

Legislative Policy Committee
December 12, 2017
1:00 p.m.
Joint Hearing Room, Legislative Services Building

Agenda

Part I: Maryland Program Evaluation Act (Sunset Process)

The sunset process is defined by statute as the process by which the Legislative Policy Committee determines whether a governmental activity shall undergo an evaluation. During the 2017 interim, the Department of Legislative Services (DLS) conducted a preliminary evaluation of the State Board of Law Examiners and a full evaluation of the State Board of Professional Counselors and Therapists.

DLS recommends waiving the State Board of Law Examiners from a full evaluation and extending the termination date of the board by 10 years, to July 1, 2030.

The full evaluation of the State Board of Professional Counselors and Therapists will be presented to the Senate Education, Health and Environmental Affairs and House Health and Government Operations committees in January.

The following preliminary evaluations are required to be conducted during the 2018 interim:

Department of Agriculture

- State Board of Veterinary Medical Examiners

Department of the Environment

- State Board of Waterworks and Waste Systems Operators
- State Board of Well Drillers

Department of Labor, Licensing, and Regulation

- State Athletic Commission
- State Board of Barbers
- State Board of Cosmetologists

Maryland State Police

- Licensing and regulation of security systems technicians

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

A written report by the Honorable Nancy K. Kopp, State Treasurer, on operations in the State Treasurer's Office during the last six months of 2017, pursuant to State Government Article § 5-104.

Part III: Legislative Staff Agency Budget

Consideration of the fiscal year 2019 budget for DLS.

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

Changes to the anti-harassment policy/procedures and additional changes.

Part I
Maryland Program Evaluation Act
(Sunset Process)

Department of Legislative Services
Annapolis, Maryland

December 2017

Department of Legislative Services: Summary of 2017 Sunset Review Activities

Summary of Sunset Activities During the 2017 Interim

Preliminary Evaluation

- During the 2017 interim, the Department of Legislative Services (DLS) conducted a preliminary evaluation of the **State Board of Law Examiners**.
- DLS concludes that there is a continued need for regulation of admission to the bar and that the board fulfills that function in a fair and efficient manner.
- Therefore, DLS recommends waiving the board from a full evaluation and extending the termination date for the board by 10 years, to July 1, 2030.
- In addition, DLS found that the board is not generating sufficient revenue from its examination and application fees to cover its operating costs. The board's \$250 examination fee is less than the \$400 maximum fee allowed by statute. Therefore, DLS recommends that the board consider raising this fee to generate sufficient revenue to cover its expenses.

Full Evaluation

- DLS completed a full evaluation of the **State Board of Professional Counselors and Therapists**, which will be presented to the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations committees in January.
- DLS found that the board issues a large number of credentials across multiple areas of specialization and has struggled to meet its licensing performance goals.
- In light of the current opioid epidemic, licensure and certification delays for alcohol and drug counselors are particularly problematic and have hamstrung providers' ability to replace or add counselors to treat patients based on caseload limitations.
- Furthermore, since the last sunset evaluation in 2007, the board continues to exhibit inadequate recordkeeping and struggles with a substantial complaint backlog.
- Based on these findings, DLS made a total of 32 recommendations.
- As the problems identified with the board are of sufficient urgency, the primary recommendation is that emergency legislation be introduced to extend the termination date of the board by no more than two years at this time. During this period, the board, in consultation with the Maryland Department of Health (MDH) and the Department of Budget and Management, should submit progress reports to DLS every six months beginning October 1, 2018. By December 1, 2019, DLS should provide a report to the relevant committees on the board's progress to date and any recommendations on whether and how long to extend the termination date of the board.

Evaluations to be Conducted in 2018

Preliminary Evaluations

Department of Agriculture

State Board of Veterinary Medical Examiners

Department of the Environment

State Board of Waterworks and Waste Systems Operators

State Board of Well Drillers

Department of Labor, Licensing, and Regulation

State Athletic Commission

State Board of Barbers

State Board of Cosmetologists

Maryland State Police

Licensing and regulation of security systems technicians

Preliminary Evaluation of the State Board of Law Examiners

Recommendations:	Waive from Full Evaluation Extend Termination Date to July 1, 2030 Consider Increasing Examination Fee within Statutory Cap
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Date Established: 1898

Most Recent Prior Evaluation: Preliminary Evaluation, 2008
Extended termination date by 10 years to July 1, 2020
(enacted by Chapter 413 of 2008); recommended increased
examination fee cap (Chapter 413 of 2008)

Composition: 7 members (each member must have been a lawyer for at
least 5 years)

Regulated Entities: Regulates admission to practice law in the State

Authorizing Statute: Title 10, Business Occupations and Professions

Evaluation Completed by: Jameson D. Lancaster, Department of Legislative Services,
2017

Overview of Regulatory Activity

The Board

The State Board of Law Examiners is responsible for administering bar examinations in the State of Maryland, investigating the legal competence and character and fitness of persons who seek a license to practice law in the courts of the State, and recommending to the Court of Appeals those candidates qualified for admission to the Maryland Bar. However, the board does not handle disciplinary matters related to attorneys. The Attorney Grievance Commission of Maryland, which is not subject to the Maryland Program Evaluation Act, is responsible for reviewing attorney conduct and overseeing attorney disciplinary matters.

Overview of the General Bar Examination

The Maryland General Bar Examination is a two-day test, consisting of one written test day and one multiple choice test day. The exam is administered twice annually, once in February and then again in July. With law school graduations typically taking place each May, the vast majority of individuals who take the bar examination do so during the July administration.

The written test is administered on the first day of the examination, with three hours allotted to a morning session and three hours allotted to an afternoon session. Test takers requesting and receiving accommodations under the Americans with Disabilities Act may be permitted to take the exam on an alternate schedule. The written test consists of 10 essay questions prepared by the board as well as a single Multistate Performance Test (MPT) question, which is published by the National Conference of Bar Examiners (NCBE). The board designs the test with each of the 10 essay questions carrying equal weight and with each question being graded on a relative range of 1 to 6 points. Scores of zero points are reserved for answers that are either blank or totally unresponsive to the essay questions. The MPT is weighted to be worth 1.5 times the value of a single essay question and is scored using the same 6-point rubric used to grade the other essay questions.

The multiple choice test, or Multistate Bar Examination (MBE), portion of the exam is administered on the second day of the examination, with 200 multiple choice questions divided between two three-hour testing sessions. The MBE is prepared by the NCBE and is administered by 48 other states and the District of Columbia.

Overview of the Out-of-State Attorney's Examination

Maryland provides attorneys from other jurisdictions who seek to become admitted to practice law in the State the option of taking an abbreviated bar examination known as the Out-of-State Attorney's Examination. Unlike many other jurisdictions, Maryland does not have reciprocity or comity with any other jurisdiction, which would allow an individual who is licensed to practice law in another jurisdiction to be admitted to practice law in Maryland without first taking Maryland's bar examination.

The Out-of-State Attorney's Examination is a three-hour, open-book essay examination prepared by the board and administered twice annually. The examination is available to be taken by individuals who have passed a written bar examination in another jurisdiction and have specified professional experience. Test takers are permitted to bring copies of the Maryland Rules as well as the Courts and Judicial Proceedings Article and Criminal Procedure Article of the Code of Maryland for reference during the examination. The board indicates that the examination is designed to test a candidate's knowledge of the Maryland Rules of Procedure governing practice and procedure in civil and criminal cases, the Maryland Rules of Professional Conduct, and provisions of the Courts and Judicial Proceedings and Criminal Procedure Articles of the Code of Maryland.

In order to be eligible to take the Out-of-State Attorney's Examination, an individual must have either a total of 10 years of professional experience or at least 5 years of professional experience in the 10 years immediately preceding the filing of an application to take the exam. The professional experience must have been full-time work as (1) a practitioner of law; (2) a teacher of law at an accredited law school; or (3) a judge of a court of record in a state.

