The Maryland Public Policy Institute

The Annapolis Report

A Review of the 2018 Legislative Session

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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

Published by
The Maryland Public Policy Institute
One Research Court, Suite 450
Rockville, Maryland 20850
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mdpolicy.org

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TABLE OF CONTENTS

THE ANNAPOLIS REPORT

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THE 2018 SESSION OF MARYLAND'S GENERAL ASSEMBLY saw little break from the typical approach of past sessions. Spending increases continued unabated, and although lawmakers addressed the state's structural deficit, they took little action to alleviate it. Notably, there will be a small "structural surplus" this year, but the structural deficit will return significantly in later years.

Lawmakers championed tax relief for favored businesses, most notably Amazon, but not for average Marylanders. And action to control crime came in the form of further restrictions on firearms possession—laws that did more to generate praise from media than to control the actions of criminals.

There were some notable differences from past legislative sessions, however. Governor Larry Hogan and legislative leadership continued to disagree on various issues, which is not surprising since they represent two different parties. But these same legislators ignored Democratic Comptroller Peter Franchot's proposals to reform the state's brewery laws and passed legislation to trim his powers.

This report summarizes and evaluates the 2018 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 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 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 2018 session is graded on whether lawmakers promoted free enterprise, limited government, and civil society.

OVERVIEW

Budget

GRADE: C

The 2018 legislative session produced mixed results for the state's budget. The Federal Tax Cuts and Jobs Act of 2017 resulted in $550 million in additional general fund revenue for Maryland, which explains the structural surplus expected for fiscal year 2019. However, in a story that repeats itself, legislators passed bills allowing future ongoing spending to exceed ongoing revenue. Therefore, a structural deficit is expected to return in FY 2020 and persist afterwards. Overall, legislators failed to tackle key issues that have plagued Maryland for years: excessive spending and a long-term structural deficit.

Taxes

GRADE: C

According to the 2018 Tax Foundation's state business tax climate ranking, Maryland has the seventh-worst tax climate in the nation.[1] Hence, the 2018 session should have focused on alleviating some of Marylanders' tax burden through broad tax rate cuts. Instead, legislators once again focused on providing targeted tax incentives to favored groups.

Maryland's history of corporate welfare peaked this year with the Promoting ext-Raordinary Innovation in Maryland's Economy Act,[2] which would provide subsidies to Amazon if that company chooses to build its second headquarters in Maryland. Meanwhile, only limited tax relief was provided for individuals negatively affected by the Federal Tax Cuts and Jobs Act of 2017 and small businesses affected by the paid sick leave law.

Education

GRADE: F

This year saw a series of unfortunate actions by the General Assembly to pass flawed bills that would negatively impact Maryland's public schools. With the state election just a few months away, the session mainly focused on topics that could be tailored to campaign ads, such as funding for pre-kindergarten. Meanwhile, legislators did not address the fact that annual spending increases for the state's public education are tightly squeezing other budget areas.

In addition to adopting a record $6.6 billion budget for education, they allocated an additional $200 million for future expenses to implement the recommendations of the Kirwan Commission. Given their mediocre track record in the past years, it is also no surprise that legislators also paid little attention to charter schools, school choice, or innovating Maryland's education sector.

Elections

GRADE: D

Maryland has some of the most gerrymandered congressional districts in the nation. Once again, Governor Hogan pushed his proposal for a bipartisan redistricting commission during this year's session, but the bill failed in the legislature. Maryland also pioneered the regulation of online political advertising, and passed bills requiring social media platforms to track all political ads. The constitutionality of this bill remains a point of debate. Legislators also considered bills that would require presidential candidates to release their tax returns for the previous five years, although they ultimately did not pass these bills.

Business, Economy, and Free Markets

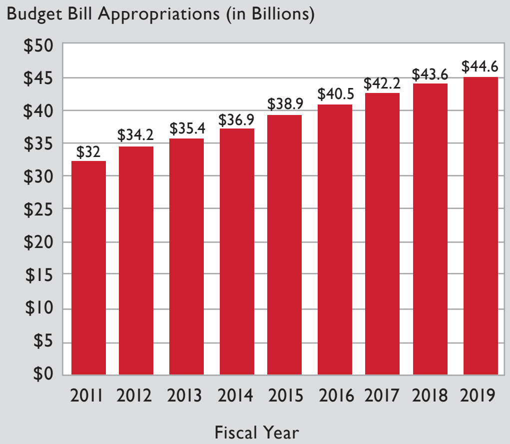
GRADE: D

State policymakers continued with their usual preference for programs favoring corporate welfare during the 2018 legislative session. The proposal to give $5.6 billion in handouts to Amazon is merely the most egregious example of the prevalent mentality in Annapolis that aims to grow the state's economy by subsidizing politically-connected businesses or industries.

