The Maryland Public Policy Institute


# The Annapolis Report

## A Review of the 2016 Legislative Session

# THE ANNAPOLIS REPORT

*A Review of the*
*2016 Legislative Session*

**BY MARC KILMER AND MARCO ORSIMARSI**

## ABOUT THE MARYLAND PUBLIC POLICY INSTITUTE

Founded in 2001, the Maryland Public Policy Institute is a nonpartisan public policy research and education organization that focuses on state policy issues. Our goal is to provide accurate and timely research analysis of Maryland policy issues and market these findings to key primary audiences.

The mission of the Maryland Public Policy Institute is to formulate and promote public policies at all levels of government based on principles of free enterprise, limited government, and civil society.

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The Maryland Public Policy Institute

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## INTRODUCTION

THE 2016 GENERAL ASSEMBLY is notable more for what did not happen than for what did. In many cases, legislators failed to advance major legislation, which in the cases of tax relief or redistricting reform, did not serve the people of Maryland. In other cases, however, Maryland is better off because legislators declined to enact policies such as a sick leave mandate that would have placed yet another hidden tax on workers.

This report attempts to sum up and evaluate legislators' actions and inactions in major policy areas. The mission of the Maryland Public Policy Institute is to promote public policies at all levels of government based on principles of free enterprise, limited government, and civil society. Our analysis of legislative sessions has been consistent with that mission. We note cases when legislation reduces the freedom of Marylanders or expands government intervention in our lives, and praise legislation that is consistent with our mission.

## METHODOLOGY

Assigning grades to legislation is a subjective process. We cannot consider every bill passed by the General Assembly, much less every bill introduced by legislators. We have tried to give an overview of the most important bills considered in certain broad subject areas, as well as some lower-profile bills that we believe merit attention. We judge the actions of Maryland legislators based on whether they are promoting free enterprise, limited government, and civil society.

## GRADING: GRADES BY SECTION

### Budget

**GRADE: C**

After a year of relative fiscal restraint, Maryland lawmakers once again returned to their big-spending ways, increasing spending by nearly 5 percent. This will not help the state deal with its long-term fiscal problems. This irresponsible spending increase is tempered by the fact that the structural deficit outlook has improved somewhat, at least in the short run.

### Tax Relief

**GRADE: F**

Both the governor and legislative leaders of both parties in both chambers have stated that they want to lower taxes, so it should have been relatively easy for them to enact tax relief this legislative session. Unfortunately, disagreements over specific rate cuts doomed the entire process. Instead of lowering the high tax rates imposed on Marylanders, legislators ended up doing nothing on this issue.

### Crime

**GRADE: B**

Legislators continued their work re-evaluating Maryland's criminal penalties. By lowering the penalties for non-violent crimes and increasing them for some violent crimes, legislators are taking positive steps to rebalance the justice system. Legislators also passed meaningful reform of the state's asset forfeiture laws, although more work is needed to protect the property of non-criminals from being seized by law enforcement.

### Education

**GRADE: C**

While other states embrace programs that give parents a variety of school choice options, Maryland legislators continue to protect the status quo. They rejected legislation that would have encouraged privately funded scholarships for non-public schools, a relatively modest school choice proposal. However, the state budget did include funding for a small program that will allow some low-income students to attend private school. This is a notable, albeit limited, school choice victory in the state.

### Business and Economy

**GRADE: C**

Legislators in both parties continued their regrettable infatuation with corporate welfare in the form of tax credits for favored industries. Lawmakers also adopted new prevailing wage legislation and a wage mandate for disabled workers—initiatives that will harm taxpayers and some workers. On the other hand, lawmakers refrained from imposing expensive sick leave requirements on the state's businesses, which *de facto* would have imposed another payroll tax on workers. Legislators also get credit for relaxing some occupational licensing laws, although significant work is still needed to remove these types of barriers to employment.