Legislative Action in Response to Most Recent Sunset Evaluation

Since the 2008 preliminary evaluation, legislative action related to the State Board of Law Examiners has been limited to extending the board's termination date and authorizing an examination fee increase. Chapter 413 of 2008 increased the statutory cap on the bar examination fee from \$150 to \$250 in 2009 and then to \$400 beginning in 2010. The Court of Appeals, which is the entity responsible for setting the examination fee, has kept the fee set at \$250 since January of 2009. Chapter 413 also extended the termination date for the board from July 1, 2010, to July 1, 2020. A requirement that the Court of Appeals submit a follow-up report to relevant committees of the General Assembly on its plans to increase fees and generate revenues to cover its expenditures, as recommended by the sunset evaluation, was stricken from the bill.

The General Bar Examination

In the last five years, the number of exam takers taking the July administration of the bar exam has decreased with each administration, while the number of exam takers taking the February examination has remained relatively flat, as shown in **Appendix 1**. Since July 2013, pass rates for the exam have decreased slightly for July administrations. With the exception of the February 2017 exam administration, the pass rate for winter administrations has remained relatively flat. However, in February 2017, only 42% of test takers passed the exam, which was 11 percentage points lower than the February 2016 pass rate and 16 percentage points lower than the average pass rate for February exam administrations in the preceding five years.

Decline in Pass Rate for February 2017 General Bar Examination

The board attributes the lower pass rate in February 2017 to two possible factors. First, the board noted that NCBE has described a general decline in the “quality” of bar applicants as shown by a downward trend in the mean MBE score in recent years. Because NCBE is able to construct the MBE exam for each exam session in a manner that is of approximately equal difficulty, test takers of equal ability and having prepared for the exam to an equal extent should receive approximately equal scores across each administration of the exam. This being the case, the board indicated that the “decline in mean performance from session to session indicates a decline in the mean ability level of the testing population.” This decline in mean ability level may also explain the slight decrease in July exam pass rates as well.

The second possible reason for lower performance offered by the board was that a higher than usual number of test takers during the February 2017 bar exam had previously failed an earlier administration of the exam. For the February 2017 exam administration, approximately 62% of test takers were retaking the test for a second or subsequent time, whereas in the preceding five February exam administrations, an average of approximately 52% of exam test takers were retaking the exam. (See Appendix 1.) According to the board, the pass rate for retakers “routinely lags behind the pass rate for first-time takers.” The data provided by the board generally confirms this assessment, showing that pass rates have typically been lower for exam administrations in which a higher percentage of test takers were retaking the exam.

Overall Decline in Examination Takers

The decline in the number of exam takers correlates with data compiled by the Law School Admissions Council (LSAC) showing an overall decline in annual law school admissions, which began in 2011. As the number of law school applications and admissions has declined, the number of individuals taking the bar exam has also declined. More recent data from LSAC suggests that the historic year-to-year decline in law school admissions may be leveling off, but it is unclear if this is any indication that admissions will begin increasing in the near future.

Out-of-State Attorney’s Examination

Appendix 2 shows that between February 2012 and February 2017, an average of 92 individuals took the Out-of-State Attorney’s Examination at each administration of the test. **Appendix 3** shows that for each bar exam administration between February 2012 and February 2017, an average of 107 individuals with non-Maryland bar admissions took the General Bar Examination rather than the Out-of-State Attorney’s Examination. The board advises that the reason individuals with non-Maryland bar admissions take the General Bar Examination in lieu of the Out-of-State Attorney’s Examination is because they lack the requisite number of years of professional experience required to apply for the Out-of-State Attorney’s Examination.

Overall Decline in Exam Takers Resulting in Declining Revenues

The board is funded with State general funds through the Judiciary. Board revenues, which are primarily generated from bar application and examination fees, are credited to the general fund. The various fees collected by the board are set by the Court of Appeals. However, as noted above, the maximum examination fee that the court may set is capped by law at \$400. Following the 2008 fee cap increase to \$400, the Court of Appeals raised the examination fee from \$150 to \$250, where it has remained since. In addition to the examination fee, the board also charges bar applicants an application fee set by the Court of Appeals at \$225 for applications filed early and \$275 for applications filed on time. The Court of Appeals last increased the application fees in January 2009 by \$50.

Based on data provided by the board, **Appendix 4** summarizes the board's revenues and expenditures for the past five years. However, the board was unable to provide salary and benefit expenditures for board staff for the covered period because the Judiciary's budgeting and payroll systems do not track employees by department. Appendix 4 also shows significant decreases in special and technical expenditures from fiscal 2012 to 2013 and corresponding increases in contractual expenses at the same time. The board advises that these changes reflect a recategorization of board member and exam reviewer compensation from the special and technical expenses category to the contractual expenses category.

There is no statutory requirement that revenues generated by the board cover its expenditures, but Chapter 413 of 2008 stated the General Assembly's intent that the board's expenditures be covered by fees, to the extent possible. In recent years, however, the board's expenditures have remained relatively flat from year to year, while its revenues have continued to decrease, as shown in Appendix 4. This has resulted in a decreasing margin between the board's revenues and expenditures, and in fiscal 2017, the board's revenues fell slightly short of expenditures. The Department of Legislative Services (DLS) notes that if board staff compensation were included, board expenditures would far surpass current revenues.

From fiscal 2012 through the end of fiscal 2017, revenues fell an average of 7.7% each year, with the largest revenue decreases occurring in fiscal 2015 and 2017. These revenue decreases correspond with decreasing numbers of bar examination test takers, as discussed above. The board is aware of this issue, but indicated that it did not see any need at this time to increase fees, and that it is working to reduce costs and expenditures. Indeed, the board's fiscal history does indicate that the board has made progress towards spending cuts in many expenditure areas. Again, these spending trend data do not include board staff compensation, which has likely increased due to salary increases and increased costs of employee benefits over that time period. Notwithstanding, while fiscal 2017 revenues were able to cover approximately 99% of the board's expenditures (not including staff compensation), the continuing trend of decreasing revenues suggests the possibility of future and more significant gaps between revenues and expenditures if left unchecked.

Overall, **Appendix 5** shows that the fees charged by the board are in the low to mid-range when compared to fees charged by other mid-Atlantic states. The total cost of the bar application

is currently lower in Maryland than in all other states in the region with the exception of New York and the District of Columbia. Maryland's bar examination fee has been set at \$250 since January 2009. The current examination fee is set \$150 below the \$400 statutory cap set by the General Assembly following the most recent sunset evaluation of the board in 2008. At this level, the Court of Appeals has some flexibility for future increases should the need arise. With the recent history of declines in law school admissions, it seems likely that there will be a similar continuing decline in the number of individuals taking the bar, thereby putting further downward pressure on board revenues.

Potential Change to the Uniform Bar Examination

In October 2017, an advisory committee appointed by Chief Judge Mary Ellen Barbera of the Court of Appeals published a report regarding the feasibility of Maryland's adoption of the Uniform Bar Examination (UBE), a uniformly administered, graded, and scored exam prepared by NCBE and administered in 26 states and the District of Columbia. The advisory committee was tasked with evaluating the UBE and making a recommendation as to whether the State should adopt the examination in lieu of the current bar exam prepared by the Board of Bar Examiners. The advisory committee voted to recommend adoption, noting that one of the UBE's most significant features is the potential portability of exam scores, which would allow for individuals who had passed the UBE in one state to transfer their score to become admitted to practice law in other states offering the exam.

Adoption of the UBE Will Likely Result in Increased Costs to the Board

While the use of State monies was outside the official scope of the advisory committee's work, the committee's report noted that adoption of the UBE would result in a \$34 increase in cost per exam applicant compared to current costs. According to the report, the board does not believe that this cost would be passed on to applicants but could be absorbed by the board's existing budgetary resources. The rationale provided in the report is that "application fees are set by the [board] to be affordable, rather than to cover all expenses." In light of the continuing decrease in annual revenues, the board's ability to absorb those costs may be limited.

Conclusion and Recommendations

There is a continued need for regulation of admissions to the bar. DLS is satisfied that the board is appropriately vested with this authority and that it fulfills this function in a fair and efficient manner. Therefore, **DLS recommends that the Legislative Policy Committee waive the State Board of Law Examiners from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2030.** The next preliminary evaluation would be conducted in 2027.