This trend is also seen in the continued favoritism shown to one energy source: wind. This industry continues to benefit from state largesse despite concerns from Ocean City's residents. And while Comptroller Franchot proposed commonsense legislation to reform the state's antiquated laws holding back the growth of breweries, this legislation failed to make it out of committee.

Although legislators have traditionally passed bills that hinder Maryland's business owners and hurt their employees, or killed bills that would encourage job creation in the state, not all news was bad on this front in Annapolis. Legislators did pass some pro-market bills involving occupational licensing and killed some bad proposals—involving home sharing and the minimum wage—that threatened the state's economy.

FIGURE 1 MARYLAND'S HISTORICAL INCREASE IN SPENDING



Source: 90 Day Reports, Maryland General Assembly, FY 2010-2018

Crime

GRADE: C

The process of determining that those who are convicted of crimes are actually guilty of those crimes is an increasing concern in the criminal justice system. Legislators deserve credit for passing a bill that facilitates post-conviction DNA testing in cases where there is a reasonable likelihood that such evidence could exonerate someone. These legislators also rectified a wrong in the court system by passing a bill that would allow the termination of a rapist's parental rights. However, the legislative session was marred by the resurrection of the fallacy that gun control is the way to reduce crime. For enacting new laws that increase the state's overly strict gun laws, this legislative session gets downgraded in our estimation.

Health Care

GRADE: D-

Maryland legislators' attitude towards health care seems to involve expanding government-run insurance (i.e., Medicaid) and adding new restrictions on insurance policies. While they did not expand Medicaid eligibility this year, they did increase spending on the program. They also squandered the opportunity to look for ways to reform Medicaid to better serve patients as well as contain costs. Legislators also doubled down on their embrace of the Affordable Care Act, enacting a new insurance tax to prop up the state's health insurance marketplace. Only the passage of legislation that will ease interstate practice of medicine saves this category from receiving a failing grade.

DETAILS

Budget

As usual, Maryland's FY 2019 budget will see a spending increase. Budget bill SB 185[3] enacts a $44.6 billion budget for FY 2019, an increase over the previous year by 2.3 percent. Since FY 2011, Maryland has increased spending every year for the past 9 years (see Figure 1). The bill allocates funds for FY 2019 in the following way: 40.27 percent to state agencies, 29 percent to entitlements, 19.6 percent to local government, 7 percent to PAYGO capital,[4] and 3.7 percent to debt service.[5]

FY 2019 is projected to end with a fund balance of $106.9 million in the General Fund as well as $882.5 million (5 percent) in the Revenue Stabilization Account, also called the Rainy Day Fund. A structural surplus of $67 million is expected for FY 2019. This is an improvement from the projected $222 structural deficit for FY 2018.

However, the expected surplus for FY 2019 is an outcome of the Federal Tax Cuts and Jobs Act of 2017 rather than a sign of legislators' improved fiscal responsibility. Federal tax changes enacted resulted in additional general fund revenue of almost $550 million for Maryland.

At the beginning of the session, legislators committed to protecting Maryland taxpayers from tax increases on their state returns triggered by the changes in the federal law by returning some of the additional revenue to Marylanders. In the end, they chose to keep most of the money, although they did not spend it right away. For instance, they passed legislation to credit $200 million of the additional revenue to a special fund to be used in the future to implement recommendations of the Kirwan Commission.

Also, the state's structural surplus for FY 2019 is predicted to be short-lived. According to budgetary estimates, the structural deficit will return in FY 2020 at a projected level of $823 million and grow each year of the forecast, reaching $1.8 billion by FY 2023. Unless addressed immediately, the state's projected long-term deficit may lead to reduced quality of public services or tax hikes, or in the worst-case scenario, both.

We tend to agree with David Brinkley, Maryland Secretary of Budget and Management, when he said that legislative mandates have pushed spending too high, to the point where spending growth is outpacing revenue growth.[6] The 2018 legislation session reduces revenues by nearly $70 million and increases spending by more than $600 million by FY 2023.[7] The two largest items in the 2019 budget were $11.4 billion in Medicaid health insurance programs and $6.5 billion in aid to local public schools. Medicaid spending is up $180 million and aid to local schools is up $160 million.[8]

Overall, lawmakers did not prioritize fixing the state's long-term deficit problems, particularly when they did not align mandatory spending with revenue increases. Despite the projected structural surplus for FY 2019, further spending constraints must be enacted in upcoming legislative sessions to eliminate Maryland's long-term structural budget deficit.

Tax

The Federal Tax Cuts and Jobs Act of 2017 was signed into law on December 22, 2017. In January 2018, the Comptroller's Office issued an analysis of the impact of the new law on Maryland taxpayers, and estimated that 13 percent of Maryland taxpayers, or 376,000, will pay more federal taxes, adding up to $782 million more in taxes. In addition, about 23 percent of Maryland taxpayers will end up having to pay additional state and local income taxes under the new law.[9]

The General Assembly passed legislation to provide limited tax relief to those who would be affected by the recent federal tax law. Although this bill was a gesture to keep the promise to protect Maryland taxpayers from tax increases triggered by the new federal law, it was short of a general tax rate reduction that would return the additional revenue to the taxpayers.

