Article - State Finance and Procurement

§1–101.

(a) In this Division I of this article the following words have the meanings indicated.

(b) "County" means a county of the State and, unless expressly provided otherwise, Baltimore City.

(c) "Includes" or "including" means includes or including by way of illustration and not by way of limitation.

(d) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(e) "State" means:

(1) a state, possession, or territory of the United States;

(2) the District of Columbia; or

(3) the Commonwealth of Puerto Rico.

§2–101.

(a) The fiscal year for the State and its officers and units begins on July 1 of a calendar year and ends on June 30 of the next calendar year.

(b) Each officer and unit of the State government shall use the fiscal year for:

(1) appropriating money;

(2) authorizing expenditures;

(3) keeping records;

(4) balancing books and accounts; and

(5) making reports.

§2–102.

(a) On or before the 10th day of each regular session of the General Assembly, the Comptroller shall submit to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly an annual report on the fiscal operations of the State.

(b) The report shall state:

(1) for the fiscal year in which the report is made:

(i) the estimated State revenues; and

(ii) the estimated State expenditures; and

(2) for the preceding fiscal year:

(i) the total State funds;

(ii) the total State revenues;

(iii) the amount of revenues that the State received from each source;

(iv) the total State expenditures;

(v) the purposes of the expenditures;

(vi) each amount that the State claims is due from a political subdivision;

(vii) each amount that the State claims is due from an officer of a political subdivision who, by law, collects revenues for the State;

(viii) the total funds, from all State sources, that the State transferred to each political subdivision; and

(ix) the amount of those transferred funds, as calculated for each $100 of assessed value of property in a political subdivision.

§2–103.

After each regular session of the General Assembly, the Comptroller shall deliver to the printer who is designated to print the session laws an accurate statement of receipts and expenditures of public money for the last full fiscal year preceding that session.

§2–104.

(a) On or before January 1 of each year, the Treasurer shall submit an annual report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly.

(b) (1) The report shall describe the activities and operation of the Office of the Treasurer during the preceding fiscal year.

(2) The report shall include:

(i) a statement on the management of State funds;

(ii) a statement on the interest earned on investments; and

(iii) a statement on the administration of the State Insurance Program and the State Insurance Trust Fund, including any recommendations for changes in their operation.

§2–106.

(a) (1) In this section the following words have the meanings indicated.

(2) "Bond" means any evidence of debt.

(3) "Official" includes:

(i) a comptroller;

(ii) a chief financial officer; and

(iii) a treasurer.

(4) "Public body" means:

(i) a unit of the State government; or

(ii) a county, municipal corporation, public corporation, special authority, or other political subdivision of the State.

(b) If a public body is authorized to incur debt to be redeemed from the proceeds of any tax or levy, an authorized official of the public body shall submit to the State Treasurer:

(1) on or before January 1 of each year, a report on bonds anticipated to be issued during the next 7-month period; and

(2) on or before July 1 of each year, a report on bonds anticipated to be issued during the next 7-month period.

(c) (1) A report under this section shall be in the form the State Treasurer requires.

(2) The report shall include:

(i) a statement of the amount of bonds that the public body expects to issue during the period that the report covers; and

(ii) for each issue of bonds, a statement of:

1. the month and part of the month during which the bonds will be issued;

2. the term for which the bonds will be outstanding; and

3. whether the bonds will be sold at a public or private sale.

(d) (1) The State Treasurer shall prepare:

(i) on or before January 31 of each year, a compilation of the information in the reports submitted for the current January 1 to July 31 period; and

(ii) on or before July 31 of each year, a compilation of the information in the reports submitted for the current July 1 to January 31 period.

(2) The compilation shall include any additions or corrections to the information in the reports.

(3) The State Treasurer shall send a copy of the compilation to each official who submitted a report included in the compilation.

(e) The State Treasurer shall:

(1) make the reports and compilations available for inspection during normal business hours; and

(2) provide a copy of a report or compilation to any person who first pays to the State Treasurer a fee to cover costs.

(f) (1) An official is not personally liable for failure to submit a report under this section.

(2) Failure to submit the report or to comply with other requirements of this section does not affect:

(i) the authority of a public body to incur debt; or

(ii) the validity of any debt that the public body incurs.

§2–107.

(a) As provided by the Comptroller by regulation, each unit of State government that imposes fees of any kind shall maintain and make available to the Comptroller up-to-date data regarding:

(1) the services or functions for which fees are imposed and the associated levels of the fees; and

(2) a comparison of the actual revenues generated by the fees and the total costs of providing the service or performing the function for which the fees are imposed.

(b) The Comptroller shall prepare and submit to the Governor and, subject to §

2-1246 of the State Government Article, the General Assembly, on a biennial basis on or before December 1 of every other year, a report compiling the data made available to the Comptroller under subsection (a) of this section.

(c) (1) The Comptroller shall adopt regulations to implement this section.

(2) The regulations adopted by the Comptroller under paragraph (1) of this subsection shall specify:

(i) that the data required for the Maryland Port Administration of the Department of Transportation shall be the data included in the port tariff;

(ii) that the Maryland Aviation Administration and the Maryland Port Administration shall disclose aggregate information on fees and costs, provided that such disclosure does not include information that is proprietary in nature; and

(iii) that any other department, agency, or governmental unit which collects fees or user charges that may contain privileged or proprietary information may aggregate or standardize the information submitted as needed to preserve the sensitive nature of the information.

§2–201.

(a) In this section, "gift" has the meaning stated in § 1–109 of the General Provisions Article.

(b) Except as otherwise expressly provided by law, an officer or unit of the State government may not spend any money that derives from a gift until the Governor assents to the acceptance of the gift.

(c) If the Governor assents to the acceptance of a gift by an officer or unit, the officer or unit may use the gift in accordance with its terms. If the gift is money or generates money, the officer or unit may not spend the money until it is appropriated as provided in Title 7 of this article.

§2–202.

(a) In this section, "block grant" means any federal grant-in-aid that:

(1) contains consolidated funding for 1 or more programs; and

(2) is designated by Congress as a block grant.

(b) It is the policy of the State that the General Assembly and the Governor should consult before the Executive Branch of the State government adopts State policy on block grants.

(c) (1) This section is in addition to and not in derogation of any other power

or duty of the General Assembly.

(2) This section applies to the adoption of State policy to:

(i) participate in a block grant;

(ii) set a date on which the State will accept responsibility for a block grant; or

(iii) transfer money between block grants.

(d) The Governor shall send, subject to § 2-1246 of the State Government Article, to the Legislative Policy Committee each proposal for the adoption of State policy on a block grant.

(e) Within 60 days after the Legislative Policy Committee receives the proposal or, if the Committee sets a shorter period, within that period, the Committee:

(1) may hold a public hearing on the proposal;

(2) may refer the proposal to another committee for review; and

(3) for the General Assembly, may send the Governor comments on the proposal.

(f) The Governor may act on the proposal only after the expiration of the 60-day period or any shorter period set under subsection (e) of this section.

§2–203.

(a) (1) After consultation with the Department of Budget and Management, the Secretary of Planning shall adopt regulations that require a unit of the State government to submit information, as required in this section, on federal aid, including grants, instructional contracts, loans, research contracts, or other assistance.

(2) The regulations shall require a unit of the State government to obtain a State Application Identifier (SAI) from the Department of Planning.

(b) (1) Each 6 months, a unit shall submit a summary notice to the Department of Planning if, during the 6-month period that the notice covers, the unit has received an award of federal aid in the form of an instructional contract, instructional grant, research contract, or research grant.

(2) The summary notice shall state the amount of the award.

(c) (1) This subsection does not apply to an instructional contract, instructional grant, research contract, or research grant.

(2) When a unit applies for federal aid, the unit shall send to the

Department of Planning a copy of the application.

(3) Within 30 days after a unit receives an award of federal aid, the unit shall submit to the Department of Planning a summary notice that states:

(i) the amount of the award; and

(ii) if the award is conditioned on matching funds:

1. the amount of those funds;

2. the source of those funds; and

3. the period for which those funds are required.

§2–205.

The Governor may designate any unit of the State government:

(1) to accept any surplus food that, under an act of Congress, is available to the State; and

(2) to manage and dispose of the food in accordance with federal law.

§2–206.

(a) (1) In this section the following words have the meanings indicated.

(2) "Board" means the Maryland Agricultural Education and Rural Development Assistance Board.

(3) "Council" means the Rural Maryland Council established under Title 13, Subtitle 4 of the Economic Development Article.

(4) "Fund" means the Maryland Agricultural Education and Rural Development Assistance Fund.

(b) The General Assembly finds and declares that:

(1) many nonprofit organizations that serve the needs of the rural areas of the State experience fiscal difficulties in addressing the areas of economic and community development and agriculture and forestry education because of the inadequacy of funding resources for them;

(2) these organizations do not have the access to private and public sources of funding that are generally more available to nonprofit groups that serve the needs of the metropolitan areas of the State; and

(3) as a result, the rural areas of the State face a serious deficit of resources

where the need, in many instances, is greatest.

(c) (1) There is a Maryland Agricultural Education and Rural Development Assistance Fund that shall be administered by the Council.

(2) The purpose of the Fund is to provide funding:

(i) to rural regional planning and economic development organizations and rural community development programs whose missions and work have statewide implications and merit State support; and

(ii) to augment the efforts of advanced technology centers and similar programs that serve agricultural and natural resources based small businesses in rural areas through community colleges.

(3) (i) The Fund is a continuing, nonlapsing fund which is not subject to § 7-302 of this article.

(ii) The Treasurer shall separately hold and the Comptroller shall account for the Fund.

(iii) The Treasurer may invest moneys in the Fund in the same manner as other State money may be invested.

(4) Expenditures from the Fund may only be made:

(i) pursuant to an appropriation approved by the General Assembly in the annual State budget; or

(ii) by the budget amendment procedure provided for in § 7-209 of this article, provided that:

1. the budget amendment and supporting information have been submitted to the budget committees for their review and comment; and

2. at least 45 days have elapsed from the time the budget amendment and supporting information were submitted to the budget committees.

(d) The Council shall award grants on the basis of the binding recommendations of the Maryland Agricultural Education and Rural Development Assistance Board.

(e) (1) There is a Maryland Agricultural Education and Rural Development Assistance Board.

(2) The Board shall consist of:

(i) the Secretary of Agriculture or the Secretary's designee;

(ii) the Secretary of Business and Economic Development or the

Secretary's designee;

(iii) the Secretary of Housing and Community Development or the Secretary's designee;

(iv) the Secretary of Health and Mental Hygiene or the Secretary's designee;

(v) the Secretary of Natural Resources or the Secretary's designee; and

(vi) the Chairman of the Council or the Chairman's designee.

(3) The agencies listed in paragraph (2)(i) through (v) of this subsection may assist the Council with administering individual grant awards.

(4) The Board shall:

(i) establish procedures for applications for grants;

(ii) review applications for grants; and

(iii) make binding recommendations to the Council regarding the recipients of grants and the amount of the grants.

(5) The Board shall give funding priority to organizations described in subsection (c)(2)(i) of this section that have:

(i) obtained an equal matching amount of funding from a source other than the State in the immediate prior fiscal year; or

(ii) sufficient evidence of a commitment of a third party funding source to provide an equal matching amount of funding in the current fiscal year.

(f) (1) A grant recipient shall submit to the Council written documentation of how the grant recipient spent or otherwise used the grant.

(2) On or before June 30 of each year, the Council shall submit to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly, a written report that includes:

(i) the number of grants made during the fiscal year;

(ii) the names of the recipients of the grants;

(iii) the specific purpose of each grant awarded; and

(iv) documentation of how the grant recipient spent or otherwise used the grant.

§2–207. IN EFFECT

// EFFECTIVE UNTIL JUNE 30, 2030 PER CHAPTERS 469 AND 470 OF 2014 //

(a) (1) In this section the following words have the meanings indicated.

(2) "Agriculture" means the commercial production, storage, processing, marketing, distribution, or export of an agronomic, aquacultural, equine, floricultural, horticultural, ornamental, silvicultural, or viticultural crop, including:

(i) farm products;

(ii) livestock and livestock products;

(iii) poultry and poultry products;

(iv) milk and dairy products;

(v) timber and forest products;

(vi) fruit and horticultural products; and

(vii) seafood and aquacultural products.

(3) "Board" means the Maryland Agricultural Education and Rural Development Assistance Board established under § 2–206(e) of this subtitle.

(4) "Council" means the Rural Maryland Council established under Title 13, Subtitle 4 of the Economic Development Article.

(5) "Fund" means the Rural Maryland Prosperity Investment Fund established under this section.

(6) "Regional councils" means:

(i) the Mid–Shore Regional Council;

(ii) the Tri–County Council for the Lower Eastern Shore of Maryland;

(iii) the Tri–County Council for Southern Maryland;

(iv) the Tri–County Council for Western Maryland; and

(v) the Upper Shore Regional Council.

(7) "Rural area" means:

(i) the following counties:

1. Allegany;

2. Calvert;

3. Caroline;

4. Carroll;

5. Cecil;

6. Charles;

7. Dorchester;

8. Frederick;

9. Garrett;

10. Harford;

11. Kent;

12. Queen Anne's;

13. St. Mary's;

14. Somerset;

15. Talbot;

16. Washington;

17. Wicomico; and

18. Worcester; and

(ii) portions of other counties in close proximity to agricultural activity.

(8) "Rural community" means an incorporated or unincorporated area of a county or group of counties in a rural area.

(b) The General Assembly finds that:

(1) many rural communities in the State face a host of difficult challenges relating to persistent unemployment and poverty, changing technological and economic conditions, an aging population and an out–migration of youth, inadequate access to quality housing, health care and other services, and deteriorating or inadequate transportation, communications, sanitation, and economic development

infrastructure;

(2) Maryland's agricultural and resource–based industries continue to underpin the local economies of rural communities but are increasingly under threat from national and international market competition, urban encroachment and land development pressure, and environmental and regulatory influences;

(3) local governments, regional organizations, educational institutions, and private sector service providers have been unable to meet all the economic development, community development, health care, and human services needs of Maryland residents in the rural counties and municipal corporations because of a lack of adequate available capacity and resources;

(4) the objective of the Rural Maryland Prosperity Investment Fund is to help raise the overall standard of living in rural areas to a level that meets or exceeds statewide benchmark averages by 2030, while preserving the best aspects of a pastoral heritage and rural way of life;

(5) resources provided to the Fund are designed to facilitate significant targeted investments in important economic, health care, and community development programs and promote regional and intergovernmental cooperation;

(6) these investments will also enable local and regional public and nonprofit organizations to leverage additional nonstate financial and human resources to facilitate the realization of sustainable rural development objectives while the program is in effect; and

(7) the Fund will serve the interests of the entire State by:

(i) encouraging the increase of entrepreneurial activity and commerce and a balanced economy in the State;

(ii) relieving conditions of unemployment and underemployment in rural areas;

(iii) assisting in the retention of valuable farm and forest land for productive use by present and future generations;

(iv) promoting intergovernmental cooperation and public sector/private sector partnerships in and between rural and other areas;

(v) enhancing the deployment of housing, transportation, water, wastewater, and broadband communications infrastructure and services in rural areas;

(vi) supporting rural commercial center redevelopment and community revitalization efforts; and

(vii) generally promoting the health, happiness, safety, employment opportunity, and general welfare of the residents of each of the rural counties and municipal corporations of the State.

(c) (1) There is a Rural Maryland Prosperity Investment Fund.

(2) The Fund is administered by the Rural Maryland Council with the assistance of the Board.

(3) The purpose of the Fund is to provide funding to rural regional and statewide planning and development organizations, institutions of higher education serving rural communities, rural community development organizations, and local governments acting in partnership with one another to promote the quality of life in rural areas.

(d) Each year, beginning in fiscal year 2008 and continuing through fiscal year 2030, the Governor may include an appropriation in the budget bill for the Fund.

(e) (1) The Fund is a special, nonlapsing fund that is not subject to reversion under § 7–302 of this article.

(2) The Treasurer shall separately hold and the Comptroller shall account for the Fund.

(3) The Treasurer may invest money in the Fund in the same manner as other State money may be invested.

(f) (1) Except as provided in paragraph (2) of this subsection, disbursements of money appropriated to the Fund shall be allocated in the following manner:

(i) one–third shall be allocated equally to the five regional councils as grants for rural regional planning and development assistance, by targeting support to the:

1. regional councils serving rural areas; and

2. multicounty efforts serving rural communities in areas not served by the regional councils; and

(ii) the remaining two–thirds shall be allocated equally as grants among the following categories:

1. regional infrastructure projects that directly involve two or more units of local government, not to exceed one–fourth of the total cost of any particular project;

2. rural entrepreneurship development, including programs and activities serving rural communities undertaken by nonprofit organizations and

institutions of higher education;

3. rural community development, programmatic assistance, and education, with money to be divided equally between the Council and the Maryland Agricultural Education and Rural Development Assistance Fund; and

4. rural health care organizations.

(2) If in any fiscal year revenues appropriated to the Fund are insufficient to fully fund all grants under paragraph (1) of this subsection, disbursements of money appropriated to the Fund shall be allocated as follows:

(i) $500,000 shall be allocated to the Council, of which:

1. $250,000 shall be used to support the operations of the Council; and

2. $250,000 shall be allocated to the Maryland Agricultural Education and Rural Development Assistance Fund established under § 2–206 of this subtitle; and

(ii) the remaining disbursements of money appropriated to the Fund shall be allocated in the manner described in paragraph (1) of this subsection.

(g) (1) Any money received by a regional council under subsection (f)(1)(i) of this section shall be used to benefit rural areas as the regional council determines.

(2) (i) Subject to subparagraph (ii) of this paragraph, the Board shall award grants from the Fund under subsection (f)(1)(ii) of this section on a competitive basis in accordance with the procedures in § 2–206(e) of this subtitle.

(ii) Any money received by the Council under subsection (f)(1)(ii) of this section shall be used to help administer the Fund and perform other functions that benefit rural areas as the Council determines.

(3) A grant recipient shall submit to the Council written documentation of how the grant recipient spent or otherwise used the grant.

(h) The Board may reallocate money from one category listed in subsection (f)(1)(ii) of this section to another category only if there is a lack of sufficient applications requesting use of money in a particular category.

(i) (1) On or before October 1 of each year, the Council shall submit a report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

(2) The report shall summarize the activities of the Fund during the preceding fiscal year, including:

(i) the number of grants made during the fiscal year;

(ii) the names of the recipients of the grants;

(iii) the specific purpose of each grant awarded; and

(iv) documentation of how the grant recipient spent or otherwise used the grant.

§2–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Authorized officer" means any official of the State or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(c) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of any authorized officer.

(d) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(e) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by the State or by any of its political subdivisions.

(f) "State" means the State or any of its departments, agencies, public bodies, or other instrumentalities.

§2–302.

This subtitle shall be construed to effectuate its general purpose to make uniform the law of those states that enact it.

§2–303.

(a) Any authorized officer, after filing with the Secretary of State the manual signature of the authorized officer certified under oath, may execute or cause to be executed with a facsimile signature instead of a manual signature:

(1) any public security, if the signature of at least 1 authorized officer required or permitted to be placed on the public security is manually subscribed; and

(2) any instrument of payment.

(b) If a public security is required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, any other signature required or permitted to be placed on the public security may be a facsimile signature.

(c) Upon compliance with this subtitle by the authorized officer, the facsimile signature of the authorized officer has the same legal effect as the manual signature of the authorized officer.

§2–304.

(a) When the seal of the State or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile on the public security or instrument of payment.

(b) The facsimile seal has the same legal effect as the impression of the seal.

§2–305.

(a) A person may not use, with intent to defraud, on a public security or an instrument of payment:

(1) a facsimile signature, or any reproduction of it, of any authorized officer; or

(2) a facsimile seal, or any reproduction of it, of the State or of any of its political subdivisions.

(b) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding $5,000 or imprisonment not exceeding 10 years or both.

§2–306.

This subtitle may be cited as the "Maryland Uniform Facsimile Signature of Public Officials Act".

§2–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Annual operating costs" include the cost of:

(1) the production, treatment, pumping, storage, transmission, and distribution of water and the maintenance and repair of equipment associated with these functions;

(2) the collection, pumping, transmission, and treatment of wastewater, and the maintenance and repair of equipment associated with these functions;

(3) administrative overhead;

(4) debt service;

(5) depreciation; and

(6) servicing customer accounts.

(c) "Lateral system construction costs" include:

(1) any cost necessary to plan, design, acquire, construct, inspect, test, and put into operation the lateral system to serve a State facility; and

(2) any indirect cost incurred by the local jurisdiction that is necessary to construct water and sewer lines.

§2–402.

(a) The State shall pay its share of:

(1) the annual operating costs of furnishing water and sewer service to any State facility; and

(2) the lateral system construction costs associated with the installation of any water or sewer line that directly serves the State facility.

(b) The State shall pay the cost of expanding a water or sewage treatment facility if the expansion is necessitated by the use of the facility by the State. However, the amount the State pays may not exceed the cost of the capacity required by the State.

§2–403.

The State shall pay any assessment, charge, or fee that is:

(1) levied by the local jurisdiction in which the State facility is located; and

(2) designated as the State's share of annual operating costs or lateral system construction costs.

§2–404.

(a) If the State has agreed to pay the costs set out in § 2-402 of this subtitle and any additional construction costs associated with the connection, the State may connect a State facility, regardless of its location, to a publicly owned utility system.

(b) If an existing publicly owned utility system is inadequate to handle proposed State utility needs, the State shall pay all costs that are:

(1) associated with the expansion of the publicly owned utility system to meet the needs of the State; and

(2) in excess of available federal funds.

(c) Before connecting to any publicly owned utility system, the State shall:

(1) coordinate with the owner of the publicly owned utility system; and

(2) consider any existing master plan in establishing the fiscal obligation of the State under this section.

(d) (1) After determining the need of the State for water or sewerage capacity, the State shall provide the information to the appropriate local jurisdictions.

(2) The local jurisdictions shall include State facility needs in developing their master plans for water and sewerage systems.

§2–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Facility for handicapped individuals" includes any door, elevator, handrail, ramp, specially treated surface, or similar design, convenience, or device that facilitates the health, safety, or comfort of a handicapped individual.

(c) "Handicapped individual" means an individual with a measurable limitation of mobility caused by disease, trauma, or congenital defect.

(d) (1) "Public building" means a building, structure, or improved area that is:

(i) owned by the State or any political subdivision of the State; or

(ii) constructed for lease by the State or a political subdivision of the State.

(2) "Public building" includes:

(i) an educational facility constructed with public funds or owned or operated by the State or a political subdivision of the State;

(ii) a public mass transportation accommodation, such as a terminal or station, that is supported by public funds; and

(iii) an improvement of a public area used for gathering or amusement, including a public park, recreation center, or the like.

§2–502.

The General Assembly finds that public buildings that lack facilities for handicapped individuals:

(1) create a substantial risk of death or injury to handicapped individuals

and others in both normal and emergency conditions; and

(2) impair the full use and enjoyment of the public buildings by handicapped individuals for education, employment, recreation, training, or treatment.

§2–503.

The design of any public building by the State or a political subdivision of the State is governed by this subtitle.

§2–504.

Plans and specifications for the construction of any public building, other than a building to be used as a penal institution, shall provide for facilities for handicapped individuals.

§2–505.

(a) Except as otherwise provided in subsection (b) of this section, if curbs or sidewalks at the intersection of 2 or more streets or roads are constructed or reconstructed by the State Highway Administration, by a political subdivision, or by a private contractor for dedication to a political subdivision, the curbs or sidewalks shall have ramps or curb cuts:

(1) graded onto the crosswalks of the intersection;

(2) at least 40 inches wide; and

(3) constructed to allow reasonable access to the crosswalks by physically handicapped individuals.

(b) Ramps or curb cuts are not required under this section if, for a particular intersection outside Baltimore City, the State Highway Administration determines or, for a particular intersection in Baltimore City, the Baltimore City Department of Public Works determines that:

(1) ramps or curb cuts would be contrary to public safety;

(2) the cost of ramps or curb cuts would be too great considering the need for them or their probable use; or

(3) the sparsity of population, the existence of other ways, or other factors show the lack of a need for ramps or curb cuts.

(c) Nothing in this section may be construed to prevent the State Highway Administration from certifying any project described in this section for the purpose of determining statewide eligibility for federal assistance.

§2–506.

Braille numbers or raised print numbers that indicate floors or levels shall be installed on the control panels in each elevator located in a public building.

§2–507.

(a) As provided in the State budget, the Secretary of General Services shall provide, in central locations in units of the State and local government and other public facilities jointly recommended by the Secretary of Health and Mental Hygiene and the State Superintendent of Schools, teletypewriters for the use of deaf individuals. These locations shall provide access to emergency police, fire, and rescue services.

(b) The teletypewriters shall be connected electronically so as to provide a means of communication between deaf individuals and the offices of major public and private facilities equipped with similar machines within a toll-free telephone district.

(c) Whenever a unit of the State or a local government gives out conventional public service telephone numbers to the public on written material, it shall also give out corresponding teletypewriter numbers on the written material. The teletypewriter numbers may be included at the time of stock replenishment.

§2–508.

In any place to which this subtitle applies, any toilet facility, ramp, building entrance, drinking fountain, parking, or walk that is usable by handicapped individuals shall be marked with a suitable symbol.

§2–509.

(a) The Board of Public Works, through the Department of General Services, shall publish minimum standards for facilities for handicapped individuals in public buildings. The standards shall conform to American Standards Association specification A 117.1-1961, as modified by the Department of General Services.

(b) The standards may not require facilities for handicapped individuals in any part of a public building that is not open to or used by the general working force or the general public.

(c) The appropriate contracting authority shall determine whether the plans and specifications for any public building built by the State, a political subdivision of the State, or a public authority meet the standards adopted under this section.

(d) The standards shall be filed with the Secretary of State.

§2–510.

(a) The Department of General Services is responsible for the enforcement of

this subtitle if:

(1) any State capital nonschool funds are used; or

(2) construction is on State-owned land.

(b) The governing body of a political subdivision is responsible for the enforcement of this subtitle if:

(1) construction is not on State-owned land;

(2) funds of the political subdivision are used; and

(3) no State funds are used, except for State funds for school construction.

§2–511.

This subtitle may be cited as the "Maryland Facilities for the Handicapped Act".

§2–601.

Each officer and unit of the State government shall send to the Treasurer, for inventory and safekeeping, each certificate of stock or other security certificate that the officer or unit holds.

§2–602.

(a) The Treasurer shall deposit in a box or vault as provided in subsection (b) of this section:

(1) all of the physical securities that the State owns; and

(2) all of the physical securities that, by State law, the Treasurer holds, in trust or otherwise, for a corporation or individual.

(b) (1) With the approval of the Board of Public Works, the Treasurer shall procure a box or vault.

(2) The box or vault shall be located in the offices of the Treasurer.

(3) Each box or vault in which securities are kept shall be built so that 2 different keys are needed to gain access to the securities.

(4) The Comptroller and the Treasurer each shall have 1 of these keys.

(5) Access to a box or vault in which physical securities are kept under this section shall be permitted only:

(i) when the Governor, the Comptroller, the Chief Deputy

Comptroller, or a Deputy Comptroller accompanies the Treasurer; or

(ii) if access is needed and the Treasurer cannot be present:

1. when the Governor, the Comptroller, the Chief Deputy Comptroller, or a Deputy Comptroller accompanies the Chief Deputy Treasurer; or

2. when the Governor, the Comptroller, or the Chief Deputy Comptroller accompanies a Deputy Treasurer.

(c) The Treasurer shall determine which physical securities are deposited or held in each box or vault.

§2–602.1.

The Treasurer shall maintain all securities other than physical securities with:

(1) any institution incorporated under the laws of the State as a State bank, trust company, or savings bank;

(2) any national banking association that has its principal office in the State; or

(3) any trust company, as defined in § 1-101 of the Estates and Trusts Article.

§2–603.

(a) Subject to the limitations in this section and notwithstanding any other provision of law, the Treasurer may lend to a bank or securities broker any security that is owned by the State and is in the custody of the Treasurer.

(b) (1) The Treasurer and the bank or broker to whom a loan is to be made under this section shall make a written contract that governs the loan.

(2) The contract shall set forth:

(i) the term of the loan;

(ii) the consideration for the loan;

(iii) any provisions that the Treasurer determines are needed to protect the interests of the State; and

(iv) any other conditions of the loan.

(c) Consideration for a loan under this section may not be less than the current market lending rate for the securities on loan.

(d) (1) The bank or broker to whom a loan is to be made under this section shall deposit with the Treasurer collateral with a value that equals or exceeds the value of the securities on loan.

(2) Collateral that may be used under this section shall be:

(i) money; or

(ii) a security in which the Treasurer may invest under § 6-222 or § 6-223 of this article.

(e) (1) The Treasurer may enter into a contractual agreement with a financial institution to lend, as agent, securities owned by the State and in the custody of the Treasurer.

(2) The financial institution shall provide security or indemnification acceptable to the Treasurer.

§2–604.

(a) Whenever a certificate of stock that the State owns and holds has been lost or misplaced, the Treasurer, at the direction of the Board of Public Works, may obtain a duplicate certificate.

(b) The State shall indemnify the corporation that issues the duplicate certificate.

§2–701.

In this subtitle, "ethnic affairs unit" means:

(1) the Commission on African American History and Culture;

(2) the Commission on Indian Affairs; and

(3) the Office of Asian–Pacific American Affairs.

§2–702.

(a) In order to become more financially self-sufficient, an ethnic affairs unit:

(1) may receive funds from any person or organization; and

(2) may not receive funds either directly or indirectly from the use of any gaming device or raised through a gaming event or activity.

(b) An ethnic affairs unit receiving funds under this section shall be subject to an annual fiscal audit by the Legislative Auditor.

§3–101.

(a) In this title the following words have the meanings indicated.

(b) "Department" means the Department of Budget and Management.

(c) "Secretary" means the Secretary of Budget and Management.

§3–201.

There is a Department of Budget and Management, established as a principal department of the State government.

§3–202.

(a) The head of the Department is the Secretary of Budget and Management, who shall be appointed by the Governor with the advice and consent of the Senate.

(b) The Secretary must have experience in public finance, budgeting, management, and fiscal planning.

(c) Before taking office, the appointee shall take the oath required by Article I, § 9 of the Maryland Constitution.

(d) (1) The Secretary serves at the pleasure of the Governor and is responsible directly to the Governor. The Secretary shall advise the Governor on all matters assigned to the Department and is responsible for carrying out the Governor's policies on those matters.

(2) The Secretary is responsible for the operation of the Department and shall establish guidelines and procedures to promote the orderly and efficient administration of the Department. The Secretary may establish, reorganize, or abolish areas of responsibility in the Department as necessary to fulfill the duties assigned to the Secretary.

(3) The Secretary is responsible for establishing policy to be followed by the units in the Department.

(e) The Secretary is entitled to the salary provided in the State budget.

§3–203.

(a) (1) With the approval of the Governor, the Secretary shall appoint a Deputy Secretary.

(2) The Deputy Secretary:

(i) is in the executive service of the State Personnel Management System and serves at the pleasure of the Secretary;

(ii) is entitled to the salary provided in the State budget; and

(iii) has the duties provided by law or delegated by the Secretary.

(b) (1) The Secretary shall appoint 1 or more budget analysts.

(2) The budget analysts shall:

(i) continually conduct studies of all budget expenditures of units of the Executive Branch of the State government;

(ii) make recommendations to the Secretary for greater efficiency and economy in those units; and

(iii) perform any other duties that the Secretary assigns.

(c) (1) The Secretary may employ a staff in accordance with the State budget.

(2) Each assistant secretary and professional consultant is in the executive service, management service, or is a special appointment in the State Personnel Management System and is appointed by and serves at the pleasure of the Secretary.

(3) Except as provided in this section or otherwise by law, the Secretary shall appoint and remove all other staff in accordance with the provisions of the State Personnel and Pensions Article.

(4) The appointment or removal of staff of any unit in the Department is subject to the approval of the Secretary.

§3–204.

(a) The Secretary is responsible for the budget of the Department.

(b) The Secretary may adopt regulations for the Department and its units.

(c) The Secretary may create any citizens' advisory body that the Secretary considers necessary for the operation of the Department.

(d) The Secretary shall have a seal.

(e) (1) The Secretary is responsible for the comprehensive planning of programs and services of the Department.

(2) The Secretary shall review the plans of the units in the Department and may approve or disapprove any of the plans.

§3–205.

The Secretary or staff of the Secretary shall be subject to call by the Senate or the House of Delegates or any of their committees, to provide information that the Secretary has.

§3–206.

(a) The Attorney General is legal adviser to the Department.

(b) (1) With the advice of the Secretary, the Attorney General shall assign at least 1 assistant Attorney General to the Central Collection Unit.

(2) At the request of the Governor, the Attorney General shall assign to the Department:

(i) at least 1 assistant Attorney General; and

(ii) any other assistant Attorneys General authorized by law to be assigned to the Department.

(c) (1) The Attorney General shall designate 1 of the assistant Attorneys General assigned to the Department as counsel to the Department. After the Attorney General designates the counsel to the Department, the Attorney General may not reassign the counsel without consulting the Secretary.

(2) The counsel may have no duty other than to give the legal aid, advice, and counsel required by the Secretary or any other official of the Department, to supervise the other assistant Attorneys General assigned to the Department and its Central Collection Unit, and to perform for the Department the duties that the Attorney General assigns. The counsel shall perform these duties subject to the control and supervision of the Attorney General.

(d) Each assistant Attorney General who is assigned to the Central Collection Unit shall devote full time to the duties with that Unit and may have no other duties.

(e) The Secretary may contract with another attorney to handle on an agreed case by case basis a collection for the Central Collection Unit if it is not feasible for any of the assistant Attorneys General assigned to the Unit to handle the collection.

§3–207. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2016 PER CHAPTERS 316 AND 317 OF 2013 //

(a) (1) In this section the following words have the meanings indicated.

(2) "Foster youth" means an individual who:

(i) is in out–of–home care under the responsibility of the State; or

(ii) 1. is an adult under the age of 26 years; and

2. was in out–of–home care under the responsibility of the State on the individual's 18th birthday.

(3) "Program" means the Foster Youth Summer Internship Pilot Program established under this section.

(b) The Secretary shall:

(1) develop and implement a Foster Youth Summer Internship Pilot Program with the assistance of the Secretary of Human Resources and in consultation with the local directors of local departments of social services; and

(2) coordinate with State agencies to establish internships in State agencies that are open to participants in the Program.

(c) The purpose of the Program is to provide foster youth with training and experience through internships in agencies within the Executive Branch of State government.

(d) The Program shall be established in multiple regions of the State.

(e) Internships under the Program may be paid or unpaid.

(f) A State agency participating in the Program may:

(1) specify requirements for internship applicants; and

(2) select its interns from among the available applicants.

(g) To be eligible to participate in an internship under the Program, an individual must be a foster youth at least 15 years old.

(h) On or before October 31, 2015, the Secretary, in consultation with the Secretary of Human Resources, shall report to the Senate Budget and Taxation Committee, the Senate Finance Committee, and the House Appropriations Committee of the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(1) the number of foster youth participating in the Program;

(2) the location and type of internships in the Program;

(3) efforts to recruit eligible individuals to participate in the Program; and

(4) factors that affect Program participation.

§3–301.

(a) There is a Central Collection Unit in the Department.

(b) (1) All employees and personnel of the Central Collection Unit shall:

(i) except for assistant Attorneys General assigned to the Central Collection Unit, be in the management service or special appointments in the State Personnel Management System who are appointed by and serve at the pleasure of the Secretary and are not subject to Title 11, Subtitle 2 of the State Personnel and Pensions Article; and

(ii) receive such compensation as provided in the State budget.

(2) Except for employees in the Executive Pay Plan and any assistant Attorneys General assigned to the Central Collection Unit, a management service or special appointment of the skilled service or the professional service employee of the Central Collection Unit may not be permanently removed except for cause and until written charges have been filed and a hearing has been conducted in accordance with Title 10, Subtitle 2 of the State Government Article. This paragraph does not apply to the removal of a management service or special appointment employee because of a layoff that resulted from:

(i) a lack of work; or

(ii) the lack of an appropriation.

(c) (1) The Secretary of Budget and Management may establish a performance incentive program to provide pay incentives for employees of the Central Collection Unit.

(2) Pay incentives provided to employees under this subsection shall be paid from the Central Collection Fund established under § 3-306 of this subtitle as provided in the State budget.

(3) Pay incentives may not be provided under this subsection if:

(i) the Central Collection Unit sustains an operating loss for the fiscal year in which the pay incentives were earned; or

(ii) funds are not available in the Central Collection Fund to pay the incentives.

§3–302.

(a) (1) Except as otherwise provided in subsection (b) of this section or in other law, the Central Collection Unit is responsible for the collection of each delinquent account or other debt that is owed to the State or any of its officials or units.

(2) An official or unit of the State government shall refer to the Central Collection Unit each debt for which the Central Collection Unit has collection responsibility under this subsection and may not settle the debt.

(3) For the purposes of this subtitle, a community college or board of trustees for a community college established or operating under Title 16 of the Education Article is a unit of the State.

(b) Unless, with the approval of the Secretary, a unit of the State government assigns the claim to the Central Collection Unit, the Central Collection Unit is not responsible for and may not collect:

(1) any taxes;

(2) any child support payment that is owed under § 5–308 of the Human Services Article;

(3) any unemployment insurance contribution or overpayment;

(4) any fine;

(5) any court costs;

(6) any forfeiture on bond;

(7) any money that is owed as a result of a default on a loan that the Department of Business and Economic Development or the Department of Housing and Community Development has made or insured; or

(8) any money that is owed under Title 9, Subtitles 2, 3, and 4 and Title 20 of the Insurance Article.

(c) The Central Collection Unit shall be responsible for the collection of each delinquent account or other debt that is owed to a community college established or operating under Title 16 of the Education Article if the board of trustees for the community college:

(1) adopts a resolution appointing the Central Collection Unit as the collector of delinquent accounts or other debt; and

(2) submits the resolution to the Central Collection Unit.

§3–303.

The Secretary may adopt regulations that relate to collections under this subtitle, including:

(1) procedures for referral of a debt or claim;

(2) the information that supports the debt or claim; and

(3) the rate of fees to be charged under § 3-304 of this subtitle.

§3–304.

(a) In carrying out its responsibilities, the Central Collection Unit may:

(1) (i) institute, in its name, any action that is available under State law for collection of a debt or claim; or

(ii) without suit, settle the debt or claim;

(2) for all debts or claims collected on or after June 1, 1992:

(i) in addition to the outstanding principal and interest, assess and collect from the debtor a fee, which may not exceed 20% of the outstanding principal and interest, sufficient to cover all collection and administrative costs; and

(ii) prior to crediting any amount to any agency which refers a debt for any purpose, withhold a fee sufficient to cover all collection and administrative costs;

(3) waive or reduce any fee assessed under paragraph (2) of this subsection; and

(4) certify a debt or claim and the debtor responsible for the debt or claim to:

(i) the Comptroller for income tax refund interception in accordance with Title 13, Subtitle 9 of the Tax – General Article; and

(ii) the State Lottery and Gaming Control Agency for State lottery prize interception in accordance with § 3–307 of this subtitle.

(b) In addition to the authority provided under subsection (a) of this section, and notwithstanding that the Central Collection Unit is a unit of the State government and that assistant Attorneys General represent the Unit, the Unit may enforce a statutory or written contractual obligation of a debtor to pay costs in addition to principal, including collection costs, counsel fees, or interest penalties.

(c) Notwithstanding any other provision of law, the Central Collection Unit may report any account referred to it under this section to a consumer reporting agency.

(d) (1) Notwithstanding the provisions of § 9–602 of the Criminal Law Article, and subject to paragraphs (2) through (5) of this subsection, the Central Collection Unit may manage the monitoring and recording of incoming telephone calls:

(i) to the automated call distribution system; and

(ii) for training and quality control purposes.

(2) Any monitored or recorded telephone call shall contain a notice to the telephone caller that "Your call may be recorded or monitored for training and quality control purposes".

(3) The Central Collection Unit may not record or monitor calls to or from a direct individual line of an employee of the Central Collection Unit.

(4) The recording of an incoming telephone call to an employee of the Central Collection Unit may not be offered as evidence in a criminal or civil proceeding against any caller unless:

(i) the caller has made a personal or imminent threat against an employee or property of the State; or

(ii) the caller or caller's representative first introduces the contents or existence of the recorded telephone call in the criminal or civil proceeding.

(5) A recording of a telephone call may not be retained by the Central Collection Unit for longer than 60 days, unless the recording is being used or is to be used:

(i) for training or quality control purposes; or

(ii) in a criminal or civil proceeding under paragraph (4) of this subsection.

§3–305.

(a) Except as otherwise provided in this section, the Central Collection Unit shall pay the net proceeds of collections into the State Treasury.

(b) If the funds of a unit of the State government are not part of the State Treasury, the Central Collection Unit shall deliver to the Treasurer the net proceeds of collection on a debt or claim that was due to the unit of the State government for its account.

(c) All fees collected under § 3-304(a)(2) of this subtitle shall be credited to the Central Collection Fund established under § 3-306 of this subtitle.

(d) The Central Collection Unit shall deliver the net proceeds of collections from defendants or liable parents in arrears on restitution payments to the Division of Parole and Probation or the Department of Juvenile Services to be forwarded by the Division or Department to the victim or other appropriate person or agency in accordance with the judgment of restitution.

§3–306.

(a) There is a Central Collection Fund.

(b) The Central Collection Fund is a continuing, nonlapsing fund that is not subject to § 7–302 of this article.

(c) The Fund shall consist of all fees collected under § 3–304(a)(2) of this subtitle.

(d) Subject to the appropriation process in the State budget and subject to subsection (h) of this section, the Department shall use the Fund for the expenses of operating the Central Collection Unit.

(e) The State Treasurer shall hold and the State Comptroller shall account for the Fund.

(f) The Fund shall be invested and reinvested in the same manner as other State funds.

(g) Investment earnings accrue to the benefit of the Fund.

(h) For any fiscal year beginning on or after July 1, 2010, any balance in the Fund at the end of the fiscal year in excess of 15% of the actual expenses of operating the Central Collection Unit for that fiscal year reverts to the General Fund of the State.

§3–307.

(a) Certification of a debt or claim owed to the State that the Central Collection Unit sends to the State Lottery and Gaming Control Agency under § 3–304(a)(4) of this subtitle shall contain:

(1) the full name of the debtor and any other name known to be used by the debtor;

(2) the Social Security number of the debtor; and

(3) the amount of the debt.

(b) If a debtor wins a lottery prize to be paid directly by the State Lottery and Gaming Control Agency, the State Lottery and Gaming Control Agency shall notify the debtor that:

(1) the debtor has won a prize to be paid by the State Lottery and Gaming Control Agency;

(2) the State Lottery and Gaming Control Agency has received notice from the Central Collection Unit of the debtor's debt or claim owed to the State in the specified amount;

(3) State law requires the State Lottery and Gaming Control Agency to withhold the prize and to pay it towards the debtor's debt or claim;

(4) the debtor may appeal to the Central Collection Unit if the debtor disputes the existence or the amount of the debt or claim; and

(5) if an appeal is not filed within 15 days after the date of the notice, the State Lottery and Gaming Control Agency will transfer the prize or the part of the prize that equals the amount of the debt or claim to the Central Collection Unit.

(c) (1) The State Lottery and Gaming Control Agency shall withhold all or part of the prize up to the amount of the debt or claim owed to the State until the Central Collection Unit notifies the State Lottery and Gaming Control Agency to whom the withheld prize money is to be paid.

(2) The State Lottery and Gaming Control Agency shall honor lottery prize interception requests in the following order:

(i) an interception request under § 10–113.1 of the Family Law Article;

(ii) an interception request under § 11–618 of the Criminal Procedure Article; and

(iii) an interception request under this section.

(d) (1) On receipt of a notice from the State Lottery and Gaming Control Agency, a debtor who disputes the existence or amount of the debt or claim may appeal the proposed transfer in accordance with the provisions of the Administrative Procedure Act, Title 10, Subtitle 2 of the State Government Article.

(2) If an appeal is not filed within 15 days after the date of the notice, the State Lottery and Gaming Control Agency shall transfer the amount of the prize withheld to the Central Collection Unit.

(3) If the debtor appeals the proposed transfer, after a hearing the Central Collection Unit shall notify the State Lottery and Gaming Control Agency that the withheld prize shall be:

(i) paid to the debtor;

(ii) transferred to the Central Collection Unit; or

(iii) in specified amounts, partly paid to the debtor and partly transferred to the Central Collection Unit.

(e) The Secretary and the Director of the State Lottery and Gaming Control Agency may jointly adopt regulations to carry out this section.

§3–501.

This subtitle does not apply to the purchase, lease, or rental of motor vehicles by the University College of the University of Maryland for use in University College overseas programs or by the Maryland Port Administration.

§3–502.

(a) Consistent with Division II of this article, the Secretary shall approve and submit to the Board of Public Works for concurrence:

(1) standards for purchase by the Department of General Services of motor vehicles for State use; and

(2) all leases or rentals of motor vehicles for use by officials or employees of any unit of the Executive Branch of the State government, other than any individual motor vehicle lease or rental made under the Standard State Travel Regulations.

(b) As far as practicable and feasible, the standards for purchase of motor vehicles shall be based on the lowest possible life cycle cost.

(c) The purchase of State-owned motor vehicles for any unit of the Executive Branch of the State government shall be reviewed and approved by the Secretary before the purchase to ensure compliance with this section and § 3-503 of this subtitle and any implementing regulations.

§3–503.

(a) (1) To ensure economical and efficient use of motor vehicles by units of the Executive Branch of the State government, the Secretary shall adopt and enforce regulations to carry out the provisions of this subtitle.

(2) The regulations adopted under this section shall apply to:

(i) all phases of the use and maintenance of State-owned motor vehicles; and

(ii) the reimbursement of owners of privately owned motor vehicles.

(3) The regulations shall be directed to:

(i) requiring the effective, efficient, and inexpensive use of all motor vehicles; and

(ii) compiling and maintaining accurate and detailed cost accounting records for all use of motor vehicles.

(4) The regulations shall provide that, unless the Secretary determines on the basis of published criteria that the use of a State-owned motor vehicle is required

for the efficient operation of a State program regardless of miles traveled, State-owned motor vehicles shall be allocated to those State employees accumulating the greatest mileage for official use.

(b) Consistent with this section, the Secretary may reassign State-owned motor vehicles between or among units of the Executive Branch of the State government if federally funded programs are substantially reduced or discontinued.

(c) Subject to § 2-1246 of the State Government Article, the Secretary shall submit to the General Assembly an annual report that includes, in detail:

(1) the text of any regulations that have been adopted under this section and are currently in effect; and

(2) a statement of any problems involved in ensuring compliance with this subtitle.

§3–601.

(a) To establish relative priorities and avoid duplication and conflicts, the Department shall advise the Governor on the means and methods available to coordinate the capital plans and capital programs of all units of the State government. Upon request of the General Assembly, the Department shall provide assistance to the General Assembly in the development and coordination of capital plans and capital programs for the Legislative Branch of State government.

(b) To avoid duplication and conflicts, the Department shall advise the Governor on the means and methods available to coordinate the capital plans and capital programs of federal, State, regional, and local governments.

§3–602.

(a) The Department shall study each capital project proposed by any unit of the State government.

(b) Except for a capital project designated as an emergency by the unit of the State government proposing the project, any unit of the State government requesting a capital project shall submit its request to the Department on or before June 30 of the fiscal year preceding the fiscal year in which the capital project is to begin.

(c) Each request for a capital project by a unit of the State government, including the University System of Maryland, St. Mary's College of Maryland, and Morgan State University, shall include a detailed list of all proposed expenditures for capital improvements to be funded from grants or nonbudgeted revenues.

(d) (1) Before an appropriation may be authorized for preliminary planning of a proposed capital project:

(i) the unit of the State government requesting the appropriation shall submit to the Department a program describing, in detail, the scope and purpose of the project; and

(ii) the Secretary of Budget and Management must approve the program.

(2) Before an appropriation may be authorized for construction of a proposed capital project:

(i) the unit of State government requesting the appropriation shall submit to the Departments of Budget and Management and General Services a detailed design program, which shall include all information required by the Departments; and

(ii) both the Secretary of Budget and Management and the Secretary of General Services must approve the detailed design program.

(e) Except with the approval of the Secretary of Budget and Management and the Secretary of General Services, no change may be made in any proposed capital project after the preliminary plan for that project has been completed and approved.

(f) (1) This subsection applies only to capital projects that involve construction of permanent or long-time duration.

(2) When the request for an appropriation for a capital project is submitted to the General Assembly, the unit of the State government that would receive the capital project or a State officer on behalf of the unit shall submit to the General Assembly:

(i) preliminary plans and outline specifications for the project that show the size, the type of construction, and the arrangement of each building; and

(ii) a statement on the sufficiency of the proposed appropriation to pay fully for the costs of that project.

(g) Total project funding may utilize alternative construction methods, such as:

(1) design/build which involves a single solicitation to design and build the facility; or

(2) "fast track" in which design and construction are implemented concurrently.

(h) A request for total project funding may be authorized jointly by the Secretaries of Budget and Management and General Services if:

(1) (i) the planning, design, construction, and equipment funds for the project have been authorized and itemized in the State budget bill or a supplementary

appropriation bill; or

(ii) the Secretaries make a determination, supported in writing and submitted to the Legislative Policy Committee of the General Assembly and the Board of Public Works, that:

1. total project funding is time critical and will result in significant cost savings;

2. there is compelling reason why the procedure required in this paragraph cannot be adopted; and

3. circumstances necessitate that consideration of the total project funding occur during the legislative interim, rather than during the legislative session; and

(2) (i) the total project funding request has been submitted to the Legislative Policy Committee for its review and comment;

(ii) written comment from the Legislative Policy Committee has been received or 45 days have elapsed after the Legislative Policy Committee has received the request and all supporting information; and

(iii) the request has been approved by the Board of Public Works.

(i) The submissions and approvals required by subsections (b) through (h) of this section are not required in connection with any capital project funded by the Transportation Trust Fund.

(j) "Total project funding" means the funding for the planning, design, construction, and equipment of a capital project through a single appropriation or authorization or through a proposed capital lease.

(k) "Capital lease" means any lease, defined as a capital lease in accordance with generally accepted accounting principles, that is used to finance the acquisition, purchase, construction, and any related renovation or alteration of real property that is the subject of a capital project.

§3–602.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "High performance building" means a building that:

(i) meets or exceeds the current version of the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) Green Building Rating System Silver rating;

(ii) achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services; or

(iii) complies with a nationally recognized and accepted green building code, guideline, or standard reviewed and recommended by the Maryland Green Building Council and approved by the Secretaries of Budget and Management and General Services.

(3) "Major renovation" means the renovation of a building where:

(i) the building shell is to be reused for the new construction;

(ii) the heating, ventilating, and air conditioning (HVAC), electrical, and plumbing systems are to be replaced; and

(iii) the scope of the renovation is 7,500 square feet or greater.

(b) It is the intent of the General Assembly that, to the extent practicable:

(1) the State shall employ green building technologies when constructing or renovating a State building not subject to this section; and

(2) high performance buildings shall meet the criteria and standards established under the "High Performance Green Building Program" adopted by the Maryland Green Building Council.

(c) (1) This subsection applies to:

(i) capital projects that are funded solely with State funds; and

(ii) community college capital projects that receive State funds.

(2) Except as provided in subsections (d) and (e) of this section, if a capital project includes the construction or major renovation of a building that is 7,500 square feet or greater, the building shall be constructed or renovated to be a high performance building.

(d) The following types of unoccupied buildings are not required to be constructed or renovated to be high performance buildings:

(1) warehouse and storage facilities;

(2) garages;

(3) maintenance facilities;

(4) transmitter buildings;

(5) pumping stations; and

(6) other similar types of buildings, as determined by the Department.

(e) (1) The Department of Budget and Management and the Department of General Services shall jointly establish a process to allow a unit of State government or a community college to obtain a waiver from complying with subsection (c) of this section.

(2) The waiver process shall:

(i) include a review by the Maryland Green Building Council established under § 4–809 of this article, to determine if the use of a high performance building in a proposed capital project is not practicable; and

(ii) require the approval of a waiver by the Secretaries of Budget and Management, General Services, and Transportation.

§3–602.2.

(a) (1) In this section the following words have the meanings indicated.

(2) "Commission" means the Maryland Commission on Public Art established under Title 4, Subtitle 6 of the Economic Development Article.

(3) "Construction project" means the construction of a new building that is proposed to contain 15,000 or more square feet.

(4) "Council" means the Maryland State Arts Council established under Title 4, Subtitle 5 of the Economic Development Article.

(5) "Division" means the Division of Tourism, Film, and the Arts established under Title 4, Subtitle 1 of the Economic Development Article.

(6) "Major renovation project" means the renovation of an existing building where:

(i) the building is to be reconstructed and reused after the construction;

(ii) the heating, ventilation, and air conditioning, electrical, and plumbing systems are to be replaced; and

(iii) the scope of the renovation is 15,000 or more square feet.

(7) (i) "Public art" means:

1. an architectural enhancement of artistic significance; or

2. an individual piece of art.

(ii) "Public art" includes:

1. a mural;

2. a tile mosaic;

3. a painting; or

4. a sculpture.

(b) (1) This section applies to capital projects that are funded entirely with State funds.

(2) This section does not apply to the following types of unoccupied buildings:

(i) warehouse and storage facilities;

(ii) garages;

(iii) maintenance facilities;

(iv) transmitter buildings;

(v) pumping stations; and

(vi) other similar buildings, as determined by the Department.

(c) It is the intent of the General Assembly that the requirements of this section will not increase the cost of a construction project or a major renovation project.

(d) To the extent practicable and except as provided in subsection (g) of this section, the State shall include public art in all construction projects and major renovation projects.

(e) During the initial design of each construction project and major renovation project, the identification and selection of public art to be included in the project shall be determined by a group composed of representatives of:

(1) the unit of State government that will be the primary user of the building;

(2) the unit of State government responsible for project management of the building; and

(3) the Division.

(f) The Division shall work with the Council and the Commission in the selection of public art for any project under this section.

(g) (1) The Department of Budget and Management and the Department of General Services shall jointly establish a process to allow a unit of State government to obtain a waiver from complying with this section.

(2) The waiver process shall:

(i) provide for consultation with the Division, on behalf of the Council and the Commission, to determine if the inclusion of public art in a proposed project is too costly or not practicable; and

(ii) require the approval of the Secretaries of Budget and Management and General Services.

§3–602.3.

(a) (1) In this section the following words have the meanings indicated.

(2) "100–year base flood" means a flood having a 1% chance of being equaled or exceeded in any given year.

(3) "Base flood elevation" means:

(i) the water surface elevation of the 100–year base flood as specified on Federal Emergency Management Agency flood insurance rate maps; or

(ii) in an area of shallow flooding:

1. the highest adjacent natural grade added to the depth number specified in feet on the flood insurance rate map; or

2. if the depth number is not specified on the flood insurance rate map, 4 feet.

(4) (i) "Coast Smart" means a construction practice in which preliminary planning, siting, design, construction, operation, maintenance, and repair of a structure avoids or minimizes future impacts associated with coastal flooding and sea level rise.

(ii) "Coast Smart" includes design criteria and siting criteria that are applicable throughout the entire life cycle of a project.

(5) "Design criteria" means standard specifications related to the shape, size, or form of a construction practice.

(6) (i) "Replacement cost" means, at the time of reconstruction, the cost of reconstructing a structure and its surrounding property to full use with materials of

the same kind and quality as the original materials.

(ii) "Replacement cost" does not include:

1. the value of the land on which a structure is located; or

2. for tax purposes, a deduction for depreciation.

(7) "Siting criteria" means specifications related to the location or use of a structure.

(8) "Special flood hazard area" means land in a tidally influenced floodplain that is:

(i) subject to at least a 1% chance of flooding in any given year; and

(ii) designated by the Federal Emergency Management Agency in flood insurance studies and on flood insurance rate maps as Zone A, AE, AH, AO, A1–30, A99, VE, or V1–30.

(9) "Structure" means:

(i) a walled or roofed building;

(ii) a manufactured home; or

(iii) a gas or liquid storage tank that is principally above ground.

(10) "Substantial damage" means damage caused by any source that is sustained by a structure such that the cost of reconstruction to its before–damaged condition is at least half of the structure's replacement cost before the damage occurred.

(b) (1) This subsection applies to State capital projects planned and built by units of State government that are partially or fully funded with State funds.

(2) Beginning July 1, 2015, if a State capital project includes the construction of a structure or the reconstruction of a structure with substantial damage, the structure shall be constructed or reconstructed in compliance with siting and design criteria established under subsection (c) of this section.

(c) (1) In consultation with the Department of Natural Resources, the Coast Smart Council established under § 3–1002 of the Natural Resources Article shall establish Coast Smart siting and design criteria to address sea level rise and coastal flood impacts on capital projects.

(2) The criteria adopted under this subsection shall include:

(i) guidelines, and any other directives applicable to the preliminary

planning and construction of a proposed capital project;

(ii) a requirement that the lowest floor elevation of each structure located within a special flood hazard area is built at an elevation of at least 2 feet above the base flood elevation; and

(iii) provisions establishing a process to allow a unit of State government to obtain a waiver from complying with the requirements of subsection (b) of this section.

§3–603.

(a) The Department shall prepare, revise, and keep current a 5-year capital program.

(b) The capital program shall include all capital projects of the State whether funded by bond authorizations, operating budget funds, or capital leases.

(c) The capital program shall be consistent with the annual recommendations of the Capital Debt Affordability Committee.

(d) Except for the first year of the program, the capital program may not include General Fund capital appropriations as a source of funding other than for projects or programs that are ineligible for tax-exempt debt financing.

§3–604.

The capital program:

(1) shall include State public works and major capital improvement projects undertaken or recommended to be undertaken by the State; and

(2) may include major projects undertaken or recommended to be undertaken with State aid or under State regulation.

§3–605.

The capital program shall:

(1) classify projects according to their necessity and urgency;

(2) recommend a time sequence for the projects; and

(3) include the following information about each project:

(i) the contract price or an estimate of the cost of acquisition or construction;

(ii) an estimate of the operating and maintenance costs;

(iii) an estimate of the number of additional State positions that will be required as a result of the project;

(iv) an estimate of revenues likely to be received from the project; and

(v) existing sources of funds or the need for additional sources of funds for construction, acquisition, and operation.

§3–606.

As far as possible, the capital program shall be based on existing information in the possession of the Department of Budget and Management, and other units of the State government.

§3–607.

The Department of Budget and Management may require the head of any unit of the State government to give information necessary for the preparation of the capital program.

§3–608.

(a) In the annual budget the Governor shall provide a sum sufficient to establish a Revolving Preliminary Planning Fund under the jurisdiction of the Board of Public Works.

(b) On the recommendation of the Department, the Board of Public Works may authorize money to be advanced from the Revolving Preliminary Planning Fund for preliminary plans, studies, designs, and outline specifications for any project that is part of the capital improvement program.

(c) Any money advanced from the Revolving Preliminary Planning Fund shall be reimbursed to the Fund:

(1) from general funds; or

(2) with the approval of the Board of Public Works, from:

(i) the annual general construction loan; or

(ii) any other special loan funds separately authorized by the General Assembly.

§3–609.

(a) There is a Construction Contingency Fund.

(b) The Fund is a continuing, nonlapsing, revolving fund that consists of:

(1) money appropriated to the Fund:

(i) in the annual budget; or

(ii) in an annual General Construction Loan Act or in a Maryland Consolidated Capital Bond Loan Act; or

(2) unspent proceeds of an enabling act allocated to the Fund by the Governor under § 8-129 of this article; or

(3) the amount of an appropriation in an annual General Construction Loan Act or in a Maryland Consolidated Capital Bond Loan Act that is in excess of the amount needed for a project included in the Act and that is allocated to the Fund by the Governor.

(c) An appropriation or allocation to the Fund may not be made if it would cause the total balance in the Fund to exceed 1.25% of the capital debt affordability limit, determined under Title 8 of this article, for that year.

(d) With the advice and assistance of the Departments of Budget and Management and General Services, the Fund shall be administered by the Board of Public Works.

(e) With the approval of the Governor, the Secretaries of Budget and Management and General Services may request the Board of Public Works to authorize an expenditure from the Fund to supplement any capital appropriation or to conduct value engineering on a project:

(1) that is for a capital project to be owned by the State or a unit of the State government;

(2) that was contained in a capital appropriation of an annual budget, in an annual general construction loan, or in an annual Maryland consolidated capital bond loan; and

(3) (i) that is insufficient in amount to permit the initial award of a contract for the project to the bidder or offeror selected in accordance with applicable State law, or to cover change orders during construction of the project which do not increase the scope of the project; or

(ii) if, in the belief of the Department of General Services or at the request of the budget committees, the project cost could be reduced or quality improved through the use of value engineering.

(f) The Secretaries of Budget and Management and General Services shall evaluate any project for additional funding and certify in writing that the project meets the criteria in subsection (e) of this section and that:

(1) all reasonable attempts to reduce the cost of the project have been made;

(2) no practicable alternative exists for securing funding to complete the project; and

(3) the requested additional funding does not increase the scope of the project.

(g) (1) Prior to seeking approval from the Board of Public Works, the Department of General Services and the Department of Budget and Management shall:

(i) provide written notice to the budget committees on the planned use of the funds; and

(ii) allow 45 days for review and comment by the budget committees.

(2) Each time an expenditure from the Fund is authorized by the Board of Public Works, the amount specified by the Board of Public Works may be transferred from the account to the appropriate annuity bond account to supplement the specified authorization.

(h) By January 1 of each year, the Secretaries of Budget and Management and General Services shall submit a report, subject to § 2-1246 of the State Government Article, to the General Assembly on the moneys:

(1) appropriated to the Fund;

(2) authorized for expenditure from the Fund; and

(3) expended from the Fund.

(i) Money in the Fund shall be deposited with the State Treasurer.

§3–1001.

(a) In this subtitle the following words have the meanings indicated.

(b) "Agency" means an entity of the Executive Branch of State government.

(c) "Goal" means a broad statement that describes the desired long–term results toward which an agency directs its efforts. Goals support, clarify, and provide direction to the agency's mission and assist in the application of State resources toward implementation of the managing for results State comprehensive plan.

(d) "Managing for results" means a planning, performance measurement, and budgeting process that emphasizes use of resources to achieve measurable results, accountability, efficiency, and continuous improvement in State government programs.

(e) "Mission" means the purpose for an agency's existence and includes a description of what an agency does and for whom it does it.

(f) "Objective" means a specific and measurable short–term target for achievement of an agency's goals and includes a description of the desired results and a target date for accomplishment.

(g) (1) "Performance measure" means a quantitative or qualitative indicator used to assess whether an agency is meeting its goals and objectives.

(2) "Performance measure" includes the following:

(i) an efficiency measure that quantifies the relationship between measures of the inputs used to produce goods or services and the measures of the outputs of these activities;

(ii) an input measure that quantifies the amount of resources used to provide goods and services;

(iii) an outcome measure that quantifies the results an agency achieves or the benefits citizens receive from an agency's activities;

(iv) an output measure that quantifies the amount of goods and services produced by the agency; and

(v) a quality measure that quantifies or describes:

1. the effectiveness of the agency in meeting agency objectives;

2. aspects of the satisfaction that customers may or may not have with State goods or services; or

3. how State goods or services compare to some external or internal standard.

(h) "State comprehensive plan" means a statement of goals which serve as a broad directive for improving or making more cost effective State resources and services. The plan shall include no more than 10 statewide goals and 50 to 100 performance measures that describe the statewide progress towards its goals.

(i) "StateStat" means the accountability process described in § 3–1003(b) of this subtitle.

(j) "Strategic plan" means a statement of direction implemented by an agency to carry out its mission.

§3–1002.

(a) The Department shall review and update as necessary:

(1) the goals developed in the managing for results State comprehensive plan; and

(2) the plan's objectives and performance measures.

(b) Except as otherwise provided in this subtitle, on or before July 1 of each year an agency, in conjunction with the Department, shall select no more than six agency goals that are:

(1) compatible with the managing for results State comprehensive plan; or

(2) consistent with the agency's mission if the goals identified in the managing for results State comprehensive plan do not apply to the agency.

(c) Except as otherwise provided in this subtitle, with its annual budget submission to the Department, an agency shall develop and submit to the Department as part of the budget process a managing for results agency strategic plan that shall include:

(1) a mission statement;

(2) a description of the agency's goals;

(3) a description of the objectives and performance measures implemented at the program level to achieve the agency's goals, including:

(i) performance measure statistics for at least the 2 most recently completed fiscal years; and

(ii) performance measure estimates for the current year appropriation and budget request year;

(4) a discussion of the agency's progress in meeting its goals and performance measures and any challenges the agency has faced in working toward its goals;

(5) a description of the internal controls established to ensure reliability of the data collected for each performance measure; and

(6) an identification of the customers and stakeholders served.

(d) An agency subject to this subtitle shall maintain documentation of the internal controls established to evaluate performance measures that shall be subject to review by the State, including the Office of Legislative Audits.

(e) (1) The Department shall provide a report to the Senate Budget and Taxation Committee and House Appropriations Committee in January of each year

on the contents of the State comprehensive plan and the State's progress toward the goals outlined in the plan.

(2) The report shall include details on each agency's progress.

(3) The Senate Budget and Taxation Committee and House Appropriations Committee may hold hearings after receiving the report.

(4) The first report shall be submitted on or before January 31, 2005 and shall include a presentation of the first managing for results State comprehensive plan.

§3–1003.

(a) The Secretary shall review the strategic plans and the State comprehensive plan and may recommend appropriate changes to agency budgets.

(b) (1) There is a StateStat process that is managed by the Executive Branch.

(2) StateStat is an accountability process that involves:

(i) the adoption of a strategic plan and the establishment of goals by an agency;

(ii) the adoption of a comprehensive set of performance and citizen satisfaction measurements by an agency;

(iii) regular and frequent:

1. submission of timely and accurate data by an agency;

2. review and analysis of submitted data; and

3. accountability meetings to assess an agency's performance;

(iv) continuous review of the strategies and tactics used by an agency to meet the goals of the agency; and

(v) continuous assessment of the progress of an agency towards meeting the goals of the agency.

(c) The Governor may require an agency to participate in the StateStat process to help facilitate and accelerate the achievement of managing for results goals and objectives.

(d) (1) Each agency that participates in the StateStat process shall submit a strategic plan and performance measurement report to the Secretary as part of its annual budget submission.

(2) The report submitted by each agency that participates in the StateStat

process shall contain the information required in § 3–1002(c) of this subtitle.

§3A–101.

(a) In this title the following words have the meanings indicated.

(b) "Department" means the Department of Information Technology.

(c) "Secretary" means the Secretary of Information Technology.

(d) "Telecommunication" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means.

(e) "Unit of State government" means an agency or unit of the Executive Branch of State government.

§3A–201.

There is a Department of Information Technology established as a principal department of State government.

§3A–202.

(a) The head of the Department is the Secretary of Information Technology, who shall be appointed by the Governor with the advice and consent of the Senate.

(b) The Secretary shall have experience in information technology, data processing, telecommunications, and systems procurement, planning, and management.

(c) Before taking office, the appointee shall take the oath required by Article I, § 9 of the Maryland Constitution.

(d) The Secretary shall advise the Governor on all matters assigned to the Department and is responsible for carrying out the Governor's policies on those matters.

(e) The Secretary is responsible for the operation of the Department and may establish guidelines and procedures to promote the orderly and efficient administration of the Department.

(f) The Secretary may establish, reorganize, or abolish areas of responsibility in the Department necessary to fulfill the duties assigned to the Secretary.

§3A–203.

(a) (1) With the approval of the Governor, the Secretary shall appoint a Deputy Secretary.

(2) The Deputy Secretary:

(i) serves at the pleasure of the Secretary;

(ii) is entitled to the salary provided in the State budget; and

(iii) has the duties provided by law or delegated by the Secretary.

(b) Each assistant secretary and professional consultant is in the executive service, management service, or is a special appointment in the State personnel management system and is appointed by and serves at the pleasure of the Secretary.

(c) Except as provided in this section or otherwise by law, the Secretary shall appoint and remove all other staff in accordance with the provisions of the State Personnel and Pensions Article.

(d) The appointment of or removal of staff of any unit in the Department is subject to the approval of the Secretary.

§3A–204.

(a) The Attorney General is legal adviser to the Department.

(b) At the request of the Governor, the Attorney General shall assign to the Department the number of assistant Attorneys General authorized by law to be assigned to the Department.

(c) (1) The Attorney General shall designate one of the assistant Attorneys General assigned to the Department as counsel to the Department.

(2) After the Attorney General designates the counsel to the Department, the Attorney General may not reassign the counsel without consulting the Secretary.

(3) (i) The counsel may have no other duty other than to:

1. give the legal aid, advice, and counsel required by the Secretary or any other official of the Department;

2. supervise the other assistant Attorneys General assigned to the Department; and

3. perform for the Department the duties that the Attorney General assigns.

(ii) The counsel shall perform these duties subject to the control and supervision of the Attorney General.

§3A–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Development" means all expenditures for a new information technology system or an enhancement to an existing system including system:

(i) planning;

(ii) procurement;

(iii) creation;

(iv) installation;

(v) testing; and

(vi) initial training.

(2) "Development" does not include:

(i) ongoing operating costs, software or hardware maintenance, routine upgrades, or modifications that merely allow for a continuation of the existing level of functionality; or

(ii) expenditures made after a new or enhanced system has been legally accepted by the user and is being used for the business process for which it was intended.

(c) "Fund" means the Major Information Technology Development Project Fund.

(d) "Information technology" means all electronic information processing hardware and software, including:

(1) maintenance;

(2) telecommunications; and

(3) associated consulting services.

(e) "Information technology services" means information provided by electronic means by or on behalf of a unit of State government.

(f) "Major information technology development project" means any information technology development project that meets one or more of the following criteria:

(1) the estimated total cost of development equals or exceeds $1,000,000;

(2) the project is undertaken to support a critical business function associated with the public health, education, safety, or financial well–being of the citizens of Maryland; or

(3) the Secretary determines that the project requires the special attention and consideration given to a major information technology development project due to:

(i) the significance of the project's potential benefits or risks;

(ii) the impact of the project on the public or local governments;

(iii) the public visibility of the project; or

(iv) other reasons as determined by the Secretary.

(g) "Master plan" means the statewide information technology master plan.

(h) "Nonvisual access" means the ability, through keyboard control, synthesized speech, Braille, or other methods not requiring sight to receive, use, and manipulate information and operate controls necessary to access information technology.

(i) "Resource sharing" means the utilization of a State resource by private industry in exchange for the provision to the State of a communication service or other consideration.

(j) "Systems development life cycle plan" means a plan that defines all actions, functions, or activities to be performed by a unit of State government in the definition, planning, acquisition, development, testing, implementation, operation, enhancement, and modification of information technology systems.

§3A–302.

(a) This subtitle does not apply to changes relating to or the purchase, lease, or rental of information technology by:

(1) public institutions of higher education solely for academic or research purposes;

(2) the Maryland Port Administration;

(3) the University System of Maryland;

(4) St. Mary's College of Maryland; or

(5) Morgan State University.

(b) Except as provided in subsection (a) of this section, this subtitle applies to any project of a unit of the Executive Branch of State government that involves an agreement with a public institution of higher education for a portion of the development

of the project, whether the work on the development is done directly or indirectly by the public institution of higher education.

(c) Notwithstanding any other provision of law, except as provided in subsection (a) of this section and §§ 3A–307(a)(2), 3A–308, and 3A–309 of this subtitle, this subtitle applies to all units of the Executive Branch of State government including public institutions of higher education other than Morgan State University, the University System of Maryland, and St. Mary's College of Maryland.

§3A–303.

The Secretary is responsible for carrying out the following duties:

(1) developing, maintaining, revising, and enforcing information technology policies, procedures, and standards;

(2) providing technical assistance, advice, and recommendations to the Governor and any unit of State government concerning information technology matters;

(3) reviewing the annual project plan for each unit of State government to make information and services available to the public over the Internet;

(4) developing and maintaining a statewide information technology master plan that will:

(i) be the basis for the management and direction of information technology within the Executive Branch of State government;

(ii) include all aspects of State information technology including telecommunications, data processing, and information management;

(iii) consider interstate transfers as a result of federal legislation and regulation;

(iv) work jointly with the Secretary of Budget and Management to ensure that information technology plans and budgets are consistent;

(v) ensure that State information technology plans, policies, and standards are consistent with State goals, objectives, and resources, and represent a long–range vision for using information technology to improve the overall effectiveness of State government; and

(vi) include standards to assure nonvisual access to the information and services made available to the public over the Internet; and

(5) adopting by regulation and enforcing nonvisual access standards to be used in the procurement of information technology services by or on behalf of units of State government.

§3A–304.

The Secretary shall develop a statewide information technology master plan.

§3A–305.

(a) Except as provided in subsection (b) of this section, in accordance with guidelines established by the Secretary, each unit of State government shall develop and submit to the Secretary:

(1) information technology policies and standards;

(2) an information technology plan; and

(3) an annual project plan outlining the status of efforts to make information and services available to the public over the Internet.

(b) (1) The governing boards of the public institutions of higher education shall develop and submit information technology policies and standards and an information technology plan for their respective institutions or systems to the Secretary.

(2) If the Secretary finds that the submissions required under this subsection are consistent with the master plan, the Secretary shall incorporate those submissions into the master plan.

(3) If the Secretary finds that the submissions required under this subsection are not consistent with the master plan:

(i) the Secretary shall return the submissions to the governing boards; and

(ii) the governing boards shall revise the submissions as appropriate and submit the revised policies, standards, and plans to the Secretary.

§3A–306.

Information technology of each unit of State government shall be consistent with the master plan.

§3A–307.

(a) (1) A unit of State government may not purchase, lease, or rent information technology unless consistent with the master plan.

(2) A unit of State government other than a public institution of higher education may not make expenditures for major information technology development projects except as provided in § 3A–308 of this subtitle.

(b) (1) The Secretary may review any information technology project for consistency with the master plan.

(2) Any information technology project selected for review may not be implemented without the approval of the Secretary.

(c) (1) A unit of State government shall advise the Secretary of any information technology proposal involving resource sharing, the exchange of goods or services, or a gift, contribution, or grant of real or personal property.

(2) The Secretary shall determine if the value of the resources, services, and property to be obtained by the State under the terms of any proposal submitted in accordance with the provisions of paragraph (1) of this subsection equals or exceeds $100,000.

(3) If the value of any proposal submitted in accordance with this subsection equals or exceeds $100,000 and the Secretary and unit agree to proceed with the proposal, information on the proposal shall be:

(i) advertised for a period of at least 30 days in the eMaryland Marketplace; and

(ii) submitted, simultaneously with the advertisement, to the Legislative Policy Committee for a 60–day review and comment period, during which time the Committee may recommend that the proposal be treated as a procurement contract under Division II of this article.

(4) Following the period for review and comment by the Legislative Policy Committee under paragraph (3) of this subsection, the proposal is subject to approval by the Board of Public Works.

(5) This subsection may not be construed as authorizing an exception from the requirements of Division II of this article for any contract that otherwise would be subject to the State procurement process.

§3A–308.

(a) This section does not apply to a public institution of higher education.

(b) In submitting its information technology project requests, a unit of State government shall designate projects which are major information technology development projects.

(c) In reviewing information technology project requests, the Secretary may change a unit's designation of a major information technology development project.

(d) The Secretary shall review and, with the advice of the Secretary of Budget and Management, approve major information technology development projects

and specifications for consistency with all statewide plans, policies, and standards, including a systems development life cycle plan.

(e) The Secretary shall be responsible for overseeing the implementation of major information technology development projects, regardless of fund source.

(f) With the advice of the Secretary of Budget and Management, expenditures for major information technology development projects shall be subject to the approval of the Secretary who shall approve expenditures only when those projects are consistent with statewide plans, policies, and standards.

(g) (1) The Secretary shall approve funding for major information technology development projects only when those projects are supported by an approved systems development life cycle plan.

(2) An approved systems development life cycle plan shall include submission of:

(i) a project planning request that details initial planning for the project, including:

1. the project title, appropriation code, and summary;

2. a description of:

A. the needs addressed by the project;

B. the potential risks associated with the project;

C. possible alternatives; and

D. the scope and complexity of the project; and

3. an estimate of:

A. the total costs required to complete through planning; and

B. the fund sources available to support planning costs; and

(ii) a project implementation request to begin full design, development, and implementation of the project after the completion of planning, including:

1. the project title, appropriation code, and summary;

2. a description of:

A. the needs addressed by the project;

B. the potential risks associated with the project;

C. possible alternatives;

D. the scope and complexity of the project; and

E. how the project meets the goals of the statewide master plan; and

3. an estimate of:

A. the total project cost; and

B. the fund sources available.

(3) The Secretary may approve funding incrementally, consistent with the systems development life cycle plan.

§3A–309.

(a) There is a Major Information Technology Development Project Fund.

(b) The purpose of the Fund is to support major information technology development projects.

(c) The Secretary:

(1) shall administer the Fund in accordance with this section; and

(2) subject to the provisions of § 2–201 of this article and § 3A–307 of this subtitle, may receive and accept contributions, grants, or gifts of money or property.

(d) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of this article.

(2) The State Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(3) The State Treasurer shall invest and reinvest the money of the Fund in the same manner as other State money may be invested.

(4) Any investment earnings of the Fund shall be paid into the Fund.

(e) Except as provided in subsection (f) of this section, the Fund consists of:

(1) money appropriated in the State budget to the Fund;

(2) as approved by the Secretary, money received from:

(i) the sale, lease, or exchange of communication sites, communication facilities, or communication frequencies for information technology purposes; or

(ii) from an information technology agreement involving resource sharing;

(3) that portion of moneys earned from pay phone commissions to the extent that the commission rates exceed those in effect in December 1993;

(4) money received and accepted as contributions, grants, or gifts as authorized under subsection (c) of this section;

(5) general funds appropriated for major information technology development projects of any unit of State government other than a public institution of higher education that:

(i) are unencumbered and unexpended at the end of a fiscal year;

(ii) have been abandoned; or

(iii) have been withheld by the General Assembly or the Secretary;

(6) any investment earnings; and

(7) any other money from any source accepted for the benefit of the Fund.

(f) The Fund does not include any money:

(1) received by the Department of Transportation, Maryland Transportation Authority, or Maryland Public Broadcasting Commission;

(2) received by the Judicial or Legislative branches of State government; or

(3) generated from pay phone commissions that are credited to other accounts or funds in accordance with other provisions of law or are authorized for other purposes in the State budget or through an approved budget amendment.

(g) The Governor shall submit with the State budget:

(1) a summary showing the unencumbered balance in the Fund as of the close of the prior fiscal year and a listing of any encumbrances;

(2) an estimate of projected revenue from each of the sources specified in subsection (e) of this section for the fiscal year for which the State budget is submitted; and

(3) a descriptive listing of projects reflecting projected costs for the fiscal

year for which the State budget is submitted and any estimated future year costs.

(h) Expenditures from the Fund shall be made only:

(1) in accordance with an appropriation approved by the General Assembly in the annual State budget; or

(2) through an approved State budget amendment under Title 7, Subtitle 2, Part II of this article, provided that a State budget amendment for any project not requested as part of the State budget submission or for any project for which the scope or cost has increased by more than 5% or $250,000 shall be submitted to the budget committees allowing a 30–day period for their review and comment.

(i) The Fund may be used:

(1) for major information technology development projects;

(2) as provided in subsections (j) and (l) of this section; or

(3) notwithstanding § 3A–301(b)(2) of this subtitle, for the costs of the first 12 months of operation and maintenance of a major information technology development project.

(j) Notwithstanding subsection (b) of this section and except for the cost incurred in administering the Fund, each fiscal year up to $1,000,000 of this Fund may be used for:

(1) educationally related information technology projects;

(2) application service provider initiatives as provided for in Title 9, Subtitle 22 of the State Government Article; or

(3) information technology projects, including:

(i) pilots; and

(ii) prototypes.

(k) A unit of State government or local government may submit a request to the Secretary to support the cost of an information technology project with moneys under subsection (j) of this section.

(l) Notwithstanding subsection (b) of this section, all money paid into the Fund under subsection (e)(2) of this section shall be used to support the State telecommunication and computer network established under § 3A–404 of this subtitle, including program development for these activities.

(m) (1) On or before November 1 of each year, the Secretary shall report to the Governor, the Secretary of Budget and Management, and to the budget committees

of the General Assembly and submit a copy of the report to the General Assembly, in accordance with § 2–1246 of the State Government Article.

(2) The report shall include:

(i) the financial status of the Fund and a summary of its operations for the preceding fiscal year;

(ii) an accounting for the preceding fiscal year of all moneys from each of the revenue sources specified in subsection (e) of this section, including any expenditures made from the Fund; and

(iii) for each project receiving moneys from the Fund in the preceding fiscal year and for each major information technology development project receiving funding from any source other than the Fund in the preceding fiscal year:

1. the status of the project;

2. a comparison of estimated and actual costs of the project;

3. any known or anticipated changes in scope or costs of the project;

4. an evaluation of whether the project is using best practices; and

5. a summary of any monitoring and oversight of the project from outside the agency in which the project is being developed, including a description of any problems identified by any external review and any corrective actions taken.

(n) On or before January 15 of each year, for each major information technology development project currently in development or for which operations and maintenance funding is being provided in accordance with subsection (i)(3) of this section, subject to § 2–1246 of the State Government Article, the Secretary shall provide a summary report to the Department of Legislative Services with the most up–to–date project information including:

(1) project status;

(2) any schedule, cost, and scope changes since the last annual report;

(3) a risk assessment including any problems identified by any internal or external review and any corrective actions taken; and

(4) any change in the monitoring or oversight status.

§3A–310.

This subtitle may not be construed to give the Secretary authority over:

(1) the content of educational applications or curriculum at the State or local level; or

(2) the entities that may participate in such educational programs.

§3A–311.

(a) The Secretary, in consultation with other units of State government, and after public comment, shall develop a nonvisual access clause for use in the procurement of information technology and information technology services that specifies that the technology and services:

(1) must provide equivalent access for effective use by both visual and nonvisual means;

(2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use;

(3) can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and

(4) shall be obtained, whenever possible, without modification for compatibility with software and hardware for nonvisual access.

(b) (1) Except as provided in paragraph (2) of this subsection, the nonvisual access clause required under subsection (a) of this section shall be included in each invitation for bids or request for proposals and in each procurement contract or modification of a contract issued under Title 13 of this article, without regard to the method chosen under Title 13, Subtitle 1 of this article for the purchase of new or upgraded information technology and information technology services.

(2) Except as provided in subsection (a)(4) of this section, the nonvisual access clause required under paragraph (1) of this subsection is not required if:

(i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and nonvisual equivalence cannot be developed; or

(ii) the cost of modifying the information technology for compatibility with software and hardware for nonvisual access would increase the price of the procurement by more than 5%.

§3A–312.

The Secretary may delegate the duties set forth in this subtitle to carry out its purposes.

§3A–313.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Payee" means any party who receives from the State an aggregate payment of $25,000 in a fiscal year.

(ii) "Payee" does not include:

1. a State employee with respect to the employee's compensation; or

2. a State retiree with respect to the retiree's retirement allowance.

(3) "Searchable website" means a website created in accordance with this section that displays and searches State payment data.

(b) On or before January 1, 2009, the Department shall develop and operate a single searchable website, accessible to the public at no cost through the Internet.

(c) The searchable website shall contain State payment data, including:

(1) the name of a payee receiving a payment;

(2) the location of a payee by postal zip code;

(3) the amount of a payment; and

(4) the name of an agency making a payment.

(d) The searchable website shall allow the user to:

(1) search data for fiscal year 2008 and each year thereafter; and

(2) search by the following data fields:

(i) a payee receiving a payment;

(ii) an agency making a payment; and

(iii) the zip code of a payee receiving a payment.

(e) State agencies shall provide appropriate assistance to the Secretary to ensure the existence and ongoing operation of the single website.

(f) This section may not be construed to require the disclosure of information that is confidential under State or federal law.

(g) This section shall be known and may be cited as the "Maryland Funding Accountability and Transparency Act of 2008".

§3A–401.

(a) The Department shall:

(1) coordinate the development, procurement, management, and operation of telecommunication equipment, systems, and services by State government;

(2) acquire and manage common user telecommunication equipment, systems, or services and charge units of State government for their proportionate share of the costs of installation, maintenance, and operation of the common user telecommunication equipment, systems, or services;

(3) promote compatibility of telecommunication systems by developing policies, procedures, and standards for the acquisition and use of telecommunication equipment, systems, and services by units of State government;

(4) coordinate State government telecommunication systems and services by reviewing requests by units of State government for telecommunication equipment, systems, or services;

(5) advise units of State government about planning, acquisition, and operation of telecommunication equipment, systems, or services; and

(6) provide radio frequency coordination for State and local governments in accordance with regulations of the Federal Communications Commission.

(b) The Department may make arrangement for a user other than a unit of State government to have access to and use of State telecommunication equipment, systems, and services and shall charge the user any appropriate amount to cover the cost of installation, maintenance, and operation of the telecommunication equipment, system, or service provided.

§3A–402.

(a) The provisions of this subtitle do not apply to a telecommunication system or service that is owned or operated by the University System of Maryland, Morgan State University, or a unit of the Legislative or Judicial Branch.

(b) The provisions of this subtitle do not preempt the authority of the Maryland Public Broadcasting Commission to own, operate, or manage telecommunication equipment, systems, or services.

§3A–403.

Telecommunications, including those of the Maryland Public Broadcasting

System, shall be consistent with statewide information technology policies and standards and the statewide information technology master plan.

§3A–404.

(a) The General Assembly declares that:

(1) it is the policy of the State to foster telecommunication and computer networking among State and local governments, their agencies, and educational institutions in the State;

(2) there is a need to improve access, especially in rural areas, to efficient telecommunication and computer network connections;

(3) improvement of telecommunication and computer networking for State and local governments and educational institutions promotes economic development, educational resource use and development, and efficiency in State and local administration;

(4) rates for the intrastate inter–LATA telephone communications needed for effective integration of telecommunication and computer resources are prohibitive for many smaller governments, agencies, and institutions; and

(5) the use of improved State telecommunication and computer networking under this section is intended not to compete with commercial access to advanced network technology, but rather to foster fundamental efficiencies in government and education for the public good.

(b) (1) The Department shall establish a telecommunication and computer network in the State.

(2) The network shall consist of:

(i) one or more connection facilities for telecommunication and computer connection in each local access transport area (LATA) in the State; and

(ii) facilities, auxiliary equipment, and services required to support the network in a reliable and secure manner.

(c) The network shall be accessible through direct connection and through local intra–LATA telecommunications to State and local governments and public and private educational institutions in the State.

§3A–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Governor's Advisory Board for Telecommunications

Relay.

(c) "Communications company" means a public service company, as defined in § 1–101 of the Public Utilities Article, or any other company, that provides a communications service.

(d) "Communications service" means:

(1) landline telephone service;

(2) wireless or cellular telephone service; or

(3) Voice over Internet Protocol (VoIP) service, as defined in § 8–601 of the Public Utilities Article.

(e) "Dual party telephone relay program" means a service that provides full and simultaneous communication between a person or persons with a disability that prevents them from using a standard telephone and a person or persons without that disability using conventional telephone equipment or other technology or equipment, whereby the disabled person or persons have their message relayed through an intermediary party using specialized telecommunications equipment.

(f) "Program" means the dual party telephone relay program.

(g) "Program participant" means a resident of the State who uses the dual party telephone relay program.

(h) (1) "Specialized customer telephone equipment" means any communications device that enables or assists a person with a disability to communicate with others by means of the public switched telephone network or Internet protocol–enabled voice communications service.

(2) "Specialized customer telephone equipment" includes:

(i) TDD/TT/TTY;

(ii) amplifiers;

(iii) captioned telephones;

(iv) VRS equipment;

(v) cell phones;

(vi) pagers;

(vii) puff blow devices;

(viii) Braille–TTY devices; and

(ix) equipment for the mobility disabled.

(i) "Telecommunications device for the deaf" or "TDD/TT/TTY" means all types of mechanical devices that enable disabled individuals to communicate through messages sent and received through a telephone or wireless network.

§3A–502.

There is a Governor's Advisory Board for Telecommunications Relay in the Department.

§3A–503.

(a) The Board shall be composed of 12 individuals appointed by the Governor, who shall designate the chair, including:

(1) five representatives of the deaf or hard of hearing community;

(2) one representative of the mobility–impaired community who requires the use of specialized customer telephone equipment;

(3) one representative of the speech–impaired community who requires the use of specialized customer telephone equipment;

(4) one representative of the senior citizen community who requires the use of specialized customer telephone equipment;

(5) one representative of the deaf–blind community; and

(6) three representatives of government, one of whom is a representative of the Public Service Commission.

(b) (1) The term of a member is 3 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on June 30, 2008.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(5) The Governor may remove a member for incompetence or misconduct.

(c) The members of the Board shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the performance of their duties.

(d) By January 1 of each year, the Board shall file an annual report on

its activities to the General Assembly in accordance with § 2–1246 of the State Government Article.

(e) The Board shall advise the Department with regard to the program's:

(1) level of access to program participants; and

(2) quality of service.

§3A–504.

(a) The Department in consultation with the Board shall:

(1) establish and administer a program to provide cost–efficient, 24–hour, dual party relay service to program participants at a comparable level of access and quality that a standard telecommunication service provides to a person without a hearing or speech disability;

(2) develop the program in collaboration with State programs currently serving disabled individuals and with community agencies or other organizations that have established relay programs; and

(3) maintain an information and referral service to provide information about the availability of the relay service.

(b) The Department in consultation with the Board may:

(1) contract with a private vendor or nonprofit organization to provide the information and referral service required under subsection (a)(3) of this section; and

(2) provide appropriate staff assistance from the Department to assist the Board in carrying out its duties under this subtitle.

§3A–505.

The Department in consultation with the Board shall adopt regulations to carry out the purposes of this subtitle.

§3A–506.

(a) The programs under § 3A–504(a) of this subtitle and § 3A–602(a) of this title shall be funded as provided in the State budget.

(b) (1) There is a Universal Service Trust Fund created for the purpose of paying the costs of maintaining and operating the program under § 3A–504(a) of this subtitle subject to the limitations and controls provided in this subtitle, and the program under § 3A–602(a) of this title subject to the limitations and controls provided in Subtitle 6 of this title.

(2) Moneys in the Universal Service Trust Fund shall be held in the State Treasury.

(3) Money in the Universal Service Trust Fund may only be used:

(i) to fund the costs of the programs specified in paragraph (1) of this subsection; and

(ii) to pay for the administration of the Universal Service Trust Fund.

(c) (1) The costs of the programs under § 3A–504(a) of this subtitle and § 3A–602(a) of this title shall be funded by revenues generated by:

(i) a surcharge to be paid by the subscribers to a communications service; and

(ii) other funds as provided in the State budget.

(2) (i) The surcharge may not exceed 18 cents per month for each account and shall be applied to all current bills rendered for a communications service in the State.

(ii) The surcharge is payable at the time the bills for a communications service are due.

(3) The surcharge to be collected under this section only applies to a communications service for which charges are billed by, or on behalf of, a communications company to a subscriber of the communications service.

(d) (1) The Secretary shall annually certify to the Public Service Commission the costs of the programs under § 3A–504(a) of this subtitle and § 3A–602(a) of this title to be paid by the Universal Service Trust Fund for the following fiscal year.

(2) (i) The Public Service Commission shall determine the surcharge for the following fiscal year necessary to fund the programs under § 3A–504(a) of this subtitle and § 3A–602(a) of this title.

(ii) 1. In accordance with subsection (c)(2) and subsubparagraph 2 of this subparagraph, the Public Service Commission shall set the surcharge for the following fiscal year at an amount that is no higher than necessary to generate sufficient revenues to fund the costs of the programs for the following fiscal year, as certified under paragraph (1) of this subsection.

2. In setting the surcharge under subsubparagraph 1 of this subparagraph, the Public Service Commission shall take into account whether the surcharge may be adjusted as a result of any uncommitted funds in the Universal Service Trust Fund at the end of the fiscal year that may be used to fund the costs of the programs for the following fiscal year.

(3) The Secretary shall, on 60 days' notice, direct the affected communications companies to add the surcharge determined by the Public Service Commission under paragraph (2) of this subsection to all current bills rendered for communications service in the State.

(e) (1) The affected communications companies shall act as collection agents for the Universal Service Trust Fund and shall remit all proceeds monthly to the Comptroller for deposit to the Universal Service Trust Fund.

(2) The communications companies shall be entitled to credit against these proceeds in an amount equal to 1 1/2 percent of these proceeds to cover the expenses of billing, collecting, and remitting the surcharge and any additional charges.

(f) (1) The Secretary shall administer the Universal Service Trust Fund.

(2) The income derived from investment of money in the Universal Service Trust Fund shall accrue to the Universal Service Trust Fund.

(3) Any funds remaining at the end of a fiscal year in the Universal Service Trust Fund shall be carried forward within the Universal Service Trust Fund for the maintenance and operation of the programs specified under subsection (b) of this section in the following fiscal year.

(g) (1) The Legislative Auditor shall conduct postaudits of a fiscal and compliance nature of the Universal Service Trust Fund and the expenditures made for purposes of § 3A–504(a) of this subtitle and § 3A–602(a) of this title.

(2) The cost of the fiscal portion of the postaudit examination shall be paid from the Universal Service Trust Fund as an administrative cost.

§3A–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Governor's Advisory Board for Telecommunications Relay established in Subtitle 5 of this title.

(c) "Program" means the program developed and administered by the Department in consultation with the Board and the Department of Disabilities to provide financial assistance for the purchase of specialized customer telephone equipment by eligible program participants.

(d) "Program participant" means a person who:

(1) is a resident of the State;

(2) is certified by a licensed professional as having a disability which seriously limits or prohibits the use of the telephone or wireless network without

specialized customer telephone equipment;

(3) is certified by a licensed professional as being able to use specialized customer telephone equipment for which application is made;

(4) meets the financial eligibility requirements established by the Department in consultation with the Department of Disabilities as a recipient of:

(i) Transitional Emergency Medical and Housing Assistance (TEMHA);

(ii) Supplemental Security Income (SSI);

(iii) Social Security Disability Income (SSDI); or

(iv) Temporary Assistance for Needy Families (TANF); and

(5) at the time of application is not receiving similar services which are available and can be provided in a timely manner through another program.

(e) "Qualified entity" means a nonprofit organization that:

(1) produces audio editions of daily newspapers, available for interstate distribution using high–speed computer and telecommunications technology; and

(2) provides a means of program administration and reader registration on the Internet.

(f) "Specialized customer telephone equipment" or "equipment" means any communications device designed to assist program participants in using a telephone or wireless service provider's network.

(g) "System" means the method which the Department shall use to provide equipment to eligible program participants.

§3A–602.

(a) In accordance with the State budget and § 3A–506 of this title, the Department, in consultation with the Board and the Department of Disabilities, shall establish and administer a program:

(1) to provide specialized customer telephone equipment to eligible program participants; and

(2) to provide reimbursement of costs under § 3A–606 of this subtitle.

(b) (1) In this subsection, "shopping facility" means an outdoor or indoor retail facility with a common pedestrian area housing more than five sales or rental establishments in which a majority of the tenants have a main entrance from the

common pedestrian area.

(2) This subsection applies to a shopping facility that:

(i) provides a total number of four or more public pay telephones at the facility of which at least one is located in the common pedestrian area; and

(ii) is larger than 500,000 square feet.

(3) In accordance with the standards and regulations established by the Department, the owner, operator, manager, or other person having control of a shopping facility shall acquire and install at least one specialized communications device designed to enable customers with hearing or speech disabilities to access a telephone or wireless service providers network.

§3A–603.

(a) The Department, in consultation with the Board and the Department of Disabilities, shall:

(1) provide a system for eligible program participants to obtain equipment, but no single eligible participant shall receive more than $6,000;

(2) establish an information and referral service, including the toll–free numbers for the various access modes for the Maryland relay service and provide information about the availability of the equipment;

(3) contract with private vendors or nonprofit organizations to provide the information and referral service and other auxiliary services;

(4) as necessary, establish interagency agreements with other State agencies that provide technical assistance for disabled individuals to prevent duplicative programs; and

(5) appoint appropriate staff to assist the Board in carrying out its activities under this subtitle.

(b) The Board and the Department of Disabilities shall:

(1) assist the Department in the development of regulations;

(2) develop and implement educational outreach programs;

(3) review and monitor the program; and

(4) advise the Department on unusual hardship cases.

§3A–604.

This subtitle may not be construed to establish an entitlement program.

§3A–605.

The Department in consultation with the Board and the Department of Disabilities shall adopt regulations to carry out the purposes of this subtitle.

§3A–606.

(a) The Department in consultation with the Board and the Department of Disabilities shall enter into an agreement with the State Department of Education, Division of Library Development and Services, providing for an annual payment to be made to the Division in an amount equal to the cost incurred for the distribution of newspapers in a computerized audio format.

(b) Under the agreement, the Division of Library Development and Services shall provide eligible blind and disabled individuals with access to newspapers in a computerized audio format by a qualified entity.

§4–101.

(a) In this title the following words have the meanings indicated.

(b) "Department" means the Department of General Services.

(c) "Secretary" means the Secretary of General Services.

§4–201.

There is a Department of General Services, established as a principal department of the State government.

§4–202.

(a) The head of the Department is the Secretary of General Services, who shall be appointed by the Governor with the advice and consent of the Senate.

(b) Before taking office, the appointee shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The Secretary serves at the pleasure of the Governor and is responsible directly to the Governor. The Secretary shall advise the Governor on all matters assigned to the Department and is responsible for carrying out the Governor's policies on those matters.

(2) The Secretary is responsible for the operation of the Department and shall establish guidelines and procedures to promote the orderly and efficient

administration of the Department. The Secretary may establish, reorganize, or abolish areas of responsibility in the Department as necessary to fulfill the duties assigned to the Secretary.

(3) The Secretary is responsible for establishing policy to be followed by the units in the Department.

(d) The Secretary is entitled to the salary provided in the State budget.

§4–203.

(a) (1) With the approval of the Governor, the Secretary shall appoint a Deputy Secretary.

(2) The Deputy Secretary:

(i) is in the executive service of the State Personnel Management System and serves at the pleasure of the Secretary;

(ii) is entitled to the salary provided in the State budget; and

(iii) has the duties provided by law or delegated by the Secretary.

(b) (1) The Secretary may employ a staff attached to the Office of the Secretary in accordance with the Code or the State budget.

(2) Each staff assistant in the Office of the Secretary in charge of a particular area of responsibility and each professional consultant is in the executive service, management service, or is a special appointment in the State Personnel Management System and is appointed by and serves at the pleasure of the Secretary.

(3) Except as provided in this section or otherwise by law, the Secretary shall appoint and remove all other staff in the Office of the Secretary in accordance with the provisions of the State Personnel and Pensions Article.

(4) The Secretary may review any personnel action taken by any unit in the Department. The Secretary may delegate the power to approve any appointment or removal to the head or governing body of any unit in the Department.

§4–204.

(a) The Secretary is responsible for the budget of the Office of the Secretary and for the budget of each unit in the Department.

(b) (1) The Secretary may adopt regulations for the Department and its units.

(2) The Secretary shall review and may approve, disapprove, or revise regulations of any unit of the Department.

(c) The Secretary may create any advisory body of any size that the Secretary considers appropriate for the operation of the Department.

(d) The Secretary shall have a seal.

(e) (1) The Secretary is responsible for the planning of activities, programs, and services of the Department.

(2) The Secretary may review, approve, disapprove, or modify the plans, proposals, and projects of the units in the Department.

(f) On or before December 1 of each year, the Secretary shall send a report to the Governor on the activities of the Department during the previous fiscal year.

(g) (1) Except as otherwise provided in paragraph (2) of this subsection, the Secretary may exercise any authority that is granted to any unit in the Department.

(2) This subsection does not authorize the Secretary to exercise any authority granted to the General Professional Services Selection Board.

§4–205.

(a) This section does not apply to a unit in the Department to the extent that the unit is permitted by law to employ its own legal adviser or counsel.

(b) The Attorney General is legal adviser to the Department.

(c) The Attorney General shall assign to the Department the number of Assistant Attorneys General authorized by law to be assigned to the Department and to its units.

(d) (1) The Attorney General shall designate 1 of the Assistant Attorneys General assigned to the Department as counsel to the Department. After the Attorney General designates the counsel to the Department, the Attorney General may not reassign the counsel without consulting the Secretary.

(2) The counsel may have no duty other than to give the legal aid, advice, and counsel required by the Secretary or any other official of the Department, to supervise the other Assistant Attorneys General assigned to the Department, and to perform for the Department the duties that the Attorney General assigns. The counsel shall perform these duties subject to the control and supervision of the Attorney General.

§4–206.

(a) The following units are in the Department:

(1) the Board of Architectural Review;

(2) the General Professional Services Selection Board;

(3) the Purchasing Bureau; and

(4) any other unit that is in the Department under any other law.

(b) Each unit in the Department shall report to the Secretary.

§4–207.

In addition to its other functions, the Department shall perform any function requested of it or delegated to it by the Board of Public Works.

§4–208.

The Department has any power necessary and proper to accomplish a function conferred on it by law or delegated to it or requested of it by the Board of Public Works.

§4–209.

The Department of General Services, the Department of Transportation, and the University System of Maryland shall reserve a reasonable amount of space in State buildings under their control, subject to regulations adopted by the Board of Public Works, so that any law enforcement agency or State recognized nonprofit advocacy group for abducted children can display the picture of a child abducted in a noncustody-related abduction in the reserved space.

§4–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Bid" means a bid, proposal, or other response to a solicitation.

(c) "Supplies" means tangible property, including equipment and materials.

§4–302.

There is a Purchasing Bureau in the Department.

§4–303.

The Secretary may delegate any power or duty set forth in Part I or Part II of this subtitle to the Chief of the Purchasing Bureau.

§4–304.

(a) The Secretary or any employee of the Department may not:

(1) be interested in any contract or bid for furnishing any supplies to any

unit that procures supplies under Division II of this article;

(2) be connected in any manner, directly or indirectly, with any contract or bid for furnishing any supplies to any of those units; or

(3) accept or receive, directly or indirectly, whether by rebate, gift, or otherwise, from a person to whom a contract may be awarded:

(i) any money or thing of value; or

(ii) any promise, obligation, or contract for future reward or compensation.

(b) If the Secretary or any employee of the Department violates any provision of this section, the Secretary or employee is guilty of a misdemeanor and on conviction is subject to a fine not less than $1,000 or imprisonment not exceeding 6 months or both.

§4–305.

Any contract for printing for the State shall be made through or with the approval of the Secretary except for:

(1) a contract for printing for the General Assembly and its staff agencies;

(2) a contract for printing a record or brief for the Office of the Attorney General; and

(3) a contract for printing of the Maryland Reports or the Maryland Appellate Reports.

§4–306.

