

The Maryland Public Policy Institute



The Annapolis Report

A Review of the 2017 Legislative Session



The Maryland Public Policy Institute

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THE ANNAPOLIS REPORT

*A Review of the
2017 Legislative Session*

BY MARC KILMER

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.

In order to maintain objectivity and independence, the Institute accepts no government funding and does not perform contract research. The Maryland Public Policy Institute is recognized as a 501 (C) (3) research and education organization under the Internal Revenue Code.



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THE ANNAPOLIS REPORT

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WITH STATE ELECTIONS JUST A YEAR AWAY, the 2017 Maryland General Assembly (MGA) session featured a large dose of political posturing. From state to national issues, legislators focused on an agenda that seemed to be tailored to campaign ads instead of solving the problems of Maryland residents. That led to a disappointing session that failed to address many pressing state issues.

Legislators spent an inordinate amount of time focusing on national affairs. Some may say that this is because the Trump administration presented the state with unprecedented issues. There is some truth to this assertion, as President Trump's actions in office have been out of the ordinary. However, legislators' actions on issues such as immigration are more likely intended to send a political signal to 2018 primary voters.

Democratic legislators did not only target Trump for criticism; they also worked to thwart Republican Gov. Larry Hogan's policy goals. From a sick leave mandate to gerrymandering reform, legislators and the governor clashed. In such instances, legislators usually won.

That is not to say that there was always disagreement between the two policymaking branches of Maryland government. In some cases lawmakers and the governor found common ground. During the previous legislative session the governor vigorously opposed a bill that would change the way in which proposed transportation projects are prioritized. This year, the governor and legislators worked together to make this scoring discretionary, not mandatory. And while lawmakers overrode the governor's veto of legislation making the state's renewable energy mandate stricter, they did agree on energy issues when it came to banning the process of hydraulic fracturing.

Overall, however, 2017 was another dismal legislative session for Marylanders who value fiscal responsibility, free enterprise, and limited government. Spending increased, the structural deficit continued to go unaddressed, the only tax cuts were targeted to favored businesses or small groups of individuals, and employers continued to have burdens placed upon them.

This report summarizes and evaluates the 2017 legislative session's results in major policy areas. The mission of the Maryland Public Policy Institute is to promote public policies at all levels of govern-

ment 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 people's lives, and praise legislation that is consistent with our mission.

METHODOLOGY

Assigning grades to legislation is a subjective process. This report cannot consider every bill passed by the General Assembly, much less every bill introduced by legislators. Instead it gives an overview of the most important bills considered in certain broad subject areas, as well as some lower-profile bills that merit attention. The 2017 session is graded on whether lawmakers promoted free enterprise, limited government, and civil society.

THE GRADES

The balance of this report examines legislative action and inaction in several major policy areas. Below is a summary of the grades awarded in each area.

Budget and Taxes: D
Economy: D
Education: F
Energy: F
Government Operations: C-
Crime: C
National Issues: F
Health Care: D
Transportation: A-

Budget and taxes

GRADE: D'

The state's Fiscal Year 2018 budget will once again see a spending increase. The structural deficit—a permanent gap between spending and revenues under current law—is projected to be lower than in FY2017, but the gap persists and is projected to increase in the coming years. When it comes to taxes, legislators and the governor only seem to agree on targeted tax cuts that act like subsidies for certain businesses. These policies are not a departure from past practice in Annapolis, but such a departure is what Maryland really needs to deal with the long-term fiscal issues facing the state.

In a story that repeats itself annually, legislators entered the 2017 session facing a structural deficit. Revenue to the state continues to increase, but not enough to keep up with ongoing spending. Revenue estimates in 2016 were too optimistic, causing even more budget problems for this year's session.

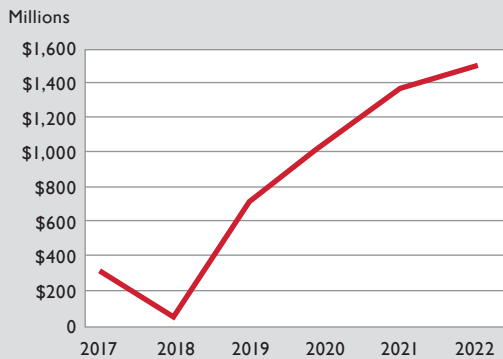
Governor Hogan submitted a budget that was designed to close this gap in FY 2018 by, in part, using fund's from the state's rainy day fund, which is supposed to be used for short-term imbalances. Hogan also proposed using another fund transfer and reductions in mandatory spending, among other maneuvers. His FY2018 budget proposed \$43.8 billion in spending. Legislative actions resulted in a final budget of \$43.6 billion. That is a spending increase over the current fiscal year of \$498.8 million, or 1.2 percent.