### Elections

**GRADE: F**

Maryland has some of the most egregiously gerrymandered congressional districts in the nation. In late 2015, a state bipartisan commission made solid recommendations on how to reform the process that draws these districts. Although the commission's plan united individuals and groups across the political spectrum, Maryland lawmakers refused to let legislation that would enact this plan out of committee, thereby putting national party politics ahead of basic fairness to state voters. This shameful capitulation to raw politics, along with legislation that obstructs the referendum process, earns legislators a failing grade in this category.

### Transportation

**GRADE: F**

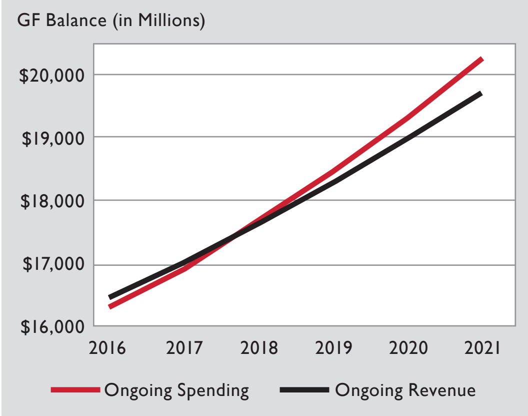
Legislators revised the methodology for planning and funding transportation projects in the state. They missed an opportunity to enact a funding system that prioritizes performance, and instead set up a system that will funnel even more money to transit in the high-wealth parts of Maryland, moving in the wrong direction for transportation planning and funding. That, along with the state's refusal to restore highway user revenue to local governments, earns legislators another failing grade.

## EXPLANATIONS BY SECTION

### Budget

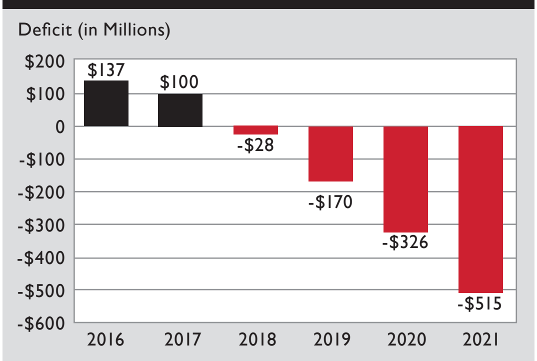
The Fiscal Year (FY) 2017 budget has returned to pre-FY 2016 spending growth levels. The budget for FY 2017 grows a sizeable 4.9 percent

FIGURE 1A THE GENERAL FUND-STRUCTURAL DEFICIT FORECAST FY 2016-2021



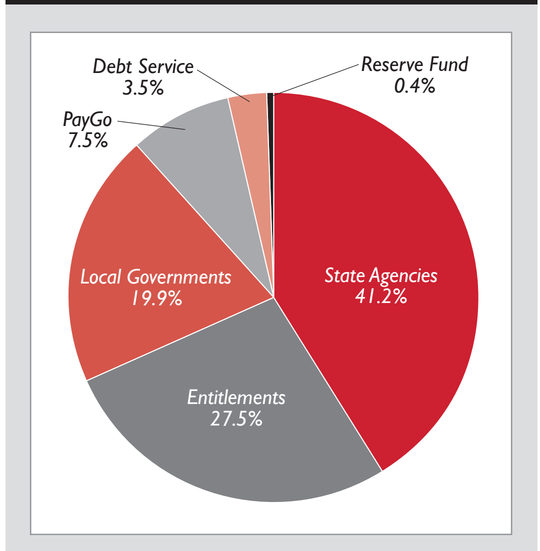

*Source: Department of Legislative Services*

FIGURE 1B THE GENERAL FUND-DEFICIT GROWTH FY 2016-2021




*Source: Department of Legislative Services*

FIGURE 2 MARYLAND'S $42.2 BILLION FY 2017 BUDGET ALLOCATION BY EXPENDITURE PURPOSE




*Source: Department of Legislative Services*

(an additional $2 billion year-over-year), compared to the 1.5 percent expenditure growth in FY 2016. FY 2017's budget growth is on par with FY 2014 (3 percent growth) and FY 2015 (4.3 percent growth). Accounting for the aforementioned growth of 4.9 percent, the FY 2017 budget currently stands at $42.2 billion.[1]

