MARYLAND
BUDGET & TAX
POLICY INSTITUTE

Analysis of state policy choices with particular attention to their impacts on low- and moderate-income Marylanders

MARYLAND POLICY REPORTS

Vol. 8 No. 5
June 2008

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a project of the Maryland Association of Nonprofit Organizations

In this issue

Maryland's Budget Process - The unique feature of Maryland's budget process is that the legislature, in general, may not add to the amounts proposed by the governor in the budget bill. This is different from the appropriation power of Congress under the federal Constitution and different from the budget processes in the other 49 states. In this issue, *Maryland Policy Reports* presents contrasting views of Maryland's executive budget process.

Maryland's Unique Budget Process

Neil Bergsman

In its special session of November 2007, the General Assembly charged the Spending Affordability Committee to study Maryland's budget structure and process. The study will address how Maryland's laws and practices compare with national norms and best practices. The committee is to issue its report in December.[1]

History – "The First Executive Budget"

One hundred years ago, Maryland's fiscal affairs were in chronic disarray. The legislature enacted multiple appropriations bills without regard to how expenses would be covered. In 1916 Governor Emerson C. Harrington appointed a study commission chaired by Dr. Frank Goodnow, president of The Johns Hopkins University and a nationally respected political scientist. The commission recommended that the power to make budget decisions should be concentrated in one accountable individual, and that should be the governor.[2]

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Increasing Budgetary Democracy and Flexibility

Roy T. Meyers

Roy Meyers is a Professor of Political Science and Director of the Sondheim Public Affairs Scholars Program at the University of Maryland Baltimore County. He is an internationally eminent expert in government budget processes.

If you are a legislator who wants to propose an increased operating budget for a program, Maryland's constitution greatly limits your ability to do this. You can ask the Governor to place this increase in his budget. If he does not, you must tie an offsetting revenue source to this increase, or you must mandate such spending in future years.

These rules were established nearly a century ago by the executive budget movement." Many of its reforms were worthwhile, particularly those that made government finances more transparent and that gave experts the responsibility to prepare budgets and audit spending. But the executive budget movement had two warring branches. The

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The Myth of a Weak Legislature

Cecilia Januszkiewicz

Cecilia Januszkiewicz served over 18 years in Maryland Department of Budget and Management as Principal Counsel, Deputy Secretary, and Secretary. Ms. Januszkiewicz is now a Senior Fellow at the Free State Foundation, a non-partisan free market think tank, where she writes about Maryland budget and fiscal policies.

While Maryland's Governor may theoretically have more budgetary power than the Governor of any other State, that power is vastly exaggerated by those seeking more power for the General Assembly. Despite assertions to the contrary, the Maryland General Assembly already has considerable budgetary authority, including the power to increase appropriations.

As has been the case since 1916, the General Assembly can increase appropriations. The only condition is that the General Assembly must create a new revenue source to support the appropriation. This does not seem like too onerous a condition. In fact, it seems very wise, especially in light of the chronic structural deficits

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Maryland's Unique Budget Process (continued)

As a result of the Goodnow Commission's recommendations, the state approved a constitutional amendment in 1916 to establish the first executive budget process of any state. Other states followed with executive budget reforms of their own, but none gave its governor such a firm grip on the budget process.

How It Works

The state Constitution requires the Governor to submit a budget bill during the second week of the General Assembly session for the upcoming fiscal year.[3]

Maryland's governor is considered to have the strongest budget powers among the 50 states

- The governor's budget must be a "complete plan of proposed expenditures and estimated revenues...." It must include certain specified amounts, including debt service payments, public school funding, and "such other purposes as are set forth in the Constitution or laws of the State."
- The budget proposed by the governor must be balanced, in that "...total proposed appropriations shall not exceed the figure for total estimated revenues."

The key provision is that the legislature "...may not alter the [budget] bill except to strike out or reduce items therein." This is the provision that puts Maryland's budget process in a class by itself.

Exceptions and Tricks-of-the-Trade

There are some important exceptions and nuances which enhance the legislature's ability to influence the budget.

Legislative and Judicial Branches. The legislature may increase items relating to the budget of the General Assembly itself, or the judicial branch.