The FY2018 will have a gap between ongoing spending and revenue of \$47 million. This is less than the \$318 million projected deficit for FY2017. However, the gap is expected to increase to \$1.5 billion by FY2022. That is because the state projects revenue to increase by 3.5% annually but spending to increase by 5.4% annually.

The continued reliance on fiscal tricks to produce a balanced budget and politicians' lack of desire to deal with the reality of the structural deficit do not bode well for Maryland's fiscal future. The callousness with which lawmakers treat the state's long-term spending problems was illustrated by the fact that, once again, this year saw legislation enacted that exacerbates the structural deficit. Bills that give targeted tax breaks to favored businesses or groups of individuals will mean \$87 million less in revenue over the next three fiscal years. Other legislation would add an additional \$70 million in new mandatory spending each year. These types of bills, though politically popular, only complicate efforts to eliminate the structural deficit.

One of these bills is the "More Jobs for Marylanders" program. It will provide certain new manufacturing businesses with income and property tax credits and refunds on some of the sales taxes they pay. Existing manufacturers may also be eligible for the income tax credits.

Legislators also passed a variety of new tax credits for such activities as hiring veterans, food donations by farms, home renovations to assist with independent living, and installing energy stor-

FIGURE I MARYLAND STRUCTURAL DEFICIT

Source: Maryland Department of Legislative Services

age systems. Legislators also increased the research and development tax credit and expanded eligibility for the biotechnology investment tax credit.

These tax actions could be viewed as a way to reduce the state government's burden on Marylanders. However, they are selective credits that reward only certain behaviors. As such, they are more akin to government subsidies than tax relief. Not all businesses get a reduction in their taxes, only manufacturing businesses that are located in certain parts of the state. The biotechnology tax credit does not benefit all businesses, just ones that engage in a very narrow activity.

The governor and legislators would serve the state better by engaging in a widespread reform and reduction of state tax laws. Instead of giving away tax benefits to a few businesses or residents engaged in favored behavior, they should give tax relief to all Maryland businesses and taxpayers. This is not only fairer, it also leads to less distortion in the economy. The state government should not be deciding which businesses the state needs; instead, it should be creating a climate that allows any business owner to thrive.

Unfortunately, modest tax relief failed in the 2016 legislative session and was not even considered during 2017.

Economy

GRADE: D

The best thing that can be said about legislators' actions regarding bills affecting Maryland's economy is that some of the most egregious ones, such as an increase in the state's minimum wage or regulation of short-term housing rentals, failed

to pass. Since legislators showed some restraint in imposing new restrictions on Maryland's employers, this category does not receive an "F."

Sick leave mandate

The highest-profile action that legislators took on economic issues this session was to pass legislation mandating that businesses offer paid sick leave. This expensive mandate will have a large negative effect on Maryland employers and exemplifies the disdain with which the labor market was generally treated in the 2017 session.

Mandatory sick leave legislation was given the designation of HB 1, indicating how important legislative leaders deemed it. Under the bill, employers that have more than 14 employees must provide them with one hour of paid sick leave for every 30 hours the employee works. Employers with 14 or fewer employees must provide them with one hour of unpaid sick leave for every 30 hours the employee works. Workers can accrue a minimum of 40 hours a year.

The types of activities that employees could use to qualify for leave include caring for the employee's sickness or a family member's sickness, for maternity or paternity leave, and for circumstances related to domestic assault or stalking.

As the fiscal note for HB 1 states, "The bill has a significant impact on small businesses."² This law will act as a tax on employers who hire workers, and that tax will fall hardest on employers of low-wage workers, since 61% of these workers do not currently receive sick leave.³ Advocates point to this as a reason to support the bill, since they think it will give these workers benefits they currently do not receive. Instead, it will impose an additional cost on employers who hire these workers, and that cost will ultimately fall on the workers themselves. If their labor is not producing enough value for these employers to justify spending additional money on sick leave benefits, the result will be less employment in this sector.