The board did not generate sufficient revenues to cover its expenditures in the most recent fiscal year; the gap would be even more pronounced if the board's staff costs were factored into

the calculation. While the 2017 gap was minimal, it does appear to be the latest development resulting from a continuing trend of falling revenues and relatively flat expenditures. Because of this, and because the board is not covering the cost of its own staff with current revenues, **DLS further recommends that the board consider raising fees to cover all of its expenses, including staff, especially if the court decides to adopt the UBE.**

Appendix 1.
Number of Candidates Taking and Passing
the General Bar Exam in Maryland
February 2012 through February 2017

<u>Date of Exam</u>	<u>Number Taking</u>	<u>Number Passing</u>	<u>Pass Rate</u>	<u>Percent of Test Takers Retaking</u>
February 2012	562	308	55%	49%
July 2012	1,615	1,227	76%	12%
February 2013	597	374	63%	47%
July 2013	1,544	1,197	78%	13%
February 2014	567	342	60%	53%
July 2014	1,537	1,102	72%	12%
February 2015	607	358	59%	54%
July 2015	1,316	827	63%	15%
February 2016	616	325	53%	58%
July 2016	1,252	790	63%	18%
February 2017	560	233	42%	62%

Appendix 2.
Number of Candidates Taking and Passing
the Out-of-State Attorneys' Bar Exam in Maryland
February 2012 through February 2017

<u>Date of Exam</u>	<u>Number Taking</u>	<u>Number Passing</u>	<u>Pass Rate</u>
February 2012	89	74	83%
July 2012	98	88	90%
February 2013	101	88	87%
July 2013	113	86	76%
February 2014	87	67	77%
July 2014	104	99	95%
February 2015	78	65	83%
July 2015	101	90	89%
February 2016	73	66	90%
July 2016	78	69	88%
February 2017	86	76	88%

Appendix 3.
**Number of Candidates Previously Admitted to Practice in Another
Jurisdiction Taking the General Bar Exam in Maryland
February 2012 through February 2017**

<u>Date of Exam</u>	<u>Total Number Taking General Bar Exam</u>	<u>Number Taking General Bar Exam and Admitted in Another Jurisdiction</u>	<u>Percent Taking General Bar Exam and Admitted in Another Jurisdiction</u>
February 2012	562	101	18%
July 2012	1,615	125	8%
February 2013	597	102	17%
July 2013	1,544	138	9%
February 2014	567	107	19%
July 2014	1,537	129	8%
February 2015	607	117	19%
July 2015	1,316	79	6%
February 2016	616	100	16%
July 2016	1,252	87	7%
February 2017	560	93	17%

Appendix 4.
Fiscal History of the State Board of Law Examiners
Fiscal 2012 through 2017

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>
General Fund Expenditures						
Salaries and Wages ¹	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Special and Technical	409,040.00	99,450.00	63,990.00	78,795.00	59,985.00	36,072.60
Communications	13,444.04	7,213.80	7,235.15	7,217.22	5,873.71	6,599.33
Travel	9,504.17	5,774.85	9,338.68	4,514.51	4,065.92	5,806.27
Utilities	0.00	0.00	0.00	0.00	0.00	0.00
Vehicles	0.00	0.00	0.00	0.00	0.00	0.00
Contractual Services	339,126.90	762,318.13	738,795.30	852,826.79	851,127.34	809,139.91
Supplies and Materials	19,985.16	15,996.20	13,572.34	12,341.01	15,066.03	13,302.76
Equipment Replacement	0.00	0.00	0.00	0.00	0.00	0.00
Equipment Additional	7,460.00	4,219.83	0.00	0.00	0.00	0.00
Fixed Charges ²	45,677.20	3,293.02	80,690.29	2,652.55	1,293.82	1,360.82
Total Expenditures	\$844,237.47	\$898,265.83	\$913,621.76	\$958,347.08	\$937,411.82	\$872,281.69
General Fund Revenues						
Examination Fees	\$623,500.00	\$524,750.00	\$570,500.00	\$513,250.00	\$497,750.00	435,500.00
Character Update Fees	8,750.00	4,900.00	3,010.00	3,360.00	3,220.00	4,060.00
Out-of-state Attorney Fees	127,400.00	145,925.00	128,150.00	122,650.00	109,250.00	129,500.00
Application (Registration) Fees	525,575.00	426,125.00	457,425.00	388,620.00	355,025.00	284,375.00
Miscellaneous Fees	4,755.50	5,044.00	4,322.00	5,887.50	6,850.00	7,195.00
Total Revenues	\$1,289,980.50	\$1,197,624.00	\$1,163,407.00	\$1,033,747.50	\$972,095.00	\$860,630.00

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>
Comparison: Revenues vs. Expenditures						
Revenues	\$1,289,980.50	\$1,197,624.00	\$1,163,407.00	\$1,033,747.50	\$972,095.00	\$860,630.00
Expenditures	\$844,237.47	\$898,265.83	\$913,621.76	\$958,347.08	\$937,411.82	\$872,281.69
Revenue Excess/(Deficit)	\$445,743.03	\$299,358.17	\$249,785.24	\$75,400.42	\$34,683.18	(\$11,651.69)
% Expenditures Covered	152.80%	133.33%	127.34%	107.87%	103.70%	98.66%

¹For fiscal years 2012 through 2017, the salaries and wages of the State Board of Law Examiners were not attributable to the board.

²In fiscal years 2012 and 2014, rent was attributed to the board as a fixed cost. Rent was not attributed as a cost to the board in any other fiscal year shown.

Source: State Board of Law Examiners

Appendix 5.
Bar Application Fees in the Mid-Atlantic Region
(Excluding Out-of-state attorney application fees)

<u>Jurisdiction</u>	<u>Examination Fee</u>	<u>Separate Registration/ Application Fee</u>	<u>Total Fee</u>
Maryland	\$250	\$225-\$275	\$475-\$525
Connecticut	\$800		\$800
Delaware	\$700-\$1,400		\$700-\$1,400
District of Columbia	\$114-\$324	\$110	\$224-\$434
New Jersey	\$675-\$1,200		\$675-\$1,200
New York	\$250		\$250
North Carolina	\$700-\$950		\$700-\$950
Pennsylvania	\$650-\$1,500		\$650-\$1,500
Virginia	\$375	\$175-\$475	\$550-\$850
West Virginia	\$500-\$700		\$500-\$700

Notes: Examination fee may be the only fee charged by some states. Fees can vary based on application timeliness. Fees do not include miscellaneous fees, fees for applicants who have received a law degree from a foreign country, or additional fees for computer-based testing, repeat examinations, or background investigations.

Source: Jurisdiction websites

Appendix 6.
Written Comments of the State Board of Law Examiners

MEMBERS OF THE BOARD
JONATHAN A. AZRAEL, CHAIRMAN
JOHN F. MUDD
MAURENE E. McNEIL
DAVID E. RALPH
MATTHEW T. MILLS
GREGORY H. GETTY
MAURA L. LYNCH



SECRETARY
JEFFREY C. SHIPLEY
DIRECTOR, CHARACTER & FITNESS
BARBARA L. GAVIN
CLERK TO THE BOARD
ROSE E. BERG

STATE BOARD OF LAW EXAMINERS

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November 29, 2017

Michael C. Rubenstein
Principal Policy Analyst, Office of Policy Analysis
Department of Legislative Services
Legislative Services Building
90 State Circle
Annapolis, MD 21401

Re: State Board of Law Examiners' Response to Exposure Draft of Preliminary Review

Mr. Rubenstein:

The State Board of Law Examiners ("the Board") has completed its review of the exposure draft copy of the Office of Policy Analysis' preliminary evaluation. The Board's comments follow.

