MD Center on Economic Policy_FAV_SB761
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MARCH 4, 2020

Maryland Should Roll Back Federal Tax Law's Private School Tax Break

Position statement in support of Senate Bill 761

Given before the Senate Budget and Taxation Committee

Great public schools are part of a thriving state, and the General Assembly is likely to take action this year to reverse a decade of underinvestment and build the world-class school system children deserve. These ambitious reforms will require us to strengthen our investments in public schools—which is only possible if Maryland has an effective revenue system. Senate Bill 761 would improve Maryland's revenue system by repealing a special tax break for private schools that Congress inserted into Maryland's tax code without any input from Maryland lawmakers. For these reasons, the Maryland Center on Economic Policy supports Senate Bill 761.

The Trump administration's signature federal tax overhaul fundamentally changed the purpose of 529 plans. These tax-advantaged savings vehicles have always been intended as a way to help families pay the increasingly unaffordable price of higher education. Like many other states, Maryland provides additional tax breaks for 529 plan savings on top of the subsidies in federal law. However, the 2017 federal tax overhaul changed the meaning of "'qualified higher education expense' to include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school."[i] Because Maryland's 529 subsidies are coupled to federal law, this change automatically created a state tax break for private schools without any input from Maryland lawmakers.

Senate Bill 761 would remove any state tax breaks for so-called "qualified higher education expenses" that are in reality used for private K-12 education. Repealing this new state tax break created by Congress would save Maryland an estimated $20 million per year—a modest but meaningful step in fixing Maryland's tax code.

As lawmakers consider the ambitious reforms called for in the Kirwan Commission recommendations, they should work to build an effective revenue system that can sustain world-class public schools and other essential services for decades to come. Senate Bill 761 takes an important step in that direction by ending tax breaks for private schools that Marylanders never asked for.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Budget and Taxation Committee make a favorable report on Senate Bill 761.

Equity Impact Analysis: Senate Bill 761

Bill summary

Senate Bill 761 would eliminate state subsidies for 529 expenditures used for expenses associated with private K-12 education.

Background

The original purpose of 529 plans was to provide tax breaks to help families save for higher education. Like many other states, Maryland provides additional subsidies for 529 plans on top of the subsidies in federal law.

The 2017 federal tax overhaul fundamentally changed the purpose of 529 plans by redefining "qualified higher education expense" to include expenditures for private K-12 education. Because Maryland's 529 program is coupled to federal law, this automatically created new state tax breaks for private schools that Maryland lawmakers never approved. These tax breaks add to the "BOOST" state voucher program created by Gov. Hogan.

Equity Implications

Maryland's current education policies pose significant equity concerns:

- As of 2017, only six of the state's 24 school districts were funded at or above 95 percent of the Bridge to Excellence standard, despite higher academic expectations that render that standard inadequate.
- More than half of Black students in Maryland went to school in a district that was funded at least 15 percent below the Bridge to Excellence standard in 2017, as did 37 percent of Latinx students and 13 percent of white students.
- Maryland public schools are among the most racially segregated in the United States.[ii] Segregation is intrinsically harmful and must ultimately be solved by meaningful integration; furthermore, inequitable school funding creates greater racial imbalances in a segregated school system.
- Multiple independent analyses have found that the wealthiest schools in Maryland are better funded than the least wealthy schools.
- Inadequate funding for special education in the current funding formula makes it harder for schools to guarantee students with disabilities the high-quality education they are entitled to under federal law.
- Inequitable access to high-quality pre-K-12 education contributes to inequitable opportunities later in life—to pursue higher education, to build a fulfilling and well-paying career, or to have a safe home in a thriving community.

Senate Bill 761 would help mitigate these concerns by removing a special interest tax break from Maryland's revenue system, making it easier to invest in world-class public schools.

Impact

Senate Bill 761 would likely **improve racial, and economic equity** in Maryland.