This legislation does not only affect employers and workers, it also affects taxpayers. At the state level, the fiscal note for the bill indicates the mandate will cost over \$2.8 million in new sick leave costs over the next five years for public workers as well as costs to enforce the bill on private businesses. The fiscal analysis also states, "Local government expenditures increase significantly for certain local jurisdictions to allow temporary or

part-time employees to earn sick and safe leave.”⁴ This may include not only money to pay for the leave, but also to combat “increased absenteeism” as workers take advantage of the more expansive definition of sick leave under this law. In other words, this bill imposes new costs that county and city taxpayers will be forced to bear.

Governor Hogan put forward his own sick leave legislation that would have covered employers with 50 or more employees. Under the governor’s bill, employers with fewer than 50 employees would have received a tax credit for offering such leave. This proposal went nowhere in the General Assembly.

Breweries

With a Guinness brewery slated to open in Baltimore, legislators focused on regulating beer-making. They passed HB 1283, which alters the law for larger breweries (such as Guinness) and smaller craft brewers that operate around the state. This bill increases the amount of beer these breweries can sell onsite from 500 barrels to 2,000 barrels a year. They can also apply to sell 1,000 additional barrels of beer a year, but—mind-bogglingly—that beer must be purchased through wholesalers. The bill also limits the hours of on-site facilities for the consumption of beer. Such facilities that open after April 1, 2017, can only operate from 10 a.m. until 10 p.m.

This legislation did make some positive changes for breweries, such as allowing them to sell more beer. However, limiting hours for onsite consumption is something that reduces competition for bars. Likewise, forcing breweries to purchase some of their products from wholesalers is a giveaway to distributors.

Corporate welfare

When it comes to passing “pro-business” legislation, legislators’ focus is often misguided. As was the case in past years, instead of reforming Maryland’s burdensome tax and regulatory climate, legislators preferred to pass targeted tax cuts or disguise corporate welfare as tax credits.

This is exemplified by the “More Jobs for Marylanders Act.” This legislation was proposed by Governor Hogan and modified before passage by lawmakers. It creates another state program that offers subsidies in the form of tax credits for manufacturing businesses under

certain circumstances. While this bill uses the mechanism of providing a credit against taxes owed, it is practically the same as a direct hand-out to businesses. In addition, this bill also exempts these businesses from paying sales taxes and property taxes in certain circumstances. It is a way to reward a narrow set of businesses in the state while leaving other business owners to shoulder the tax burden.

Legislators also passed SB 226/HB 373, which expands the types of companies that are eligible for the biotechnology tax credit.

The heavy reliance on tax credits to incentivize certain companies is an economic development approach championed by Governor Hogan. One could argue that broad tax reform or across-the-board tax cuts are impossible in Annapolis, so a targeted approach is the best option that can be accomplished. Perhaps this is true. However, these targeted tax breaks and giveaways called “tax credits” should be recognized for the corporate welfare that they are. No one should mistake them as advancing free enterprise in the state; instead, they merely provide special favors for a select few businesses.

Unlicensed barber decriminalization

There were some modest victories for economic freedom. For instance, HB 1261 removed criminal penalties for anyone who cuts hair without a license. Previous state law made such a practice a misdemeanor and also imposed civil penalties. Unfortunately, HB 1261 did not also repeal the civil penalties.

Septic mandate

On the environmental front, actions on energy issues (discussed below) indicate the willingness of legislators to prioritize questionable policies at the expense of workers and consumers. However, this session could have been worse. One positive development was lawmakers not acting on a bill that would have mandated widespread use of so-called “best available technology” (BAT) for septic systems. Previous governor Martin O’Malley’s administration had mandated this policy, which forced rural homeowners to use expensive septic systems that, in many cases, yielded little or no pollution reduction compared to conventional technology. Governor Hogan rolled back the mandate, keeping it in place only for septic sys-

tems in critical areas. In the 2017 MGA session, legislation to re-impose the mandate outside of critical areas never made it out of committee.

Minimum wage

Maryland's minimum wage is set to increase to \$10.10 next year, yet some legislators want it to increase further, to \$15. Bills that would have done this did not advance in the General Assembly this year. Neither did a bill that would prohibit local governments from raising the minimum wage in their jurisdictions. The latter bill would have ensured that the state has a uniform minimum wage, instead of the current situation where Montgomery and Prince George's County have higher minimum wages than other jurisdictions in the state.