Another big topic, continued from last year's session, was paid sick leave. At the start of the session, the legislature overrode Governor Hogan's veto of paid sick law, which forces even the smallest businesses to offer paid sick leave, including for part-time employees. Hogan had offered his own version of tax subsidies for sick leave, but that plan went nowhere in the legislature.[10] To compensate, legislators passed the Hogan's bill SB 134.[11] Under this legislation, companies with 14 or fewer employees who provide paid sick leave to their employees are eligible to receive the tax credit, which can be up to $500 per qualified employee.

In January 2018, the governor announced an incentive package to encourage Amazon to build its second headquarters in Maryland. This led to SB 877—Promoting ext-Raordinary Innovation in Maryland's Economy (PRIME Act).[12] The act, although intended to benefit Amazon, promises tax incentives for any Fortune 100 company that establishes an eligible project in Maryland. A qualifying business may claim income, property, and sales tax credit. This bill, in addition to the $2 billion transportation improvement project planned to accommodate Amazon workers, is expected to cost Maryland taxpayers $8.5 billion (see Business, Economy, and Free Markets).

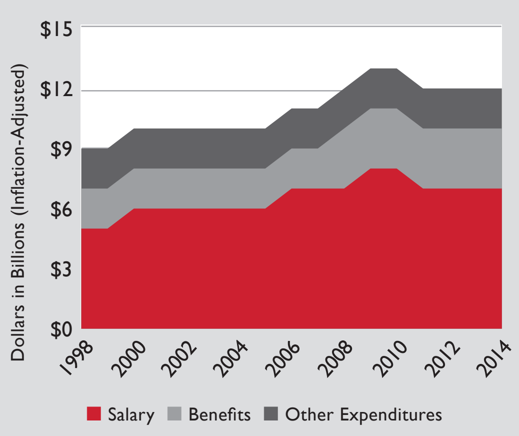
The state's targeted property tax breaks were also extended, authorizing property tax credits for spouses of military retirees, Baltimore City public safety officers, senior homeowners of Baltimore County, and so on. None of these tax incentives, however, address the fact that localities are losing residents every year, such as Baltimore City, which is partly due to its $2.248 local property tax burden.

At a first glance, these tax actions could be viewed as a way to reduce the state government's burden on Marylanders. However, the targeted tax breaks only reward certain activities. They are more akin to government subsidies than tax relief and will distort Maryland's economy. Legislators would serve the state better through 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. The state government should not decide which businesses or groups of people deserve to benefit. Instead, it should create an environment that is conducive for everyone to succeed.

Education

As with health care, Maryland's education system demands an ever-increasing share of the budget (see Figure 2). From 1998 to 2014, Maryland increased education operating expenses by $3.8

FIGURE 2 CHANGE IN SPENDING IN 2014 INFLATION-ADJUSTED DOLLARS, 1998 TO 2014



billion in inflation-adjusted dollars—a hefty 45 percent increase. However, misguided spending does not fix the broken system.[13] As of 2016, Maryland school districts were already spending $14,206 per pupil, the 13th-highest spending in the nation,[14] but less than 20 percent of Baltimore City's public school students in grade 3 to 8 meet or exceed expectations in English or math.[15]

This year's session resulted in a record $6.6 billion in funding for K–12 education, an increase by $169.1 million, or 2.6 percent for FY 2019. In addition, legislators reserved $200 million funding to prepare for increased future spending to implement recommendations of the Kirwan Commission, and passed SB 1122.[16] The bill, if approved by the voters at the 2018 general election, requires the governor to provide supplemental state funding for public education through use of commercial gaming revenues starting in FY 2020. The funding would total $125 million the first year and increase to more than $500 million by 2023.

However, recent history has shown that bigger school budgets do not translate to better student outcomes in Maryland. Maryland's excessive school spending has encouraged the growth of bureaucracy over the years. From 1992 to 2015, the number of teachers increased 36 percent while the number of administrative staff grew 60 percent. A larger and larger share of taxpayer money is being spent on school bureaucrats who do not actually teach children.[17]

Legislators also passed HB 1415,[18] increasing annual state funding for pre-kindergarten expansion from $4.3 million to $26.6 million, beginning in FY 2020. While expanding pre-K is a popular political issue, there is little empirical evidence to suggest that more spending will produce positive effect on Maryland children. Evidence from Tennessee shows that students who did not attend pre-K actually performed better than their pre-K-educated peers by second and third grade.[19]

According to the 2018 Maryland Voter Survey on Education conducted for the Maryland Public Policy Institute, a majority of Marylanders oppose increasing taxes or cutting funding for other services to expand pre-K. More than 70 percent of the respondents opposed cuts to road and transportation, public health, or children's insurance to expand pre-K. Only 10 percent of the respondents supported spending additional tax dollars on expanding pre-K.[20]

In 2017, the legislature passed disastrous legislation that watered down the school evaluation system by judging schools based on how they spend their money rather than how students perform. This session, Governor Hogan set forth several bills to try to reverse this and achieve greater accountability for school spending.

