

December 11, 2012  
4:00 p.m.  
House Appropriations Committee Room 121, House Office Building

## **Agenda**

### **Part I: Maryland Program Evaluation Act (Sunset Process)**

The “Sunset Process” is defined by the statute as “the process by which the Legislative Policy Committee determines whether a governmental activity shall undergo an evaluation”. The 2012 interim marked the fifth year of the fourth “cycle” of sunset review under the Maryland Program Evaluation Act. During this time DLS conducted eight preliminary evaluations and one full evaluation. Of these, three agencies that underwent preliminary evaluations during 2011 interim, but whose final status was deferred, submitted requested updates to DLS. Additionally, one full evaluation was conducted on the remaining entity. Below are the agencies under consideration:

- **Department of Health and Mental Hygiene**
  - State Acupuncture Board
  - State Board of Dietetic Practice
  - State Board of Occupational Therapy Practice
  
- **Department of Labor, Licensing, and Regulation**
  - State Board of Foresters
  - State Board of Public Accountancy

Three other entities underwent preliminary evaluations during the 2011 interim:

- **Department of Labor, Licensing, and Regulation**
  - State Board of Stationary Engineers
  - Elevator Safety Review Board
  - Board of Boiler Rules

One entity underwent a full evaluation:

- **Department of Labor, Licensing, and Regulation**
  - Division of Labor and Industry

Additional Evaluations to be conducted in 2013:

- **Completion of Full Evaluation Initiated in 2012 Interim**
  - **Department of Labor, Licensing, and Regulation**
    - State Racing Commission
    - Maryland-Bred Race Fund Advisory Committee
    - Standardbred Race Fund Advisory Committee
- **Preliminary evaluations**
  - **Department of Health and Mental Hygiene**
    - State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists
    - Prescription Drug Monitoring Program
  - **Department of Labor, Licensing and Regulation**
    - Maryland Horse Industry Board
    - State Board of Individual Tax Preparers
  - **Department of State Police**
    - Licensing and Regulations of Security Systems Technician

## **Part II: State Treasurer's Office - Report of the Treasurer**

- A written report to the Legislative Policy Committee by the Honorable Nancy K. Kopp, State Treasurer, on operations in the State Treasurer's Office during the last six months of 2012.

## **Part III: Legislative Staff Agency Budget**

Consideration of the fiscal year 2014 budget for the Department of Legislative Services.

**Part IV:** *Guidelines for Compensation and Expenses for Legislators, Maryland General Assembly, Effective January 1, 2013*

Substantive changes relating to blackberry devices and smart phones reimbursements.

Non-substantive changes relating to unauthorized uses of district office expense funds.

**Part V:** *Maryland General Assembly Personnel Guidelines, proposed revisions*

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**Part I**  
**Maryland Program Evaluation Act**  
**(Sunset Process)**

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Department of Legislative Services  
Annapolis, Maryland

December 2012



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## Summary of Sunset Review in 2012

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- The 2012 interim marked the fifth year of the fourth “cycle” of sunset review under the Maryland Program Evaluation Act.
- Five entities underwent preliminary evaluation. All five entities are recommended for a waiver from further evaluation at this time and a 10-year extension.
- Three entities that underwent preliminary evaluations during the 2011 interim, but whose final status was deferred, submitted requested updates to the Department of Legislative Services (DLS): the Elevator Safety Review Board, the State Board of Stationary Engineers, and the Board of Boiler Rules.
  - DLS recommends that all three entities be waived from further evaluation at this time and proposes a 10-year extension for the Board of Boiler Rules and the State Board of Stationary Engineers and a five-year extension for the Elevator Safety Review Board.
- One entity underwent full evaluation: the Division of Labor and Industry (DLI) within the Department of Labor, Licensing, and Regulation.
  - DLS recommends repealing DLI’s termination date and extending the termination dates of four associated boards and councils: Board of Boiler Rules (as noted above), the Amusement Ride Safety Advisory Board, the Maryland Apprenticeship and Training Council, and the Maryland Occupational Safety and Health Advisory Board) by 10 years to July 1, 2024.
  - DLS offers a total of 13 recommendations designed to maximize the effectiveness of DLI; the recommendations (1) standardize DLI’s statutory authority to enforce State employment laws; (2) improve the tracking and reporting of its enforcement activity; and (3) repeal the largely inactive Advisory Council on Prevailing Wage Rates.

# DLS Recommendations on 2012 Preliminary Evaluations

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<u>Preliminary Evaluations</u>	DLS Recommendation	
	<u>Full Evaluation in 2013 Interim</u>	<u>Waive or Take Other Action<sup>1</sup></u>
<b>Department of Health and Mental Hygiene</b>		
State Acupuncture Board		X
State Board of Dietetic Practice		X
State Board of Occupational Therapy Practice		X
<b>Department of Labor, Licensing, and Regulation</b>		
State Board of Foresters		X
State Board of Public Accountancy		X

<sup>1</sup> DLS recommends waiving these entities, extending their termination dates by 10 years, and requiring follow-up reports and other actions as specified in the evaluations.

# DLS Recommendations on Deferred 2011 Preliminary Evaluations

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<u>Preliminary Evaluations</u>	DLS Recommendation	
	<u>Full Evaluation in 2013 Interim</u>	<u>Waive<sup>1</sup></u>
<b>Department of Labor, Licensing, and Regulation</b>		
Board of Boiler Rules <sup>2</sup>		X
State Board of Stationary Engineers		X
Elevator Safety Review Board		X

<sup>1</sup> DLS recommends waiving these entities; the termination dates for the Board of Boiler Rules and the State Board of Stationary Engineers are recommended for a 10-year extension, and the termination date for the Elevator Safety Review Board is recommended for a five-year extension.

<sup>2</sup> Rather than complete a separate analysis of the Department of Labor, Licensing, and Regulation's follow-up report on the Board of Boiler Rules, DLS consolidated the analysis within the full evaluation of the Division of Labor and Industry, with the recommendation for a 10-year extension of that board encompassed in the recommendation to extend termination dates for four associated boards and councils.

# Additional Evaluations to Be Conducted in 2013

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## **Completion of Full Evaluation Initiated in 2012 Interim**

### **Department of Labor, Licensing, and Regulation**

State Racing Commission

Maryland-Bred Race Fund Advisory Committee

Standardbred Race Fund Advisory Committee

## **Preliminary Evaluations**

### **Department of Health and Mental Hygiene**

State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists

Prescription Drug Monitoring Program<sup>1</sup>

### **Department of Labor, Licensing, and Regulation**

Maryland Horse Industry Board

State Board of Individual Tax Preparers

### **Department of State Police**

Licensing and Regulation of Security Systems Technicians

<sup>1</sup> As the Prescription Drug Monitoring Program, enacted by Chapter 166 of 2011, is not yet fully operational, an evaluation of the program will likely be deferred until the 2014 interim.

# Preliminary Evaluation of the State Acupuncture Board

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2025**

**Require Follow-up Report by October 1, 2013**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process also known as sunset review because most of the regulatory entities or activities subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 entities according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Acupuncture Board last underwent a preliminary evaluation as part of sunset review in 2002. Based on that evaluation, DLS recommended that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2015. DLS also recommended that the board submit a follow-up report to LPC by October 1, 2003, regarding board resources and the outcome of the board's proposal to require an examination as a condition of licensure. Chapter 407 of 2003 extended the board's termination date and required DLS to conduct a sunset review of the board by July 1, 2014.

In conducting this preliminary evaluation, DLS staff reviewed statutory and regulatory changes related to acupuncture, legislative testimony, the prior sunset evaluation of the board, and board materials including minutes, newsletters, correspondence, and financial and complaint data. Additionally, DLS staff conducted interviews with the board's executive director, the board chairman, and a representative of the Maryland Acupuncture Society (MAS).

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

## **The Practice of Acupuncture**

Originating in China over 3,500 years ago, acupuncture is a form of health care based on a belief that there are as many as 2,000 acupuncture points on the human body that are connected by pathways called meridians. Meridians conduct energy, or *qi* (pronounced “chee”), between the surface of the body and its internal organs. Each point has a different effect on the *qi* that passes through it. Acupuncture is believed to allow for the normal flow of *qi* throughout the body, thereby maintaining or restoring health.

As defined by the Maryland Annotated Code, the practice of acupuncture involves the use of oriental medicine therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health. In practice, acupuncture includes (1) the stimulation of points of the body by the insertion of very fine, solid needles just below the surface of the skin; (2) the application of moxibustion, heat produced by the burning of specific herbs; and (3) manual, mechanical, thermal, or electrical therapies. Maryland law also authorizes the practice of auricular detoxification (an acupuncture technique involving the needling of the ear to assist individuals undergoing detoxification) by certain qualified individuals.

There are many different traditions within the practice of acupuncture both nationally and internationally based on evolving interpretations and applications of ancient principles. Within the acupuncture profession in Maryland, there are two major approaches: 5-element and Traditional Chinese Medicine (TCM).

### **The 5-Element Approach**

The 5-element approach to acupuncture is based on the relationships of the five elements: fire, earth, metal, water, and wood, and how to create balance in the relationships among the elements within a person. The 5-element acupuncture system, also known as Traditional Acupuncture, was developed by J.R. Worsley. Though the founding principles and techniques are based on Chinese medical classics, the 5-element system is a relatively recent approach to acupuncture first taught in England in the late 1960s.

### **Traditional Chinese Medicine**

TCM, as practiced today, is based on several classic theories, including Yin and Yang, Five Phases, Eight Principles, Six Aspects, and Disease Cause Pattern Differentiation. TCM practitioners apply these theories to remedy the problems of the body, mind, and spirit.

## **Composition of Acupuncture Practitioners in Maryland**

A unique aspect of the practice of acupuncture in Maryland is the composition of practitioners. Nationally, TCM practitioners comprise approximately 95% of practicing acupuncturists, while 5-element practitioners account for approximately 5%. Within Maryland, an estimated 60% to 70% of licensed acupuncturists utilize the 5-element tradition, while 30% to 40% practice TCM. The large proportion of 5-element practitioners in Maryland results from the fact that the Tai Sophia Institute, the first accredited school of acupuncture in the nation, is located in Maryland and offers an acupuncture program based on the 5-element tradition.

## **Maryland Acupuncture School**

The Tai Sophia Institute is currently the only school of acupuncture in the State accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). The Tai Sophia Institute offers a three-year program utilizing the 5-element tradition as the basis for seeing the whole person and to provide students with a basic familiarity with all acupuncture traditions leading to the award of a Master of Acupuncture degree. Another school of acupuncture, the Maryland Institute of Traditional Chinese Medicine, closed in December 2002, after its accreditation was revoked by ACAOM. The Maryland Institute of Traditional Chinese Medicine offered a three-year program that included acupuncture, TCM, and some Western medicine and resulted in a Professional Diploma in Acupuncture.

## **The State Acupuncture Board**

Chapter 620 of 1994 established the current licensing and regulatory process for the practice of acupuncture in Maryland and created the State Acupuncture Board in the Department of Health and Mental Hygiene (DHMH). The mission of the board is to protect the citizens of Maryland and to promote quality health care in the field of acupuncture by:

- licensing acupuncturists, registering auricular detoxification specialists (ADSs), and issuing certificates to practice acupuncture on animals;
- receiving and resolving complaints from the public, courts, employers, insurance companies, and other licensees regarding acupuncturists who may have violated the Maryland Acupuncture Act; and
- setting standards for the practice of acupuncture that reflect new and emergent developments in the practice of acupuncture through regulations and legislation.

## **Membership and Staff**

The board consists of seven members appointed by the Governor, including five licensed acupuncturists and two consumer members. Chapter 387 of 2004 extended the length of board members' terms from three to four years, based on a recommendation in the 2002 preliminary

sunset evaluation. As a result, board members report that they are more comfortable in their roles and that institutional knowledge has been better preserved. Members may not serve more than two consecutive full terms. Currently, the board has a chairman and a vice chairman. Statute entitles board members to receive compensation in accordance with the budget of the board. Board members typically receive a per diem for attending board activities, as well as reimbursement for expenses.

The board is supported by a part-time (80%) executive director, a part-time (20%) board counsel, a full-time administrative specialist, and a full-time investigator that the board shares with five other boards (25% of the investigator's time is assigned specifically to the board). The number of board members and the number of staff appear appropriate to the number of licensees regulated by the board (a total of 939 as of June 30, 2012).

### **Board Meetings and Committees**

The board, which meets every other month, accomplishes its work through several committees that meet on an informal basis via telephone or email to discuss board matters and provide recommendations back to the board for further action. The most active committees are the Scope of Practice Committee, which answers questions from both practitioners and the public on the appropriateness of certain acupuncture techniques and procedures, and the Discipline Committee, which reviews all complaints against licensees. There are usually one to two *ad hoc* committees at any given time based on the board's needs. In addition to these committees, the board has Budget, Foreign Applications, and Personnel committees that are called upon when necessary, as well as a designated representative/liaison to the Council of Boards and Commissions within DHMH.

### **Additional Board Activities**

The board maintains a website at <http://www.dhmh.state.md.us/bacc> and publishes a newsletter, both of which provide information to licensees and the public. The board has also established its own set of operating procedures to ensure consistency in its actions. During this evaluation, the board decided to add a conflict of interest section to the operating procedures so current procedures are documented. Another important board activity has been participation in the Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA), which has provided the board with an opportunity to compare the regulation of acupuncture in various states. However, in the summer of 2010, FAOMRA's board of directors voted to fold after several years of canceled meetings due to a combination of lack of funds and lack of interest. Members of the board and the president of MAS hope that when funds are available FAOMRA can be reestablished.

### **Legislative Changes in the Practice of Acupuncture Since 2002**

Several legislative changes have affected the practice of acupuncture and the board since the last sunset evaluation. Major legislative changes are noted in **Exhibit 1**. Among those

changes were (1) removing the termination provision from the ADS statute; (2) easing the requirements for ADS supervision by a licensed acupuncturist by repealing the definition of “direct supervision” and instead requiring more general supervision; (3) specifying the conditions for retroactive renewal and reinstatement of a license; (4) establishing additional grounds for disciplinary action against licensees and increasing the maximum misdemeanor penalties for practicing without a license; and (5) establishing standardized guidelines for all health occupations boards regarding discipline, board membership and training, and other administrative matters.

**Exhibit 1**  
**Legislative Changes Since the 2002 Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	407	<p>Extends the board’s termination date by 10 years to July 1, 2015.</p> <p>Requires DLS to conduct a sunset review of the board by July 1, 2014.</p> <p>Modifies the standards for education and training to qualify for a license.</p>
2004	57	<p>Allows specified individuals, such as substance abuse counselors and nurses in addition to licensed acupuncturists, to continue practicing auricular detoxification.</p> <p>Alters the requirement for supervision of individuals performing auricular detoxification by a licensed acupuncturist and requires the board to adopt regulations regarding the number of individuals who may perform auricular detoxification under a licensed acupuncturist’s supervision.</p>
	387	<p>Increases the maximum misdemeanor penalties to a \$5,000 fine and/or three years imprisonment for practicing without a license or misrepresentation as being authorized to practice acupuncture in the State. Prosecution of a misdemeanor offense must be instituted within three years after the offense was committed.</p> <p>Extends board members’ terms from three to four years.</p> <p>Provides an acupuncturist a 30-day grace period to retroactively renew a license under specified conditions.</p> <p>Prohibits the board from placing a licensee on inactive status for more than six years.</p> <p>Authorizes the board to reinstate a former licensee who has failed to renew the license if specified conditions are met.</p> <p>Prohibits the board from assessing a reinstatement fee on a person who has been on inactive status for more than six years if the person has maintained an active license in another state.</p>

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2010	533/534	<p>Set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and other administrative matters.</p> <p>Require each board, to the extent permitted by administrative and fiscal resources, to establish a disciplinary subcommittee to be responsible for the investigation of complaints and other aspects of the disciplinary process.</p> <p>Establish a six-year statute of limitations on the bringing of charges by a board against a licensee.</p> <p>Require boards to adopt sanctioning guidelines and post final public orders on the boards' websites.</p> <p>Require board membership to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.</p> <p>Require boards to notify licensees of board vacancies.</p> <p>Require boards to develop a training process and materials for new board members.</p> <p>Require boards to collect racial and ethnic information about applicants.</p> <p>Authorize boards to establish a program that provides training, mentoring, or other forms of remediation to licensees who commit a single standard-of-care violation.</p> <p>Require the Secretary of Health and Mental Hygiene to confirm the appointment of an administrator or executive director to each board and establish goals for the timeliness of complaint resolution.</p>

Source: Laws of Maryland

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To date, the board has implemented almost all of the requirements of Chapters 533 and 534 of 2010, many of which the board was already in compliance with prior to passage of the Acts. The board has a biannual newsletter that notifies licensees of board vacancies, posts final public orders on its website, has a discipline committee, adopted sanctioning guidelines in 2012, has a training process and materials for new board members, holds a yearly board member training session, and collects racial and ethnic information about applicants on initial licensure and renewal applications.

### **Regulatory Changes Since the 2002 Sunset Evaluation**

In addition to statutory changes, there have been several regulatory changes since the last sunset evaluation of the board. The most significant regulatory changes implemented legislative changes regarding ADS supervision. Additional changes include alterations to continuing

education requirements and procedures and adoption of sanctioning guidelines as required by Chapters 533 and 534 of 2010. These and other regulatory changes are summarized in **Exhibit 2**.

**Exhibit 2**  
**Regulatory Changes Since the 2002 Sunset Review**

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
2004	10.26.02.03	Requires applicants with foreign credentials to submit proof of educational equivalency to a course accredited by ACAOM and to submit a transcript that has been translated into English.
2005	10.26.02.05	Clarifies that a licensee must apply for inactive status and submit all requirements within 30 days after the expiration of a license.
	10.26.02.09*	Specifies the responsibilities for supervisors of auricular detoxification aides and changes the title of auricular detoxification aide to ADS.
2007	10.26.02.03	Alters the requirements for applicants to demonstrate proficiency in written and oral communication in English.
2009	10.26.02	Requires licensees to obtain at least three hours of continuing education in ethics or professional boundary training every four years.
		Eliminates reference to registration certificates issued by the Board of Physicians.
		Clarifies that ADSs must work directly with chemically dependent clients of a chemical dependency program.
	10.26.02.05	Authorizes licensees to earn continuing education credits for performing <i>pro bono</i> work.
2010	10.26.02.07	Alters the requirements for registration and supervision of ADSs.
2011	10.26.02.07	Authorizes the board to reinstate an ADS with an expired registration under specified conditions.
2012	10.26.02.05	Alters continuing education requirements and procedures, including revising the list of organizations through which continuing education may be obtained, changing the continuing education requirements for reinstatement and reactivation of a licensee, and allowing 10 hours of continuing education units to be obtained through published writing or articles on acupuncture or oriental medicine.
	10.26.04.10	Adds sanctioning guidelines for licensees and registered ADSs that violate the Maryland Acupuncture Act or board regulations.

\*Regulations regarding auricular detoxification were recodified under 10.26.02.07 in 2009.

Source: Code of Maryland Regulations, *Maryland Register*

## **Licensing, Certification, and Registration**

Before individuals may practice acupuncture in Maryland, they must be licensed by the board. The board issues both new and renewal licenses for the practice of acupuncture, certifies individuals to practice acupuncture on animals, and registers ADSs. Both initial and renewal licenses are valid for two years. The board accepts renewals twice annually.

### **Acupuncture License**

To qualify for licensure as an acupuncturist, an applicant must be of good moral character, be at least 18 years old, and demonstrate the ability to communicate in English. Applicants must also meet *one* of the following standards for education, training, or demonstrated experience:

- graduate from an approved course of training of at least 1,800 hours (including 300 clinical hours) or its equivalent;
- achieve a diplomate in Acupuncture from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or pass an examination that is determined by the board to be equivalent to the NCCAOM examination; or
- hold an existing license in acupuncture in another state that has a reciprocity agreement with Maryland.

Maryland is one of only three states that regulate acupuncture (and the only health occupations board in Maryland) that *does not* require an examination as a condition of licensure. During the 2002 preliminary evaluation, the board expressed plans to introduce legislation to mandate passage of the NCCAOM examination as a licensure requirement. However, the board ultimately decided not require the examination based on objections from MAS that the NCCAOM examination, which is designed to test TCM, is “strongly biased” against the 5-element approach. Due to the large number of 5-element acupuncturists in Maryland, the board concluded that the examination requirement would be inappropriate. Unfortunately, no other national acupuncture examination is currently available. Given that preparation and administration of a State examination would be a time-consuming and costly process (and one that states such as California have found difficult and fraught with legal issues), the board continues to not require an examination as a condition of licensure.

Acupuncturists who renew their licenses must complete a minimum of 40 hours of continuing education in the two years preceding the expiration of their license, 25 of which must be specifically acupuncture related. Acupuncturists who seek reinstatement must either complete a minimum of 40 hours of continuing education for each renewal period lapsed, not to exceed 80 hours, or have passed the NCCAOM exam within four years prior to the date of reinstatement.

## **Certification to Practice Acupuncture on Animals**

To obtain certification to practice acupuncture on animals, an applicant must possess a current license to practice acupuncture in Maryland and complete a board-approved specialty training program in animal acupuncture of at least 135 hours of theory and clinical training. To practice acupuncture on animals, the licensed acupuncturist must cooperate and consult with a veterinarian. There are currently 86 licensed acupuncturists certified to practice acupuncture on animals in Maryland, up from 60 in 2002. There have been only eight certifications issued in the last five years, all of which were issued in fiscal 2008. According to the board, only one school (Tai Sophia) offers an approved training program and, until recently, training had not been offered since 2008. However, in the fall of 2012, Tai Sophia offered the program again and the board has begun to receive applications for certification to practice acupuncture on animals.

## **Auricular Detoxification Specialist Registration**

Chapter 317 of 2001 authorized licensed nurses, psychologists, clinical social workers, and certified or licensed substance abuse counselors to perform auricular detoxification – an acupuncture technique involving the needling of the human ear for the purpose of assisting a person who is undergoing detoxification to remove addictive substances from the body and restore health. Applicants must complete a 70-hour basic training program, provide verification of licensure or certification, and be under the supervision of a licensed acupuncturist. Currently, there are 53 registered ADSs in Maryland.

In an effort to raise the number of ADSs, the board has tried to ease regulations and decrease fees. Chapter 57 of 2004 eased ADS supervision requirements, and the fees for ADS initial registration and renewal were reduced by 50% in 2009. Despite these efforts to increase the number of ADSs through regulation changes and fee reductions, the number of ADSs has not grown significantly.

In 2010, new regulations were adopted that deleted the requirement that ADS supervisors be licensed for at least two years, but required supervisors to complete an ADS supervisor training course with specified topics and make on-site visits once every two months. The National Acupuncture Detoxification Association continues to assert that easing regulations will result in more people seeking ADS registration. The board is currently in the process of adopting regulations that remove the ADS supervisor training course requirement and change the on-site visit requirement from once every two months to once prior to renewal. The board states that there will still be sufficient oversight with these changes given that ADSs are licensed professionals and the technique of auricular detoxification is limited and routine (*i.e.*, an ADS is not permitted to deviate from the standard procedure without approval from the supervising acupuncturist).

## Trends in Licensing Activity

**Exhibit 3** displays the number of new acupuncture licenses issued, the total number of active acupuncture licenses held on June 30 of each fiscal year (including both new and renewal licensees), and the number of ADS registrations issued annually since fiscal 2008.

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<b>Exhibit 3</b>					
<b>Licensing and Registration Activity</b>					
<b>Fiscal 2008-2012</b>					
	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
<b>Acupuncture Licenses Issued</b>					
Initial	76	89	78	88	77
Renewal	345	320	336	383	374
<b>Total</b>	<b>421</b>	<b>409</b>	<b>414</b>	<b>471</b>	<b>451</b>
<b>Total Active Licenses Held<sup>1</sup></b>	<b>842</b>	<b>824</b>	<b>847</b>	<b>888</b>	<b>939</b>
<b>Auricular Detoxification Specialist Registration</b>					
Initial	6	11	8	15	2
Renewal	6	4	9	14	16
<b>Total</b>	<b>12</b>	<b>15</b>	<b>17</b>	<b>29</b>	<b>18</b>

<sup>1</sup>Total active licenses held represents all active licensees on record with the board as of June 30 of each fiscal year, including individuals with temporary licenses. As the figures are based on one point in time, they do not reflect the sum of licenses issued over the two-year licensure period.

Source: State Acupuncture Board

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The board has seen an 11.5% increase in the number of total active licenses in the last five years, from 842 in fiscal 2008 to 939 in fiscal 2012, an average yearly increase of 2.8%. The number of initial licenses issued per year has demonstrated a cyclical pattern but it is not clear why. It is difficult to estimate long-term trends as the board implemented a new licensure system in fiscal 2008, and prior-year data were based on estimates rather than actual data.

The number of initial ADS registrations varies from year to year, but the number of renewals appears to be increasing slowly. The board has not tracked the total number of active ADS registrations per year in the past, but in fiscal 2012, there were a total of 53 active ADSs. **DLS recommends that the number of ADS registrations be consistently tracked by the board. The board should also explore potential reasons for the low number of ADS registrations, including looking at the experiences of other states.**

Since the last sunset evaluation, the board has implemented a new licensure system and now offers online renewal. This has decreased the workload for board staff and made analyzing

data easier. According to the board’s Managing for Results (MFR) data, the board has met its performance target of issuing 100% of new licenses within 60 days for the past five years. The board must approve new applicants at a board meeting before licenses can be issued. Because the board meets every other month, applicants who submit a complete application for licensure that raises no questions or concerns on the part of the board are issued a temporary license number that can be used until the next board meeting. These temporary numbers are usually provided within five days. According to the trade organizations, licensees are grateful for the opportunity to begin practicing. License renewals do not need the formality of the board meeting; therefore, the board has also consistently met its MFR target of issuing 100% of renewal applications within five days.

### Complaint Process and Trends in Complaint Activity

The board investigates and acts upon complaints against acupuncturists if the complaint involves violations of Title 1A of the Health Occupations Article. A description of the board’s complaint review process and the complaint form are provided on the board’s website. As shown in **Exhibit 4**, the board receives very few complaints about its licensees. Since fiscal 2008, the board has received fewer than a dozen complaints annually.

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**Exhibit 4**  
**New Complaints Received**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Total Complaints Received	8	11	6	7	7

Source: State Acupuncture Board

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After a complaint has been considered by the board, it may be referred for substantive investigation. Once the board’s investigator has examined the case and presented the findings to the board, the board must decide if the complaint is within its jurisdiction and either close the case without action, take informal or formal action, or refer the case to the Office of the Attorney General (OAG) for prosecution.

**Exhibit 5** shows how the board has resolved complaints over the past five years. Most complaints are submitted by patients and range from simple billing disputes addressed with informal action, such as a letter of education to the licensee, to more serious charges of sexual misconduct that are sent to OAG for prosecution and are more likely to result in the suspension of a license.

While the majority of complaint cases are resolved within the same fiscal year, difficult or complex cases referred for prosecution may take several years. Complaints received by the board toward the end of the fiscal year often carry over as well. For example, three of the six cases that

were carried over from fiscal 2012 were received after May 1, 2012, while the other three are more serious cases that have been referred to OAG for prosecution.

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**Exhibit 5**  
**Resolution of Complaints Received**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Type of Action Taken					
Dismissed/Closed	3	2	4	7	2
Letter of Education	1	1	0	0	2
Cease and Desist Letter	0	3	0	0	0
Letter of Admonishment	3	0	2	0	0
Formal Action	2	1	2	0	0
<b>Total Complaints Resolved<sup>1</sup></b>	<b>9</b>	<b>7</b>	<b>8</b>	<b>7</b>	<b>4</b>
Complaints Carried Over <sup>2</sup>	1	5	3	3	6

<sup>1</sup> Includes both new complaints received in a given fiscal year and complaints carried over from prior years but resolved in that fiscal year.

<sup>2</sup> Includes complaints carried over from prior fiscal years that were not resolved in that fiscal year.

Source: State Acupuncture Board

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In fiscal 2001, the board's investigator was a part-time (50%) position shared with the State Board of Examiners of Psychologists. In fiscal 2006, the investigator became a full-time position shared among four boards, with 25% of the investigator's time allocated to the board. The position is currently split between six boards, with 20% of the investigator's time allocated to the board. The board indicates that the investigator is able to efficiently investigate complaints in a timely manner even with only one day per week dedicated to the State Acupuncture Board. The board has met its MFR target of investigating 100% of all complaints within 180 days for the past five years.

The board currently tracks complaint data in an Excel worksheet, which appears sufficient at this time given the low volume of cases presented to the board. **DLS recommends that the spreadsheet be made more user-friendly and searchable in order to support analysis.**

### **Policy Issues Surrounding the Practice of Acupuncture**

As the board has become more established, it has taken a greater interest in policy issues on the periphery of acupuncture. The board seeks to empower practitioners and expand the methods

they may use to treat their patients while ensuring the safety of Maryland citizens. Two policy issues have emerged that have prompted the board to take a proactive role.

## **Herbal Medicine**

Looking forward, the board is interested in regulating the practice of herbal medicine, a major component of TCM. In 2011, 26 states included Chinese herbs in the scope of practice for acupuncturists, and six states had active legislation pending regarding regulation of herbal medicine. The board would eventually like to issue herbal medicine certificates, similar to the way it provides certificates to practice acupuncture on animals. Regulation of herbal medicine would allow acupuncturists to use herbs to treat their patients. Regulation would also allow the board to track which acupuncturists have been properly trained and certified to utilize herbal medicine, enhancing patient safety.

In 2008, the board requested legislation (House Bill 234 of 2008) to change the definition of “practice acupuncture” to include “other oriental medicine therapies.” According to the board, the bill was intended to clarify that oriental medicine is included in the practice of acupuncture to be consistent with the terminology used by national acupuncture organizations. However, the bill was interpreted to be an *expansion* of the scope of practice of acupuncture to include herbal medicine. The General Assembly was resistant to changing the definition of acupuncture because of safety concerns after news stories of improper use of Chinese herbs in other countries. The board hopes to promote awareness of the benefits and limitations of herbal medicine in the next few years and revisit whether to issue herbal medicine certificates once there is more national recognition and understanding of the use of Chinese herbs.

## **Dry Needling**

An area of concern for the board in recent years is the use of dry needling (also known as intramuscular manual therapy, trigger point dry needling, or intramuscular needling) by some physical therapists. The American Physical Therapy Association defines dry needling as a technique used to treat myofascial pain that uses a dry needle, without medication, that is inserted into a trigger point with the goal of releasing/inactivating the trigger point and relieving pain. According to the executive director of the Board of Physical Therapy Examiners (BPTe), dry needling is an advanced postgraduate technique that only a small percentage of physical therapists have studied as part of their continuing education. In 2010, after consulting with the Office of the Attorney General (OAG), BPTe determined that dry needling by physical therapists is permissible in Maryland, but that regulations are necessary.

According to the Federation of State Boards of Physical Therapy (FSBPT), as of August 2012, 27 states have ruled that dry needling is allowed by physical therapists (including Maryland, Virginia, and West Virginia); while 7 states (including Pennsylvania) have ruled that it is not permissible. FSBPT indicates that there are currently no consistent profession-wide standards or competencies defined for the performance of dry needling.

During this evaluation, MAS and the Maryland State Medical Society expressed concerns that it is unclear what qualifications physical therapists have to perform dry needling. The board also noted that BPTE does not track which physical therapists have received training to perform dry needling and, therefore, cannot adequately ensure public safety. Acupuncturists were also concerned that if physical therapists are not subjected to the same level of training as acupuncturists (which can be costly for licensees), then they will have a competitive advantage.

BPTE, after consulting with the State Acupuncture Board and other concerned groups, recently proposed regulations regarding the appropriate training for dry needling by physical therapists. BPTE indicates that the regulations include requirements that are stricter than in any other state and that the board plans to ask physical therapists on renewal forms whether they practice dry needling. The State Acupuncture Board considered the initial regulations too weak to ensure accountability and public safety. MAS noted that the training requirements outlined in the regulations are far lower than those that physicians must meet to practice acupuncture.

Due to the dispute between the two boards, DHMH did not submit the regulations for publication in the *Maryland Register*, but instead solicited public comments on the regulations through the department's website. On November 9, 2012, after review of the substantial public comments received and the 2010 guidance from OAG, the Secretary of Health and Mental Hygiene sent correspondence to BPTE expressing tentative support for regulations that permit dry needling by physical therapists, provided that specific changes are made regarding the adequacy of training required, a transition plan for physical therapists already practicing dry needling in Maryland, and a plan for oversight of dry needling by physical therapists. The State Acupuncture Board concurs with the Secretary's recommendations and feels that such changes will ensure accountability and public safety. However, the board remains concerned that physical therapists are currently performing dry needling in the absence of regulations. **Given the intersection of the two boards' scopes of practice on this issue, DLS recommends that the State Acupuncture Board continue to work with BPTE, DHMH, and the affected professional associations to ensure appropriate regulation of dry needling.**

## **Financial Status**

Since its inception in 1994, the board has been self-supported entirely by special funds raised through licensing fees. Section 1A-206 of the Health Occupations Article authorizes the board to set reasonable fees for the issuance and renewal of licenses and for other provided services. **Exhibit 6** displays the major fees currently charged by the board, compared with those fees effective in 2002. Only one fee (late application) has been increased since 2002.

Since 2002, the board has lowered the reinstatement fee because reinstatement is seen as a large financial burden on applicants due to the cost of completing continuing education requirements. The ADS registration and renewal fees have also been decreased by \$50 and \$25, respectively in order to attract more applicants. However, these reductions have not generated a significant increase in the number of ADS registrations.

Due to the board's position as a self-funded entity, fees were initially set high to cover the full cost of the board's expenses given the small number of licensees. Although the licensee base has grown, the board remains a smaller health occupations board. By contrast, boards with more licensees can allocate costs across a larger pool of licensees and thus charge lower licensing fees.

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**Exhibit 6**  
**Comparison of Board Fees: 2002 Fees vs. Current Fees**

	<b>Fees Effective in 2002</b>	<b>Fees Effective in 2012</b>
<b>Acupuncture Licensure</b>		
Initial Application	\$450	\$450
Renewal Application	525	525
Application for Inactive Status	100	100
Late Application	50	100
Reinstatement <sup>1</sup>	325	200
<b>Auricular Detoxification Specialist<sup>2</sup></b>		
Registration	100	50
Renewal	50	25
Reinstatement <sup>1,3</sup>	--	100

<sup>1</sup> Reinstatement fees are payable *in addition* to renewal fees.

<sup>2</sup> Prior to November 2005, this registration was known as Auricular Detoxification Aide.

<sup>3</sup> This fee was added in 2011.

Source: State Acupuncture Board; Code of Maryland Regulations 10.26.01.03

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Based on an informal survey, the board's fees are significantly higher than those charged in most surrounding states, as shown in **Exhibit 7**. Such fees range from \$30 to \$500 for an initial license and \$40 to \$425 for a renewal license. The only other neighboring state with an initial fee as high as Maryland is West Virginia (\$500). However, DLS notes that West Virginia is also the only other state that, like Maryland, has a separate board for the regulation of acupuncture. The remaining states have at least some form of consolidation with other boards or regulate acupuncture as part of a larger professional licensing division. Based on the range in the number of licensees in surrounding states, it appears that board consolidation likely plays a large role in the lower levels of fees in other states.

**Exhibit 7**  
**Acupuncture Licensure Fees by State**  
**As of September 2012**

	<u>MD</u>	<u>DE</u>	<u>NJ</u>	<u>PA</u>	<u>VA</u>	<u>WV</u>
Fee						
Initial fee <sup>1</sup>	\$450	\$165	\$370	\$30	\$130	\$500
Renewal fee <sup>2</sup>	525	165	270	20/40	135	425
Number of Licensees	939	37	560	646	427	58
Separate Board <sup>3</sup>	Yes	No	No	No	No	Yes

<sup>1</sup> Includes application fee.

<sup>2</sup> In Pennsylvania, acupuncturists can be licensed by either the Board of Medicine or the Board of Osteopathic Medicine based on level of training and length of study.

<sup>3</sup> Virginia and New Jersey have smaller acupuncture boards that share some responsibility with the primary licensing board.

Source: Maryland State Acupuncture Board, Delaware Board of Medical Licensure and Discipline, New Jersey Acupuncture Examining Board, Pennsylvania State Board of Medicine, Virginia Department of Health Professionals, and West Virginia Board of Acupuncture

## Board Revenues and Expenditures

As shown in **Exhibit 8**, board revenues from licensure fees have remained fairly consistent over the past five fiscal years, with average annual revenues of about \$233,000. Revenues have shown an average annual increase of 1.9%. Revenue patterns reflect biennial license renewals.

Expenditures for the board have averaged about \$223,000, with an average annual increase of 5.0%. Expenses include indirect costs paid to DHMH for departmental costs such as information technology and human resources expenses and direct costs for personnel and all other expenses. The average annual increase in direct costs over the past four years was 6.3% and was mainly driven by increases in salaries and wages.

The increase in board expenditures from fiscal 2010 to 2011 was the result of increasing the part-time executive director position from 50% to 80%. The executive director explained that, although the board has long needed the position at 80%, the current director could not move up to 80% until 2011 for personal reasons. The executive director and the board felt it appropriate to increase the position to 80% at that time.