Short-term rentals

Legislators scored a victory for Marylanders who use platforms like Airbnb to rent out their residential property on a short-term basis when the MGA failed to advance a bill that would have placed onerous rules on those property owners. There is no statewide regulation of short-term rentals, although some towns have their own rules. SB 463 would have classified people who rent their lodging for short-term rentals as "innkeepers" and forced them to register with the state and pay special taxes to the state and their local governments. This bill died in committee.

Education

GRADE: F

Maryland lawmakers dealt a pair of blows to public schoolchildren in the 2017 session. First, they watered down school evaluation standards by increasingly judging schools on how they spend their money, not on what that spending accomplishes in student achievement. Then, lawmakers failed to expand charter school opportunities in the state.

Weak school accountability

Legislators took a big step backwards in terms of improving Maryland education by setting weak accountability standards for schools. Schools are in one business: educating children. Accordingly, school systems should be evaluated on how well they achieve this purpose. While such measurements are admittedly difficult to craft, schools should be judged on their outcomes in terms of

academic progress, graduation rates, and other measures of the results that they produce.

Under the federal Every Student Succeeds Act, which replaced the No Child Left Behind Act, states have widened latitude to consider different factors when establishing an accountability program. HB 978 took advantage of this leeway to set state measurement standards that move away from looking at school outcomes and instead give schools credit for the "opportunities" available to them. Dubbed "quality indicators," these are essentially inputs into the school system. They tell us nothing about how well a school is performing. Having small class sizes, access to dual enrollment or advanced courses, or a lot of teachers who have National Board certification may be good things, but they may not actually improve education. Looking at actual measures of success, such as graduation rates or standardized test proficiency, gives a far better indication of whether a school is actually succeeding in educating children.

The General Assembly could have left decisions on standards to the state superintendent and the state school board. Or it could have set accountability standards that truly measure what schools achieve. Instead, the General Assembly passed a bill that gives significant weight to indicators that do not actually measure educational achievement. Governor Hogan vetoed HB 978, but legislators overrode him.

Charter schools

Maryland schoolchildren suffered another blow this legislative session when lawmakers failed to advance Hogan administration legislation that would have expanded charter schools in the state. HB 878 and SB 704 would have established a state-level board to authorize charter schools. Currently local boards of education authorize these schools. The state would directly fund charter schools under the governor's proposal. Charter schools would also have more leeway in hiring decisions. Legislators gave HB 878 an unfavorable report in committee. SB 704 did not even receive a committee hearing.

Universal pre-kindergarten

Maryland has not yet mandated that schools provide universal pre-kindergarten for children, but such a mandate appears to be on the hori-

zon. Legislators passed HB 516 to establish the “Workgroup to Study the Implementation of Universal Access to Prekindergarten for 4-Year-Olds.” This workgroup will study how to make pre-kindergarten available to all 4-year-olds and provide recommendations to legislators by the end of the year.

Energy

GRADE: F

Lawmakers chose to embrace symbolism over substance on energy policy this year. They overrode Governor Hogan’s veto of flawed legislation that would mandate an increased use of energy from so-called renewable sources. This bill sounds like a nice idea, but it ignores the stark realities of affordable energy production as well as the mixed environmental effects of such energy sources. Unfortunately, the governor chose to join legislators in another misguided energy proposal: making Maryland the first state with shale gas potential to ban the process of hydraulic fracturing. This process is controversial, but there is broad agreement that it is possible to design regulations that allow its safe use. Instead of enacting sensible regulations, legislators and the governor agreed on a total ban.

Renewable energy mandate

One of the major energy issues was a holdover from last year’s legislative session. In 2016, lawmakers voted to increase the amount of electricity that must be generated from renewable sources. Under the new mandate, 25 percent of Maryland’s electricity must be generated from sources deemed “renewable” beginning in 2020, instead of the previous mandate of 20 percent by 2022.

This is problematic for a few reasons. One is that renewable sources of electricity are not currently as cost-effective for generating electricity as other sources, especially natural gas.⁵ If they were, they would not need government mandates to increase their usage. Because they are more expensive, consumers will be paying higher energy prices as a result of this mandate.