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i Senate Bill 761 Fiscal and Policy Note

ii Gary Orfield, Jongyeun Ee, Erica Frankenberg, and Genevieve Siegel-Hawley, "*Brown* at 62: School Segregation by Race, Poverty and State," Civil Rights Project / *Proyecto Derechos Civiles*, UCLA, 2016, https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-62-school-segregation-by-race-poverty-and-state/Brown-at-62-final-corrected-2.pdf

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Education, Health, and Environmental Affairs Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair
Joint Committee on Fair Practices and State Personnel Oversight

Chair
Howard County Senate Delegation

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SB761 Income Tax-529 College Investment Plans- Elementary and Secondary Education Expenses

Purpose of SB761:
To address and help correct State income tax losses created by Federal tax law changes made in December 2017. These changes allowed Section 529 investments to be used for elementary through secondary education expenses in addition to higher education expenses.

Addresses problems found in by a recent Legislative Services audit of Maryland529 administration processes and procedures. The audit found a serious lack of documentation about the program and distributions made under it.

What SB761 Does:
Addresses income tax changes and lack of documentation by requiring:

- Prohibit individuals from claiming distributions used for K-12 education expenses in State income subtraction modifications for contributions to the Maryland College Investment Plan or the Maryland Prepaid Trust
- The Comptroller to establish regulations to provide a process for submitting information.
- Entities which make distributions to provide annual statements to account holders and the Comptroller each year, and
- Individuals who use distributions for K-12 expenses to provide annual information to the Comptroller.

Why SB761 is Needed:
529 saving plans were initially created in the 1990s to allow families to save for higher education, including accredited trade schools. Allowing their use for K-12 education expenses dilutes amounts families will have available to them to use when for the costs of higher education.

Prevent lost state taxes and revenue (estimated at over $20 million a year) as well as to help prevent lost local revenue (over $10 million a year)

Revert the state tax subtraction to its original intention for higher education expenses and incentivize the use of 529 savings fund as an investment fund for higher education

10 states have disqualified using 529 savings accounts for K-12 schools (New York, Illinois, Minnesota, Vermont, California, Colorado, Montana, Nebraska, New Mexico, Oregon)

Favorable Report on SB761 will problems in the administration of Maryland 529 and help encourage families to invest in higher education.

msea maryland state education association

EDUCATORS TOGETHER

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Testimony in Support of Senate Bill 761
Income Tax – 529 College Investment Plans – Elementary and Secondary Education Expenses

Senate Budget & Taxation Committee
February 21, 2020

Samantha Zwerling
Government Relations

The Maryland State Education Association strongly supports Senate Bill 761, which expressly forbids state tax subtractions for funds withdrawn from 529 accounts when those funds are used for elementary or secondary education expenses. If enacted, this bill would save state government a projected $20 million annually and local governments in Maryland approximately $12.5 million per year. Failure to act on this bill will continue a state-permitted voucher program based on federal tax law changes in 2017 that will cost $32.5 million. Passing this legislation and stopping this unintended voucher program is critical.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

Senate Bill 761 is Maryland's best answer to language that was inserted into Federal Tax Cuts and Jobs Act of 2017 that allows parents to pay for private school K-12 tuition with 529 account funds. That was never the intent in Maryland and allowing it would effectively have Maryland taxpayers subsidizing private school tuition to the tune of $32.5 million.

Public education, as with many other worthy services provided by government, is a common good and needs to be supported with revenue sources that are broad based, reliable, and stable. Providing adequate funding for education is an investment that promotes families, communities, economic development, and public safety. Investing in education provides an educated workforce that pays income taxes based upon higher salaries, pays sales taxes based upon greater consumer demand, and pays property taxes through expanded home purchasing power. Today's investment in education is tomorrow's increased government revenues.

A great public school for every child means our students have updated technology, small manageable classes, safe and modern schools, proper healthcare and nutrition, and have highly qualified and highly effective educators. The work of the Commission on Innovation and Excellence in Education (Kirwan Commission) further recommends improvements to access to Pre-K and Career Technology Education, as well as expansion of the educator workforce and increased salaries to help deliver individualized instruction and recruit and retain the best workforce in the country.

The Kirwan Commission has determined that Maryland will need to put substantially more resources into education if our state is to help our citizens become truly successful in the very competitive national and global economies. This is the time to locate and allocate more resources to public education, and passage of this bill helps to do just that.

We urge the committee to issue a Favorable Report on Senate Bill 761.

