

D05E01
Board of Public Works

Executive Summary

The Governor, the Comptroller, and the Treasurer comprise the Board of Public Works (BPW). The budget for BPW contains funds for the administrative staff of the board, the Wetlands Administration office, a contingent fund that the board may allocate from to supplement an agency's general fund appropriation when necessary, grants for private nonprofit groups, and a fund to pay settlements and judgments against the State.

Operating Budget Data

(\$ in Thousands)

	<u>FY 18</u>	<u>FY 19</u>	<u>FY 20</u>	<u>FY 19-20</u>	<u>% Change</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>	<u>Prior Year</u>
General Fund	\$7,062	\$7,688	\$7,878	\$190	2.5%
Adjustments	0	406	31	-375	
Adjusted General Fund	\$7,062	\$8,094	\$7,909	-\$185	-2.3%
 Adjusted Grand Total	 \$7,062	 \$8,094	 \$7,909	 -\$185	 -2.3%

Note: The fiscal 2019 appropriation includes deficiencies, a one-time \$500 bonus, and general salary increases. The fiscal 2020 allowance includes general salary increases.

- The fiscal 2019 grant to the Maryland Zoo is supplemented by a \$400,000 deficiency appropriation. The fiscal 2020 grant declines by \$256,000 when compared to the fiscal 2019 working appropriation.
- The Department of Information Technology (DoIT) is moving to a fee-for-service funding model, which results in declining DoIT general fund appropriations and increasing reimbursable fund appropriations. DoIT has also been underfunded in recent years (there are deficiency appropriations in fiscal 2019 to compensate for this underfunding), so total fiscal 2020 DoIT appropriations increase. With respect to BPW, fees for DoIT increase by approximately \$53,000.

Note: Numbers may not sum to total due to rounding.

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- Salary actions, which include a 3% general salary increase and a higher pension contribution rate, total to approximately \$66,000.

Personnel Data

	<u>FY 18 Actual</u>	<u>FY 19 Working</u>	<u>FY 20 Allowance</u>	<u>FY 19-20 Change</u>
Regular Positions	9.00	9.00	9.00	0.00
Contractual FTEs	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Personnel	9.00	9.00	9.00	0.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.00	0.00%
Positions and Percentage Vacant as of 12/31/18	1.00	11.11%

Key Observations

- The board's largest expenditure is a \$5.0 million appropriation for the Maryland Zoo in Baltimore, which is 63% of the board's budget. The zoo ended fiscal 2017 with exceptionally high attendance. Since summer 2017, attendance has declined, which has strained zoo resources.
- In 2017, legislation allowing BPW to give grants to individuals that were erroneously convicted and imprisoned was amended. The amendments expanded eligibility for grants, and create a potentially large liability for the board. It is unclear how many individuals could qualify. To date, BPW has not made any awards to individuals.

Operating Budget Recommended Actions

1. Add language restricting the use of the contingent fund for programs and grants that were approved by the General Assembly during the 2019 legislative session.
2. Adopt annual committee narrative directing the Maryland Zoo in Baltimore to submit attendance and financial data reports.

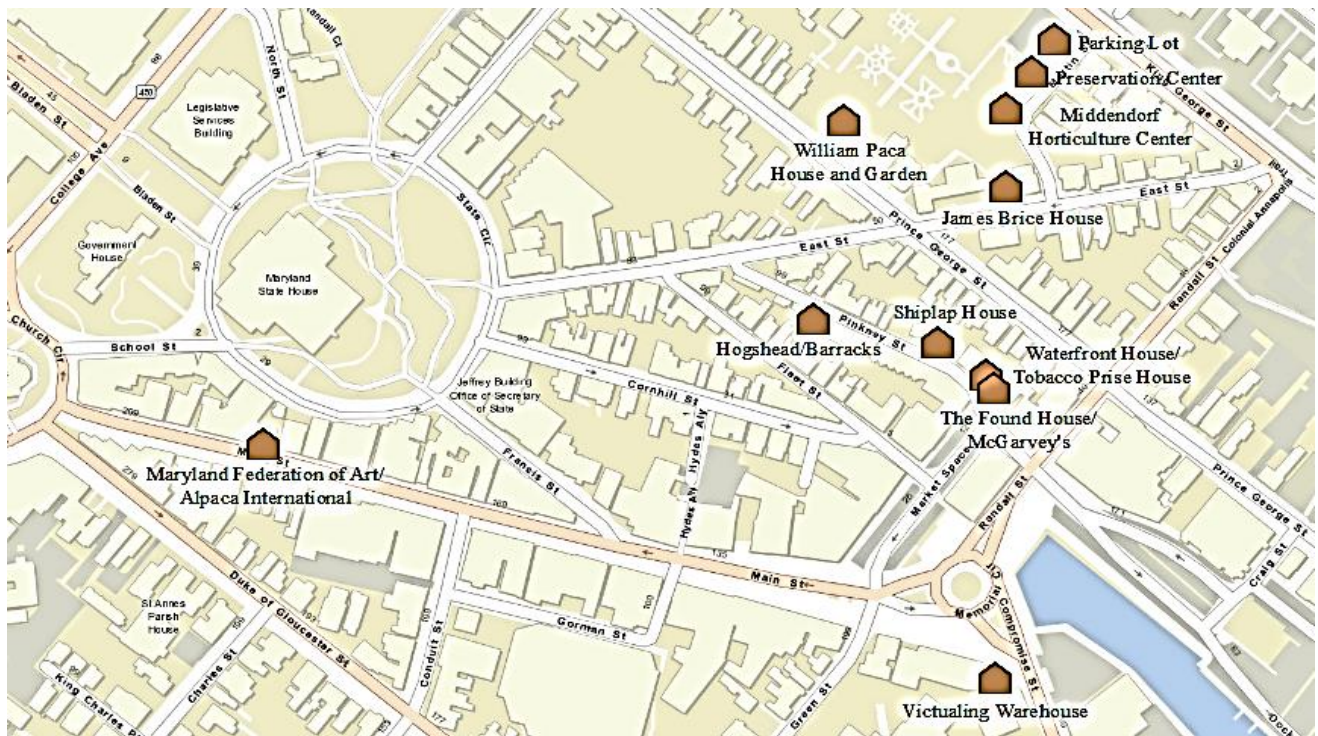
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Operating Budget Analysis

Program Description

The Governor, the Comptroller, and the Treasurer comprise the Board of Public Works (BPW). The board approves leases and contracts executed by State agencies. It adopts and promulgates rules, regulations, and procedures for the administration of the State's procurement law. The board also approves the amount and timing of bond sales. BPW owns property in Annapolis. The Historic Annapolis Foundation (HAF) receives a grant to manage these properties. **Exhibit 1** shows the location of the properties.

Exhibit 1
Properties Managed by the Historic Annapolis Foundation
Fiscal 2019



Source: Board of Public Works; Department of Legislative Services

The board is responsible for the issuance of licenses to people seeking to dredge in or to place fill on State tidal wetlands. The Wetlands Administration is a division of the board that prepares written recommendations and issues licenses after approval by the board. This program also coordinates the State's wetlands licensing program with other governmental agencies, landowners, and the general public.