Another issue is that it singles out one industry for special favors at the detriment of competitors. This distorts the market in ways that are detrimental not only to consumers and competitors, but also leads to other problems. The bill

would boost the use of wind power, for instance. Offshore wind is economically untenable without government subsidies and renewable energy mandates. However, due to the favoritism shown to this industry by politicians at the state and federal level, there are now offshore wind turbines being planned for off Maryland’s beaches. This is something that city officials in Ocean City oppose, given the potential impact the sight of those turbines could have on tourism. Without government meddling in the market, Ocean City would never be forced to deal with this problem.

Governor Hogan vetoed this renewable energy mandate after the 2016 legislative session. However, early in the 2017 session, legislators overrode the veto and this mandate became law.

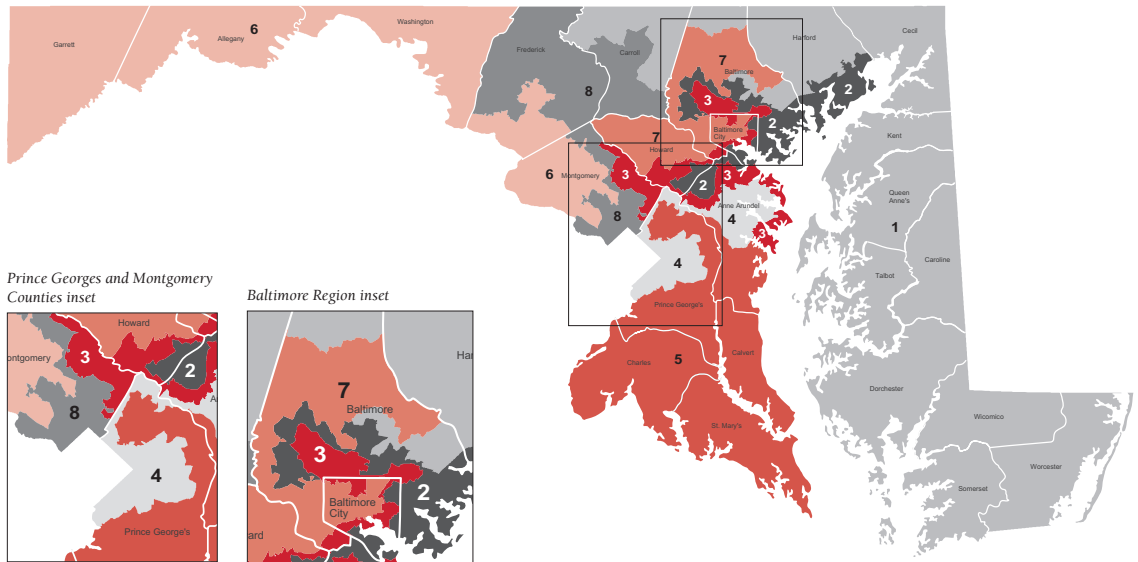
Hydraulic fracturing

While legislators were passing bills to force consumers to subsidize high-cost renewable energy, they were taking steps to hinder the use of low-cost natural gas. Western Maryland sits atop the Marcellus Shale rock formation, which contains shale gas. In Pennsylvania, shale gas from the same formation has led to a robust natural gas industry.

However, there are concerns about the method used to extract shale gas. Hydraulic fracturing, or “fracking,” uses high-pressure water and chemicals injected underground to fracture the shale and release the gas. Some blame water pollution and other ills on fracking. Although the weight of scientific evidence is that fracking can be done safely without widespread impact to groundwater or health, there are many activists who oppose it.

The obvious policy response is for local governments to be empowered to oversee, regulate, and perhaps even ban fracking, thereby placing those decisions closest to the people affected by the costs and benefits of the practice. Instead, lawmakers in Annapolis injected themselves into this Western Maryland matter.

Governor Hogan initially supported allowing fracking under strict regulations. However, legislation to ban the process completely was moving through the General Assembly. Eventually the governor changed position and came out in support of a fracking ban. Without the threat of a veto, legislators passed HB 1325 to ban hydraulic fracturing in Maryland. As a result, Pennsylvania and West Virginia slant-drilling operations will benefit from some of the shale gas trapped under Maryland.