Despite considerable increases in expenditure in the FY 2017 budget, higher income tax revenues and lower entitlement enrollment and utilization (largely in the Medicaid program) have contributed to a healthier fiscal standing than previous years. Such budgetary improvements have led to the first projected General Fund (GF) structural surplus since 2006.[2] The Assembly estimates that the GF will close FY 2016 with over $550 million in fund balance. The Assembly likewise estimates that the GF will maintain a $364.6 million balance at the end of FY 2017, with an additional $1 billion in the state's Rainy Day Fund. The budgetary estimate forecasts ongoing revenue to exceed ongoing spending by roughly $100 million for FY 2017.[3]

For the past five years, the Spending Affordability Committee (SAC), a team tasked with ensuring that the rate of spending growth does not outpace the state's rate of economic growth, has recommended budgetary constraints aimed at reducing the state's structural deficit. Due to the recent alleviation of Maryland's structural deficit woes, the SAC has begun transitioning back to the "traditional recommendation based on a growth limit relative to spending at the prior legislative session."[4] The General Assembly has met all of the SAC's recommendations for the FY 2017 budget.

Although the budget is expected to be in structural balance in FY 2016 and FY 2017, such positive steps may prove short-lived: the Assembly expects a small deficit to reappear in FY 2018 and grow through FY 2019. It is estimated that the deficit will exceed $500 million by FY 2021 if further spending constraints are not enacted or revenue increases do not materialize.[5] The deficit forecast can be seen in Figures 1A and 1B.

Debt service payments continue to be of major concern, as required expenditures continue to grow rapidly. Debt service totaled $140 million in FY 2015, but has grown to be an estimated $252.4 million this fiscal year. The FY 2017 budget appropriates another $283 million for the upcoming fiscal year, an increase of 12.1 percent.[6] Continuing at its current growth rate, debt service payments may total $433 million in 2018. To address this issue, the FY 2017 budget has set the capital budget debt limit (i.e., how much the state can borrow) at $995 million, a bit below the recommended level of $1.055 billion proposed by SAC.[7]

As mentioned previously, the FY 2017 Budget Bill, Senate Bill 190, provides $42.2 billion in appropriations for FY 2017. The bill allocates those funds as follows: 41.2 percent to state agencies, 27.5 percent to entitlements, 19.9 percent to local government, 7.5 percent to PAYGO capital, 3.5 percent to debt service, and 0.4 percent to the reserve fund.[8]

## Tax Relief

With the seventh-highest state and local tax burden in the nation (according to the Tax Foundation[9]), many Marylanders think their income taxes are too high. There was some hope when the General Assembly convened in January that state taxpayers could see lower rates. As the Washington Post reported, 2016 seemed like an opportune year for tax relief:

> Maryland has not enacted widespread tax relief in nearly two decades. But Hogan campaigned on a platform of lowering taxes, and both Busch and Miller seemed on board this year, buoyed by robust state revenue and eager to act on recommendations from a commission they created to help improve the state's economic climate.[10]

There was added impetus for tax relief due to a January 2016 report from the Maryland Economic Development and Business Climate Commission. According to the Department of Legislative Services, "The commission found that Maryland's current tax structure is a detriment to the state's competitiveness in attracting and retaining businesses as well as in creating jobs and expanding the revenue base of the government itself."[11]

Both the House of Delegates and the Senate passed tax relief legislation. The Senate bill, SB 840, would have reduced the income tax rate for Marylanders who are single or married filing separately and making more than $100,000 a year or joint filers making more than $150,000 a year. The bill would have also increased the personal exemptions for these filers. In addition, the bill would have significantly expanded the earned income tax credit for low-income working Marylanders.[12]