**Exhibit 8**  
**Financial History of the State Acupuncture Board**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Beginning Balance	\$9,830	\$26,881	\$17,720	\$29,505	\$37,048
Revenues	225,751	215,621	221,708	243,031	241,711
<b>Total Available Funds</b>	<b>235,581</b>	<b>242,502</b>	<b>239,428</b>	<b>272,536</b>	<b>278,759</b>
Direct Costs	175,197	185,802	161,663	200,126	217,203
Indirect Costs	33,503	\$38,980	38,594	35,362	31,244
<b>Total Expenditures</b>	<b>208,700</b>	<b>224,782</b>	<b>200,257</b>	<b>235,488</b>	<b>248,477</b>
Transfer to General Fund			\$9,666		
<b>Ending Fund Balance</b>	<b>\$26,881</b>	<b>\$17,720</b>	<b>\$29,505</b>	<b>\$37,048</b>	<b>\$30,282</b>
Balance as % of Expenditures	12.9%	7.9%	14.7%	15.7%	12.2%
<b>Target Fund Balance</b> (20% of expenditures)	<b>\$41,740</b>	<b>\$44,956</b>	<b>\$40,051</b>	<b>\$47,098</b>	<b>\$49,695</b>

Source: State Acupuncture Board

### Fund Balance

Each special-funded board maintains a fund balance of approximately 20% to 30% of annual expenditures to cover unanticipated expenditures or fluctuations in licensing volume and associated revenues. The board's executive director states that the board is comfortable with a target fund balance of 20% of expenditures. However, as shown in Exhibit 8, the board's fund balance has been below 16% of expenditures every year since fiscal 2008.

During the 2012 session, the budget committees expressed concern over the fund balances for various health occupations boards. The *Joint Chairmen's Report* (JCR) required DHMH to submit a report detailing five-year budget projections for the boards. **Exhibit 9** demonstrates the board's projected revenues, expenses, and fund balances for the next five years.

Based on these projections, the board's revenues are anticipated to increase beginning in fiscal 2014 due to the rising numbers of renewals each year. The board estimates there will be approximately 30 to 35 more renewals in 2014. However, board revenues and expenditures remain extremely close, preventing the board from building its fund balance up to or near the 20% of expenditures target, with the highest projected fund balance only 14% by the end of fiscal 2015.

**Exhibit 9**  
**Financial Projections of the Maryland Acupuncture Board**  
**Fiscal 2013-2017**

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Beginning Balance	\$30,310	\$25,546	\$31,707	\$37,691	\$33,394
Revenues	249,000	265,000	270,000	265,000	270,000
Total Available Funds	279,310	290,546	301,707	302,691	303,394
Total Expenditures	253,764	258,839	264,016	269,296	274,682
Ending Fund Balance	\$25,546	\$31,707	\$37,691	\$33,394	\$28,712
Balance as % of Expenditures	10%	12%	14%	12%	10%

Note: Fiscal 2013 figures reflect the current appropriation, while fiscal 2014 through 2017 figures are estimates.

Source: Department of Health and Mental Hygiene

## Financial Considerations for the Board

As discussed above, board revenues have not kept pace with expenditures in recent fiscal years. In fiscal 2013, board expenditures will exceed revenues by \$5,503. Furthermore, the board's fund balance will be less than half of the targeted 20% of expenditures. Recently submitted projections for future years do not project an increase in the fund balance. Given this fiscal position, the board will need to take action to keep revenues and expenditures in line by either decreasing expenditures or increasing revenues. There are several options available to the board to accomplish this goal. For example, the board may wish to consider:

- **Reducing the Executive Director Position from 80% to 50%:** With an established board and regulatory system, the board could operate effectively under this change, while reducing expenditures by approximately \$25,000 annually. If the board pursues regulation of herbal medicine, this position may need to remain greater than 50%.
- **Increasing Fees:** Though the board is reluctant to increase licensing fees given the high fees already charged relative to other states, the board could explore increasing other fees such as instituting a duplicate license fee, raising the license verification fee, or raising the initial license fee to be equivalent to the renewal fee. Together such changes could yield additional annual revenues of approximately \$9,600. Alternatively, should the board choose to pursue regulation of herbal medicine, additional revenues could be collected through new fees for the issuance of herbal medicine certifications.
- **Sharing Additional Resources with Other Health Occupations Boards:** The board has expressed the desire to remain an independent board and, though small relative to other boards, the licensee base of acupuncturists is growing. However, to avoid increasing fees,

the board could share additional resources with other boards or explore the potential to pool funding with other smaller boards.

## **Recommendations**

The State has an interest in licensing acupuncturists, registering ADSs, and certifying individuals to practice acupuncture on animals to ensure the welfare of the citizens of Maryland. The board was very helpful and responsive during the evaluation process. The staff of the board responded quickly to requests for information and began implementing suggestions made by DLS. Furthermore, board members and staff made their own suggestions for improvement during the process.

DLS finds that the board is sufficiently meeting its mandated duties, including efficiently issuing licenses and taking disciplinary actions against licensees where warranted. The board has a good relationship with MAS, which described the board as responsive, communicative, and helpful. The board has been responsive to legislative changes, implementing them and updating regulations in a timely manner. **Therefore, DLS recommends that LPC waive the State Acupuncture Board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025.**

However, given the fiscal pressures on the board, **DLS recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and DLS by October 1, 2013. This report should build on the figures provided by the board in its JCR response and address the options suggested by DLS to keep revenues and expenditures in balance. Specifically, the report should note any fee increases, changes to the executive director position, and any options for sharing additional resources or pooling funding with other boards and how such changes would modify the board's fund balance.**



**Appendix 1. Written Comments of the  
State Acupuncture Board**

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STATE OF MARYLAND  
DHMH

Maryland Department of Health and Mental Hygiene  
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

November 15, 2012

Mr. Warren G. Deschenaux  
Director, Office of Policy Analysis  
Department of Legislative Services  
90 State Circle  
Annapolis, Maryland 21401

Dear Mr. Deschenaux:

The Maryland Board of Acupuncture (the "Board") has received and reviewed the Department of Legislative Services (DLS) Exposed Draft Sunset Review Evaluation report of the Board. The Board concurs with the report and has the following comments to offer:

***DLS recommends the board continue to work with BPTE, DHMH, and the affected professional associations to ensure appropriate regulation of dry needling.***

The Board concurs and will continue to work with BPTE, DHMH and affected professional associations to ensure appropriate regulation of dry needling. Dr. Sharfstein recently solicited public comment on the draft regulation and subsequently provided recommendations for changes to the Physical Therapy Board. The Board agrees with his recommendations and believes that the changes will ensure accountability of the practice and will provide public safety. However, the Board remains very concerned that physical therapists continue to perform dry needling without the proper training as advised by the Attorney General's Office and more importantly, in the absence of regulations.

***The Board should explore why there have not been any additional (animal acupuncture) certifications issued since fiscal year 2008.***

The Board believes that the low rate of animal certifications processed by the Board remains two fold. In 1997, HB 277 required that licensed acupuncturists complete a training program in animal acupuncture that was approved by the Board and consisted of at least 135 hours by a school holding nationally recognized accreditation. To date, there is only one school in the country, TAI Sophia, which offers such a program. Unfortunately, the program is only offered on a triennial basis. The last animal acupuncture course offered by Tai Sophia was in 2008. TAI Sophia offered the program this fall and as a result, the Board recently received several applications.

Secondly, the program is costly. Students pay over \$7,200 for the 12 credit program. In this economy, licensed acupuncturists may find it difficult to finance the additional costs for books, supplies and a student loan to complete this program.

***DLS recommends that the number of ADS registrations be consistently tracked by the board. The board should also explore potential reasons for the low number of ADS registrations, including looking at the experiences of other states.***

The Board currently tracks the number of ADS registrations but has not included the information in the monthly State Stat report or the annual Managing for Results. The Board will ensure that these numbers are included in future reports. As suggested, the Board will exam potential reasons for the low number of ADS registrations and will request data from other states.

***DLS recommends that the (disciplinary case) spreadsheet be made more user-friendly and searchable in order to support analysis.***

As stated in the report, the Board currently receives between 6 and 10 complaints a year and finds that the current excel data base is sufficient to track such low number of cases. However, should the Board notice an increase in complaints, the Board will be certain to implement a more accessible database.

In addition the Board would like to express its appreciation to the DLS staff for their hard work in constructing this comprehensive report. Please do not hesitate to contact Ms. Penny Heisler, Executive Director, at 410-764-5925, if you require additional information or have further questions regarding the Board's comments.

Sincerely,



Steve Kaufman, L.Ac., Chair

cc: Secretary Joshua Sharfstein, MD, DHMH  
Mr. Patrick D. Dooley, Chief of Staff  
Mr. Karl S. Aro, Executive Director, DLS  
Penny Heisler, Executive Director

# Preliminary Evaluation of the State Board of Dietetic Practice

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2025**

**Require Follow-up Report by October 1, 2013**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process also known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Dietetic Practice last underwent a full evaluation as part of sunset review in 2003. Based on that evaluation, DLS recommended that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2015. DLS also recommended that the board submit a follow-up report to certain committees of the General Assembly by October 1, 2004, on implementation of the recommendations contained in the sunset report. Chapter 439 of 2004 extended the board’s termination date and required DLS to conduct a sunset review of the board by July 1, 2014.

In conducting this preliminary evaluation, DLS staff reviewed prior evaluations of the board; applicable State law and regulations; recent legislative and regulatory actions; the board’s operating budget, meeting minutes, annual reports, and newsletters; as well as licensing, complaint, and disciplinary data. DLS staff conducted interviews with the executive director and board president. DLS also examined data on national industry trends, surveyed the Maryland Academy of Nutrition and Dietetics (formerly the Maryland Dietetic Association) and the Maryland Nutritionists Association, and attended a board meeting.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been

made throughout the document; therefore, references in board comments may not reflect the final version of the report.

## The Practice of Dietetics

Dietitians and nutritionists are experts in food and nutrition who advise individuals on what food to eat in order to lead a healthy lifestyle. The work of dietitians and nutritionists includes assessing patients and clients, explaining nutrition issues, and developing meal plans and nutritional programs. While the majority of dietitians and nutritionists work in hospital settings, others work in nursing care facilities, outpatient care centers, physician offices, schools, and cafeterias. Some dietitians and nutritionists are self-employed. Specialties for dietitians and nutritionists include clinical dietitians, who provide medical nutrition therapy; management dietitians, who plan meal programs; and community dietitians, who educate the public on topics related to food and nutrition.

The Maryland Licensed Dietitian-Nutritionists Act defines “practice dietetics” as the application of principles derived from integrating knowledge of food, biochemistry, physiology, management science, behavioral science, and social science to human nutrition, including:

- assessing individual and community food practices and nutritional status – using anthropometric, biochemical, clinical, dietary, and demographic data – for clinical, research, and program planning purposes;
- developing, establishing, and evaluating nutritional care plans that establish priorities, goals, and objectives for meeting nutrient needs for individuals or groups;
- nutrition counseling and education as a part of preventive or restorative health care throughout the life cycle;
- determining, applying, and evaluating standards for food and nutrition services; and
- applying scientific research to the role of food in the maintenance of health and the treatment of disease.

## Employment in Dietetics Is Expected to Grow

According to the U.S. Department of Labor’s Bureau of Labor Statistics’ *Occupational Handbook*, approximately 64,400 dietitians and nutritionists were employed nationwide in 2010, and projections show that the jobs will increase 20% by 2020. The growth is due, in part, to greater interest in the role of food as part of preventative health care. Additionally, the aging of the U.S. population has led to an increased prevalence of diabetes and heart disease, both of which can be treated, at least in part, through a change in diet.

## State Board of Dietetic Practice

The State Board of Dietetic Practice was established in 1985 to protect the lives and health of the citizens of Maryland. The board fulfills its mission by issuing dietitian-nutritionist licenses, setting standards for the practice of dietetics, developing and enforcing regulations, resolving complaints, and educating the public. The board also enforces title protection of “licensed dietitian-nutritionist” to those individuals who are licensed by the board.

The board comprises nine members. Seven members are licensed dietitian-nutritionists and two are consumers. As shown in **Exhibit 1**, five of the licensed members must represent certain specialty areas of practice. The two consumer members may not have any connection to the practice of dietetics. All members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene and the advice and consent of the Senate. For the licensed dietitian-nutritionist members, the Secretary makes recommendations to the Governor from a list of qualified individuals compiled by the board, the Maryland Academy of Dietetics and Nutrition, and the Maryland Nutritionists Association. Once appointed, all members serve four-year, staggered terms. No member may serve more than two consecutive full terms, though all may serve until a successor is named. The board currently has no vacancies.

### Exhibit 1 Required Board Composition

<u>Number of Members</u>	<u>Type of Member/Specialty Area of Practice</u>
1	Clinical Dietetic Practice
1	Community or Public Health Dietetic Practice
1	Administrative Dietetic Practice
1	Consulting Dietetic Practice
1	Faculty Member in the Field of Dietetics or Nutritional Science
2	Licensed Nutritionists Who Are Not Registered Dietitians
2	Consumer Members

Source: Laws of Maryland

The board’s staff consists of a part-time administrator and a full-time administrative assistant. Staff duties include responding to licensees and the public by phone or email; attending bimonthly board meetings; mailing initial licenses, license renewal notices, and renewal licenses; verifying the completion of continuing education units; and maintaining board files. Other shared personnel support the board. Investigators are hired on a contractual basis and paid hourly wages. An assistant Attorney General is provided by the Department of Health

and Mental Hygiene (DHMH) for which the board pays its share of associated costs. A regulations coordinator and fiscal and information technology personnel are shared with other boards. DHMH charges the board for certain support services, such as personnel, timekeeping, and training, through an indirect cost assessment. Though most board staffing is shared, it appears sufficient to meet the administrative needs of the board.

## **Regulation of Dietitians and Nutritionists in Maryland**

Maryland began regulating the practice of dietetics in 1985 when the General Assembly established a license for dietitians. One year later, the General Assembly established a separate license for nutritionists. The original distinction between the two licenses was that licensing requirements for nutritionists included the option of completing a master's or doctoral degree whereas licensing requirements for dietitians did not. Although nutritionists were not required to have an advanced degree, because the option was available for them and not for dietitians, it became the custom that professionals in dietetic practice holding a master's or doctoral degree opted for licensure as a nutritionist. Likewise, those professionals in dietetic practice who did not hold a master's or doctoral degree took the licensed dietitian route. In 1994, legislation passed retaining separate licenses for dietitians and nutritionists but making the requirements for each license identical by including the option of having an advanced degree as a qualification for both dietitian and nutritionist licenses.

After a full sunset evaluation in 2003, DLS recommended that the separate licenses for dietitians and nutritionists be combined into a single license for dietitian-nutritionists. DLS found that there was no difference in the licensure requirements or scope of practice for the two professions. Chapter 439 of 2004 established a license for dietitian-nutritionists and phased out the separate licensing of dietitians and nutritionists.

Maryland dietitians and nutritionists are represented by two industry groups, the Maryland Academy of Nutrition and Dietetics and the Maryland Nutritionists Association. On September 24, 2011, the American Dietetic Association changed its name to the Academy of Nutrition and Dietetics. Likewise, the Maryland Dietetic Association changed its name to the Maryland Academy of Nutrition and Dietetics. **A technical correction should be made in statute to reflect this change.**

## **Legislative Changes Affecting the Board Since the 2003 Sunset Review**

As shown in **Exhibit 2**, only a handful of legislative changes have affected the board since the last sunset review in 2003. The board has successfully implemented these changes.

**Exhibit 2**  
**Major Legislative Changes Since the 2003 Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2004	439	<p>Extends the board's termination date by 10 years to July 1, 2015.</p> <p>Requires DLS to conduct a sunset review of the board by July 1, 2014.</p> <p>Creates a single dietitian-nutritionist license for the practice of dietetics and phases out the existing dietitian licenses and nutritionist licenses.</p> <p>Limits use of the titles "nutritionist" and "dietitian-nutritionist" to individuals who are licensed to practice dietetics.</p> <p>Alters the qualification requirements and nomination process for board members.</p> <p>Requires the board and DHMH to report to certain committees of the General Assembly on or before October 1, 2004, on the board's progress in implementing the recommendations of the 2003 DLS sunset evaluation report.</p>
2006	382	<p>Authorizes the board to issue subpoenas, summon witnesses, administer oaths, and take affidavits and testimony.</p> <p>Authorizes board members to receive compensation.</p> <p>Consolidates and enhances the requirements for licensure as a dietitian-nutritionist.</p> <p>Requires national certification as a prerequisite for licensure.</p> <p>Repeals a provision of law that previously authorized an individual to practice without a license if the application process for licensure had been initiated but not yet completed.</p> <p>Expands the board's authority to waive an examination requirement.</p> <p>Authorizes the board to place licensees on inactive status.</p> <p>Clarifies disciplinary action, penalty, and hearing provisions.</p> <p>Authorizes the board to impose civil monetary penalties of up to \$5,000 instead of or in addition to suspending or revoking a license or reprimanding a licensee.</p> <p>Alters the composition of the Dietetic Rehabilitation Committee.</p>

- 2010 533/534 Set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and other administrative matters.
- Require each board, to the extent permitted by administrative and fiscal resources, to establish a disciplinary subcommittee to be responsible for the investigation of complaints and other aspects of the disciplinary process.
- Establish a six-year statute of limitations on the bringing of charges by a board against a licensee.
- Require boards to adopt sanctioning guidelines and post final public orders on the boards' websites.
- Require board membership to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.
- Require boards to notify licensees of board vacancies.
- Require boards to develop a training process and materials for new board members.
- Require boards to collect racial and ethnic information about applicants.
- Authorize boards to establish a program that provides training, mentoring, or other forms of remediation to licensees who commit a single standard-of-care violation.
- Require the Secretary of Health and Mental Hygiene to confirm the appointment of an administrator or executive director to each board and establish goals for the timeliness of complaint resolution.

Source: Laws of Maryland

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## Legislative Response to Unlicensed Individuals

Historically, the board has struggled with unlicensed individuals practicing dietetics. Chapter 382 of 2006 addressed this issue by expanding the board's authority to issue subpoenas, summon witnesses, administer oaths, take affidavits, and take testimony on matters relating to the board's jurisdiction, rather than only in connection with a board hearing. The legislation also defined "medical device," "medical nutrition," and "supervision"; expanded the board's authority to impose civil monetary penalties; and modified the board's grounds for taking disciplinary action by providing that:

- use of misleading, deceiving, or untruthful advertising matter or other information no longer had to be *intentional* to be subject to board disciplinary action;
- failure to file a required report or record or impeding or obstructing the filing of the report or record no longer had to be *willful* to be subject to board disciplinary action; and

- an individual who failed to cooperate with a lawful investigation conducted by the board would be subject to board disciplinary action.

Further, Chapter 382 provided the board with more options for disciplining licensees by adding provisions that prohibit the surrender of a license during an investigation unless approved by the board and authorizing the board to impose a civil fine of up to \$5,000.

## **General Revisions to Health Occupations Boards**

Chapters 533 and 534 of 2010 set standardized guidelines for all health occupations boards' policies and procedures. The legislation focused on the disciplinary process and sanctioning of licensees; board vacancies, membership, and training; the appointment of an executive director; the posting of final orders on a board's website; data collection; and the role of the assistant Attorneys General in the disciplinary process. The small size of the board and low number of complaints make some of the requirements difficult to implement; however, the board has complied with the requirements, including the adoption of sanctioning guidelines, which became effective in April 2012.

## **Licensure of Dietitian-nutritionists**

An individual must be licensed by the board before practicing dietetics in Maryland. Licensure applicants must be of good moral character and at least 18 years of age. Additionally, an applicant must:

- complete academic requirements for the field of dietetics and have a baccalaureate degree from an accredited college or university; or
- have a master's or doctoral degree from an accredited college or university in nutritional sciences (with emphasis in human nutrition), food and nutrition, dietetics, human nutrition, community nutrition, public health nutrition, or equivalent training approved by the board.

An applicant must have satisfactorily completed a program of supervised clinical experience approved by the board and submit to the board proof of certification by the Certification Board for Nutritional Specialists or proof of registration with the American Academy of Dietetics and Nutrition. A license expires on the date set by the board and may not be renewed for a term longer than two years. Before the license expires, the licensee may renew the license for an additional two years if the licensee meets specified requirements.

The board issues new and renewal dietitian-nutritionist licenses in a timely manner, with the majority of the applications processed within two days.

## Licensure Activity Remains Stable

**Exhibit 3** shows licensing activity for fiscal 2008 through 2012 and projected activity for fiscal 2013. Over the past five fiscal years, the board issued a total of 638 initial licenses (an average of 128 annually), renewed 3,108 licenses (an average of 622 annually), placed 159 licenses on inactive status, reactivated 17 licenses, and reinstated 27 licenses. As of June 30, 2012, a total of 1,588 active licensees and 145 inactive licensees were under the jurisdiction of the board. This figure represents all active licensees on record with the board as of that date. As the figure is based on one point in time, it does not reflect the sum of licenses issued over the two-year licensure period shown below in Exhibit 3.

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### Exhibit 3 Licensing Activity Fiscal 2008-2012

<u>License</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>Projected FY 2013</u>
Initial	125	133	123	130	127	120
Renewal	589	613	607	657	642	620
Inactive	27	43	30	31	28	10
Reactivation	1	3	3	4	6	5
Reinstatement	3	7	7	5	5	5
<b>Total</b>	<b>745</b>	<b>799</b>	<b>770</b>	<b>827</b>	<b>808</b>	<b>760</b>

Source: State Board of Dietetic Practice

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DLS notes that approximately 100 licensees fail to renew each year. The board indicated that the loss of licensees is common due to individuals who retire, take extended maternity leave, pass away, or move out of state, but that the economy has also played a role. To date, the loss of licensees has not been large enough to impact the board's finances as it is offset by a slightly larger number of new licensees annually.

## Complaints

The board is charged with receiving, investigating, and responding to questions and complaints. As shown in **Exhibit 4**, on average, the board receives approximately 13 complaints per year, most of which are related to practicing without a license. The board resolves almost 90% of complaints within six months.

**Exhibit 4**  
**Resolution of Complaints Received**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
New Complaints	19	14	14	11	9
<i>Type of Complaints</i>					
Practicing Without a License	6	10	13	10	7
Aids in Practice Without a License	7				
Standard of Care	6	2			1
Other		2	1	1	1
<i>Time for Resolution</i>					
Within Six Months	16	12	13	11	8 <sup>1</sup>
Required More than Six Months	3	2	1		
<i>Disposition of Resolved Complaints</i>					
Closed Without Action	6	3	4	5	5
Closed/Referred to Another Board	2				
Closed/Letter of Law	2	6	1		
Closed/Letter of Education	7		1		
Closed/Letter of Admonishment	1	2			
Closed/Cease and Desist Letter	1	2	8	6	3
Formal Charges/Consent Agreement		1			

<sup>1</sup> One case from fiscal 2012 is pending as of September 24, 2012, while all other cases have been resolved.  
Source: Department of Legislative Services, State Board of Dietetic Practice

### **Board Receives Large Number of Unlicensed Practice Complaints**

Most board complaints concern unlicensed individuals. These complaints come from the public, licensees, other health occupations boards, the trade associations, and DHMH's Office of Health Care Quality. Frequently, the complaints refer to websites that mislead the public to believe a person is authorized to practice dietetics and provide medical nutrition.

The Maryland Licensed Dietitian-Nutritionists Act prohibits a person from practicing dietetics in the State unless licensed by the board, while explicitly excluding a person that provides services and information related to nonmedical nutrition, which includes weight loss programs, health food stores, and other sources of nonmedical nutrition. Unfortunately, it is difficult for the public and potential providers of nutritional information to determine the

difference between practicing dietetics and providing services and information related to nonmedical nutrition. The Act and corresponding regulations attempt to distinguish the two, but inconsistent definitions and terminology make it difficult to understand. For example, § 5-301 of the Health Occupations Article uses the term “practice dietetics,” while the exemption clauses in § 5-103(b) and (d) of the Health Occupations Article refer to “providing services and information related to nonmedical nutrition.” Both “practice dietetics” and “medical nutrition” are defined by statute, but “nonmedical nutrition” is only defined in regulation. Further, neither the definition of “practice dietetics” nor the definition of “medical nutrition” refers to the other, and the definitions in statute do not match the definitions in regulation. **The board should work with relevant stakeholders to propose clarification of these definitions.**

### **Board Has Limited Authority over Unlicensed Practice Complaints**

The board remains limited in the action it can take in response to complaints alleging the unlicensed practice of dietetics. The board can refer a complaint of this nature to the Office of the Attorney General (OAG) for criminal prosecution. If OAG decides to move forward with the complaint, persons found to be practicing dietetics without a license or otherwise misrepresenting themselves may be found guilty of a misdemeanor and subject to fines of up to \$1,000 and imprisonment for up to one year. Despite having this authority, the board reports it has never taken this action.

Instead, the board closes complaints concerning the unlicensed practice of dietetics by sending letters of law or cease and desist letters. A letter of law cites the statutory definitions for “practice dietetics” and “medical nutrition” and informs an unlicensed individual that statute prohibits an individual from practicing dietetics without being licensed by the board. Further, a letter of law includes the statutory provisions for title protection and criminal sanctions. A cease and desist letter is similar to a letter of law except that it states that the unlicensed individual must immediately stop a specific action and includes the term “cease and desist.”

Recently, the board stopped sending cease and desist letters in response to an opinion issued by the Federal Trade Commission (FTC) concerning antitrust implications on the interaction between health occupations boards and unlicensed individuals. On December 7, 2011, FTC issued a final order and opinion regarding the North Carolina Board of Dental Examiners. The decision prohibits that board from issuing cease and desist orders to nondentist teeth whitening providers. The American Medical Association has appealed the decision to the U.S. Court of Appeals for the Fourth Circuit. The opinion is tentatively scheduled for oral argument in December 2012. Although the issue is not directly related to the practice of dietetics, it has given the State Board of Dietetic Practice pause in its actions against unlicensed individuals. **Once the court has ruled on this case, the board should consider whether additional statutory authority would better enable the board to handle complaints concerning unlicensed individuals. The board may wish to amend its statute to include specific authority to issue cease and desist letters or to seek injunctive relief, as is authorized in the Health Occupations Article for other health occupations boards.**

**Board Finances**

The board is entirely special funded by fees collected for licensing and other board services. In fiscal 2008, the board established an “inactive status fee” of \$75 and a “reactivation after inactive status fee” of \$150 in order to comply with Chapter 382 of 2006, which established the inactive license. Additionally in fiscal 2008, the board established a \$50 fee for failure to notify the board of a change of address. The board’s last fee increase took effect in fiscal 2009 when it raised the biennial renewal fee from \$175 to \$250. The board does not anticipate the need to raise fees in the near future.

As shown in **Exhibit 5**, board expenditures have remained relatively stable, with the exception of a large jump from fiscal 2008 to 2009. The board indicates that the increase was due to the cost of referring a complaint to the Office of Administrative Hearings in fiscal 2009, a rare occurrence for the board, and lower than usual expenditures in fiscal 2008. More specifically, the board had no health insurance expenditures in fiscal 2008 and the administrative director performed some work for the Community Health Resources Commission for which the board’s portion of shared staffing costs was reduced. With the exception of fiscal 2008, board expenditures have averaged just under \$202,000.

**Exhibit 5**  
**Financial History of the State Board of Dietetic Practice**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Beginning Balance	\$13,531	\$2,668	\$0	\$4,658	\$14,199
Revenues	151,500	202,089	201,952	219,356	216,540
<b>Total Available Funds</b>	<b>\$165,031</b>	<b>\$204,757</b>	<b>\$201,952</b>	<b>\$224,014</b>	<b>\$230,739</b>
Direct Costs	137,980	184,336	169,699	178,011	180,077
Indirect Costs	24,383	20,421	23,857	28,082	22,589
<b>Total Expenditures</b>	<b>\$162,363</b>	<b>\$204,757</b>	<b>\$193,556</b>	<b>\$206,093</b>	<b>\$202,666</b>
Transfer to General Fund			3,738	3,722	
<b>Ending Fund Balance</b>	<b>\$2,668</b>	<b>\$0</b>	<b>\$4,658</b>	<b>\$14,199</b>	<b>\$28,073</b>
Balance as % of Expenditures	2%	0%	2%	7%	14%
Target Fund Balance (30% of expenditures)	\$48,709	\$61,427	\$58,067	\$61,828	\$60,800

Source: State Board of Dietetic Practice

As described above, board revenues are generated by biennial licensure fees, with slightly more than half of licensees renewing in odd-numbered fiscal years and slightly less than half of licensees renewing in even-numbered fiscal years. Revenues jumped by nearly \$51,000 between fiscal 2008 and 2009 due to an increase in the renewal fee. With the exception of fiscal 2008, revenues have averaged just under \$210,000. In fiscal 2008 and 2009, board expenditures exceeded fee revenues. Since the renewal fee was increased in fiscal 2009, fee revenues have consistently exceeded expenditures.

Each special-funded board maintains a fund balance of approximately 20% to 30% of annual expenditures to cover unanticipated expenses or fluctuations in licensing volume and associated revenues. Because of its small size, DHMH has set a target fund balance of 30% of expenditures for this board. However, the board has historically kept an even lower balance. For example, at the time of the board's last sunset evaluation, the board's fiscal 2003 ending fund balance was \$2,870 (2% of annual expenditures). In fiscal 2008, the fund balance was similarly low at \$2,668 (2% of expenditures). Recognizing that funds otherwise would not be sufficient to cover costs, the board took appropriate action by increasing fees as noted above. Unfortunately, the board's costs increased that same year as discussed previously. Even with the additional revenue from increased fees, these additional expenditures resulted in the board depleting its fund balance to zero by the end of fiscal 2009. The board had replenished its fund balance to \$28,073 (14% of expenditures) by the end of fiscal 2012. The board's fund balance is projected to be just under the 30% target by the end of fiscal 2013, assuming current licensing trends continue and fees remain the same.

In recent years, some health occupations boards have been required to transfer funds to the general fund. The Budget Reconciliation and Financing Act (BRFA) of 2010, required the board to transfer \$3,738 to the general fund for furloughs in fiscal 2010. The BRFA also required the board to transfer special fund savings realized from the implementation of furloughs to the general fund in fiscal 2011. Additionally, the BRFA transferred money from almost all of the health occupations boards in fiscal 2011, including \$796 from the board, and directed that the funds support the Central Business Licensing Project. Total transfers from the board to the general fund in fiscal 2011 were \$3,722. Without these transfers, the board's fund balance would have been higher.

During the 2012 session, the budget committees expressed concern over the fund balances for various health occupations boards. The *Joint Chairmen's Report* required DHMH to submit a report detailing five-year budget projections for the boards. **Exhibit 6** demonstrates the board's projected revenues, expenses, and fund balances for the next five years as provided in the *Joint Chairmen's Report* response.

**Exhibit 6**  
**Financial Projections of the State Board of Dietetic Practice**  
**Fiscal 2013-2017**

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Beginning Balance	\$28,073	\$52,711	\$66,575	\$75,353	\$72,722
Revenues	219,000	216,000	219,000	216,000	219,000
Total Available Funds	247,073	268,711	285,575	291,353	291,722
Total Expenditures	194,362	202,136	210,222	218,631	227,376
Ending Fund Balance	\$52,711	\$66,575	\$75,353	\$72,722	\$64,346
Balance as % of Expenditures	27%	33%	36%	33%	28%

Note: Fiscal 2013 figures reflect the current appropriation, while fiscal 2014 through 2017 figures are estimates.

Source: Department of Health and Mental Hygiene

Based on these projections, the board’s annual fee revenue should be sufficient to cover expenditures until fiscal 2016 and 2017, when expenditures will again begin to exceed revenues. However, the board’s fund balance is anticipated to continue to grow and in fact exceed the targeted 30% of expenditures in fiscal 2014 through 2016. Though it may remain slightly above target for this period, the board will then begin to spend down its balance beginning in fiscal 2017. If licensing activity remains consistent, this will allow the board to charge licensees stable fees for several years. **The board should continue to monitor its fund balance to remain at or below the established target.**

**Recommendations**

The General Assembly established the board to protect the public by identifying qualified sources of nutritional care through licensure. The need to protect the public has only increased during the information age where nutritional information is available to anyone with access to a computer. The board has fulfilled its duty through efficient and timely licensing and complaint resolution processes. For the continued benefit of the public health, Maryland should maintain its regulation of dietetic practice. **Therefore, DLS recommends that LPC waive the State Board of Dietetic Practice from full evaluation and that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2025.**

Through its continued regulation of dietitian-nutritionists, the board should consider addressing the recurring issue of unlicensed individuals in two ways. First, the board should

work with the Maryland Academy of Nutrition and Dietetics and the Maryland Nutritionists Association to more clearly define the difference between “practicing dietetics” and “providing services and information related to nonmedical nutrition.” Second, after the FTC decision has been resolved by the courts, the board should consider what, if any, additional authority it may need to more effectively address complaints alleging the unlicensed practice of dietetics. **DLS recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and DLS by October 1, 2013. This report should include any recommendations for legislative changes to clarify the practice of dietetics and any additional authority the board needs to address complaints alleging the unlicensed practice of dietetics.**

## **Appendix 1. Written Comments of the State Board of Dietetic Practice**

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STATE OF MARYLAND

DHMH

Board of Dietetic Practice

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

November 5, 2012

Jennifer B. Chasse, Principal Policy Analyst  
Department of Legislative Services  
Office of Policy Analysis  
90 State Circle  
Annapolis, MD 21401-1991

Dear Ms. Chasse:

The Board has reviewed the Exposure Draft of the evaluation of the State Board of Dietetic Practice and, in general, we concur with the findings and recommendations as proposed in the report.

If you have any questions or need additional information regarding the Board, please feel free to contact me at 410-764-4741.

Sincerely,

Marie M. Savage  
Director

cc: Secretary Joshua M. Sharfstein, M.D.  
Mr. Patrick D. Dooley  
Mr. Karl S. Aro  
Melanie A. Brooks, RD, LDN, Board Chair  
Board Members  
Ari Elbaum, Board Counsel

410-764-4733 Fax 410-358-1610 TTY 800-542-4964  
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Web Site: [www.dhmh.maryland.gov/dietetic/](http://www.dhmh.maryland.gov/dietetic/)



# Preliminary Evaluation of the State Board of Occupational Therapy Practice

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2025**

## **The Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process also known as sunset review because most of the regulatory entities or activities subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 entities according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Occupational Therapy Practice last underwent a preliminary evaluation as part of sunset review in 2001. Based on that evaluation, DLS recommended that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 11 years to July 1, 2015. Chapter 209 of 2002 extended the board's termination date and required DLS to conduct a sunset review of the board by July 1, 2014.

In conducting this preliminary evaluation, DLS staff reviewed statutory and regulatory changes related to occupational therapy; attended public board meetings and a closed executive session; and reviewed board documents including minutes, newsletters, and licensing, complaint, and financial data. Additionally, DLS staff conducted interviews with the board chairperson, the executive director, and a representative from the Maryland Occupational Therapy Association (MOTA).

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

## **Occupational Therapy**

Occupational therapy is defined as the therapeutic use of goal-directed activities to treat individuals with various impairments or prevent impairments from occurring. Title 10 of the Health Occupations Article governs occupational therapists (OTs) and occupational therapy assistants (OTAs). Before individuals may practice occupational therapy or limited occupational therapy, they must first be licensed by the State Board of Occupational Therapy Practice. As of September 2012, there were approximately 2,700 licensed OTs and over 500 licensed OTAs practicing in the State.

The goals of occupational therapy are the promotion of independence in daily life and the remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes. Examples of occupational therapy include teaching a patient how to sit up and move during an initial recovery period in a hospital following open heart surgery, working in a rehabilitation facility with a spinal cord injury patient on exercises to help the patient regain the skills required in daily life, or helping a client recover from a stroke in the home health environment by teaching basic life skills.

The settings for occupational therapy include hospitals, rehabilitation facilities, nursing homes, home health environments, and school systems. The various settings in which occupational therapy services are rendered are due to several factors, including trends in reimbursement policies, shorter hospital stays, growth in the geriatric population, and a focus on preschool programs and mainstreaming children with special needs.

The shift to the community-based setting provides less of an opportunity for interaction with and institutional oversight of licensees; thus, there is an increased need for guidance of occupational therapists in execution of duties. The Maryland Occupational Therapy Practice Act (Title 10 of the Health Occupations Article) specifically describes the principles and procedures for the proper practice of occupational therapy.

## **The State Board of Occupational Therapy Practice**

The State Board of Occupational Therapy Practice is housed within the Department of Health and Mental Hygiene (DHMH). The mission of the board is to protect the citizens of Maryland and to promote quality health care in the field of occupational therapy by:

- licensing OTs and OTAs;
- setting standards for the practice of occupational therapy; and
- receiving and resolving complaints from the public regarding OTs and OTAs who may have violated the Maryland Occupational Therapy Practice Act or related regulations.

The board consists of seven members appointed by the Governor, including four OTs, one OTA, and two consumers. Members serve four-year terms and may be reappointed once.

Section 10-203 of the Health Occupations Article authorizes the board to elect a chairperson and determine the appropriate duties. The prior chairperson resigned for medical reasons in August 2012. The vice chairperson has assumed the role of chair. With the resignation, there is currently no OTA member on the board.