The budget for BPW contains funds for:

- the administrative staff of the board;
- the Wetlands Administration office;
- a contingent fund that the board may allocate from to supplement an agency's general fund appropriation when necessary;
- grants for private nonprofit groups; and
- a fund to pay settlements and judgments against the State, which has not received an appropriation since fiscal 2015.

Performance Analysis: Managing for Results

1. Competitiveness of Procurement Contracts

A number of different procurement methods are available to State agencies. These include:

- ***Competitive Sealed Bids:*** A procurement method in which selection is based solely on a low bid, assuming a responsible bidder submits a low bid. If there is only one bid, the award is classified as a "single bid/proposal received." This approach is often used when the specifications can be finely detailed, are not overly complex, or when the price is the sole deciding factor. The types of procurements that use this approach include maintenance and repair contracts; general obligation bond sales; and venues for events, such as the Maryland Teacher of the Year Gala.
- ***Competitive Sealed Proposals:*** A procurement method in which offerors submit separate technical and financial proposals that the State evaluates separately and then reviews the technical and financial ranks or scores in a final evaluation to determine which proposal is the most advantageous to the State. If there is only one proposal, the award is classified as a "single bid/proposal received." If specifications cannot be finely detailed or are more complex, a creative solution is needed, or the price is not the sole deciding factor, this approach is advantageous. Most procurements for technical services use this approach. For example, an

actuarial procurement may include evaluating the quality of the actuaries as well as the cost of the services.

- ***Negotiated Award After Unsatisfactory Competitive Sealed Bid:*** At times, competitive sealed bids will be opened, and an agency will determine that all bids are rejected, all bids are in excess of available funds, or all prices are determined to be unreasonable. If resolicitation would be fiscally disadvantageous or not in the best interest of the State, an invitation for revised bids shall be issued based on revised specifications or quantities. The agency may hold discussions with all bidders if there is a compelling need for further negotiation. Examples include selecting expert witnesses to testify at a trial or consulting services for a federally required Medicaid report after two failed procurements.
- ***Sole Source:*** A process under which an agency awards a contract to a vendor without competition. An agency may use this method if it determines that there is only one available responsible source; that compatible equipment, accessories, or replacement parts are the paramount consideration; or that a sole vendor's item is needed for trial use or testing, or to be procured for resale. Proprietary information technology (IT) services are often bid with sole source contracts.
- ***Emergency and Expedited:*** A procurement that an agency may make by any method considered most appropriate to mitigate or avoid serious damage to public health, safety, or welfare. The agency must obtain as much competition as possible and limit, both in type and quantity, the items procured. Emergency contract awards shall be reported to BPW within 45 days of the contract award. Examples of emergency procurements include replacing broken pipes and boilers or replacing inoperable fire equipment. The Maryland Port Administration and the Maryland Aviation Administration can enter into expedited procurements. To do this, the agency's head and its board must determine that the need for the expedited procurement outweighs the benefits of making the procurement on the basis of competitive sealed bids or competitive sealed proposals.
- ***Intergovernmental Cooperative Purchasing Agreements:*** A procurement method entered into by the State and another entity selected in a manner consistent with the purposes of State procurement and intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing. The State could enter into this agreement with the federal government, other states, or municipalities. Primary Procurement Units can both sponsor and participate in these agreements. An example is the Minnesota Multistate Contracting Alliance, through which the Department of Public Safety and Correctional Services procured drug testing services in 2017.
- ***Noncompetitive Negotiated Procurements:*** A procurement method by which an agency may award a procurement contract for specified human, social, or educational services if the agency head determines, on the basis of continuing discussion or past experience, that an award under this process will serve the best interest of the State. This is most common with foster care

services. Generally, there are less available beds than children needing services, and all responsible contractors are eligible for an award.

- ***Auction Bids:*** A procurement method by which an agency may award a procurement contract after issuing an invitation for auction bids. This can only be allowed for procurements in excess of \$1 million. The invitation should include the “objective measureable criteria by which the lowest evaluated bid price will be determined” and the date and time when bidding will begin and end. This method is commonly used by the Department of General Services (DGS) for energy contracts.
- ***Master Contract Awards:*** This is a two-step procurement. Initially, the procurement authority approves master contractors as qualified to provide specific goods and services. This master contract is required to be approved by BPW if it is anticipated to exceed \$200,000. When a purchase is made, a task order (awarded on price and technical scores) or purchase order (awarded on price alone) Request for Proposals is issued. Any of the approved vendors can submit bids. This is often used with IT equipment.

Small procurements are exempt from BPW approval. Chapters 588 and 589 of 2017 increased the threshold for small procurements from \$25,000 to \$50,000, raised the corresponding threshold for DGS construction contracts from \$50,000 to \$100,000, and applied the \$100,000 threshold to Maryland Department of Transportation (MDOT) construction projects.

Procurement policy is also shaped by socioeconomic considerations. For example, the State has programs that assist small businesses, minority businesses, preferred providers (such as the Maryland Correctional Enterprises and the Blind Industries and Services of Maryland), and veteran-owned small businesses.

Competitive sealed bids and competitive sealed proposals are the preferred procurement methods of the State, as each attempts to achieve as much competition as possible. **Exhibit 2** shows that more than 50% of contracts approved by BPW in fiscal 2016 through 2018 were competitive procurements.

Exhibit 2
Contracts Approved by Procurement Method
Fiscal 2016-2019 Estimated

	<u>2016</u> <u>Actual</u>	<u>2017</u> <u>Actual</u>	<u>2018</u> <u>Actual</u>	<u>2019</u> <u>Estimated</u>
Competitive Methods				
Competitive Sealed Bid	32.1%	38.2%	35.5%	36.4%
Competitive Sealed Proposal	13.2%	14.0%	15.0%	14.9%
<i>Subtotal</i>	<i>45.4%</i>	<i>52.2%</i>	<i>50.5%</i>	<i>51.2%</i>
Other Methods				
Single Bid/Proposal Received	7.0%	5.0%	6.7%	5.8%
Sole Source	14.1%	12.8%	10.8%	11.6%
Emergency or Expedited	8.6%	10.0%	10.3%	9.9%
Other	25.0%	20.1%	21.7%	21.5%
<i>Subtotal</i>	<i>54.6%</i>	<i>47.8%</i>	<i>49.5%</i>	<i>48.8%</i>
Total	100.0%	100.0%	100.0%	100.0%

Source: Department of Budget and Management

2. Number and Value of Procurement Contracts Vary

Exhibit 3 shows the number of contracts and modifications approved, along with the value of the number of contracts approved. Large new contract approvals in fiscal 2018 include:

- \$288 million for Maryland Area Regional Commuter rail system equipment;
- \$212 million for transit buses;
- \$200 million for IT electronic toll equipment;
- \$171 million for long-term health care services at the Charlotte Hall Veterans Home; and
- \$156 million for inmate mental health services.