(a) The Secretary shall adopt standards for maintaining stores and inventory control for all supplies required by any unit that procures supplies under Division II of this article.

(b) (1) To the extent required by the Secretary, each unit that procures supplies under Division II of this article shall file with the Secretary an inventory of the supplies in its possession.

(2) The unit shall submit the inventory to the Secretary at least once a year.

(3) The inventory is subject to audit.

§4–307.

The Secretary shall provide a copy of each award for supplies to the requisitioning unit.

§4–310.

Except as otherwise specifically provided by law, each unit of the Executive Branch of the State government shall purchase all supplies through or with the approval of the Secretary.

§4–311.

An invoice for supplies purchased by the Secretary or by any unit that procures supplies under Division II of this article may not be paid until the invoice has been approved by the Secretary or a designee of the Secretary.

§4–312.

Consistent with Division II of this article, the Secretary shall set standards for supplies to be purchased by a unit, including standards for electronic equipment used by State employees or the public for communications that are consistent with the standards for nonvisual access information technology issued under § 3-410 of this article.

§4–313.

Consistent with Division II of this article, the Secretary shall contract for or purchase any supplies for a unit except an item that the Secretary:

(1) determines is strictly perishable;

(2) determines is impracticable for the unit to purchase through or with the approval of the Secretary; or

(3) permits the unit to purchase with the approval of the Secretary.

§4–314.

At time intervals set by the Secretary, each unit that procures supplies under Division II of this article shall send to the Secretary estimates of the amount and quality of any needed supplies.

§4–315.

(a) An employee of a unit that procures supplies under Division II of this article whose salary and expenses are paid from the fees of the employee's office may not pay any contractor or seller for any article of any kind acquired for the unit unless the invoice approved by the employee is also approved by the Secretary or a designee of the Secretary.

(b) The Governor may remove an employee for any violation of the provisions of this section.

§4–316.

(a) Subject to the initial approval of the Secretary, the appropriate purchasing unit for the following entities may use the services of the Department to purchase materials, supplies, and equipment:

(1) a county;

(2) a municipality;

(3) a governmental unit in the State;

(4) a public or quasi–public agency that:

(i) receives State money; and

(ii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code;

(5) a private elementary or secondary school that:

(i) either has been issued a certificate of approval from the State Board of Education or is accredited by the Association of Independent Schools; and

(ii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code; or

(6) a nonpublic institution of higher education as provided under § 17–106 of the Education Article.

(b) Notwithstanding subsection (a)(5) and (6) of this section, the Department may not purchase religious materials on behalf of a private elementary or secondary school or a nonpublic institution of higher education.

(c) The purchasing authority under this section is in addition to, and not a substitution for, the purchasing power of an entity under another law.

§4–318.

This Part III of this subtitle does not apply to:

(1) intergovernmental lease transactions;

(2) lease transactions involving property located outside the State;

(3) lease transactions declared by the Secretary to be necessary because of an emergency;

(4) lease transactions where the State is the lessor; or

(5) lease transactions involving less than 2,500 square feet of property.

§4–319.

(a) This section applies to any lease of property by the State.

(b) (1) The Department shall give written notice of each proposed initial lease of property to:

(i) the governing body of each political subdivision in which the property is located; and

(ii) each member of the General Assembly in whose legislative district the property is located.

(2) If the notice given under paragraph (1) of this subsection is for at least 2 proposed sites from which 1 site is to be selected, before any site is finally selected, the Department shall give written notice of the site that has been proposed for final selection.

(c) Within 30 days after receiving notice under subsection (b)(1) of this section, the governing body or the member of the General Assembly may submit written comments to the Department.

(d) A lease for a site may not be executed until 31 days after the day that notice is received under subsection (b)(1) of this section.

§4–320.

(a) The Department shall advertise any need of the State to rent building space at least 30 days before proposals for a lease are due.

(b) The Department shall advertise the proposed leasing in daily or weekly newspapers with circulation sufficient to provide notice:

(1) to the people of the State; or

(2) at least to the people of the affected locality.

(c) The advertisement shall contain:

(1) the number of square feet proposed to be leased; and

(2) the general area in which the State desires to lease the space.

§4–321.

(a) Each proposal for the lease of building space by the State shall be submitted to the Secretary.

(b) Unless a regulation of the Board of Public Works provides otherwise, the Secretary shall submit each proposal, along with any recommendation of the Secretary, to the Board of Public Works for final approval.

(c) The Board of Public Works shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article concerning submission of proposals for the lease of building space under this section.

§4–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Chief" means the Chief of the Division.

(c) "Division" means the Land Acquisition Division of the Department.

(d) "Public improvement" includes any construction, maintenance, or repair of any building, structure, or other public work:

(1) owned or constructed by the State or any unit of the State government, including the University System of Maryland, St. Mary's College of Maryland, and Morgan State University; or

(2) acquired or constructed in whole or in part with State funds.

§4–402.

(a) Except as provided in § 4-409 of this subtitle, this subtitle does not apply to any public improvement made by:

(1) the Department of Transportation or a unit in that Department;

(2) any housing authority created under Division II of the Housing and Community Development Article;

(3) the Maryland-National Capital Park and Planning Commission;

(4) the Washington Suburban Sanitary Commission;

(5) the Baltimore County Metropolitan District;

(6) a county, municipal corporation, or unit of a county or municipal corporation;

(7) the University System of Maryland;

(8) Morgan State University; or

(9) St. Mary's College of Maryland.

(b) The Board of Public Works may exempt specific projects of a unit of the State government from the provisions of this subtitle.

(c) The Board of Public Works shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article establishing procedures for the exemption of specific projects of units of State government under subsection (b) of this section.

§4–403.

(a) The Department of General Services shall assist the Department of Budget and Management:

(1) in developing technical details necessary for the preparation of the Capital Improvement Program for any unit of the State government; and

(2) in any regional study relating to land acquisition, dedication, lease, transfer, and the like.

(b) The Department shall assist and advise any unit of the State government, including the Board of Public Works:

(1) in the review and approval of any change to a contract, plan, or specification for a public improvement; and

(2) on any engineering matter, survey, plan, specification, or contract for a public improvement or land acquisition that:

(i) may come before the Board of Public Works; or

(ii) may be of interest to the unit of the State government.

(c) The Department shall enforce the State Building Code.

§4–406.

(a) (1) The Department shall advise the Board of Public Works and any unit of the State government in connection with any engineering question or matter concerning a public improvement.

(2) The Department shall supervise any engineering question or matter concerning a public improvement.

(3) Any contract, plan, or specification for any public improvement that involves an engineering question:

(i) shall be submitted to the Department; and

(ii) is subject to the approval of the Department.

(4) At the request of the Board of Public Works, the Department shall advise the Board of Public Works on any contract that exceeds $500,000 if the contract involves an engineering question or a matter concerning a public improvement undertaken by the University System of Maryland, Morgan State University, or St. Mary's College of Maryland.

(b) The Department shall:

(1) represent the Board of Public Works at the opening of bids for a public improvement;

(2) tabulate and record the bids; and

(3) advise the Board of Public Works on the bids.

(c) The Department shall supervise each appraisal related to a public improvement.

(d) (1) The Department shall collect and maintain a complete and accurate file of drawings and plats of the location of all public improvements.

(2) The Department shall collect and maintain records of construction costs and progress on each public improvement.

(3) The Department shall adequately store and protect any original drawing, plat, record, or specification.

(e) The Department shall examine and approve or disapprove each plan and specification prepared in connection with the preparation or execution of a contract for a public improvement.

(f) (1) The Department shall inspect and approve or disapprove any material, equipment, and methods used in making public improvements and shall inspect each public improvement during the course of construction or repair.

(2) The duty of the Department under this subsection does not relieve an architect or engineer of any supervisory responsibility for which the architect or engineer is employed.

(g) (1) The provisions of subsections (a), (b), (e), and (f) of this section do not apply to State correctional facilities as defined in § 11-101 of this article.

(2) In accordance with §§ 10-102 through 10-105 of the Correctional Services Article, the Department of Public Safety and Correctional Services shall perform the duties specified in subsections (a), (b), (e), and (f) of this section for State correctional facilities.

§4–407.

(a) The General Assembly finds that:

(1) units of the State government are under pressure to delay or eliminate needed physical facility maintenance and repair because of fiscal constraints;

(2) lack of regular maintenance and repair results in deterioration of public improvements and increased costs for repair or construction of entirely new replacement facilities; and

(3) a specific set of procedures is necessary to ensure that all units of the State government perform regular maintenance and repair.

(b) (1) The Department of General Services shall establish general policies and standards for maintenance and repair of public improvements.

(2) On or before December 31 of each year, the Department of General Services shall send any changes to these general policies and standards to:

(i) the Board of Public Works; and

(ii) the Department of Budget and Management.

(c) The Department shall:

(1) establish and supervise a comprehensive and continuing program of maintenance and repair of all public improvements; and

(2) review maintenance and operation of public improvements to the extent that any engineering question is involved.

(d) Each unit of the State government shall carry out a maintenance and repair program for each public improvement under the jurisdiction of the unit. In carrying out the program, the unit shall:

(1) conform to the policies and standards established by the Department; and

(2) allocate sufficient funds and personnel.

§4–408.

(a) On or before May 31 of each year, each unit of the State government shall send a report on the condition of each public improvement under its jurisdiction to:

(1) the Department of Budget and Management; and

(2) the Department of General Services.

(b) The report shall:

(1) identify the public improvement; and

(2) state whether the public improvement is being maintained in accordance with the policies and standards established by the Department of General Services.

(c) With the assistance of the Department of Budget and Management, the Department of General Services shall recommend measures necessary to correct deficiencies in the maintenance and repair programs.

§4–409.

On an annual basis, the Department may inspect the physical facilities of the public junior or community colleges and the regional community colleges in the State.

§4–411.

There is a Land Acquisition Division in the Department.

§4–412.

(a) Except as otherwise provided in this section, the Division exclusively shall negotiate the acquisition of land for any public improvement.

(b) The Division shall make each State acquisition in the name of:

(1) the unit of the State government; or

(2) the principal department of the State government to which the unit belongs.

(c) The Division is not responsible for acquiring land for a local project.

(d) (1) The Division is not responsible for developing any acquired land.

(2) Development of any land acquired under Program Open Space is the responsibility of the unit of the State government.

(e) The provisions of this section and §§ 4–413 through 4–416 of this subtitle do not apply to land acquired by the Department of Natural Resources under Title 1, Subtitle 1 of the Natural Resources Article.

§4–413.

(a) The head of the Division is the Chief of the Land Acquisition Division, who shall be appointed by the Secretary with the approval of the Governor.

(b) The Chief serves at the pleasure of the Secretary.

(c) The Chief must be experienced and skilled in the field of land acquisition.

(d) The Chief is entitled to the salary provided in the State budget.

§4–414.

(a) The Chief is responsible to the Department for:

(1) administering the Division; and

(2) carrying out any function assigned to the Division.

(b) The Chief shall organize the Division as necessary to carry out the powers and duties of the Division.

(c) Subject to the approval of the Secretary, the Chief may employ a staff and any professional consultant in accordance with the State budget.

§4–415.

(a) This section does not apply to any capital expenditures by the Department of Transportation or the Maryland Transportation Authority in connection with State roads, bridges, or highways.

(b) Before execution, a contract for the acquisition of land shall be:

(1) reviewed by the Secretary of General Services; and

(2) except as provided in § 12-204 of this article, after that review, approved by the Board of Public Works.

(c) (1) This subsection does not apply to any capital expenditure by:

(i) the Maryland Aviation Administration;

(ii) the Maryland Port Administration; or

(iii) the Maryland Transit Administration.

(2) At least 40 days before the Board of Public Works may act on a land acquisition, the Division shall give written notice of a potential acquisition of land:

(i) to the governing body of the county in which the land is located; and

(ii) if the land is located within a municipal corporation, to the governing body of the municipal corporation.

(3) Within 30 days after receiving notice under this subsection, the governing body may submit written comments to the Division.

(d) The Board of Public Works shall supervise the expenditure of any money that the General Assembly appropriates for the acquisition of land.

§4–416.

(a) Except for real property that is acquired by gift, before any real property is acquired from a private owner, the Board of Public Works shall obtain two independent appraisals of the property.

(b) The Board of Public Works shall adopt regulations, in accordance with Title 10, Subtitle 1 of the State Government Article, to carry out this section.

§4–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Excess personal property" means an item of personal property that is declared to be in excess of the needs of the custodial unit of the State government because the item:

(1) is not necessary to the efficient operation of the unit; or

(2) has been replaced by a similar item.

(c) "Nonexpendable item" means an item of equipment or furnishing that has:

(1) an anticipated useful life of more than 1 year; and

(2) an original cost exceeding a minimum dollar amount established by the Department by regulation.

(d) "Surplus personal property" means an item of excess personal property that the Department declares is not needed by any unit of the State government.

§4–502.

(a) (1) The head of a unit of the State government may declare an item of personal property in the possession of the unit to be excess personal property by submitting a declaration of excess personal property to the Department.

(2) The declaration is effective on approval by the Department.

(b) The Department may declare excess personal property to be surplus personal property if the Department determines that the excess personal property cannot be used by any unit of the State government.

§4–503.

(a) The Department shall administer all arrangements for moving excess personal property or surplus personal property.

(b) The Department shall decide whether excess personal property or surplus personal property shall be:

(1) moved to a central location; or

(2) disposed of at its present location.

§4–504.

(a) The Secretary may dispose of excess personal property and surplus personal property as provided in this section.

(b) (1) Whenever feasible, the Secretary shall dispose of excess personal property by transferring it to another unit of the State government.

(2) The unit of the State government that receives the excess personal property shall pay any cost of the transfer.

(c) The Secretary:

(1) may dispose of any surplus personal property; and

(2) shall seek to gain the maximum value for the State in the disposition.

(d) (1) The Secretary shall dispose of surplus personal property:

(i) by dismantling it for recovery of valuable parts;

(ii) by trading it in;

(iii) by transferring it to a local jurisdiction, public school system, or nonprofit organization;

(iv) by auctioning or selling it, including selling it for scrap value; or

(v) if no value can be realized from it, by destroying it.

(2) If surplus personal property is destroyed under this subsection, the unit of the State government that declared the item to be excess personal property shall pay any cost of destruction.

(e) The Secretary may delegate the authority to dispose of surplus personal property to a designee of the Secretary or, by regulation, to another unit of the State government.

§4–505.

(a) Except as provided in subsection (b) of this section, money received from the auction or sale of any surplus personal property in excess of charges which might be imposed by the Department of General Services for conducting the auction or sale shall be deposited in the General Fund of the State. If the Department of Budget and Management approves, the money in excess of the service charge may be credited to the account of the unit of the State government that declared the property to be excess personal property.

(b) Money received from the auction or sale of surplus personal property shall be deposited as follows:

(1) if the item was purchased from a special fund appropriation, the proceeds shall be deposited in the appropriate special fund;

(2) if the item was purchased with bond money, the proceeds shall be deposited in the Annuity Bond Fund; and

(3) if the item was purchased with federal money, the proceeds shall be disbursed in accordance with federal law.

§4–506.

(a) The Department shall distribute periodically a list of excess personal property to each unit of the State or a local government.

(b) The Department shall adopt regulations to implement this subtitle. Any regulation adopted under this subtitle is subject to approval by the Board of Public Works.

(c) The Department may use excess personal property to satisfy a purchase requisition if the excess personal property:

(1) is functional;

(2) is serviceable; and

(3) satisfies the need of the requisitioning unit.

§4–507.

If the Department trades in surplus personal property for a replacement for the unit of the State government that declared the item excess, the Department shall give credit to that unit in the form of a reduced cost for the replacement property.

§4–508.

If a unit of the State government requisitions a nonexpendable item to replace any

item, the unit shall declare the existing item to be excess personal property unless the Department of Budget and Management waives this requirement. The unit of the State government seeking to replace the item shall submit a declaration of excess personal property to the Department of General Services with the purchase requisition for the replacement item.

§4–601.

The Department has jurisdiction over and full police authority for the enforcement of the criminal laws and the parking and motor vehicle laws as to the operation, maintenance, and protection of:

(1) buildings and grounds that, on June 30, 1984, were administered by the Office of Annapolis Public Buildings and Grounds, and extending to the surrounding area that encompasses 1,000 feet in any direction from the boundary of those buildings and grounds;

(2) buildings and grounds that, on June 30, 1984, were administered by the Office of Baltimore Public Buildings and Grounds, and extending to the surrounding area that encompasses 1,000 feet in any direction from the boundary of those buildings and grounds;

(3) multiservice centers designated by law or by the Board of Public Works; and

(4) other public improvements or grounds designated by law or by the Board of Public Works.

§4–602.

(a) In accordance with the provisions of the State Personnel and Pensions Article, the Secretary may appoint and remove superintendents to supervise designated improvements, grounds, and multiservice centers under the jurisdiction of the Department, including those in Annapolis and Baltimore City.

(b) A superintendent shall perform the duties delegated by the Secretary.

(c) A superintendent is entitled to compensation in accordance with the State budget.

§4–603.

The Secretary may establish divisions or offices in the Department to carry out the responsibilities for improvements, grounds, and multiservice centers under the jurisdiction of the Department.

§4–604.

For all improvements, grounds, and multiservice centers under the jurisdiction of the Department, the responsibilities of the Department include:

(1) keeping a complete inventory of movable property assigned to the Department;

(2) supervising utility and sanitation services and fire and safety systems;

(3) supervising repairs and other work;

(4) landscaping;

(5) purchasing carpets, equipment, furniture, and supplies;

(6) protecting persons and property, including dispersing any assemblage that is unlawful, is dangerous, or obstructs free passage;

(7) preserving and protecting the public peace, health, and safety; and

(8) controlling pedestrian and vehicular traffic, including establishing speed limits and parking and impoundment regulations for parking garages, surface parking lots, roads, and sidewalks that are owned or leased by the State and that are within the improvements, grounds, and multiservice centers.

§4–605.

(a) (1) In accordance with the provisions of the State Personnel and Pensions Article, the Secretary may establish a police and security force to protect people and property on or about improvements, grounds, and multiservice centers under the jurisdiction of the Department, and in the surrounding areas of the buildings and grounds in Annapolis and Baltimore City as described in § 4–601(1) and (2) of this subtitle.

(2) The police and security force may include sworn police officers.

(b) A member of the police and security force may not be involuntarily transferred from a site to another site.

(c) A member of the police and security force has the same powers as a sheriff or police officer under § 2–101 of the Criminal Procedure Article only if the member:

(1) meets the legal requirements set forth by the Maryland Police Training Commission; and

(2) is designated by the Department as a police officer.

§4–606.

(a) In this section, "Chief of Police" means:

(1) as to improvements, grounds, and multiservice centers in the City of Annapolis, the Chief of Police of the City of Annapolis;

(2) as to improvements, grounds, and multiservice centers in Baltimore City, the Police Commissioner of Baltimore City; and

(3) as to improvements, grounds, and multiservice centers not located in the City of Annapolis or Baltimore City, the head of the local police force of the county in which the improvements, grounds, or multiservice centers are located.

(b) The Secretary has concurrent authority with the Chief of Police to enforce the criminal laws and parking and motor vehicle laws on streets adjacent to all improvements, grounds, and multiservice centers under the jurisdiction of the Department, and in the surrounding areas of the buildings and grounds in Annapolis and Baltimore City as described in § 4–601(1) and (2) of this subtitle.

§4–607.

(a) The Secretary may adopt regulations for the operation, maintenance, and security of the improvements, grounds, and multiservice centers under the jurisdiction of the Department.

(b) Any regulation adopted under this section shall be conspicuously posted.

(c) A person who violates a regulation adopted under this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $20 plus costs. A person who fails to pay any fine or costs imposed under this section may be imprisoned in jail for a period not exceeding 30 days.

§4–608.

Annually, the State shall appropriate and pay to the Mayor and Aldermen of the City of Annapolis the sum provided in the State budget as payment for:

(1) the collection of refuse from State buildings located in the City of Annapolis; and

(2) other services provided to the State by the City of Annapolis.

§4–701.

In this subtitle, "Board" means the State Board of Architectural Review.

§4–702.

There is a State Board of Architectural Review in the Department.

§4–703.

(a) (1) The Board consists of 7 members.

(2) (i) Upon the recommendation of the Secretary and with the advice and consent of the Senate, the Governor shall appoint the members from a list of names:

1. of architects, submitted by the Baltimore, Chesapeake Bay, and Potomac Valley chapters of the American Institute of Architects;

2. of engineers, submitted by the Maryland Society of Professional Engineers; and

3. of landscape architects, submitted by the Maryland Chapter of the American Society of Landscape Architects.

(ii) There shall be at least 5 names on the list submitted by each organization.

(3) The Board shall consist of architects and at least 1 engineer, 1 landscape architect, and 1 architect who specializes or has particular experience in building preservation.

(b) The term of a member is 4 years.

(c) A member of the Board:

(1) may not receive compensation; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§4–704.

Except for the Department of Transportation and the Maryland Transportation Authority in connection with the construction of roads, bridges, or highways, each State agency shall refer to the Board any major architectural problem or plan concerning the construction, reconstruction, or repair of a State building.

§4–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Building" means:

(1) any new structure with an area of at least 5,000 square feet;

(2) any change to an existing structure that:

(i) will add at least 10% gross floor space to the structure and has an estimated construction cost of more than $25,000; or

(ii) constitutes a major renovation; or

(3) any structure with an area of at least 5,000 square feet that is leased or owned by the State.

(c) "Energy-consumption analysis" means an evaluation, by type and amount of energy used, of:

(1) each piece of equipment that serves a building, including any piece of equipment that is used:

(i) to cool the building;

(ii) to heat the building; or

(iii) to heat water used in the building;

(2) each piece of equipment on the building site that is:

(i) used to generate electricity for the building; or

(ii) powered, in whole or in part, by coal, electricity, natural gas, oil, sun, or wind; and

(3) each conservation measure included in the building that decreases the energy requirements of the building.

(d) "Energy performance index" means a number that:

(1) describes the energy requirements of a building measured at the building boundaries under defined internal and external ambient conditions over an entire seasonal cycle; and

(2) is stated either:

(i) per square foot of floor space in the building; or

(ii) per cubic foot of occupied volume of the building.

(e) "Life of the building" has the meaning established by the Department under § 4-808 of this subtitle.

(f) "Life-cycle costs" means the sum of the following costs of a building:

(1) the cost of initial construction;

(2) the cost of all energy conservation measures;

(3) the cost of operation and maintenance, including labor and materials, for the life of the building;

(4) the cost, over the life of the building, of the fuel used by:

(i) the equipment that controls or provides the humidity, lighting, power, temperature, and ventilation of the building; and

(ii) other energy-using equipment in the building; and

(5) the other costs incident to owning the building.

(g) "Primary procurement unit" has the meaning provided in § 11-101 of this article.

§4–802.

To encourage the consideration of energy efficiency in building design and to establish a model for future application in the private sector, it is the policy of the State that any building financed or constructed by the State or with State assistance must be designed and constructed to:

(1) minimize the cost to the State; and

(2) achieve the most efficient use of energy resources in the operation and maintenance of the building.

§4–803.

(a) To save both cost and energy, the Department, in cooperation with the Maryland Energy Administration, shall project life-cycle costs and perform an energy consumption analysis during the preliminary design phase of the construction or renovation of any building.

(b) Each construction appropriation shall require a State agency, including a district school board, to obtain a projection of life-cycle costs and an energy consumption analysis from the Department.

§4–804.

When a primary procurement unit replaces or supplements a major item of energy-consuming equipment in an existing building owned or leased by the State, the procurement of the equipment shall be made on the basis of a life-cycle cost analysis of

alternatives in accordance with standards established under § 4-808 of this subtitle.

§4–806.

(a) So that it can audit and evaluate competing design proposals, the Department, in cooperation with the Maryland Energy Administration, shall set standards for energy performance indices.

(b) As experience develops on the energy performance achieved in State buildings, the energy performance indices will serve as a measure of building performance with respect to energy consumption.

(c) The Department, in cooperation with the Maryland Energy Administration, shall set energy performance standards that require the average energy consumption in State buildings be reduced from the level in 2005 as follows:

(1) 5% by 2009; and

(2) 10% by 2010.

(d) (1) (i) Except as provided in subsection (f) of this section, by December 31, 2007, each State agency shall conduct an analysis on each of the buildings under its jurisdiction of its gas and electric consumption and the cost of this consumption under the direction of the Maryland Energy Administration and in coordination with the Department of General Services.

(ii) The analysis required in subparagraph (i) of this paragraph shall include an examination of methods to achieve energy and costs savings, including:

1. the installation of more efficient lighting systems, including relamping;

2. the installation of more efficient heating and cooling systems;

3. the installation of water conservation devices;

4. weatherization; and

5. modification of lighting, heating, and cooling practices such as turning off lights when not in use and better thermostatic controls.

(2) (i) By July 1, 2008, each State agency shall upgrade its energy conservation plan developed in consultation with the Maryland Energy Administration and the Department of General Services to achieve the energy performance standards set under subsection (c) of this section.

(ii) The plan required under subparagraph (i) of this paragraph

shall include provisions for the training of State personnel, including management and maintenance personnel, in conservation practices that reduce the consumption of energy and assist the agency in achieving the standards set under subsection (c) of this section.

(iii) In the development and implementation of the provisions of subparagraph (ii) of this paragraph, each agency shall consider alternative financing opportunities in shared savings and performance contracting as administered by the Maryland Energy Administration and include an analysis of the payback and cost advantage to the State of shared savings and performance contracting.

(e) (1) All plans developed in accordance with subsection (d) of this section shall be filed with the Maryland Energy Administration.

(2) The Maryland Energy Administration, in coordination with the Department of General Services, shall review and analyze these plans and submit to the Governor the plans and proposals to implement the plans.

(f) (1) Except as provided in paragraph (2) of this subsection, this section does not apply to a building under the jurisdiction of the Department of Transportation.

(2) The Department of Transportation shall comply with the requirements of this section for any office building under its jurisdiction, if the building contains:

(i) the Department's headquarters; or

(ii) the administrative offices of a Modal Administration in the Department of Transportation.

§4–807.

(a) The Department, in cooperation with the Maryland Energy Administration, shall establish standards and procedures, including energy conservation performance guidelines, for evaluating the efficiency of the design for any proposed State-financed or State-assisted building construction.

(b) The standards shall be based on materials developed by the Department, in cooperation with the Maryland Energy Administration, and on the best currently available methods of evaluating design efficiency, including methods developed or used by:

(1) the Department of Housing and Urban Development and other federal agencies;

(2) the National Institute of Standards and Technology; and

(3) professional societies.

(c) The Department, in cooperation with the Maryland Energy Administration, shall update the standards and procedures by March 1 of each odd-numbered year.

§4–808.

(a) To determine life-cycle costs, the Department, in cooperation with the Maryland Energy Administration, shall establish standards that require at least:

(1) an evaluation of:

(i) the amount and type of glass used in the building and the directions of exposure;

(ii) the effect of insulation incorporated into the design of the building;

(iii) the effect of the use of active and passive solar energy systems;

(iv) if wind or solar energy is used, the orientation and integration of the building with respect to its site; and

(v) the variable occupancy and operating conditions of the building and its parts;

(2) an energy consumption analysis of each major piece of equipment in any of the following systems serving the building:

(i) the cooling system;

(ii) the heating system;

(iii) the hot water system;

(iv) the lighting system;

(v) the ventilation system; and

(vi) any other major energy-using system; and

(3) a comparison of possible alternative energy systems:

(i) that would use the most plentiful and available energy resources in combinations that would result in maximum energy efficiency, both in the building and at the source; and

(ii) with respect to the projected annual energy consumption of the major energy-using equipment of each system over the life of the building.

(b) To evaluate life-cycle costs, the Department shall:

(1) adopt and uniformly apply a definition of the "life of the building"; and

(2) provide defending criteria for the definition adopted.

§4–809.

(a) There is a Maryland Green Building Council.

(b) The Council shall include:

(1) the Secretary of General Services, or the Secretary's designee;

(2) the Secretary of Budget and Management, or the Secretary's designee;

(3) the Secretary of the Environment, or the Secretary's designee;

(4) the Secretary of Housing and Community Development, or the Secretary's designee;

(5) the Secretary of Natural Resources, or the Secretary's designee;

(6) the Secretary of Planning, or the Secretary's designee;

(7) the Secretary of Transportation, or the Secretary's designee;

(8) the Director of the Maryland Energy Administration, or the Director's designee;

(9) the Director of the Interagency Committee on Public School Construction, or the Director's designee;

(10) the Chancellor of the University System of Maryland, or the Chancellor's designee; and

(11) six members appointed by the Governor to represent environmental, business, and citizen interests, one of whom has expertise in energy conservation or green building design standards.

(c) (1) The term of a member appointed by the Governor is 2 years.

(2) The terms of appointed members are staggered.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the remainder of that term and until a successor is appointed and qualifies.

(5) The Governor may remove an appointed member for incompetence,

misconduct, or failure to perform the duties of the position.

(6) A member appointed by the Governor may not receive compensation, but is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) (1) The Governor shall appoint a chair from among the Council members.

(2) The Council may act with an affirmative vote of nine members.

(e) Staff support to the Council shall be provided by the Department of General Services, with assistance as necessary to be furnished by other involved agencies and units of State government.

(f) The Maryland Green Building Council shall:

(1) evaluate current high performance building technologies;

(2) provide recommendations concerning the most cost–effective green building technologies that the State might consider requiring in the construction of State facilities, including consideration of the additional cost associated with the various technologies;

(3) provide recommendations concerning how to expand green building in the State;

(4) develop a list of building types for which green building technologies should not be applied, taking into consideration the operational aspects of facilities evaluated, and the utility of a waiver process where appropriate; and

(5) establish a process for receiving public input.

(g) On or before November 1 of each year, the Council shall report to the Governor and the General Assembly, in accordance with § 2–1246 of the State Government Article, as to recommendations for the implementation plan for a higher performance building program in the State and any progress that has been made during the preceding year.

§5–101.

(a) In this title the following words have the meanings indicated.

(b) "Department" means the Department of Planning.

(c) "Secretary" means the Secretary of Planning.

§5–102.

This title does not limit any planning powers that are conferred on any unit of

the State government or of a local government by any other State law or local law that existed on June 1, 1959.

§5–201.

(a) There is a Department of Planning, established as a principal department of the State government.

(b) The head of the Department is the Secretary of Planning, who shall be appointed by the Governor with the advice and consent of the Senate.

(c) The Secretary serves at the pleasure of the Governor and is responsible directly to the Governor.

(d) (1) The Secretary shall advise the Governor on all matters assigned to the Department and is responsible for carrying out the Governor's policies on these matters.

(2) The Secretary is responsible for the operation of the Department and shall establish guidelines and procedures to promote the orderly and efficient operation of the Department.

(3) The Secretary may establish, reorganize, or abolish areas of responsibility in the Department as necessary to fulfill the duties assigned to the Secretary.

(e) The Secretary is entitled to the salary provided in the State budget.

§5–202.

(a) The Secretary may employ a staff in accordance with the State budget.

(b) Each staff assistant in charge of a particular area of responsibility and each professional consultant is in the executive service, management service, or is a special appointment in the State Personnel Management System and is appointed by and serves at the pleasure of the Secretary.

(c) Except as provided in subsection (b) of this section or otherwise by law, the Secretary shall appoint and remove all other staff in accordance with the provisions of the State Personnel and Pensions Article.

(d) (1) The Secretary may review any personnel action taken by any unit in the Department.

(2) The appointment or removal of personnel by a board, division, or other agency within the jurisdiction of the Department is subject to the approval of the Secretary.

(3) The Secretary may delegate the power of approval to the heads or

governing bodies of the boards, commissions, divisions, or other agencies within the jurisdiction of the Department.

§5–203.

(a) The Secretary is responsible for the budget of the Department.

(b) (1) The Secretary may adopt regulations for the Department.

(2) The Secretary shall review and shall have the power to approve or disapprove or revise the regulations of all boards, commissions, divisions, and other agencies within the jurisdiction of the Department.

(c) In addition to the meetings of any board or commission within the Department that are provided for by law or are called by the chair of the board or commission, the Secretary, whenever appropriate, may call a meeting of a board or commission to consider any subject that the Secretary considers necessary and proper.

(d) All boards, commissions, divisions, and other agencies of the Department shall report to the Secretary or the Secretary's designee as provided in regulations or written directives of the Secretary.

(e) The Secretary may create any citizens' advisory body that the Secretary considers necessary for the operation of the Department.

(f) The Secretary shall have a seal.

(g) (1) The Secretary is responsible for the comprehensive planning of programs and services of the Department.

(2) The Secretary shall review and approve or disapprove the plans of the units in the Department.

(h) The Secretary or a staff member of the Department designated by the Secretary shall have access to information that relates to State planning in the possession of any unit of the State government, of a regional government, or of a local government.

(i) If the entry is made in a manner so as to cause no unnecessary injury, the Secretary or a staff member of the Department designated by the Secretary may enter, at any reasonable hour, on any land in order to make examinations and surveys that relate to State planning.

(j) After providing adequate public notice, the Secretary shall hold hearings on matters of State planning whenever it is in the public interest to do so.

(k) In the interest of intergovernmental cooperation, the Secretary shall attend:

(1) meetings of regional planning commissions;

(2) interstate planning conferences; and

(3) other planning conferences.

(l) The Secretary may contract for professional or consultant services for work related to State planning as provided in the State budget.

(m) The Secretary may exercise any power necessary and proper to discharge the Secretary's duties.

§5–204.

(a) The Attorney General is legal advisor to the Department.

(b) (1) The Attorney General shall assign to the Department the number of assistant Attorneys General authorized by law to be assigned to the Department and any additional ones necessary to give effective legal advice and counsel.

(2) The Attorney General also shall designate an assistant Attorney General as Counsel to the Department.

(c) (1) The Counsel to the Department may have no duty other than:

(i) to give the legal aid, advice, and counsel required by the Secretary and any other official of the Department;

(ii) to supervise the other assistant Attorneys General assigned to the Department; and

(iii) to perform for the Department the duties that the Attorney General assigns.

(2) The Counsel shall perform these duties subject to the control and supervision of the Attorney General.

(3) After the Attorney General designates the Counsel to the Department, the Attorney General may not reassign the Counsel without consulting the Secretary.

§5–301.

(a) The Department is the staff agency of the Governor for planning matters with the exception of capital facilities planning.

(b) (1) The Department is the principal staff agency for planning matters concerning the resources and development of the State.

(2) In this capacity, the Department shall undertake special studies,

submit reports, and give advice to the Governor at the request of the Governor.

§5–302.

The Department shall function in part as an advisory, consultative, and coordinating agency.

§5–303.

To promote the health, safety, and general welfare of the citizens of the State, the Department shall prepare, recommend, and periodically revise a balanced, integrated program for the development and effective use of the natural and other resources of the State.

§5–304.

(a) The Department may accept funds, grants, and services from public and private sources to carry out its powers and duties.

(b) (1) (i) The Department may charge reasonable fees for services and products.

(ii) The fees charged may not exceed the cost of providing the service or product.

(2) All fees collected under this subsection shall be credited to a continuing nonlapsing fund that is not subject to § 7-302 of this article.

(3) Subject to the appropriation process in the State budget, the Department shall use the fund for the costs of operating.

(4) The State Treasurer shall hold and the State Comptroller shall account for the fund.

(5) The fund shall be invested and reinvested in the same manner as other State funds.

(6) Investment earnings accrue to the benefit of the fund.

§5–305.

(a) With respect to any administrative, judicial, or other proceeding in the State concerning land use, development, or construction, the Department has the right to:

(1) intervene as a party; or

(2) file a formal statement expressing the views of the Department and any other unit of the State government concerning environmental or economic impact.

(b) The Department may intervene only in accordance with the rules of procedure and law that apply to the proceeding.

(c) After intervening, the Department has the standing and all the rights of a party in interest or an aggrieved party, including all rights of judicial review and appeal.

(d) The Department and the governing body of each local subdivision shall establish procedures for notifying the Department of each application for zoning, a permit, or authority to use, develop, or construct on land, whenever the application:

(1) has more than local impact; and

(2) is of substantial State or regional interest.

§5–306.

(a) The Department shall prepare population projections for the State and for each county and municipal corporation in the State.

(b) The population projections shall include details of age, sex, and race.

(c) The Department shall prepare the population projections for periods of 20 years, in 5-year intervals beginning with 1990.

(d) Beginning in 1991, the Department shall revise the population projections at least every 3 years.

(e) In preparing the population projections for the Washington metropolitan area, the Department may use the population figures developed by the Maryland-National Capital Park and Planning Commission.

§5–307.

(a) Each year, no later than 60 days before the General Assembly convenes for its regular session, the Department shall submit a report to the Governor.

(b) The annual report shall include:

(1) a summary and description of the nature of every section of the State Development Plan that has been:

(i) added, deleted, or revised since the last annual report; and

(ii) filed by the Governor under § 5-605 of this title;

(2) a summary of each important study wholly or partly completed by the Department since the last annual report; and

(3) summaries of the work of the Department and of the State Economic Growth, Resource Protection, and Planning Commission.

(c) The Department shall distribute copies of the annual report:

(1) subject to § 2-1246 of the State Government Article, to the General Assembly;

(2) to the head of each department of the State government;

(3) to the head of each local or regional planning agency in the State; and

(4) on request, to any federal agency.

(d) The Department shall make copies of the annual report available for general distribution or sale.

§5–308.

(a) On the request of the Governor, the General Assembly, or the Legislative Policy Committee, the Department shall submit a special report on any aspect of the work of the Department that is considered to be of current interest.

(b) The Department may submit a special report on any aspect of its work that the Secretary considers to be of current interest.

(c) The Department shall make special reports on major research and planning projects, as distinguished from mere compilations of current information, available as soon as practicable after completion.

(d) The Department shall distribute a copy of a special report:

(1) subject to § 2-1246 of the State Government Article, to the General Assembly;

(2) to the head of each department of the State government;

(3) to the head of each local or regional planning agency in the State; and

(4) on request, to any federal agency.

(e) The Department shall make copies of special reports available for general distribution or sale.

§5–309.

The Department may exercise any power necessary and proper to discharge its duties.

§5–310.

(a) Each unit of the State government shall notify the Department in writing of:

(1) any real property that is in excess of the needs of the unit; or

(2) any substantial change to any real property owned by the State.

(b) Subject to subsection (c) of this section, for any real property identified under subsection (a) of this section, the Department shall:

(1) study the proper disposition of the property;

(2) determine whether any local government or unit of the State government is interested in the property; and

(3) make an appropriate recommendation to the using unit of the State government and to the Board of Public Works.

(c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, this subsection applies to the following categories of real property owned by the State in fee simple:

1. property acquired with Program Open Space funds under Title 5, Subtitle 9 of the Natural Resources Article;

2. property acquired with Rural Legacy Program funds under Title 5, Subtitle 9A of the Natural Resources Article;

3. public park land and recreational areas acquired under Title 5, Subtitle 10 of the Natural Resources Article;

4. wildland and open areas acquired under Title 5, Subtitle 12 of the Natural Resources Article;

5. heritage conservation areas acquired with funds under Title 5, Subtitle 15 of the Natural Resources Article;

6. forest conservation areas acquired under Title 5, Subtitle 6 of the Natural Resources Article;

7. GreenPrint areas acquired under Title 5, Subtitle 15A of the Natural Resources Article;

8. property identified in the most current public lands acreage report published by the Department of Natural Resources that is classified under designated land units or under undesignated land units within an agency or program; and

9. outdoor recreation, open space, conservation, preservation, park, or forest land property identified by the Department of Natural Resources in regulation.

(ii) This subsection does not apply to property declared excess for purposes of corrective disposal, including boundary or access corrections and minor road improvements for public safety.

(2) When a unit notifies the Department under subsection (a) of this section, the unit shall include with the notification:

(i) the history of the acquisition of the property;

(ii) the rationale for the acquisition provided to the Board of Public Works at the time of the acquisition;

(iii) any future conservation plans for the property;

(iv) the environmental and ecological attributes of the property;

(v) the cultural and historical significance of the property;

(vi) the relationship of the property to surrounding and nearby real properties;

(vii) the actual cost savings, if any, that the unit anticipates will result from the disposal of the property;

(viii) any expected revenues that would be generated from the disposal of the property; and

(ix) any other justification or basis that the unit relied on in its determination that the property is in excess of its needs.

(3) The information provided under paragraph (2) of this subsection shall be made available by the unit or the Department on request.

(4) After the Department receives notice from a unit under subsection (a) of this section, the Department shall:

(i) notify:

1. the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Environmental Matters Committee, and the House Appropriations Committee by electronic mail or facsimile and by first-class mail;

2. the General Assembly members who represent the legislative district in which the property is located by electronic mail or facsimile and

by certified mail; and

3. owners of property adjacent to the property declared excess:

A. in writing by first-class mail; and

B. if practicable, by posting public notification signs on the property declared excess;

(ii) 1. hold a public hearing in the county or legislative district in which the property is located within 14 days after receiving a request for a hearing if:

A. within 14 days after the Department provides the notice required under item (i) of this paragraph, the Department receives a request for a public hearing from a person who received notice under item (i) of this paragraph or who resides in the county in which the property is located; and

B. the property has an estimated value of over $100,000; or

2. if a public hearing is not required under item 1 of this item, accept and consider written public comments on the declaration of the property as excess;

(iii) in conjunction with the local governing body of the jurisdiction in which the property is located, determine whether any proposed disposition would conform to the local comprehensive plan; and

(iv) 1. consolidate all information received by and all determinations made by the Department into a public record available on request; and

2. submit the record to the using unit.

(5) After review of the record created under paragraph (4) of this subsection, the using unit may rescind the notice of excess property submitted under subsection (a) of this section.

(6) If the using unit does not rescind the notice of excess property, the Department shall:

(i) based on all of the information collected by the Department, make an appropriate recommendation to the using unit and the Board of Public Works; and

(ii) notify the persons identified under paragraph (4)(i)1 and 2 of this subsection of the recommendation.

§5–311.

(a) The Secretary or a staff member of the Department designated by the Secretary shall have access to information that relates to capital facilities planning in

the possession of any unit of the State government.

(b) If the entry is made in a manner so as to cause no unnecessary injury, the Secretary or a staff member of the Department designated by the Secretary may enter, at any reasonable hour, on any State-owned land in order to make examinations and surveys that relate to capital facilities planning.

§5–401.

(a) To establish relative priorities and avoid duplication and conflicts, the Department shall advise the Governor on the means and methods available to coordinate the plans and programs of all units of the State government.

(b) To avoid duplication and conflicts, the Department shall advise the Governor on the means and methods available to coordinate the plans and programs of federal, State, regional, and local governments.

§5–402.

(a) The Department shall:

(1) harmonize its planning activities with the planning activities of other units of the State government;

(2) coordinate the plans and programs of all units of the State government;

(3) cooperate with and assist other units of the State government in the execution of their planning functions, to harmonize their planning activities with the State Development Plan; and

(4) promote the State's Economic Growth, Resource Protection, and Planning Policy set forth in Subtitle 7A of this title.

(b) The Department shall:

(1) harmonize its planning activities with the planning activities of local governments; and

(2) cooperate with and assist local governments in the execution of their planning functions, to harmonize their planning activities with the State Development Plan.

(c) The Department shall:

(1) coordinate State programs with the federal government;

(2) cooperate with and assist units of the federal government in the execution of their planning functions, to harmonize their planning activities with the State Development Plan; and

(3) cooperate with, confer with, and, on request, provide information to:

(i) units of the federal government; and

(ii) local or regional agencies that are created under federal programs or that receive federal support.

(d) As far as possible, the Department shall cooperate with and confer with planning agencies of other states or of regional groupings of states.

(e) The Department shall cooperate with and assist regional and private planning agencies in the execution of their planning functions, to harmonize their planning activities with the State Development Plan.

(f) The Department shall exercise authority as the lead agency in coordinating the State's land preservation efforts and focus its planning efforts on targeted land preservation.

(g) The Department shall plan for the efficient use of inactive railroad corridors by:

(1) examining all opportunities, both present and future, for acquisition or use of inactive railroad corridors;

(2) coordinating and working with the Departments of Natural Resources, Transportation, Business and Economic Development, and the State Railroad Administration and other agencies to determine the suitability and feasibility of acquiring or using inactive railroad corridors for recreational trails, public utilities, or future transportation purposes; and

(3) taking part in United States Interstate Commerce Commission proceedings regarding the abandonment or the discontinuance of use of railroad corridors on behalf of the State.

(h) The Department shall:

(1) review transportation plans and programs prepared by the Department of Transportation and regional planning agencies and make recommendations regarding the relationship between transportation and planned land use; and

(2) evaluate proposed transportation improvements and policies to assure consistency between transportation investments and the State Economic Growth, Resource Protection, and Planning Policy.

(i) The Department may provide advice to local governments regarding the impact on growth and development of:

(1) transportation components of local plans;

(2) aspects of local land use regulation affecting transportation; and

(3) local transportation improvements.

§5–403.

(a) The Department:

(1) shall provide planning assistance, including surveys, land use studies, urban renewal plans, technical services, and other planning work, to local governments; and

(2) may provide financial and other planning assistance to local governments as provided in the State budget.

(b) The Department may provide financial or other planning assistance to regional planning agencies as provided in the State budget.

(c) Before providing the assistance, the Secretary shall consider the adequacy and competency of any regional or local planning agency that requests financial assistance from the Department.

(d) The Secretary may require any local government or regional planning agency that receives financial or other planning assistance from the State to submit to the Secretary a copy of its planning budget.

(e) (1) The Secretary may require any local government or regional planning agency that receives financial or other planning assistance from the State to submit to an annual audit of its financial operations related to planning.

(2) The audit shall be performed by the Legislative Auditor or by an auditor or accountant legally qualified to perform municipal audits.

(3) The Secretary may accept an audit by the federal unit for a local government that receives financial or other planning assistance from a unit of the federal government.

(f) Whenever the Department requests and receives financial or other assistance from any unit of the federal government for planning assistance to a local government or a regional planning agency, the Department shall satisfy any requirement imposed by federal law.

§5–404.

(a) The Department may collect reimbursement, in accordance with an agreement, for technical services the Department provides under § 5-402 or § 5-403(a)

of this subtitle.

(b) Except as otherwise provided in subsection (a) of this section, the Department may require a contribution in any amount from a local government or regional planning agency that requests assistance under § 5-403 of this subtitle.

(c) If federal law requires a contribution in any amount as a condition before a local government or a regional planning agency may receive financial or other planning assistance, the Department may supply all or part of the contribution as provided in the State budget, unless the federal law specifies that the local government or regional planning agency shall make the contribution.

§5–405.

(a) The Secretary may make an agreement with the head of another unit of the State government, of a local government, of a regional or local planning agency, or of a unit of the federal government for the temporary exchange or transfer of employees:

(1) from the Department to the unit, local government, or agency; or

(2) from the unit, local government, or agency to the Department.

(b) An employee may not be transferred or exchanged under this section for more than 90 days at a time.

(c) The approval of the Secretary of Budget and Management is not required for an agreement under this section.

(d) For purposes of Division I of the State Personnel and Pensions Article, an employee transferred or exchanged under this section is considered to continue in the position from which the employee is temporarily transferred or exchanged.

(e) The Secretary may agree to reimburse, or collect reimbursement from, another unit of the State government, a local government, a regional or local planning agency, or a federal agency for a transfer or exchange of employees under this section.

§5–406.

In the exercise of its planning functions, the Department shall cooperate with any unit of the State or federal government in planning for civil defense.

§5–407.

(a) In this section, "Commission" means the Maryland-National Capital Park and Planning Commission.

(b) To provide regional planning in the area of the State subject to the jurisdiction of the Commission, and except as otherwise provided in this section, the

Department may include in the annual budget of the Department the amount the Secretary considers appropriate as the State's share of the cost of regional planning projects programmed by the Commission for the following fiscal year.

(c) The amount included in the annual budget under subsection (b) of this section may not exceed $100,000 in any single year.

(d) The Secretary shall determine which regional planning projects programmed by the Commission qualify for State assistance.

(e) (1) The Commission shall provide the Secretary with any information the Secretary requires to determine which regional planning projects programmed by the Commission qualify for State assistance.

(2) On or before August 1 of each year, the Commission shall provide the Secretary with a copy of the proposed budget of the Commission for the following fiscal year. After the copy of the proposed budget is provided to the Secretary, the Commission shall promptly notify the Secretary and obtain the approval of the Secretary for any changes in the proposed budget for regional projects funded under this section.

(f) The Secretary may require an annual audit of the operations of the Commission that relate to any project financed wholly or partly by payments to the Commission from the Department.

§5–408.

(a) There is within the Department a program for certification of effective county agricultural land preservation programs.

(b) A county may apply to the Department and the Maryland Agricultural Land Preservation Foundation for certification under this section only if the county agricultural preservation advisory board and the governing body of the county both:

(1) approve the program established at the county level as being an effective approach to agricultural land preservation; and

(2) approve the county's application for certification.

(c) (1) A county may apply for certification under this section if the county has established programs to encourage participation of farmers in agricultural land preservation efforts at the county level, including purchase of development rights or financial enhancements related to purchase of development rights, outside of the State Agricultural Land Preservation Foundation.

(2) County programs shall include:

(i) any program that the Department and the Foundation:

1. determine is necessary for an effective county agricultural land preservation program; and

2. require by regulation; and

(ii) beginning in fiscal year 2009, a priority preservation area element established in accordance with § 2–518 of the Agriculture Article.

(d) (1) To apply for certification under this section, a county shall file with the Maryland Agricultural Land Preservation Foundation and the Department an application in the form that the Department and the Foundation jointly require by regulation.

(2) Within 60 days after notification of an application for certification:

(i) the Foundation shall advise the Department as to whether it approves the application; and

(ii) the Department shall notify the county as to whether the county's application for certification has been approved.

(e) The Department and the Foundation may not certify a county under this section unless the Department and the Foundation determine that:

(1) the proposed county program for the purchase of development rights or financial enhancements related to the purchase of development rights is likely to be successful;

(2) the county has committed to spend additional local funds for the purchase of development rights or enhancements related to the purchase of development rights in an amount equal to or exceeding the amount of the additional funds that will be available as a result of certification; and

(3) beginning in fiscal year 2009:

(i) the county's priority preservation area has been established in accordance with § 2–518 of the Agriculture Article; and

(ii) the county's priority preservation area element in the comprehensive plan meets the requirements set forth in subsection (f) of this section.

(f) The Department and the Foundation may not certify a priority preservation area of a county under this section unless the Department and the Foundation agree that the county's comprehensive plan:

(1) establishes appropriate goals for the amount and types of agricultural resource land to be preserved in the priority preservation area;

(2) describes:

(i) the county's strategy to support normal agricultural and forestry activities in conjunction with the amount of development permitted in the priority preservation area; and

(ii) the ordinances, regulations, and procedures the county is using in the priority preservation area to support the ability of working farms to engage in normal agricultural and forestry activities;

(3) includes maps showing the county's priority preservation area;

(4) describes the priority preservation area in the context of the county's growth management plans;

(5) describes the way in which preservation goals will be accomplished in the priority preservation area, including the county's strategy to:

(i) protect land from development through zoning;

(ii) preserve the desired amount of land with permanent easements; and

(iii) maintain a rural environment capable of supporting normal agricultural and forestry activities;

(6) includes an evaluation of the ability of the county's zoning and other land use management practices to:

(i) limit the impact of subdivision and development;

(ii) allow time for easement purchase; and

(iii) achieve the Foundation's goals before development excessively compromises the agricultural and forest resource land;

(7) identifies shortcomings in the abilities of the county's zoning and land management practices and identifies current or future actions to correct the shortcomings; and

(8) describes the methods the county will use to concentrate preservation funds and other supporting efforts in the priority preservation area to achieve the goals of the Foundation and the county's acreage preservation goal.

(g) In certifying a county's priority preservation area, the Department and the Foundation shall ensure that:

(1) the county has included all the information required by subsection (f) of this section in the county's comprehensive plan; and

(2) the size of the county's priority preservation area is appropriate in relation to the county's acreage preservation goal.

(h) (1) A county that has been certified under this section as having established an effective county agricultural land preservation program is eligible for:

(i) the additional funds available to certified counties under § 2–508.1 of the Agriculture Article and § 13–306 of the Tax – Property Article; and

(ii) as of July 1, 2008, funds provided for the Maryland Agricultural Land Preservation Foundation over and above the funding the Foundation receives in accordance with § 2–508.1 of the Agriculture Article and §§ 13–209 and 13–306 of the Tax – Property Article.

(2) A county that has been certified under this section may use the additional funds available as a result of certification:

(i) for the purposes stated under § 2–508.1 of the Agriculture Article and § 13–306 of the Tax – Property Article;

(ii) to purchase easements in its priority preservation area;

(iii) for a Critical Farms Program approved by the Foundation;

(iv) for an installment purchase agreement program approved by the Foundation; or

(v) for the Next Generation Farmland Acquisition Program approved by the Foundation.

(i) (1) A certification under this section is effective for 3 years and the decision by the Department and the Foundation as to certification is final with no right to appeal.

(2) At the request of the county, the Department and the Foundation shall recertify under this section a county agricultural land preservation program if:

(i) the county has maintained a successful program of purchase of development rights or financial enhancements related to purchase of development rights during the period of certification;

(ii) conditions in the county priority preservation area remain in accordance with the requirements of § 2–518 of the Agriculture Article;

(iii) the county provides an update on the method, evaluation, shortcomings, and future actions that the county is using or will use to achieve preservation goals, as required under subsection (f)(6) through (8) of this section; and

(iv) the update demonstrates significant progress toward

achievement of preservation goals in the priority preservation area.

(j) The Department and the Foundation shall jointly adopt regulations for administration of the certification program.

(k) In accordance with the requirements of § 2–1246 of the State Government Article, the Department and the Foundation shall report on the certification program on or before January 15 of each year to:

(1) the Governor;

(2) the Secretary of Agriculture and the Secretary of Planning;

(3) the Senate Budget and Taxation Committee and the Senate Education, Health, and Environmental Affairs Committee; and

(4) the House Appropriations Committee, the House Environmental Matters Committee, and the House Committee on Ways and Means.

§5–501.

The Department shall establish a central depository for all general, area, and functional plans related to this title, and all amendments or revisions to these plans, that are prepared by:

(1) any unit of the State government, of a regional government, or of a local government; or

(2) any interstate agency.

§5–502.

Each unit of the State government, of a regional government, or of a local government, and each interstate agency, shall submit to the Department the plans required by regulations adopted by the Secretary.

§5–503.

(a) The Department shall establish statewide classification standards for geographically referencing all basic planning information collected by any unit of the State government.

(b) The classification standards may be used by any unit of the State or of a local government.

§5–504.

(a) The Department shall be a repository and clearinghouse for information about real property available for public use.

(b) The Department shall correlate information concerning real property owned by the State or any political subdivision of the State.

(c) (1) The Department shall maintain a current, updated list of real property owned by the State or any political subdivision of the State.

(2) The list shall include pertinent details concerning size, facilities, and value.

(3) A copy of the list and any related information shall be provided to any State agency and the General Assembly upon request.

§5–505.

(a) The Department shall prepare and periodically revise inventory lists of:

(1) the natural resources of the State; and

(2) major public works and private facilities that are important to the development of the State as a whole.

(b) A copy of the inventory list shall be provided to any State agency and the General Assembly upon request.

§5–506.

(a) To the extent relevant to State planning, the Department shall study:

(1) the resources of the State;

(2) existing and emerging problems of agriculture, commerce, housing, industry, local government, population, public service, and transportation; and

(3) related matters affecting the development of the State.

(b) In making the studies, the Department shall seek the cooperation of appropriate:

(1) governmental units;

(2) regional planning commissions;

(3) public or private educational institutions;

(4) public or private research organizations;

(5) civic groups; and

(6) interested persons.

§5–507.

The Department shall provide information to State and local officials and to the public to stimulate public interest and participation in the orderly, integrated development of the State and to foster public awareness and understanding of:

(1) the objectives of the State Development Plan; and

(2) the function of State, regional, and local planning.

§5–508.

Upon request of the General Assembly, the Department shall provide information to and cooperate with the General Assembly and its committees in connection with the studies made by the Department relevant to State planning.

§5–509.

(a) The Department shall serve as a repository and clearinghouse for information concerning federal and State grants, loans, and other financial and technical assistance.

(b) The Department shall adopt regulations that require units of State government:

(1) to submit financial and technical assistance information to the Department; and

(2) to publish information concerning grant application requirements in the Maryland Register in a timely manner.

(c) The Department shall annually publish information concerning State financial and technical assistance in a catalog or catalogs of State assistance programs.

§5–601.

In this subtitle, "Plan" means the State Development Plan.

§5–602.

(a) The Department shall prepare and from time to time revise a plan or plans for development of the State. The plan or plans collectively shall be known as the State Development Plan.

(b) The Department shall prepare the Plan to promote the general welfare and prosperity of the people of the State through the coordinated development of the State.

(c) The Department shall base the Plan on studies of governmental, economic,

physical, and social conditions and trends.

§5–603.

In the preparation and revision of the Plan or any part of it, the Department shall:

(1) seek comments from and consult with the local governments of the areas that are affected by the Plan; and

(2) seek the cooperation and advice of appropriate:

(i) governmental units;

(ii) regional planning commissions;

(iii) public or private educational institutions;

(iv) public or private research organizations;

(v) civic groups; and

(vi) interested persons.

§5–604.

The Plan shall embody the policy recommendations of the Department regarding the economic and physical development of the State.

§5–605.

(a) On completion, the Secretary shall send to the Governor the Plan, any substantial part of the Plan, or any revision to the Plan.

(b) The Governor shall file with the Secretary of State the Plan, part of the Plan, or revision to the Plan, together with any comments made by the Governor, and, in that event:

(1) the Department shall make copies of the material filed available for general distribution or sale; and

(2) the Governor shall send copies of the material filed:

(i) to the head of each unit of the State government; and

(ii) subject to § 2-1246 of the State Government Article, to the General Assembly.

§5–606.

(a) The Plan may not be used to deny:

(1) a State–issued permit; or

(2) State funding:

(i) mandated by statute or regulation; or

(ii) provided for in the State operating budget or capital budget.

(b) The Plan does not:

(1) supersede any State statute or regulation;

(2) supersede any local ordinance or regulation;

(3) affect the delegation of planning and zoning powers granted by the State to local jurisdictions under Division II, Title 9, Subtitles 2 or 3, Title 10, or Title 11 of the Local Government Article and Division I of the Land Use Article; or

(4) overturn or prevent a decision of a local jurisdiction to fund a project.

(c) The Plan may not require a local government to change or alter a local ordinance, regulation, or comprehensive plan.

§5–608.

The Plan shall contain a statement of the objectives, standards, and principles sought to be expressed in the Plan.

§5–609.

The Plan shall contain a comprehensive analysis and evaluation of the capital plans and programs of each unit of the State government.

§5–610.

The Plan shall contain a review and analysis of:

(1) all federal grants, loans, or services available to the State;

(2) all State grants to local governments; and

(3) the impact of any existing or proposed federal program on the State.

§5–611.

(a) The Plan shall identify all areas designated by the Department as areas of critical State concern.

(b) Each county shall recommend to the Department those areas in the county that should be designated as areas of critical State concern.

(c) Before designating an area as an area of critical State concern, the Secretary shall consult with and consider any recommendations submitted by affected political subdivisions.

(d) The Secretary may adopt regulations for the political subdivisions to use in recommending areas to be designated as areas of critical State concern.

(e) The Department shall:

(1) furnish to the governing body of each affected political subdivision the full text of each proposed designation of an area as an area of critical State concern;

(2) give each political subdivision affected by a proposed designation at least 45 days to review and comment on the proposed designation; and

(3) publish its designation of areas of critical State concern, together with all written comments received from political subdivisions regarding the areas designated.

§5–612.

The Plan shall contain recommendations for the most desirable general pattern of land use in the State. The recommendations shall be based on the best available information concerning:

(1) environmental and natural factors, including climate, soil and underground conditions, topography, and water sources and bodies of water;

(2) present and prospective economic bases of the State;

(3) water and sewerage facilities;

(4) trends of industrial, population, or other developments;

(5) habits and standards of life of the people of the State; and

(6) the relation of land use in the State to land use in adjoining areas.

§5–613.

The Plan shall contain recommendations concerning the need for and the

proposed general location of major public works and private facilities, including utilities, flood control works, water reservoirs, pollution control facilities, and military or defense installations, that are of State, as opposed to purely local or regional, concern because of:

(1) their function, size, extent, or legal status;

(2) the fact that their authorization, location, or construction is legally under the jurisdiction of a unit of the State government; or

(3) any other reason that makes inclusion in the Plan appropriate.

§5–614.

The Plan shall recommend a major circulation pattern for the State, including major transportation routes and major terminals that should be used for movement within the State or for movement from and to adjoining areas.

§5–615.

The Plan shall contain the recommendations of the Secretary concerning any current or impending problem that may affect the State as a whole.

§5–701. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 and 489 OF 2010 //

In this subtitle, "Commission" means the Maryland Sustainable Growth Commission.

§5–702. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 and 489 OF 2010 //

There is a Maryland Sustainable Growth Commission.

§5–703. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 AND 489 OF 2010 //

(a) (1) The Commission consists of the following members:

(i) two members of the House Environmental Matters Committee, appointed by the Speaker of the House;

(ii) two members of the Senate Education, Health, and

Environmental Affairs Committee, appointed by the President of the Senate;

(iii) as ex officio members:

1. the Secretary of Planning, or the Secretary's designee;

2. the Secretary of the Environment, or the Secretary's designee;

3. the Secretary of Transportation, or the Secretary's designee;

4. the Secretary of Housing and Community Development, or the Secretary's designee;

5. the Secretary of Natural Resources, or the Secretary's designee;

6. the Secretary of Business and Economic Development, or the Secretary's designee;

7. the Secretary of Agriculture, or the Secretary's designee;

8. the Superintendent of the Maryland State Department of Education, or the Superintendent's designee;

9. the Chair of the Base Realignment and Closure Subcabinet, or the Chair's designee;

10. the Executive Director of the Rural Maryland Council, or the Executive Director's designee; and

11. the Director of the University of Maryland's National Center for Smart Growth, or the Director's designee;

(iv) four representatives of local government:

1. two designated by the Maryland Municipal League; and

2. two designated by the Maryland Association of Counties;

(v) appointed by the Governor:

1. one representative of the smart growth community;

2. one representative of the environmental community;

3. one representative of the residential building and development community;

4. one representative of the commercial building and development community;

5. one representative of the agricultural community;

6. one representative of a rural community;

7. one representative of a citizen organization that addresses housing;

8. one representative of a citizen organization that addresses transportation;

9. one representative from Western Maryland;

10. one representative from Southern Maryland;

11. three representatives from the Washington metropolitan area;

12. three representatives from the Baltimore metropolitan area; and

13. one representative from the Eastern Shore.

(2) (i) The members representing a region of the State shall have knowledge of smart growth and planning issues.

(ii) Of the three members representing the Washington metropolitan area, one shall represent local or regional government.

(iii) Of the three members representing the Baltimore metropolitan area, one shall represent local or regional government.

(iv) Of the members appointed by the Governor, one shall be an architect that:

1. is licensed to practice in the State; and

2. is a resident of the State.

(b) (1) Except for ex officio members or their designees, the term of a member is 5 years.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) If the Governor appoints a regulated lobbyist to serve as a member of the Commission, the lobbyist:

(1) is not subject to § 5–504(d) of the General Provisions Article with respect to that service; and

(2) is not subject to § 5–704(f)(3) of the General Provisions Article as a result of that service.

(d) A member of the Commission:

(1) may not receive compensation as a member of the Commission; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§5–704. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 AND 489 OF 2010 //

(a) The Governor shall designate the Chair and the Vice Chair of the Commission.

(b) The Commission may adopt rules of procedure.

§5–705. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 AND 489 OF 2010 //

The Department of Planning shall provide staff for the Commission.

§5–706. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 AND 489 OF 2010 //

The Commission shall:

(1) assess and advise on the progress of State, regional, and local planning in Maryland in achieving the goals of the State economic growth, resource protection, and planning policy, as defined in § 5–7A–01 of this title;

(2) make recommendations on the adequacy, coordination, and implementation of funding mechanisms and other State assistance for planning activities and infrastructure and land preservation needs, consistent with the State economic growth, resource protection, and planning policy;

(3) promote planning coordination and interjurisdictional cooperation among the State and local jurisdictions and recommend mechanisms to facilitate voluntary joint planning;

(4) advise on the content and preparation of the State development plan, State transportation plan, and State housing plan and the implementation of these plans, including the relationship of these plans with local land use plans;

(5) promote and make recommendations regarding efficient and predictable model State and local development regulations to achieve the goals of the State economic growth, resource protection, and planning policy;

(6) evaluate the continuing viability and effectiveness of the State and local government smart growth indicators contained in § 1–208 of the Land Use Article, and make recommendations for amendments or additions to the indicators;

(7) review the reports of local jurisdictions on adequate public facilities development restrictions required by Title 7, Subtitle 1 of the Land Use Article, and assess whether and to what extent adequate public facilities ordinances affect the achievement of the goals of the State economic growth, resource protection, and planning policy;

(8) develop and assist in the implementation of educational and outreach programs about smart growth;

(9) review periodically the educational requirements for members of planning boards and commissions and boards of appeals required by § 1–206 of the Land Use Article, and evaluate compliance rates for the members;

(10) make recommendations for changes in State law, regulations, policies, and procedures, if any, that the Commission believes are necessary to achieve the State's economic growth, resource protection, and planning policy; and

(11) serve as an advisory board to the Governor's Smart Growth Subcabinet, providing advice and guidance.

§5–707. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2020 PER CHAPTERS 488 AND 489 OF 2010 //

On or before December 1 of each year, the Commission shall report, in accordance with § 2–1246 of the State Government Article, on its activities and recommendations to:

(1) the Speaker of the House;

(2) the President of the Senate;

(3) the House Environmental Matters Committee;

(4) the Senate Education, Health, and Environmental Affairs Committee; and

(5) the Governor.

§5–7A–01.

The State Economic Growth, Resource Protection, and Planning Policy is the following:

(1) quality of life and sustainability: a high quality of life is achieved through universal stewardship of the land, water, and air resulting in sustainable communities and protection of the environment;

(2) public participation: citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals;

(3) growth areas: growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers;

(4) community design: compact, mixed–use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources;

(5) infrastructure: growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner;

(6) transportation: a well–maintained, multimodal transportation system facilitates the safe, convenient, affordable, and efficient movement of people, goods, and services within and between population and business centers;

(7) housing: a range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes;

(8) economic development: economic development and natural resource–based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities are encouraged;

(9) environmental protection: land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy

air and water, natural systems, and living resources;

(10) resource conservation: waterways, forests, agricultural areas, open space, natural systems, and scenic areas are conserved;

(11) stewardship: government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection; and

(12) implementation: strategies, policies, programs, and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State, and interstate levels to achieve these visions.

§5–7A–02.

(a) (1) Except as provided in paragraph (2) of this subsection, with respect to a State public works, transportation, or major capital improvement project funded through State or federal funds, the State may not provide State funding for the project if the project is not consistent with:

(i) the State Economic Growth, Resource Protection, and Planning Policy established in § 5-7A-01 of this subtitle; or

(ii) the local plan of the jurisdiction in which the project is located.

(2) The State may provide State funding for a State public works, transportation, or major capital improvement project funded through State or federal funds which is not consistent with the policy or plan under paragraph (1) of this subsection if the State determines that extraordinary circumstances exist that warrant proceeding with the project and that no reasonably feasible alternative exists.

(b) (1) Except as provided in paragraph (2) of this subsection with respect to a local construction project involving the use of State funds, grants, loans, loan guaranties, or insurance, a local jurisdiction may not approve or construct the project unless the project is consistent with the local plan.

(2) A local jurisdiction may approve and construct a local construction project which is inconsistent with the local plan under paragraph (1) of this subsection if the local jurisdiction determines that extraordinary circumstances exist that warrant proceeding with the project and that no reasonably feasible alternative exists.

(c) By December 1, 1992 the Governor shall establish procedures for review of State projects under subsection (a) of this section, and each local jurisdiction shall establish procedures for the review of local projects under subsection (b) of this section, to:

(1) ensure that the projects are consistent with their respective policy and

plans; and

(2) evaluate extraordinary circumstances under subsections (a)(2) and (b)(2) of this section, respectively.

(d) Each local jurisdiction shall report on or before February 1 of each year to the State Economic Growth, Resource Protection, and Planning Commission on the number and type of projects approved under subsection (b)(2) of this section during the preceding calendar year, including a description of the extraordinary circumstances existing and the alternatives considered, together with any additional information required by the Commission.

§5–7B–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Funding" includes any form of assurance, guarantee, grant payment, credit, tax credit, or other assistance, including a loan, loan guarantee, or reduction in the principal obligation of, or rate of interest payable on, a loan or a portion of a loan.

(c) (1) "Growth–related project" means only the items set forth below:

(i) any major capital project as defined in § 2–103.1(a)(4) of the Transportation Article, except existing transportation facilities projects as defined in § 4–101(h) of the Transportation Article, project planning as defined in § 8–610(i) of the Transportation Article, or initial project planning as defined in § 8–610(e) of the Transportation Article;

(ii) funding by the Department of Housing and Community Development for:

1. construction or purchase of newly constructed single family homes or purchase of loans for newly constructed single family homes under Title 4, Subtitle 2, Subtitle 3, or Subtitle 8 of the Housing and Community Development Article;

2. acquisition or construction of newly constructed multifamily rental housing under Title 4, Subtitle 2, Subtitle 4, or Subtitle 15 of the Housing and Community Development Article; or

3. State–funded neighborhood revitalization projects under Title 6 of the Housing and Community Development Article;

(iii) funding by the Department of Business and Economic Development under any of the following:

1. the Maryland Industrial Development Financing Authority, authorized under Title 5, Subtitle 4 of the Economic Development Article;

2. the Maryland Small Business Development Financing Authority, authorized under Title 5, Subtitle 5 of the Economic Development Article;

3. the former Maryland Energy Financing Act, authorized under former Article 83A, Title 6, Subtitle 4 of the Code, succeeded by the Maryland Industrial Development Financing Authority;

4. the Economic Development Opportunities Program Fund, authorized under § 7–314 of this article;

5. the former Maryland Competitive Advantage Financing Fund, authorized under former Article 83A, Title 5, Subtitle 13 of the Code; and

6. the Maryland Economic Development Assistance Authority and Fund, authorized under Title 5, Subtitle 3 of the Economic Development Article;

(iv) funding by the Department of the Environment, for any project under:

1. §§ 9–1601 through 9–1605 (Water Quality Revolving Loan Fund) of the Environment Article except for funding nonpoint source pollution projects;

2. §§ 9–420 through 9–426 (Water Supply Financial Assistance Program) of the Environment Article; and

3. the supplemental assistance program authorized under Title 9, Subtitle 3, Part VI of the Environment Article; and

(v) except as provided in paragraph (2) of this subsection, procurement or funding of projects by the Department of General Services for:

1. leases of property by the State governed by §§ 4–318 through 4–321 of this article; and

2. land acquisition governed by §§ 4–411 through 4–416 of this article.

(2) "Growth–related project" does not include:

(i) projects by the Department of General Services for maintenance, repair, additions, or renovations to existing facilities, acquisition of land for telecommunications towers, parks, conservation and open space, and acquisition of agricultural, conservation, and historic easements;

(ii) funding by the Department of Housing and Community Development for any project financed with federal moneys used to purchase or rehabilitate existing single or multifamily housing or project financed with the proceeds of revenue bonds issued by the Community Development Administration if:

1. the Secretary of Housing and Community Development determines that application of this section:

A. conflicts with any provision of federal or State law applicable to the issuance or tax–exempt status of the bonds;

B. conflicts with any provision of any trust agreement between the Community Development Administration and any trustee; or

C. would otherwise prohibit financing of an existing project, or financing provided to cure or prevent any default under existing financing; or

2. the revenue bonds are issued under a transfer of the Maryland State ceiling to the Administration by a county under Title 13, Subtitle 8 of the Financial Institutions Article;

(iii) acquisition of land by the Department of Natural Resources under Title 1, Subtitle 1 of the Natural Resources Article; or

(iv) any other project, funding, or other State assistance not listed under paragraph (1) of this subsection.

(d) "Limited peripheral development" means development that is contiguous to an existing community and does not increase the size of the existing community or village by more than 10% of the existing number of dwelling units.

(e) "Locally designated growth area" means an area determined by the county to be suitable for development in compliance with Title 1, Subtitle 4 or Title 3 of the Land Use Article.

(f) "Rural village" means a rural village, village center, or other unincorporated area that is primarily residential, including an area with historic qualities, that is located in an otherwise rural or agricultural area and for which new growth, if any, would derive primarily from in-fill development or limited peripheral expansion.

(g) "Technical assistance" means the provision of advice, consultation, training, information, or design, or architectural, organizational, or management assistance.

§5–7B–02.

The following areas shall be considered priority funding areas under this subtitle:

(1) a municipal corporation, including Baltimore City, except that:

(i) those areas annexed by a municipal corporation after January 1, 1997 but before October 1, 2006 shall satisfy requirements relating to density and service by water and sewer set forth in § 5–7B–03 of this subtitle; and

(ii) those areas annexed by a municipal corporation after September 30, 2006, shall satisfy all of the requirements set forth in § 5–7B–03 of this subtitle;

(2) an enterprise zone as designated under Title 5, Subtitle 7 of the Economic Development Article, or by the United States government;

(3) a certified heritage area as defined in §§ 13–1101 and 13–1111 of the Financial Institutions Article that is located within a locally designated growth area;

(4) those areas of the State located between Interstate Highway 495 and the District of Columbia;

(5) those areas of the State located between Interstate Highway 695 and Baltimore City; and

(6) an area designated by the governing body of a county or municipal corporation under § 5–7B–03 of this subtitle.

§5–7B–03.

(a) (1) The governing body of a county or of a municipal corporation may designate priority funding areas as provided in this section.

(2) The governing bodies of two or more adjoining counties, two or more municipal corporations, or any combination of adjoining counties and municipal corporations may designate, as provided in this section and in accordance with the regulations adopted by the Department of Planning, a priority funding area that combines two or more contiguous areas located in each of the local governments.

(b) (1) An area zoned or, if applicable, classified by January 1, 1997 principally for industrial use may be designated as a priority funding area.

(2) An area zoned or, if applicable, classified after January 1, 1997, as industrial may be designated as a priority funding area if the area is served by a public or community sewer system.

(c) (1) An area where the principal uses of the area are for employment may be designated as a priority funding area if:

(i) the area is served by public or community sewer systems; or

(ii) public or community sewer systems are planned in the approved 10-year water and sewer plan.

(2) An area zoned or, if applicable, classified after January 1, 1997 as industrial, or where the principal uses are for employment, in addition to meeting the criteria set forth in paragraph (1) of this subsection, shall be located within a locally designated growth area.

(d) (1) A community in existence prior to January 1, 1997 that is within a locally designated growth area may be designated as a priority funding area if the community:

(i) is served by a public or community sewer system and in that part of the community designated by the local government for residential use or development:

1. there is an average density of at least 2.0 units per acre; or

2. if a portion of the community is undeveloped, the permitted average density is not less than 2.0 units per acre; or

(ii) except as provided in paragraph (2) of this subsection, is served by a public or community water system and in that part of the community designated by the local government for residential use or development there is an average density of at least 2.0 units per acre.

(2) (i) The provisions of paragraph (1)(ii) of this subsection do not apply to mobile home parks or communities with less than 10 units.

(ii) Funding for a growth-related project under paragraph (1)(ii) of this subsection is to be provided only if the project serves to maintain the character of the community and does not serve to increase the growth capacity of the community except for limited peripheral or in-fill development.

(3) (i) If an existing community receives a public or community sewer system, an area beyond the periphery of the developed portion of the existing community may be designated as a priority funding area if the development of the area beyond the periphery:

1. has a permitted average density of at least 3.5 units per acre; and

2. the area is served by a public or community sewer system.

(ii) The Department of the Environment may provide funding for a sewer system in an existing community beyond the periphery of the developed portion of the community if the expansion has a permitted average density of at least 3.5 units per acre.

(e) An area, other than an existing community under subsection (d) of this section, may be designated as a priority funding area if:

(1) the area:

(i) is within a locally designated growth area of the local government; and

(ii) is planned to be served under the approved 10-year water and sewer plan;

(2) the designation represents a long-term development policy for promoting an orderly expansion of growth and an efficient use of land and public services; and

(3) in that part of the area designated by the local government for residential use or development, there is permitted an average density of not less than 3.5 units per acre.

(f) (1) A rural village may be designated as a priority funding area under this section if:

(i) the village is designated in the county comprehensive plan as of July 1, 1998; and

(ii) the boundary of the priority funding area is the periphery of the developed portion of the village as of July 1, 1998.

(2) Funding for a growth-related project under this subtitle is to be provided only if the project serves to maintain the character of the community and does not serve to increase the growth capacity of the village except for limited peripheral or in-fill development.

(g) The designation by a county, municipal corporation, or multiple local governments as provided in subsection (a)(2) of this section, of a priority funding area under this section shall be based on:

(1) an analysis of the capacity of land areas available for development, including in-fill and redevelopment; and

(2) an analysis of the land area needed to satisfy demand for development at densities consistent with the master plan.

(h) For the purposes of this section, average density shall be calculated based on the total acreage of all parcels in the area for which the principal permitted use is residential, excluding land:

(1) (i) dedicated for public use by easement in perpetuity or fee acquisition; or

(ii) dedicated recreational use;

(2) subject to an agricultural easement under § 2-508 of the Agriculture Article;

(3) subject to an agricultural easement under a county agricultural land

preservation program certified under § 5-408 of this title;

(4) used for cemetery purposes;

(5) identified by a local government as:

(i) 1. streams and their buffers;

2. 100-year flood plains;

3. habitats of threatened and endangered species; and

4. steep slopes; and

(ii) on which development is prohibited by local law or ordinance; or

(6) identified by a local government as delineated nontidal wetlands on which development is prohibited by State or local law or ordinance.

§5–7B–04.

(a) Except as otherwise provided in this subtitle, beginning October 1, 1998, the State may not provide funding for a growth-related project if the project is not located within a priority funding area.

(b) In a priority funding area established under § 5-7B-03(c) or (e) of this subtitle in which water and sewer service is planned, a commitment for funding for a growth-related project shall be contingent upon nonstate funding for planned water and sewer service moving forward in advance of or concurrent with the State funding.

(c) (1) A growth-related project may not be funded by the State in a municipal corporation exercising zoning authority unless the municipal corporation has first adopted residential development standards relating to public school adequacy. These standards shall be substantially similar to:

(i) the State rated capacity standards established by the public school interagency committee on school construction; or

(ii) the school capacity standards established in its county's adequate public facilities ordinance.

(2) The requirement contained in paragraph (1) of this subsection does not apply:

(i) in a municipal corporation exercising zoning authority located in a county in which no adequate school capacity standards have been established by the county governing body; or

(ii) to a residential development project where an impact fee has been

paid or other monetary or nonmonetary contributions have been provided that defray the local cost of school construction attributable to the project.

(3) After October 1, 1997, prior to establishing or changing the school capacity standards in a county's adequate public facilities ordinance, the county shall confer with the governing bodies of the municipal corporations that exercise zoning authority located within the county.

(4) For planning purposes, each county board of education shall annually provide to the county and each municipal corporation exercising zoning authority in the county:

(i) a list of projected student enrollments for a 5-year period for each school serving students in or near that municipal corporation; and

(ii) information relating to the student capacity of each school.

§5–7B–05.

(a) (1) The State may provide funding for a growth-related project not in a priority funding area if:

(i) the Board of Public Works determines that extraordinary circumstances exist in accordance with the requirements of paragraph (2) of this subsection; or

(ii) the Board of Public Works approves the project as a transportation project that meets the requirements of paragraph (3) of this subsection.

(2) In order to determine that extraordinary circumstances exist under paragraph (1) of this subsection, the Board shall determine by a majority vote that:

(i) the failure to fund the project in question creates an extreme inequity, hardship, or disadvantage that clearly outweighs the benefits from locating a project in a priority funding area; and

(ii) there is no reasonable alternative for the project in a priority funding area in another location within the county or an adjacent county.

(3) The Board of Public Works may approve a transportation project under paragraph (1)(ii) of this subsection if the transportation project:

(i) maintains the existing transportation system, if the Department of Transportation and the Department of Planning determine the project does not serve to significantly increase highway capacity;

(ii) serves to connect priority funding areas, if:

1. the Department of Transportation and the Department of Planning determine that adequate access control or other measures are in place to:

A. prevent development that is inconsistent with § 5-7A-01(1), (2), and (3) of this title; and

B. maintain the viability of the project while concomitantly constraining development which potentially detracts from main street business areas; and

2. the Department of Transportation and the Department of Planning have first determined whether alternative transportation modes, such as mass transit and transportation demand management, provide a reasonable alternative to the project and that no reasonable alternative exists;

(iii) has the sole purpose of providing control of access by the Department of Transportation along an existing highway corridor; or

(iv) due to its operational or physical characteristics, must be located away from other development.

(b) (1) A request for approval by the Board under subsection (a) of this section may be made at the request of the governing body of the local jurisdiction in which the project is located or the Secretary with approval authority over the project.

(2) When making a request to the Board of Public Works, the applicant shall:

(i) identify the extraordinary circumstances that require State funds for the project; and

(ii) demonstrate that no feasible alternatives exist to making an exception to the requirements of this subtitle.

(3) The Board of Public Works, at its discretion, may require remedial actions to mitigate any negative impacts of the proposed project.

(c) (1) When a request is made to the Board of Public Works for an exception under this section, the Board of Public Works may request from the Department of Planning an advisory opinion on the request for the exception.

(2) Upon receiving a request for an advisory opinion under this subsection, the Department, if requested by a member of the public, shall hold a public meeting to gather information relevant to the advisory opinion.

§5–7B–06.

(a) The State may provide funding for a growth-related project not in a priority

funding area without receiving approval from the Board of Public Works as provided under § 5-7B-05 of this subtitle for:

(1) a project that is required to protect public health or safety;

(2) a project involving federal funds, to the extent compliance with this subtitle would conflict or be inconsistent with federal law; or

(3) a growth-related project related to a commercial or industrial activity which, due to its operational or physical characteristics, shall be located away from other development, including:

(i) a natural resource based industry;

(ii) an industry relating to:

1. agricultural operations, as defined in § 7-101 of the Labor and Employment Article;

2. forestry activities; or

3. mineral extraction;

(iii) an industry that is proximate to:

1. an airport facility;

2. a port facility;

3. a railroad facility;

4. a transit facility; or

5. a major highway interchange; or

(iv) a tourism facility or museum that is required to be located away from other development due to necessary proximity to specific historic, natural, or cultural resources.

(b) A procedure for notification, review, and comment on exceptions proposed under this section shall be established jointly by the applicable State agency and the Department of Planning.

§5–7B–07.

(a) It shall be the policy of the State that the emphasis of funding for public school construction projects shall be to target the rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools.

(b) This section may not be construed to prohibit the provision of school construction funding outside a priority funding area.

(c) The Public School Interagency Committee on School Construction shall continue to review and make recommendations on school funding projects to the Board of Public Works.

§5–7B–08.

(a) To be eligible for funding for growth-related projects, a local government or two or more county governments shall certify to the Department of Planning any area designated by the local government or county governments as a priority funding area under § 5-7B-03 of this subtitle, which shall be consistent with the local comprehensive plan and the criteria set forth in § 5-7B-03 of this subtitle.

(b) Prior to certification of a priority funding area or areas, the local government or county governments may submit the proposed priority funding areas and any relevant information to the Department of Planning for:

(1) technical assistance, review, and comment; and

(2) the opportunity for public review.

(c) Upon certification of a priority funding area, the local government or county governments shall provide to the Department of Planning all information necessary to demonstrate the precise location of the area, including a map of the area showing planning and zoning characteristics, and existing and planned water and sewer services as appropriate.

(d) The Department of Planning, as appropriate, shall provide to each State agency that funds growth-related projects copies of maps illustrating:

(1) priority funding areas certified by the local government or county governments; and

(2) any comments by the Department of Planning on the areas certified.

(e) Prior to funding a growth-related project, the State funding agency shall obtain from the affected local government or county governments a written statement that the proposed growth-related project is located within a certified priority funding area.

§5–7B–09.

(a) (1) In this section the following words have the meanings indicated.

(2) "Infill development" means new development in a priority funding area on vacant, bypassed, and underutilized lands within existing developed areas.

(3) "Smart neighborhood development" means a comprehensively planned, compact mixed use development within a priority funding area that integrates residential, commercial, open space, and public uses.

(b) The Department of Planning shall:

(1) establish a process for the review of projects by the appropriate State agencies and the Department of Planning for compliance with this subtitle;

(2) provide to each State agency and unit of State government the location of priority funding areas; and

(3) make available to each county, and to the public for review, copies of maps illustrating:

(i) priority funding areas certified by the local governments; and

(ii) any comments by the Department of Planning on the areas certified.

(c) By October 1, 1998, the Department of Planning shall complete surveys of municipal, county, and State governments for infrastructure needs and shall maintain a list of needed projects that includes information relating to the financial capacity of the affected unit of government to undertake such projects.

(d) A copy of this list of projects shall be made available upon request to members of the General Assembly, local government officials, and the general public.

(e) The Department of Planning shall:

(1) draft model land-use codes for infill development and smart neighborhood development;

(2) draft guidelines to provide local governments with information on innovative planning and implementation techniques to encourage and facilitate infill development and smart neighborhood development;

(3) circulate the models and guidelines to other State agencies and departments; and

(4) work with local governments, State agencies, and departments to develop incentives to encourage the voluntary adoption and implementation by local governments of models and guidelines implementing the intent of the models and guidelines required to be developed by the Department of Planning under this section.

(f) Each State agency subject to this subtitle shall report annually to the Department of Planning on the implementation of this subtitle in a form approved by the Department of Planning.

§5–7B–10.

(a) This section may not be construed to create a private cause of action for any person or local government.

(b) A decision to fund a project or not to fund a project as required under this subtitle shall not be subject to Title 10, Subtitle 2 (Administrative Procedure Act - Contested Cases) of the State Government Article.

(c) This subtitle may not be construed to prevent an agency from providing technical assistance in an area that is not a priority funding area.

§5–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Commission" means the Patuxent River Commission.

(c) "Plan" means:

(1) the Patuxent River Policy Plan that has been approved by the General Assembly; and

(2) all amendments to that Plan that are approved under this subtitle.

§5–804.

The Plan shall be used as a policy guide by local jurisdictions and units of the State government in carrying out their action and regulatory programs in the Patuxent River Watershed.

§5–805.

(a) (1) The Department has primary responsibility for preparing proposed amendments to the Plan.

(2) For the purpose of updating the Plan, the Department and the Commission shall together consider draft amendments to the Plan at least once every 5 years starting with October 1, 1995.

(3) In preparing a proposed amendment, the Department shall consult with local jurisdictions and appropriate units of the State government, who shall:

(i) provide the Department with pertinent information, including information on implementation of the Plan; and

(ii) cooperate with and assist the Department in preparing the proposed amendment.

(b) Before the Department presents a proposed amendment to the Plan to local jurisdictions for their approval, the Commission shall:

(1) review and comment on the proposed amendment and work with the Department in making any modifications to the proposed amendment that the Commission considers necessary;

(2) distribute copies of the proposed amendment to the Governor, appropriate members of the General Assembly, the local jurisdictions entitled to voting representation on the Commission, other affected local jurisdictions, and appropriate units of the State government, for their information and comments; and

(3) conduct at least 1 public hearing on the proposed amendment.

(c) After a proposed amendment to the Plan has been acted on by the Commission, the Department may present the proposed amendment to the governing bodies of the local jurisdictions entitled to voting representation on the Commission, for their approval, by resolution. The Department shall include any comments made by the Commission.

(d) (1) If the governing bodies of 6 of the 8 local jurisdictions entitled to voting representation on the Commission approve the proposed amendment, the Department shall present the proposed amendment to the General Assembly. The Department shall include any comments made by the Commission or by the governing bodies.

(2) If the General Assembly, by joint resolution, approves the proposed amendment, the effective date of the amendment is immediate, unless otherwise specified in the amendment.

§5–806.

(a) After the General Assembly approves an amendment to the Plan, the Department shall:

(1) present copies of the approved amendment to the Governor and to each local jurisdiction entitled to voting representation on the Commission, for their information; and

(2) make copies of the amendment to the Plan available to the general public.

(b) The Department continuously shall review and evaluate information related to the Patuxent River and its watershed.

(c) The Department periodically shall make and assist local jurisdictions and units of the State government in making environmental assessments of:

(1) comprehensive planning programs, as they relate to the Patuxent

River and its watershed; and

(2) major land use changes, major regulatory actions, and major rezonings whether proposed or implemented as they relate to the Patuxent River and its watershed.

§5–807.

Funds for the Patuxent River planning program described in this subtitle may include:

(1) money from the General Fund of the State;

(2) proceeds of special assessments, permit fees, or other fees;

(3) available special funds;

(4) local contributions; or

(5) federal grants.

§5–808.

The staff for the Patuxent River planning program described in this subtitle shall consist of or be supplemented by personnel from the local jurisdictions and State departments entitled to voting representation on the Commission.

§5–809.

(a) The Department shall review, evaluate, and report biennially to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly on the implementation of the Plan and the status of the Patuxent River and its watershed.

(b) The report shall include specific recommendations of the Department concerning implementation of the Plan and the bases for these recommendations.

(c) Before presenting its report to the General Assembly, the Department shall present the report to the Commission for its comments. The Department shall include any comments of the Commission when it presents the report to the General Assembly.

§5–812.

There is a Patuxent River Commission in the Department.

§5–813.

The existence of the Commission does not take away or limit the authority that any principal department of the State government had on July 1, 1980.

§5–814.

(a) The Commission consists of the following 34 voting members appointed by the Governor:

(1) 7 individuals, 1 from each of the following 7 counties, on the recommendation of the governing body of that county:

(i) Anne Arundel County;

(ii) Calvert County;

(iii) Charles County;

(iv) Howard County;

(v) Montgomery County;

(vi) Prince George's County; and

(vii) St. Mary's County;

(2) 1 individual representing the Washington Suburban Sanitary Commission;

(3) 1 individual from each of the following regional planning agencies:

(i) the Maryland-National Capital Park and Planning Commission, Montgomery County;

(ii) the Maryland-National Capital Park and Planning Commission, Prince George's County; and

(iii) the Tri-County Council for Southern Maryland;

(4) 1 individual, representing a municipality in the watershed, on the recommendation of the corresponding governing body of that municipality;

(5) 1 individual representing a large federal facility in the watershed;

(6) as far as possible, the following individuals appointed by the Governor with the advice and consent of the Senate, shall be selected to represent broad geographic, economic, and social interests within the watershed:

(i) 2 individuals representing farming interests;

(ii) 1 individual representing business interests;

(iii) 4 individuals representing environmental and citizen interests;

(iv) 2 individuals representing developer interests;

(v) 2 individuals representing academic interests;

(vi) 2 individuals, 1 each, representing 2 soil conservation districts;

(vii) 1 individual representing the University of Maryland Cooperative Extension Service; and

(viii) 1 individual representing watermen interests; and

(7) as ex officio members:

(i) the Secretary of Agriculture or a designee;

(ii) the Secretary of the Environment or a designee;

(iii) the Secretary of Natural Resources or a designee;

(iv) the Secretary of Planning or a designee;

(v) the Secretary of Transportation or a designee; and

(vi) the Chief of the Planning Division, U.S. Army Corps of Engineers, Baltimore District or a designee.

(b) (1) Except for ex officio members or their designees, the term of a member appointed under subsection (a)(1) of this section is 4 years.

(2) At the end of a term, a member appointed under subsection (a)(1) of this section continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed under subsection (a)(1) of this section after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(4) The terms of the members are staggered as required by the terms provided for members of the Commission on October 1, 1995.

(c) (1) The Commission may establish and abolish nonvoting memberships.

(2) A nonvoting member shall be appointed by the Commission for a term set by the Commission.

§5–815.

(a) From among its voting members, the Commission shall elect a Chairman.

(b) From among its voting members, the Commission may elect a vice chairman

and any other officers it requires.

(c) The manner of election of officers and their terms of office shall be as the Commission determines.

§5–816.

In addition to its other powers and duties, the Commission shall:

(1) review the operation of units of State and local government that have responsibility for implementation of the Plan;

(2) provide a clearinghouse for information on the Patuxent River and its watershed;

(3) review and comment on plans and reports related to the Patuxent River and its watershed; and

(4) serve as the tributary strategy team for the Patuxent Watershed, coordinating the Patuxent tributary strategy with the Plan.

§5A–101.

There is a Division of Historical and Cultural Programs in the Department of Planning.

§5A–102.

The Division of Historical and Cultural Programs includes the Maryland Historical Trust.

§5A–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Director" means the Director of the Maryland Historical Trust.

(c) "Financial assistance" means action by the State or a State unit to award grants, loans, loan guarantees, or insurance to a public or private entity to finance, wholly or partly, an undertaking.

(d) "Governmental unit" means an agency, authority, board, commission, council, office, or other unit or instrumentality of the government of the State or of a political subdivision of the State.

(e) (1) "Historic property" means a district, site, building, structure, monument, or object significant to:

(i) the prehistory or history of the State; or

(ii) the upland and underwater archaeology, architecture, engineering, or culture of the State.

(2) "Historic property" includes related artifacts, records, and remains.

(f) "Nonprofit organization" means a corporation, foundation, or other legal entity, no part of the net earnings of which inures to the benefit of a private shareholder or individual holding an interest in the entity.

(g) "Political subdivision" means a county or municipal corporation of the State.

(h) "Preservation" or "historic preservation" means the identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, and reconstruction of a historic property.

(i) "State Historic Preservation Officer" means the individual who administers the State Historic Preservation Program under the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470–470mm.

(j) "State unit" has the meaning stated in § 11–101 of the State Government Article.

(k) "Submerged" means beneath or substantially beneath water.

(l) "Terrestrial" means relating to land above the mean high tide line and above nontidal waters.

(m) "Trust" means the Maryland Historical Trust.

(n) "Undertaking" means a project that involves or may result in building construction, building alteration, or land disturbance.

§5A–302.

The General Assembly finds that:

(1) historic properties significant to the State's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(2) historic properties are a vital part of our community life and development and cannot be replaced if lost or destroyed;

(3) it is in the public interest to preserve the State's heritage and enrich present and future generations with the cultural, educational, inspirational, social, and economic benefits of the past;

(4) increasing knowledge of our historic resources, establishing better means of identifying and administering them, and encouraging their preservation will

assist the economic and cultural growth of the State; and

(5) the State's heritage has been enriched by accomplishments and contributions of the State's private preservation organizations, and their continuing activities are in the public interest.

§5A–303.

(a) (1) In this section the following words have the meanings indicated.

(2) "Business entity" means:

(i) a person conducting or operating a trade or business in the State; or

(ii) an organization operating in Maryland that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

(3) "Certified heritage area" has the meaning stated in § 13–1101 of the Financial Institutions Article.

(4) (i) "Certified historic structure" means a structure that is located in the State and is:

1. listed in the National Register of Historic Places;

2. designated as a historic property under local law and determined by the Director to be eligible for listing on the National Register of Historic Places;

3. A. located in a historic district listed on the National Register of Historic Places or in a local historic district that the Director determines is eligible for listing on the National Register of Historic Places; and

B. certified by the Director as contributing to the significance of the district; or

4. located in a certified heritage area and certified by the Maryland Heritage Areas Authority as contributing to the significance of the certified heritage area.

(ii) "Certified historic structure" does not include a structure that is owned by the State, a political subdivision of the State, or the federal government.

(5) "Certified rehabilitation" means a completed rehabilitation of a certified historic structure that the Director certifies is a substantial rehabilitation in conformance with the rehabilitation standards of the United States Secretary of the Interior.

(6) (i) "Commercial rehabilitation" means a rehabilitation of a structure other than a single–family, owner–occupied residence.

(ii) "Commercial rehabilitation" does not include a small commercial project.

(7) "Director" means the Director of the Maryland Historical Trust.

(8) "Financial assistance" means action by the State or a State unit to award grants, loans, loan guarantees, or insurance to a public or private entity to finance, wholly or partly, a project that involves or may result in building construction, building alteration, or land disturbance.

(9) "High performance building" means a building that:

(i) meets or exceeds the current version of the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) green building rating system gold rating; or

(ii) achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services under § 3–602.1 of this article.

(10) (i) "Historic property" means a district, site, building, structure, monument, or object significant to:

1. the prehistory or history of the State; or

2. the upland or underwater archeology, architecture, engineering, or culture of the State.

(ii) "Historic property" includes related artifacts, records, and remains.

(11) "Local historic district" means a district that the governing body of a county or municipal corporation, or the Mayor and City Council of Baltimore, has designated under local law as historic.

(12) "National register structure" means a structure that is:

(i) listed on the National Register of Historic Places; or

(ii) located in a historic district listed on the National Register of Historic Places and certified by the Director as contributing to the significance of the district.

(13) "Political subdivision" means a county or municipal corporation of the

State.

(14) "Qualified rehabilitation expenditure" means any amount that:

(i) is properly chargeable to a capital account;

(ii) is expended in the rehabilitation of a structure that by the end of the calendar year in which the certified rehabilitation is completed is a certified historic structure;

(iii) is expended in compliance with a plan of proposed rehabilitation that has been approved by the Director; and

(iv) is not funded, financed, or otherwise reimbursed by any:

1. State or local grant;

2. grant made from the proceeds of tax–exempt bonds issued by the State, a political subdivision of the State, or an instrumentality of the State or of a political subdivision of the State;

3. State tax credit other than the tax credit under this section; or

4. other financial assistance from the State or a political subdivision of the State, other than a loan that must be repaid at an interest rate that is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

(15) (i) "Single–family, owner–occupied residence" means a structure or a portion of a structure:

1. occupied by the owner and the owner's immediate family as their primary or secondary residence; or

2. a small commercial project.

(ii) "Single–family, owner–occupied residence" includes a residential unit in a cooperative project owned by or leased to a cooperative housing corporation, as defined in § 5–6B–01 of the Corporations and Associations Article, and leased for exclusive occupancy to, and occupied by, a member of the corporation and the member's immediate family under a proprietary lease.

(16) (i) "Small commercial project" means a rehabilitation of a structure primarily used for commercial, income–producing purposes if:

1. the qualified rehabilitation expenditures do not exceed $500,000; and

2. the structure is located in a sustainable community.

(ii) "Small commercial project" includes a structure that is used for both commercial and residential rental purposes.

(iii) "Small commercial project" does not include a structure that is used solely for residential purposes.

(17) "Smart Growth Subcabinet" means the Smart Growth Subcabinet established under Title 9, Subtitle 14 of the State Government Article.

(18) "State unit" has the meaning stated in § 11–101 of the State Government Article.

(19) "Substantial rehabilitation" means rehabilitation of a structure for which the qualified rehabilitation expenditures, during the 24–month period selected by the individual or business entity ending with or within the taxable year, exceed:

(i) for single–family, owner–occupied residential property, $5,000; or

(ii) for all other property, the greater of:

1. the adjusted basis of the structure; or

2. $25,000.

(20) "Sustainable community" has the meaning stated in § 6–201 of the Housing and Community Development Article.

(b) (1) The Director, in consultation with the Smart Growth Subcabinet, shall adopt regulations to:

(i) establish procedures and standards for certifying historic structures and rehabilitations under this section;

(ii) for commercial rehabilitations, establish an application process for the award of initial credit certificates for Maryland sustainable communities tax credits consistent with the requirements of this subsection;

(iii) for commercial rehabilitations, establish criteria, consistent with the requirements of this subsection, for evaluating, comparing, and rating plans of proposed rehabilitation that have been determined by the Director to conform with the rehabilitation standards of the United States Secretary of the Interior;

(iv) for commercial rehabilitations, establish a competitive award process for the award of initial credit certificates for Maryland sustainable communities tax credits that favors the award of tax credits for rehabilitation projects that:

1. are located in jurisdictions that have been historically underrepresented in the award of tax credits for commercial rehabilitations, based on the number of national register structures in each jurisdiction;

2. are consistent with and promote current growth and development policies and programs of the State;

3. are located in areas targeted by the State for additional revitalization and economic development opportunities due to the focusing of State resources and incentives;

4. are located in areas where the political subdivision has implemented regulatory streamlining or other development incentives that foster redevelopment and revitalization in priority funding areas, as defined in Title 5, Subtitle 7B of this article, and the appropriate local governing body or the planning board or commission, if designated by the local governing body, has certified to the Smart Growth Subcabinet those regulatory streamlining or other development incentives; and

5. include affordable and workforce housing options;

(v) for commercial rehabilitations, determine whether the certified rehabilitation is a high performance building;

(vi) for commercial rehabilitations, establish a required external marker or, at a minimum, an internal marker for the rehabilitation project that identifies that the rehabilitation was funded by Maryland sustainable communities tax credits;

(vii) as provided in paragraph (7) of this subsection, charge reasonable fees to certify historic structures and rehabilitations under this subtitle;

(viii) for commercial rehabilitations, require documentation that the applicant has ownership or site control of the structure in order to demonstrate the ability to meet the requirement to begin work as required under subsection (c)(3)(i)1 of this section;

(ix) for commercial rehabilitations, provide a time limit for approval of the additional tax credit for high performance buildings provided for in subsection (c)(1)(ii) of this section; and

(x) for small commercial projects:

1. establish conditions regarding the percentage of the structure that may be used for residential rental purposes if the structure is used for both commercial and residential rental purposes; and

2. specify criteria and procedures for the issuance of initial

credit certificates under subsection (e) of this section.

(2) The Director may not certify that a rehabilitation is a certified rehabilitation eligible for a tax credit provided under this section unless the individual or business entity seeking certification states under oath the amount of the individual's or business entity's qualified rehabilitation expenditures.

(3) Each year, the Director may accept applications for approval of plans of proposed commercial rehabilitations and for the award of initial credit certificates for the fiscal year that begins July 1 of that year.

(4) (i) Except as provided in subsection (e) of this section, a small commercial project shall be treated as a single–family, owner–occupied residential property, including the limitation on the amount of the tax credit provided in subsection (c)(2)(ii) of this section.

(ii) A small commercial project is subject to the credit recapture provision in subsection (f) of this section.

(5) (i) For commercial rehabilitations, the Director may not accept an application for approval of plans of proposed rehabilitation if:

1. any substantial part of the proposed rehabilitation work has begun; or

2. the applicant for a commercial rehabilitation has previously submitted three or more applications for commercial rehabilitations with total proposed rehabilitations exceeding $500,000 in that year.

(ii) For commercial rehabilitations, the Director may accept an application for approval of plans of a proposed rehabilitation for which a substantial part of the proposed rehabilitation work has begun if the rehabilitation work has been approved under the federal historic tax credit.

(6) Except as provided in subsection (d)(3)(iii) of this section, not more than 60% of the total credit amounts under initial credit certificates issued for any fiscal year may be issued for projects in a single county or Baltimore City.