When the House of Delegates received this legislation, lawmakers amended it to remove the tax rate reductions and the higher personal exemptions. Instead, they proposed reducing the state's 4.75 percent income tax bracket (which applies to incomes between $3,001 and $100,000) to 4.65 percent. In addition, the House amended the legislation to reduce taxes on retirement income for law enforcement, firefighters, and emergency service personnel. The legislation would have also changed how the state taxes corporate income, essentially levying income taxes on multi-state corporations based on the amount of Maryland sales.[13]

In the negotiations over the final version of the bill, House negotiators offered to cut the highest tax bracket (affecting households making over $300,000) to 5.69 percent from the current rate of 5.75 percent. The Senate countered with a reduction to 5.65 percent. That difference proved too much, and the tax legislation died upon adjournment.[14]

## Crime

**Marijuana** This year's legislative session began with a veto override of a bill from the last legislative session. SB 517, passed during the 2015 session, repealed the criminal prohibition on possessing marijuana-related paraphernalia. Both houses of the General Assembly overrode the governor's veto, allowing this bill to take effect. Legislators rejected two bills that sought to tighten the penalties on marijuana use, HB 777 (make smoking marijuana in public a criminal misdemeanor) and HB 183 (prohibit the smoking of marijuana in a car by a driver or passenger).

**Criminal Penalties** The major criminal justice legislation undertaken by legislators this session was intended to implement the recommendations of the Justice Reinvestment Coordinating Council. SB 1005 lowers maximum penalties for drug possession, repeals mandatory minimum penalties for drug distribution, and raises the monetary threshold for theft crimes. It also increases penalties for gang activity, second-degree murder, and child abuse that results in death.

**Asset Forfeiture Reform** The General Assembly also undertook important action related to criminal justice when it revamped the state's asset forfeiture laws. Law enforcement has the power to seize certain property, including cash, from individuals considered to be involved in crime. This money can be forfeited to the police even if no criminal charges are ever filed against the property owner.

During the 2015 session, legislators passed bills that would limit seizures of cash to amounts over $300, require law enforcement to prove property owners knew their property was connected to a crime, and limit the transfer of assets to the federal government. The governor vetoed this bill, but lawmakers overrode that veto early in the 2016 session. In addition, legislators passed SB 161 and HB 336 that would enact further limits on asset forfeiture, including new procedures for seizure and greater protections for property owners looking to have their property returned to them. These bills also require greater reporting on seized assets.[15]

## Education

**School Choice** With no public or private school choice programs and meager charter school offerings, Maryland lags behind other states in offering parents and students educational options. Legislation (HB 1213, HB 1343, HB 453, and SB 706) that would have established tax credits for scholarship programs to assist students in attending private schools failed in this year's session of the General Assembly, as it has in past sessions.

Although legislators failed to pass school choice bills, they did approve a portion of the budget that creates the Broadening Options and Opportunities for Students Today (BOOST) program. BOOST will allow some students who receive free or reduced meals to attend qualified non-public schools. The budget provides $5 million to fund the program.

**Higher Education** For higher education, legislation (SB 363 and HB 27) that would allow community college employees to collectively bargain for salary and benefits was defeated in both chambers. Certain community college employees already have this ability, but this legislation would extend this privilege statewide. The result of these bargaining agreements could have had a large impact on community college spending, thus affecting local taxes as well as the tuition of these colleges.

Other failed bills relating to higher education were SB 906 and HB 1002, which would have banned anyone from carrying a firearm on the campus of a higher education institution, even if this person were allowed to carry a firearm elsewhere. This prohibition did not apply to law enforcement personnel or guards. Given Maryland's strict firearm laws that limit carrying of both concealed and visible firearms, it is difficult to see what purposes these bills would have accomplished.