The Board believes it is too early to reach the conclusions stated in the exposure draft with regard to the potential impact of the adoption of the Uniform Bar Exam on Board revenues and expenses. (Exposure Draft, p. 6.) While the Board will have to purchase exam materials from the National Conference of Bar Examiners (NCBE) costing \$34 more than the current materials, that expense is not incurred for each individual who pays an exam fee because the Board only pays the NCBE for exam materials for each actual exam taker. Hence, the Board does not pay a materials charge for applicants who apply but then withdraw or are absent from the exam. Also, the switch to use of NCBE materials for the UBE will eliminate exam-related expenditures related to printing the exam questions. Further, while the Board has yet to set an application fee for UBE transfer applicants, those applicants will provide revenue with no concurrent exam-related expenditures. The fees charged to UBE transfer applicants in most current UBE jurisdictions match or exceed the fees charged to examination applicants. This "non-exam applicant" revenue stream may fundamentally alter the Board's revenue/expenditure ratio.

Finally, the Board notes that to follow the Office of Policy Analysis' recommendation that revenues be increased to cover attributed staff salary and benefits in addition to its operational costs (Exposure Draft, p. 7) is contrary to past practice. The Board's budget historically has not included staff salaries and benefits, as these are part of the general budget for the Judiciary, and have not been covered by application and exam fees. Moreover, to add staff salaries and benefits to revenues would require an immediate increase in application and exam fees by approximately 60% over their current levels, as well as regular increases thereafter. Maryland's current timely application and exam fees for a General Bar applicant total \$525. (Maryland charges the same application and exam fees to all General Bar applicants.) The average application and exam fees

for an applicant seeking a first bar admission in the mid-Atlantic region (CT, DC, DE, NC, NJ, NY, PA, and WV) is \$642. Should Maryland increase its timely application and exam fees for the General Bar Exam by 60%, the resulting fee would be \$840. Although a modest increase in fees may be warranted, the Board is particularly concerned about the impact of charging the highest application and exam fees in the region to recent law school graduates seeking a first bar admission.

The State Board of Law Examiners appreciates the efforts of the Office of Policy Analysis in compiling the Preliminary Evaluation. Should you have questions, please do not hesitate to contact us.

Sincerely yours,

STATE BOARD OF LAW EXAMINERS

Handwritten signature of Jonathan A. Azrael in blue ink, dated 1/21.

Jonathan A. Azrael, Chairman

Handwritten signature of Jeffrey C. Shipley in blue ink.

Jeffrey C. Shipley, Secretary

Cc: Chief Judge Mary Ellen Barbera
Pamela Q. Harris, State Court Administrator
All Board Members

Part II
State Treasurer's Office
Report of the Treasurer

Department of Legislative Services
Annapolis, Maryland

December 2017



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

December 12, 2017

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 last Report of June 6, 2017. 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 State Retirement and Pension System and is the Chair of the Board of Trustees of the Maryland 529 Plans. The Treasurer is a member of the governing boards of the Maryland Teachers’ and Employees’ Supplemental Retirement Plans, the Maryland Health and Higher Education Facilities Authority, and the Maryland Agricultural Land Preservation Foundation.

The Treasurer’s Office continues 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 Zone Academy Bonds. And as you know, we continue to invest State funds prudently and conservatively to minimize risk to Maryland taxpayers.

The items set forth below detail a number of our recent achievements. We are always available to provide greater information or answer questions regarding these and other issues.

BOARD OF PUBLIC WORKS

Between June 1, 2017 and November 30, 2017 the Board of Public Works (“BPW”) met 11 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, in addition to the State General Obligation Bond Authorizations and the Capital-Lease and Energy Performance Lease financings discussed in more detail in the Debt Management Section of this Report, the following items, worthy of note, were considered by the Board of Public Works:

FY 2018 State Operating Budget

- Approved the Governor’s request to reduce General Funds by \$60,978,555 and Special Funds by \$1,950,000 for FY18. The reductions will result in the elimination of 30 vacant positions at the University System of Maryland. (09/06/17)

Natural Resources

- Approved a request from the Department of Natural Resources (DNR) to grant \$4,871,000 of Program Open Space statewide funds for the acquisition in fee simple of approximately 460 acres in Cecil County (the OBX Farms property). The property features 14,000 linear feet of frontage along the Bohemia River and its tributaries. This purchase will allow for recreational boating, fishing, water trails, hiking and bird watching. (6/7/17)
- Approved a request from DNR to provide \$295,000 in capital grants to design four shoreline restoration projects as a part of DNR’s Coastal Resiliency Program. (9/20/17)
- Approved a request from DNR to provide \$1,836,282 in capital grants from the Chesapeake and Atlantic Coastal Bays Trust Fund for storm water management facilities installation projects. (9/20/17)

School Construction

- Adopted amendments to existing COMAR provisions relating to the Public School Construction Program to allow certain broadband infrastructure costs under the Federal Communication Commission’s E-Rate Program to qualify as public school construction costs eligible for State grant funding through the Capital Improvement Program. (8/16/17)
- Modified the recommendations from the Interagency Committee on School Construction to establish the State cost share percentages for the FY19 State Public School Construction Program at a level that holds nine counties harmless by setting their cost share percentage at the FY18 level rather than reducing the percentage to the amount determined applying the regulatory formula. Approval of the modified item authorized the Public School Construction Program to submit proposed COMAR amendments that reflect the updated FY19 cost share percentage and that include Qualified School Construction Bonds debt in

the formula for calculating the cost share percentage to the AELR Committee and to the *Maryland Register* for public comment. (10/18/17)

School Construction -- Baltimore City 21st Century Public School Construction Initiative

- John Rurah Elementary/Middle School: Renovation and Addition:
 - Approved a request from the Maryland Stadium Authority (MSA) to award a contract for architectural design and engineering services. (6/7/17)
 - Approved a request from MSA to award a contract for preconstruction services throughout the design phase of the project. (7/5/17)
- Bay-Brook Elementary/Middle School: Replacement:
 - Approved a request from MSA to award a contract for architectural design and engineering services. (8/16/17)
 - Approved a request from MSA to award a contract for construction management services. (8/16/17)
- Calvin M. Rodwell Elementary School: Replacement:
 - Approved a request from MSA to award a contract for architectural and engineering services. (8/16/17)
 - Approved a request from MSA to award a contract for construction management services. (8/16/17)
- Fairmount Harford Building: Renovation: Approved a request from MSA to award a contract for early design-build services for the Reach Partnership High School that will be sited in the Fairmount Harford Building. (8/16/17)
- Approved an amendment to the Memorandum of Understanding between MSA, the Interagency Committee on School Construction, the Baltimore City Board of School Commissioners, and the Mayor and City Council of Baltimore to formally recognize MSA as the manager of all projects in the Baltimore City 21st Century Public School Construction Initiative. (8/16/17)
- Approved MSA issuing up to \$426.44 million in Baltimore City Public Schools Construction and Revitalization Program Revenue Bonds, Series 2017, to finance the completion of the renovations or replacements of six of the 11 public school facilities for which the first series of bonds (2016 Series) was issued and to finance a portion of the costs to construct, renovate, replace, equip, and furnish 17 additional public school facilities. (11/15/17)

State Facilities and Assets

- Approved the sale of 117 acres of the original Rosewood Hospital Center in Baltimore County to Stevenson University for \$1. Before the sale is finalized, Stevenson University must perform environmental remediation on the property, using State capital grants. As part of the requirements of the transaction, Stevenson must use the property for educational purposes and educational-related activities for fifteen years or until Stevenson has spent at least \$20 million in constructing capital improvements to the property for education purposes. (6/7/17)

- Approved a request from the University of Maryland College Park to declare 10 University of Maryland properties in College Park (29.4 acres) as surplus. The University intends ultimately to convey these properties to Terrapin Development Company, LLC, a two-member limited liability company comprising the University and the University of Maryland College Park Foundation, as the next step in the Greater College Park initiative. (10/18/17)

State Services

- Approved on a 2-1 vote, with the Treasurer voting no, a request from the Department of Information Technology and the Department of General Services to:
 - Award compensation without a contract to the current contractor, Periscope Holdings, Inc., for providing electronic procurement services (eMaryland Marketplace) to the State from October 2016 - July 2017; and
 - Approve the award of a sole source contract to Periscope Holdings, Inc. for the continued provision of the same services to the State from two years (July 2017 - July 2019). (7/26/17)