(7) (i) The Director shall adopt regulations to charge reasonable fees to certify historic structures and rehabilitations under this section which shall include:

1. a minimum fee for the second phase of the application process;

2. for a commercial rehabilitation project, a final fee that may not exceed 3% of the amount of the issued initial credit certificate; and

3. for any other rehabilitation project, a final fee that may not

exceed 3% of the amount of the credit for which the rehabilitation would be eligible based on the greater of the estimated or final qualified rehabilitation expenditures for the rehabilitation.

(ii) The Director shall set the level of the fees so that the projected proceeds from the fees will cover the costs to the Trust of administering the credit under this section and the federal historic tax credit.

(iii) If a fee charged for a commercial rehabilitation is not received by the Trust within 90 days after the Trust sends notice that the fee is due, the initial credit certificate for the rehabilitation shall expire.

(iv) For commercial rehabilitations, if an applicant's initial credit certificate expired for failure to pay a fee as required in this paragraph, the Trust may not accept an application from the applicant for a commercial rehabilitation during the 3 fiscal years following the fiscal year in which the certificate expired.

(v) The proceeds from the fees shall be deposited in a special fund, to be used only for the purposes of paying the costs of administering the credit under this section and the federal historic tax credit.

(vi) Any unused balance of the fund at the end of each fiscal year shall be transferred to the Reserve Fund established under subsection (d) of this section and shall increase the amount of the initial credit certificates that the Trust may issue for the following fiscal year.

(c) (1) (i) Except as otherwise provided in this section, for the taxable year in which a certified rehabilitation is completed, an individual or business entity may claim a tax credit in an amount equal to 20% of the individual's or business entity's qualified rehabilitation expenditures for the rehabilitation.

(ii) For a commercial rehabilitation, an individual or business entity may claim an additional tax credit in an amount equal to 5% of the individual's or business entity's qualified rehabilitation expenditures if the certified rehabilitation is a certified historic structure and a high performance building.

(2) (i) For any commercial rehabilitation, the State tax credit allowed under this section may not exceed the lesser of:

1. $3,000,000; or

2. the maximum amount specified under the initial credit certificate issued for the rehabilitation.

(ii) For a rehabilitation other than a commercial rehabilitation, the State tax credit allowed under this section may not exceed $50,000.

(iii) For the purposes of the limitation under subparagraph (i) of this

paragraph, the following shall be treated as a single commercial rehabilitation:

1. the phased rehabilitation of the same structure or property;

2. the separate rehabilitation of different components of the same structure or property; or

3. the rehabilitation of multiple structures that are functionally related to serve an overall purpose.

(3) (i) Subject to subparagraph (ii) of this paragraph, the initial credit certificate for a proposed commercial rehabilitation shall expire and the credit under this section may not be claimed if:

1. within 18 months after the initial credit certificate was issued, the applicant has not notified the Trust, in writing, that the commercial rehabilitation has begun;

2. the commercial rehabilitation is not completed within 30 months after the initial credit certificate was issued; or

3. the applicant does not submit to the Trust a request for final certification of the commercial rehabilitation within 12 months after:

A. the 30–month expiration date under subparagraph (i)2 of this paragraph; or

B. the date to which the Director postponed the expiration date under subparagraph (ii) of this paragraph.

(ii) For reasonable cause, the Director may postpone:

1. the 30–month expiration date under subparagraph (i)2 of this paragraph for an initial credit certificate for a commercial rehabilitation; or

2. if the commercial rehabilitation was completed prior to the expiration of the initial credit certificate, the deadline under subparagraph (i)3 of this paragraph for submission of a request for final certification.

(4) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the business entity or the individual for that taxable year, the individual or business entity may claim a refund in the amount of the excess.

(5) The State credit allowed under this section may be allocated among the partners, members, or shareholders of an entity in any manner agreed to by those persons in writing.

(d) (1) In this subsection, "Reserve Fund" means the Sustainable

Communities Tax Credit Reserve Fund established under paragraph (2) of this subsection.

(2) (i) There is a Sustainable Communities Tax Credit Reserve Fund that is a continuing, nonlapsing special fund that is not subject to § 7–302 of this article.

(ii) The money in the Fund shall be invested and reinvested by the Treasurer, and interest and earnings shall be credited to the General Fund.

(iii) If the fees paid in any fiscal year are less than the directly related administrative costs of operating the Sustainable Communities Tax Credit Program, funds in the Reserve Fund shall be used for the directly related administrative costs of the Program.

(3) (i) Subject to the provisions of this subsection, the Director shall issue an initial credit certificate for each commercial rehabilitation for which a plan of proposed rehabilitation is approved.

(ii) An initial credit certificate issued under this subsection shall state the maximum amount of credit under this section for which the commercial rehabilitation may qualify.

(iii) 1. Except as otherwise provided in this subparagraph and in subsection (b)(7)(vi) of this section, for any fiscal year, the Director may not issue initial credit certificates for credit amounts in the aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal year in the State budget as approved by the General Assembly.

2. If the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year as a result of the limitation under subsection (b)(6) of this section, any excess amount may be issued under initial credit certificates for projects in a county or Baltimore City in the same fiscal year, without regard to the limitation under subsection (b)(6) of this section.

3. Subject to subsubparagraph 2 of this subparagraph, if the aggregate credit amounts under initial credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial credit certificates for the next fiscal year.

4. For any fiscal year, if funds are transferred from the Reserve Fund under the authority of any provision of law other than paragraph (4) of this subsection, the maximum credit amounts in the aggregate for which the Director may issue initial credit certificates shall be reduced by the amount transferred.

5. In each fiscal year, the Director shall estimate the amount of fees to be collected based on the amount appropriated to the Reserve Fund and reserve

the difference between the estimated fees and estimated directly related administrative costs of the Program to be used to administer the Program.

6. If the reservation of funds to administer the Program under subsubparagraph 5 of this subparagraph is not necessary to cover the directly related administrative costs of the Program, any excess amount shall remain in the Reserve Fund and may be issued under initial credit certificates for the next fiscal year.

(iv) For each of fiscal years 2015, 2016, and 2017, the Governor shall include in the budget bill an appropriation to the Reserve Fund.

(v) Notwithstanding the provisions of § 7–213 of this article, the Governor may not reduce an appropriation to the Reserve Fund in the State budget as approved by the General Assembly.

(vi) The Director may not issue an initial credit certificate for any fiscal year after fiscal year 2017.

(4) (i) Except as provided in this paragraph, money appropriated to the Reserve Fund shall remain in the Fund.

(ii) 1. Within 15 days after the end of each calendar quarter, the Trust shall notify the Comptroller as to each commercial rehabilitation completed and certified during the quarter:

A. the maximum credit amount stated in the initial credit certificate for the project; and

B. the final certified credit amount for the project.

2. On notification that a project has been certified, the Comptroller shall transfer an amount equal to the maximum credit amount stated in the initial credit certificate for the project from the Reserve Fund to the General Fund.

(iii) 1. On or before October 1 of each year, the Trust shall notify the Comptroller as to the maximum credit amount stated in the initial credit certificate for each commercial rehabilitation for which the initial credit certificate has expired under subsection (c)(3) of this section as of the end of the prior fiscal year.

2. On notification that the initial credit certificate for a project has expired under subsection (c)(3) of this section, the Comptroller shall transfer an amount equal to the maximum credit amount stated in the initial credit certificate for the project from the Reserve Fund to the General Fund.

(e) (1) Subject to the provisions of this subsection, the Director shall issue an initial credit certificate for each approved small commercial project on a first–come, first–served basis.

(2) An initial credit certificate issued under this subsection shall state the maximum amount of tax credit for which the applicant is eligible.

(3) The Director may not issue an initial credit certificate under this subsection:

(i) prior to January 1, 2015; or

(ii) after the aggregate amount of initial credit certificates issued for small commercial projects totals $4,000,000.

(f) (1) (i) In this subsection the following words have the meanings indicated.

(ii) 1. "Dispose of" means to transfer legal title or, in the case of a leasehold, the leasehold interest.

2. "Dispose of" includes to sell in a sale–and–leaseback transaction, to transfer on the foreclosure of a security interest, or to transfer by gift.

3. "Dispose of" does not include to transfer title or the leasehold interest to a creditor on creation of a security interest.

(iii) "Disqualifying work" means work that:

1. is performed on a certified rehabilitation; and

2. if performed as part of the rehabilitation certified under this section, would have made the rehabilitation ineligible for certification.

(2) The credit allowed under this section shall be recaptured as provided in paragraph (3) of this subsection if, during the taxable year in which a certified rehabilitation is completed or any of the 4 taxable years succeeding the taxable year in which the certified rehabilitation is completed:

(i) any disqualifying work is performed on the certified rehabilitation; or

(ii) for a commercial rehabilitation, the certified rehabilitation is complete and has been disposed of.

(3) (i) 1. If the disqualifying work is performed or the certified rehabilitation is disposed of during the taxable year in which the certified rehabilitation was completed, 100% of the credit shall be recaptured.

2. If the disqualifying work is performed or the certified rehabilitation is disposed of during the first full year succeeding the taxable year in which the certified rehabilitation was completed, 80% of the credit shall be recaptured.

3. If the disqualifying work is performed or the certified rehabilitation is disposed of during the second full year succeeding the taxable year in which the certified rehabilitation was completed, 60% of the credit shall be recaptured.

4. If the disqualifying work is performed or the certified rehabilitation is disposed of during the third full year succeeding the taxable year in which the certified rehabilitation was completed, 40% of the credit shall be recaptured.

5. If the disqualifying work is performed or the certified rehabilitation is disposed of during the fourth full year succeeding the taxable year in which the certified rehabilitation was completed, 20% of the credit shall be recaptured.

(ii) The individual or business entity that claimed the tax credit shall pay the amount to be recaptured as determined under subparagraph (i) of this paragraph as taxes payable to the State for the taxable year in which the disqualifying work is performed or the certified rehabilitation is disposed of.

(g) (1) The Comptroller may determine, under the process for return examination and audit under §§ 13–301 and 13–302 of the Tax – General Article:

(i) the amount of rehabilitation expenditures used in calculating the credit;

(ii) whether such expenditures are qualified rehabilitation expenditures under this section; and

(iii) whether the credit is allowable as claimed.

(2) The authority of the Comptroller to examine and audit a tax return does not limit the authority of the Director to determine whether a rehabilitation qualifies as a certified rehabilitation or whether a certificate of certified rehabilitation has been properly issued.

(3) The Comptroller may adopt regulations to require that an entity other than a corporation claim the tax credit on the tax return filed by that entity.

(4) (i) Except as otherwise provided in this paragraph, the credit under this section may be claimed for the year a certified rehabilitation is completed, only if the Director has, by the time the return is filed, issued a certificate of completion for the certified rehabilitation.

(ii) A taxpayer claiming the credit may amend a return for the year the certified rehabilitation was completed to account for a certificate issued subsequent to the filing of the original return.

(iii) An amended return shall be filed within the period allowed under the Tax – General Article for filing refund claims.

(iv) The provisions of this paragraph do not extend the period in which a certified rehabilitation must be completed to be eligible for a tax credit under this section.

(v) An amended return may account for an amended certification issued by the Director for a certified rehabilitation.

(h) A refund payable under subsection (c) of this section:

(1) operates to reduce the income tax revenue from corporations if the person entitled to the refund is a corporation subject to the income tax under Title 10 of the Tax – General Article;

(2) operates to reduce insurance premium tax revenues if the person entitled to the refund is subject to taxation under Title 6 of the Insurance Article; and

(3) operates to reduce the income tax revenue from individuals if the person entitled to the refund is:

(i) an individual subject to the income tax under Title 10 of the Tax – General Article; or

(ii) an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

(i) (1) On or before December 15 of each fiscal year, the Director shall report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly, on:

(i) the initial credit certificates awarded for commercial rehabilitations and small commercial projects under this section for that fiscal year;

(ii) the tax credits awarded for certified rehabilitations completed in the preceding fiscal year;

(iii) whether the tax credits awarded for certified rehabilitations completed in the preceding fiscal year were located in:

1. a local historic district; or

2. a national register district; and

(iv) the estimated amount of directly related administrative costs reserved in the Reserve Fund, the estimated amount of fees to be collected, the actual directly related administrative costs, and the actual amount of fees collected.

(2) The report required under paragraph (1) of this subsection shall

include for each initial credit certificate awarded for the fiscal year for a commercial rehabilitation:

(i) the name of the owner or developer of the commercial rehabilitation;

(ii) the name and address of the proposed or certified rehabilitation and the county where the project is located;

(iii) the dates of receipt and approval by the Director of all applications regarding the project, including applications:

1. for certification that a structure or property will qualify as a certified historic structure; and

2. for approval of the proposed rehabilitation; and

(iv) the maximum amount of the credit stated in the initial credit certificate for the project and the estimated rehabilitation expenditures stated in the application for approval of the plan of proposed rehabilitation.

(3) The report required under paragraph (1) of this subsection shall include for each certified commercial rehabilitation completed during the preceding fiscal year:

(i) the name of the owner or developer of the commercial rehabilitation;

(ii) the name and address of the certified rehabilitation and the county where the project is located;

(iii) the dates of receipt and approval by the Director of all applications regarding the project; and

(iv) 1. the maximum amount of the credit stated in the initial credit certificate for the project and the estimated rehabilitation expenditures stated in the application for approval of the plan of proposed rehabilitation; and

2. the actual qualified rehabilitation expenditures and the final amount of the credit for which the project qualified.

(4) The report required under paragraph (1) of this subsection shall summarize for each category of certified rehabilitations:

(i) the total number of applicants for:

1. certification that a structure or property will qualify as a certified historic structure;

2. approval of plans of proposed rehabilitations; or

3. certification of the completed rehabilitations;

(ii) the number of proposed projects for which plans of proposed rehabilitation were approved; and

(iii) the total estimated rehabilitation expenditures stated in approved applications for approval of plans of proposed rehabilitation and the total qualified rehabilitation expenditures for completed rehabilitations certified.

(5) The information required under paragraph (4) of this subsection shall be provided in the aggregate and separately for each of the following categories of certified rehabilitations:

(i) owner–occupied single family residential structures;

(ii) small commercial projects; and

(iii) commercial rehabilitations.

(j) (1) Subject to the provisions of this subsection, the provisions of this section and the tax credit authorized under this section shall terminate as of July 1, 2017.

(2) On and after July 1, 2017:

(i) the tax credit authorized under this section may be claimed for:

1. a rehabilitation project, other than a commercial rehabilitation, for which an application for approval of a plan of proposed rehabilitation was received by the Director on or before June 30, 2017; or

2. a commercial rehabilitation for which an initial credit certificate has been awarded under subsection (d) of this section; and

(ii) the Director shall continue to report to the Governor and the General Assembly as required under subsection (i) of this section for as long as any rehabilitation project for which the tax credit may be claimed remains incomplete.

§5A–304.

(a) (1) On request by the Trust, the Board of Public Works may acquire part or all of any property that the Trust finds is a historic landmark worthy of public care and preservation.

(2) The property may be acquired by gift or by purchase with any available money.

(b) (1) Under § 5A-318 of this subtitle, the Board of Public Works may select the Trust as the State unit to control and administer any property acquired.

(2) For these purposes the Board of Public Works may transfer title to or an interest in the property to the Trust or to an appropriate governmental unit, private agency, or corporation, subject to covenants and conditions that call for the property to:

(i) be properly maintained and controlled; and

(ii) revert to the Board of Public Works on breach of any of these conditions or covenants.

§5A–305.

(a) (1) To preserve the architectural and scenic integrity and beauty of the State House and other nearby real properties owned or used by the State or a State unit, the Board of Public Works may acquire architectural easements in the following areas in the City of Annapolis:

(i) around State Circle;

(ii) on School Street opposite the Executive Mansion; and

(iii) on the easterly side of North Street, between State Circle and College Avenue.

(2) The areas listed in paragraph (1) of this subsection include:

(i) the bed of the street and outer sidewalk areas to the building line on the outer perimeter; and

(ii) an area extending outward 50 feet from that building line.

(b) The Board of Public Works may acquire architectural easements by purchase, gift, exchange, or condemnation under Title 12 of the Real Property Article, with any available money.

(c) The Board of Public Works may:

(1) agree or contract with the owner or user of real property in the specified area to prohibit the owner or user from making any structural or other physical change in the property that the Board of Public Works determines would harm the architectural and scenic integrity and beauty of the property and the specified area; and

(2) give the owner or user cash or other consideration, including a promise not to acquire an architectural easement by condemnation over part or all of the property while the owner or user complies with the agreement or contract.

§5A–306.

This subtitle does not abrogate or supplant any power of the State Highway Administration.

§5A–309.

(a) In this part the following words have the meanings indicated.

(b) "Board" means the Board of Trustees of the Maryland Historical Trust.

(c) "Trustee" means a member of the Board.

§5A–310.

(a) There is a Maryland Historical Trust.

(b) (1) The Trust is an instrumentality of the State, is a body corporate, and has perpetual existence.

(2) The General Assembly may terminate the Trust if the purposes of the Trust end.

§5A–311.

(a) The purposes of the Trust are to:

(1) preserve, protect, and enhance districts, sites, buildings, structures, and objects of significance in the prehistory, history, upland and underwater archaeology, architecture, engineering, and culture of the State;

(2) encourage others to do the same; and

(3) promote interest in and study of those things listed in item (1) of this subsection.

(b) The Trust is charitable and is intended to benefit the residents of the State.

(c) The General Assembly may modify the Trust to carry out the purposes of the Trust.

§5A–312.

There is a Board of Trustees of the Trust.

§5A–313.

(a) (1) The Board consists of 15 trustees.

(2) The Governor, the President of the Senate, and the Speaker of the House of Delegates are ex officio trustees.

(3) With the advice and consent of the Senate, the Governor shall appoint the other 12 trustees.

(b) (1) The Governor may delegate any or all of the Governor's powers or duties as trustee to a member of the Executive Department of the State.

(2) The President of the Senate may delegate any or all of the President's powers or duties as trustee to a member of the Senate.

(3) The Speaker of the House of Delegates may delegate any or all of the Speaker's powers or duties as trustee to a member of the House of Delegates.

(c) (1) At least two of the trustees appointed by the Governor shall have:

(i) an advanced degree in archaeology or a closely related field; and

(ii) experience in archaeology.

(2) Of the trustees who qualify under paragraph (1) of this subsection:

(i) at least one shall have experience in submerged archaeology; and

(ii) at least one shall have experience in terrestrial archaeology.

(3) The Secretary shall advise the Governor on the appointment of trustees qualified under paragraph (1) of this subsection after consulting with the Advisory Committee on Archaeology established under § 5A-336 of this subtitle.

(d) (1) The term of an appointed trustee is 4 years.

(2) The terms of appointed trustees are staggered as required by the terms provided for trustees on October 1, 2005.

(3) If an appointed trustee fails to serve or to complete a term, the Governor shall appoint a successor for the rest of the term.

(e) To the extent practicable and consistent with the purposes of the Trust, trustees shall be chosen, whether by delegation or appointment, to achieve a broad geographic distribution of trustees throughout the State.

§5A–314.

(a) The Board shall elect annually a chair, a vice chair, and a treasurer from among its trustees.

(b) The Board shall determine how its officers are to be elected.

§5A–315.

(a) Eight trustees are a quorum.

(b) (1) The Board shall meet at least twice a year at the times and places that it sets.

(2) The Director appointed under § 5A-316 of this subtitle shall call a special meeting:

(i) on order of the chair, on the chair's own initiative; or

(ii) at the request of four or more trustees.

(3) (i) The Director shall notify each trustee in writing of the time and place of a meeting at least 7 days before the meeting.

(ii) The trustees may hold a meeting on less than 7 days' notice if all trustees agree.

(c) A trustee:

(1) may not receive compensation for duties performed as a trustee; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§5A–316.

(a) (1) The trustees shall appoint a Director, with the approval of the Governor.

(2) The Director is the chief administrative officer of the Trust.

(b) The Director shall have:

(1) knowledge in architecture, history, archaeology, or another appropriate discipline relating to historic preservation; and

(2) experience in historic preservation or related fields.

(c) The Director serves at the pleasure of the Board and may be removed with the concurrence of the Governor.

(d) (1) The Director is entitled to the salary provided in the State budget.

(2) The Director may employ a staff in accordance with the State budget.

(e) Under the direction of the Board, the Director shall perform the duties and

functions that the Board prescribes.

§5A–317.

On request, the Board shall receive legal counsel and services from the Attorney General to carry out the purposes of the Trust.

§5A–318.

(a) The Board shall exercise the powers and duties of the Trust.

(b) The Trust may:

(1) adopt regulations to carry out this subtitle;

(2) take legal action to enforce this subtitle;

(3) adopt and use an official seal;

(4) contract for consultant or other services;

(5) apply for and accept money, grants, or loans from federal, State, local, or private sources;

(6) agree with a prospective mortgagor or grantee to provide financial assistance to a historic preservation project;

(7) acquire and hold real and personal historic property by gift, purchase, devise, bequest, or any other means;

(8) acquire or take assignment of a note, mortgage, or other security or evidence of indebtedness;

(9) acquire, attach, accept, or take title to an historic property by conveyance or, if a mortgage is in default, by foreclosure;

(10) sell, convey, assign, lease, or otherwise transfer or dispose of any property held by the Trust;

(11) make contracts, leases, or other agreements necessary or incidental to the performance of the duties of the Trust;

(12) preserve, restore, rehabilitate, reconstruct, protect, document, excavate, salvage, exhibit, and interpret historic properties;

(13) accept a gift or bequest for any purpose of the Trust and, unless the donor specifies otherwise, use the principal and income of the gift or bequest by:

(i) spending all or part of them to further the Trust; or

(ii) investing them, with the consent of the State Treasurer, in general obligations of the State or other securities;

(14) apply to Trust purposes any money, asset, property, or other thing of value the Trust receives incident to its operation; or

(15) delegate any of the powers of the Trust to one or more trustees or the Director.

(c) The Trust shall:

(1) direct and conduct a comprehensive statewide survey of historic properties in cooperation with:

(i) units of the federal government;

(ii) State units, including the Department of Natural Resources;

(iii) political subdivisions;

(iv) private organizations; and

(v) individuals;

(2) maintain an inventory and register of historic properties;

(3) document, research, record, and evaluate the significance of historic properties;

(4) prepare and implement comprehensive statewide and regional historic preservation plans;

(5) help political subdivisions to develop local historic preservation plans and programs;

(6) carry out programs and activities to protect, preserve, and encourage the preservation of historic properties;

(7) preserve and administer historic properties held by the Trust;

(8) cooperate with units of federal government, State units, political subdivisions, and private entities to ensure that historic properties are considered at all levels of planning and development;

(9) review the policies and programs of each State unit that affect historic properties, and recommend ways to improve the effectiveness and coordination of these policies and programs, consistent with this subtitle;

(10) administer programs of financial and technical assistance for historic

preservation projects;

(11) make recommendations on the certification and eligibility of historic properties for tax incentives and other programs of public assistance;

(12) provide public information, education, and training relating to historic preservation;

(13) encourage public interest and participation in historic preservation;

(14) advise and assist the State Historic Preservation Officer in implementing the State Historic Preservation Officer's responsibilities;

(15) advise the Governor and the General Assembly on historic preservation; and

(16) submit annually to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly a report of the activities of the Trust during the preceding year and any recommendations for actions appropriate to further its purposes.

(d) Income and fees received by the Trust, including fees authorized under this subtitle and income from educational and other preservation materials, activities, and services of the Trust, are not subject to § 7-302 of this article.

(e) Money maintained under this section is subject to audit by the State, including the Legislative Auditor.

§5A–319.

(a) Unless the Board of Public Works approves, the Trust may not dispose of any property transferred to it by the State or purchased with State money.

(b) The Trust may not sell, convey, assign, or lease out any historic property solely for investment.

(c) Before selling or conveying real or personal property listed in or eligible to be listed in the Maryland Register of Historic Properties, the Trust shall:

(1) ensure that the proposed sale or conveyance provides for the preservation or enhancement of the property;

(2) give preference to acquisition proposals that:

(i) are made by political subdivisions or capable private nonprofit organizations qualifying under § 501(c)(3) of the Internal Revenue Code;

(ii) provide for uses most compatible with the historic or architectural value of the property; and

(iii) provide the greatest opportunity for public involvement, participation, education, and enjoyment; and

(3) provide a 6-month option to purchase to entities that:

(i) meet the requirements of item (2) of this subsection; and

(ii) propose to purchase at the State-established appraised fair market value.

(d) The reversion under a lease made by the Trust may not be redeemed at the option of the tenant unless the lease expressly provides that the reversion may be redeemed at the option of the tenant.

§5A–322.

(a) In this part the following words have the meanings indicated.

(b) "Council" means the Maryland Advisory Council on Historic Preservation.

(c) "Historic Register" means the Maryland Register of Historic Properties.

(d) "Preparation costs" means the costs of studies, surveys, plans and specifications, or architectural, engineering, and other special services.

§5A–323.

(a) The Trust shall compile a Maryland Inventory of Historic Properties that consists of districts, sites, buildings, structures, and other objects of known or potential value to the prehistory, history, upland and underwater archaeology, architecture, engineering, and culture of the State.

(b) (1) The Trust shall compile a Historic Register to include all properties in the State that are listed in or eligible for listing in the National Register of Historic Places of the United States Department of the Interior.

(2) The Trust shall adopt regulations specifying procedures and eligibility standards for including properties in the Historic Register.

(3) The Director shall determine whether a property is eligible to be listed in the National Register of Historic Places.

(4) (i) The Director's determination may be appealed to the Governor's Consulting Committee on the National Register of Historic Places, which reviews nominations to the National Register under the National Historic Preservation Act.

(ii) The determination of the Governor's Consulting Committee is final.

(c) The location and character of a historic property included in the Maryland Inventory of Historic Properties or the Historic Register shall be confidential if the Director determines that disclosure would create a substantial risk of theft of the property or damage to the property or to the area where the property is located.

§5A–324.

(a) There is a Maryland Advisory Council on Historic Preservation.

(b) (1) The Council consists of seven voting members.

(2) The ex officio members are:

(i) the Secretary of General Services;

(ii) the Secretary of Housing and Community Development;

(iii) the Secretary of Planning; and

(iv) the Secretary of Transportation.

(3) The Governor shall appoint the other three members, of whom:

(i) two shall be individuals with expertise in architecture, history, archaeology, or another appropriate discipline that relates to historic preservation; and

(ii) one shall be a member of the general public.

(4) An ex officio member may designate a deputy secretary from the member's department to act in the member's absence.

(c) The Secretary of Planning serves as chair.

(d) (1) The term of an appointed member is 4 years.

(2) The terms of the appointed members are staggered as required by the terms provided for members of the Council on October 1, 2005.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(e) (1) A majority of the authorized membership of the Council is a quorum.

(2) The Council shall set the times and places of its meetings.

(f) A member of the Council:

(1) may not receive compensation as a member; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(g) The Director of the Trust is the secretary and staff to the Council.

§5A–325.

(a) (1) To the extent feasible, a State unit that submits a request or is otherwise responsible for a capital project shall consult with the Director to determine whether the project will adversely affect any property listed in or eligible for listing in the Historic Register.

(2) The consultation shall occur:

(i) before the State unit submits a request for the capital project to the Department of Budget and Management under § 3–602 of this article;

(ii) before or as part of the final project planning phase for a major transportation capital project as defined in § 2–103.1 of the Transportation Article; or

(iii) as early in the planning process as possible for a capital project that uses nonbudgeted money and is subject to the reporting requirements of § 3–602 of this article.

(b) (1) State units that own or control properties may consult with the Director to develop plans or interagency agreements to identify, evaluate, and manage any of those properties that are listed in or eligible to be listed in the Historic Register.

(2) Capital projects undertaken in accordance with a plan approved by the Trust or an interagency agreement are not subject to further review under this section.

(c) (1) This subsection applies to a capital project that:

(i) is not being carried out by a State unit;

(ii) uses the proceeds of State general obligation bonds; and

(iii) is not otherwise reviewed by the Trust under this section.

(2) Before the Board of Public Works may approve the use of bond proceeds for the project, the Department of Budget and Management or another State unit responsible for the project shall consult with the Director to determine whether the project will adversely affect any property listed in or eligible to be listed in the Historic Register.

(d) (1) Within 30 days after a State unit notifies the Director of a proposed capital project under this section, the Director shall determine whether the project

would adversely affect any property listed in or eligible to be listed in the Historic Register.

(2) If the Director finds that the proposed capital project would have a significant adverse effect on a listed or eligible property, the Director and the State unit shall consult to determine whether a practicable plan exists to avoid, mitigate, or satisfactorily reduce the adverse effect.

(3) If the Director and the State unit cannot agree on a plan, the State unit shall submit to the Council a report of the consultations and the findings and recommendations of the State unit.

(4) Within 30 days after receiving the report, the Council shall submit to the State unit comments:

(i) accepting the adverse effect; or

(ii) recommending practicable alternatives to avoid, mitigate, or satisfactorily reduce the adverse effect.

(5) The State unit may:

(i) incorporate in the project the alternatives recommended by the Council; or

(ii) disagree with the comments of the Council.

(6) If the State unit disagrees with the comments of the Council, the State unit:

(i) shall respond in writing to the Council, explaining why the State unit refuses to adopt the measures included in the comments of the Council; and

(ii) may not proceed with the project for at least 10 working days after responding.

(e) Except for the cost of studies and surveys, a State unit may include the capital costs of preservation activities required under this subtitle as eligible project costs of any project undertaken or financed by the State unit.

(f) The Trust shall adopt regulations that establish procedures and standards for:

(1) administrative review and comment under this section, including time frames for Trust action by the Trust or the Director on specific categories of projects;

(2) exempting specific projects, categories of projects, or categories of programs from any requirement of this section, if the exemption is found to be

consistent with the purposes of this subtitle and the best interests of the State, considering the magnitude of the exemption and the risk of impairing historic properties; and

(3) participation by State units, political subdivisions, private organizations, and other entities in proceedings under this section that may affect their interests.

(g) In accordance with regulations adopted under subsection (f) of this section, this section may be applied to any undertaking that is subject to the National Historic Preservation Act, 16 U.S.C. § 470f.

(h) Failure by a State unit to comply with this section does not create a private cause of action under State law.

§5A–326.

(a) In cooperation with the Trust and subject to available resources, each State unit shall:

(1) establish a program to identify, document, and nominate to the Trust each property owned or controlled by the State unit that appears to qualify for the Historic Register;

(2) ensure that no property listed in or eligible to be listed in the Historic Register is inadvertently transferred, sold, demolished, destroyed, substantially altered, or allowed to deteriorate significantly; and

(3) use any available historic building under its control to the extent prudent and practicable before acquiring, constructing, or leasing a building to carry out its responsibilities.

(b) If it is prudent, practicable, and in the State's best interest to do so, a State unit that transfers a surplus property listed in or eligible to be listed in the Historic Register shall ensure that the transfer provides for the preservation or enhancement of the property.

(c) If a historic property is to be altered substantially or destroyed by State action or with financial assistance from a State unit, the State unit shall cause timely steps to be taken to:

(1) make appropriate investigations and records;

(2) salvage appropriate objects and materials; and

(3) deposit with the Trust the results of the investigations, the records, and the recovered objects and materials.

(d) (1) A State unit that issues permits or licenses or provides financial assistance for any undertaking shall cooperate with the Trust by:

(i) giving notice to the Director, on request, of each application for a permit, a license, or financial assistance; and

(ii) requiring that, where appropriate, an applicant for a permit, a license, or financial assistance consult with the Director before the State unit takes final action on the application.

(2) After consulting with the Director, and to avoid, mitigate, or satisfactorily reduce any significant adverse effect on a property listed in or eligible to be listed in the Historic Register, a State unit may:

(i) put reasonable conditions on a license, permit, or award of financial assistance; and

(ii) seek guidance from the Council before imposing any conditions on a license, permit, or award of financial assistance.

(3) A person may appeal in accordance with the Administrative Procedure Act the reasonableness of a condition imposed by a State unit under this subsection on a license or permit.

(e) By regulation, the Trust shall establish professional standards, guidelines, and procedures to preserve historic properties owned, controlled, regulated, or assisted by State units, to minimize the need for Director review, and to avoid duplication and delays.

(f) This section may be applied to any undertaking that is subject to the National Historic Preservation Act, 16 U.S.C. § 470f.

(g) Failure by a State unit to comply with this section does not create a private cause of action under State law.

§5A–327.

(a) (1) In this section the following words have the meanings indicated.

(2) "MHT Loan Fund" means the Historic Preservation Loan Fund of the Trust.

(3) "MHT Loan Program" means the Historic Preservation Loan Program of the Trust.

(b) (1) There is an MHT Loan Program in the Trust.

(2) The purpose of the MHT Loan Program is to implement and encourage

the preservation of historic properties.

(3) The Trust shall administer the MHT Loan Program and coordinate the MHT Loan Program with federal and State programs that complement or facilitate carrying out the MHT Loan Program.

(c) There is an MHT Loan Fund in the Trust.

(d) The MHT Loan Fund may be used:

(1) to pay administrative costs directly related to the MHT Loan Program;

(2) to pay for the Trust to acquire historic properties or interests in historic properties for its authorized purposes or for resale or lease subject to appropriate preservation covenants;

(3) to pay costs, including preparation costs, to restore or rehabilitate historic properties owned by the Trust for:

(i) the Trust's authorized purposes; or

(ii) resale or lease subject to appropriate preservation covenants; or

(4) to make loans to nonprofit organizations, political subdivisions, business entities, and individuals to:

(i) acquire, rehabilitate, restore, or refinance historic properties; or

(ii) provide short–term financing for costs, including preparation costs, directly related to work that the Trust or the State Historic Preservation Officer requires or recommends to be undertaken before a construction project financed with federal or State money is begun or continued.

(e) (1) The MHT Loan Fund is a continuing, nonlapsing special fund that is not subject to § 7–302 of this article.

(2) The State Treasurer shall hold and the Comptroller shall account for the MHT Loan Fund.

(f) The MHT Loan Fund consists of:

(1) money appropriated in the State budget to the MHT Loan Program;

(2) money received as interest or repayment of principal on loans made under the MHT Loan Program or the Capital Revolving Fund for Historic Preservation;

(3) the proceeds from the resale or lease of property originally acquired by the Trust with money from the MHT Loan Fund or the Capital Revolving Fund for Historic Preservation;

(4) money received from other public or private sources for the benefit of the MHT Loan Fund; and

(5) money received from the sale of general obligation bonds.

(g) Money in the MHT Loan Fund shall be invested in the same manner as other State money.

(h) (1) The Department shall adopt regulations to carry out the purposes of the MHT Loan Program.

(2) The regulations shall include:

(i) application procedures;

(ii) procedures to give adequate notice to the public of assistance available under the MHT Loan Program;

(iii) provisions for the review of plans and specifications;

(iv) provisions for the inspection of projects during construction; and

(v) selection criteria the Trust must consider in evaluating loan applications, including:

1. the relative historical or cultural significance of, and the urgency of need for, the project to be financed by the loan;

2. any proposed contribution by the appropriate political subdivision to the project;

3. the geographic distribution of loan assistance from the MHT Loan Fund; and

4. other relevant factors.

(i) (1) With the approval of the Secretary, for each loan the Trust may set:

(i) the principal amount;

(ii) the maturity;

(iii) the repayment terms; and

(iv) an interest rate that complies with applicable federal regulations governing State borrowing.

(2) A loan from the MHT Loan Fund may be granted at an interest rate lower than rates on other loans from the MHT Loan Fund if:

(i) the loan recipient is a nonprofit organization or a political subdivision; or

(ii) the Secretary of Housing and Community Development determines under § 4–212 of the Housing and Community Development Article that after restoration or rehabilitation, the historic property will be wholly or partly occupied by individuals or families of limited income.

(3) A loan from the MHT Loan Program may be secured by:

(i) a mortgage lien, which may be subordinate to other mortgage liens;

(ii) a guarantee of repayment; or

(iii) another form of collateral acceptable to the Trust.

(4) Without approval or execution by the Board of Public Works, the Trust may take title to a mortgaged property by foreclosure or by deed in lieu of foreclosure and:

(i) convey title to a buyer; and

(ii) obtain and seek enforcement of a deficiency judgment.

(5) An individual or business entity may receive a loan only if the recipient can document that private financing is unavailable.

(6) The Trust shall ensure that no loan is made under the MHT Loan Program to acquire, restore, or rehabilitate a historic property unless the historic property is listed in or eligible to be listed in the Historic Register.

(j) (1) The Trust shall require the recipient of a loan from the MHT Loan Program to enter into an agreement to preserve and maintain the property.

(2) If the property is real property, the agreement shall be a recordable historic preservation easement.

(3) The Secretary may waive the agreement requirement if the Secretary finds that an agreement is impracticable.

(k) The trustees shall review and make recommendations to the Secretary about loans and expenditures from the MHT Loan Fund, and the Secretary shall approve each loan and expenditure from the MHT Loan Fund.

(l) (1) To the extent required by regulations adopted by the Secretary and approved by the Board of Public Works, the Secretary shall submit to the Board of Public Works for approval a proposed loan or expenditure from the MHT Loan Fund

that will be financed through the sale of State general obligation bonds.

(2) Except for an expenditure under subsection (d)(2) or (3) of this section, a loan or expenditure from the MHT Loan Fund is not subject to Titles 4 and 5 of this article.

(m) On or before December 31 of each year, the Trust shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, to the General Assembly on the financial status and the activities of the MHT Loan Program for the preceding fiscal year.

(n) (1) A person may not knowingly make or cause to be made a material false statement of fact, including an understatement or overstatement of financial condition, in a statement or report in or regarding an application for a loan or affecting an existing loan.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding $5,000 or both.

§5A–328.

(a) (1) In this section the following words have the meanings indicated.

(2) "MHT Grant Fund" means the Historic Preservation and Historical and Cultural Museum Assistance Grant Fund of the Trust.

(3) "MHT Grant Program" means the Historic Preservation Grant Program of the Trust.

(b) (1) There is an MHT Grant Program in the Trust.

(2) The purposes of the MHT Grant Program are to:

(i) implement and encourage the preservation of historic properties; and

(ii) promote interest in and study of historic properties and their preservation.

(c) (1) The Trust shall administer the MHT Grant Program and coordinate the MHT Grant Program with federal and State programs that complement or facilitate the MHT Grant Program.

(2) The Trust shall ensure that a grant awarded under the MHT Grant Program to acquire, restore, or rehabilitate a historic property is used only if the historic property is listed in or is eligible to be listed in the Historic Register.

(3) (i) The Trust shall require a grantee under the MHT Grant Program to enter into an agreement to preserve and maintain the property.

(ii) If the property is real property, the agreement shall be a recordable historic preservation easement.

(iii) The Secretary may waive the agreement requirement if the Secretary determines that an agreement is impracticable.

(d) (1) The Department shall adopt regulations to carry out the purposes of the MHT Grant Program.

(2) The regulations shall include:

(i) application procedures;

(ii) procedures to give adequate notice to the public of assistance available under the MHT Grant Program;

(iii) provisions for the review of plans and specifications;

(iv) provisions for the inspection of projects during construction; and

(v) selection criteria the Trust must consider when evaluating applications for grants, including:

1. the relative historical or cultural significance of, and the urgency of need for, the project to be financed by the grant;

2. any proposed contribution by the appropriate political subdivision to the project;

3. the geographic distribution of grant assistance from the MHT Grant Fund under subsection (e) of this section; and

4. other relevant factors.

(e) (1) There is an MHT Grant Fund in the Trust.

(2) The MHT Grant Fund may be used:

(i) for the purposes set forth in § 5A–353 of this subtitle;

(ii) to make grants to nonprofit organizations, political subdivisions, business entities, and individuals to acquire, rehabilitate, or restore historic properties;

(iii) to make grants to nonprofit organizations and political subdivisions to pay costs, including preparation costs, that are directly related to a rehabilitation or restoration project;

(iv) to make grants to nonprofit organizations and political subdivisions for historic preservation education and promotion, including the research, survey, and evaluation of historic properties and the preparation of historic preservation planning documents and educational materials;

(v) to purchase or acquire historic properties or interests in historic properties for the Trust's authorized purposes or for resale or lease with appropriate preservation covenants;

(vi) to pay costs, including preparation costs, that are directly related to restoring or rehabilitating historic properties that the Trust owns for use in accordance with the Trust's authorized purposes or for resale or lease subject to appropriate preservation covenants; and

(vii) to pay for historic preservation education and promotion conducted by the Trust, and for the research, survey, and evaluation of historic properties and the preparation of historic preservation planning documents and educational materials.

(f) The Trust shall administer the MHT Grant Fund.

(g) (1) The MHT Grant Fund is a continuing, nonlapsing special fund that is not subject to § 7–302 of this article.

(2) The Treasurer shall hold and the Comptroller shall account for the MHT Grant Fund.

(h) The MHT Grant Fund consists of:

(1) money appropriated in the State budget to the MHT Grant Program or the Historical and Cultural Museum Assistance Program under § 5A–352 of this subtitle;

(2) the proceeds from the resale or lease of any properties originally acquired by the Trust from the MHT Grant Fund or the Capital Grant Fund for Historic Preservation;

(3) money received from other public or private sources for the benefit of the MHT Grant Fund; and

(4) money received from the sale of State general obligation bonds.

(i) Money in the MHT Grant Fund shall be invested in the same manner as other State money.

(j) (1) The trustees shall review and make recommendations to the Secretary about grant applications and expenditure requests from the MHT Grant Fund.

(2) The trustees shall base their grant recommendations on a competitive selection process.

(3) In any fiscal year, the Secretary may hold up to 20% of the money in the MHT Grant Fund in reserve for emergency use in accordance with subsection (e) of this section.

(4) Grants to business entities may not exceed 10% of all grants awarded from the MHT Grant Fund under this section.

(k) (1) To the extent required by regulations adopted by the Secretary and approved by the Board of Public Works, the Secretary shall submit to the Board of Public Works for approval grants or expenditures from the MHT Grant Fund to be financed through the sale of State general obligation bonds.

(2) Except for an expenditure under subsection (e)(2)(v) and (vi) of this section, grants and expenditures from the MHT Grant Fund are not subject to Titles 4 and 5 of this article.

(l) On or before December 31 of each year, the Trust shall report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly on the financial status and the activities of the MHT Grant Program and the MHT Grant Fund for the preceding fiscal year.

(m) (1) A person may not knowingly make or cause to be made a material false statement of fact, including an understatement or overstatement of financial condition, in a statement or report in or regarding an application for a grant or affecting an existing grant.

(2) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding $5,000 or both.

§5A–329.

(a) In this section, "Fund" means the Historic Marker Program Fund.

(b) There is a Historic Marker Program Fund in the Trust.

(c) The purpose of the Fund is to produce and install historic markers at sites of statewide historical significance.

(d) The Trust shall administer the Fund.

(e) (1) The Fund is a continuing, nonlapsing special fund that is not subject to § 7-302 of this article.

(2) The State Treasurer shall hold and the Comptroller shall account for

the Fund.

(f) The Fund consists of:

(1) money appropriated to the Fund in the State budget;

(2) money recovered by the State to replace damaged or destroyed historic markers; and

(3) money from any other source received for the benefit of the Fund.

(g) The Trust may use money from the Fund to produce and install a historic marker at a site that the Trust determines to have statewide historical significance:

(1) if the site is on State-owned land; or

(2) if the site is not on State-owned land and at least one-half of the cost of producing and installing the historic marker is provided from sources other than the State.

(h) Money in the Fund shall be invested in the same manner as other State money.

(i) (1) The Trust shall approve the form and text of historic markers produced and installed under this section.

(2) Except as provided in paragraph (3) of this subsection, the Trust shall approve the location of a historic marker.

(3) If a historic marker is to be placed within the right-of-way of a public highway or street, the unit of the State or the political subdivision that maintains the public highway or street shall approve the location and manner of installation of the historic marker.

(j) The State owns the historic markers produced and installed under this section.

§5A–330. IN EFFECT

// EFFECTIVE UNTIL MAY 31, 2015 PER CHAPTERS 278 AND 279 OF 2010 //

(a) (1) In this section the following words have the meanings indicated.

(2) "Capital project" means the:

(i) acquisition of land or buildings for an African American heritage preservation project; or

(ii) construction or improvement of an African American heritage preservation project.

(3) "Commission" means the Commission on African American History and Culture.

(4) "Construction or improvement" means planning, design, engineering, alteration, construction, reconstruction, enlargement, expansion, extension, improvement, replacement, rehabilitation, renovation, upgrading, repair, or capital equipping.

(5) "Grantee" means a business entity, individual, nonprofit organization, or political subdivision.

(6) "Secretary" means the Secretary of Planning.

(b) (1) There is an African American Heritage Preservation Program in the Trust.

(2) The purpose of the African American Heritage Preservation Program is to identify and preserve buildings, communities, and sites of historical and cultural importance to the African American experience in Maryland.

(c) The Trust shall develop and administer the African American Heritage Preservation Program in partnership with the Commission.

(d) (1) On or before July 15 of each year, a grantee may submit an application to the joint partnership of the Trust and Commission to receive a grant for an African American heritage preservation capital project for the next fiscal year.

(2) An application shall include:

(i) a description of the scope and purpose of the project;

(ii) a building plan that includes the estimated total cost of the project; and

(iii) any other information required by the Trust and Commission.

(e) Grants under the Program to a business entity, individual, or political subdivision:

(1) require a matching fund from any combination of federal, county, municipal, or private sources; and

(2) may not exceed 50% of the total cost of an African American heritage preservation capital project.

(f) (1) The Trust and Commission shall review grant applications submitted

in accordance with subsection (d) of this section and shall make recommendations for African American heritage preservation capital project grants for the next fiscal year.

(2) In making recommendations under this subsection, the Trust and Commission shall consider:

(i) the public necessity and urgency of a project;

(ii) the need for additional sources of funding for a project;

(iii) the estimated cost and timeliness of executing a project;

(iv) the viability of matching funds for a project; and

(v) geographic diversity.

(3) On or before November 1 of each year, the Trust and Commission shall:

(i) recommend African American heritage preservation capital projects for funding in the State capital budget for the next fiscal year; and

(ii) forward the list of recommended projects and grantees to the Department of Budget and Management.

(g) For fiscal year 2012 and each fiscal year thereafter, the Governor shall include in the annual capital budget submission $1,000,000 for African American heritage preservation capital projects.

(h) On or before October 1 of each year, the Trust and Commission shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on State grants awarded for African American heritage preservation capital projects for the prior fiscal year.

(i) (1) Except as provided in paragraph (3) of this subsection, the Trust shall require a grantee under the African American Heritage Preservation Program to enter into an agreement to preserve and maintain the property.

(2) If the property is historic real property, the agreement shall be a recordable historic preservation easement.

(3) The Secretary may waive the easement requirement if the Secretary determines that an easement is impracticable or infeasible under the circumstances.

(j) (1) Subject to paragraph (2) of this subsection, the Secretary, in consultation with the Commission, shall adopt regulations to implement the African American Heritage Preservation Program.

(2) A proposed regulation that relates to approval by the Board of Public Works of grants to be financed through the sale of State general obligation bonds may

not be adopted under paragraph (1) of this subsection unless the regulation is approved by the Board of Public Works.

(k) To the extent required by regulations adopted under subsection (j) of this section, the Trust and the Commission shall submit to the Board of Public Works for the Board's approval each recommended African American Heritage Preservation Program grant that is to be financed through the sale of State general obligation bonds.

§5A–333.

(a) In this part the following words have the meanings indicated.

(b) "Archaeology Office" means the Archaeology Office established under § 5A-334 of this subtitle.

(c) "Associated funerary objects" means objects that are reasonably believed to have been placed with individual human remains as a part of the death rite or ceremony of a culture.

(d) (1) "Cave" has the meaning stated in § 5-1401 of the Natural Resources Article.

(2) "Cave" includes:

(i) any naturally occurring void, cavity, recess, cavern, sinkhole, grotto, rock shelter, or system of interconnecting passages beneath the surface of the earth or within a cliff or ledge; and

(ii) natural subsurface water and drainage systems.

(e) "Committee" means the Advisory Committee on Archaeology.

(f) "Human remains" means any part of the body of a deceased human being in any state of decomposition.

(g) "Native American" means an individual or a descendant of an individual who inhabited North America before European contact.

(h) "Submerged archaeological historic property" means any underwater structure, remains, or object that:

(1) yields or is likely to yield information significant to the study of human prehistory, history, or culture; and

(2) (i) is so embedded in underwater land that excavating tools are needed to move the bottom sediments to reach all or part of it and has remained unclaimed for at least 100 years; or

(ii) is included or is eligible to be included in the National Register

of Historic Places.

§5A–334.

(a) There is an Archaeology Office in the Trust.

(b) (1) The Archaeology Office includes a research unit.

(2) The research unit shall:

(i) engage in and direct fundamental archaeological research;

(ii) synthesize existing research information; and

(iii) encourage archaeological research and investigation by museums, institutions of higher education, and scientific and historical institutions and organizations in the State.

(c) (1) The Director shall employ a Chief Archaeologist, a State Terrestrial Archaeologist, and a State Underwater Archaeologist in accordance with § 5A-316 of this subtitle.

(2) (i) Each archaeologist employed under this subsection shall have an advanced degree in archaeology or a closely related field from an accredited college or university.

(ii) The Chief Archaeologist shall be a professional archaeologist.

(3) The Chief Archaeologist is the administrative head of the Archaeology Office.

(d) (1) Except as provided in paragraph (2) of this subsection, the Archaeology Office includes all staff members of the Trust who are archaeologists or hired to perform archaeological work, including those who may be assigned archaeological-related functions in other units of the Trust.

(2) The Archaeology Office does not include individuals specifically assigned to a park, museum, or other site-specific facility under the jurisdiction of the Trust.

§5A–335.

(a) The Archaeology Office shall:

(1) cooperate in excavating historically or archaeologically significant sites in the custody or control of any other State unit;

(2) encourage the preservation of prehistoric or historic sites on privately owned land in the State;

(3) coordinate the work of retrieving and preserving archaeologically significant objects and materials found during public construction in the State;

(4) cooperate with and help museums, institutions of higher education, and other scientific or historical institutions and organizations in preserving and protecting objects and materials of archaeological nature in their custody or control;

(5) cooperate with similar units of other states in preserving archaeologically significant sites, objects, and materials; and

(6) keep institutions or units of other states from exploiting archaeologically significant sites, objects, and materials in this State.

(b) The Archaeology Office also shall:

(1) make available to museums, institutions of higher education, and other scientific or historical institutions and organizations objects and materials suitable for demonstrating the archaeological history of the State;

(2) make available to public and private schools in the State exhibits on, and help to teach students about, the life of the early settlers and Native Americans of the State;

(3) disseminate archaeological information by publishing reports of archaeological research and investigation; and

(4) establish an educational program to train interested members of the public to identify, investigate, and register terrestrial archaeological historic property.

(c) The Archaeology Office also shall:

(1) prepare a list of prioritized research goals and objectives to guide the Trust and the Department's Division of Historical and Cultural Programs in choosing archaeological research projects to perform;

(2) develop, in consultation with the Committee, a policy that specifies the circumstances under which the Trust may directly perform archaeological investigations to comply with State or federal law that the Trust or the State Historic Preservation Officer administers; and

(3) provide to the Committee each year a copy of the part of the Trust's annual report to the Governor, required by § 5A-318(c)(16) of this subtitle, that relates to the Trust's archaeological activities.

(d) (1) Except as provided in paragraph (2) of this subsection, an archaeologist who is not working for the Trust need not adhere to the archaeological research goals and objectives developed by the Archaeology Office under this section.

(2) An archaeologist who performs a project governed by any State or federal law that the Trust or the State Historic Preservation Officer administers shall adhere to those goals and objectives to the extent required by law.

§5A–336.

(a) There is an Advisory Committee on Archaeology.

(b) (1) The Committee consists of seven members appointed by the Governor on recommendation of the Secretary and with the advice and consent of the Senate.

(2) The Committee shall include representatives of reputable museums, institutions of higher education, other recognized scientific or historical institutions or organizations, and qualified private firms that provide archaeological services.

(c) Each member of the Committee shall have skill and knowledge in archaeological matters.

(d) (1) The term of a member is 3 years and begins on July 1.

(2) The terms of members are staggered as required by the terms provided for members of the Committee on October 1, 2005.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(e) The Committee shall elect a chair from among its members.

(f) (1) The Committee shall meet at least four times a year at the times and places that the chair sets.

(2) At every meeting at least one of the following officers shall attend:

(i) the Chief Archaeologist;

(ii) the State Terrestrial Archaeologist; or

(iii) the State Underwater Archaeologist.

(g) A member of the Committee:

(1) may not receive compensation for duties performed as a member; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(h) The Committee shall:

(1) advise and assist the Archaeology Office on archaeological matters; and

(2) review policies, plans, and regulations relating to archaeological matters.

§5A–337.

A person who knows the location of an archaeological site in the State is encouraged to give the information to a reputable museum, an institution of higher education, another recognized scientific or historical institution or organization, or the Trust.

§5A–338.

The costs of archaeological work incurred in a State project on a site of archaeological or historical significance shall be as stated in § 7-114.1 of this article.

§5A–339.

(a) Except as provided in subsection (b) of this section and elsewhere in this title, an object or material of historical or archaeological value or interest found on a submerged or terrestrial archaeological site on land that the State owns or controls:

(1) is the property of the State; and

(2) shall be deposited for permanent preservation with a reputable museum, an institution of higher education, or another recognized scientific or historical institution or organization.

(b) (1) Subject to applicable federal law and paragraph (2) of this subsection, the Trust may transfer Native American or other human remains in its possession, custody, or control to an appropriate place of repose.

(2) If the cultural affiliation of human remains and associated funerary objects in the possession, custody, or control of the Trust can be established, the Trust may transfer the human remains and associated funerary objects in the following order of priority to:

(i) the descendants of the deceased; or

(ii) a group established as culturally affiliated with the deceased, including a Native American tribe, band, group, or clan.

(c) (1) Except for human remains of Native Americans and associated funerary objects subject to subsection (b)(2) of this section, the Trust may transfer any

human remains and associated funerary objects in its possession, custody, or control to a reputable museum, an institution of higher education, or another recognized scientific or historical institution or organization for study, if:

(i) the study is an essential part of scientific research;

(ii) the outcome of the scientific research will benefit the State; and

(iii) except as provided in paragraph (2) of this subsection, the study will be completed and the items returned to the Trust within 1 year after the date of the transfer.

(2) (i) If a transferee under this subsection makes a good faith effort but cannot complete a study within 1 year, the transferee may request an extension from the Trust.

(ii) The Trust may grant the extension only in accordance with its regulations.

(d) (1) In consultation with the Commission on Indian Affairs, the Trust shall adopt regulations to carry out this section.

(2) The regulations shall include:

(i) procedures to determine the appropriate disposition of human remains for which descent or cultural affiliation cannot be established;

(ii) specific time frames and procedures to extend a study of human remains and associated funerary objects beyond 1 year; and

(iii) procedures to account for any human remains and associated funerary objects that temporarily are transferred for study to a reputable museum, an institution of higher education, or another recognized scientific or historical institution or organization.

§5A–340.

(a) Submerged archaeological historic property on or taken from underwater land over which the State has sovereign control is the property of the State.

(b) The State may convey title to part or all of submerged archaeological historic property it owns in accordance with a permit, if the Board of Public Works approves the permit in accordance with Title 10, Subtitle 3 of this article.

(c) (1) The Trust and a holder of a permit under § 5A-341 of this subtitle may enter into an agreement to dispose of submerged archaeological historic property recovered by the holder.

(2) The agreement may divide the recovered submerged archaeological historic property between the State and the holder.

(3) Subject to approval of the Board of Public Works, the division may be in value or in kind.

(4) The Trust shall be the arbiter of the division, acting in the best interest of the State and giving consideration to the fair treatment of the permit holder.

(5) An agreement under this subsection shall provide reasonable compensation to the permit holder for any recovered submerged archaeological historic property claimed and turned over to the State.

(d) The Trust shall:

(1) establish an educational program to train interested members of the public to identify and register submerged archaeological historic property; and

(2) certify members of the public who successfully complete the educational program.

(e) (1) The Trust shall adopt regulations on issuing permits and disposing of and transferring submerged archaeological historic property under this subtitle.

(2) The regulations shall be adopted:

(i) with the approval of the Secretary; and

(ii) in consultation with the Federal Advisory Council on Historic Preservation and appropriate public and private sector groups in the State, including sport divers, professional dive operators, dive clubs, salvors, archaeologists, commercial fishermen, and historic preservationists.

§5A–341.

(a) Without a permit, a person may not excavate, remove, destroy, injure, deface, or disturb a submerged archaeological historic property on land over which the State has sovereign control.

(b) A person does not need a permit to inspect, study, explore, photograph, measure, record, or otherwise use and enjoy submerged archaeological historic property on land over which the State has sovereign control if the use or activity does not:

(1) involve the excavation, removal, destruction, injury, or disturbance of the submerged archaeological historic property or its immediate environment;

(2) endanger other persons or property; or

(3) violate any law.

(c) (1) Regulations under § 5A-340(e) of this subtitle shall provide that an individual does not need a permit to collect from submerged archaeological historic property a limited number of objects or materials recoverable by hand or with the use of screwdrivers, wrenches, or pliers.

(2) The State is not liable for injury or loss sustained by an individual engaged in activity authorized in accordance with paragraph (1) of this subsection.

(d) The Trust does not need a permit to do anything for which a permit is required under this section, but shall obtain approval for the undertaking from the Board of Public Works.

(e) The Trust shall establish a program for issuing and administering permits for activity that involves the removal, excavation, destruction, injury, or disturbance of submerged archaeological historic property on land over which the State has sovereign control.

(f) Subject to subsection (g) of this section, the Trust may issue to any person a permit granting an exclusive right to remove, excavate, destroy, injure, or disturb submerged archaeological historic property on land over which the State has sovereign control for the term and under the conditions that the Trust considers appropriate if:

(1) the Trust and the applicant for the permit have entered into an agreement under § 5A-340(c) of this subtitle; and

(2) the Trust determines that issuing the permit is in the best interest of the State and that the applicant for the permit has submitted a research plan that meets standards established by the Trust for:

(i) professional qualifications of the applicant and persons working under the permit;

(ii) techniques and methodology for the recovery and dissemination of data; and

(iii) proper conservation of information and materials.

(g) The Trust may not issue a permit to a person that seeks title to part or all of submerged archaeological historic property, or to a person that seeks to use submerged archaeological historic property for commercial salvage or another income-producing purpose, unless:

(1) the applicant has provided the Trust with assurance acceptable to the Trust that the project will be carried out and completed in accordance with a research plan under subsection (f)(2) of this section; and

(2) the Trust finds that:

(i) the submerged archaeological historic property is threatened with imminent destruction or substantial damage by natural or human factors unrelated to the proposed commercial excavation or disturbance;

(ii) the submerged archaeological historic property is not of major scientific, archaeological, anthropological, historical, recreational, or other public value;

(iii) the proposed excavation or disturbance will be minor and will produce information relevant to the statewide comprehensive historic preservation plan prepared by the Trust under § 5A-318(c)(4) of this subtitle; or

(iv) the submerged archaeological historic property will not be excavated or disturbed by any other person in the foreseeable future and will remain submerged until it is excavated or disturbed.

(h) The Trust may charge a reasonable fee to issue a permit and may require an applicant or permit holder to pay for the cost of the Trust's review, administration, and supervision of the permit.

(i) The Director or the Director's designee may enforce this section and may:

(1) issue a summons for a violation of this section or of a permit issued under this section;

(2) seize objects or materials removed from a submerged archaeological historic property, if the removal took place without a permit on or after July 1, 1988, or if the removal was contrary to the terms of a permit; and

(3) revoke a permit on a finding that the permit was issued improperly or the terms of the permit have been violated.

§5A–342.

(a) Without a permit, a person may not excavate, remove, destroy, injure, deface, or disturb a terrestrial archaeological site on land that the State owns or controls.

(b) The Trust does not need a permit to do anything for which a permit is required under this section.

(c) The Trust may issue a permit to excavate a terrestrial archaeological site on land the State owns or controls to any person that the Trust determines is qualified to conduct an excavation to collect objects and materials of historical or archaeological value or interest.

(d) A terrestrial archaeological excavation may be conducted only to benefit a

reputable museum, an institution of higher education, or another recognized scientific or historical institution or organization, so as to increase knowledge and appreciation of historical and archaeological objects and materials.

(e) The Trust may adopt regulations to ensure that objects and materials collected in a terrestrial archaeological excavation are properly safeguarded and preserved.

(f) The Director or the Director's designee may enforce the provisions of this subtitle relating to terrestrial archaeological historic property in the same manner as provided in § 5A-341(i) of this subtitle for submerged archaeological historic property.

§5A–343.

(a) (1) This section applies to all archaeological, prehistoric, and historic features found in any cave, including:

(i) all or any part of any burial grounds, historic or prehistoric ruins, and archaeological sites; and

(ii) relics, inscriptions, saltpeter workings, fossils, bones, and remains of historical human activity.

(2) Without a permit issued under this section, a person may not excavate, remove, destroy, injure, deface, or disturb features found in a cave.

(b) In accordance with §§ 5A-341 and 5A-342 of this subtitle, an individual trained in archaeology may apply for and be issued a permit to excavate or remove features described in subsection (a) of this section from or in a cave on land that the State owns or controls by rights under a lease, option contract, or purchase contract.

(c) (1) An individual may apply for a permit to excavate or remove archaeological, prehistoric, and historic features from a cave on privately owned land.

(2) An applicant for a permit shall:

(i) be trained in archaeology;

(ii) give the Trust a detailed statement of the purposes and objectives of the proposed excavation or removal;

(iii) agree to provide the Trust with information from and results of any excavation, study, or collection in accordance with the terms of the permit;

(iv) obtain the prior written consent of the owner of the land on which the excavation or removal will be conducted; and

(v) agree to carry the permit while conducting the excavation or

removal authorized by the permit.

(3) A permit may be issued for a maximum term of 2 years and may be renewed.

(4) A permit is not transferable, but a person working under the direct supervision of the permit holder need not obtain a separate permit.

(d) Any object or material of archaeological, prehistoric, or historic value or interest found in a cave on privately owned land is the property of the owner of the land.

(e) If a person uses a cave for recreational or scientific purposes with the prior consent of and without a charge by the owner and sustains an injury, the owner and an authorized agent of the owner acting within the scope of the agent's authority are not liable for the injury.

(f) The Director and the Director's designee may enforce the provisions of this part relating to archaeological historic property found in caves in the same manner as provided in § 5A-341(i) of this subtitle for submerged archaeological historic property.

§5A–344.

(a) If the Director or the Director's designee takes any enforcement action under this subtitle against a permit holder, the permit holder shall be given an opportunity for a hearing before the Secretary.

(b) Subject to subsection (c) of this section, notice shall be given and the hearing shall be held in accordance with Title 10, Subtitle 2 of the State Government Article.

(c) The Director or the Director's designee shall provide notice that a hearing will be held within 30 days after the enforcement action, unless a different period is agreed to by the parties.

§5A–345.

(a) The provisions of this subtitle that protect property on land under State control if it is submerged archaeological historic property, terrestrial archaeological historic property, or archaeological historic property in a cave may apply to similar historic property on privately owned land if:

(1) the owner asks the Trust in writing to apply the provisions to the property; and

(2) the Trust determines that the property is eligible for the Maryland Register of Historic Properties and deserves protection.

(b) Unless the State controls privately owned land by rights under a lease,

option contract, or purchase contract, this subtitle does not:

(1) limit the use of the land by the owner or the owner's guest; or

(2) require the owner or guest to hold a permit before conducting any activity on the land.

§5A–346.

(a) (1) A person who violates § 5A-339, § 5A-341, § 5A-342, or § 5A-343 of this subtitle, or a regulation adopted under any of those sections is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 30 days or a fine not exceeding $1,000 or both.

(2) If a person is found guilty of a violation under paragraph (1) of this subsection, the court:

(i) may impose costs against the person; and

(ii) on request by the Trust, may revoke any permit issued to the person under § 5A-340, § 5A-341, § 5A-342, or § 5A-343 of this subtitle.

(3) Each day on which a violation occurs is a separate violation.

(b) (1) A person who violates any term of a permit issued under § 5A-341 of this subtitle for use of a submerged archaeological historic property for commercial salvage or other income-producing purpose is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $10,000 or both.

(2) If a person is found guilty of a violation under paragraph (1) of this subsection, the court:

(i) may impose costs against the person; and

(ii) on request by the Trust, may revoke the person's permit.

(3) Each day on which a violation occurs is a separate violation.

(c) Materials and recorded information obtained in violation of § 5A-339, § 5A-341, § 5A-342, or § 5A-343 of this subtitle are subject to appropriation by the State and will be managed, cared for, and administered by the Trust.

§5A–349.

(a) In this part the following words have the meanings indicated.

(b) "Operating support" means money for necessary administrative, technical, or professional services, and related expenses.

(c) "Panel" means the Museum Assistance Review Panel.

(d) "Program" means the Historical and Cultural Museum Assistance Program.

§5A–350.

This part applies to a museum in the State that:

(1) is organized on a nonprofit basis for essentially educational or preservation purposes;

(2) cares for tangible inanimate objects that the museum owns or uses;

(3) exhibits those objects to the public on a regular schedule; and

(4) interprets the State's cultural heritage, history, natural history, or history of science and technology.

§5A–351.

(a) The General Assembly finds that:

(1) museums present, interpret, and preserve unusual and significant objects of the State's heritage for the benefit, enjoyment, and education of the residents of the State;

(2) museums are unique and beneficial resources that supplement the State's educational system;

(3) museums are repositories and caretakers of irreplaceable cultural objects for the benefit of today's generation and generations yet to come;

(4) museums, including those located in small communities, play an important and cost-effective role in the State's leisure time and tourism industry;

(5) it is not feasible or desirable to display the entire history and heritage of the State in a single facility at one location;

(6) the history and heritage of the State should be displayed and interpreted to the public where the history happened and the heritage arose, so that centers of community pride may be created and tourist activity may be dispersed throughout the State; and

(7) the public interest is served by helping museums to become more accessible and by helping residents of the State and visitors to understand the State's diverse heritage.

(b) The General Assembly finds that the public interest is served by establishing a program of financial assistance to support the upgrade, care, research, interpretation,

documentation, and display of the State's irreplaceable museum collections.

§5A–352.

There is a Historical and Cultural Museum Assistance Program of the Trust.

§5A–353.

(a) The purpose of the Program is to provide political subdivisions and nonprofit organizations with financial assistance for museums.

(b) The Program shall make grants from the MHT Grant Fund under § 5A-328 of this subtitle to political subdivisions and nonprofit organizations for use by museums for:

(1) research related to collections, exhibits, or other educational activities;

(2) the care, conservation, interpretation, and documentation of collections;

(3) the planning, design, and construction of exhibits;

(4) educational programs and projects;

(5) the development of master plans for museums, including activities required to achieve accreditation by the American Association of Museums or another appropriate entity;

(6) minor structural modifications to existing museum facilities;

(7) the development of plans and specifications and the provision of architectural, engineering, or other special services directly related to the construction or rehabilitation of museum facilities; or

(8) operating support for any museum-related activity, including activities described in items (1) through (7) of this subsection.

(c) On or before December 31 of each year, the Trust shall report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly on the financial status and the activities of the Program for the preceding fiscal year.

§5A–354.

(a) There is a Museum Assistance Review Panel in the Program.

(b) (1) The Panel shall include as members:

(i) the President of the Senate or the President's designee; and

(ii) the Speaker of the House of Delegates or the Speaker's designee.

(2) The Secretary shall appoint the other members of the Panel.

(3) Of the members that the Secretary appoints:

(i) one shall be a representative of the Executive Branch with functions related to the purposes of the Program; and

(ii) the others shall fairly represent museums eligible for assistance under this part.

(c) (1) The Panel shall:

(i) advise the Secretary and the staff of the Trust regarding Program policies and activities;

(ii) review applications for grants under the Program and recommend approval or disapproval to the Secretary; and

(iii) seek the advice and recommendations of the State Archivist in reviewing grant applications that relate in any part to the care and preservation of, or access to, archival material.

(2) The Panel shall recommend approval of a grant only after a competitive selection process.

§5A–355.

(a) The Trust shall administer the Program and coordinate the Program with federal, State, and private programs that complement or facilitate carrying out the Program.

(b) The Trust shall:

(1) survey the locations, resources, and needs of museums in the State;

(2) provide technical and general advisory assistance to museums that qualify or seek to qualify for grants under the Program; and

(3) encourage museums to develop long-range plans and to achieve accreditation by the American Association of Museums or another appropriate entity that accredits museums and helps them to meet professional standards.

§5A–356.

The Trust may not make a grant to a museum that:

(1) currently is receiving operating support from the Maryland State Arts

Council;

(2) is operated wholly or partly by the State; or

(3) has not existed as a nonprofit organization for at least 3 years before applying for the grant.

§5A–357.

In any fiscal year, the Secretary may reserve up to 20% of the money available in the MHT Grant Fund under § 5A-328 of this subtitle for unanticipated projects eligible for assistance under § 5A-353 of this subtitle.

§5A–358.

(a) The Department shall adopt regulations to carry out the Program, including:

(1) application and review procedures;

(2) procedures for adequate public notice of assistance available under the Program; and

(3) selection standards that the Panel shall consider in reviewing applications for grants.

(b) Selection standards under subsection (a)(3) of this section include:

(1) the relative merits of the project or activities within identified statewide needs;

(2) the extent to which the appropriate political subdivision contributes to support the project;

(3) the potential for the project to stimulate increased tourism, museum attendance, or museum self-sufficiency; and

(4) other relevant factors, such as the extent to which the project helps achieve equal geographic distribution of grant assistance throughout the State.

§5A–359.

(a) A person may not knowingly make or cause to be made a material misstatement of fact in a statement or report in or regarding an application for a grant or affecting a grant already made.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding $5,000 or both.

§5A–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Committee" means the Maryland Advisory Committee on Historic Agricultural Structure Preservation.

(c) "Fund" means the Maryland Barn Preservation Fund.

§5A–402.

(a) There is a Maryland Advisory Committee on Historic Agricultural Structure Preservation.

(b) (1) The Committee consists of 10 members.

(2) The ex officio members are:

(i) the Secretary of Agriculture, or the Secretary's designee;

(ii) the Secretary of Business and Economic Development, or the Secretary's designee;

(iii) the Secretary of Planning, or the Secretary's designee;

(iv) the Director of the Maryland Historical Trust; and

(v) the Director of the Maryland Cooperative Extension.

(3) The Governor shall appoint the other five members, of whom:

(i) one shall be from a list of at least two nominees representing the Maryland State Grange;

(ii) one shall be from a list of at least two nominees representing the Maryland Farm Bureau;

(iii) two shall be individuals actively engaged in agriculture; and

(iv) one shall be a member of the Maryland Environmental Trust.

(c) The Secretary of Planning serves as chair.

(d) The term of an appointed member is 4 years.

(e) A member of the Committee:

(1) may not receive compensation as a member; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§5A–403.

(a) There is a Barn Preservation Fund in the Department of Planning.

(b) The Fund shall be used to make grants to preserve historic barns and agricultural structures in the State.

(c) The Fund consists of:

(1) money appropriated in the State budget to the Fund; and

(2) any other money from any other source accepted for the benefit of the Fund.

(d) To apply for a grant, an applicant shall submit to the Committee an application in the form that the Committee requires.

(e) On a recommendation from the Committee, the Board of Public Works shall approve expenditures from the Fund in the form of grants to preserve historic barns and agricultural structures.

(f) In recommending grants under this subtitle, the Committee shall consider:

(1) any historic building features;

(2) important examples of historic agricultural building types;

(3) the productive long-term use of the property;

(4) important local landmarks;

(5) structures that are located on designated scenic and cultural byways; and

(6) structures that accept a preservation easement.

(g) On or before December 31 of each year, the Committee shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly on the financial status and the activities of the Fund for the preceding fiscal year.

§5A–404.

The Department of Planning shall adopt any regulations necessary to implement this subtitle.

§5A–405.

If a recipient of a grant under this subtitle or subsequent owner of a property that was assisted by a grant under this subtitle takes any action within 10 years of the grant award with respect to the assisted building or structure, such as dismantlement, removal, or substantial alteration, which causes it to no longer be eligible for listing on the National Register of Historic Places, within 1 year from the date of loss of eligibility, the preservation grant shall be repaid in full to the Fund.

§5A–406.

Receipt of a grant award under this subtitle and conditions of the award shall be recorded in the land records for the county in which the historic barn or agricultural structure is located.

§6–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Board of Revenue Estimates.

(c) "Bureau" means the Bureau of Revenue Estimates.

(d) "Chief" means the Chief of the Bureau.

§6–102.

(a) There is a Board of Revenue Estimates.

(b) The Board consists of the following 3 ex officio members:

(1) the Comptroller;

(2) the Treasurer; and

(3) the Secretary of Budget and Management.

(c) The Treasurer may appoint, as the Treasurer's designee, a deputy treasurer to serve on the Board.

(d) The Chief is the executive secretary of the Board.

§6–103.

(a) There is a Bureau of Revenue Estimates in the Office of the Comptroller.

(b) (1) The head of the Bureau is the Chief.

(2) Subject to the supervision of the Comptroller, the Chief has

administrative control of the Bureau.

(3) Unless the Comptroller, with the approval of the Board, determines that an alternative structure is appropriate, the Chief shall be subject to the supervision of the Deputy Comptroller with responsibility for tax administration.

(c) (1) Except as otherwise provided by law, subject to the approval of the Board, the Comptroller shall appoint the Chief.

(2) The Chief may be removed only by a majority of the Board for incompetence or other good cause.

(3) The Chief shall appoint other employees of the Bureau in accordance with the provisions of the State Personnel and Pensions Article.

§6–104.

(a) (1) After the end of each fiscal year, the Bureau shall submit to the Board a report that:

(i) contains an itemized statement of the State revenues from all sources for that fiscal year; and

(ii) includes any recommendations of the Bureau.

(2) In December, March, and September of each year, the Bureau shall submit to the Board a report that contains an itemized statement of the estimated State revenues from all sources for the fiscal year following the fiscal year in which the report is made.

(3) The Bureau shall provide to the Board any other information that the Board requests.

(4) Notwithstanding any other provision of law, the reports required under paragraphs (1) and (2) of this subsection shall include an itemized statement of:

(i) revenues or estimated revenues distributed to the Transportation Trust Fund, including the motor fuel taxes imposed under Title 9, Subtitle 3 of the Tax – General Article and motor vehicle titling taxes imposed under Title 13, Subtitle 8 of the Transportation Article; and

(ii) revenues from the State transfer tax imposed under Title 13, Subtitle 2 of the Tax – Property Article.

(b) In addition to these reports, the Bureau shall continually conduct studies of State revenue sources to:

(1) determine the amount of revenue produced; and

(2) devise and recommend new methods and sources for improved efficiency, equity, and economy in production, collection, and estimation of revenue.

(c) (1) On or before December 1, 2008, and December 1 of every third year thereafter, the Bureau shall submit to the Governor and, in accordance with § 2–1246 of the State Government Article, to the General Assembly a tax incidence study measuring the burden of all the major taxes imposed by the State and how that burden is shared among taxpayers of different income levels.

(2) The Bureau shall prepare and submit the statistics of income report required under § 10–223 of the Tax – General Article.

§6–105.

(a) In this section, "Group" means the Consensus Revenue Monitoring and Forecasting Group established under this section.

(b) There is a Consensus Revenue Monitoring and Forecasting Group.

(c) The Group consists of:

(1) the Chief and staff of the Bureau as designated by the Chief;

(2) the Deputy Comptroller with responsibility for tax administration and staff as designated by the Deputy Comptroller with responsibility for tax administration;

(3) staff of the Office of the Treasurer as designated by the Treasurer;

(4) staff of the Department of Budget and Management as designated by the Secretary of Budget and Management;

(5) staff of the Department of Transportation as designated by the Secretary of Transportation; and

(6) staff of the Office of Policy Analysis of the Department of Legislative Services as designated by the Director of the Office.

(d) The Chief shall chair the Group.

(e) The Group and its constituent units shall:

(1) review and analyze attainment of revenues on a monthly basis; and

(2) advise and collaborate with the Bureau:

(i) in the development of revenue forecasts and any necessary revisions to those forecasts; and

(ii) in the performance of any pertinent studies or analyses as requested by the Chief or as directed by the Board.

(f) To assist the Group in performing its function, the Comptroller and the Bureau shall:

(1) within 7 calendar days after the end of each month, provide to members of the Group detailed data on revenue collections; and

(2) before any document relating to the work of the Bureau is published, provide a draft of the document to the members of the Group for review and comment.

§6–106.

(a) The Board shall:

(1) study the information that the Bureau provides; and

(2) consider the recommendations of the Bureau.

(b) (1) In December, March, and September of each year, the Board shall submit to the Governor and, in accordance with § 2–1246 of the State Government Article, to the General Assembly, a report that:

(i) contains an itemized statement of the estimated State revenues from all sources for the fiscal year following the fiscal year in which the report is made; and

(ii) includes any recommendations of the Board.

(2) (i) Subject to subparagraph (ii) of this paragraph, the Governor shall state the most recent estimates of revenues reported by the Board in the proposed budget and any supplemental budget submitted to the General Assembly.

(ii) If the Governor uses different estimates of revenues in the formulation of the proposed budget and any supplemental budget submitted to the General Assembly than those reported by the Board, a statement providing an explanation as to the differences shall be included together with those submissions.

§6–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Banking institution" means an institution that is incorporated under the laws of the State as a State bank, trust company, or savings bank.

(c) "Collateral" means collateral that is listed under § 6-202 of this subtitle.

(d) "Deposit insurance" means insurance by:

(1) the Federal Deposit Insurance Corporation; or

(2) the Resolution Trust Corporation created under § 21A of the Federal Home Loan Bank Act (12 U.S.C. § 1441a.).

(e) "Financial institution" means:

(1) any banking institution;

(2) any national banking association;

(3) an institution that is incorporated under the laws of any other state as a bank; and

(4) an institution that is incorporated under the laws of this State or of the United States as a savings and loan association.

(f) "National banking association" means an institution that is incorporated under federal law as a bank.

(g) "State money" for purposes of §§ 6-209 and 6-210 of this subtitle includes moneys in a bank account maintained under the control of an employee or official of the clerk of the court or register of wills.

§6–202.

Collateral that may be used under this subtitle shall be:

(1) an obligation of the United States or any of its agencies;

(2) an obligation guaranteed by the United States or by any of its agencies;

(3) an obligation insured by the United States;

(4) an obligation of the State or any of its units or instrumentalities;

(5) an obligation of a county of the State or any of its agencies;

(6) an obligation of a municipal corporation in the State or any of its agencies;

(7) an obligation of any other governmental authority in the State;

(8) an obligation of the Inter–America Development Bank;

(9) an obligation of the World Bank;

(10) an obligation of the following government–sponsored enterprises:

(i) the Federal Home Loan Banks;

(ii) the Federal Home Loan Mortgage Corporation;

(iii) the Federal National Mortgage Association;

(iv) the Farm Credit System;

(v) the Federal Agricultural Mortgage Corporation; and

(vi) the Student Loan Marketing Association;

(11) a surety bond if:

(i) subject to the terms and conditions of the bond, it is irrevocable and absolute;

(ii) the surety bond is issued by an insurance company authorized to do business in this State;

(iii) the issuer of the surety bonds does not provide surety bonds for any one financial institution in an amount that exceeds 10% of the surety bond insurer's policyholders' surplus and contingency reserve, net of reinsurance; and

(iv) the claims–paying ability of the authorized insurance company is rated, at all relevant times, in the highest category by at least two nationally recognized rating agencies acceptable to the Treasurer;

(12) an obligation or security of, or other interest in, any open–end or closed–end management type investment company or investment trust registered under the provisions of the federal Investment Company Act of 1940, 15 U.S.C. § 80a–1 et seq., if:

(i) the portfolio of the open–end or closed–end management type investment company or investment trust is limited to direct obligations of the United States government and to repurchase agreements fully collateralized by United States government obligations; and

(ii) the open–end or closed–end management type investment company or investment trust takes delivery of that collateral, either directly or through an authorized custodian; or

(13) a letter of credit issued by a Federal Home Loan Bank if the letter of credit meets the conditions under the guidelines issued by the State Treasurer's office.

§6–203.

(a) The Treasurer shall give 15% of the weight of the decision to the standards established in this section in deciding whether to:

(1) designate a financial institution as a depositary for State money under § 6-205 of this subtitle; and

(2) make an agreement with a financial institution for a banking service under § 6-229 of this subtitle.

(b) (1) The Treasurer shall consider whether the financial institution received a rating of "needs improvement" or "substantial noncompliance" in its most recent examination under the federal Community Reinvestment Act of 1977, P.L. Number 95-128.

(2) If a financial institution operates in a state other than Maryland, the Treasurer shall consider Maryland-specific information that is provided within the assessment area section of the Community Reinvestment Act report.

(c) (1) The Treasurer shall consider whether, during the previous 5 years, a court in Maryland has found, in a final adjudication, that a financial institution has violated any antidiscrimination statute or regulation.

(2) The Treasurer may consider whether, during the previous 5 years, a court outside Maryland has found, in a final adjudication, that a financial institution has violated any antidiscrimination statute or regulation.

(3) The Treasurer may determine how to assess a violation under paragraph (1) or (2) of this subsection if the violation was committed by:

(i) an affiliate of the financial institution; or

(ii) an entity acquired by the financial institution.

(d) The Treasurer shall consider whether the financial institution has demonstrated that during the previous 5 years, the financial institution has:

(1) successfully made loans in Maryland through State or federal lending programs designed to assist small and minority-owned businesses;

(2) had an active outreach program to assist small and minority-owned businesses through which the financial institution has made efforts in Maryland; and

(3) established strategic partnerships in Maryland with entities whose mission is to provide technical assistance to small and minority-owned businesses.

§6–205.

(a) Subject to the limitations in this subtitle and in any other law, the Treasurer may designate any financial institution as a depositary for State money.

(b) The Treasurer may designate foreign banks and similar institutions

as depositaries for the purpose of conducting State government activities outside the United States. The deposits in such institutions may not exceed the amount appropriated in the budget for conducting State government activities outside the United States.

§6–206.

The Treasurer may not designate a financial institution or a foreign institution as a depositary unless the Governor approves the designation.

§6–209.

(a) State money on deposit with a financial institution shall be secured by:

(1) deposit insurance; or

(2) collateral as required by this section.

(b) (1) The collateral for State money on deposit with a financial institution:

(i) must have, at all times, a market value that equals or exceeds the State money that is on deposit with the financial institution and is not covered by deposit insurance; and

(ii) must be approved by the Treasurer.

(2) If the collateral is a surety bond under § 6-202 of this subtitle:

(i) the surety bond shall be in a form and amount acceptable to the Treasurer as determined by the Treasurer from time to time; and

(ii) the financial institution that provides the surety bond as collateral shall immediately notify the Treasurer if the rating assigned to the issuing insurance company by any rating agency, found acceptable to the Treasurer under § 6-202 of this subtitle, is withdrawn or downgraded, in which event the financial institution shall immediately provide the Treasurer with substitute collateral permitted under § 6-202 of this subtitle.

(3) Subject to the requirements of this subsection, a financial institution may change its collateral from time to time.

(c) (1) A custodian shall hold the collateral under this section for the benefit of the State.

(2) A financial institution may use as a custodian:

(i) any banking institution that is approved by the Commissioner of Financial Regulation to conduct commercial banking business in the State;

(ii) a federal reserve bank; or

(iii) any national banking association that is approved by the Comptroller of the Currency to conduct banking business in the State.

(3) A financial institution may not be approved as custodian for the collateral of a depositary unless the assets of the financial institution equal or exceed 200% of the value of the collateral to be held for the depositary.

§6–210.

(a) (1) On request of the Treasurer, a depositary for State money shall submit to the Treasurer or a designee of the Treasurer a report that states:

(i) the total amount of State money on deposit with the depositary;

(ii) the total amount of collateral and deposit insurance for the money; and

(iii) the market value of the collateral for the money.

(2) Each national banking association that is a depositary for State money shall submit to the Comptroller of the Currency each report for which the Comptroller asks.

(3) Each banking institution that is a depositary for State money shall submit to the Commissioner of Financial Regulation each report for which the Commissioner asks.

(4) Each other bank that is a depositary for State money shall submit to the banking authority for the state where the bank has its principal office each report for which the banking authority of that state asks.

(b) On request of the Treasurer a custodian shall submit to the Treasurer or a designee of the Treasurer a report that states the total amount of collateral that a depositary has with the custodian.

§6–211. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2021 PER CHAPTER 396 OF 2006 AND CHAPTER 740 OF 2009 //

(a) (1) There is a Linked Deposit Program in the Department of Housing and Community Development.

(2) The purpose of the Linked Deposit Program is to stimulate opportunities for minority business enterprises to have access to credit by assisting these businesses in obtaining loans at lower than market interest rates.

(b) A loan qualifies under the Linked Deposit Program if the loan:

(1) satisfies the financial institution's lending criteria;

(2) has a term not exceeding 10 years;

(3) is made to a minority business enterprise certified under Title 14, Subtitle 3 of this article;

(4) has an interest rate that the financial institution charges on a loan for a similar purpose and a similar term that is reduced by at least the lesser of:

(i) 2 percentage points; or

(ii) the difference between the financial institution's rate on a 60–month certificate of deposit and the interest rate acceptable to the Treasurer for its deposits; and

(5) has points or fees charged at loan closing not exceeding 1 percent of the loan amount.

(c) The Department of Housing and Community Development shall:

(1) confirm with the certification agency designated under Title 14, Subtitle 3 of this article that each loan under the Linked Deposit Program is made to a business that is certified as a minority business enterprise;

(2) establish procedures for notification by the certification agency designated under Title 14, Subtitle 3 of this article if a business that has an outstanding balance of a loan under the Linked Deposit Program is no longer certified;

(3) require minority business enterprises and lenders to notify the Department concerning final loan disposition; and

(4) report annually to the Governor, the Treasurer, and, in accordance with § 2–1246 of the State Government Article, the General Assembly on overall performance of the Linked Deposit Program.

(d) The Treasurer may establish the Linked Deposit Program for investment of deposits in any financial institution that:

(1) the Treasurer has designated as a depository for State money; and

(2) makes a loan in accordance with subsection (b) of this section.

(e) (1) The Treasurer may make one or more interest bearing deposits that are equal to:

(i) the amount of the loan made by the financial institution in

accordance with subsection (b) of this section; or

(ii) the aggregate amount of two or more loans made by one or more financial institutions in accordance with subsection (b) of this section.

(2) In making an interest bearing deposit under this subsection, the Treasurer may accept a rate that is up to 2 percentage points below current market rates or an index selected by the Treasurer.

(3) The Treasurer may use up to $50,000,000 to make interest bearing deposits in an amount equivalent to the amount financial institutions loan to certified minority business enterprises.

(4) Notwithstanding the provisions of § 6–202 of this subtitle, the Treasurer may make an interest bearing deposit under this subsection in any financial institution without the security required in § 6–202 of this subtitle if:

(i) the funds are initially placed for deposit with a financial institution selected by the Treasurer;

(ii) the financial institution selected by the Treasurer arranges for the further deposit of the money into one or more certificates of deposit, each in an amount of not more than the applicable Federal Deposit Insurance Corporation maximum insurance coverage limit, in one or more financial institutions for the account of the Treasurer;

(iii) at the same time the money is deposited and the certificates of deposit are issued for the benefit of the Treasurer by other financial institutions, the financial institution selected by the Treasurer receives an amount of deposits from customers of other banks or savings and loan associations equal to the amount of money initially deposited by the Treasurer;

(iv) each certificate of deposit issued for the Treasurer's account is insured by the Federal Deposit Insurance Corporation for 100% of the principal and accrued interest of the certificate of deposit; and

(v) the financial institution selected by the Treasurer acts as custodian for the depositor with respect to the certificates of deposit issued for the Treasurer's account.

(f) (1) Subject to paragraph (2) of this subsection, on notification by the Department of Housing and Community Development that a minority business enterprise participating in the Linked Deposit Program is no longer certified under Title 14, Subtitle 3 of this article, the Treasurer shall reduce the amount of the interest bearing deposit with the participating financial institution by the outstanding balance of the loan made under this section to the decertified minority business enterprise.

(2) A minority business enterprise that loses its certification due to

revenue or employee growth may not be considered decertified for purposes of paragraph (1) of this subsection.

(g) (1) A loan assisted by a linked deposit is not a debt of the State or a pledge of the credit of the State.

(2) The Treasurer and the State are not liable to any financial institution for payment of the principal or interest on a loan assisted by a linked deposit.

(h) The Department of Housing and Community Development and the Treasurer may adopt regulations to carry out this section.

§6–212.

(a) (1) There is a Linked Deposit Program for Small Businesses in the Department of Housing and Community Development.

(2) The purpose of the Linked Deposit Program for Small Businesses is to stimulate opportunities for small businesses to have access to credit by assisting these businesses in obtaining loans at lower than market interest rates.

(b) A loan qualifies under the Linked Deposit Program for Small Businesses if the loan:

(1) satisfies the lending criteria of the financial institution;

(2) has a term not exceeding 10 years;

(3) is made to a small business qualified under Title 14, Subtitle 5 of this article;

(4) has an interest rate that the financial institution charges on a loan for a similar purpose and a similar term that is reduced by at least the lesser of:

(i) 2 percentage points; or

(ii) the difference between the financial institution's rate on a 60–month certificate of deposit and the interest rate acceptable to the Treasurer for its deposits; and

(5) has points or fees charged at loan closing not exceeding 1 percent of the loan amount.

(c) The Department of Housing and Community Development shall:

(1) confirm with the Department of General Services that each loan under the Linked Deposit Program for Small Businesses is made to a business that qualifies as a small business;

(2) establish procedures for notification by the Department of General Services if a business that has an outstanding balance of a loan under the Linked Deposit Program for Small Businesses no longer qualifies as a small business;

(3) require small businesses and lenders to notify the Department of Housing and Community Development concerning final loan disposition; and

(4) report annually to the Governor, the Treasurer, and, in accordance with § 2–1246 of the State Government Article, the General Assembly on overall performance of the Linked Deposit Program for Small Businesses.

(d) The Treasurer may establish the Linked Deposit Program for Small Businesses for investment of deposits in any financial institution that:

(1) the Treasurer has designated as a depository for State money; and

(2) makes a loan in accordance with subsection (b) of this section.

(e) (1) The Treasurer may make one or more interest bearing deposits that are equal to:

(i) the amount of the loan made by the financial institution in accordance with subsection (b) of this section; or

(ii) the aggregate amount of two or more loans made by one or more financial institutions in accordance with subsection (b) of this section.

(2) In making an interest bearing deposit under this subsection, the Treasurer may accept a rate that is up to 2 percentage points below current market rates or an index selected by the Treasurer.

(3) The Treasurer may use up to $50,000,000 to make interest bearing deposits in an amount equivalent to the amount financial institutions loan to qualified small businesses.

(4) Notwithstanding the provisions of § 6–202 of this subtitle, the Treasurer may make an interest bearing deposit under this subsection in any financial institution without the security required in § 6–202 of this subtitle if:

(i) the funds are initially placed for deposit with a financial institution selected by the Treasurer;

(ii) the financial institution selected by the Treasurer arranges for the further deposit of the money into one or more certificates of deposit, each in an amount of not more than the applicable Federal Deposit Insurance Corporation maximum insurance coverage limit, in one or more financial institutions for the account of the Treasurer;

(iii) at the same time the money is deposited and the certificates of deposit are issued for the benefit of the Treasurer by other financial institutions, the financial institution selected by the Treasurer receives an amount of deposits from customers of other banks or savings and loan associations equal to the amount of money initially deposited by the Treasurer;

(iv) each certificate of deposit issued for the Treasurer's account is insured by the Federal Deposit Insurance Corporation for 100% of the principal and accrued interest of the certificate of deposit; and

(v) the financial institution selected by the Treasurer acts as custodian for the depositor with respect to the certificates of deposit issued for the Treasurer's account.

(f) (1) Subject to paragraph (2) of this subsection, on notification by the Department of Housing and Community Development that a small business participating in the Linked Deposit Program for Small Businesses no longer qualifies as a small business under Title 14, Subtitle 5 of this article, the Treasurer shall reduce the amount of the interest bearing deposit with the participating financial institution by the outstanding balance of the loan made under this section to the small business that no longer qualifies under Title 14, Subtitle 5 of this article.

(2) A small business that loses its qualification due to revenue or employee growth may not be considered unqualified for purposes of paragraph (1) of this subsection.

(g) (1) A loan assisted by a linked deposit is not a debt of the State or a pledge of the credit of the State.

(2) The Treasurer and the State are not liable to any financial institution for payment of the principal or interest on a loan assisted by a linked deposit.

(h) The Department of Housing and Community Development and the Treasurer may adopt regulations to carry out this section.

§6–213.

(a) Except as otherwise provided by law, in accordance with regulations and policies adopted by the Treasurer and the Comptroller, each unit of the State government shall:

(1) pay into depositaries designated by the Treasurer for the account of the State Treasury all collections, fees, income, and other revenues that are received by the unit; and

(2) account to the Comptroller for those revenues.

(b) The Comptroller shall credit the revenues that a unit pays into depositaries

designated by the Treasurer for the account of the State Treasury:

(1) to the account that the law specifies; or

(2) if the law does not specify an account, to an account that the Comptroller designates for the use of the unit.

(c) (1) With the approval of the Governor, the Comptroller:

(i) shall exempt revenues from the requirements of subsection (a) of this section if the Comptroller determines that the exemption would be in the public interest; and

(ii) may rescind an exemption.

(2) The Comptroller shall keep a record that shows each exemption and the reasons for it.

(3) The records shall be kept in the Office of the Comptroller and shall be open to public inspection.

(d) (1) In this subsection, "State institution" includes a hospital or center that the State operates.

(2) The Treasurer may exclude from the State Treasury the personal funds that a State institution holds for its residents or clients.

(3) A State institution shall use, as a depositary for these funds, a financial institution that the Treasurer approves.

(4) The Treasurer may require the submission of a proposed agreement between the State institution and the financial institution and may approve or disapprove the agreement.

(5) The accounts established by a State institution shall be interest bearing accounts.

(6) All interest on money of a resident or client of a State institution shall be credited to the resident or client.

(7) A State institution shall:

(i) keep records of all transactions that involve money of a resident or client; and

(ii) provide the resident or client with a statement of those transactions at least each 6 months and on discharge.

§6–214.

Each person who collects or receives money for the State and who is not subject to § 6-213(a) of this subtitle shall:

(1) pay the money into the State Treasury as provided by law; and

(2) account to the Comptroller for the money:

(i) at the times and in the manner that the law specifies; or

(ii) if the law does not specify the time and manner, as the Comptroller considers necessary.

§6–215.

(a) (1) The Comptroller may not allow a warrant for payment of money into the State Treasury to be issued until a record is made in the Office of the Comptroller.

(2) The record shall state:

(i) the amount of the warrant; and

(ii) the account to which the money is credited.

(3) The Comptroller shall keep an abstract of each warrant for payment of money into the State Treasury.

(b) (1) The Treasurer, the Chief Deputy Treasurer, or a deputy treasurer shall endorse, as a receipt, a warrant for payment of money into the State Treasury that the Comptroller or, if authorized by law, the Chief Deputy Comptroller or a deputy comptroller has signed.

(2) Unless the warrant is signed as required by this subsection, an acknowledgment for money paid into the State Treasury is not valid.

(3) The Treasurer shall keep, as a voucher, a copy of each warrant for payment of money into the State Treasury.

§6–216.

(a) The Comptroller shall keep accounts that fully and accurately state, by class, State revenues and State expenditures for each fiscal year.

(b) The accounts shall be kept in the Office of the Comptroller.

§6–217.

The account that the Comptroller keeps for the Treasurer shall:

(1) charge the Treasurer with:

(i) the money that is in the State Treasury when a fiscal year begins; and

(ii) money that, on warrant, is paid into the State Treasury during the fiscal year; and

(2) credit the Treasurer with money that, on warrant, is paid from the State Treasury.

§6–218.

In an action against a person who is responsible for the receipt or collection of State money or against the surety of the person, a statement of the person's account signed and certified by the Comptroller is prima facie evidence of the amount stated in it as due.

§6–219.

(a) In this section, "claim" includes a claim that is reduced to judgment.

(b) Subject to the limitations in this section, the Comptroller may settle a claim of the State that has been in arrears for at least 2 years:

(1) against a person who receives or collects State money;

(2) against the surety of that person; or

(3) against any other person.

(c) Before settling a claim under this section, the Comptroller shall examine the claim thoroughly and shall be satisfied that the State could not collect the claim through legal process.

(d) To settle a claim so as best to serve the interests of the State, the Comptroller may abate, wholly or partly, the principal or interest that is due to the State.

(e) The Comptroller shall discharge a person and the surety of the person when the agreed sum is paid into the State Treasury.

(f) (1) If a claim is settled without payment in full, the Comptroller shall keep a record that states the facts on which the settlement was based.

(2) The record shall be kept in the Office of the Comptroller.

§6–222.

(a) The Treasurer may invest or reinvest unexpended or surplus money over

which the Treasurer has custody in:

(1) an obligation for which the United States has pledged its faith and credit for the payment of the principal and interest;

(2) an obligation that a federal agency or a federal instrumentality has issued in accordance with an act of Congress;

(3) a repurchase agreement collateralized in an amount not less than 102% of the principal amount by an obligation of the United States, its agencies or instrumentalities, provided the collateral is held by a custodian other than the seller designated by the buyer;

(4) bankers' acceptances guaranteed by a financial institution with a short–term debt rating in the highest letter and numerical rating by at least one nationally recognized statistical rating organization as designated by either the United States Securities and Exchange Commission or the Treasurer;

(5) with respect to amounts treated by the Internal Revenue Service as bond sale proceeds only, bonds, notes, or other obligations of investment grade in the highest quality letter and numerical rating by at least one nationally recognized statistical rating organization as designated by the United States Securities and Exchange Commission issued by or on behalf of this or any other state or any agency, department, county, municipal or public corporation, special district, authority, or political subdivision thereof, or in any fund or trust that invests only in securities of the type described in this item;

(6) commercial paper that has received the highest letter and numerical rating by at least two nationally recognized statistical rating organizations as designated by the United States Securities and Exchange Commission, provided that such commercial paper may not exceed 10% of the total investments made by the Treasurer under this subsection;

(7) money market mutual funds that:

(i) are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. § 80a–1 et seq., as amended;

(ii) are operated in accordance with Rule 2A–7 of the Investment Company Act of 1940, 17 C.F.R. § 270.2A–7, as amended; and

(iii) have received the highest possible rating from at least one nationally recognized statistical rating organization as designated by the United States Securities and Exchange Commission; and

(8) any investment portfolio created under the Maryland Local Government Investment Pool defined under §§ 17–301 through 17–309 of the Local Government Article of the Code that is administered by the Office of the State

Treasurer.

(b) The Treasurer may sell, redeem, or exchange an investment or reinvestment made under this section in accordance with the limitations of this section.

(c) Subject to § 2–1246 of the State Government Article, the Treasurer shall report by January 3 of each year to the General Assembly on investment activities for unexpended or surplus money over which the Treasurer has custody which have been conducted during the previous fiscal year. At a minimum, the report shall specify for General Fund investments and all other investments:

(1) the inventory of investments with maturity dates and the book and market value as of June 30;

(2) the net income earned;

(3) the percentage share of each category of investment in the portfolio; and

(4) any sale of investments prior to the maturity date.

(d) An investment made pursuant to this section shall be made:

(1) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(2) in a manner designed to reasonably match the anticipated cash flow of the State so that sufficient funds are available to pay obligations upon proper presentation for payment;

(3) so that a reasonable amount of cash or cash equivalents is available for unanticipated cash needs;

(4) with due regard for minimizing risk while maximizing return;

(5) using competitive purchasing practices except when impractical;

(6) in accordance with a written investment policy;

(7) so that the securities and collateral may continue to be priced on a market to market basis; and

(8) to avoid the enhancement of the personal financial position of the Treasurer or any employee of the Treasurer who has responsibilities for such investments.

(e) (1) (i) Consistent with minority business purchasing standards applicable to units of State government under this article and consistent with

the fiduciary duties of the Treasurer, the Treasurer shall attempt to use to the greatest extent feasible minority business enterprises for brokerage and investment management services under this section.

(ii) For purposes of this subsection, brokerage and investment management services shall include services relating to all allocated asset classes as described in subsection (a) of this section.

(2) (i) To assist the Treasurer in achieving the goal described under paragraph (1) of this subsection, the Treasurer shall undertake measures to remove any barriers that limit full participation by minority business enterprises in brokerage and investment management services opportunities afforded under this section.

(ii) The measures undertaken by the Treasurer shall include the use of a wide variety of media, including the Treasurer's website, to provide notice to a broad and varied range of potential providers about the brokerage and investment management services opportunities afforded by the Treasurer.

(3) In conjunction with the Governor's Office of Minority Affairs, the Treasurer shall develop guidelines to assist in identifying and evaluating qualified minority business enterprises in order to help the Treasurer achieve the objective for greater use of minority business enterprises for brokerage and investment management services under this section.

(4) On or before September 1 each year, the Treasurer shall submit a report to the Governor's Office of Minority Affairs and, subject to § 2–1246 of the State Government Article, the General Assembly on:

(i) the identity of the minority business enterprise brokerage and investment management services firms used by the Treasurer in the immediately preceding fiscal year;

(ii) the percentage and dollar value of the assets under the custody of the Treasurer that are under the investment control of minority business enterprise brokerage and investment management services firms for each allocated asset class; and

(iii) the measures the Treasurer undertook in the immediately preceding fiscal year in accordance with paragraph (2)(ii) of this subsection.

§6–223.

(a) Except as otherwise prohibited by law, the Treasurer may invest or reinvest, in a deposit with a financial institution in the State, unexpended or surplus money over which the Treasurer has custody if:

(1) the deposit is interest bearing; and

(2) as provided for a depositary for State money:

(i) the financial institution provides collateral that has a market value that equals or exceeds the amount by which a deposit exceeds the deposit insurance; and

(ii) a custodian holds the collateral.

(b) The Treasurer may sell, redeem, or exchange an investment or reinvestment made under this section.

§6–224.

(a) Notwithstanding any other provision of law, the Treasurer may invest or reinvest unexpended or surplus State money in obligations that the Maryland Environmental Service issues for a capital project if:

(1) there is a commitment of federal funds for the project;

(2) the Service has not received the federal funds;

(3) the amount of the investment does not exceed the federal commitment; and

(4) as to any investment or reinvestment that exceeds $500,000, the Board of Public Works approves the investment or reinvestment.

(b) The Treasurer shall set the conditions of the investment or reinvestment, including the term, the interest rate, and any service charge.

(c) The Maryland Environmental Service shall repay the investment or reinvestment when the term that the Treasurer sets ends or, if sooner, when the Service receives the final federal funds.