## Business and the Economy

**Corporate Welfare** While legislators could not find a way to provide the average taxpayer with relief, they did find it easy to provide targeted tax breaks for some business activities. These targeted tax credits act, in effect, as a form of corporate welfare, funneling taxpayer money to certain favored industries. In fact, in one instance, legislators approved millions of dollars of tax credits that will benefit only one company. This occurred with the approval of SB 1112, which created the Aerospace, Electronics or Defense Contract Tax Credit. This bill is written in a way that will allow one company, Northrup Grumman, to claim $7.5 million in tax credits over five years.[16] That is a total of $37.5 million in taxpayer money going to this company. Legislators also expanded corporate welfare tax credits for biotechnology and cybersecurity companies (HB 1167 and HB 1168) and extended the life of tax credits for clean energy firms (SB 936).

Another type of corporate welfare, increasing the requirements for state electrical generation to come from solar energy source, was contained in SB 921 and HB 1106. Legislators approved both bills. In addition, legislators continued their practice of providing state support for horse racing. HB 965 provides state funding for the $500,000 purse of the Maryland International race and bonuses for Maryland-bred or sired horses running in the Preakness International.

**Wage Rates** Legislators hurt job opportunities for some people with disabilities by passing SB 417 and HB 420. These bills phase out the ability of nonprofits to pay wages below the mandated minimum wage to some workers. State law currently allows a person with a disability to find employment at a sheltered workshop and be paid a training wage that is below the state minimum of $8.75. These individuals are paid on a piecework basis, so their wage is based on their productivity. In essence, their wage rate is set commensurate with their abilities, based on the prevailing wage rate for individuals without disabilities performing the same type of work.[17] Ending the ability of organizations to pay a subminimum wage will likely result in the loss of job opportunities for these individuals.

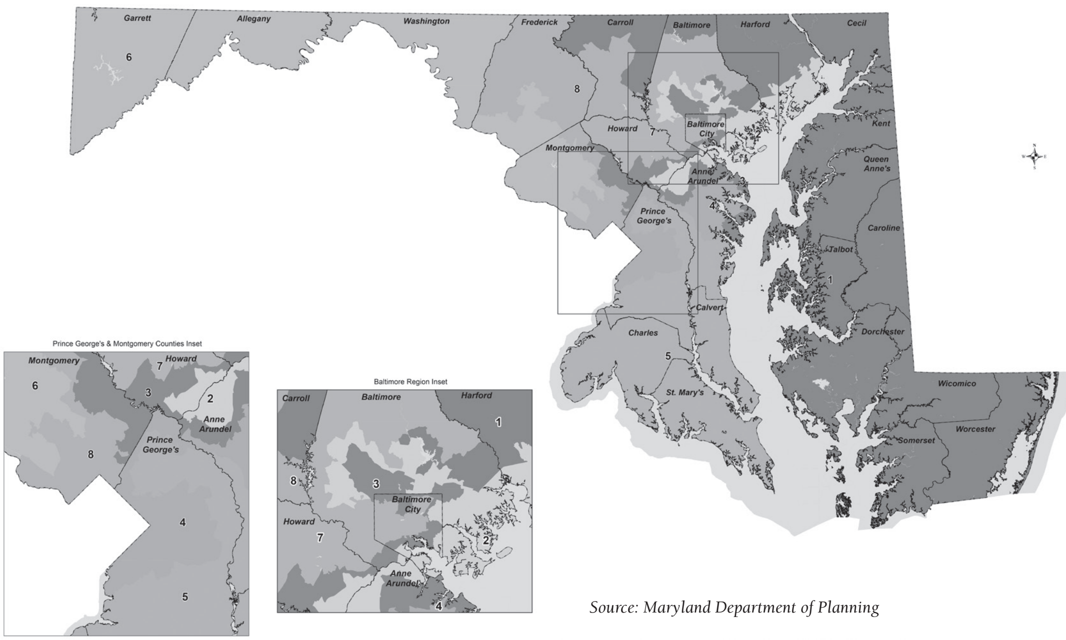
In another blow to the state economy, legislators made the prevailing wage law even more onerous. This legislation, which requires that state contractors pay an artificially high wage to their workers, contributes to increased costs for public works projects, and privileges union businesses over non-union businesses for public contracts. The current fine for businesses that fail to pay the prevailing wage is $20 per day per employee. SB 1009 and HB 689 increase this fine to $250 per day per employee.