Supplemental Budgets. The governor may introduce "supplemental budgets" which can amend or add to the original budget. As a result, legislators can negotiate with the governor to place spending items which were not in the original budget into a supplemental budget.[1] The balanced budget requirement applies to supplemental budgets as well as the original budget. Frequently, governors have balanced supplemental budgets by assuming the legislature will reduce the original budget.

Supplementary Appropriations Bills. The legislature is permitted, after enacting the budget bill, to enact a "supplementary appropriations bill." A supplementary appropriations bill authorizes funding for a "single work, object, or purpose" and also authorizes the tax or revenue needed to fund the appropriation. It's intended to make the legislature to put its money where its mouth is by requiring it to impose a revenue burden if it wants to add spending to the governor's proposal.

Restrictions and Authorizations to Transfer. Rather than cutting an amount outright, the legislature may restrict the use of funds. Often this is used to compel a particular action on the part of an agency. For example, in the budget for fiscal year 2008, the legislature restricted the Department of Human Resources' appropriation, so that $500,000 could be used only for services of private adoption agencies.[2]

The legislature may also authorize (but not compel) the governor to transfer a proposed amount from one use to another. By combining these actions, the legislature may restrict an appropriation to prevent its use for the purpose intended by the governor, but then permit the governor to transfer the funds to another use favored by the legislature. This either effects a transfer of the appropriation, or takes the dollars off the table. For fiscal year 2007, the legislature authorized the Governor to transfer $4 million from the State Reserve Fund to the Department of Juvenile Services for grants to prevent gang-related violence. Such a program was never part of the Governor's proposed budget.[3]

Mandates. Although the legislature is limited in its ability to add to the upcoming year's budget, it can pass legislation to mandate the governor to add specified amounts to future budgets. The Department of Legislative Services found that nearly $10 billion of the budget for fiscal year 2008 - 42% of state own-source expenditures - are appropriations mandated by law. The largest of these are public school funding programs and the state medical assistance program.[4] Other mandated amounts include funding for the Maryland Arts Council and funding for substance abuse treatment.

The legislature may not alter the budget bill except to strike out or reduce items.

Capital Budget. The "capital budget" is the funding provided for construction projects and loan programs in areas like housing and economic development. Only a small portion of the capital budget is funded through the operating budget bill. The rest is funded by bond proceeds authorized in separate legislation (which are technically "supplementary appropriations bills" with the state property tax as the revenue sources to fund bond repayment). Although the governor proposes a capital budget, the legislature has complete flexibility over the bond bills, and may approve, reduce, increase, or substitute items and amounts freely.

Should We Keep it or Change It?

Maryland's governor is considered to have the strongest budget powers among the 50 states - largely due to the legislature's inability to add to or rearrange the budget bill.[5] Over the past several years, the General Assembly has considered constitutional amendments to increase the legislature's budget authority. The most recent version would require the legislature to work within the total proposed by the governor (they could rearrange, but not add to the total). It would also have allowed the governor to item-veto legislative additions, subject to legislative override. Is our system good for the state, or should Maryland adopt the practices of our sister states? Let's find out what Secretary Januszkiewicz and Professor Meyers think.

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Notes:

[1] Alan Rosenthal, Heavy Lifting: The Job of the American Legislature, (Washington: CQ Press, 2004), p. 198.

[2] Chairmen of the Senate Budget and Taxation Committee and House Committee on Appropriations, Report on the State Operating Budget and the State Capital Budget and Related Recommendations ("Joint Chairmen 's Report, 2007 Session"), (Annapolis: Department of Legislative Services, 2007), p. 135.
[3] Chairmen of the Senate Budget and Taxation Committee and House Committee on Appropriations, Report on the State Operating Budget and the State Capital Budget and Related Recommendations ("Joint Chairmen 's Report, 2006 Session"), (Annapolis: Department of Legislative Services ,2006), p. 203.
[4] Department of Legislative Services-Office of Policy Analysis.
Mandated Appropriations in the Maryland State Budget. June 27, 2007 .
http://mlis.state.md.us/other/2007_Fiscal_Briefing/June_27_mandated.pdf
[5] See, for Example, Rosenthal, pp. 172-173.

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branch that influenced Maryland was politically conservative, and saw a dominant Governor as its bulwark against liberal attempts to spend more on programs that addressed inequities in society. Since it was the era of "scientific management," they cloaked their political intent by using the language of efficiency experts.