§6–225.

(a) Notwithstanding any other provision of law, the Treasurer may invest or reinvest State money in any obligation that the Maryland Higher Education Loan Corporation guarantees if:

(1) a financial institution holds the obligation; and

(2) the Governor approves the financial institution.

(b) (1) The Treasurer may set the conditions of the investment or reinvestment, including the term and any service charge.

(2) The investments and reinvestments under this section may not exceed:

(i) for any 1 obligation, 80% of its principal;

(ii) for any 1 financial institution, the amount by which its holdings in the obligations exceed 1% of the total deposits of the financial institution; and

(iii) for all obligations, $10,000,000.

(c) If the Treasurer invests or reinvests in an obligation under this section, the financial institution that holds the obligation is the collecting agent of the State for the investment or reinvestment.

§6–226. IN EFFECT

(a) (1) Except as otherwise specifically provided by law or by regulation of the Treasurer, the Treasurer shall credit to the General Fund any interest on or other income from State money that the Treasurer invests.

(2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

1. Maryland Housing Loan Funds of 1976, 1978, 1979, and 1984;

2. Microsoft Cost Share Fund;

3. Subsequent Injury Fund;

4. Uninsured Employers' Fund;

5. State Agency Loan Program Fund;

6. Jane E. Lawton Conservation Loan Program;

7. Energy Overcharge Restitution Fund;

8. PEPCO/Connectiv Settlement Fund;

9. Baseball Capital Improvements Fund;

10. State Victims of Crime Fund;

11. Juvenile Accountability Incentive Block Grant Fund;

12. Victim and Witness Protection and Relocation Fund;

13. Unclaimed Restitution – Victims of Crime;

14. Justice Assistance Grant;

15. Byrne Justice Assistance Grant;

16. Maryland Election Modernization Fund;

17. Scriven Estate Fund;

18. Volunteer Company Assistance Fund;

19. Radoff Memorial Fund;

20. Archives Endowment Account within the Archives Fund;

21. Ellefson Endowment Fund;

22. Albert C. Ritchie Memorial Fund;

23. Rate Stabilization Fund;

24. Maryland Health Insurance Plan Fund;

25. Fair Campaign Financing Fund;

26. State Employees and Retirees Health and Welfare Benefits Fund;

27. Major Information Technology Development Project Fund;

28. State Retirement Agency Funds;

29. Postretirement Health Benefits Trust Fund;

30. Maryland Emergency Medical System Operations Fund;

31. State Wildlife Management and Protection Fund;

32. Fisheries Management and Protection Fund;

33. Ocean Beach Replenishment Fund;

34. Community Services Trust Fund;

35. Waiting List Equity Fund;

36. Health Care Coverage Fund;

37. Health Services Cost Review Commission Fund;

38. Hospital Uncompensated Care Fund;

39. funds in the accounts of Morgan State University;

40. funds in the accounts of St. Mary's College of Maryland;

41. funds in the accounts of the University System of Maryland;

42. Maryland Prepaid College Trust Fund;

43. Nurse Support Program Assistance Fund;

44. funds in the accounts of the Baltimore City Community College;

45. Education Trust Fund;

46. Section 8 construction and administration funds administered by the Department of Housing and Community Development;

47. MacArthur Grant Fund;

48. all special funds within the Department of Business and Economic Development;

49. Maryland Water Quality Revolving Loan Fund;

50. Maryland Drinking Water Revolving Loan Fund;

51. Bay Restoration Fund;

52. Migratory Game Bird Fund;

53. Deer Stamp Fund;

54. Wildlife Habitat Incentive Fund;

55. Fisheries Research and Development Fund;

56. Strategic Energy Investment Fund;

57. Criminal Injuries Compensation Fund;

58. 50% of the interest from the 9–1–1 Trust Fund;

59. all accounts within the State Reserve Fund;

60. local revenue accounts collected by the Judiciary;

61. Assistive Technology Loan Fund;

62. Veterans Trust Fund;

63. Transportation Trust Fund;

64. Foreclosed Property Registry Fund;

65. Asbestos Worker Protection Fund;

66. Maryland Innovation Initiative Fund;

67. Family Security Trust Fund, subject to § 7–4A–03(d) of the Health Occupations Article;

68. Baltimore City Community Enhancement Transit–Oriented Development Fund;

69. the Maryland Legal Services Corporation Fund;

70. Mortgage Loan Servicing Practices Settlement Fund;

71. Maryland Offshore Wind Business Development Fund;

72. the Maryland First Scholarship Fund;

73. Natalie M. LaPrade Medical Marijuana Commission Fund;

74. State Brain Injury Trust Fund;

75. the Baltimore City Public School Construction Facilities Fund;

76. the Baltimore City Public School Construction Financing Fund;

77. the Spay/Neuter Fund;

78. the Prekindergarten Expansion Fund;

79. the Energy–Efficient Homes Construction Fund;

80. the Maryland E–Nnovation Initiative Fund;

81. the Cybersecurity Investment Fund; and

82. the Northeastern Maryland Additive Manufacturing Innovation Authority Fund.

(b) (1) Notwithstanding any other provision of law, the Treasurer may invest separately or commingled in 1 or more pools amounts to be invested by law or regulation for State agencies.

(2) The Treasurer shall allocate net earnings on amounts commingled in a pool to the appropriate State agencies entitled to receive interest earnings under subsection (a) of this section.

6–226. // EFFECTIVE SEPTEMBER 30, 2022 PER CHAPTERS 561 AND 562 OF 2013 //

(a) (1) Except as otherwise specifically provided by law or by regulation of the Treasurer, the Treasurer shall credit to the General Fund any interest on or other income from State money that the Treasurer invests.

(2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

1. Maryland Housing Loan Funds of 1976, 1978, 1979, and 1984;

2. Microsoft Cost Share Fund;

3. Subsequent Injury Fund;

4. Uninsured Employers' Fund;

5. State Agency Loan Program Fund;

6. Jane E. Lawton Conservation Loan Program;

7. Energy Overcharge Restitution Fund;

8. PEPCO/Connectiv Settlement Fund;

9. Baseball Capital Improvements Fund;

10. State Victims of Crime Fund;

11. Juvenile Accountability Incentive Block Grant Fund;

12. Victim and Witness Protection and Relocation Fund;

13. Unclaimed Restitution – Victims of Crime;

14. Justice Assistance Grant;

15. Byrne Justice Assistance Grant;

16. Maryland Election Modernization Fund;

17. Scriven Estate Fund;

18. Volunteer Company Assistance Fund;

19. Radoff Memorial Fund;

20. Archives Endowment Account within the Archives Fund;

21. Ellefson Endowment Fund;

22. Albert C. Ritchie Memorial Fund;

23. Rate Stabilization Fund;

24. Maryland Health Insurance Plan Fund;

25. Fair Campaign Financing Fund;

26. State Employees and Retirees Health and Welfare Benefits Fund;

27. Major Information Technology Development Project Fund;

28. State Retirement Agency Funds;

29. Postretirement Health Benefits Trust Fund;

30. Maryland Emergency Medical System Operations Fund;

31. State Wildlife Management and Protection Fund;

32. Fisheries Management and Protection Fund;

33. Ocean Beach Replenishment Fund;

34. Community Services Trust Fund;

35. Waiting List Equity Fund;

36. Health Care Coverage Fund;

37. Health Services Cost Review Commission Fund;

38. Hospital Uncompensated Care Fund;

39. funds in the accounts of Morgan State University;

40. funds in the accounts of St. Mary's College of Maryland;

41. funds in the accounts of the University System of Maryland;

42. Maryland Prepaid College Trust Fund;

43. Nurse Support Program Assistance Fund;

44. funds in the accounts of the Baltimore City Community College;

45. Education Trust Fund;

46. Section 8 construction and administration funds administered by the Department of Housing and Community Development;

47. MacArthur Grant Fund;

48. all special funds within the Department of Business and Economic Development;

49. Maryland Water Quality Revolving Loan Fund;

50. Maryland Drinking Water Revolving Loan Fund;

51. Bay Restoration Fund;

52. Migratory Game Bird Fund;

53. Deer Stamp Fund;

54. Wildlife Habitat Incentive Fund;

55. Fisheries Research and Development Fund;

56. Strategic Energy Investment Fund;

57. Criminal Injuries Compensation Fund;

58. 50% of the interest from the 9–1–1 Trust Fund;

59. all accounts within the State Reserve Fund;

60. local revenue accounts collected by the Judiciary;

61. Assistive Technology Loan Fund;

62. Veterans Trust Fund;

63. Transportation Trust Fund;

64. Foreclosed Property Registry Fund;

65. Asbestos Worker Protection Fund;

66. Maryland Innovation Initiative Fund;

67. Family Security Trust Fund, subject to § 7–4A–03(d) of the Health Occupations Article;

68. Baltimore City Community Enhancement Transit–Oriented Development Fund;

69. the Maryland Legal Services Corporation Fund;

70. Mortgage Loan Servicing Practices Settlement Fund;

71. Maryland Offshore Wind Business Development Fund;

72. the Maryland First Scholarship Fund;

73. Natalie M. LaPrade Medical Marijuana Commission Fund;

74. State Brain Injury Trust Fund;

75. the Baltimore City Public School Construction Facilities Fund;

76. the Baltimore City Public School Construction Financing Fund;

77. the Prekindergarten Expansion Fund;

78. the Energy–Efficient Homes Construction Fund;

79. the Maryland E–Nnovation Initiative Fund;

80. the Cybersecurity Investment Fund; and

81. the Northeastern Maryland Additive Manufacturing Innovation Authority Fund.

(b) (1) Notwithstanding any other provision of law, the Treasurer may invest separately or commingled in 1 or more pools amounts to be invested by law or regulation for State agencies.

(2) The Treasurer shall allocate net earnings on amounts commingled in a pool to the appropriate State agencies entitled to receive interest earnings under subsection (a) of this section.

§6–229.

(a) The Treasurer may make an agreement with a financial institution as to terms, conditions, and compensation for a banking service that the financial institution provides to the State or any State agency.

(b) An agreement under this section:

(1) shall specify the charges to be paid for a banking service;

(2) may allow the deposit of money with the financial institution in an amount determined by the Treasurer that permits the financial institution to earn sufficient compensation to offset the charges for its banking service; and

(3) shall require the financial institution to invest any money on deposit that exceeds any amount allowed by the Treasurer under item (2) of this subsection and unless otherwise specifically provided by law to pay to the State the proceeds of the investment to the General Fund of the State.

(c) The Treasurer, with the concurrence of the Comptroller, may authorize a State agency to open and maintain an account with a financial institution that has an agreement with the Treasurer under this section.

(d) An account established under subsection (c) of this section shall comply with the provisions of this subtitle and regulations and policies adopted by the Treasurer and the Comptroller.

§7–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Proposed budget" means:

(1) the budget bill; and

(2) the budget books and other documents that support the budget bill.

(c) "Secretary" means the Secretary of Budget and Management.

§7–102.

(a) The General Assembly desires that, during preparation of a proposed budget, the Governor review, thoroughly and in detail, the recommendations of the Spending Affordability Committee.

(b) To have the complete financial program of the Governor early in a regular session, the General Assembly desires that the Governor:

(1) submit with the proposed budget for a fiscal year:

(i) the Governor's complete financial program for that fiscal year; and

(ii) each bond or revenue bill proposed to carry out the program; and

(2) use a supplemental budget amendment only to:

(i) correct a mechanical error in the proposed budget; or

(ii) provide funding for legislation enacted during the session.

§7–103.

(a) (1) The Secretary shall continually conduct studies on the needs of units of the Executive Branch of the State government and of private entities to which the State appropriates money.

(2) To obtain the information that the Secretary wants in estimating the needs of the unit or entity, the Secretary may:

(i) question any officer or employee of the unit or entity; and

(ii) examine the records of the unit or entity.

(b) The Secretary shall:

(1) continually compare the needs of the units of the Executive Branch of the State government and of the private entities with the revenues that are collected;

(2) prepare estimates of revenues that will be available for the State budget;

(3) prepare any other estimates of revenues that the Governor requests;

(4) study the revenue structure of the State;

(5) evaluate the sources of State revenues; and

(6) recommend to the Governor:

(i) appropriate changes in the revenue structure of the State; and

(ii) new sources of State revenues.

(c) (1) The studies of the units of the Executive Branch of the State government shall include:

(i) program analyses; and

(ii) careful consideration of the administration, organization, functions, and duties of the units, to identify duplication or overlap.

(2) On the basis of the studies, the Secretary shall report to the Governor on changes that the Secretary believes would result in economy or efficiency or otherwise would be in the State's best interest, including:

(i) elimination or reduction of State programs;

(ii) abolition of positions;

(iii) changes in procedures; and

(iv) reorganization or consolidation of units.

(3) The Secretary shall send a copy of each report under this subsection, subject to § 2-1246 of the State Government Article, to the Executive Director of the Department of Legislative Services.

§7–104.

(a) (1) The Secretary shall prepare for the Governor a draft of the proposed budget.

(2) The draft shall:

(i) be comprehensive;

(ii) eliminate duplication and conflict; and

(iii) include each item that the Governor is required by law to include in a proposed budget.

(b) The Secretary shall include in the draft items for capital improvements.

(c) The Secretary may specify:

(1) the form to be used by a unit of the Executive Branch of the State government or a private entity to request an appropriation from the State;

(2) information that must be submitted with the form; and

(3) the time for submission of the form.

§7–105.

Each proposed budget shall be classified as and in the form and with the detail that the Governor or law requires.

§7–106.

The Governor shall submit to the General Assembly by the third Wednesday in January each year, except in the case of a newly elected Governor, and then not later than 10 days after the convening of the General Assembly, each bond or revenue bill necessary to submit a balanced budget and to carry out the proposed budget for the next fiscal year.

§7–108.

(a) In accordance with the Maryland Constitution and other law, the Governor shall include in each budget bill:

(1) an appropriation to pay the principal of and interest on the State debt;

(2) without revision, the appropriations requested for public schools, as certified by the State Superintendent of Schools;

(3) without revision, the appropriations requested for the Legislative Branch of the State government, as certified by the presiding officers of the General Assembly;

(4) without revision, the appropriations requested for the Judicial Branch of the State government, as certified by the Chief Judge of the Court of Appeals;

(5) the appropriations requested by the Governor for the Executive Branch of the State government;

(6) the appropriations required by law to be included with the appropriations for the Executive Branch;

(7) appropriations for the salaries required by law to be paid by the State; and

(8) any other appropriations required by the Maryland Constitution or other law to be included in the budget bill.

(b) The Governor shall use the current salary plan of the Secretary of Budget and Management as the basis for the appropriations to pay those salaries to which the plan applies.

§7–109.

(a) Each budget bill shall contain a separate section that includes:

(1) the proposed salary schedule for the executive pay plan established under Title 8, Subtitle 1 of the State Personnel and Pensions Article, which shall be in effect for that fiscal year; and

(2) a listing of the job classification and title of each position in the executive pay plan, including the proposed salary grade for each position.

(b) In addition to the separate section required under subsection (a) of this section, each budget bill shall contain a separate section that includes:

(1) a listing, by the unit of State government, of the job classification of each position with flat rate or per diem compensation in excess of the minimum salary in the proposed executive pay plan. The listing shall include, but not be limited to, constitutional officers, positions for which salaries by law are determined by judicial salaries, and positions for which salaries are determined by an agency with independent salary setting authority that have not been included in the executive pay plan;

(2) the number of positions in each of those job classifications; and

(3) the amount of the salary proposed for each of those job classifications.

(c) (1) The salary schedule and proposed salary grade, as provided in accordance with subsection (a) of this section, shall be subject to approval by the General Assembly.

(2) The proposed salary for job classifications, as provided in accordance with subsection (b) of this section, shall be subject to approval by the General Assembly.

§7–110.

(a) (1) In this section the following words have the meanings indicated.

(2) "Capital expenditure" means an expenditure made by the Department of Transportation for:

(i) the construction, reconstruction, or rehabilitation of a transportation facility, as defined in § 3-101(l) of the Transportation Article; or

(ii) capital equipment as defined by the Secretary of Transportation.

(3) "Modal administration" has the meaning stated in § 1-101 of the Transportation Article.

(4) "Operating expenditure" means an expenditure that is made by the Department of Transportation, including the Office of the Secretary or a modal administration, and that is not a capital expenditure.

(b) (1) Each budget bill shall set forth as part of the appropriation for the Office of the Secretary of Transportation and for each modal administration, separate items for:

(i) capital expenditures; and

(ii) operating expenditures.

(2) The budget books shall set forth, for information, a summary of the capital expenditures and operating expenditures, as defined by the Secretary of Transportation, for the Maryland Transportation Authority.

(3) The budget books for a fiscal year shall include the appropriation for the preceding fiscal year for each modal administration, as provided in the Consolidated Transportation Program.

§7–111.

(a) The Governor shall include in each budget bill a lump sum appropriation to the University College of the University of Maryland.

(b) An appropriation under this section for a fiscal year shall equal the amount that University College estimates it will receive during the fiscal year from tuitions, fees, gifts, and grants and interest on those revenues.

(c) (1) The supporting documents for each budget bill shall include the annual financial information statement that University College prepares.

(2) The supporting documents need not include any other information about the appropriation under this section.

§7–112.

(a) Unless specifically authorized by law, the Governor may not submit a budget bill that changes a State statute.

(b) Subject to the limitations in the Maryland Constitution, a statute that sets a salary is superseded by passage of a budget bill that alters the salary.

§7–113.

(a) The purposes of this section are to:

(1) carry out the purposes of the laws relating to motor vehicle licensing and motor vehicle fuel taxes; and

(2) prevent diversions of revenues that those laws generate.

(b) In a budget bill, the Governor may use the revenues that are generated by

motor vehicle licensing and by motor vehicle fuel taxes, including fines and penalties, only to:

(1) construct, reconstruct, and maintain bridges, highways, roads, and streets;

(2) pay the interest on and principal of bonds that have been issued to finance the construction of bridges, highways, roads, and streets; or

(3) enforce those laws.

§7–114.

(a) (1) In this section the following words have the meanings indicated.

(2) "Cancer Program" means the Cancer Prevention, Education, Screening, and Treatment Program established under Title 13, Subtitle 11 of the Health - General Article.

(3) "Tobacco Program" means the Tobacco Use Prevention and Cessation Program established under Title 13, Subtitle 10 of the Health - General Article.

(b) Each budget bill shall contain a separate section that includes the appropriation for:

(1) each Component of the Tobacco Program;

(2) each Component of the Cancer Program; and

(3) any other program that is funded with money from the Cigarette Restitution Fund established under § 7-317 of this title.

§7–114.1.

The costs of archaeological work incurred in a State project on a site of archaeological or historical significance shall be included in the budget bill of which the project is a part.

§7–114.2.

When a proposed budget includes expenditure reductions to be applied across multiple Executive Branch agencies, the budget bill shall specify how the savings will be achieved and with the exception of position abolitions and items requiring collective bargaining shall include a separate schedule for each reduction allocating the reduction for each agency in a level of detail not less than the 3–digit R*Stars financial agency code and by each fund type.

§7–115.

On submission of the budget bill to the presiding officers of the General Assembly, the Governor shall send a copy of the budget books to each member of the General Assembly.

§7–116.

Whenever a proposed budget exceeds the recommendations of the Spending Affordability Committee, the budget books shall:

(1) indicate the degree to which the proposed budget and recommendations differ; and

(2) set forth the Governor's reasons for exceeding the recommendations.

§7–117.

The budget books for a fiscal year shall state:

(1) each source of State revenues for the year, from which the proposed appropriations are to be paid; and

(2) the amount that the Governor estimates will be collected from each source.

§7–118.

(a) Subject to § 2-1246 of the State Government Article, the Secretary shall provide to the General Assembly on a biennial basis by no later than February 1 of the fiscal year preceding the fiscal year the report covers, a report that contains a statement of the estimated amount by which exemptions from taxation reduce, for the year:

(1) State revenues; and

(2) revenues that the State collects for local governments.

(b) For each exemption, the statement shall:

(1) show the estimated amount by which the exemption reduces revenues;

(2) identify the person or the part of the population that benefits from the exemption; and

(3) say whether the exemption conflicts with any other State program.

(c) The statement shall include:

(1) each subtraction modification under § 10-207, § 10-208, or § 10-209 of

the Tax - General Article; and

(2) each exemption under:

(i) Title 8, Subtitle 7 of the Natural Resources Article;

(ii) § 5-104, § 6-103, § 7-203, § 7-303, § 9-203, § 9-303, § 9-304, § 10-104, § 10-211, § 10-212, § 12-104, or Title 11, Subtitle 2 of the Tax - General Article;

(iii) Title 7 of the Tax - Property Article; and

(iv) § 13-810 or § 13-903 of the Transportation Article.

(d) The Comptroller, the Department of Assessments and Taxation, the Department of Labor, Licensing, and Regulation, the Department of Natural Resources, the Department of Transportation, and other units of the State government shall help the Secretary of Budget and Management to prepare a draft of the statement under this section.

§7–119.

The budget books for a fiscal year shall contain a summary of the annuity bond accounts of the State as of the end of the last full fiscal year.

§7–120.

The budget books for a fiscal year shall:

(1) include a copy of the statewide cost allocation plan filed with the federal government for federal reimbursement of the costs of indirect State services that benefit federally funded programs; and

(2) list, by unit of the State government, the amount of reimbursement received under the plan during the last full fiscal year.

§7–121.

(a) The budget books shall contain a section that, by unit of the State government, sets forth, for each program or purpose of that unit:

(1) the total number of officers and employees and the number in each job classification:

(i) authorized in the State budget for the last full fiscal year and the current fiscal year; and

(ii) requested for the next fiscal year;

(2) the total amount for salaries of officers and employees and the amount

for salaries of each job classification:

(i) spent during the last full fiscal year;

(ii) authorized in the State budget for the current fiscal year; and

(iii) requested for the next fiscal year;

(3) an itemized statement of the expenditures for contractual services, supplies and materials, equipment, land and structures, fixed charges, and other operating expenses:

(i) made in the last full fiscal year;

(ii) authorized in the State budget for the current fiscal year; and

(iii) requested for the next fiscal year; and

(4) the StateStat or managing for results agency strategic plan required under this article that shall be limited to a description of the agency's mission, goals, objectives, and performance measures.

(b) In its annual submission of the proposed budget, the Department of Budget and Management shall provide, for informational purposes, a budget presentation that includes a description of the proposed expenditures under the Maryland Emergency Medical System Operations Fund for the:

(1) Maryland Institute for Emergency Medical Services Systems;

(2) R Adams Cowley Shock Trauma Center;

(3) Maryland Fire and Rescue Institute;

(4) Aviation Division of the Special Operations Bureau, Department of State Police; and

(5) grants under the Senator William H. Amoss Fire, Rescue, and Ambulance Fund.

(c) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Cancer Program" means the Cancer Prevention, Education, Screening, and Treatment Program established under Title 13, Subtitle 11 of the Health - General Article.

(iii) "Tobacco Program" means the Tobacco Use Prevention and Cessation Program established under Title 13, Subtitle 10 of the Health - General Article.

(2) The budget books shall contain a budget presentation that provides an overview of the proposed expenditures for:

(i) the Tobacco Program, including the proposed expenditures for:

1. each Component of the Tobacco Program;

2. each program funded under each Component of the Tobacco Program; and

3. each Local Public Health Tobacco Grant;

(ii) the Cancer Program, including the proposed expenditures for:

1. each Component of the Cancer Program;

2. each program funded under each Component of the Cancer Program;

3. each Local Public Health Cancer Grant;

4. each statewide Academic Health Center Public Health Grant;

5. each statewide Academic Health Center Cancer Research Grant;

6. each statewide Academic Health Center Tobacco-Related Diseases Research Grant; and

7. each statewide Academic Health Center Network Grant; and

(iii) any other program that is funded with the Cigarette Restitution Fund established under § 7-317 of this title.

§7–122.

(a) (1) For each fiscal year, General Fund capital appropriations shall be budgeted in the operating budget in separate eight-digit programs.

(2) When multiple projects or programs are budgeted within the same nontransportation eight-digit program, each distinct program and project shall be budgeted in a distinct subprogram.

(b) (1) To the extent possible, subprograms for projects spanning multiple years shall be retained to preserve funding history.

(2) The budget detail for prior and current fiscal years submitted with each

proposed budget shall be organized in the same fashion to allow comparison between fiscal years.

§7–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Appropriation act" means:

(1) the State budget; or

(2) a supplementary appropriation act.

(c) "Program" means a brief statement in an appropriation act of the purpose for which an appropriation shall be used.

(d) "Warrant" means a warrant that the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller issues for the disbursement of money from the State Treasury.

§7–202.

Money may be disbursed from the State Treasury only on appropriation by an appropriation act.

§7–205.

Money may be disbursed from the State Treasury only in accordance with the current appropriation for a program as amended from time to time in accordance with this title.

§7–206.

The initial appropriation for a program is set forth in the appropriation act. However, the appropriation for a program may be increased or reduced as provided in this subtitle.

§7–207.

(a) "Lump sum appropriation" means an appropriation for which the budget books or other documents that support the appropriation act contain no detailed information.

(b) Within 90 days after the General Assembly adjourns, each officer or unit of the State government to which a lump sum appropriation is made shall submit to the Board of Public Works a schedule that shows, in the form and with the detail set by the Board, the proposed apportionment and proposed disbursement of the appropriation.

§7–208.

(a) While the General Assembly is in session the General Assembly may amend the appropriation for a program of the Legislative Branch of the State government by amendment to the budget bill.

(b) While the General Assembly is not in session, the President of the Senate and the Speaker of the House of Delegates jointly may authorize an amendment of an appropriation for a program of the Legislative Branch of the State government.

(c) An amendment of an appropriation for a program of the Legislative Branch of the State government:

(1) may not increase the sum of the appropriations from the General Fund of the State for all the programs of the Legislative Branch; and

(2) may authorize the expenditure of money from a special fund or the federal government as provided in § 2-201 of this article or § 7-217(a) of this subtitle.

(d) (1) (i) Except as provided in this subsection, an amendment under this section may not increase a salary for a nonclassified position so that the salary exceeds the amount set by the most recently enacted State budget.

(ii) The limitation applies whether or not the most recently enacted budget is in effect.

(iii) This subsection does not apply to salaries of positions that are included in an executive pay plan for the Legislative Branch.

(2) While the General Assembly is not in session, the President of the Senate and the Speaker of the House of Delegates jointly may approve an amendment that increases a salary so that it exceeds the limitation in this subsection if:

(i) the President and the Speaker find that the salary increase is needed because an inability to obtain or to keep an essential career employee who is performing an administrative function or an essential professional or technical employee has created an acute emergency; and

(ii) their findings are documented.

(e) A copy of each amended appropriation for a program shall be provided promptly to:

(1) the Comptroller; and

(2) the Secretary of Budget and Management.

§7–208.1.

(a) The Chief Judge of the Court of Appeals may authorize an amendment of an appropriation for a program of the Judicial Branch.

(b) An amendment of an appropriation for a program of the Judicial Branch:

(1) may not increase the sum of the appropriations from the General Fund of the State for all the programs of the Judicial Branch; and

(2) may authorize the expenditure of money from a special fund or the federal government as provided in § 2-201 of this article and § 7-217(a) of this subtitle.

(c) (1) Except as provided in paragraph (2) of this subsection, an amendment under this section may not increase a salary for a nonclassified position so that the salary exceeds the amount set forth by the most recently enacted State budget bill. The limitation in this paragraph applies whether or not the most recently enacted budget is in effect.

(2) The Chief Judge of the Court of Appeals may approve an amendment that increases a salary so that it exceeds the limitation of this subsection if the Chief Judge finds that the salary increase is needed because an inability to obtain or to keep an essential career employee who is performing an administrative function or an essential professional or technical employee has created an acute emergency, and the finding is documented. This paragraph does not apply to salaries of positions that are included in an executive pay plan for the Judicial Branch. Adjustments to those salaries beyond the amount included in the most recently enacted State budget shall be submitted to the Legislative Policy Committee for approval.

(d) A copy of each amended appropriation for a program shall be provided promptly to:

(1) the Comptroller; and

(2) the Secretary of Budget and Management.

§7–209.

(a) The Governor may amend an appropriation for a program of the Office of the Governor.

(b) (1) Except as provided in § 7-212 of this subtitle, whenever an officer or unit of the Executive Branch of the State government wants the appropriation for a program of the officer or unit amended, the officer or unit shall submit a proposed amended appropriation for the program to the Secretary of Budget and Management.

(2) The Secretary of Budget and Management shall endorse on or attach to the proposed amended appropriation for the program a recommendation and send

the amended appropriation for the program and recommendation to the Governor.

(3) At any time before the Governor approves or disapproves the proposed amended appropriation for a program, the officer or unit may withdraw the proposal.

(4) Whenever the Governor approves a proposed amended appropriation for a program, the Governor shall endorse it as "approved".

(c) (1) An amendment of an appropriation for a program:

(i) except as provided in paragraph (2) of this subsection, may not increase the sum of the appropriations from the General Fund of the State for all the programs of the officer or unit; and

(ii) may permit the expenditure of money from a special fund or the federal government as provided in § 2-201 of this article or § 7-217(a) of this subtitle.

(2) An amendment of an appropriation for a program of the Executive Branch may increase the sum of the appropriations from the General Fund of the State for all programs of the officer or unit if moneys from the Contingent Fund of the Board of Public Works are transferred to the program.

(d) (1) (i) Except as provided in paragraph (2) of this subsection, an amendment under this section may not increase a salary so that it exceeds the amount set by the most recently enacted State budget.

(ii) The limitation in this paragraph applies whether or not the most recently enacted budget is in effect.

(2) (i) If the Board of Public Works approves the increase, the Governor may approve an amendment that increases the salary for a position listed in the budget bill in accordance with § 7-109 of this title.

(ii) An amendment under this paragraph remains effective until the State budget for the next fiscal year becomes effective.

(e) (1) Except as provided in paragraphs (2) and (3) of this subsection, an amendment under this section may not transfer any part of an appropriation among any of the principal departments or any of the units in the Executive Branch that are not assigned to a principal department.

(2) This subsection does not prevent a transfer that:

(i) is part of a reorganization under § 8-301 of the State Government Article;

(ii) is needed to comply with federal law or a policy directive of a federal unit that relates to the use of federal funds;

(iii) because of an emergency declared by the Governor, is needed to protect the health, welfare, or property of the public; or

(iv) is specifically authorized by the budget bill or other law.

(3) (i) Subject to the State budget bill, an amendment may transfer part of an appropriation of special or federal funds between any of the principal departments or any of the units in the Executive Branch that are not assigned to a principal department if:

1. funds are available to the department or unit from which the funds are to be transferred through a federal grant or contract or other restricted grant or contract;

2. the use of funds by the department or unit to which the funds are to be transferred is directly related to the purposes of the grant or contract and the statutory duties of that department or unit; and

3. the transferring department or unit and the receiving department or unit submit a schedule of funds to be transferred to the Department of Budget and Management.

(ii) Funds transferred under this paragraph may not be expended by the recipient department or unit until each proposed budget amendment has been approved by:

1. the Secretary of Budget and Management;

2. the Governor; and

3. the Board of Public Works.

(iii) A copy of each approved budget amendment under this paragraph shall be provided to the Department of Legislative Services.

(f) The Governor shall send a copy of each amended appropriation for a program to:

(1) the Comptroller; and

(2) the Department of Legislative Services.

(g) An amended appropriation for a program is effective when the Governor sends notice of the amended appropriation to the Comptroller.

§7–210.

(a) (1) A budget amendment may not change any language or substantive provision in the State budget.

(2) The limitation in this subsection does not apply to the monetary figures of an appropriation.

(b) A budget amendment may not transfer any part of a General Fund capital appropriation to an operating program or purpose.

§7–211.

(a) On or before the 3rd Wednesday in January of each year, the Secretary of Transportation shall submit to the General Assembly, subject to § 2-1246 of the State Government Article, a report on amendments of appropriations for programs of the Department of Transportation.

(b) (1) A report under this section shall describe each proposed amended appropriation for a program that the Department has submitted or expects to submit during the current fiscal year under § 7-209 of this subtitle.

(2) The description shall include:

(i) an explanation of the purpose of the amendment; and

(ii) an analysis of the impact of the amendment on appropriations of special and federal funds.

§7–212.

(a) This section applies only to the following governing boards:

(1) the Board of Regents of Morgan State University;

(2) the Board of Regents of the University System of Maryland; and

(3) the Board of Trustees of St. Mary's College of Maryland.

(b) A governing board to which this section applies may transfer money among objects and, subject to the limitation in subsection (c) of this section, among programs under the jurisdiction of the governing board without submitting a proposed amended appropriation for a program under § 7-209 of this subtitle.

(c) During a fiscal year, a governing board may not transfer from a program more than 5% of the appropriation in the State budget for that program.

(d) At the end of each fiscal year, each governing board to which this section applies shall give to the Comptroller, the Department of Budget and Management, and, subject to § 2-1246 of the State Government Article, the Department of Legislative Services, for information only, a summary of the transfers among programs made during the fiscal year.

(e) Section 7-209 of this subtitle does not apply to a transfer under this section.

§7–213.

(a) Except as provided in subsection (b) of this section, with the approval of the Board of Public Works, the Governor may reduce, by not more than 25%, any appropriation:

(1) that the Governor considers unnecessary; or

(2) that is subject to budgetary reductions required under the budget bill as approved by the General Assembly.

(b) (1) The Governor may not reduce an appropriation to the Legislative Branch or the Judicial Branch of the State government.

(2) The Governor may not reduce an appropriation for:

(i) payment of the principal of or interest on the State debt;

(ii) public schools, including the Maryland School for the Deaf;

(iii) the Maryland School for the Blind; or

(iv) the salary of a public officer, during the term of office.

(3) Except as provided in § 8-109 of the State Personnel and Pensions Article, the Governor may not reduce an appropriation for the salary of any nontemporary employee in the State Personnel Management System.

§7–216.

(a) Subject to the limitations in this subtitle, an officer or unit of the State government may spend an appropriation for a program of the officer or unit in accordance with the current appropriation.

(b) (1) Except as provided in subsection (c) of this section, whenever an officer or a unit of the State government spends any part of an appropriation, the officer or unit promptly shall send the bill to the Comptroller for payment.

(2) Subject to the limitations in this subtitle, the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller may issue a warrant for payment of the bill.

(c) (1) The Comptroller shall exempt an officer or unit of the State government from the requirements of subsection (b) of this section if the Comptroller determines that the exemption would be in the public interest.

(2) Subject to the limitations in this subtitle, the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller may issue warrants from time to time to provide the officer or unit with the working cash that the Comptroller finds necessary.

(3) The Comptroller shall keep a record that shows each exemption, each amount advanced to an officer or unit, and the reasons for each exemption.

(4) The record shall be kept in the Office of the Comptroller and shall be open to public inspection.

(5) An officer or unit shall send to the Comptroller the voucher or a copy of the voucher for each expenditure made from an advance under this subsection.

§7–217.

(a) An officer or unit of the State government may spend money from a special fund or the federal government that is not estimated or included in the State budget or exceeds the estimate in the State budget and is paid into the State Treasury for a program after an approved amendment of a special or federal fund appropriation for the program:

(1) for the specific purpose to which the money is dedicated by State law or act of Congress; or

(2) if the money is not dedicated to a specific purpose, with the approval of the Governor and as authorized in an approved budget amendment, for necessary current operations.

(b) Money that is derived from a source estimated and included in an appropriation act and that is in excess of the estimate shall remain in the General Fund of the State until appropriated by a subsequent appropriation act.

§7–218.

Before issuance of a warrant for payment of a bill, the Comptroller may have the bill audited.

§7–219.

(a) The Comptroller, the Chief Deputy Comptroller, or a deputy comptroller may not sign a blank warrant.

(b) A warrant for payment of a bill is not valid unless the following information appears on the face of the warrant:

(1) the amount of the warrant;

(2) the date of issue;

(3) a reference to the document that identifies:

(i) the payee; and

(ii) the officer or unit of the State government that submitted the bill; and

(4) the certification of the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller that:

(i) the amount of the warrant is correct; and

(ii) the officer or unit submitted the bill for which the warrant is issued.

(c) A warrant for an advance of money to an officer or unit of the State government is not valid unless the following information appears on the face of the warrant:

(1) the amount of the warrant;

(2) the date of issue;

(3) the identity of the officer or unit; and

(4) the certification of the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller that the amount of the warrant is correct.

§7–220.

A warrant shall charge an applicable appropriation to the officer or unit that:

(1) has submitted a bill for payment; or

(2) is to receive an advance.

§7–221.

(a) The Comptroller, the Chief Deputy Comptroller, or a deputy comptroller may not issue a warrant for disbursement of an appropriation to an institution or corporation unless the Comptroller has on file an affidavit that complies with the requirements of this section.

(b) An affidavit under this section shall state that the affiant personally knows that no money from State funds has been paid or promised to any legislative agent, lawyer, or lobbyist for any service to obtain the appropriation.

(c) An affidavit under this section shall be signed by:

(1) the president and the treasurer of the institution or corporation; or

(2) if there is no president or treasurer, another officer or individual who has charge of and disburses the money of the institution or corporation.

§7–222.

Unless a person and the Comptroller or any duly authorized agent or representative designated by the Comptroller have entered into an agreement for the payment of the person's indebtedness to the State and the payments are current or unless, for good cause shown, the Board of Public Works grants a waiver, the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller may not issue to a person a warrant for payment of a claim due to the person in the person's own right, if the person owes $50 or more to the State, a unit of the State government, or any governmental entity under the control of the State.

§7–223.

(a) (1) The Comptroller may not allow a warrant to be issued until a record is made in the books of the Office of the Comptroller.

(2) The record shall:

(i) state the amount of the warrant;

(ii) state the account against which the warrant is charged; and

(iii) identify:

1. the payee and the officer or unit of the State government that submitted the bill; or

2. for an advance, the officer or unit.

(b) The Comptroller shall keep an abstract of each warrant.

§7–226.

Subject to the limitations in this Part IV of this subtitle and any other law, the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer may disburse moneys from the State Treasury in accordance with a warrant.

§7–227.

A check that is drawn to disburse money from the State Treasury shall be:

(1) signed by the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer; and

(2) countersigned by the Comptroller, the Chief Deputy Comptroller, or a deputy comptroller.

§7–227.1.

In addition to disbursement of moneys by check authorized under § 7-227 of this subtitle, the Treasurer, upon warrant of the Comptroller, may disburse moneys by those means generally recognized and accepted by the banking industry for transferring funds. Such disbursements shall be made in accordance with regulations promulgated by the Treasurer, after concurrence by the Comptroller, in accordance with Title 10, Subtitle 1 of the State Government Article.

§7–228.

The Treasurer, the Chief Deputy Treasurer, or a deputy treasurer shall keep a receipt for money disbursed from the State Treasury.

§7–229.

(a) In this section, "Fund" means the Undeliverable Checks Fund.

(b) There is an Undeliverable Checks Fund.

(c) If a check that the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer issues is returned to the Comptroller as undeliverable, the Comptroller:

(1) shall keep the check for a period of not more than 30 days;

(2) during that period, shall try diligently to find the correct address of the payee and to deliver the check; and

(3) if unable to deliver the check during that period, shall send the check to the Treasurer.

(d) Whenever the Comptroller returns a check as undeliverable, the Treasurer shall:

(1) cancel the check; and

(2) request the Comptroller to credit the amount of the canceled check to the Fund.

(e) On a warrant charged against the Fund, the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer may issue a check to replace a check canceled under this section.

(f) As required by State or federal law, or as considered proper by the Treasurer, the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer shall:

(1) on a warrant charged against the Fund, disburse to the original source any money in the Fund required to be returned to the source; or

(2) request the Comptroller to transfer any money in the Fund to another fund or account.

(g) At the end of each fiscal year, the Treasurer:

(1) shall identify the checks that have been credited to the Fund and remain unclaimed for 2 years;

(2) determine a reasonable balance to retain in the Fund that will be needed to honor each replacement check that may be issued on a warrant charged against the Fund; and

(3) request the Comptroller to transfer the balance in the Fund, after subtraction of the amount determined as provided in item (2) of this subsection, to the General Fund of the State.

(h) Undeliverable checks credited to the Fund are not subject to Title 17 of the Commercial Law Article.

(i) Notwithstanding Title 4, Subtitle 3, Part III of the General Provisions Article, at the end of each fiscal year, the Treasurer may electronically publish on the Treasurer's website the names of payees of checks that have remained unclaimed for 2 years or more.

§7–230.

(a) In this section, "Fund" means the Unpresented Checks Fund.

(b) There is an Unpresented Checks Fund.

(c) At the end of each fiscal year, the Treasurer shall:

(1) identify each check that:

(i) has been issued against the money of the State; and

(ii) has remained unpresented for 2 years; and

(2) request the Comptroller to credit the aggregate amount of the checks to the Fund.

(d) At the end of each fiscal year, the Treasurer shall:

(1) determine a reasonable minimum balance to retain in the Fund that will be needed to honor each check that is presented after its amount has been credited to the Fund; and

(2) request the Comptroller to transfer the balance in the Fund to the General Fund of the State.

(e) After the amount of a check has been credited to the Fund, on a warrant charged against the Fund, the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer may reissue a check that is presented for payment.

(f) As required by State or federal law, or as considered proper by the Treasurer, the Treasurer, the Chief Deputy Treasurer, or a deputy treasurer shall:

(1) void an unpresented check; and

(2) request the Comptroller to transfer the amount of the voided check to:

(i) the original source of the money; or

(ii) another fund or account.

(g) Unpresented checks credited to the Fund are not subject to Title 17 of the Commercial Law Article.

(h) Notwithstanding Title 4, Subtitle 3, Part III of the General Provisions Article, at the end of each fiscal year, the Treasurer may electronically publish on the Treasurer's website the names of payees of checks that have remained unpresented for 2 years or more.

§7–233.

An officer or unit of the State government may not spend any part of a lump sum appropriation to the officer or unit until the Board of Public Works approves the schedule for apportionment and disbursement of the appropriation, as provided in § 7-207 of this subtitle.

§7–234.

(a) An officer or unit of the State government may not spend money:

(1) in excess of the total appropriation to the officer or unit; or

(2) in excess of the amounts set forth in the current schedule for apportionment and disbursement of the appropriation.

(b) (1) The State may not reimburse any expenditure to the extent that the expenditure violates subsection (a) of this section.

(2) The State is not obligated to appropriate money to pay an expenditure that violates subsection (a) of this section.

(c) Each employee or member of a unit and each officer of the State government who makes an expenditure that violates subsection (a) of this section is guilty of neglect of official duty and is subject to removal.

§7–235.

(a) (1) Except as provided in paragraph (2) of this subsection, this section applies to:

(i) each unit of the State government; and

(ii) each unit that:

1. is created by general law; and

2. operates in 2 or more counties.

(2) This section does not apply to a bicounty commission that county governing bodies appoint if those bodies also review the budget of the commission.

(b) A unit may not adopt a rule or regulation or take any other administrative action that would result in expenditures in excess of the limitations in the State budget unless:

(1) the General Assembly expressly approves the administrative action;

(2) if the General Assembly is not in session, the President of the Senate and the Speaker of the House of Delegates:

(i) consult with the Joint Audit Committee; and

(ii) after receiving the written advice of the Joint Audit Committee, jointly give written approval for the administrative action; or

(3) the Governor declares, by proclamation, that the administrative action is necessary and a matter of emergency.

§7–236.

(a) A unit of the Executive Branch of the State government may not create a permanent staff position that is in addition to the positions for which the State budget and its supporting documents specifically provide unless:

(1) the Board of Public Works gives its approval; and

(2) money for the position is available:

(i) from the General Emergency Fund; or

(ii) by budget amendment, from other special or federal funds.

(b) On the 1st day of each regular session of the General Assembly, the Secretary of Budget and Management shall submit, subject to § 2-1246 of the State

Government Article, to the appropriate committees of the General Assembly a report that:

(1) states the total number of additional staff positions for which the Board of Public Works has given approval since the last regular session; and

(2) for each position, states:

(i) the type;

(ii) the salary or wages; and

(iii) the reasons for the approval.

(c) The approval of a new position under this section is temporary. However, unless the General Assembly deletes the position from the budget bill, the position continues with the compensation provided in the State budget.

§7–237.

(a) This section applies to any officer or agent of the State who is charged with:

(1) construction, improvement, or maintenance of a building or work; or

(2) management of or provision for a State institution.

(b) An officer or agent to whom this section applies may not:

(1) make or participate in making for any purpose a contract that purports to bind the State to pay any amount unless money has been appropriated for that purpose and remains unspent;

(2) create a deficiency; or

(3) incur a liability or spend money in excess of the applicable appropriation.

(c) (1) The State is not liable on any contract made in violation of subsection (b) of this section.

(2) An officer or agent who willfully or knowingly violates subsection (b)(1) of this section is personally liable on the contract.

(d) If an officer or agent to whom this section applies is found guilty of willfully or knowingly violating any provision of subsection (b)(2) or (3) of this section:

(1) the officer or agent is personally liable to the State for the amount of the deficiency or excess; and

(2) the officer or agent is subject:

(i) for a 1st offense, to a fine not exceeding $1,000 or imprisonment in the State Penitentiary not exceeding 2 years or both; and

(ii) for a subsequent offense, to a fine not exceeding $2,000 or imprisonment in the State Penitentiary not exceeding 2 years or both.

§7–238.

(a) (1) In this section the following words have the meanings indicated.

(2) "Capital project" means a project for which funds are spent for:

(i) the construction, reconstruction, or rehabilitation of a transportation facility, as defined in § 3-101(l) of the Transportation Article; or

(ii) capital equipment as defined by the Secretary of Transportation.

(3) "Major capital project" has the meaning stated in § 2-103.1 of the Transportation Article.

(4) "Modal administration" has the meaning stated in § 1-101 of the Transportation Article.

(b) Except for an emergency project, the Department of Transportation, including the Office of the Secretary and the modal administrations, may not use an appropriation for a major capital project for any capital project that was not included in the Consolidated Transportation Program when the appropriation was made.

§7–301.

(a) This section applies to the following entities:

(1) an institution that receives an appropriation for operating expenses; and

(2) an officer or unit of the State government that:

(i) receives an appropriation for operating expenses; or

(ii) has its expenses paid out of the fees collected by the officer or unit.

(b) At the end of each fiscal year, each entity that, during that fiscal year, has received an appropriation for operating expenses shall give the Comptroller notice of:

(1) the amount of the appropriation that is unspent; and

(2) the amount of the unspent part that is needed to meet unpaid obligations incurred during the fiscal year.

§7–302.

Except as otherwise provided by law, at the end of a fiscal year, the unspent balance of each appropriation that was made for that fiscal year to an officer or unit of the State government or to an institution reverts to the General Fund of the State.

§7–303.

At the end of a fiscal year, the amount of the unspent part of an appropriation that is needed to meet unpaid obligations incurred during that fiscal year does not revert to the General Fund of the State.

§7–304.

At the end of a fiscal year, the unspent part of an appropriation from a source that State law or an Act of Congress dedicates to a specific purpose does not revert to the General Fund of the State but reverts to the appropriate special fund.

§7–305.

(a) In this section, "capital expenditure" includes an expenditure for:

(1) acquisition of land, buildings, or equipment; or

(2) new construction.

(b) At the end of a fiscal year, the unspent part of an appropriation for a capital expenditure made through the State budget or a supplementary appropriation act other than an enabling act for a general obligation loan:

(1) does not revert to the General Fund; and

(2) with the approval of the Board of Public Works, may be carried in a capital account until it is spent in accordance with subsection (c) of this section or until the authority to spend the appropriation for a project terminates.

(c) Money carried in a capital account under subsection (b) of this section may be spent only for a capital purpose.

(d) Unless otherwise provided by law, the authority to spend the appropriation for a project terminates:

(1) 2 years after the effective date of the appropriation act that authorizes the project, if:

(i) evidence that a required matching fund will be provided has not

been presented to the Board; or

(ii) no part of the project is under contract and the Board has not encumbered money for any part of the project;

(2) 1 year after the latest of abandonment, completion, or acceptance of the project; or

(3) except to the extent the Board has encumbered money for a State project or program authorized by an appropriation act, 7 years after the effective date of the appropriation act that authorized the project unless:

(i) the appropriation act provides otherwise; or

(ii) in an emergency, the Board unanimously grants a temporary exception for 1 year.

§7–306.

(a) This section applies only to St. Mary's College of Maryland.

(b) At the end of a fiscal year, the unencumbered balance of each appropriation from the General Fund, including an amount received as reimbursement of statewide indirect costs, to the Board or any of these institutions reverts to the General Fund of the State.

(c) The unencumbered balance of any other appropriation to the Board or these institutions:

(1) does not revert to the General Fund of the State;

(2) shall be available as provided in the State budget or through an approved budget amendment; and

(3) shall be reported by the Board or institution to the State Comptroller at the end of each fiscal year.

§7–307.

(a) Unless the State budget expressly provides otherwise, whenever a new or substantially renovated facility does not begin operation on the date that was used to determine the amount of the appropriation to the facility in the State budget, the part of the appropriation for operating expenses that is not needed to provide services to the same clients, students, patients, or inmates shall revert to the General Fund or to an appropriate special fund and may not be spent for any other purpose or transferred by a budget amendment.

(b) If a facility under this section begins to operate after the date on which the

appropriation was based but in the same fiscal year, the Department of Budget and Management shall determine, on a pro rata basis, the amount of the appropriation for operating expenses that shall revert to the General Fund.

§7–308.

The Secretary of Budget and Management shall give each member of the General Assembly notice of:

(1) the total reversions at the end of each fiscal year; and

(2) any revision of an estimated reversion from an appropriation in the State budget for the current fiscal year.

§7–309.

(a) There is a State Reserve Fund.

(b) The State Reserve Fund comprises:

(1) the Dedicated Purpose Account;

(2) the Revenue Stabilization Account;

(3) the Economic Development Opportunities Program Account; and

(4) the Catastrophic Event Account.

§7–310.

(a) In this section, "Account" means the Dedicated Purpose Account.

(b) The Dedicated Purpose Account is established:

(1) to retain appropriations for major, multi-year expenditures where the magnitude and timing of cash needs are uncertain; and

(2) beginning in fiscal year 1996, to meet specific expenditure requirements.

(c) The Governor may provide an appropriation in the budget bill to the Account for a specific purpose or purposes.

(d) For each appropriation to the Account, the Governor may:

(1) include the funds in the State budget subject to appropriation by the General Assembly; or

(2) transfer the funds by budget amendment from the Account to the

expenditure account of the appropriate unit of State government only after the proposed budget amendment has been:

(i) submitted to the Senate Budget and Taxation Committee and the House Appropriations Committee of the General Assembly; and

(ii) approved by the Legislative Policy Committee.

(e) The Account is a continuing, nonlapsing fund which is not subject to § 7-302 of this subtitle.

(f) (1) The unspent balance of an appropriation to the Account reverts to the Revenue Stabilization Account 4 years after the end of the fiscal year for which the appropriation was made.

(2) If the Governor determines that certain funds in the Account are no longer needed for the purpose for which they were originally appropriated, those funds may be transferred by budget amendment to the Revenue Stabilization Account after the proposed budget amendment has been:

(i) submitted to the Senate Budget and Taxation Committee and the House Appropriations Committee of the General Assembly; and

(ii) approved by the Legislative Policy Committee.

§7–310.1.

(a) Any money received by the State or otherwise subject to the direction or control of a State official, as a result of a settlement, judgment, or consent decree made or entered into after January 1, 2012:

(1) shall be deposited in the State treasury; and

(2) except for funds designated as restitution:

(i) shall be expended only as authorized in the State budget bill as enacted; and

(ii) may be transferred by budget amendment.

(b) In negotiating any State payment under any national or multistate settlement, judgment, or consent decree, a State official may recommend restrictions on the use of that State payment but shall also request that the settlement, judgment, or consent decree also provide that the funds may be used for any public purpose, to the extent that doing so is not inconsistent with the State or its citizens securing the maximum benefit from the settlement, judgment, or consent decree.

§7–311.

(a) (1) In this section the following words have the meanings indicated.

(2) "Account" means the Revenue Stabilization Account.

(3) "Estimated General Fund revenues" means the estimated General Fund revenues for a fiscal year stated in the report of the Board of Revenue Estimates submitted to the Governor under § 6–106 of this article in December preceding the fiscal year.

(b) The Revenue Stabilization Account is established to retain State revenues for future needs and reduce the need for future tax increases by moderating revenue growth.

(c) The Account is a continuing, nonlapsing fund which is not subject to § 7-302 of this subtitle.

(d) The Account consists of:

(1) moneys appropriated in the State budget to the Account; and

(2) interest or other income earned from the investment of any portion of this Account or any other account in the State Reserve Fund.

(e) Except as provided in subsection (f) of this section, for each fiscal year:

(1) if the Account balance is below 3% of the estimated General Fund revenues for that fiscal year, the Governor shall include in the budget bill an appropriation to the Account equal to at least $100,000,000; and

(2) if the Account balance is at least 3% but less than 7.5% of the estimated General Fund revenues for that fiscal year, the Governor shall include in the budget bill an appropriation to the Account equal to at least the lesser of $50,000,000 or whatever amount is required for the Account balance to exceed 7.5% of the estimated General Fund revenues for that fiscal year.

(f) The appropriations required by subsection (e) of this section are not required when the Account balance exceeds 7.5% of the estimated General Fund revenues.

(g) (1) Unless the transfer would result in an Account balance below 5% of the estimated General Fund revenues for the fiscal year in which the transfer is made, if authorized by an act of the General Assembly or specifically authorized in the State budget bill as enacted, the Governor may transfer funds from the Account to General Fund revenues as necessary to support the operation of State government on a temporary basis.

(2) If the transfer would result in an Account balance below 5% of the

estimated General Fund revenues for the fiscal year in which the transfer is made, the Governor may transfer funds from the Account to General Fund revenues only if the transfer is authorized by an act of the General Assembly other than the State budget bill.

(h) If the budget bill as submitted to the General Assembly includes a transfer of funds from the Account pursuant to subsection (g) of this section, the budget bill as enacted by the General Assembly may provide for a reduction of the amount of the transfer from the Account by an amount up to the amount of the reductions made by the General Assembly in the General Fund appropriations.

(i) Funds of the Account may only be transferred from the Account as provided in this section and are not subject to transfer by budget amendment.

(j) (1) Except as provided in paragraph (2) of this subsection and § 13-209(g) of the Tax - Property Article, for fiscal year 2007 and for each subsequent fiscal year, the Governor shall include in the budget bill an appropriation to the Account equal to the amount by which the unappropriated General Fund surplus as of June 30 of the second preceding fiscal year exceeds $10,000,000.

(2) The appropriation required under this subsection for any fiscal year may be reduced by the amount of any appropriation to the Account required to be included for that fiscal year under subsection (e) of this section.

§7–312.

(a) There is a Maryland Stadium Facilities Fund.

(b) The Fund is:

(1) a special, nonlapsing fund that consists of moneys that may be appropriated, transferred, credited, or paid to it from any source; and

(2) not subject to § 7-302 of this subtitle.

(c) The Treasurer shall separately hold, and the Comptroller shall account for, the Fund.

(d) (1) The Fund shall be invested and reinvested in the same manner as other State funds.

(2) Any investment earnings shall be retained to the credit of the Fund.

(e) Moneys credited to the Maryland Stadium Facilities Fund may be used, in accordance with approved comprehensive financing plans, to:

(1) pay rent to the Maryland Stadium Authority;

(2) with the approval of the Board of Public Works, make grants or loans, not exceeding $1 million in any fiscal year, to the Authority for its corporate purposes;

(3) with the approval of the Board of Public Works, finance capital construction in lieu of issuing bonds; or

(4) financially support, through equity investment, loan, guarantee, or otherwise, full or partial private financing of any element of the facility.

(f) (1) At the end of the fiscal year, a transfer to the Dedicated Purpose Fund of the State Reserve Fund shall be made to the extent that the balance of revenues in the Fund exceeds:

(i) $24 million; and

(ii) the Debt Service Reserve Fund being held by or on behalf of the Maryland Stadium Authority for payment of debt service on revenue bonds issued by the Authority.

(2) (i) Any revenues transferred to the State Reserve Fund in accordance with paragraph (1) of this subsection shall be dedicated for use by the Maryland Stadium Authority and may be transferred from the State Reserve Fund by an appropriation in the budget bill or, with the approval of the Legislative Policy Committee, by budget amendment.

(ii) The unspent balance of any revenues for the Maryland Stadium Authority in the State Reserve Fund shall revert to the General Fund 2 years after the end of the fiscal year in which the transfer was made.

§7–314.

(a) (1) In this section the following words have the meanings indicated.

(2) "Account" means the Economic Development Opportunities Program Account.

(3) "Executive agency" means an executive department or agency in the Executive Branch of State government, including all offices of the Executive Department or agency directly responsible to the Governor.

(4) "Extraordinary economic development opportunity" means the:

(i) attraction of a new private sector enterprise to the State or retention or expansion of an existing private sector enterprise in the State that:

1. maintains a strong financial condition and minimal credit risk profile;

2. is capable of accessing alternative sources of financing through financial institutions or capital markets;

3. is consistent with the strategic plan of the State for economic development;

4. creates or retains substantial employment, particularly in areas of high unemployment; and

5. invests in capital at a level equal to five times the value of the incentive offered;

(ii) retention or expansion of an existing public institution, private institution, or federal research and development institute that:

1. is consistent with the strategic plan of the State for economic development; and

2. creates or retains substantial employment, particularly in areas of high unemployment; or

(iii) establishment or attraction of a public institution, a private institution, or a federal research and development institute new to the State that:

1. is consistent with the strategic plan of the State for economic development; and

2. creates or retains substantial employment, particularly in areas of high unemployment.

(5) (i) "Performance requirement" means a contractual agreement between an executive agency and an Account recipient that requires the Account recipient to meet minimum economic development outcomes in exchange for a grant or a loan under this section.

(ii) "Performance requirement" includes claw–back, penalty, rescission, and recalibration clauses that utilize job creation, capital investment, and other measures of economic development.

(6) "Private sector enterprise" means any commercial, industrial, educational, or research organization which is not a part of or controlled by a federal, State, or local government agency.

(b) Subject to the provisions of this section, the Economic Development Opportunities Program Account is established to maximize extraordinary economic development opportunities.

(c) The Governor may provide an appropriation in the budget bill to the Account

for a specific or general purpose or purposes.

(d) After notice to and approval by the Legislative Policy Committee, the Governor may transfer funds by budget amendment from the Economic Development Opportunities Program Account to the expenditure account of the appropriate executive agency.

(e) (1) The Account is a continuing, nonlapsing fund which is not subject to § 7–302 of this subtitle.

(2) The Treasurer shall separately hold, and the Comptroller shall account for, the Account.

(3) The Account shall be invested and reinvested in the same manner as other State funds.

(4) Except as provided in paragraph (5) of this subsection, any investment earnings shall be subject to § 7–311(d) of this subtitle.

(5) Any investment earnings on moneys transferred from the Account to a second continuing, nonlapsing fund may be retained to the credit of the second fund.

(f) (1) Moneys appropriated or credited to the Account do not revert to the Revenue Stabilization Account.

(2) Except as provided in paragraph (3) of this subsection, repayments of principal or interest on any loan from the Account shall be retained to the credit of the Account.

(3) Repayments of principal or interest on any loan made from moneys transferred from the Account to a second continuing, nonlapsing fund may be retained to the credit of the second fund.

(g) (1) The Department of Business and Economic Development shall report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly before January 1 of each year:

(i) the financial status of the program and a summary of its operations for the preceding fiscal year;

(ii) for the previous 3 fiscal years, the status of Account disbursements for economic development projects reviewed by the Legislative Policy Committee under this section; and

(iii) for the previous 3 fiscal years, the status of job creation, capital investment, and other measures of economic development for each economic development project reviewed by the Legislative Policy Committee under this section.

(2) If the job creation, capital investment, and other measures of economic development described in paragraph (1) of this subsection are lower than negotiated according to subsection (h)(1) of this section, the report shall contain an explanation.

(3) Upon receipt of the report, the Legislative Policy Committee shall have 60 days to review and comment on the report, during which time the Department of Business and Economic Development shall provide any additional information regarding the Account as requested by the Legislative Policy Committee.

(h) (1) Except as provided in paragraph (2) of this subsection and in subsection (i) of this section, any funds transferred from the Economic Development Opportunities Program Account shall be used only for extraordinary economic development opportunities that:

(i) meet the criteria provided in this section;

(ii) include performance requirements; and

(iii) in addition to the performance requirements under item (ii) of this paragraph, include a performance requirement that utilizes a claw–back provision.

(2) The Account may pay an executive agency for administrative, legal, or actuarial expenses incurred by the agency in connection with transactions funded by transfers of moneys to the agency from the Account.

(i) The Legislative Policy Committee may approve an economic development opportunity that is not an extraordinary economic development opportunity if the executive agency requesting the transfer of funds offers a detailed justification for the exception. The Legislative Policy Committee shall give particular consideration to an exception that would provide a significant economic development opportunity for an area of the State that has a relatively high unemployment rate or relatively low per capita income.

(j) (1) The Department of Business and Economic Development shall submit to the Legislative Policy Committee by January 1 of each year a list of guidelines for the kinds of performance requirements that may be negotiated with a loan or grant applicant.

(2) The Department of Business and Economic Development may modify these guidelines as needed, upon approval of the Legislative Policy Committee.

(3) An executive agency may depart from these guidelines as needed, upon approval of the Legislative Policy Committee.

(k) Subject to the provisions of this subtitle, funds transferred from the Economic Development Opportunities Program Account, to an executive agency, may be loaned, granted, or invested for:

(1) assisting in the retention or expansion of existing private sector enterprises, public or private institutions, or federal research and development institutes;

(2) assisting in the establishment or attraction of private sector enterprises, public or private institutions, or federal research and development institutes new to this State; or

(3) providing assistance where existing State or local programs lack sufficient resources or are constrained by timing or program design from being utilized.

(l) Upon submission to the Legislative Policy Committee of a proposed budget amendment to transfer money from the Account, the Governor shall provide, subject to § 2–1246 of the State Government Article, to the Legislative Policy Committee:

(1) a detailed description of:

(i) the proposed use of the funds;

(ii) the manner in which the proposed use meets the criteria as set forth in this section;

(iii) the degree to which the proposed use of funds will advance statewide or local economic development strategies and objectives; and

(iv) the degree to which available sources of federal, State, local, and private financial support have been sought and will be utilized;

(2) the terms, conditions, and performance requirements of any grant or loan for which the funds are to be used;

(3) a comprehensive economic analysis of the proposed use of the funds which estimates:

(i) the economic impact to the State and the local jurisdictions affected;

(ii) a minimum level of net economic benefits to the public sector;

(iii) the number of jobs expected to be created as a result of the proposed economic development project and the percentage of those jobs that are expected to be held by Maryland residents;

(iv) the wage rates and benefit packages for the jobs expected to be created as a result of the proposed economic development project; and

(v) any other appropriate financial or economic benefits;

(4) any other analysis or information that is requested by the Legislative

Policy Committee; and

(5) the date on which the executive agency expects to disburse the funds to the proposed recipient.

(m) If an executive agency fails to disburse transferred funds to a recipient within 1 year after the expected disbursement date presented to the Legislative Policy Committee under subsection (l) of this section, the funds will revert back to the Account and the Governor shall:

(1) resubmit the proposed budget amendment to transfer money from the Account to the Legislative Policy Committee; and

(2) provide the Legislative Policy Committee with the information required under subsection (l) of this section.

(n) Funds appropriated to the Economic Development Opportunities Program Account may not be loaned, granted, or invested for:

(1) substituting for funds from other State or local programs for which a project may be eligible and sufficient resources exist;

(2) projects which are not likely to attract or retain employment opportunities;

(3) funding projects located outside the State;

(4) construction or land acquisition by the Maryland Stadium Authority; or

(5) funding for any sports activity or facility.

(o) In the case of an economic development opportunity located outside a priority funding area as established under Title 5, Subtitle 7B of this article, the Department shall first comply with the provisions of that subtitle before making a request for approval by the Legislative Policy Committee under this section.

(p) An executive agency may approve changes to a transaction approved by the Legislative Policy Committee as long as the changes do not materially and adversely affect the overall position of the executive agency in the transaction or the economic development benefits to be derived by the State in the transaction.

(q) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Financial assistance" means a grant, loan, or investment provided under this subsection that exceeds $100,000.

(iii) "Political subdivision" includes an agency or other instrumentality of the political subdivision.

(2) This subsection does not apply to financial assistance used solely for the purpose of acquiring real property or structures on real property.

(3) With respect to financial assistance under this section to a political subdivision:

(i) if the political subdivision has a program for promoting procurement opportunities among minority businesses that is acceptable to the Department of Business and Economic Development, the political subdivision shall apply the requirements of that program to the procurement of goods or services made with the proceeds from the financial assistance; but

(ii) if the political subdivision does not have a program that is acceptable to the Department of Business and Economic Development under subparagraph (i) of this paragraph, the political subdivision is subject to paragraph (4) of this subsection.

(4) (i) In this paragraph, "minority business enterprise" has the meaning stated in § 14–301 of this article.

(ii) With respect to financial assistance under this section to an entity other than a political subdivision, the entity shall agree to include in the agreement providing the financial assistance a provision acceptable to the Department of Business and Economic Development that would encourage the procurement from minority business enterprises of goods or services purchased with the proceeds from the financial assistance.

(iii) In negotiating the provision required under subparagraph (ii) of this paragraph, the Department of Business and Economic Development shall take into account relevant factors, including:

1. the intended use of the proceeds from the financial assistance; and

2. the feasibility of obtaining the required goods or services from minority business enterprises.

(5) The Department of Business and Economic Development may require that a recipient of financial assistance under this section submit to the Department of Business and Economic Development a list, or an updated list, of the minority business enterprises from which goods or services were procured and the nature and dollar amount of the goods or services.

§7–315.

(a) There is an Energy Overcharge Restitution Fund.

(b) (1) The Fund is a continuing, nonlapsing fund that is not subject to the provisions of § 7–302 of this subtitle.

(2) There shall be credited to the Fund:

(i) all federal fund revenues consisting of refunds received by the State from any source as a direct or indirect result of litigation or administrative proceedings prosecuted by the U.S. Department of Energy to redress violations of federal petroleum pricing regulations under the Emergency Petroleum Allocation Act, 15 U.S.C. §§ 751 through 756, and the Energy Policy and Conservation Act, 15 U.S.C. §§ 757 through 760H; and

(ii) all special fund revenues received and accepted as a gift under § 2–201 of this article that are expressly given for the purpose of energy assistance or weatherization for individuals in this State.

(3) Revenues received by the State as a result of claims representing purchases by the State are excluded from the Fund.

(c) The Treasurer shall:

(1) invest and reinvest the Fund in the same manner as other State funds; and

(2) credit any investment earnings to the Fund.

(d) Expenditures from the Fund shall be made by:

(1) an appropriation in the annual State budget; or

(2) a budget amendment in accordance with § 7–209 of this title, provided that any budget amendment shall be submitted to and approved by the Legislative Policy Committee prior to the expenditure or obligation of funds.

(e) In accordance with the provisions of subsection (f) of this section, the Director of the Maryland Energy Administration or the designee of the Director shall:

(1) administer the Fund;

(2) develop plans, prepare and submit proposals to the Governor for Fund use, and undertake any action that is necessary to obtain for the Fund all energy overcharge refunds and judgment awards to which the citizens of the State have a legal entitlement;

(3) assess and determine the respective needs of the citizens of the

State and develop recommendations for the allocation and disbursement of funds in accordance with those needs pursuant to the provisions of subsection (f) of this section;

(4) conduct public hearings at least twice a year at times and places the Director or the designee of the Director determines; and

(5) perform other duties as may be assigned by the Governor.

(f) (1) The Fund shall be expended subject to any restrictions on its use or other limitations on its allocation that are:

(i) expressly provided by statute; or

(ii) required as a condition of the acceptance of funds.

(2) The Fund shall be expended:

(i) for emergency energy assistance provided under § 5–5A–07(a) of the Human Services Article;

(ii) for energy assistance programs provided under § 5–5A–07(b) of the Human Services Article;

(iii) for energy assistance and weatherization programs provided under § 4–211(c) of the Housing and Community Development Article and Title 9, Subtitle 20 of the State Government Article;

(iv) for energy extension service and low–income home–energy programs provided under 42 U.S.C. §§ 7001 through 7011 and 8621 through 8629;

(v) for other energy assistance or weatherization programs meeting the federal restitutive objectives governing the distribution of overcharge refunds to the states;

(vi) for any other program within the definition of "energy conservation programs" as provided by Pub. L. No. 97–377, 96 Stat. 1830, § 155 (1982) and subsequent amendments, including the State Energy Efficiency Programs Improvement Act of 1990, Pub. Law No. 101–440;

(vii) for energy efficiency and economic development loans provided under Title 9, Subtitle 20A of the State Government Article; or

(viii) for any other purpose required as a condition of their acceptance.

(3) In addition to the provisions of paragraph (2) of this subsection, priority shall be given to the energy assistance and weatherization programs.

(4) Disbursements from the Fund to programs funded by the State or with federal funds administered by the State shall be used solely to supplement, and not to

supplant, funds otherwise available for such programs under federal or State law.

§7–317.

(a) There is a Cigarette Restitution Fund.

(b) (1) The Fund is a continuing, nonlapsing fund that is not subject to § 7–302 of this subtitle.

(2) There shall be credited to the Fund all revenues consisting of funds received by the State from any source resulting, directly or indirectly, from any judgment against or settlement with tobacco product manufacturers, tobacco research associations, or any other person in the tobacco industry relating to litigation, administrative proceedings, or any other claims made or prosecuted by the State to recover damages for violations of State law.

(3) There shall be credited to the Fund all moneys collected under § 24–508 of the Health – General Article or § 5–608 of the Labor and Employment Article.

(c) The Treasurer shall:

(1) invest and reinvest the Fund in the same manner as other State funds; and

(2) credit any investment earnings to the Fund.

(d) Expenditures from the Fund shall be made by an appropriation in the annual State budget.

(e) (1) The Fund shall be expended subject to any restrictions on its use or other limitations on its allocation that are:

(i) expressly provided by statute;

(ii) required as a condition of the acceptance of funds; or

(iii) determined to be necessary to avoid recoupment by the federal government of money paid to the Fund.

(2) Disbursements from the Fund to programs funded by the State or with federal funds administered by the State shall be used solely to supplement, and not to supplant, funds otherwise available for the programs under federal or State law as provided in this section.

(f) (1) The Cigarette Restitution Fund shall be used to fund:

(i) the Tobacco Use Prevention and Cessation Program established under Title 13, Subtitle 10 of the Health - General Article;

(ii) the Cancer Prevention, Education, Screening, and Treatment Program established under Title 13, Subtitle 11 of the Health - General Article; and

(iii) other programs that serve the following purposes:

1. reduction of the use of tobacco products by minors;

2. implementation of the Southern Maryland Regional Strategy-Action Plan for Agriculture adopted by the Tri-County Council for Southern Maryland with an emphasis on alternative crop uses for agricultural land now used for growing tobacco;

3. public and school education campaigns to decrease tobacco use with initial emphasis on areas targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco products;

4. smoking cessation programs;

5. enforcement of the laws regarding tobacco sales;

6. the purposes of the Maryland Health Care Foundation under Title 20, Subtitle 5 of the Health - General Article;

7. primary health care in rural areas of the State and areas targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco products;

8. prevention, treatment, and research concerning cancer, heart disease, lung disease, tobacco product use, and tobacco control, including operating costs and related capital projects;

9. substance abuse treatment and prevention programs; and

10. any other public purpose.

(2) The provisions of this subsection may not be construed to affect the Governor's powers with respect to a request for an appropriation in the annual budget bill.

(g) (1) Amounts may only be expended from the Fund through appropriations in the State budget bill as provided in this subsection.

(2) The Governor shall include in the annual budget bill appropriations from the Fund equivalent to the lesser of $100,000,000 or 90% of the funds estimated to be available to the Fund in the fiscal year for which the appropriations are made.

(3) For each fiscal year for which appropriations are made, at least 50% of the appropriations shall be made for those purposes enumerated in subsection (f)(1)(i),

(ii), and (iii)1 through 9 of this section subject to the requirement of subsection (e)(2) of this section.

(4) For each fiscal year for which appropriations are made, at least 30% of the appropriations shall be made for the purposes of the Maryland Medical Assistance Program.

(5) For each fiscal year for which appropriations are made, 0.15% of the Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5 of the Business Regulation Article.

(6) Any additional appropriations, not subject to paragraph (3), paragraph (4), or paragraph (5) of this subsection, may be made for any lawful purpose.

(h) For each program, project or activity receiving funds appropriated under subsection (g)(3) of this section, the Governor shall:

(1) develop appropriate statements of vision, mission, key goals, key objectives, and key performance indicators and report these statements in a discrete part of the State budget submission, which shall also provide data for key performance indicators; and

(2) report annually, subject to § 2-1246 of the State Government Article, to the General Assembly no later than October 1 on:

(i) total funds expended, by program and subdivision, in the prior fiscal year from the Fund established under this section; and

(ii) the specific outcomes or public benefits resulting from that expenditure.

§7–324.

(a) In this section, "Account" means the Catastrophic Event Account.

(b) Subject to the provisions of this section, the Account is established to enable the State to respond without undue delay to a natural disaster or other catastrophic situation that cannot be taken care of within the resources of existing appropriations.

(c) The Governor may provide an appropriation in the budget bill to the Account.

(d) After notice to and approval by the Legislative Policy Committee, the Governor may transfer funds by budget amendment from the Account to the expenditure accounts of the appropriate unit of State government.

(e) Funds appropriated to the Catastrophic Event Account:

(1) may not be used to offset operating deficiencies in regular programs of State government; but

(2) may be expended to assist a unit of State government in funding costs in connection with a natural disaster or catastrophic situation.

(f) (1) The Account is a continuing, nonlapsing fund which is not subject to § 7-302 of this subtitle.

(2) The Treasurer shall separately hold, and the Comptroller shall account for, the Account.

(3) The Account shall be invested and reinvested in the same manner as other State funds.

(4) Any investment earning shall be subject to § 7-311(d) of this subtitle.

(g) Moneys appropriated to the Account do not revert to the Revenue Stabilization Account.

§7–325.

(a) (1) In each of fiscal years 2011 and 2012, the Governor shall include in the annual budget bill submitted to the General Assembly a General Fund appropriation for the Maryland State Arts Council of not less than $13,298,434.

(2) For fiscal year 2013 and each fiscal year thereafter, the Governor shall include in the annual budget bill submitted to the General Assembly a General Fund appropriation for the Maryland State Arts Council in an amount not less than the amount of the General Fund appropriation for the Council as approved in the State budget as enacted by the General Assembly for the prior fiscal year, increased by not less than the percentage by which the projected total General Fund revenues for the upcoming fiscal year exceed the revised estimate of total General Fund revenues for the current fiscal year, as contained in the report of estimated State revenues submitted by the Board of Revenue Estimates to the Governor under § 6–106(b) of this article.

(b) The Legislative Auditor has the authority to conduct a review or audit of any recipient of a grant from the Maryland State Arts Council.

§7–326.

(a) In this section, "Fund" means the Public School Construction Fund.

(b) The Fund is a continuing, nonlapsing fund which is not subject to § 7-302 of this subtitle.

(c) The Fund consists of moneys transferred by the Camden Yards Financing Funds as required under § 10–652 of the Economic Development Article.

(d) The Treasurer shall separately hold, and the Comptroller shall account for, the Fund.

(e) Subject to the approval of the Board of Public Works, moneys credited to the Fund shall be used only for public school construction projects and public school capital improvements consistent with the provisions of Title 5, Subtitle 3 of the Education Article.

(f) Moneys from the Fund may only be transferred from the Fund to the extent authorized by an appropriation as enacted in the annual State budget bill and are not subject to transfer by budget amendment.

(g) It is the intent of the General Assembly that the funds provided for school construction in the Fund be in addition to and not in substitution of general funds or any other funds provided in the Governor's allowance for public school construction.

§7–328.

(a) There is a Mortgage Loan Servicing Practices Settlement Fund.

(b) (1) The Fund is a continuing, nonlapsing fund that is not subject to § 7–302 of this subtitle.

(2) Except for restitution and funds designated as fines, civil penalties, and money that are otherwise required under Maryland law, a judgment, or a settlement agreement to be paid into the General Fund of the State, there shall be credited to the Fund all revenues consisting of funds received by the State from any source resulting, directly or indirectly, from any judgment against or settlement with bank mortgage servicers or any other person in the mortgage servicing industry relating to litigation, administrative proceedings, or any other claims made or prosecuted by the State to recover damages for violations of State law.

(c) The Treasurer shall:

(1) invest and reinvest the Fund in the same manner as other State funds; and

(2) credit any investment earnings to the Fund.

(d) Expenditures from the Fund shall be made by an appropriation in the annual State budget or may be transferred by budget amendment.

(e) (1) The Fund shall be expended subject to any restrictions on its use or other limitations on its allocation that are:

(i) expressly provided by statute; or

(ii) required as a condition of the acceptance of funds.

(2) It is the intent of the General Assembly that disbursements from the Fund to programs funded by the State or with federal funds administered by the State shall be used as provided in this section solely to supplement, and not to supplant, funds otherwise available for the programs under federal or State law.

(f) (1) The Mortgage Loan Servicing Practices Settlement Fund shall be used for housing and foreclosure–relief purposes and for related investigation and enforcement activities, including:

(i) the provision of housing counseling;

(ii) legal assistance related to foreclosure and housing activities;

(iii) criminal or civil investigations of fraud related to housing and the securitization of mortgage loans;

(iv) relevant enforcement activities;

(v) foreclosure prevention, remediation, and restitution;

(vi) programs to address community blight;

(vii) programs reasonably targeted to benefit persons harmed by mortgage fraud; and

(viii) any other public purpose reasonably related to housing and foreclosure relief.

(2) The provisions of this subsection may not be construed to affect the Governor's powers with respect to a request for an appropriation in the annual budget bill.

(g) For each program, project, or activity under subsection (f)(1) of this section for which funds are appropriated, the Governor shall:

(1) develop appropriate statements of vision, mission, key goals, objectives, and performance indicators and report these statements in a discrete part of the State budget submission, which shall also provide data for key performance indicators; and

(2) on or before October 1 of each year until 2016, report, subject to § 2–1246 of the State Government Article, to the General Assembly on:

(i) total funds expended, by program and subdivision, in the prior fiscal year from the Fund established under this section; and

(ii) the specific outcomes or public benefits resulting from that expenditure.

§7–401.

(a) The Comptroller may direct the units of the State government to use the method that the Comptroller sets for:

(1) keeping books and accounts;

(2) adopting uniform systems of accounting; or

(3) making reports.

(b) (1) Except as provided in paragraph (2) of this subsection, the Comptroller shall require a unit of the State government to comply with each recommendation of the Legislative Auditor in an audit report on the unit concerning:

(i) its record keeping;

(ii) its use of a uniform system of accounting; and

(iii) its submission of reports.

(2) The Comptroller may waive compliance with a recommendation of the Legislative Auditor if the unit satisfies the Comptroller that the recommendation should not be carried out.

(3) The Comptroller shall report to the Joint Audit Committee on actions under this subsection.

(4) The report shall include the reasons for waiving compliance with a recommendation of the Legislative Auditor.

§7–402.

(a) (1) In this section the following words have the meanings indicated.

(2) "Social organization" means an association or corporation that is operated for a charitable, cultural, educational, historical, humane, industrial, medical, or military purpose.

(3) "State aid" means a contribution, grant, or subsidy of money from the State Treasury.

(b) (1) Each social organization that, by statute, is to receive State aid shall make an agreement:

(i) with the unit of the State government to which the money for the State aid has been appropriated; or

(ii) if the money is not appropriated to a unit, with the Comptroller.

(2) An agreement under this subsection shall:

(i) define the purposes and terms of the State aid; and

(ii) require the social organization to submit to the unit or Comptroller a report on expenditure of the State aid.

(c) (1) Unless the agreement sets another date for submission of the report, a social organization shall submit the report on or before September 1 after the close of the fiscal year in which the social organization received the State aid.

(2) The report shall:

(i) contain an itemized statement that fully and accurately accounts for how the State aid was spent; and

(ii) be verified:

1. by an officer of the social organization; or

2. for a military organization, by the commanding officer.

(d) After a unit or the Comptroller receives a report under this section, the unit or Comptroller:

(1) shall determine whether the social organization has spent and accounted for the State aid in accordance with the agreement; and

(2) if the unit or Comptroller finds inconsistencies between the agreement and the expenditures or operations of the social organization, shall give the Department of Budget and Management and, subject to § 2-1246 of the State Government Article, the Department of Legislative Services notice of the inconsistencies.

(e) To ensure compliance with this section, the unit or the Comptroller may audit the financial records of a social organization.

§7–403.

(a) (1) In this section the following words have the meanings indicated.

(2) "Financial records" means the generally accepted budgets, journals, ledgers, reports of expenses and revenue, or other forms of financial documentation that may be required as a condition for receiving State funds.

(3) "Health or social welfare organization" means an organization that is operated for the promotion of the public health or social welfare, whether or not the organization is tax exempt under § 501(c) of the Internal Revenue Code.

(4) "Uniform accounting standards" means:

(i) accounting standards and procedures that the American Institute of Certified Public Accountants has adopted for voluntary health or social welfare organizations; or

(ii) uniform standards of an equivalent nature that:

1. are applied consistently; and

2. conform to generally accepted accounting principles.

(b) This section does not apply to:

(1) a dentist;

(2) a hospital that the State Health Services Cost Review Commission regulates;

(3) a pharmacist; or

(4) a physician.

(c) (1) This subsection applies only to a contract for the provision of health or social welfare services between:

(i) a unit of the State government; and

(ii) a health or social welfare organization or an individual.

(2) A contract with an individual who is a Maryland resident or with a health or social welfare organization incorporated under the laws of this State shall require the individual or the health or social welfare organization to keep financial records in accordance with uniform accounting standards.

(3) A contract with any other individual or private health or social welfare organization may require the individual or private health or social welfare organization to keep financial records in accordance with uniform accounting standards.

(d) A unit of the State government that makes a grant to a private health or social welfare organization shall require the private health or social welfare organization to keep financial records in accordance with uniform accounting standards.

(e) A unit of the State government may not require an individual or a private health or social welfare organization to keep financial records in a manner that is inconsistent with uniform accounting standards.

(f) (1) (i) The chief accountant of a unit of the State government or of the principal department to which the unit is assigned may examine the financial records of an individual or a health or social welfare organization that receives a grant from

the unit.

(ii) The accountant shall give 30 days' prior notice of an examination under this paragraph.

(2) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, the chief accountant of a unit or of the principal department to which the unit is assigned shall examine any financial records required to be kept under subsection (c) of this section.

(ii) For the financial records required to be kept under subsection (c)(2) of this section, the accountant shall give 30 days' prior notice of the examination under this paragraph.

(iii) For any financial records required to be kept under subsection (c)(3) of this section, the accountant shall examine the financial records when an examination is authorized by:

1. the secretary of the principal department to which the unit is assigned; or

2. if the unit is not assigned to a principal department, the head of the unit.

(g) A unit of the State government may not:

(1) make a grant to an organization that fails to keep financial records in accordance with uniform accounting standards; or

(2) make a contract with an organization or individual who fails to keep financial records as required under this section.

§7–404.

(a) (1) In this section the following words have the meanings indicated.

(2) "Department" means a principal department of the Executive Branch of the State government.

(3) "Independent unit" means a unit of the State government that is not in a department.

(b) This section does not apply to:

(1) a private provider who provides care for 4 or fewer individuals;

(2) a provider from another state;

(3) a provider of family child care for 6 or fewer children; or

(4) a foster parent with whom a child is placed by the Social Services Administration.

(c) (1) After consultation with the Legislative Auditor, the head of each department or independent unit that contracts with a private provider for care of an individual in a nongovernmental facility shall specify the intervals and manner of examination of the accounts of the private provider.

(2) The examination shall determine whether costs of care for which the private provider has received reimbursement are in accordance with the guidelines of the department or unit for allowable costs.

(d) The department or independent unit shall pay for the examination from the appropriation to the department or independent unit in the State budget.

(e) If an independent certified public accountant is to examine the accounts of a private provider, the head of the department or independent unit shall choose the accountant in accordance with a procedure that the Legislative Auditor has reviewed.

(f) (1) Whenever an examination under this section shows that the reimbursement that a provider has received during the period covered by the examination exceeds the total allowable costs, the department or independent unit shall collect:

(i) the full amount of the excess; or

(ii) a lesser amount if the department or independent unit finds that the collection of the full amount would impair seriously the financial condition of the provider.

(2) Whenever an examination under this section shows that the allowable costs exceed the reimbursement that the provider has received, the department or independent unit shall pay to the provider the difference between the reimbursement and the lesser of the allowable costs or the maximum rate of payment as provided in the State budget.

(g) The head of a department or independent unit shall send to the Secretary of Budget and Management and, subject to § 2–1246 of the State Government Article, the Legislative Auditor:

(1) a copy of a report of each examination under this section; and

(2) a written statement that contains the basis for any finding made under subsection (f)(1)(ii) of this section.

(h) A provision of this section has effect only to the extent that the provision does not conflict with federal law.

§7–405.

(a) (1) In this section the following words have the meanings indicated.

(2) "Developmentally disabled individual" means a severe chronic disability of an individual that:

(i) is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(ii) is manifested before the individual attains the age of 22;

(iii) is likely to continue indefinitely;

(iv) results in an inability to live independently without external support or continuing and regular assistance; and

(v) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(3) "Elderly individual" means an individual who is 60 years old or older.

(b) In addition to any other requirement of this subtitle, each corporation that administers services to elderly or developmentally disabled individuals and receives funds from the State shall be subject to audit of its financial records by:

(1) the State Comptroller; or

(2) the State Legislative Auditor.

(c) This section does not apply to services administered by a nonprofit hospital corporation.

§7–406.

(a) (1) In this section the following words have the meanings indicated.

(2) "Department" means the Department of Budget and Management.

(3) (i) "Grantee" means a for profit or nonprofit entity or association that receives State aid during a fiscal year.

(ii) "Grantee" does not include a unit of State or local government.

(4) "Grantor" means a unit of State government or other State entity that provides State aid to a grantee.

(5) (i) "State aid" means a contribution, grant, or subsidy of $50,000 or more provided through the State operating or capital budget or by the action of a unit of State government from State funds appropriated to that unit.

(ii) "State aid" does not include reimbursements to providers participating in a State program.

(b) (1) (i) A grantor shall submit a report as provided in this subsection to the Department on or before September 1 after the close of each fiscal year in which the grantor provided State aid to a grantee.

(ii) The report shall contain:

1. the name, address, and zip code of each grantee that received State aid from the grantor during the previous fiscal year;

2. the amount of any State aid provided to the grantee; and

3. a description of the State aid provided to the grantee.

(2) The reports required under this subsection shall be in the form and format, including electronic format, that the Department, after consultation with the Department of Information Technology, requires.

(c) (1) The Department of Information Technology, in consultation with the Department of Budget and Management, shall develop and operate a searchable website, accessible to the public at no cost through the Internet.

(2) The searchable website shall contain:

(i) the name of the grantor that provided the State aid;

(ii) the name of the grantee that received the State aid;

(iii) the amount of the State aid that was provided to the grantee;

(iv) the zip code of the grantee that received the State aid; and

(v) a description of the State aid that was provided to the grantee.

(3) The searchable website shall allow a user to search by the following data fields:

(i) the grantee that received the State aid;

(ii) the grantor that provided the State aid; and

(iii) the zip code of any grantee that received State aid.

(d) The Office of Legislative Audits may conduct an audit or review of a grantee in accordance with §§ 2–1221 through 2–1227 of the State Government Article.

§8–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Board of Public Works.

(c) "Capital appreciation bond" means a State bond that accrues interest payable only on the date of maturity.

(d) "Enabling act" means a law that authorizes the creation of a general obligation debt of the State and the sale of State bonds to evidence that debt.

(e) "State bond" means a general obligation bond of the State.

(f) "State debt" means the general obligation debt of the State.

§8–104.

(a) In this Part II of this subtitle the following words have the meanings indicated.

(b) "Committee" means the Capital Debt Affordability Committee.

(c) (1) "Tax supported debt" means:

(i) State debt; and

(ii) other forms of debt, including State agency capital leases supported in whole or part by State tax revenues and debt of the Department of Transportation, the Maryland Stadium Authority, and other units of State government which, in the opinion of the Committee, are supported directly or indirectly by State tax revenues.

(2) "Tax supported debt" includes debt issued by the Department of Transportation under Title 3, Subtitle 6 of the Transportation Article or by the Maryland Transportation Authority under Title 4, Subtitle 3 of the Transportation Article that is secured by a pledge of future federal aid from any source.

(3) "Tax supported debt" does not include capital leases used to finance energy performance contracts entered into under § 12–301 of this article, if, as determined by the Committee, energy savings that are guaranteed by the contractor:

(i) equal or exceed the capital lease payments on an annual basis; and

(ii) are monitored in accordance with reporting requirements

adopted by the Committee.

§8–105.

(a) The General Assembly finds that:

(1) for many years, State bonds have had the highest credit rating and, therefore, have been readily marketable at favorable interest rates;

(2) to continue to finance essential capital projects for the benefit of its citizens, the State must keep this rating; and

(3) to keep this rating, authorizations of State debt must be based on the ability of the State to meet its total debt service requirements in light of other calls on its fiscal resources.

(b) The purpose of this Part II of this subtitle is to provide for a State debt management program through which:

(1) a State debt affordability analysis can be made annually;

(2) on the basis of the analysis, proposed capital projects that require new State debt can be evaluated; and

(3) the General Assembly can receive guidance in properly setting priorities among capital projects and appropriations.

§8–106.

This Part II of this subtitle shall be construed liberally to carry out its purpose.

§8–107.

(a) This Part II of this subtitle applies only to tax supported debt.

(b) This Part II of this subtitle does not affect:

(1) the authority of the Governor to submit:

(i) amendments to the consolidated loan budget or to any accompanying bill; or

(ii) instead of amendments, separate bills that authorize State debt; or

(2) the authority of the General Assembly to:

(i) continue its independent analysis of State debt affordability; or

(ii) consider bills that authorize State debt in addition to the bills that accompany the consolidated loan budget.

§8–108.

There is a Capital Debt Affordability Committee in the Executive Department.

§8–109.

The Committee consists of the following 7 members:

(1) 1 individual appointed by the Governor;

(2) as ex officio members:

(i) the Comptroller;

(ii) the Treasurer;

(iii) the Secretary of Budget and Management; and

(iv) the Secretary of Transportation; and

(3) as nonvoting members:

(i) the chair of the Capital Budget Subcommittee of the Senate Budget and Taxation Committee; and

(ii) the chair of the Capital Budget Subcommittee of the House Appropriations Committee.

§8–110.

The Treasurer is the Chairman of the Committee.

§8–111.

(a) The Chairman shall call meetings of the Committee as needed to perform its duties.

(b) The Committee shall invite the Executive Director of the Department of Legislative Services to attend the meetings of the Committee.

§8–112.

(a) The Committee shall review on a continuing basis the size and condition of the State tax supported debt as well as other debt of State units, including the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Baltimore City Community College.

(b) On or before October 1 of each year, the Committee shall submit to the Governor and the General Assembly the Committee's estimate of the total amount of new State debt that prudently may be authorized for the next fiscal year.

(c) In making the estimate, the Committee shall consider:

(1) the amount of State bonds that, during the next fiscal year:

(i) will be outstanding; and

(ii) will be authorized but unissued;

(2) the capital program prepared by the Department of Budget and Management;

(3) capital improvement and school construction needs during the next 5 fiscal years, as projected by the Interagency Committee on School Construction;

(4) projections of debt service requirements during the next 10 fiscal years;

(5) the criteria that recognized bond rating agencies use to judge the quality of issues of State bonds;

(6) any other factor that is relevant to:

(i) the ability of the State to meet its projected debt service requirements for the next 5 fiscal years; or

(ii) the marketability of State bonds;

(7) the effect of authorizations of new State debt on each of the factors set out in this subsection; and

(8) the amount of issuances, debt outstanding, and debt service requirement of other classes of State tax supported debt as well as other debt of State units, including the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Baltimore City Community College.

(d) The estimate of the Committee:

(1) is advisory; and

(2) does not bind the General Assembly, the Board, or the Governor.

(e) (1) In addition to its other duties under this section, the Committee shall review on a continuing basis the size and condition of any debt of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Baltimore City Community College.

(2) In preparing an estimate with respect to the authorization of any new State debt, the Committee shall take into account as part of the affordability analysis any debt for academic facilities to be issued by a System.

(3) At the same time that the Committee makes its report as required under subsection (b) of this section, the Committee shall submit to the Governor and the General Assembly the Committee's estimate of the amount of new bonds for academic facilities that prudently may be authorized in the aggregate for the next fiscal year by the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Baltimore City Community College.

(4) For purposes of this subtitle, the terms "System" and "academic facilities" have the meanings stated in § 19–101 of the Education Article.

(5) The Committee may request any needed information from a System and shall consider the information in making its estimates, including any information submitted by a System at its own initiative.

(6) This estimate:

(i) is advisory; and

(ii) does not bind the General Assembly, the Board, or the Governor.

§8–113.

On or before November 1 of each year, after considering the current estimate of the Committee, the Governor shall determine:

(1) the total authorizations of new State debt that the Governor considers advisable for the next fiscal year; and

(2) the preliminary allocation of new State debt for:

(i) general construction projects;

(ii) school construction projects; and

(iii) other special projects.

§8–114.

(a) The Department of Budget and Management annually shall prepare for the Governor a draft of the part of the consolidated loan budget that relates to general construction projects.

(b) On or before the 20th day of each regular session of the General Assembly, the Governor shall submit to the General Assembly:

(1) the consolidated loan budget; and

(2) if necessary, 1 or more bills that authorize new State debt to fund the consolidated loan budget.

(c) The consolidated loan budget shall:

(1) contain a complete plan of the proposed projects that any accompanying bills would fund; and

(2) show, by dollar amount and percent, the allocation for:

(i) general construction projects;

(ii) school construction projects; and

(iii) other special projects.

(d) (1) Each bill that the Governor submits under this section shall comply with the requirements of Article III, §§ 34 and 52 of the Maryland Constitution.

(2) An authorization of State debt to fund any part of the consolidated loan budget shall be deemed to be a single work, object, or purpose under Article III, § 52 of the Maryland Constitution.

§8–117.

(a) The General Assembly may authorize the Board to:

(1) borrow money for any public purpose; and

(2) issue State bonds to evidence the debt.

(b) An enabling act shall specify the total principal amount of the debt authorized by the enabling act.

(c) An enabling act may take substantially the following form:

"A BILL ENTITLED

AN ACT concerning

Creation of a State Debt – (Name of Project)

FOR the purpose of authorizing the creation of a State debt not to exceed $....., (for an enabling act that requires an equal matching fund)/ in the amount of $....., (for an enabling act that requires no matching fund or a lesser matching fund) the proceeds to be used as a grant to ..... (name of grantee) for certain development or improvement purposes; providing for disbursement of the loan proceeds, subject to the requirement that the grantee provide and expend a matching fund (if the enabling act requires a matching fund); and providing generally for the issuance and sale of bonds evidencing the loan.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(1) The Board of Public Works may borrow money and incur indebtedness on behalf of the State of Maryland through a State loan to be known as the ... (name of project) Loan of ... (year) equal to the lesser of (i) $... or (ii) the amount of the matching fund provided in accordance with Section 1(5) below. (For an enabling act that requires an equal matching fund)/ in the total principal amount of $..... (for an enabling act that requires no matching fund or a lesser matching fund). This loan shall be evidenced by the issuance, sale, and delivery of State general obligation bonds authorized by a resolution of the Board of Public Works and issued, sold, and delivered in accordance with §§ 8–117 through 8–124 and 8–131.2 of the State Finance and Procurement Article.

(2) The bonds to evidence this loan or installments of this loan may be sold as a single issue or may be consolidated and sold as part of a single issue of bonds under § 8–122 of the State Finance and Procurement Article.

(3) The cash proceeds of the sale of the bonds shall be paid to the Treasurer and first shall be applied to the payment of the expenses of issuing, selling, and delivering the bonds, unless funds for this purpose are otherwise provided, and then shall be credited on the books of the Comptroller and expended, on approval by the Board of Public Works, for the following public purposes, including any applicable architects' and engineers' fees: as a grant to ..... (name of grantee) (referred to hereafter in this Act as "the grantee") (for an enabling act that requires a matching fund) for (here state the purpose or purposes to which the proceeds of the bonds are to be applied).

(4) An annual State tax is imposed on all assessable property in the State in rate and amount sufficient to pay the principal of and interest on the bonds, as and when due and until paid in full. The principal shall be discharged within 15 years after the date of issue of the bonds.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, ... (year)".

(d) (1) If an enabling act requires an equal matching fund, the fifth paragraph is as follows:

"(5) Prior to the payment of any funds under the provisions of this Act for the purposes set forth in Section 1(3) above, the grantee shall provide and expend a matching fund. No part of the grantee's matching fund may be provided, either directly or indirectly, from funds of the State, whether appropriated or unappropriated. No part of the fund may consist of real property, in kind contributions, or funds expended prior to the effective date of this Act. In case of any dispute as to the amount of the matching fund or what money or assets may qualify as matching funds, the Board of Public Works shall determine the matter and the Board's decision is final. The grantee has until June 1, ... (2 years from the effective date of the Act), to present evidence satisfactory to the Board of Public Works that a matching fund will be provided. If satisfactory evidence is presented, the Board shall certify this fact and the amount of the matching fund to the State Treasurer, and the proceeds of the loan equal to the amount of the matching fund shall be expended for the purposes provided in this Act. Any amount of the loan in excess of the amount of the matching fund certified by the Board of Public Works shall be canceled and be of no further effect.".

(2) If an enabling act requires a lesser matching fund, the fifth paragraph is as follows:

"(5) Prior to the payment of any funds under the provisions of this Act for the purposes set forth in Section 1(3) above, the grantee shall provide and expend a matching fund of $ ..., (amount of the matching fund to be provided by the grantee). No part of the grantee's matching fund may be provided, either directly or indirectly, from funds of the State, whether appropriated or unappropriated. No part of the fund may consist of real property, in kind contributions, or funds expended prior to the effective date of this Act. In case of any dispute as to the amount of the matching fund or what money or assets may qualify as matching funds, the Board of Public Works shall determine the matter and the Board's decision is final. The grantee has until June 1, ... (2 years from the effective date of the Act), to present evidence satisfactory to the Board of Public Works that a matching fund will be provided. If satisfactory evidence is presented, the Board shall certify this fact to the State Treasurer, and the proceeds of the loan shall be expended for the purposes provided in this Act.".

(e) An enabling act may also contain the following paragraph:

"The proceeds of the loan must be expended or encumbered by the Board of Public Works for the purposes provided in this Act no later than June 1, ... (7 years from the effective date of the Act). If any funds authorized by this Act remain unexpended or unencumbered after June 1, ... (7 years from the effective date of the Act), the amount of the unencumbered or unexpended authorization shall be canceled and be of no further effect. If bonds have been issued for the loan, the amount of unexpended or unencumbered bond proceeds shall be disposed of as provided in § 8–129 of the State Finance and Procurement Article.".

(f) An enabling act under this section may contain:

(1) an additional provision for all or part of the principal of and interest on the State bonds issued under the enabling act to be paid primarily from sources of funds other than a State tax on assessable property; and

(2) any other additional provision that is appropriate to the purpose of the enabling act and the nature of State bonds.

§8–118.

(a) The Board shall exercise the powers and perform the duties that the General Assembly delegates to the Board in connection with:

(1) the creation of State debt;

(2) the determination of interest on and other terms and conditions of the State debt;

(3) the preparation of State bonds that evidence the State debt;

(4) notice of a sale of State bonds; and

(5) the sale.

(b) The Board shall exercise these powers and perform these duties in accordance with:

(1) Article III, § 34 of the Maryland Constitution;

(2) §§ 8-117 through 8-124 of this subtitle; and

(3) the specific enabling act.

§8–119.

(a) By 1 or more resolutions, the Board may provide for the terms, conditions, security, issuance, sale, delivery, replacement, or payment of the State bonds

authorized by an enabling act.

(b) Unless the enabling act provides otherwise, the Board shall use the procedures set forth in §§ 8-117 through 8-124 of this subtitle for the issuance and sale of the State bonds.

§8–120.

By resolution, the Board may provide that the State bonds authorized by an enabling act:

(1) be in 1 or more series;

(2) bear a certain date of issue;

(3) be executed in a certain manner;

(4) be sold in a certain manner at public or private, negotiated sale;

(5) be in certain denominations, not necessarily in equal paramounts;

(6) mature in certain amounts at certain times, not necessarily in consecutive annual installments, but not later than 15 years after their respective dates of issue;

(7) bear interest at certain rates or at rates to be determined in the manner stated in the resolution; and

(8) be paid, as to principal and interest, at certain places.

§8–121.

(a) By resolution, the Board may specify the form in which State bonds are to be issued, including:

(1) a coupon form;

(2) a capital appreciation form;

(3) a variable interest rate form;

(4) a form that qualifies for tax credits, interest subsidies, or other federal tax benefits;

(5) a form that qualifies as a registered form under §§ 54A, 103, and 149 of the Internal Revenue Code or a regulation proposed or adopted under those sections; and

(6) any other registered form.

(b) (1) Whenever the Board provides for the sale of State bonds in registered form, the Board may establish procedures for the registration and transfer of the State bonds.

(2) The Board may exercise any other power that relates to issuance of State bonds in registered form and that is not conferred on the Treasurer.

(c) Whenever the Board provides for the sale of State bonds in registered form, the Treasurer may:

(1) appoint any agent, including an authenticating trustee, corporate trustee, paying agent, registrar, or transfer agent, or use the agent appointed under § 8-135 of this subtitle;

(2) specify the rights, duties, and compensation of the agent; and

(3) in connection with the establishment and maintenance of a central depository system for the transfer or pledge of the State bonds, make agreements with:

(i) custodian banks and their nominees; or

(ii) financial intermediaries and their nominees.

(d) Whenever the Board provides for the sale of State bonds in variable interest rate form, the Treasurer may:

(1) appoint any agent or other contracting party, including an underwriter, remarketing agent, dealer, tender agent, insurer, liquidity provider, or similar entity; and

(2) specify the rights, duties, and compensation of and make agreements with the agent or other contracting party.

§8–122.

(a) By resolution, the Board may provide for all or part of the State bonds authorized by 2 or more enabling acts to be consolidated and sold as a single issue. However, the Board may not include in a consolidated issue any State bonds authorized by an enabling act that specifically exempts the State bonds from this section.

(b) A consolidated issue under this section shall be known as the "State and local facilities loan" of the series and year in which the Board authorizes the sale of the issue.