Predictably, legislators did not pass SB 301,[21] which would increase the emphasis on standardized testing in school ratings and access to a well-rounded curriculum. In addition, legislation creating an investigator general position to investigate wrongdoing in school systems across the state also did not pass, despite several allegations of misconduct in school districts of Baltimore City and Prince George County this year.[22]

Governor Hogan vetoed other flawed education bills that the General Assembly overrode. One of them was HB 1783,[23] the 21st Century School Facilities Act, which would strip oversight over school construction funding from the state's top fiscal leaders. The legislation was purely a political move—a rebuke of Comptroller Franchot's involvement in local school issues. The assembly also overrode SB 639,[24] which would add an unnecessary layer of bureaucracy to the process of removing teachers charged with misconduct. Both of these bills would further deteriorate accountability and transparency of Maryland's education spending.[25]

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. Charter schools have the potential to innovate and tailor their education to meet student needs. Yet this year, legislators once again failed to advance charter schools. The capital budget as proposed by Governor Hogan included an additional $1.5 million for air conditioning improvements at the KIPP Charter School in Baltimore City, the largest charter school in Baltimore. Even this small additional budget for charter school was deleted by the General Assembly.

Instead of encouraging school choice, legislators did pass a bill approving up a community college subsidy of up to $5,000 to students, thereby urging students to study at a particular type of school instead of one that optimizes their career options. To qualify, a student must enroll in one of Maryland's 16 community colleges within two years of finishing high school or obtaining a GED. Lawmakers estimate the program will cost another $15 million a year.[26]

According to findings from the 2018 Maryland Voter Survey on Education, 72 percent of respondents agreed that policymakers should refocus on allocating resources more efficiently and effectively, instead of continuously increasing the education budget.[27] Once again, the 2018 legislative session failed to achieve this goal, as education spending was increased but school choice was not. The main premise of legislators regarding Maryland's education system seems to be that education bureaucracy must grow.

Elections

Maryland has some of the most notoriously gerrymandered congressional districts in the nation. This year, Governor Hogan once again pushed his proposal for a bipartisan redistricting commission as the proposals had died in legislative committees in 2016 and 2017. Predictably, the bills failed again this year in the legislature. SB 307[28]/HB 356,[29] if passed, would have taken the job of drawing congressional and state legislative districts away from politicians and put it in the hands of a nonpartisan commission. The bills would have required a commission comprised equally of members registered with Maryland's largest political party, second-largest political party and unaffiliated members.

Unlike previous years, however, the redistricting issue gained special prominence as it was heard by the Supreme Court. Although the Supreme Court decided not to rule on the case for the time being, Justice Elena Kagan noted that Maryland's districts were clearly gerrymandered: "The district went from 47 percent Republican and 36 percent Democratic to exactly the opposite, 45 percent Democratic and 34 percent Republican." While holding the decision means Maryland congressional districts will stay the same for the upcoming 2018 midterm elections, there is still hope that the Supreme Court will eventually make a ruling on the case.

Marylanders want free and fair elections and a nonpartisan redistricting process. Once again, the General Assembly missed a big opportunity to deal with a problem that has long plagued Maryland's electoral system, thereby putting party politics ahead of basic fairness to state voters.

Political advertising online has grown rapidly in recent years, becoming a crucial medium of communication for campaigns. This year, Maryland pioneered the regulation of online political advertising. SB 875/HB 981[30] requires social media platforms track all political ads, keep copies of them, and record which users are being targeted. The bill is similar to one introduced in Congress that places such requirements on digital platforms with at least 50 million monthly visitors, but it goes further, as it applies to platforms with just 100,000 monthly visitors.

The resulting law has such negative implications for free speech online that Governor Hogan warned it may be unconstitutional: "The legislation contains vague and overbroad language that could have unintended consequences of stifling the free speech of citizens who are mobilizing on social media platforms." The Maryland-Delaware-D.C. Press Association also threatened a lawsuit, saying the law violates free speech provisions of the First Amendment because the government cannot force newspapers to print anything. The bill was allowed to become a law without the governor's signature.[31]

Although President Donald Trump is a federal official who holds no office in Maryland, legislators from this state still spend considerable time focusing on his actions. This was especially true last year, when they considered a number of bills in response (either symbolically or, more rarely, substantively) to President Trump's actions. This year saw more focus on state issues, but there was one high-profile bill inspired directly by secrecy surrounding the president and his tax returns.