- Approved a request from Maryland 529 (formerly College Savings Plan of Maryland) for approval of the State's participation in an intergovernmental cooperative purchasing agreement with the State of Oregon and to award a contract to Oregon's management services contractor to implement the Maryland ABLE Program. (9/6/17)

- Approved a request from the Department of Budget and Management to award a statewide master contract to 18 contractors to provide customer service training and process improvement consultation to State agencies. (9/20/17)

Transportation

- BWI Marshall Airport:
 - Approved a request from the Maryland Aviation Administration (MAA) to award a contract to Lyft, Inc. and Raiser, LLC (Uber) to provide ground transportation services at BWI Marshall Airport using technology that connects passengers to authorized drivers. (6/7/17)

 - Approved a request from MAA to award a contract to provide pre-arranged concierge passenger services to travelers at BWI Marshall Airport. (8/16/17)

- Approved a request from MAA to allow AIRMALL, the Airport's Concessionaire, to enter into seven new subleases and to modify three existing subleases so that all 10 subleases extend beyond the end date of AIRMALL's Lease and Concession contract (March 31, 2022) but do not go beyond December 31, 2025. After the expiration of the AIRMALL lease, the subleases will continue as direct leases with MAA. (11/15/17)
- Adopted resolutions authorizing the issuance and sale by the Maryland Department of Transportation of its Consolidated Transportation Bonds Series 2017, Second Issuance in an amount not to exceed \$500 million. (6/7/17)

TREASURY MANAGEMENT DIVISION

Banking Services Department

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

The State Treasurer's Office procures financial products and services on behalf of the State. In April 2017, an award was made for Statewide Lockbox Services with a contract effective date of May 24, 2017.

BSD 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 Department 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 BSD 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.

As of November 30, 2017, total cash receipts and disbursements exceeded \$132 billion. The State's bank accounts continue to be reconciled to the State's general ledger to the penny, daily.

In addition to the reconciliation duties, the Department 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 Federal Reserve wire payments;
- Managing foreign currency transactions;
- Processing check stop payments, cancellations and reissues;
- Initiating replacement checks for failed ACH payments;
- Recovering funds for fraudulent check presentments;
- Providing transaction research assistance to State agencies;
- Managing the Unpresented and Undeliverable Check Funds;
- Recordation in R*STARS of all bank adjustments; and
- Maintenance of tables to allow for accurate posting of electronic receipts.

Another responsibility of the Department 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), BSD monitors over 1,500 agency bank accounts at 28 financial institutions.

Total posted collateral as of October 31, 2017 was \$564+ million (unaudited). The annual update of all State agency bank accounts have been received and reviewed. The information gathered was used to update the TBAIS system and reassure the Legislative Auditors that every

penny of the \$127,362 of interest earned on working funds during FY17 was deposited in the General Fund.

The BSD 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 Department will continue to explore new financial products and improved data delivery methods that will increase its capabilities to provide efficient and cost-saving banking and financial services to all State agencies.

Investment Department

The Treasurer's prudent investment policy and practices focus primarily on safety of principal to ensure protection of Maryland State Funds. The information in this report is based on the daily verification of investments as of December 1, 2017. The par value of the General Fund investment portfolio for November 30, 2017 was \$6,588,747,574 as compared to November 30, 2016 at \$5,855,658,247. The General Fund Investment Portfolio increased by \$733,089,328.

On November 30, 2017, the portfolio was earning an average of 1.438%, compared to 1.301% on November 30, 2016. The Federal Open Market Committee (FOMC), on December 15, 2016 increased rates 0.25%. On March 16, 2017 and June 15, 2017, there were 2 increases of 0.25%. The current FOMC target Federal Funds rate ranges between 1 – 1.25%.

The Maryland State Treasurer's Office investment policy requires a rate of return to be at least equal to the three month US Treasury Bill yield. As of November 30, 2017, the three month Treasury Bill yield is 1.24%. In the prior year as of November 30, 2016, the three month Treasury Bill yield was 0.48%. The General Fund Investment Portfolio yield is greater than the three month Treasury Bill yield as of November 30, 2017. The Federal Funds Target Rate is expected to rise on December 13, 2017.

The General Fund gross interest earnings received year-to-date for FY18 are \$41,854,573 compared to 21,405,215 received for the same time period in FY17.

The following chart tracks the number of individual agency accounts that receive an interest allocation from the total interest earned on the investment portfolio:

Total Interest Earned				Percentage of
Total Interest Earned Allocated to State Agencies				
Fiscal Year	Net General Fund	Allocated to State Agencies	Total	% of Total Allocated to State Agencies
2008	155,170,184	207,179,098	362,349,282	57%
2009	102,768,740	142,619,087	245,387,827	58%
2010	44,190,425	87,921,654	132,112,079	67%
2011	53,178,733	87,900,159	141,078,892	62%
2012	23,207,535	48,647,954	71,855,489	68%
2013	8,646,595	40,710,863	49,357,458	83%
2014	19,133,149	52,602,770	71,735,919	73%
2015	7,064,094	55,460,767	62,524,861	88%
2016	15,241,045	60,075,483	75,316,528	80%
2017	2,161,351	84,108,492	86,269,843	97%
YTD FY 2018	*	*	41,854,573	*

*The interest allocation calculation has been revised and updated after consultation with DBM. Each month's transaction for FY 2018 is currently being processed and reviewed.

The Office continues to encourage minority business participation in the investment of State funds. The evolving bond market has made this task more difficult. A number of MBE firms have merged, been acquired, or ceased to exist during the last few years. The STO has been diligent in the pursuit of qualified MBE broker/dealer firms. Twenty five MBE broker/dealers are on the Office's approved list for FY18 and have purchased investments of \$25,000,000 out of \$125,000,000 (20%) so far this fiscal year. This compares to FY17, when the Office had twenty-six approved MBE broker/dealers who purchased \$826,373,000 out of \$3,286,344,901 (25%) by this same time last year.

The Maryland Local Government Investment Pool's (MLGIP) AAAM rating was reaffirmed by S&P Global Ratings on September 25, 2017. The MLGIP has maintained the AAAM rating since April 2000. The MLGIP's balance, which is the amount invested by all participants, on November 30, 2017 is \$5,141,268,286 compared with \$4,998,916,944 on November 30, 2016. This is an increase of \$142,351,342, due to participants' higher available cash balances and lack of safe alternative investments. The MLGIP yield is 1.10% as of November 30, 2017, compared

to 0.42% last year. The MLGIP consists of 305 participants and provides its participants with a diversified, well-managed portfolio at a reduced cost.

The objectives of the Maryland State Treasurer's Investment Policy are to maintain safety of principal, to provide sufficient funds to meet cash flow needs, and to achieve a return on investment. The State Treasurer's Office compares our cash management and investment policies and practices with those of peer AAA-rated States to ensure best practices are implemented and followed. The Maryland State Treasurer's Office Investment Division actively works to seek improved ways to protect Maryland State Funds.

DEBT MANAGEMENT DIVISION

Ratings

In conjunction with the sale of Maryland's General Obligation Bonds State and Local Facilities Loan of 2017, Second Series, Moody's Investors Service, S&P's Global Ratings and Fitch Ratings all affirmed their AAA ratings for Maryland's General Obligation debt in August of 2017. Maryland is one of only eleven states to hold the coveted AAA rating, the highest possible rating, from all three major rating agencies. S&P's Global Ratings has rated the bonds AAA since 1961. Moody's has assigned the bonds a rating of Aaa since 1973, and Fitch Ratings has rated the bonds AAA since 1993. The other ten states that hold AAA ratings from all three rating agencies are Delaware, Georgia, Iowa, Missouri, North Carolina, South Dakota, Tennessee, Texas, Utah and Virginia.

Meetings with Rating Agencies

The Treasurer's Office has provided the rating agencies with 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 2018 First Series General Obligation Bonds in March 2018.