(c) Notwithstanding any provision of an enabling act, each State bond that is sold as part of a consolidated issue under this section shall be identified by the series and year in which the Board authorizes the sale of the issue.

§8–122.1.

(a) Upon sale of State bonds authorized by an enabling act, the principal amount of the loan authorized by that enabling act shall be reduced by:

(1) the stated principal amount of the State bonds sold, if the bonds are sold at 95% or more of par; or

(2) the cash proceeds, excluding any accrued interest, received for the State bonds, if the bonds are sold at less than 95% of par.

(b) Whenever State bonds are sold as a consolidated issue at less than 95% of par, the Board, by resolution, shall determine the manner in which the cash proceeds received for the bonds, excluding accrued interest, shall be allocated among the loans included in that issue.

§8–123.

(a) Except as otherwise provided in this subtitle, the Board shall offer State bonds at a public sale.

(b) (1) At least 10 days before the date of a public sale, the Board shall give public notice of the sale.

(2) The notice shall state the date, time, and place of the public sale.

(c) (1) Except as provided in paragraph (2) of this subsection, at a public sale, the Board shall sell State bonds for cash to the responsible bidder who:

(i) offers the lowest net interest cost to the State; or

(ii) meets other terms or conditions of sale or issuance that the Board has set.

(2) Whenever the Board determines that no bid is satisfactory and that it is in the best interests of the State to reject all bids, the Board may reject the bids.

(d) (1) By resolution, the Board may postpone the time for receipt of proposals for the bonds without republishing the form of advertisement for the bonds.

(2) (i) The Treasurer shall provide notice of the new date and time of sale not less than 24 hours prior to the time proposals are to be submitted, which date may not be more than 30 days after the originally scheduled date of sale.

(ii) The notice may be given by Munifacts News Service or a similar service or such other method as the Treasurer deems appropriate.

§8–123.1.

(a) In accordance with the authority to issue capital appreciation bonds under § 8-121 of this subtitle, the Board, in a resolution setting forth the terms and conditions of any State bond issue, may designate that all or a portion of the State bonds be issued as capital appreciation bonds.

(b) The Board may sell the capital appreciation bonds at a negotiated sale if the Board determines that a negotiated sale will provide greater access to investors who are residents of the State of Maryland.

§8–123.2.

(a) In this section, "small denomination bonds" means bonds in denominations of $5,000 or less.

(b) In accordance with § 8-121 of this subtitle, the Board, in a resolution setting forth the terms and conditions of any State bond issue, may designate that all or a portion of the State bonds be issued as small denomination bonds.

(c) Small denomination bonds may be issued in any form permitted under § 8-121 of this subtitle.

(d) The Board may sell small denomination bonds at a negotiated sale if the Board determines that a negotiated sale will:

(1) result in either a more efficient or economical sale of the bonds; or

(2) provide greater access to investors who are residents of the State of Maryland.

§8–123.3.

(a) In considering the structure of a State of Maryland capital appreciation general obligation bond issue, the Board of Public Works shall be sensitive to the need to help Maryland citizens save for the costs of college.

(b) The Maryland College Savings Bond Advisory Board, created under § 20-101 of the Education Article, shall make recommendations to the Board of Public Works regarding the need for Maryland capital appreciation general obligation bonds for college savings.

§8–123.4.

(a) Except as provided in subsection (c) of this section, in accordance with the authority to issue variable interest rate bonds under § 8-121 of this subtitle, the Board, in a resolution setting forth the terms and conditions of a State bond issue, may designate that all or a portion of the State bonds be issued as variable interest

rate bonds.

(b) The Board may sell variable interest rate bonds at a private, negotiated sale on the terms and conditions that the Board determines to be most advantageous to the State.

(c) At the time of issuance, the aggregate par value of the State's general obligation variable interest rate bonds shall comprise no more than 15% of the outstanding general obligation indebtedness of the State.

§8–124.

(a) Subject to the provisions of subsection (b) of this section, it is the policy of the State that the preferred method of sale of general obligation bonds of the State by the Board is by public, competitive sale.

(b) The Board may offer the sale of general obligation bonds of the State at a private, negotiated sale, but only if the Board determines that:

(1) extraordinary credit market conditions exist that warrant the use of the method authorized by this subsection instead of the method stated in subsection (a) of this section; and

(2) the terms and conditions for the sale of general obligation bonds of the State, including price, interest rates, and payment dates, achieved through a private, negotiated sale are more advantageous to the State than the terms and conditions for the sale that can be achieved by a public, competitive sale.

(c) Whenever the Board receives no bids or rejects all bids for the State bonds offered at a public, competitive sale, the Board may sell some or all of the State bonds at a private, negotiated sale, on the terms and conditions, including price, interest rates, and payment dates, that the Board determines to be the most advantageous to the State.

(d) Any determination or finding made by the Board pursuant to this section shall be conclusive.

§8–125.

(a) In this section, "Fund" means the State and Local Facilities Loan Fund.

(b) For bonds issued under § 8-122 of this subtitle, the Comptroller shall establish:

(1) the State and Local Facilities Loan Fund;

(2) a premium and expense account in the Fund; and

(3) for accounting purposes only:

(i) a capital project account for each enabling act; and

(ii) separate subaccounts for each project included in enabling acts authorizing multiple projects.

(c) (1) The Comptroller shall credit the proceeds of the sale of State bonds to the Fund.

(2) The Comptroller shall credit to the premium and expenses account:

(i) any part of the proceeds of a bond sale that is a premium; and

(ii) any additional part of the proceeds necessary to pay the expenses of that bond sale.

(d) (1) On approval by the Board, the Comptroller may expend money from the Fund for any expenditure authorized by an enabling act, regardless of whether bonds have been sold to specifically fund that enabling act.

(2) To ensure compliance with § 8-127 of this subtitle, the Comptroller shall account for all expenditures from the Fund on a project-specific basis.

(3) An expenditure made under this subsection may not reduce the amount of bonds authorized under an enabling act for which bonds have not been sold.

(e) (1) Unless payment of expenses otherwise has been provided, the expenses of each bond sale shall be paid from the proceeds of that bond sale credited to the premium and expense account.

(2) After the expenses of each sale of State bonds have been paid, the remaining premium credited to the premium and expense account from that bond sale shall be transferred to the Annuity Bond Fund to pay debt service on State bonds.

§8–126.

(a) Whenever an appropriation from the General Fund is made in the State budget and is spent to finance any part of a project or program for which an enabling act authorizes State debt, the total State debt authorized by the enabling act is reduced by the lesser of:

(1) the amount of the appropriation; or

(2) the amount of the State debt for which State bonds have not been issued.

(b) Whenever any other funds are made available to finance any part of a project or program for which an enabling act authorizes State debt, the Governor, with the

approval of the Board, may reduce the total State debt authorized by the enabling act by an amount not exceeding the amount of funds made available.

(c) The Comptroller shall submit for publication in 2 separate issues of the Maryland Register a notice that:

(1) describes the project or program for which the debt authorization is to be reduced;

(2) states the amount of the reduction;

(3) states the source of the funds on which the reduction is based; and

(4) states the chapter number and year of enactment of the enabling act and each amendment to the enabling act.

(d) A reduction under this section may become effective only after the second publication of notice in the Maryland Register.

§8–127.

(a) Except as provided in § 8-129 of this subtitle, the proceeds of a sale of State bonds may be used only in the manner and for a project or program that is specified in an enabling act authorizing the issuance of State bonds.

(b) (1) Except as provided in § 8-129 of this subtitle, the proceeds of a sale of State bonds may be used only for a capital improvement unless:

(i) the enabling act specifically provides otherwise; or

(ii) in an emergency, the Board unanimously grants a temporary exception.

(2) The Board shall determine whether the object of an expenditure is a capital improvement. The standard for this determination is whether the useful life of the object equals or exceeds the life of the State bonds.

(c) The Board shall enforce the provisions of this section.

§8–128.

(a) If, within 2 years after the date of an authorization of State debt, evidence that a required matching fund will be provided has not been presented to the Board or no part of the project or program for which the enabling act authorized the State debt is under contract and the Board has not encumbered money for any part of the project or program, the authorization terminates unless:

(1) the enabling act provides otherwise; or

(2) in an emergency, the Board unanimously grants a temporary exception for a period of 1 year.

(b) Unless otherwise provided in an enabling act, an authorization of State debt for a project or program shall terminate no later than 1 year after the abandonment, completion, or acceptance of the project or program, as determined by the Board.

(c) Except to the extent that money authorized by an enabling act for a State project or program has been encumbered by the Board, an authorization of State debt shall automatically terminate 7 years after the date of the authorization, unless:

(1) the enabling act provides otherwise; or

(2) in an emergency, the Board unanimously grants a temporary exception for 1 year.

(d) If bonds have not been issued, the amount of any unissued bonds from a terminated authorization shall be canceled and be of no further effect.

(e) If bonds have been issued, the amount of any unspent bond proceeds from a terminated authorization shall be disposed of as provided in § 8-129 of this subtitle.

(f) (1) The Board shall enforce the provisions of this section.

(2) A failure to comply with or give effect to the provisions of this section may not affect the validity or enforceability of State debt.

(g) The Board shall submit for publication in the Maryland Register a notice of any authorization of State debt that has been terminated or extended under this section; the notice shall include the chapter number and year of enactment of the enabling act and each amendment to the enabling act.

(h) A termination or extension under this section may become effective only after the publication of notice in the Maryland Register.

(i) (1) The Treasurer, in consultation with the Comptroller, shall submit a report on January 1 each year to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

(2) The report shall list all projects or programs for which authorization would be terminated in the upcoming year under the provisions in this section or § 7-305 of this article.

§8–129.

(a) With the approval of the Board, the Governor shall dispose of unspent proceeds of an enabling act within 1 year after the termination of the State debt authorization under § 8-128 of this subtitle.

(b) The Governor shall:

(1) use the proceeds to reduce State debt authorizations, as provided in § 8-126(b) through (d) of this subtitle;

(2) allocate the proceeds to the Construction Contingency Fund, as provided in § 3-609 of this article; or

(3) order the proceeds to be credited to the Annuity Bond Fund, to pay the outstanding bonded indebtedness of the State.

(c) The Board shall enforce the provisions of this section.

§8–130.

The Department of Budget and Management, with the approval of the Board, shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article to implement the provisions of §§ 8-128 and 8-129 of this subtitle.

§8–131.

(a) Subject to the limitations in this section, the Board of Public Works may issue new bonds to refund its outstanding bonds.

(b) The power to issue bonds under this section is in addition to any other power to borrow.

(c) The Board may issue bonds under this section only for:

(1) the public purpose of realizing for the State a savings in the total cost of debt service on a direct comparison or present value basis; or

(2) the public purpose of debt restructuring that reduces the total cost of debt service.

(d) The Board may:

(1) provide that bonds under this section be in 1 or more series; and

(2) vary the amount of the series.

(e) The total principal amount of the bonds issued under this section may exceed the total principal amount of the bonds that are being refunded.

(f) Bonds that are being refunded and that are subject to redemption before their stated dates of maturity may be called for redemption:

(1) on the earliest redemption date; or

(2) at a later date that the Board determines.

(g) (1) The Treasurer shall invest and apply proceeds of a sale of bonds issued under this section to ensure that the principal and redemption premium of, and interest on, the bonds that are being refunded will be paid in full when due.

(2) The Treasurer may deposit any part of the proceeds of the sale of bonds issued under this section in a trust fund with a trust company or other banking institution, in the name of the State.

(3) The trustee may invest and reinvest money in the trust fund in:

(i) obligations of the United States;

(ii) obligations guaranteed by the United States;

(iii) certificates of deposit or time deposits secured by an obligation of the United States;

(iv) certificates of deposit or time deposits secured by an obligation guaranteed by the United States; or

(v) any obligation or other investment described in § 6-222(a) of this article.

(4) Interest, income, and profits on the investment may be applied in any lawful manner, including to the payment of:

(i) the bonds that are being refunded; and

(ii) the bonds issued under this section.

(5) The trustee shall make money in the trust fund available, as the Board requires, for the payment of:

(i) the principal and redemption premium of, and interest on, the bonds that are being refunded;

(ii) the principal and redemption premium of, and interest on, the bonds issued under this section; or

(iii) any other related costs.

(6) The Comptroller shall account for the proceeds of a sale of bonds issued under this section as nonbudgeted funds.

(h) All or any part of the bonds issued under this section may be made payable from and secured by:

(1) money in the Annuity Bond Fund established under § 8-132 of this subtitle; or

(2) other money or security that the State provides.

(i) Nothing in this section shall prevent issuance and sale of refunding bonds the interest on which is not excludable from gross income for federal income tax purposes.

§8–131.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Code" means the Internal Revenue Code of 1986 and includes regulations and rulings issued under that Code.

(3) "Proceeds" means moneys received from the sale of State bonds, and includes any moneys deemed to be proceeds of State bonds under the Code.

(b) The Treasurer and the Comptroller shall establish and maintain funds and accounts for the administration, management, investment and accounting of proceeds, including any investment earnings on proceeds, that may be necessary or appropriate from time to time to comply with the Code and to establish or maintain the exclusion from gross income for federal income tax purposes of interest on State bonds.

(c) The Treasurer shall manage and invest proceeds, including any investment earnings on proceeds, in a manner so as to maintain the exclusion from gross income for federal income tax purposes of interest on State bonds. The Treasurer shall restrict the yields on investments of proceeds if and to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of interest on State bonds.

(d) The Treasurer and the Comptroller shall prepare and maintain records of the receipt, deposit, investment, management, disbursement and application of proceeds, including any investment earnings on proceeds, that may be necessary or appropriate from time to time to comply with the Code and to maintain or verify the exclusion from gross income for federal income tax purposes of interest on State bonds.

(e) The Treasurer shall establish a separate rebate fund to be used to make any payments to the United States with respect to investment earnings on proceeds that may be required from time to time by the Code. There may be separate accounts within the rebate fund. Amounts deposited to the rebate fund shall be used only for the purpose of making rebate payments to the United States. The Treasurer shall make payments from the rebate fund as may be required from time to time in order to comply with the Code and to maintain the exclusion from gross income for federal income tax purposes of interest on State bonds. Any excess moneys held in the rebate fund with respect to an issue of State bonds after all required rebate payments for that issue have been made, as certified by the Treasurer, shall be deposited in the General Fund.

(f) The Treasurer and the Comptroller shall prepare and file from time to time with the appropriate agency of the United States any forms, information, and reports with respect to State bonds and the expenditure and investment of proceeds that may be required under the Code.

(g) For purposes of doing whatever is necessary or appropriate from time to time to comply with the Code and to establish or maintain the exclusion from gross income for federal income tax purposes of interest on State bonds, the Board, the Treasurer, and the Comptroller shall each:

(1) take any other or further actions;

(2) enter into any agreement or covenant regarding the use of proceeds, including any investment earnings on proceeds, the deposit of moneys to the rebate fund and the making of rebate payments; and

(3) provide certifications of facts and estimates.

(h) This section does not prevent the Board from authorizing the issuance and sale of State bonds the interest on which is not excludable from gross income for federal income tax purposes if the Board in its authorizing resolution finds that to be in the best interests of the State.

§8–131.2.

The State bonds, the transfer of State bonds, the interest payable on State bonds, and any income derived from State bonds, including profit realized in the sale or exchange of State bonds, are exempt from State and local taxes.

§8–132.

(a) There is an Annuity Bond Fund.

(b) The Comptroller shall:

(1) credit to the Annuity Bond Fund any money appropriated in the State budget to:

(i) meet the debt service requirements on State bonds; and

(ii) pay the costs of fiscal agents and other contracting parties appointed by the State Treasurer under §§ 8–121 and 8–136 of this subtitle; and

(2) as specified in the appropriation, use the money to meet the debt service on the State bonds and pay fiscal agents and other contracting parties' costs.

(c) Any premium from the sale of State bonds transferred to the Annuity Bond Fund under § 8–125 of this subtitle may be used to pay debt service on State bonds.

§8–133.

(a) The source of payment for the principal of and interest on each State bond that is sold as part of a State and local facilities loan shall be as provided in the enabling act under which the State bond is issued.

(b) This section does not affect any exemption from taxation provided by law.

§8–134.

(a) (1) Subject to the provisions of subsection (b) of this section, on or before May 1 of each year, the Board shall certify to the governing body of each county the rates of State tax on assessable property needed to meet the debt service requirements during the next taxable year on all the State bonds that the Board anticipates will be outstanding during that year.

(2) Each governing body immediately shall collect the tax at the rates the Board certifies under this section.

(b) If, on or before May 1 of any year, the Comptroller certifies to the Board that the General Assembly has appropriated enough money to meet the debt service requirements during the next taxable year on an issue of State bonds:

(1) the Board, by resolution, may determine that the tax otherwise required by the enabling act under which those State bonds are issued need not be imposed for that year; and

(2) the Governor, by proclamation issued under the resolution, shall declare that the taxes otherwise required by the enabling act may not be collected during that year.

§8–135.

(a) In this section, "financial institution" has the meaning stated in § 6-201 of this article.

(b) The Treasurer may appoint any financial institution as a fiscal agent.

(c) During its agency, the fiscal agent shall be covered by a surety bond in the form and amount required by law.

(d) (1) In accordance with the procedures that the Treasurer sets, a fiscal agent shall pay at the financial institution, from money advanced to the agent, the interest on State debt and, as the principal matures, the principal.

(2) The fiscal agent shall keep a receipt for each payment.

(e) Each fiscal agent shall:

(1) allow the Treasurer to inspect the agent's accounts at any time; and

(2) provide copies of the accounts on request of:

(i) the Senate;

(ii) the House of Delegates;

(iii) the Comptroller; or

(iv) the Treasurer.

(f) At least once every 6 months, each fiscal agent shall send to the Treasurer:

(1) an accounting of the State bonds and coupons that the agent has redeemed since the last accounting or transmittal under this subsection;

(2) (i) a certificate that states the total number of those State bonds and coupons and that attests to the destruction of all of them by a method satisfactory to the Treasurer; or

(ii) if the Treasurer requires, the State bonds and coupons that the agent has redeemed since the last accounting or transmittal under this subsection;

(3) an accounting of the State bonds and coupons that have not been redeemed during any allowed redemption period that expired since the prior accounting provided under this subsection; and

(4) the total unredeemed principal and interest on any State bonds and coupons for which the redemption period has expired since the prior accounting provided under this subsection.

(g) (1) The Treasurer shall examine, count, and record each State bond and coupon that a fiscal agent returns.

(2) Once every 2 years, after the Legislative Auditor verifies the records of the Treasurer, the Comptroller and the Treasurer or their deputies shall destroy all State bonds and coupons that the fiscal agents returned before the close of the last fiscal year.

(3) The State bonds and coupons shall be destroyed in the presence of the Legislative Auditor or a designee of the Auditor.

(4) The Comptroller, Treasurer, and Legislative Auditor shall execute a certificate that states the total number of State bonds and coupons destroyed and that attests to the destruction of all of them.

(h) The Treasurer shall:

(1) keep all certificates of destruction; and

(2) send copies of each certificate to the presiding officers of the General Assembly.

(i) The Treasurer shall:

(1) deposit unredeemed principal and interest into an unpresented bond and coupon account; and

(2) dispose of unredeemed principal and interest as provided in Title 17 of the Commercial Law Article.

§8–136.

If the Board has authorized the transaction and approved the form of the agreement, to improve the management of State general obligation debt or to reduce the cost of servicing such debt, and after giving due consideration to the creditworthiness of the counterparties, the Treasurer may:

(1) enter into interest rate exchange agreements or contracts providing for payments based on levels of or changes in interest rates; and

(2) appoint any agents necessary to implement and administer such agreements or contracts.

§8–138.

Subject to the limitations in this Part V of this subtitle, and at the direction of the Board, the Treasurer may borrow money, on the credit of the State, in anticipation of:

(1) tax receipts, as set forth in the revenue estimates that support an enacted State budget; or

(2) proceeds of a sale of State bonds.

§8–139.

The Board shall give the President of the Senate and the Speaker of the House of Delegates at least 10 days' prior notice of a loan under this Part V of this subtitle.

§8–140.

The loans outstanding under this Part V of this subtitle may not exceed a total principal amount of $100,000,000.

§8–141.

The Board shall determine the interest rates on loans under this Part V of this

subtitle.

§8–142.

(a) A loan under this Part V of this subtitle in anticipation of proceeds of a sale of State bonds shall be repaid within 180 days after the date of the loan.

(b) A loan under this Part V of this subtitle in anticipation of tax receipts shall be repaid within 180 days after the date of the loan but no later than 45 days after the close of the fiscal year.

(c) The Board may not extend a time limit set in this section.

§8–145.

(a) Whenever the owner of a State bond or coupon from a State bond satisfies the Treasurer, by legal and competent evidence, that the State bond or coupon has been lost and gives the Treasurer satisfactory security to indemnify the State against any other claim on the State bond or coupon, the Treasurer may issue a duplicate State bond or duplicate coupon.

(b) Each duplicate State bond or duplicate coupon shall:

(1) show on its face that it is a duplicate of a lost State bond or coupon; and

(2) correspond in amount with the lost State bond or coupon.

§8–201.

(a) In this subtitle the following words have the meanings indicated, unless the context clearly requires otherwise.

(b) (1) "Bond" means an obligation for the payment of money, by whatever name known or source of funds secured, issued by a State unit under general or special statutory authority.

(2) "Bond" includes:

(i) a bond;

(ii) a certificate of indebtedness;

(iii) an interim certificate; and

(iv) a note.

(c) "Enabling act" means a law that authorizes a State unit to create a debt and to sell bonds to evidence that debt.

(d) "Resolution" means a resolution or other evidence of official action customarily used by a State unit.

(e) (1) "State unit" means a unit or instrumentality of the State.

(2) "State unit" does not include the State.

§8–202.

This subtitle does not apply to an entity that is governed by Title 19, Subtitles 1, 2, and 9 and Subtitle 6, Part I of the Local Government Article.

§8–205.

(a) A State unit authorized to issue bonds may issue bonds:

(1) in coupon form; or

(2) notwithstanding any other provision of law, in a form that qualifies as a registered form under §§ 103 and 149 of the Internal Revenue Code or a regulation proposed or adopted under those sections.

(b) Whenever a State unit provides for the sale of bonds in registered form, the State unit may:

(1) establish procedures for the registration and transfer of the bonds;

(2) appoint any agent, including an authenticating trustee, corporate trustee, paying agent, registrar, or transfer agent;

(3) in connection with the establishment and maintenance of a central depository system for the transfer or pledge of the bonds, make agreements with:

(i) custodian banks and their nominees; or

(ii) financial intermediaries and their nominees; and

(4) exercise any other power that relates to issuance of bonds in registered form.

§8–206.

(a) (1) This section does not apply if the total principal amount of the authorized issue is $25,000 or less.

(2) This section does not apply to a bond that:

(i) matures within 1 year after the date of issue and is issued:

1. in anticipation of tax receipts;

2. to meet current expenses; or

3. to meet an emergency;

(ii) is sold to the United States or a unit or instrumentality of the United States;

(iii) is issued under a plan of composition approved in a proceeding under Chapter IX of the United States Bankruptcy Act; or

(iv) is issued under any other plan to refund or refinance in exchange, bond for bond, an outstanding maturing debt, other than:

1. a current or floating debt; or

2. a bond under item (i) of this paragraph.

(3) This section does not apply if:

(i) the proceeds of the sale of bonds are to be used with a grant from the United States or a unit or instrumentality of the United States to finance public works; and

(ii) in the opinion of the Attorney General, the agreement or other writing referring to the grant conditions the grant on the prior execution, by the State unit and a prospective buyer, of a contract for the sale of the bonds when issued.

(4) This section does not apply to bond or grant anticipation notes issued under Part III of this subtitle.

(5) This section does not apply to bonds issued under an enabling act that specifically states that this section does not apply or that provides a different method for the sale of the bonds.

(b) A State unit shall offer bonds at a public sale.

(c) (1) A State unit shall give notice of a public sale of bonds at least twice in at least 1 newspaper with a general circulation in the State. The 1st publication shall appear at least 10 days before the date of sale.

(2) The notice shall:

(i) be in the form required in the resolution that authorizes the issuance of the bonds;

(ii) state the date, time, and place of the public sale;

(iii) describe the bonds by reference to the enabling act under which they are authorized;

(iv) state the date of issue;

(v) state the total principal amount;

(vi) state the schedule of maturities;

(vii) state the interest payable or the manner of determining the interest;

(viii) state the purpose for which the proceeds will be used;

(ix) describe the general form of the bonds, including:

1. whether the bonds will be in coupon or registered form; and

2. whether the principal or interest or both will be registrable;

(x) state that each bid must be made in writing by sealed proposal; and

(xi) state the amount of the good faith deposit that the State unit has determined must accompany the bid.

(3) The notice may reserve to the State unit the right to reject any or all bids.

(d) Except as provided in subsection (e) of this section and § 8-207 of this subtitle, the State unit shall sell the bonds to the highest bidder or bidders at the public sale.

(e) (1) If the State unit has reserved the right to reject bids and does reject all bids, the State unit, within 30 days after rejecting all the bids, may sell the bonds at a private sale for not less than the highest amount bid by an acceptable bidder at the public sale.

(2) If the State unit has reserved the right to reject all bids and does reject all bids and fails to sell the bonds at a private sale within the 30-day period under paragraph (1) of this subsection, the State unit may sell the bonds only at another public sale after notice as required in subsection (c) of this section.

§8–207.

(a) This section does not apply to bonds issued under an enabling act that specifically states that this section does not apply.

(b) Whenever a State unit simultaneously issues bonds authorized under 2 or

more enabling acts, the State unit may allow submission of a bid that:

(1) is for bonds authorized under 1 enabling act; and

(2) is conditioned on the acceptance of 1 or more companion bids for bonds authorized under 1 or more of the other enabling acts.

(c) Whenever, as a whole, a set of bids under subsection (b) of this section yields to the State unit more than individual bids, the State unit shall accept the set even if 1 or more of the bids in the set yields less than the individual bids.

§8–208.

(a) (1) This section does not apply to a bond that:

(i) matures within 1 year after the date of issue and is issued:

1. in anticipation of tax receipts;

2. to meet current expenses; or

3. to meet an emergency;

(ii) is sold to the United States or a unit or instrumentality of the United States;

(iii) is issued under a plan of composition approved in a proceeding under Chapter IX of the United States Bankruptcy Act; or

(iv) is issued under any other plan to refund or refinance in exchange, bond for bond, an outstanding maturing debt, other than:

1. a current or floating debt; or

2. a bond under item (i) of this paragraph.

(2) This section does not apply to bond or grant anticipation notes issued under Part III of this subtitle.

(3) This section does not apply to bonds issued under an enabling act that specifically states that this section does not apply or that provides a different method for establishing the maturity of the bonds.

(b) (1) A State unit shall issue bonds on a serial maturity plan.

(2) The State unit may:

(i) vary the amounts of the series; and

(ii) provide for the maturity of a series in consecutive annual installments or at longer intervals.

(c) (1) The maturity date of the final series shall be based on the purpose for which the bonds are issued:

(i) within the time limit that applies under the schedule in paragraph (2) of this subsection; or

(ii) if more than 1 time limit applies, within the shortest applicable time limit.

(2) The schedule of maturity dates is as follows:

Purpose of Issue	Limit on Maturity of Issue
Paving existing highways or streets	10 years
Airports and buildings constructed or to be constructed on airports	15 years
Highway construction	20 years
Electric light and power systems	25 years
Gas systems	25 years
Grade crossing eliminations	25 years
Harbor improvements	25 years
School construction	25 years
All unscheduled permanent structures of durable materials	25 years
Bridges	30 years
Land acquired for permanent improvements	40 years
Sewerage installation	40 years
Water systems	40 years
All other unscheduled proprietary or public purposes	40 years

§8–209.

(a) Subject to the limitations in this section, with the approval of the Board of Public Works, a State unit authorized to issue bonds may issue new bonds to refund its outstanding bonds.

(b) The power to issue bonds under this section is in addition to any other power to borrow.

(c) A State unit may issue bonds under this section only for:

(1) the public purpose of realizing for the State unit a savings in the total cost of debt service on a direct comparison or present value basis;

(2) the public purpose of debt restructuring that reduces the total cost of debt service; or

(3) the public purpose of debt restructuring that the State unit determines:

(i) is in its best interests;

(ii) is consistent with its long term financial plan; and

(iii) realizes a financial objective of the State unit, including improvement of the relationship of debt service to any source of payment such as taxes, assessments, or other charges.

(d) A State unit may:

(1) provide that bonds under this section be in 1 or more series; and

(2) vary the amount of the series.

(e) (1) The total principal amount of the bonds issued under this section may exceed the total principal amount of the bonds that are being refunded.

(2) To determine whether the bonds under this section are within any limit on debt that applies to the State unit:

(i) the amount of the bonds that are being refunded shall be subtracted from its total outstanding debt; and

(ii) the amount of the bonds issued under this section shall be added to the difference.

(f) (1) Except as provided in paragraph (2) of this subsection, a State unit shall issue bonds under this section in accordance with the procedures that applied to issuance of the bonds that are being refunded.

(2) If, at a public meeting, the State unit determines that it would be in the public interest, the State unit may sell bonds issued under this section at a private sale, without soliciting bids.

(g) Bonds that are being refunded and that are subject to redemption before their stated dates of maturity may be called for redemption:

(1) on the earliest redemption date; or

(2) at a later date that the State unit determines.

(h) (1) A State unit shall invest and apply proceeds of a sale of bonds issued under this section to ensure that the principal and redemption premium of, and interest on, the bonds that are being refunded will be paid in full when due.

(2) The State unit may deposit any part of the proceeds of the sale of bonds issued under this section in a trust fund with a trust company or other banking institution, in the name of the State unit.

(3) The trustee may invest and reinvest money in the trust fund in:

(i) obligations of the United States;

(ii) obligations guaranteed by the United States;

(iii) certificates of deposit or time deposits secured by an obligation of the United States; or

(iv) certificates of deposit or time deposits secured by an obligation guaranteed by the United States.

(4) Interest, income, and profits on the investment may be:

(i) considered to be revenue of a revenue project; and

(ii) applied in any lawful manner, including to the payment of:

1. the bonds that are being refunded; and

2. the bonds issued under this section.

(5) The trustee shall make money in the trust fund available, as the State unit requires, for the payment of:

(i) the principal and redemption premium of, and interest on, the bonds that are being refunded;

(ii) the principal and redemption premium of, and interest on, the bonds issued under this section; or

(iii) any other related costs.

(i) All or any part of the bonds issued under this section may be made payable from and secured by:

(1) money in the trust fund; or

(2) other money or security that the State unit provides.

§8–210.

(a) A State unit authorized to issue bonds:

(1) subject to the limitations in this section and notwithstanding any other law, if the State unit determines that it is in the public interest, may issue and sell the bonds in denominations of less than $1,000, in any form; and

(2) subject to any other provision of law, may set the prices for and the interest rates to be paid on the bonds.

(b) (1) A State unit may not have bonds outstanding under this section in excess of a total principal amount of $1,000,000.

(2) The total debts of a State unit, including bonds under this section, may not exceed a limit set by law.

(c) A State unit may sell bonds issued under this section in any manner that the State unit considers appropriate, notwithstanding §§ 8-206 and 8-208 of this subtitle or any other law that requires the solicitation of competitive bids or the public sale of bonds to the highest bidder or bidders or that regulates the manner in which the sale shall be advertised or the bonds sold.

(d) (1) A State unit that issues bonds under this section shall approve a disclosure document that includes:

(i) a description of the security for the bonds;

(ii) a statement of the purposes for which the proceeds of the bonds will be used;

(iii) a description of the financial condition of the State unit;

(iv) a statement of the prices for and the interest rates to be paid on the bonds; and

(v) a statement of the times and places of payment of the principal of and interest on the bonds.

(2) The State unit shall make the disclosure document available to buyers of the bonds.

§8–211.

(a) (1) In this section the following words have the meanings indicated.

(2) "Code" means the Internal Revenue Code of 1986 and includes

regulations and rulings issued under that Code.

(3) "Financial officer" means the Controller, the director of finance or similar official of a unit of the State government or a political instrumentality of the State that has authority to issue bonds. "Financial officer" includes, to the extent necessary, the Treasurer and the Comptroller.

(4) "Proceeds" means moneys received from the sale of bonds, and includes any moneys deemed to be proceeds of bonds under the Code.

(b) The financial officer may establish and maintain funds and accounts for the administration, management, investment and accounting of proceeds, including any investment earnings on proceeds, that may be necessary or appropriate from time to time to comply with the Code and to establish or maintain the exclusion from gross income for federal income tax purposes of interest on the bonds.

(c) The financial officer may manage and invest proceeds, including any investment earnings on proceeds, in a manner so as to maintain the exclusion from gross income for federal income tax purposes of interest on the bonds. The financial officer may restrict the yields on investments of proceeds if and to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the bonds.

(d) The financial officer may prepare and maintain records of the receipt, deposit, investment, management, disbursement and application of proceeds, including any investment earnings on proceeds, that may be necessary or appropriate from time to time to comply with the Code and to maintain or verify the exclusion from gross income for federal income tax purposes of interest on the bonds.

(e) (1) The financial officer may establish a separate rebate fund to be used to make any payments to the United States with respect to investment earnings on proceeds that may be required from time to time by the Code.

(2) There may be separate accounts within the rebate fund.

(3) Amounts deposited to the rebate fund shall be used only for the purpose of making rebate payments to the United States.

(4) The financial officer may make payments from the rebate fund as may be required from time to time in order to:

(i) comply with the Code; and

(ii) maintain the exclusion from gross income for federal income tax purposes of interest on the bonds.

(5) Any excess moneys held in the rebate fund with respect to an issue of bonds after all required rebate payments for that issue have been made, as certified by

the financial officer, shall be applied in a manner consistent with the Code.

(f) The financial officer may prepare and file from time to time with the appropriate agency of the United States any forms, information, and reports with respect to the bonds and the expenditure and investment of proceeds that may be required under the Code.

(g) The financial officer and other officers of a State unit may:

(1) take any other or further actions;

(2) enter into any agreement or covenant regarding the use of proceeds, including any investment earnings on proceeds, the deposit of moneys to the rebate fund and the making of rebate payments; and

(3) provide certifications of facts and estimates, that may be necessary or appropriate from time to time to comply with the Code and to establish or maintain the exclusion from gross income for federal income tax purposes of interest on the bonds.

(h) Nothing in this section shall prevent the State unit from authorizing the issuance and sale of bonds the interest on which is not excludable from gross income for federal income tax purposes.

§8–213.

(a) A State unit authorized to issue bonds may issue and sell bond anticipation notes if, in the resolution that authorizes the notes, the State unit covenants to:

(1) pay from the proceeds of the bonds in anticipation of the sale of which the notes are issued:

(i) the principal of the notes; and

(ii) to the extent that the interest on the notes is not paid from the proceeds of sale of the notes, the interest on the notes; and

(2) issue the bonds as soon as there is no longer a reason for deferring their issuance.

(b) A State unit may issue and sell grant anticipation notes in anticipation of the receipt of a grant from the United States, the State, or any of their units if, in the resolution that authorizes the notes, the State unit covenants to pay from the proceeds of the grant in anticipation of the receipt of which the notes are issued:

(1) the principal of the notes; and

(2) the interest on the notes.

§8–214.

(a) Bond and grant anticipation notes issued under this Part III of this subtitle shall be authorized by resolution of the State unit.

(b) (1) The resolution shall state:

(i) the authority for the notes and, if the notes are bond anticipation notes, the authority for the bonds;

(ii) the amount of notes authorized; and

(iii) the terms of the notes.

(2) The resolution shall specify that the notes:

(i) be sold in a certain manner, at public sale or, if the State unit considers private negotiation to be in its best interest, at private sale;

(ii) mature at certain times;

(iii) bear interest at certain rates or at rates to be determined in the manner stated in the resolution; and

(iv) be sold for certain prices or for prices to be determined in the manner stated in the resolution, which may be at, above, or below par.

(3) The resolution may provide that the notes:

(i) be in 1 or more series, as money is required; and

(ii) be renewable at maturity with or without resale.

§8–215.

(a) A State unit may not issue bond anticipation notes under this Part III of this subtitle in a total principal amount that exceeds the authorized amount of the bonds in anticipation of the sale of which the notes are issued and sold.

(b) A State unit may not issue grant anticipation notes under this Part III of this subtitle in a total amount, including interest, that exceeds the amount of the grant in anticipation of the receipt of which the notes are issued and sold.

§8–216.

Grant anticipation notes may not be sold under this Part III of this subtitle until the State unit receives from the grantor a written commitment for the grant.

§8–217.

(a) A bond anticipation note may not be issued under this Part III of this subtitle unless it is signed, endorsed, or guaranteed in the manner required by law for the bonds in anticipation of which the note is issued.

(b) A bond or grant anticipation note is valid and binding in accordance with its terms notwithstanding that:

(1) an official whose signature appears on the note is no longer an official when the note is delivered; or

(2) an official whose signature appears on the note became an official after the note was issued.

§8–218.

(a) (1) The principal of and interest on bond anticipation notes under this Part III of this subtitle shall be payable from:

(i) the 1st proceeds of sale of the bonds; or

(ii) the tax or other revenue that the State unit has pledged to the payment of the bonds.

(2) One year's interest on the notes, or on any renewal of the notes, accounting from the date of the initial issue of the notes, may be paid from the proceeds of sale of the notes.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, the principal of and interest on grant anticipation notes under this Part III of this subtitle shall be payable from the proceeds of the grant.

(2) The State unit may make the grant anticipation notes payable only from the proceeds of the grant and need not pledge the faith and credit or taxing power of the State unit.

(3) If the State unit does not pledge its faith and credit or taxing power, the grant anticipation notes are not a debt or a charge against the general credit or taxing power of the State unit under any constitutional provision or statutory limitation.

§8–219.

The proceeds of sale of bond anticipation notes shall be spent:

(1) 1st, for payment of the expenses of issuance of the notes; and

(2) then, subject to § 8-218(a)(2) of this subtitle, only for the public purposes for which the bonds are authorized.

§8–220.

(a) (1) Except for the provisions of this section, each State unit shall comply with the provisions, requirements, and limitations in the enabling act.

(2) If a State unit is unable to sell bonds to pay the bond anticipation notes under this Part III of this subtitle when due because of an interest rate limitation in the enabling act, the State unit may:

(i) issue bonds in a total principal amount sufficient to pay the principal of and not more than 1 year's interest on the notes; and

(ii) provide for payment of interest on the bonds at a rate that is higher than the interest rate limitation in the enabling act.

(3) This section is supplemental authority for a State unit to issue bonds free of an interest rate limitation to pay outstanding bond anticipation notes under this Part III of this subtitle.

(b) A resolution that authorizes the issuance of bonds under subsection (a)(2) of this section shall refer to:

(1) the enabling act; and

(2) this section.

§8–221.

(a) A State unit may issue bond or grant anticipation notes under this Part III of this subtitle as notes in the nature of commercial paper.

(b) A bond or grant anticipation note issued as a note in the nature of commercial paper may be secured by:

(1) a trust indenture with a trust company, or a bank with powers of a trust company, in or outside the State; and

(2) a letter of credit, line of credit, or other credit arrangement from or with a lending institution.

(c) (1) For bond anticipation notes, the credit arrangement may be made payable out of:

(i) the 1st proceeds of sale of the bonds; or

(ii) the tax or other revenue that the State unit has pledged to payment of the principal of and interest on the bonds.

(2) For grant anticipation notes, the credit arrangement may be made

payable out of the proceeds of the grant.

§8–222.

The following obligations are exempt from State and local taxation:

(1) a bond or grant anticipation note issued under this part;

(2) a bond issued to pay the notes issued under item (1) of this section; and

(3) the interest on the obligations.

§8–301.

(a) Except as provided in subsection (b) of this section or in other law, a contract to spend the proceeds of a general obligation loan that has been authorized by any act of the General Assembly may not be executed until the Board of Public Works approves the contract.

(b) Approval by the Board of Public Works is not required if the act merely authorizes a county or municipal corporation to borrow money and no State funds are involved.

§8–302.

(a) In this section, "bond" means an obligation of the State or of any of its units or instrumentalities.

(b) If a bond otherwise complies with the requirements of the Commercial Law Article for investment securities, the bond shall be considered to be an investment security notwithstanding that:

(1) the resolution or other authority under which the bond is issued subjects the bond to an indenture or agreement that is separate from the resolution or authority;

(2) the resolution or other authority under which the bond is issued limits payment of principal and interest to:

(i) the proceeds of limited sources of revenue; or

(ii) a special fund established for that purpose;

(3) any law limits payment of principal and interest to a certain amount or rate of tax that may be imposed; or

(4) principal or interest are registrable.

(c) A bond that is considered to be an investment security under subsection (b)

of this section has all the attributes of an investment security that are possessed by a bond that is:

(1) issued on the full faith and credit of the issuer;

(2) payable to bearer; and

(3) secured as to the payment of principal and interest by the unlimited taxing power of the issuer.

§8–401.

The purpose of this subtitle is to codify the authority of the State Treasurer to enter into a capital lease agreement and to establish a method for financing a capital lease as defined in this subtitle.

§8–402.

(a) In this subtitle the following terms have the meanings indicated.

(b) "Capital equipment" means any item of equipment that, by generally accepted accounting principles, is capitalized for purposes of accounting.

(c) (1) "Capital lease" means any lease, conditional sale, installment sale, or similar agreement, defined as a capital lease in accordance with generally accepted accounting principles, that is used to finance:

(i) the acquisition or construction of improvements to real property, under § 3-602 of this article; or

(ii) the acquisition of capital equipment.

(2) "Capital lease" includes a master lease.

§8–403.

(a) The State Treasurer, with the approval of the Board of Public Works, may enter into a capital lease on behalf of one or more units of State government.

(b) Prior to submission of a capital lease to the Board of Public Works, the Treasurer shall submit to the Legislative Policy Committee the total financing request and any supporting information. The Legislative Policy Committee has 45 days within which to review and provide written comments on the financing.

§8–404.

A capital lease authorized under this subtitle:

(1) shall be contingent on the availability of appropriated or other legally

available funds, not including nonappropriated pension or retirement funds, that permit the timely payment of principal, interest, and other obligations, if any, imposed by the terms of the capital lease;

(2) may not be construed or deemed to be a debt of the State or a unit of State government; and

(3) may not constitute a pledge of the full faith and credit and taxing power of the State or a unit of State government.

§8–405.

(a) Except for capital leases used to finance energy performance contracts excluded from tax supported debt under § 8–104 of this title, the Treasurer shall, at a reasonable market rate, capitalize the payments on a capital lease authorized under this subtitle on an annual basis for each fiscal year the lease is in effect.

(b) The greater of the amount determined for a given fiscal year under subsection (a) of this section or the amount of any purchase value at the termination of a capital lease authorized under this subtitle shall be included in the tax supported debt considered by the Capital Debt Affordability Committee in its annual estimate for that fiscal year under Subtitle 1 of this title.

§8–406.

(a) (1) The State Treasurer may deposit the proceeds of a capital lease authorized under this subtitle in an escrow account or similar arrangement.

(2) The proceeds may be withdrawn for the purpose of making payment due under the terms of the capital lease.

(3) A withdrawal made under the provisions of this section shall be made in accordance with the terms of the individual contract.

(b) The State Treasurer may invest any unexpended proceeds held in escrow and the investment income on the proceeds in obligations authorized for the investment of State funds under § 6-222 of this article.

§8–407.

(a) (1) In this section the following words have the meanings indicated.

(2) "Code" means the Internal Revenue Code of 1986 and includes regulations and rulings issued under that Code.

(3) (i) "Financial officer" means the secretary of the principal department that includes the appropriate unit or the head of the unit if the unit is an independent unit.

(ii) "Financial officer" includes the Treasurer and the Comptroller.

(4) "Proceeds" means moneys received from the sale of a capital lease, and includes any moneys deemed to be proceeds of a capital lease under the Code.

(b) The financial officer may establish and maintain funds and accounts for the administration, management, investment and accounting of proceeds, including any investment earnings on proceeds, that may be necessary or appropriate from time to time to comply with the Code and to establish or maintain the exclusion from gross income for federal income tax purposes of interest on a capital lease.

(c) (1) The financial officer may manage and invest proceeds, including any investment earnings on proceeds, in a manner so as to maintain the exclusion from gross income for federal income tax purposes of interest on a capital lease.

(2) The financial officer may restrict the yields on investments of proceeds if and to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of interest on a capital lease.

(d) The financial officer may prepare and maintain records of the receipt, deposit, investment, management, disbursement and application of proceeds, including any investment earnings on proceeds, that may be necessary or appropriate from time to time to comply with the Code and to maintain or verify the exclusion from gross income for federal income tax purposes of interest on a capital lease.

(e) (1) The financial officer may establish a separate rebate fund to be used to make any payments to the United States with respect to investment earnings on proceeds that may be required from time to time by the Code.

(2) There may be separate accounts within the rebate fund.

(3) Amounts deposited to the rebate fund shall be used only for the purpose of making rebate payments to the United States.

(4) The financial officer may make payments from the rebate fund as may be required from time to time in order to:

(i) comply with the Code; and

(ii) maintain the exclusion from gross income for federal income tax purposes of interest on a capital lease.

(5) Any excess moneys held in the rebate fund with respect to a capital lease after all required rebate payments for that capital lease have been made, as certified by the financial officer, shall be applied in a manner consistent with the Code.

(f) The financial officer may prepare and file from time to time with the appropriate agency of the United States any forms, information, and reports with

respect to each capital lease and the expenditure and investment of proceeds that may be required under the Code.

(g) The financial officer and other officers of a State unit may:

(1) take any other or further actions;

(2) enter into any agreement or covenant regarding the use of proceeds, including any investment earnings on proceeds, the deposit of moneys to the rebate fund, and the making of rebate payments; and

(3) provide certifications of facts and estimates, that may be necessary or appropriate from time to time to comply with the Code and to establish or maintain the exclusion from gross income for federal income tax purposes of interest on a capital lease.

(h) Nothing in this section shall prevent the Treasurer from entering into a capital lease the interest on which is not excludable from gross income for federal income tax purposes.

§9–101.

(a) In this title the following words have the meanings indicated.

(b) "Fund" means the State Insurance Trust Fund.

(c) "Program" means the State Insurance Program.

§9–102.

(a) The General Assembly finds that it is desirable for the State to have a program of purchased insurance and self-insurance against loss, damage, and liability that the State may incur.

(b) The General Assembly intends that the State:

(1) insure against loss, damage, and liability as fully as permitted by law or agreement; and

(2) have a program for central administration of purchased insurance and self-insurance.

§9–103.

(a) There is a State Insurance Program for providing and administering purchased insurance and self-insurance for the State, including:

(1) insurance on State property;

(2) insurance that federal law requires;

(3) insurance trust agreements; and

(4) insurance against other risk or commitment of the State.

(b) (1) There is a State Insurance Trust Fund.

(2) The Fund consists of:

(i) each General Fund and special fund appropriation in the State budget to the Treasurer or a unit of the State government for self-insurance;

(ii) each General Fund and special fund appropriation to the State Insurance Trust Fund for payment under Title 12, Subtitle 5 of the State Government Article;

(iii) each premium that a unit of the State government pays for protection under the Fund;

(iv) each payment for a loss under purchased insurance; and

(v) each payment from salvage or other recovery that results from a loss paid through the Program.

(3) The General Assembly intends that the State budget include sufficient General Fund appropriations to provide in the State Insurance Trust Fund a reserve that the Treasurer considers adequate to cover losses under § 9-105 of this title.

§9–104.

(a) (1) Subject to any limitation in an agreement or law, the Treasurer is responsible for the Program.

(2) The Treasurer shall administer the Fund.

(3) Notwithstanding any law that authorizes a unit of the State government to buy insurance, the Treasurer may:

(i) buy the insurance in accordance with Division II of this article; or

(ii) require the unit to obtain approval before the unit buys the insurance.

(b) The Treasurer shall adopt necessary regulations:

(1) to set policies and procedures for payment on losses, including adjustment and approval;

(2) to collect from private insurers on losses; and

(3) otherwise to carry out the duties of the Treasurer under this title.

(c) The Office of the Attorney General and the State Fire Marshal shall cooperate with and assist the Treasurer in carrying out the duties of the Treasurer under this title.

§9–105.

(a) (1) The Treasurer shall provide self-insurance for:

(i) loss of or damage to State motor vehicles;

(ii) loss of or damage to hulls of State vessels;

(iii) loss of or damage to State real property, to the extent that purchased insurance does not cover the loss or damage; and

(iv) loss as a result of a settlement or judgment to the extent that the Board of Public Works pays the loss under Title 12, Subtitle 5 of the State Government Article.

(2) The Treasurer may provide self-insurance for loss of or damage to State personal property, including fine arts. However, for any fine art item that the Treasurer determines is irreplaceable, the indemnity shall be only for repair of damage.

(3) To the extent that funds are available in the State budget, the Treasurer may provide self-insurance for any other loss risk that the Treasurer finds appropriate.

(b) To the extent that funds are available in the State budget, the Treasurer:

(1) shall provide purchased insurance as required by law; and

(2) may provide any other purchased insurance that the Treasurer considers appropriate to the interests of the State.

(c) To the extent that funds are available in the State budget, the Treasurer shall provide sufficient self-insurance, purchased insurance, or both to cover the liability of the State and its units and personnel under the Maryland Tort Claims Act.

§9–106.

(a) If a unit of the State government is funded by special or federal funds, the Treasurer shall assess the unit a premium for coverage under the Fund that is needed to pay losses due to total protection or applicable deductions on purchased insurance.

(b) After considering the potential exposure of the Fund and its loss experience,

the Treasurer shall try to set premiums so as to produce funds that approximate the payments from the Fund.

§9–107.

(a) Subject to the limitations in this section, the Treasurer shall pay a unit of the State government for a loss that is covered under § 9-105 of this title, without regard to whether the unit is funded wholly or partly from general, special, or federal funds.

(b) (1) The unit of the State government that had State property at the time of its loss or damage and the Treasurer jointly shall determine the value of the property.

(2) The Office of the Attorney General shall determine and certify to the Treasurer the value of a liability claim against the State.

(3) The Treasurer may not pay from the Fund any money for loss or liability in excess of the value certified under this subsection.

(c) Notwithstanding any other provision of this title, the 1st $1,000 of value of each loss, damage, or liability occurrence of a unit shall be paid from its appropriations in the State budget unless, on recommendation of the Secretary of Budget and Management, the Treasurer reduces the amount.

§9–108.

(a) This section applies to any sheriff or deputy sheriff engaged in any activity other than those activities relating to:

(1) courthouse security;

(2) service of process;

(3) the transportation of inmates to and from court proceedings;

(4) personnel and other administrative activities;

(5) activities, including activities relating to performing law enforcement functions, arising under a multijurisdictional agreement under the supervision and direction of the Maryland State Police or other State agency; or

(6) any other activities, except activities relating to performing law enforcement functions or detention center functions.

(b) A county or Baltimore City may obtain insurance to provide the coverage and defense necessary under the Maryland Tort Claims Act for personnel covered by this section.

(c) (1) If a county or Baltimore City does not obtain adequate insurance coverage to satisfy the coverage and defense necessary under the Maryland Tort

Claims Act, an assessment for coverage and for payment of any litigation expenses, other than for compensation for the time spent by any State employee working for the Attorney General, shall be set off from:

(i) any tax which has been appropriated in the State budget to the county or Baltimore City; or

(ii) the subdivision's share of any income tax collected by the State Comptroller.

(2) Any amount due under this subsection shall be collected in the manner provided by § 7-222 of this article.

§10–101.

In this title, "Board" means the Board of Public Works.

§10–201.

(a) The Board may appoint a full-time secretary.

(b) The secretary serves at the pleasure of the Board.

(c) The secretary:

(1) must be a person of high character and integrity; and

(2) shall be appointed on the basis of executive skill and ability.

§10–202.

(a) This section does not apply to property to be acquired in connection with State roads, bridges, or highways.

(b) Subject to Title 12 of the Real Property Article, the Board may condemn property for State use.

(c) The Department of General Services, with the approval of the Board, shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article that establish a uniform method of determining the value of any applicable life estate discount for property condemned in accordance with this section.

§10–203.

(a) (1) On the recommendation of the Comptroller, the Board shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article covering matters of business administration in the units of the State government.

(2) The regulations adopted under this section may include regulations

that establish:

(i) uniform rates of mileage allowance; and

(ii) the terms and renewals of bonds furnished by State officials and employees.

(b) Regulations adopted under this section are binding on all units of the State government affected by the regulations.

§10–204.

By regulation, the Board may require that any proposed contract, contract renewal, or change order, of a designated class or monetary value, of any unit of the Executive Branch be brought to the Board for consideration and approval before execution.

§10–205.

For purposes of the preparation of the State budget:

(1) the Board of Public Works is an independent agency; and

(2) all expenses related to the administration of the Board of Public Works shall be separately identified and independent of the budget of any other State agency.

§10–206.

Any payments due by the State for the Baltimore Zoo under a lease or sublease agreement shall be included in the annual budget for the Board of Public Works.

§10–301.

In this subtitle, "real or personal property" includes:

(1) the inland waters of the State and the land under those waters;

(2) the waters of the Atlantic Ocean for 3 miles from the low watermark of the coast of the State bordering on that ocean and the land under those waters; and

(3) any legal or equitable rights, interests, privileges, or easements in, to, or over any real or personal property.

§10–302.

This subtitle does not apply to the transfer or disposal of excess personal property or surplus personal property under Title 4, Subtitle 5 of this article.

§10–302.1.

This subtitle does not apply to:

(1) the release of a lot subject to an agricultural land preservation easement under § 2–513 of the Agriculture Article; or

(2) the sale, transfer, exchange, lease, or other disposition of real property held by the Maryland Agricultural Land Preservation Foundation under the Critical Farms Program under § 2–517 of the Agriculture Article.

§10–303.

(a) Notwithstanding any other section of this subtitle, the Department of Natural Resources may dispose of any existing structure on any property acquired by the State for the use of the Department if the structure is valued at $2,500 or less.

(b) Before the Department of Natural Resources disposes of any structure under this section, the Department shall give public notice in a newspaper of general circulation in the county in which the structure is located.

(c) The proceeds of the sale shall be credited to the Natural Resources Property Maintenance Fund.

§10–304.

(a) This section does not apply to:

(1) property that is pledged to secure the payment of principal of or interest on revenue bonds; or

(2) real property that is owned or controlled by the State Highway Administration, unless the property is being transferred to the Maryland Transportation Authority or to another unit in the Department of Transportation.

(b) (1) The Board may transfer any property, and all rights of physical custody and control over the property, from a unit of the Executive Branch of the State government to another unit of the Executive Branch of the State government.

(2) Any property transferred under this subsection is exempt from the appraisal requirements under § 10–305(b)(2)(i) of this title.

(3) Any property transferred under this subsection is subject to the continuing general jurisdiction of the Board.

§10–305.

(a) Subject to subsection (b) of this section, any real or personal property of the State or a unit of the State government may be sold, leased, transferred, exchanged,

granted, or otherwise disposed of:

(1) to any person, to the United States or any of its units, or to any unit of the State government, for a consideration the Board decides is adequate; or

(2) to any county or municipal corporation in the State subject to any conditions the Board imposes.

(b) (1) (i) Except as provided under subparagraph (ii) of this paragraph, this subsection applies to the sale, transfer, grant, or exchange of:

1. real property identified under § 5–310(c)(1) of this article; and

2. State–owned real or personal property, funded in accordance with an appropriation act of the General Assembly, that has an appraised value over $100,000.

(ii) This subsection does not apply to the following dispositions of property identified in subparagraph (i) of this paragraph:

1. leasing the property; or

2. the sale, transfer, grant, or exchange of a corrective or access easement on the property.

(2) The Board may not approve the sale, transfer, exchange, or grant of property until:

(i) the Department of General Services or the Department of Natural Resources under Title 1, Subtitle 1 of the Natural Resources Article has submitted to the Board two independent appraisals of the property that:

1. with regard to real property, consider the value of any restrictive covenant that may be placed on the property; and

2. may not be publicly disclosed if the property is to be sold at auction;

(ii) the following information has been submitted, by electronic mail or facsimile and by certified mail, to the Senate Budget and Taxation Committee, the House Appropriations Committee, and, for property that meets both criteria of paragraph (1)(i) of this subsection, the Legislative Policy Committee:

1. a description of the property; and

2. if applicable, any justification for not selling, transferring, exchanging, or granting the property in a manner that generates the highest return for

the State;

(iii) 45 days have elapsed since:

1. the information required by item (ii) of this paragraph was received by the appropriate committees; and

2. the Board declared the property surplus; and

(iv) except for property sold under paragraph (4) of this subsection, for property that meets both criteria under paragraph (1)(i) of this subsection and for which the Board intends to approve a fee simple sale, transfer, exchange, or grant, the General Assembly has approved the proposed disposition as provided under paragraph (3) of this subsection.

(3) (i) Within 45 days after receiving the information submitted under paragraph (2) of this subsection, the Legislative Policy Committee shall:

1. review the information and the public record created by the Department of Planning for the property; and

2. A. approve the proposed disposition of the surplus property and refer the property back to the Board for final disposition; or

B. refer the proposed disposition of the property to the full General Assembly and notify the Board of the referral.

(ii) If the Legislative Policy Committee fails to take any action under subparagraph (i)2 of this paragraph within the specified time period, the proposed disposition shall be deemed approved by the Committee.

(iii) 1. If the proposed disposition of the surplus property is referred by the Legislative Policy Committee to the full General Assembly, the proposed disposition may not be approved by the Board unless it is approved by the passage of legislation during the next legislative session of the General Assembly.

2. In any legislation passed in accordance with subsubparagraph 1 of this subparagraph, the General Assembly may approve the proposed disposition with or without conditions.

(4) If the Board has declared the property surplus, the Board shall sell the property to the federal government, a local government, or a unit of federal or local government for $1.00, if:

(i) the government or unit has indicated its interest in acquiring the land; and

(ii) a restrictive covenant is placed on the deed of transfer, in

accordance with § 5–906(e)(7) and (8) of the Natural Resources Article, that requires the property to be maintained in a use that is consistent with its use at the time of transfer.

(5) Any revenues derived from the sale, transfer, exchange, or grant of property identified under paragraph (1)(i)1 of this subsection shall be deposited in the Advance Option and Purchase Fund under § 5–904(b) of the Natural Resources Article.

(c) Except as otherwise provided in this section:

(1) if any real or personal property disposed of under this section is not under the jurisdiction or control of any particular unit of the State government, the deed, lease, or other evidence of conveyance of the real or personal property shall be executed by the Board; and

(2) if any real or personal property disposed of under this section is under the jurisdiction or control of a unit of the State government, the deed, lease, or other evidence of conveyance of the real or personal property shall be executed by the highest official of the unit and by the Board.

(d) (1) Whenever any unit of the State government leases any State-owned property under its jurisdiction and control to any State employee, agent, or servant, or to any other individual in State service, for the purpose of permitting the individual to maintain a residence on or in the property, the lease shall be:

(i) executed by the unit; and

(ii) approved by the Secretary of General Services.

(2) The lease is not valid unless the Secretary of General Services approves it.

(3) Whenever any unit of the State government leases any State-owned property under its jurisdiction and control to any lessee, the lease shall include a provision which prohibits the lessee from assigning or subleasing that property without the prior approval of the Board of Public Works.

(4) Whenever the State Highway Administration leases any State-owned property under its jurisdiction and control to any person, the Administrator of the State Highway Administration may execute the lease if:

(i) the lease is entered into on a 30-day renewable basis; and

(ii) the duration of the tenancy does not exceed 1 year.

(5) At least twice each year, the Administrator of the State Highway Administration shall submit a report of the leases executed under the authority granted in paragraph (4) of this subsection to the Board of Public Works.

(e) (1) On the sale, lease, transfer, exchange, or other disposition of any real or personal property owned or controlled by the State Retirement and Pension System or the State of Maryland for the use of the Board of Trustees of the State Retirement and Pension System, any conveyancing document shall be executed in the manner provided in Division II of the State Personnel and Pensions Article.

(2) Any sale, lease, transfer, exchange or other disposition of any real or personal property owned or controlled by the State Retirement and Pension System or the State of Maryland for the use of the Board of Trustees of the State Retirement and Pension System by a conveyancing document executed by or for the Board of Trustees of the State Retirement and Pension System before October 1, 1994 in the manner provided under former Article 73B is ratified and confirmed.

(f) All conveyances under this section shall be made in the name of the State of Maryland, acting through the executing authority provided for in this section.

(g) This section does not apply to any lease or other temporary transfer, grant, or disposition of State real or personal property in connection with a procurement made subject to § 11-202(3) of this article.

(h) The Department of Budget and Management and Department of General Services, with the approval of the Board, shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article to implement the provisions of this section.

§10–306.

(a) In this section, "capital asset" means an asset of a substantial permanent nature.

(b) If the consideration received for the disposition of any real or personal property of the State or any unit of the State government is other real or personal property, the real or personal property received shall be held and accounted for in the same manner as other property under the jurisdiction and control of the unit of the State government that receives the real or personal property.

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, if cash is received as consideration for the disposition of a capital asset of the State or any unit of the State government, the cash shall be applied to the State Annuity Bond Fund Account for the payment of the principal of and interest on the bonded indebtedness of the State.

(2) If the capital asset is real property that is being leased or sold to a private party for the purpose of realizing a transit–oriented development as defined under § 7–101 of the Transportation Article, at the discretion of the State agency that is disposing of the property, all or a portion of the cash proceeds resulting from the transaction shall be deposited in the Baltimore City Community Enhancement Transit–Oriented Development Fund established under Title 15 of the Economic

Development Article for the purposes of that Fund.

(3) (i) If cash is received as consideration for the disposition of a capital asset, and if the capital asset was originally purchased with special funds, the cash shall be applied to the special fund.

(ii) Notwithstanding subparagraph (i) of this paragraph, cash received as consideration for the disposition of helicopters, auxiliary helicopter equipment, ground support equipment, or other capital equipment related to helicopters shall be applied to the State Annuity Bond Fund Account for the payment of the principal of and interest on the bonded indebtedness of the State.

(4) If cash is received as consideration for the disposition of any real or personal property of the State or any unit of the State government, other than a capital asset, the cash shall be accounted for and paid into the State Treasury.

§10–307.

(a) In this section, "geothermal resources" has the meaning stated in § 5-601 of the Environment Article.

(b) Subject to any conditions the Board and the Department of Natural Resources impose, geothermal resources located on real property owned by the State may be sold, leased, transferred, exchanged, granted, or otherwise disposed of to any person for a consideration the Board decides is adequate.

§10–308.

(a) In this section, "minority business enterprise" has the meaning stated in Title 14, Subtitle 3 of this article.

(b) Each unit of the State government that leases State-owned property to business entities shall adopt regulations that establish procedures for awarding the leases. The procedures shall be structured to try to achieve participation by minority business enterprises in:

(1) 10% of the total dollar amount of the leases; and

(2) 10% of the total number of leases.

§10–309.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Perpetual care" means the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishments of a cemetery and its grounds, roads, and paths.

(ii) "Perpetual care" includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

(3) "State facility" means:

(i) a facility maintained by the Behavioral Health Administration of the Department of Health and Mental Hygiene and listed in § 10–406 of the Health – General Article;

(ii) a State residential center for individuals with an intellectual disability in the Developmental Disabilities Administration of the Department of Health and Mental Hygiene; and

(iii) a facility that formerly met the definition of "State facility" under item (i) or (ii) of this subsection, including:

1. the former Rosewood Center; and

2. the former Crownsville Hospital Center.

(b) A cemetery owned by the State and located on the grounds of a State facility may not be sold by the State if the State facility is downsized, consolidated, closed, or sold.

(c) A cemetery owned by the State and located on the grounds of a State facility shall be provided perpetual care and marked with a monument commemorating the individuals interred in the cemetery.

(d) Activities or projects undertaken under subsection (c) of this section shall be undertaken in consultation with the Maryland Historical Trust, in accordance with the consultation provisions:

(1) for capital projects under § 5A–325 of this article; and

(2) for issuance of permits or licenses or provision of financial assistance under § 5A–326(d)(2) of this article.

(e) Any easement or right of entry to a cemetery owned by the State and located on the grounds of a State facility that has been recorded among the land records of the county where the cemetery is located on or before October 1, 2004 may not be transferred or sold.

(f) Notwithstanding subsections (b) and (e) of this section, a cemetery or an easement or right of entry to a cemetery owned by the State and located on the grounds of a State facility may be sold by the State if the deed for the property includes a restrictive covenant requiring the owner and any future owner to maintain the cemetery as provided under subsection (c) of this section.

(g) The provisions of § 5–502 of the Business Regulation Article apply to a cemetery owned by the State and located on the grounds of a State facility.

(h) Beginning January 1, 2015, and on or before January 1 of each succeeding year, the Department of Health and Mental Hygiene shall report, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Health and Government Operations Committee on the implementation of this section.

§10–401.

(a) This subtitle applies only to land owned by the State as a result of the relationship of the land to the waters of the State.

(b) This subtitle does not:

(1) affect the title to interests conveyed by the State before July 1, 1970, by a valid grant, lease, or patent or a grant confirmed by Article 5 of the Maryland Declaration of Rights;

(2) prohibit the execution of a conveyance for which application was made and approved by the Board before July 1, 1970;

(3) deprive any riparian owner or proprietor of any riparian rights, privilege, or enjoyment that the owner or proprietor had before July 1, 1970; or

(4) affect §§ 3-101 and 3-102 of the Natural Resources Article of the Code of Public Local Laws of Worcester County.

§10–402.

(a) The Board may not convey any title to land covered by this subtitle to any person other than the riparian owner or proprietor of the land abutting the land conveyed.

(b) The Board may convey title to land covered by this subtitle only after seeking the advice of:

(1) the Department of Natural Resources;

(2) appropriate agricultural agencies, including:

(i) the Maryland Agricultural Commission;

(ii) the agricultural stabilization and conservation committee of the county in which the land lies; and

(iii) the soil conservation district committee of the county in which the land lies; and

(3) other interested federal and State agencies.

(c) (1) Before the Board may convey title to land covered by this subtitle, the Board shall:

(i) hold a public hearing, after proper notice, in the county in which the land lies; and

(ii) issue a written decision that justifies the action of the Board, taking into account the best interests of the State with respect to the varying ecological, economic, developmental, agricultural, recreational, and aesthetic values of the area under consideration.

(2) The written decision issued under this subsection shall be kept among the permanent records of the Board and be open to public inspection.

§10–501.

(a) (1) Subject to subsection (b) of this section, the Board of Public Works may grant to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit an amount commensurate with the actual damages sustained by the individual, and may grant a reasonable amount for any financial or other appropriate counseling for the individual, due to the confinement.

(2) In making a grant under paragraph (1) of this subsection, the Board of Public Works shall use money in the General Emergency Fund or money that the Governor provides in the annual budget.

(b) An individual is eligible for a grant under subsection (a) of this section only if the individual has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error.

(c) The Board of Public Works may pay the grant determined under subsection (a) of this section in a lump sum or in installments.

(d) (1) The Board of Public Works may not pay any part of a grant made under this section to any individual other than the pardoned individual.

(2) (i) An individual may not pay any part of a grant received under this section to another person for services rendered in connection with the collection of the grant.

(ii) An obligation incurred in violation of this paragraph is void.

(iii) A payment made in violation of this paragraph shall be forfeited to the State.

(e) This section does not prohibit an individual from contracting for services to:

(1) determine the individual's innocence;

(2) obtain a pardon; or

(3) obtain the individual's release from confinement.

§10A–101.

(a) In this title the following words have the meanings indicated.

(b) "Budget committees" means the Senate Budget and Taxation Committee, the House Committee on Ways and Means, and the House Appropriations Committee.

(c) "Private entity" means an individual, a corporation, a general or limited partnership, a limited liability company, a joint venture, a statutory trust, a public benefit corporation, a nonprofit entity, or another business entity.

(d) "Public infrastructure asset" means a capital facility or structure, including systems and equipment related to the facility or structure intended for public use.

(e) "Public notice of solicitation" includes a request for qualifications, a request for expressions of interest, a request for proposals, or any combination thereof.

(f) (1) "Public–private partnership" means a method for delivering public infrastructure assets using a long–term, performance–based agreement between a reporting agency and a private entity where appropriate risks and benefits can be allocated in a cost–effective manner between the contractual partners in which:

(i) a private entity performs functions normally undertaken by the government, but the reporting agency remains ultimately accountable for the public infrastructure asset and its public function; and

(ii) the State may retain ownership in the public infrastructure asset and the private entity may be given additional decision–making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.

(2) "Public–private partnership" does not include:

(i) a short–term operating space lease entered into in the ordinary course of business by a unit of State government and a private entity and approved under § 4–321 or § 12–204 of this article;

(ii) a procurement governed by Division II of this article;

(iii) public–private partnership agreements entered into by the University System of Maryland, St. Mary's College of Maryland, Morgan State University, or Baltimore City Community College, where no State funds are used to

fund or finance any portion of a capital project; or

(iv) a revenue–producing transportation facility under 21.01.03.03B.(1)(d) of the Code of Maryland Regulations that is not a public–private partnership as defined under paragraph (1) of this subsection.

(g) "Reporting agency" means:

(1) the Department of General Services;

(2) the Maryland Department of Transportation, for public infrastructure assets of any of its modal administrations;

(3) the Maryland Transportation Authority;

(4) the University System of Maryland;

(5) Morgan State University;

(6) St. Mary's College of Maryland; and

(7) the Baltimore City Community College.

(h) "Responsibility determination" means the determination by a reporting agency that a private entity that responds to a solicitation for a public–private partnership:

(1) has the capacity in all respects to perform fully the requirements of a public–private partnership agreement; and

(2) possesses the integrity and reliability that will ensure good faith performance.

§10A–102.

(a) It is the public policy of the State to utilize public–private partnerships, if appropriate, to:

(1) develop and strengthen the State's public infrastructure assets;

(2) apportion between the public and private sectors the risks involved with developing and strengthening public infrastructure assets;

(3) foster the creation of new jobs; and

(4) promote the socioeconomic development and competiveness of Maryland.

(b) It is the public policy of the State that a private entity that enters into

a public–private partnership with a reporting agency comply with the Labor and Employment Article and the federal Fair Labor Standards Act.

§10A–103.

(a) (1) A reporting agency may establish a public–private partnership and execute an agreement in connection with any public infrastructure asset for which the reporting agency is responsible in accordance with the provisions of the Annotated Code.

(2) A public–private partnership agreement executed under paragraph (1) of this subsection may include provisions that are necessary to develop and strengthen a public infrastructure asset in conjunction with a public–private partnership.

(b) (1) A reporting agency shall adopt regulations and establish processes for the development, solicitation, evaluation, award, and delivery of public–private partnerships.

(2) A reporting agency may not adopt regulations under paragraph (1) of this subsection until:

(i) the Joint Committee on Administrative, Executive, and Legislative Review reviews the regulations in accordance with § 10–110 of the State Government Article;

(ii) the budget committees review and comment on the regulations; and

(iii) at least 45 days after the first publication of the regulations in the Maryland Register.

(c) A reporting agency may create a specific function dedicated to public–private partnership processes within the existing reporting agency.

(d) Any combination of federal, State, or local funds, grants, loans, debt, or other public sources of funding or financing may be used and combined with any private sources of funding or financing for a public–private partnership project.

(e) Any proceeds or revenues received by a reporting agency from a public–private partnership that are not otherwise paid or allocated to the private sector shall accrue to the fund that would have normally received those funds.

§10A–104.

(a) (1) By January 1 of each year, each reporting agency shall submit to the budget committees, in accordance with § 2–1246 of the State Government Article:

(i) a report concerning each public–private partnership under

consideration that has not been reviewed or approved previously by the General Assembly; and

(ii) a status report concerning each existing public–private partnership in which the reporting agency is involved.

(2) The reports submitted by the Department of General Services under this subsection shall include information concerning all public–private partnerships involving units within the Executive Branch of State government, except for those units that are also reporting agencies.

(b) By January 1 of each year, a unit of State government that provides conduit financing for a public–private partnership shall submit to the budget committees, in accordance with § 2–1246 of the State Government Article, a list that includes each public–private partnership for which the unit is providing conduit financing.

(c) The annual report of the Capital Debt Affordability Committee required under § 8–112 of this article shall include an analysis of the aggregate impact of public–private partnership agreements on the total amount of new State debt that prudently may be authorized for the next fiscal year.

(d) All existing public–private partnerships and any public–private partnership that is expected to be solicited shall be listed annually as appropriate in the annual capital budget or the Consolidated Transportation Program.

§10A–105.

(a) A project undertaken by a reporting agency through a public–private partnership shall comply with the following provisions, to the extent that the provisions are applicable to the project:

(1) § 3–602.1 of this article; and

(2) the Environment Article.

(b) The private entity and any contractors or subcontractors constructing a public infrastructure asset shall be subject to Title 17, Subtitles 1 and 2 of this article regardless of whether the contract qualifies as a public works contract.

(c) State employees shall retain all of the protections in State law, regulations, and policies that are in effect at the time the public–private partnership agreement is approved by the Board of Public Works.

(d) The Board of Public Works may not approve a public–private partnership that results in the State exceeding its debt affordability guidelines.

§10A–201.

(a) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a reporting agency may not issue a public notice of solicitation for a public–private partnership until a presolicitation report concerning the proposed public–private partnership is submitted to the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services, in accordance with § 2–1246 of the State Government Article.

(ii) A reporting agency may not issue a public notice of solicitation for a public–private partnership for a transportation facilities project, as defined in § 4–101(h) of the Transportation Article, until a presolicitation report concerning the proposed public–private partnership is submitted to the budget committees and the Department of Legislative Services, in accordance with § 2–1246 of the State Government Article.

(2) (i) The budget committees may not have more than 45 days to review and comment on the presolicitation report submitted in accordance with paragraph (1) of this subsection.

(ii) 1. If the total value of a proposed public–private partnership reported in the presolicitation report under paragraph (b)(1) of this subsection exceeds $500,000,000, the budget committees may request an additional 15 days to review and comment on the presolicitation report.

2. The request for additional time under this subparagraph shall:

A. be made in writing to the Governor, the Department of Budget and Management, and the reporting agency; and

B. include the reason for the request and any preliminary issues the budget committees have.

(b) (1) A presolicitation report shall:

(i) state the specific policy, operational, and financial reasons for pursuing a public–private partnership;

(ii) identify the anticipated value of the proposed public–private partnership, risks and benefits to the State, and any potential workforce, economic development, or environmental implications;

(iii) evaluate, if relevant and to the extent necessary, the risks and benefits of a public–private partnership, including benefits such as expedited asset delivery, cost savings, risk transfer, net new revenue, state–of–the–art techniques for asset development or operations, efficiency of operations, maintenance via innovative management techniques, and expertise in accessing and organizing the widest range

of financial resources;

(iv) include, if relevant and to the extent possible, the following information prepared by the reporting agency, in consultation with the Department of Budget and Management:

1. a preliminary analysis on debt affordability;

2. a preliminary summary of the proposed solicitation process; and

3. a statement of intention to use the exemption from the requirements of Division II of this article set forth in § 11–203 of this article;

(v) withhold information deemed confidential, proprietary, or otherwise exempt from disclosure under applicable law, in accordance with § 4–335 of the General Provisions Article, relating to:

1. confidential commercial information;

2. confidential financial information; and

3. trade secrets; and

(vi) be posted online by the reporting agency during the review period in accordance with paragraph (2) of this subsection.

(2) The online location of the presolicitation report shall be:

(i) on the Web site of the reporting agency; or

(ii) on the Web site of the specific project if one has been established.

(3) The reporting agency shall include in the Maryland Register a brief synopsis of, and a link to, the presolicitation report.

(c) (1) After the budget committees' review and comment period on the presolicitation report and before issuing a public notice of solicitation, a reporting agency shall seek the official designation by the Board of Public Works of the public infrastructure asset as a public–private partnership and approval of the solicitation method.

(2) The request for official designation and approval shall:

(i) include a copy of the presolicitation report required under subsection (a) of this section;

(ii) describe the process for soliciting, evaluating, selecting, and awarding the public–private partnership;

(iii) include a preliminary solicitation schedule;

(iv) outline the organization and contents of the public notice of solicitation;

(v) provide a summary of the key terms of the proposed public–private partnership agreement; and

(vi) include any other information or requests determined to be relevant by the reporting agency.

§10A–202.

(a) If a reporting agency intends to establish a public–private partnership under § 10A–103 of this title, the reporting agency shall issue a public notice of solicitation for the public–private partnership.

(b) (1) A private entity may be qualified as a bidder through a request for qualifications.

(2) After a bidder is qualified and at any time before the award of the public–private partnership agreement, a reporting agency may engage in discussions with qualified bidders.

(3) These discussions may be held to:

(i) obtain comments and make revisions to solicitation documents;

(ii) obtain the best value for the State; and

(iii) ensure full understanding of:

1. the requirements of the State, as set forth in the request for proposals; and

2. the proposal submitted by the bidder.

(c) For any private entity that responds to the public notice of solicitation, a reporting agency shall make a responsibility determination.

(d) If a private entity is composed of multiple subentities or partners, the reporting agency shall make a responsibility determination for each subentity or partner owning 20% or more of the entity.

(e) Any changes in the ownership composition of a public–private partnership, as described in subsection (d) of this section, require:

(1) a responsibility determination;

(2) 45 days' notice to the budget committees; and

(3) approval by the Board of Public Works.

(f) (1) A reporting agency may reimburse a private entity for the portion of the entity's costs incurred in response to the solicitation of a public–private partnership.

(2) A reporting agency shall adopt regulations that establish the process for reimbursing a private entity under paragraph (1) of this subsection.

(3) Regulations adopted under paragraph (2) of this subsection shall:

(i) provide for the reimbursement of a private entity based on the dollar value of a project, the value of any work product received from the private entity, or any other method for calculating such reimbursement; and

(ii) specify a maximum dollar amount that a reporting agency may reimburse a private entity for costs incurred under paragraph (1) of this subsection.

(4) A reporting agency may pay a private entity that submits an unsuccessful proposal for the right to use the private entity's work product.

(5) A reporting agency may not reimburse a private entity for any portion of the costs incurred to develop a response to a public notice of solicitation if:

(i) the private entity enters into a public–private partnership agreement with the reporting agency; and

(ii) the public–private partnership agreement entered into under item (i) of this paragraph is approved by the Board of Public Works.

§10A–203.

(a) (1) Except as provided in paragraph (2) of this subsection, the Board of Public Works may not approve a public–private partnership agreement until:

(i) a copy of the proposed agreement is submitted simultaneously to the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services, in accordance with § 2–1246 of the State Government Article;

(ii) the State Treasurer, in coordination with the Comptroller, analyzes the impact on the State's capital debt affordability limits of the proposed public–private partnership agreement;

(iii) the State Treasurer submits the analysis to the budget committees and the Department of Legislative Services, in accordance with § 2–1246 of the State Government Article; and

(iv) the budget committees have reviewed and commented on the

agreement in accordance with paragraph (3) of this subsection.

(2) The Board of Public Works may not approve a public–private partnership agreement for a transportation facilities project, as defined in § 4–101(h) of the Transportation Article, until the proposed agreement is submitted to the budget committees and the Department of Legislative Services, in accordance with § 2–1246 of the State Government Article.

(3) (i) The period for review, analysis, and comment under paragraphs (1) and (2) of this subsection may not exceed a total of 30 days from the date the proposed public–private partnership agreement is submitted simultaneously to the State Treasurer, the Comptroller, the budget committees, and the Department of Legislative Services.

(ii) The budget committees may facilitate a faster review and comment period by sending a letter to the Board of Public Works supporting a proposed public–private partnership agreement in advance of the expiration of the 30–day review period.

(b) (1) The proposed public–private partnership agreement made available to the public shall:

(i) after consultation with the private entity, withhold information deemed confidential, proprietary, or otherwise exempt from disclosure under applicable law, including in accordance with § 4–335 of the General Provisions Article, relating to:

1. confidential commercial information;

2. confidential financial information; and

3. trade secrets; and

(ii) be posted online by the reporting agency during the 30–day review period in accordance with paragraph (2) of this subsection.

(2) The online location of the proposed public–private partnership agreement shall be:

(i) on the Web site of the reporting agency; or

(ii) on the Web site of the specific project if one has been established.

§10A–204.

(a) The reporting agency shall post the final public–private partnership agreement on the Web site of the reporting agency or the Web site of the specific project if one has been established.

(b) Information deemed confidential, proprietary, or otherwise exempt from disclosure under applicable law shall be withheld from the posted version of the final public–private partnership agreement in accordance with § 4–335 of the General Provisions Article relating to:

(1) a trade secret;

(2) confidential commercial information; and

(3) confidential financial information.

§10A–301.

(a) A reporting agency may accept, reject, or evaluate an unsolicited proposal for a public–private partnership that will assist the reporting agency in implementing its functions in a manner consistent with State policy.

(b) A reporting agency shall establish the process for determining whether an unsolicited proposal meets a need of the reporting agency or is otherwise advantageous to the reporting agency.

(c) (1) A reporting agency may establish by regulation an application fee for submitting an unsolicited proposal.

(2) For an unsolicited proposal that does not address a project already in the State's Capital Improvement Program or Consolidated Transportation Program planning documents, a reporting agency may require a higher application fee.

(d) If a reporting agency determines that an unsolicited proposal meets a need of the reporting agency or is otherwise advantageous to the reporting agency, the reporting agency shall:

(1) conduct a competitive solicitation process as described under Subtitle 2 of this title;

(2) protect proprietary information included in the unsolicited proposal to the same extent proprietary information is protected under § 10A–203(b) of this title; and

(3) comply with all of the other procedural requirements set forth in this title.

(e) An individual or firm that has submitted an unsolicited proposal under this title may participate in any subsequent competitive solicitation process.

§10A–401.

(a) Whenever applicable, a public–private partnership agreement shall include

the following provisions:

(1) the method and terms for approval of any assignment, reassignment, or other transfer of interest related to the public–private partnership agreement;

(2) the methods and terms for setting and adjusting tolls, fares, fees, and other charges related to the public infrastructure asset;

(3) the method and terms for revenue–sharing or other sharing in fees or charges, in which the public participates in the financial upside of asset performance of the public infrastructure asset;

(4) minimum quality standards, performance criteria, incentives, and disincentives;

(5) operations and maintenance standards;

(6) the rights for inspection by the State;

(7) the terms and conditions under which the reporting agency may provide services for a fee sufficient to cover both direct and indirect costs;

(8) provisions for oversight and remedies and penalties for default;

(9) the terms and conditions under which the reporting agency originating the public–private partnership shall be responsible for ongoing oversight;

(10) the terms and conditions for audits by the State, including the Office of Legislative Audits, related to the agreement's financial records and performance;

(11) the terms and conditions under which the public infrastructure assets shall be returned to the State at the expiration or termination of the agreement; and

(12) requirements for the private entity to provide performance and payment security in a form and in an amount determined by the responsible public entity, except that requirements for the payment security for construction contracts shall be in accordance with Title 17, Subtitle 1 of this article, including the requirement that payment security shall be established on the value of the construction elements of the public–private partnership agreement and not on the total value of the public–private partnership agreement.

(b) (1) A public–private partnership agreement may include a provision that, except as provided in paragraph (2) of this subsection, compensation may be provided for competing infrastructure developments that directly result in a documented revenue loss for the private entity in a public–private partnership.

(2) Compensation may not be provided as a result of State infrastructure developments already in the State's Capital Improvement Program or Consolidated

Transportation Program planning documents at the time the public–private partnership agreement is executed, safety initiatives, infrastructure improvements with minimal capacity increases, or infrastructure for other transportation modes that are not the subject of the public–private partnership.

(c) A public–private partnership agreement may not include a noncompete clause for public–private partnership projects involving road, highway, or bridge assets.

§10A–402.

(a) Except as provided in subsection (b) of this section, a public–private partnership agreement may not exceed 50 years, including all renewals and extensions.

(b) The Board of Public Works may:

(1) waive the prohibition set forth in subsection (a) of this section if the Board determines that the reporting agency has demonstrated sufficient reason for the agreement to have a longer term; and

(2) waive the prohibition set forth in subsection (a) of this section at any point during the presolicitation, proposal review, or agreement negotiations process.

§10A–403. IN EFFECT

// EFFECTIVE UNTIL JUNE 30, 2016 PER CHAPTER 5 OF 2013 //

(a) The findings and evidence relied on by the General Assembly for the continuation of the Minority Business Enterprise Program under Title 14, Subtitle 3 of this article, as enacted by Chapter 253 of the Acts of 2011 and Chapter 154 of the Acts of 2012, are hereby incorporated.

(b) To the extent practicable and permitted by the United States Constitution, the provisions of the Minority Business Enterprise Program under Title 14, Subtitle 3 of this article shall apply to public–private partnerships established under this title.

(c) (1) The Board of Public Works may not approve a public–private partnership agreement under § 10A–203 of this title until the reporting agency, in consultation with the Governor's Office of Minority Affairs, the Office of the Attorney General, and the private entity, if permissible, establishes reasonable and appropriate minority business enterprise participation goals and procedures for the project.

(2) To the extent practicable, goals and procedures established under paragraph (1) of this subsection shall be based on the requirements of:

(i) Title 14, Subtitle 3 of this article, including the implementation of regulations adopted under §§ 14–302 and 14–303 of this article; and

(ii) regulations adopted specifically to implement this section.

§11–101.

(a) In this Division II the following words have the meanings indicated unless:

(1) the context clearly requires a different meaning; or

(2) a different definition is provided for a particular title or provision.

(b) (1) "Architectural services" means professional or creative work that:

(i) is performed in connection with the design and supervision of construction or landscaping; and

(ii) requires architectural education, training, and experience.

(2) "Architectural services" includes consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services that structural, civil, mechanical, and electrical engineers and other consultants provide.

(3) "Architectural services" does not include construction inspection services, services provided in connection with an energy performance contract, or structural, mechanical, plumbing, or electrical engineering.

(c) "Bid" means a response to an invitation for bids under § 13–103 of this article.

(d) "Board" means the Board of Public Works.

(e) (1) "Construction" means the process of building, altering, improving, or demolishing an improvement to real property.

(2) "Construction" includes any major work necessary to repair, prevent damage to, or sustain existing components of an improvement to real property.

(3) "Construction" does not include the maintenance or routine operation of an existing improvement to real property, or activities related to an energy performance contract.

(f) (1) "Construction related services" means feasibility studies, surveys, construction management, construction inspection, and similar efforts associated with construction or the acquisition of public improvements as defined in § 4–401(d) of this article.

(2) "Construction related services" does not include services provided in connection with an energy performance contract.

(g) "County" means a county of the State and, unless expressly provided otherwise, Baltimore City.

(h) "Energy performance contract" means an agreement for the provision of energy services, including electricity, heating, ventilation, cooling, steam, or hot water, in which a person agrees to design, install, finance, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings.

(i) (1) "Engineering services" means professional or creative work that:

(i) is performed in connection with any utility, structure, building, machine, equipment, or process, including structural, mechanical, plumbing, electrical, geotechnical, and environmental engineering; and

(ii) requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences.

(2) "Engineering services" includes consultation, investigation, evaluation, planning, design, and inspection of construction to interpret and ensure compliance with specifications and design within the scope of inspection services.

(3) "Engineering services" does not include services provided in connection with an energy performance contract.

(j) "Invitation for bids" means any document used for soliciting bids under § 13–103 of this article.

(k) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(l) "Primary procurement units" means:

(1) the State Treasurer;

(2) the Department of Budget and Management;

(3) the Department of General Services;

(4) the Department of Transportation;

(5) the Department of Information Technology;

(6) the University System of Maryland;

(7) the Maryland Port Commission;

(8) the Department of Public Safety and Correctional Services;

(9) the Morgan State University; and

(10) the St. Mary's College of Maryland.

(m) (1) "Procurement" means the process of:

(i) leasing real or personal property as lessee; or

(ii) buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services, or services provided under an energy performance contract.

(2) "Procurement" includes the solicitation and award of procurement contracts and all phases of procurement contract administration.

(n) (1) "Procurement contract" means an agreement in any form entered into by a unit for procurement.

(2) "Procurement contract" does not include:

(i) a collective bargaining agreement with an employee organization;

(ii) an agreement with a contractual employee, as defined in § 1–101(d) of the State Personnel and Pensions Article;

(iii) a Medicaid, Judicare, or similar reimbursement contract for which law sets:

1. user or recipient eligibility; and

2. price payable by the State; or

(iv) a Medicaid contract with a managed care organization, as defined in § 15–101(e) of the Health – General Article as to which regulations adopted by the Department establish:

1. recipient eligibility;

2. minimum qualifications for managed care organizations; and

3. criteria for enrolling recipients in managed care organizations.

(o) "Procurement officer" means an individual authorized by a unit to:

(1) enter into a procurement contract;

(2) administer a procurement contract; or

(3) make determinations and findings with respect to a procurement contract.

(p) "Proposal" means a response to any solicitation other than an invitation for bids.

(q) "Request for proposals" means any document used for soliciting proposals.

(r) "Responsible bidder or offeror" means a person who:

(1) has the capability in all respects to perform fully the requirements for a procurement contract; and

(2) possesses the integrity and reliability that will ensure good faith performance.

(s) "Responsive bid" means a bid that:

(1) is submitted under § 13–103 of this article; and

(2) conforms in all material respects to the invitation for bids.

(t) (1) Except as provided in paragraph (3) of this subsection, "services" means:

(i) the labor, time, or effort of a contractor; and

(ii) any product or report necessarily associated with the rendering of a service.

(2) "Services" includes services provided by attorneys, accountants, physicians, consultants, and other professionals who are independent contractors.

(3) "Services" does not include:

(i) construction related services;

(ii) architectural services;

(iii) engineering services; or

(iv) energy performance contract services.

(u) "State" means:

(1) a state, possession, territory, or commonwealth of the United States; or

(2) the District of Columbia.

(v) (1) "State correctional facilities" means correctional institutions, and all places of correctional confinement, that are located within the State of Maryland and are primarily operated by the Maryland State government.

(2) "State correctional facilities" includes Patuxent Institution.

(w) (1) "Supplies" means:

(i) insurance;

(ii) tangible personal property;

(iii) printing; and

(iv) services necessarily associated with insurance or tangible personal property.

(2) "Supplies" does not include:

(i) an interest in real property; or

(ii) tangible personal property acquired or used in connection with an energy performance contract.

(x) (1) "Unit" means an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement contract.

(2) "Unit" does not include:

(i) a bistate, multistate, bicounty, or multicounty governmental agency; or

(ii) a special tax district, sanitary district, drainage district, soil conservation district, water supply district, or other political subdivision of the State.

§11–201.

(a) The purposes and policies of this Division II include:

(1) providing for increased confidence in State procurement;

(2) ensuring fair and equitable treatment of all persons who deal with the State procurement system;

(3) providing safeguards for maintaining a State procurement system of quality and integrity;

(4) fostering effective broad–based competition in the State through support of the free enterprise system;

(5) promoting increased long–term economic efficiency and responsibility in the State by encouraging the use of recycled materials;

(6) providing increased economy in the State procurement system;

(7) getting the maximum benefit from the purchasing power of the State;

(8) simplifying, clarifying, and modernizing the law that governs State procurement;

(9) allowing the continued development of procurement regulations, policies, and practices in the State; and

(10) promoting development of uniform State procurement procedures to the extent possible.

(b) Unless otherwise indicated, this Division II shall be construed liberally and applied to promote the purposes and policies enumerated in subsection (a) of this section.

(c) If a provision of this Division II is inconsistent with a federal law, regulation, or grant agreement or other federal requirement that governs procurement or a procurement contract or with the terms of a gift, as defined in § 1–109 of the General Provisions Article, the federal requirement or the terms of the gift control the procurement or procurement contract.

(d) (1) In this subsection, "bundle" means the consolidation of two or more procurement requirements for supplies or services previously provided or performed under separate contracts into a single solicitation seeking offers for a single contract that is unlikely to be accessible for award to a small business or minority business enterprise.

(2) This subsection does not apply if a unit bundles a procurement for the purpose of participating in the Small Business Reserve Program in accordance with Title 14, Subtitle 5 of this article.

(3) For the purpose of precluding or limiting participation by a minority business enterprise as defined under Title 14, Subtitle 3 of this article or a small business as defined under Title 14, Subtitle 2 of this article, a unit subject to this Division II may not:

(i) bundle a procurement;

(ii) limit the number of competitive bidders or offerors; or

(iii) limit participation to a predetermined group of bidders or offerors.

§11–202.

Except as otherwise expressly provided by law, this Division II applies to:

(1) each expenditure by a unit under a procurement contract;

(2) each procurement by a unit on behalf of another unit, governmental agency, or other entity; and

(3) each procurement by a unit, even if a resulting procurement contract will involve no expenditure by the State and will produce revenue for the State, for services that are to be provided for the benefit of:

(i) State officials, State employees, or students at a State facility, including a school, hospital, institution, or recreational facility;

(ii) clients or patients at a State hospital or State institution;

(iii) the public at a State recreational facility; or

(iv) the public at a State transportation facility or State higher education facility, as required by the Board.

§11–203. IN EFFECT

(a) Except as provided in subsection (b) of this section, this Division II does not apply to:

(1) procurement by:

(i) the Blind Industries and Services of Maryland;

(ii) the Maryland State Arts Council, for the support of the arts;

(iii) the Maryland Health and Higher Educational Facilities Authority, if no State money is to be spent on a procurement contract;

(iv) the Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Business and Economic Development, for training services or programs for new or expanding businesses or industries or businesses or industries in transition;

(v) the Maryland Food Center Authority, to the extent the Authority is exempt under Title 10, Subtitle 2 of the Economic Development Article;

(vi) the Maryland Public Broadcasting Commission:

1. for services of artists for educational and cultural television productions; or

2. when planning for or fulfilling the obligations of grants or cooperative agreements that support the educational and cultural activities of the Commission;

(vii) public institutions of higher education, for cultural, entertainment, and intercollegiate athletic procurement contracts;

(viii) the Maryland State Planning Council on Developmental Disabilities, for services to support demonstration, pilot, and training programs;

(ix) the Maryland Historical Trust for:

1. surveying and evaluating architecturally, archeologically, historically, or culturally significant properties; and

2. other than as to architectural services, preparing historic preservation planning documents and educational material;

(x) the University of Maryland, for University College Overseas Programs, if the University adopts regulations that:

1. establish policies and procedures governing procurement for University College Overseas Programs; and

2. promote the purposes stated in § 11–201(a) of this subtitle;

(xi) the Department of Business and Economic Development, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of Maryland and the tourism industry where there will be a private sector contribution to the project of not less than 50% of the total cost of the project, if the project is reviewed by the Attorney General and approved by the Secretary of Business and Economic Development or the Secretary's designee;

(xii) the Rural Maryland Council;

(xiii) the Maryland State Lottery and Gaming Control Agency, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of the Maryland State Lottery and its products, if the cooperative marketing project:

1. provides a substantive promotional or marketing value that the lottery determines acceptable in exchange for advertising or other promotional activities provided by the lottery;

2. does not involve the advertising or other promotion of alcohol or tobacco products; and

3. is reviewed by the Attorney General and approved by the Maryland Lottery Director or the Director's designee;

(xiv) the Maryland Health Insurance Plan established under Title 14, Subtitle 5 of the Insurance Article;

(xv) the Maryland Energy Administration, when negotiating or entering into grants or cooperative agreements with private entities to meet federal specifications or solicitation requirements related to energy conservation, energy efficiency, or renewable energy projects that benefit the State;

(xvi) the Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene for family and individual support services, and individual family care services, as those terms are defined by the Department of Health and Mental Hygiene in regulation;

(xvii) the Department of General Services for the renovation of a structure that:

1. was built during the 18th or 19th century; and

2. is listed in or eligible for listing in the National Register of Historic Places; and

(xviii) the Department of Natural Resources, for negotiating or entering into grants, agreements, or partnerships with nonprofit entities related to conservation service opportunities;

(2) procurement by a unit from:

(i) another unit;

(ii) a political subdivision of the State;

(iii) an agency of a political subdivision of the State;

(iv) a government, including the government of another state, of the United States, or of another country;

(v) an agency or political subdivision of a government; or

(vi) a bistate, multistate, bicounty, or multicounty governmental agency; or

(3) procurement in support of enterprise activities for the purpose of:

(i) direct resale; or

(ii) remanufacture and subsequent resale.

(b) (1) The following provisions of this Division II apply to each procurement enumerated in subsection (a) of this section:

(i) § 11–205 of this subtitle ("Collusion");

(ii) § 10–204 of this article ("Approval for designated contracts");

(iii) Title 12, Subtitle 2 of this article ("Supervision of Capital Expenditures and Real Property Leases");

(iv) § 13–219 of this article ("Required clauses – Nondiscrimination clause");

(v) § 13–221 of this article ("Disclosures to Secretary of State");

(vi) Title 12, Subtitle 4 of this article ("Policies and Procedures for Exempt Units");

(vii) Title 16 of this article ("Suspension and Debarment of Contractors"); and

(viii) Title 17 of this article ("Special Provisions – State and Local Subdivisions").

(2) Except for procurement under subsection (a)(1)(i) and (xi) and (2)(i) and (vi) of this section, the provisions of Title 14, Subtitle 3 of this article ("Minority Business Participation") shall apply to each procurement enumerated in subsection (a) of this section.

(3) A procurement by an entity listed in subsection (a)(1)(i) through (xiii) and (xvii) of this section shall be made under procedures that promote the purposes stated in § 11–201(a) of this subtitle.

(4) (i) A unit that procures human, social, or educational services from an entity enumerated in subsection (a)(2) of this section shall publish in eMaryland Marketplace notice of a procurement contract or an extension or renewal of a procurement contract if:

1. the procurement contract, extension, or renewal costs more than $25,000; and

2. the procurement is made for 3rd party clients described in § 13–106 of this article.

(ii) The notice required under this paragraph shall be published not

more than 30 days after the execution and approval of the procurement contract or the extension or renewal of the procurement contract.

(5) The purchase of advisory services from the General Selection Board or the Transportation Selection Board under § 13–305 of this article shall be governed by the Maryland Architectural and Engineering Services Act.

(c) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article, this Division II does not apply to the Maryland Stadium Authority.

(d) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article, this Division II does not apply to the Board of Trustees of the State Retirement and Pension System for:

(1) services of managers to invest the assets of the State Retirement and Pension System, including real and personal property;

(2) expenditures to manage, maintain, and enhance the value of the assets of the State Retirement and Pension System in accordance with investment guidelines adopted by the Board of Trustees;

(3) services related to the administration of the optional retirement program under Title 30 of the State Personnel and Pensions Article; and

(4) services related to the administration of the Postretirement Health Benefits Trust Fund.

(e) (1) In this subsection, "University" means the University System of Maryland, Morgan State University, or St. Mary's College of Maryland.

(2) Except as otherwise provided in this subsection, this Division II does not apply to the University System of Maryland, Morgan State University, or St. Mary's College of Maryland.

(3) (i) A procurement by a University shall comply with the policies and procedures developed by the University and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the General Assembly in accordance with § 12–112 of the Education Article for the University System of Maryland, § 14–109 of the Education Article for Morgan State University, or § 14–405(f) of the Education Article for St. Mary's College of Maryland.

(ii) 1. The review and approval of the Board of Public Works shall be required for the following types of contracts with a value that exceeds $1,000,000:

A. capital improvements;

B. services; and

C. dispositions of personal property subject to § 10–305 of this article, except for dispositions of personal property that was purchased with the proceeds of a general obligation loan.

2. In its review of a contract for services or capital improvements with a value that exceeds $1,000,000, the Board of Public Works may request the comments of the appropriate agencies, including the Department of Budget and Management and the Department of General Services.

(4) A University's policies shall:

(i) to the maximum extent practicable, require the purchasing of supplies and services in accordance with Title 14, Subtitle 1 of this article; and

(ii) promote the purposes of the regulations adopted by the Department of General Services governing the procurement of architectural and engineering services.

(5) (i) Except as provided in paragraph (7) of this subsection, the following provisions of Division II of this article apply to a University:

1. § 11–205 of this subtitle ("Collusion");

2. § 11–205.1 of this subtitle ("Falsification, concealment, etc., of material facts");

3. § 13–219 of this article ("Required clauses – Nondiscrimination clause");

4. § 13–225 of this article ("Retainage");

5. Title 14, Subtitle 3 of this article ("Minority Business Participation");

6. Title 15, Subtitle 1 of this article ("Procurement Contract Administration");

7. § 15–226 of this article ("Policy established; timing of payments; notice upon nonpayment; disputes; appeals"); and

8. Title 16 of this article ("Suspension and Debarment of Contractors").

(ii) If a procurement violates the provisions of this subsection or policies adopted in accordance with this subsection, the procurement contract is void or voidable in accordance with the provisions of § 11–204 of this subtitle.

(6) (i) The State Board of Contract Appeals shall have authority over

contract claims related to procurement contracts awarded by:

1. the University System of Maryland before July 1, 1999; and

2. Morgan State University before July 1, 2004.

(ii) At the election of the Board of Regents of the University System of Maryland and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by the University after June 30, 1999.

(iii) At the election of the Board of Regents of Morgan State University and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by the University after June 30, 2004.

(iv) At the election of the Board of Trustees of St. Mary's College of Maryland and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by St. Mary's College of Maryland after June 30, 2006.

(7) Paragraphs (3), (4), and (5) of this subsection do not apply to:

(i) procurement by a University from:

1. another unit;

2. a political subdivision of the State;

3. an agency of a political subdivision of the State;

4. a government, including the government of another state, of the United States, or of another country;

5. an agency or political subdivision of a government; or

6. a bistate, multistate, bicounty, or multicounty governmental agency;

(ii) procurement by a University in support of enterprise activities for the purpose of:

1. direct resale;

2. remanufacture and subsequent resale; or

3. procurement by the University for overseas programs; or

(iii) procurement by the University System of Maryland for:

1. services of managers to invest, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article; or

2. expenditures to manage, maintain, and enhance, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, the value of gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article.

(f) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article, this Division II does not apply to the College Savings Plans of Maryland for:

(1) services of managers to invest the assets of the Maryland Prepaid College Trust in accordance with the comprehensive investment plan adopted by the College Savings Plans of Maryland Board under § 18–1906 of the Education Article; and

(2) expenditures to manage, maintain, and enhance the value of the assets of the Maryland Prepaid College Trust in accordance with the comprehensive investment plan adopted by the College Savings Plans of Maryland Board under § 18–1906 of the Education Article.

(g) This Division II does not apply to a contract or grant awarded by a unit of State government to the Chesapeake Bay Trust for a project involving the restoration or protection of the Chesapeake Bay and other aquatic and land resources of the State.

(h) (1) Except as provided in paragraph (2) of this subsection, this division does not apply to a public–private partnership under Title 10A of this article.