Exhibit 3
Contract Approvals and Modifications
Fiscal 2016-2020 Estimated

	<u>2016</u>	<u>Actual</u> <u>2017</u>	<u>2018</u>	<u>Annual %</u> <u>Change</u> <u>2016-2018</u>	<u>Estimated</u> <u>2019</u>	<u>2020</u>
Contracts Submitted for Approval	655	662	776	8.8%	700	700
Contracts Approved	623	620	718	7.4%	650	650
Percent Approved	95%	94%	93%		93%	93%
Value of Contracts (\$ in Billions) ¹	\$3.3	\$4.6	\$3.5	2.6%	\$4.0	\$4.0
Contract Modifications Submitted for Approval	332	261	179	-26.6%	250	250
Contract Modifications Approved	306	247	171	-25.2%	230	230
Percent Approved	92%	95%	96%		92%	92%
Value of Contracts (\$ in Billions)	\$1.0	\$1.4	\$0.8	-12.3%	\$1.0	\$1.0

¹ This data excludes approvals that provide allocations of funds whose projects require subsequent approval. Examples of exclusions are general obligation bond sales and public school construction levels approved by the Interagency Committee on School Construction. The table also excludes small procurements.

Source: Department of Budget and Management

3. Minority Business Enterprise Program

The State's Minority Business Enterprise (MBE) program was established as an economic development tool to increase procurement opportunities for minority and women-owned firms. The race and gender specific program applies to 70 agencies and departments. Certification for the MBE program is administered by the Office of Minority Business Enterprise in MDOT. Certified firms must renew annually. All participating agencies are required to submit annual data to the Governor's Office of Small, Minority, and Women Business Affairs (GOSMWBA).

GOSMWBA's statewide goal is that 29% of procurement contracts be awarded to MBE-certified firms. In fiscal 2017, the latest fiscal year for which data is available, the MBE program achieved 21.0% MBE-certified firm funding across State agencies. This is \$1.5 billion out of \$7.3 billion in procurement contracts, which includes contracts not reviewed by BPW such as contracts valued at less than \$50,000.

Managing for Results data is collected for BPW-approved contracts. **Exhibit 4** shows that 64% of contracts approved by BPW do not have any MBE participation. This share has been increasing in recent years.

Exhibit 4
Minority Business Enterprise Participation Rates
Fiscal 2016-2020 Estimated

<u>Participation Rates</u>	<u>Actual</u> <u>2016</u>	<u>Actual</u> <u>2017</u>	<u>Actual</u> <u>2018</u>	<u>Estimated</u> <u>2019</u>	<u>Estimated</u> <u>2020</u>
0% Participation	52.9%	58.6%	64.1%	60.6%	60.6%
Between 0% and 10%	10.2%	8.0%	8.8%	9.1%	9.1%
Between 10% and 29%	19.6%	19.2%	14.8%	16.7%	16.7%
Greater than 29%	17.3%	14.2%	12.3%	13.6%	13.6%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Department of Budget and Management

4. Wetlands Licenses

The Wetlands Administration processes tidal wetlands license applications by holding hearings and preparing recommendations, issues tidal wetlands licenses after board approval; and coordinates with other agencies, landowners, and the public. The administration seeks to preserve and manage the State's tidal wetlands by balancing the various ecological, economical, developmental, recreational, and aesthetic values of tidal wetlands activities.

Exhibit 5 shows that 80% of licenses were processed within 30 days in fiscal 2018. BPW advises that most licenses that take more than 30 days involve a public hearing where opposition is expressed. Current law requires that, if a case has opposition, the Maryland Department of the Environment reports to the "Interest Parties list" for a 21-day comment period. The additional reporting requirements and comment period usually require more than 30 days.

BPW also notes that the timing of cases is such that cases are sometimes submitted in one fiscal year and approved in another fiscal year, so submittals and approvals may not be equal in each fiscal year.

Exhibit 5
Wetland License Application Data
Fiscal 2016-2020 Estimated

	Actual <u>2016</u>	Actual <u>2017</u>	Actual <u>2018</u>	Estimated <u>2019</u>	Estimated <u>2020</u>
License Applications Submitted	111	109	109	109	109
Wetlands Licenses Approved	111	109	107	107	107
Percent Processed in 30 Days	99%	89%	80%	80%	80%

Source: Department of Budget and Management

Fiscal 2019 Actions

Proposed Deficiency

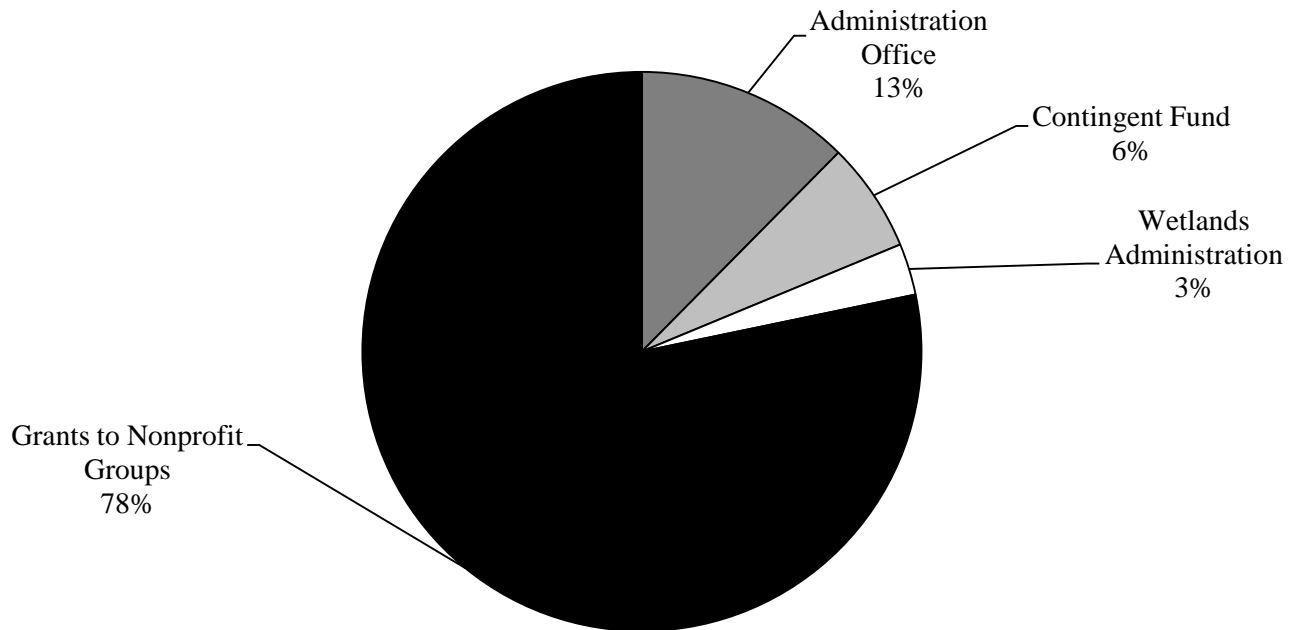
As introduced, \$400,000 is included to increase the fiscal 2019 grant to the Maryland Zoo to \$5,215,209. This increase is discussed further in Issue 1, which provides an overview of the zoo's attendance and finances. Attendance has dropped substantially since summer 2017. This decline is attributable to the weather. Since the zoo is an outdoor experience, attendance is heavily affected by weather. The zoo advises that calendar 2018 was the wettest year on record in Baltimore. Instead of continuing to increase, visitors declined by approximately 75,500 (15%) in fiscal 2018. Attendance in the first half of fiscal 2019 was also less than in fiscal 2016 and 2017.