Ratings Reports

Generally there is consensus among the rating agencies in evaluating the State's credit strengths and weaknesses. All three major rating agencies cite Maryland's debt policies, fiscal management and strong, stable economy as credit positives and the State's debt burden and pension funding as concerns.

Financial Management

All three rating agencies point to the State's history of strong, sound financial management as a credit strength with Moody's saying the State has a "history of proactive financial management." All three commend the Board of Revenue Estimates' binding, consensus-based revenue forecast and the Board of Public Works' ability to adjust spending mid-year when necessary, with S&P Global Ratings mentioning the State has a "long history of... frequent and timely budget adjustments to align revenues and expenditures and long-term financial planning." Fitch Ratings notes that its rating reflects Maryland's "exceptionally strong" financial resilience and its unlimited ability to increase revenues, as well as its strong reserve levels. Moody's likewise highlights the State's liquidity, which it states is "bolstered by unfettered access to the State's short-term investment pool," which totaled \$6.2 billion at the end of FY17.

Debt Policies and Debt Burden

In the case of all three rating agencies, the State's Capital Debt Affordability Committee process and constitutionally imposed fifteen-year amortization of debt are considered credit strengths and help to offset concerns the rating agencies have regarding the State's debt burden, which S&P Global Ratings calls "moderate." Fitch notes that "centralized debt planning and issuance" managed by the State Treasurer's Office is an additional credit strength. Moody's states that the fifteen-year amortization requirement "quickly replenishes the State's debt capacity and helps restrain growth in outstanding balance." S&P echoes this assessment, noting our "well-developed debt management practices with a moderate debt burden for most measures and rapid amortization."

Economy

In assigning its 'AAA' long-term rating and stable outlook, S&P Global Ratings said: "The rating reflects what we view as the state's "broad and diverse economy," and "continued strong wealth and income levels." S&P's further states: "The stable outlook reflects Maryland's continued focus on structural budget alignment and maintenance of minimum state reserve levels." Fitch observed that Maryland's economy "has long benefited from proximity to the nation's capital" and notes that the State's dominant sector is services, including "professional and business services, education, health, and government", with Baltimore's trade and port activity also factoring in as a significant part of its economic base. Fitch also mentions a recent uptick in economic growth in the State which has brought Maryland's personal income and employment growth to a level "matching or exceeding national levels in recent months."

Each rating agency cites ties to the federal government as both a benefit and a risk to Maryland's economy, with Moody's calling the large federal presence in Maryland a "mixed blessing." S&P Global Ratings notes the State's economy "continues to recover slowly after weakness in recent years due to federal budget uncertainty and sequestration" while also stating that the government sector and federal research agencies are economic strengths. Fitch writes that despite the "drag posed by federal sequestration," the federal government continues to be an "important anchor... supporting the State's solid economic performance."

Pension and other liabilities

Fitch Ratings calls pensions a "significant burden," but notes that the state has taken multiple steps to reduce their burden and improve sustainability over time. Moody's indicated it considers the State's retirement system its "most significant credit challenge," but goes on to recognize that "the state has taken a number of steps to manage its pension burden," which demonstrates its "proactive management approach." S&P indicates "failure to demonstrate a consistent commitment to fully funding its pensions could also pressure [Maryland's] rating."

The State Treasurer's Office provides information about the State's ratings reports for each bond sale to all members of the General Assembly. Current reports are also available on the Treasurer's website at www.treasurer.state.md.us.

General Obligation Bonds

Since our last report to this committee, the State has conducted one General Obligation bond sale consisting of two separate series. Both series were sold August 16, 2017 and closed August 30, 2017.

- The 2017 General Obligation Bonds, Second Series A consisted of \$550,000,000 in tax-exempt new money bonds. The proceeds were used to finance new projects. Series A received a True Interest Cost (TIC) of 2.29% and included a premium of \$93,874,850 to offset debt service costs.
- The 2017 General Obligation Bonds, Second Series B consisted of \$785,340,000 in tax-exempt refunding bonds. The proceeds were used to refinance previously issued bonds at a lower rate, which saved the State \$75,832,051 in debt service costs on a net present value basis. Series B received a TIC of 1.66%.

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. From June 1, 2017 through November 30, 2017, \$1,326,618 in capital equipment was leased by State agencies through the State Treasurer's Office. On September 2, 2016, this committee authorized \$35,000,000 for equipment lease purchase financing through June 30, 2018. As of November 30, 2017, \$33,059,468 of that authorization is still available.

The Energy Lease-Financing Program allows State agencies to acquire equipment necessary for Energy Performance Contracts (EPCs) and pay for the equipment over multiple years using the utility savings generated by the project. From June 1, 2017 through November 30, 2017, \$9,459,123 in equipment for EPCs was leased by State agencies through the State Treasurer's Office. On September 2, 2016, this committee authorized \$80,000,000 for energy lease purchase financing through June 30, 2018. As of November 30, 2017, \$65,858,105 of that authorization is still available.

Upcoming Financing Plans

The next General Obligation tax-exempt financing, projected to total approximately \$475,000,000, is planned for March 2018. The State Treasurer's Office will consider whether a retail component will be offered in light of market conditions.

Status of the Annuity Bond Fund

Debt service on General Obligation Bonds is paid from the Annuity Bond Fund, and the primary source of revenue for this Fund is the State's real property tax receipts. Over the years, however, the debt service has occasionally been supported by appropriations from the General Fund, as well. The Commission on State Debt met and released its annual report on April 24, 2017. In FY18, \$263,000,000 is appropriated from the General Fund to support debt service. Assuming current property tax rates are maintained and other assumptions remain as currently estimated, a continued General Fund subsidy is projected for FY19 - FY23. The complete Commission on State Debt report is available on the Treasurer's website at: <http://www.treasurer.state.md.us/debtmanagement/csd-reports.aspx>

Annuity Bond Fund Forecast, FY17 – FY23 (\$ millions)

	2017	2018	2019	2020	2021	2022	2023
	Actual	Estimated	Estimated	Estimated	Estimated	Estimated	Estimated
Beginning Balance (\$1,000,000s)	\$ 202.3	\$ 162.1	\$ 104.5	\$ 2.0	\$ 2.0	\$ 2.0	\$ 2.0
Total Property Tax Collections	\$ 773.1	\$ 804.5	\$ 814.5	\$ 831.8	\$ 849.4	\$ 866.8	\$ 884.5
General Fund Appropriation	\$ 259.4	\$ 263.0	\$ 367.7	\$ 485.3	\$ 484.8	\$ 512.6	\$ 530.6
Bond Sale Premium	\$ 91.2	\$ 93.9	\$ -	\$ -	\$ -	\$ -	\$ -
Federal Subsidy for ARRA							
Bonds	\$ 11.5	\$ 11.5	\$ 10.9	\$ 9.9	\$ 9.4	\$ 8.3	\$ 5.1
Transfer Tax	\$ 6.6	\$ 6.7	\$ 7.1	\$ 6.9	\$ 6.9	\$ 6.9	\$ 6.9
Other Cash Receipts	\$ 8.7	\$ 3.1	\$ 3.1	\$ 3.1	\$ 3.1	\$ 3.1	\$ 3.1
Debt Service	\$ (1,190.7)	\$ (1,240.3)	\$ (1,305.7)	\$ (1,337.0)	\$ (1,353.4)	\$ (1,397.8)	\$ (1,430.2)
Ending Balance	\$ 162.1	\$ 104.5	\$ 2.0	\$ 2.0	\$ 2.0	\$ 2.0	\$ 2.0

INSURANCE DIVISION

The Insurance Division is responsible for administering the State's Insurance Program which includes both commercial insurance 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-owned 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 has three Units: Underwriting, Loss Prevention, and Claims, which includes Tort Litigation. 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, Loss Prevention and Claims

The Insurance Division conducted an annual Stewardship conference with our Commercial Liability Broker in July 2017. This meeting provided an opportunity to review, discuss and report on all critical policy renewals and premium trends, current premium positions and future market projections. The insurance Division provided our broker with Division updates, functionality and any new policy requirements and exposures for future renewals.