The board is supported by an executive director, licensing coordinator, secretary, and network specialist, all of which are full-time positions. The board also employs an investigator on a contractual basis. The low volume of complaints and investigative work needed (which will be described later in this report) allows the board to manage without a full-time investigator. The board maintains a website at <http://dhmh.maryland.gov/botp> that is helpful to both licensees and the public.

### **Legislative and Regulatory Changes Since the 2001 Sunset Evaluation**

No significant statutory changes affecting the occupational therapy profession have been adopted since the last sunset evaluation, as shown as shown in **Exhibit 1**. However, significant legislation was passed just prior to the evaluation in 2000. Chapter 412 of 2000 added definitions for occupational therapy, limited occupational therapy, occupational therapy practice, limited occupational therapy practice, occupational therapy principles, occupational therapy procedures, and various levels of supervision. According to the board, these additions have served to improve the guidance and availability of information regarding licensees practicing occupational therapy. Regulations detailing the statutory changes and were adopted by the board in a timely manner.

Though not specific to occupational therapy, Chapters 533 and 534 of 2010 enacted standardized guidelines for all health occupations boards regarding the disciplinary process, sanctioning of licensees, and other administrative matters. The board is currently in compliance with most of the requirements of Chapters 533 and 534. The board's sanctioning guidelines were proposed in January 2012 and adopted in April 2012. The board posts final public orders on its website. The board is authorized to convene a disciplinary subcommittee, but due to the small size of the board, the full board handles these matters. The board collects racial and ethnic information about applicants on its application forms. The board sends out email notifications to members when there are board vacancies, as well as listing vacancies on the board website and notifying MOTA. Additionally, the board maintains manuals for new and current board members, and new members participate in a training program.

**Exhibit 1**  
**Legislative Changes Since the 2001 Sunset Review**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	209	<p>Extends the board's termination date by 11 years to July 1, 2015.</p> <p>Requires DLS to conduct a sunset review of the board by July 1, 2014.</p>
2010	533/534	<p>Set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and other administrative matters.</p> <p>Require each board, to the extent permitted by administrative and fiscal resources, to establish a disciplinary subcommittee to be responsible for the investigation of complaints and other aspects of the disciplinary process.</p> <p>Establish a six-year statute of limitations on the bringing of charges by a board against a licensee.</p> <p>Require boards to adopt sanctioning guidelines and post final public orders on the boards' websites.</p> <p>Require board membership to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.</p> <p>Require boards to notify licensees of board vacancies.</p> <p>Require boards to develop a training process and materials for new board members.</p> <p>Require boards to collect racial and ethnic information about applicants.</p> <p>Authorize boards to establish a program that provides training, mentoring, or other forms of remediation to licensees who commit a single standard-of-care violation.</p> <p>Require the Secretary of Health and Mental Hygiene to confirm the appointment of an administrator or executive director to each board and establish goals for the timeliness of complaint resolution.</p>

Source: Laws of Maryland

Despite a lack of legislative changes, the board has made a number of regulatory changes since the last sunset evaluation, as shown in **Exhibit 2**. The most significant of these is the change from a two-year to a one-year license renewal period, including adjusting the continuing competency requirements to correspond to the one-year renewal period.

## Exhibit 2 Regulation Changes Since the 2001 Sunset Review

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
2004	10.46.05.01	Increased application and renewal license fees.
2008	10.46.01	Added provisions to reflect a two-year licensure period; specified continuing competency requirements; authorized activities for OTAs; and established guidelines for supervision.
	10.46.02.01A	Updated general conduct requirement to provide services without regard to certain traits of the patient and to terminate treatment when appropriate to client needs.
	10.46.03.01, .02A, .04, and .05C	Established provisions for case resolution conference committees.
	10.46.04	Required recordkeeping of continuing competency activities and specified activities that count toward satisfying the requirements.
	10.46.05.01 and .02	Implemented a new fee schedule.
	10.46.06	Defined competency requirements for physical and electrical modalities.
2010	10.46.01.01B and .02	Reduced the length of the licensure period from 24 to 12 months and altered corresponding continuing competency requirements.
2011	10.46.04.02B, .04, .05, and .06	Aligned continuing competency requirements to require 12 contact hours annually and adjusted caps on the number of hours for specified activities that may be counted toward the yearly requirement.
2012	10.46.02.03	Established uniform standards for professional competency.
2012	10.46.07	Implemented sanctioning guidelines establishing minimum and maximum disciplinary sanctions for licensees.

Source: Code of Maryland Regulations, *Maryland Register*

### Licensing Activity

The board issues licenses for occupational therapy practice on an ongoing basis; the completed applications are reviewed monthly by the board. The board issues two different licenses: (1) an OT license for an individual to practice occupational therapy; and (2) an OTA license for an individual to practice limited occupational therapy. Additionally, the board may issue a temporary OT or OTA license to an individual who has met the education and experiential requirements but has not received the required national examination results.

To be licensed, an applicant must be of good moral character, be at least 18 years old, satisfy the board's education and experience requirements, and pass an exam given by the National Board for Certification in Occupational Therapy or another national credentialing organization. OTs and OTAs who renew their licenses or seek reinstatement must complete a minimum of 12 contact hours of continuing education within the one-year period preceding the application for renewal or reinstatement. The board offers online license renewal to all licensees. In fiscal 2012, 97% of OTs and 96% of OTAs renewed their licenses online.

The number of licensed OTs and OTAs has grown at a modest pace over the last five years, as shown in **Exhibit 3**. The U.S. Bureau of Labor Statistics predicts job growth in the occupational therapy field at 33% over the period from 2010 through 2020, with a median annual wage of \$72,320 in May 2010. Obtaining an OT license requires a master's degree, while an OTA license can be obtained following completion of a two-year educational program.

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**Exhibit 3**  
**Licensing Activity**  
**Fiscal 2008-2012**

<u>License</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Occupational Therapist					
Initial	197	192	187	187	216
Renewal	2,107	0	2,370	2,529	2,501
Subtotal	2,304	192	2,557	2,716	2,717
Occupational Therapist Assistant					
Initial	61	73	46	58	54
Renewal	422	0	496	533	520
Subtotal	483	73	542	591	574
<b>Total</b>	<b>2,787</b>	<b>265</b>	<b>3,099</b>	<b>3,307</b>	<b>3,291</b>

Note: In fiscal 2010, the board changed the renewal period from two years to one year. Fiscal 2009 reflects only new licensees as no renewals were processed.

Source: State Board of Occupational Therapy Practice

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The board has consistently met its Managing for Results (MFR) goals with respect to licensing. In fiscal 2012, the board processed 82% of applications for initial licensure in less than five days, while the remaining applications were processed within the 30-day MFR goal. The board also processes 100% of renewal licenses within the five-day MFR goal.

## Complaint Activity Has Been Minimal

The board investigates and acts upon complaints against OTs and OTAs if the complaint involves violations of the Maryland Occupational Therapy Practice Act. A description of the board’s complaint review process and the complaint form are provided on the board’s website. The complaints must be received in writing on the appropriate signed and dated form and cannot be anonymous.

Since fiscal 2008, the board has received a total of 29 complaints, as shown in **Exhibit 4**. The board credits the relatively low number of complaints to developing a jurisprudence exam that is designed to direct applicants to specific portions of the statute and regulations that have proven to be problem areas for licensees in the past. The exam is a requirement for new applicants and an option for renewing applicants. Many of the questions on the exam stem from scenarios presented to the board via the complaint and disciplinary process. According to the board, the goal of the exam is to use data about the nature of violations of the practice act as an opportunity to educate licensees and hopefully preempt future violations.

### Exhibit 4 Complaint Activity Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Complaints	4	8	7	7	3
Disciplinary Actions	3	7	5	1	2
Dismissals <sup>1</sup>	1	1	2	3	0
Under Investigation	0	0	0	3	1

<sup>1</sup> One complaint received in fiscal 2010 was dismissed due to the death of the licensee.

Source: State Board of Occupational Therapy Practice

After a complaint has been considered by the board, it may be referred to an investigator. Once the investigator has examined the case and presented the findings to the board, the board must decide if the complaint is within its jurisdiction and whether to take informal or formal action. In cases of formal action, the board votes to refer the case to the Office of the Attorney General for issuance of charges. In cases of informal action, letters of education or admonishment are sent to the licensees and, in certain circumstances, an informal meeting is held between the board and the licensee.

The majority of complaints involve issues of fraudulent billing, fraud in obtaining a license, or practicing under an expired license. The most frequent disciplinary actions are letters of education or admonishment; however, in the past four years, the board has revoked

two licenses and resolved two cases by accepting letters of surrender. Three cases remain open from fiscal 2011. These cases deal with fraudulent or deceptive use of a license, aiding and abetting an unauthorized individual in the practice of occupational therapy, and willfully making or filing a false report or record. One case remains open from fiscal 2012 that involves an allegation of aiding and abetting an unauthorized individual in the practice of occupational therapy.

The board has consistently met its MFR goals with respect to its handling of complaints. The board has maintained 100% compliance for completing investigative reports and initial board action on complaints within its 180-day target. The board has also maintained 100% compliance for completing board action on receipt of a proposed decision on a case from the Office of Administrative Hearings or a board hearing panel within its 30-day MFR target.

### **The Board's Current Financial Standing**

The board is self-supported entirely by special funds raised through licensing fees. Section 10-206 of the Health Occupations Article provides the board authority to set reasonable fees for the issuance and renewal of licenses and other provided services. Fees are to be set to approximate the cost of maintaining the board. These fees are the only means by which the board generates revenue. **Exhibit 5** shows the licensure fees charged by the board from fiscal 2008 through 2013. The board has been proactive in attempting to not only cover its costs as mandated by statute but also provide relief to licensees in the form of lower fees when practicable.

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**Exhibit 5**  
**Initial and Renewal Licensure Fees Charged**  
**Fiscal 2008-2013**

<u>License</u>	<u>FY 2008<sup>1</sup></u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>Projected FY 2013</u>
Initial OT/OTA	\$200	\$200	\$200	\$200	\$200
Renewal OT	297	68	183	113	163
Renewal OTA	210	40	110	80	95

<sup>1</sup> Fiscal 2008 reflects a two-year license renewal fee. The renewal period was reduced to one-year in fiscal 2010.

Source: State Board of Occupational Therapy Practice

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Typically, license fees are set in regulation. The board's fee schedule is found under Code of Maryland Regulations 10.46.05.01. The renewal fees for OTs and OTAs are listed as \$270 and \$210, respectively. However, the board has not come close to charging these amounts since the one-year renewal cycle went into effect in fiscal 2010. The board does list the fees to

be charged for the current year on its website. Despite this practice, there is no compelling reason why the fees listed under the regulation are not the current fees for the fiscal year. **The board should regularly update its regulations to reflect the actual licensure fees charged to licensees.**

In fiscal 2010, the board changed its two-year licensure period to a one-year period as a way to develop more stable and predictable revenues. As shown in **Exhibit 6**, the fiscal 2008 to 2009 renewal period brought in close to \$880,000 in revenues, which was to provide funding for fiscal 2008 and 2009. Annual renewals of licenses began in fiscal 2010. Revenues have fluctuated since then as the board adjusted to the one-year revenue stream while reducing its large fund balance.

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**Exhibit 6**  
**Financial History of the State Board of Occupational Therapy Practice**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Beginning Balance	\$183,423	\$543,384	\$282,871	\$58,018	\$168,004
Revenues	747,130	133,042	216,223	566,519	401,389
<b>Total Available Funds</b>	<b>\$930,553</b>	<b>\$676,426</b>	<b>\$499,094</b>	<b>\$624,537</b>	<b>\$569,393</b>
Direct Costs	\$344,425	\$357,038	\$399,440	\$373,611	\$401,600
Indirect Costs	42,744	36,517	41,636	72,869	82,666
<b>Total Expenditures</b>	<b>\$387,169</b>	<b>\$393,555</b>	<b>\$441,076</b>	<b>\$446,480</b>	<b>\$484,266</b>
Transfer to General Fund	-	-	-	10,053	-
<b>Ending Fund Balance</b>	<b>\$543,384</b>	<b>\$282,871</b>	<b>\$58,018</b>	<b>\$168,004</b>	<b>\$84,964</b>
Balance as % of Expenditures	140%	72%	13%	38%	18%
Target Fund Balance (20%)	\$77,434	\$78,711	\$88,215	\$89,296	\$96,853

Note: In fiscal 2010, the board changed the renewal period from two years to one year.

Source: State Board of Occupational Therapy Practice

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Total board expenditures have averaged about \$430,500 over the past five years, with a nearly \$100,000 increase from fiscal 2008 to 2012. Current annual expenditures are nearing \$500,000. Expenses include indirect costs paid to DHMH for departmental costs such as information technology and human resources expenses and direct costs for personnel and all other expenses.

The board's fund balance has varied greatly, in part due to the two-year renewal cycle and transition to a one-year cycle. According to the board, it aims to maintain a fund balance of

between 15% and 20% of expenditures. The board amassed a significant fund balance by fiscal 2008 (\$543,384 or 140% of expenditures) mainly due to a larger than anticipated number of licensees. At the time of the board's last evaluation, the board had projected that the number of licensees would stabilize at about 2,000; however, the number of licensees grew to 2,787 by fiscal 2008, yielding much greater fee revenues than anticipated and a corresponding increase in the fund balance. In response to this large balance, the board appropriately lowered fees in fiscal 2009 and began to spend down the fund balance. Since that time, the board has been successful in adjusting fees to maintain a more appropriate fund balance.

An issue arose during the 2012 legislative session with respect to the board's budget. Inaccurate revenue projections showed the board with a substantially inflated fund balance. This fund balance was targeted for a fund transfer of \$241,036 in the Budget Reconciliation and Financing Act (BRFA) of 2012 based on the assumption there would be \$649,571 in revenue in fiscal 2012, resulting in a fund balance of \$329,158. Revenues for fiscal 2012 were actually estimated at around \$400,000, resulting in a fiscal 2012 ending fund balance of \$84,964 (18% of expenditures). Therefore, no transfer was made through the BRFA.

Also during the 2012 session, the budget committees expressed concern over the fund balances for various health occupations boards. The *Joint Chairmen's Report* required DHMH to submit a report detailing five-year budget projections for the boards. **Exhibit 7** demonstrates the board's projected revenues, expenses, and fund balances for the next five years as provided in the response.

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**Exhibit 7**  
**Financial Projections of the State Board of Occupational Therapy Practice**  
**Fiscal 2013-2017**

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Beginning Balance	\$84,964	\$120,606	\$80,961	\$95,823	\$99,982
Revenues	550,000	485,000	550,000	550,000	550,000
Total Available Funds	634,964	605,606	630,961	645,823	649,982
Total Expenditures	514,358	524,645	535,138	545,841	556,758
Ending Fund Balance	\$120,606	\$80,961	\$95,823	\$99,982	\$93,224
Balance as % of Expenditures	23%	15%	18%	18%	17%

Source: Department of Health and Mental Hygiene

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The board's financial projections indicate that, assuming current fees and stable licensing activity, it will bring in approximately \$550,000 in fee revenues annually. However, the board plans a slight reduction in fees for one year only, which will result in fiscal 2014

revenues of \$485,000. This action is intended to maintain a fund balance of less than 20% of expenditures. The board believes the projected fund balances will be adequate given that unanticipated board expenses, such as litigation expenses, have been low enough in recent years to allow for a smaller fund balance. In the event that the fund balance is depleted by unanticipated expenses, the board can appropriately adjust licensure fees.

## **Recommendations**

The board plays an essential role in both protecting the health and safety of consumers in the occupational therapy arena and serving occupational therapy licensees. Based on this preliminary evaluation, DLS finds that the board and its staff are functioning well, maintaining appropriate standards, and promoting a high level of professionalism.

The occupational therapy industry appears to be stable. No legislation relating to the field has been enacted since the last sunset evaluation, which implies that the existing statutes are relevant and effective. With the exception of its regulations pertaining to licensure renewal fees, the board has continually promulgated corresponding regulations in a timely and effective manner. While the board has had some recent issues with its budget and fund balances, they have been appropriately addressed and the board anticipates stabilization in its revenues and fund balance now that licenses are renewed on an annual rather than biennial basis.

**Therefore, DLS recommends that LPC waive the State Board of Occupational Therapy Practice from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025.**



**Appendix 1. Written Comments of the  
State Board of Occupational Therapy Practice**

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STATE OF MARYLAND

# DHMH MD Board of Occupational Therapy Practice

Maryland Department of Health and Mental Hygiene

Spring Grove Hospital Center • Bland Bryant Building, 4<sup>th</sup> Floor • Baltimore, MD 21228

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

November 7, 2012

Jennifer B. Chasse  
Principal Policy Analyst  
Department of Legislative Services  
Office of Policy Analysis  
Maryland General Assembly

Dear Ms. Chasse:

Thank you for providing the Board of Occupational Therapy with a copy of the preliminary evaluation conducted by the Department of Legislative Services (DLS).

The Board has reviewed the document and finds no errors or discrepancies. The Board concurs with the recommendations contained in the report.

The Board wishes to thank you for your work in coordinating this review and also Mr. Phillip S. Anthony, Office of Policy Analysis, for all of his effort in conducting the evaluation. If any additional information is needed at this time, please do not hesitate to contact us.

Sincerely,

Dr. Christine Moghimi, ScD., MAS, OTR/L, Board Chairperson  
Maryland State Board of Occupational Therapy Practice  
55 Wade Avenue, Bland Bryant Building, 4<sup>th</sup> Floor  
Baltimore, Maryland 21228

Donna Ashman, Executive Director  
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cc: Secretary Joshua M. Sharfstein, M.D., DHMH  
Senator Paula Hollinger, Associate Director, Boards & Commission  
Mr. Patrick D. Dooley, Chief of Staff to the Secretary of DHMH  
Phillip Anthony, Office of Policy Analysis, MLIS  
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# Preliminary Evaluation of the State Board of Foresters

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2025**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee. Based on the preliminary evaluation, the Legislative Policy Committee decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Foresters last underwent a preliminary evaluation as part of sunset review in 2001. At that time, the board was fully constituted and had recently been given expanded regulatory authority. Thus, the preliminary evaluation recommended that the board be waived from further evaluation and that the board submit a follow-up report to address certain educational and administrative issues. Ensuing legislation, Chapter 212 of 2002, extended the board’s termination date by 11 years to July 1, 2015. However, full evaluations conducted in 1982 and 1992 recommended that the board be terminated because, the evaluations concluded, the practice of forestry does not pose a threat to public health, safety, and welfare and thus does not need to be regulated. Those recommendations were not adopted by the General Assembly.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations; recent legislative and regulatory actions; board minutes; prior sunset reviews; and other information provided by the board regarding revenues, expenditures, licensing, and complaints. In addition, DLS staff interviewed or corresponded with current members of the board, the executive director, licensees, the Society of American Foresters, the Maryland Forest Service, and the Maryland Forests Association.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document. Therefore, references in board comments may not reflect the final version of the report.

## **The State Board of Foresters**

The General Assembly established the State Board of Foresters in 1972 to oversee the practices and licensing of foresters in the State. The State Board of Foresters is one of 24 boards currently housed within the Division of Occupational and Professional Licensing within the Department of Labor, Licensing, and Regulation (DLLR). DLLR and the Department of Natural Resources (DNR) could not recall why the board was placed within DLLR instead of DNR. Although DLLR is the agency responsible for overseeing the licensing of various professions, DNR is responsible for managing forests, currently licenses tree experts and forest product operators, and employs about one-quarter of the foresters that the board licenses.

The State Board of Foresters licenses and regulates individuals who practice forestry in the State of Maryland. Section 7-101 of the Business Occupations and Professions Article defines forestry as “the application, for compensation, of scientific techniques to the planting, conservation, protection, and management of trees and related resources for their continuing use, whether found in large numbers and areas commonly known as forests, woodlands, and woodlots or in small groupings and individual trees in suburban and urban settings.” Thus, forestry differs from the activities of an arborist or tree expert, who generally focus on the health and physical condition of individual trees and not the whole forest.

Licensed foresters are trained to assist landowners in making informed decisions about the management of their forests, complying with restrictions on tree harvesting, and blending tree harvesting and tree removal goals with the environmental and economic values that a woodland is capable of producing. For example, the Maryland Forest Conservation Act requires that a person making application for subdivision or for grading or sediment control permits on areas greater than 40,000 square feet submit a forest conservation plan for the site. This document must be prepared by a licensed forester, licensed landscape architect, or other qualified professional as approved by the State or local authority.

The purpose of regulating a profession is generally to protect public health, safety, and welfare. As shown in **Appendix 1**, only 15 states regulate the practice of forestry. Thus, the vast majority of states are able to protect the public and their forests without regulating the practice of forestry.

## **Membership and Operation of the Board**

The board consists of seven members: five licensed foresters and two consumers. Each member of the board is required to be a resident of Maryland for at least three years and a citizen of the United States. The licensed forester members are required to have practiced forestry for at least 10 years. The consumer members must be members of the general public and may not be licensed or regulated by the board. Additionally, consumer members may not have a financial interest in or receive compensation from a person regulated by the board within the year before

appointment and while serving as a member. Although board members do not receive compensation, they are eligible for reimbursement of expenses.

Board members serve five-year staggered terms that begin on July 1. Board members continue to serve after their term has ended until a successor is appointed. All members of the board are appointed by the Governor with the advice and consent of the Senate. The Governor appoints each licensed forester member from a list of at least three names of licensed foresters submitted to the Governor by the Maryland members of the Maryland-Delaware Division of the Alleghany Society of American Foresters (SAF). The Governor may remove a member for incompetence, misconduct, or habitual or willful neglect of duty.

There are currently three vacancies on the board: one licensed forester member and both consumer members. There has not been a fully appointed board since 2005, and there has not been a consumer member on the board since 2010. Additionally, two of the four current board members are serving beyond the expiration of their terms. One of these two members has entered a new profession and is continuing to serve for the sole purpose of retaining a quorum for the board to conduct its statutory obligations.

The most critical problem related to the board vacancies is the board's difficulty in attaining a quorum to conduct business. Section 7-204 of the Business Occupations and Professions Article defines a quorum as a "majority of the authorized membership of the Board." As the board is composed of seven members, at least four members must be present to conduct business. This means that the board must have all four of its current members in attendance to draw a quorum, which can be difficult if one of the members has a schedule conflict, is ill, or has an emergency. Thus, the current vacancies often limit the board's ability to conduct business when even a single member is absent. To avoid any delay in approving a license application, board members often sign off on a license approval and then ratify the approval at a later date when there is a quorum.

It is not clear why seven years have passed since the board has had full membership. The board indicated that the Governor's Appointments Office is aware of the vacancies, and the board has solicited applications for the consumer positions and has asked SAF for names to replace the vacant forester positions. The board acknowledges that it is a challenge to find candidates to fill vacant board positions due to the time commitment and absence of compensation. Additionally, filling the consumer positions is particularly challenging for this board because there are a limited number of consumers of forest services. Furthermore, the Alleghany SAF only makes nominations for the forester positions once a year, which compounds the difficulties associated with filling the vacant board positions.

The board is required by law to meet twice per year, but it typically meets four times each year to review license applications, complaints, and conduct its other business. As noted above, it is sometimes difficult for the board to meet when scheduled due to the inability to establish a quorum, but the board does maintain good records of its meetings, licensing activity, and complaint activity.

## **Legislative Changes Affecting the Board Since the 2001 Preliminary Sunset Review**

As shown in **Exhibit 1**, two legislative changes have affected the board since the last preliminary sunset review in 2001. Chapter 212 of 2002 extended the board's termination date by 11 years to July 1, 2015. Chapter 175 of 2009 does not directly affect the board but does potentially create more employment opportunities for foresters by encouraging forestry practices to be included in local comprehensive plans and promoting sustainable forestry management.

### **Exhibit 1**

#### **Major Legislative Changes Since the 2001 Preliminary Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	212	Extends the board's termination date by 11 years to July 1, 2015. Requires DLS to conduct a sunset review of the board by July 1, 2014.
2009	175	Excludes the definition of "forestry" as used in § 5-101 of the Natural Resources Article from the definition of "forestry" in § 7-101 of the Business Occupations and Professions Article. Encourages forestry practices to be included in local comprehensive plans, and that they be developed in accordance with existing State law. Modifies right-to-farm provisions in existing law to include "silvicultural operations." Promotes sustainable forestry management consistent with current law, and establishes a Sustainable Forestry Council within the Department of Natural Resources.

Source: Laws of Maryland

### **Shared Staffing Sufficient for Board Needs**

The board does not have any full-time employees. The board's executive director and administrative officer work for the board in addition to other boards within the Division of Occupational and Professional Licensing. The executive director and administrative officer each devote approximately 10% of their time to the State Board of Foresters. In addition, the board shares an investigator with several other boards. Nevertheless, the board reports that its current staffing is sufficient to meet the board's limited responsibilities.

## **Licensing of Foresters**

Before obtaining a license to practice forestry, an applicant for a forestry license must (1) complete a four-year curriculum in forestry from a college or university that is either approved by the board or accredited by SAF; and (2) complete two years of experience in forestry to indicate competency. When applying for a license, an applicant is required to furnish a list of at least five references, including at least three foresters who have personal or professional knowledge of the applicant's experience in practicing forestry. The application fee for a new forestry license is \$45. Depending on how complete an application is upon receipt, the board generally processes a license application within one to three months. Once the application is approved, the applicant is required to pay a \$55 fee for a license that lasts two years.

SAF has established a national Certified Forester credential to address the inconsistent approaches that states use to credential foresters.<sup>1</sup> Qualifications for obtaining a Certified Forester credential are similar to the requirements for State licensure. The main differences are that SAF credentialing accepts a wider range of educational backgrounds, and more experience is required to obtain the SAF credential than the State license. Additionally, renewal of a Certified Forester credential requires 60 hours of continuing education every three years, compared to 8 hours, or credits, every two years for renewal of State licensure. It is also important to note that an applicant does not need to be a SAF member to become a Certified Forester, and that achieving Certified Forester status does not provide the legal standing of licensure.

### **Accreditation of University of Maryland Urban Forestry Program**

Currently no college or university in Maryland offers an SAF-accredited forestry curriculum. Therefore, applicants for a license in Maryland generally receive their education from colleges or universities in other states, such as Pennsylvania, West Virginia, and New York. DLS noted in the 2001 preliminary evaluation that the University of Maryland began offering a forestry curriculum in the fall of 2001. The University of Maryland urban forestry program focuses on landscape architecture, horticulture, and arboriculture. SAF is evaluating the program for accreditation, which is currently in "candidate" status for an urban forestry accreditation.

A member of the board has acknowledged that if the University of Maryland's program receives SAF accreditation, the university's graduates would meet the statutory educational requirements for licensing. However, the member is concerned about the absence of key forest management courses from the program's curriculum. The member determined that these concerns would likely be addressed on a case-by-case basis once a graduate from the program applies for a license.

### **License Renewals and Continuing Education**

Licenses must be renewed on a biennial basis for a renewal fee of \$100. The board began staggering new licensees' renewals in 2001. Thus, there are significantly more renewals in

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<sup>1</sup> For more information see <http://www.eforester.org/certifiedforester/index.cfm>.

odd-numbered years than in even-numbered years. The majority of renewals are done electronically through the DLLR website.

When applying for a license renewal, an applicant is required to demonstrate that he or she has successfully completed at least eight hours of board-approved continuing education programs over the course of the two-year license period. As shown in **Appendix 1**, the continuing education requirement in Maryland is slightly below average when compared with other states' requirements, which range from no credit requirement in three states to approximately 10 credits per year required in five states. While documentation in support of a licensee's completed continuing education hours is not required, the board has begun auditing licensees at random to verify the satisfactory completion of the continuing education hours stated on the licensee's renewal application. Additionally, if a forester fails to renew his or her license in a timely manner and attempts to renew the license beyond the subsequent licensing period, the forester must produce proper documentation confirming the number of hours of continuing education necessary to warrant the renewal of the forester license.

### **Inactive Licensees**

Chapter 314 of 1999 required the board to grant inactive status to a licensee under specified conditions. The board currently offers an inactive status for \$25. However, no forester has requested inactive status to date. The board believes this could be because foresters do not know what it means to be inactive or that foresters are not interested in losing their title of "forester." Regardless of the rationale, the board does not believe it is necessary to offer inactive status for \$25 when the license renewal fee is \$100.

Due to the lack of interest in inactive status, the board has not put inactive status application forms on the board's website. The lack of information about this licensing option on the board's website may be a contributing factor to low interest in the program.

### **Nonresident Foresters**

An individual may practice forestry in Maryland without a license if (1) the individual is licensed to practice forestry in another state or country; (2) the state or country that the individual is licensed in waives the license requirements for Maryland licensees; (3) the individual submits evidence to the board that the individual is licensed in the other state or country; and (4) the individual either is not a resident of Maryland and does not maintain a place of business in Maryland or has become a resident of Maryland within the preceding six months.

### **Licensing Activity Has Remained Relatively Stable**

There are approximately 196 foresters currently licensed by the board to practice forestry in Maryland, a number that has remained stable since 1996. **Exhibit 2** shows licensing activity for fiscal 2008 through 2012, and estimates for fiscal 2013. As stated above, the board began

staggering license renewals in 2001, and thus there are more renewals in odd-numbered years than in even-numbered years.

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**Exhibit 2**  
**Forester Licenses Awarded**  
**Fiscal 2008-2013**

<u>License</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013*</u>
Original	6	9	8	8	9	8
Renewal	26	154	36	164	35	165
<b>Total</b>	<b>32</b>	<b>163</b>	<b>44</b>	<b>172</b>	<b>44</b>	<b>173</b>

\*Fiscal 2013 figures are estimates.

Source: State Board of Foresters

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### Complaint Volume Is Low

The board has the right to fine, reprimand, suspend, or revoke the license of a forester who (1) attempts to obtain, obtains, or uses a license fraudulently or deceptively; (2) is guilty of gross negligence, incompetence, or misconduct in practicing forestry; (3) is convicted, under the laws of the United States or of any state, of a felony or misdemeanor directly related to the fitness and qualification of the certified forester to practice forestry; (4) has had a license to practice forestry in another state revoked or suspended by the other state for a reason that would justify revocation or suspension in Maryland, except for the failure to pay a license or registration renewal fee; (5) knowingly violates any provision of the code of ethics adopted by the board; or (6) knowingly violates any provision of Title 7 of the Business Occupations and Professions Article. As of October 1, 2001, the board also has the right to fine a person who engages in the unlicensed practice of forestry. This broader authority has not increased the number of complaints filed with the board.

The process for handling complaints begins with the receipt of a written complaint, usually from a consumer or DNR. The complaint is logged into a complaint management system and is referred for investigation to an investigator employed by DLLR. If the investigator determines that the facts of the investigation appear to be violations of the forester law, the complaint is referred to the department's Office of the Attorney General. If the Office of the Attorney General determines that sufficient evidence exists to charge the individual, the board either schedules a hearing or refers the case to the Office of Administrative Hearings. If the Office of the Attorney General recommends against filing charges, the case is closed. If, after a hearing, the board determines an individual violated the law or regulations, the board may reprimand or fine the individual, or suspend or revoke the license.

The board received three complaints between fiscal 2008 and 2012. Two were filed in 2007 arising from the same event involving an alleged violation of the Forester Act. Both complaints were closed within six months with no formal action taken. The third complaint was filed in 2011 and also involved an alleged violation of the Forester Act. The complainant sought legal action, but the subject matter of the complaint was not sustained in civil litigation. The complaint was closed within four months.

### Available Financial Resources Cover Board Operations

As shown in **Exhibit 3**, revenues do not cover direct costs in each fiscal year but do cover direct costs when considered over biennial licensing cycles. This is because, as mentioned above, prior to 2000 all licenses were renewed at the same two-year interval rather than being staggered as they are now. Revenues should begin covering direct costs on an annual basis rather than over a two-year fiscal period as more new licensees' renewals are staggered. However, it is important to note that, because the board is general funded, it never actually operates with a deficit.

Despite low revenues in even-numbered years, the board is still taking in considerably more revenues over two-year fiscal periods than is necessary to cover direct costs. Direct costs were higher in fiscal 2008 than other fiscal years shown in **Exhibit 3**. DLLR believes this is due to a \$3,852 personnel expenditure that was allocated to direct costs. Legal costs were also much higher in fiscal 2008 and 2012 due to complaints being addressed in those years and an increased need for legal services (*e.g.*, potential regulations and legislation being discussed). DLLR was unable to provide an explanation before the completion of this evaluation regarding why revenues in fiscal 2010 were higher than normal for an even-numbered year.

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**Exhibit 3**  
**State Board of Foresters Fiscal History**  
**Fiscal 2008-2013**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY2013*</u>
Total Revenues	\$3,455	\$16,335	\$9,900	\$17,000	\$4,010	\$18,000
Total Costs	11,140	4,080	2,751	3,245	5,395	4,066
Direct Costs	6,636	3,029	2,299	2,531	1,904	2,146
Direct Legal Costs	3,919	1,051	452	714	3,491	1,920
Indirect Costs	585	**	**	**	**	**
<b>Revenue Excess/(Gap)</b>	<b>(\$7,685)</b>	<b>\$12,255</b>	<b>\$7,149</b>	<b>\$13,755</b>	<b>(\$1,385)</b>	<b>\$13,934</b>

\*Fiscal 2013 figures are estimates.

\*\*Indirect costs were below reportable levels in fiscal 2009 through 2012 and are projected to be below reportable levels for fiscal 2013.

Source: Department of Legislative Services and Department of Labor, Licensing, and Regulation

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## **Recommendations**

The board appears to be operating within its statutory authority and meeting its mandated duties. However, evaluations conducted in 1982 and 1992 both recommended that the board be terminated because, the evaluations concluded, it is not necessary to license the practice of forestry to protect public health, safety, and welfare. In both instances the General Assembly chose to extend the board despite the recommendation to terminate. The 2001 evaluation waived the board from full evaluation, and thus a possible recommendation for termination, because the board had been given greater disciplinary authority and it was unclear how the greater authority would impact the practice of forestry. This preliminary evaluation concludes that the broader disciplinary authority granted to the board has had little effect on the board's operation. Thus, the same concern remains today that has been consistent throughout the board's history: that the board may not be necessary to protect public health, safety, and welfare. The board's difficulty in securing a quorum for its meetings, the virtually nonexistent number of consumer complaints filed against foresters, and the availability of a national professional certificate lend further credence to the notion that the board may not be necessary. DLS does not believe, however, that a full evaluation would add substantively to the General Assembly's understanding of the board or assist in determining its necessity, particularly in light of the fact that the General Assembly has twice previously rejected DLS recommendations to terminate the board.

**Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Foresters from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025. However, in deciding whether to reauthorize the board for 10 more years, the General Assembly may wish to consider this report's findings, as well as the previous two recommendations to terminate the board. Assuming the board is continued, DLS further recommends that DLLR either work with the Governor's Appointments Office to resolve the persistent vacancies on the board or introduce departmental legislation to alter the board's membership to enable it to maintain a quorum at its meetings.**



## Appendix 1. States that Register/License Foresters

<u>State</u>	<u>Type</u>	<u>Mandatory</u>	<u>Continuing Education</u>
Alabama	registration	yes	10 credits/1 yr.
Arkansas	registration	yes	6 credits/1 yr.
California	license	yes	none
Connecticut	license	yes	6 credits/2 yrs. (forester) 4 credits/2 yrs. (supervising forest products harvester) 3 credits/2 yrs. (forest products harvester)
Georgia	license	yes	12 credits/2 yrs.
Maine	license	yes	12 credits/2 yrs.
Maryland	license	yes	8 credits/2 yrs.
Massachusetts	license	yes	20 credits/1 yr. (averaged over 3 yr. license period)
Michigan	registration	no	none
Mississippi	license	yes	16 credits/2 yrs.
New Hampshire	license	yes	20 credits/2 yrs.
North Carolina	registration	yes	10 credits/1 yr.
Oklahoma	registration	no	none
South Carolina	license	yes	20 credits/2 yrs.
West Virginia	license	yes	10 credits/1 yr.

Source: Society of American Foresters; Alabama State Board of Registration for Foresters; Arkansas Board of Registration for Foresters; California Board of Forestry and Fire Protection; Connecticut Department of Energy and Environmental Protection; Georgia Board of Foresters; Maine Board of Licensure of Foresters; Maryland State Board of Foresters; Massachusetts Forester Licensing Board; Michigan Department of Licensing and Regulatory Affairs; Mississippi Board of Registration for Foresters; New Hampshire Board of Foresters; North Carolina State Board of Registration for Foresters; Oklahoma State Board of Registration for Foresters; South Carolina Board of Registration for Foresters; and West Virginia Board of Registration for Foresters.



**Appendix 2. Written Comments of the  
State Board of Foresters**

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November 9, 2012

Michael Rubenstein  
Principal Policy Analyst  
Office of Policy Analysis  
Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401-1991

Dear Mr. Rubenstein:

The Department of Labor, Licensing and Regulation and the State Board of Foresters have received the draft of the preliminary evaluation of the Board conducted by the Department of Legislative Services pursuant to the Maryland Program Evaluation Act. We appreciate the time and attention that was spent reviewing the Board's operations.

We are pleased that the Report found that the Board is fulfilling its statutory duties and recommended that the Legislative Policy Committee waive the Board from full evaluation. Further, the Department acknowledges the recommendation related to the Board's persistent vacancies. The Board will work with Departmental staff responsible for appointments and the Governor's Appointment Office to reduce the number of vacancies.