Fiscal 2020 Allowance

Overview of Agency Spending

BPW is funded entirely with general funds. **Exhibit 6** shows that almost four-fifths of the budget supports grants to nonprofits.

Exhibit 6
Board of Public Works Spending by Program
Fiscal 2020
(\$ in Millions)



Note: The entire Board of Public Works' budget is supported by the General Fund.

Source: Department of Budget and Management

Proposed Budget Change

Exhibit 7 shows that total spending is anticipated to decline by approximately \$185,000, or 2.3%.

Exhibit 7
Proposed Budget
Board of Public Works
(\$ in Thousands)

How Much It Grows:	<u>General Fund</u>	<u>Total</u>
Fiscal 2018 Actual	\$7,062	\$7,062
Fiscal 2019 Working Appropriation	8,094	8,094
Fiscal 2020 Allowance	<u>7,909</u>	<u>7,909</u>
Fiscal 2019-2020 Amount Change	-\$185	-\$185
Fiscal 2019-2020 Percent Change	-2.3%	-2.3%
Where It Goes:		
Personnel Expenses		
Fiscal 2020 general salary increase.....		\$30
Pension contributions		18
Employee and retiree health insurance.....		12
Increments and other compensation.....		11
Remove \$500 bonus in fiscal 2019		-5
Grants to Private Nonprofit Groups		
One-time deficiency appropriation to the Maryland Zoo.....		-400
Increase ongoing grant to the Maryland Zoo		144
Operating Expenses		
Department of Information Technology services allocation		53
Supplies and equipment		-13
Printing costs.....		-10
Court report expenses.....		-9
Service contracts		-7
Postage and telecommunication costs.....		-4
Other Expenses		-5
Total		-\$185

Note: Numbers may not sum to total due to rounding.

Grants to Private Nonprofits

The fiscal 2020 allowance for grants to private nonprofits totals \$6,165,592 in general funds, which is \$255,544 less than the fiscal 2019 working appropriation.

- ***Maryland Zoo in Baltimore:*** The State has provided the Maryland Zoo in Baltimore with a variety of grants to support its general operations over the past 20 years. These funds have resided in the BPW budget since 2004. The board's fiscal 2020 allowance includes a \$4,959,665 general fund operating grant to the zoo, which is 3% more than the fiscal 2019 working appropriation. In addition, State funding for educational organizations includes \$851,900 for zoo operations, resulting in total State operating funding of \$5,811,565. The fiscal 2020 capital budget bill also proposes a \$5 million grant for capital improvements.
- ***Historic Annapolis Foundation:*** The fiscal 2020 allowance provides a \$789,000 general fund grant to HAF, which is unchanged from fiscal 2019. As shown in Exhibit 1, HAF leases State-owned historic buildings in Annapolis and is contractually obligated to operate and maintain them.
- ***Western Maryland Scenic Railroad:*** The fiscal 2020 allowance provides a \$250,000 general fund grant to the Western Maryland Scenic Railroad. The foundation reported that the funds will be used to support ongoing maintenance needs for the railroad. The grant was first provided in fiscal 2017 and has remained at \$250,000 for all four years.
- ***Council of State Governments:*** A \$166,927 general fund grant to the Council of State Governments (CSG) provides the organization with an operating budget subsidy. CSG uses these funds to provide support services for priorities established by legislative leaders and executives through the Council of State Governments Eastern Regional Conference, the Southern Legislative Conference, and the Southern Governors' Association. The amount budgeted represents the same as was appropriated in fiscal 2019.

Issues

1. Annual Review of Baltimore Zoo Attendance and Financial Statement

As in recent years, the Maryland Zoo submitted financial statements and attendance reports to the budget committees. Attendance reports are provided monthly, and the audited financial statement was received in October 2018. The zoo was granted accreditation from the Association of Zoos and Aquariums for four years in September 2018.

Zoo Attendance Has Declined

Exhibit 8 shows zoo attendance for fiscal 2014 through 2018 by visitor group type. Attendance was down in fiscal 2018. General admission was lower in fiscal 2018 than in any other year, and membership attendance was lower than in any year in the period except in 2014. The zoo attributes the decline in fiscal 2018 to the weather and construction at the zoo. The number of passes increased 28% in fiscal 2018 and 15% per year since fiscal 2014. Passes are primarily used for activities such as renting facilities for private events or doing behind-the-scenes tours. This also includes complementary tickets, which totaled approximately 2,600 in fiscal 2018. **The Department of Legislative Services requests that the zoo provide details about what kinds of passes are given or sold each year when it submits attendance data to the budget committees.**

Exhibit 8
Maryland Zoo in Baltimore – Attendance by Groups
Fiscal 2014-2018

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Change</u> <u>2017-2018</u>	<u>% Change</u> <u>2017-2018</u>	<u>Annual %</u> <u>Change</u> <u>2014-2018</u>
High Revenue Attendance								
General	190,933	169,117	188,755	217,227	167,399	-49,828	-22.9%	-3.2%
Member	129,687	154,133	165,831	169,142	148,332	-20,810	-12.3%	3.4%
Subtotal	320,620	323,250	354,586	386,369	315,731	-70,638	-18.3%	-0.4%
Other Attendance								
School	85,852	83,337	87,951	94,217	82,243	-11,974	-12.7%	-1.1%
Passes	18,374	19,947	22,388	25,137	32,249	7,112	28.3%	15.1%
Subtotal	104,226	103,284	110,339	119,354	114,492	-4,862	-4.1%	2.4%
Total	424,846	426,534	464,925	505,723	430,223	-75,500	-14.9%	0.3%

Source: Maryland Zoo in Baltimore

The weather is believed to be the primary factor that led to reduced attendance. The zoo's attendance tends to be lower when it rains, and fiscal 2018 had more rainy days. Market research indicates that 60% of memberships are purchased while visitors are at the zoo, so rain affects both general admission and membership sales. A second factor is the construction at the Elephant/Giraffe/Lion exhibit. The zoo anticipated that this would reduce attendance. Declining attendance is most acute among high revenue groups of general admission and membership. This tends to depress visitor revenue and membership dues.

Through the first half of fiscal 2019, attendance is less than it has been in recent years. **Exhibit 9** shows that attendance dropped to approximately 178,000 in the first six months of fiscal 2019. The unusually high attendance from January to June 2017 is attributed to good weather, animal births, and new animals. A giraffe calf was born in February, and the Presidents Day weekend had 70 degree weather. The zoo also added new species, grizzly bears, and bobcats.