FIGURE 2 MARYLAND CONGRESSIONAL DISTRICTS

Source: Maryland Department of Planning

Government Operations

GRADE: C-

Maryland has some of the most gerrymandered legislative districts in the nation. Instead of embracing a proposal to alter the system by which these districts are drawn, state lawmakers passed a bill that ties Maryland's redistricting reform to that of other mid-Atlantic states. This was a cynical attempt to appear to be "doing something" about gerrymandering without actually changing a system that serves lawmakers partisan ends. The only action that saves this category from receiving a grade of "F" is passage of long-overdue legislation that strengthens the state's ethics laws.

Redistricting

In 2015, an independent commission recommended that state law be changed regarding how congressional and state legislative districts are drawn. The commission recommended that an independent, multi-partisan panel would redraw legislative and congressional districts every 10 years so that districts are more compact, contiguous, and better follow existing political boundaries, among other things. The General Assembly could only reject the panel's proposed redistrict-

ing 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 proposed redistricting does not become law, then the panel would make another attempt to draw the districts. If the subsequent plan were also rejected, then the Maryland Court of Appeals would draw the districts.

The General Assembly has failed to act on the commission's recommendations. Instead, this year legislators passed SB 1023, which would enact redistricting reform only if five other mid-Atlantic states also did so. In effect, gerrymandering will only end in Maryland if New York, New Jersey, Pennsylvania, Virginia, and North Carolina enacted similar laws to reform their congressional redistricting process. Since all of these states are unlikely to enact redistricting reform any time soon, this bill is a toothless gesture that will accomplish nothing. It is no wonder that the *Washington Post's* editorial board called the bill "equal parts cynical and ludicrous."⁶ Legislators then rejected a series of amendments that would have turned this legislation into a bill to accomplish real redistricting reform. In essence, they have put national par-

tisan interests over Marylanders' right for representative government.

Ethics

While meaningful gerrymandering reform failed, legislators did score a win for good government by passing bills to strengthen the state's ethic laws. HB 879 expands the types of actions that are considered conflicts of interest for legislators. These conflicts now include some types of advocacy before local governmental bodies. The legislation also limits lawmakers' ability to do favors for businesses that may hire the lawmakers. Another part of the bill extends the "cooling off" period before a former legislator can become a General Assembly lobbyist. The bill also mandates that the financial disclosure statements of legislators and candidates for office must be published online beginning in 2019.

In a long overdue move, HB 1386 extends the Maryland Public Ethics law to cover members and employees of local boards of license commissioners and local liquor control boards.

Crime

GRADE: C

Maryland's bail system has flaws, but it also serves an important purpose by allowing accused persons to go free before their trial, yet giving them considerable incentive to stay out of trouble and to appear in court. Unfortunately, the state attorney general and the state Court of Appeals have gone a long way toward dismantling the state's bail system. This is a flawed policy change, but it cannot be held against lawmakers. Legislation to enshrine these bail changes into law failed in the General Assembly this year. However, legislators failed to take steps to fix some of the real problems that exist in the system.

Discussion of Maryland's bail system was the biggest crime issue in this year's legislative session. In 2016, Attorney General Brian Frosh wrote an opinion that the state's bail system likely violates the federal Constitution's prohibition on excessive bail. Subsequently, the state Court of Appeals issued a rule that courts should essentially apply a standard of affordability when setting bail.

Maryland Public Policy Institute Senior Fellow Sean Kennedy explains the effects of these opinions:

Although the Court and Frosh letter did not explicitly call for the elimination of bail, the "least onerous" conditions standard—which court commissioners, who initially set bail in Maryland, must follow to ensure a defendant appears at trial and does not commit any new crimes—effectively precludes money bail as an option for all but the wealthiest of defendants who are deemed eligible for release and can "afford" to post bond according to the court's assessment.⁷

The attorney general's letter and the court's rule may have a significant effect on how the bail system operates in Maryland, but they are not law. Legislators considered a variety of bills that would have changed the bail system by statute. One would have codified much of the court's bail rule. However, after significant discussion and lobbying, legislators failed to move forward with any bail legislation. That leaves the system operating under the Court of Appeals' rule for the moment.

National Issues

GRADE: F

Legislators spent a lot of time discussing issues only tangentially related to Maryland during this legislative session. The actions of Republican President Donald Trump have spurred widespread outrage among Democrats, and the Democrat-controlled MGA was not immune to this. They sought to use legislation to empower state officials to act on national matters.