After review of the report, we have found the following factual discrepancies and/or request the following changes:

- on page five, in the second paragraph, the report states: "The main differences are that SAF credentialing accepts a wider range of educational backgrounds, and more experience is required to obtain the SAF credential than the State license." In fact, there are two other differences. The first is that 60 hours of continuing education is required every three years to become a Certified Forester and achieving Certified Forester status does not provide the legal standing of licensure. The later point is referenced in the Recommendations section.
- on page five, in the second paragraph, the report states: "However, it is important to note that an individual must be an SAF member to obtain a Certified Forester credential, which means that the individual must pay at least \$95 per year in SAF membership fees in addition to the costs associated with obtaining the credential." It should be noted that non-SAF members may also become Certified Foresters.

PHONE: 410-230-6221 • EMAIL: [dirvin@dllr.state.md.us](mailto:dirvin@dllr.state.md.us) • INTERNET: [www.dllr.maryland.gov](http://www.dllr.maryland.gov)

- on page five of the report, in the fourth paragraph, the report states: “However, the member is concerned about the absence of dendrology from the program’s curriculum and whether the graduates from an urban forestry program will pursue a path to provide them with the expertise necessary to conduct a timber sale contract.” The Board has more curriculum concerns than simply the absence of dendrology. A more appropriate statement would be: “However, the member is concerned about the absence of key forest management courses from the program’s curriculum.”
- On page nine, in the first paragraph, the report states that the number of consumer complaints is “the virtually nonexistent.” The Board receives a low number of complaints but would prefer that the report not indicate that there are essentially no complaints.
- On page nine, in the first paragraph, the report states “the availability of a national professional certificate lend[s] further credence to the notion that the board may not be necessary.” The Board believes that enforcement of the Certified Forester credential by the SAF Certification Review Board does not carry the same force as a licensing law enforced by a State agency.

The Department and the Board would like to express appreciation for the professionalism provided by your staff members, in particular Ms. Crystal Heide, while conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the Report as well as future issues that may arise. If your office should require additional information, please do not hesitate to contact me at (410) 230-6225.

Sincerely,



Michael Vorgetts  
Deputy Commissioner

Cc: Secretary Leonard Howie III  
Commissioner Harry Loleas  
Dennis Gring, Executive Director  
Wade Dorsey, Jr., Chair

# Preliminary Evaluation of the State Board of Public Accountancy

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**Recommendations:**      **Waive from Full Evaluation**  
**Extend Termination Date by 10 Years to July 1, 2025**  
**Require Follow-up Report by October 1, 2013**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Public Accountancy last underwent a preliminary evaluation as part of sunset review in 2001. Both the 2001 and 1991 preliminary evaluations recommended waiver from full evaluation, which last took place in 1982. The most recent evaluation recommended extending the board’s termination date by 11 years until July 1, 2015, based on the board’s fulfillment of its mandated duties and service to the public and licensed community. The evaluation, however, required the board to submit a follow-up report by October 1, 2002, regarding exam administration, efforts to make the board self-supporting, and updates on the complaint-tracking database. The information presented in the follow-up report will be discussed in greater detail later in this report.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations, recent legislative and regulatory actions, board minutes, prior sunset reviews, and other information provided by the board regarding revenues, expenditures, exams, licensing, complaints, and disciplinary actions. In addition, DLS staff interviewed or corresponded with current members of the board, the board’s executive director, board administrative staff, the Commissioner of Occupational and Professional Licensing, the executive director of the Maryland Association of Certified Public Accountants (MACPA), and a representative of the Maryland Society for Accountants (MSA).

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document. Therefore, references in board comments may not reflect the final version of the report.

## **The Certified Public Accountancy Profession**

Title 2 of the Business Occupations and Professions Article authorizes certified public accountants (CPAs) to conduct audits of financial statements and certify the correctness or fairness of information contained in various documents. CPAs perform work as individuals and as employees of firms that provide services to public and private entities of varying sizes and lines of business. Approximately 20,000 CPAs hold licenses in Maryland, making the profession the fourth largest under the Division of Occupational and Professional Licensing of the Department of Labor, Licensing, and Regulation (DLLR). As discussed later in this report, out-of-state licensed practitioners benefit from a “practice privilege” or “mobility” standard that allows them to perform certified public accountancy work without a Maryland license.

### **New Standards Clarify Scope of Practice Issues**

The scope of practice for CPAs corresponds to the scopes of practice for related professions, such as accountancy and individual tax preparation. The terms “accountant” and “accountancy,” however, are not defined in Maryland law. The board does not regulate nonlicensed accountants, such as bookkeepers, as they are not subject to any qualification standards or governmental oversight. As long as a nonlicensed person does not perform activities encompassed within the definition of “certified public accountancy,” Title 2 does not bar the person from assisting a licensee or permit holder, performing the duties of public office or employment, or providing public bookkeeping and accounting services. By default, these activities define the limits of a nonlicensed accountant’s scope of practice.

Prior to 2008, tax preparers that did not perform certified public accountancy services similarly were not required to be licensed, registered, or accredited by the State. Chapter 623 of 2008, however, established the State Board of Individual Tax Preparers. The legislation requires registration and renewal every two years for a person who provides “individual tax preparation services,” which is defined as preparing, advising, or assisting in the preparation of, or assuming final responsibility for another person’s preparation of a federal or State income tax return for valuable consideration. Actively licensed CPAs, among other professionals, are exempt from the registration requirement.

### **Corporate Scandals, Desire for Uniform Standards Lead to Federal Regulatory Activity**

The complex nature of the practice of certified public accountancy, coupled with several high-profile corporate and accounting scandals, has led to increased demand for and regulation

of CPAs over the last 10 years. A 2012 report by the U.S. Bureau of Labor Statistics projected 16% growth in employment opportunities for accountants and auditors from 2010 to 2020 based on “recent financial crises and subsequent financial regulations.” In terms of regulation, on the federal level, the Sarbanes-Oxley Act of 2002 required auditors of publicly held companies to attest to and report on management’s assessment of internal controls that are in place for financial reporting. More recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 increased and conformed regulation of financial planners and other professionals by the Securities and Exchange Commission, Federal Reserve, Commodity Futures Trading Commission, and Bureau of Consumer Financial Protection. The board and MACPA suggest that an exemption of CPAs from direct oversight by the Bureau of Consumer Financial Protection may have encouraged inactive licensees to seek reactivation or reinstatement. On the state level, the National Association of State Boards of Accountancy (NASBA) has coordinated the adoption of uniform standards in Maryland and other states regarding licensing criteria, reciprocity among states, peer review of audits, and other topics. The board anticipates continued increased demand for CPAs based on the federal and State regulatory climate and the expected retirement of a large proportion of current licensees in the near future.

## **The State Board of Public Accountancy**

The board serves three primary functions: licensing, regulation, and enforcement. These responsibilities, discussed in greater detail later in this report, require the board to balance administrative tasks – such as processing a high volume of exam and license applications – and decisionmaking that affects both individuals and large sectors of the licensed community.

The board consists of seven members appointed by the Governor with the advice and consent of the Secretary of Labor, Licensing, and Regulation. Five of the members must be licensed CPAs – four actively practicing certified public accountancy and one serving as a full-time professor of accounting at an accredited college. The remaining two members must be consumer members of the public who (1) are not subject to the board’s regulation; (2) do not otherwise qualify as members of the board; and (3) have not had a financial interest in or received compensation from a person regulated by the board within one year of appointment. As a conflict-of-interest safeguard, while serving on the board, consumer members may not have financial interests in or receive compensation from a person regulated by the board or grade any exam given by or for the board.

Currently, members represent an array of practices and geographic areas of the State. Both professional associations – MACPA and MSA – generally praise the board’s accessibility and deliberative process.<sup>1</sup> Through use of a committee structure, the board delegates educational, experience, firm permit, peer review, and complaint matters to the appropriate

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<sup>1</sup> MSA expresses satisfaction with the board’s current framework but suggests that a nonlicensed accountant could be added to the board to enhance its decisionmaking. Currently, the board’s only interaction with nonlicensed accountants is through disciplinary matters, due to unlicensed practice of certified public accountancy, and consumer relations.

committees for preliminary review and recommendation. Several of the committee chairs have experience in their given subject matter – for example, the full-time accounting professor member chairs the Education Committee – which helps to maximize the efficiency of the board’s meetings. The board publishes notices in advance, holds its meetings open to the public, and publishes minutes and a quarterly newsletter on its website in an effort to operate in an open and accountable manner.

**The board’s balanced composition invites well-rounded discussion and feedback from the licensed community. DLS concurs with the board and MACPA that the existing membership adequately represents diverse perspectives on matters that affect the public and industry.**

### **Legislative Changes Affecting the Board Since the 2001 Preliminary Sunset Review**

The General Assembly substantially revised the law governing CPAs since the last preliminary evaluation. **Exhibit 1** summarizes 15 of those changes, which (1) alter the board’s funding, licensing requirements, permitting framework, fee structure, enforcement authority, and administration of the Uniform CPA Exam; (2) establish a practice privilege standard; (3) require certain work to be subject to peer review; and (4) alter the level of education required to qualify for the exam. In terms of administrative changes, Chapter 156 of 2006 established the State Board of Public Accountancy Fund as a special, nonlapsing fund in DLLR. The transition from general funding to special funding was intended to give the board the resources necessary to fund technology advances and increase staffing. As discussed later in this report, the board used its new authority under Chapter 156 to increase licensing and permitting fees to move closer to its technology and staffing goals.

#### **Exhibit 1**

#### **Major Legislative Changes Since 2001 Preliminary Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	133	Extends the termination date for the State Board of Public Accountancy by 11 years from July 1, 2004, to July 1, 2015, and requires a sunset evaluation report of the board by July 1, 2014.
2002	196	Requires the board to offer licensing exams at least twice a year and authorizes the board to select an exam that is equivalent to the exam prepared by the American Institute of Certified Public Accountants (AICPA).

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	73	<p>Alters the terms under which the board may issue limited permits for specific jobs to partnerships, limited liability companies, and corporations to be (1) a simple majority of the ownership of the entities, in terms of financial interests and voting rights, is licensed to practice certified public accountancy in Maryland or another state and (2) individuals with ownership interests that do not possess licenses to practice certified public accountancy must be active participants in the partnership, limited liability company, or corporation.</p> <p>Adds a conforming requirement that the board must license each member of a limited liability company who practices or intends to practice in Maryland under a limited permit.</p>
2003	362	<p>Requires the board to adopt regulations that establish the passing score for the exam to qualify for licensure as a CPA.</p> <p>Authorizes the board to send exam answers to AICPA by electronic transmission.</p>
2004	496	<p>Expands the grounds for disciplinary action by the board against an applicant or a licensee to include sanctions or denial of a renewed license by another state or sanctions by any unit of the State or the federal government that relate to the individual's fitness to practice.</p>
2005	254	<p>Authorizes a CPA licensed in another state to practice certified public accountancy in Maryland if the individual (1) verifies that the individual's principal place of business is located outside of Maryland; and (2) pays a \$50 notification fee; and the board (3) verifies that the individual meets specified licensing and educational requirements.</p> <p>Specifies that an individual consents to the authority of the board by notifying the board of an intent to practice certified public accountancy in Maryland.</p> <p>Entitles an individual who meets specified standards to (1) practice in Maryland for two years with possible renewal by the board upon notice and payment of \$50 and (2) represent to the public that he or she is authorized to practice certified public accountancy in Maryland.</p>
2005	88	<p>Requires firms or CPAs who offer specified services to (1) have an independent peer review once every three years as a condition of license renewal and (2) affirm the most recent peer review to the board at the time of renewal.</p> <p>Requires a peer reviewer to report to the board firms and individuals who receive certain deficient reviews and establishes procedures for disciplinary or corrective action for firms or individuals receiving such reports.</p>
2006	156	<p>Establishes the State Board of Public Accountancy Fund as a special, nonlapsing fund in DLLR.</p> <p>Requires the board to establish fees sufficient to cover the actual documented direct and indirect costs of the board.</p> <p>Limits fee increases to 12.5% of the existing and corresponding fee.</p>

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2008	536	Establishes a “practice privilege” for CPAs licensed in another state who meet specified standards, without the need for notification to the board or payment of a fee.  Modifies requirements for a partnership, limited liability corporation, or corporation to qualify for a firm permit.
2009	466	Allows the board to charge firms a reinstatement fee if they allow their permits to lapse but are otherwise entitled to be permitted.
2009	220	Modifies governing standards and procedures for peer reviews in the State for licensees and firms performing certified public accountancy services to reflect revised standards adopted by AICPA.
2009	30, 31	Repeal the provision that restricts CPAs to meeting no more than 40 hours of the continuing education requirement for license renewal through a course of home study or service as a teacher, lecturer, or discussion leader in a board-approved course.
2010	152	Specifies that the board may deny licensure or a permit to an applicant or discipline a licensee or firm permit holder if the applicant, licensee, or permit holder has been sanctioned by a regulatory entity established by law for an act or omission that directly relates to the fitness of a person to practice public accountancy.  Establishes that a holder of a permit issued by the board may be fined up to \$5,000 for each violation of the Maryland Public Accountancy Act.
2011	208	Specifies that a person may take the Uniform CPA Exam after completing 120 semester hours of college level course work and earning a baccalaureate degree.  Requires a person who passes the exam to have completed 150 semester hours of course work and earned a baccalaureate degree in accounting or an equivalent field before being qualified for licensure with the board.
2011	228, 229	Establish, clarify, and modify the definitions of services that constitute the practice of certified public accountancy.  Identify the conditions under which a nonlicensed individual may prepare a compilation.  Require the board to specify, by regulation, standard language for a disclosure statement regarding exemption from peer review requirements.

Source: Laws of Maryland

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Aside from administrative changes, many licensing changes establish new accountability measures, increase board oversight of CPAs and CPA firms, and conform Maryland law to the model Uniform Accountancy Act. MACPA’s executive director favorably characterizes the changes, calling Maryland “the gold standard of licensing.” The adoption of a peer review requirement in 2005, as discussed later in this report, constituted one such conforming change that brought Maryland in line with 36 other states.

Several other legislative changes lessened board interaction with out-of-state practitioners by facilitating “mobility,” which allows CPAs licensed and principally based in other states to practice in Maryland without a Maryland license so long as they have a valid CPA firm permit. In particular, Chapters 73 of 2003, 254 of 2005, and 536 of 2008 eased the requirement for out-of-state practitioners from full State licensure to mobility. Practitioners licensed in other states that seek to establish businesses in Maryland remain subject to reciprocity licensing requirements and fees. According to AICPA, Maryland’s mobility standard is in line with 48 states and the District of Columbia, which extend similar courtesies to Maryland CPAs working in their jurisdictions. MACPA “emphatically” supports the concept of mobility, which became effective October 1, 2008, because it (1) “eliminated costly and unnecessary registration and licensing” fees; (2) “enabled CPAs to serve clients whose businesses expanded into other states”; and (3) allowed regulators to enforce standards in both the state in which the service is performed and in the state of licensure. The board’s executive director indicates that a potential disadvantage of the mobility standard is that the board is not notified that an out-of-state practitioner is working in Maryland unless a consumer files a complaint against the CPA. Even so, the board has not identified any specific problems with out-of-state practitioners or the new mobility standard.

### Major Regulatory Changes Since the 2001 Preliminary Sunset Review

In addition to statutory changes, the board’s regulations have been substantively changed at least 31 times since the last preliminary evaluation. **Exhibit 2** describes these changes, which include the establishment of peer review standards, modification of continued professional education (CPE) requirements, and alteration of the fee schedule. Most of the measures correspond to legislative changes and attempt to clarify new qualification standards for licensure, permit holding, and renewal.

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#### Exhibit 2 Regulation Changes Since the 2001 Preliminary Sunset Review

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
2002	09.24.01.09A, B	Successive changes increase the fee that an applicant pays for the administration and grading of the Uniform CPA Exam.
2003	09.24.01.07	Adopts DLLR’s regulations to govern administrative hearings.
	09.24.04.01-.04	Adopts standards governing the issuance of firm permits.
2004	09.24.01.09A, B	Increases the fees that an applicant pays for the administration and grading of the Uniform CPA Exam.
	09.24.01.02-.04	Repeals obsolete educational requirements.

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
	09.24.05.01-.06	Modifies the exam administration process to conform with changes occurring due to the transition to electronic testing.  Alters the procedures that determine a candidate's conditional credit eligibility.
2005	09.24.01.05A-C	Modifies the procedure for transferring passing scores on the Uniform CPA Exam.
	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.02.02	Requires a licensee to earn a minimum of four hours on professional ethics as part of the 90 hours of CPE required for license renewal. Effective October 1, 2006.
2006	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.06.01-.04	Establishes procedures for the conduct and reporting of peer reviews.
	09.24.07.01-.06	Establishes requirements for practice privilege of a CPA licensed to practice in other states.
2007	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.01.01, .06	Clarifies the definition of and Code of Professional Conduct standard governing a "contingent fee."
	09.24.02.02E, .04B	Clarifies the board's authority to audit a licensee based on CPE hours as part of the license renewal process.
	09.24.02.03H	Authorizes a licensee to use educational experience earned during participation on a firm's peer review team toward meeting the CPE requirements for license renewal to a specified extent.
	09.24.05.03	Modifies the education requirement that an applicant must meet to qualify for the Uniform CPA Exam.
2008	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.01.09	Increases license, permit, and related service fees to facilitate the board's special fund operation.
2009	09.24.01.05A, .05D	Modifies license application requirements for an individual who has passed the Uniform CPA Exam in other states.
	09.24.02.02	Clarifies that four hours of professional ethics education is the minimum number of CPE hours required for renewal without carryover for excess hours.

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
	09.24.02.02, .03	Clarifies and alters the calculation and qualification standards for continuing professional education credits.
	09.24.04.04	Amends the firm permit regulation to recognize a statutory change that authorizes a nonlicensed person to have an ownership interest in a firm in which certified public accountancy is practiced.
	09.24.05.03A	Adds specified courses to the list of courses that qualify an applicant to take the Uniform CPA Exam.
	09.24.07.01-.06	Repeals obsolete requirements dealing with notification of intention to exercise the practice privilege.
2010	09.24.01.09	Establishes a reinstatement fee for a CPA firm that fails to renew its permit.
	09.24.02.02D	Increases the number of CPE hours that a teacher, lecturer, or discussion leader may claim in a given licensing period.
	09.24.02.02F	Requires specified applicants to earn 80 hours of CPE as a condition of initial licensure.
2011	09.24.05.03	Modifies the educational requirements for an applicant to take the Uniform CPA Exam.
	09.24.01.09	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
2012	09.24.01.09	Reduces license, permit, and related service fees.
	09.24.01.10	Specifies the language that disclosure statements must include for specified peer review exemptions.

Source: Code of Maryland Regulations, *Maryland Register*

## Licensing and Permitting Levels Are Stable, Even as Demand Increases

The board regulates approximately 20,000 CPAs. Each year, about half of those licensees and permit holders seek renewal based on staggered two-year license and permit terms. Legislative changes since the last preliminary evaluation prompted changes to the board's license and permitting process. For example, the mobility legislation alone eliminated notification, limited license, and limited firm permit categories. Despite the elimination of these categories, however, the board regulates more individuals than it did in 2001. As **Exhibit 3** illustrates, the board has experienced fairly stable licensing and permitting activity over the last six fiscal years across almost all categories.

**Exhibit 3**  
**Licensing and Permits Issued**  
**Fiscal 2008-2013**

<u>License/Permit/Notification</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013*</u>
<b>CPA</b>						
License – Initial	547	483	507	521	576	634
License – Renewal	6,297	6,394	6,400	6,486	6,358	6,702
Inactive License – Renewal	2,788	2,815	2,740	2,826	2,660	2,660
Notification – Initial**	65	26	--	--	--	--
Notification – Renewal**	14	1	--	--	--	--
Limited License – Initial***	40	12	--	--	--	--
<b>Corporation</b>						
Permit – Initial	60	44	55	37	16	18
Permit – Renewal	194	190	225	226	257	291
Limited Permit – Initial***	10	0	--	--	--	--
<b>Partnership</b>						
Permit – Initial	1	1	7	1	0	2
Permit – Renewal	28	2	25	3	31	33
Limited Permit – Initial***	10	0	--	--	--	--
<b>Limited Liability Company</b>						
Permit – Initial	63	31	38	43	28	31
Permit – Renewal	50	60	98	95	108	167
Limited Permit – Initial***	3	0	--	--	--	--
<b>Limited Liability Partnership</b>						
Permit – Initial	3	3	20	13	6	31
Permit – Renewal	18	19	15	23	28	65
Limited Permit***	15	1	--	--	--	--
<b>Total</b>	<b>10,206</b>	<b>10,082</b>	<b>10,130</b>	<b>10,274</b>	<b>10,068</b>	<b>10,634</b>

\*Projected licensing figures.

\*\*Chapter 536 of 2008 repealed the notification requirement for out-of-state licensees.

\*\*\*Chapter 536 of 2008 repealed the board's authority to issue limited licenses and limited firm permits.

Source: State Board of Public Accountancy, Laws of Maryland

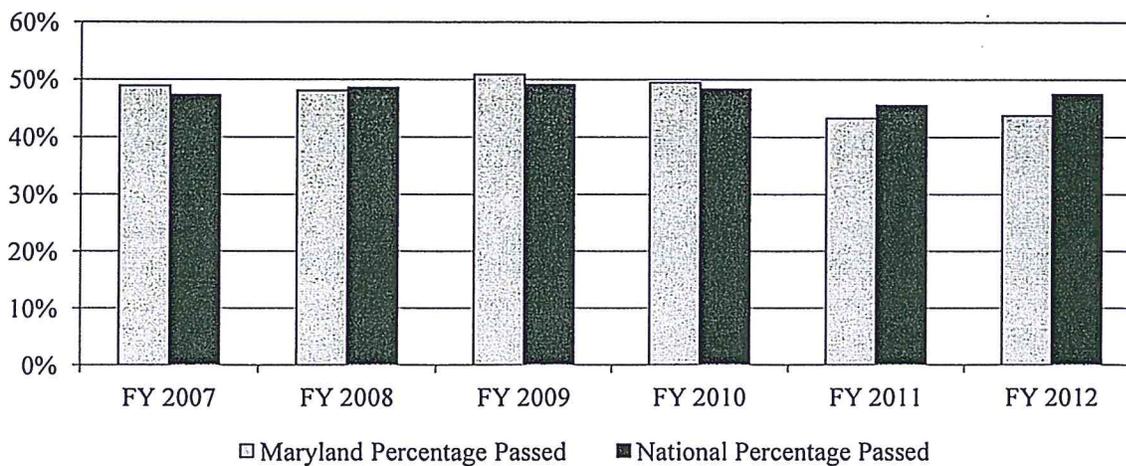
Increased demand for CPAs has resulted in increased participation in the standardized exam that is required for licensure by each of the 55 public accountancy boards. In Maryland, applicants become eligible to take the Uniform CPA Exam by completing 120 semester hours or equivalent related course work, earning a baccalaureate or higher degree from an accredited institution, and submitting an exam application to the board. Once an applicant is authorized to

sit for the Uniform CPA Exam, the applicant takes a four-part, 14-hour test that covers (1) Auditing and Attestation; (2) Business Environment and Concepts; (3) Financial Accounting and Reporting; and (4) Regulation. Previously, the exam was offered twice a year at two locations around the State. In order to pass the exam, applicants were required to take multiple parts of the exam over a two-day span of time and earn a score of at least 75 on two sections and at least 50 on the remaining sections. A new computerized exam format enables applicants to take and pass each section separately, so long as the applicant passes all four sections within an 18-month timeframe. Exam sections are now administered on a daily basis during eight months of the year at seven Maryland locations and locations in other states.

Applicants who have passed the exam become eligible for licensure once they obtain a total of 150 semester hours of related instruction and complete one year (2,000 hours) of practical work experience. CPA firms qualify to obtain the required firm permit by meeting guidelines that are specific to the firm’s corporate structure.

Although nearly twice as many Maryland applicants have passed the exam over the last five fiscal years, the overall pass rate has declined over the last two fiscal years as the number of applicants taking the exam has also increased. **Exhibit 4** compares exam pass rates of Maryland applicants to national average pass rates from fiscal 2007 through 2012. The executive director suggests that changes to the exam format and recent legislation to allow applicants with 120 semester hours of relevant course work to sit for the exam may explain the slightly lower Maryland pass rate.

**Exhibit 4**  
**Maryland and National CPA Exam Pass Rates**  
**Fiscal 2007-2012**



Source: State Board of Public Accountancy, National Association of State Boards of Accountancy

## **Tax-related Complaints and Mandated Peer Reviews Affect Complaint Backlog**

Certain types of misconduct give rise to disciplinary action by the board that can include denial of a license, reprimand, suspension or revocation, or the imposition of civil fines or penalties. When the board receives a complaint, staff reviews it to determine whether the board has jurisdiction and sends a letter to the affected practitioner or firm requesting a response to the complaint within 30 days. Staff then refers the matter to the board's complaint committee for a more comprehensive review. The complaint committee consults legal counsel and DLLR's investigative services division if necessary and determines whether to close the complaint or refer it for adjudication. Generally, based on the nature of the complaints it receives, the board closes complaints without formal action or a hearing. If a complaint requires further action, legal counsel generates a pre-charge letter to send to the affected practitioner or firm explaining the charges and any rights under the law. The board, which does not refer cases to the Office of Administrative Hearings, then conducts an open hearing during a board meeting and discusses appropriate action in executive session with legal counsel. Rather than pursue costly administrative action, the board often reaches private settlement agreements with affected practitioners or firms. MACPA and MSA describe the board's disciplinary role as both fair and consistent.

Tax-related complaints represent the highest volume of complaints received since fiscal 2008, followed by board-initiated complaints for failure of CPE audits and other conduct such as misrepresentation, "records hostage" or failure to return work papers, unlicensed practice, and fee disputes. Failure of a CPE audit arises when an active licensee does not obtain or properly document 80 hours of qualifying CPEs during every two-year licensing term except the first renewal. The board becomes aware of noncompliance when a part-time consultant fails to verify a licensee's reported CPE hours based on audits on a random selection of applicants for renewal. Failed CPE audits become formal board-initiated complaints against the practitioners. Since April 2010, the CPE auditor has completed approximately 400 audits and initiated 63 complaints, leading to sanctioning of 26 licensees.

**Exhibit 5** details the board's complaint management over the last five fiscal years. The board maintains a low ratio of average yearly number of complaints relative to the number of licensees at 0.4%. The three larger DLLR-regulated boards report similar ratios with the State Board of Cosmetologists at 0.4%, the State Real Estate Commission at 1.2%, and the State Board for Professional Engineers at 0.01%. From fiscal 2009 to 2010, the number of complaints rose by approximately 20, representing a 35% increase. The executive director attributes this increase to the receipt of complaints meant for the newly established State Board of Individual Tax Preparers and tracking of complaints based on CPE violations.

On average, the board meets its Managing for Results goal of closing complaint files within six months. However, a consistently high proportion of complaints carry over from one fiscal year to the next. The executive director attributes the backlog to staff illness and turnover and the coincidence of tax season and the end of the fiscal year, which means that a

large volume of complaints arrives just before the end of the fiscal year. Additionally, the executive director explains that the proportionately high number of complaints resolved by formal action in fiscal 2011 resulted from the initiation of automated CPE audits.

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**Exhibit 5**  
**Resolution of Complaints Received**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
New Complaints Processed	53	55	74	76	71
Complaints Carried Over from the Prior Fiscal Year	48	39	36	34	24
Complaints Resolved*	62	58	76	86	44
<i>Formal Action**</i>	11	1	2	31	5
<i>Informal Action</i>	1	4	2	4	2
<i>No Action</i>	50	53	72	51	37
<i>Resolved within Six Months</i>	32	42	59	61	38
<i>Resolved in More Than Six Months</i>	30	16	17	25	6
<i>Average Months for Resolution</i>	12	5-6	5-6	7-8	3-4

\*Complaints resolved includes only those complaints on which the board took some action – including a decision to take no formal action, based on a finding of no violation – and those complaints opened in previous years.

\*\*Formal action includes settlements, consent orders, and orders from the board following hearings, among other actions.

Source: State Board of Public Accountancy

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The board anticipates a modest future increase in complaints due to implementation of the peer review requirement, which authorizes the board to initiate disciplinary action against noncompliant licensees. Under Chapter 22 of 2005, an independent evaluator known as a “peer reviewer” must review some individual’s or firm’s accounting and auditing practices once every three years depending on the types of accounting services they provide. The board’s executive director indicates that a “vast majority” of licensees do not require peer reviews of the type of work they perform. “Systems reviews” more broadly evaluate policies or procedures, while “engagement reviews” evaluate specific reports and documents that a firm or individual has prepared. Both types of reviews are designed to demonstrate competency as gauged by professional, State, and federal standards. A licensee or permit holder fails a peer review if it identifies “one or more significant deficiencies in performing or reporting in conformity with

professional standards.” A report indicating “pass with deficiencies” is similarly based on “one or more deficiencies.”

AICPA oversees peer review program implementation nationwide and identifies peer reviewers who are authorized to conduct the evaluations. MACPA administers peer reviews for AICPA in Maryland and oversees the performance of peer reviewers who, according to Maryland law, must forward a peer review report to the board if a licensee or permit holder (1) fails to take necessary corrective action; (2) receives a second consecutive report indicating “pass with deficiencies”; or (3) receives a failing report.

Implementation of the peer review process has been a major collaborative effort, but enforcement and communication between MACPA and the board are still lacking. MACPA advises that 22 licensees or permit holders failed their peer reviews in calendar 2011, and 16 have failed their peer reviews to date in calendar 2012. According to State law, findings from these reports should have been forwarded to the board, but the board advises that it has received a total of two reports for potential disciplinary action. **Therefore, DLS recommends that the board, in consultation with MACPA, take steps to resolve the inconsistent reporting of failed peer reviews to the board and, as appropriate, take corrective action with respect to licensees and permit holders that have previously failed a peer review.**

## **Board Manages Chronic Resource Constraints**

At the time of the last sunset evaluation, the board employed an executive director who also served as executive director of the State Board of Foresters, one full-time professional, and one part-time professional. Based on input from the professional associations, DLS concluded that staffing levels did not correspond to the number of licensees and “extremely high” workload. The 2001 evaluation referenced difficulty in “simply reaching a receptionist by telephone” and noted that the board’s efforts to reduce reliance on staff through technology changes were sometimes stalled due to lack of resources.

The establishment of State Board of Public Accountancy Fund improved the board’s immediate access to resources, which enabled it to retain the shared executive director and other employees and add two full-time contractual employees. The contractual employees process complaints and CPE audits, among other administrative duties. The board advises that the contractual nature of the positions has led to high turnover among staff. For example, the last two contractual employees left the board for permanent State employment within one year of starting. The executive director expresses frustration over the fact that, given State hiring freezes and new personnel restrictions, the board lacks authority to make these positions permanent or otherwise expedite the hiring of replacements. Based on past experience, the executive director estimates that the employee who left the board in August 2012 will not be replaced until January 2013.

Four years into the board’s transition to special funding, MACPA and MSA report continued difficulty in reaching a receptionist or receiving a return telephone call. The addition

of two contractual employees has assisted the board's overall operations, but high staff turnover contributes to a complaint backlog. DLLR should work with the Department of Budget and Management (DBM) to convert the contractual positions to permanent positions to reduce turnover and maximize the use of the board's special fund resources.

### **Technology Streamlines Administrative Processes, but Challenges Persist**

Following the last preliminary evaluation, the board undertook a campaign to streamline administrative processes through automation and use of the Internet. In 2002 and 2003, the board adopted a "lockbox banking" process and eliminated the manual processing of payment for re-exam<sup>2</sup> registration. This change reduced burden on staff who had previously processed checks, prepared deposit slips, and reconciled deposits by hand for approximately 3,000 payments per year. During that same timeframe, the board activated its Complaint Management System database. According to the executive director, 2004 served as a "watershed year for technology" based on the transition to electronic registration, testing, and score verification for the Uniform CPA Exam. In 2005, the executive director developed databases to track license applications, initial exam qualification applications, and license verification requests. In 2006, the board began electronically notifying exam applicants of their qualification to sit for the Uniform CPA Exam. In 2008, the board established an online process for reporting requirements associated with peer reviews and shared content on its website detailing newly enacted mobility standards. In 2009, the board began issuing *Account Balance*, a quarterly electronic newsletter. In 2010, the board started to randomly select licensees seeking renewal for audits based on their reported CPE hours. In 2011, the board launched a comprehensive online database that processes initial exam applications and electronic payments. The same year, the board joined the CPA Verify national licensing database, which is discussed later in this report. In 2012, the board developed an electronic licensing portal that enables individuals to access and print their own licenses without involvement of board staff. In the near future, the board expects to (1) establish a mechanism for real-time online tracking of CPE hours; (2) finish transitioning all forms to the board's website; and (3) begin networking with other public accountancy boards to electronically transfer licensing information.

Despite extensive technological advances, staff still spends a considerable proportion of its time processing applications for the Uniform CPA Exam. MACPA suggests that the board should outsource the exam application review process to NASBA to further streamline administrative processes and make staff available to perform other tasks. The CPA Exam Services division of NASBA offers a range of services, including exam processing, credential evaluation, score reporting, and customer service interaction, with the mission of enhancing the effectiveness of public accountancy boards. The last preliminary evaluation mandated a follow-up report on options for outsourcing future exam administration based on the pending transition to computerized testing and a 2000 incident where the former exam vendor filed for bankruptcy. The October 2002 follow-up report indicated that DLLR had received and was in

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<sup>2</sup> The board continued to manually process initial exam applications until October 2011.

the process of reviewing a proposal from NASBA to administer the computer-based exam. The report did not, however, discuss outsourcing of the exam application review process.

At the August 2012 board meeting, the executive director distributed a report on the exam review process for fiscal 2005 through 2012. According to the report, staff processes 50% of all exam applications within 5 days after the date an application is complete and 90% within 30 days. The executive director contends that the board is best suited to handle exam applications based on the board's ability to interact with applicants and continually improve administrative processes. Additionally, the executive director indicates that the State's procurement process would not guarantee that NASBA would earn the contract to process the exam applications. DLS notes that such a procurement may be eligible for a sole source procurement.

**Assuming that the board continues to operate with the same level of staffing, it should reconsider outsourcing the processing of exam applications to allow staff to focus on processing complaints and license and permit applications. In reconsidering the issue, the board should, as needed, consult with DBM and NASBA regarding the use of a sole source procurement and report to the General Assembly by October 1, 2013, on the feasibility, costs, benefits, and potential terms of an outsourcing contract.**

### **Board Fully Participates in National Electronic Licensing Database**

The presence of another regulatory agency – the State Board of Individual Tax Preparers – has enhanced oversight of professionals that provide accounting-type services, but the board and MACPA indicate that members of the public often fail to appreciate important differences among the professions. To better inform consumers about licensed and nonlicensed professionals, the board's website links to CPA Verify, a free, publicly accessible database run by NASBA. The database allows consumers to verify a CPA's licensure status in 33 participating jurisdictions and a CPA firm's permit status in 16 participating jurisdictions. Maryland shares information with NASBA on both CPAs and CPA firms. **The board should continue to share information with NASBA and develop content on its website to inform consumers of the differences between CPAs and related professionals.**

### **Transition to Special Funding Provides Stable Revenue**

The board struggled to cover its expenses under general funding. As discussed in the 2001 preliminary evaluation, the board's revenues did not cover both direct and indirect costs, causing it to function with a "negative balance."<sup>3</sup> Although revenues exceeded direct costs, large portions of estimated revenues and budgetary appropriations represented revenues and expenditures attributable to a separate special fund that administers the Uniform CPA Exam. Accordingly, DLS expressed "concern about the lack of staff resources available to the board" and required the board to report on efforts to become self-supporting. In its mandated follow-up report, the board indicated that DLLR planned to introduce legislation to make "most Boards in

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<sup>3</sup> The board was supported entirely by general funds, so it did not actually operate at a deficit.

the Division” self-sufficient beginning in fiscal 2004. As noted above, legislation creating the board’s special fund did not pass until the 2006 session and did not become effective until July 1, 2007 (Chapter 156). The legislation restricted future fee increases to 12.5% per year – a restriction that could have presented significant challenges for the board if the new special fund could not cover costs.

The board now manages two special funds – one to perform its regulatory duties and the other to administer the Uniform CPA Exam. **Exhibit 6** summarizes the board’s management of the regulatory fund over the last four fiscal years. As shown in **Exhibit 7**, following the board’s transition to special fund status, the board increased license, permit, and related service fees in September 2008 to become self-sustaining and account for future costs. The fee increases covered both direct and indirect costs, allowed the board to maintain relatively stable revenue figures, and caused the regulatory fund to build a surplus well in excess of DLLR’s target fund balance.<sup>4</sup> Effective June 1, 2012, the board reduced<sup>5</sup> license, permit, and related service fees out of a concern that the board’s sustained and excessive surplus would lead to a budget transfer to the general fund. As a result, one month of lower fees contributed to a reduction in revenues for fiscal 2012; DLLR projects revenues of approximately \$600,000 on an annualized basis beginning in fiscal 2013.

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<sup>4</sup> DLLR indicates that its target fund balance of \$250,000 to \$300,000 is “not premised on a specific ratio, but more protective” in light of potential budget transfers and plans for technology projects and increased staffing.