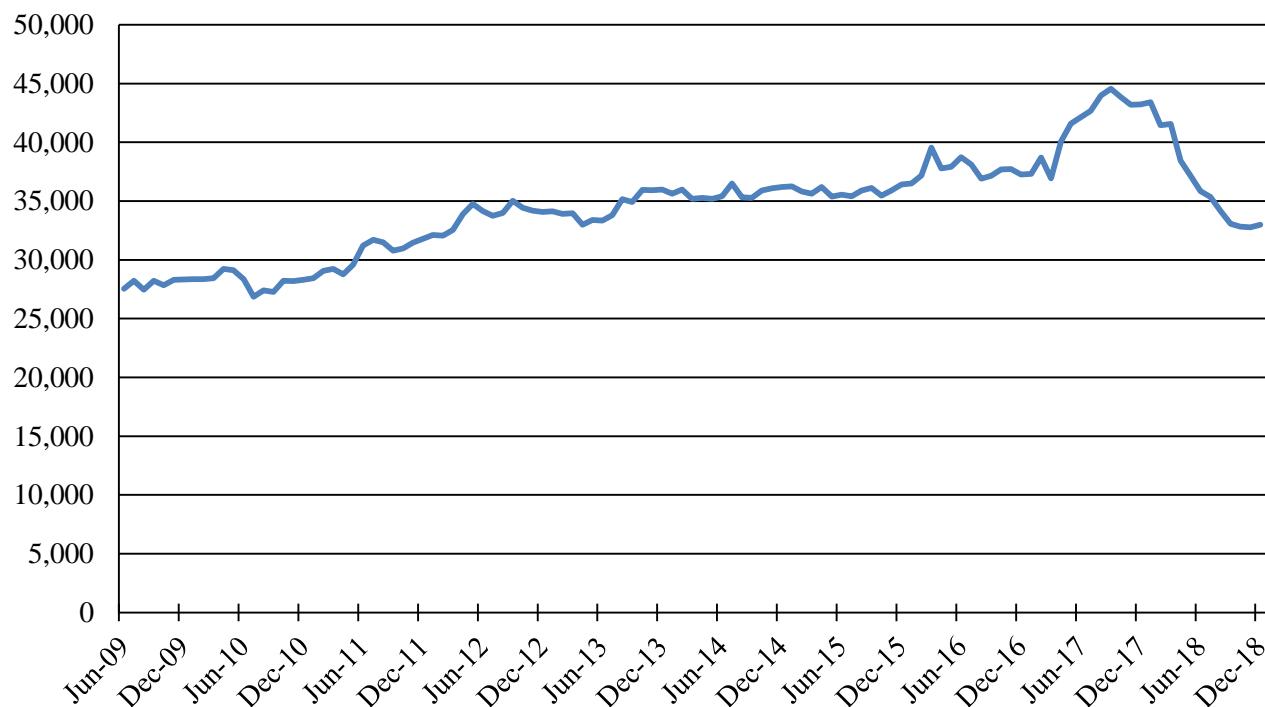
Exhibit 9
Attendance: First Six Months Compared to Full Fiscal Year
Fiscal 2014-2019

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
July to December	196,872	206,406	217,027	199,336	212,444	178,123
January to June	227,974	220,128	247,898	306,387	217,779	n/a
Full Year	424,846	426,534	464,925	505,723	430,223	n/a

Source: Maryland Zoo in Baltimore

Another approach to reviewing monthly attendance data is to prepare a 12-month moving average. The advantage of this approach is that it removes annual cyclicalities since each data point contains a full year of data. **Exhibit 10** shows that from April 2017 to March 2018, all data points averaged over 40,000 monthly visitors. This shows how extraordinary attendance was from January 2016 through the end of calendar 2017. While attendance dropped sharply since 2017, it has not been extraordinarily low. Recent attendance is comparable with attendance prior to fiscal 2014. Insofar as the weather has been poor and there has been construction at the Elephant/Giraffe/Lion exhibit, it appears likely that attendance will improve. **The zoo should be prepared to brief the budget committees about its recent attendance and any plans to improve attendance.**

Exhibit 10
Twelve-month Moving Average of Zoo Attendance
June 2009 to December 2018



Source: Maryland Zoo in Baltimore

Earned Income and Expenses

Exhibit 11 shows the changes in zoo revenues and expenses from fiscal 2014 to 2018, as detailed in the audited financial statements.

Attendance Revenues

Attendance revenues increased steadily from fiscal 2014 to 2017 and declined slightly in fiscal 2018. Notable changes include:

- **Visitor revenue** is obtained from admission ticket sales, concession commissions, enjoyment of rides (net of revenue sharing paid to vendors), and facility rentals. The category of visitor revenue does not include membership sales. This grew at 9.1% rate from fiscal 2014 to 2017 and declined 10.4% in fiscal 2018. The zoo advises that the revenue decline is attributable to the decline in attendance.

Exhibit 11
Maryland Zoo in Baltimore – Audited Financial Statements
Fiscal 2014-2018
(\$ in Thousands)

<u>Revenues</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Change 2017-18</u>	<u>% Change 2017-2018</u>	<u>Annual % Change 2014-2018</u>
Attendance Revenues								
Visitor Revenue	\$3,026	\$3,098	\$3,568	\$3,932	\$3,562	-\$371	-9.4%	4.2%
Membership Dues	1,373	1,662	1,804	1,840	1,998	157	8.6%	9.8%
Special Events	420	517	597	775	830	55	7.0%	18.6%
Education Programs	262	247	398	294	334	41	13.9%	6.2%
Subtotal	\$5,080	\$5,525	\$6,367	\$6,841	\$6,723	-\$118	-1.7%	7.3%
Grants and Contributions								
Grants and Awards	\$18,293	\$9,759	\$9,590	\$10,011	\$10,604	\$592	5.9%	-12.7%
Contributions	1,247	860	1,491	793	1,046	252	31.8%	-4.3%
In-kind Donations	831	977	823	949	989	40	4.2%	4.4%
Subtotal	\$20,372	\$11,595	\$11,905	\$11,754	\$12,638	\$884	7.5%	-11.3%
Other Revenues								
Insurance Recoveries	\$1,389	\$112	\$455	\$0	\$0	\$0	n/a	-100.0%
Investment Income	24	1	-5	20	14	-6	-31.6%	-13.7%
Other Revenue	10	77	10	37	32	-5	-14.1%	33.5%
Subtotal	\$1,423	\$190	\$460	\$57	\$45	-\$12	-20.2%	-57.7%
Total Revenues	\$26,875	\$17,310	\$18,731	\$18,652	\$19,407	\$755	4.0%	-7.8%

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<u>Expenses</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Change 2017-18</u>	<u>% Change 2017-2018</u>	<u>Annual % Change 2014-2018</u>
Program Services	\$13,410	\$14,238	\$14,980	\$15,407	\$15,791	\$385	2.5%	4.2%
Supporting Services	2,836	2,622	2,424	2,860	2,846	-14	-0.5%	0.1%
Fundraising	849	925	1,042	1,035	1,044	9	0.9%	5.3%
Total Expenses	\$17,095	\$17,786	\$18,447	\$19,301	\$19,681	\$380	2.0%	3.6%
Net Income	\$9,780	-\$475	\$284	-\$649	-\$275	\$375		

Note: Fiscal 2017 revenues for special events and education programs has been amended since the fiscal 2017 audit. The changes relate to categorizing revenues and do not change total fiscal 2017 revenues.