The Insurance Division attended two meetings with SHA, one on August 30, 2017, and a second one on September 14, 2017. The primary objective for both meetings was to discuss the process for responding to claim division inquiries about road hazard claims. The effective, efficient and comprehensive use of the electronic CCMS system was the focus of the meeting. This was determined to be the best way to help SHA employees respond to claim inquiries and help cut down on the total response timeframes.

Also, the Insurance Division met with the Maryland Conservation Jobs Corps Academy on June 20, 2017. This meeting was held to help provide claim reporting processes for proper and prompt notification of accidents by temporary summer drivers. The meeting was held at DNR with the program manager in attendance. The meeting included an observation of the safety training along with a tour of the safety course. A presentation was done by the Insurance Division, including recommendations for proper incident reporting.

The Insurance Division, our insurance broker and our insurance carrier also participated in the annual meeting with the Maryland Aviation Administration staff at BWI Airport on August 2, 2017. The group, which included the commercial carrier's claims manager and assigned adjuster, reviewed all open and closed claims for the calendar year. An open discussion and brain storming

session provided direction and handling protocol for a number of open claims. The MAA staff provided a tour of the new Concourse E, the International Concourse, and other newly constructed sections of the airport. There was a loss prevention discussion around incident reporting at the airport and the process for documenting and reporting such incidents. MAA provided a presentation of the safety improvements they have made in the past year, and the insurance carrier discussed expectations for the upcoming renewal.

Underwriting Unit

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

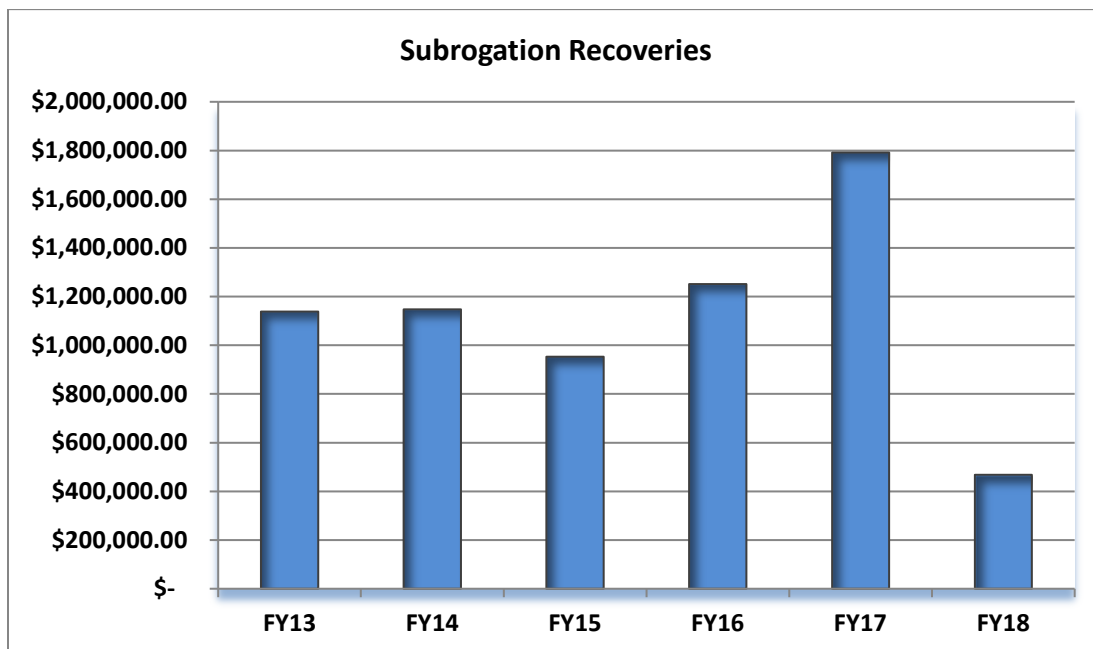
- The Maryland Transit Administration’s excess liability coverage renewed effective July 1, 2017, with overall premium reduction of 2% for a **savings of \$94,746**.
- The Maryland Transit Administration’s rail car floater coverage renewed effective July 1, 2017, with total insured values down less than 1%. The coverage was renewed with AIG, who agreed to adjust losses on a replacement cost basis, despite the average age of railcars being over 10 years. There was an overall rate reduction of 22% resulting in overall premium **savings of \$105,553**.
- Maryland Aviation Administration’s airport liability coverage renewed effective August 15, 2017, with a stable/flat premium pricing of \$276,000.
- The Allied Health professional liability coverage for student interns from various schools renewed effective September 1, 2017. There was a 3% increase in the number of student interns in addition to a rate increase of slightly less than 2%. The overall resulting premium increase was \$2,350.
- The Blanket Boiler & Machinery coverage for the State renewed effective September 30, 2017. The State’s overall values were up by 5.7%. Due to frequency of water damage losses, the incumbent initially proposed to renew with a \$2.5 million water damage deductible for all locations along with a 27% rate increase. Following negotiations, the incumbent agreed to amend the water damage deductible to \$1 million for all State Universities and \$250,000 for all others. The coverage for “all other perils” remains a \$250,000 deductible for all locations. Overall premium cost increase was \$148,256.
- The Maryland Transportation Authority Bridges & Tunnels Liability coverage renewed effective October 17, 2017, with an overall premium **cost savings of \$14,107**.
- The Maryland Port Administration Cranes coverage was renewed effective November 25, 2017 with an overall premium **savings of approximately 7%**.

Claims Unit

The Insurance Division's Claims Unit investigates and resolves claims filed by private citizens under the Maryland Tort Claims Act for property damage and personal injury. 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.

In addition to adjusting claims filed under the Maryland Tort Claims Act, the Unit is also charged with recovering the cost of damage to State automobiles and property caused by others. This subrogation recovery process helps to offset State Insurance Trust Fund liabilities and positively affects the Fund's solvency. Since 2007, the Claims Unit has renewed its focus on increasing subrogation recoveries by designating specific claims personnel to pursue these debts.

Year-to-date subrogation recoveries for FY18 total is \$467,981 as of November 30, 2017. The subrogation recoveries for all of FY17 totaled \$1,791,469. This is a continued area of focus and is a priority within the Claims Unit.



On September 20, 2017, the Insurance Division's Claims unit received a potential high severity claim from Frostburg State University which occurred on September 1, 2017. The claim involves possible damage to a number of critical "IT" equipment in the computer server room, caused by a lack of cooling which was a result of failure of the cooling unit. The cooling unit has been restored to proper working order. This claim is currently being evaluated and processed by the Insurance Division along with the Commercial Carriers for Property and Boiler and & Machinery coverages.

On November 9, 2017, the Insurance Division's Claims unit received a potential high severity claim from University of Maryland Baltimore, North Pharmacy Hall which occurred on October 24, 2017. The nitrogen generation system was found to contain a significant amount of water which resulted in damage to three nitrogen generators and at least one or more mass spectrometers. The nitrogen system is connected to all ten (10) of the mass spectrometers in the labs and there is the possibility that there is damage to other equipment. The source of the water in the nitrogen system is not known at this time. This claim is currently being evaluated and processed by the Insurance Division along with the Commercial Carriers for Property and Boiler & Machinery coverages.