<sup>5</sup> The fees are set in regulation, rather than statute, to give the special-funded board flexibility in altering the fee schedule.

**Exhibit 6**  
**Financial History of the State Board of Public Accountancy**  
**Fiscal 2008-2012**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Beginning Balance		\$31,941	\$273,027	\$559,547	\$807,066
Revenues	\$491,615	790,813	907,338	889,767	853,715
<b>Total Available Funds</b>	<b>491,615</b>	<b>822,754</b>	<b>1,180,365</b>	<b>1,449,314</b>	<b>1,660,781</b>
Direct Costs	362,582	455,182	518,033	526,316	569,129
Indirect Costs	30,159	35,012	32,849	32,281	32,210
Legal Services Costs	66,933	59,533	69,936	76,151	72,030
<b>Total Expenditures</b>	<b>459,674</b>	<b>549,727</b>	<b>620,818</b>	<b>634,748</b>	<b>673,369</b>
Transfer to General Fund	0	0	0	7,500	0
<b>Ending Fund Balance</b>	<b>\$31,941</b>	<b>\$273,027</b>	<b>\$559,547</b>	<b>\$807,066</b>	<b>\$987,412</b>
Balance as % of Expenditures	7%	50%	90%	128%	147%
Target Fund Balance	\$250-300,000	\$250-300,000	\$250-300,000	\$250-300,000	\$250-300,000

Source: State Board of Public Accountancy

**Exhibit 7**  
**Comparison of Board Fees: 2008 Fees Versus Current Fees**

	<b>Fees Effective Before <u>September 22, 2008</u></b>	<b>Fees Effective as of <u>September 22, 2008</u></b>	<b>Fees Effective <u>June 2012</u></b>
<b>Exam Application Fees</b>			
Original exam application fee	\$40	\$60	\$60
Exam section fees (set by AICPA)			
(1) Auditing and Attestation	249	249	200
(2) Financial Accounting and Reporting	237	237	200
(3) Regulation	211	211	180
(4) Business Environment and Concepts	198	198	180
<b>Accountant Fees</b>			
License fee	\$15	\$20	20
Renewal fee	40	80	50
Application for inactive status	20	40	25
Renewal for inactive status	20	40	25
Reinstatement for inactive status*	40	60	50
Reactivation from inactive status	40	80	50
Reinstatement of expired license*	60	120	100
Application for reciprocity	50	60	60
<b>Firm Permit Fees</b>			
Firm application fee	\$25	\$80	\$60
Firm permit fee	25	80	60
Firm renewal fee	80	160	120
Firm reinstatement fee*	--	--	240
<b>Miscellaneous Fees</b>			
Transfer of grades application	\$25	\$60	\$60
License verification certificate	25	25	25
Duplicate license certificate	50	50	50
Proctoring fee	75	75	--

\* Licensees and permit holders pay reinstatement fees in addition to the applicable renewal fee.

Source: State Board of Public Accountancy; Code of Maryland Regulations 09.24.01.09; *Maryland Register*

The exam special fund maintains a similarly excessive surplus, despite its primary purpose of serving as a mechanism to pass through funds to NASBA. The board uses some of the remaining funds to accommodate test-takers under the federal Americans with Disabilities Act and handle other administrative matters, but the fund balance remains high because of refund

checks the board receives from NASBA when applicants do not take sections of the exam for which they have registered. AICPA determines when to change exam section fees, which the board collects in the exam fund and passes on to AICPA. Section fees have increased several times since the last preliminary evaluation, bringing the total cost of registering for and taking four sections one time each to \$820.

The board had sought to use surplus funds in the regulatory fund to cover new operational expenditures, increase staffing, and account for future licensee attrition due to the new mobility standard and other industry changes. Cost-containment measures and personnel policies across State government, however, have limited the board's ability to use the funds for these purposes. The executive director expresses frustration that the board lacks authority to use some of the available funds to address staffing challenges. The Commissioner of Occupational and Professional Licensing indicates, and DLS concurs, that the board could accommodate additional employee salary and benefits even with the fee reductions. Nevertheless, the board's ability to cover increased costs will diminish as its revenues and fund balance decline due to recent fee reductions. The statutory limit on increasing fees will then restrict the board's ability to raise revenue in a short period of time to cover any additional costs.

**In light of the staffing concerns and the availability of excess surplus, the board should work with DLLR to request from DBM at least one new contractual staff position if the board is unable to make the contractual positions permanent. The board should also issue a follow-up report by October 1, 2013, detailing fund balances and future plans to use any remaining surplus.**

## **Recommendations**

The board serves the public and licensed community by regulating the CPA profession to the best of its ability, given constrained resources. The board's diverse representation of industry and consumer interests encourages thoughtful and transparent decisionmaking. DLS concurs with the board and MACPA that inclusion of a nonlicensed member is not necessary because the existing membership adequately represents the perspectives that MSA suggests a nonlicensed accountant member could contribute. The board should continue its efforts to educate consumers on the range of accounting-type services available. **Further, DLS recommends that LPC waive the State Board of Public Accountancy from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025.**

By automating several key administrative processes, the board anticipated and appropriately responded to significant legislative and regulatory changes and an increased volume of complaints and exam, license, and permit applications. However, DLS finds that more should be done to maximize existing resources. In particular, DBM should consider converting the two contractual positions to permanent positions. This conversion would reduce staff turnover, encourage longer-term professional development, and maximize the board's resources. Alternatively, if the board is unable to convert the positions, it should work with DLLR to request from DBM at least one new contractual staff position to avoid increased

backlogs in complaints, CPE audits, and exam applications. In the event of any increases or changes to current staffing levels, the board should direct as many resources as practicable to its processing of complaints.

Assuming that the board is forced to continue operating with the same level of staffing, DLS encourages the board to reconsider outsourcing the processing of exam applications. In considering this change, the board should consult with DBM and NASBA to determine costs, benefits, and potential terms of an outsourcing contract.

**DLS further recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2013, that details:**

- **fund balances, changes to the target fund balances, and future plans to use any remaining surplus;**
- **findings and recommendations related to the outsourcing of exam application processing; and**
- **the number of peer reviews conducted in each of the previous three calendar years; the number of licensees and permit holders that failed, passed with deficiencies, or failed to take corrective action; reasons why the board did not previously receive a vast majority of failed peer reviews; steps taken by the board with respect to licensees and permit holders who previously failed a peer review; and actions taken to resolve the inconsistent reporting of failed peer reviews to the board.**



## **Appendix 1. Written Comments of the State Board of Public Accountancy**

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November 19, 2012

Michael C. Rubenstein  
Principal Policy Analyst  
Department of Legislative Services  
Office of Policy Analysis  
Maryland General Assembly  
90 State Circle  
Annapolis, Md. 21401-1991

Re: Preliminary Evaluation of the State Board of Public Accountancy

Dear Mr. Rubenstein:

Pursuant to your letter of November 5, 2012, I am pleased to present this response on behalf of the Department of Labor, Licensing and Regulation and the State Board of Public Accountancy regarding the draft sunset report forwarded to us for review and comment. Our substantive response to the draft report is attached with comments, clarifications, and factual corrections referenced by page and paragraph number.

The Department and the Board appreciates the professional manner in which Ms. Atas conducted the review. We look forward to working with legislative staff to address issues that were raised in the report as well as any future issues that may arise. If your office should require additional information, please do not hesitate to contact me at (410) 230-6225.

Sincerely,



Michael Vorgetts  
Deputy Commissioner

Cc: Secretary Leonard Howie, III  
Commissioner Harry Loleas  
Mr. Dennis Gring, Executive Director  
Mr. Thomas Murphy, Chair



## **Comments, Clarifications, and Factual Corrections of the Department of Labor, Licensing and Regulation and the State Board of Public Accountancy**

### ***I. Proposed Changes to the Report's Narrative***

**On page 2, in the third paragraph:** A reference is made to “unlicensed accountants.” The Department and Board advise that describing regular accountants who are not certified public accountants as “unlicensed” is accurate, but misleading. Unlicensed practice in most industries regulated by the Department connotes unauthorized practice. In the accountancy industry, certain accountants may perform bookkeeping and other such services without having to become licensed and are not in violation of the CPA law. The report acknowledges this fact; however, the Board would prefer the use of a different term, such as “nonlicensed” accountants, which would indicate that these individuals are not required to hold a license from the Board. The Board advises that other references to “unlicensed accountants” should also be changed.

**On page 3, in the second paragraph:** The Board’s three major functions are described as “licensing, regulation, and complaints.” The Department and the Board advise that it would be more appropriate to describe the Board’s functions as “licensing, regulation, and enforcement.”

**On page 11, in the first paragraph:** The second to last sentence states: “A new computerized exam format enables applicants to take and pass each section separately, so long as the applicant passes all four sections within a two-year timeframe.” This statement should be amended to reflect the fact that the time frame for successful passage of the four sections is 18 months.

**On page 11, in the first paragraph:** The last sentence states: “Exam sections are now administered on a daily basis during eight months of the year at seven Maryland locations.” Applicants do not have to take the exam in Maryland. The Board advises that a more accurate statement would be: “Exam sections are now administered on a daily basis during eight months of the year at seven Maryland locations or any other testing center in the United States.”

**On page 14, in the fourth paragraph:** The term “contractual employees” should replace the term “temporary employees.” Other references to “temporary employees” should also be changed.

## ***II. Response to Recommendations***

**On page 21, regarding conversion of contractual positions to permanent positions or – alternatively, if such a conversion is not feasible – the addition of a contractual employee to the Board’s staff:**

The Board’s productivity would benefit greatly if its contractual employees were to be converted to permanent positions. As the report acknowledges, Board operations are significantly inhibited by turnover of contractual employees. Turnover results in prolonged vacancies, and reduced functionality and forgone institutional memory. Moreover, the contractual employees perform functions that are substantially similar to those performed by permanent employees of other boards and commissions, yet they receive significantly less compensation and benefits. The Department and Board strongly support the conversion of contractual employees to permanent status. If such a conversion is not viable due to the State’s fiscal condition, the Department and Board would support the alternative recommendation for the addition of a contractual employee.

**On page 21, regarding outsourcing of examination applications:**

The bifurcation of the education qualification criteria for the exam and for licensure has added another step in the licensing process. Prior to October 2011 applicants who met the qualifying education requirements for the exam at the same time met the education requirements for licensure. Current practice dictates that the Board is required to conduct an additional education evaluation to determine an applicant’s education requirements for licensure sometime after passage of the examination. The Department and the Board strongly believe that it is not prudent to segment one portion of the licensing process to a third party and have another portion of an education review done by the Board.

The Board provides local, personalized, and timely customer service as was reflected in an August 2012 analysis of the newly instituted application process. Over the past decade, the examination review staff has developed professional relationships with college registrars, accounting department chairs, and other industry members. These strong linkages have enabled the Board to provide the highest possible quality of examination candidate qualification. In addition, most issues involving the appropriateness of required course work is resolved quickly without formal appeal to the Board. Transitioning to a third party vendor, in all likelihood, would result in the Board to having to hear a larger volume of appeals and the dedication of more time at regular business meetings to appeals hearings.

Furthermore, new processes for the management of applicant files would have to be created to accommodate the transfer of files to the Board. The Board would have to create a regular scheduled delivery of examination files as well as processes of cataloging and filing approved applications from a vendor for later use during a licensing review.

The reporting requirement specified by this evaluation will analyze the merits of outsourcing the exam evaluation and will take into consideration the above issues as well as the impact on the process of the staffing structure that exists as of fiscal year 2014.

**On page 21, regarding peer review management:**

The Board, its peer review oversight committee, the MACPA, and other approved administrative entities are still working on a meaningful and practicable process for the reporting of failing peer reviews. The purpose of the peer review oversight committee is to evaluate the performance of the peer review administration entities. The Board needs to further analyze the deficiencies cited in peer reviews that result in a failure as to their severity and what is prescribed by peer reviewers to correct those deficiencies. The reporting requirement specified by this evaluation will analyze the peer review process and will examine these issues.



# Update on the Preliminary Evaluation of the State Board of Stationary Engineers

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**Recommendations: Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2024**

During the 2011 interim, the Department of Legislative Services (DLS) conducted a preliminary evaluation of the State Board of Stationary Engineers as required by the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article). DLS recommended that the decision regarding waiver from full evaluation be deferred until the submission of a follow-up report to be prepared jointly with the Board of Boiler Rules and the Department of Labor, Licensing, and Regulation (DLLR). DLS deferred a recommendation to the Legislative Policy Committee (LPC) on whether to waive the board from full evaluation and for what period of time to extend the board's termination date until receiving the follow-up report. DLS has received and reviewed the joint follow-up report, copies of which are available upon request. Thus, this report presents our final findings and recommendations regarding the board which, where appropriate, mirror final recommendation for the Board of Boiler Rules contained in DLS's sunset evaluation of the Division of Labor and Industry.

## Summary of the 2011 Preliminary Evaluation of the State Board of Stationary Engineers

After conducting the preliminary evaluation, DLS concluded that it was too early to determine whether recent efforts undertaken by the board to (1) improve compliance with the licensing requirement; (2) coordinate efforts with the Board of Boiler Rules; and (3) address the looming shortage of stationary engineers were sufficient and effective. DLS recognized that addressing the issues identified in the preliminary evaluation, particularly the effective regulation of boiler safety, could be complicated by the separation of the two boards and the fact that both boards have had persistent vacancies.<sup>1</sup> The State Board of Stationary Engineers is also unique in that a different division within DLLR (Labor and Industry) houses the vast majority of State staff expertise on the subject of boiler safety because the office of the Chief Boiler Inspector resides in that division. Although the board benefits from having eager and active members, it was unclear at the time of the preliminary evaluation whether the current regulatory structure, if fully embraced, affords it sufficient resources to carry out its mission effectively.

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<sup>1</sup>The board had three vacancies until October 2011, when a representative of the boiler manufacture and design industry who also serves on the Board of Boiler Rules was appointed.

To address these issues, DLS recommended that the board work in conjunction with the Board of Boiler Rules and DLLR to:

- **enhance efforts to fill vacant seats on both boards;**
- **meet regularly with a quorum necessary to conduct official business;**
- **hold joint meetings between the two boards, including joint meetings to consider ways to boost board membership and improve the State's regulatory structure;**
- **enhance its enforcement of the stationary engineer licensing statute with more active and effective enforcement strategies; and**
- **explore initiatives designed to increase the number of new entrants into the stationary engineer trade.**

DLS also recommended that the three entities submit a joint follow-up report addressing these issues to DLS by October 1, 2012. The report was to address:

- **the frequency with which the State Board of Stationary Engineers and the Board of Boiler Rules have been able to meet independently with a quorum necessary to conduct official business;**
- **the frequency with which the two boards have met to coordinate enforcement of boiler safety;**
- **the extent to which the anticipated increase in the volume of complaints handled by the State Board of Stationary Engineers has been realized and whether the complaint volume has resulted in increased expenditures for the board; and**
- **final fiscal 2012 revenues and expenditures for the State Board of Stationary Engineers; fiscal 2012 licensing totals by grade; and projected revenues, expenditures, and licensing numbers for fiscal 2013.**

DLS deferred a recommendation to LPC on whether to waive the board from full evaluation and for what period of time to extend the board's termination date until receiving the board's follow-up report. If the report was not submitted, DLS was to automatically conduct a full evaluation of the board during the 2013 interim. LPC adopted these recommendations at its December 2011 meeting.

## **The 2012 Follow-up Report**

DLS received the follow-up report on October 1, 2012. The report addressed all of the issues requested by DLS.

## **Board Meetings and Coordination**

With one exception, the board met once a month for every month between the publication of the preliminary evaluation and the completion of the follow-up report. It held two meetings with the Board of Boiler Rules over a 15-month period, including one following the completion of the preliminary evaluation. One individual currently serves on both the State Board of Stationary Engineers and the Board of Boiler Rules, which facilitates communication and collaboration between the two boards. The board currently reports only one vacancy, an industry member.

## **Complaint Volume**

Proactive enforcement actions by the Boiler Inspection Unit of the Division of Labor and Industry, described in the preliminary evaluation, have not resulted in a dramatic increase in complaint volume for the board, as was anticipated by the preliminary evaluation. The complaint volume for the board remains low, with only a few complaints received in the intervening period between the completion of the preliminary evaluation and the receipt of the follow-up report. Therefore, the need for additional staff expenditures to process a larger number of complaints is not anticipated.

## **Revenues Continue to Exceed Costs**

Year-end data for fiscal 2011 and 2012 indicate that board revenues continue to exceed total direct and indirect costs for the board by substantial margins. Expenditures exceeded total direct and indirect costs by \$101,600 in fiscal 2011 and by \$179,800 in fiscal 2012. This represents a net gain to the general fund, as the board is general funded. The surplus is prompted by the lack of any full-time staff expenditures for the board. The board's executive director position became vacant in February 2009 and was eventually eliminated as part of cost containment. The board also lost its full-time administrative assistant position; it now shares a position with the State Board of Master Electricians.

The board projects stable licensing activity over the next two biennial licensing cycles, which may justify a reduction in licensing fees. The persistent excess revenues generated by the board's licensing fees do not conform with statutory requirements that licensing revenues approximate the true cost of regulating the industry.

## **Potential Merger with Board of Boiler Rules**

The preliminary evaluation invited, but did not require, the board to comment on the advantages and disadvantages of merging with the Board of Boiler Rules to consolidate their respective expertise on boiler safety and create a single entity responsible for regulating boiler safety. The follow-up report did not address this issue. However, in subsequent discussions with staff in both the Division of Labor and Industry and the Division of Occupational and

Professional Licensing, DLS has concluded that such a merger is not warranted. For a more complete discussion of this issue, refer to the sunset evaluation of the Division of Labor and Industry, available at <http://dls.state.md.us/content.aspx?page=104>.

## **Recommendations**

Based on the information provided in the follow-up report, DLS is satisfied that the board continues to make meaningful strides in filling its vacancies, maintaining a consistent meeting schedule, and coordinating its efforts with the Board of Boiler Rules. A substantial increase in complaints generated by more proactive enforcement by the Boiler Inspection Unit has not materialized, obviating the need for additional staff to adjudicate those complaints.

With respect to the board's fiscal status, board revenues continue to exceed costs by substantial margins. **Given that the board does not anticipate any reduction in licensing activities, nor does it anticipate any significant one-time expenditures for staff or other direct costs, DLS recommends that the board consider a reduction in licensing fees in conjunction with an assessment of its current and future staffing needs. DLS further recommends that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2024. DLS also finds that there is no need for the board to submit any additional follow-up report.**

# Update on the Preliminary Evaluation of the Elevator Safety Review Board

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**Recommendations:      Waive from Full Evaluation**

**Extend Termination Date by Five Years to July 1, 2019**

During the 2011 interim, the Department of Legislative Services (DLS) conducted a preliminary evaluation of the Elevator Safety Review Board as required by the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article). DLS recommended that a recommendation to the Legislative Policy Committee (LPC) regarding waiver from full evaluation be deferred until the submission of a follow-up report to be prepared by the Department of Labor, Licensing, and Regulation (DLLR). DLS has received and reviewed the follow-up report, copies of which are available upon request. Thus, this report presents our final findings and recommendations regarding the board.

## Summary of the 2011 Preliminary Evaluation of the Elevator Safety Review Board

Although the Elevator Safety Review Board was required to issue licenses to elevator mechanics and contractors effective October 1, 2001, due to budgetary constraints, the board had only recently begun issuing licenses at the time of the preliminary evaluation. The board had been meeting regularly since February 2011 and was beginning to meet its statutory responsibilities for the first time. Due to the absence of licensees, the board had not received or processed any consumer complaints regarding licensees.

After conducting the preliminary evaluation, DLS determined that it could not fully assess the financial stability of the board or the Elevator Safety Review Board Fund due to the unreliable revenue data provided by DLLR. From fiscal 2009 through 2011, revenues for the board were generated exclusively from nonlicensure activities, namely registration fees for third-party elevator inspectors and inspection fees for two types of elevator safety inspections. These revenues were generated by the Division of Labor and Industry (DLI) within DLLR and transferred to the fund. However, due to coding errors in accounting for that revenue, additional revenues generated by DLI that should have been deposited in the State's general fund were inadvertently commingled with monies transferred to the Elevator Safety Review Board Fund. Therefore, at the time, DLLR could not provide a reliable estimate or projection of the revenue generated exclusively from those three activities for the benefit of the board.

While the revenue generated by DLI enabled the board to cover its start-up costs, the board advised that, going forward, it did not intend to rely solely on those sources of revenue to maintain its operation. Instead, it set licensing fees to fully support the board's licensing activity as if it were not receiving additional revenue. To the extent that the DLI revenue provides excess revenue, the bulk of it will revert to the general fund under a statutory reversion provision established by Chapter 484 of 2008. In accordance with the statutory reversion, revenues in excess of 10% of the board's direct and indirect costs revert to the general fund at the end of each fiscal year. It is possible, however, that the board will need the DLI revenue to cover its expenditures during its "off-cycle" year, given the biennial license renewal cycle. In the absence of reliable revenue data, however, DLS could not accurately assess the fund's stability and viability.

DLS recommended that DLLR submit a report to DLS by October 1, 2012. The report was to provide:

- a thorough and detailed explanation of the accounting errors that led to the commingling of other DLI revenues with revenues designated for the Elevator Safety Review Board Fund;
- to the extent feasible, an accurate accounting for fiscal 2009 through 2012 of the revenue generated from registration fees for third-party elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met;
- projections for fiscal 2013 of the revenues to be generated from those same sources;
- the number and type of licenses issued during fiscal 2012 and a projection of the number of new and renewal licenses expected to be issued in fiscal 2013;
- the number of consumer complaints, if any, received by the board during fiscal 2012 and the status of those complaints; and
- an update on the sufficiency of the fund balance to maintain board licensure activity on a biennial cycle, including fiscal 2012 revenue generated by the issuance of elevator mechanic and elevator contractor licenses.

The report was to specifically address whether the funding sources will produce a stable stream of revenue and whether revenue from these sources will be sufficient to support the board's operations. It was also to address whether the statutory fee caps are appropriate given the actual number of licensees. In addition, the report was to address whether keeping a surplus of only 10% of the board's direct and indirect costs is sufficient to support the board's operations.

DLS deferred a recommendation to LPC on whether to waive the board from full evaluation and for what period of time to extend the board's termination date until receiving the board's follow-up report. If the report was not submitted, DLS was to automatically conduct a full evaluation of the board during the 2013 interim. LPC adopted these recommendations at its December 2011 meeting.

## **The 2012 Follow-up Report**

After granting an extension to DLLR to complete the required report, DLS received the follow-up report submitted jointly by DLLR and the board on November 7, 2012. The report addressed all of the issues requested by DLS.

### **Overview of Accounting Errors and Comingling of Funds**

DLLR reports that the comingling of various types of funds in the Elevator Safety Review Board Fund occurred over several years due to a series of miscommunications, a lack of oversight of deposits and how those deposits were recorded in the accounting system, and turnover at the Office of Budget and Financial Services (OBFS) in DLLR.

DLLR reports that it is clear that for several years DLI deposited boiler inspection fees and miscellaneous fine or citation revenues into the fund along with elevator fees and other revenue required by law to be deposited in this fund. Apparently, DLI and OBFS officials did not have an understanding regarding which party was responsible for ensuring that the monies were separated and deposited into the correct program cost accounts, which would result in elevator monies being directed to the newly created special fund and other monies being deposited in the State's general fund.

In calendar 2011, OBFS hired a new chief of accounting and deputy chief of accounting. According to DLLR, the new accounting team has dedicated a significant amount of time to reviewing and analyzing the fund and the comingling of monies that occurred for several fiscal years.

DLLR concludes that the lingering issues with proper disposition of funds have been resolved for fiscal 2013. OBFS and DLI have worked closely to develop rigorous standards and practices to ensure that monies are deposited accurately and information is shared effectively. Effective July 1, 2012, DLI has instituted a procedure requiring all deposits to be tracked carefully and entered into an internal database. Every three months, DLI will issue a report to OBFS and the Division of Occupational and Professional Licensing that lists total special and general fund deposits. The first report was recently issued by DLI. OBFS advises that it evaluated the DLI report and found that the amount of revenue due to the special fund matched the amount that appeared in the board's program cost account. The remaining monies were directed to the general fund, as specified in State law.

### **Accounting History for Fiscal 2009 through 2012 and Fiscal 2013 Revenue Projection**

Due to the commingling of funds in prior years, DLLR is able to provide data only for fiscal 2011. In that year, \$46,031 was generated from registration fees for third-party elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met, but \$125,646 was credited to the Elevator Safety Review Board Fund. DLI believes most of the excess funds were ultimately deposited into the general fund because of the reversion provision governing the fund.

Based on the limited data available, the Division of Occupational and Professional Licensing projects that the fund will receive approximately \$52,000 in revenues from DLI in fiscal 2013.

### **Licensing Totals for Fiscal 2012, Projection for Fiscal 2013, and Complaint Activity**

The board issued 290 new elevator mechanic licenses and 10 new elevator contractor licenses in fiscal 2012, for a total of 300 licenses issued. The division notes that the board is poised to undertake a major licensing initiative in this fiscal year; the board expects to issue nearly 700 new licenses in fiscal 2013. The board received no complaints through October 2012.

### **Sufficiency of the Fund Balance and Fiscal 2012 Elevator Mechanic and Contractor Licensing Revenues**

The 300 licenses issued in fiscal 2012 resulted in \$61,000 in revenue in that fiscal year. The division expects licensing revenues to be significantly higher in fiscal 2013 as the bulk of individuals who are required to be licensed by the board will achieve licensed status during this fiscal year. Thus, the division projects about \$137,500 in licensing revenue in fiscal 2013.

The fact that the majority of licensees will achieve licensed status during fiscal 2013 creates a difficult fiscal situation as the board has a lapsing special fund. Unlike other special funds, which may accrue a fund balance, the Elevator Safety Review Board Fund may only carry a surplus equal to 10% of its direct and indirect costs. Thus, due to the anticipated licensing renewal trends, the sufficiency of the board revenues is less certain than it would be if the special fund were nonlapsing. Nevertheless, the division projects that board revenues will be sufficient to cover anticipated expenditures through fiscal 2017, and DLS concurs.

## **Recommendations**

Based on the information provided in the follow-up report, DLS is satisfied that the board continues to make progress in meeting its statutory responsibility of licensing elevator mechanics and contractors. As the board continues to issue more licenses, there will be more revenue from licensing fees and more reliable revenue data provided by DLLR, enabling DLS to accurately assess the fund's stability and viability in the future.

**DLS recommends that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by five years to July 1, 2019. This will give DLS the opportunity to assess the stability and viability of the Elevator Safety Review Board Fund following five years of licensing activity. Waiting any longer to assess the fund may result in insufficient resources for the board to maintain its operations. DLS also finds that there is no need for the board to submit any additional follow-up report.**

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**Part II**  
**State Treasurer's Office**  
**Report of the Treasurer**

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Department of Legislative Services  
Annapolis, Maryland

December 2012



**TREASURER'S REPORT TO  
LEGISLATIVE POLICY COMMITTEE**

**December 11, 2012**

**Nancy K. Kopp**

*State Treasurer*

**Section 5-104 of the State Government Article of the Annotated Code of Maryland provides that, “The Treasurer shall address the Legislative Policy Committee of the General Assembly on a semi-annual basis and as necessary on issues of legislative importance, including the activities of the Board of Public Works, bond sales, and investment and procurement initiatives.” This Report is in fulfillment of that law and covers the period since the report of June 8, 2012. I invite and welcome further discussion with the Committee at your convenience.**

The State Treasurer’s activities and responsibilities are of particular concern to the Legislature. One of seven statewide Constitutional officers, and the only one elected by the General Assembly, the State Treasurer’s duties are multifaceted and extend throughout State government and higher education. The Treasurer’s duties include membership on the Board of Public Works and Board of Revenue Estimates and Chairmanship of the Capital Debt Affordability Committee. The Treasurer presently also serves as Chair of the Board of Trustees of the College Savings Plans of Maryland and the Board of Trustees of the State Retirement and Pension System. She is a member of the governing boards of the Teachers’ and Employees’ Supplemental Retirement Plans, the Maryland Health and Higher Education Facilities Authority, the Maryland Small Business Development Financing Authority and of the Maryland Agricultural Land Preservation Foundation. Several of these Boards work under the general oversight of legislative oversight committees which are in periodic receipt of reports and communications from the Office, as do the two legislative budget committees.

While the State’s fiscal picture seems to be improving slightly due to the strength and diversity of Maryland’s economy, the State continues to face fiscal challenges. The Office’s experienced staff continues to assist State agencies in many ways including expanding the use of innovative banking services such as remote deposit, negotiating reduced insurance premiums while enhancing coverage, and advising on procurements.

We continue to plan and conduct our bond sales effectively, while striving to maintain Maryland’s coveted AAA bond rating. We monitor the market routinely to take advantage of savings as they become available, such as by refunding our General Obligation Bonds or issuing new types of debt such as Qualified School Construction Bonds, Qualified Zone Academy Bonds and Qualified Energy Conservation Bonds. Lastly, we continue to invest State funds prudently and conservatively to minimize risk to the Maryland taxpayers.

While we continue to do more with less, the Office is implementing improvements and achieving real results. The items set forth below detail a number of these achievements and we are always available to provide greater information or answer questions regarding these and other issues.

## BOARD OF PUBLIC WORKS

Between June 1, 2012 and November 30, 2012, the Board of Public Works (BPW) met nine times to consider State procurements, expenditures of capital appropriations, the acquisition, use and transfer of State assets, issuances of licenses to dredge and fill wetlands, and the acquisition of land and easements in support of Program Open Space, the Conservation Reserve Enhancement Program, the Rural Legacy Program and the Agricultural Land Preservation Program.

During this timeframe, the following items, worthy of note, were considered by the Board of Public Works:

### **Capital Equipment Lease-Purchase Financing**

- The Legislative Policy Committee (LPC) approved the request of the State Treasurer periodically to lease-finance equipment acquisitions in an aggregate amount not to exceed \$40 million over a two-year period beginning July 1, 2011 and ending June 30, 2013. The BPW approved the following lease-purchase equipment financing consistent with this authorization:
  1. **October 2012 Tax-Exempt Equipment Lease-Purchase Agreement** for financing the acquisition of approximately **\$739,000 of capital equipment** for the Department of Health and Mental Hygiene, Maryland Department of the Environment, and Maryland Public Television. (9/19/12)
- Following the most recent financing (October 2012), the remaining balance of the \$40 million authorized by LPC for equipment lease-purchase financing is approximately \$34.7 million.

### **State General Obligation Bonds**

- Adoption of a Resolution for the **sale of \$727,025,000 of State of Maryland General Obligation Bonds**, to be known as the State and Local Facilities Loan of 2012, Second Series:
  - Second Series A: \$26,340,000 tax-exempt bonds (negotiated - retail)
  - Second Series B: \$478,660,000 tax-exempt bonds (competitive)
  - Second Series C: \$23,000,000 taxable bonds (competitive)
  - Second Series D: \$15,230,000 taxable Qualified Zone Academy Bonds (competitive)
  - Second Series E: \$183,795,000 tax-exempt refunding bonds (competitive) (08/01/12)
- **Merger of St. Joseph Medical Center, Inc. and the University of Maryland Medical System, Inc. (UMMS):**

1. Approval of a request to sell property of St. Joseph Medical Center that was improved with State General Obligation bond proceeds to UMMS; and
2. Approval of a capital projects grant assumption agreement between UMMS and the BPW for the three St. Joseph Medical Center, Inc. grant agreements that correspond to the three General Obligation bond-funded grants received since 2004. (11/14/12)

### Procurement

- Adopted regulations to implement the **Veterans Small Business Enterprise Program** and issued a procurement advisory setting forth agency procedures to implement this program. (06/20/12)
- Approval for notification to go out to companies listed on the Agenda Item informing each company that the BPW intends to include the company on a **list of persons engaged in investment activities in Iran**. (Chapter 447 of the Acts of 2012) Each company notified has a 90-day opportunity to refute inclusion on the list. Inclusion of a business on this list would make that business ineligible to bid on, submit a proposal for, or enter into or renew a contract with a public body in Maryland for goods or services. (09/19/12)
- Approval of a consulting services contract to **review current State procurement practices** and develop a business process improvement plan. (11/14/12)

### Maryland Stadium Authority

- Authorized the Maryland Stadium Authority to issue debt on two separate occasions:
  - Issue **\$15.93 million in new debt to repay bonds that financed the Montgomery County Conference Center in 2003**. The Stadium Authority will use \$15.62 million to redeem the existing debt and use the balance for transaction costs. Estimated net present value savings is approximately \$1.77 million. The Series 2012 Refunding Bonds will be payable from rent paid by the State as the Stadium Authority leases the Conference Center to the State (10/17/12); and
  - Issue new debt, **\$14.05 million in tax supported Lease Revenue Bonds** (Series 2012 Taxable Lease Revenue Bonds), with \$13.66 million of the proceeds to be used to redeem the outstanding balance of the Series 2002 Hippodrome Performing Arts Center Taxable Lease Revenue Bonds. (06/20/12)
- Ocean City Convention Center:
  - Approval of **modifications to the Ocean City Convention Center Operating Lease** between the Mayor and City Council of Ocean City and the Maryland Stadium Authority consistent with legislation passed during

the 2012 Session (SB 990; Chapter 630 of the Acts of 2012). The Operating Lease was modified to extend:

- The State’s obligation for one-half of the operating deficit at the Ocean City Convention Center through December 31, 2035; and
- The State’s obligation for an annual \$50,000 contribution to the Ocean City Convention Center’s Capital Improvements Fund until December 31, 2035. (08/22/12)
- **Performing Arts Center** (08/22/12):
  - Approval of a Memorandum of Understanding setting out the **project management obligations** for the Maryland Stadium Authority;
  - Approval of a contract for **design and construction administration services** for conversion of existing ballroom and exhibit hall space into a two-story Performing Arts Center; and
  - Approval of the award of a **construction management contract for pre-construction services** for the Performing Arts Center.