It is fundamentally undemocratic to deny citizens and their representatives the ability to increase spending above what the Governor requests.

In response, a member of the liberal branch of the executive budget movement, the highly-respected William H. Allen, wrote that the Maryland budget amendment constituted overkill:

Nothing could be more unscientific and more 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. (Institute for Public Service, 1917)

What's the practical impact now? Here's a tasty example: legislators may designate Smith Island Cake as the official state dessert, but may not add funds for emergency food assistance from the Community Services Administration. Before you jump to the conclusion that this is a case of "let them eat cake," the Constitution does allow legislators to make capital grants to food banks, though such provisions are subject to the Governor's item veto. Do these distinctions make sense?

Consider two things that we especially value about American democracy: the independence of the legislature from the executive, and the right of citizens to "petition for a redress of grievances" (i.e., to lobby). These principles are found not only in the U.S. Constitution, but also in the Declaration of Rights that begins Maryland's Constitution. Our democracy relies on advocacy, deliberation, and compromise.

Excessive budgetary power for the Governor violates these principles. It is fundamentally undemocratic

to deny citizens and their representatives the ability to increase spending above what the Governor requests.

We ask our legislators to reflect the values and aspirations of their constituents. Sometimes they succeed, and sometimes they fail. But the same is true of executives. We must rely on executives to make many difficult decisions. And given the heavy responsibilities of office, it's not unusual to hear executives say something on the order of "I'm the decider, and I decide what's best" (George W. Bush, April 20, 2006). Their decisions aren't always correct, however, and we should be able to correct their big mistakes.

The first part of "the deal" is deciding that some mandated spending is in fact not worth the cost. The other part is that these funds could be shifted to higher priorities by legislators or the Governor.

Legislators often agree, so they have taken advantage of their remaining budgetary powers. Suppose that the legislature is especially concerned about a problem. Since it can't enact a spending increase for the budget year, it may instead mandate future spending or it may dedicate revenues by creating a special fund. Add up these actions over time, and you have a budget that is inflexible, which locks in spending for purposes that may no longer be high priorities, and which is very difficult to understand given the multiplicity of dedicated funds. How ironic: with the supposed goal of promoting budgetary prudence, the constitution encourages actions that have the opposite effect.

So what's the alternative? Simply put, a deal. But the deal's components are procedurally and politically complex. The timing for this deal may be right, however, as the legislatively-required study of the state's budget process suggests that the state's fiscal leaders could negotiate its terms.

Not that Maryland has a bad budget process. In many respects, it is quite good–e.g., revenue estimating is skillful, debt levels are relatively low, and powerful and effective legislative leaders usually keep the trains running on time. The state's AAA bond rating is not due only to Maryland's wealth and diversified economy, but to a culture of fiscal responsibility that is much stronger than in many other states.

Where Maryland lags other states is in the areas of priority-setting and performance management (see my policy brief on this topic at: http://userpages.umbc.edu/%7Emeyers/policy_brief_5.pdf). These are processes that if done well can help all who should be involved–Governor, legislators, and citizens–understand better what we are getting for our taxes, and how we might spend funds more efficiently and effectively. In neighboring Virginia, for example, the budget is connected to the "Virginia Scorecard," which identifies long-term objectives for health, education, environment, transportation, and the like, and then reports on the extent to which the state is meeting these objectives. Virginia has also been praised for the quality of its performance audits.

Of course, these advanced processes do not magically eliminate budgetary challenges. Partisan and

interbranch conflicts are simply unavoidable–and often quite desirable–when states are facing structural deficits. It's fine to argue about the level of taxation and the trend in spending. Yet such conflicts can be better resolved when the state's leaders fully understand Maryland's economic, social, and environmental conditions and the cost-effectiveness of program spending and tax preferences. That is, better priority-setting and performance management processes would enable the first part of "the deal" I alluded to above: deciding that some mandated spending is in fact not worth the cost. The other part of the deal is that these funds could be shifted to higher priorities–by legislators as well as by the Governor. They would be expected to do so flexibly–not by mandating or dedicated funds, but by making future budgets conditional on demonstrated performance. Governor O'Malley's StateStat approach can contribute to this effort.