Maryland Catholic Conference_UNF_SB761

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Position: UNF

March 4, 2020

SB 761
Income Tax - 529 College Investment Plans - Elementary and Secondary Education Expenses

Senate Budget & Taxation Committee

Position: OPPOSE

The Maryland Catholic Conference offers this testimony in OPPOSITION to Senate Bill 761 on behalf of the families of approximately 50,000 students served by more than 150 PreK-12 Catholic schools in Maryland. The Conference represents the public-policy interests of the three (arch)dioceses serving Maryland, the Archdioceses of Baltimore and Washington and the Diocese of Wilmington, which together encompass over one million Marylanders.

Senate Bill 761 would bar parents, grandparents, family members or any other benefactor from state income tax benefits for contributions made toward elementary or secondary education expenses under Section 529 of the Internal Revenue Code. Additionally, tax deductions for distributions taken to pay for a child-beneficiary's educational expenditures would also be disallowed.

Now that this benefit has been in law for more than a year, many parents are utilizing it for K-12 educational assistance. This bill would effectively strip those Maryland families of that benefit. There are many low and middle-income families who live year-to-year in providing for their children's education by humbly soliciting assistance from grandparents, family members, and other benefactors. Current Section 529 benefits encourage and incentivize such assistance and, therefore, those benefits should remain intact in order to aid in educational success and sustainability.

Moreover, there are hundreds of Catholic and other nonpublic schools in the state, educating nearly 100,000 K-12 students. Those families educate in those schools for a whole host of reasons, each of which can be summarily categorized into one: their particular school curriculum or environment is the best fit for their children's learning needs. Nonetheless, the majority of those families sacrifice, or even struggle, to ensure that their students get the education best tailored to their needs because there are limited resources available. Catholic schools strive to great extent year in and year out to make their schools as accessible and affordable as possible for their students. Despite millions of dollars in subsidized assistance, they only are able to meet around 10% of the stated need.

The capability to utilize a Section 529 account, which offers a similar tax treatment mechanism to a ROTH IRA investment account, for elementary and secondary education expenses, could provide a crucial benefit to tens of thousands of Maryland families. It is for the compelling reasons above that we respectfully urge this committee to report unfavorably on Senate Bill 761.

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MDCAPE 529 Testimony SB 761 - 2020

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SENATE BUDGET AND TAXATION COMMITTEE

SENATE BILL 761
STATE INCOME TAX – SUBTRACTION MODIFICATION - ELEMENTARY AND SECONDARY EDUCATION EXPENSES

MARCH 4, 2020

OPPOSE

Maryland CAPE is our state's chapter and one of 40 state chapters of the Council for American Private Education. Our network includes the Catholic, Christian, Evangelical Lutheran, Friends, Independent, Jewish, Lutheran, Montessori, Muslim, and Seventh Day Adventist school communities. We speak on behalf of roughly 120,000 nonpublic school students attending over one thousand nonpublic schools across our great state of Maryland.

We issue this testimony in opposition of Senate Bill 761.

Back in December 2017, Congress passed the *Tax Cuts and Jobs Act of 2017* (TCJA). In it there are many items that impact Marylanders on multiple levels. One item of benefit to Marylanders is the expansion to the 529 College Savings Plan, which enables Marylanders to invest in the education of their children, their grandchildren, or any other Maryland child - beginning with their entry into kindergarten all the way through the completion of their studies in graduate school.

The funds invested in 529 programs benefit from the non-taxable status of the accumulated gains and it provides the investor with the tax incentive to make this these precious investments into the full education – not to mention the future - of Maryland's youth. With the expanded opportunity, a portion of Maryland's tax revenue will be offering a far larger world of investment into the future of our state and society.

Senate Bill 761 seeks to end this expanded benefit in Maryland, by excluding the language which mentions elementary and secondary education. Legislation which seeks to deny an initiative which has been created to assist children in becoming educated and successful members of our society does not deserve support of this committee. Tax incentives are created for good reason, and the impact on Maryland revenues are no different than other existing tax benefits that we all support and celebrate.

We respectfully request an UNFAVORABLE report on Senate Bill 761.

Thank you.