### Lottery and Gaming

- Approval of a **Memorandum of Understanding** between the Board of Public Works and the Department of Business and Economic Development under which DBED is designated to manage the **Small, Minority and Women-Owned Business grant program** funded by video-lottery-terminal proceeds. (08/22/12)
- Approval of the **transfer of ownership of Rocky Gap Hotel/Conference Center** to Evitts Resort, LLC as a part of Evitts’ proposal for a **video lottery terminal facility** adjacent to the Rocky Gap Resort. In order to effect this change of ownership, approval was also given for the Maryland Economic Development Corporation (MEDCO) to assign to Evitts the ground lease through which the Department of Natural Resources leases 260 acres in Rocky Gap State Park to MEDCO. (06/20/12)
- Approval of a request by the **Lottery and Gaming Control Agency to create 44 positions** within the “Rule of 100.” General Funds will be used to cover the cost of the positions (approximately \$1.73 million). The new positions will enable the Agency to perform its regulatory responsibilities under recently enacted legislation (Senate Bill 1 from the 2012 2<sup>nd</sup> Special Session and Senate Bill 864 which was passed during the 2012 Legislative Session):
  - Table games;
  - 24 hour-a-day/7-day-a-week casino operations;

- Licensing of qualified veterans organizations to operate up to five instant ticket lottery machines; and
- Oversight of electronic gaming devices in Anne Arundel and Calvert Counties. (11/14/12)

**Personnel – “Rule of 100”**

- In FY 2013, as of November 30, 2012, the BPW has approved the **creation of 77.4 positions within the “Rule of 100.”**
  - Approval to transfer \$100,000 from the Contingency Fund to the **State Labor Relations Board (SLRB)** to implement the provisions of recently enacted legislation (Chapter 582 of the Acts of 2012) that expands the applicability of the State’s collective bargaining law to include employees of the Office of the Comptroller, the Maryland Transportation Authority who are not police officers, the State Retirement Agency and the Maryland State Department of Education. Part of the implementation plan includes increasing an existing Assistant Attorney General **position from part time to full time (0.6 to 1.0)**. The Board approved the **creation of this new full-time position** under the “Rule of 100.” (08/01/12)
  - Approval of the creation of **33 positions** in the Department of Health and Mental Hygiene to support all key core functions of the **Maryland Health Benefit Exchange**. The cost of the 33 positions, estimated to be approximately \$2.4 million, initially will be supported entirely by federal funds and will at a later date be supported with Exchange fee collections. (09/19/12)
  - Approval of the creation of **44 positions in the Lottery and Gaming Control Agency**. (11/14/12) [See “Lottery and Gaming” Section above for more information.]
- Approval of the creation of **18 positions outside of the “Rule of 100” in the Department of Housing and Community Development (DHCD)** to support EmPower Maryland energy efficiency programs for low income electric customers. The Maryland Public Service Commission ordered the operation of these low income programs to shift from the electric utilities to DHCD. These 18 positions are funded by the EmPower Maryland surcharge that is assessed against all electric utility customers. (06/20/12)
- Approval of the creation of **one federally-funded position outside of the “Rule of 100” within the Maryland Energy Administration** to coordinate a program to reduce energy consumption in State buildings 20% by 2020. This position will be abolished if the funding source is terminated. (09/19/12)

## State Services and Facilities

- Granting of a request for a **Land Patent** to the Baltimore Area Council, Boy Scouts of America for 19 +/- acres of land in Harford County that were determined not to have been granted to anyone by either Lord Baltimore or the State. Land that has never been granted is considered vacant, and the discoverer may purchase the land from the State if the State does not reserve it for public purposes. (06/20/12)
- Approval of a contract modification for the configuration of all new **medevac helicopters** to reflect changes to the searchlight and medical interior initially proposed in the original contract. Authorization was also given to purchase helicopters 7 - 9 during FY 2012 (funds distributed during FY 2013) and to purchase helicopter 10 during FY 2013 (funds distributed during FY 2014). (06/20/12)
- Approval of the demolition of 210 properties on 10 acres near **Coppin State University** campus. Coppin has been acquiring properties specifically to support the growth of Coppin and to provide a site for construction of a new **Science & Technology Center**. Those property acquisitions periodically have been approved by the BPW. Approval was also given to clear the 10-acre site for construction. (07/11/12)
- Approval of a 40-year ground lease between **Towson University** and **Harford Community College** for 10 acres located on the campus of Harford Community College. Towson University intends to build a 55,000 gross square foot classroom/office building to deliver its academic programs to Harford and Cecil Counties as a part of a “2+2” program. **Morgan State University** has until March 31, 2013 to opt into the initiative as well. (08/01/12)
- Approval of a contract to provide end-to-end **talent acquisition services and recruitment processes** for hiring faculty and staff at **University of Maryland University College**. (08/22/12)
- Approval of three federally-funded **National Guard Armory renovation/construction** contracts:
  - **La Plata MD National Guard Readiness Center** – \$9.28 million for renovations and building an addition;
  - **Dundalk MD National Guard Readiness Center** – \$14.3 million for renovations and building an addition; and
  - **Westminster MD National Guard Readiness Center** – \$7.095 million for renovations and building an addition. (09/19/12)

## Environmental Programs

- **Rural Legacy Program:** A program to preserve large blocks of contiguous open space that are among the State's most valuable due to myriad agricultural, forestry, natural and cultural resources. To protect these resources, the Rural Legacy Program, acting through local governments or private land trust sponsors, purchases conservation easements or fee simple interests in real property from willing land owners based on Rural Legacy Plans. For FY 2013, the BPW:
  - Approved the **expansion of the Mountain Ridge Rural Legacy Area** (Allegany County) by 14 acres to complete a multi-parcel easement in the Legacy Area; and
  - Approved the allocation of **\$5.622 million in FY 2013 General Obligation Bond proceeds among 11 Rural Legacy Areas:**
    - Agricultural Security Corridor Rural Legacy Area (Caroline, Cecil, Dorchester, Kent and Talbot Counties): \$440,000;
    - Anne Arundel South Rural Legacy Area: \$45,307.63;
    - Coastal Bays Rural Legacy Area (Worcester County): \$320,000;
    - Deer Creek Rural Legacy Area (Harford County): \$701,366.63;
    - Dividing Creek Rural Legacy Area (Somerset and Worcester Counties): \$130,631.69;
    - Fair Hill Rural Legacy Area (Cecil County): \$113,698.95;
    - Mid-Maryland Washington Rural Legacy Area (Washington County): \$1,260,000;
    - Nanticoke Rural Legacy Area (Dorchester County): \$650,000;
    - Piney Run Rural Legacy Area (Baltimore County): \$568,000;
    - Upper Patapsco and Little Pipe Creek Rural Legacy Areas (Carroll County): \$617,995.09; and
    - Mattapany Rural Legacy Area (St. Mary's County): \$775,000. (09/19/12)
- Approval of the second Maryland **Regional Greenhouse Gas Initiative (RGGI)** Services Contract with RGGI, Inc. to provide technical, scientific and auction support services to Maryland and the other eight member states in the

development and implementation of the multi-state **cap-and-trade, greenhouse gas control program**. (09/19/12)

- Approval of a request by the Department of Housing and Community Development to enter into multiple contracts totaling \$17.9 million to provide **weatherization services for low-income single-family households** in the BGE, Pepco, Delmarva, Potomac Edison and SMECO service territories under the **EmPower Maryland Program**. (09/19/12)
- Approval of the expenditure of \$1.35 million of the State's share of **Program Open Space** funds for the **acquisition of a conservation easement on a 200 +/- acre parcel** in Anne Arundel County that includes bottomland forest, pasture, and cultivated fields (Gail Campbell property). Although the land was not located in a Target Ecological Area, the Department of Natural Resources scored the property using the new "**Community Connections**" **protocol** which is a metric for scoring properties in relation to human ecology objectives. This protocol assesses properties that provide exceptional public benefits and connect people to the land. (10/17/12)
- Approval of the use of \$416,610.34 from Program Open Space State funds to acquire a 101.3-acre **Conservation Reserve Enhancement Program ("CREP") Easement** on property in Wicomico County (Smith Property). With the approval of this project, the 2009 Memorandum of Understanding between the State and the US Department of Agriculture to **protect 3,285 acres in permanent CREP easements** using \$12.6 million in POS State funds was satisfied. (10/17/12)

### Information Technology

- Approval of the second phase – Eastern Shore infrastructure build out (\$32.7 million) – of a \$345 million integrated statewide **public safety wireless communication system** for broadcast interoperability among the State's first responders. Authorization was also given for the expenditure of \$23 million by State agencies for subscriber equipment through the end of FY 2013. (06/06/12)
- Approval of an upgrade to information technology equipment that will create a state-of-the-art **E911 delivery network for the Maryland State Police (MSP)**. These upgrades will improve MSP's ability to handle 911 calls directed to its barracks and create Next Generation 911 capabilities. (07/11/12)
- Approval of a 15-year multiple award, indefinite quantity **master contract for commercial off-the-shelf software**. Of the 53 Contractors approved for award, 34 are Maryland resident businesses, 14 are small businesses and 21 are MBEs. The cost of the first 3 years of this contract is estimated to be \$36 million. (09/19/12)
- Approval a 15-year multiple award, indefinite quantity purchase order request for proposals-based **master contract to provide hardware, installation, training services and manufacturer's extended warranty**. Laptops and desktops are

excluded from this contract. Of the 73 Contractors approved for award, 50 are Maryland resident businesses, 16 are small businesses, and 19 are MBEs. The cost of the first 3 years of this contract is estimated to be \$57 million. (11/14/12)

### Transportation

- In December, 2011, the BPW gave its approval for a \$100M expedited procurement with a phased construction schedule for **improvements at BWI Marshall to facilitate the merger between Southwest and AirTran Airlines**. During the June 1 – November 30, 2012 timeframe, the following reports pertaining to the expedited procurement were received:
  - Contract Award for construction of a new nine lane passenger security checkpoint and the airside passenger connector project for Concourses B and C; and (06/06/12)
  - Contract Award for the Concourse C widening project. (11/14/12)
- Approval of a standard **skycap and wheelchair service concession contract** that grants non-exclusive rights for one or more authorized air carriers operating at **BWI Marshall**. (08/01/12)
- Approval of a standard **mishandled baggage delivery service concession contract** that grants the non-exclusive right to conduct mishandled baggage delivery services at **BWI Marshall**. (11-14-12)
- Approval of a Memorandum of Understanding between the State, acting through the Maryland Department of Transportation, and **British Airways** that provides a guarantee to the airline on operating margin not to exceed \$5.5 million/year. The guarantee is based upon the difference between actual operating margin and the target margin required to maintain service (8%) at **BWI Marshall**. The term of the MOU is 3 years. (09/19/12)
- Approval of a contract with **Bombardier Transportation Services USA Corp.** to provide passenger railroad services on the Camden and Brunswick lines of the **MARC Commuter Rail system**. The contract provides for operating the service and maintenance of equipment, facilities and rights-of-way used in providing the service. (10/17/12)
- Approval of the **extension of the MTA's Mobility Services contracts** with Veolia Transportation Services, Inc. and MV Transportation, Inc. each for six months to ensure continued paratransit services while a new procurement for these services is conducted. (08/22/12)
- Approval of the **award of multiple contracts to operate ADA paratransit services for MTA's Mobility Services Program**. Contracts with MV Contract Transportation, Inc., Veolia Transportation Services, Inc. and First Transit, Inc. were approved. (11/14/12)

- Approval of a **modification to the Architectural/Engineering contract for the Inter-County Connector** to increase the contract value by \$20 million for General Engineering Consultant services and to add 2 years to the contract term. Even with this increased funding, the project is within its overall budget of \$2.425 billion. There are an additional \$31 million in costs with over \$20 million attributable to environmental mitigation, monitoring or maintenance work. However, only a \$20 million contract modification was sought due to the availability of cost savings from earlier work. (08/22/12)

## INVESTMENT DIVISION

The Treasurer's conservative investment policy and practices have protected the investment portfolio through these continued volatile and unprecedented economic times. It is a true accomplishment in this environment to report that all principal is intact and a modest but continuous return has been earned on the portfolio. The par value of the General Fund investment portfolio for October 31, 2012 was \$6,450,878,782.93 as compared to October 31, 2011 when it was \$6,453,189,015.32. This is a decrease of \$2.3 million dollars.

On October 31, 2012, the portfolio was earning an average of 0.82%, compared to 0.85% for the same date in 2011. The lower return reflects the impact of the Federal Open Market Committee maintaining the Fed Funds Target rate at .25% or less since December 16, 2008. For comparison, the three month constant maturity Treasury Bill averaged 0.10% from July 2012 until the end of October 2012 as compared with 0.02% for the same time period in the previous fiscal year. The low rate environment combined with the highly conservative portfolio strategy focused on liquidity to offset unpredictable and volatile cash flows has resulted in continued moderate but positive interest earned.

The General Fund gross interest earnings received year-to-date for FY 2013 are \$17,489,065 as compared with \$37,145,517 received for the same time period in FY 2012. The over \$19 million decline in interest received is directly attributable to the continued lower interest rate environment combined with the increased liquid balances which earn a lower return.

The following chart tracks the impact of the legislation passed last fiscal year to reduce the number of individual agency accounts that receive an interest allocation from the total interest earned on the investment portfolio. It should be remembered that as the total General Fund portfolio decreases, the proportion of Agency Funds to General Funds increases and therefore their allocated share increases.

## Total Interest Earned

### % of Total Interest Earned Allocated to State Agencies

Fiscal Year	Net General Fund	Allocated to State Agencies	Total	% of Total Allocated to State Agencies
<b>2000</b>	121,951,720	103,173,287	225,125,007	46%
<b>2001</b>	136,981,074	144,249,899	281,230,973	51%
<b>2002</b>	82,641,807	66,399,769	149,041,576	45%
<b>2003</b>	37,205,637	42,240,523	79,446,160	53%
<b>2004</b>	25,037,345	29,053,449	54,090,794	54%
<b>2005</b>	52,886,074	54,538,463	107,424,537	51%
<b>2006</b>	149,613,238	109,222,108	258,835,346	42%
<b>2007</b>	150,798,001	205,589,917	356,387,918	58%
<b>2008</b>	155,170,184	207,179,098	362,349,282	57%
<b>2009</b>	102,768,740	142,619,087	245,387,827	58%
<b>2010</b>	44,190,425	87,921,654	132,112,079	67%
<b>2011</b>	53,002,765	87,698,955	140,701,720	62%
<b>2012</b>	22,981,014	48,647,953	71,628,967	68%
<b>October 2012</b>	7,655,034	9,834,031	17,489,065	56%

The Securities Lending Program continues to provide additional revenue. The program has earned \$152,763.26 so far in FY 2013. This compares with \$138,275.81 for the same period in FY 2012. The Federal Reserve and Federal Treasury programs designed to add liquidity to the financial markets which reduced borrowers' need for the securities in the State's portfolio is being scaled back.

The Office continues to increase MBE participation in the investment of State funds. Twenty-four MBE broker/dealers are on the Office's approved list for FY 2013 and they have handled investments of \$259 million so far this fiscal year. This compares with FY 2012, when the Office had twenty-two approved MBE broker/dealers who handled \$151 million in investments by the end of October.

The Maryland Local Government Investment Pool (MLGIP) AAAM rating was reaffirmed by Standard and Poor's on September 24, 2012. The pool balance at October 31, 2012 was \$3,129,219,623.37 compared with \$3,344,600,869.94 for the same date in 2011. This is a decrease of over \$215 million dollars, due to lower available cash balances of the participants. The MLGIP is paying .14% as of October 31, 2012 as compared with .09% last year. The participants continue to use the pool due to the lack of safe short term investment alternatives for Investment Pool members at a comparable yield. The

MLGIP is in total compliance with the 2010 changes in Money Market rules and regulations.

The Office continues to invest according to the officially adopted State Treasurer's Investment Policy, which sets out investment goals, priorities and constraints. The overriding goal is to assure sufficient liquidity to maintain uninterrupted funding of State government and legislated payments. As revenues have become less predictable and more volatile, the strategy has been adjusted to ensure liquidity. The State Treasurer's Office continues to review and compare our cash management and investment policies and practices with those of peer AAA-rated States to ensure best practices are followed and implemented.

## **DEBT MANAGEMENT DIVISION**

### **Ratings**

Maryland is one of eight states with AAA ratings from all three rating agencies. The states are Maryland, Delaware, Virginia, North Carolina, Georgia, Missouri, Iowa and Utah. On July 18 and July 19, 2012 Moody's Investors Service, Standard & Poor's (S&P) and Fitch Ratings all affirmed the State's AAA rating.

Moody's has assigned a negative outlook to Maryland's General Obligation Bonds. In its latest confirmation of Maryland's Aaa rating dated July 18, 2012, Moody's stated that the negative outlook on Maryland's Aaa rating, like that for the Commonwealth of Virginia, is due to Maryland's indirect linkages to the weakened credit profile of the U.S. government, which itself was assigned a negative outlook by Moody's on August 2, 2011. The July 18, 2012 rating states "Moody's has determined that issuers with such indirect linkages, such as Maryland, have some combination of economies that are highly dependent on federal employment and spending, a significant healthcare presence in their economies, have direct healthcare operations, or high levels of short-term and puttable debt." In a December 7, 2011 assessment of issuers with these indirect linkages, Moody's specifically cited Maryland's and Virginia's economic sensitivity to federal employment and spending as an outlier having high risk exposure when compared to national norms. Moody's did not cite any elevated risk exposure for economic sensitivity to the healthcare industry or capital markets exposure as evidenced by the fact that the State has no general obligation variable rate debt.

On September 11, 2012, Moody's issued an update on the U.S. government stating that the Aaa rating with a negative outlook remains unchanged. The report continued to state that THE DIRECTION OF THE U.S. RATING AND ITS OUTLOOK WILL MOST LIKELY BE DETERMINED BY THE OUTCOME OF BUDGET NEGOTIATIONS DURING THE COURSE OF 2013 AND THAT THE MAINTENANCE OF THE CURRENT RATING AND OUTLOOK INTO 2014 IS "HIGHLY UNLIKELY". THE TREASURER'S OFFICE ANTICIPATES THAT MOODY'S WOULD REVIEW THE STATE'S RATING AND NEGATIVE OUTLOOK SHORTLY FOLLOWING ANY CHANGES TO THE U.S. RATING OR OUTLOOK.

### *Meetings with Rating Agencies*

As of the date of this report, there have been no further rating actions. The Treasurer's Office has provided the rating agencies regular updates on the financial condition of the State. The next conference call with the rating agencies is expected prior to the sale of the 2013 First Series General Obligation Bonds in March, 2013.

### *Excerpts from Ratings Reports*

Generally, there is consensus among the rating agencies in evaluating the State's credit strengths and weaknesses. All three agencies cite Maryland's economy and fiscal management as a credit positive. The State's unfunded pension liability continues to be a credit challenge, although each agency recognizes the State's recent reform efforts. The following summarizes the most recent reports:

Fitch Ratings, in assigning the AAA rating and stable outlook, noted:

- *Debt oversight is strong and centralized, and the debt burden is moderate. The State has policies to maintain debt affordability, and the constitution requires GO and transportation bonds to amortize within 15 years.*
- *Pension funding levels have deteriorated, although the State has undertaken extensive pension and other post-employment benefit (OPEB) reforms.*
- *The State has a diverse, wealthy economy, benefiting from its proximity to the nation's capital.*
- *Financial operations are conservative, and the State maintains a well-funded Rainy Day Fund to manage revenue cyclicalities. The State took repeated action during the course of the recession to address projected budget gaps, including raising tax revenues, cutting spending, and using Rainy Day and other balances.*

Credit challenges that were cited by Moody's include:

- *Continuing budget pressure*
- *Low retirement system funded levels*
- *Above average debt burden*
- *Reliance on federal jobs in year of retrenchment*

Standard and Poor's AAA rating with a stable outlook reflects the State's:

- *Diverse, broad-based economy, which has historically outperformed the national economy;*
- *Strong wealth and income levels, coupled with unemployment that remains below the national average through economic cycles;*
- *Long history of prudent fiscal management, including making difficult decisions to restore structural budget balance; and*

- *Moderate debt burden; enhancing this are a clearly defined debt-affordability model limiting annual issuance and the maintenance of ratios within reasonable limits, including a constitutional 15-year debt maturity schedule.*

Standard and Poor's continues in its analysis to cite below-average pension funded ratios and the potential for significant reductions in federal funding as downside risks to the rating.

The State Treasurer's Office sends copies of the ratings reports for each bond sale to all members of the General Assembly and current reports are also available on the Treasurer's website at [www.treasurer.state.md.us](http://www.treasurer.state.md.us).

### **Closed Financing - General Obligation Bonds**

Since our last report, the State has had one successful bond sale. The 2012 Second Series was sold on August 1, 2012 and totaled \$727,025,000. The proceeds were used to finance new projects and refund existing bonds. The sale closed on August 14, 2012 and had five series:

- Series A: \$26.3 million in Tax-Exempt Bonds sold in a negotiated sale with first priority to Maryland citizens
- Series B: \$478.7 million in Tax-Exempt Bonds sold in a competitive sale primarily to institutions
- Series C: \$23.0 million in Taxable Bonds
- Series D: \$15.2 million of Qualified Zone Academy Bonds (QZABs)
- Series E: \$183.8 million of Tax-Exempt Refunding Bonds

The Series A and Series B bonds provided \$525.0 million, at a historically low TIC of 2.19%, to finance investments in capital projects that benefit communities throughout the State. The Series D QZABs were taxable bonds with a 100% direct interest subsidy from the US Treasury. The refunding bonds saved taxpayers \$16.0 million in interest costs.

### **Closed Financing – Leases**

The Capital Lease-Financing Program allows State agencies to acquire equipment and pay for those items over a three, five, or ten year time frame. Between July 1, 2012 and November 30, 2012, \$0.74 million in capital equipment was leased by State agencies through the State Treasurer's Office. On December 14, 2012, the State Treasurer's Office will finalize the financing of another equipment lease totaling \$0.24 million.

The Treasurer's Office also finances Energy Performance Leases in cooperation with the Department of General Services (DGS), providing funding for energy conservation at State facilities. The program finances significant up-front investments in conservation projects; the lease is paid using the savings in operating costs. No energy leases were financed between July 1, 2012 and November 30, 2012.

## **2013 Financing Plans**

The next general obligation tax-exempt financing, projected to total approximately \$500 million, is planned for early March 2013. In light of reduced retail demand for the State's bonds due to the current low interest rate environment, the State Treasurer's Office does not expect to offer a retail component for this sale. Throughout the year, the Office monitors interest rates to gauge refunding opportunities that meet present value savings criteria in debt policy. If these benchmarks are met, refunding bonds could also be issued in March.

## **Status of the Annuity Bond Fund**

Debt service on General Obligation Bonds is paid from the Annuity Bond Fund (ABF) and the primary source of revenue for this fund is real property tax receipts. The Capital Debt Affordability Committee's 2012 Report updated projections for the Annuity Bond Fund after the issuance of the 2012 Second Series Bonds. A General Fund subsidy is projected beginning in fiscal year 2014, assuming current property tax rates of 11.2 cents per \$100 of assessed value of real property other than that of public utilities and 28 cents per \$100 of assessed value of real property of public utilities are not changed and other assumptions, including no bond premiums, remain as currently projected. Please refer to the 2012 CDAC report for projections.

## **Capital Debt Affordability Committee (CDAC)**

The 2012 Capital Debt Affordability Report and the 2012 meeting materials are available on the State Treasurer's website at <http://www.treasurer.state.md.us/debtmanagement/cdac-reports.aspx>

## **General Obligation Recommendation**

The Committee met on October 1, 2012 and considered a recommendation to increase the authorization assumption projected in the 2011 CDAC Report by \$150 million. The Committee thus approved a total of \$1,075 million for new general obligation authorizations by the 2013 General Assembly to support the fiscal year 2014 capital program. The vote was 4-1, with the Comptroller voting against the proposed amount and advocating no change to the original \$925 million planning assumption.

In addition to determining and recommending a prudent affordable authorization level for the coming year, the Committee also sets out planning assumptions for the DBM and DLS to use in the capital program planning process. The Committee's adopted planning assumptions for future authorizations assume nearly level authorizations through fiscal year 2017 of between \$1,085 million and \$1,105 million. In fiscal year 2018, the projected authorization is \$1,200 million and it increases by approximately 3% through 2022. With these authorization levels, the debt affordability ratios remain within the CDAC benchmarks of 4% debt outstanding to personal income and 8% debt service to revenues. The affordability analysis presented at the Committee's meetings indicates that the Committee's projection of General Obligation Bond authorizations will continue

to be affordable (within debt guidelines) going into the future. Debt outstanding peaks at 3.46% of personal income in fiscal year 2014 and is at 2.94% in fiscal year 2022. Debt service increases annually to 7.62% of revenues in fiscal year 2018 but declines to 7.15% in fiscal year 2022.

The Committee recognizes that there are multiple annual authorization levels and patterns that would result in adherence to the benchmarks, depending on future levels of personal income and State revenue. The Committee's planning assumptions for future authorizations will be reviewed in preparation for the 2013 report in light of updated revenue and personal income projections and authorization levels may be adjusted to adhere to these affordability benchmarks.

### **Academic Facilities Bonds Recommendation**

Based on its review of the condition of State debt in light of the debt affordability guidelines, the Committee therefore, recommended a limit of \$32.0 million for new academic facilities bonds for the University System of Maryland for fiscal year 2014. The Committee did not receive any requests for new issuances for Morgan State University, St. Mary's College of Maryland and Baltimore City Community College and therefore made no recommendations for these institutions.

## **BANKING SERVICES DIVISION**

The primary mission of the Banking Services Division (BSD) is to manage and control relationships with vendors providing banking services for the State of Maryland, to anticipate agency banking requirements and respond timely to agency requests.

The Division is directly responsible for managing the banking needs for all agencies of the State. Over the past six months, BSD continued to be actively involved in the conversion of lockbox processing to the new statewide lockbox provider, Citibank N.A. The first two agencies, the Comptroller's Revenue Administration Division and the Department of Labor, Licensing and Regulation's Contributions Division, have implemented lock boxes with Citibank. These two agencies represent approximately 60% of total statewide lockbox volume. Utilizing Citibank's enhanced imaging capabilities and on-line, real-time access; both agencies anticipate a significant decrease in the amount of "exception" processing. Agency personnel will now be able to review, research, and resolve most exception items on-line. The result will be faster processing of exception deposits and reduced paper flow between the lockbox provider and agencies. The remaining 24 agencies will be converted by February 2013.

Banking Services continues to ensure the accurate and timely recordation of State funds and the reconciliation of the State's bank accounts to the State's R\*STARS accounting system. The Division must account for the receipt of all warranted deposits and the disbursement of all warranted payments. To meet these responsibilities, a comprehensive daily cash reconciliation is performed which allows Banking Services to proactively resolve agency banking issues. Even as the volume of transactions has increased, the processes and controls developed by BSD continue to result in a timely,

accurate, and well documented reconciliation of the State's cash accounts. For FY 2013, total cash receipts and disbursements each exceeded \$105 billion through October 31<sup>st</sup> and the State's bank accounts continued to be reconciled to the penny on a daily basis to the State's general ledger.

In addition to the reconciliation duties, the Division performs daily operational functions that are critical to the movement of funds into and out of the State's bank accounts and to the recordation of these transactions in R\*STARS. These include:

- Processing the drawdown of funds from federal programs and grants
- Initiating Fed wire payments
- Managing foreign currency transactions
- Processing check stop payments, cancellations and reissues
- Initiating replacement checks for failed ACH payments
- Providing transaction research assistance to State agencies
- Managing the Unpresented and Undeliverable Check Funds
- Recordation in R\*STARS of all bank adjustments
- Maintenance of tables to allow for accurate posting of electronic receipts

During the past six months, BSD worked with several agencies in streamlining their receivables collection processes through implementation of the Bank of America Payment Collection Gateway (PCG) service.

Banking Services continued to work with the Department of Information Technology (DoIT) and NIC USA (NIC), on the implementation of self-funded eGovernment applications using a centralized web portal.

The Division is assisting the Comptroller's Revenue Administration Division (RAD) in implementing Bank of America Image Cash Letter (ICL) Service. The ICL service will allow RAD to deposit tax check receipts via transmission of an image file vs. the physical delivery of paper checks to the bank. Once completed, this service will result in faster availability of funds and a reduction in armored courier fees.

Another responsibility of the Division is to ensure protection of all State funds on deposit with financial institutions through monitoring of bank account and collateral balances. Utilizing the Treasurer's Bank Account Information System (TBAIS), Banking Services monitors over 1,800 agency bank accounts at 23 financial institutions. Total posted collateral as of October 31, 2012 was \$355 million.

The Banking Services Division continues to serve as the State's authority for the development, control and maintenance of statewide policies and procedures for banking products and services. We continually strive to stay at the forefront of changes in banking products and services offered in the financial industry. The Division will continue to explore new financial products and improved data delivery methods that will increase its capabilities to provide efficient, cost-saving, banking services to Maryland State agencies.

## INSURANCE DIVISION

The Insurance Division is responsible for administering the State's Insurance Program which is comprised of both commercial and self-insurance. Commercial insurance policies are procured to cover catastrophic property and liability losses, and other obligations derived from State contracts, statutes and regulations. Among the several exposures covered by commercial policies are State maintained toll bridges, tunnels and roads, the Baltimore Washington International Thurgood Marshall Airport, the Port of Baltimore, Maryland Transit Administration liability, assorted professional liability exposures, and student athlete accident insurance. The State self-insures a significant portion of its exposures and maintains the State Insurance Trust Fund to pay claims and the costs associated with handling those claims. Self-insurance coverage includes State-owned real and personal property, vehicles, and liability claims covered under the Maryland Tort Claims Act.

The Insurance Division is comprised of three units: Underwriting, Loss Prevention, and Claims. The Division's goal is to provide statewide risk management through loss protection (Underwriting), loss control (Loss Prevention), and loss restoration (Claims and Tort Litigation).

### Underwriting

The Insurance Division procures broker services for the purchase of commercial insurance to protect the State Insurance Trust Fund from catastrophic loss, to meet statutory or regulatory requirements, and for compliance with agencies' contractual agreements. Underwriting highlights for the past six months include the following:

The Maryland Transit Administration (MTA) coverage for physical damage of the bus and mobility fleets renewed effective July 1, 2012. After the broker approached five insurance companies, only the State's current carrier, Philadelphia, offered a quote. Philadelphia **reduced its rate by 19.6%**. The expiring premium was \$111,500 and the renewal premium was \$98,181, which **saved MTA \$13,319**.

MTA's property coverage for rail cars was renewed effective July 1, 2012. Three quotes were received, including one from the incumbent carrier, Ace. The values were up 45%, and Ace **reduced their rate 36.4%**, with improved coverage. The expiring premium was \$662,856, and coverage was renewed for \$618,284, which **saved MTA \$44,572**.

MTA's liability renewal was effective July 1, 2012. The broker had warned that the insurance carriers were seeking rate increases in addition to a ridership increase estimated at 15-20%. The broker provided us with two quotes: one quote from Lexington and the other quote from Queens Island. The Queens Island quote was \$292,967 lower than Lexington's which resulted in an **overall savings of \$20,216**.

The Maryland Aviation Administration (MAA) airport liability renewal effective August 15, 2012, for Baltimore Washington International Thurgood Marshall (BWI) and

Martin Airports was renewed with the incumbent carrier, Ace. The broker approached several carriers but all declined to provide a quote because of the incumbent's competitive pricing. In spite of BWI's growth, their losses have been low. Ace reduced the expiring premium (including the broker fee) of \$345,003 to \$339,202, which **saved MAA approximately 2%, or \$5,801**. Ace also continued to offer a plan that may return some premium to MAA after expiration if the losses remain low.

The statewide boiler and machinery coverage was renewed effective September 30, 2012. We reviewed quotes received from Zurich, our incumbent carrier, and from CNA. Our loss experience is poor mainly due to two large losses for which the incumbent paid over \$5.2 million. Even though CNA quoted a lower premium, Zurich included 20 days of infrared testing, a service that is valued at \$21,000. These services are critical in preventing future State losses. Zurich also increased limits on several coverages. In addition, when asked to lower their premium to make their pricing more competitive with CNA, Zurich readily complied by decreasing their premium by more than \$48,000. Zurich was awarded the renewal. With an expiring premium of \$360,688 and a renewal premium of \$352,897, **the overall savings for the State is \$7,791**.

The Maryland Port Administration (MPA) has a policy for the owned cranes that renewed on November 25, 2012. The broker was able to obtain two quotes which were from Travelers, and the incumbent carrier Ace. The Port crane values were down 9.7%. In a market where rate increases are averaging 10-15%, the incumbent carrier took only a 2.7% rate increase. The decrease in crane values offset the premium increase. The expiring premium dropped from \$139,691 to \$129,614, **which saved MPA \$10,077**.

The Treasurer's Office buys three separate terrorism policies. One is for State-owned buildings and contents, another provides increased limits of coverage on our toll facilities, and the third provides a \$1,000,000 limit for chemical, biological, nuclear, and radiological coverage. In spite of the increasing threat of terrorist activities, increased values by 14.8%, and with the broadest coverage available, these three policies were renewed at a lower premium **saving the State \$4,000**.

The Maryland Transportation Authority (MDTA) has a liability policy for the toll bridges, tunnels, and the new Inter-County Connector (ICC). The October 17, 2012 renewal exposures increased because of the extension of the ICC since the last renewal. More broker competition resulted in a reduced broker fee which offset some of the increase in the premium due to the ICC extension. The expiring premium and broker fee was \$499,667. The coverage was renewed at \$511,717.

The Underwriting Unit frequently addresses agencies' commercial and self-insurance questions. The Unit has met with several agencies on specific issues during the first half of FY 2013. Below are highlights of some of the issues that were addressed.

- The Underwriting Unit held a meeting on August 15, 2012, with our contact from the Maryland Port Administration (MPA), our insurance broker, and the insurance carrier, in advance of the January 2013 renewal. Discussions included a review of

open claims, operational changes expected at the Port and loss control services offered by the insurance carrier.

- On August 22, 2012, a meeting was held at MTA to include two representatives from our insurance broker, nine representatives from various divisions of the MTA, and the Insurance Division's underwriting and Claims Managers. The meeting's purpose was to review the unique commercial liability coverage form and the loss reporting requirements (with updated 2012/13 contacts), and to discuss what was needed to maintain the limits of liability if all or a portion of the limits were exhausted. We held two subsequent conference calls with MTA, the insurance broker, and the Underwriting Manager to answer questions emanating from the earlier meeting which proved to be very productive, and provided the basis for establishing regularly scheduled meetings between the Division and MTA.
- The Underwriting Unit met with the insurance broker and a representative from the new primary insurance carrier for the MTA liability, Queens Island. The meeting was held as an introduction to the new carrier, and to clarify a few issues arising from the July 1, 2012 renewal.
- The Underwriting Manager worked with the Department of Budget and Management on an Invitation For Bid for "Specimen Collection" services. The Manager offered advice on recommended coverages and the minimum limits of insurance DBM should consider. Recommendations and input were also obtained from the liability broker.
- The Treasurer has awarded a new Liability Broker Services Contract- Category A, to procure liability coverage for Maryland Public Television (MPT). The Underwriting Manager arranged a meeting with MPT's Vice President and CFO and two members of the newly contracted broker service to discuss MPT's operations, and to tour the Owings Mills facility. The meeting was very informative and timely for the new broker as they were working on two renewals at the time.
- The Underwriting Unit worked with the Procurement Officer to release two Broker Services RFPs. One RFP was for three liability contracts. The other RFP was for the auto contract. All four contracts have been awarded.

### **Claims**

The Insurance Division's Claims Unit investigates and resolves liability claims filed under the Maryland Tort Claims Act, Md State Gov't Code Ann. §12-101 *et seq.* The Unit also handles claims for damage to State-owned property arising from sudden and accidental perils such as collision and comprehensive losses to autos, and a number of other perils such as fire, hail, lightning and wind which may cause damage to State structures, equipment and contents.

## **Maryland weathers the storms**

### Derecho

On June 29, 2012, one of the most destructive complexes of thunderstorms in memory, known as a derecho, swept through Maryland bringing with it wind gusts of 60-80 mph. Although the storm wreaked havoc across the State, the damage sustained to State-owned property was relatively minor by comparison. The Department of General Services, Public Safety and Correctional Services, Maryland Aviation Administration, University of Maryland College Park and the State Highway Administration suffered damage to several structures. The State Highway Administration suffered the most costly loss as a result of a lightning strike during the storm at the LaVale facility in Western Maryland. The cost to repair the facility's boiler and other equipment is estimated at over \$300,000. Damages to all of the agencies total approximately \$650,000.

### Hurricane Sandy

On October 29, 2012, Hurricane Sandy slammed into the Mid-Atlantic and left a path of destruction as the 1,000 mile-wide storm moved inland and up the coast. Sandy, which has been called "historic", left over 7 million without power including thousands in Maryland.

In the days leading up to the arrival of the storm, the National Weather Service predicted that Sandy would have a devastating impact on the Mid Atlantic and Northeastern coastal areas. The Loss Prevention Manager provided State agency risk managers, plant and facility managers and insurance coordinators with helpful information including steps to take in preparation for the storm's arrival. The Underwriting Manager manned the dedicated emergency contact phone with all of the State's insurance resources at the ready. Miraculously, during the weekend prior to the storm and over the two days Sandy hovered over Maryland before moving north, no emergency calls were received. After the State resumed its normal operations, the Claims Manager followed up with several agencies including the colleges and universities as well as DGS, BWI Marshall Airport, and other agencies located in areas likely affected by the storm. Preliminary reports indicate that State property was left largely unscathed. Most of the damage reported was comprised of leaking roofs, damaged walls and flooring, downed canopies, awnings, siding and trees. The single largest loss at the time of this report was a flood in the University of Maryland Eastern Shore's boiler room which had damaged a significant amount of equipment, including the boiler itself. The Division will continue to monitor the storm's impact to State-owned property over the next several weeks and will begin the process adjusting the agencies' claims.

## **Highest Single Subrogation Recovery on Record**

Over two years ago, on June 28, 2010, a fire broke out in the Health Sciences Building on the campus of the University of Maryland at Baltimore. As a result, a highly specialized piece of research equipment, known as a spectrometer, was damaged. The replacement cost of the equipment was valued at over \$3 million. The State is self-insured for \$2.5 million. The State's commercial carrier insured the amount in excess of the State's self-insurance.

The preliminary investigation revealed that the cause of the fire may have been due to the equipment's design. The equipment's manufacturer and distributor were immediately notified of the State's intent to pursue a claim to recover the damages to the fullest extent under Maryland law. The Insurance Division's adjuster, the Office of the Attorney General, and the commercial carrier worked together to evaluate the facts and determine the chances for recovery. After several months of fact-finding, the team provided evidence that convinced the manufacturer and distributor that a speedy settlement was a far better alternative to protracted and costly litigation. In August 2012, the Treasurer's Office received a payment of \$316,054, the market value of the damaged equipment. The claim settlement represents the Division's highest single subrogation recovery on record.

## **Continuing Outreach**

The Department of General Services, Lease Compliance Division, held a seminar on September 12, 2012 which featured the Insurance Division. The Division's Claims Manager presented the benefits and services provided by the Division to over 40 participants from several State agencies. The presentation included discussion on coverage, claim filing, loss prevention and litigation.

## **Tort Litigation Management**

The Litigation Manager works closely with the Office of the Attorney General to proactively resolve cases in litigation. The Litigation Manager investigates, evaluates and extends settlement authority to the Assistant Attorneys General on behalf of the Treasurer. In cases valued over \$100,000, the Litigation Manager briefs the Insurance Review Committee which is comprised of the Chief Deputy Treasurer, the Supervising Tort Attorney, and other stakeholders. The Litigation Manager also attends settlement conferences and other court mandated activities. The Litigation Manager provides feedback to adjusters on investigations and provides updates on the status of certain litigation claims of interest.

The Tort Unit handles a rolling docket of approximately 120 litigation claims. The Litigation Manager actively monitors trial verdicts and appeals and assesses the potential impact on the State Insurance Trust Fund. The Litigation Manager also analyzes the data in order to track the litigation outcomes. The disposition of the cases disposed of between July 1, 2012 and November 5, 2012, is noted in the following table:

Disposition	Reason or Method	Count
Dismissal	Motions granted	3
	Notice of claim not provided	0
	State not served	0
	Non – State	1
	Voluntary w/o prejudice	0
	Voluntary w/prejudice	2
Verdict	Adverse	1
	State	3
Settlement	Pre trial settlement	7
	Pre trial settlement conference	2
	Mediation	0
	Settlement at trial	0
	Post trial settlement	0
Total Cases Closed as of Nov. 5, 2012		19

### Loss Prevention

The aim of loss prevention is to help State agencies develop specific action plans and safety practices to mitigate or eliminate State agencies' most frequent or severe sources of preventable losses.

