legislators are ensuring that consumers will always have to pay a premium (both in time and money) every time they see a doctor. There was no challenge to CON laws whatsoever during the 2015 legislative session, despite the evidence that they do nothing to control patient costs.⁸¹ The national program was abandoned by the federal government in the 1980s and should be challenged in the state of Maryland as soon as possible.

Education

Status Quo Spending for all things education increases slightly: state aid for education by 2.1 percent,⁸² libraries by 2.5 percent,⁸³ and higher education by 1.2 percent.⁸⁴ School construction continues to be funded at a level exceeding what was pledged 11 years ago in The Public School Facilities Act of 2004, to the tune of \$280 million this year.⁸⁵

Much like the healthcare industry, the state's education system is a leviathan that demands an ever-increasing share of the budget. And legislators approached education similarly, making small tweaks here and there to ex-

isting regulations but refusing to confront the fact that mandated annual spending increases for public education are squeezing other budget areas tightly.

There was, however, some good news. SB 595,⁸⁶ the Public Charter School Improvement Act of 2015, makes numerous changes to charter school law that expand the operational autonomy of charter schools.⁸⁷ And HB 452⁸⁸ puts state testing under the microscope and may hopefully lead to improved standardized tests in public schools. Little else of note made its way through the legislature this year.

Crime

Marijuana Decriminalization Following the lead of several other states, Maryland is taking steps to decriminalize the use of both medicinal and recreational marijuana. Possession of up to 10 grams of marijuana by adults over the age of 21 was already downgraded to a simple fine in 2014. SB 517⁸⁹ takes things a step further, repealing the prohibition on marijuana-related paraphernalia and setting the penalty for smoking in public at \$100. SB 456⁹⁰ requires that a court case be dismissed if it is determined that a defendant is using marijuana for medicinal reasons. Finally, HB 121⁹¹ allows a court to ignore mandatory minimum sentencing guidelines for drug-related offenses.

Police Accountability Recent media coverage of apparent racism in police practices spurred the legislature to pass three bills to increase the transparency of law enforcement. SB 413⁹² requires officers to record racial data on traffic stops and to compile these statistics into an annual report. HB 954⁹³ requires annual reports on all officer-involved deaths, including physical descriptions of all those involved. And, most notably, SB 482⁹⁴

will see the phase-in of body-worn cameras on police officers beginning in 2016.⁹⁵

All three of these measures passed before protests turned violent in Baltimore City over Freddie Gray's death while in police custody and forced the Governor to declare a state of emergency and mobilize the National Guard to maintain order.

CONCLUSION

Viewing this year's Legislative Session through the lens of "free enterprise, limited government, and civil society"—the core principles of the Maryland Public Policy Institute's mission—it is clear that this state still has a long road to travel. Getting spending under control and reevaluating priorities is a necessary first step that was only half taken this year.

While it is comforting to have a governor who does not view taxing and spending as the ultimate solution to all state problems, voters can be forgiven for remaining a little skeptical that any real change will be made. The state's problems did not develop overnight, and Governor Hogan will have an uphill battle to fight if he wishes to make real progress towards making the state friendlier to businesses and more conducive to economic growth.

For those who do not view the state budget as the end-all, be-all measure of politics, this legislative session must be something of a disappointment. Little progress was made on transportation projects, healthcare issues, education challenges, or environmental cleanup. With some exceptions (notably crime), the status quo largely prevailed.

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NOTES

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