When he ran for president, President Trump broke with decades of tradition and refused to release his tax returns. There is no constitutional requirement or federal law that requires candidates to do so, but candidates have been doing this since the 1960s. Under SB 256[32] and HB 662[33], candidates for president and vice president would have been denied access to the Maryland ballot unless they released their tax returns for the previous five years. There were significant legal questions about this proposal.

Since the U.S. Constitution only sets a few restrictions on who can be president, it is unlikely that Maryland could add another restriction in order to appear on the state's presidential ballots. Whether because of this legal issue or other concerns, legislators ultimately did not pass either of these bills.

All in all, little progress was made this year to improve the fairness of elections. Maryland's gerrymandered congressional districts will remain the same for the upcoming 2018 midterm elections. Political ad regulations will take down Gov. Hogan's successful campaign ads. However, legislators should be credited for not passing the tax return disclosure law aimed at President Trump, a distraction from focusing on the upcoming state election in November.

Business, Economy, and Free Markets

Amazon Subsidies

As in past years, the large economic development effort in the General Assembly this year centered on targeted tax breaks. Unlike past years, most of the focus was on a tax break for one company—Amazon. Governor Hogan proposed legislation aimed at encouraging Amazon to locate its second headquarters in Maryland. As ultimately passed by the General Assembly, this incentive package would have been a $5.6 billion giveaway to this single company.

These incentives were embodied in SB 877, the PRIME Act,[34] which would ostensibly apply to any Fortune 100 company that commits to building a qualified project in the state, hiring 40,000 workers, and investing $4.5 billion in certain expenditures. While this could technically apply to any Fortune 100 company, it was obviously designed to benefit only Amazon.

The benefits that Amazon would receive under this deal would be significant. Amazon would receive a tax credit equal to the amount it paid in employee wages multiplied by 5.75 percent. This is roughly equivalent to the amount these employees would pay in state taxes. That would be a great deal for Amazon, since the employees pay the taxes but the state pays the corporation. This is a refundable tax credit, which means that if the credit amount exceeds Amazon's tax liability, the company would receive a check from the state for the difference.

In addition, the company would receive a tax credit equal to 50 percent of the amount of increased value of the land the project is built on. This includes both state and local taxes, with the state reimbursing the local government 50 percent of that jurisdiction's lost tax revenue. In addition, any purchases of personal property or services for use at the project site would also be exempt from the state's sales tax. These tax breaks and direct payments to Amazon would be coupled with $2 billion in infrastructure improvements in Montgomery County.

Researchers at the Mercatus Center at George Mason University's Study on American Capitalism wrote an op-ed in the *Baltimore Sun* explaining some of these problems with the PRIME Act:

> *Maryland could take the $8.5 billion offer to Amazon and instead reduce the corporate income tax for homegrown businesses by a whopping 96 percent, according to our calculations. Or it could reduce individual income taxes by 8.5 percent, the state sales tax by 16.5 percent, or the state property tax by 69 percent.*
>
> *Instead of tax cuts, the subsidy could pay the state's highway maintenance costs for 26 years. Or it could easily fund the $2.9 billion Red Line public transit project that Gov. Larry Hogan called a "wasteful boondoggle" and derailed in 2015. And it should seem odd to Maryland families that the governor and legislature were able to find funds to subsidize Amazon, considering they're struggling with how to pay for the Kirwan*

Commission's recommendations to improve the state's schools.

Adding insult to injury, Maryland would pay Amazon more than it would receive in payroll taxes from Amazon employees. The package allows Amazon to claim a tax credit amounting to 5.75 percent of an employee's wages, provided those wages are at least $60,000. But the state tax rate for incomes below $100,000 is only 4.75 percent.[35]

This approach to economic development is typical in the General Assembly. Legislators enact an onerous tax and/or regulatory structure, then provide targeted exemptions for certain businesses. Or, in response to concerns caused by their mandatory sick leave law, they pass a business mandate then provide tax credits or exemptions in an attempt to alleviate (at least partially) the problems they caused.

This is the case with SB 134,[36] which provides tax credits for some small businesses (one credit applies to businesses with fewer than 50 employees and another to businesses with fewer than 14 employees) to offset some of the costs that came with state-mandated sick leave. While this bill recognizes that legislators' sick leave mandate does have negative consequences for business owners, it would have been better to repeal the sick leave law.

Energy

The General Assembly continued its attack on a potentially vibrant energy industry in the state this session by passing a bill designed to hamper offshore oil and natural gas production. The Trump administration has issued an offshore energy plan that would potentially allow oil and natural gas exploration off of Maryland's coast. While offshore drilling would occur in waters under federal control, there are aspects of state law that govern this industry.