Annually, the Loss Prevention Unit conducts a comprehensive review of numerous State agencies' loss histories to identify problem areas and to help agencies with high severity and/or frequency claims take corrective measures. These efforts are expected to significantly reduce loss frequency and the severity of damage sustained to State-owned buildings and contents.

### Property Loss Control Surveys

In August and September 2012, property loss control engineering inspections were conducted for the Maryland Military Department (Fifth Regiment Armory), Department of General Services (Herbert O'Connor Building), University of Maryland College Park (McKeldin Library), and Maryland Aviation Administration (BWI Thurgood Marshall Airport). Other inspections slated for inspection this fiscal year include, the Department of Public Safety and Correctional Services (Eastern Correctional Institute), the Department of Health and Mental Hygiene (Western Medical Hospital Center), the Maryland Military Department (Camp Fretterd Military Reservation), the University of Maryland Baltimore School of Medicine (Dental School and Frank Bressler Research Building), and the University of Maryland Baltimore County (Albin Kuhn Library).

The intent of the inspections is to identify property exposures and provide solutions to mitigate exposures, which may be the result of deficiencies in fire protection, construction or special hazard protection. The inspection also includes a review of the

loss prevention programs, such as emergency response, impairment handling, fire protection testing and maintenance, as well as contingency planning.

Upon receipt of the engineering reports, the Loss Prevention Manger and the respective agency stakeholders will have an opportunity to review the reports and provide comments and or develop actions plans in response to improvement recommendations offered by our excess commercial property insurance carrier, Lexington Insurance Company.

### **Fleet Safety Assessment**

In September, the Risk Control Consultant from Travelers Insurance Company, the State's auto insurance carrier for the Maryland Port Administration (MPA), and the Loss Prevention Manager met with the MPA Risk Management Officer to conduct a fleet safety assessment. The meeting entailed a review of the auto safety policies and procedures, i.e., driver qualification processes, screenings, fleet maintenance and records. Results of the assessment have been shared with MPA for appropriate action.

### **Loss Analysis**

An analysis of annual losses is near completion for all State agencies. Upon completion of the initial review, further examination will be conducted to identify agencies with high frequency and severity losses. The Loss Prevention Manager will meet with the risk management representatives for these agencies to discuss loss prevention and reduction activities to mitigate future losses.

## **INFORMATION TECHNOLOGY DIVISION**

The Information Technology (IT) Division provides a platform of integrated systems that include midrange, server, and web based hardware that host customized and industry standard applications and communications that support the State Treasurer's Office's (STO) operations.

Over the last six months, the IT Division worked with the Office's Divisions and our State agency clients to support many changes and upgrades. Services provided to state agencies include: electronic funds transfer, check printing, positive pay and account reconciliation process services for the Comptroller's Office, the State Retirement System, as well as the Department of Human Resources.

The Division is receiving more requests from agencies to receive deposit and adjusting entries via an electronic file that can be read into their systems in order to streamline their reconciliation process. To meet this need, IT is expanding our list of transmission options to include secure email, Open SSH and Secure FTP. These new alternatives will satisfy two current agency requests for such options, and will now give many of the State agencies the option of receiving files that can serve as input to an automated reconciliation process, regardless of their hardware platform.

The IT Division is currently testing same day processing of the paid check file versus the current nightly batch method. This change will update the paid check data one day sooner, which will benefit everyone's reconciliation and offer even better protection against fraudulent checks.

The IT Division continued to enhance and support the Banking Services Division's - Treasury Bank Account Information System (TBAIS). The TBAIS system tracks account approval requests, routes them to GAD and Banking Services for approval, and generates up-to-date reporting and management of agency bank accounts. Recent enhancements include conversion and upload of agency collateral data, upload of new agency survey data, creation of a TBAIS Snapshot Report of current account statistics, ability to enter or change notes linked to the account, and the development of a new program to allow global changes to bank name and account when bank mergers occur. Additional features and functions will continue to be added over the next year.

Other IT projects include the addition of R\*STARS agency codes to the Monthly Investment Balance reporting and a new Automated Loss Report process was designed for the Budget Management and Accounting Division. We are in the final testing phase of new programming that will link new check numbers issued from the Unpresented and Undeliverable Funds to the original check numbers. Since the data will be populated in R\*STARS, agencies will have the ability to lookup the checks status themselves and not have to contact the Treasurer's Office to obtain this information.

The Network Services staff maintained support of all network, firewall, email, web, file and application server hardware and software for the agency. Additional responsibilities include maintaining reliable PC hardware and software built via a standard image. This standard provides the staff with the ability to utilize automated scripts for the deployment of security, anti-virus and application patches. They also support custom software utilized within the agency, including, but not limited to, Mun-ease, SunGard, LAS (Leave Accounting System), M&T Check Viewer, Matter Tracker, PTX Viewer, Rumba, J-Walk, NGS Query, Org Plus and the entire MS Office Suite including MS Project. Recent accomplishments include: maintaining excellent uptime despite several hardware failures; migrated the web server to new hardware; and began rollout of new antivirus/security software with improved protection capabilities (based on heuristics and file reputation data).

***As noted in the opening section of this Report, present revenue and market conditions continue to impact the operations and achievements of the State Treasurer's Office in many ways. The Treasurer appreciates the opportunity to provide this report to the Legislative Policy Committee on a regular schedule. A copy of this report is also available on the State Treasurer's website: [www.treasurer.state.md.us](http://www.treasurer.state.md.us). If the Committee or its members would care to pursue further these or other STO developments, or any other aspects of the Treasurer's activities, please call the Treasurer at (410) 260-7160 or Chief Deputy Treasurer, Bernadette T. Benik at (410) 260-7390.***

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**Part IV**  
**Proposed Changes to *Guidelines for***  
***Compensation and Expenses for***  
***Legislators***

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Department of Legislative Services  
Annapolis, Maryland  
December 2012

# **SUBSTANTIVE CHANGES**

## **SUBTITLE 4. COMPUTERS AND RELATED EQUIPMENT**

### **3-407.1**

#### **(A) BLACKBERRY DEVICES AND SMART PHONES:**

- (1) BLACKBERRY/SMART PHONE DEVICES AND THE RELATED CELL PLANS ARE TO BE PROCURED DIRECTLY BY THE MEMBER. EXCEPT AS PROVIDED IN SUB-SECTION (2) BELOW, THE COSTS ASSOCIATED WITH PURCHASING EITHER BLACKBERRY/SMART PHONE DEVICES OR THE RELATED CELL PLANS ARE NOT REIMBURSABLE TO THE MEMBER.**
- (2) THE MGA WILL PROVIDE REIMBURSEMENT TO THE MEMBER, FOR THE ACTUAL MONTHLY COSTS INCURRED FOR THE DATA PORTION OF THE PLAN (WHICH ALLOWS LEGISLATIVE EMAIL, CALENDAR AND CONTACT SYNCHRONIZATION WITH THE MGA FACILITIES) UP TO A MAXIMUM OF \$50/MONTH.**
- (3) ALL INCLUSIVE PLANS THAT DO NOT SEPARATE OUT THE DATA CHARGE WILL BE REIMBURSED AT 40% OF THE TOTAL PLAN COST, UP TO THE MAXIMUM OF \$50/MONTH.**
- (4) REIMBURSEMENTS MADE UNDER THIS SECTION ARE SUBJECT TO THE GENERAL PROVISIONS SET FORTH IN SECTION 3-102(F) OF THE *GUIDELINES FOR COMPENSATION AND EXPENSES FOR LEGISLATORS*, AND ACCORDINGLY WILL BE CHARGED TO THE MEMBER'S DISTRICT OFFICE ALLOWANCE.**

# NON-SUBSTANTIVE CHANGES

## SUBTITLE 6. MISCELLANEOUS

### 3-601. UNAUTHORIZED USES OF DISTRICT OFFICE EXPENSE FUNDS

(a) Travel.

A member may not use the member's allowance for any travel. A request for reimbursement for travel expenses from the member's allowance will be denied by the presiding officers.

(b) Unauthorized purchases.

Purchase of the following items for use in an office from the member's allowance is prohibited:

- (1) Picture framing.
- (2) Art work such as photographs, oil paintings, watercolors, etchings, sculpture, and carvings.
- (3) Decorator objects such as fancy ashtrays, personalized desktop items, live flowers or plants, artificial or dried floral or plant arrangements, carpeting, rugs, curtains, draperies, window treatments, and wall hangings.
- (4) Small personal items such as pins, tie tacks, desk flags, etc. The only flags members may purchase using district office allowance funds are Maryland flags that measure either 3' x 5' or 4' x 6'.
- (5) Refrigerators, **MICROWAVE OVENS**, sofas, and air conditioners.
- (6) Cameras and/or film.

- (c) Contribution to non-profit organizations and charitable causes prohibited.

A member may not use the member's allowance to provide a financial benefit to a non-profit organization or other charitable cause, whether by direct monetary contribution or by payment to a consultant to perform work on an organization's behalf.

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**Part V**  
**Proposed Revisions to *Maryland General***  
***Assembly Personnel Guidelines***

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Department of Legislative Services  
Annapolis, Maryland  
December 2012

**Maryland General Assembly**  
**Personnel Guidelines**  
**Summary of Major Changes (11/29/12)**

1. Page 14 – Added after-tax Roth options to Deferred Compensation
2. Page 15 – Revised the age that a dependent can be eligible for health benefits to age 26
3. Page 16 – updated Retirement section to include the Employees’ Reformed Contributory Pension Benefit for employees hired on or after July 1, 2011
4. Page 20 – Moved ‘A. Legislative Session Closings’ to ‘Security and Emergency Procedures, p. 30, 4. Emergency Release/Closing’; provided contact information for weather-related closing instead of stating that ‘General Assembly never closes’.
5. Page 21 – Corrected the official name of the holiday
6. Page 22 – clarification to comp leave
7. Page 30 - Added First Aid Kit information
8. Page 34 - Termination with Prejudice – new policy (Ch. 381/12)

## I. INTRODUCTION

These Maryland General Assembly Personnel Guidelines have been prepared as an introduction to the personnel policies and procedures of the Maryland General Assembly and are to be used as a resource by the Maryland General Assembly staff when they have questions about the personnel practices and procedures of the General Assembly. These Guidelines have been adopted by the Legislative Policy Committee of the Maryland General Assembly and remain in effect until amended or repealed.

The information contained in these Guidelines applies only to legislative employees of the Maryland General Assembly. **These Guidelines are presented as a matter of information only and are not, nor are they intended to be, a contract between the General Assembly and any employee. This handbook is a summary compiled for the convenience of legislative employees. The President and Speaker have the final authority to implement, administer, and enforce these Guidelines, may review any personnel decision made by a member, and reserve the right to respond to specific situations in the manner that best serves the Maryland General Assembly.**

Please read these Guidelines carefully and keep them available for future reference. One of your responsibilities as an employee is to be familiar with the contents of these Guidelines.

If you have any questions about these Guidelines, contact the Human Resources Office in Room 311 of the Legislative Services Building.

Please note that these Guidelines are not all inclusive. From time to time, there will be changes to them. The Maryland General Assembly reserves the right to change any of its policies, including those covered here, at any time. These Guidelines supersede all previous Maryland General Assembly Personnel Guidelines.

It is the policy of the Maryland General Assembly that all personnel practices will be made and administered on the basis of merit without regard to age, ancestry, color, creed, marital status, national origin, race, religious affiliation, belief or opinion, sex or sexual orientation, or mental or physical disability. Consideration will be given to providing reasonable accommodation of disabilities requested by persons who are able to perform the essential functions of the position.

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## II. DEFINITIONS

In these Guidelines, the following words have the meanings indicated:

**A. Benefited Full-time Legislative Employee:** an employee who works for the Maryland General Assembly, is employed on a year-round basis with a normal workweek consisting of five (5) days of at least forty (40) work hours, receives benefits and is certified as a Benefited Full-time Legislative Employee by the Presiding Officer(s) pursuant to these Guidelines. Except as otherwise indicated, the term also includes legislative employees in positions to which they are directly appointed by the Presiding Officer(s). These employees are paid on the regular payroll of the State of Maryland.

**B. Benefited Part-time Legislative Employees:** an employee of the Maryland General Assembly who is not certified as a Benefited Full-time Legislative Employee but who works at least 130 days per year with work hours totaling at least 1040, receives benefits, and is certified as a Benefited Part-time Legislative Employee by the Presiding Officer(s) pursuant to these Guidelines. These employees are paid on the regular payroll of the State of Maryland.

**C. Certification:** approval given by the Presiding Officer(s) to hire a legislative employee and place that employee on the payroll of the Maryland General Assembly.

**D. Contractual Employee:** a legislative employee who does not receive subsidized health or retirement benefits and is hired for a short-term project or specific period of time and whose salary is paid out of member account funds or Maryland General Assembly funds.

**E. Department of Legislative Services (DLS):** the nonpartisan, professional staff agency to the General Assembly, which, for the most part, is housed in the Legislative Services Building. The Human Resources Office and the Finance and Administrative Services Office are part of this Department.

**F. Desk Officers:** officers appointed by the President of the Senate of Maryland and the Speaker of the House; sworn to perform the necessary services to assist legislators in the accomplishment of their responsibilities in the respective Houses.

**G. Finance and Administrative Services (FAS):** a part of the Department of Legislative Services with offices located on the third floor of the Legislative Services Building, responsible for all financial services in the Department and the General Assembly, including accounts payable and receivable, budgeting, fiscal planning and reporting, procurement, facilities management, and telecommunications. The office is also responsible for mail pickup and delivery and distribution of legislative bills, hearing schedules, and other legislative documents, as well as a subscription mailing service, a customer “bin” pickup service, and a centralized FAX service.

**H. Guidelines:** these Maryland General Assembly Personnel Guidelines.

**I. Human Resources Office (HR):** a part of the Department of Legislative Services with offices located on the third floor of the Legislative Services Building, responsible for personnel activities for the employees of the Department and for the Maryland General Assembly. Specific functions include recruitment, retirement, training and orientation, benefits coordination, records processing, payroll, and related activities required to maintain personnel services. This unit also coordinates the General Assembly's page and intern programs, which provide opportunities for students from Maryland high schools and colleges to participate in the work of the legislature.

**J. Legislative Employee:** a person who is employed by the Maryland General Assembly and whose position is funded in the annual General Assembly budget or by a legislator from his or her member account or by any combination of these funding sources. For purposes of these Guidelines, this term does not include students in the Intern and Page Programs, persons employed by the Department of Legislative Services (DLS), or employees working on a contract basis for a member of the Maryland General Assembly.

**K. Legislator:** any Senator or Delegate who has been sworn in as a member of the Maryland General Assembly and is currently serving in office.

**L. Maryland General Assembly (MGA):** the Legislative Branch of State Government which comprises the Senate and the House of Delegates.

**M. Member:** a Legislator currently serving in the Senate of Maryland or the House of Delegates.

**N. Member Account:** the funds allocated for each member of the Maryland General Assembly in the annual budget. A member may use these funds to maintain an office in that member's district and for any other expenses that are authorized pursuant to the "Guidelines for Compensation and Expenses for Legislators."

**O. Presiding Officer(s):** the President of the Senate and the Speaker of the House of Delegates.

**P. President:** the Presiding Officer of the Senate of Maryland.

**Q. Speaker:** the Presiding Officer of the House of Delegates of Maryland.

**R. Supervising Member(s):** any legislator(s), other than the Presiding Officer(s), who is responsible for recommending the appointment or dismissal of a legislative employee and who supervises the performance of duties by that legislative employee. A supervising member may delegate this authority to a staff person.

**S. Temporary Employee:** a legislative employee who is not certified as either a Benefited Full-time or Benefited Part-time employee; who is hired for a short-term project or specific period of time; and whose salary is paid out of member account funds or Maryland General Assembly funds on the contractual payroll of the State of Maryland.

### III. EMPLOYMENT POLICIES

State legislatures are unique and have developed over time to reflect the needs, experience, and expectations of their constituents. Because of this culture, job descriptions for positions in the Maryland General Assembly are broad and varied. Members are permitted to hire staff to meet their needs, both in the district office and the Annapolis office. The range of skills and the volume of work varies with the individual member, reflective of the citizen legislature created by the Maryland Constitution.

#### A. Employment “At-Will”

**All positions in the General Assembly are “at-will” positions. Neither employer nor employee has a contractual agreement with each other. Employment may be terminated at any time without cause and without prior notice. The needs of the Maryland General Assembly typically fluctuate, both seasonally and as a consequence of election results. Continued employment of any Maryland General Assembly employee is also contingent upon the employee’s job performance, budgetary requirements, and the continuing service of the supervising member(s).**

#### B. Employment of Relatives

A member is prohibited from employing for legislative business his or her own relatives or the relatives of another member from the same legislative district, if the employee is paid from State funds over which the member has direct control, unless the person is needed to assist a legislator who has a physical impairment.

#### C. Certification of Benefited Positions

Certain positions for legislative employees shall be as specified in the State budget and approved by the Maryland General Assembly. Other benefited full-time or benefited part-time positions that are funded to any extent from a member account may be established with the written approval of the Presiding Officer. To be considered, the Presiding Officer must receive these requests in writing from the member *or* members whose accounts will be affected by the establishment of the new position. The Human Resources Office is responsible for retaining all certifications of employment.

#### D. Authorization to Hire

**Members must provide written authorization to the Human Resources Office to place an employee on the payroll. The authorization must indicate whether the position is a benefited or non-benefited position.** All newly hired benefited full-time and benefited part-time employees must appear in the Human Resources Office in Annapolis to process employment forms and to be placed on the payroll before commencing work. All new employees, benefited or non-benefited, are required by Federal regulation to file a W-4 form (tax obligation) and an I-9 form (Employment Eligibility Verification) at the time of employment. Under the Immigration Reform and Control Act of November 6, 1986, employers are required to

verify that all new employees are either United States citizens or aliens authorized to work in the United States. Consistent with this law, employment in the Maryland General Assembly will be contingent upon the completion of the I-9 form and the ability to provide the necessary documents of citizenship and work authorization.

A person may not receive subsidized health or retirement benefits through the Maryland General Assembly unless the person is a benefited full-time or a benefited part-time employee. A person hired to perform consulting services on a temporary basis for a member may not receive benefits or use Maryland General Assembly resources. Short-term employees are not eligible for benefits. Benefited full-time or benefited part-time positions may be available in leadership offices and administrative offices of the Senate or House, Senate and House committees, delegations, and member offices.

Two or more members of the House of Delegates may employ a benefited full-time or benefited part-time employee only if:

- The members are elected to represent the same Legislative District or they share the same office suite or district office; and
- Each member agrees to pay the employee the same daily rate.

In a gubernatorial election year, the Finance and Administrative Services office reserves one-half of each member's district office funds pending the outcome of the election. If an employing member does not return in office, employment of the member's staff is terminated on December 31 of the election year.

## **E. Position Responsibilities**

Due to the number of offices and differences in the legislative districts, there are no standard job descriptions. For guidance, job titles and duties are listed below:

### **Receptionist/Legislative Clerk**

Employees in these positions perform basic legislative and clerical functions.

#### ***Job Duties:***

- Greet the general public and other staff and assist them with their questions or concerns
- Perform basic computer functions
- Perform standard office duties
- Answer and direct telephone calls to appropriate persons; take accurate messages
- Open and sort mail
- Prepare sign-up sheets for bills scheduled for hearing

- Receive and distribute testimony for bill hearings
- Duplicate materials as needed
- Make and label bill files
- File copies of bill testimony and other legislative materials
- Provide backup assistance to other staff
- Perform other duties as required

### **Legislative Secretary**

This intermediate-level position requires more advanced legislative and technical skills. Employees in these positions must have excellent writing skills to compose testimony and prepare speeches.

#### ***Job Duties:***

- Perform legislative clerk responsibilities
- Perform advanced computer functions
- Record data on legislation and amendments
- Maintain supervising member's calendar, schedules, appointments and meetings
- Compose correspondence and prepares for signature
- Respond to constituent inquiries
- Track pending legislation for supervising member(s)
- Prepare resolutions
- Attend hearings for member
- Prepare position letters for member
- Perform more complex duties as required

### **Committee Assistant**

This advanced legislative position requires a high level of legislative and technical skills. Committee assistants are administrators to the full committee and any subcommittees created by the legislature. The committee assistants work very closely with Committee Chairs, Senators, Delegates, and Department of Legislative Services' analysts assigned to the committee and with staff to other committee members. Staff will work comprehensively with the MAPPER computer system.

***Job Duties:***

- Perform general office duties with proficiency
- Assist in hiring, training, and assigning work to support staff
- Track and maintain accurate priority actions for member/committee analyst
- Prepare research and compile information for legislation
- Review legislative initiatives and assess the impact of proposed legislation
- Manage and resolve constituent issues
- Correspond with general public and various government agencies
- File amendments
- Attend legislative hearings, record votes, and keep hearings running smoothly
- Perform legislative duties as assigned by chairman

**Administrative Aide**

These advanced legislative positions require a thorough understanding of the legislative environment and advanced knowledge of the legislative process. Employees in these positions need exceptional problem-solving skills and the ability to work cooperatively with composure under time constraints, as well as respond to the multiple demands of legislative staff, the public, and other individuals. Administrative aides work very closely with Committee Chairs, Senators, Delegates, and Department of Legislative Services' analysts assigned to the committee and with staff to other committee members.

***Job Duties:***

- Perform legislative secretarial duties
- Interview, hire, train, and assign work to support staff
- Plan and arrange committee meetings/hearings, including committee site visits and retreats (if assigned to a committee)
- Prepare research and compile information on legislation
- Review legislative initiatives to assess the impact of proposed legislation
- Manage and resolve constituent issues
- Correspond with constituents and government agencies
- Perform other duties as required

## IV. SALARY POLICIES

### A. Benefited Employees

To qualify as a benefited full-time employee, employees must work the following schedule:

- 260 days per year or 100% on an annual basis, 5 days per week, 8 hours per day

To qualify as a benefited part-time employee, employees must work the following schedule:

- 130 days per year or 50% on an annual basis with a minimum of 40% (2 days per week) during the legislative interim

To ensure proper payroll reporting, the supervising member must submit, in writing, to the Human Resources Office the planned session and interim work schedule for part-time employees.

### B. Funding

Salaries for legislative employees are funded through:

- the Maryland General Assembly budget process for Maryland General Assembly-funded employees, or
- the member account for member-funded employees

*MGA-funded benefited employees* are funded in the annual budget. The salary for each newly hired Maryland General Assembly-funded employee is approved by the respective Presiding Officer upon submission of a request from the supervising member. Salary increases for these positions are granted solely at the discretion of the Presiding Officer(s) and increases are generally considered during the annual budget cycle. These employees may not receive cash payment for any time worked in excess of an 8-hour day or a 40-hour week; however, they may earn compensatory leave for extra hours worked in accordance with compensatory leave policy (see page 21 - Compensatory Leave section).

*Member-funded benefited employees* are funded through a member account. The salary of a newly hired member-funded employee is set by the supervising member(s) after determining that funds are available in the member account. Any additional increases are granted at the discretion of that member. The employee may receive payment for additional full days (an 8-hour day) worked only if:

- the supervising member notes and initials to approve extra days worked on the employee timesheet for the period and the Finance and Administrative Services Office certifies that sufficient funds are available in the member account.

A request for additional compensation must be submitted to the Human Resources Office within two pay periods of the extra days worked. Member-funded benefited employees may receive cash payment for **extra days** worked for the **current pay period or two prior pay periods** only. Employees may not receive bonus payments. Pay increases may, at times, be subject to the approval of the Presiding Officers.

*MGA-funded temporary session employees* are paid a per diem rate. However, those who work during the legislative session may be authorized by the Presiding Officer(s) to receive cash payment for extra days worked immediately preceding and immediately following the Legislative Session. Due to the irregular schedule and workload of the Maryland General Assembly, legislative employees are occasionally expected to work extended hours during session without additional compensation.

### **C. Time Records**

All benefited employees and certain non-benefited employees, as directed by the Human Resources Office, shall complete and submit bi-weekly timesheets to the Human Resources Office following the pay period closing date. It is each employee's responsibility to assure that timesheets are completed accurately and honestly and submitted to the Human Resources Office. Failure to do so in a timely manner may result in loss of leave and benefits. **Employees shall not prepare or sign timesheets for other employees.** **Misrepresentation on a timesheet of the amount of time worked is a serious matter, which may result in disciplinary or legal action.**

Each timesheet must be approved by the supervising member(s) or by the designee of the Presiding Officer(s). Signature stamps and signatures other than those of the authorized persons mentioned above are not acceptable. Members or supervisors may not sign blank timesheets in advance of the time worked.

During the interim, employees who work in Annapolis may have their timesheets approved by a staff person designated by the Speaker or President when the supervising member is not available.

When completing timesheets, hours must be reported in not less than half hour increments. For example, employees may register 5.5 hours (five and one half hours), but not 5.3 hours.

A sample timesheet is included on page 33 of these guidelines.

#### **D. No Bonus Payments**

Legislative employees may **not** receive bonus payments from any legislative funding source at any time.

#### **E. Pay Schedule**

Legislative employees are paid bi-weekly (every two weeks). A bi-weekly payroll runs from Wednesday through the second following Tuesday.

Salary checks are mailed to the employee's address on file with the Human Resources Office the week following the pay period closing date. A schedule of pay dates is available from the Human Resources Office. Employees should advise the Human Resources Office of any change in address.

#### **F. Direct Deposit of Pay**

Direct deposit of payroll checks to a checking account or other banking account is standard for all legislative employees. Each new employee must complete a direct deposit form, which is available from the Human Resources Office.

Upon submission of the direct deposit form to the Central Payroll Bureau, enrollment may take up to six weeks to process. According to Central Payroll Bureau procedures, employees enrolled in the direct deposit program who are making a change in banking institutions will receive a paycheck before direct deposit to the new institution is initiated.

#### **G. Payroll Online Service Center (POSC)**

The Comptroller's Office and the Central Payroll Bureau administer the Payroll Online Service Center (POSC). Employees enrolled in POSC can access their pay stub information electronically by visiting <http://compnet.comp.state.md.us/cpb>. Employees who do not have access to a personal computer and printer should notify the Human Resources Office. This application provides employees with the following online services in addition to the web only access:

- Online pay stub history (12 rolling months)
- Up to 5 years history of year-end pay stub information
- View and print up to 3 years of W-2 information
- Address update capability
- Direct deposit update capability
- W-4 withholding changes

First time users must execute the “sign up” process through the POSC website. Some personalized data and unique information found on the most recent pay stub will be required. Pay stub information received within the last 8 weeks may be used. New employees must receive their first paycheck before enrolling. This process will help you generate a “login ID and password” that will be used each subsequent time you access the POSC.

A copy of any change made on POSC must be submitted to the Human Resources Office.

## **H. Payroll Deductions**

Various payroll deductions are made each payday to comply with federal and State laws pertaining to taxes, insurance, and pension contributions. Payroll deductions are taken in a priority order:

- FICA
- Federal taxes
- State taxes
- Conditions of employment deductions, such as retirement
- Mandated deductions
- Health insurance deductions
- Voluntary deductions

Employees will be supplied with a wage and tax statement (form W-2) for each calendar year. This statement summarizes individual income and deductions for the year. Questions regarding these forms and deductions should be directed to the Human Resources Office.

## **I. Lost Paychecks**

If a paycheck is lost or misplaced, the Human Resources Office should be notified if it has not appeared after 5 business days. A replacement check may take up to 10 business days to be issued.

## **J. Travel Reimbursement**

Generally, legislative employees are not compensated or reimbursed for travel expenses, including mileage, lodging, and food expenses incurred in the performance of their duties.

## V. BENEFITS AND SERVICES<sup>1</sup>

### A. Summary/General/Overview

Benefit	Benefited F/T or P/T	Session or Temporary Legislative Employees
COBRA	Eligible	If currently receiving unsubsidized benefits
Credit Union (SECU)	Eligible	Eligible
Deferred Compensation	Eligible	Eligible 401(k) and 457 but not for State match
Health Benefits/ Flexible Spending Accounts	Eligible and subsidized	May purchase health benefits but must pay full cost plus administrative fee
Leave (see Section VI) <sup>2</sup>	Eligible	Not Eligible
Parking--Free Naval Academy Stadium and shuttle	Eligible	Eligible
Pension System	Eligible	Not Eligible
Social Security	Eligible	Eligible
Unemployment Insurance	Eligible	Eligible
Workers' Compensation	Eligible	Eligible

A brief description of each of the above-referenced benefits and/or services can be found on the pages following this chart. Contact the Human Resources Office, ext. 5120, for more specific information.

The existence of these employee benefits and plans, in and of themselves, does not signify that an employee will be employed for the requisite time necessary to qualify for these benefits and plans.

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<sup>1</sup> A person performing consulting services on a contractual basis for a member or legislative office is not an employee of the Maryland General Assembly and may not receive any employee benefits.

<sup>2</sup> Because the duties of desk officers are performed primarily during the legislative session, desk officers do not accrue leave.

## **B. Consolidated Omnibus Budget Reconciliation Act (COBRA)**

If an employee leaves the General Assembly, certain health benefits may be continued under Federal COBRA regulations. The total cost of the benefits plus an administrative fee must be paid by the former employee. The State Health Benefits Office will bill the former employee directly. Applications for COBRA coverage are available from the Human Resources Office.

Information on COBRA benefits is available from the Human Resources Office.

## **C. Credit Union**

Legislative employees are eligible to join the State Employees Credit Union of Maryland. Services include savings and checking accounts, loan privileges, IRAs, and payroll deductions for checking, savings, and loan repayments.

## **D. Deferred Compensation - 401(k) and 457**

The Maryland Supplemental Retirement Plans are provided by the State of Maryland as an employee benefit available for voluntary participation. These voluntary plans permit eligible employees to defer a limited amount of earnings on a pre-tax basis to a savings plan allowed by Sections 401(k) and 457 of the Internal Revenue Code. **ALSO, AFTER-TAX ROTH 401(K) AND 457 OPTIONS ARE AVAILABLE.** These plans are offered through Nationwide Retirement Solutions (NRS), a private financial investment company.

A representative of NRS provides individual employee consultations in Annapolis periodically. The Human Resources Office notifies employees of the consultation dates and schedules meetings for interested employees.

For a period of time, the State has matched the contributions of a benefited employee enrolled in the employee Deferred Compensation plans up to a maximum as provided in the annual State budget. Members of the Maryland General Assembly and temporary employees who join the Deferred Compensation plans are not eligible for a match, if any is approved in the annual State budget.

## **E. Health Benefits**

The Maryland General Assembly participates in the State employee and retiree health and welfare benefits program. Accordingly, the Maryland General Assembly provides the same package of subsidized employee benefit programs for eligible benefited employees as the State provides to Executive Branch employees. Through participation in this plan, the General Assembly provides eligible employees the opportunity to enroll in a variety of benefits through a cafeteria plan under the IRS Code, Section 125, allowing pre-tax premium deductions in the program and tax-free state subsidies. Under this program, the State pays a portion of the health benefit cost for medical (vision), dental, and prescription plans for eligible employees. It also provides the benefit of group rates for term life insurance, long term care insurance, and

accidental death and dismemberment insurance. A pre-tax Day Care and Health Care Spending Account may also be established. A full description of eligibility, benefits, and coverage can be found in the State's Guide to Health Benefits, which can be found at <http://dbm.maryland.gov/benefits>.

Temporary and contractual legislative employees are not eligible for subsidized benefits but may participate in the following plans, provided the employee pays an administrative fee plus the full cost of the premiums:

- Medical plan (including vision)
- Prescription plan
- Dental plan
- Accidental death and dismemberment insurance
- Life insurance.

New employees have 60 days to enroll in the benefits program. Changes can be made only during annual open enrollment periods, usually during the spring of the year. However, changes in family status (marriage, divorce, birth/adoption of a child, loss of a dependent, termination of spouse's employment) may be made within 60 days of this qualifying event.

Dependent ~~unmarried~~ children of an employee may be covered on the employee's benefits coverage through the end of the month in which they reach age 25 ~~26~~. ~~Effective July 1, 2011, that coverage will be extended until the dependent child reaches age 26.~~ Student certification is not required. ~~Dependent unmarried children, incapable of self support because of a mental or physical capacity that began before age 25, will be allowed to continue on the coverage beyond the month in which the child turns 25.~~ **DISABILITY CERTIFICATION IS REQUIRED TO COVER CHILDREN BEYOND AGE 26.**

Employees will be required to provide verification for all dependents to be enrolled in the plan. An **AFFIDAVIT FOR DEPENDENT ELIGIBILITY AND TAX STATUS** must be completed.

Periodically, the State negotiates changes to the benefits package. Consequently, the benefits offered by the Maryland General Assembly are subject to change. Benefits become effective on the date covered by the first payroll deduction. Deductions for all flexible benefit plans are taken out of employees' paychecks for 24 bi-weekly periods each calendar year.

For more information about benefit plans or to obtain forms, contact the benefits coordinator in the Human Resources Office or visit the Department of Budget and Management's website at [www.dbm.maryland.gov](http://www.dbm.maryland.gov), click on Health Benefits.

## **F. Parking**

Free parking at the Navy Marine Corps Memorial Stadium and shuttle service to the legislative complex are available to Maryland General Assembly employees in the Annapolis

area. For further information, contact the Parking Coordinator in the offices of the President of the Senate (ext. 3700) or the Speaker of the House (ext. 3392), as appropriate.

**G. Pension System**

~~Benefited legislative employees hired after January 1, 1980, become members of the State Employee Pension System. Legislation in 2006 created a new component of the State Employees' Pension System: the Alternate Contributory Pension Selection Plan. Employees are required to make mandatory contributions. As of July 1, 2008, the annual contribution is 5% of earnable compensation. Contributions are automatically deducted for active State employees.~~

~~After five years of eligibility service in the pension system, an employee becomes vested. When a vested employee leaves State service, accumulated benefits are protected, provided the member does not withdraw his or her accumulated contributions. When an employee retires from State service, benefits will be paid based on accrued service years and/or age or both.~~

**REGULAR EMPLOYEES EMPLOYED BY THE STATE PRIOR TO 1980 QUALIFY FOR BENEFITS UNDER THE STATE EMPLOYEES' RETIREMENT SYSTEM, IF THEY REMAINED IN THE SYSTEM.**

**ALL REGULAR EMPLOYEES HIRED AFTER JANUARY 1, 1980 BECOME MEMBERS OF THE STATE EMPLOYEES' PENSION SYSTEM. FROM TIME TO TIME, THE GENERAL ASSEMBLY MAY ENACT LEGISLATION CHANGING THE RETIREMENT AND PENSION SYSTEMS OF THE STATE. LEGISLATION IN 2006 CREATED A NEW COMPONENT OF THE STATE EMPLOYEES' PENSION SYSTEM: THE ALTERNATE CONTRIBUTORY PENSION SELECTION PLAN. EMPLOYEES ARE REQUIRED TO MAKE MANDATORY CONTRIBUTIONS. AS OF JULY 1, 2011, THE ANNUAL EMPLOYEE CONTRIBUTION IS 7% OF EARNABLE ANNUAL COMPENSATION. CONTRIBUTIONS ARE AUTOMATICALLY DEDUCTED FOR ACTIVE STATE EMPLOYEES.**

**EMPLOYEES HIRED ON OR AFTER JULY 1, 2011 ARE SUBJECT TO THE EMPLOYEES' REFORMED CONTRIBUTORY PENSION BENEFIT. THE FOLLOWING CHART PROVIDES YOU A SUMMARY OF THE MAJOR CHANGES ENACTED BY THE BUDGET FINANCING AND RECONCILIATION ACT OF 2011. THIS SUMMARY APPLIES GENERALLY BUT MAY NOT ADDRESS EVERY CHANGE OR EVERY SITUATION. IF YOU ARE NOT SURE WHICH SYSTEM OR BENEFIT APPLIES TO YOU, PLEASE CONTACT THE STATE RETIREMENT AGENCY DIRECTLY. YOU MAY ALSO REFER TO YOUR ANNUAL PERSONAL STATEMENT OF BENEFITS THAT IS MAILED TO YOUR HOME ADDRESS ANNUALLY.**

	<b>CURRENT MEMBERS AT JUNE 30, 2011</b>	<b>EMPLOYEES HIRED ON OR AFTER JULY 1, 2011</b>
<b>ANNUAL EMPLOYEE</b>	<b>7% OF EARNABLE COMPENSATION</b>	<b>7% OF EARNABLE COMPENSATION</b>

<b>CONTRIBUTION</b>		
<b>AVERAGE FINAL COMPENSATION</b>	<b>AVERAGE OF THE 3 HIGHEST CONSECUTIVE YEARS</b>	<b>AVERAGE OF THE 5 HIGHEST CONSECUTIVE YEARS</b>
<b>NORMAL SERVICE RETIREMENT</b>	<b>30 ELIGIBILITY SERVICE YEARS OR AGE 62 WITH 5 YEARS; AGE 63 WITH 4 YEARS; AGE 64 WITH 3 YEARS; OR AGE 65 OR OLDER WITH 2 YEARS.</b>	<b>THE RULE OF 90 (SUM OF AGE AND ELIGIBILITY SERVICE YEARS) OR AGE 65 WITH 10 ELIGIBILITY SERVICE YEARS</b>
<b>EARLY SERVICE RETIREMENT</b>	<b>AGE 55 WITH 15 ELIGIBILITY SERVICE YEARS</b>	<b>AGE 60 WITH 15 ELIGIBILITY SERVICE YEARS</b>
<b>VESTING</b>	<b>5 ELIGIBILITY SERVICE YEARS</b>	<b>10 ELIGIBILITY SERVICE YEARS</b>
<b>COST OF LIVING ADJUSTMENT (COLA)</b>	<p><b>FOR CREDIT EARNED BEFORE JULY 1, 2011: ANNUAL RETIREE COLA LINKED TO CONSUMER PRICE INDEX (CPI) WITH A CAP OF 3% PER YEAR</b></p> <p><b>FOR CREDIT EARNED ON OR AFTER JULY 1, 2011:</b></p> <p><b>COLA REMAINS LINKED TO CPI BUT CAPPED AT: 2.5% IF ASSUMED RATE OF RETURN FOR INVESTMENTS* IN PRIOR CALENDAR YEAR IS ACHIEVED. 1% IF INVESTMENT TARGET NOT MET</b></p> <p><b>*CURRENTLY 7.75%</b></p>	<p><b>COLA REMAINS LINKED TO CPI BUT CAPPED AT: 2.5% IF ASSUMED RATE OF RETURN FOR INVESTMENTS* IN PRIOR CALENDAR YEAR IS ACHIEVED. 1% IF INVESTMENT TARGET NOT MET</b></p> <p><b>*CURRENTLY 7.75%</b></p>

Note: Eligibility service determines when you qualify for a retirement benefit; and creditable service, along with your age, determines the amount of your retirement benefit. As a member of the pension system, you earn service credit toward your retirement based on **actual time worked**. All employees are advised to request an application for an estimate of service retirement allowances 12 months prior to a planned retirement date and consult with Human Resources regarding the impact of terminating on other benefits such as health insurance.