Empowering the attorney general

Perhaps their biggest success on this front was giving the attorney general power to sue the federal government on any matter without specific prior approval from the MGA. Previously, the attorney general did not have authority to initiate legal action to protect what he or she saw as the public interest. HB 913 gave the attorney general this power and directed the governor to include \$5 million in his budgets in order to fund such legal fights.

In addition to giving the attorney general broad power to sue the federal government, the General Assembly also specifically directed him to take action against President Trump's directives. Senate Joint Resolution 5 and House Joint

Resolution 3 direct the attorney general to undertake legal action against federal government actions and federal government inactions that threaten the public interest or welfare of Marylanders. The areas where the attorney general must act involve protecting residents' health care, safeguarding public safety, protecting civil liberties, protecting economic and financial security, safeguarding against fraud, protecting the environment, fighting immigration restrictions, and protecting the health and well-being of Maryland residents. These are such broad mandates that they put considerable power and public money at the discretion of the attorney general.

Obviously, the attorney general should always act in the interests of his or her constituents. But this enormous new power, vested in a single person, is an opportunity for enormous abuse. In essence, it allows the attorney general to use public resources for partisan ends.

Health care

With health care being a hot issue in Washington, D.C., legislators in Annapolis took actions to counter any changes in current federal health care policies.

The General Assembly passed two pieces of legislation in an attempt to insert state officials into the debate over the Affordable Care Act (ACA). House Joint Resolution 9 expressed disagreement with any ACA repeal efforts. SB 571 establishes the Maryland Health Insurance Coverage Protection Commission to monitor federal action on a variety of health programs and recommend state action in response.

In light of calls to remove federal funding from Planned Parenthood, legislators passed HB 1083. This bill would provide state funding for Medicaid family planning providers if federal funds are cut.

Immigration

With President Trump promising a crackdown on illegal immigration, some legislators tried to make it more difficult for federal agents to enforce immigration law in the state. SB 835 and HB 1362 would have made Maryland a "sanctuary state," where law enforcement officials were prohibited from cooperating with federal immigration efforts. Under this legislation, state and local law enforcement could not inquire about someone's immigration sta-

tus, transfer someone to federal immigration authorities if the person were only wanted on immigration charges, notify federal immigration authorities of an illegal immigrant's address, or detain an individual for the federal government on immigration charges.

States do not have to enforce federal law or cooperate with federal authorities. State law enforcement officers are only required to not interfere with federal immigration officials. Hence, there is nothing illegal about the proposed legislation. However, lawmakers worried that passing the legislation could result in the state losing some federal funding, especially given the Trump administration's emphasis on this issue. There were also concerns about whether such restrictions would impede efforts to enforce other laws. In the end, HB 1362 passed the House but the Senate failed to advance SB 835 out of committee.

Health Care

GRADE: D

Granting the attorney general power to take pharmaceutical companies to court over vaguely defined "price gouging" was the major piece of health care legislation passed during this year's session. As high-minded as this sounds, it does little to lower drug prices, instead giving the attorney general a soapbox to grandstand on an issue that he has little expertise on. On the other hand, the MGA did pass legislation to allow terminal patients access to experimental drugs.

Drug price "gouging"

HB 631 prohibits drug manufacturers from engaging in "price gouging" on the sale of generic drugs. What is "price gouging"? The bill's fiscal note explains:

"Price gouging" means an unconscionable increase in the price of a prescription drug. "Unconscionable increase" means an increase in the price of a prescription drug that (1) is excessive and not justified by the cost of producing the drug or the cost of appropriate expansion of access to the drug to promote public health and (2) results in consumers for whom the drug has been prescribed having

no meaningful choice about whether to purchase the drug at an excessive price because of the importance of the drug to their health and insufficient competition in the market for the drug.⁸

This legislation gives the attorney general broad power to bring legal action against drug companies if he or she believes that their prices are “excessive” or “not justified.” This is sweeping power to give to a politician who is unlikely to have any background in the pharmaceutical business or business in general.

Much like the legislation that empowers the attorney general to sue the federal government, this bill seems aimed more at giving this elected official a media platform rather than dealing with the problems of drug pricing. There are certainly issues when it comes to companies being able to charge high prices for generic drugs. Many of those issues are caused by federal law regarding pharmaceuticals. No state law that gives the attorney general power to fight vaguely defined “price gouging” will have any real effect on the price of generic drugs.