(2) To the extent otherwise required by law, the following provisions of this division apply to a public–private partnership under Title 10A of this article:

(i) § 11–205 of this subtitle ("Collusion");

(ii) § 11–205.1 of this subtitle ("Falsification, concealment, etc. of material facts");

(iii) Title 12, Subtitle 4 of this article ("Policies and Procedures for Exempt Units");

(iv) § 13–219 of this article ("Required clauses – Nondiscrimination clause");

(v) Title 17, Subtitle 1 of this article ("Security for Construction Contracts");

(vi) Title 17, Subtitle 2 of this article ("Prevailing Wage Rates – Public Work Contracts"); and

(vii) Title 18 of this article ("Living Wage").

11–203. // EFFECTIVE JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

(a) Except as provided in subsection (b) of this section, this Division II does not apply to:

(1) procurement by:

(i) the Blind Industries and Services of Maryland;

(ii) the Maryland State Arts Council, for the support of the arts;

(iii) the Maryland Health and Higher Educational Facilities Authority, if no State money is to be spent on a procurement contract;

(iv) the Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Business and Economic Development, for training services or programs for new or expanding businesses or industries or businesses or industries in transition;

(v) the Maryland Food Center Authority, to the extent the Authority is exempt under Title 10, Subtitle 2 of the Economic Development Article;

(vi) the Maryland Public Broadcasting Commission:

1. for services of artists for educational and cultural television productions; or

2. when planning for or fulfilling the obligations of grants or cooperative agreements that support the educational and cultural activities of the Commission;

(vii) public institutions of higher education, for cultural, entertainment, and intercollegiate athletic procurement contracts;

(viii) the Maryland State Planning Council on Developmental Disabilities, for services to support demonstration, pilot, and training programs;

(ix) the Maryland Historical Trust for:

1. surveying and evaluating architecturally, archeologically, historically, or culturally significant properties; and

2. other than as to architectural services, preparing historic preservation planning documents and educational material;

(x) the University of Maryland, for University College Overseas Programs, if the University adopts regulations that:

1. establish policies and procedures governing procurement for University College Overseas Programs; and

2. promote the purposes stated in § 11–201(a) of this subtitle;

(xi) the Department of Business and Economic Development, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of Maryland and the tourism industry where there will be a private sector contribution to the project of not less than 50% of the total cost of the project, if the project is reviewed by the Attorney General and approved by the Secretary of Business and Economic Development or the Secretary's designee;

(xii) the Rural Maryland Council;

(xiii) the Maryland State Lottery and Gaming Control Agency, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of the Maryland State Lottery and its products, if the cooperative marketing project:

1. provides a substantive promotional or marketing value that the lottery determines acceptable in exchange for advertising or other promotional activities provided by the lottery;

2. does not involve the advertising or other promotion of alcohol or tobacco products; and

3. is reviewed by the Attorney General and approved by the Maryland Lottery Director or the Director's designee;

(xiv) the Maryland Health Insurance Plan established under Title 14, Subtitle 5 of the Insurance Article;

(xv) the Maryland Energy Administration, when negotiating or entering into grants or cooperative agreements with private entities to meet federal specifications or solicitation requirements related to energy conservation, energy efficiency, or renewable energy projects that benefit the State;

(xvi) the Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene for family and individual support services, and individual family care services, as those terms are defined by the Department of Health and Mental Hygiene in regulation;

(xvii) the Department of General Services for the renovation of a structure that:

1. was built during the 18th or 19th century; and

2. is listed in or eligible for listing in the National Register of Historic Places; and

(xviii) the Department of Natural Resources, for negotiating or entering into grants, agreements, or partnerships with nonprofit entities related to conservation service opportunities;

(2) procurement by a unit from:

(i) another unit;

(ii) a political subdivision of the State;

(iii) an agency of a political subdivision of the State;

(iv) a government, including the government of another state, of the United States, or of another country;

(v) an agency or political subdivision of a government; or

(vi) a bistate, multistate, bicounty, or multicounty governmental agency; or

(3) procurement in support of enterprise activities for the purpose of:

(i) direct resale; or

(ii) remanufacture and subsequent resale.

(b) (1) The following provisions of this Division II apply to each procurement enumerated in subsection (a) of this section:

(i) § 11–205 of this subtitle ("Collusion");

(ii) § 10–204 of this article ("Approval for designated contracts");

(iii) Title 12, Subtitle 2 of this article ("Supervision of Capital Expenditures and Real Property Leases");

(iv) § 13–219 of this article ("Required clauses – Nondiscrimination clause");

(v) § 13–221 of this article ("Disclosures to Secretary of State");

(vi) Title 12, Subtitle 4 of this article ("Policies and Procedures for Exempt Units");

(vii) Title 16 of this article ("Suspension and Debarment of Contractors"); and

(viii) Title 17 of this article ("Special Provisions – State and Local Subdivisions").

(2) A procurement by an entity listed in subsection (a)(1)(i) through (xiii) and (xvii) of this section shall be made under procedures that promote the purposes stated in § 11–201(a) of this subtitle.

(3) (i) A unit that procures human, social, or educational services from an entity enumerated in subsection (a)(2) of this section shall publish in eMaryland Marketplace notice of a procurement contract or an extension or renewal of a procurement contract if:

1. the procurement contract, extension, or renewal costs more than $25,000; and

2. the procurement is made for 3rd party clients described in § 13–106 of this article.

(ii) The notice required under this paragraph shall be published not more than 30 days after the execution and approval of the procurement contract or the extension or renewal of the procurement contract.

(4) The purchase of advisory services from the General Selection Board or the Transportation Selection Board under § 13–305 of this article shall be governed by the Maryland Architectural and Engineering Services Act.

(c) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article, this Division II does not apply to the Maryland Stadium Authority.

(d) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article, this Division II does not apply to the Board of Trustees of the State Retirement and Pension System for:

(1) services of managers to invest the assets of the State Retirement and Pension System, including real and personal property;

(2) expenditures to manage, maintain, and enhance the value of the assets of the State Retirement and Pension System in accordance with investment guidelines adopted by the Board of Trustees;

(3) services related to the administration of the optional retirement program under Title 30 of the State Personnel and Pensions Article; and

(4) services related to the administration of the Postretirement Health Benefits Trust Fund.

(e) (1) In this subsection, "University" means the University System of Maryland, Morgan State University, or St. Mary's College of Maryland.

(2) Except as otherwise provided in this subsection, this Division II does not apply to the University System of Maryland, Morgan State University, or St. Mary's College of Maryland.

(3) (i) A procurement by a University shall comply with the policies and procedures developed by the University and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the General Assembly in accordance with § 12–112 of the Education Article for the University System of Maryland, § 14–109 of the Education Article for Morgan State University, or § 14–405(f) of the Education Article for St. Mary's College of Maryland.

(ii) 1. The review and approval of the Board of Public Works shall be required for the following types of contracts with a value that exceeds $1,000,000:

A. capital improvements;

B. services; and

C. dispositions of personal property subject to § 10–305 of this article, except for dispositions of personal property that was purchased with the proceeds of a general obligation loan.

2. In its review of a contract for services or capital improvements with a value that exceeds $1,000,000, the Board of Public Works may request the comments of the appropriate agencies, including the Department of Budget and Management and the Department of General Services.

(4) A University's policies shall:

(i) to the maximum extent practicable, require the purchasing of supplies and services in accordance with Title 14, Subtitle 1 of this article; and

(ii) promote the purposes of the regulations adopted by the Department of General Services governing the procurement of architectural and engineering services.

(5) (i) Except as provided in paragraph (7) of this subsection, the following provisions of Division II of this article apply to a University:

1. § 11–205 of this subtitle ("Collusion");

2. § 11–205.1 of this subtitle ("Falsification, concealment, etc., of material facts");

3. § 13–219 of this article ("Required clauses –

Nondiscrimination clause");

4. § 13–225 of this article ("Retainage");

5. Title 14, Subtitle 3 of this article ("Minority Business Participation");

6. Title 15, Subtitle 1 of this article ("Procurement Contract Administration");

7. § 15–226 of this article ("Policy established; timing of payments; notice upon nonpayment; disputes; appeals"); and

8. Title 16 of this article ("Suspension and Debarment of Contractors").

(ii) If a procurement violates the provisions of this subsection or policies adopted in accordance with this subsection, the procurement contract is void or voidable in accordance with the provisions of § 11–204 of this subtitle.

(6) (i) The State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by:

1. the University System of Maryland before July 1, 1999; and

2. Morgan State University before July 1, 2004.

(ii) At the election of the Board of Regents of the University System of Maryland and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by the University after June 30, 1999.

(iii) At the election of the Board of Regents of Morgan State University and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by the University after June 30, 2004.

(iv) At the election of the Board of Trustees of St. Mary's College of Maryland and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by St. Mary's College of Maryland after June 30, 2006.

(7) Paragraphs (3), (4), and (5) of this subsection do not apply to:

(i) procurement by a University from:

1. another unit;

2. a political subdivision of the State;

3. an agency of a political subdivision of the State;

4. a government, including the government of another state, of the United States, or of another country;

5. an agency or political subdivision of a government; or

6. a bistate, multistate, bicounty, or multicounty governmental agency;

(ii) procurement by a University in support of enterprise activities for the purpose of:

1. direct resale;

2. remanufacture and subsequent resale; or

3. procurement by the University for overseas programs; or

(iii) procurement by the University System of Maryland for:

1. services of managers to invest, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article; or

2. expenditures to manage, maintain, and enhance, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, the value of gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article.

(f) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article, this Division II does not apply to the College Savings Plans of Maryland for:

(1) services of managers to invest the assets of the Maryland Prepaid College Trust in accordance with the comprehensive investment plan adopted by the College Savings Plans of Maryland Board under § 18–1906 of the Education Article; and

(2) expenditures to manage, maintain, and enhance the value of the assets of the Maryland Prepaid College Trust in accordance with the comprehensive investment plan adopted by the College Savings Plans of Maryland Board under § 18–1906 of the Education Article.

(g) This Division II does not apply to a contract or grant awarded by a unit of State government to the Chesapeake Bay Trust for a project involving the restoration or protection of the Chesapeake Bay and other aquatic and land resources of the State.

(h) (1) Except as provided in paragraph (2) of this subsection, this division does not apply to a public–private partnership under Title 10A of this article.

(2) To the extent otherwise required by law, the following provisions of this division apply to a public–private partnership under Title 10A of this article:

(i) § 11–205 of this subtitle ("Collusion");

(ii) § 11–205.1 of this subtitle ("Falsification, concealment, etc. of material facts");

(iii) Title 12, Subtitle 4 of this article ("Policies and Procedures for Exempt Units");

(iv) § 13–219 of this article ("Required clauses – Nondiscrimination clause");

(v) Title 17, Subtitle 1 of this article ("Security for Construction Contracts");

(vi) Title 17, Subtitle 2 of this article ("Prevailing Wage Rates – Public Work Contracts"); and

(vii) Title 18 of this article ("Living Wage").

§11–204.

(a) A unit may not enter into a procurement contract except as allowed under this Division II.

(b) (1) Except as otherwise provided in this Division II, if a procurement violates this Division II, the procurement contract is void.

(2) Whenever a procurement contract is void under this subsection, the contractor shall be awarded compensation for actual expenses reasonably incurred under the procurement contract, plus a reasonable profit, if the contractor:

(i) acted in good faith;

(ii) did not directly contribute to a violation of this Division II; and

(iii) had no knowledge of the violation before the procurement contract was awarded.

(c) (1) Whenever a procurement violates this Division II, the Board may determine that the procurement contract is voidable, rather than void, if the Board determines that:

(i) all parties acted in good faith;

(ii) ratification of the procurement contract would not undermine the purposes of this Division II; and

(iii) the violation or series of violations was insignificant or otherwise did not prevent substantial compliance with this Division II.

(2) Whenever a procurement contract is voidable under this subsection and the contractor has not acted in violation of this Division II, the unit may:

(i) ratify the procurement contract if the unit determines that ratification is in the best interests of the State; or

(ii) void the procurement contract and award the contractor compensation for actual expenses reasonably incurred under the contract, plus a reasonable profit.

(3) Whenever a procurement contract is voidable under this subsection and the contractor has acted in violation of this Division II, the unit:

(i) may void the procurement contract; or

(ii) without prejudice to the State's right to appropriate damages, may ratify the procurement contract if the unit determines that ratification is in the best interests of the State.

§11–205.

(a) This section is broadly applicable to all procurements by the State.

(b) A person who, for the purpose of defrauding the State, acts in collusion with another person in connection with the procurement process is liable for damages equal to 3 times the value of the loss to the State that is attributable to the collusion.

(c) (1) A procurement officer who has reason to believe that collusion has occurred in connection with the procurement process shall send to the Office of the Attorney General written notice that states the belief and its basis.

(2) The Attorney General may begin an action in the appropriate court for damages under subsection (b) of this section.

(d) (1) If there is reason to believe that collusion has occurred in connection with the procurement process, all relevant documents shall be kept until the Attorney General gives notice that they may be destroyed.

(2) On request by the Office of the Attorney General, relevant documents shall be made available immediately.

§11–205.1.

(a) In connection with a procurement contract a person may not willfully:

(1) falsify, conceal, or suppress a material fact by any scheme or device;

(2) make a false or fraudulent statement or representation of a material fact; or

(3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

(b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

(c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 5 years or both.

§11–206.

(a) Unless otherwise indicated in the regulation, a regulation adopted under this Division II applies to a procurement contract if:

(1) the regulation is in effect on the day that the parties execute the procurement contract; and

(2) the procurement contract is governed by this Division II.

(b) A regulation adopted under this Division II does not affect the rights of a unit or contractor under a procurement contract that was entered into before the effective date of the regulation.

(c) A requirement of law that a procurement contract contain a particular provision is satisfied if the procurement contract includes notice of the provision, including the subject matter of the provision.

§11–207.

Each determination required under this Division II shall be:

(1) in writing;

(2) based on written findings of the public official or employee who makes the determination; and

(3) kept, for at least 3 years, in an official procurement contract file.

§11–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Employee" means any individual who performs services for, or under the control and direction of, an employer for wages or other remuneration.

(2) "Employee" does not include an employee as defined in § 1-501(c)(1) of the Health Occupations Article.

(c) (1) "Employer" means a person engaged in a business, industry, profession, trade, or other enterprise that enters a procurement contract with a unit to provide supplies or services under this Division II.

(2) "Employer" includes agents, contractors, and subcontractors of an employer.

(3) "Employer" does not include a unit of State government subject to the provisions of Title 5, Subtitle 3 of the State Personnel and Pensions Article or the Judicial Branch of State government.

§11–302.

An employer subject to this subtitle shall provide employees with written notice of the protections and remedies provided by this subtitle.

§11–303.

An employer may not take or refuse to take any personnel action as a reprisal against an employee because the employee:

(1) discloses information that the employee reasonably believes evidences:

(i) an abuse of authority, gross mismanagement, or gross waste of money;

(ii) a substantial and specific danger to public health or safety; or

(iii) a violation of law;

(2) objects to or refuses to participate in any activity, policy, or practice in violation of law; or

(3) following a disclosure under item (1) of this section, seeks a remedy provided under this subtitle.

§11–304.

(a) Any employee who is subject to a personnel action in violation of § 11-303 of

this subtitle may institute a civil action in the county where:

(1) the alleged violation occurred;

(2) the employee resides; or

(3) the employer maintains its principal office in the State.

(b) The action shall be brought within 1 year after the alleged violation of § 11-303 of this subtitle occurred or within 1 year after the employee first became aware of the alleged violation of § 11-303 of this subtitle.

§11–305.

In any action brought under this subtitle, a court may:

(1) issue an injunction to restrain continued violation of § 11-303 of this subtitle;

(2) reinstate the employee to the same or an equivalent position held before the violation of § 11-303 of this subtitle;

(3) remove any adverse personnel record entries based on or related to the violation of § 11-303 of this subtitle;

(4) reinstate full fringe benefits and seniority rights;

(5) require compensation for lost wages, benefits, and other remuneration;

(6) award costs of litigation and reasonable attorney's fees to the prevailing employee; and

(7) award any other appropriate damages and relief.

§11–306.

In any action brought under this subtitle, it is a defense that the personnel action was based on grounds other than the employee's exercise of any rights protected under this subtitle.

§12–101.

(a) This section does not apply to capital expenditures by the Department of Transportation or the Maryland Transportation Authority, in connection with State roads, bridges, or highways, as provided in § 12-202 of this title.

(b) (1) The Board may control procurement by units.

(2) To implement the provisions of this Division II, the Board may:

(i) set policy;

(ii) adopt regulations, in accordance with Title 10, Subtitle 1 of the State Government Article; and

(iii) establish internal operational procedures consistent with this Division II.

(3) The Board shall ensure that the regulations of the primary procurement units provide for procedures that are consistent with this Division II and Title 13, Subtitle 4 of the State Personnel and Pensions Article and, to the extent the circumstances of a particular type of procurement or a particular unit do not require otherwise, are substantially the same.

(4) The Board may delegate any of its authority that it determines to be appropriate for delegation and may require prior Board approval for specified procurement actions.

(5) Except as limited by the Maryland Constitution, the Board may exercise any control authority conferred on a primary procurement unit by this Division II and, to the extent that its action conflicts with the action of the primary procurement unit, the action of the Board shall prevail.

(6) The Board, with the assistance of the Department of Budget and Management, shall compile comprehensive statistics on the procurement system by agency, amount, and type of procurement.

(7) The Board shall develop and submit to the General Assembly, in accordance with § 2–1246 of the State Government Article, an annual report on the procurement system that includes information on actions necessary to improve effective broad–based competition in procurement.

§12–102.

(a) (1) The Board shall appoint a Procurement Advisor, who serves at the pleasure of the Board.

(2) The Procurement Advisor shall:

(i) ensure that the State's procurement system is utilizing the most advanced procurement methods and management techniques;

(ii) effect and enhance communication between State units on procurement matters, with an emphasis on disseminating information on current developments and advances in the management of the State procurement system;

(iii) examine all procurements that are subject to review by the Board and make recommendations to the Board as to the appropriateness of each

procurement, with an emphasis on whether the proposed procurement:

1. has been competitively conducted; and

2. conforms to provisions of procurement law, procurement regulations, and best management practices;

(iv) prevent and detect fraud, waste, and abuse and foster competition in the expenditure of State funds in the procurement of supplies, services, or construction;

(v) conduct investigations into procurement policies, practices, and procedures, as appropriate;

(vi) investigate complaints made by State employees concerning fraud, waste, and abuse in the procurement process and any alleged violation of the procurement law or regulations;

(vii) investigate complaints, other than formal bid protests filed under Title 15, Subtitle 2 of this article, made by contractors and other interested parties concerning fraud, waste, and abuse in the procurement process and any alleged violation of the procurement law or regulations;

(viii) if apparent criminal violations are found in the course of an investigation, report findings to the Board of Public Works, Office of the Attorney General, United States Attorney, and State or local prosecutors, as appropriate;

(ix) if other apparent violations of law or regulation are found in the course of an investigation, report findings to the Board of Public Works, the appropriate agency head, and any other appropriate body for administrative action;

(x) produce and submit to the Board of Public Works and the General Assembly, in accordance with § 2-1246 of the State Government Article, an annual report of the activities of the Procurement Advisor, including:

1. all findings and recommendations for improvements to the procurement system; and

2. the identification of barriers to effective broad-based competition in State procurement and recommendations for the elimination of these barriers;

(xi) assist agencies and the public with questions regarding procurement policy;

(xii) establish policies for the effective training of State procurement officials to ensure that the State's procurement system is utilizing the most advanced procurement methods and management techniques;

(xiii) coordinate activities with other entities performing similar functions;

(xiv) review internal audit reports and comment as appropriate;

(xv) be the principal staff to the Procurement Advisory Council; and

(xvi) notify the Legislative Auditor when the Procurement Advisor undertakes an investigation under item (vi) or (vii) of this paragraph.

(3) The Procurement Advisor shall:

(i) have access to all books, accounts, records, reports, any material related to contracts and procurement, and all other papers and equipment necessary to carry out its responsibilities; and

(ii) have direct and prompt access to all heads of agencies involved in the expenditure of public funds.

(b) (1) (i) The Board shall appoint a General Counsel, who serves at the pleasure of the Board.

(ii) The General Counsel shall be an attorney in this State.

(2) The General Counsel shall:

(i) provide independent legal advice to the Board;

(ii) examine all procurements that are subject to review by the Board and make recommendations to the Board as to the legal sufficiency of the procurements, with an emphasis on whether the proposed procurement has been competitively conducted;

(iii) assist the Procurement Advisor in investigations undertaken by the Procurement Advisor;

(iv) assist the Procurement Advisor in responding to complaints made by State employees, contractors, and other interested parties concerning fraud, waste, and abuse in the procurement process or any alleged violation of the procurement law and regulations;

(v) compile information for distribution to State procurement officials relating to recent decisions of the Maryland State Board of Contract Appeals and State and federal courts concerning procurement, including any policy or legal guidance to the procurement officials based on these decisions; and

(vi) review regulations proposed by the Board for legality and approve them for proposal and adoption.

(3) The General Counsel shall:

(i) have access to all books, accounts, records, any material related to contracts and procurement, and all other papers and equipment necessary to carry out its responsibilities; and

(ii) have direct and prompt access to all heads of agencies involved in the expenditure of public funds.

(c) In accordance with the State budget, the Board may appoint any additional staff necessary to carry out its responsibilities under this Division II.

§12–103.

(a) This section does not apply to capital expenditures by the Department of Transportation or the Maryland Transportation Authority, in connection with State roads, bridges, or highways, as provided in § 12-202 of this title.

(b) Notwithstanding any delegation of authority under § 12-101 of this subtitle, the Board retains full authority to engage in procurement of services and supplies for itself.

(c) By resolution, the Board may authorize a Board member or a unit to exercise all or any part of the authority of the Board for a specific Board procurement or for a particular class of Board procurements.

§12–104.

(a) Except as provided in subsection (b) of this section, the Board may modify or waive any requirement under this Division II for a procurement contract or a class of procurement contracts that is to be performed entirely outside the United States, or any lease of real property outside this State, to the extent that:

(1) the purposes stated in § 11–201(a) of this article are fostered;

(2) the circumstances require the modification or waiver; and

(3) foreign or out–of–state contractors are expected to be involved in the procurement.

(b) The Board may not modify or waive the following requirements:

(1) § 14–404 of this article ("Coal in heating systems");

(2) Title 16, Subtitle 2 of this article ("Offenses Subject to Debarment"); and

(3) Title 17 of this article ("Special Provisions — State and Local Subdivisions").

§12–105.

(a) In this section, "Council" means the Procurement Advisory Council.

(b) There is a Procurement Advisory Council.

(c) (1) The Council consists of the following 11 members:

(i) the State Treasurer;

(ii) the Chancellor of the University System of Maryland;

(iii) the Secretary of Budget and Management;

(iv) the Secretary of General Services;

(v) the Secretary of Information Technology;

(vi) the Secretary of Transportation;

(vii) the Secretary of the Board;

(viii) the Special Secretary for the Office of Minority Affairs;

(ix) a representative of local government who has expertise in local procurement matters, appointed by the Governor with the advice and consent of the Senate; and

(x) two members of the general public, at least one of whom has expertise in State procurement matters, appointed by the Governor with the advice and consent of the Senate.

(2) (i) If the State Treasurer is unable to attend a meeting of the Procurement Advisory Council, the Treasurer may designate the Deputy Treasurer to attend the meeting.

(ii) If a member of the Council listed in paragraph (1)(ii) through (v) of this subsection is unable to attend a meeting of the Procurement Advisory Council, the member may designate the Chief Procurement Officer of the agency to attend the meeting.

(d) The Secretary of the Board is Chairman of the Council.

(e) The Council shall meet at least quarterly each year.

(f) The Procurement Advisor is the principal staff of the Council and the Council shall have any additional staff that the Board authorizes in accordance with the State budget.

(g) The Council shall:

(1) ensure that the State's procurement system is utilizing the most advanced procurement methods and management techniques;

(2) effect and enhance communication between State units on procurement matters, with an emphasis on disseminating information on current developments and advances in procurement methods and management;

(3) provide a forum for the discussion of specific procurement issues and problems that arise;

(4) advise the Board on problems in the procurement process and make recommendations for improvement of the process; and

(5) review existing procurement regulations to:

(i) determine whether they fulfill the intent and purpose of the law, especially as it relates to fostering broad–based competition; and

(ii) make recommendations on the regulations, if revising and restructuring them will result in easier understanding and use.

§12–106.

The Board may establish other advisory bodies.

§12–107.

(a) This section does not apply to capital expenditures by the Department of Transportation or the Maryland Transportation Authority, in connection with State roads, bridges, or highways, as provided in § 12-202 of this title.

(b) Subject to the authority of the Board, jurisdiction over procurement is as follows:

(1) the State Treasurer may engage in or control procurement of banking and financial services, insurance, and insurance services, as provided in Division I of this article and Article VI, § 3 of the Maryland Constitution;

(2) the Department of Budget and Management may control procurement of:

(i) services by a unit, subject to any limitation in this Division II; and

(ii) leases of motor vehicles, as provided in Title 3, Subtitle 5 of this article;

(3) the Department of General Services may engage in or control procurement of:

(i) leases of real property, including leases under Title 4, Subtitle 3 of this article;

(ii) supplies, including supplies under Title 4, Subtitle 3 of this article, but excluding insurance, information processing equipment, and motor vehicle leases;

(iii) construction, including construction under Title 4, Subtitle 4 of this article;

(iv) construction related services, including those under Title 4, Subtitle 4 of this article; and

(v) architectural or engineering services under Title 13, Subtitle 3 of this article;

(4) the Department of Transportation and the Maryland Transportation Authority, without the approval of any of the other primary procurement units, may engage in the procurement of:

(i) construction that is related to transportation, as provided in the Transportation Article;

(ii) construction related services that are related to transportation, as provided in the Transportation Article;

(iii) architectural or engineering services that are related to transportation, under Title 13, Subtitle 3 of this article;

(iv) rolling stock and other property peculiar to the operation of a transit system, as provided in § 7–403 of the Transportation Article;

(v) supplies for aeronautics related activities, including motor vehicles and information processing supplies, but excluding:

1. supplies funded by the proceeds from State general obligation bonds; and

2. insurance; and

(vi) services for aeronautics related activities, including information processing services, but excluding banking and financial services under the authority of the State Treasurer under item (1) of this subsection;

(5) the Maryland Port Commission, without the approval of any of the

other primary procurement units, may engage in the procurement of:

(i) supplies for port related activities, including motor vehicles and information processing supplies, but excluding:

1. supplies funded by the proceeds from State general obligation bonds; and

2. insurance;

(ii) services for port related activities, including information processing services, but excluding banking and financial services under the authority of the State Treasurer under item (1) of this subsection;

(iii) construction and construction related services for a port facility as defined in § 6–101(e) of the Transportation Article;

(iv) port related architectural and engineering services under Title 13, Subtitle 3 of this article; and

(v) leases of real property for port related activities unless the lease payments are from the General Fund of the State;

(6) the Department of Public Safety and Correctional Services may, without the approval of any of the other primary procurement units:

(i) engage in the procurement of construction and construction related services for State correctional facilities; and

(ii) engage in the procurement of supplies, materials, and equipment in support of construction and construction related services for State correctional facilities in accordance with this Division II and Title 2 and Title 10, Subtitle 1 of the Correctional Services Article; and

(7) the Department of Information Technology may control procurement of:

(i) information processing equipment and associated services, as provided in Title 3A, Subtitle 3 of this article; and

(ii) telecommunication equipment, systems, or services, as provided in Title 3A, Subtitle 4 of this article.

§12–108.

(a) This section does not apply to capital expenditures by the Department of Transportation or the Maryland Transportation Authority, in connection with State roads, bridges, or highways, as provided in § 12-202 of this title.

(b) Subject to the approval of the Board and under the coordination of the Governor, each of the primary procurement units shall:

(1) adopt regulations to carry out this Division II;

(2) send to the Board a copy of each proposed regulation under item (1) of this subsection; and

(3) send to the Board a copy of each internal operating procedure that the primary procurement unit adopts.

§12–109.

If authorized by the principal executive or legislative authority of the local government in accordance with local ordinance, a local health department may use either the State procurement system or the procurement system of the county in which the health department is located.

§12–110.

(a) (1) In this section the following words have the meanings indicated.

(2) "Council" means the Council for the Procurement of Health, Educational, and Social Services.

(3) "Health, educational, and social services" means services procured to provide or assist in providing:

(i) support, care, or shelter to third–party clients under a contract; or

(ii) training to third–party clients under a contract.

(4) "Task Force Report" means the report entitled "Task Force Report to the Governor and the General Assembly on Procurement of Health, Education and Social Services by State Agencies" that was issued on November 30, 2011, by the Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies.

(b) There is a Council for the Procurement of Health, Educational, and Social Services.

(c) (1) The Council consists of the following members:

(i) the State Treasurer;

(ii) the Attorney General;

(iii) the Procurement Advisor;

(iv) the State Superintendent of Schools;

(v) the Secretary of Budget and Management;

(vi) the Secretary of Juvenile Services;

(vii) the Secretary of Human Resources;

(viii) the Secretary of Health and Mental Hygiene;

(ix) the Director of the Governor's Grants Office;

(x) the Executive Director of the Governor's Office of Crime Control and Prevention;

(xi) the Executive Director of the Governor's Office for Children;

(xii) the Special Secretary for the Office of Minority Affairs;

(xiii) four representatives of private organizations with experience providing human services funded by contracts through State units, appointed by the Governor;

(xiv) a member of the Senate, appointed by the President of the Senate; and

(xv) a member of the House of Delegates, appointed by the Speaker of the House.

(2) (i) If the State Treasurer is unable to attend a meeting of the Council, the Treasurer may designate a Deputy Treasurer to attend the meeting.

(ii) If a member of the Council listed in paragraph (1)(ii) through (xii) of this subsection is unable to attend a meeting of the Council, the member may designate the Chief Procurement Officer or another senior management staff member of the agency or organization to attend the meeting.

(3) (i) This paragraph applies to members of the Council appointed under paragraph (1)(xiii) of this subsection.

(ii) On or after July 1, 2014, the term of a member is 4 years.

(iii) The terms of members are staggered as required by the terms provided for members of the Council on July 1, 2014.

(iv) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(v) A member who is appointed after a term has begun serves only

for the rest of the term and until a successor is appointed and qualifies.

(vi) A member may not serve more than two consecutive terms, except that a member appointed before July 1, 2014, may serve one additional 4–year term when the member's current term expires.

(vii) The Governor may remove a member for neglect of duty, incompetence, or misconduct.

(d) The Procurement Advisor is the Chair of the Council.

(e) The Council shall meet at least twice each year.

(f) The staffing responsibilities of the Council shall be shared by:

(1) the agencies represented on the Council; and

(2) additional staff that the Board authorizes in accordance with the State budget.

(g) The Council shall:

(1) advise the Board on specific steps necessary to implement the recommendations of the Task Force Report;

(2) monitor and report to the Board the progress of implementation of the recommendations in the Task Force Report;

(3) establish subcommittees or working committees consisting of members of the Council and interested parties to address or study specific issues;

(4) with regard to the procurement of health, educational, and social services:

(i) effect and enhance communication between State units on procurement matters, with an emphasis on disseminating information on current developments and advances in procurement methods and management;

(ii) provide a forum for the discussion of specific procurement issues and problems that arise;

(iii) advise the Board on problems in the procurement process and make recommendations for improvement to the procurement process; and

(iv) review existing procurement regulations to determine whether they fulfill the intent and purpose of the law, especially as the law relates to fostering broad–based competition and making effective use of State funds for the delivery of health, educational, and social services; and

(5) on or before December 31 of each year, report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on the Council's activities and recommendations regarding the procurement of health, educational, and social services by State agencies.

§12–111.

(a) (1) In this section the following words have the meanings indicated.

(2) "Public employer" means:

(i) a unit;

(ii) a county;

(iii) a municipality;

(iv) a county board of education; or

(v) a special taxing district.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, "services" has the meaning stated in § 11–101(t) of this article.

(ii) "Services" includes:

1. construction–related services;

2. architectural services;

3. engineering services; and

4. energy performance contract services.

(b) This section applies to a procurement contract with an estimated value of $2,000,000 or more.

(c) In response to a solicitation for a procurement contract issued by a public employer, a bidder shall disclose to the public employer the following:

(1) whether the bidder or any contractor that the bidder will subcontract with to perform the contract has plans, at the time the bid is submitted, to perform any services required under the contract outside the United States; and

(2) if services required under the contract are anticipated to be performed outside the United States:

(i) where the services will be performed; and

(ii) the reasons why it is necessary or advantageous to perform the services outside the United States.

(d) (1) Except as provided in paragraph (2) of this subsection, a public employer may not knowingly contract for the following services unless the services are to be provided in the United States:

(i) architectural services;

(ii) construction services;

(iii) engineering services; or

(iv) energy performance contract services.

(2) A public employer may contract for services listed in paragraph (1) of this subsection that are provided outside the United States, if:

(i) the services are not available in the United States;

(ii) the price of the services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or

(iii) the quality of the services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

(3) The Board shall adopt regulations defining the following terms for the purposes of this subsection:

(i) "unreasonable amount"; and

(ii) "substantially less".

§12–201.

This subtitle is broadly applicable to all procurements by the State.

§12–202.

(a) This section does not apply to capital expenditures by the Department of Transportation or the Maryland Transportation Authority, in connection with State roads, bridges, or highways.

(b) Before execution, a contract for a capital expenditure other than in connection with a State correctional facility, St. Mary's College of Maryland, Morgan State University, or the University System of Maryland shall be:

(1) reviewed by the Secretary of General Services; and

(2) except as provided in § 12-203 of this subtitle and § 13-108 of this article, after that review, approved by the Board.

(c) Before execution, a contract for a capital expenditure in connection with a State correctional facility shall be:

(1) reviewed by the Secretary of Public Safety and Correctional Services; and

(2) except as provided in § 12-203 of this subtitle, after that review, approved by the Board.

(d) Before execution, a contract for a capital expenditure in connection with the University System of Maryland shall be:

(1) subject to the provisions of Title 4, Subtitle 4 of this article;

(2) approved by the Board of Regents of the University System of Maryland; and

(3) approved by the Board of Public Works.

(e) Before execution, a contract for a capital expenditure in connection with St. Mary's College of Maryland shall be:

(1) subject to the provisions of Title 4, Subtitle 4 of this article;

(2) approved by the Board of Trustees of St. Mary's College of Maryland; and

(3) approved by the Board of Public Works.

(f) Before execution, a contract for a capital expenditure in connection with Morgan State University shall be:

(1) subject to the provisions of Title 4, Subtitle 4 of this article;

(2) approved by the Board of Regents of Morgan State University; and

(3) approved by the Board of Public Works.

(g) The Board shall supervise the expenditure of any money that the General Assembly appropriates for:

(1) buildings;

(2) equipment;

(3) new construction; or

(4) any other capital expenditure.

§12–203.

(a) (1) The Board may adopt regulations that allow a unit of the State government to enter into a contract or make a change order related to a capital project without approval.

(2) These regulations shall:

(i) comply with this section; and

(ii) be subject to the approval of the Joint Committee on Administrative, Executive, and Legislative Review.

(b) (1) Regulations adopted under this section shall:

(i) establish an expenditure or use classification to determine which contracts or change orders may be made without Board approval;

(ii) set an amount for each classification and require a unit of the State government to obtain approval of the Board if the annual dollar value of a contract and its change orders exceeds that amount; and

(iii) require a unit of the State government to establish a reporting system approved by the Board to inform the Board about contracts or change orders entered into without Board approval.

(2) The amount established by the Board under paragraph (1)(ii) of this subsection shall be an amount that:

(i) frees the Board from direct review of relatively insignificant items; but

(ii) does not impair the strong public policy favoring direct review by the Board for items that have a substantial fiscal impact.

§12–204.

(a) This section does not apply to a lease entered into on or before May 31, 1967, unless the lease is renewed after that date.

(b) (1) Except as otherwise provided in this section and § 13–108 of this article, before a unit executes or renews a lease of land, buildings, or office space, the Board shall approve the lease or lease renewal.

(2) After review by the Secretary of General Services, the Board may designate the location of any unit.

(c) (1) Subject to paragraph (2) of this subsection, the Board may adopt regulations, in accordance with Title 10, Subtitle 1 of the State Government Article, that allow a unit to execute or renew a lease without Board approval.

(2) These regulations are subject to the approval of:

(i) the General Assembly; or

(ii) while the General Assembly is not in session, the Legislative Policy Committee.

(3) Regulations adopted under this section shall:

(i) establish an expenditure or use classification to determine which leases or lease renewals may be entered into without Board approval;

(ii) set an amount for each classification and require a unit to obtain approval if a lease or lease renewal exceeds that amount; and

(iii) require a unit to establish a reporting system approved by the Board to inform the Board about leases or lease renewals entered into without Board approval.

(d) (1) Subject to paragraph (2) of this subsection, the Board may not approve a lease that:

(i) transfers ownership of the property to the lessee on or before the termination of the lease;

(ii) allows the lessee to purchase the property below fair market value or for a fixed amount;

(iii) is for a term that is 75% or more of the estimated useful economic life of the property; or

(iv) has payments with a present value that is 90% or more of the fair market value of the property.

(2) The Board may approve a lease described in paragraph (1) of this subsection if:

(i) the Capital Debt Affordability Committee has certified to the Governor and the General Assembly that the total amount of new State debt to be incurred by the lease may prudently be authorized; or

(ii) the General Assembly has approved the lease in the budget for the requesting unit.

§12–205.

(a) This section does not apply to a lease entered into on or before May 31, 1967, unless the lease is renewed after that date.

(b) An appropriation may not be obligated or spent for the lease of a building or part of a building to be occupied by the State or a unit of the State government for a State purpose at an annual rent that exceeds 15% of the fair market value of the leased premises on the date of the lease.

§12–301.

(a) (1) Before issuing a request for proposals for an energy performance contract, a primary procurement unit shall consult with the Maryland Energy Administration.

(2) The Maryland Energy Administration shall review the proposed request to ensure that it meets with the State energy standards, preserves the State's flexibility to investigate and use economically justifiable new technologies, and is in conformance with the unit's energy conservation plan that has been developed in accordance with § 4–806 of this article.

(b) (1) Notwithstanding any other provision of law and subject to the approval and control of the Board of Public Works, a primary procurement unit of State government is authorized to enter into energy performance contracts of up to 15 years' duration.

(2) The Treasurer may enter into a capital lease to finance energy performance contracts as provided in Title 8, Subtitle 4 of this article.

(3) The payments and the total contract amount due under an energy performance contract or, in the case of a capital lease used to finance energy performance contracts, the capital lease payments may not exceed the actual energy savings realized as a result of the contract's performance.

(4) (i) Before approval of an energy performance contract, the Board:

1. shall ensure that the projected annual energy savings attributable to the project will exceed the projected annual capital lease payments or payments to the contractor under the contract; and

2. based on the review of the Maryland Energy Administration, shall determine whether the proposed energy technology is appropriate for the time period provided in the contract.

(ii) The Board may:

1. authorize the use of incentive contracts, including contracts

that guarantee energy savings performance; and

2. require prospective contractors to furnish appropriate guarantees to ensure that projected savings are realized.

(iii) Any guarantees required under subparagraph (ii) of this paragraph may include a requirement that the contractor furnish a bond or other assurance to the State in an appropriate amount to guarantee projected performance and that the bond or other assurance be structured so that a failure to meet guaranteed performance savings will forfeit a portion of the bond or other assurance to match the shortfall in energy savings.

§12–302.

The Maryland Energy Administration shall be responsible for monitoring the status of active energy performance contracts and reporting that status to the Board annually.

§12–303.

The Board may modify or waive any authorization, source selection, solicitation, or contract requirement under this Division II for an energy performance contract or a class of energy performance contracts to the extent that:

(1) the purposes stated in § 11-201(a) of this article are fostered; and

(2) the circumstances of energy performance contracting require the modification or waiver.

§12–401.

(a) (1) Except as provided in paragraph (2) of this subsection, each unit with an exemption from any provision of Division II of this article shall have written policies and procedures for the exempted unit's procurements.

(2) This section does not apply to:

(i) § 11–203(a)(1)(iii) of this article;

(ii) § 11–203(a)(2) of this article;

(iii) § 11–203(e) of this article; or

(iv) § 11–203(g) of this article.

(b) Written policies and procedures shall include:

(1) the types of procurement exempted from Division II of this article;

(2) the methods of procurement to be used for procurements provided under item (1) of this subsection;

(3) the advertising requirements for each type of procurement provided under item (1) of this subsection;

(4) procurement goals, including minority business enterprise participation, for each type of procurement provided under item (1) of this subsection; and

(5) the approval process for each type of procurement provided under item (1) of this subsection.

(c) (1) Except as provided in paragraph (2) of this subsection, at the beginning of each fiscal year, each unit shall submit written policies and procedures to the Board for review as required by subsections (a) and (b) of this section.

(2) Units that are governed by their own board, commission, council, or authority shall submit their policies and procedures as required by subsections (a) and (b) of this section to their board, commission, council, or authority for approval.

§12–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Direct involvement in the deportation of victims" means ownership or operation of the trains on which individuals were transported to extermination camps, death camps, or any facility used to transition individuals to extermination camps or death camps, during the period beginning on September 1, 1939, and ending on September 2, 1945.

(c) "Entity" means:

(1) a corporation, affiliate, or other similar organization or a successor in interest of the corporation, affiliate, or similar organization that controls, or is controlled or owned or partially owned by or under common control with, a corporation that had direct involvement in the deportation of victims; or

(2) a member of a partnership or a consortium that includes an entity that certifies that it had direct involvement in the deportation of victims.

(d) "MARC" means the Maryland Area Regional Commuter.

(e) (1) "Property" means any personal belongings owned or controlled by victims.

(2) "Property" includes:

(i) jewelry;

(ii) books;

(iii) artifacts;

(iv) precious metals; and

(v) currency.

(f) "Process of assembling the records" means to:

(1) organize, digitize, and make records available to the public in an Internet accessible, electronic format that is searchable and analyzable; and

(2) prepare to submit the information described in § 12–507 of this subtitle to the State Archivist.

(g) (1) "Records" means material relating to the deportation of victims.

(2) "Records" includes:

(i) documents;

(ii) correspondence;

(iii) memoranda;

(iv) receipts;

(v) invoices;

(vi) presentations;

(vii) audits; and

(viii) any other materials related to items (i) through (vii) of this paragraph.

(h) "Victim" means an individual who was on an entity's train for the purpose of being transported to an extermination camp, death camp, or a facility used to transition individuals to extermination camps or death camps during the period beginning on September 1, 1939 and ending on September 2, 1945.

§12–502.

For the purposes of this subtitle:

(1) two or more entities shall be considered as the same entity if:

(i) one entity is a wholly owned subsidiary of the other; or

(ii) one entity owns or directly or indirectly controls more than 50% of the voting securities of the other entity, regardless of whether the equity interest in that other entity is owned by a foreign government; and

(2) if an equity interest in an entity is or was owned by a foreign government, that equity interest shall be attributed to the entity.

§12–503.

This subtitle applies to an entity that:

(1) had direct involvement in the deportation of victims; and

(2) submits a bid or offer to a unit of State or local government on a procurement contract to provide MARC service that is funded in whole or in part with public funds.

§12–504.

An entity may not be considered a responsible bidder or offeror for a procurement contract to provide MARC service unless the entity complies with the requirements of §§ 12–505 through 12–507 of this subtitle.

§12–505.

(a) In conjunction with the submission of a bid or offer on a procurement contract to a unit of State or local government to provide MARC service, an entity shall submit to the unit:

(1) a statement that the entity had direct involvement in the deportation of victims; and

(2) an estimated date for completing the process of assembling the records and providing information to the State Archivist in accordance with §§ 12–506 and 12–507 of this subtitle.

(b) The entity shall notify the unit of any change in the estimated date that was submitted to the unit in accordance with subsection (a) of this section.

§12–506.

(a) Before a unit of State or local government may award a procurement contract to provide MARC service to an entity subject to this subtitle, the entity shall comply with the provisions of this section for the process of assembling the records related to the deportation of victims.

(b) (1) An entity shall contract with an archivist and a historian to conduct

an initial analysis of the records.

(2) The archivist and historian that conduct the initial analysis shall:

(i) be approved by the State Archivist;

(ii) be independent of the entity; and

(iii) conduct the analysis in accordance with the standards of the Society of American Archivists and the Council of State Archivists.

(3) The initial analysis shall include:

(i) an inspection of each location in which the entity maintains records that may be related to the deportation of victims; and

(ii) a report submitted to the State Archivist.

(4) The initial report submitted to the State Archivist shall include:

(i) a list of each location inspected and an assessment of whether the location maintains any records;

(ii) an outline and assessment of the quality of the records;

(iii) a timeline for the process to assemble the records; and

(iv) an estimated cost to assemble the records.

(c) (1) After the initial analysis is concluded and the State Archivist has approved the initial report in accordance with § 12–508(a)(2)(i) of this subtitle, the entity shall contract with an archivist and a historian to ensure that the process of assembling the records is completed in a manner consistent with:

(i) the initial report; and

(ii) the standards of the Society of American Archivists and the Council of State Archivists.

(2) The archivist and historian contracted with to carry out paragraph (1) of this subsection:

(i) shall be approved by the State Archivist; and

(ii) may be the archivist and historian that conducted the initial analysis or another archivist and historian approved by the State Archivist.

(d) After the process of assembling the records is complete, the entity shall provide the information required under § 12–507 of this subtitle to the State Archivist.

§12–507.

Before a unit of State or local government may award a procurement contract to provide MARC service to an entity subject to this subtitle, the entity shall provide the State Archivist with the following information as it relates to the deportation of victims:

(1) a written statement providing:

(i) whether the entity possesses, has custody of, or controls records relating to the the deportation of victims;

(ii) each location where the records are maintained; and

(iii) the contents and addresses of each archive or other facility where the entity maintains records;

(2) a detailed index of the records, including:

(i) the location of the records and a list of any money received for each deportation, delineated by individual convoys and persons; and

(ii) an accounting of each piece of property taken or confiscated from each victim;

(3) if the entity no longer has in its custody or control any or all of the property taken or confiscated from each victim, a written description of:

(i) the time and manner in which the entity disposed of or converted the property;

(ii) any property currently owned or operated by the entity that was exchanged for the expropriated property;

(iii) any expropriated property currently owned by the entity or any other property derived from the expropriated property; and

(iv) any other derivative or traceable property that remains in the entity's possession, custody, or control as a result of its deportations activity; and

(4) a written statement concerning whether the entity has provided restitution or reparations to all identifiable victims of the deportations and, if so stated, a detailed description on how the restitution or reparations apply specifically to the deportation of each victim.

§12–508.

(a) The State Archivist shall:

(1) approve an archivist and historian to conduct the initial analysis

required under § 12–506(b) of this subtitle;

(2) within 14 days after receiving the initial report submitted in accordance with § 12–506(b) of this subtitle:

(i) review the report and determine whether, in the professional opinion of the State Archivist, the report is consistent with the standards of the Society of American Archivists and the Council of State Archivists; and

(ii) approve an archivist and historian that will ensure that the process of assembling the records is completed in a manner consistent with:

1. the initial report; and

2. the standards of the Society of American Archivists and the Council of State Archivists;

(3) as needed, provide guidance for and oversight of the process of assembling the records;

(4) after receiving from an entity the information required under § 12–507 of this subtitle, determine whether, in the professional opinion of the State Archivist:

(i) the process of assembling the records is complete;

(ii) the process of assembling the records was completed in a manner consistent with:

1. the initial report submitted in accordance with § 12–506(b) of this subtitle; and

2. the standards of the Society of American Archivists and the Council of State Archivists; and

(iii) the information submitted under § 12–507 of this subtitle is as complete and accurate as possible; and

(5) provide written notice of the determination made under item (4) of this subsection to:

(i) the entity; and

(ii) if the State Archivist determines that the entity met the requirements set forth in item (4)(i), (ii), and (iii) of this subsection, to the unit of State or local government awarding the procurement contract to provide MARC service.

(b) The State Archivist may use a designee to carry out any provision of this section.

§12–509.

(a) At least 30 days before awarding a procurement contract on which an entity subject to this subtitle submitted a bid or offer, a unit of State or local government shall publish notice of its intent to award the procurement contract.

(b) A unit of State or local government may not award a procurement contract to provide MARC service to an entity that does not comply with §§ 12–505 through 12–507 of this subtitle.

(c) A unit of State or local government may award a procurement contract to provide MARC service to an entity only after the unit receives the notice from the State Archivist in accordance with § 12–508(a)(5) of this subtitle.

(d) Notwithstanding the requirements of this subtitle, a unit of State or local government may award a procurement contract to provide MARC service to a bidder or offeror that is not an entity subject to the requirements of this subtitle.

§12–510.

An entity awarded a procurement contract to provide MARC service in accordance with § 12–509(c) of this subtitle is considered to have satisfied the requirements of §§ 12–505 through 12–507 of this subtitle for all future procurement contracts to provide MARC service.

§12–511.

The entity or any other bidder or offeror for a procurement contract to provide MARC service may not submit a protest under § 15–217 of this article relating to the requirements of this subtitle.

§13–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "eMaryland Marketplace" means the Internet-based procurement system managed by the Department of General Services.

(c) "Evaluated bid price" means the price of a bid after adjustment in accordance with objective measurable criteria.

(d) (1) "Objective measurable criteria" means standards that enable the State to compare the economy, effectiveness, or value of the subject of the bids.

(2) "Objective measurable criteria" includes standards of reliability, operational costs, maintainability, useful life, and residual value.

§13–102.

(a) Except as provided in Subtitle 3 and Subtitle 4 of this title, all procurement by units shall be by competitive sealed bids unless one of the following methods specifically is authorized:

(1) competitive sealed proposals under § 13–104 or § 13–105 of this subtitle;

(2) noncompetitive negotiation under § 13–106 of this subtitle;

(3) sole source procurement under § 13–107 of this subtitle;

(4) emergency or expedited procurement under § 13–108 of this subtitle;

(5) small procurement under § 13–109 of this subtitle;

(6) an intergovernmental cooperative purchasing agreement under § 13–110 of this subtitle; or

(7) auction bids under § 13–111 of this subtitle.

(b) (1) In awarding a procurement contract for human, social, cultural, or educational service, the preferred method is by competitive sealed proposals under § 13–104 of this subtitle.

(2) In awarding a procurement contract for a lease of real property, the preferred method is by competitive sealed proposals under § 13–105 of this subtitle.

(3) Procurement under an intergovernmental cooperative purchasing agreement is appropriate in situations where the State is expected to achieve a better price as the result of economies of scale or to otherwise benefit by purchasing in cooperation with another governmental entity.

§13–102.1.

(a) A unit may not charge a fee to access eMaryland Marketplace.

(b) (1) The Department of Budget and Management may establish fees for the use of eMaryland Marketplace by an entity that publishes a notice of a procurement, conducts a procurement, or publishes a notice of award.

(2) The Department of Budget and Management may not charge a unit, as defined in § 11–101(x) of this article, a fee under this subsection.

§13–103.

(a) (1) Whenever procurement is based on competitive sealed bids, a procurement officer shall seek bids by issuing an invitation for bids.

(2) Subject to subsection (b) of this section, an invitation for bids shall include:

(i) the specifications of the procurement contract, including the expected degree of minority business enterprise participation, as provided in § 14–303(b) of this article;

(ii) whether the procurement contract will be awarded based on the lowest bid price, the lowest evaluated bid price or, if the procurement is subject to § 11–202(3) of this article, the bid most favorable to the State;

(iii) if the procurement contract will be based on evaluated bid price, the objective measurable criteria by which the lowest evaluated bid price will be determined; and

(iv) if the Secretary of General Services, the Secretary of Transportation, or the Chancellor of the University System of Maryland has so designated, the small business preference.

(b) (1) Whenever a procurement officer determines that an initial preparation of specifications for price bids is impracticable, the invitation for bids may:

(i) include a request for unpriced technical offers or samples; and

(ii) direct bidders to submit price bids:

1. with the unpriced technical offers or samples; or

2. after the unit evaluates the technical offers or samples and finds that they are acceptable under the criteria set forth in the invitation for bids.

(2) A unit shall consider the prices submitted by bidders whose technical offers or samples have been found acceptable.

(3) Price bids may not be opened until after the unit has completed evaluation of the technical offers or samples.

(4) (i) A price bid may not be opened at any time if the bid is submitted by a bidder whose technical offer or sample has been evaluated as unacceptable to the unit.

(ii) A procurement officer shall return an unopened price bid submitted by a bidder whose technical offer or sample has been evaluated as unacceptable.

(c) (1) A unit shall give public notice of an invitation for bids before bid opening in accordance with this subsection.

(2) A unit shall give reasonable notice that shall be at least 10 days before bid opening.

(3) Until July 1, 2006, the unit shall publish notice in the Contract Weekly, Contract Weekly Online, and eMaryland Marketplace at least 20 days before bid opening if:

(i) the procurement officer reasonably expects bid prices to exceed $25,000 or a lower amount set by the Board by regulation in accordance with Title 10, Subtitle 1 of the State Government Article; and

(ii) at least part of the procurement contract is to be performed in this State or the District of Columbia.

(4) On and after July 1, 2006, the unit shall publish the notice required under paragraph (3) of this subsection in eMaryland Marketplace.

(5) In addition to any notice required under this subsection, a unit may publish notice of an invitation for bids:

(i) on a bid board or eMaryland Marketplace; or

(ii) in a newspaper, periodical, or trade journal.

(d) (1) A procurement officer shall:

(i) open bids in public at the time and place designated in the invitation for bids; and

(ii) announce, record, and post:

1. the name of each bidder; and

2. the amount of each bid.

(2) Except as provided in paragraph (3) of this subsection, a bid is irrevocable, after bid opening, for the period specified in the invitation for bids.

(3) A procurement officer may allow a bidder to correct or withdraw a bid if correction or withdrawal is:

(i) allowed under regulations adopted under this Division II; and

(ii) approved in writing by the Office of the Attorney General.

(e) (1) After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible bidder who submits the responsive bid that:

(i) is the lowest bid price;

(ii) if the invitation for bids so provides, is the lowest evaluated bid price; or

(iii) for procurement subject to § 11–202(3) of this article, is the bid most favorable to the State.

(2) If, after competitive sealed bids have been opened, a procurement officer determines that only 1 responsible bidder has submitted a responsive bid, the unit may negotiate the procurement contract with that 1 bidder under the procedure for sole source procurement.

(3) (i) After competitive sealed bids have been opened, a procurement officer may award a procurement contract on the basis of revised bids if:

1. all bids are rejected under § 13–206(b) of this title;

2. all bid prices exceed the funds available for the procurement; or

3. with the approval of the head of the unit or a designee, the procurement officer determines that all bids are unreasonable as to at least 1 requirement and the delay that would result from issuing a new invitation for bids with revised specifications or quantities would be fiscally disadvantageous or otherwise not in the best interests of the State.

(ii) If there is more than 1 bidder, discussions about revised specifications or quantities shall be conducted with all responsible bidders who submitted responsive bids. The bidders shall be treated fairly and equally with respect to any discussions.

(iii) As promptly as possible, the procurement officer shall:

1. issue an invitation for revised bids, which shall state whether the award will be made without competitive negotiations; and

2. require a prompt response to that invitation.

(iv) An invitation for revised bids is not subject to the notice requirements in subsection (c) of this section.

(v) After revised bids have been submitted, negotiations with bidders may not be conducted unless the procurement officer determines that there is a compelling reason to negotiate.

(vi) After revised bids have been opened and any approval required by law has been obtained, the procurement officer shall award the procurement contract

to the responsible bidder who submits a responsive bid that:

1. is the lowest bid price;

2. if the invitation for revised bids so provides, is the lowest evaluated bid price; or

3. for procurement subject to § 11–202(3) of this article, is the bid most favorable to the State.

(4) A responsible bid or proposal shall include the criteria specified in subsection (a) of this section.

(f) Not more than 30 days after the execution and approval of a procurement contract in excess of $25,000 awarded under this section, or a lower amount set by the Board by regulation in accordance with Title 10, Subtitle 1 of the State Government Article, a unit shall publish notice of the award:

(1) until July 1, 2006, in the Contract Weekly and eMaryland Marketplace; and

(2) on and after July 1, 2006, in eMaryland Marketplace.

§13–104.

(a) Competitive sealed proposals may be used if:

(1) the procurement is for human, social, cultural, or educational services;

(2) with the approval of the head of a unit, the procurement officer determines that specifications cannot be prepared that allow an award based on the lowest bid price, the lowest evaluated bid price or, if the procurement is subject to § 11–202(3) of this article, the bid most favorable to the State; or

(3) the head of the unit determines that:

(i) the need to use a method other than competitive sealed bids is sufficiently compelling to override the general public policy that favors awarding procurement contracts on the basis of competitive sealed bids; and

(ii) the use of competitive sealed bidding for that procurement contract is not practicable or not advantageous to the State.

(b) (1) Whenever procurement is based on competitive sealed proposals, a procurement officer shall seek proposals by issuing a request for proposals.

(2) A request for proposals shall include a statement of:

(i) the scope of the procurement contract, including the expected

degree of minority business enterprise participation, as provided in § 14–303(b) of this article;

(ii) the factors, including price, that will be used in evaluating proposals; and

(iii) the relative importance of each factor.

(c) A unit shall publish a request for proposals in the same manner as required for an invitation for bids.

(d) (1) After receipt of proposals but before the procurement officer awards the procurement contract, a unit may conduct discussions with an offeror to:

(i) obtain the best price for the State; and

(ii) ensure full understanding of:

1. the requirements of the State, as set forth in the request for proposals; and

2. the proposal submitted by the offeror.

(2) If discussions are conducted, the unit:

(i) shall conduct the discussions in accordance with regulations adopted under this Division II;

(ii) shall provide an opportunity to participate to each responsible offeror who submits a proposal that, in the judgment of the procurement officer, is reasonably susceptible of being selected for award;

(iii) shall treat all of those responsible offerors fairly and equally;

(iv) may allow all of those responsible offerors to revise their initial proposals by submitting best and final offers, if discussions indicate that it would be in the best interests of the State to do so;

(v) may conduct more than 1 series of discussions and requests for best and final offers; and

(vi) may not disclose to an offeror any information derived from a proposal of or discussions with a competing offeror.

(e) (1) Except as provided in paragraph (2) of this subsection:

(i) a proposal is irrevocable for the period specified in the request for proposals; and

(ii) a best and final offer is irrevocable for the period specified in the request for best and final offers.

(2) A procurement officer may allow an offeror to correct or withdraw a proposal or best and final offer if correction or withdrawal is:

(i) allowed under regulations adopted under this Division II; and

(ii) approved in writing by the Office of the Attorney General.

(f) After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the State considering the evaluation factors set forth in the request for proposals.

(g) A unit shall publish notice of a contract in excess of $25,000 awarded under this section, or a lower amount set by the Board by regulation in accordance with Title 10, Subtitle 1 of the State Government Article as follows:

(1) until July 1, 2006, in the Contract Weekly and in eMaryland Marketplace; and

(2) on and after July 1, 2006, in eMaryland Marketplace.

§13–105.

(a) A request for proposals for a lease of real property shall include:

(1) a work statement that shall be used as a basis for the evaluation of proposals;

(2) a statement of the factors, including price, that will be used in evaluating proposals; and

(3) a statement of the relative importance of each factor.

(b) Subject to the requirements of Title 4, Subtitle 3, Part III of this article, a unit shall publish a request for proposals in the same manner as required for an invitation for bids.

(c) After proposals have been opened, the procurement officer shall reject any proposal that is unacceptable.

(d) (1) If more than three proposals are submitted, the procurement officer may conduct negotiations with the offerors who, based on a preliminary evaluation in accordance with the evaluation factors, have submitted the three best proposals.

(2) Negotiations are not required if the request for proposals:

(i) notified all offerors that negotiations would not be conducted; and

(ii) requested best and final offers.

(e) (1) The procurement officer:

(i) may establish a maximum fair market rental rate for each premises offered;

(ii) during negotiations, may not disclose to an offeror any information derived from the proposal of a competing offeror, except price and information directly related to price; and

(iii) after negotiations, may reject a proposal that exceeds the maximum fair market rate.

(2) After receiving best and final offers:

(i) a procurement officer may conduct further negotiations with the successful offeror to obtain for the State the best price, conditions, and services; and

(ii) any modification of a successful offer must be in the best interests of the State.

(f) By direct solicitation and without republication of notice, the procurement officer may acquire other offers if:

(1) (i) negotiations and best and final offers fail to produce a lease for real property with terms comparable to market rental rates in the boundaries in which the unit must obtain the lease; and

(ii) the final offeror did not accept a lease with terms comparable to the market rental rates; or

(2) the public notice of requests for proposals fails to produce a response or offer of a lease for real property.

(g) If a procurement officer determines that renewal of an existing lease is in the best interests of the State, the procurement officer may negotiate the renewal without soliciting other offers.

(h) After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the State considering:

(1) the price and evaluation factors set forth in the request for proposals; and

(2) the modifications to those factors under the negotiation process.

§13–106.

(a) A procurement officer may award a procurement contract on the basis of noncompetitive negotiation if:

(1) the procurement is for human, social, or educational services to be provided directly to individuals with disabilities, individuals who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, or displaced or minors;

(2) the procurement is one of a class for which the Department of Budget and Management has approved the use of noncompetitive negotiation; and

(3) with the approval of the head of the unit, the procurement officer determines that:

(i) at least 2 sources are available for the services; but

(ii) the absence of effective competition makes it unreasonable to expect bids or proposals from the available sources.

(b) (1) Whenever a procurement is based on noncompetitive negotiation, a unit shall publish a request for general expressions of interest.

(2) A request for general expressions of interest shall:

(i) state the general requirement for services;

(ii) request interested service providers to respond in writing with general expressions of interest; and

(iii) be published in the same manner as required for an invitation for bids.

(c) (1) To satisfy all or part of the requirements of the State as they occur, and without additional advertising, the procurement officer may conduct discussions with any responsible service provider who has submitted an expression of interest.

(2) As far as practicable in the course of administering a program, the unit shall treat fairly and equally with respect to discussions all responsible service providers who have submitted expressions of interest.

(d) After obtaining any approval required by law, the unit may award a procurement contract if the head of the unit determines, on the basis of continuing discussions or past program experience, that an award will serve the best interests of the State.

(e) A unit shall publish in eMaryland Marketplace notice of a procurement contract awarded under this section.

§13–107.

(a) (1) Whenever a procurement officer determines that there is only 1 available source for the subject of a procurement contract, the procurement officer may award the procurement contract without competition to that source.

(2) Before awarding a procurement contract to a sole source, the procurement officer shall obtain:

(i) the approval of the head of the unit; and

(ii) any other approval required by law.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, with the prior written approval of the Attorney General, a unit may enter into a sole source contract to obtain the services of a contractor in connection with:

(i) threatened or pending litigation;

(ii) appraisal of real property for acquisition by the State; or

(iii) collective bargaining.

(2) This subsection applies only to a procurement in which:

(i) a unit obtains the services of a contractor to represent the State; and

(ii) the nature of the services to be performed requires confidentiality.

(3) This subsection does not apply if the unit reasonably can anticipate a continuing need for a contractor described in paragraph (1)(ii) or (iii) of this subsection.

(c) Not more than 30 days after the execution and approval of a procurement contract awarded under this section, a unit shall publish in eMaryland Marketplace notice of the award.

§13–108.

(a) (1) Except as provided in § 11–205 ("Collusion"), § 10–204 ("Approval for designated contracts"), § 13–219 ("Required clauses – Nondiscrimination clause"), § 13–221 ("Disclosures to Secretary of State"), Title 16 ("Suspension and Debarment of Contractors"), or Title 17 ("Special Provisions – State and Local Subdivisions") of this article, with the approval of the head of a unit, its procurement officer may make an emergency procurement by any method that the procurement officer considers most appropriate to avoid or mitigate serious damage to public health, safety, or welfare.

(2) The procurement officer shall:

(i) obtain as much competition as possible under the circumstances;

(ii) limit the emergency procurement to the procurement of only those items, both in type and quantity, necessary to avoid or to mitigate serious damage to public health, safety, or welfare; and

(iii) after awarding the procurement contract, submit to the Board a written report that gives the justification for use of the emergency procurement procedure.

(b) (1) Except as provided in § 11–205 ("Collusion"), § 10–204 ("Approval for designated contracts"), § 13–219 ("Required clauses – Nondiscrimination clause"), § 13–221 ("Disclosures to Secretary of State"), Title 16 ("Suspension and Debarment of Contractors"), or Title 17 ("Special Provisions – State and Local Subdivisions") of this article, with the approval of the head of the unit and the Board, the Maryland Port Commission or the Maryland Aviation Administration may make a procurement on an expedited basis if the head of the unit and the Board find that:

(i) urgent circumstances require prompt action;

(ii) an expedited procurement best serves the public interest; and

(iii) the need for the expedited procurement outweighs the benefits of making the procurement on the basis of competitive sealed bids or competitive sealed proposals.

(2) The procurement officer shall attempt to obtain as much competition as reasonably possible.

(c) Not more than 30 days after the execution and approval of a procurement contract awarded under this section, a unit shall publish in eMaryland Marketplace notice of the award.

(d) For real property leases procured under this section, the term of the lease shall be for the minimum period of time practicable.

§13–109.

(a) In this section, "small procurement" means a procurement for which:

(1) a unit spends $25,000 or less;

(2) a contractor provides services subject to § 11–202(3) of this article for expected annual revenues of $25,000 or less; or

(3) the Department of General Services is seeking to award a procurement contract for a construction with a value that is $50,000 or less.

(b) A unit may make small procurements in accordance with the regulations of primary procurement units.

(c) A primary procurement unit may not create a small procurement by artificial division of a procurement.

(d) Any regulation of a primary procurement unit to govern small procurements:

(1) shall provide for a simplified administrative procedure;

(2) shall be consistent with the basic intent of this Division II; and

(3) may not be disadvantageous economically to the State.

(e) At least every 3 years, the Board shall:

(1) review the prevailing costs of labor and materials; and

(2) if warranted by changes in cost, recommend to the General Assembly appropriate adjustments in the ceiling for a small procurement.

§13–110.

(a) (1) In this section the following words have the meanings indicated.

(2) "Cooperative entity" means one or more State or local entities that enter into an agreement for the cooperative or joint administration of programs.

(3) "Governmental entity" means:

(i) the federal government or an agency or other instrumentality of the federal government;

(ii) another state or an agency or other instrumentality of another state;

(iii) a bistate or multistate agency;

(iv) a county, municipal corporation, or other political subdivision of the State or of another state, or an agency or other instrumentality of the political subdivision;

(v) a bicounty or multicounty agency;

(vi) a primary procurement unit; or

(vii) an affiliation, alliance, consortium, or group composed solely of governmental entities that is established for purposes of promoting intergovernmental cooperative purchasing.

(4) "Intergovernmental cooperative purchasing agreement" means a contract:

(i) 1. entered into by at least one governmental entity and a person selected in a manner that is consistent with the purposes set forth under § 11–201 of this article;

2. that is available for use by the governmental entity entering the contract and at least one additional governmental entity which may, but need not be, an original party to the contract; and

3. that is intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing; or

(ii) between a primary procurement unit and a person who, at the time the intergovernmental cooperative purchasing agreement is awarded, has a contract with the federal government or an agency or other instrumentality of the federal government, and who agrees to provide the unit with identical prices, terms, and conditions as stipulated in the federal contract.

(5) (i) "Local entity" means a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of this State.

(ii) "Local entity" includes boards of education and library boards that receive funding from the State.

(6) "Not–for–profit entity" means a corporation incorporated in the State, or otherwise qualified to do business in the State that has been determined by the Internal Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal Revenue Code.

(7) "State entity" means a department, board, commission, agency, or a subunit in the Executive branch of State government.

(b) (1) Subject to § 12–107 of this article, whenever a primary procurement unit procurement officer determines that it is in the best interest of the State to sponsor or participate in an intergovernmental cooperative purchasing agreement, with the approval of the unit head and subject to any other approval required by law, the primary procurement unit may become a party to or participate under the agreement.

(2) A determination under this subsection shall be in writing and include a statement that the intergovernmental cooperative purchasing agreement:

(i) will provide cost benefits to the State, promote administrative efficiencies, or promote intergovernmental cooperation; and

(ii) is not intended to evade the purposes of this Division II.

(3) If a primary procurement unit sponsors an intergovernmental cooperative purchasing agreement:

(i) the contract shall be awarded in the same manner as the contract would be awarded under this Division II if the unit was the sole participant under the contract; and

(ii) all procedures under this Division II, including procedures governing contract claims and protests, shall apply.

(4) If a primary procurement unit participates in an intergovernmental cooperative purchasing agreement, any protest or contract claim involving the agreement shall be handled in accordance with the terms of the agreement.

(c) (1) Except as provided in paragraph (2) of this subsection, each procurement contract for supplies or services entered into by a State or local entity shall include a provision that facilitates other State and local entities and not–for–profit entities to participate in the contract.

(2) (i) This subsection does not apply to:

1. a procurement for a capital facility, improvement, or other unique purchase; or

2. a procurement with a projected value of less than $100,000.

(ii) This subsection does not apply if the State or local entity determines that including the provision would:

1. undermine the desired timing or effect of the procurement;

2. interfere with the State or local entity's ability to meet:

A. the minority business enterprise goals provided under § 14–302 of this article or any other minority business enterprise program sponsored by the local entity; or

B. the Small Business Reserve Program requirements under § 14–502 of this article or any other small business procurement program sponsored by the local entity; or

3. not be in the best interest of the entity.

(d) (1) A State or local entity may enter into an agreement for the cooperative or joint administration of programs with one or more other State or local entities.

(2) A cooperative entity established under this section may administer the programs and exercise the powers and duties specifically delegated to the cooperative

entity by the agreement that established the cooperative entity.

(3) An agreement described under this subsection does not relieve a State or local entity or other participant of the agreement from any obligation or responsibility imposed on the entity by law.

(e) Notwithstanding any other law, a local entity may participate in an existing State or local contract drafted in accordance with this section, if the governing body of the entity determines that participation would:

(1) provide a cost savings in purchase price or administrative burden; or

(2) further other policy goals including operational and energy–efficiency goals related to the purchase, operation, or maintenance of the supply or service.

§13–111.

(a) This section applies to the procurement of supplies, with an estimated contract value of $1,000,000 or more, by a primary procurement unit.

(b) (1) Whenever the head of a primary procurement unit or designee determines that it is in the best interest of the State for a procurement contract to be based on auction bids, a procurement officer shall seek bids by issuing an invitation for auction bids.

(2) Subject to subsection (c) of this section, an invitation for auction bids shall include:

(i) the specifications of the procurement contract;

(ii) whether the procurement contract will be awarded based on the lowest bid price or the lowest evaluated bid price;

(iii) if the procurement contract will be based on evaluated bid price, the objective measurable criteria by which the lowest evaluated bid price will be determined;

(iv) the small business preference, if designated under § 13–103 of this subtitle; and

(v) the date and time when bidding will commence and the date and time when bidding will end or the event upon which bidding will end.

(c) (1) In the discretion of the procurement officer, the invitation for auction bids may:

(i) include a request for unpriced technical offers or samples;

(ii) direct bidders to submit price bids after the unit evaluates the

technical offers or samples and finds they are acceptable under the criteria set forth in the invitation for auction bids; and

(iii) inform all bidders who submitted technical offers or samples of the identity of each bidder who submitted an acceptable technical offer or sample.

(2) Price bids may not be received until after the unit has completed evaluation of the technical offers or samples.

(3) A price bid may not be received at any time if the bid is submitted by a bidder whose technical offer or sample has been evaluated as unacceptable to the unit.

(d) A unit shall give public notice of an invitation for auction bids in the same manner as required for an invitation for bids.

(e) (1) (i) Multiple price bids are permitted in response to an invitation for auction bids.

(ii) When a bidder submits multiple bids, each bid shall be judged independently and shall not revoke previous bids of that bidder.

(2) A procurement officer shall:

(i) receive bids in public at the time and place designated in the invitation for auction bids; and

(ii) record and post the amount of each bid at the time it is received.

(3) (i) The amount of a price bid shall be available for public inspection from the time it is received.

(ii) The identity of the bidder submitting a price bid shall not be available for public inspection until bidding has ended.

(4) Except as provided in paragraph (5) of this subsection, a bid is irrevocable, after receipt, for the period specified in the invitation for auction bids.

(5) A procurement officer may allow a bidder to correct or withdraw a bid if correction or withdrawal is:

(i) allowed under regulations adopted under this Division II applicable to an invitation for bids; and

(ii) approved in writing by the Office of the Attorney General.

(f) (1) After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible bidder who submits the responsive bid that:

(i) is the lowest bid price; or

(ii) if the invitation for auction bids so provides, is the lowest evaluated bid price.

(2) If, after bids have been received, a procurement officer determines that only one responsible bidder has submitted a responsive bid, the unit may negotiate the procurement contract with that one bidder under the procedure for sole source procurement.

(3) (i) After bids have been received, a procurement officer may award a procurement contract on the basis of revised bids if:

1. all bids are rejected under § 13–206(b) of this title;

2. all bid prices exceed the funds available for the procurement; or

3. with the approval of the head of a primary procurement unit or a designee, the procurement officer determines that all bids are unreasonable as to at least one requirement and the delay that would result from issuing a new invitation for auction bids with revised specifications or quantities would be fiscally disadvantageous or otherwise not in the best interests of the State.

(ii) If there is more than one bidder, discussions about revised specifications or quantities shall be conducted with all responsible bidders who submitted responsive bids. The bidders shall be treated fairly and equally with respect to any discussions.

(iii) If one of the conditions set forth under subparagraph (i) of this paragraph exists, as promptly as possible, the procurement officer shall:

1. issue an invitation for revised auction bids, which shall state whether the award will be made without competitive negotiations; and

2. require a prompt response to that invitation.

(iv) An invitation for revised auction bids is not subject to the notice requirements in subsection (d) of this section.

(v) After revised bids have been submitted, negotiations with bidders may not be conducted unless the procurement officer determines that there is a compelling reason to negotiate.

(vi) After revised bids have been received and any approval required by law has been obtained, the procurement officer shall award the procurement contract to the responsible bidder who submits a responsive bid that:

1. is the lowest bid price; or

2. if the invitation for revised bids so provides, is the lowest evaluated bid price.

(g) Not more than 30 days after the execution and approval of a procurement contract awarded under this section, a unit shall publish notice of the award:

(1) until July 1, 2006, in the Contract Weekly and eMaryland Marketplace; and

(2) on and after July 1, 2006, in eMaryland Marketplace.

§13–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Change order" means a written order that:

(1) is signed by the procurement officer; and

(2) directs the contractor to make changes that the procurement contract authorizes the procurement officer to order without the consent of the contractor.

(c) "Contract modification" means a written alteration that:

(1) affects specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of a procurement contract; and

(2) is accomplished by mutual action of the parties to the procurement contract.

(d) "Cost-reimbursement contract" means a procurement contract under which the State reimburses a contractor for fees and other costs that are:

(1) recognized as allowable and allocable under the regulations of the Board on price and cost principles; and

(2) within a stated ceiling.

§13–202.

(a) After a solicitation is issued and until a recommendation is made by a procurement officer, a procurement officer may disclose to a person outside the Executive Department only:

(1) whether a decision has been made regarding a solicitation; and

(2) information that is available to the public under Title 4, Subtitles 1

through 5 of the General Provisions Article.

(b) After a solicitation is issued, a procurement officer shall record and include in the procurement file the following information from an inquiry from a source outside the Executive Department:

(1) the date and time of the inquiry;

(2) the name and affiliation of the person making the inquiry; and

(3) the substance and nature of the inquiry.

(c) A procurement officer shall maintain a file on each procurement that includes:

(1) a record of all inquiries required to be recorded under subsection (b) of this section;

(2) all written solicitations by an agency or unit;

(3) all offers received;

(4) all internal and external correspondence regarding the procurement;

(5) written documentation from the procurement officer describing efforts to confirm the information in the affidavits submitted by the successful bidder or offeror; and

(6) the final contract.

§13–204.

(a) (1) By regulation, each of the primary procurement units may provide for the prequalification of persons as prospective responsible bidders or offerors for procurements other than leases of real property.

(2) Each of the primary procurement units shall keep a register of all prequalified persons.

(3) Persons prequalified as prospective responsible bidders or offerors by a primary procurement unit for procurements of direct or indirect work-related services shall be deemed to be prequalified for the purposes of procurements by the Department of Human Resources of direct or indirect work-related services to benefit current recipients, former recipients or non-custodial parents of children who are current or former recipients of family investment program benefits.

(b) If a primary procurement unit or the Department of Human Resources uses a prequalification procedure for awarding a procurement contract:

(1) a person who is not prequalified may submit a bid or proposal; and

(2) after bid opening or receipt of proposals and before awarding the procurement contract, a procurement officer may determine that:

(i) a person who was not prequalified at the time of bid opening or receipt of proposals is a responsible bidder or offeror; or

(ii) a prequalified person is not a responsible bidder or offeror.

§13–205.

(a) A unit:

(1) shall draft specifications to encourage maximum practicable competition without modifying the requirements of the State; and

(2) may not draft specifications to favor a single prospective bidder or offeror.

(b) A unit shall require a prospective bidder or offeror of supplies or construction to state in the bid or offer:

(1) whether the procurement will or may include recycled materials; and

(2) the types, amounts, and application of recycled materials that the bidder or offeror intends to include in the procurement.

§13–206.

(a) (1) A procurement officer shall reject a bid or proposal if the procurement officer determines that:

(i) the bid is nonresponsive or the proposal is unacceptable; or

(ii) the bidder or offeror is not responsible.

(2) The procurement officer shall include a determination under this subsection in the procurement file.

(b) If, with the approval of the Board, a unit determines that it is fiscally advantageous or otherwise in the best interests of the State, the unit may:

(1) cancel an invitation for bids, a request for proposals, or other solicitation; or

(2) reject all bids or proposals.

(c) A procurement officer may determine that a person is not a responsible

bidder or offeror for:

(1) unreasonable failure to supply information promptly in connection with a determination of responsibility under subsection (a) of this section; or

(2) any other reason indicating that the person does not have:

(i) the capability in all respects to perform fully the requirements for a procurement contract; or

(ii) the integrity and reliability that will ensure good faith performance.

§13–207.

(a) Except as otherwise provided in this section, a procurement officer may not require a bidder or offeror to provide bid security on a procurement contract if the procurement officer expects the price to be $100,000 or less.

(b) (1) A procurement officer shall require a bidder or offeror to provide bid security on a procurement contract for construction if:

(i) the price is expected to exceed $100,000; or

(ii) the price is expected to be $100,000 or less but federal law or a condition of federal assistance requires the security.

(2) The amount of bid security required for a procurement contract for construction shall be:

(i) at least 5% of the bid or price proposal; or

(ii) if the bid or price proposal states a rate but not a total price, an amount determined by the procurement officer.

(c) (1) A procurement officer may require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if the price of the procurement contract is expected to exceed $50,000.

(2) A procurement officer shall require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if federal law or a condition of federal assistance requires the security.

(3) The amount of bid security required for a procurement contract for services, supplies, or construction related services shall be an amount determined by the procurement officer. If a bid or proposal states a rate but not a total price, the procurement officer shall determine the dollar amount of the bid security.

(d) Bid security under this section shall be:

(1) a bond provided by a surety company authorized to do business in the State;

(2) cash; or

(3) another form of security allowed by regulation.

§13–208.

(a) Except as provided under subsection (b) of this section, if a procurement officer requires bid security, the procurement officer shall reject a bid or proposal that is not accompanied by proper security.

(b) A procurement officer may accept a bid or proposal that is accompanied by bid security in less than the amount required if:

(1) the procurement officer determines that:

(i) the deficiency in the amount is insubstantial; and

(ii) acceptance of the bid or proposal would be in the best interests of the State; and

(2) the procurement officer further determines that:

(i) the bid or proposal was the only one submitted and there is no time for rebidding;

(ii) the bid security became inadequate as a result of the correction of a mistake in the bid or proposal or as a result of a modification in the bid or proposal in accordance with applicable regulations, and the bidder or offeror increased the amount of bid security to required limits within 48 hours after the correction or modification; or

(iii) after consideration of the risks involved and the difference between the lowest bid and the next lowest bid, it would be fiscally advantageous to the State to accept the lowest bid or proposal.

§13–209.

Whenever a bidder or offeror withdraws a bid or proposal, action may be taken against the bid security unless:

(1) there is a mistake in the bid or proposal; and

(2) the procurement officer allows the bidder or offeror to withdraw before the procurement contract is awarded.

§13–210.

(a) (1) If a procurement officer decides to conduct a pre–bid conference to explain the requirements of a procurement that is expected to exceed $100,000, as soon as practicable after the conference concludes, the procurement officer shall have written minutes of the conference prepared.

(2) The minutes of a pre–bid conference are public records and shall be open to public inspection during ordinary business hours.

(b) (1) Subject to Title 4 of the General Provisions Article:

(i) a summary of the final evaluation of a proposal shall be open to public inspection;

(ii) after an award, all proposals shall be open to public inspection; and

(iii) at and after bid opening, the contents of a bid and any document submitted with the bid shall be open to public inspection.

(2) Except as otherwise provided in this section, Title 4 of the General Provisions Article shall govern any request for the disclosure of information related to a procurement.

(c) A procurement officer may deny public access to the advisory or deliberative records of an evaluator of a proposal if the records would not be available by law to a private party in litigation with the unit.

(d) (1) Before bid opening:

(i) bids shall remain sealed; and

(ii) the State may not disclose the name of a bidder.

(2) Before the closing date for proposals, a procurement officer may not disclose the name of a person who has submitted a proposal.

(3) Before awarding a procurement contract based on competitive sealed proposals, the State may not disclose the contents of a proposal to any person other than a person responsible for evaluating or reviewing the proposal.

(e) Subsections (b)(1), (c), and (d) of this section do not affect the authority of the Board of Contract Appeals or a court of competent jurisdiction to:

(1) decide that information is discoverable in an administrative or judicial proceeding; and

(2) compel disclosure.

§13–211.

(a) In this section, "procurement official" means a procurement officer or an individual who participates in the drafting of specifications for procurement.

(b) During the conduct of a procurement, a competing contractor, or any officer, employee, representative, agent, or consultant of any competing contractor, may not knowingly:

(1) make any offer or promise of future employment or business opportunity to, or engage in any discussion of future employment or business opportunity with, any procurement official of the agency conducting the procurement;

(2) offer, give, or promise to offer or give any money, gratuity, or other thing of value to any procurement official of the agency conducting the procurement; or

(3) solicit or obtain from any officer or employee of an agency conducting the procurement, before the award of a contract, any proprietary or source selection information regarding the procurement.

§13–212.

(a) Each invitation for bids or request for proposals for a contract that will involve the selection of a consultant who is to assist the unit in the formation, award, or execution of any State contract shall require that a bidder or offeror provide to the unit an affidavit that discloses any actual or potential conflict of interest of which the bidder or offeror knows, or can reasonably be expected to know, in accordance with regulations adopted under this section.

(b) The Board shall adopt regulations concerning the disclosure and evaluation of conflicts of interest under this section.

§13–213.

(a) In accordance with Title 10, Subtitle 1 of the State Government Article, the Board shall adopt regulations on price and cost principles based on generally accepted accounting principles.

(b) The principles adopted by the Board shall be used:

(1) as guidelines for negotiations on:

(i) estimated costs or fixed prices;

(ii) price adjustments for contract modifications and change orders; and

(iii) settlements of terminated procurement contracts;

(2) to establish the allowability of costs under procurement contract provisions for the reimbursement of costs; and

(3) in any other situation that requires the establishment of the estimated or incurred costs of performing a procurement contract.

§13–214.

(a) (1) Subject to § 13-215 of this subtitle and subsection (b) of this section, a unit may enter into a procurement contract based on any method of pricing that will promote the best interests of the State.

(2) If practicable, a unit shall give preference to a fixed-price form of procurement contract.

(b) (1) A unit may not enter into a cost-plus-a-percentage-of-cost procurement contract.

(2) A contractor who is subject to a cost-reimbursement contract may not enter into a cost-plus-a-percentage-of-cost subcontract.

§13–215.

(a) A unit may not enter into a cost-reimbursement contract unless the procurement officer determines that:

(1) a cost-reimbursement contract is likely to be less costly to the State than any other type of contract; or

(2) except for leases of real property, the kind or quality of procurement that the unit requires could not be obtained practicably under any other type of contract.

(b) A unit may not enter into a procurement contract that is wholly or partly a cost-reimbursement contract unless the procurement officer determines that the accounting system of the contractor:

(1) will allow timely development of all necessary cost data in the form required by the specific type of procurement contract under consideration; and

(2) is adequate to allocate costs in accordance with generally accepted accounting principles.

(c) A cost-reimbursement contract shall provide that costs, including costs for subcontractors, will be reimbursed only if the costs are allowable and allocable under:

(1) the procurement contract; or

(2) the regulations of the Board on cost principles.

(d) A contractor under a cost-reimbursement contract shall give notice to and, as required under the contract, obtain approval from a procurement officer before the contractor enters into:

(1) a cost-reimbursement subcontract; or

(2) any subcontract involving more than:

(i) $25,000; or

(ii) 5% of the estimated cost of the procurement contract.

§13–216.

(a) Except as provided in subsection (b) of this section, a procurement officer may not require a contractor to provide a performance bond, payment bond, or other security on a procurement contract for construction, construction related services, services, or supplies if the price of the procurement contract is $100,000 or less.

(b) A procurement officer shall require a contractor to provide a performance bond, payment bond, or other security if federal law or a condition of federal assistance requires the security.

(c) If the price of a procurement contract for construction exceeds $100,000, a procurement officer shall require a contractor to provide security as required under Title 17, Subtitle 1 of this article.

(d) A procurement officer may require a contractor to provide a performance bond or other security on a procurement contract for supplies, services, or construction related services if:

(1) circumstances warrant security; and

(2) the price of the procurement contract exceeds $100,000.

§13–217.

(a) In this section, "multi–year contract" means a procurement contract that requires appropriations for more than 1 fiscal year.

(b) (1) A unit may enter into a multi–year contract subject to:

(i) standards established by the Board; and

(ii) regulations adopted by the primary procurement unit that is responsible for the type of procurement involved.

(2) A multi–year contract shall be subject to review and approval by that primary procurement unit.

(c) A multi–year contract may not be approved unless each unit reviewing the multi–year contract determines that:

(1) the estimated requirements of the State:

(i) cover the period of the multi–year contract;

(ii) are reasonably firm; and

(iii) are continuing; and

(2) the multi–year contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economy in State procurement.

(d) (1) If money sufficient for the continued performance of a multi–year contract is not appropriated for any fiscal year, the multi–year contract terminates automatically on the earlier of:

(i) the last day of the fiscal year for which money last was appropriated; or

(ii) the date provided in the termination clause of the procurement contract.

(2) If the multi–year contract is terminated under this subsection, the unit shall reimburse the contractor for the reasonable value of any nonrecurring costs that were:

(i) incurred as a result of the multi–year contract; but

(ii) not amortized in the price of the supplies or services delivered under the multi–year contract.

(3) The cost of termination under this subsection may be paid from any appropriation available for that purpose.

(e) Except as provided in subsection (f) of this section, each multi–year contract, including a lease of real property, shall include an automatic termination clause that:

(1) is not inconsistent with the requirements of subsection (d) of this section; and

(2) discharges both parties to the multi–year contract from future performance of that contract, but not from their existing obligations.

(f) (1) On the recommendation of the Secretary of General Services, the Board may waive the requirement to include an automatic termination clause under subsection (e) of this section for a multi–year contract to procure energy generated

from a Tier 1 renewable source or a Tier 2 renewable source, as defined in § 7–701 of the Public Utilities Article.

(2) In determining whether or not to grant a waiver under paragraph (1) of this subsection, the Board shall consider the effect of imposing the termination clause requirement under subsection (e) of this section on the ability of the energy supplier to obtain financing for the renewable energy generation project that produces the energy that the State is contracting to procure.

§13–218.

(a) Each procurement contract shall include clauses covering:

(1) termination for default;

(2) termination wholly or partly by the State for its convenience if the head of the primary procurement unit determines that termination is appropriate;

(3) variations that occur between estimated and actual quantities of work in a procurement contract;

(4) liquidated damages, as appropriate;

(5) specified excuses for nonperformance;

(6) except for real property leases, the unilateral right of the State to order in writing:

(i) changes in the work, if the changes are within the scope of the procurement contract; and

(ii) a temporary stop or delay in performance;

(7) the obligation of the contractor to comply with the political contribution reporting requirements under Title 14 of the Election Law Article, to which the contractor may be subject as required under § 17–402 of this article; and

(8) nonvisual access for information technology as required under § 3A–312 of this article.

(b) In addition to the clauses required under subsection (a) of this section, a procurement contract for construction shall include:

(1) a clause providing for contract modification if the condition of a site differs from the condition described in the specifications; and

(2) a clause covering the requirements for notice of contract claims, submission of contract claims, and resolution of contract claims under § 15–219 of this article.

(c) Each procurement contract shall include a clause that gives to the parties notice that preexisting regulations apply to the procurement contract in accordance with § 11–206 of this article.

(d) At any time after the parties enter into a procurement contract they may include additional clauses in the procurement contract, by consent, without consideration.

(e) A clause required under this section for contract modification of or change orders to a procurement contract for construction shall:

(1) make each contract modification or change order that affects the price of the procurement contract subject to:

(i) prior written approval from the unit and any other person responsible for the procurement contract; and

(ii) prior certification by the fiscal authority responsible for the unit about:

1. the availability of money; and

2. the effect of the contract modification or change order on the project budget or the total construction cost; and

(2) prohibit the contract modification or change order if the certification by the fiscal authority discloses that the contract modification or change order will increase the cost beyond budgeted and available money, unless:

(i) sufficient additional money is made available; or

(ii) the scope of the project is adjusted to allow completion within the project budget.

§13–218.1.

(a) In this section, "service contract" has the meaning stated in § 13–401 of the State Personnel and Pensions Article.

(b) (1) At least 60 days before the issuance of a solicitation for a service contract that is not exempt under § 13–403(c) or § 13–404(b) of the State Personnel and Pensions Article, the unit shall provide the exclusive representative of the employees who may be affected by the service contract with written notice of:

(i) work that is being proposed for contracting; and

(ii) contracting procedures, requirements, timetables, and employee rights as provided in Title 13, Subtitle 4 of the State Personnel and Pensions Article.

(2) (i) 1. Except as provided in subsubparagraph 2 of this subparagraph, this paragraph applies to a solicitation for a service contract for janitorial services.

2. This paragraph does not apply to a service contract for janitorial services under Title 14, Subtitle 1 of this article.

(ii) In consultation with the Department of General Services, the Board shall adopt regulations concerning a solicitation for a service contract for janitorial services to require that a bidder or offeror delineate its costs by category, including:

1. labor;

2. cleaning supplies; and

3. projected man–hours to satisfactorily complete the service.

(c) A violation of this section does not constitute grounds to challenge or appeal an award of a procurement or the process through which the procurement was conducted.

§13–219.

(a) This section is broadly applicable to all procurements by the State.

(b) Each contract for procurement shall include a nondiscrimination clause as provided in this section.

(c) The nondiscrimination clause shall:

(1) prohibit discrimination in any manner by the contractor against an employee or applicant for employment because of sex, race, age, color, creed, or national origin;

(2) require the contractor to include a similar clause in every subcontract except a subcontract for standard commercial supplies or raw materials; and

(3) require each contractor and subcontractor subject to this clause to post conspicuously a notice that sets forth the provisions of the clause in a place that is available to employees and applicants for employment.

(d) If the nondiscrimination clause is omitted from a contract or subcontract subject to this section, the State may declare the contract to be void. In that event, the contractor is entitled to the reasonable value of work that has been performed and materials that have been provided.

(e) If a contractor willfully fails to comply with the requirements of the

nondiscrimination clause and the contract is partly executory, the State may compel the contractor to continue to perform under the contract, but the State:

(1) is liable for no more than the reasonable value of work performed and materials provided after the date on which the breach of contract was or should have been discovered; and

(2) shall deduct any money that has been paid under the contract from the money that becomes due under item (1) of this subsection.

(f) If a subcontractor willfully fails to comply with the requirements of a nondiscrimination clause, the contractor may void the subcontract. In that event, the contractor is liable for no more than the reasonable value of work performed or materials provided.

(g) (1) Any person, including an employee or prospective employee, who has information about a violation of this section or a nondiscrimination clause may inform the Board.

(2) The Board:

(i) shall cause an immediate investigation of the charge; and

(ii) if it concludes that the charge is true, may invoke any remedy available by law.

§13–220.

(a) In this section, "established catalog price" means the price included in the most current catalog, price list, schedule, or other form that:

(1) is regularly maintained by the manufacturer or supplier of an item;

(2) is published or available for inspection by customers; and

(3) states:

(i) prices at which sales are currently or were last made to the general buying public; or

(ii) discounted prices at which sales are currently or were last made to local, State, or federal governmental units.

(b) This section applies to all procurements by units except:

(1) a procurement for which the price will be established by competitive sealed bidding; or

(2) a lease of real property or an amendment to a lease of real property.

(c) An offeror or contractor shall submit cost and price information for a procurement contract, change order, or contract modification if the price:

(1) is expected to exceed $100,000 or a smaller amount set by the procurement officer; and

(2) is not:

(i) based on adequate price competition;

(ii) based on the established catalog or market price of commercial items sold in substantial quantities to a significant number of buyers; or

(iii) set by law.

(d) An offeror or contractor required to submit cost and price information shall certify that, to the best knowledge of the offeror or contractor, the information is:

(1) accurate;

(2) complete; and

(3) current as of a specific date that:

(i) has been determined by the procurement officer and the offeror or contractor; and

(ii) occurs before the conclusion of price discussions.

(e) Each procurement contract, change order, or contract modification for which a cost and price certificate is required shall contain a provision that the price, including profit or fee, shall be reduced to exclude any significant price increases in a component that result because the contractor provided cost or price information that, as of the date specified under subsection (d)(3) of this section, was inaccurate, incomplete, or not current.

§13–221.

(a) The provisions of this section are broadly applicable and apply to all contracts, leases, or other agreements entered into by the State.

(b) (1) In this section, "beneficial ownership" means:

(i) any ownership interest of 5% or more in a business;

(ii) any ownership interest of 5% or more in 1 or more entities in a chain of parent and subsidiary entities, any 1 of which participates in at least 5% of the capital or profits of a business; or

(iii) possession of an interest that exists under an agreement, contract, relationship, understanding, or other arrangement and entitles a person to benefits substantially equivalent to an ownership interest of 5% or more of a business.

(2) In this section, unless there are special circumstances, an individual is deemed to hold an ownership interest that is held by the individual's spouse, the individual's child, or other relative of the individual who lives in the individual's home.

(c) (1) If, during a calendar year, a business enters into contracts, leases, or other agreements, with the State or its units or both, under which the business is to receive from the State or its units or both a total of $100,000 or more, the business shall file with the Secretary of State a list that contains the name and address of:

(i) any resident agent of the business;

(ii) each officer of the business; and

(iii) if known, each person who has beneficial ownership of the business.

(2) The list shall be filed within 30 days of the date when the total value of the contracts, leases, or other agreements entered into during the calendar year reaches $100,000.

(3) If a person who has beneficial ownership is unknown to the business, it is sufficient for the business to disclose the legal ownership or the identity of the nominee who holds title for the unknown person.

(d) A business or an officer of a business who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000.

§13–222.

(a) For a State procurement contract for $10,000 or more, except as provided in subsection (c) of this section, at the time a bid or proposal for any State procurement contract is submitted, the bidder or offeror shall certify to the procurement officer that:

(1) the bidder or offeror has paid all taxes, unemployment insurance contributions, reimbursement payments, and interest not barred by limitations and payable to the Comptroller, the Department of Assessments and Taxation, or the Department of Labor, Licensing, and Regulation or has provided for payment in a manner satisfactory to the unit responsible for collection; and

(2) if the bidder or offeror is a vendor of tangible personal property, the bidder or offeror possesses a valid sales and use tax license under Title 11, Subtitle 7 of the Tax - General Article.

(b) Before a unit awards any procurement contract for $100,000 or more, the unit shall verify through the Office of the Comptroller:

(1) that all taxes, unemployment insurance contributions, reimbursement payments, and interest not barred by limitations and payable by the contractor to the Comptroller, the Department of Assessments and Taxation, and the Secretary of Labor, Licensing, and Regulation are paid or that payment has been provided for in a manner satisfactory to the unit responsible for collection; and

(2) if the contractor is a vendor of tangible personal property, that the contractor possesses a valid sales and use tax license under Title 11, Subtitle 7 of the Tax - General Article.

(c) The Board may waive the requirements of this section if the Board determines that:

(1) the procurement is essential or in the best interests of the State; and

(2) there is no other known source for the procurement at a reasonable cost.

(d) In any solicitation, a unit shall provide notice of the requirements of this section.

§13–223.

(a) Each procurement contract shall include the following clause:

"The contractor, architect, or engineer warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesperson, or commercial selling agency, any fee or other consideration contingent on the making of this agreement."

(b) (1) (i) Except as provided in subparagraph (ii) of this paragraph, unless a person is a bona fide employee, bona fide salesperson, or commercial selling agency working for the contractor, the person may not offer or agree to solicit or secure a procurement contract under this subtitle if the person's fee is contingent on, or results from, the making of the procurement contract.

(ii) A regulated lobbyist, who is described in § 5–702(a)(1), (2), or (3) of the General Provisions Article, may not offer or agree to solicit or secure a procurement contract under this subtitle if the lobbyist's fee is contingent on, or results from, the making of the procurement contract.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, a

contractor or a person who provides architectural or engineering services may not offer to pay a fee or other consideration that is contingent on the making of a procurement contract under this article.

(ii) This paragraph does not apply to a payment to a bona fide employee, bona fide salesperson, or commercial selling agency working for the contractor or person providing architectural or engineering services.

(3) An employee of a unit may not solicit or secure or offer to solicit or secure a procurement contract under this article between the unit and any other person for which the employee is paid or is to be paid a fee or other consideration that is contingent on the making of the procurement contract.

§13–224.

(a) (1) In this section the following words have the meanings indicated.

(2) "Children of current or former recipients" has the meaning stated in § 5–304 of the Human Services Article.

(3) "Department" means the Department of Human Resources.

(4) "Eligible contract" means a procurement contract designated by the Board as appropriate for the execution of a hiring agreement.

(5) "FIP" means the Family Investment Program established under Title 5, Subtitle 3 of the Human Services Article.

(6) "Former recipient" has the meaning stated in § 5–304 of the Human Services Article.

(7) "Foster youth" has the meaning stated in § 5–304 of the Human Services Article.

(8) "Hiring agreement" means an agreement entered into by the Department or a local department and an entity doing business with the State under which the Department or the local department and the entity agree to work cooperatively in endeavoring to identify and hire current and former FIP recipients, children of current or former recipients, foster youth, and obligors to fill job openings of the entity.

(9) "Local department" means a local department of social services in a county or in Baltimore City created or continued under § 3–201(a) of the Human Services Article.

(10) "Obligor" has the meaning stated in § 10–101 of the Family Law Article.

(b) On or before October 1, 1998, the Board, in consultation with the Department, shall designate the types of procurement contracts that are eligible contracts.

(c) (1) On or before December 1, 1998, the Department shall develop a model hiring agreement form that shall be completed by the Department or a local department and an entity in conjunction with the award of an eligible contract.

(2) The model hiring agreement form shall include the following provisions:

(i) the entity will:

1. inform the Department or the local department, as appropriate, of all of the entity's job openings;

2. declare the Department or the local department, as appropriate, its "first source" in identifying and hiring candidates to fill those job openings;

3. work cooperatively with the Department or the local department, as appropriate, to develop any necessary training programs that will enable current and former FIP recipients, children of current or former recipients, foster youth, and obligors in qualifying for and securing the positions;

4. give first preference and first consideration to the extent permitted by law and any existing labor agreements to candidates referred to the entity by the Department or the local department, as appropriate;

5. agree to give candidates referred to the entity by the Department or the local department, as appropriate, priority in the filling of a job opening if the candidate meets the qualifications of the position;

6. provide the Department or the local department, as appropriate, with information on the disposition of all referrals made by the Department or the local department, as appropriate, including an explanation of why any such candidate was not hired or considered qualified;

7. provide the Department or the local department, as appropriate, with information regarding the progress and employment status of those candidates referred by the Department or the local department, as appropriate, that the entity hired; and

8. designate a specific individual that the Department or the local department, as appropriate, may contact in regard to the provisions of the hiring agreement; and

(ii) the Department or the local department, as appropriate, will

assign an account representative to the entity who will:

1. receive and process all of the entity's job notifications;

2. refer only screened and qualified candidates to the entity;

3. assist in the development of any mutually agreed upon training programs, internship programs, or both that will better prepare current and former FIP recipients, children of current or former recipients, foster youth, and obligors for employment with the entity;

4. arrange follow–up and post–hire transitional/supportive services, such as child care and transportation, as necessary and appropriate; and

5. review and evaluate the effectiveness of the hiring agreement with the entity and make modifications in the agreement as necessary and appropriate.

(d) Each year, the Department and any local departments that have entered into hiring agreements shall submit a report to the Board, the Joint Committee on Welfare Reform, and, subject to § 2–1246 of the State Government Article, the General Assembly on:

(1) the number of hiring agreements executed;

(2) the number of current and former FIP recipients, children of current or former recipients, foster youth, and obligors hired by an entity with which a hiring agreement was executed; and

(3) the effectiveness of each hiring agreement in obtaining employment for current and former FIP recipients, children of current or former recipients, foster youth, and obligors.

§13–225.

(a) (1) In this section the following words have the meanings indicated.

(2) "Payment security" has the meaning stated in § 17-101 of this article.

(3) "Performance security" has the meaning stated in § 17-101 of this article.

(b) (1) If a contractor has furnished 100% payment security and 100% performance security in accordance with Title 17, Subtitle 1 of this article under a State procurement contract for construction, the percentage specified in the contract for retainage may not exceed 5% of the total amount.

(2) In addition to retainage, a primary procurement unit and the

Maryland Transportation Authority may withhold from payments otherwise due a contractor any amount that the unit reasonably believes necessary to protect the State's interest.

(3) Retainage withheld by a primary procurement unit and the Maryland Transportation Authority may be deposited in an interest-bearing escrow account in accordance with § 15-108 of this article.

(c) (1) A contractor may not retain a percentage of payments due a subcontractor that exceeds the percentage of payments retained by the primary procurement unit or the Maryland Transportation Authority.

(2) Paragraph (1) of this subsection may not be construed to prohibit a contractor from withholding any amount in addition to retainage if the contractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

(d) (1) A subcontractor may not retain a percentage of payments due a lower tier subcontractor that exceeds the percentage of payments retained from the subcontractor.

(2) Paragraph (1) of this subsection may not be construed to prohibit a subcontractor from withholding any amount in addition to retainage if the subcontractor determines that a lower tier subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

(e) If retainage has been placed in escrow under § 15-108 of this article, each payment of retainage shall include a pro rata portion of interest earned.

(f) This section may not be construed to limit the application of the provisions of Title 17, Subtitle 1 of this article.