**Paid Leave and Equal Pay** Perhaps the best thing that legislators did to help Maryland's economy during this session was to defeat legislation that would have mandated that employers provide paid sick leave. SB 472 and HB 580 would have required an employer with more than nine employees to provide paid "sick or safe" leave at the rate of one hour for every 30 hours worked. Employers of fewer than eight workers would have been required to provide unpaid leave at the same rate. "Sick and safe" leave is broadly defined as time off to care for health issues of the employee or employee's family member or to deal with circumstances related to stalking or sexual violence for an employee or an employee's family member. Analysts with the state Department of Legislative Services concluded, "The bill has a significant impact on small businesses,"[18] while some economists argue that such benefits *de facto* impose a hidden payroll tax on all workers to support those workers who take leave.[19] Legislators defeated these bills, but did pass legislation (SB 485 and HB 740) to study this issue and make recommendations in December 2017.

Legislators passed another bill to set up a commission to make recommendations in December 2017. HB 1004 establishes an equal pay commission to recommend ways to collect more data from businesses on how they pay their employees and recommend ways to update regulations and laws concerning how businesses pay men and women. This commission, along with the family leave commission, will provide recommendations for legislators to use in their 2018 legislative session. This potentially sets up a fight between the governor and legislators over sensitive family and gender issues right before the next state elections.

**Occupational Licensing** In another positive step to free the economy from government interference, legislators relaxed some occupational licensing laws that have been used to existing businesses to ward off potential competitors. A 2015 White House report concluded, "There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across State lines."[20] HB 567 allows the owner of a barber shop or beauty salon to operate a second, mobile unit. SB 830 and HB 1291 allow qualified individuals to provide professional blow-drying services without obtaining a full cosmetology or barber license. SB 285 repealed the requirement that a person must be licensed before acting as a home improvement subcontractor. HB 119, SB 1020, and HB 998 relaxed some licensing restrictions on out-of-state physicians practicing in Maryland. HB 470 and HB 680 allow dental hygienists to perform more functions in the scope of their practice.

FIGURE 3 MARYLAND 2011 CONGRESSIONAL DISTRICTS




*Source: Maryland Department of Planning*

**Other Gains for Economic Freedom** There were other small, but notable, victories for economic and individual freedom in this year's General Assembly session. HB 70 ended the requirement that a business owner obtain a license to own a billiard table for commercial use. HB 127 legalized gambling (up to $1,000) in private houses on mahjong or card games. SB 410 allows distilleries more freedom to sell their products to individuals on a tour of their facilities who want to consume their products off-premises. HB 1316 and SB 630 also make it easier for distilleries to operate in the state. SB 707 allows a licensed general hospital to transition into a freestanding medical facility without forcing operators to seek state approval through the cumbersome certificate-of-need process.

Legislators also defeated some legislation that would have restricted economic freedom, such as SB 980 (to prohibit individuals from playing fantasy sports games online that offer prizes or charge an entry fee) and legislation that would have interfered with the contracts that farmers sign with poultry companies (HB 599, HB 1496, and SB 496).

**Baltimore Revitalization** As part of the overall state business climate, Governor Hogan and legislative leaders have made it a priority to revitalize Baltimore. To that end, they worked together to pass a package of projects that will cost $227 million over five years. These so-called "community development" projects will be used for building demolition, financial assistance for residents and businesses, and funding for Baltimore's higher education institutions and hospitals.