The retirement benefits package includes a death benefit equal to one year's salary plus contributions with accumulated interest payable to a designated beneficiary. An employee must

have been a member of the employee retirement or pension system for one year in order to qualify. Employees are advised to keep their beneficiary designation current.

From time to time, the General Assembly may enact legislation changing the Retirement and Pension Systems of the State. More specific information on retirement is available from the benefits coordinator in the Human Resources Office or you may refer to the State Retirement Agency website at [www.sra.state.md.us](http://www.sra.state.md.us).

## **H. Social Security**

All employees are covered by the Social Security Act (FICA). A required percentage of employee compensation is deducted from the employee's earnings to pay the employee's portion of this protection. The Maryland General Assembly pays matching premiums for each employee. The plan provides Social Security retirement benefits, as well as disability, death, survivor, and Medicare benefits.

## **I. Unemployment Insurance**

The Unemployment Insurance program is funded entirely by employers in the State of Maryland. The program provides certain weekly benefits if employees become unemployed through no fault of their own or due to circumstances described in the law.

As noted in Section V - Benefits and Services, legislative employees are covered under the provisions of the unemployment law. The Unemployment Benefits Office verifies dates of employment with the General Assembly prior to approving a claim. Employees should verify dates of employment, on file in the Human Resources Office, prior to filing an unemployment claim. Employees are reminded that filing a claim for unemployment for the same period of time for which they are paid by the Maryland General Assembly is fraudulent.

## **J. Workers' Compensation**

An employee who sustains an accidental personal injury arising out of and in the course of the performance of his or her job duties may be covered under the Workers' Compensation Law. The injured employee, or an individual acting on the injured employee's behalf, must provide notice of the accident to the Human Resources Office promptly after the accident occurs. A representative from the Human Resources Office will file an Employer's First Report of Injury with the Injured Workers' Insurance Fund (IWIF) and the Workers' Compensation Commission after receipt of the notice of injury. Based on the accident report filed, the Workers' Compensation Commission determines whether or not the injury is compensable. If the Workers' Compensation Commission makes a determination of a compensable injury, medical bills will be paid by IWIF.

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## VI. LEAVE POLICIES

Non-benefited legislative employees and desk officers are not eligible to earn paid leave. Approval of the supervising member is required prior to taking leave of any type, except **UNFORESEEN** sick leave. Leave is not approved during the legislative session for employees in the Annapolis offices, except as authorized by the supervising member. **ADDITIONALLY, DURING THE LEGISLATIVE SESSION, THE GENERAL ASSEMBLY DOES NOT CLOSE FOR HOLIDAYS AND HOLIDAY LEAVE IS NOT GRANTED.**

Benefited employees are eligible for leave as noted in the following sections.

### **A. Legislative Session Closings**

~~During the legislative session, the General Assembly does not close for holidays or inclement weather. State announcements of Executive Department closures do not apply to the Maryland General Assembly. When the State announces a liberal leave policy, they are advising Executive Department employees that they may charge leave if they are unable to get to work. However, during the legislative session, Maryland General Assembly employees are considered essential employees, and are expected to be present if they can manage to arrive safely. When anticipating severe weather, an employee is expected to consider alternative accommodations to ensure the ability to be at work. Employees should maintain contact with their supervising member(s) for direction. Employees who are not able to come to work on their normal workday because of inclement weather will be charged an earned leave day.~~

### **B. Leave With Pay**

#### **1. Annual Leave**

Annual leave is earned based on the percentage of time worked (for leave-earning purposes, refer to the chart on page 34). All employees must receive prior approval from their supervising member before using annual leave.

Benefited employees accumulate annual leave on a bi-weekly basis. A maximum of 75 days may be carried forward at the end of each calendar year. The official end of the calendar year is determined by statute, regulation, or agency ruling and may not necessarily coincide with December 31 of each year.

If a legislative employee transfers to another State agency, earned annual leave is generally transferred to the new agency. Upon separation from State service, an employee will be paid for accumulated and unused annual leave not exceeding 50 days of the total that were accrued at the end of the previous calendar year plus any unused annual leave that is earned during the year in which the employee leaves State service. Upon leaving the General Assembly, the possible maximum payout for annual leave is 75 days. Timesheets must be current for the employee to receive an annual leave payout.

Newly hired benefited employees who have performed prior Maryland General Assembly

contractual service within the last four years may receive credit for up to six months of service only for leave earning purposes. This credit will be pro-rated based on number of hours worked.

## 2. Personal Leave

Benefited employees are eligible for personal leave. Personal leave days are granted at the beginning of each calendar year. Use of personal leave must be approved in advance by the supervising member(s). Any personal leave not used by the end of the calendar year is lost. The official end of the calendar year is determined by statute, regulation, or agency ruling and may not necessarily coincide with December 31 of each year. Upon termination of service, there is no payment for unused personal leave.

Employees are granted personal leave based on their date of entry at the following rates:

- Full-time benefited employees receive 6 personal leave days per year
- Newly hired full-time benefited employees hired between January 1 and June 30 receive 6 personal leave days
- Newly hired full-time benefited employees hired between July 1 and December 31 receive 3 personal leave days
- Part-time benefited employees receive 4 personal leave days per year
- Newly hired part-time benefited employees hired between January 1 and June 30 receive 4 personal leave days
- Newly hired part-time benefited employees hired between July 1 and December 31 receive 2 personal leave days

## 3. Holidays

**Benefited full-time** employees are entitled to the holidays authorized by State law for State employees. However, due to the extraordinary and irregular schedule of the General Assembly during session, the General Assembly does not close. Employees will be required to accept a compensatory day of leave in lieu of taking the holiday on the actual day designated.

The official State holidays are as follows:

New Year's Day	Labor Day	<del>Day after Thanksgiving</del>
Martin Luther King, Jr. Day	Columbus Day	<b>AMERICAN INDIAN HERITAGE DAY</b>
Presidents' Day	*General Election Day	Christmas Day
Memorial Day	Veterans' Day	
Independence Day	Thanksgiving Day	

Subject to the conditions set forth above, **benefited part-time** legislative employees are entitled to seven (eight in a general election year) of the State holidays, as indicated below:

New Year's Day	Labor Day	<del>Day after Thanksgiving</del>
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Memorial Day	*General Election Day	<b>AMERICAN INDIAN HERITAGE DAY</b>
Independence Day	Thanksgiving Day	Christmas Day

**\*includes gubernatorial and presidential elections**

**4. Compensatory Leave**

Due to the extraordinary and irregular schedule of the General Assembly, legislative employees are expected, especially during session, to work extended hours without additional compensation. Legislative employees do not qualify for overtime payments. Additional hours worked beyond those comprising a normal workday and workweek earn no credit for annual leave, sick leave, nor do they serve to qualify one as a benefited full-time or benefited part-time legislative employee, or for any other benefit.

Legislative employees do not automatically become entitled to compensatory leave for excess hours worked. At the discretion of the supervising member(s) or, if none, the Presiding Officer(s), benefited full-time and benefited part-time employees may be granted compensatory leave for excess time worked **ON AN HOUR FOR HOUR BASIS**.

Compensatory leave may be granted only if consistent with the work requirements of the office and must be indicated on the employee’s timesheet for the period involved and certified by the signature(s) of the supervising member(s) or, if none, the Presiding Officer(s). **Timesheets must be filed with and maintained by the Human Resources Office**. Compensatory time must be used within one year of the date earned. Compensatory time may be granted as follows:

- If the employee is required to work on a Saturday, Sunday, or State holiday to which he or she is entitled; or
- If the employee is required to work for an extended period beyond the 8 hour day (not to include lunch) for 30 minutes or more on a business day.

Upon separation from the General Assembly, unused compensatory leave will be forfeited.

**5. Sick Leave**

Sick leave is earned based on the percentage of time worked (for leave-earning purposes, refer to the chart on page 34).

Employees may use sick leave for their own illness or disability, for the illness or disability of a member of their immediate family, for the birth or adoption of a child or for a death in their immediate family (known as bereavement leave). For a list of immediate family members, see Bereavement Leave section below. Use of sick leave may require verification by a physician.

Sick leave is a valuable benefit earned by employees to be used for illness or injury. It should not be used as a substitute for other types of leave.

## **6. Bereavement Leave (Sick Leave Charge)**

With the approval of the supervising member(s), benefited employees may use a maximum of five days of available sick leave in the event of the death of the following immediate family members:

- Spouse
- Child or spouse of child or legal ward
- Parent, step parent, or foster parent of employee or spouse
- Brother or sister of employee or spouse
- Grandparent or grandchild of employee or spouse
- Legal guardian or former legal guardian
- Other relative living as a member of the employee's household

With approval of the supervising member(s), benefited employees may use a maximum of one day of available sick leave in the event of the death of the following relatives:

- Aunt or uncle of employee or spouse
- Nephew or niece of employee or spouse

## **7. Jury Duty**

Benefited employees may serve on a jury without loss of earnings or leave. Normal earnings will be paid by the Maryland General Assembly for the period of jury service. Employees called for jury duty should advise their supervising member(s) promptly after receiving notification to appear. Employees may also use court/jury summons leave if they are summoned for a court appearance when they are not a party to an action or a paid witness. Upon completion of service, a jury confirmation form supplied by the court must be attached to the time sheet submitted for that pay period. Employees should code the time as "jury leave" when completing timesheets.

## **8. Military Leave**

A legislative employee who is a member of the National Guard or the military reserve may receive up to 15 days military leave annually. Documentation is required to be granted this leave.

## **9. Religious Observance**

Benefited employees may use annual leave, personal leave, or compensatory leave for religious observances, with prior notification to their supervising member(s).

## **10. LIBERAL LEAVE**

**LIBERAL LEAVE IS A CHARGEABLE ANNUAL, PERSONAL, OR COMPENSATORY LEAVE. IT IS UNSCHEDULED LEAVE WHICH MAY ONLY BE USED IN CERTAIN EMERGENCY SITUATIONS AND ONLY AFTER IT IS AUTHORIZED BY THE PRESIDING OFFICERS.**

### **B. Approved Leave of Absence Without Pay**

A leave of absence without pay may be granted at the discretion of the President or Speaker to eligible employees to maintain continuity of service in instances where unusual or unavoidable circumstances require prolonged absence or in accordance with federal or State law.

In order to maintain pension service credit, the leave must be for a reason acceptable to the State Retirement System. Currently those reasons are personal illness, maternity/paternity, adoption, career-related study, government-sponsored or subsidized employment, or service in a professional organization. If the employee takes an unpaid leave of absence for reasons other than those noted above, active membership in the State Retirement System ceases and accrued service credit may be affected.

An employee requesting a leave of absence without pay must put the request in writing to the supervising member. The request and the recommendation of the supervising member will be forwarded to the President or Speaker for consideration. If the request is approved, the employee must complete an application to be placed on a qualifying leave of absence (State Retirement Agency form 46 (available from the Human Resources Office) and submit it to the Human Resources Office prior to beginning the leave.

The employee may be eligible to be rehired to the same or a comparable position, if such a position is available. Note that this benefit allows the employee to continue to earn service credit and protects the employee's survivor benefit during the period of leave, not to last longer than 2 years. There is no guarantee that a position will be available after the period of leave.

An employee who applies to return from leave of absence and is rehired must repay any required payroll contributions to the retirement system, plus interest, in order to be eligible for retirement credit for the period of absence. In order to receive credit for the period, the employee must file a request to purchase prior service (State Retirement Agency form 26) with the Human Resources Office.

Human Resources will notify the State Retirement Agency for an employee who is rehired on a regular or contractual basis when returning to work. The benefits provided under the leave of absence agreement will end at that time. The State Retirement System should be

consulted directly regarding service credit.

For further information about benefits while on approved leave of absence, employees should contact the Human Resources Office.

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## **VII. ON THE JOB/STANDARDS OF CONDUCT**

### **A. Ethics Code**

All legislative employees fall under the provisions of the State Ethics Law, which is administered by the State Ethics Commission. Be sure you read and understand the State Ethics Commission Summary (Attachment A). Violations of the State Ethics Law may lead to disciplinary action or civil or criminal sanctions. Questions may be addressed to the State Ethics Commission. The ethics counsel of the Maryland General Assembly represents only the members of the General Assembly and not staff.

### **B. Code of Conduct**

Every legislative employee is important to the overall successful operation of the Maryland General Assembly. Employees are expected to conduct themselves in a manner that assures an orderly and positive work environment for themselves, their co-workers, and the public.

The National Conference of State Legislatures (NCSL), of which Maryland is a member, has developed a “Model Code of Conduct for Legislative Staff.” This document is included as a resource for all legislative employees (Attachment B). You should read this booklet and become familiar with the standards of conduct as set forth in the “Model Code.” It sets the tone by which legislative employees should conduct themselves as employees with the Maryland General Assembly.

### **C. Confidentiality**

Disclosure of confidential information is governed by the State Ethics Law and Maryland General Assembly policy. Legislative employees may have access to confidential information concerning internal General Assembly activities or personal or constituent matters. Confidential information should not be discussed with any unauthorized person. Legislative employees should not divulge confidential information concerning Maryland General Assembly members or other legislative employees to which they may be privileged. Staff is not authorized, unless authorized by supervising member, to give comment to press.

If there is a question about whether a matter is confidential or whether a person is authorized to receive the information, a legislative employee should consult his or her supervising member(s). This consultation should occur prior to the release of information concerning the matter in question. Legislative employees who disclose confidential information are subject to disciplinary action, termination of employment, or as otherwise provided by law.

### **D. Conflict of Interest**

Employees of the Maryland General Assembly may not participate in any matter in which the employee or a qualifying relative of the employee has an interest, or in a matter related to a business entity in which the employee has a direct financial interest. Employees may not

participate in a business entity doing business with the State or a business entity subject to regulation by the Maryland General Assembly.

### **E. Abuse of Prestige of Office**

Employees of the Maryland General Assembly may not use the prestige of the legislative office or legislative position for their own private gain or that of another or to advance an interest in conflict with these guidelines.

### **F. Dual Employment**

It is the responsibility of legislative employees to ensure that any employment they may have with any other employer is permitted under the provisions of the State Ethics Law, administered by the State Ethics Commission. Issues may include conflicts of interest or the appearance of a conflict, salary payments from two employers for the same time period, or incompatible duties. A volume of advisory opinions by the State Ethics Commission is available for review in the Department of Legislative Services Library. In addition, more stringent standards may be set by the Presiding Officers. Legislative employees must advise their supervising member if they currently hold or seek to obtain additional employment and they must advise the Human Resources Office if they are employed in another State government office. Employees with questions may request an advisory opinion from the State Ethics Commission. The Human Resources Office may require a written statement regarding any secondary employment and bi-weekly timesheets from the employee.

### **G. Professional Conduct**

Professional conduct is essential for the legislative staff of the Maryland General Assembly. Members rely on staff for expertise and assistance. All employees are to conduct themselves in a manner that reflects positively on the Maryland General Assembly. Legislative employees are expected to show respect, tact, and good judgment in dealing with all members of the Maryland General Assembly, co-workers, the general public, and employees of other public agencies. It is the responsibility of each legislative employee to assist and support the work of the members of the General Assembly. Moreover, all legislative employees must recognize that it is the elected members who have the responsibility and the authority to make legislative decisions.

### **H. Campaign Activities**

Legislators and legislative employees are not to use their legislative offices, equipment, or supplies for campaign purposes. All campaign activities within the legislative complex, including soliciting contributions and preparing campaign literature, are prohibited. Legislative employees are not required to, but may, participate in political activities on their own time, outside the legislative complex. Employees must use their earned leave when participating in a political activity on a regular workday. Legislative employees may not be required by members or other legislative staff to provide any political service. A public official or an employee of the State may not require any legislative employee to make a political contribution. Legislative staff

serving multiple members who represent diverse political parties and opinions should be particularly sensitive and respect these differences. Employees should perform their duties in a competent and equitable manner for all members.

## **I. Seeking Public Office**

Consistent with rules prohibiting legislators from campaign activity during the legislative session, while employed by the Maryland General Assembly, an employee may not run for an office in the Maryland General Assembly. A legislative employee who holds himself/herself out publicly as a candidate for an office in the Maryland General Assembly through activities such as creating a campaign website, making public appearances or statements or sending mailings asserting that he or she is running for such office, or accepting a campaign contribution for such office shall be deemed to be running for such an office. Moreover, a filing with the Elections Board to run for a State legislative office shall be considered the employee's resignation from his or her position with the Maryland General Assembly. If not otherwise prohibited by law, an employee may run for other elective office, with permission of the supervising member, without resigning his or her employment in the General Assembly.

## **J. Dress and Personal Appearance**

The legislative complex is frequented by the public and the media. Legislative employees are to maintain an appropriate appearance that is businesslike, neat, and clean. Casual attire is not acceptable during the 90-day legislative session. During the interim period between sessions, business casual attire (no shorts or work jeans) is acceptable. Casual dress is also acceptable in conjunction with office moves and/or renovations or when your area is experiencing heating/cooling problems. Employees who have questions about appropriate attire should consult their supervising member(s).

## **K. Security and Emergency Procedures**

### **1. Security Proximity Cards**

Newly hired Senate employees must report to the Senate President's Office and newly hired employees of the House of Delegates must report to the House Administrator's Office to obtain the application necessary to have a photo taken for a security proximity card (ID card), which is used as proof of identity. This card allows employees to have access to certain buildings in the legislative complex and assigned parking lots, and to ride the shuttle to free parking in the Navy-Marine Corps Memorial Stadium lot. The badge must be worn at all times in a manner that allows it to be seen easily by security personnel. If an employee loses the ID badge, he/she must immediately notify the appropriate House or Senate office as mentioned above. A significant fee is charged for a replacement.

Because these cards are proof of identity, if you change your name you must obtain a new proximity/ID card. Doing so will ensure that parking privileges, access to buildings, and shuttle privileges will not be adversely affected. There is no charge for the new card. It is the employee's responsibility to promptly inform both Human Resources and the parking coordinator of any name changes.

ID cards are the property of the State. Upon termination of employment with the Maryland General Assembly, this card must be returned to the Office of the House Administrator, 313 House Office Building or the Office of the Senate President, State House. The Secretary of **THE DEPARTMENT OF** General Services has authority to impose penalties and/or fees for failure to surrender ID cards.

## **2. Emergency Action Plan**

The Maryland General Assembly issued the Emergency Action Plan handbook in June 2012. The handbook includes information on preparedness, building evacuation, and specific threats and emergencies. A copy, which includes list of floor wardens, is provided to all new employees. Please read this important booklet and familiarize yourself with its contents.

**KEEP EMERGENCY INFORMATION IN A CONSPICUOUS LOCATION AT ALL TIMES.**

### **Emergency Contacts:**

- State Police, Room 102, Legislative Services Building, 410-841-3844.
- Maryland Capitol Police, Central Services Building (adjacent to B Lot), 410-260-2911.
- For rapid response, dial "22" to reach Maryland State Police or the Maryland Capitol Police located in the legislative complex.
- For medical emergencies, dial 9-911.

## **3. Security Procedures**

The Maryland State Police and the Maryland Capitol Police (~~formerly Department of General Services Police~~) provide security and emergency assistance for the Maryland General Assembly. The Maryland State Police maintain order in the State House, Senate, House of Delegates, and at hearings and rallies. They also investigate threats against elected officials and staff. The Maryland Capitol Police provide security for the physical operation of the Annapolis complex.

### ***Personal Safety***

- Remember that police and emergency personnel are always in charge during emergencies. Follow their instructions promptly.
- Report any unusual activity or suspicious packages and persons immediately.
- Remain alert to your surroundings while walking to your vehicle and have vehicle keys in hand prior to leaving your building.
- Remember that you can use the Maryland Capitol Police escort service, by calling 410-260-2911.

If you have security concerns in the legislative complex, call Legislative Security at ext. 3844.

***Fire Emergency (Alarm Will Sound and Strobe Lights Will Flash)***

- End all telephone conversations immediately.
- Follow your floor warden’s instructions (know who that is).
- Lock your desk and take important personal belongings with you.
- Close your office door when you leave the office.
- Guide any visitors out of the building.
- Leave the building promptly.
- Return to the building only after direction from security personnel.

**FIRST AID KITS ARE LOCATED IN ANNAPOLIS OFFICES AT THE FOLLOWING LOCATIONS:**

<b>LEGISLATIVE SERVICES BUILDING -</b>	<b>BASEMENT</b>	<b>PRINT SHOP AND INFORMATION DESK</b>
	<b>GROUND FLOOR</b>	<b>BILL ROOM, ROOM G-01</b>
	<b>FIRST FLOOR</b>	<b>OFFICE OF DIRECTOR, POLICY ANALYSIS, ROOM 120</b>
	<b>SECOND FLOOR</b>	<b>OFFICE OF THE EXECUTIVE DIRECTOR, ROOM 200</b>
	<b>THIRD FLOOR</b>	<b>FINANCE &amp; ADMINISTRATIVE SERVICES, ROOM 300E, DOCUMENT DESIGN, ROOM 307, LEGISLATIVE EDITING, ROOM 309</b>
<b>MILLER SENATE BUILDING -</b>	<b>GROUND LEVEL</b>	<b>LEGISLATIVE SUPPLY OFFICE</b>
<b>STATE HOUSE -</b>	<b>GROUND FLOOR</b>	<b>AMENDMENT OFFICE</b>
<b>HOUSE OFFICE BUILDING - ROOM 313</b>	<b>THIRD FLOOR</b>	<b>HOUSE ADMINISTRATOR -</b>

**A MEDICAL OFFICE IN THE STATE HOUSE (EXT. 3918) IS STAFFED BY A NURSE AND DOCTOR WHEN THE GENERAL ASSEMBLY IS IN SESSION.**

#### **4. Emergency Release / Closing [Language revised and moved from Leave Policies]**

**THE GENERAL ASSEMBLY DOES NOT CLOSE DURING A LEGISLATIVE SESSION EXCEPT IN AN EXTRAORDINARY SITUATION. AN EMERGENCY RELEASE OR CLOSURE DUE TO WEATHER OR OTHER CONDITIONS WILL BE DETERMINED BY THE PRESIDING OFFICERS. STATE ANNOUNCEMENTS OF EXECUTIVE DEPARTMENT CLOSURES DO NOT APPLY TO THE MARYLAND GENERAL ASSEMBLY. DEDICATED EMERGENCY NUMBERS HAVE BEEN ESTABLISHED FOR GENERAL ASSEMBLY-SPECIFIC ANNOUNCEMENTS. THE DEDICATED EMERGENCY LINE NUMBER FOR THE SENATE IS 301-858/410-841-3998. THE DEDICATED EMERGENCY LINE NUMBER FOR THE HOUSE IS 301-858/410-841-3900. THERE WILL ALSO BE A POSTING ON THE GENERAL ASSEMBLY WEBSITE ([HTTP://MLIS.STATE.MD.US](http://mlis.state.md.us)). ALL EMPLOYEES SHOULD MAINTAIN CONTACT WITH THEIR SUPERVISING MEMBER(S).**

#### **L. Smoking Policy**

In compliance with State law, smoking is prohibited in all offices and work areas (including garages) in the legislative complex.

#### **M. Substance Abuse Policy**

The Legislative Branch of Maryland State Government Substance Abuse Policy is included under “Policy Statements” in these Guidelines (Attachment C).

#### **N. Use of General Assembly Facilities, Equipment, and Supplies**

General Assembly facilities and equipment are to be used for Maryland General Assembly business only and not for political or campaign activity, commercial use, or private gain.

Communication through MGA-provided facilities (computer, fax, and telephone) identifies the message as coming from the Maryland General Assembly. Therefore, all communications on this equipment reflect directly on the General Assembly. Employees should have no expectation of privacy when using Maryland General Assembly equipment. Use of equipment by employees implies their consent to be monitored. Use of these facilities may be monitored and reviewed for abuse which may result in disciplinary action.

#### **1. Computers**

Employees who are assigned computers which access the Maryland General Assembly internet and e-mail systems are encouraged to take appropriate training when offered by the Office of Information Systems. Email accounts are generally not provided to contractual employees. Employees may not modify or remove standard General Assembly software installed on the computers unless approved by the Office of Information Systems. **There is no right to privacy in the use of these systems.** No one may use General Assembly facilities for commercial use or for personal gain. Any use of the Internet which is illegal, inappropriate, abusive, harassing, interferes with the network, adversely affects other users or reflects badly on the Maryland General Assembly, is prohibited. The system and Internet use is monitored, and is subject to audit. Any stored evidence of potential crime or unlawful usage may be retrieved and disclosed. **Use of the Maryland General Assembly system by any user, authorized or unauthorized, constitutes consent to monitoring by authorized personnel and to the retrieval and disclosure of any information stored on the network.** A policy statement from the Joint Advisory Committee on Legislative Data Systems is included in these Guidelines (Attachment D).

## **2. Telephones**

Telephones are provided to serve the needs of the Maryland General Assembly. All calls must be answered promptly and courteously. Employees are expected to keep personal calls brief and to a minimum, as they are disruptive to the member(s) and other staff in the work area and interfere with the performance of job responsibilities. The Maryland General Assembly must be reimbursed for all personal long-distance calls. Employees should be aware that incoming calls and outgoing calls are logged by computer and periodically reviewed for possible abuse and reimbursement.

While at work, employees are expected to exercise the same discretion in using personal cellular phones as is expected for the use of department phones. The Maryland General Assembly will not be liable for the loss of personal cellular phones brought into the workplace.

Voicemail is available for most staff. It is not intended to be used regularly during the course of normal business hours. Voicemail messages should include directions as to how the caller can get assistance by calling another number. If the Voicemail must be on for an extended period of time, the Voicemail system should be checked regularly and cleared of messages.

## **3. Metered Mail**

Members may have their mail processed through the Maryland General Assembly postage meter during the legislative session. Details are explained in the "Guidelines for Compensation and Expenses for Legislators" available from the Finance and Administrative Services Office.

## **4. Facsimile Machines**

Facsimile (FAX) machines are located throughout the legislative complex to conduct legislative business, but they may be used occasionally, if required, for essential personal business. The General Assembly should be reimbursed for any personal long-distance facsimile messages.

## **5. Photocopy Machines**

Photocopy machines are located conveniently throughout the complex for small copying jobs pertaining to Maryland General Assembly business. Large jobs (twenty copies or more or multi-page documents) should be taken to the Legislative Print Shop. If a copying machine is jammed or otherwise inoperable, contact the key operator for assistance. That name is posted in the copier area. Do not try to fix a jammed machine.

## **6. Workspace**

Legislative employees are encouraged to personalize their offices and work areas to make them more comfortable, so long as the items are appropriate for the workplace and are free of any reference that may be viewed as offensive or discriminatory. It should be noted that the office, furniture, and equipment are the property of the Maryland General Assembly, and care should be taken in the use of such property. Employees should secure all valuables when they are not in their work area. Reassignment of offices and work areas are made at the discretion of the presiding officers.

## **7. Office Supplies**

Office supplies authorized by your supervising member may be ordered through the Supply Office in the Miller Senate Building (ext. # 5050).

## **8. Stationery**

Stationery items for regular legislative staff may be ordered as authorized by the supervising member through Document Design, located in room 307, Legislative Services Building (ext. #5165). These items generally include personalized business cards and notepads.

## **O. Complaint Procedures**

The Maryland General Assembly is committed to protecting the legitimate rights of its employees. Employees of the Maryland General Assembly are at-will and serve at the pleasure of the employee's supervising member. It is the obligation of the employee to promptly report complaints to appropriate personnel. An employee who has a job-related complaint should attempt to discuss and resolve the matter within the office. The supervising member(s) has the primary responsibility for resolution of job-related complaints. Each employee and supervising member is encouraged to resolve on-the-job complaints in an atmosphere of mutual respect. If the issue cannot be resolved with the assistance of the supervising member, or at the supervising member's request, the manager of Human Resources (HR) may assist in resolving problems. If a

problem cannot be resolved informally, an employee may timely submit a written complaint to the manager of HR, except for matters relating to budgetary actions, layoffs/furloughs, department policies, and salary schedules. Within 14 days, the manager of HR will confer with the employee and make any other additional inquiry regarding the complaint. Within 14 days after conferring with the employee, the manager of HR will render a decision and notify the employee. If the employee is dissatisfied with the decision, the employee has 7 days, to seek in writing a review from the appropriate presiding officer or designee. Within 45 days, the Presiding Officer or designee will issue a written disposition. An effort is made to keep all such consultations confidential to the extent consistent with appropriate investigation and remedial action, if applicable.

Complaints regarding unlawful discrimination and sexual harassment will be handled by the process outlined in the Maryland General Assembly Anti-Harassment Policy and Procedures found in these guidelines under policy statements (Attachment E).

#### **P. Resignation and Removal**

Legislative employees are expected to provide a two-week notice of resignation in writing. This letter should be directed to the supervising member with a copy sent to the Human Resources Office. Prior to the employee's last day in the office, the employee must:

- contact the Human Resources Office to schedule an appointment for completing required exit forms, and
- return all General Assembly property, including keys, security proximity card, equipment and any other legislative materials issued during the course of employment.

Legislative employees are "at-will" employees who have no contractual right to continuing employment and serve at the pleasure of the supervising member(s). An employee may be removed from the payroll by written notice to the Human Resources Office from the supervising member(s).

Violations of these Maryland General Assembly Personnel Guidelines policies and standards of conduct may result in discipline or removal.

#### **Q. TERMINATION WITH PREJUDICE**

**AS DISCUSSED ABOVE, ALL GENERAL ASSEMBLY EMPLOYEES ARE AT-WILL EMPLOYEES AND, AS SUCH, MAY BE TERMINATED AT ANY TIME WITH OR WITHOUT CAUSE AND WITHOUT ADVANCE NOTICE.**

**IT IS THE POLICY OF THE GENERAL ASSEMBLY THAT, AT THE DISCRETION OF THE PRESIDING OFFICERS, A TERMINATION MAY BE OFFICIALLY IDENTIFIED AS BEING MADE WITH PREJUDICE. A TERMINATION WITH PREJUDICE IS DEFINED AS SUCH WHEN AN EMPLOYEE'S ACTIONS**

**CONSTITUTE A SERIOUS VIOLATION OF THE GENERAL ASSEMBLY REGULATIONS, POLICIES, OR STANDARDS OF CONDUCT AND ARE SO EGREGIOUS TO THE EXTENT THAT THE EMPLOYEE IS PERMANENTLY BARRED FROM EMPLOYMENT IN ANY CAPACITY WITH THE STATE. UNDER STATE LAW, AN INDIVIDUAL TERMINATED WITH PREJUDICE IS INELIGIBLE FOR RE-HIRE WITH ANY STATE AGENCY AND WILL BE NOTIFIED OF THIS DETERMINATION IN WRITING.**

## **TIME SHEET**

## LEAVE EARNING TABLE

**VIII. BENEFITED PART-TIME EMPLOYMENT FACT SHEET**  
**Maryland General Assembly**  
**Human Resources Office**

Benefited part-time employees are eligible to receive State of Maryland employee benefits if they meet the qualifications, requirements, and contingencies established by the Presiding Officers. **By requesting the establishment of a benefited position, the member and the employee agree to accept all policies that govern the employment relationship.**

If a member wishes to hire a benefited part-time employee, and the establishment of that position has not been approved by the appropriate Presiding Officer, a “Request for Benefited Position” (**form HR-MGA 210**) must be completed by the employing member and forwarded to the appropriate Presiding Officer(s) for approval.

**“At-Will” Employment**

All General Assembly employees are “at-will” and serve at the pleasure of the supervising member. This employment is not considered permanent in nature. An employee may be terminated at any time by the supervising member or the appropriate Presiding Officer. In addition, employment is contingent on the re-election, reappointment, or continued service of a supervising member.

**Requirements/Funding**

Employee must work a regular, established bi-weekly schedule during the legislative session and the interim. To receive benefits, the hours worked must total at least 50% of the hours of a full-time employee or a minimum of 130 days on an annual basis.

Funding approval is required in advance of employment as follows:

- For Maryland General Assembly-funded positions, approval of the Presiding Officer(s) is required
- For member-funded positions, approval of each funding member is required prior to approval of the Presiding Officer(s)

Once the position is approved, the Finance and Administrative Services Office commits funds from the supervising member’s account to cover the salary for the position. Once committed, these funds may not be used for any other purpose. In the case of a terminating employee, the remaining salary funds will be restored to the member’s account.

A Certification Form must be completed and approved by the funding member along with an employee Session and Interim Work Schedule and maintained in the Human Resources Office. Unless the supervising member advises the Human Resources Office in writing of a change in salary, schedule, or termination of employment, the employee will be retained on the payroll at the requested salary and schedule through the end of the member’s term.

A benefited part-time employee may be employed by an individual member or by two or three members who all share in funding the employee's salary from their member accounts. Therefore, when the word "member" is used in this fact sheet, it can also mean "members."

During an election year, employees will be recertified by the supervising member on July 1, but funding will be reserved only through the end of the calendar year. When results of the General Election are certified following the November election, funds will be reserved for the remainder of the fiscal year for returning members. An employee whose member is not re-elected or chose not to return to the General Assembly may remain on the member's payroll until December 31st of the election year or may terminate or be terminated sooner, with notice to the Human Resources Office by the supervising member.

Bi-weekly timesheets must be completed by the employee, approved by the supervising member, and submitted to the Human Resources Office bi-weekly by Wednesday following the closing date on the payroll schedule issued by the Central Payroll Bureau (CPB). Each employee is responsible for accurately completing and submitting their own timesheet to the Human Resources Office in a timely manner. Failure to do so may result in loss of leave and benefits. Misrepresentation on a timesheet of the amount of time worked is a serious matter, which may result in disciplinary or legal action.

The bi-weekly salary amount an employee is paid is based on the completed Certification Form and work schedule. For leave earning purposes, the planned work time schedule is entered into the SAP information system, and timesheets are manually entered each pay period. Leave is accumulated based on these timesheet entries, and leave reports are issued to each employee on a quarterly basis. For Maryland General Assembly-funded employees, no additional payment is provided for time worked beyond the established schedule. If an employee is funded through a member account, the supervising member may authorize additional days of pay by initialing the day and noting on the timesheet that "additional pay is authorized." See Salary Policies, Section IV - B, Funding, in these Guidelines for more information.

Salary checks are mailed to the employee's address on file with the Human Resources Office the week following the pay period closing date. Employees should advise the Human Resources Office of any change in address. Employees with direct deposit must access their pay information through payroll online service center. (<http://compnet.comp.state.md.us/cpb>).

## **Benefits**

Benefited employees are entitled to State benefits on a pro-rated basis based on the percentage of hours worked. These benefits may include annual, sick, personal, and compensatory leave; holidays; health benefits; and membership in the Maryland State Pension System, Deferred Compensation Plan, State Employees Credit Union; and other benefits as may be provided to State employees. The employer-subsidized portion of the benefits program is provided by Maryland General Assembly funding, not from the employing member account. When a member requests approval from the appropriate Presiding Officer to establish a benefited part-time position, the member agrees to provide access to benefits, including use of leave and holidays. Upon termination of employment, an employee is entitled to be paid for any

accumulated annual leave. This payment is funded by the Maryland General Assembly. No provision is made for payment of any other type of leave, including personal, compensatory, and sick leave.

### **Modifications to Program**

The Maryland General Assembly reserves the right to modify the Benefited Employee Program at any time. In addition, since benefits are provided through the State of Maryland and are subject to change, the benefit program will be modified in accordance with State benefits.

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## **IX. POLICY STATEMENTS**