§13–226.

(a) Unless otherwise prohibited by law, a primary procurement unit may conduct procurement, including the solicitation, bidding, award, execution, and administration of a contract, by electronic means as provided in the Uniform Electronic Transactions Act in Title 21 of the Commercial Law Article.

(b) Bidding on a procurement contract by electronic means shall constitute consent by the bidder to conduct by electronic means all elements of the procurement of that contract which the unit agrees to conduct by electronic means.

(c) (1) Except as provided in paragraph (2) of this subsection, a unit utilizing electronic means to conduct procurement or a private contractor furnishing to the State electronic means for conducting procurement may charge a reasonable fee to the bidder for the use of the electronic means.

(2) Unless approved by the Board of Public Works, a fee may not be charged under this subsection.

(d) The terms and conditions of a procurement conducted under this section shall comply with the Uniform Electronic Transactions Act in Title 21 of the Commercial Law Article.

§13–227.

(a) If a prime contractor requires a subcontractor to provide a bid, performance, or payment bond on a procurement contract for services, supplies, or construction related services with the State, the prime contractor may not require bid, performance, or payment bonding from the subcontractor that is more stringent than the bonding requirements in §§ 13–207 and 13–216 of this subtitle and § 17–104 of this article.

(b) A bid, performance, or payment bond that is provided by a subcontractor under subsection (a) of this section shall be accepted by the prime contractor if the bond would be accepted by the State and provided by:

(1) a surety company authorized to do business in the State; or

(2) the Maryland Small Business Development Financing Authority established in Title 5, Subtitle 5 of the Economic Development Article.

(c) In a solicitation or pre–bid conference for a procurement contract for services, supplies, or construction related services with the State, the procurement agency shall provide notice to all bidders that bid security shall be:

(1) a bond provided by a surety company authorized to do business in this State;

(2) a bond provided by an individual surety that meets the requirements of §§ 13–207 and 13–216 of this subtitle and § 17–104 of this article;

(3) cash; or

(4) another form of security:

(i) authorized by federal or State regulation; or

(ii) that is satisfactory to the unit awarding the contract.

§13–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "General Selection Board" means the General Professional Services Selection Board.

(c) "Person" includes, unless the context requires otherwise:

(1) the State;

(2) a county, municipal corporation, or other political subdivision; and

(3) any unit of the State government or a political subdivision.

(d) "Selection Board" means the General Selection Board or the Transportation Selection Board.

(e) "Transportation Selection Board" means the Transportation Professional Services Selection Board.

(f) "Transportation unit" means:

(1) the Department of Transportation;

(2) any unit in the Department of Transportation;

(3) the Maryland Port Commission; or

(4) the Maryland Transportation Authority.

§13–302.

(a) There is a General Professional Services Selection Board in the Department of General Services.

(b) (1) The General Selection Board consists of:

(i) 4 permanent members; and

(ii) 1 temporary member.

(2) The permanent members shall be:

(i) the Secretary of General Services, ex officio, or a designee; and

(ii) 3 members who are appointed by the Governor and shall be:

1. 1 appointee from the Department of General Services on recommendation of the Secretary of General Services; and

2. 2 appointees from the general public, at least 1 of whom is not an architect or engineer.

(3) The temporary member shall be the head of the unit whose request is under consideration.

(4) On recommendation of the Secretary of General Services, the Governor may appoint an alternate member to serve in the absence of the appointee under paragraph (2)(ii)1 of this subsection.

(c) (1) The appointee from the Department of General Services serves at the pleasure of the Governor.

(2) An appointee from the general public:

(i) serves a term of 5 years; and

(ii) at the end of the term, continues to serve until a successor is appointed and qualifies.

(3) A temporary member serves only for the purpose of considering and acting on the request of the unit that the temporary member represents.

(4) A permanent member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) (1) The Governor may remove a member for incompetence, misconduct, neglect of duty, or other sufficient cause.

(2) A member may not participate in any matter before the General Selection Board in which the member:

(i) has an interest; or

(ii) is or, within the previous 12 months, has been associated with:

1. a transportation unit that has an interest in the matter; or

2. any other person who is not a unit and has an interest in the matter.

(e) Each appointee from the general public is entitled to:

(1) compensation in accordance with the State budget; and

(2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§13–303.

(a) There is a Transportation Professional Services Selection Board in the Department of Transportation.

(b) (1) The Transportation Selection Board consists of:

(i) 4 individuals who are permanent members; and

(ii) 1 individual who is a temporary member.

(2) The permanent membership shall consist of the following:

(i) the Secretary of Transportation, ex officio, or a designee;

(ii) 1 individual from the Department of Transportation, appointed by the Governor on recommendation of the Secretary of Transportation; and

(iii) 2 individuals appointed by the Governor from the general public, at least 1 of whom is not an architect or engineer.

(3) The transportation unit whose request the Transportation Selection Board is considering shall appoint the temporary member.

(4) On recommendation of the Secretary of Transportation, the Governor may appoint an alternate member to serve in the absence of the appointee under paragraph (2)(ii) of this subsection.

(c) (1) The appointee from the Department of Transportation serves at the pleasure of the Governor.

(2) An appointee from the general public:

(i) serves a term of 5 years; and

(ii) at the end of the term, continues to serve until a successor is appointed and qualifies.

(3) A temporary member serves only for the purpose of considering and acting on the request of the transportation unit that the temporary member represents.

(4) A permanent member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) (1) The Governor may remove a member for incompetence, misconduct, neglect of duty, or other sufficient cause.

(2) A member may not participate in any matter before the Transportation Selection Board in which the member:

(i) has an interest; or

(ii) is or, within the previous 12 months, has been associated with a person, other than a transportation unit, who has an interest in the matter.

(e) Each appointee from the general public is entitled to:

(1) compensation in accordance with the State budget; and

(2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§13–304.

(a) The selection boards shall adopt regulations that provide substantially similar procedures to carry out this subtitle.

(b) The procedures of each selection board shall ensure that a recommendation to the Board of Public Works for the award of a procurement contract for architectural or engineering services costing over $200,000 is made on a competitive basis and includes an evaluation of the technical proposals and qualifications of at least 2 persons.

§13–305.

(a) At the request of a school board or a political subdivision of the State, the Selection Board may provide advisory services about procurement of architectural services or engineering services.

(b) A school board or political subdivision that receives advisory services under this section shall reimburse the Selection Board for its costs.

§13–306.

(a) Except for a transportation unit, a unit that intends to procure architectural or engineering services costing more than $200,000 shall submit a request to the General Selection Board at a public meeting of that Board.

(b) The General Selection Board shall publish reasonable and timely notice of a request presented under this section.

§13–307.

(a) The General Selection Board may approve a request for architectural or engineering services only if it concludes that the services cannot be provided feasibly and economically by existing in-house resources.

(b) The General Selection Board shall:

(1) publish uniform and consistent announcements of all approvals for requests for architectural services or engineering services; and

(2) mail a copy of an announcement to each person who requests notice.

(c) An announcement of an approval under this section shall:

(1) describe generally the architectural services or engineering services

that are the subject of the procurement; and

(2) indicate how an interested person may receive information about the procurement.

(d) (1) On request, the General Selection Board shall provide to an interested person a comprehensive description of the nature and scope of the architectural or engineering services that are the subject of the procurement.

(2) The unit requesting the procurement shall prepare the description required under this subsection.

§13–308.

(a) The General Selection Board shall:

(1) evaluate technical proposals and the qualifications of the persons submitting proposals; and

(2) determine an order of priority based on those evaluations.

(b) (1) The General Selection Board shall:

(i) begin negotiations with the most qualified person; and

(ii) try to negotiate a procurement contract with that person at a rate of compensation that is fair, competitive, and reasonable.

(2) In determining the rate of compensation under this subsection, the General Selection Board shall:

(i) consider the scope and complexity of the architectural or engineering services required; and

(ii) conduct a detailed analysis of the cost of those services.

(c) (1) If the General Selection Board is unable to negotiate a satisfactory procurement contract at a rate of compensation that is fair, competitive, and reasonable, it shall:

(i) terminate negotiations with the most qualified person; and

(ii) negotiate in the same manner with the second and, if necessary, the third most qualified person chosen under subsection (a) of this section.

(2) If the General Selection Board is unable to negotiate a procurement contract with any person chosen under subsection (a) of this section, the General Selection Board shall:

(i) choose additional persons in order of their competence and qualification; and

(ii) continue negotiations in accordance with the procedures under this section until it reaches an agreement.

(d) The General Selection Board may delegate the negotiation process to the Department of General Services, but any negotiating team shall include a representative of the unit requesting the procurement.

§13–309.

The General Selection Board shall:

(1) review all procurement contract documents; and

(2) announce the general content of the documents at a public meeting of that Board.

§13–310.

(a) (1) A transportation unit that intends to procure architectural or engineering services shall submit a request to the Secretary of Transportation.

(2) The Secretary of Transportation shall certify to the Transportation Selection Board that the architectural or engineering services requested under this section cannot be provided feasibly and economically by existing in-house resources.

(b) The Transportation Selection Board shall:

(1) publish uniform and consistent announcements of all requests for architectural services or engineering services; and

(2) mail a copy of an announcement to each person who requests notice of a specific project.

(c) An announcement of a request under this section shall:

(1) describe generally the architectural or engineering services that are the subject of the procurement; and

(2) indicate how an interested person may receive information about the procurement.

(d) A transportation unit shall negotiate competitively each procurement contract for architectural or engineering services costing $200,000 or less at a price that the transportation unit determines to be fair and reasonable.

§13–311.

(a) The Department of Transportation shall establish a selection process based on a competitive procedure to:

(1) promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing architectural or engineering services;

(2) evaluate technical proposals and the qualifications of the persons submitting proposals; and

(3) determine an order of priority based on those evaluations.

(b) (1) From the results of the selection process under subsection (a) of this section, the transportation unit shall:

(i) begin negotiations with the most qualified person; and

(ii) try to negotiate a procurement contract with that person at a rate of compensation that is fair, competitive, and reasonable.

(2) In determining the rate of compensation under this subsection, the transportation unit shall:

(i) consider the scope and complexity of the architectural or engineering services required;

(ii) conduct a detailed analysis of the cost of those services; and

(iii) comply with limits on costs reimbursement, including, but not limited to overhead limits, established by the Transportation Selection Board. In setting such limits, the Board shall consider the goal of the selection process set forth in paragraph (1) of this subsection, as well as the reasonable cost of architectural or engineering services.

(c) (1) If the transportation unit is unable to negotiate a satisfactory procurement contract at a rate of compensation that is fair, competitive, and reasonable, it shall:

(i) terminate negotiations with the most qualified person; and

(ii) negotiate in the same manner with the second and, if necessary, the third most qualified person chosen under subsection (a) of this section.

(2) If the transportation unit is unable to negotiate a procurement contract with any person chosen under subsection (a) of this section, the transportation unit shall:

(i) choose additional persons in order of their competence and qualification; and

(ii) continue negotiations in accordance with the procedures under this section until it reaches an agreement.

(d) The Transportation Selection Board may delegate the negotiation process to the Department of Transportation, but any negotiating team shall include a representative of the transportation unit requesting the procurement.

§13–312.

(a) A transportation unit shall submit to the Transportation Selection Board the name of the person with whom an agreement for the procurement of architectural services or engineering services is reached in accordance with § 13-311 of this subtitle.

(b) The Transportation Selection Board shall:

(1) review all procurement contract documents; and

(2) announce the general content of the documents at a public meeting of that Board.

(c) (1) The Transportation Selection Board shall hold a public meeting at which that Board shall:

(i) accept or reject the person with whom the agreement was reached; or

(ii) for cause, postpone its decision on the selection.

(2) The Transportation Selection Board shall provide reasonable and timely notice of a meeting required under this subsection.

§13–313.

The Selection Board shall make available for public review all documents that relate to the award of a procurement contract, including:

(1) technical resumes;

(2) proposals;

(3) the procurement contract;

(4) scope of services;

(5) programs;

(6) staff reports;

(7) internal worksheets; and

(8) all other information that relates to the negotiation and award of a procurement contract under this subtitle.

§13–314.

(a) The Selection Board shall waive the requirements of §§ 13-304(b), 13-308, 13-309, 13-311, 13-312(b), and 13-313 of this subtitle if:

(1) the Selection Board determines that:

(i) the architectural services or engineering services cannot be defined so completely as to carry out those requirements; or

(ii) the specifications require architectural services or engineering services that are available only from a bona fide single source or a proprietary product or process;

(2) the Governor declares an emergency;

(3) after a natural disaster, public health and safety are endangered; or

(4) on the recommendation of the Secretary of General Services or the Secretary of Transportation and a finding by the Governor that extraordinary circumstances exist, the Board of Public Works determines that:

(i) for a particular project, urgent circumstances require the selection of a contractor on an expedited basis;

(ii) expedited selection best serves the public interest; and

(iii) the need for an expedited selection outweighs the benefits of carrying out those requirements.

(b) A waiver and the reasons for it shall be documented and:

(1) immediately reported to eMaryland Marketplace for publication; and

(2) reported to the Legislative Policy Committee within 30 days after the waiver occurs.

§13–315.

(a) (1) After choosing a contractor in accordance with this subtitle, the Selection Board shall recommend that contractor to the Board of Public Works.

(2) With each recommendation, the Selection Board shall submit a statement of the reasons for the selection.

(3) The statement required under this subsection serves as a public notice of the selection.

(b) The Selection Board shall assure the Board of Public Works that the recommended contractor has the financial capacity to:

(1) provide the architectural services or engineering services; and

(2) protect the State from errors and omissions that might arise from the performance of the architectural or engineering services by:

(i) the contractor; or

(ii) third parties relying on the completed design or work product.

§13–316.

(a) Within 10 days after an offeror of architectural services or engineering services receives notice of a recommendation by the Selection Board to the Board of Public Works, the offeror may appeal the recommendation to the Board of Public Works.

(b) On an appeal under this section, the Board shall:

(1) approve the recommendation;

(2) disapprove the recommendation; or

(3) remand the matter to the Selection Board for further consideration.

(c) The Board of Public Works may award a prospective offeror or an offeror the reasonable costs of filing and pursuing an appeal, not including attorney's fees, if:

(1) the prospective offeror or offeror appeals the recommendation of the Transportation Selection Board or the General Selection Board to enter into an architectural services or engineering services contract to the Board of Public Works;

(2) the Board of Public Works disapproves the recommendation of the Transportation Selection Board or the General Selection Board; and

(3) the Board of Public Works finds that there has been a violation of the procurement law or regulations.

(d) The Board of Public Works shall adopt regulations to implement this section and to determine what constitutes reasonable costs of filing and pursuing an appeal.

§13–317.

(a) A unit may not award a procurement contract to a person under this subtitle unless:

(1) the person submits:

(i) an affidavit of noncollusion; and

(ii) a price quotation; and

(2) for a procurement contract costing more than $200,000, the person has executed a truth-in-negotiation certificate.

(b) The truth-in-negotiation certificate shall state that:

(1) wage rates and other factual unit costs supporting wages are accurate, complete, and current as of the time of contracting; and

(2) the original price of the procurement contract and any additions to the procurement contract will be adjusted to exclude any significant price increase if the Selection Board determines that the price increase is due to wage rates or other factual unit costs that were inaccurate, incomplete, or not current as of the time of contracting.

(c) An adjustment to the procurement contract shall be made within 1 year after the procurement contract is completed.

§13–318.

The Selection Board may not award a procurement contract for architectural services or engineering services that:

(1) is a cost-plus-a-percentage-of-cost contract; or

(2) includes fee schedules that are based on a percentage of construction costs.

§13–320.

(a) (1) The State may postaudit the rates of contractors performing architectural services or engineering services under this subtitle as required by the regulations adopted under this subtitle.

(2) All rates used in a cost-plus-fixed-fee procurement contract shall be verified by postaudit if:

(i) the compensation is more than $50,000 and the procurement contract involves a unit other than a transportation unit; and

(ii) the compensation is more than $25,000 and the procurement contract involves a transportation unit.

(b) On request by a procuring authority of any political subdivision of the State that is considering an architect or engineer for a specific project, any State audit of the architect or engineer shall be made available.

§13–321.

(a) The Board may terminate without liability a procurement contract for architectural services or engineering services if:

(1) there has been a conviction of a crime arising out of or in connection with the procurement contract or any payment to be made under the procurement contract; or

(2) there has been a breach or violation of any provision of this subtitle.

(b) Subject to subsection (a) of this section, the Board may deduct from the procurement contract price or otherwise recover the full amount of any fee, commission, gift, percentage, or other consideration paid in violation of this subtitle.

(c) If a procurement contract is terminated under this section, the contractor:

(1) is entitled only to the earned value of the work completed as of the date of termination, plus termination costs;

(2) is liable for any costs incurred for completion of the work over the maximum amount payable to the contractor under the procurement contract; and

(3) shall refund all profits or fixed fees realized under the procurement contract.

(d) (1) The provisions of this section are in addition to any other right or remedy allowed by law.

(2) By carrying out this section, the Board does not waive any other right or remedy provided by law.

§13–322.

A person who violates any provision of this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 10 years or both.

§13–323.

This subtitle may be cited as the "Maryland Architectural and Engineering Services Act".

§13–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Information technology" has the meaning stated in § 3A–301 of this article.

(c) "Secretary" means the Secretary of Information Technology.

§13–402.

(a) The Secretary shall adopt a streamlined procurement process for procurement of information technology services that provides for the qualification of an offeror in one or more categories of information technology services.

(b) The streamlined procurement process adopted by the Secretary shall include:

(1) the categories of information technology services in which an offeror may submit a proposal for qualification;

(2) a procedure for the consideration and approval of proposals for qualification of an unlimited number of offerors in each category of information technology services;

(3) the execution of a standard contract for a specified period of time between the State and an offeror approved for qualification in a category of information technology services;

(4) the policies and procedures to be followed by a unit of the Executive Branch in the issuance of a solicitation for a task order for information technology services to a qualified offeror that has executed a contract with the Secretary; and

(5) a performance evaluation procedure to be used by a unit of the Executive Branch to evaluate the performance of a qualified offeror that has completed work on a task order.

(c) (1) A unit of the Executive Branch that requires information technology services may issue a solicitation for a task order to a qualified offeror in the appropriate category of information technology services consistent with procedures and policies adopted by the Secretary in subsection (b) of this section.

(2) The solicitation for a task order shall include a statement of the:

(i) factors that will be used in evaluating a qualified offeror's response; and

(ii) relative importance of each factor.

(d) (1) If the unit of the Executive Branch expects that the total cost of the

information technology services will exceed $100,000, the unit shall issue a solicitation for a task order to all qualified offerors in the appropriate category established by the Secretary.

(2) If the unit of the Executive Branch expects that the total cost of the information technology services will be $100,000 or less, the unit shall issue a solicitation for a task order to a minimum of six qualified offerors or all qualified offerors, whichever is less, in the appropriate category established by the Secretary.

(e) After a unit of the Executive Branch receives responses from qualified offerors to a solicitation for a task order, the unit shall evaluate the responses and may select an offeror based on the response that is determined to be the most advantageous to the State considering the evaluation factors set forth in the task order.

§14–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Community service provider" means an entity that:

(1) is organized under the laws of the United States or this State;

(2) is accredited by the Division of Rehabilitation Services of the State Department of Education for participation in the Employment Works Program;

(3) is operated in the interest of individuals who have a mental or physical disability, including blindness, that:

(i) constitutes a substantial barrier to employment; and

(ii) prevents the individual from engaging in competitive employment; and

(4) does not inure net income wholly or partly to the benefit of any shareholder or other individual.

(c) "Individual with disability owned business" means a business:

(1) that is organized under the laws of the United States or the State;

(2) that is majority owned by an individual or individuals determined by the Division of Rehabilitation Services in the State Department of Education to have a disability, as defined by Title 21, Subtitle 3 of the Education Article;

(3) whose majority owner or owners are directly and significantly engaged in the daily operation of the business;

(4) whose workforce includes individuals with disabilities comprising a percentage of the workforce that is at or above the minimum required under the policies

or guidelines established by the Pricing and Selection Committee for the Employment Works Program;

(5) whose total gross revenues for contracts assigned under the Program at the time of assignment do not exceed the maximum allowed under policies or guidelines established by the Pricing and Selection Committee for the Employment Works Program; and

(6) that continues to meet all other eligibility criteria established by the Pricing and Selection Committee for the Employment Works Program.

(d) "Preferred provider" means a provider of supplies or services given preference in § 14–103 of this subtitle.

(e) "State aided or controlled entity" means any public or quasi–public institution that receives aid from the State or that is owned, controlled, or managed by the State.

§14–102.

(a) Notwithstanding any other provision of this Division II, a State or State aided or controlled entity shall buy supplies and services in accordance with § 14–103 of this subtitle.

(b) The procurement of services from a sheltered workshop is not subject to the cost savings requirements of § 13–405 of the State Personnel and Pensions Article.

§14–103.

(a) A State or State aided or controlled entity shall buy supplies and services from:

(1) Maryland Correctional Enterprises, as provided in Title 3, Subtitle 5 of the Correctional Services Article, if State Use Industries provides the supplies or services;

(2) Blind Industries and Services of Maryland, if:

(i) Blind Industries and Services of Maryland provides the supplies or services; and

(ii) Maryland Correctional Enterprises does not provide the supplies or services;

(3) the Employment Works Program established under § 14–108 of this subtitle, if:

(i) a community service provider provides the supplies or services;

(ii) neither Maryland Correctional Enterprises nor Blind Industries and Services of Maryland provides the supplies or services; and

(iii) the State or a State aided or controlled entity is not required by law to buy the supplies or services from any other unit of the State government; or

(4) individual with disability owned businesses if:

(i) an individual with disability owned business provides the supplies or services;

(ii) neither Maryland Correctional Enterprises, Blind Industries and Services of Maryland, nor a community service provider provides the supplies or services; and

(iii) a State or State aided or controlled entity is not required by law to buy the supplies or services from any other unit of the State government.

(b) A State or State aided or controlled entity shall give preference to the providers listed under subsection (a) of this section in the order that the providers are listed.

(c) To the extent practicable, a State or State aided or controlled entity shall include in a maintenance contract that has a component for housekeeping or janitorial services, a requirement that a prime contractor procure janitorial products from Blind Industries and Services of Maryland when the specified products are available.

§14–104.

(a) In this section, "Committee" means the Pricing Committee for Blind Industries and Services of Maryland.

(b) There is a Pricing Committee for Blind Industries and Services of Maryland.

(c) The Committee consists of the following 4 members or their respective designees:

(1) the Secretary of General Services;

(2) the Secretary of Public Safety and Correctional Services;

(3) the President of Blind Industries and Services of Maryland; and

(4) a member of the Executive Board of the National Federation of the Blind of Maryland appointed by that Executive Board.

(d) A member of the Committee:

(1) may not receive compensation; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(e) The Committee shall receive assistance from the staff of Blind Industries and Services of Maryland.

(f) (1) The Committee shall set the prices of supplies and services that Blind Industries and Services of Maryland provides.

(2) The prices shall reflect the fair market prices for the supplies and services.

§14–105.

Every 6 months, Blind Industries and Services of Maryland shall:

(1) revise the list of supplies and services that it provides; and

(2) send the list to the Secretary of General Services and each person responsible for buying supplies or services for the State or a State aided or controlled entity.

§14–106.

(a) In this section, "Committee" means the Pricing and Selection Committee for the Employment Works Program.

(b) There is a Pricing and Selection Committee for the Employment Works Program.

(c) The Committee consists of the following 6 members:

(1) the Secretary of Transportation or a designee;

(2) the Secretary of General Services or a designee;

(3) the Secretary of Public Safety and Correctional Services or a designee;

(4) the President of Blind Industries and Services of Maryland or a designee;

(5) the Assistant Secretary for Vocational Rehabilitation within the State Department of Education or a designee; and

(6) the Secretary of Labor, Licensing, and Regulation or a designee.

(d) A member of the Committee:

(1) may not receive compensation; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations as provided in the State budget.

(e) The Committee shall:

(1) establish procedures to govern procurement of supplies and services from community service providers and individual with disability owned businesses;

(2) from the State procurement list, choose appropriate supplies and services for community service providers and individual with disability owned businesses to offer for procurement;

(3) provide that the State procure those supplies and services from a community service provider or an individual with disability owned business;

(4) if supplies or services are not available for procurement from a unit of the State government, determine whether supplies or services are available from a community service provider or an individual with disability owned business;

(5) determine the fair market price of supplies and services that community service providers and individual with disability owned businesses provide;

(6) in accordance with market conditions, adjust prices for the supplies and services that community service providers and individual with disability owned businesses provide; and

(7) at the request of a community service provider or an individual with disability owned business, review and, if appropriate, change the price of a supply or service.

(f) In addition to the duties specified under subsection (e) of this section, the Committee shall:

(1) establish and periodically review eligibility policies or guidelines for participating community service providers and individual with disability owned businesses;

(2) maintain a current list of community service providers and individual with disability owned businesses;

(3) periodically review and revise its list of community service providers and individual with disability owned businesses; and

(4) send any revised list to the Secretary of General Services who shall make the list available to each person responsible for buying supplies or services for the State or a State aided or controlled entity.

§14–107.

The Pricing and Selection Committee for the Employment Works Program shall:

(1) maintain a current list of supplies and services that community service providers and individual with disability owned businesses provide;

(2) periodically review and revise its list of supplies and services that community service providers and individual with disability owned businesses provide; and

(3) send the list, and any revised list, to the Secretary of General Services who shall make the list available to each person responsible for buying supplies or services for the State or a State aided or controlled entity.

§14–108.

(a) In this section, "Program" means the Employment Works Program.

(b) There is an Employment Works Program in the Department of General Services.

(c) The Secretary of General Services shall designate Maryland Works, Inc., or another appropriate coordinating entity, to facilitate the distribution of procurement contracts for supplies and services among community service providers and individual with disability owned businesses.

(d) The coordinating entity designated under subsection (c) of this section shall:

(1) identify potential contracts for supplies and services eligible for procurement;

(2) establish procedures for the selection of community service providers to perform under potentially eligible contracts for preference procurement;

(3) establish procedures for remediation of noncompliance with State or Program policies;

(4) provide training and technical assistance to participating community service providers;

(5) conduct cost analyses and market research for submission and review by the Pricing and Selection Committee for the Program;

(6) provide staff support for the Pricing and Selection Committee for the Program; and

(7) serve as a monitoring agent to ensure that high quality standards are met and maintained by the Program and its participating community service providers.

§14–109.

(a) (1) In this section the following words have the meanings indicated.

(2) "Blind person" means a person who is:

(i) blind; and

(ii) licensed by the Division under the federal acts.

(3) "Division" means the Division of Rehabilitation Services in the Department of Education.

(4) "Program" means the Maryland Business Enterprise Program for the Blind.

(5) "Vending facility" includes vending machines, cafeterias, snack bars, and other concession stands that sell food, beverages, newspapers, periodicals, confections, tobacco products, and other merchandise, including chances for the State Lottery.

(6) "Vending machine" means a currency-operated machine that dispenses products or services.

(7) "Vending machine income" means receipts, other than those of a blind vendor, from vending machine operations on property controlled by the Department of General Services after deducting the costs of the goods sold, including reasonable service and maintenance costs in accordance with customary business practices.

(b) There is a Maryland Business Enterprise Program for the Blind in the Division.

(c) (1) Except as provided in paragraph (2) of this subsection, the Program has priority to operate a vending facility on property controlled by the Department of General Services.

(2) If a facility required to give the priority under this section has vending facilities that are not operated by blind persons, the requirements of this section are waived until the earlier of:

(i) the first expiration of a contract between the operator of the vending facility and the Department of General Services; or

(ii) June 1, 1994.

(d) (1) The Division and the Department of General Services shall adopt regulations for:

(i) the operation and maintenance of a vending facility by the

Program; and

(ii) the protection of State property.

(2) The Department of General Services shall cooperate with the Division for the establishment, whenever possible, of vending facilities operated by the Program on Department of General Services property.

(3) (i) Any vending machine income that results from the provisions of this section shall accrue to the blind person managing the vending facility on the property where the income is generated in accordance with federal regulations governing the Vending Facilities Program for the Blind.

(ii) If there is no person managing the vending facility, the vending machine income shall be distributed to the Division for the support of the Program.

§14–110.

(a) Notwithstanding any other provision of law, subsections (b) and (c) of this section apply to:

(1) a State or State aided or controlled entity that is:

(i) subject to the requirements of § 14–103 of this subtitle and § 14–305 of this title; or

(ii) identified by the Department of General Services; and

(2) The University System of Maryland, St. Mary's College of Maryland, and Morgan State University.

(b) (1) Within 60 days after the enactment of the budget bill by the General Assembly, each State or State aided or controlled entity shall prepare and submit to the Department of General Services a fiscal year procurement expenditure forecast that details the expected expenditures and contracts to be awarded under § 14–103 of this subtitle in the next fiscal year.

(2) The forecast required by paragraph (1) of this subsection shall include activities planned to increase the number of contracts awarded under § 14–103 of this subtitle.

(c) (1) Within 90 days after the end of each fiscal year, a State or State aided or controlled entity shall submit a report to the Department of General Services that complies with the requirements of paragraph (2) of this subsection.

(2) For the preceding fiscal year, the report shall include:

(i) the total number and the dollar value of contracts awarded by the

State or State aided or controlled entity to a preferred provider;

(ii) the total number and the dollar value of payments made by a State or State aided or controlled entity to a preferred provider, including purchase card procurements;

(iii) the total number and the dollar value of contracts awarded by the State or State aided or controlled entity to a provider other than a preferred provider;

(iv) the total number and the dollar value of payments made by the State or State aided or controlled entity to a provider other than a preferred provider, including purchase card procurements;

(v) the percentage that the contracts to preferred providers represent of the total number of procurement contracts;

(vi) the percentage that the payments to preferred providers represent of the total value of payments; and

(vii) any other information required by the Department of General Services.

(d) (1) Within 90 days after the end of each fiscal year, a preferred provider awarded a contract in accordance with § 14–103 of this subtitle shall report to the Department of General Services in accordance with paragraph (2) of this subsection.

(2) For the preceding fiscal year, the report shall state the total number of full–time equivalents for individuals with disabilities who contributed to the work of the contracts.

(e) Within 60 days after receipt of all of the reports required under subsections (c) and (d) of this section, the Department of General Services shall submit a summary of the information to:

(1) the Board of Public Works; and

(2) in accordance with § 2–1246 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee, the House Health and Government Operations Committee, and the Legislative Policy Committee.

§14–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Disabled veteran" means a veteran who has been certified by the U.S. Department of Veterans Affairs as having a service–connected disability regardless of the disability rating.

(c) "Disabled veteran–owned small business" means a small business that is at least 51% owned and controlled by one or more individuals who are disabled veterans.

(d) "Small business" means a business that meets the qualifications established under § 14–203 of this subtitle.

(e) "Small business preference" means a purchase request for which bids are invited from a list of qualified bidders that includes small businesses.

(f) "Veteran" means a veteran as defined in 38 U.S.C. § 101(2) who is domiciled in Maryland.

(g) "Veteran–owned small business" means a small business that is at least 51% owned and controlled by one or more individuals who are veterans.

§14–202.

(a) This subtitle applies to procurement of supplies, services, and construction related services by:

(1) the Department of General Services;

(2) the Department of Transportation;

(3) the University System of Maryland;

(4) Morgan State University; and

(5) as provided in subsection (b) of this section, the Department of Public Safety and Correctional Services in connection with construction of a State correctional facility under § 12-107 of this article.

(b) For procurements in connection with the construction of a State correctional facility, the Department of Public Safety and Correctional Services shall:

(1) apply the percentage price preferences established by the Department of General Services under this subtitle; and

(2) follow the same procedures established by the Department of General Services to comply with this subtitle.

§14–203.

(a) By regulation, the Secretary of General Services, the Secretary of Transportation, the Chancellor of the University System of Maryland, and the President of Morgan State University each shall specify the criteria that a business must meet to qualify as a small business.

(b) (1) The criteria for qualification as a small business may vary among

industries to reflect their particular characteristics.

(2) Regulations adopted under this section shall include, for each class of business, the maximum number of employees a business may have to qualify as a small business.

§14–204.

The Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland each shall adopt regulations to establish procedures for:

(1) compiling and maintaining a comprehensive bidder's list of small businesses;

(2) locating potential sources for various construction related services, supplies, and services and affirmatively seeking to locate potential minority business enterprise sources for those construction related services, supplies, and services;

(3) helping small businesses to comply with the procedures for bidding on procurement contracts;

(4) examining requests for construction related services, supplies, and services to determine when an invitation for bids may be designated for the Small Business Preference Program;

(5) bidding for a procurement contract designated for a small business preference;

(6) simplifying procurement specifications and terms, to increase the opportunities for small business participation;

(7) investigating the responsibility of bidders on small business preferences; and

(8) explaining to a small business the reason for which its bid for a small business preference was rejected.

§14–205.

The Department of Business and Economic Development shall help the Secretaries of General Services and Transportation and the Chancellor of the University System of Maryland in establishing procedures to carry out § 14-204(1) and (2) of this subtitle.

§14–206.

(a) In this section, "percentage preference" means the percent of the lowest

responsive bid submitted by a responsible bidder who is not a small business by which a responsive bid by a small business may:

(1) exceed the lowest bid; and

(2) be awarded a procurement contract under this subtitle.

(b) Subject to the approval of the Board, the Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland each:

(1) shall establish a percentage preference, not to exceed 8%, for each industry as follows:

(i) a base percentage preference not to exceed 5% for all small businesses; and

(ii) two additional preferences to the percentage preference set forth in item (i) of this paragraph as follows:

1. 2% for veteran–owned small businesses; and

2. 3% for disabled veteran–owned small businesses; and

(2) may vary the percentage preference determined in item (1)(i) of this subsection among industries to account for their particular characteristics.

§14–207.

(a) The Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland each may designate, for the Small Business Preference Program, procurement of certain supplies, services, or construction related services that have been requested through or with the approval of the Secretary or Chancellor.

(b) The invitation for bids on a procurement that has been designated for a small business preference shall be sent to small businesses and regular bidders to establish a reasonable price range commensurate with current market conditions.

(c) The Secretary of General Services, the Secretary of Transportation, or the Chancellor of the University System of Maryland shall award a procurement contract designated for a small business preference to the small business that:

(1) is a responsible bidder; and

(2) submits the lowest responsive bid from a small business if the difference between that bid and the lowest responsive bid submitted by a responsible bidder who is not a small business does not exceed the percentage preference

established under § 14-206 of this subtitle.

§14–208.

(a) Within 90 days after the end of each fiscal year, the Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland each shall submit a report on the operation and effectiveness of the Small Business Preference Program to the Board.

(b) Within 60 days after receipt of all reports required under subsection (a) of this section, the Board shall compile the information and report on the entire Small Business Preference Program to the Legislative Policy Committee, subject to § 2-1246 of the State Government Article.

§14–301. IN EFFECT

(a) In this subtitle the following words have the meanings indicated.

(b) "Certification" means the determination that a legal entity is a minority business enterprise for the purposes of this subtitle.

(c) "Certification agency" means the agency designated by the Board of Public Works under § 14–303(b) of this subtitle to certify and decertify minority business enterprises.

(d) "Certified minority business enterprise" means a minority business enterprise that holds a certification.

(e) "Economically disadvantaged individual" means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(f) (1) "Minority business enterprise" means any legal entity, except a joint venture, that is:

(i) organized to engage in commercial transactions;

(ii) at least 51% owned and controlled by 1 or more individuals who are socially and economically disadvantaged; and

(iii) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

(2) "Minority business enterprise" includes a not for profit entity organized to promote the interests of physically or mentally disabled individuals.

(g) "Minority business enterprise participation schedule" means a schedule included in the submission of a bid or offer that identifies:

(1) the certified minority business enterprises that a bidder or offeror agrees to use in the performance of the contract; and

(2) the percentage of contract value attributed to each certified minority business enterprise.

(h) (1) Subject to paragraphs (2) and (3) of this subsection, "personal net worth" means the net value of the assets of an individual remaining after total liabilities are deducted.

(2) "Personal net worth" includes the individual's share of assets held jointly or as community property with the individual's spouse.

(3) "Personal net worth" does not include:

(i) the individual's ownership interest in the applicant or a certified minority business enterprise;

(ii) the individual's equity in his or her primary place of residence; or

(iii) up to $500,000 of the cash value of any qualified retirement savings plans or individual retirement accounts.

(i) "Race–neutral measure" means a method that is or can be used to assist all small businesses.

(j) (1) Subject to paragraphs (2) and (3) of this subsection, and in accordance with the State's most recent disparity study, "socially and economically disadvantaged individual" means a citizen or lawfully admitted permanent resident of the United States who is:

(i) in any of the following minority groups:

1. African American – an individual having origins in any of the black racial groups of Africa;

2. American Indian/Native American – an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin;

3. Asian – an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part;

4. Hispanic – an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part;

5. physically or mentally disabled – notwithstanding the State's most recent disparity study, an individual who has an impairment that substantially limits one or more major life activities, who is regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business; or

6. women – a woman, regardless of race or ethnicity; or

(ii) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

(2) There is a rebuttable presumption that an individual who is a member of a minority group under paragraph (1)(i) of this subsection is socially and economically disadvantaged.

(3) An individual whose personal net worth exceeds $1,500,000, as adjusted annually for inflation according to the Consumer Price Index, may not be found to be economically disadvantaged.

(k) "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual.

14–301. ** TAKES EFFECT JULY 1, 2015 PER CHAPTERS 343 AND 605 OF 2013 **

// EFFECTIVE UNTIL JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

(a) In this subtitle the following words have the meanings indicated.

(b) "Certification" means the determination that a legal entity is a minority business enterprise for the purposes of this subtitle.

(c) "Certification agency" means the agency designated by the Board of Public Works under § 14–303(b) of this subtitle to certify and decertify minority business enterprises.

(d) "Certified minority business enterprise" means a minority business enterprise that holds a certification.

(e) "Economically disadvantaged individual" means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(f) "Minority business enterprise" means any legal entity, except a joint venture, that is:

(1) organized to engage in commercial transactions;

(2) at least 51% owned and controlled by 1 or more individuals who are socially and economically disadvantaged; and

(3) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

(g) "Minority business enterprise participation schedule" means a schedule included in the submission of a bid or offer that identifies:

(1) the certified minority business enterprises that a bidder or offeror agrees to use in the performance of the contract; and

(2) the percentage of contract value attributed to each certified minority business enterprise.

(h) "Not–for–profit entity" means a corporation that:

(1) is incorporated in the State or otherwise qualified to do business in the State;

(2) has been determined by the Internal Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal Revenue Code; and

(3) is organized to promote the interests of physically or mentally disabled individuals.

(i) (1) Subject to paragraphs (2) and (3) of this subsection, "personal net worth" means the net value of the assets of an individual remaining after total liabilities are deducted.

(2) "Personal net worth" includes the individual's share of assets held jointly or as community property with the individual's spouse.

(3) "Personal net worth" does not include:

(i) the individual's ownership interest in the applicant or a certified minority business enterprise;

(ii) the individual's equity in his or her primary place of residence; or

(iii) up to $500,000 of the cash value of any qualified retirement savings plans or individual retirement accounts.

(j) "Race–neutral measure" means a method that is or can be used to assist all small businesses.

(k) (1) Subject to paragraphs (2) and (3) of this subsection, and in accordance with the State's most recent disparity study, "socially and economically disadvantaged individual" means a citizen or lawfully admitted permanent resident of the United States who is:

(i) in any of the following minority groups:

1. African American – an individual having origins in any of the black racial groups of Africa;

2. American Indian/Native American – an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin;

3. Asian – an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part;

4. Hispanic – an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part;

5. physically or mentally disabled – notwithstanding the State's most recent disparity study, an individual who has an impairment that substantially limits one or more major life activities, who is regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business; or

6. women – a woman, regardless of race or ethnicity; or

(ii) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

(2) There is a rebuttable presumption that an individual who is a member of a minority group under paragraph (1)(i) of this subsection is socially and economically disadvantaged.

(3) An individual whose personal net worth exceeds $1,500,000, as adjusted annually for inflation according to the Consumer Price Index, may not be found to be economically disadvantaged.

(l) "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual.

§14–301.1. IN EFFECT

// EFFECTIVE UNTIL JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

The General Assembly finds the following:

(1) the State of Maryland wishes to provide all of its citizens with equal access to business formation and business growth opportunities;

(2) the elimination of discrimination against minority– and women–owned businesses is of paramount importance to the future welfare of the State;

(3) the General Assembly has received and carefully reviewed the disparity study entitled "The State of Minority– and Women–Owned Business Enterprise: Evidence from Maryland" commissioned by the General Assembly and published on February 17, 2011 (the Study), and finds that the Study provides a strong basis in evidence demonstrating persistent discrimination against minority– and women–owned businesses;

(4) based on its review of the Study, the General Assembly finds that:

(i) there are substantial and statistically significant adverse disparities between the availability and utilization of minorities and women in the private sector in the same geographic markets and industry categories in which the State does business;

(ii) the State would become a passive participant in private sector racial and gender discrimination if it ceased or curtailed its remedial efforts, including the operation of the Minority Business Enterprise Program;

(iii) there are substantial and statistically significant adverse disparities for all racial and ethnic groups and nonminority women combined in all major contracting categories in State procurement;

(iv) there are substantial and statistically significant adverse disparities for all individual racial and ethnic groups and for nonminority women in most major industry categories in State procurement;

(v) there is ample evidence that discrimination in the private sector has depressed firm formation and firm growth among minority and nonminority women entrepreneurs; and

(vi) there is powerful and persuasive qualitative and anecdotal evidence of discrimination against minority and nonminority women business owners in both the public and private sectors;

(5) as a result of ongoing discrimination and the present day effects of past discrimination, minority– and women–owned businesses combined continue to be very significantly underutilized relative to their availability to perform work in the sectors in which the State does business;

(6) minority prime contractors also are subject to discrimination and confront especially daunting barriers in attempting to compete with very large and long–established nonminority companies;

(7) despite the fact that the State has employed, and continues to employ, numerous and robust race–neutral remedies, including aggressive outreach and advertising, training and education, small business programs, efforts to improve access to capital, and other efforts, there is a strong basis in evidence that discrimination persists even in public sector procurement where these efforts have been employed;

(8) this subtitle ensures that race–neutral efforts will be used to the maximum extent feasible and that race–conscious measures will be used only where necessary to eliminate discrimination that was not alleviated by race–neutral efforts;

(9) this subtitle continues and enhances efforts to ensure that the State limits the burden on nonminority businesses as much as possible by ensuring that all goals are developed using the best available data and that waivers are available whenever contractors make good faith efforts; and

(10) State efforts to support the development of competitively viable minority– and women–owned business enterprises will assist in reducing discrimination and creating jobs for all citizens of Maryland.

§14–302. IN EFFECT

(a) (1) (i) Except for leases of real property, each unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall percentage goal of the unit's total dollar value of procurement contracts being made directly or indirectly to certified minority business enterprises.

(ii) 1. The overall percentage goal shall be established on a biennial basis by the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General.

2. During any year in which there is a delay in establishing the overall goal, the previous year's goal will apply.

(iii) 1. In consultation with the Secretary of Transportation and the Attorney General, the Special Secretary of Minority Affairs shall establish guidelines on a biennial basis for each unit to consider while determining whether to set subgoals for the minority groups listed in § 14–301(j)(1)(i)1, 2, 3, 4, and 6 of this subtitle.

2. During any year in which there is a delay in establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.

(iv) 1. The Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, shall establish goals and subgoal guidelines that, to the maximum extent feasible, approximate the level of minority business enterprise participation that would be expected in the absence of discrimination.

2. In establishing overall goals and subgoal guidelines, the Special Secretary of Minority Affairs shall provide for public participation by consulting with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning:

A. the availability of minority– and women–owned businesses;

B. the effects of discrimination on opportunities for minority– and women–owned businesses; and

C. the State's operation of the Minority Business Enterprise Program.

(v) In establishing overall goals, the factors to be considered shall include:

1. the relative availability of minority– and women–owned businesses to participate in State procurement as demonstrated by the State's most recent disparity study;

2. past participation of minority business enterprises in State procurement, except for procurement related to leases of real property; and

3. other factors that contribute to constitutional goal setting.

(vi) Notwithstanding § 12–101 of this article, the Special Secretary of Minority Affairs shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article setting forth the State's overall goal.

(2) The Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, shall establish guidelines for each unit to consider when determining the appropriate minority business enterprise participation percentage goal for a procurement contract in accordance with paragraph (3) of this subsection.

(3) Each unit shall:

(i) consider the practical severability of all contracts and, in accordance with § 11–201 of this article, may not bundle contracts;

(ii) implement a program that will enable the unit to evaluate each contract to determine the appropriate minority business enterprise participation goals, if any, for the contract based on:

1. the potential subcontract opportunities available in the prime procurement contract;

2. the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities;

3. the contract goal guidelines established under paragraph (2) of this subsection;

4. the subgoal guidelines established under paragraph (1)(iii) of this subsection; and

5. other factors that contribute to constitutional goal setting;

(iii) monitor and collect data with respect to prime contractor compliance with contract goals; and

(iv) institute corrective action when prime contractors do not make good–faith efforts to comply with contract goals.

(4) Units may not use quotas or any project goal–setting process that:

(i) solely relies on the State's overall numerical goal, or any other jurisdiction's overall numerical goal; or

(ii) fails to incorporate the analysis outlined in paragraph (2)(ii) of this subsection.

(5) (i) A woman who is also a member of an ethnic or racial minority group may be certified in that category in addition to the gender category.

(ii) For purposes of achieving the goals in this subsection, a certified minority business enterprise may participate in a procurement contract and be counted

as a woman–owned business, or as a business owned by a member of an ethnic or racial group, but not both, if the business has been certified in both categories.

(6) Each unit shall meet the maximum feasible portion of the State's overall goal established in accordance with this subsection by using race–neutral measures to facilitate minority business enterprise participation in the procurement process.

(7) If a unit establishes minority business enterprise participation goals for a contract, a contractor, including a contractor that is a certified minority business enterprise, shall:

(i) identify specific work categories appropriate for subcontracting;

(ii) at least 10 days before bid opening, solicit minority business enterprises, through written notice that:

1. describes the categories of work under item (i) of this paragraph; and

2. provides information regarding the type of work being solicited and specific instructions on how to submit a bid;

(iii) attempt to make personal contact with the firms in item (ii) of this paragraph;

(iv) offer to provide reasonable assistance to minority business enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

(v) in order to publicize contracting opportunities to minority business enterprises, attend prebid or preproposal meetings or other meetings scheduled by the unit; and

(vi) upon acceptance of a bid or proposal, provide the unit with a list of minority businesses with whom the contractor negotiated, including price quotes from minority and nonminority firms.

(8) The Special Secretary of Minority Affairs shall:

(i) in consultation with the Secretary of Transportation and the Attorney General, establish procedures governing how the participation of minority business enterprise prime contractors is counted toward contract goals; and

(ii) notwithstanding § 12–101 of this article, adopt regulations setting forth the procedures established in accordance with this paragraph.

(9) (i) 1. If a contractor, including a certified minority business enterprise, does not achieve all or a part of the minority business enterprise

participation goals on a contract, the unit shall make a finding of whether the contractor has demonstrated that the contractor took all necessary and reasonable steps to achieve the goals, including compliance with paragraph (6) of this subsection.

2. A waiver of any part of the minority business enterprise goals for a contract shall be granted if a contractor provides a reasonable demonstration of good–faith efforts to achieve the goals.

(ii) If the unit determines that a waiver should be granted in accordance with subparagraph (i) of this paragraph, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.

(iii) The head of the unit may waive any of the requirements of this subsection relating to the establishment, use, and waiver of contract goals for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those requirements.

(iv) 1. Except for waivers granted in accordance with subparagraph (iii) of this paragraph, when a waiver determination is made, the unit shall issue the determination in writing.

2. The head of the unit shall:

A. keep one copy of the waiver determination and the reasons for the determination; and

B. forward one copy of the waiver determination to the Governor's Office of Minority Affairs.

(v) On or before July 31 of each year, each unit shall submit directly to the Board of Public Works and the Governor's Office of Minority Affairs an annual report of waivers requested and waivers granted under this paragraph.

(vi) The report required under subparagraph (v) of this paragraph shall contain the following information on those contracts where the unit considered a contractor's request for waiver of all or a portion of the minority business enterprise goals:

1. the contract titles, numbers, and dates;

2. the number of waiver requests received;

3. the number of waiver requests granted; and

4. any other information specifically requested by the Board.

(10) (i) 1. This paragraph applies to a bidder or offeror after submission of a bid or proposal and before the execution of a contract with an expected

degree of minority business enterprise participation.

2. If the bidder or offeror determines that a minority business enterprise identified in the minority business enterprise participation schedule has become or will become unavailable or ineligible to perform the work required under the contract, the bidder or offeror shall notify the unit within 72 hours of making the determination.

(ii) 1. If a minority business enterprise identified in the minority business enterprise participation schedule submitted with a bid or offer has become or will become unavailable or ineligible to perform the work required under the contract, the bidder or offeror may submit a written request with the unit to amend the minority business enterprise participation schedule.

2. The request to amend the minority business enterprise participation schedule shall indicate the bidder's or offeror's efforts to substitute another certified minority business enterprise to perform the work that the unavailable or ineligible minority business enterprise would have performed.

(iii) A minority business enterprise participation schedule may not be amended unless:

1. the bidder or offeror provides a satisfactory explanation of the reason for inclusion of the unavailable or ineligible firm on the minority business enterprise participation schedule; and

2. the amendment is approved by the unit's procurement officer after consulting with the unit's minority business enterprise liaison.

(11) (i) This paragraph applies after execution of a contract with an expected degree of minority business enterprise participation.

(ii) The minority business enterprise participation schedule, including any amendment, shall be attached to and made a part of the executed contract.

(iii) 1. A contractor may not terminate or otherwise cancel the contract of a certified minority business enterprise subcontractor listed in the minority business enterprise participation schedule without showing good cause and obtaining the prior written consent of the minority business enterprise liaison and approval of the head of the unit.

2. The unit shall send a copy of the written consent obtained under subsubparagraph 1 of this subparagraph to the Governor's Office of Minority Affairs.

(iv) A minority business enterprise participation schedule may not be amended after the date of contract execution unless the request is approved by the head

of the unit and the contract is amended.

(12) If, during the performance of a contract, a certified minority business enterprise contractor or subcontractor becomes ineligible to participate in the Minority Business Enterprise Program because one or more of its owners has a personal net worth that exceeds the amount specified in § 14–301(j)(3) of this subtitle:

(i) that ineligibility alone may not cause the termination of the certified minority business enterprise's contractual relationship for the remainder of the term of the contract; and

(ii) the certified minority business enterprise's participation under the contract shall continue to be counted toward the program and contract goals.

(b) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle and subsection (a) of this section are inapplicable to the extent that any unit determines the provisions to be in conflict with any applicable federal program requirement.

(2) The determination under this subsection shall be included with the report required under § 14–305 of this subtitle.

14–302. ** TAKES EFFECT JULY 1, 2015 PER CHAPTERS 343 AND 605 OF 2013 **

// EFFECTIVE UNTIL JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

(a) (1) (i) 1. Except for leases of real property, each unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall percentage goal of the unit's total dollar value of procurement contracts being made directly or indirectly to certified minority business enterprises.

2. Notwithstanding subsubparagraph 1 of this subparagraph, the following contracts may not be counted as part of a unit's total dollar value of procurement contracts:

A. a procurement contract awarded in accordance with Subtitle 1 of this title;

B. a procurement contract awarded to a not–for–profit entity in accordance with requirements mandated by State or federal law; and

C. a procurement by the Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene for family and individual support services, community residential services, resource coordination services, behavioral support services, vocational and day services, and respite services, as those terms are defined in regulations adopted by the Department of Health and Mental Hygiene.

(ii) 1. The overall percentage goal shall be established on a biennial basis by the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General.

2. During any year in which there is a delay in establishing the overall goal, the previous year's goal will apply.

(iii) 1. In consultation with the Secretary of Transportation and the Attorney General, the Special Secretary of Minority Affairs shall establish guidelines on a biennial basis for each unit to consider while determining whether to set subgoals for the minority groups listed in § 14–301(k)(1)(i)1, 2, 3, 4, and 6 of this subtitle.

2. During any year in which there is a delay in establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.

(iv) 1. The Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, shall establish goals and subgoal guidelines that, to the maximum extent feasible, approximate the level of minority business enterprise participation that would be expected in the absence of discrimination.

2. In establishing overall goals and subgoal guidelines, the Special Secretary of Minority Affairs shall provide for public participation by consulting with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning:

A. the availability of minority– and women–owned businesses;

B. the effects of discrimination on opportunities for minority– and women–owned businesses; and

C. the State's operation of the Minority Business Enterprise Program.

(v) In establishing overall goals, the factors to be considered shall include:

1. the relative availability of minority– and women–owned businesses to participate in State procurement as demonstrated by the State's most recent disparity study;

2. past participation of minority business enterprises in State procurement, except for procurement related to leases of real property; and

3. other factors that contribute to constitutional goal setting.

(vi) Notwithstanding § 12–101 of this article, the Special Secretary of Minority Affairs shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article setting forth the State's overall goal.

(2) The Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, shall establish guidelines for each unit to consider when determining the appropriate minority business enterprise participation percentage goal for a procurement contract in accordance with paragraph (3) of this subsection.

(3) Each unit shall:

(i) consider the practical severability of all contracts and, in accordance with § 11–201 of this article, may not bundle contracts;

(ii) implement a program that will enable the unit to evaluate each contract to determine the appropriate minority business enterprise participation goals, if any, for the contract based on:

1. the potential subcontract opportunities available in the prime procurement contract;

2. the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities;

3. the contract goal guidelines established under paragraph (2) of this subsection;

4. the subgoal guidelines established under paragraph (1)(iii) of this subsection; and

5. other factors that contribute to constitutional goal setting;

(iii) monitor and collect data with respect to prime contractor compliance with contract goals; and

(iv) institute corrective action when prime contractors do not make good–faith efforts to comply with contract goals.

(4) Units may not use quotas or any project goal–setting process that:

(i) solely relies on the State's overall numerical goal, or any other jurisdiction's overall numerical goal; or

(ii) fails to incorporate the analysis outlined in paragraph (2)(ii) of this subsection.

(5) (i) A woman who is also a member of an ethnic or racial minority

group may be certified in that category in addition to the gender category.

(ii) For purposes of achieving the goals in this subsection, a certified minority business enterprise may participate in a procurement contract and be counted as a woman–owned business, or as a business owned by a member of an ethnic or racial group, but not both, if the business has been certified in both categories.

(6) Each unit shall meet the maximum feasible portion of the State's overall goal established in accordance with this subsection by using race–neutral measures to facilitate minority business enterprise participation in the procurement process.

(7) If a unit establishes minority business enterprise participation goals for a contract, a contractor, including a contractor that is a certified minority business enterprise, shall:

(i) identify specific work categories appropriate for subcontracting;

(ii) at least 10 days before bid opening, solicit minority business enterprises, through written notice that:

1. describes the categories of work under item (i) of this paragraph; and

2. provides information regarding the type of work being solicited and specific instructions on how to submit a bid;

(iii) attempt to make personal contact with the firms in item (ii) of this paragraph;

(iv) offer to provide reasonable assistance to minority business enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

(v) in order to publicize contracting opportunities to minority business enterprises, attend prebid or preproposal meetings or other meetings scheduled by the unit; and

(vi) upon acceptance of a bid or proposal, provide the unit with a list of minority businesses with whom the contractor negotiated, including price quotes from minority and nonminority firms.

(8) The Special Secretary of Minority Affairs shall:

(i) in consultation with the Secretary of Transportation and the Attorney General, establish procedures governing how the participation of minority business enterprise prime contractors is counted toward contract goals; and

(ii) notwithstanding § 12–101 of this article, adopt regulations

setting forth the procedures established in accordance with this paragraph.

(9) (i) 1. If a contractor, including a certified minority business enterprise, does not achieve all or a part of the minority business enterprise participation goals on a contract, the unit shall make a finding of whether the contractor has demonstrated that the contractor took all necessary and reasonable steps to achieve the goals, including compliance with paragraph (6) of this subsection.

2. A waiver of any part of the minority business enterprise goals for a contract shall be granted if a contractor provides a reasonable demonstration of good–faith efforts to achieve the goals.

(ii) If the unit determines that a waiver should be granted in accordance with subparagraph (i) of this paragraph, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.

(iii) The head of the unit may waive any of the requirements of this subsection relating to the establishment, use, and waiver of contract goals for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those requirements.

(iv) 1. Except for waivers granted in accordance with subparagraph (iii) of this paragraph, when a waiver determination is made, the unit shall issue the determination in writing.

2. The head of the unit shall:

A. keep one copy of the waiver determination and the reasons for the determination; and

B. forward one copy of the waiver determination to the Governor's Office of Minority Affairs.

(v) On or before July 31 of each year, each unit shall submit directly to the Board of Public Works and the Governor's Office of Minority Affairs an annual report of waivers requested and waivers granted under this paragraph.

(vi) The report required under subparagraph (v) of this paragraph shall contain the following information on those contracts where the unit considered a contractor's request for waiver of all or a portion of the minority business enterprise goals:

1. the contract titles, numbers, and dates;

2. the number of waiver requests received;

3. the number of waiver requests granted; and

4. any other information specifically requested by the Board.

(10) (i) 1. This paragraph applies to a bidder or offeror after submission of a bid or proposal and before the execution of a contract with an expected degree of minority business enterprise participation.

2. If the bidder or offeror determines that a minority business enterprise identified in the minority business enterprise participation schedule has become or will become unavailable or ineligible to perform the work required under the contract, the bidder or offeror shall notify the unit within 72 hours of making the determination.

(ii) 1. If a minority business enterprise identified in the minority business enterprise participation schedule submitted with a bid or offer has become or will become unavailable or ineligible to perform the work required under the contract, the bidder or offeror may submit a written request with the unit to amend the minority business enterprise participation schedule.

2. The request to amend the minority business enterprise participation schedule shall indicate the bidder's or offeror's efforts to substitute another certified minority business enterprise to perform the work that the unavailable or ineligible minority business enterprise would have performed.

(iii) A minority business enterprise participation schedule may not be amended unless:

1. the bidder or offeror provides a satisfactory explanation of the reason for inclusion of the unavailable or ineligible firm on the minority business enterprise participation schedule; and

2. the amendment is approved by the unit's procurement officer after consulting with the unit's minority business enterprise liaison.

(11) (i) This paragraph applies after execution of a contract with an expected degree of minority business enterprise participation.

(ii) The minority business enterprise participation schedule, including any amendment, shall be attached to and made a part of the executed contract.

(iii) 1. A contractor may not terminate or otherwise cancel the contract of a certified minority business enterprise subcontractor listed in the minority business enterprise participation schedule without showing good cause and obtaining the prior written consent of the minority business enterprise liaison and approval of the head of the unit.

2. The unit shall send a copy of the written consent obtained under subsubparagraph 1 of this subparagraph to the Governor's Office of Minority

Affairs.

(iv) A minority business enterprise participation schedule may not be amended after the date of contract execution unless the request is approved by the head of the unit and the contract is amended.

(12) If, during the performance of a contract, a certified minority business enterprise contractor or subcontractor becomes ineligible to participate in the Minority Business Enterprise Program because one or more of its owners has a personal net worth that exceeds the amount specified in § 14–301(k)(3) of this subtitle:

(i) that ineligibility alone may not cause the termination of the certified minority business enterprise's contractual relationship for the remainder of the term of the contract; and

(ii) the certified minority business enterprise's participation under the contract shall continue to be counted toward the program and contract goals.

(13) (i) Except as provided in subparagraph (ii) of this paragraph, a not–for–profit entity participating as a minority business enterprise on a procurement contract awarded by a unit before July 1, 2015, may continue to participate in the contract until the contract expires or otherwise terminates, including all options, renewals, and other extensions.

(ii) 1. The not–for–profit entity's participation may not be counted toward achieving the minority business enterprise participation goals in this subsection.

2. The unit may not require that a certified minority business enterprise be substituted for the not–for–profit entity in order to meet the minority business enterprise goals for the procurement contract.

(b) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle and subsection (a) of this section are inapplicable to the extent that any unit determines the provisions to be in conflict with any applicable federal program requirement.

(2) The determination under this subsection shall be included with the report required under § 14–305 of this subtitle.

§14–303. IN EFFECT

// EFFECTIVE UNTIL JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

(a) (1) (i) In accordance with Title 10, Subtitle 1 of the State Government Article, the Board shall adopt regulations consistent with the purposes of this Division II to carry out the requirements of this subtitle.

(ii) The Board shall keep a record of information regarding any

waivers requested in accordance with § 14–302(a)(9)(i) of this subtitle and subsection (b)(11) of this section and submit a copy of the record to the General Assembly on or before October 1 of each year, in accordance with § 2–1246 of the State Government Article.

(iii) The Board shall keep a record of the aggregate number and the identity of minority business enterprises that receive certification under the process established by the Board under subsection (b)(1) of this section and submit a copy of the record to the General Assembly on or before October 1 of each year, in accordance with § 2–1246 of the State Government Article.

(2) The regulations shall establish procedures to be followed by units, prospective contractors, and successful bidders or offerors to maximize notice to, and the opportunity to participate in the procurement process by, a broad range of minority business enterprises.

(b) These regulations shall include:

(1) provisions:

(i) designating one State agency to certify and decertify minority business enterprises for all units through a single process that meets applicable federal requirements, including provisions that promote and facilitate the submission of some or all of the certification application through an electronic process;

(ii) for the purpose of certification under this subtitle, that promote and facilitate certification of minority business enterprises that have received certification from the U.S. Small Business Administration or a county that uses a certification process substantially similar to the process established in accordance with item (i) of this item;

(iii) requiring the agency designated to certify minority business enterprises to complete the agency's review of an application for certification and notify the applicant of the agency's decision within 90 days of receipt of a complete application that includes all of the information necessary for the agency to make a decision; and

(iv) authorizing the agency designated to certify minority business enterprises to extend the notification requirement established under item (iii) of this item once, for no more than an additional 60 days, if the agency provides the applicant with a written notice and explanation;

(2) a requirement that the solicitation document accompanying each solicitation set forth the expected degree of minority business enterprise participation based, in part, on the factors set forth in § 14–302(a)(3)(ii) of this subtitle;

(3) a requirement that bidders or offerors complete a document setting forth the percentage of the total dollar amount of the contract that the bidder or offeror

agrees will be performed by certified minority business enterprises;

(4) a requirement that the solicitation documents completed and submitted by the bidder or offeror in connection with its minority business enterprise participation commitment must be attached to and made a part of the contract;

(5) a requirement that all contracts containing minority business enterprise participation goals shall contain a liquidated damages provision that applies in the event that the contractor fails to comply in good faith with the provisions of this subtitle or the pertinent terms of the applicable contract;

(6) a requirement that the unit provide a current list of certified minority business enterprises to each prospective contractor;

(7) provisions to ensure the uniformity of requests for bids on subcontracts;

(8) provisions relating to the timing of requests for bids on subcontracts and of submission of bids on subcontracts;

(9) provisions designed to ensure that a fiscal disadvantage to the State does not result from an inadequate response by minority business enterprises to a request for bids;

(10) provisions relating to joint ventures, under which a bidder may count toward meeting its minority business enterprise participation goal, the minority business enterprise portion of the joint venture;

(11) consistent with § 14–302(a)(9) of this subtitle, provisions relating to any circumstances under which a unit may waive obligations of the contractor relating to minority business enterprise participation;

(12) provisions requiring a monthly submission to the unit by minority business enterprises acknowledging all payments received in the preceding 30 days under a contract governed by this subtitle;

(13) a requirement that a unit shall verify and maintain data concerning payments received by minority business enterprises, including a requirement that, upon completion of a project, the unit shall compare the total dollar value actually received by minority business enterprises with the amount of contract dollars initially awarded, and an explanation of any discrepancies therein;

(14) a requirement that a unit verify that minority business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(15) provisions establishing a graduation program based on the financial viability of the minority business enterprise, using annual gross receipts or other

economic indicators as may be determined by the Board;

(16) a requirement that a bid or proposal based on a solicitation with an expected degree of minority business enterprise participation identify the specific commitment of certified minority business enterprises at the time of submission;

(17) provisions promoting and providing for the counting and reporting of certified minority business enterprises as prime contractors;

(18) provisions establishing standards to require a minority business enterprise to perform a commercially useful function on a contract;

(19) a requirement that each unit work with the Governor's Office of Minority Affairs to designate certain procurements as being excluded from the requirements of § 14–302(a) of this subtitle; and

(20) other provisions that the Board considers necessary or appropriate to encourage participation by minority business enterprises and to protect the integrity of the procurement process.

(c) The regulations adopted under this section shall specify that a unit may not allow a business to participate as if it were a certified minority business enterprise if the business's certification is pending.

§14–304. IN EFFECT

// EFFECTIVE UNTIL JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

(a) (1) The certification agency shall develop and maintain a directory of all certified minority business enterprises.

(2) The directory shall be accessible to the public through the Internet.

(3) For each minority business enterprise included in the directory, the certification agency shall include the following information:

(i) all contract information available to the certification agency for the minority business enterprise;

(ii) the certification number and minority status of the minority business enterprise;

(iii) contact information for up to three professional references for the minority business enterprise; and

(iv) any other information the certification agency considers necessary or appropriate to encourage participation in the procurement process by minority business enterprises.

(4) The certification agency shall:

(i) update the directory at least monthly;

(ii) identify as recently certified in the directory each minority business enterprise that has obtained certification during the calendar year; and

(iii) include in the directory a list of all minority business enterprises that have become ineligible to participate in the Minority Business Enterprise Program because:

1. one or more of its owners has a personal net worth that exceeds the amount specified in § 14–301(i)(3) of this subtitle; or

2. the minority business enterprise no longer meets the standards developed under § 14–303(b)(12) of this subtitle.

(b) In the same manner and with the same fees as provided by law in civil cases, in a matter regarding the decertification of a certified minority business enterprise, the certification agency may:

(1) subpoena witnesses;

(2) administer oaths; and

(3) compel the production of records, books, papers, and other documents.

(c) If a person fails to comply with a subpoena issued under subsection (b) of this section, or fails to produce documents or other evidence, on petition of the certification agency, a court of competent jurisdiction may pass an order directing compliance with the subpoena or compelling the production of documents or other evidence.

§14–305. IN EFFECT

// EFFECTIVE UNTIL JULY 1, 2017 PER CHAPTERS 200 AND 201 OF 2013 //

(a) (1) Within 90 days after the end of the fiscal year, each unit shall report to the Governor's Office of Minority Affairs, the certification agency, and, subject to § 2–1246 of the State Government Article, the Joint Committee on Fair Practices and Personnel Oversight.

(2) A report under this subsection shall for the preceding fiscal year:

(i) state the total number and value of procurement contracts between the unit and certified minority business enterprises, by specific category of minority business enterprise, including whether the minority business enterprise participated as a prime contractor or as a subcontractor;

(ii) indicate the percentage that those procurement contracts

represent, by specific category of minority business enterprise, of the total number and value of procurement contracts;

(iii) state the total number and the names of certified minority business enterprises that participated as prime contractors or as subcontractors on procurement contracts awarded by a unit;

(iv) for each minority business included in the report under item (iii) of this paragraph, list all procurement contracts awarded by a unit to the minority business enterprise, including a description of the contract; and

(v) contain other such information as required by the Governor's Office of Minority Affairs and the certification agency and approved by the Board.

(3) As to procurement contracts for architectural services and engineering services reported under paragraph (2) of this subsection, the report shall identify by separate category of minority business enterprise procurements for:

(i) architectural services; and

(ii) engineering services.

(4) A report under this subsection shall be in a form prescribed by the Governor's Office of Minority Affairs and the certification agency and approved by the Board.

(b) (1) On or before December 31 of each year, the Governor's Office of Minority Affairs shall submit to the Board of Public Works and, subject to § 2–1246 of the State Government Article, to the Legislative Policy Committee a report summarizing the information the Office receives under subsection (a) of this section.

(2) This report may be prepared in conjunction with the annual report required under § 9–306 of the State Government Article.

§14–307.

The Legislative Policy Committee shall direct at least 1 standing committee of the House of Delegates and at least 1 standing committee of the State Senate to review annually the performance of units as reported under § 14-305 of this subtitle.

§14–308.

(a) (1) A person may not:

(i) fraudulently obtain, hold, or attempt to obtain or hold certification;

(ii) aid another person in performing an act prohibited under item (i)

of this paragraph;

(iii) willfully obstruct, impede, or attempt to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;

(iv) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this subtitle; or

(v) in any minority business enterprise matter administered under this subtitle:

1. willfully falsify, conceal, or cover up a material fact by any scheme or device;

2. make a false or fraudulent statement or representation; or

3. use a false writing or document that the person knows to contain a false or fraudulent statement or entry.

(2) Except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

(i) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its bid or proposal;

(ii) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or proposal;

(iii) fail to use the certified minority business enterprise in the performance of the contract; or

(iv) pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

(3) A person who violates any provision of this subsection is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 5 years or both.

(b) (1) A person may not make a false statement about whether an entity has certification.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $2,500 or imprisonment not exceeding 1 year or both.

(c) The Governor's Office of Minority Affairs shall make available a fraud hotline for reporting violations of this section.

§14–309.

The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations adopted under those sections, shall be of no effect and may not be enforced after July 1, 2017.

§14–401.

(a) (1) In this section the following words have the meanings indicated.

(2) "Preference" includes:

(i) a percentage preference;

(ii) an employee residency requirement; or

(iii) any other provision that favors a resident over a nonresident.

(3) "Resident bidder" means a bidder whose principal office is located in the State.

(4) "Resident offeror" means an offeror whose principal office is located in the State.

(5) "Services" means services, architectural services, construction related services, engineering services, or energy performance contract services, all as defined in § 11-101 of this article.

(b) When a unit uses competitive sealed bidding to award a procurement contract, the unit may give a preference to the resident bidder who submits the lowest responsive bid from a resident bidder if:

(1) the resident bidder is a responsible bidder;

(2) a responsible bidder whose principal office or operation is in another state submits the lowest responsive bid;

(3) the state in which the nonresident bidder's principal office is located or the state in which the nonresident bidder has its principal operation through which it would provide supplies or services gives a preference to its residents; and

(4) a preference does not conflict with a federal law or grant affecting the procurement contract.

(c) When a unit uses competitive sealed proposals to award a procurement contract, the unit may give a preference to resident offerors if:

(1) a responsible offeror whose principal office or operation is in another state submits a proposal;

(2) the state in which the nonresident offeror's principal office is located or the state in which the nonresident offeror has its principal operation through which it would provide the subject of the contract gives a preference to its residents; and

(3) the preference does not conflict with a federal law or grant affecting the procurement contract.

(d) (1) At the request of the unit, a nonresident bidder or nonresident offeror submitting a proposal for a State project shall provide a copy of the current statute, resolution, policy, procedure, or executive order that pertains to the treatment of nonresident bidders or nonresident offerors by:

(i) the state in which the nonresident bidder's or nonresident offeror's principal office is located; and

(ii) the state in which the nonresident bidder or nonresident offeror has its principal operation through which it would provide supplies or services.

(2) A unit may give a preference under this section that is identical to any of the following preferences, or any combination of them:

(i) the preference that the state in which the nonresident bidder's or nonresident offeror's principal office is located gives to its residents; or

(ii) the preference that the state in which the nonresident bidder or nonresident offeror has its principal operation through which it would provide supplies or services gives to its residents.

§14–402.

(a) In this section, "recycled paper" means a paper product at least 80% of the total weight of which consists of the product of a manufacturing process that:

(1) has converted a raw material into a valuable commodity; and

(2) includes a total gross content of post consumer waste of at least 80%.

(b) To the extent practicable, in procuring paper or paper products under Title 4, Subtitle 3, Part II of this article, the Secretary of General Services shall buy or approve for purchase only supplies that are produced from recycled paper.

(c) Of the total volume of paper that the Secretary of General Services buys, at least 90% shall be recycled paper.

(d) If recycled paper that meets the definition set forth in subsection (a) of

this section is unavailable, then for purposes of complying with the requirements of this section, the Department of General Services may purchase recycled paper products that at a minimum conform to the definitions set forth in the Environmental Protection Agency guideline for federal procurement of paper and paper products containing recovered materials (40 C.F.R., Part 247).

§14–403.

(a) To the extent practicable, each unit of the State government shall buy or lease for use by the State government supplies that are the quietest available supplies.

(b) Supplies that are certified as low-noise-emission products under the federal Noise Control Act of 1972 are considered to meet the requirement of subsection (a) of this section.

§14–404.

(a) In this section, "coal products" includes coal in both its synthetic and conventional forms.

(b) This section does not apply to a building or facility for which:

(1) the Department of the Environment determines that the use of coal products violates a provision of the Environment Article or a regulation that the Department adopts under that article; or

(2) the Department of General Services or another appropriate unit determines that the use of coal products would not be cost effective.

(c) The design of a heating system in a building or facility constructed after July 1, 1986 may not preclude the use of Maryland coal if:

(1) the State provides at least 50% of the money used for construction of the building or facility; and

(2) a determination is made that coal products will be used to fuel the heating system.

§14–405.

(a) (1) In this section the following words have the meanings indicated.

(2) "Environmentally preferable product or service" means a product or service that throughout the full life cycle of the product or service:

(i) is energy efficient, water efficient, biobased, nonozone depleting, made with recycled content, or nontoxic; or

(ii) has other attributes recognized as environmentally preferable by

the Maryland Green Purchasing Committee.

(b) (1) To encourage the maximum purchase of environmentally preferable products and services, the Maryland Green Purchasing Committee established under § 14–410 of this subtitle shall establish environmentally preferable specifications to be adopted by State agencies.

(2) The environmentally preferable specifications shall be published and maintained online by the Maryland Green Purchasing Committee for use by State agencies.

(c) Each State unit shall review annually the procurement specifications currently used by the unit and, to the extent practicable:

(1) adopt the environmentally preferable specifications published by the Maryland Green Purchasing Committee; and

(2) revise the unit's procurement specifications in accordance with § 14–410 of this subtitle.

(d) On or before September 1 of each year, each State unit shall report to the Department of General Services on the unit's procurement of environmentally preferable products and services as a percentage of the unit's gross purchases during the preceding fiscal year, including the types and quantities of products and services procured.

(e) (1) Except as provided in paragraph (2) of this subsection, this section is broadly applicable to all procurements by the State if the quality of the product or service is consistent with the requirements of the bid specifications.

(2) Only to the extent necessary to prevent the denial of federal moneys or eliminate the inconsistency with federal law, this section does not apply to a procurement by the State if the procurement officer determines that compliance with this section would:

(i) cause denial of federal moneys; or

(ii) be inconsistent with the requirements of federal law.

§14–406.

(a) In this section, "preference" includes:

(1) a percentage price preference; and

(2) any other provision that favors products or equipment that are mercury free or that contain the least amount of mercury necessary to meet product or equipment performance standards over other products.

(b) Beginning October 1, 2003, all State agencies shall give preference to products and equipment that are mercury free or contain the least amount of mercury necessary to meet product or equipment performance standards.

(c) This section does not apply to a contract or procurement agreement in effect on October 1, 2001.

(d) The Board may adopt regulations to implement this section.

§14–407.

(a) (1) In this section the following words have the meanings indicated.

(2) "Locally grown food" means food grown in the State.

(3) "Percentage price preference" means the percent by which a responsive bid from a responsible bidder whose product is a locally grown food may exceed the lowest responsive bid submitted by a responsible bidder whose product is not a locally grown food.

(b) The Board shall adopt regulations that require State schools and facilities to establish a percentage price preference, not to exceed 5%, for the purchase of locally grown food.

(c) A percentage price preference under this section may not be used in conjunction with any other percentage price preference established under this title.

(d) Each State school and facility shall review the procurement specifications currently used and, to the extent practicable, require the use of a percentage price preference in their purchase of locally grown food.

(e) (1) Except as provided in paragraph (2) of this subsection, this section is broadly applicable to all procurements by State schools and facilities if the locally grown food is consistent with the requirements of the bid specification.

(2) Only to the extent necessary to prevent the denial of federal moneys or eliminate the inconsistency with federal law, this section does not apply to a procurement by a State school or facility if it is determined that compliance with this section would:

(i) cause denial of federal moneys; or

(ii) be inconsistent with the requirements of federal law.

§14–408.

(a) In this section, "biodiesel fuel" means:

(1) a fuel, comprised of mono–alkyl esters of long chain fatty acids derived

from vegetable oils or animal fats, that is designated B100 and meets the requirements of ASTM D 6751 and its successors; or

(2) a blend of biodiesel fuel meeting ASTM D 6751 with petroleum–based diesel fuel, designated as BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

(b) In fiscal year 2008 and in each subsequent fiscal year, the State shall ensure that at least 50% of the vehicles using diesel fuel in the State vehicle fleet use a blend of fuel that is at least 5% biodiesel fuel or other biofuel approved by the U.S. Environmental Protection Agency as a fuel or fuel additive or approved under the EPA Renewable Fuels Standard 2 program.

(c) In fiscal year 2009 and in each subsequent fiscal year, the State shall ensure that at least 50% of the heavy equipment owned by the State using diesel fuel and at least 50% of the heating equipment in State buildings that uses normal or #2 heating oil use, subject to availability, a blend of fuel that is at least 5% biodiesel fuel or other biofuel approved by the U.S. Environmental Protection Agency as a fuel or fuel additive or approved under the EPA Renewable Fuels Standard 2 program.

(d) This section does not apply to any State vehicle, piece of heavy equipment, or heating equipment for which mechanical failure due to use of biodiesel fuel or other biofuel will void the manufacturer's warranty for that vehicle, piece of heavy equipment, or heating equipment.

§14–409.

(a) A State or local unit responsible for the maintenance of public lands in the State, to the maximum extent practicable, shall give consideration and preference to the use of compost in any land maintenance activity that is to be paid for with public funds.

(b) (1) The Department of General Services shall study the use of compost as a fertilizer on State property that is under the operation of the Department of General Services to develop a baseline estimate of the share of landscaped area fertilized by compost.

(2) The Department of General Services shall report the findings of the study required under paragraph (1) of this subsection to the General Assembly, in accordance with § 2–1246 of the State Government Article, on or before December 1, 2010, and shall make the report available to the public.

(c) It is the goal of the Department of General Services to:

(1) compost, to the extent practicable, all landscape waste on State property that is under its operation for use as fertilizer in landscaping activities; and

(2) increase the percentage of landscaped area fertilized by compost each

year.

§14–410.

(a) (1) In this section the following words have the meanings indicated.

(2) "Committee" means the Maryland Green Purchasing Committee.

(3) "Environmentally preferable purchasing" means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose, based on:

(i) the full life cycle of the product or service;

(ii) relevant international consensus standards; and

(iii) relevant factors including the raw materials, manufacturing, packaging, distribution, use, reuse, operation, maintenance, recycling, energy recovery, climate change, fossil fuel, ozone depletion, and disposal of the goods or services.

(b) (1) There is a Maryland Green Purchasing Committee.

(2) The Committee shall consist of the following members:

(i) the Secretary of General Services, or the Secretary's designee;

(ii) the Secretary of Budget and Management, or the Secretary's designee;

(iii) the Secretary of Natural Resources, or the Secretary's designee;

(iv) the Secretary of the Environment, or the Secretary's designee;

(v) the Secretary of Health and Mental Hygiene, or the Secretary's designee;

(vi) the Secretary of Business and Economic Development, or the Secretary's designee;

(vii) the Secretary of Transportation, or the Secretary's designee;

(viii) the Secretary of Public Safety and Correctional Services, or the Secretary's designee;

(ix) the Chancellor of the University System of Maryland, or the Chancellor's designee;

(x) the Secretary of Information Technology, or the Secretary's

designee;

(xi) the Secretary of Education, or the Secretary's designee; and

(xii) the State Treasurer, or the Treasurer's designee.

(3) The Secretary of General Services, or the Secretary's designee, shall serve as the Chair of the Committee.

(4) Staff support to the Committee shall be provided by the Department of General Services, with assistance as necessary to be furnished by other member agencies.

(c) The Committee shall provide the State with information and assistance regarding environmentally preferable purchasing, including:

(1) the promotion of environmentally preferable purchasing through education and training;

(2) the development and implementation of statewide policies, guidelines, programs, best practices, and regulations;

(3) coordination with other State or federal agencies, task forces, workgroups, regulatory efforts, research and data collection efforts, or other programs and services relating to environmentally preferable purchasing;

(4) the publication of environmentally preferable specifications to be adopted by State agencies; and

(5) the framework and format for State unit reports required under § 14–405 of this subtitle.

(d) The Committee shall designate a single point of contact for State agencies, suppliers, and other interested parties to contact regarding environmentally preferable purchasing issues.

(e) On or before October 1 of each year, the Committee shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on the Committee's activities and the progress made as a result of the implementation of this section.

(f) This section may not be construed to:

(1) limit or supersede recycled content requirements under any other provision of law; or

(2) require the acquisition of goods or services that:

(i) do not perform adequately for the intended use;

(ii) exclude adequate competition; or

(iii) are not available at a reasonable price in a reasonable period of time.

(g) A bidder or offeror for a procurement contract shall certify in writing that any claims of environmental attributes made relating to a product or service are consistent with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms.

§14–411.

(a) In this section, "public employer" means:

(1) a unit;

(2) a county;

(3) a municipality in the State;

(4) a school district in the State; or

(5) any special district in the State.

(b) (1) Except as provided in paragraph (2) of this section, a public employer may not knowingly buy, furnish, or require an employee to buy or acquire for use while on duty any of the following items unless the item is manufactured in the United States:

(i) a uniform or any other item of apparel, the selection of which is not in the employee's discretion, except for the proper size; or

(ii) safety equipment and protective accessories.

(2) A public employer may buy, furnish, or require an employee to purchase or acquire an item listed in paragraph (1) of this subsection that is manufactured outside of the United States, if:

(i) the item or a similar item is not manufactured or available for purchase in the United States;

(ii) the item or a similar item is not manufactured or available for purchase in the United States in reasonably available quantities;

(iii) the price of the item or a similar item manufactured in the United States exceeds the price of a similar, available item that is not manufactured in the United States by an unreasonable amount; or

(iv) the quality of the item or a similar item manufactured in the United States is substantially less than the quality of a comparably priced, similar,

and available item that is not manufactured in the United States.

(3) The Board shall adopt regulations defining the following terms for the purposes of this section:

(i) "reasonably available";

(ii) "unreasonable amount"; and

(iii) "substantially less".

§14–412.

(a) (1) In this section the following words have the meanings indicated.

(2) "Lamp" means the component of a luminaire that produces the light.

(3) "Lumen" means a unit of measurement of luminous flux.

(4) "Luminaire" means the complete lighting unit, including the lamp or other component that produces light and the assembly that holds the lamp, including an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and a refractor or lens.

(5) "Restricted uplight luminaire" means a luminaire that:

(i) except for a 0.5% maximum incidental uplight from reflection off mounting hardware, allows no direct light emission above a horizontal plane through the luminaire's lowest light–emitting part; and

(ii) emits no more than 10% of the total direct light emission at or above a vertical angle of 80 degrees.

(6) "State building" means a building owned or leased by the State or a unit of the State.

(b) This section does not apply to a luminaire:

(1) located on the grounds of a correctional facility;

(2) required by federal regulation;

(3) required for storm operation activities performed by the Department of Transportation;

(4) required to illuminate the State flag or the flag of the United States;

(5) used for sign illumination; or

(6) in a lighting plan where less than 25% of the luminaires are to be replaced.

(c) State funds may not be used to install or replace a permanent outdoor luminaire for lighting on the grounds of any State building or facility unless:

(1) the luminaire is designed to maximize energy conservation and to minimize light pollution, glare, and light trespass;

(2) the illumination produced by the luminaire is the minimum illumination necessary for the intended purpose of the lighting; and

(3) for a luminaire with an output of more than 1,800 lumens, the luminaire is a restricted uplight luminaire.

(d) (1) The Board of Public Works or the Board's designee may waive the requirement of subsection (c)(3) of this section if, after a request for a waiver has been made, the Board of Public Works or the Board's designee determines that the waiver is necessary for the lighting application.

(2) The Board of Public Works shall establish the requirements for a waiver request under paragraph (1) of this subsection, including:

(i) a description of the lighting plan;

(ii) a description of the efforts made to comply with the requirements of this section; and

(iii) the reason a waiver is necessary.

(3) In reviewing a waiver request, the Board of Public Works or the Board's designee shall consider design safety, costs, and any other factors the Board or the Board's designee determines are appropriate.

§14–413.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Conflict mineral" means a mineral or mineral derivative determined under federal law to be financing human conflict.

(ii) "Conflict mineral" includes columbite–tantalite (coltan), cassiterite, gold, wolframrite, or derivatives of these minerals.

(3) "Noncompliant person" means a person:

(i) that is required to disclose under federal law information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; and

(ii) for which the disclosure is not filed, is considered under federal law to be an unreliable determination, or contains false information.

(b) A unit may not knowingly procure supplies or services from a noncompliant person.

(c) In any solicitation for supplies or services, a unit shall provide notice of the requirements of this section.

§14–414.

(a) (1) In this section the following words have the meanings indicated.

(2) "Electronic product" means a product covered by EPEAT or another comprehensive environmental rating system approved by the Department of Information Technology.

(3) "EPEAT" means the Electronic Product Environmental Assessment Tool.

(b) When purchasing an electronic product to be used by the State, a State unit shall purchase an electronic product that:

(1) is listed and rated silver or gold on the EPEAT registry; or

(2) meets nationally recognized and consensus–based standards established by a comprehensive environmental rating system approved by the Department of Information Technology.

(c) If a unit requests a waiver from the requirement in subsection (b) of this section, the Secretary of Information Technology, or the Secretary's designee, may waive the requirement.

§14–415.

(a) (1) In this section the following words have the meanings indicated.

(2) "Certified e–Stewards recycler" means a recycler of electronic products that has successfully completed the e–Stewards certification program created by the Basel Action Network.

(3) "Electronic product" means a product recycled by:

(i) a certified e–Stewards recycler;

(ii) a R2 certified recycler; or

(iii) a recycler of electronic products that meets nationally recognized and consensus–based guidelines, standards, and systems for recycling that are

approved by the Department of the Environment in consultation with the Department of General Services.

(4) "R2 certified recycler" means a recycler of electronic products that is certified in the R2 Practices Standards that are maintained by R2 Solutions.

(b) On or after October 1, 2014, when awarding a procurement contract for services to recycle electronic products, a State unit shall award the contract to a recycler of electronic products that:

(1) is R2 or e–Stewards certified; or

(2) meets nationally recognized and consensus–based guidelines, standards, and systems for recycling that are approved by the Department of the Environment in consultation with the Department of General Services.

§14–416.

(a) (1) In this section the following words have the meanings indicated.

(2) "American manufactured goods" means goods that:

(i) are manufactured in the United States; or

(ii) are assembled in the United States.

(3) (i) "Emergency life safety and property safety goods" means any goods when provided for installation in, as part of, or as an addition to a system designed to:

1. prevent, respond to, alert regarding, suppress, control, or extinguish an emergency or the cause of an emergency that threatens life or property; or

2. assist in evacuation in the event of an emergency that threatens life or property.

(ii) "Emergency life safety and property safety goods" includes:

1. systems or items for or relating to:

A. fire alarms;

B. fire sprinklers;

C. fire suppression;

D. fire extinguishing;

E. security;

F. gas detection;

G. intrusion detection;

H. access control;

I. video surveillance and recording;

J. mass notification;

K. public address;

L. emergency lighting;

M. patient wandering;

N. infant tagging; and

O. nurse call; and

2. information technologies and telecommunications products and technologies that are used for the purposes listed in subparagraph (i) of this paragraph.

(4) "Public body" means:

(i) a unit;

(ii) a county;

(iii) a municipality in the State;

(iv) a school district in the State; or

(v) a special district in the State.

(b) Except as provided in subsection (c) of this section, a public body shall require a contractor or subcontractor to use or supply American manufactured goods in the performance of a contract for:

(1) constructing or maintaining a public work; or

(2) buying or manufacturing machinery or equipment that is to be installed at a public work site.

(c) This section does not apply:

(1) if the head of a public body determines that:

(i) the price of the American manufactured goods exceeds the price of a similar manufactured good that is not manufactured in the United States by an unreasonable amount;

(ii) the item or a similar item is not manufactured or available for purchase in the United States in reasonably available quantities;

(iii) the quality of the item or a similar item manufactured in the United States is substantially less than the quality of a comparably priced, similar, and available item that is not manufactured in the United States; or

(iv) the procurement of a manufactured good would be inconsistent with the public interest; or

(2) to emergency life safety and property safety goods.

(d) The Board of Public Works shall adopt regulations to define the following terms for the purposes of this section:

(1) "reasonably available";

(2) "unreasonable amount"; and

(3) "substantially less".

§14–501. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2016 PER CHAPTER 22 OF 2010 //

(a) In this subtitle the following words have the meanings indicated.

(b) "Designated procurement unit" means:

(1) the State Treasurer;

(2) the Department of Information Technology;

(3) the Department of Business and Economic Development;

(4) the Department of the Environment;

(5) the Department of General Services;

(6) the Department of Health and Mental Hygiene;

(7) the Department of Housing and Community Development;

(8) the Department of Human Resources;

(9) the Department of Juvenile Services;

(10) the Department of Labor, Licensing, and Regulation;

(11) the Department of Natural Resources;

(12) the State Department of Education;

(13) the Department of State Police;

(14) the Department of Public Safety and Correctional Services;

(15) the Department of Transportation;

(16) the University System of Maryland;

(17) the Maryland Port Commission;

(18) the State Retirement Agency;

(19) the Maryland Insurance Administration;

(20) the Maryland Stadium Authority;

(21) the State Lottery and Gaming Control Agency;

(22) the Morgan State University; and

(23) the Maryland Transportation Authority.

(c) "Small business" means:

(1) a certified minority business enterprise, as defined in § 14–301 of this title, that meets the criteria specified under paragraph (2) of this subsection; or

(2) a business, other than a broker, that meets the following criteria:

(i) the business is independently owned and operated;

(ii) the business is not a subsidiary of another business;

(iii) the business is not dominant in its field of operation; and

(iv) 1. A. the wholesale operations of the business did not employ more than 50 persons in its most recently completed 3 fiscal years;

B. the retail operations of the business did not employ more than 25 persons in its most recently completed 3 fiscal years;

C. the manufacturing operations of the business did not employ more than 100 persons in its most recently completed 3 fiscal years;

D. the service operations of the business did not employ more than 100 persons in its most recently completed 3 fiscal years;

E. the construction operations of the business did not employ more than 50 persons in its most recently completed 3 fiscal years; and

F. the architectural and engineering services of the business did not employ more than 100 persons in its most recently completed 3 fiscal years; or

2. A. the gross sales of the wholesale operations of the business did not exceed an average of $4,000,000 in its most recently completed 3 fiscal years;

B. the gross sales of the retail operations of the business did not exceed an average of $3,000,000 in its most recently completed 3 fiscal years;

C. the gross sales of the manufacturing operations of the business did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years;

D. the gross sales of the service operations of the business did not exceed an average of $10,000,000 in its most recently completed 3 fiscal years;

E. the gross sales of the construction operations of the business did not exceed an average of $7,000,000 in its most recently completed 3 fiscal years; and

F. the gross sales of the architectural and engineering services of the business did not exceed an average of $4,500,000 in its most recently completed 3 fiscal years.

(d) "Small business reserve" means those procurements that are limited to responses from small businesses under § 14–502(b) of this subtitle.

§14–502. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2016 PER CHAPTER 22 OF 2010 //

(a) Except as provided in subsection (d) of this section, this subtitle applies to all procurements by a designated procurement unit.

(b) This subsection does not apply to procurements subject to Subtitle 1 of this title.

(c) A designated procurement unit shall structure its procurement procedures

to achieve a minimum of 10% of the unit's total dollar value of goods, supplies, services, maintenance, construction, construction–related services, and architectural and engineering service contracts to be made directly to small businesses.

(d) The total dollar value of procurements by a designated procurement unit does not include the value of contracts to which this section does not apply because of a conflict with federal law.

§14–503. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2016 PER CHAPTER 22 OF 2010 //

(a) The Department of General Services shall adopt regulations to establish procedures for compiling and maintaining a comprehensive bidder's list of qualified small businesses that shall be posted on the Department's website.

(b) Each designated procurement unit shall ensure compliance with the regulations set forth in subsection (a) of this section.

§14–504. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2016 PER CHAPTER 22 OF 2010 //

(a) Any procurement by a designated procurement unit of goods, supplies, services, maintenance, construction, construction–related services, architectural services, and engineering services shall be eligible for designation for the small business reserve.

(b) A solicitation for procurement that has been designated for a small business reserve shall be published in the same manner as required for an invitation for bids as set forth in § 13–103(c) of this article.

(c) The procurement officer of a designated procurement unit shall award a procurement contract designated for a small business reserve to the small business that submits a responsive bid that:

(1) is the lowest bid price;

(2) if the invitation for bids so provides, is the lowest evaluated bid price; or

(3) is the bid or proposal most favorable to the State within the small business reserve.

§14–505. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2016 PER CHAPTER 22 OF 2010 //

(a) Within 90 days after the end of each fiscal year, each designated

procurement unit shall submit a report on the operation and effectiveness of the Small Business Reserve Program that complies with subsection (d)(2) of this section to the Board of Public Works.

(b) Within 60 days after receipt of all reports required under subsection (a) of this section, the Board of Public Works shall compile the information and report on the operation and effectiveness of the entire Small Business Reserve Program to the Legislative Policy Committee, subject to § 2–1246 of the State Government Article.

(c) Within 60 days after the enactment of the budget bill by the General Assembly, each designated procurement unit shall submit a report to the Governor's Office of Minority Affairs that complies with the reporting requirements set forth in COMAR 21.11.01.06.

(d) (1) Within 90 days after the end of each fiscal year, each unit shall submit a report to the Governor's Office of Minority Affairs that complies with the requirements of paragraph (2) of this subsection.

(2) For the preceding fiscal year, the report shall:

(i) state the total number and the dollar value of payments the unit made to small businesses under designated small business reserve contracts;

(ii) state the total number and the dollar value of payments the unit made to small businesses under nondesignated small business reserve contracts, including purchase card procurements;

(iii) state the total dollar value of payments the unit made under procurement contracts; and

(iv) contain other such information as required by the Governor's Office of Minority Affairs.

(e) On or before December 31 of each year, the Governor's Office of Minority Affairs shall submit to the Board of Public Works and, subject to § 2–1246 of the State Government Article, to the Legislative Policy Committee a report summarizing the information the Office receives under subsection (b) of this section.

§14–601.

In this subtitle, "veteran–owned small business enterprise" means a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran–owned small business.

§14–602.

(a) Beginning July 1, 2012, a unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall minimum of

0.5% of the unit's total dollar value of procurement contracts to be made directly or indirectly with veteran–owned small business enterprises.

(b) Solicitation documents shall establish the expected degree of veteran–owned small business enterprise participation based, in part, on:

(1) the potential subcontract opportunities available in the procurement contract; and

(2) the availability of veteran–owned small business enterprises to respond competitively to the potential subcontract opportunities.

(c) The provisions of this subtitle do not apply to a unit's procurement procedures to the extent that any unit determines that those provisions are in conflict with an applicable federal program.

§14–603.

A unit shall award the contract to the responsible bidder that submits the lowest responsive bid, or responsible offeror proposing the most advantageous offer, that meets or makes a good faith effort to meet any applicable goal established under this subtitle.

§14–604.

The Board shall:

(1) adopt regulations to implement this subtitle;

(2) establish procedures for tracking and reporting participation of veteran–owned small business enterprises under this subtitle; and

(3) on or before December 1 of each year, report to the Legislative Policy Committee on:

(i) the number and amount of contracts awarded to veteran–owned small business enterprises under this subtitle; and

(ii) the effectiveness of the program under this subtitle.

§14–605.

(a) A person may not:

(1) knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this article;

(2) knowingly and with intent to defraud, fraudulently represent

participation of a veteran–owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;

(3) willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(4) willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) willfully and knowingly fail to file any declaration or notice with the unit that is required by this subtitle; or

(6) establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of items (1) through (5) of this subsection.

(b) (1) A person who violates any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 6 months or both.

(2) In addition to the penalties under paragraph (1) of this subsection, a person who violates any of the provisions of subsection (a) of this section shall be:

(i) for the first offense, liable for a civil penalty of not less than $10,000 and not exceeding $30,000; and

(ii) for a subsequent offense, liable for a civil penalty of not less than $30,000 and not exceeding $50,000.

(3) A person who violates any of the provisions of subsection (a) of this section shall pay all costs and attorney's fees incurred by the plaintiff in a civil action brought under this subtitle.

(c) The Board shall prohibit a business or person who fails to satisfy the penalties, costs, and attorney's fees imposed under subsection (b) of this section from further contracting with the State until the penalties are satisfied.

(d) (1) A unit shall report all alleged violations of this section to the Board.

(2) The Board subsequently shall report all alleged violations of this section to the Office of the Attorney General, which shall determine whether to bring a civil action against a person or business for a violation of this section.

§15–101.

In this subtitle, "invoice" means an invoice that meets the requirements of § 15-102 of this subtitle.

§15–102.

A contractor who submits an invoice for a procurement contract shall include in the invoice:

(1) the contractor's federal employer's identification number or Social Security number;

(2) the procurement contract or purchase order number or another adequate description of the procurement contract; and

(3) any documentation required by regulation or the procurement contract.

§15–103.

It is the policy of the State to make a payment under a procurement contract within 30 days:

(1) after the day on which the payment becomes due under the procurement contract; or

(2) if later, after the day on which the unit receives an invoice.

§15–104.

(a) Except as provided in § 15-105 of this subtitle, interest shall accrue at the rate of 9% per annum on any amount that:

(1) is due and payable by law and under the written procurement contract; and

(2) remains unpaid more than 45 days after a unit receives an invoice.

(b) Interest shall accrue beginning on the 31st day after:

(1) the day on which payment becomes due under a procurement contract; or

(2) if later, the day on which the unit receives an invoice.

§15–105.

A unit is not liable under § 15-104 of this subtitle for interest:

(1) unless within 30 days after the date on the State's check for the amount on which the interest accrued, the contractor submits an invoice for the interest;

(2) if a contract claim has been filed under Subtitle 2 of this title;

(3) accruing more than 1 year after the 31st day after the unit receives an invoice; or

(4) on an amount that represents unpaid interest.

§15–106.

The Governor shall resolve a dispute among units as to which unit is responsible for a delayed payment under a procurement contract.

§15–107.

After a unit pays a semifinal estimate on a procurement contract, the unit shall place any retainage remaining in its possession in an interest bearing escrow account.

§15–108.

(a) This section does not apply to any procurement contract funded with tax-exempt financing.

(b) (1) Subject to the requirements of this section, a contractor under a procurement contract that a unit awards for construction is entitled to have retainage under the procurement contract placed in an escrow account if the contractor:

(i) elects that procedure in the procurement contract in the space provided for that election; and

(ii) submits to the unit an escrow agreement that meets the requirements of subsection (c) of this section.

(2) The procurement contract shall identify the escrow agent.

(c) The escrow agreement shall:

(1) be on a form that the unit provides;

(2) include the complete address of both the escrow agent and the surety;

(3) authorize the unit to pay retainage to the escrow agent; and

(4) be signed by:

(i) the contractor;

(ii) the surety for the contractor; and

(iii) the escrow agent.

(d) On compliance with the requirements of subsection (b) of this section, the unit shall pay the retainage to the escrow agent unless:

(1) federal money is involved and application of this section would jeopardize timely recovery of that federal money; or

(2) retainage is withheld for:

(i) lack of progress on the part of the contractor; or

(ii) other violations by the contractor.

(e) In accordance with the escrow agreement, a contractor may require an escrow agent:

(1) to invest the retainage placed in the escrow account; and

(2) to the extent the contractor is entitled to retainage under subsection (f)(2)(ii) of this section, to pay the earnings on the investment to the contractor.

(f) (1) Retainage may be released to the contractor only as directed by the unit.

(2) At the time of final payment, the unit shall direct the escrow agent to settle the escrow account by distributing money in the escrow account in the following order:

(i) to the unit for any claim it may have against the contractor under the procurement contract;

(ii) unless waived by the Board, to the Comptroller for any claim exceeding $50 against the contractor by the State, a unit, or a State controlled governmental entity; and

(iii) to the contractor.

§15–109.

(a) At reasonable times an inspection may be conducted of a plant, place of business, or job site of:

(1) a bidder or offeror seeking a procurement contract;

(2) any contractor under a procurement contract;

(3) a subcontractor under a procurement contract; or

(4) a prospective subcontractor of:

(i) a bidder or offeror seeking a procurement contract; or

(ii) a contractor under a procurement contract.

(b) An inspection under this section may be conducted by:

(1) the Department of Legislative Services;

(2) the unit engaged in procurement; or

(3) as authorized by law, any other unit.

§15–110.

(a) The following persons are subject to an audit of books, accounts, or records:

(1) before the expiration of the period of retention under subsection (c) of this section, a person who submits cost and price information under § 13-220 of this article, if the books, accounts, or records being audited are reasonably connected with the cost and price information;

(2) a contractor or subcontractor under a procurement contract if, from an audit of a cost-type contract, the unit has reason to believe that costs have been inappropriately assigned to the cost-type contract from a fixed-price contract; and

(3) a contractor or subcontractor under a procurement contract that:

(i) was awarded by a method other than competitive sealed bids; and

(ii) is not a firm fixed-price procurement contract.

(b) An audit under this section may be conducted by:

(1) the Department of Legislative Services;

(2) a unit engaged in procurement; or

(3) as authorized by law, any other unit.

(c) A person subject to an audit under subsection (a) of this section shall keep books, accounts, and records for:

(1) at least 3 years after the day on which the person receives final payment under a procurement contract or a subcontract; or

(2) if longer, the period required under the procurement contract.

§15–111.

(a) Within 90 days after the end of each fiscal year, each primary procurement unit shall submit to the Governor and to the General Assembly a report on each procurement contract that was awarded during the preceding fiscal year and:

(1) was exempt from the notice requirements of § 13-103(c) of this article because the procurement officer reasonably expected that the procurement contract would be performed entirely outside this State and the District of Columbia;

(2) cost more than $100,000 and was awarded for the procurement of services, construction related services, architectural services, or engineering services; or

(3) was awarded on the basis of:

(i) § 13-107 of this article ("Sole source procurement");

(ii) § 13-108(a) of this article ("Emergency procurement"); or

(iii) § 13-108(b) of this article ("Expedited procurement").

(b) (1) A report required under subsection (a)(2) or (3) of this section shall include:

(i) the name of each contractor;

(ii) the type and cost of the procurement contract; and

(iii) a description of the procurement.

(2) A report required under subsection (a)(3) of this section also shall describe the basis for the award.

(c) Within 90 days after the end of each fiscal year, the Governor shall submit to the General Assembly a report on each expedited procurement approved under § 13-108(b) of this article.