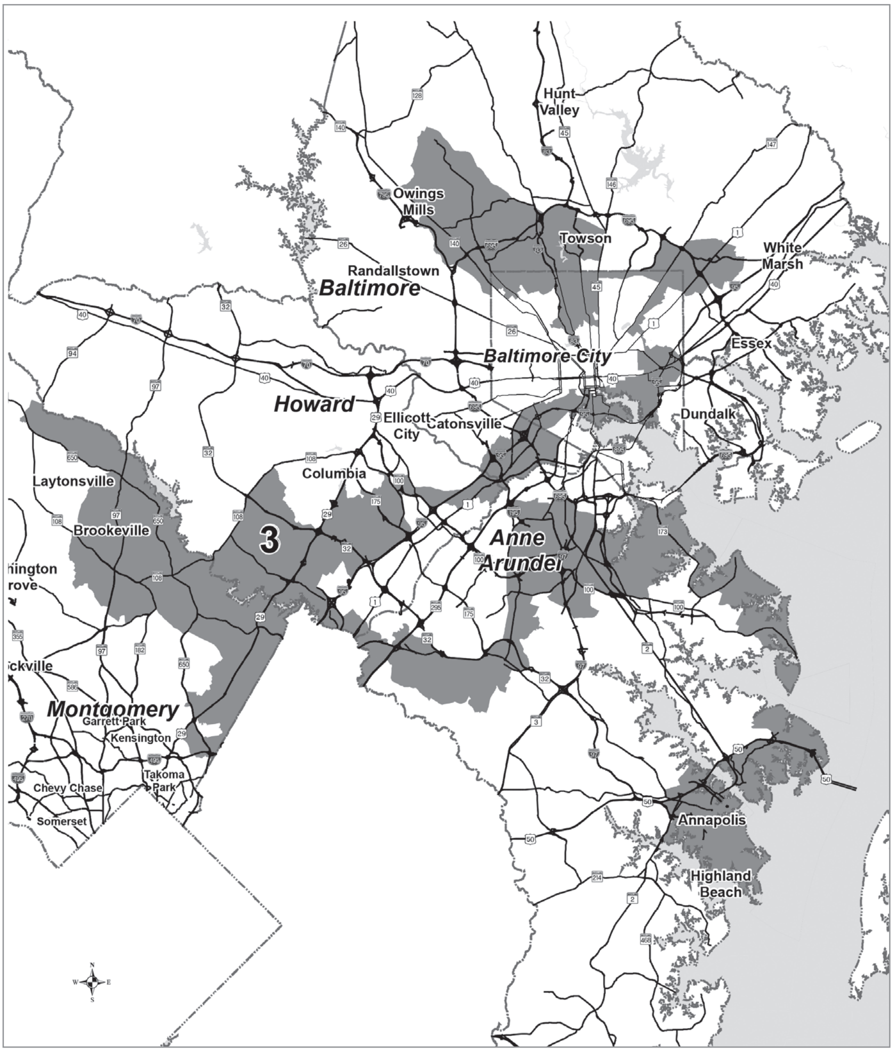
## Elections

**Redistricting** The General Assembly missed a big opportunity to deal with a problem that has long plagued the state's electoral system when legislators refused to reform the redistricting process. In November 2015, The Maryland Redistricting Reform Commission, a bipartisan panel, recommended ways that lawmakers should change the process of drawing legislative and congressional districts.

The commission recommended that legislative districts be drawn with these five criteria in mind:

- Have a substantially equal population
- Comply with the federal Voting Rights Act and other applicable federal laws
- Districts should be congruent, recognizing municipal and county lines where possible

FIGURE 4 MARYLAND 2011 CONGRESSIONAL DISTRICT 3




*Source: Maryland Department of Planning*

- Districts should be contiguous, taking in adjoining territory
- Districts should be compact

To achieve these goals, the commission recommended changing the redistricting process to mostly remove politics. Under the commission's plan, an independent, multi-partisan panel would redraw legislative and congressional districts every 10 years along the lines of the recommendations above. The General Assembly could only reject this panel's proposal through a supermajority vote. If the General Assembly approved the proposal, the governor could either sign or veto it. If the governor vetoed it, then the General Assembly could override that veto. If the plan does not become law, then the panel would make another attempt to draw the districts. If the subsequent plan does not become law, then the Maryland Court of Appeals would draw the districts.[21]

The commission concluded these changes are necessary because, as it noted in its report to Governor Hogan, "A glance at Maryland's congressional districts map confirms that our state has been gerrymandered, and national news publications have confirmed that Maryland's problem is severe compared to other states'." The third Congressional district has especially come under scrutiny, with some analysts calling it the second-most gerrymandered district in the nation.[22]

The commission's recommendations were contained in SB 380 and HB 458. Neither bill made it out of committee for consideration by the full Senate or House of Delegates.