Source: *Maryland Zoological Society Consolidated Financial Statements*, June 30, 2015, 2017, and 2018

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- **Membership dues** have been increasing consistently at a 9.8% annual rate since fiscal 2014. The zoo attributes three changes that helped contribute to the zoo's increase in member dues in recent years. The first change was a discount program that incentivized existing members to renew their memberships before they expired, thereby increasing the retention rate of members and increasing total revenues. The second change involved restructuring membership levels to simplify the sales process. The third change was an increase in membership pricing; prices for the most popular family membership levels, basic and plus, were increased by \$3 and \$10, respectively.
 - **Special events** revenue increased by approximately \$55,000 in fiscal 2018 and has increased at a rate of 19% annually since fiscal 2014. The zoo runs special events throughout the year that appeal to different age groups and demographics. The most popular event is Brew at the Zoo, which takes place over the Saturday and Sunday of Memorial Day weekend. The zoo advises that the event staff has made an effort to appeal to a broader spectrum of the population. Other events include College Night, Summer Football Festival, Paint Nights, and Yoga at the Zoo.
 - **Education programs** generate revenues through the ZOOMobile visits as well as educational breakfasts, lectures, and guided tours. These revenues increased by under \$41,000 in fiscal 2018.

Grants and Contributions

Grants and contributions have fluctuated in recent years, ranging from a high of \$20.4 million in fiscal 2014 to a low of \$11.6 million in fiscal 2015. Trends include:

- **Grants and awards** increased by approximately \$592,000, or 5.9 %, in fiscal 2018. Grants and awards generally consist of public funding from State and local jurisdictions for both operating and capital funds, as **Exhibit 12** shows. Grants and awards are more than half of the zoo's revenues in every year. Grant revenues as a share of total revenues range from 51.0% in fiscal 2016 to 68.0% in 2014. The high levels of grants in fiscal 2014 are attributable to additional grants for capital projects. The zoo reports that the increase reflects the grant of \$7.0 million that the State provided in fiscal 2014 for capital improvements, specifically the Penguin Coast exhibit.

Exhibit 12
Sources of Grants and Awards
Fiscal 2018
(\$ in Thousands)

<u>Source</u>	<u>Amount</u>	<u>Percent of Total</u>
Maryland Board of Public Works – Operating	\$4,815	45%
Maryland Board of Public Works – Capital	3,387	32%
Maryland State Department of Education School Children Grant	812	8%
Baltimore City	576	5%
Baltimore County Commission on the Arts and Sciences Operating Grant	500	5%
Other	513	5%
Total	\$10,604	100%

Source: *Maryland Zoological Society Consolidated Financial Statements*, June 30, 2018

- **Contributions** are comprised of annual donations from individuals and corporations, excluding memberships, and are often provided in support of specific exhibit projects. The zoo reports that contributions received in fiscal 2014 included a higher number of private capital gifts related to the Penguin Coast exhibit. The fiscal 2015 decline reflects the reduced capital spending, primarily due to the conclusion of the penguin project and the one-time nature of contributions. In fiscal 2016, the zoo received a bequest of over \$530,000. Fiscal 2018 contributions include funding restricted for construction of the Elephant/Giraffe/Lion exhibit.

- **In-kind donations** increased by almost \$40,000, or 4.2%, in fiscal 2018. In-kind donations are noncash donations that the zoo received, in large part, from Baltimore City, which provided approximately \$960,000; the increase thus reflects general increases in rent, waste removal services, and electricity costs donated by the city.

Other Revenues

- **Insurance recoveries** did not occur in fiscal 2018. Fiscal 2014 insurance recoveries were much higher due to the receipt of payment for the damages that developed in the Maryland Aviary and the African Aviary, as a result of two snowstorms that occurred in February 2010.
- **Investment income** of the zoo's investments are held in a pool managed by the Baltimore Community Foundation. These investments are held in an account that includes equities. Returns on equities are uneven, so investment income varies from year to year, with some years even realizing losses. Over the five-year period, income ranged from gains exceeding \$24,000 to losses that are just over \$6,000.

Expenses

Payroll is a substantial share of the zoo's budget, representing 69% of costs in fiscal 2019. The zoo's expenses have increased at an average annual rate of 3.6% since fiscal 2014. In fiscal 2018, Program Services were 80.2% of spending. Program Services expenses are costs related to maintaining the zoo, such as facilities maintenance, care of the animals, and education programs.

Supporting Services, which reflect such activities as accounting, personnel administration, and strategic direction, have increased at an annual rate of 0.1% since fiscal 2014. Administration also supports technology upgrades, such as a fiscal 2017 initiative that required professional services related to technology initiatives to upgrade two major applications: the 20-year-old ticketing system and the Customer Relations Management System. These are now cloud applications. The customer system relieves staff of cumbersome tasks and allows staff to do more targeted marketing and be more responsive to customers.

Zoo Remains Reliant on Grants and Contributions

The zoo has experienced consistent growth in attendance-driven revenues. However, the zoo remains heavily reliant on grants and contributions. **Exhibit 13** shows that the share of revenues generated from grants and contributions is still about two-thirds of total revenues.

Exhibit 13
Attendance, Grant, and Other Revenues as a Share of Total Revenues
Fiscal 2014-2018

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Attendance Revenues	19%	32%	34%	37%	35%
Grants and Contributions	76%	67%	64%	63%	65%
Other Revenues	5%	1%	2%	0%	0%
Total Revenues	100%	100%	100%	100%	100%

Source: *Maryland Zoological Society Consolidated Financial Statements*, June 30, 2015, 2017, and 2018

Declining Attendance Has Strained Resources

The most recent three years have been unusual. There was a sharp increase in attendance in calendar 2017 followed by a sharp drop in 2018. This has strained the zoo's finances, resulting in the zoo tapping into its long-standing line of credit. The State provides an additional \$400,000 in fiscal 2019 and has increased the base appropriation by \$144,456 (3%) in fiscal 2020. The State should continue to monitor the zoo's attendance and finances. The zoo expenditures have exceeded revenues in three of the last five years. **The zoo should be prepared to brief the committees on how recent declines in attendance have impacted its finances. This should include a discussion about any plans to improve them.**

2. Erroneous Conviction and Imprisonment Legislation Creates a Potential Unfunded Liability

In 2017, legislation allowing BPW to give grants to individuals that were erroneously convicted and imprisoned was amended. Chapters 799 and 800 of 2017 authorized the State's attorney to certify that a conviction was made in error. If a conviction was made in error, an imprisoned individual could petition BPW for a grant to compensate the individual for time imprisoned. A concern is that there are a number of ambiguities related to the effect of the legislation. When the legislation was enacted, there was insufficient data concerning the number of erroneously convicted and imprisoned individuals to determine a precise cost estimate. The legislation also did not provide guidance about how large a grant is appropriate. The legislation did not require that BPW provide a grant, so it is conceivable that the board would approve some grants but not others, further complicating the fiscal estimate.

SB 987 and HB 1225 were introduced in 2018 to amend the State erroneous conviction and imprisonment laws. The legislation did not pass. The bills proposed to modify State law by clarifying some of the ambiguities in the 2017 legislation. The bills would have required that BPW make

payments, rather than authorize BPW to make payments. The bills set the payment amount at \$50,000 per year of incarceration and would have authorized up to \$10,000 for living expenses upon an individual's release.

Chapters 799 and 800 also created a Task Force to Study Erroneous Conviction and Imprisonment. The Governor's Office on Crime Control and Prevention (GOCCP) was designated to staff the task force. The legislation required that the task force study the State's current process for establishing whether a conviction was made in error, study the processes and standards in other states, and make recommendations on whether the State should create and implement a new process. The task force's review included whether a specific agency should certify that a person is innocent.