Legislators passed SB 1128[37]/HB 1456[38] to label offshore drilling as an "ultrahazardous" and "abnormally dangerous" activity. According to the Department of Legislative Services, "Abnormally dangerous activities are uncommon acts that carry a significant risk of serious harm to persons or property, even if the actor used reasonable care."[39]

While there some high-profile accidents have occurred with offshore drilling, it is not an inherently dangerous activity. Legislators labeled offshore drilling with this designation so that the state's "strict liability" standard applies if there is a civil case brought against energy companies engaged in offshore drilling. Under strict liability, an offshore drilling company would be liable for any damages regardless of whether that company or its workers were negligent or intended to do harm. This legislation is an attempt to make it more unattractive for these companies to operate off Maryland's coastline in the event that a federal offshore energy plan allows oil and gas exploration in these waters.

Legislators want to discourage the oil and natural gas industry from operating off the state's coast, but they welcome subsidized wind industry in this area. In previous legislative sessions, legislators authorized generous subsidies for the wind industry. David Stevenson of Delaware's Caesar Rodney Institute explains the economic problems with this subsidized wind:

The offshore wind projects commit Maryland electric customers to over $5 billion in subsidies. The risk of offsetting benefits is left with the electric customers rather than the wind project developers. The publicized cost to a residential customer of $1.40/month in 2012 dollars, for projects that will not become operational until 2021 and 2023, obfuscates the cost in both actual dollars of $3.17/month, and the overall cost of $760 over the life of the project. Some industrial customers could see an electric premium of almost a quarter million dollars a year, or $4.75 million over the life of the projects.[40]

Companies are looking to take advantage of these government handouts and build a wind farm in the waters near Ocean City. There is significant local opposition to these windmills, with the concern that they will spoil beachgoers' views and harm the resort's tourist-based economy.

In February 2018, the Ocean City council voted to oppose visible offshore wind turbines. This prompted legislators from the region to offer a bill that would only allow state subsidies to be paid to windmills located beyond 26 nautical miles offshore. That would affect currently-planned projects, since their farthest planned distance offshore is 21 nautical miles.

This new limit would have ensured that windmills could not have been seen from Ocean City, although critics contend that it would have killed the wind farm project. Of course, the project could proceed without state subsidies under this legislation. The fact that the wind energy lobby fought this bill so hard indicates just how reliant the industry is on subsidies to sustain its business models.

Breweries

Legislators squandered a prime opportunity to lighten the state's regulatory load holding back the operations of breweries. In spite of a growing microbrewery industry, Maryland still has some of the nation's most onerous laws restricting what these breweries can offer customers.

Comptroller Franchot held a series of statewide meetings on this issue, resulting in the Reform on Tap Act (HB 518[41]). This bill would have made numerous changes to the state's laws governing breweries, especially the larger breweries that hold a Class 5 license. These breweries are classified as production breweries, as opposed to breweries that operate in conjunction with a restaurant or pub.

The Reform on Tap Act would have freed these larger breweries to:

- Provide samples at any time, not just during tours or special events
- Allow individuals to purchase any amount of beer from the brewery
- Purchase a permit for on-site consumption more easily
- Sell any amount of beer for on-site consumption

The legislation would have also lifted the current limit on micro-brewery production. Currently, these micro-breweries can only produce 22,500 barrels (except in one county) for sale and 4,000 barrels for on-premises consumption.[42]

Comptroller Franchot's bill would have brought Maryland's laws regarding production limits and the sale of beer at taprooms in line with the states surrounding Maryland. These states have far fewer restrictions in these areas. Some have no limits on brewery production nor do they limit how much beer these breweries can sell at their own taprooms.[43] Maryland's restrictive brewery laws restrain the growth of breweries and constrain consumers who wish to sample a wider variety of beer.

Notably, this legislation would have diminished the role of distributors in the sale of beer. Maryland operates under a three-tier alcohol sales system, where manufacturers sell to distributors (wholesalers) who then sell to retailers who then sell to consumers. The comptroller's legislation would have allowed far more direct sales from manufacturers to consumers. Distributors lobbied extensively against this legislation. This pressure, along with tension between legislative leaders and Comptroller Franchot, unfortunately doomed this reform legislation's chances. It died in committee.

Minimum Wage

In 2018, Maryland's minimum wage will rise to $10.10 per hour. This is not good enough for some legislators. Nationwide, groups have been pushing "Fight for 15" to increase the minimum wage to $15 an hour. This movement has not bypassed Maryland, with a number of bills being introduced to accomplish this:

- SB 1019[44] would have raised the minimum wage to $15 an hour and indexed it to inflation by 2024 for a small employer, by 2023 for a mid-size employer, and 2021 for larger employers
- SB 543[45] and HB 664[46] would have gradually increased the minimum wage to $15 an hour by 2024 and indexed it to inflation
- SB 368[47] would have gradually increased the minimum wage to $15 an hour by 2022 for larger employers and 2026 for smaller employers as well as indexing it to inflation

Another bill, SB 235, would not have increased the minimum wage but would have indexed it to inflation beginning in 2020. None of these bills passed.