Right to Try

There are 36 states that have laws allowing terminally ill patients to have access to experimental medication that has not received final approval from the U.S. Food and Drug Administration. Maryland joined these states this legislative session by passing its own “right to try” bill. HB 584, unanimously supported in the House of Delegates and the Senate, allows manufacturers of drugs that have successfully completed “Phase I” FDA safety testing to distribute those drugs to patients who have a terminal illness and have considered all other treatment options. While the drugs may ultimately prove not to be effective (which is the focus of Phase II FDA testing), in some cases they may hold the only hope for treating a terminal illness.

Transportation

GRADE: A-

One of Governor Hogan’s top transportation priorities in the past session was the repeal of what he called the “road kill bill.” This legislation, passed in the 2016 session, required the use of a new scoring system to prioritize state transportation projects.

Maryland Public Policy Institute adjunct scholar Peter Samuel has written that this legislation’s flaw is that it elevates a number of questionable policy goals above the most important goal of transportation: improved mobility. According to Samuel:

Prioritizing proposed transportation projects using an objective, analytical scoring system makes good sense in principle. But Maryland’s new scoring law, Chapter 36, constitutes a misuse of this principle. In their zeal to emphasize a few questionable policy goals in the scoring system, Maryland lawmakers lost sight of the central rationale for transportation projects, namely to support efficient mobility, enabling us to get ourselves and our belongings where they need to go speedily, conveniently, reliably, and efficiently. Chapter 36’s scoring system is heavily biased toward a small number of commuter-oriented transit trips at the expense of roads, which serve about 90 percent of the trips taken in Maryland. Further distortions are introduced by the law’s requirement that projects be weighted by the populations of the counties in which the projects would take place. This would concentrate virtually all of Maryland’s transportation money in just four of the state’s 24 political jurisdictions.⁹

In the face of opposition to this scoring system by the governor and some local officials, legislators passed SB 307. This bill would retain the scoring starting in 2018, but only as a model. The Maryland Department of Transportation would not be required to use it to prioritize transportation projects. This legislation also creates a new transportation priority of reducing congestion and improving commute times.

While this reform legislation is a step in the right direction, it could pose problems in the future. It is unlikely that Governor Hogan will use the new scoring system to set transportation priorities, but future governors may. The existence of the system, even though it is not mandatory, sets the stage for a shift in transportation priorities

that will have the effect of focusing on projects that serve the desires of only a narrow slice of the state's population.

CONCLUSION

During this year's legislative session, lawmakers generally chose to enact more government mandates, unsound energy policy, and narrow tax subsidies over broad-based tax cuts. To their credit, legislators did reject some of the most extreme policies that came up in Annapolis, such as increasing the minimum wage or imposing onerous restrictions on short-term housing rentals. Legislators and the governor also worked together to enact meaningful ethics reform and make a flawed transportation scoring system optional instead of mandatory. Overall, however, these good pieces of legislation were outweighed by the bad. For Marylanders who value free enterprise, lim-

ited government, and fiscal responsibility, 2017 was another year of disappointment.

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NOTES

- 1 Much of the information in this section is from "The 90 Day Report: A Review of the 2017 Legislative Session" by the Maryland Department of Legislative Services. <http://mgaleg.maryland.gov/Pubs/LegisLegal/2017rs-90-day-report.pdf>
- 2 HB 1 Fiscal and Policy Note, Department of Legislative Services. http://mgaleg.maryland.gov/2017RS/fnotes/bil_0001/hb0001.pdf
- 3 Ibid
- 4 Ibid
- 5 See "Levelized Cost and Levelized Avoided Cost of New Generation Resources in the Annual Energy Outlook 2017" by the Energy Information Administration for a detailed discussion. https://www.eia.gov/outlooks/aeo/pdf/electricity_generation.pdf
- 6 "Maryland Democrats' faux redistricting reform," *The Washington Post*, May 12, 2017.
- 7 Kennedy, Sean, "Bent, not Broken: Assessing Maryland's Bail System and Reforms in Context," The Maryland Public Policy Institute, March 30, 2017.
- 8 HB 631 Fiscal and Policy note, http://mgaleg.maryland.gov/2017RS/fnotes/bil_0001/hb0631.pdf
- 9 Samuel, Peter, "Big Problems with Chapter 36," The Maryland Public Policy Institute, March 22, 2017. <http://www.mdpolicy.org/research/detail/big-problems-with-chapter-36>

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