Prior to expiring on September 30, 2018, as required by law, the task force met three times. On December 1, 2018, GOCCP released the task force's final report. The report recommended the adoption of HB 1225 as passed by the House in 2018 with two changes. The task force recommended striking references to Section 8-301 of the Criminal Procedure Article. Striking the reference allows a certificate of error regardless of whether there is a petition for a writ of actual innocence. The second change is to strike provisions requiring BPW to perform various tasks that the task force believes the board is not suited to perform.

In addition to enacting the 2018 bill, the task force recommended that the Attorney General prepare a letter that provides guidance and clarity concerning the State's attorney's authority to provide a certification of actual innocence from another jurisdiction. Finally, the task force recommended that codified language directing BPW to prepare a process for receiving and responding to petitioners be enacted.

The report also mentions that some issues were discussed and not adopted. One such provision would have retained the current law that gives BPW discretion when awarding compensation. Another would have allowed the State to seek indemnification from a local jurisdiction if the actions of the local jurisdiction or its employees contributed to an erroneous conviction.

The legislation and task force raise administrative issues, such as:

- If Section 8-301 of the Criminal Procedure Article is not required to receive a grant for erroneous conviction and imprisonment, should a court or State's Attorney's office have another administrative procedure in place?
- Should all jurisdictions have the same standards for awarding grants?
- BPW is a small office without a history of social work or criminal enforcement, and this is a new responsibility for the board. Other State agencies with more experience with criminal justice issues may be better prepared for these administrative tasks. What role should BPW play?

Budget Issues

To date, BPW has not awarded any grants or adopted any policies for awarding grants. BPW advises that it has reviewed the legislation and would appreciate some clarity in the law. If there is legislation, the General Assembly may consider the following budget issues:

- ***What is the State's exposure?*** It is unclear how many individuals can qualify for grants. The Baltimore City State's Attorney's Office has noted that 1,700 cases may be tainted by the police department's defunct Gun Trace Task Force. It is also unclear how many other erroneously convicted individuals are incarcerated. This ambiguity makes it difficult to estimate the liability.
- ***What is an appropriate amount?*** SB 987 and HB 1225 would have provided the greater of \$50,000 per year of imprisonment, or actual damages, as the grant amount. In some cases, individuals have been exonerated after spending 30 years in prison. This would be a \$1.5 million payment at a rate of \$50,000 per year of incarceration. If there were numerous erroneous convictions over a period of years, these amounts could be substantial. To limit the State's liability, legislation could include a maximum payment. The requirement to award actual damages, if greater than that, opens up the possibility of even larger awards, as well as leaving the difficulty of how to determine those actual damages. Examples of states with caps include Massachusetts, which has a \$500,000 cap; Maine, which has a \$300,000 cap; Oklahoma, which has a \$175,000 cap; and Tennessee, which has a \$1,000,000 cap.
- ***Should annuities be encouraged?*** An annuity is a payment over a period of time. It may be easier for an individual to manage a large grant amount as an annuity than a one-time payment. Annuities also reduce the State's immediate exposure, which can make it easier to manage the State's budget.
- ***Should the State be able to indemnify local jurisdictions?*** To indemnify is to be reimbursed for losses caused by that party. The current law and the 2018 legislation place the entire liability on the State. Is it clear that the entire responsibility for erroneous convictions should be borne by the State? The law could require local jurisdictions to participate in some share of grants to individuals.

3. Contingent Fund Use

BPW administers Maryland's contingent fund, which is used to fund shortfalls in agency budgets. In fiscal 2018, the contingent fund transferred \$125,000 to fund the Department of Housing and Community Development's Rental Housing Assistance program and \$375,000 to the Maryland Department of Agriculture to fund a seafood marketing campaign. The full \$500,000 appropriation was spent, and there were no general funds reverted. The rental assistance program gives grants to individuals that are at risk of becoming homeless. This is an established program that provided \$1.7 million in grants in fiscal 2018.

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Funding for the seafood marketing campaign was a new initiative to increase demand for smaller female crabs. In most years, the crabs are harvested and picked. In 2018, federal visa restrictions resulted in a shortage of workers available to pick the crabs. The campaign costs totaled approximately \$387,000, including \$129,000 for radio advertisements, \$111,000 for a Maryland Public Television project preparing four episodes providing Maryland viewers an understanding of rural Maryland, \$60,000 for television advertisements, \$40,000 for billboards, \$37,000 for newspaper and trade publication advertisements, and \$10,000 for production costs.

Since fiscal 2011, the annual appropriation into the contingent fund has been \$500,000. The fund supports unanticipated expenditures in State agencies such as legal fees, leave payout, rewards for information about the death of a State trooper, unanticipated repairs, and costs required to implement legislation. In general, the fund supports ongoing operations. **Exhibit 14** provides a list of the appropriations, transfers, and reversions since fiscal 2009.

Contingent fund appropriations in past budgets were larger than current appropriations because the budget process did not incorporate deficiency appropriations. Instead, the General Assembly appropriated large contingent fund appropriations to address shortfalls. The advantage of deficiency appropriations is that they provide the General Assembly an opportunity to review new initiatives that the Administration would like to begin during the fiscal year. Since unforeseen shortfalls regularly occur in ongoing programs and grants, having a contingent fund allows the Administration to fund these shortfalls in agency budgets.

The General Assembly has not placed any limits on the use of these contingent fund appropriations. As introduced, the language currently provides that the funds can be used “for any other contingencies that might arise within the State or other governmental agencies.” While these funds generally support unanticipated shortfalls realized in the operation of ongoing programs, the funds can also be used to fund new initiatives that the General Assembly has not reviewed. The General Assembly may want to restrict the use of contingent fund appropriations to only be used for programs and grants that have been approved by the General Assembly and encourage the Administration to use deficiency appropriations for new initiatives. **To limit the uses of funds appropriated in the contingent fund to operations or grants approved by the General Assembly, it is recommended that language restricting the contingent fund for operations and grants approved by the General Assembly be adopted.**

Exhibit 14
Contingent Fund Activity
Fiscal 2009-2018

<u>Years</u>	<u>Appropriation</u>	<u>Transfer</u>	<u>Reversion</u>	<u>Comments</u>
2009	\$750,000	\$266,081	\$483,919	AG legal fees, SBE air conditioning and inventory system, and IAC expenditures.
2010	750,000	750,000	0	AG legal fees, SBE information technology and legal fees, SDAT and PTAAB leave payout, and DSP reward information about death of a State trooper.
2011	500,000	0	500,000	No funds transferred to State agencies.
2012	500,000	90,845	409,155	AG legal fees.
2013	500,000	411,109	88,891	BPW procurement contract, State Labor Relations Board Legislation, leave payout, and DSP reward information about death of a State trooper.
2014	200,000 ¹	123,000	77,000	State Prosecutor legislation, Historic St. Mary's City operations, IAC accrued leave payout.
2015	500,000	294,404	205,596	Fund 2% reduction at BPW, Historic St. Mary's City Dove repairs, IAC accrued leave payout, Board of Contract Appeals and MDVA operations.
2016	500,000	232,880	267,120	Secretary of State operations, Board of Contract Appeals leave payout, Department of Disabilities' advocates, and AG to implement legislation.
2017	500,000	196,200	303,800	Secretary of State charity enforcement, IAC leave payout and other personnel costs, and Board of Contract Appeals leave payout.
2018	500,000	500,000	0	Department of Agriculture small crab marketing campaign and Rental Housing Program shortfall.