There is strong evidence that while a minimum wage increase may lead to higher wages for some workers, it also leads to many more workers not being able to find jobs and lowers the earnings of other workers. By not passing legislation to mandate an even higher minimum wage, legislators took a positive step to help Maryland's workers and economy.[48]

Occupational Licensing

Across the political spectrum, there is increasing recognition that laws requiring a state license to pursue certain jobs is hindering employment and harming the economy. This is especially true for individuals seeking a license to work after they have exited prison. A criminal record may be grounds to deny a license to an ex-offender, which obviously limits the ability of this person to find a job. There were significant efforts in other states to reform these occupational licensing laws. Maryland was not part of this pro-worker effort, but it did take a small step to acknowledge the problems these licensing requirements cause to ex-offenders.

HB 1597[49] would require the state's licensing departments to report on the licensure or certification of ex-offenders, and how many ex-offenders were denied licenses, in the past five years. This information could be used for future legislative efforts to reform the licensing process to allow it easier for ex-offenders to find work.

Home Sharing

As home-sharing platforms like Airbnb become more popular, there is also a push to increase regulations on individuals who use such services. This is typically due to pressure from hotel owners, who do not appreciate the competition that comes from home-sharing users. While some local governments in the state regulate home sharing, there is no statewide law that restricts this practice.

Two bills were introduced in the 2018 legislative session to change this. SB 1081[50] and SB 1604[51] would have mandated that homeowners (or "innkeepers," as this bill terms them) using home-sharing platforms must register with the state, keep detailed records, and comply with any local laws governing the activity. This bill explicitly authorizes local governments to impose new rules on home-sharing users, and subjects them to fines up to $7,500 for violating these rules. The bill would also require anyone who rents their home to collect and remit the state's 6 percent accommodation tax.[52]

This legislation was an attempt to stifle the use of home-sharing platforms, depriving Marylanders of the opportunity rent their homes for a night or two without the intervention of the state. Both these bills failed to pass.

Crime

Post-Conviction DNA Testing

In 1989, the first exoneration based on post-conviction DNA evidence of someone convicted of a crime occurred. Since then, Maryland and every other state have enacted laws allowing post-conviction DNA testing in some cases to ensure that those who are convicted of crimes truly committed them.

Under Maryland's post-conviction process, there were limited avenues for someone to ask for DNA testing and request a new trial based on that evidence. This process foreclosed the possibility that someone who pleaded guilty to a crime could access such testing. However, there is growing evidence that a troubling number of defendants who confess to a crime did not actually commit that crime. According to the Innocence Project, "more than 1 out of 4 people wrongfully convicted but later exonerated by DNA evidence made a false confession or incriminating statement."[53]

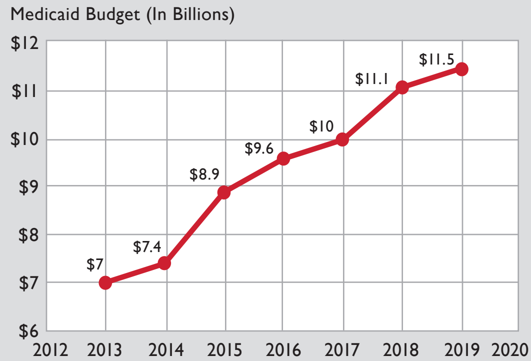
SB 423[54] allows someone who is convicted of a crime—whether that conviction was the result of a trial, a guilty plea, an Alford plea, or a plea of no contest—to request post-conviction DNA testing if there is reasonable probability that this testing would provide evidence that exonerates a person. If the testing does produce such evidence, then a judge must open a post-conviction proceeding or order a new trial. For a person who pled guilty or who was convicted due to an Alford or no contest plea, the judge can set aside the conviction and move for a new trial.

This bill also expands the ability of Marylanders to seek a writ of actual innocence and obtain a certification of a conviction in error.

Termination of a Rapist's Parental Rights

Going into 2018, 30 states had laws that allowed courts to terminate the parental rights of a rapist for a child that was conceived through rape. Another 14 states and the District of Columbia placed some restrictions on the parental rights of rapists. Maryland did not have any such restrictions. The passage of SB 2[55] and HB 1[56] allow a judge to terminate the parental rights of someone who engages in nonconsensual sex that leads to conception. This can be determined either through someone being convicted of rape or through clear and convincing evidence that rape occurred. The

FIGURE 3 MARYLAND'S MEDICAID SPENDING (FY 2013-2019)



Source: Maryland Budget Highlights FY 2013-2019

judge must also find that the termination of parental rights is in the best interest of a child.

Gun Control

Although Maryland has some of the strictest gun control laws in the nation, legislators still found a way to enact more restrictions on firearm ownership. They passed SB 707[57] and HB 888[58] to ban "bump stocks," a modification device that allows a semi-automatic firearm to mimic the action of a fully-automatic firearm. If these devices are used to commit crime in Maryland, there appears to be no record of it. However, a bump stock was used during a 2017 mass shooting in Las Vegas. Reacting to this high-profile event, Maryland legislators banned these devices in the state.