**Campaign Finance** Legislators passed SB 459 and HB 963 to limit access to the state's referendum process. These bills require anyone desiring to collect signatures for a referendum to first establish a campaign finance entity. Previously, individuals worked together to overturn a state law or amend the state constitution or county charter. This law now requires that a ballot issue committee will receive donations and spend money in support of the signature effort. Anyone opposing a referendum signature effort will also be required to create a ballot issue committee.

## Transportation

**Planning** The major transportation legislation during this session was an overhaul of how the Maryland Department of Transportation will set its transportation goals and how it will measure which projects will meet those goals (and thus receive funding priority). HB 1013 establishes a complicated system to score transportation projects, along with weighting factors that influence which projects receive funding.

Former state transportation secretary Bob Flanagan shared what the scoring system will achieve:

> The use of this weighting factor is biased in favor of transit. As the population "in the area served" increases, the score will be multiplied by a larger number. Actual usage of a facility is not relevant. A transit project in a dense population area will receive a higher score, even if 20 percent of the population takes transit and 80 percent travels by automobile.[23]

The idea of creating a ranking system for transportation funding is not necessarily a bad idea. Wendell Cox and Randall Utt recommended this in a 2013 MPPI analysis. Unlike the system outlined in HB 1013, however, Cox and Utt advocated for a system based on performance:

> Under such a system every potential transportation investment project would be evaluated by traffic engineers to determine both its potential cost and potential to reduce travel time by a certain amount for a specific number of passengers. Projects including roads, transit, technology, bicycle paths, car pools, and hiking trails would then be ranked by impact on congestion mitigation, and funding would be available only to those at the top of the list until available funds are exhausted.[24]

As Cox and Utt noted, current Maryland transportation spending already overemphasizes transit. This focus is misplaced, they conclude, because transit "serves fewer than 9 percent of commuters, moves no freight, and whose share of all travel (commuting, shopping, recreation, etc.) is just 3 percent." Legislation that skews spending priorities even further in the direction of transit will only worsen congestion in Maryland.

Governor Hogan vetoed HB 1013, but legislators overrode this veto.

**Highway User Revenue** Highway user revenues are funds derived from the gas tax and vehicle fees that are allocated among the state, municipalities, and counties. Before 2010, fund allocation was linked to the amount of money coming from a locality and the number of state, county, and municipal roads there. This link was severed in the 2010 budget, with the state diverting a significant amount of this revenue from transportation projects and into the general fund to pay for other spending. This then required cities and counties, many that used this revenue for road and transit uses, to either forgo spending on these projects or to raise taxes to replace the revenue.

There have been efforts since then to restore this funding, derived from taxes and fees paid by those who use the roads, to city and county governments to use for their transportation needs. A variety of bills were introduced this legislative session to accomplish this (HB 723, SB 585, HB 1455, and HB 1388). Legislators failed to approve any of those bills.

## CONCLUSION

From the perspective of free enterprise, limited government, and civil society—the advancement of which is the mission of the Maryland Public Policy Institute—this year's legislative session may be an improvement over other sessions, but it is still a significant disappointment. While legislators stopped some bad ideas and enacted some positive legislation, they still fell far short of embracing constructive legislation. Their failure on tax reform is especially troubling, considering the overall agreement of the need to reduce Marylanders' tax burden. The embrace of petty partisan politics over bipartisan redistricting reform illustrates one of the powerful motivating factors that unfortunately prevail in Annapolis. Legislators will hopefully do better in the 2017 session.

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## NOTES

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