Admittedly, this deal would be a huge step politically. The opposite approach was used in the recent special session, when the pain of tax increases was partially offset by promises of dedicated funding for environmental protection, higher education, and medical care, among other purposes. Such mandates can be interpreted as major political commitments, and they help justify higher taxes–even when some of the commitments are weakened just months later. . .

So the "tooth fairy" analogy made by Ms. Januszkiewicz does have the merit of apparent political realism. However, the process of governing evolves continually–what now appears to be politically unrealistic later becomes expected behavior. After all, many who once believed in the tooth fairy end up making periodic visits to the dentist, including for root canals. Just as it may be painful to imagine root canals, legislators naturally shy away from cutting the spending that they mandated in the past. But such cuts will be necessary. It may be more politically realistic to ask them to do this if they have the option to add to the Governor's budget when such additions are necessary and affordable.

We are now in an era when citizens expect much more transparency, and demand a greater ability to affect policy choices. While some in Maryland are comfortable with making budget decisions behind the closed doors of the executive branch, this practice is not sustainable. It's time to modernize the process, making it more consistent with how Marylanders now envision democracy.

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The Myth of a Weak Legislature (continued)

the State has experienced and expects to experience at least until 2012.

In addition to this specific authority, the General Assembly possesses indirect power to increase appropriations. Each year the General Assembly adopts more than 600 new laws. If the Governor approves the laws, the General Assembly and the public expect that the Governor will propose appropriations to implement them even if the laws do not include a mandated appropriation. Thus, merely enacting legislation increases appropriations. But the General Assembly's powers go far beyond

this basic legislative power.

In 1978, the Constitution was amended to authorize the General Assembly to mandate appropriations. This power unquestionably increases appropriations and the General Assembly has used it often. Now, more than 42% of appropriations from state funds are mandated by law. Unless the Governor obtains General Assembly approval, the Governor must include the mandated amount in the budget.

In addition to mandated appropriations, the General Assembly has created special funds that are dedicated to specific statutory purposes. The most familiar special funds are the Transportation Trust Fund and Program Open Space. To use special funds for any purpose not specified by the law governing the fund, the Governor must obtain the General Assembly's approval.

In FY 2009, special fund appropriations total $6 billion while general fund appropriations total $15 billion. "Mandated appropriations" [1] and entitlements consume 59% of the general fund budget. This leaves approximately $6 billion for appropriation by the Governor. From this amount, the Governor must provide for state employee salaries and health benefits, maintenance for State owned facilities and rent for non-State owned facilities. Even before providing for these expenses, the amount remaining for the Governor to appropriate is significantly less than the $15 billion[2] appropriated in advance by the General Assembly.

The combination of mandated appropriations, special funds, and entitlements means that the vast majority of the budget is not subject to the Governor's budgetary control but is controlled by the General Assembly. This level of legislative power makes it hard to argue that the Maryland General Assembly has less power than legislatures in other States.

Despite the legislature's substantial legal and practical control of the State budget, arguments persist that this power is not enough. The General Assembly, it is argued, should have the power to increase the Governor's budget or, at least, to rearrange it by increasing appropriations by increasing some appropriations while reducing others.

Some argue that this kind of legislative power would reduce the number of mandated appropriations and provide more discretion for both the Governor and the General Assembly. Some also believe in the tooth fairy. It is hard to imagine that the General Assembly and those who are the beneficiaries of the mandates would give up their protected appropriations and subject themselves to the vagaries of each budget session and each new Governor and General Assembly in exchange for allowing the General Assembly to increase appropriations.

The combination of mandated appropriations, special funds, and entitlements means that the vast majority of the budget is controlled by the General Assembly.

The primary beneficiaries of a change permitting the General Assembly to rearrange or increase the Governor's budget would be the members of the budget committees and the lobbyists who would be hired to protect existing appropriations or to urge shifting appropriations to the benefit of one of their clients.

Granting the General Assembly the power to increase appropriations would return to the practices that existed prior to the current budget system. Appropriations and new programs would be initiated without public notice or discussion.

Granting the General Assembly the power to rearrange the Governor's budget would do nothing to enhance budget transparency. Despite all of the hours of testimony before the budget committees, most of the legislative budget decisions occur behind closed doors, and often in the last days of the General Assembly session.