(d) Within 90 days after the end of each fiscal year, the Department of Budget and Management shall submit to the Board and the General Assembly a report on each class of procurement for which the procedure for noncompetitive negotiated procurement has been approved under § 13-106 of this article.

(e) A report to the General Assembly under this section is subject to § 2-1246 of the State Government Article.

§15–201.

In this subtitle, "Appeals Board" means the Maryland State Board of Contract Appeals.

§15–202.

This subtitle does not apply to a protest concerning:

(1) the formation of a procurement contract for architectural services or engineering services; or

(2) except to the extent authorized by regulation by the Board, any act or omission by a procurement agency under Title 14, Subtitle 6 of this article.

§15–205.

There is a Maryland State Board of Contract Appeals.

§15–206.

The Appeals Board is an independent unit of the Executive Branch of the State government and, except by statute, may not be made a part of another unit of the State government.

§15–207.

(a) The Appeals Board consists of 3 members appointed by the Governor with the advice and consent of the Senate.

(b) Each member of the Appeals Board shall:

(1) be qualified to serve in a quasi-judicial capacity; and

(2) have a thorough knowledge of procurement practices and processes.

(c) Before taking office, each appointee to the Appeals Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(d) (1) The term of a member is 5 years.

(2) The terms of members are staggered as required by the terms provided for members of the Appeals Board on October 1, 1988.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(e) The Governor may remove a member of the Appeals Board for cause.

§15–208.

From among the members of the Appeals Board, the Governor shall designate a chairman.

§15–209.

(a) Each member of the Appeals Board shall devote full time to the duties of office.

(b) Each member of the Appeals Board is entitled to:

(1) compensation in accordance with the State budget; and

(2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Appeals Board may employ a staff in accordance with the State budget.

§15–210.

In accordance with Title 10, Subtitle 1 of the State Government Article, the Appeals Board shall adopt regulations that provide for informal, expeditious, and inexpensive resolution of appeals before the Appeals Board.

§15–211.

(a) The Appeals Board shall have jurisdiction to hear and decide all appeals arising from the final action of a unit:

(1) on a protest relating to the formation of a procurement contract; or

(2) except for a contract claim relating to a lease of real property, on a contract claim by a contractor or a unit concerning:

(i) breach;

(ii) performance;

(iii) modification; or

(iv) termination.

(b) A decision of the Appeals Board is final, subject to any judicial review.

§15–212.

(a) In connection with a proceeding authorized under this subtitle, the Appeals Board may:

(1) administer oaths;

(2) certify to all official acts; and

(3) at the request of a party to the proceeding:

(i) issue subpoenas for the attendance and testimony of witnesses or the production of documents; and

(ii) compel the testimony of witnesses.

(b) If a person fails to comply with a subpoena or order compelling testimony under this section, on petition of the Appeals Board, a court of competent jurisdiction may pass an order directing compliance with the subpoena or compelling testimony.

(c) (1) A person who, under oath, willfully makes a false statement about a matter before the Appeals Board is guilty of perjury.

(2) A person who causes another person under oath to make a false statement about a matter before the Appeals Board is guilty of subornation of perjury.

(3) A person who commits perjury or subornation of perjury under this section is subject to the penalty provided in §§ 9-101 and 9-102 of the Criminal Law Article.

§15–215.

(a) In this Part III of this subtitle the following words have the meanings indicated.

(b) (1) "Contract claim" means a claim that relates to a procurement contract.

(2) "Contract claim" includes a claim about the performance, breach, modification, or termination of the procurement contract.

(c) (1) "Protest" means a complaint that relates to the formation of a procurement contract.

(2) "Protest" includes a complaint about:

(i) the qualifications of a bidder or offeror; or

(ii) the determination of the successful bidder or offeror.

§15–216.

(a) Title 10, Subtitle 2 of the State Government Article does not apply to the disposition of a protest or a contract claim by:

(1) a primary procurement unit;

(2) a procurement officer; or

(3) a unit.

(b) The Appeals Board shall conduct its proceedings in accordance with Title 10, Subtitle 2 of the State Government Article.

§15–217.

(a) (1) A prospective bidder or offeror, a bidder, or an offeror may submit a protest to the procurement officer.

(2) A unit or a person who has been awarded a procurement contract may submit a contract claim to the procurement officer.

(b) Except as provided in § 15-219 of this subtitle, a protest or contract claim shall be submitted within the time required under regulations adopted by the primary procurement unit responsible for the procurement.

§15–218.

(a) Except as provided under § 15-219 of this subtitle, a procurement officer who receives a protest or a contract claim from a contractor shall comply with this section.

(b) (1) On receipt of a protest or contract claim from a contractor, a procurement officer:

(i) shall review the substance of the protest or contract claim;

(ii) may request additional information or substantiation through an appropriate procedure;

(iii) may discuss with interested parties and, if appropriate, may conduct negotiations with the person initiating the protest or contract claim; and

(iv) shall comply with any applicable regulations.

(2) Unless clearly inappropriate, the procurement officer shall seek the advice of the Office of the Attorney General.

(c) (1) Subject to subsection (b) of this section and consistent with the State budget and other applicable laws, the procurement officer shall:

(i) resolve the protest or contract claim by agreement of the parties;

(ii) wholly or partly deny the protest or contract claim; or

(iii) wholly or partly grant the relief sought by the person who submitted the protest or contract claim.

(2) The procurement officer promptly shall send the decision in writing to the reviewing authority.

(d) Unless otherwise provided by regulation, the decision of the procurement officer shall be reviewed promptly by:

(1) the head of the unit; and

(2) the head of the principal department or other equivalent unit of which the unit is a part.

(e) (1) Except as provided under paragraph (3) of this subsection, the reviewing authority shall approve, disapprove, or modify the decision of the procurement officer.

(2) The action of the reviewing authority under this subsection shall be the final action of the unit.

(3) The reviewing authority may remand the proceeding with instructions to the procurement officer.

(4) On remand, the procurement officer shall proceed under subsection (b) of this section in accordance with those instructions.

§15–219.

(a) Except to the extent a shorter period is prescribed by regulation governing differing site conditions, a contractor shall file a written notice of a claim relating to a procurement contract for construction within 30 days after the basis for the claim is known or should have been known.

(b) Unless extended by the unit, within 90 days after submitting a notice of a contract claim under a procurement contract for construction, a contractor shall submit to the unit a written explanation that states:

(1) the amount of the contract claim;

(2) the facts on which the contract claim is based; and

(3) all relevant data and correspondence that may substantiate the contract claim.

(c) (1) Subject to paragraph (2) of this subsection, the head of the unit engaged in procurement of the construction shall review the contract claim.

(2) If the unit is part of a principal department or other equivalent unit, the Secretary of the principal department or the equivalent official shall review the contract claim, unless review has been delegated by regulation to the head of the unit.

(d) The person who reviews a contract claim under subsection (c) of this section shall:

(1) investigate the contract claim; and

(2) give the contractor written notice of a resolution of the contract claim:

(i) within 90 days after receiving the contract claim or a longer period to which the parties agree, if the amount of the contract claim is not more than the amount under which the accelerated procedure may be selected before the Appeals Board; or

(ii) for any other contract claim, within 180 days after receiving the contract claim or a longer period to which the parties agree.

(e) Recovery under a contract claim is not allowed for any expense incurred:

(1) more than 30 days before the required submission of a notice of a claim under subsection (a) of this section; or

(2) unless the time for submission of a claim is extended under subsection (b) of this section, more than 120 days before the required submission of the claim.

(f) (1) If the unit determines that it is responsible for a portion but not all of the amount claimed by the contractor, subject to the terms of the contract, the unit shall pay the undisputed amount.

(2) Payment of the undisputed amount:

(i) is not an admission of the liability of the unit on the claims; and

(ii) does not preclude recovery of the amount paid if it subsequently is determined that the determination of the unit was not correct.

(g) (1) A decision not to pay a contract claim is a final action for the purpose of appeal to the Appeals Board.

(2) The failure to reach a decision within the time required under subsection (c) of this section may be deemed, at the option of the contractor, to be a decision not to pay the contract claim.

(h) At the time of final payment, the unit shall:

(1) release the retainage due to the contractor; and

(2) pay any interest that:

(i) has accrued on the retainage from the time of payment of the semifinal estimate; and

(ii) is due and payable to the contractor.

§15–219.1.

(a) (1) A unit may assert a contract claim against a contractor by sending written notice to the contractor and the procurement officer that states:

(i) the basis for the contract claim;

(ii) to the extent known, the amount, or the performance or other action, requested by the unit in the contract claim; and

(iii) the date by which the contractor is required to provide a written response to the contract claim.

(2) On receipt of a contract claim from a unit, a procurement officer:

(i) shall review the substance of the contract claim;

(ii) may request additional information or substantiation through an appropriate procedure; and

(iii) may discuss or, if appropriate, negotiate the contract claim with the unit or contractor.

(3) The procurement officer shall proceed under subsection (b) of this section if the contractor fails to respond, provides an inadequate response, or denies the contract claim or the relief sought by the unit in whole or in part.

(b) (1) If the contractor and the unit do not resolve the contract claim, the procurement officer shall prepare a proposed decision on the contract claim, including:

(i) a description of the contract claim;

(ii) references to pertinent contract provisions;

(iii) a statement of factual areas of agreement or disagreement; and

(iv) a statement in the proposed decision wholly or partly granting or denying the relief sought, with supporting rationale.

(2) Unless otherwise provided by regulation, the procurement officer shall

submit the contract claim and proposed decision to:

(i) the head of the unit; and

(ii) the head of the principal department or other equivalent unit of which the unit is a part.

(3) (i) The reviewing authority shall approve, modify, or disapprove the proposed decision.

(ii) In disapproving a proposed decision, the reviewing authority may remand the contract claim with instructions to the procurement officer.

(iii) On remand, the procurement officer shall proceed as required under this subsection and in accordance with the instructions of the reviewing authority.

(4) The decision of the reviewing authority is the final action of the unit.

§15–220.

(a) Except for a contract claim related to a lease for real property, a bidder or offeror, a prospective bidder or offeror, a unit, or a contractor may appeal the final action of a unit to the Appeals Board.

(b) An appeal under this section shall be filed:

(1) for a protest, within 10 days after receipt of the notice of a final action; and

(2) for a contract claim, within 30 days after receipt of the notice of a final action.

§15–221.

(a) If a person appeals the decision of a unit about a protest, the Appeals Board shall:

(1) give that case priority over other matters not involving protests before the Appeals Board; and

(2) decide it expeditiously.

(b) (1) For any appeal, the Appeals Board may require each party to file a brief.

(2) If briefs are required, the Appeals Board shall establish the order and time limits for filing briefs after consultation with both parties.

(c) Except as provided in subsection (d) of this section, in a case before the Appeals Board, a party may obtain discovery about any matter that:

(1) is not privileged; and

(2) is relevant to the subject matter involved in that case.

(d) In an appeal from a decision about a protest, discovery shall be limited to requests for the production of documents unless the Appeals Board determines that extraordinary circumstances require additional limited discovery to avoid substantial unfairness or prejudice.

(e) In an appeal from a decision about a contract claim, unless both parties agree to a longer period, the Appeals Board shall issue its final decision within 180 days after the day on which:

(1) all briefs have been filed; or

(2) if later, the record has been closed.

§15–221.1.

(a) The Board of Contract Appeals may award a prospective bidder or offeror, a bidder, or an offeror the reasonable costs of filing and pursuing a protest, not including attorney's fees, if:

(1) the prospective bidder or offeror, bidder, or offeror appeals the final action of an agency on a protest;

(2) the Board of Contract Appeals sustains the appeal; and

(3) the Board of Contract Appeals finds that there has been a violation of law or regulation.

(b) The Board of Contract Appeals shall adopt regulations to implement this section and to determine what constitutes reasonable costs of filing and pursuing a protest.

§15–221.2.

(a) This section only applies to a claim resulting under a contract for construction.

(b) The Appeals Board may award to a contractor the reasonable costs of filing and pursuing a claim, including reasonable attorney's fees, if the Appeals Board finds that the conduct of unit personnel in processing a contract claim is in bad faith or without substantial justification.

(c) The Appeals Board shall adopt regulations to implement this section.

§15–222.

(a) Notwithstanding any provision of a procurement contract, the Appeals Board may award interest on money that the Appeals Board determines to be due to the unit or the contractor under a contract claim.

(b) (1) Subject to paragraph (2) of this subsection, interest may accrue from a day that the Appeals Board determines to be fair and reasonable after hearing all the facts until the day of the decision by the Appeals Board.

(2) Interest may not accrue before the procurement officer receives a contract claim from the unit or the contractor.

(c) (1) Subject to paragraph (2) of this subsection, an award under a decision by the Appeals Board shall accrue interest until the day on which the award is paid.

(2) If an award is reduced as a result of a judicial review of the decision of the Appeals Board, interest shall be paid only on the reduced award.

(d) The rate of interest under this section shall be the rate of interest on judgments as provided under § 11-107(a) of the Courts Article.

§15–223.

(a) (1) A decision of the Appeals Board is subject to judicial review in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) Any party to an Appeals Board decision, including a unit, may appeal a final decision of the Appeals Board to a court of competent jurisdiction.

(b) When a decision about a protest or contract claim has become final and is no longer subject to judicial review, the determination shall be enforceable in the appropriate court.

§15–226.

(a) In this section, "undisputed amount" means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld.

(b) It is the policy of the State that, for work under a State procurement contract for construction:

(1) a contractor shall promptly pay to a subcontractor any undisputed amount to which the subcontractor is entitled; and

(2) a subcontractor shall promptly pay to a lower tier subcontractor any undisputed amount to which the lower tier subcontractor is entitled.

(c) (1) A contractor shall pay a subcontractor an undisputed amount to which the subcontractor is entitled within 10 days of receiving a progress or final payment from the State.

(2) If a contractor withholds payment from a subcontractor, within the time period in which payment normally would be made, the contractor shall:

(i) notify the subcontractor in writing and state the reason why payment is being withheld; and

(ii) provide a copy of the notice to the procurement officer.

(d) (1) If a subcontractor does not receive a payment within the required time period, the subcontractor may give written notice of the nonpayment to the procurement officer.

(2) The notice shall:

(i) indicate the name of the contractor, the project under which the dispute exists, and the amount in dispute;

(ii) provide an itemized description on which the amount is based; and

(iii) if known, provide an explanation for any dispute concerning payment by the contractor.

(e) (1) Within 2 business days of receipt of written notice from a subcontractor, a representative of the unit designated by the procurement officer shall verbally contact the contractor to ascertain whether the amount withheld is an undisputed amount.

(2) If the representative of the unit decides that a part or all of the amount withheld is an undisputed amount, the representative of the unit shall instruct the contractor to pay the subcontractor the undisputed amount within 3 business days.

(3) The representative of the unit shall verbally communicate to the subcontractor the results of discussions with the contractor.

(4) If the contractor is instructed to pay the subcontractor and the subcontractor is not paid within the time instructed under paragraph (2) of this subsection, the subcontractor may report the nonpayment in writing to the procurement officer.

(f) (1) If the subcontractor notifies the procurement officer under subsection (e)(4) of this section that payment has not been made, the representative of the unit shall schedule a meeting to discuss the dispute with the unit's project manager, the contractor, and the subcontractor:

(i) at a time and location designated by the representative of the unit; but

(ii) not later than 10 days after receiving notice from the subcontractor under subsection (e)(4) of this section.

(2) The purpose of the meeting is to establish why the contractor has not paid the subcontractor in the required time period.

(3) The representative of the unit shall require the parties to provide at the meeting any information that the representative believes necessary to evaluate the dispute.

(4) If the representative of the unit determines that the contractor is delinquent in payment of an undisputed amount to the subcontractor, further progress payments to the contractor may be withheld until the subcontractor is paid.

(5) If payment is not paid to the subcontractor within 7 days after the representative of the unit determines that the contractor is delinquent in paying the subcontractor under this subsection, the representative shall schedule a second meeting to address the dispute:

(i) at a time and location designated by the representative of the unit; but

(ii) not later than 5 days after the close of the 7-day period.

(6) If, at the completion of the second meeting, the representative of the unit determines that the contractor continues to be delinquent in payments owed to the subcontractor, the representative:

(i) shall order that further payments to the contractor not be processed until payment to the subcontractor is verified;

(ii) may order that work under the contract be suspended based on the failure of the contractor to meet obligations under the contract; and

(iii) subject to paragraph (7) of this subsection, may require that the contractor pay a penalty to the subcontractor, in an amount not exceeding $100 per day, from the date that payment was required under subsection (e)(2) of this section.

(7) A penalty may not be imposed under paragraph (6)(iii) of this subsection for any period that the representative of the unit determines the subcontractor was not diligent in reporting nonpayment to the procurement officer.

(g) (1) A contractor or a subcontractor may appeal a decision under subsection (f)(6) of this section to the procurement officer.

(2) The contractor shall comply with the procurement officer's decision.

(h) An act, failure to act, or decision of a procurement officer or a representative of a unit concerning a payment dispute between a contractor and subcontractor or between subcontractors under this section may not:

(1) affect the rights of the contracting parties under any other provision of law;

(2) be used as evidence on the merits of a dispute between the unit and the contractor or the contractor and subcontractor in any other proceeding; or

(3) result in liability against or prejudice the rights of the unit.

(i) A decision of a procurement officer or a representative of the unit designated by the procurement officer under this section is not subject to judicial review or the provisions of Part III of this subtitle.

(j) (1) A unit shall include in each State procurement contract for construction a provision:

(i) governing prompt payment to subcontractors; and

(ii) requiring inclusion of a similar provision in each subcontract at any tier.

(2) The contract provision shall establish procedures and remedies for the resolution of payment disputes similar to the process and remedies prescribed in subsections (c) through (g) of this section.

§16–101.

(a) In this title the following words have the meanings indicated.

(b) "Business" means an individual or a corporation, partnership, sole proprietorship, joint venture, or other legal entity through which commercial activity is conducted.

(c) "Contract" means any agreement in any form.

(d) "Controlling stockholder" means a stockholder who:

(1) owns more than 25% of the voting stock of a corporation; or

(2) notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the management or policies of a corporation.

(e) "Convicted" includes an accepted plea of nolo contendere.

(f) "Public body" means:

(1) the State;

(2) a unit; or

(3) a local governmental entity in the State, including a bicounty or multicounty governmental entity.

§16–102.

For purposes of this title, the Board may treat the imposition of probation before judgment for an offense in the same manner as a conviction for the same offense.

§16–201.

This subtitle is broadly applicable to all contracts with public bodies, except where a section refers only to the State.

§16–202.

(a) A person is debarred by operation of law from entering into a contract with a public body if the person has been convicted under the laws of the State for bribery, attempted bribery, or conspiracy to bribe, committed in furtherance of obtaining a contract with a public body.

(b) A person may be debarred from entering into a contract with a public body, if the person:

(1) has been convicted under the laws of the State for bribery, attempted bribery, or conspiracy to bribe, committed other than in furtherance of obtaining a contract with any public body;

(2) has been convicted under the laws of another state or of the United States of bribery, attempted bribery, or conspiracy to bribe; or

(3) during the course of an official investigation or other proceeding has admitted, in writing or under oath, acts or omissions that would constitute bribery, attempted bribery, or conspiracy to bribe, under the laws of the State, another state or the United States.

§16–203.

(a) A person may be debarred from entering into a contract with the State if the person, an officer, partner, controlling stockholder or principal of that person, or any other person substantially involved in that person's contracting activities has:

(1) been convicted under the laws of the State, another state or the United States of:

(i) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, except as provided in § 16–202 of this subtitle; or

(ii) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(2) been convicted of a criminal violation of an antitrust statute of the State, another state, or the United States;

(3) been convicted of a violation of the Racketeer Influenced and Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract;

(4) been convicted of a violation of § 14–308 of this article;

(5) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in items (1), (2), (3), or (4) of this subsection;

(6) been convicted of a violation of § 7201, § 7203, § 7205, § 7206, or § 7207 of the Internal Revenue Code;

(7) been convicted of a violation of 18 U.S.C. § 286, § 287, or § 371;

(8) been convicted of a violation of Title 13, Subtitle 7 or Subtitle 10 of the Tax – General Article;

(9) been found to have willfully or knowingly violated Title 17, Subtitle 2 or Title 18 of this article if:

(i) 1. the finding was made by a court; and

2. the decision of the court became final; or

(ii) 1. the finding was made in a contested case under the Administrative Procedure Act; and

2. the finding was not overturned on judicial review;

(10) been found to have willfully or knowingly violated Title 3, Subtitle 3, Subtitle 4, or Subtitle 5 or Title 5 of the Labor and Employment Article if:

(i) 1. the finding was made by a court; and

2. the decision of the court became final; or

(ii) 1. the finding was made in a contested case under the Administrative Procedure Act; and

2. the finding was not overturned on judicial review;

(11) been found civilly liable under an antitrust statute of the State, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

(12) been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of this article with regard to a public or private contract.

(b) A person may be debarred from entering into a contract with the State if, during the course of an official investigation or other proceedings, the person, an officer, partner, controlling stockholder or principal of that person, or any other person substantially involved in that person's contracting activities has admitted, in writing or under oath, an act or omission that constitutes grounds for conviction or liability under any law or statute described in subsection (a) of this section.

(c) A person may be debarred from entering into a contract with the State if the person, an officer, partner, controlling stockholder or principal of that person, or any other person substantially involved in that person's contracting activities has been debarred from federal contracts under the Federal Acquisition Regulations, as provided in 48 C.F.R. Chapter 1.

(d) A person may be debarred from entering into a contract with the State:

(1) if the Board finds that the person was established or operates in a manner designed to evade the application of this title or to defeat the purpose of this title;

(2) if the person is a successor, assignee, subsidiary, or affiliate of a person who is debarred or suspended;

(3) for one of the following violations of a contract provision if the Board believes it to be serious enough to justify debarment:

(i) the deliberate failure, without good cause, to perform in accordance with the specifications, or within the time limit, provided in a contract; or

(ii) within the preceding 5 years, the failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, unless the failure to perform or unsatisfactory performance was caused by acts beyond the control of the person;

(4) if the person is a competing contractor, or any officer, employee, representative, agent, or consultant of any competing contractor who violates § 13–211 of this article; or

(5) for any other cause that the Board determines to be so serious as to

affect the integrity of the procurement process.

§16–301.

This subtitle is broadly applicable to all debarment proceedings.

§16–302.

(a) The clerk of each circuit court shall send to the Board a certified copy of:

(1) each judgment of conviction of bribery, attempted bribery, or conspiracy to bribe; and

(2) each docket entry showing an acceptance of a plea of nolo contendere for bribery, attempted bribery, or conspiracy to bribe, or imposition of probation before judgment for any such offense.

(b) During an investigation or other proceeding, if a person admits an act or omission that would subject that person to debarment under § 16-202(b)(3) or § 16-203(b) of this title, the prosecuting officer of the public body who has responsibility for the proceeding shall send to the Board a copy or summary of the written statement or transcript reflecting the admission as soon as the officer determines that the transmission will not prejudice a pending or anticipated investigation or other proceeding.

(c) Each unit shall report to the Board information showing a cause for debarment under § 16-203(d) of this title.

§16–303.

(a) The Attorney General may institute proceedings to debar a person under § 16-202(b) or § 16-203 of this title from:

(1) being considered for the award of, being awarded, or performing a contract with a public body if the Attorney General believes that the person is subject to debarment under § 16-202(b) of this title; or

(2) being considered for the award of, being awarded, or performing a contract with the State if the Attorney General believes that the person is subject to debarment under § 16-203 of this title.

(b) The Attorney General may recommend whether the Board should suspend a person under § 16-305 of this subtitle.

(c) The Attorney General:

(1) shall investigate the matters to be determined by the Board in a hearing under this title;

(2) as a party to any proceeding brought under this title, shall present to the Board the evidence that the Attorney General considers appropriate; and

(3) may recommend:

(i) whether the Board should debar the person; and

(ii) the appropriate time period of the debarment.

(d) (1) If the Attorney General reasonably believes that a person may have information or may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which the Attorney General believes is relevant to, or may lead to the discovery of, evidence relevant to the subject matter of an investigation of a possible basis for debarment under this title, the Attorney General, before initiating debarment proceedings or recommending suspension as provided for in this title, may serve on the person a written investigative demand which requires the person to perform any one or more of the following:

(i) to be examined under oath;

(ii) to answer written interrogatories; or

(iii) to produce documentary material and permit inspection and copying of such material.

(2) The demand of the Attorney General shall:

(i) state the grounds for debarment under investigation;

(ii) describe the class of documentary material to be produced under the demand with sufficient specificity to indicate fairly the material demanded;

(iii) contain a copy of the written interrogatories;

(iv) prescribe a reasonable time of not less than 3 days after the demand is served at which time the person must appear to testify, within which time the person must answer the written interrogatories, and within which time the documentary materials must be produced;

(v) specify the place for the taking of testimony and for the production of documentary materials; and

(vi) identify the member of the Office of the Attorney General who will:

1. take testimony;

2. receive the answers to the written interrogatories; and

3. review the documentary material to be made available for inspection and copying.

(3) A petition to extend the time for compliance or to modify or set aside a demand issued under this subsection may be filed at any time before the date specified in the demand in the circuit court of the county of the petitioner's residence or principal place of business.

§16–304.

(a) The Board shall notify a person that the person is debarred under § 16-202(a) of this title, and shall give reasonable opportunity for that person to be heard on whether the stated basis for debarment exists.

(b) (1) The Attorney General may institute proceedings to debar a person under § 16-202(b) or § 16-203 of this title by filing an administrative complaint with the Board.

(2) The Board shall notify the person that debarment proceedings have been initiated and that the person has a right to a hearing.

(c) Before being debarred, a person subject to debarment under § 16-202(b) or § 16-203 of this title is entitled to a hearing before the Board. The Board shall conduct the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(d) When a unit contracting for a public body is notified that a person who has applied for a contract is subject to debarment under this title, the unit shall notify the person in writing that:

(1) the application may be disqualified; and

(2) the person has a right to a hearing before the Board.

(e) Unless a person notified by the Board pursuant to this section submits a request to the Board for a hearing within 30 days after receiving such notice, the person:

(1) waives the right to a hearing; and

(2) is debarred.

§16–305.

(a) While a final decision on a debarment is pending, the Board may suspend a person from:

(1) being considered for the award of, being awarded, or performing a contract with a public body, if the debarment proceedings are instituted under §

16-202(b) of this title; or

(2) being considered for the award of, being awarded, or performing a contract with the State, if the debarment proceedings are instituted under § 16-203 of this title.

(b) A business is suspended to the same extent that a person is suspended under this section if:

(1) the suspended person's debarment would cause the debarment of the business under § 16-307 of this subtitle; and

(2) the Board notifies the business in writing of its suspension under this subsection.

(c) (1) A person or business suspended under this section may petition the Board to modify or terminate the suspension.

(2) In its discretion, the Board may conduct, in accordance with Title 10, Subtitle 2 of the State Government Article, a hearing concerning a petition received under paragraph (1) of this subsection.

(3) In considering a petition received under paragraph (1) of this subsection, the Board shall conclude whether the integrity of the contracting process and the best interests of the State would be served by continuing, modifying, or terminating the suspension.

(4) The Board shall give the person or business petitioning for modification or termination of a suspension written notice of the Board's decision.

§16–306.

(a) In making a determination whether a person should be debarred under § 16-202(b) or § 16-203 of this title, the Board shall conclude whether the integrity of the contracting process and the best interests of the State would be served by debarring the person from entering into contracts with the applicable public bodies. In making its determination, the Board shall consider relevant factors, including:

(1) the nature and seriousness of the act that caused the person to be subject to debarment;

(2) the time the act occurred;

(3) whether and to what extent the person cooperated with authorities in their investigation of the matters;

(4) the conditions under which the person cooperated; and

(5) the conduct of the person since the act occurred.

(b) Upon making its determination under subsection (a) of this section, the Board shall notify the person subject to debarment in writing either that:

(1) the person is debarred and the period of debarment; or

(2) the person is no longer subject to debarment for the act which was the subject of the hearing and determination.

(c) Except as provided in § 16-310 of this subtitle, this section does not apply to a person debarred under § 16-202(a) of this title.

§16–307.

(a) A business is debarred from entering into a contract with a public body if the Board debars:

(1) an officer, director, controlling shareholder, or partner; or

(2) an employee directly involved in the process of obtaining contracts with public bodies.

(b) The business is debarred under subsection (a) of this section to the same extent as the person debarred by the Board.

(c) A business shall remain debarred under this section:

(1) as long as the debarred person remains with the business in any capacity described in subsection (a) of this section; or

(2) until the debarment is removed under § 16-310 of this subtitle.

(d) The Board shall notify in writing any business that it is debarred under this section.

§16–308.

(a) The Board shall keep a roster of all persons and businesses suspended or debarred under this title.

(b) The roster is a public record.

§16–309.

(a) If a person or business is debarred or suspended based on an offense listed in § 16-202 of this title, the person or business may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with a public body during the time period of debarment or suspension.

(b) If a person or business is debarred or suspended based on an offense listed in § 16-203 of this title, the person or business may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the State during the time period of debarment or suspension.

§16–310.

(a) (1) If the conviction that is the basis for a debarment or suspension is reversed or otherwise rendered void, the debarment or suspension terminates automatically.

(2) If the federal debarment that is the basis for a State debarment is reversed or otherwise rendered void, the debarment terminates automatically if the person debarred provides to the Board sufficient legal documentation that the federal debarment has been reversed or otherwise rendered void.

(b) (1) Any person debarred under § 16-202 of this title may, after a period of 5 years from the date of the debarment, petition the Board for removal of the debarment.

(2) Any person debarred under § 16-203(a), (b), or (d) of this title may petition the Board for removal of the debarment, after the expiration of:

(i) one-half of the period of debarment; or

(ii) 5 years.

(c) (1) The Board shall consider all petitions received under subsection (b) of this section.

(2) Within 90 days after receiving a petition under subsection (b) of this section, the Board shall determine in its discretion whether to conduct a hearing regarding the petition. If the Board decides to conduct a hearing, it shall conduct the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(3) The Board shall notify the person of its decision whether it will conduct a hearing regarding the petition.

(d) In making its determination whether the debarment should be removed, the Board shall conclude whether the integrity of the contracting process and the best interests of the State would be served by continuing the debarment. In making its determination, the Board shall consider relevant factors including those listed in § 16-306(a) of this subtitle.

(e) Upon making its determination, the Board shall give written notice to the petitioner that the debarment is removed or continued.

(f) The time for any hearing or determination by the Board under this section may be extended by the Board upon a showing of good cause.

§16–311.

(a) Every person, upon submitting a bid proposal or other application for a contract with a public body, shall submit an affidavit stating to its best knowledge whether it or any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or performing contracts with any public bodies has:

(1) been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;

(2) been convicted under a State or federal law or statute of any offense enumerated in § 16-203 of this title; or

(3) been found civilly liable under a State or federal antitrust statute as provided in § 16-203 of this title.

(b) The affidavit required by subsection (a) of this section shall also contain the person's affirmation that it shall not knowingly enter into a contract with a public body under which a person or business debarred or suspended under this subtitle will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

(c) The requirements of this section are satisfied if the affidavit:

(1) incorporates by reference the statements contained in an affidavit filed with the same public body within the previous year pursuant to the requirements of this section; and

(2) states that those statements remain accurate.

§16–312.

(a) Debarment proceedings under this subtitle against a person or business subject to debarment under this title may be instituted within 5 years after:

(1) a final judgment in a civil or criminal action that constitutes a cause for debarment;

(2) an admission, in writing or under oath, of an act or omission that constitutes grounds for a criminal conviction or civil liability that may be a cause for debarment; or

(3) the occurrence of any other event that constitutes a cause for debarment.

(b) Debarment proceedings under this subtitle against a person or business subject to debarment under this title may be instituted after the period set forth in subsection (a) of this section, only if such proceedings are brought within 1 year of the

time when the State discovered, or by the exercise of ordinary diligence should have discovered, the grounds for debarment under this title.

§17–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Payment security" means security to guarantee payment for labor and materials, including leased equipment, under a contract for construction.

(c) "Performance security" means security to guarantee the performance of a contract for construction.

(d) "Public body" means:

(1) the State;

(2) a county, municipal corporation, or other political subdivision;

(3) a public instrumentality; or

(4) any governmental unit authorized to award a contract.

(e) (1) "Supplier" means a person who supplies labor or materials.

(2) "Supplier" includes a lessor of equipment to the extent of the fair rental value of the equipment.

§17–102.

(a) This subtitle does not limit the authority of a public body to require performance security in addition to, or in cases other than, those specified under §§ 17-103, 17-104, 17-106, and 17-107 of this subtitle.

(b) This subtitle applies only to security for a construction contract.

(c) (1) By ordinance, Baltimore City may provide for a program to satisfy the bonding requirements under §§ 17-103, 17-104, 17-106, and 17-107 of this subtitle with respect to any construction contract:

(i) that does not exceed $200,000; and

(ii) for which State money is not used.

(2) The program shall provide for payment security of at least 50% of the total amount payable under the contract.

§17–103.

(a) (1) Before a public body awards a construction contract exceeding $100,000, the contractor shall provide payment security and performance security that meet the requirements of § 17-104 of this subtitle.

(2) The security shall be:

(i) for performance security, in an amount that the public body considers adequate for its protection; and

(ii) for payment security, at least 50% of the total amount payable under the contract.

(b) A public body, other than the State or a unit of the State government, may require payment security or performance security for a construction contract if:

(1) the contract exceeds $25,000 but does not exceed $100,000; and

(2) the amount of the security does not exceed 50% of the contract amount.

§17–104.

(a) Payment security or performance security required under this subtitle shall be:

(1) a bond executed by a surety company authorized to do business in the State;

(2) cash in an amount equivalent to a bond; or

(3) other security that is satisfactory to the public body awarding the contract.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, performance security may include the granting of a mortgage or deed of trust on real property located within the State if such security is satisfactory to the public body awarding the contract.

(2) The face amount of a mortgage or deed of trust on real property granted as security under this subsection may not exceed 75% of the contractor's equity interest in the property.

(3) A mortgage or deed of trust accepted under this subsection shall be recorded by an official designated by the public body accepting the mortgage or deed of trust in the land records of the county where the real property is situated in accordance with § 3–103 of the Real Property Article.

§17–105.

(a) Security under this subtitle:

(1) if required by the State or a unit of the State government, shall be payable to "the State of Maryland"; or

(2) if required by any other public body, shall be payable to that public body.

(b) The form of payment security or performance security shall be approved:

(1) for the State or a unit of the State government, by the Attorney General; and

(2) for any other public body, by its attorney.

(c) The contractor shall file the security or evidence of a trust account established as security:

(1) if payable to the State under this section, in the Office of the Comptroller; or

(2) if payable to any other public body, in the appropriate office of that public body.

§17–106.

Before a contractor receives a progress or final payment under a contract covered by payment security, the contractor shall certify in writing that, in accordance with contractual arrangements, suppliers:

(1) have been paid from the proceeds of previous progress payments; and

(2) will be paid in a timely manner from the proceeds of the progress or final payment currently due.

§17–107.

A contractor who provides payment security under this subtitle in connection with a construction contract awarded by a public body need not execute a waiver of a mechanics' lien to the public body.

§17–108.

(a) Subject to subsection (b) of this section, a supplier may sue on payment security if the supplier:

(1) supplied labor or materials in the prosecution of work provided for in

a contract subject to this subtitle; and

(2) has not been paid in full for the labor or materials within 90 days after the day that the person last supplied labor or materials for which the claim is made.

(b) (1) A supplier who has a direct contractual relationship with a subcontractor or sub-subcontractor of a contractor who has provided payment security but no contractual relationship with the contractor may sue on the security if the supplier gives written notice to the contractor within 90 days after the labor or materials for which the claim is made were last supplied in prosecution of work covered by the security.

(2) A notice under this subsection:

(i) shall state with substantial accuracy the amount claimed and the person to whom the labor or material was supplied; and

(ii) shall be sent by certified mail to the contractor at the contractor's residence or a place where the contractor has an office or does business.

(c) (1) On request by a person who submits an affidavit verifying that the person has supplied labor or materials but has not been paid or is being sued under this section, the Comptroller or the officer in charge of the office where the payment security or evidence of security is required to be filed shall issue:

(i) a certified copy of the payment bond; or

(ii) for other security, a certified statement of the security.

(2) The person requesting certification shall pay a reasonable fee, set by the Comptroller or other officer required to issue the certification, to cover the costs of preparation.

(3) A certification under this section is prima facie evidence of the contents, execution, and delivery of payment security.

(d) (1) An executory contract between a supplier and a contractor or subcontractor that is related to a construction contract may not waive or require the supplier to waive the right to sue on payment security under this section.

(2) A provision in an executory contract between a supplier and a contractor or subcontractor that is related to a construction contract and that conditions payment to the supplier on receipt of payment by the person from a public body or other third party, may not abrogate or waive the right of the supplier to sue on payment security under this subtitle.

(3) A provision of a contract made in violation of this subsection is void as against the public policy of the State.

§17–109.

(a) An action on a payment bond required by this subtitle shall be filed in the appropriate court of the county where:

(1) the contract was executed and performed; or

(2) the contractor has its principal place of business.

(b) An action on a payment bond required by this subtitle shall be filed within 1 year after the public body finally accepts the work performed under the contract.

(c) An obligee named in a bond or a trustee for any other security is not liable for any costs in connection with an action on a payment bond required by this subtitle.

§17–110.

(a) Subsections (b)(1) and (2), (c), and (d) of this section do not apply to an entity that is required to comply with the provisions of § 13–225 of this article.

(b) (1) If a contractor has furnished 100% payment security and 100% performance security in accordance with this subtitle under a contract for construction awarded by a public body, the percentage specified in the contract for retainage may not exceed 5% of the total amount of the contract.

(2) In addition to retainage, a public body may withhold from payments otherwise due a contractor any amount that the public body reasonably believes necessary to protect the public body's interest.

(3) Except as provided in paragraph (4) of this subsection, within 120 days after satisfactory completion of a contract for construction, a public body shall release any retainage due to the contractor.

(4) If there is a dispute or contract claim between the contractor and the public body concerning the satisfactory completion of a contract for construction, the public body shall release the retainage to the contractor within 120 days after the resolution of the dispute or contract claim.

(c) (1) A contractor may not retain a percentage of payments due a subcontractor that exceeds the percentage of payments retained by the public body.

(2) Paragraph (1) of this subsection may not be construed to prohibit a contractor from withholding any amount in addition to retainage if the contractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

(d) (1) A subcontractor may not retain a percentage of payments due a lower tier subcontractor that exceeds the percentage of payments retained from the

subcontractor.

(2) Paragraph (1) of this subsection may not be construed to prohibit a subcontractor from withholding any amount in addition to retainage if the subcontractor determines that a lower tier subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

(e) This section may not be construed to limit the application of the remaining provisions of this subtitle.

§17–111.

This subtitle may be cited as the "Maryland Little Miller Act".

§17–201.

(a) In this subtitle, unless the context indicates otherwise, the following words have the meanings indicated.

(b) "Apprentice" means an individual who:

(1) is at least 16 years old;

(2) has signed with an employer or employer's agent, an association of employers, an organization of employees, or a joint committee from both, an agreement including a statement of:

(i) the trade, craft, or occupation that the individual is learning; and

(ii) the beginning and ending dates of the apprenticeship; and

(3) is registered in a program of the Council or the Bureau of Apprenticeship and Training of the United States Department of Labor.

(c) "Commissioner" means:

(1) the Commissioner of Labor and Industry;

(2) the Deputy Commissioner of Labor and Industry; or

(3) an authorized representative of the Commissioner.

(d) "Construction" includes all:

(1) building;

(2) reconstructing;

(3) improving;

(4) enlarging;

(5) painting and decorating;

(6) altering;

(7) maintaining; and

(8) repairing.

(e) "Council" means the Apprenticeship and Training Council.

(f) (1) "Employee" means an apprentice or worker employed by a contractor or subcontractor under a public work contract.

(2) "Employee" does not include an individual employed by a public body.

(g) (1) "Locality" means the county in which the work is to be performed.

(2) If the public work is located within 2 or more counties, the locality includes all counties in which the public work is located.

(h) "Prevailing wage rate" means the hourly rate of wages paid in the locality as determined by the Commissioner under § 17–208 of this subtitle.

(i) (1) "Public body" means:

(i) the State;

(ii) except as provided in paragraph (2)(i) of this subsection, a unit of the State government or instrumentality of the State;

(iii) any political subdivision, agency, person, or entity:

1. with respect to the construction of an elementary or a secondary school for which 25% or more of the money used for construction is State money; or

2. with respect to the construction of any other public work for which 50% or more of the money used for construction is State money;

(iv) notwithstanding paragraph (2)(ii) of this subsection, a political subdivision if its governing body:

1. provides by ordinance or resolution that the political subdivision is covered by this subtitle; and

2. gives written notice of that ordinance or resolution to the Commissioner; and

(v) the Washington Suburban Sanitary Commission.

(2) "Public body" does not include:

(i) except as provided in paragraph (1)(v) of this subsection, a unit of the State government or instrumentality of the State funded wholly from a source other than the State; or

(ii) any political subdivision, agency, person, or entity:

1. with respect to the construction of an elementary or a secondary school for which less than 25% of the money used for construction is State money; or

2. with respect to the construction of any other public work for which less than 50% of the money used for construction is State money.

(j) (1) Subject to paragraph (2) of this subsection, "public work" means a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that:

(i) is constructed for public use or benefit; or

(ii) is paid for wholly or partly by public money.

(2) "Public work" does not include:

(i) unless let to contract, a structure or work whose construction is performed by a public service company under order of the Public Service Commission or other public authority regardless of:

1. public supervision or direction; or

2. payment wholly or partly from public money; or

(ii) an elementary or a secondary school if:

1. the school is not in a political subdivision covered under subsection (i)(1)(iv) of this section; and

2. the State provides less than 25% of the money for construction.

(k) "Public work contract" means a contract for construction of a public work.

(l) "Worker" means a laborer or mechanic.

§17–202.

(a) This subtitle does not limit:

(1) the hours of work an employee may work in a particular period of time; or

(2) the right of a contractor to pay an employee under a public work contract more than the prevailing wage rate.

(b) This subtitle does not apply to:

(1) a public work contract of less than $500,000; or

(2) the part of a public work contract for which the federal government provides money if, as to that part, the contractor is required to pay the prevailing wage rate as determined by the United States Secretary of Labor.

(c) If this subtitle and the federal Davis-Bacon Act apply and the federal act is suspended, the Governor may declare this subtitle suspended for the same period for:

(1) the part of that public work contract for which the United States Secretary of Labor would have been required to make a determination of a prevailing wage rate; or

(2) that entire public work contract.

§17–204.

(a) (1) The Commissioner shall adopt regulations reasonably required to carry out this subtitle.

(2) The regulations may include exemptions for minimum number of hours worked or workers employed.

(3) Payroll records shall be kept in accordance with those regulations.

(b) On or before January 1 of each year, the Commissioner shall submit to the Governor and to the Secretary of Labor, Licensing, and Regulation an annual report that:

(1) describes the activities of the Commissioner under this subtitle during the preceding calendar year; and

(2) includes:

(i) each recommendation received from the Advisory Council on Prevailing Wage Rates during the preceding calendar year;

(ii) full information about the operation of this subtitle; and

(iii) other information about prevailing wage rates, as the Commissioner desires.

§17–205.

(a) A contractor or subcontractor under a public work contract subject to this subtitle:

(1) shall employ only competent workers and apprentices who qualify under subsection (b) of this section;

(2) may not employ any individual classified as a helper or trainee; and

(3) may refuse to employ a worker who is a resident of another state if the Commissioner finds that the other state enforces a law that prohibits a resident of this State from employment as a worker under a public work contract in that state, unless:

(i) the refusal is in conflict or otherwise inconsistent with a federal law applicable to the public work;

(ii) the federal government is to pay wholly or partly for the public work; and

(iii) the inconsistency with federal law jeopardizes the availability of federal funds for the public work.

(b) An apprentice under a public work contract shall be part of and used in accordance with an apprenticeship program registered with the Council and approved by the Bureau of Apprenticeship and Training of the United States Department of Labor.

§17–208.

(a) (1) For each public work to which this subtitle applies, the Commissioner shall determine the prevailing wage rate for each classification of worker engaged in work of the same or a similar character.

(2) The Commissioner shall determine the prevailing wage rates for both straight time and overtime.

(3) These determinations shall be made in accordance with:

(i) the applicable provisions of Title 10, Subtitles 1 through 3 of the State Government Article; and

(ii) to the extent not inconsistent with those provisions, the requirements of this section.

(b) (1) Except as provided in subsection (c) of this section, the prevailing wage rate for straight time for a worker is the rate paid:

(i) in the locality;

(ii) on projects similar to the proposed public work;

(iii) for work of the same or a similar character as that to be performed on the public work; and

(iv) to 50% or more of the workers in the worker's occupational classification.

(2) The prevailing wage rate for overtime for a worker shall be at least time and a half the prevailing wage rate for straight time for that worker.

(c) (1) If fewer than 50% of the workers in the locality working in the same classification receive the same wage rate:

(i) the prevailing wage rate shall be the rate paid to at least 40% of those workers; or

(ii) if fewer than 40% receive the same wage rate, the rate shall be a weighted average rate obtained by:

1. adding the products obtained by multiplying each hourly rate paid to workers in the classification by the number of workers receiving that rate; and

2. dividing that sum by the total number of workers in the classification.

(2) If the Commissioner determines that there is not a substantial number of competent workers engaged in similar work in the locality, the Commissioner shall determine the prevailing wage rate based on the nearest locality within the State that most closely approximates that locality in:

(i) population;

(ii) degree of industrialization; and

(iii) skill of work force.

(d) The calculation of the rate paid in the locality shall include the basic hourly rate of pay and either:

(1) if a contractor is not required by law to provide fringe benefits, the hourly rate of contribution irrevocably made by a contractor or subcontractor to a third person under a fund, plan, or program that provides:

(i) medical, surgical, or hospital care;

(ii) retirement, disability, or death benefits, including a profit sharing plan that provides benefits on retirement;

(iii) unemployment, life, or accident insurance or compensation;

(iv) insurance or compensation for injury or illness resulting from occupational activity;

(v) vacation and holiday pay;

(vi) subsidies to defray costs of apprenticeship or other similar programs; or

(vii) other bona fide fringe benefits; or

(2) the hourly rate of costs to the contractor or subcontractor that reasonably may be anticipated in providing the fringe benefits specified in item (1) of this subsection under an enforceable commitment to carry out a financially responsible plan or program that is communicated in writing to the workers.

(e) An apprentice under a public work contract shall be paid at least the percentage, set by the Council, of the prevailing wage rate for a mechanic in the trade in which the apprentice is employed.

§17–209.

(a) One time per year, the Commissioner shall determine the prevailing wage rate for a classification of worker in a locality by considering among other things:

(1) any other payroll information relevant to the determination; and

(2) wage rates established by collective bargaining agreements.

(b) The Commissioner shall mail notice as provided in § 17-210(b)(2) of this subtitle at least 60 days before making a determination under this section.

(c) (1) The determination, as issued under this section or modified in a proceeding under § 17-211 of this subtitle, is effective for 1 year from the date upon which the Commissioner issued the determination under this section.

(2) The Commissioner shall show on the determination the date upon which it expires.

(3) Upon expiration of the prevailing wage determination for a locality, the Commissioner shall issue a new determination for the locality.

(4) A determination applies to a public work covered by this subtitle that

is the subject of a call for bids or proposals published on or before the date upon which it expires.

§17–210.

(a) Before a public body advertises for bids or proposals for a public work contract, it shall request the Commissioner to determine the prevailing wage rate for each classification of worker required to perform the public work contract.

(b) (1) The Commissioner shall give notice of each prevailing wage rate determination for a public work contract under this subtitle.

(2) On written request, the Commissioner shall mail to any representative of any classification, any employer, or any representative of any group of employers notice:

(i) that a determination will be made, at least 60 days before making the determination; and

(ii) of the determination, after making the determination.

(c) After a determination has been made, the public body shall include each prevailing wage rate for straight time and overtime:

(1) in any call for bids or proposals;

(2) in the specifications for the public work contract; and

(3) in the public work contract.

§17–211.

(a) A determination of a prevailing wage rate issued under § 17-209 of this subtitle is subject to review when a public body publishes a call for bids or proposals in which the determination is used for the first time following its issuance under § 17-209 of this subtitle.

(b) (1) Within 10 days after a public body publishes any call for bids or proposals, as described in subsection (a) of this section, a petition for review of a determination of a prevailing wage rate may be submitted to the Commissioner by:

(i) the public body;

(ii) a prospective bidder or offeror or a representative of a prospective bidder or offeror;

(iii) a representative of a group of employers engaged in the type of construction for which the prevailing wage rate was determined; or

(iv) a representative of a classification of worker for which the prevailing wage rate was determined.

(2) A petition under this subsection shall be verified and shall set forth the facts on which it is based.

(3) If a petition is not filed within the period set under paragraph (1) of this subsection, the determination is final and is the rate applicable in the locality for the remainder of the 1-year period for which it was issued under § 17-209 of this subtitle.

(c) (1) Within 2 days after a petition is submitted under this section, the petitioner shall send a copy to the public body.

(2) On receipt of a copy of the petition, the public body shall extend the closing date for bids or proposals until 5 days after the Commissioner publishes the final determination under subsection (f) of this section.

(d) (1) Within 20 days after a petition is submitted, the Commissioner shall:

(i) after giving the notice required under paragraph (3) of this subsection, conduct an investigation; and

(ii) hold a public hearing to review the petition.

(2) If more than 1 petition is submitted, the Commissioner may consolidate the hearings on any of the petitions.

(3) The Commissioner shall notify the petitioner, public body, recognized collective bargaining representative for the classification for which a review is requested, and any other person entitled to receive notice under § 17-210(b)(2) of this subtitle.

(e) At the hearing:

(1) the Commissioner shall introduce as evidence the investigation conducted under subsection (d) of this section and the other facts that formed the basis of the Commissioner's original determination; and

(2) any interested party, including the Commissioner, may introduce other evidence material to the issue.

(f) Within 10 days after the conclusion of a review hearing, the Commissioner shall send to the public body and each interested party, a determination of the prevailing wage rate. This determination is final and is the rate applicable in the locality for the remainder of the 1-year period for which it was issued under § 17-209 of this subtitle.

§17–212.

A member of a public body may not vote for the award of a public work contract or vote to disburse money for the construction of a public work unless:

(1) the public body has asked the Commissioner to determine the prevailing wage rates in the locality for each classification of worker required to perform the public work contract; and

(2) the determination has been made part of the specifications and public work contract for the public work.

§17–213.

(a) Before entering into a public work contract, a public body shall require that the public work contract include a clause for payment:

(1) to a worker, of at least the prevailing wage rate; and

(2) to an apprentice, of at least the rate that the Council sets for an apprentice based on a percentage of the prevailing wage rate for a mechanic in that trade.

(b) A public body shall require bonds on public work contracts to guarantee the faithful performance of the prevailing wage rate clause of the public work contract.

§17–214.

(a) Except as provided in subsection (b) of this section, each contractor and subcontractor under a public work contract shall pay not less than the prevailing wage rate of straight time to an employee for each hour that the employee works.

(b) A contractor and subcontractor shall pay an employee the prevailing wage rate of overtime for each hour that the employee works:

(1) in excess of 10 hours in any single calendar day;

(2) in excess of 40 hours per each workweek; or

(3) on Sunday or a legal holiday.

§17–215.

(a) Each contractor and subcontractor subject to this subtitle shall pay each employee not less than the prevailing wage rate required under this subtitle:

(1) unconditionally;

(2) without subsequent rebate; and

(3) except as provided in subsection (b) of this section, without deductions for:

(i) food;

(ii) sleeping accommodations;

(iii) transportation;

(iv) use of small tools; or

(v) any other thing of any kind.

(b) A contractor or subcontractor may make deductions that are:

(1) required by law;

(2) required or allowed by a collective bargaining agreement between a bona fide labor organization and the contractor or subcontractor; or

(3) contained in a written agreement between an employee and an employer undertaken at the beginning of employment, if the agreement:

(i) concerns food, sleeping accommodations, or other similar items;

(ii) is submitted by the employer to the public body awarding the public work contract; and

(iii) is approved by the public body as fair and reasonable.

§17–216.

(a) A laborer may perform any work that is not ordinarily performed by a mechanic or mechanic's apprentice, but shall be paid the prevailing wage rate for the work performed.

(b) (1) A laborer receiving the prevailing wage rate for laborers may not perform work ordinarily performed by a mechanic or mechanic's apprentice.

(2) If a laborer performs work ordinarily performed by any mechanic or mechanic's apprentice, the contractor or subcontractor shall pay the laborer for the entire time of performance of that work at the prevailing wage rate for a mechanic.

§17–219.

(a) Each contractor under a public work contract subject to this subtitle shall:

(1) post a clearly legible statement of each prevailing wage rate to be paid under the public work contract; and

(2) keep the statement posted during the full time that any employee is employed on the public work contract.

(b) The statement of prevailing wage rates shall be posted in a prominent and easily accessible place at the site of the public work.

(c) Subject to § 10-1001 of the State Government Article, the Commissioner may impose on a person that violates this section a civil penalty of up to $50 per violation.

§17–220.

(a) Each contractor required to pay the prevailing wage rate shall:

(1) keep payroll records covering work performed directly at the work site in accordance with regulations adopted by the Commissioner; and

(2) allow the Commissioner or the public body to inspect the records at any reasonable time and as often as necessary.

(b) (1) Each contractor shall submit a complete copy of the payroll records of the contractor and, for work performed at the work site, of the subcontractors in the form that the Commissioner specifies by regulation to:

(i) the public body; and

(ii) the Commissioner.

(2) The Commissioner and the public body shall make payroll records available for public inspection during regular business hours.

(c) Each copy of the payroll records shall be accompanied by a statement that is signed by the contractor or, for the subcontractor's records, by the subcontractor and indicates that:

(1) the payroll records are correct;

(2) the wage rates paid are not less than those established by the Commissioner as set forth in the public work contract;

(3) the classification set forth for each employee conforms with the work performed by that employee; and

(4) the contractor or subcontractor has complied with each requirement of this subtitle.

(d) If a contractor is late in submitting copies of the payroll records required under subsection (b) of this section:

(1) the public body may postpone the processing of partial payment

estimates under the public work contract pending receipt of the copies; and

(2) the contractor shall be liable to the public body for liquidated damages of $10 for each calendar day the records are late.

§17–221.

(a) Each public body that awards a public work contract shall:

(1) take cognizance of a complaint of a violation of this subtitle committed in the course of performance of the public work contract; and

(2) when making payments to the contractor, withhold any amount that the contractor owes to its employees or the public body as a result of the violation.

(b) (1) The Commissioner shall institute an investigation as necessary to determine compliance with this subtitle and regulations adopted under this subtitle.

(2) The Commissioner promptly shall investigate a complaint of a violation of this subtitle.

(3) Any written or oral complaint or statement made by an employee is confidential and may not be disclosed to the employer without the consent of the employee.

(c) A contractor or subcontractor subject to an investigation under this section shall allow the Commissioner to observe work being performed at the site of a public work project, to interview employees, and to review books and records, to determine:

(1) the correctness of each classification;

(2) the ratio of apprentices to mechanics; and

(3) payment of straight and overtime prevailing wage rates as required under the public work contract.

(d) If, after investigation, the Commissioner determines that a provision of this subtitle may have been violated, the Commissioner immediately shall notify the public body.

(e) (1) On notification, the public body shall withhold from payment due the contractor or subcontractor an amount sufficient to:

(i) pay each employee of the contractor or subcontractor the full amount of wages due under this subtitle; and

(ii) satisfy a liability of a contractor for liquidated damages as provided in § 17-222(a) of this subtitle, pending a final determination.

(2) If a subcontractor is responsible for a violation of this subtitle, the contractor:

(i) may withhold from payment to the subcontractor an amount equal to the amount withheld from the contractor under paragraph (1) of this subsection; or

(ii) if payment has been made to the subcontractor, may sue to recover that amount.

(f) The Commissioner shall:

(1) issue an order for a hearing within 30 days after completing an investigation; and

(2) expeditiously conduct the hearing.

(g) (1) At least 10 days before the hearing, the Commissioner shall serve, personally or by mail, written notice of the hearing on all interested persons, including the public body.

(2) The notice shall include:

(i) a statement of the facts disclosed in the investigation; and

(ii) the time and place of the hearing.

(h) (1) In conducting an investigation or hearing under this section, the Commissioner is deemed to be acting in a quasi-judicial capacity and may:

(i) issue subpoenas;

(ii) administer oaths; or

(iii) examine witnesses.

(2) The Commissioner shall grant each interested person an opportunity to speak at the hearing on matters relevant to the complaint.

(i) (1) After the conclusion of the hearing, the Commissioner shall:

(i) file in the Commissioner's office an order that states the Commissioner's determination; and

(ii) serve, personally or by mail, the public body and parties to the hearing with a copy of the order and notice of its filing.

(2) If the Commissioner finds a violation, the Commissioner shall determine the amount of liquidated damages and restitution to be assessed for the

violation.

(3) On the entry and service of a Commissioner's order, the public body, from the money due the contractor or subcontractor, shall:

(i) pay the affected employees the full amount of wages due them; and

(ii) satisfy the obligation of the contractor or subcontractor to pay liquidated damages as required under § 17-222 of this subtitle.

§17–222.

(a) A contractor under a public work contract is liable to the public body for liquidated damages of $20 for each laborer or other employee for each day for which:

(1) the laborer is paid less than the prevailing wage rate of a mechanic while performing a task required to be performed by a mechanic or mechanic's apprentice; or

(2) the employee is paid less than the prevailing wage rate.

(b) (1) If a contractor or subcontractor pays an employee less than the amount the employee is entitled to receive for the work performed, the contractor shall make restitution to the employee.

(2) The contractor and the subcontractor shall be jointly and severally liable for restitution to the subcontractor's employees.

§17–223.

(a) If a public body does not comply with a provision of this subtitle, the Commissioner:

(1) shall give written notice of the noncompliance to the public body;

(2) may require compliance within a sufficient period as determined by the Commissioner; and

(3) after the expiration of that period, may inform the Attorney General in writing that notice has been given and that the public body has not complied with the notice.

(b) As soon as possible after being informed by the Commissioner, the Attorney General shall sue, in the name of the State, in the circuit court for the county where the public body is located to seek any remedies that the court may find appropriate to carry out the policies of this subtitle.

(c) In the action, the State and the public body each shall have the right of

appeal that is provided by law in an injunction proceeding.

§17–224.

(a) (1) If an employee under a public work contract is paid less than the prevailing wage rate for that employee's classification for the work performed, the employee may file a complaint with the Commissioner.

(2) Except as otherwise provided in this section, a complaint filed under this section shall be subject to the provisions of § 17–221 of this subtitle.

(3) If the Commissioner's investigation determines that the employer violated provisions of this subtitle, the Commissioner shall try to resolve the issue informally.

(4) (i) If the Commissioner is unable to resolve the matter informally, the Commissioner shall issue an order for a hearing in accordance with § 17–221 of this subtitle.

(ii) If, at the conclusion of a hearing ordered under subparagraph (i) of this paragraph, the Commissioner determines that the employee is entitled to restitution under this subtitle, the Commissioner shall issue an order in accordance with § 17–221 of this subtitle.

(iii) If an employer of an employee found to be entitled to restitution under subparagraph (ii) of this paragraph is no longer working under a contract with a public body, the Commissioner may order that restitution be paid directly by the employer to the employee within a reasonable period of time, as determined by the Commissioner.

(5) If an employer fails to comply with an order to pay restitution to an employee under paragraph (4)(iii) of this subsection, the Commissioner or the employee may bring a civil action to enforce the order in the circuit court in the county where the employee or employer is located.

(b) (1) An action under this section is considered to be a suit for wages.

(2) A judgment in an action under this section shall have the same force and effect as any other judgment for wages.

(3) An action brought under this section for a violation of this subtitle shall be filed within 3 years from the date the affected employee knew or should have known of the violation.

(c) (1) The failure of an employee to protest orally or in writing the payment of a wage that is less than the prevailing wage rate is not a bar to recovery in an action under this section.

(2) A contract or other written document in which an employee states that the employee shall be paid less than the amount required by this subtitle does not bar the recovery of any remedy required under this subtitle.

(d) (1) Except as provided in paragraph (3) of this subsection, if the court in an action filed under this section finds that an employer paid an employee less than the requisite prevailing wage, the court shall award the affected employee the difference between the wage actually paid and the prevailing wage at the time that the services were rendered.

(2) (i) Subject to subparagraph (ii) of this paragraph, unpaid fringe benefit contributions owed for an employee in accordance with this section shall be paid to the appropriate benefit fund, plan, or program.

(ii) In the absence of an appropriate benefit fund, plan, or program, the amount owed for fringe benefits for an employee shall be paid directly to the employee.

(3) The court may order the payment of double damages or treble damages under this section if the court finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard of the employer's obligations under this subtitle.

(4) In an action under this section, the court shall award a prevailing plaintiff reasonable counsel fees and costs.

(5) If the court finds that an employee submitted a false or fraudulent claim in an action under this section, the court may order the employee to pay the employer reasonable counsel fees and costs.

(e) (1) Subject to paragraph (2) of this subsection, an action filed in accordance with this section may be brought by one or more employees on behalf of that employee or group of employees and on behalf of other employees similarly situated.

(2) An employee may not be a party plaintiff to an action brought under this section unless that employee files written consent with the court in which the action is brought to become a party to the action.

(f) (1) A person found to have made a false or fraudulent representation or omission known to be false or made with deliberate ignorance or reckless disregard for its truth or falsity regarding a material fact in connection with any prevailing wage payroll record required by § 17–220 of this subtitle is liable for a civil penalty of $1,000 for each falsified record.

(2) The penalty shall be recoverable in a civil action filed in accordance with this section and paid to the State General Fund.

(g) An employer may not discharge, threaten, or otherwise retaliate or

discriminate against an employee regarding compensation or other terms and conditions of employment because that employee or an organization or other person acting on behalf of that employee:

(1) reports or makes a complaint under this subtitle or otherwise asserts the worker's rights under this section; or

(2) participates in any investigation, hearing, or inquiry held by the Commissioner under § 17–221 of this subtitle.

(h) (1) A contractor or subcontractor may not retaliate or discriminate against an employee in violation of this section.

(2) If a contractor or subcontractor retaliates or discriminates against an employee in violation of this section, the affected employee may file an action in any court of competent jurisdiction within 3 years from the employee's knowledge of the action.

(3) If the court finds in favor of the employee in an action brought under this subsection, the court shall order that the contractor or subcontractor:

(i) reinstate the employee or provide the employee restitution, as appropriate;

(ii) pay the employee an amount equal to three times the amount of back wages and fringe benefits calculated from the date of the violation; and

(iii) pay reasonable counsel fees and other costs.

§17–225.

(a) A person may not:

(1) violate the wage provisions of a public work contract;

(2) allow or require an employee to work for less than the applicable prevailing wage rate;

(3) except as provided in subsection (b) of this section, ask an employee or prospective employee to give anything of value to that person or any other person on a statement, representation, or understanding that failure to comply with the request or demand will prevent the employee from procuring or retaining employment; or

(4) directly or indirectly, authorize a violation of this subtitle by any other person.

(b) Subsection (a) of this section does not apply to any agent of a collective bargaining organization acting in collection of sums as allowed by the National Labor

Relations Act.

§17–226.

(a) (1) After investigation and entry of an order in accordance with § 17-221 of this subtitle, the Commissioner shall file with the Secretary of State a list of the contractors and any subcontractors who persistently and willfully violate the provisions of this subtitle.

(2) Filing under this subsection shall be notice to a public body and its representatives.

(b) (1) If the name of a contractor or any subcontractor appears on the list, that contractor or subcontractor shall be prohibited from entering into a contract for construction of a public work directly or indirectly for 2 years from the day on which the list is filed.

(2) A public body may not award a contract for construction of a public work to a person who is prohibited from entering into a contract under this section.

§17–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "American steel product" means a product that is:

(1) produced from steel made in any state by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process; and

(2) rolled, forged, drawn, cast, extruded, or otherwise similarly processed.

(c) "Public body" means:

(1) the State;

(2) a unit of the State government; or

(3) a county, municipal corporation, school or conservation district, or other governmental entity that, by State law, awards contracts for public construction or other public work.

§17–302.

The provisions of this subtitle do not apply if they conflict with a federal law or grant affecting a contract.

§17–303.

(a) Except as otherwise provided in this subtitle, a public body shall require

a contractor or subcontractor to use or supply only American steel products in the performance of a contract for:

(1) constructing or maintaining a public work; or

(2) buying or manufacturing machinery or equipment that:

(i) is composed of at least 10,000 pounds of steel products; and

(ii) is to be installed at a public work site.

(b) This section does not apply if the head of a public body determines that:

(1) the price of American steel products is not reasonable, as provided in § 17-304 of this subtitle;

(2) American steel products are not produced in sufficient quantity to meet the requirements of the contract; or

(3) the purchase of American steel products would be inconsistent with the public interest.

(c) The public body shall give notice of the requirement for American steel products in the invitation for bids or request for proposals.

§17–304.

The Board shall adopt regulations, in accordance with Title 10, Subtitle 1 of the State Government Article, stating that a bid or offered price of an American steel product shall be considered reasonable if it does not exceed the sum of the bid or offered price of a similar steel product of foreign origin, including duty, plus:

(1) 20% of that bid or offered price; or

(2) 30% of that bid or offered price if the steel product is produced in a "substantial labor surplus area" as defined by the United States Department of Labor.

§17–305.

(a) Unless a public body is satisfied that a person has completed the work in full compliance with §§ 17-303 and 17-304 of this subtitle, the public body may not pay or authorize a payment for work subject to §§ 17-303 and 17-304 of this subtitle to a person under a contract.

(b) If a person receives a payment that should not have been made under subsection (a) of this section, the Attorney General may recover the portion of the payment that is attributable to work that does not comply with §§ 17-303 and 17-304 of this subtitle directly from the person who did not comply with §§ 17-303 and 17-304 of this subtitle by filing a complaint in the circuit court for the county where the

contract was executed or performed.

§17–306.

This subtitle may be cited as the "Maryland Buy American Steel Act".

§17–401.

In this subtitle, "contribution" has the meaning stated in § 1-101 of the Election Law Article.

§17–402.

Each State or local government procurement contract shall include a clause covering the obligation of a contractor to comply with the political contribution reporting requirements under Title 14 of the Election Law Article to which the contractor may be subject.

§17–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "eMaryland Marketplace" has the meaning stated in § 13–101 of this article.

(c) "Procurement" means procurement by competitive sealed bidding, competitive sealed proposals, or noncompetitive negotiation.

§17–502.

(a) In addition to any other provision of law, the following persons shall use eMaryland Marketplace to publish notice of a procurement or publish a notice of award of a procurement that is at the same amount or exceeds the amount required by the Board for a State contract to be published in eMaryland Marketplace:

(1) a unit of State government;

(2) a county;

(3) a municipality;

(4) a bicounty or multicounty governmental agency;

(5) a special tax district, sanitary district, drainage district, soil conservation district, and water supply district;

(6) a public institution of higher education;

(7) a public school; and

(8) except for the Maryland Health and Higher Educational Facilities Authority, an entity exempt from the provisions of this Division II in accordance with § 11–203 of this article.

(b) This section may not be construed to prohibit a person listed in subsection (a) of this section from publishing notice of a procurement or publishing a notice of award in accordance with any other law or policy.

(c) An unintentional violation of this section may not constitute grounds to challenge or appeal:

(1) the award of a procurement; or

(2) the process through which a procurement was conducted.

§17–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Apprenticeship training program" means an apprenticeship training program that is registered with, and approved by, the Apprenticeship and Training Council or the U.S. Department of Labor.

(c) "Covered craft" means a classification of workers listed in the prevailing wage determination applicable to the covered project.

(d) "Covered project" means a project for the construction of a public work, as defined under § 17–201 of this title, that is valued at $500,000 or more.

(e) "Department" means the Department of Labor, Licensing, and Regulation.

(f) "Fund" means the State Apprenticeship Training Fund established under § 17–602 of this subtitle.

(g) "Participates in an apprenticeship training program" means that a contractor or subcontractor makes regular financial contributions for each covered craft to apprenticeship training programs for covered crafts during the term of the covered project that are at least equal to the hourly fringe benefit contribution rates required for apprenticeship training by the applicable prevailing wage determination for the project, as specified by the Secretary.

(h) "Secretary" means the Secretary of Labor, Licensing, and Regulation.

§17–602.

(a) There is a State Apprenticeship Training Fund in the Department.

(b) The Fund consists of:

(1) payments made by contractors or subcontractors in accordance with this subtitle; and

(2) penalties collected as a result of violations of this subtitle.

(c) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of this article.

(d) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(e) The Secretary shall use money in the Fund to:

(1) promote preapprenticeship programs and other workforce development programs in the State's public secondary schools and community colleges that assist students in preparing for and entering apprenticeship training programs; and

(2) pay any costs associated with carrying out the provisions of this subtitle.

§17–603.

(a) A contractor that is awarded a procurement contract for a covered project shall provide to a unit, as a condition of receiving the contract, written verification that:

(1) the contractor participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project;

(2) the contractor will make payments to the Fund; or

(3) the contractor will make payments in amounts determined under § 17–605 of this subtitle to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.

(b) The written verification required under subsection (a) of this section shall be provided by a contractor to the unit responsible for the project before the contractor commences performance under the procurement contract.

(c) Organizations that have registered apprenticeship programs and receive funds from contractors under subsection (a)(3) of this section shall certify to the Secretary that all funds received are used solely for the purpose of improving or expanding apprenticeship training in the State.

(d) The Secretary shall adopt regulations to establish a process for auditing organizations that provide registered apprenticeship programs to ensure that all funds received under subsection (a)(3) of this section are used solely to improve and expand

apprenticeship programs in the State.

§17–604.

(a) A subcontractor that performs work valued at $100,000 or more for a covered project shall provide to a unit written verification that:

(1) the subcontractor participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project;

(2) the subcontractor will make payments to the Fund; or

(3) the subcontractor will make payments in amounts determined under § 17–605 of this subtitle to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.

(b) The written verification required under subsection (a) of this section shall be provided by a subcontractor to the unit responsible for the project before the subcontractor commences performance under the procurement contract.

(c) Organizations that have registered apprenticeship programs and receive funds from contractors under subsection (a)(3) of this section shall certify to the Secretary that all funds received are used solely for the purpose of improving or expanding apprenticeship training in the State.

(d) The Secretary shall adopt regulations to establish a process for auditing organizations that provide registered apprenticeship programs to ensure that all funds received under subsection (a)(3) of this section are used solely to improve and expand apprenticeship programs in the State.

§17–605.

(a) (1) A contractor or subcontractor that elects to make payments to the Fund in accordance with this subtitle shall make payments, as determined by the Secretary, not to exceed 25 cents per hour for each employee in each covered craft who is employed by the contractor or subcontractor on the covered project.

(2) If the prevailing wage determination for a covered craft includes a fringe benefit contribution for apprenticeship programs that exceeds 25 cents, the contractor or subcontractor shall pay the difference to the employees in the covered craft in wages.

(3) Payments made under this section fulfill any obligations of the contractor or subcontractor regarding contributions for apprenticeship programs included in the prevailing wage determination under § 17–208 of this title.

(4) Payments made under paragraph (1) of this section are permissible deductions under § 17–215(b) of this title.

(5) Payments made to the Fund in accordance with paragraph (1) of this subsection shall be made on a monthly basis.

(b) (1) If the Secretary determines that a contractor or subcontractor for a covered project has made contributions to an apprenticeship training program at rates lower than those required by this subtitle, the contractor or subcontractor shall make payments to the Fund for the difference between its contribution and the contribution rate required by this subtitle.

(2) Payments made to the Fund in accordance with paragraph (1) of this subsection shall be made on a monthly basis.

(c) A contractor shall report all apprenticeship payments made under this subtitle on prevailing wage payroll records required by § 17–220 of this title.

(d) (1) A contractor or subcontractor that makes contributions to the Fund, a registered apprenticeship program, or an organization that has registered apprenticeship programs may request that its contributions be directed to a specific preapprenticeship or workforce development program.

(2) The Secretary shall make a good–faith effort to accommodate requests received in accordance with paragraph (1) of this subsection.

§17–606.

(a) A contractor or subcontractor that fails to meet the requirements of this subtitle shall be liable for an amount equal to twice the amount of unpaid apprenticeship training contributions required by this subtitle.

(b) (1) In this subsection, "willfully" means representations or omissions known to be false or made with deliberate ignorance or reckless disregard for their truth or falsity.

(2) Any person, firm, or corporation that is found to have made willfully a false or fraudulent representation or omission regarding a material fact in connection with prevailing wage records required by this section shall be liable for a civil penalty in an amount of up to $1,000 for each employee and each falsified record.

(3) Penalties shall be recoverable in civil actions and paid to the State.

(c) (1) The Secretary shall adopt regulations to establish administrative procedures for the collection of payments under this subtitle.

(2) (i) The Secretary may file suit to enforce this section in any court of competent jurisdiction.

(ii) In an action filed under this subsection, the court shall require the contractor or subcontractor to pay the amount required by subsection (a) of this

section, including interest, reasonable counsel fees, and court costs.

§17–701. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

(a) In this subtitle the following words have the meanings indicated.

(b) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.

(c) "Financial institution" has the meaning stated in Section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172).

(d) "Iran" includes the government of Iran and any agency or instrumentality of Iran.

(e) "Person" includes:

(1) a natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) a governmental entity or instrumentality of a government, including a multilateral development institution, as defined by the federal International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or

(3) any parent, successor, subunit, direct or indirect subsidiary of, or any entity under common ownership or control with, an entity described in item (1) or (2) of this subsection.

(f) "Public body" means:

(1) the State;

(2) a county, municipal corporation, or other political subdivision;

(3) a public instrumentality; or

(4) any governmental unit authorized to award a contract.

§17–702. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

(a) For purposes of this subtitle, a person engages in investment activities in Iran if:

(1) the person provides goods or services of $20,000,000 or more in the

energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or

(2) the person is a financial institution that extends $20,000,000 or more in credit to another person for 45 days or more if the person to whom the credit is extended:

(i) will use the credit to provide goods or services in the energy sector of Iran as described in item (1) of this section; and

(ii) is, at the time of the extension of credit, identified on a list created under § 17–704 of this subtitle as a person engaging in investment activities in Iran.

(b) If the Board determines that the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 has been amended or any other federal act or law has been enacted or amended that authorizes or requires the reduction of the dollar amounts provided for in this section or otherwise alters the parameters of investment activities in Iran for the purpose of imposing sanctions, the Board shall adopt regulations to reduce the dollar amounts or alter the parameters.

§17–703. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on a list created by the Board under § 17–704 of this subtitle as a person engaging in investment activities in Iran is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with a public body for goods or services.

§17–704. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

(a) (1) On or before December 31, 2012, the Board shall use credible information available to the public to create a list of persons that the Board determines to be engaged in investment activities in Iran as described in § 17–702 of this subtitle.

(2) The Board shall update the list at least every 180 days.

(3) Before the Board includes a person on the list, the Board shall provide the person with 90 days' written notice that:

(i) the Board intends to include the person on the list; and

(ii) inclusion on the list would make the person ineligible to bid on, submit a proposal for, or enter into or renew a contract with a public body for goods or

services.

(4) The notice required under paragraph (3) of this subsection shall specify that if the person ceases engagement in investment activities in Iran as described in § 17–702 of this subtitle, the person may become eligible for a future contract or contract renewal with a public body for goods or services on removal from the list.

(b) (1) The Board shall provide a person with an opportunity to comment in writing to the Board that the person is not engaged in investment activities in Iran.

(2) If the person demonstrates to the Board that the person is not engaged in investment activities in Iran as described in § 17–702 of this subtitle, the Board may not include the person on the list.

(c) The Board shall remove a person from the list if the person demonstrates to the Board that the person no longer is engaged in investment activities in Iran as described in § 17–702 of this subtitle.

(d) The Board shall make every reasonable effort to avoid erroneously including a person on the list.

(e) The Board shall publish the list on the Internet.

§17–705. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

(a) On or after January 1, 2013, a public body shall require a person that submits a bid or proposal to the public body for a contract for goods or services, or otherwise proposes to enter into or renew a contract for goods or services with the public body, to:

(1) certify at the time the bid is submitted or the contract is renewed that the person:

(i) is not identified on the list created by the Board as a person engaging in investment activities in Iran as described in § 17–702 of this subtitle; and

(ii) is not engaging in investment activities in Iran as described in § 17–702 of this subtitle; or

(2) if the person is unable to make the certification under item (1) of this subsection, provide the public body, under penalty of perjury, a detailed description of the person's investment activities in Iran.

(b) A public body shall submit any information provided to the public body under subsection (a)(2) of this section to the Board.

§17–706. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

(a) (1) If a public body, using credible information available to the public, determines that a person has submitted a false certification under § 17–705(a)(1) of this subtitle, the public body shall provide written notice to the person and an opportunity for the person to demonstrate in writing that the person is not engaged in investment activities in Iran.

(2) If the person fails to demonstrate to the public body within 90 days after the public body provides notice under paragraph (1) of this subsection that the person is not engaged in investment activities in Iran, the public body shall report to the Board and the Attorney General:

(i) the name of the person determined to have submitted a false certification; and

(ii) the information on which the public body made its decision.

(b) (1) The Attorney General may institute an action against a person determined to have submitted a false certification under § 17–705(a)(1) of this subtitle.

(2) An action brought under this section shall be brought within 3 years from the date the certification is made.

(c) If, in an action brought under this section, a court determines that a person submitted a false certification:

(1) the person shall pay all reasonable costs and fees incurred in the civil action, including:

(i) any costs incurred by the public body for the investigation that led to the finding of the false certification; and

(ii) all reasonable costs and fees incurred by the Attorney General in bringing the action;

(2) the court may impose a civil penalty equal to the greater of $1,000,000 or twice the amount of the contract for which the false certification was submitted;

(3) the public body may terminate the contract for which the false certification was submitted; and

(4) the person is ineligible to bid on a contract with a public body for a period of 3 years from the date of the court order.

(d) (1) Except as provided in paragraph (2) of this subsection, an unsuccessful

bidder or any other person may not protest the award of a contract or contract renewal on the basis of a false certification.

(2) Paragraph (1) of this subsection does not prohibit a public body from filing a protest objecting to the award of a contract or contract renewal on the basis of a false certification.

(e) This subtitle does not create or authorize a private right of action.

§17–707. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTERS 446 AND 447 OF 2012 **

This subtitle preempts any law, ordinance, rule, or regulation of any local governing body involving procurement contracts for goods or services with a person engaged in investment activities in Iran.

§18–101.

(a) In this title the following words have the meanings indicated.

(b) "Commissioner" means the Commissioner of Labor and Industry.

(c) (1) "Employer" means a contractor or subcontractor that has a State contract for services valued at $100,000 or more.

(2) "Employer" does not include a contractor or subcontractor that:

(i) employs 10 or fewer employees; and

(ii) has a State contract for services valued at less than $500,000.

(d) "Living wage" means an hourly wage set as provided under § 18–103 of this title.

(e) "Tier 1 area" includes Montgomery County, Prince George's County, Howard County, Anne Arundel County, Baltimore County, and Baltimore City.

(f) "Tier 2 area" includes any county in the State not included in the Tier 1 area.

§18–102.

(a) (1) This title applies to an employee of an employer for the duration of a contract subject to this title if at least one–half of the employee's time during any workweek relates to a State contract for services or a subcontract for services under a State contract.

(2) This title does not apply to an employee of an employer if the employee:

(i) is 17 years of age or younger for the duration of a contract subject to this title; or

(ii) works less than 13 consecutive weeks for the duration of a contract subject to this title and during that period works full time.

(b) This title does not apply to a contract:

(1) for services needed immediately to prevent or respond to an imminent threat to public health or safety;

(2) with a public service company;

(3) with a nonprofit organization;

(4) between units; or

(5) between a unit and a county or Baltimore City.

(c) If the unit responsible for a State contract determines that application of this title would conflict with any applicable federal program requirement, this title does not apply to the contract or program.

(d) The head of the unit responsible for a State contract subject to this title shall determine if contract services valued at 50% or more of the total value of the contract will be performed in the Tier 1 area or the Tier 2 area and shall provide that determination on the invitation for a bid.

§18–103.

(a) Except as provided in subsection (c) of this section, an employer subject to this title shall pay each employee covered under this title:

(1) at least $11.30 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 area; or

(2) at least $8.50 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 2 area.

(b) (1) Not later than 90 days after the start of each fiscal year, the Commissioner shall adjust the wage rates required under subsection (a) of this section by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington–Baltimore metropolitan area, or any successor index, for the previous calendar year.

(2) If the Commissioner adjusts the wage rates in accordance with paragraph (1) of this subsection, the Commissioner shall publish the new wage rates on the Division of Labor and Industry's website.

(3) On request by any person, the Commissioner shall give the person a printed copy of the new wage rates.

(c) If an employer commits in its bid or proposal to provide health insurance to an employee, either directly or through an employee representative, the employer may:

(1) certify in its bid or proposal the hourly cost of the employer's share of the premium for that insurance for each employee; and

(2) reduce the wage rate paid under subsection (a) of this section to any employee covered by the insurance by all or part of the hourly cost of the employer's share of the premium for each employee.

(d) The Commissioner may authorize, by regulation, an employer to reduce the wage rates paid under subsection (a) of this section by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan.

§18–104.

(a) The Commissioner shall adopt regulations governing employers subject to this title.

(b) The Commissioner may require that an employer keep records and submit reports to the Commissioner that the Commissioner determines necessary for the effective administration and enforcement of this title.

(c) The Commissioner every 3 years shall assess the appropriateness of:

(1) the measures used to adjust the wage rates under § 18–103(b) of this subtitle to ensure that the measures accurately reflect the wage rates of employees in the Tier 1 area and Tier 2 area of the State; and

(2) the placement of counties in the Tier 1 area and Tier 2 area.

§18–105.

An agreement by an employee to commute, release, or waive the employee's rights under this title is void.

§18–106.

(a) During any period in which an employee of the employer is entitled to a wage rate under this title, each employer subject to this title shall post in a prominent and easily accessible place at the work site of an employee described in § 18–102(a) of this title a notice of:

(1) the living wage rate;

(2) employee rights under this title; and

(3) the name, address, and telephone number of the Commissioner.

(b) The notice under this section shall be:

(1) developed by the Commissioner in English, Spanish, and any other language commonly used by employees at a work site; and

(2) (i) on request of an employer, provided without charge to the employer; or

(ii) made available for download on the Internet without charge.

(c) Subject to § 10–1001 of the State Government Article, the Commissioner may impose on a person that violates this section a civil penalty not exceeding $50 per violation.

§18–107.

(a) Within 30 days after a complaint is filed, the Commissioner shall investigate the complaint in accordance with this title.

(b) A written or oral complaint or statement made by an employee under this title is confidential and may not be disclosed to the employer without the consent of the employee.

(c) An employer subject to this title shall allow the Commissioner or the Commissioner's designee access to a work site and payroll records, and allow an opportunity to interview employees for purposes of enforcing this title.

(d) (1) Within 30 days after completing an investigation, the Commissioner shall issue an order for a hearing.

(2) Within 30 days before the hearing, the Commissioner shall serve, personally or by mail, written notice of the hearing on all interested parties.

(3) The notice shall include:

(i) a statement of facts disclosed in the investigation; and

(ii) the time and place of the hearing.

(4) In conducting a hearing, the Commissioner may:

(i) subpoena witnesses;

(ii) administer oaths; and

(iii) compel the production of records, books, papers, and other evidence.

(e) (1) Within 30 days after the conclusion of the hearing, the Commissioner shall:

(i) issue a determination; and

(ii) serve, personally or by mail, each interested party with a copy of the determination.

(2) If the Commissioner finds a violation of this title, the Commissioner shall determine the amount of restitution and liquidated damages to be assessed under § 18–108 of this title.

(3) On receipt of the determination, the employer shall pay the affected employees the amount due in accordance with the Commissioner's determination.

§18–108.

If the Commissioner determines that the employer violated a provision of this title or regulations of the Commissioner, the employer shall:

(1) pay restitution to each affected employee; and

(2) pay to the State liquidated damages of $20 per day for each employee who was paid less than the hourly rate required under this title.

§18–109.

(a) (1) If an employee was paid less than the wage rate required under this title the employee is entitled to sue to recover the amount of the difference between the wage rate required under this title and the amount received by the employee.

(2) A determination by the Commissioner that an employer is required to make restitution does not preclude an employee from filing an action under this section.

(b) (1) An action under this section is considered to be a suit for wages.

(2) A judgment in an action under this section shall have the same force and effect as any other judgment for wages.

(c) The failure of an employee to protest orally or in writing the payment of a wage that is less than the wage rate required under this title is not a bar to recovery in an action under this section.

§19–101.

(a) It is the policy of the State not to enter into a contract with any business entity that has discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status,

sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.

(b) Nothing in this title shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the marketplace.

(c) A complaint of discrimination shall be filed within 4 years after the date the cause of action accrues.

§19–102.

It is the intent of the State to avoid becoming a passive participant in private sector commercial discrimination by refusing to procure goods and services from business entities that discriminate in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination by providing a procedure for receiving, investigating, and resolving complaints of discrimination filed against business entities that:

(1) have submitted a bid or proposal; or

(2) have been selected to engage in, or are engaged in, providing goods or services to the State.

§19–103.

(a) In this title the following words have the meanings indicated.

(b) "Administrative law judge" means the individual assigned by the Office of Administrative Hearings to conduct a hearing under this title.

(c) (1) "Business entity" means any person, as defined in § 1–101(d) of this article, firm, sole proprietorship, partnership, corporation, limited liability company, or other business entity or a combination of any of these entities, including any financial institution, developer, consultant, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal for, has been selected to engage in, or is engaged in providing goods or services to the State.

(2) "Business entity" does not include another governmental entity that is subject to Title VI of the Civil Rights Act of 1964.

(d) "Commercial customer" means a business entity that procured or attempted to procure goods or services from a business entity for business as opposed to personal, family, or household use.

(e) "Commercial Nondiscrimination Policy" means the provisions contained under this title and any regulations or documentation requirements adopted by the Commission on Civil Rights in accordance with this title.

(f) (1) "Commercial treatment" means the treatment of a vendor, supplier, subcontractor, or commercial customer by a business entity that affects the conduct of business and the terms and conditions under which business is transacted between two or more business entities.

(2) "Commercial treatment" does not mean treatment that is unrelated to a business transaction or the conduct of business.

(g) "Commission" means the Commission on Civil Rights.

(h) "Commission staff" means employees of the Commission on Civil Rights designated by the Commission to process, investigate, and pursue complaints filed under this title.

(i) "Contract" means an agreement with a business entity that is let by or on behalf of the State for that business entity to sell or lease supplies or goods, or to provide construction, real estate development, financial, insurance, professional, or other services to the State in return for a fee or any other form of compensation to be paid or provided by the State.

(j) (1) "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, supplier, subcontractor, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.

(2) "Discrimination" does not include lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the marketplace.

(k) "Economic development project" means a real estate development, construction, or renovation project for which the State provides:

(1) funding or other financial assistance, other than payments in exchange for goods or services;

(2) land;

(3) road improvements;

(4) tax credits; or

(5) a below market purchase price.

(l) (1) "Financial institution" means a person:

(i) engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, or providing venture or equity capital; or

(ii) that offers financial services in connection with State projects or the administration of State government.

(2) "Financial institution" includes banks, savings and loans, venture capital companies, insurance companies, bonding companies, mortgage companies, credit unions, and brokers.

(m) "Party" means:

(1) the person who has filed a complaint under this title;

(2) the respondent business entity that has been alleged to have violated this title; and

(3) the Commission that is responsible for investigating the complaint and rendering the initial findings.

(n) "Retaliate" means to take any action that has a material negative effect against any person, business or other entity for reporting any incident of discrimination, testifying as a witness at a hearing, or providing requested assistance to Commission staff in any investigation of an incident of discrimination under this title.

(o) "Services" includes construction, real estate development, financial, insurance, professional, and other services.

(p) "State subcontract" means an agreement for the provision of goods or the performance of a particular portion of work to be performed under a contract with the State, where:

(1) the party providing the goods or services is on reasonable notice that the work is to be performed under a State contract; and

(2) the amount to be paid for such goods and services is material with respect to the overall amount of the contract.

(q) "State subcontractor" means the party providing goods or services under a State subcontract.

§19–104.

(a) As a condition of participating in an economic development project, the State shall require the governmental entity, quasi-governmental entity, corporation,

developer, or contractor that receives assistance from the State to comply with this title:

(1) in administering the economic development project; and

(2) in awarding contracts to manage or perform the work entailed in the economic development project.

(b) (1) Each contract and subcontract awarded in connection with an economic development project shall contain the nondiscrimination clause set forth in § 19-115 of this title.

(2) Any claim of discrimination relating to the economic development project shall be subject to investigation and adjudication by the State in accordance with this title.

(c) This title does not apply to:

(1) other than a lease of real estate for the State's use, any real property acquisition by the State, including property subject to condemnation;

(2) settlement of litigation;

(3) except for proceedings to enforce this title, settlement of judicial or administrative enforcement proceedings by or on behalf of the State; and

(4) agreements concerning standards for locating facilities in a State right-of-way when a business entity has a statutory right to be in the right-of-way.

§19–105.

(a) The provisions of this title are to be liberally construed to accomplish its objectives and purposes.

(b) For purposes of administration, the Commission shall construe the provisions of this title.

(c) A decision of the Commission is subject to judicial review under § 19-113 of this title.

§19–106.

(a) Any person may file an administrative complaint with the Commission within the limitations period set forth in § 19–101(c) of this title stating facts showing or tending to show that a business entity has within the preceding 4–year period engaged in discrimination or retaliation against that person in violation of this title.

(b) Within 10 business days, the Commission shall notify the business entity against whom the complaint was filed that a complaint has been received.

(c) Before the commencement of an investigation of an administrative complaint, Commission staff shall review the complaint to determine whether:

(1) mediation would be appropriate; and

(2) both parties should be contacted to attempt such mediation in a manner consistent with the regulations adopted under this title.

§19–107.

(a) Commission staff shall be responsible for directing and conducting investigations of discrimination and retaliation complaints filed under this title in a manner consistent with §§ 20–208, 20–1005, 20–1006, 20–1008, 20–1009, and 20–1010 of the State Government Article.

(b) The Commission may request assignment of additional State personnel or outside consultants as may be reasonably necessary or appropriate to conduct an investigation.

(c) (1) Commission staff shall exercise reasonable judgment in seeking relevant evidence from the complainant, the respondent business entity and, as necessary, external sources.

(2) This title may not be construed to require the State to fund the cost of:

(i) having State staff or other individuals travel outside the State to investigate any claim under this title; or

(ii) having witnesses travel to the State for the purpose of investigating a claim or testifying at a hearing or proceeding under this title.

(d) (1) Consistent with § 20–1101 of the State Government Article, the Public Information Act, and the Open Meetings Act, the Commission shall protect the confidential character of information relating to an investigation and may issue protective orders for good cause to limit, or otherwise impose conditions on, access by any person to any document in the possession of a party.

(2) A protective order issued under paragraph (1) of this subsection may include:

(i) a document in the possession of the State or otherwise in the record that is not a public record; and

(ii) information disclosed in accordance with § 19–116 of this title.

(e) The Commission shall exercise reasonable discretion in determining the extent of the investigation required to support Commission staff's initial findings and recommendations.

(f) (1) The Commission may investigate and adjudicate a claim of discrimination under this title only if the claim alleges that:

(i) the discrimination was committed by a business entity within the limitations period set forth in § 19–101(c) of this title; and

(ii) the discrimination occurred in the State.

(2) Discrimination is deemed to have occurred in the State only if:

(i) each party operated a place of business in, or resided in, the State at the time of the discrimination; or

(ii) the discriminatory act was committed in the State.

§19–108.

(a) In determining whether to proceed further with an investigation and in making findings, Commission staff may consider any evidence provided by the complainant or the respondent business entity as to the following factors:

(1) whether there was an intent to discriminate on the part of the respondent business firm;

(2) whether there was a pattern and practice of discrimination on the part of the respondent business entity;

(3) any actions taken by the respondent business entity to remedy the alleged discrimination;

(4) the effectiveness of any prior attempts by the respondent business entity to remedy the discrimination;

(5) whether the respondent business entity has procured goods or services from or otherwise engaged in business with persons or entities of the same protected class as the complainant to an extent sufficient to demonstrate that the respondent business entity has not discriminated against such protected class in the overall context of its business; and

(6) any other evidence deemed relevant by the Commission.

(b) Based on a review and investigation consistent with § 20–1005 of the State Government Article, Commission staff shall make an initial finding of each allegation stated in the complaint, that either:

(1) the investigation produced sufficient evidence to find that the alleged discrimination or retaliation did take place ("probable cause");

(2) the investigation failed to produce sufficient evidence to find that the

alleged discrimination or retaliation took place ("no probable cause");

(3) the investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations, and further investigation did not appear likely to produce sufficient evidence that the alleged discrimination or retaliation did take place ("false or frivolous");

(4) the allegation has been settled or otherwise resolved with the agreement of the respondent business entity, the complainant, and the State ("settled"); or

(5) the allegation has been withdrawn ("withdrawn").

(c) Commission staff shall make the initial findings under subsection (b) of this section based on a preponderance of the evidence.

(d) On completion of its initial investigation, Commission staff shall recommend to the Commission the appropriate action to be taken, including:

(1) additional investigation of the complaint;

(2) the Commission's adoption of the initial findings rendered by Commission staff;

(3) imposition of sanctions;

(4) imposition of remedies; or

(5) other action consistent with this title.

(e) In determining appropriate action on a discrimination claim, the Commission may take into account any evidence provided or uncovered in the course of the investigation regarding:

(1) the impact of the discrimination on affected parties;

(2) the impact of any authorized remedy on the State or any other party;

(3) actions taken by the respondent business entity to remedy the alleged discrimination;

(4) the effectiveness of any prior attempts by the respondent business entity to remedy the discrimination;

(5) whether the respondent business entity has procured goods or services from or otherwise engaged in business with persons or entities of the same protected class as the complainant to an extent sufficient to demonstrate that the respondent business entity has not discriminated against such protected class in the overall context of its business;

(6) the number and scope of prior violations of this policy by the respondent business entity; and

(7) any other evidence determined to be relevant by the Commission.

(f) (1) Except as provided in paragraph (2) of this subsection, the Commission shall make the initial findings and issue recommendations for appropriate action within 120 calendar days of the receipt of the complaint.

(2) The Commission may extend the time limit set forth in paragraph (1) of this subsection:

(i) for good cause; or

(ii) if the parties agree to mediate a settlement to the complaint.

(g) The Commission shall notify the complainant and the business entity within 5 business days of the issuance of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.

§19–109.

(a) A request for a contested case hearing in accordance with the procedures specified in this section may be made by:

(1) a business entity, upon a Commission determination of probable cause for one or more of the allegations stated in the complaint against the business entity, and failure of timely conciliation; or

(2) a complainant on a Commission determination that the complainant has filed a knowingly false or frivolous complaint.

(b) (1) To submit a matter to an administrative hearing as a contested case under this title, the business entity or the complainant must request a contested case hearing by filing a written notice with the Commission within 15 calendar days of notice of the initial findings and recommendations.

(2) The notice must contain the following information:

(i) a demand that the matter be referred to the Office of Administrative Hearings for a contested case hearing in accordance with § 10–205(c)(2) of the State Government Article;

(ii) the names, addresses, and telephone numbers of the Commission, the business entity's representatives, and any other parties;

(iii) a reference to this title; and

(iv) a summary of the Commission's findings and recommendations

that are being submitted for resolution to the administrative law judge for the contested case hearing.

(3) The requesting party shall immediately serve notice of the request for a contested case hearing upon all other parties.

(c) If the business entity fails to properly request a contested case hearing, the initial findings and recommendations of the Commission shall become the final administrative decision of the State, and the Commission shall then be authorized to enter any order and to take any action reasonably necessary or convenient to:

(1) implement remedies under § 19–110 of this title;

(2) impose sanctions under § 19–111 of this title; and

(3) govern the conduct of the parties in the manner described under § 19–112 of this title so that the purposes of this title are achieved.

(d) (1) (i) For each contested case hearing properly requested by the business entity or by the complainant, the Commission shall file a statement of charges with the Office of Administrative Hearings and request a hearing before an administrative law judge in a manner consistent with the requirements of this subsection.

(ii) The Commission may designate the venue for the contested case hearing, taking into consideration the convenience of the parties and the location of the evidence.

(iii) At the contested case hearing, the Commission shall have the burden of proof by a preponderance of the evidence.

(2) The Office of Administrative Hearings shall conduct any contested case hearing in accordance with its rules of procedure under COMAR 28.02.01.

(3) (i) At the conclusion of the contested case hearing, the administrative law judge shall issue a written decision.

(ii) The administrative law judge's written decision may:

1. affirm or reject all or part of the statement of charges; or

2. substitute different findings and recommend appropriate remedies.

(4) The administrative law judge's written decision shall be solely based on a preponderance of the evidence contained in the record of the contested case hearing and shall reflect the evidentiary basis for its findings.

(5) An administrative law judge may consider any evidence regarding the factors described in § 19–108(a) of this title when determining whether to sustain an allegation presented in a statement of charges.

(e) Notwithstanding any contrary provision in this title, unless the administrative law judge finds that one or more allegations giving rise to the Commission's findings or the business entity's challenge to the findings were frivolous or knowingly false when made, each party shall bear the cost of its own legal representation and expert witness fees.

(f) If the administrative law judge finds that one or more allegations giving rise to the Commission's findings or the business entity's challenge to the findings was frivolous or knowingly false when made, the administrative law judge may require the party who made the frivolous or knowingly false allegations to bear all or a portion of the other party's legal fees and expert witness fees.

(g) The business entity, the Commission, and the complainant shall cooperate in good faith to have the contested case hearing concluded within 180 days after the business entity issues its notice for a contested case hearing.

(h) If the Commission determines that one or more allegations are knowingly false or frivolous, the complainant making the allegations shall be entitled to a contested case hearing on the allegations that are determined to be knowingly false or frivolous in accordance with the procedures set forth in this section, except that all references to the business entity with respect to matters of contested case hearing rules and procedure shall apply to the complainant.

(i) If the complainant fails to properly request a contested case hearing regarding a determination of a knowingly false or frivolous allegation as provided in this title, the initial findings and recommendations shall become the final administrative decision of the State in accordance with § 19–112 of this title.

(j) (1) If a timely contested case hearing is not requested, the Commission may vacate the Commission staff's recommended remedy on written notice to all parties within 5 business days after the time for requesting a contested case hearing has expired.

(2) In the absence of notice, the Commission shall be deemed to have approved the Commission staff's recommended remedy.

(k) To the extent that procedures and standards stated in this title differ from those contained in Title 10, Subtitle 2 of the State Government Article, this title shall govern but, in all other respects, the provisions of the State Government Article shall govern.

§19–110.

(a) When an allegation is sustained by an administrative law judge under this

title, the administrative law judge may take additional evidence on the appropriate remedy to be recommended, including evidence relating to factors set forth in § 19–108(e) of this title and any other evidence deemed relevant by the administrative law judge.

(b) If the administrative law judge sustains an allegation, the administrative law judge may order any one or more of the following actions:

(1) any remedy that is agreed to by the respondent business entity, the complainant, and the Commission;

(2) referral of the respondent business entity to the Board of Public Works for a determination of debarment pursuant to §§ 16–306 and 16–307 of this article to preclude the business entity from:

(i) bidding on or receiving contract awards on State projects; and

(ii) participating in State contracts as a subcontractor, vendor, or supplier for a period of not more than 3 years;

(3) rescission, suspension, or termination of any current contract between the respondent business entity and the State under the terms of that contract;

(4) exercise of any other rights or remedies available to the State under any current contract between the respondent business entity and the State;

(5) finding that the respondent business entity is not a "responsible bidder" within the meaning of this article with respect to specific contracts that the State has put out for bids or intends to put out for bids;

(6) referral of the matter for criminal prosecution of fraud and other violations under State law if appropriate under the circumstances; or

(7) mediation.

§19–111.

(a) If the Commission determines that one or more allegations of a complaint filed under this title are false and that the complainant knew them to be false when filed, or that one or more of the allegations of a complaint are frivolous and without merit, the Commission may refuse to review or investigate any subsequent complaint filed by that complainant for a period of up to 3 years.

(b) When the totality of the evidence warrants action to deter future abuse of the protections made available under this title, the Commission may also recommend to the administrative law judge:

(1) that monetary sanctions be imposed against the complainant in the

amount of the costs incurred by the State and the business entity in the investigation and review of the false or frivolous complaint, including reasonable attorneys' fees; and

(2) that the complainant be disqualified from bidding and contract awards on State projects for a period of not more than 3 years.

§19–112.

(a) Absent a request for a contested case hearing, the Commission's findings and recommendations shall become the final administrative decision of the State, subject to such judicial review as is provided for in a contested case under § 10-222 of the State Government Article.

(b) In cases where a contested case hearing has been requested, the administrative law judge's written decision shall become the final administrative decision of the State subject to judicial review as provided for in a contested case under § 10-222 of the State Government Article.

(c) On issuance of a final decision, the Commission or the administrative law judge may enter any order reasonably necessary or convenient to govern the conduct of the State and the parties so that the purposes of this title are achieved.

§19–113.

Any party who, after having exhausted all administrative remedies available, is aggrieved by a final decision of the Commission or the administrative law judge may seek judicial review of such decision under § 10-222 of the State Government Article.

§19–114.

Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:

"As a condition of entering into this agreement, the company represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the company may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this

agreement and may result in termination of this agreement, disqualification of the company from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.".

§19–115.

All requests for bids or proposals issued for State contracts shall include the following certification to be completed by the bidder:

"The undersigned bidder hereby certifies and agrees that the following information is correct:

In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19–103 of the State Finance and Procurement Article of the Annotated Code of Maryland; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for bids on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder shall provide to the State a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a bid or proposal to the State, the bidder agrees to comply with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.".

§19–116.

Every contract that the State enters into shall include the following language:

"As a condition of entering into this agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the company under Title 19 of the State Finance and Procurement Article, as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by the contractor on each subcontract or supply contract. The company further

agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.".

§19–117.

The remedies provided by this title are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be prerequisite to or exclusive of any other remedies.

§19–118.

The filing, investigation, hearing, and appeal of a complaint under this title may not hinder or affect the eligibility for bidding, award of, performance of, or payment on a contract prior to a final adjudicated decision that establishes a violation.

§19–119.

(a) In accordance with Title 10 of the State Government Article, the Commission shall adopt regulations to implement this title.

(b) The Commission may establish documentation and reporting requirements to further the purposes and intent of this title.

§19–120.

This title and any regulations adopted under this title may be cited as the "Commercial Nondiscrimination Policy".