

Testimony on SB 808, State Budget Constitutional Amendment
Senate Budget and Taxation Committee, Maryland General Assembly

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This proposed constitutional amendment would allow the legislature to add amounts to those requested by the Governor as long as total spending does not exceed the Governor's request. I urge a favorable report.

I also suggest that you pair this bill with credible actions that will make the budget more flexible. You have a vehicle for doing that in the Governor's proposed mandate relief bill, SB 375, which you have already heard. I could not attend that hearing because of teaching commitments, but offer suggestions below on how that bill could be amended.

Legislative Suggestions Can Improve the Governor's Budget

I have participated in and studied federal and state budgeting, including the executive budgeting approach, for thirty-five years--first as an analyst at the Congressional Budget Office, and now at UMBC.² My support of this bill is nonpartisan--as it was when similar bills were sponsored by Senator P.J. Hogan and Delegate Branch in 2004, and by Senators Pipkin and Brinkley in 2012. I hope that the incumbent governor will be strong and effective, and that goes for his successors as well.

Unfortunately, governors have traditionally opposed this bill. They say it is a "power grab" by the legislature, and they claim that it would promote fiscal irresponsibility. But under the bill, if the legislature increases spending items, those must be offset by savings elsewhere to fit under the Governor's requested budget total. In addition, the Governor would have a limited line item veto, subject to override. This is hardly a radical weakening of gubernatorial power or a license to waste money.

Sometimes opponents of this bill also make a "Chicken Little"-type claim that it would endanger Maryland's AAA bond rating. To be frank, this is absurd. You could ask the bond rating agencies--as was done in 2004--if this bill will risk our top rating. I guarantee that the answers will again be "No."

¹ My testimony represents my own views rather than an official UMBC position.

² See, for example, "The Executive Budget in the Federal Government: The First Century and Beyond," with Irene S. Rubin, *Public Administration Review*, 71:3, May/June 2011, pp. 334-344, available at: <http://userpages.umbc.edu/%7Emeyers/execbudgetmeyersandrubin>.

When the state constitution was amended to give the Governor extraordinary power over the budget, the flaws of the legislature made it reasonable to shift some authority and responsibility to the executive. But now, there is no question that the Maryland General Assembly is an effective legislature, and that its staff is among the best in the country.

The advocates of the 1916 amendment thus overdid it when they assumed that only the chief executive could be accountable to the public. One of the general principles of American government is that the separate branches are both expected to represent the public, and to compromise because they share powers. On the relevance of this principle to budgeting in Maryland, I will quote William Allen, an expert proponent of executive budgeting, but an opponent of the extreme 1916 amendment. He said:

Nothing could be more unscientific and absurd than to ask legislators to deal intelligently or honestly with executive proposals if the constitution prohibits them from considering at the same time evidence existing anywhere in the state that the governor's proposals are inadequate.³

Allen's criticism of the 1916 amendment is just as true today. Democracy requires that we encourage open debate to compare reasonable policy alternatives.

The 1916 Amendment Encourages Mandates

Because it is self-evident to citizens and legislators that Maryland's legislature should not be a rubber stamp, the General Assembly has adapted in the century since the 1916 amendment was adopted. Most importantly, since the Maryland constitution prevents you from rearranging moneys in the Governor's budget proposal, your justified response has been to mandate spending in future budgets, a power that was confirmed by a 1978 constitutional amendment.

Mandates can prevent a Governor from single-handedly starving a deserving program of necessary funds. They are more effective than pleading for insertion of additional spending in a supplemental budget or next year's proposed budget. You also use mandates and entitlements to declare that much spending is high priority, and to show that you want the state's commitment to last for more than one year.⁴

One drawback of this approach is that sometimes mandates have been added without knowing how additional spending will be financed. In other words, giving the Governor so much power

³ Allen, William H., 1917. "Serious Defects of Maryland's Budget Law," Institute for Public Service, New York, pp. 8-9.

⁴ See the discussion of different motivations for mandates in the January 2009 DLS briefing "Update on Mandates and Mandate Reform."

in the name of fiscal responsibility ironically created incentives to generate a structural deficit in the general fund. Governors from both parties have at times endorsed mandates even when they have had this effect.

The legislature has also coped with its limited authority by dedicating revenues into special funds (aka “mandates for purpose”), and by redirecting spending through confusing “fencing” and “restriction” techniques (though not always successfully). These techniques have reduced the budget’s transparency and flexibility. They require you to enact changes to current law through complicated BRFA’s rather than simply changing amounts in the regular budget bill.

Increasing the Budget’s Flexibility and Transparency

As shown in the fiscal note for the Governor’s mandate relief bill, only 17.1% of the state’s own-source spending in FY16 is flexible absent legislation.

Section 2 of the Governor’s bill would limit your ability to mandate, because it would prevent the legislature from adding a required appropriation unless that amount was offset by savings from existing required appropriations.

This offset requirement is a reasonable constraint, but only if it is paired with this constitutional amendment. Should you report SB 375 favorably, Section 2 should be effective only after ratification of the amendment.

Section 1 of the bill would grant the Governor power to not include in the budget mandated amounts above FY18 appropriated levels. This would effectively give only one branch of government the right to dictate spending, which--again--is an unwise rejection of the checks and balances principle that is central to American government.

The power is enabled by a very strange trigger, which is that growth in projected general fund revenues increase by less than 2% from the estimate released 19 months before the start of the budget year to the estimate released 7 months before that start. If a trigger is to be used, it should instead be based on the extent of growth in projected revenues from current year to budget year, not on adjustments to prior revenue estimates for the budget year.

There are better ways of increasing the budget’s flexibility. I suggest that you replace the language in Section 1 with directions that would:

1. Set up a process designed to reduce the number of special funds. Delegate Krimm’s bill, HB 120, requiring a display of such dedications in the Governor’s budget, is a good start in this direction. In 2012, I requested a printout of all the special funds in the budget. I received 19 pages that listed 990 accounts. Surely this is too many. You should shift some of these funds into the general fund base. Besides giving you more flexibility, this will help reduce confusion

that the state's "budget" is only the general fund. Your current practice for Spending Affordability of viewing the state's budget on the more comprehensive own-source basis is the preferable practice.

2. Adopt a sunset procedure that would schedule on a rotating basis the examination of all mandated amounts and entitlements. You already periodically review some major expenditures, such as for K-12 aid and pension contributions, which are excluded from this bill's provisions. Some additional large programs, particularly Medicaid, usually draw your attention each year. But there are other programs that you have reviewed less frequently, and then typically under the challenging time pressures of BRFA consideration. The better alternative of a sunset schedule would allow you to review systematically how well programs are addressing needs and how spending might be adjusted.

3. Apply a similar approach for tax preferences. The General Assembly has made a good start by requiring analyses of selected major tax preferences for the Tax Credit Evaluation Committee, but other tax preferences also deserve such scrutiny. The current biennial report on tax expenditures should be integrated into the annual budget.

4. Adopt a more aggressive counter-cyclical strategy, one that would produce larger balances in the rainy day fund during good years, and allow a greater draw from this fund during recessions in order to maintain basic services. To do so, you should increase the statutory target above 7.5% of general fund revenues, prevent the use of rainy day fund balances below this higher statutory target during years when revenue growth is positive, and retain the sweeper provision that directs unappropriated surplus at closeout into the fund.

Conclusion

Passage and then ratification of this constitutional amendment, when paired with other efforts to increase the flexibility of the budget, will increase the ability of both branches to be responsive to Maryland's citizens and to keep the state in a stable financial position.