The Conference Committee meetings in which differences between the House and the Senate versions of the budget are reconciled are held without public notice and in a space to which the public has no access. It is here – away from public view - where the final decisions are made on the State's $31 billion budget. Under the current budget system, this is not an optimal way to complete work on the most important bill passed each year. Under a system where the General Assembly can not only decrease but can increase the Governor's budget, this system could yield some very unpleasant surprises. Remember the ill-fated computer services tax adopted in the Special Session?

Granting the General Assembly the power to increase appropriations would return to the practices that existed prior to the adoption of the current budget system. Appropriations and new programs would be initiated without public notice or discussion. Appropriations would be traded for votes on other bills. The Budget would be passed in the closing hours of the General Assembly session without public scrutiny and without debate and with greater uncertainty as to what would be funded and what would be denied funding.

If Marylanders wish to understand how expanding the General Assembly's power would work, they need only look at the federal process. The federal government has a system that provides the kind of legislative budget authority that Professor Meyers advocates. Its massive deficits and inability to adopt budgets on a timely basis are surely not the ideal to which Maryland aspires. At the federal level, the power to appropriate has fostered a diversion of funds from national priorities to earmarks for local projects.

There are enhancements that could make the budget system work better for Marylanders. Allowing the General Assembly to increase appropriations or to rearrange the Governor's budget is not one of them. Rather it would be a step backward and a step to a full-time legislature. Increasing the General Assembly's power is not the solution for whatever budget problems there may be.

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Notes:

1 Mandated appropriations means appropriations whose amount is established by law and which the Governor must include in the budget.

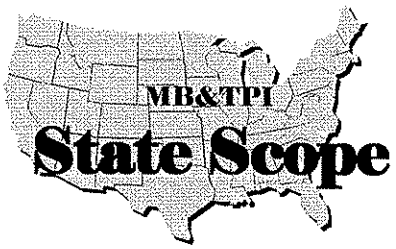
2 This amount is derived from the $6 billion in special funds and $9 billion in mandated appropriations and entitlements.

StateScope - Observations on a "Strong" Legislative – "Weak" Governor State Budgeting System

by Wayne Roberts

Texas is usually listed on the opposite end of the spectrum from Maryland as a state with a strong legislative budget process. To provide some perspective on the advantages and disadvantages of a strong-legislative system, we have Wayne Roberts. Wayne Roberts is the Senior Advisor for Higher Education to Governor Rick Perry. In this capacity, he leads implementation of the Governor's higher education and accountability initiatives. Mr. Roberts served Governor Perry as Senior Fiscal Advisor, State Budget Director, and Assistant Director of Budget and Planning. He also served Governor George W. Bush as Deputy and Acting State Budget Director. He was the Lieutenant Governor's special assistant for budget and human services following 18 years with the Legislative Budget Board. Mr. Roberts was also the 2003-04 President of the National Association of State Budget Officers.

The first requirements of a successful governmental budget system are fiduciary responsibility, timeliness, implementation of long term goals, and understandability to those paying for it and those writing it. These considerations apply whether the enacting entity is a state, nation, or local groundwater district.



Whether or not a state budget process is led by a "strong" or "weak" governor is secondary to meeting these requirements. Texas is commonly referred to as a "weak" governor state as opposed to a "strong" governor state such as Maryland. This characterization is misleading because Texas, like most Old South states, is a "weak government" state, meaning that control is heavily decentralized. This results from a perception by citizens that centralized authority was abused during Reconstruction. When the current constitution took effect in 1876, voters feared vesting too much authority in any one individual or elected body.

Historically, the legislature leads the Texas budgeting process. The Legislative Budget Board is a powerful permanent joint committee comprised of the Lt. Governor, Speaker of the House, chairs of the House Committee on Appropriations and the Senate Committee on Finance and 6 other key legislators involved in fiscal policy. This committee maintains a full-time professional staff of about 110 compared to the governor's budget staff of about 30.

Although the governor is constitutionally the chief budget officer of the state and required by law to submit a biennial budget recommendation, the draft appropriations bill used by the legislature is developed by legislative staff. The governor's staff provides input along the way with varying degrees of success depending upon the willingness of legislators to accept the governor's positions and proposals. The governor does have line-item veto authority which significantly influences the process.

Texas' current governor, Rick Perry, is keenly interested in the state budget. He sees it as the means to implement his long-term vision for Texas. However, since the budget process is heavily weighted

towards legislative involvement, statewide goals are often prioritized behind local goals of individual legislator's districts.