AG: Office of the Attorney General
 BPW: Board of Public Works
 DSP: Department of State Police
 IAC: Interagency Commission on School Construction

MDVA: Maryland Department of Veterans' Affairs
 PTAAB: Property Tax Assessments Appeals Board
 SBE: State Board of Elections
 SDAT: State Department of Assessments and Taxation

¹ The fiscal 2014 appropriation includes a \$300,000 withdrawn appropriation.

Source: Department of Budget and Management

Operating Budget Recommended Actions

1. Amend the following language in the general fund appropriation:

To the Board of Public Works to be used by the Board in its judgement ~~(4)~~ for supplementing appropriations made in the budget for fiscal 2020 when the regular appropriations are insufficient for the operating expenses of the government beyond those that are contemplated at the time of the appropriation of the budget for this fiscal year, ~~or (2) for any other contingencies that might arise within the State or other governmental agencies during the fiscal year or any other purpose provided by the law, when adequate provision for such contingencies or purposes has not been made in the budget.~~ Provided that this appropriation may only be transferred to other programs and expended to support purposes, programs, or grants approved during the 2019 legislative session. Funds not transferred for this restricted purpose shall revert to the General Fund.

Explanation: Since fiscal 2011, the General Assembly has been appropriating \$500,000 for a contingent fund that can be used by the Board of Public Works to transfer funds to State agencies. The fund supports unanticipated expenditures in State agencies such as legal fees, leave payouts, rewards for information about the death of a State trooper, unanticipated repairs, and costs required to implement legislation. In general, the fund supports ongoing operations. The General Assembly has not placed any limits on the use of these contingent fund appropriations. As introduced, the language notes that the funds can be used “for any other contingencies that might arise within the State or other governmental agencies.” While these funds generally support unanticipated shortfalls realized in the operation of ongoing programs, the funds can be used to fund new initiatives that the General Assembly has not reviewed. This language restricts the use of contingent fund appropriations for purposes, programs, and grants that have been approved by the General Assembly and encourages the Administration to use deficiency appropriations for new initiatives.

2. Adopt the following narrative:

Operational Reporting: In continuance of the practice that began in July 2008, the committees request that the Maryland Zoological Society submit audited financial statements for fiscal 2018 and year-to-date monthly attendance figures for the zoo for fiscal 2019 by visitor group. This should include a breakdown of the kinds of passes allocated.

Information Request	Author	Due Date
Audited financials	Maryland Zoological Society	November 1, 2019
Monthly attendance	Maryland Zoological Society	Monthly

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Appendix 1
Current and Prior Year Budgets
Board of Public Works
(\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2018					
Legislative Appropriation	\$7,687	\$0	\$0	\$0	\$7,687
Deficiency/Withdrawn Appropriation	-13	0	0	0	-13
Cost Containment	0	0	0	0	0
Budget Amendments	-500	0	0	0	-500
Reversions and Cancellations	-111	0	0	0	-111
Actual Expenditures	\$7,062	\$0	\$0	\$0	\$7,062
Fiscal 2019					
Legislative Appropriation	\$7,679	\$0	\$0	\$0	\$7,679
Budget Amendments	9	0	0	0	9
Working Appropriation	\$7,688	\$0	\$0	\$0	\$7,688

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. Numbers may not sum to total due to rounding.

Fiscal 2018

Fiscal 2018 expenditures totaled \$7.1 million, which is \$624,562 less than appropriated. Reductions are attributable to:

- \$13,298 in health insurance reductions, as required by Section 19 of the fiscal 2019 Budget Bill;
- \$500,000 transferred from the contingent fund to State agencies, which is the entire appropriation for the contingent fund; and
- \$111,264 in reverted general funds support the board's operations, of which approximately \$67,000 was for salaries and fringe benefits for regular employees, \$16,000 for printing, and \$9,000 for legal services. \$17,404 in reverted general funds support the Wetlands Administration, primarily for contractual services such as printing, equipment rental, and consulting services.

Fiscal 2019

The fiscal 2019 budget increased from \$7,678,945 to \$7,687,851. This is attributable to a budget amendment that has been processed. It adds \$8,906 for a 2% general salary increase for regular employees on January 1, 2019, which includes \$7,201 for the Administration Office and \$1,705 for the Wetlands Administration.

Appendix 2
Object/Fund Difference Report
Board of Public Works

<u>Object/Fund</u>	<u>FY 18 Actual</u>	<u>FY 19 Working Appropriation</u>	<u>FY 20 Allowance</u>	<u>FY 19 - FY 20 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	9.00	9.00	9.00	0.00	0%
Total Positions	9.00	9.00	9.00	0.00	0%
Objects					
01 Salaries and Wages	\$ 975,936	\$ 1,047,570	\$ 1,088,831	\$ 41,261	3.9%
02 Technical and Spec. Fees	11,968	21,750	12,111	-9,639	-44.3%
03 Communication	3,629	7,536	1,252	-6,284	-83.4%
04 Travel	1,628	5,650	3,593	-2,057	-36.4%
08 Contractual Services	27,997	46,976	83,577	36,601	77.9%
09 Supplies and Materials	14,189	24,100	16,195	-7,905	-32.8%
10 Equipment – Replacement	1,365	4,200	1,363	-2,837	-67.5%
11 Equipment – Additional	457	2,500	637	-1,863	-74.5%
12 Grants, Subsidies, and Contributions	6,021,136	6,521,136	6,665,592	144,456	2.2%
13 Fixed Charges	4,117	5,433	4,117	-1,316	-24.2%
14 Land and Structures	0	1,000	538	-462	-46.2%
Total Objects	\$ 7,062,422	\$ 7,687,851	\$ 7,877,806	\$ 189,955	2.5%
Funds					
01 General Fund	\$ 7,062,422	\$ 7,687,851	\$ 7,877,806	\$ 189,955	2.5%
Total Funds	\$ 7,062,422	\$ 7,687,851	\$ 7,877,806	\$ 189,955	2.5%

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. The fiscal 2020 allowance does not include general salary increases.

**Appendix 3
Fiscal Summary
Board of Public Works**

<u>Program/Unit</u>	<u>FY 18 Actual</u>	<u>FY 19 Wrk Approp</u>	<u>FY 20 Allowance</u>	<u>Change</u>	<u>FY 19 - FY 20 % Change</u>
01 Administration Office	\$ 832,917	\$ 937,769	\$ 977,317	\$ 39,548	4.2%
02 Contingent Fund	0	500,000	500,000	0	0%
05 Wetlands Administration	208,369	228,946	234,897	5,951	2.6%
10 Miscellaneous Grants to Private Nonprofit	6,021,136	6,021,136	6,165,592	144,456	2.4%
Total Expenditures	\$ 7,062,422	\$ 7,687,851	\$ 7,877,806	\$ 189,955	2.5%
General Fund	\$ 7,062,422	\$ 7,687,851	\$ 7,877,806	\$ 189,955	2.5%
Total Appropriations	\$ 7,062,422	\$ 7,687,851	\$ 7,877,806	\$ 189,955	2.5%

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. The fiscal 2020 allowance does not include general salary increases