They also passed another gun control law, HB 1302[59], which was termed the "red flag" bill. This law allows a health care professional, a spouse, a boyfriend or girlfriend, and a few other categories of people to petition the court for an extreme risk protective order against someone that will allow law enforcement to seize the firearms of that person. The petitioner must assert that the person from whom the guns are to be taken poses an immediate and present danger to harm himself or others.

This charge, however, does not have to be proven at the time. A judge merely has to find that there are reasonable grounds to grant an interim or temporary order allowing the seizure of firearms. There is an appeals process laid out in the bill. This new type of protective order allows a judge to order the surrender of guns without sufficient judicial safeguards and upon fairly flimsy evidence.

Health Care

Medicaid

Medicaid continues to play a growing role in the state's ongoing spending problems (see Figure 3). The budget passed by the General Assembly increases Medicaid spending from the General Fund by 6.9 percent, or $219 million. Total General Fund spending allocated for Medicaid will be $3.4 billion, and total overall Medicaid spending is budgeted at $11.487 billion.

As enrollment grows and health care costs increase, Medicaid will continue to crowd out spending for competing needs in the state budget. Other states are undertaking reforms of their Medicaid programs, which the Trump administration has shown more willingness to consider than past administrations. Maryland policymakers should take advantage of a relative lull in enrollment growth and consider ways to fundamentally reshape the state's Medicaid program to deal with its fiscal effects.

Affordable Care Act Fallout

Maryland was in the forefront of embracing the Affordable Care Act. It quickly expanded Medicaid, aligned its insurance markets with federal mandates, and set up a health insurance exchange. Some of the problems with the speedy implementation of the ACA were soon apparent, such as the disastrous rollout of the health insurance exchange, named the Maryland Health Benefits Exchange (MHBE). Other problems are only beginning to be seen now.

One issue with the ACA that legislators and the governor faced during this year's legislative session is the lack of choice in the MHBE. Only two insurance providers participate in it, which leaves little choice for the individuals and small business owners who buy their insurance there. In 2018, the rates for the mid-tier silver insurance plans increased between 22 percent and 52 percent.[60]

These rates increased even more when the Trump administration ended cost-sharing reduction payments. The ACA authorized these payments to insurance companies in a partial attempt to offset the cost these companies bear because the law limits what they can charge lower-income customers. Congress did not appropriate funds for these payments, but the Obama administration issued them anyway. The House of Representatives sued, saying that the president cannot offer such payments without an appropriation, and a D.C. district court agreed. This court stayed its decision pending appeal, but the Trump administration decided that it would no longer offer what the president styled as a "bailout" to insurance companies that was not authorized by Congress.[61]

In response, legislators passed SB 387[62] and HB 1782[63] that imposes a 2.75 percent tax on insurance premiums to cover this funding gap. This fee will increase the price on those who buy insurance, thus further eroding the promise of affordable health care under the Affordable Care Act.

In another move related to the ACA, the Trump administration issued guidance that made it easier for associations to offer members health insurance. This could be a way to allow a greater variety of insurance as well as lower-cost insurance to Marylanders who belong to professional associations. The same bill that imposed the 2.75 percent tax on health insurance premiums also imposed the same voluminous state regulations on association health plans as on other health plans sold in the state. This bill effectively killed any promise that association health plans held for Marylanders looking for better insurance options.

Interstate Licensure of Physicians

The passage of SB 234 [64] enters Maryland into a compact with 22 other states that will streamline the interstate licensing of physicians. Every state has different standards for licensing physicians and for the requirements that are imposed that allow these physicians to continue practicing. Qualified physicians in states covered by this compact can receive an expedited license to practice medicine outside the state that originally issued them a license.

This compact is not an ideal way to deal with the problems caused by conflicting state licensing standards, but it is a step in the right direction. This will ease some of the burdens faced by Maryland physicians looking to practice in other states or out-of-state physicians looking to practice in Maryland. It is a modest win for health care freedom.

CONCLUSION

The 2018 legislative session ended with higher state spending, a steep structural deficit predicted for future years, little in the way of expanded educational choice, and more restrictions on firearm ownership. Subsidized wind energy continues to be subsidized, but more proven energy sources are further restricted. Much-needed brewery reform languished despite the hard work of Comptroller Franchot.

All was not negative this year, however. The "Fight for 15" movement did not succeed in convincing legislators of its dubious economic platform. Marylanders who use home-sharing apps can still do so in relative freedom. Those convicted unjustly have greater access to post-conviction DNA testing to prove their innocence. For those of us who favor free enterprise, limited government, and a strong civil society, this was not a legislative session to celebrate, but it did have some positive moments.

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