This point is the key disadvantage of a budget process influenced more heavily by the legislative branch of government than the executive. Governors are elected by all voters of the state. Therefore governors take a statewide policy perspective – what is best for the state as a whole as opposed to the interests of one region. Legislators, since they are elected from smaller districts, take a more provincial view, i.e., what will promote their districts. This is a key shortcoming – statewide needs and interests are frequently subordinated to regional wants which may not align with a statewide vision. Since no legislator's district dominates the funding process, competing interests keep one district or region from benefiting disproportionately compared to others. However, state needs are balkanized instead of developed in a broader context.

Since Texas' budget process is weighted towards the legislature, statewide goals are often prioritized behind local goals of individual legislator's districts.

Nonetheless, the Texas budget process successfully meets the "first requirements" stated above. As in all states, there is negotiation and compromise. The natural tension between legislative and executive branches provides the balance of power intended by our founders. This tension is healthy, provides safeguards against abuse, and is far better than any alternatives about which I'm aware.

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Director's Corner

It is an honor and a pleasure to be joined in this issue by three good friends and respected colleagues: Cecilia Januszkiewicz, Roy Meyers, and Wayne Roberts. I want to thank them for their contributions to this issue and recognize their enormous contributions to the field of state finance.

Most scholars and practitioners agree that processes affect outcomes. That's why people pay attention to budget processes. Here in Maryland, we tend to assume that the more power the legislature has, the most spending it will authorize. On that assumption, progressives have tended to advocate more legislative power, while conservatives tend to resist expanding the legislature's budget power.

I'm not so sure that assumption is right. It does not seem to hold in Texas. I do know that with the process we have, Maryland state spending has increased in line with the state's overall economy over the past 25 years. Progressives (including me) would like to see that share increase a bit, because we think there are important unmet needs in health, education and other human services. I don't think that giving more budget power to the legislature would automatically make that happen, though it might have other benefits.

A opposing claim is that if we give the legislature a freer hand with the budget it will lead to

deadlock. In Maryland we have always passed a budget in time to begin the fiscal year. "Continuing resolution" is not in our current glossary of budget terms. Some states with strong legislatures have frequent deadlocks, but others do not.

Both of our Maryland experts have pointed to the lack of transparency in our current process (though they point to different points in the process). Wayne Roberts describes "understandability to those paying for it" as a first requirement of a sucessful budget process. It is hard for interested citizens in Maryland to get timely information about budget proposals while they are under consideration. It's hard for them to provide constructive input before decisions are made.

In reforming the budget process, I think that progressives and conservatives should agree to improve transparency and provide better opportunities for public participation.

In other news: I am pleased to announce that Mr. Branden A. McLeod has joined the Maryland Budget and Tax Policy Institute as our Policy Analyst. Branden comes to us from the Child Welfare League of America, where he did analysis and advocacy work on federal issues related to child welfare. Branden is taking on a wide variety of duties with the Maryland Budget and Tax Policy Institute. He will lead our analysis of human services programs, and will be very active in our expanded outreach and advocacy programs. Branden's great research, writing, communication and organization skills – and his direct-service experience – make him an excellent addition to our team. You will begin seeing his contributions next month.

-Neil Bergsman

About the Maryland Budget & Tax Policy Institute

The Maryland Budget and Tax Policy Institute is a nonpartisan research organization that provides timely, accurate and accessible analysis of state budget and tax issues. In addition to general budget and tax research and analysis, the Institute examines issues affecting low-income Marylanders and other vulnerable populations and the important community programs that serve them. For additional information, to be added to our e-mail list, or to make a tax-deductible contribution, please visit our website at www.marylandpolicy.org.

The Maryland Budget and Tax Policy Institute gratefully acknowledges the Ford Foundation, which provides financial support for the Institute under its State Fiscal Analysis Initiative. Additional general support for the Maryland Budget and Tax Policy Institute is provided by the Aaron Straus and Lillie Straus Foundation, the Eugene and Agnes E. Meyer Foundation, the Open Society Institute-Baltimore, the Maryland State Teachers Association, the Center for Budget and Policy Priorities and generous individual donors.

The Institute is a project of Maryland Nonprofits, www.marylandnonprofits.org.