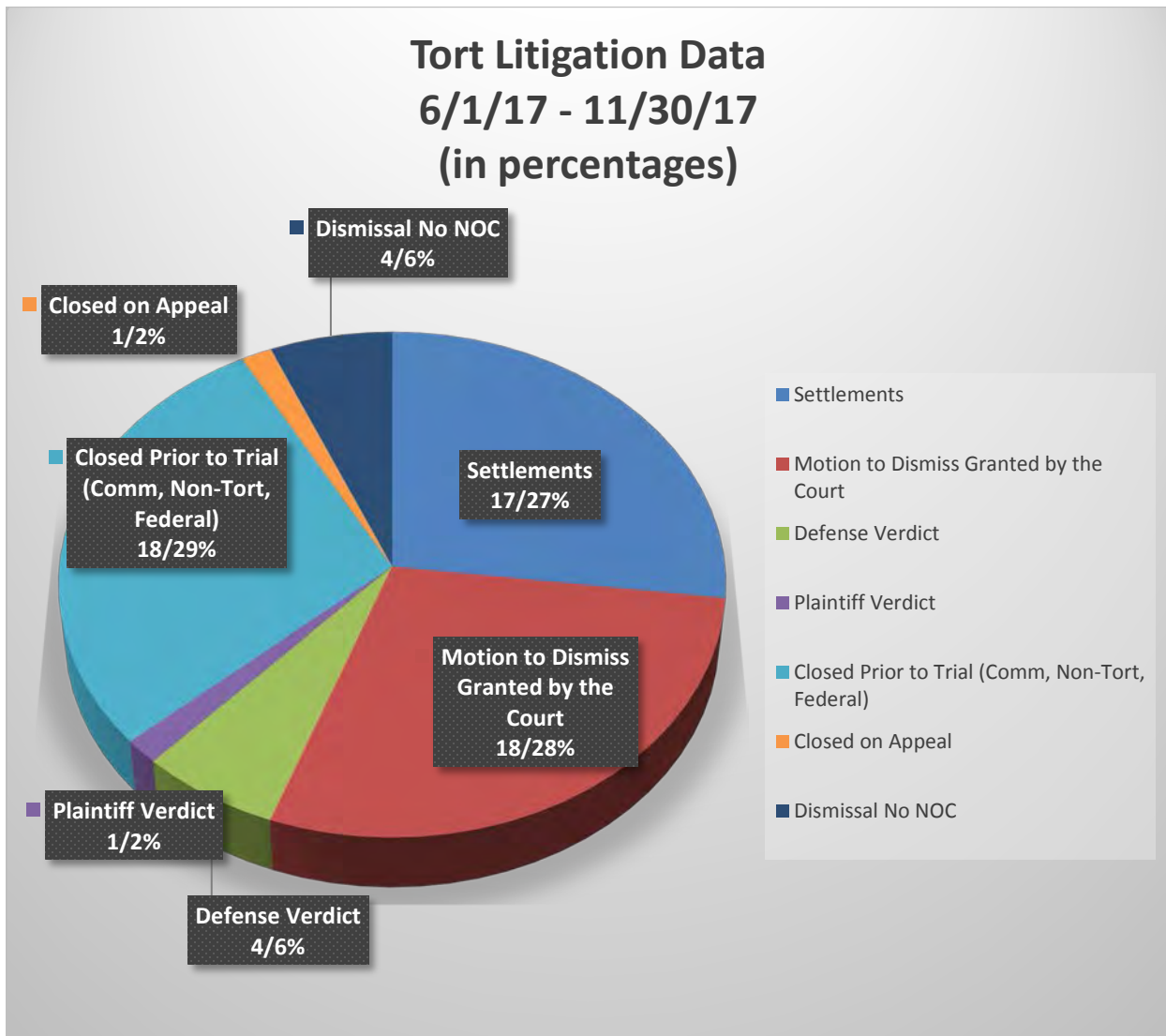
Tort Litigation Management

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 on behalf of the Treasurer to the Office of the Attorney General. In cases valued over \$400,000, the Litigation Manager briefs the Insurance Review Committee which includes the Chief Deputy Treasurer, the Director of the Insurance Division, and the Deputy Director of the Insurance Division, the Supervising Tort Attorney, and other stakeholders requesting settlement authority.

Settlement costs for the period of June 1, 2017, through November 30, 2017, totaled \$625,250; litigation expense costs were \$37,956; for a total of \$663,206. The Litigation Manager attends settlement conferences and other court mandated activities and provides periodic updates on the status of litigation claims, as requested. The Litigation Manager provides feedback to adjusters during the discovery process and upon resolution as required.

The Tort Unit handles a rolling docket of approximately 100 - 135 litigation claims. The current litigation caseload is 117, as of November 30, 2017. 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 during the timeframe of June 1, 2017 – November 30, 2017, is presented in the chart below:



The Litigation Manager will continue to monitor litigation outcomes and provide relevant data and analytical information to the Insurance Director, Deputy Director, Loss Prevention, Underwriting, and Claims units, which will be used to determine future risk prevention activities.

Loss Prevention Unit

The goal of the Loss Prevention Unit is to help State agencies develop specific action plans and safety practices to mitigate or eliminate the most frequent or severe sources of preventable losses.

The new Loss Control Management Specialist was hired on August 2, 2017. The opportunity to facilitate learning was identified; to meet in person, working directly with representatives of state agencies and universities to establish and strengthen relationships, develop knowledge and gain an understanding of mutual objectives.

Meetings are continuously scheduled with the various agency representatives to learn about their operations, primary objectives, discuss historical loss trends, loss cost opportunities, prevention programs, mitigation strategies and lessons learned. Meetings and inspections were held with:

Agency and Insurance Carrier Meetings:

1. University of Maryland College Park:
 - Discussed with UMCP Department of Environmental Safety; departmental duties and operations, insurance and claims, maintenance, training opportunities, current challenges, supporting UMCP goals and future site inspection and training.
2. Maryland Aviation Administration (Baltimore Washington International Airport) - Property inspection close out meeting:
 - Met with 23 agency representatives from the offices of: Maryland Airport Administration, Office of Safety and Risk, Fire Prevention Division, BWI Airport & Rescue Department, Offices of Management Service, Commercial Management, Airport Operations, Building operations, Airmall, Property and Special Risks, Client Risk Service, Fireline and Engineering and Construction
 - Discussed the inspection, additional information requests, recommendations, timelines and communications – Provided a draft and final inspection documents
3. AIG – Property and Special Risks Meeting with AIG representatives;
 - Discussed AIG’s property inspection and risk improvement recommendation, process timelines, current and prior property inspections.
 - Drafted 2017 property inspection schedule, discussed prior losses and Maryland property deductible.
 - Requested copies of all prior property inspection reports and discussed training and additional services available to the state.
4. CNA – Equipment Breakdown and Risk Control - Met with Marshall Vosburg, Risk Control Director and David Zalusky Senior Risk Control Consultant:
 - Discussed the state of Maryland policy, covering over 400 buildings and campuses containing approximately 150 boilers and pressure vessels.
 - Confirmed CNA has completed 1,990 statutory and loss control inspections (including violations and re-inspections), visiting 302 state locations.

- Discussed and reviewed risk control service and inspection overview, violations, available education and training along with claims loss history.

Property Pre-Inspections:

The Pre-Inspections are completed prior to the commercial carrier's scheduled property inspection. Pre-inspections are conducted on select property sites based on either age, value or facility condition. The purpose is to meet with and familiarize the facility manager and staff of the inspection process, areas that will be viewed (roof, mechanical room and utility closets), required information (pump test results) and timelines.

Agencies inspected were as follows:

1. Maryland State House, Annapolis, MD
2. University College Inn and Conference Center, University of Maryland, Adelphi, MD
3. State Office Building #1, Baltimore, MD
4. 5th Armory Regiment, Baltimore, MD

Property Inspections:

The property inspections are completed by the insurance carrier and Loss Control Manager on an annual basis. Properties are determined at renewal based on last inspection dates, building values and condition of property.

The purpose of the inspection is to evaluate the exposures for property loss through fire, flood and other perils. It is our intention to understand the local operations, protection systems, management programs and possible causes of loss. The inspection assists in identifying any possible loss prevention measures in order to reduce potential loss.

Agencies inspected were as follows:

1. Marriott Conference Center Hotel, Towson University, Towson, MD
2. Columbus Center, University of Maryland Baltimore County, Baltimore, MD
3. Baltimore City Jail, Baltimore, MD
4. M&T Bank Stadium, Baltimore, MD
5. Oriole Park, Camden Yards, Baltimore, MD
6. University College Inn and Conference Center, University of Maryland, Adelphi, MD
7. Maryland State House, Annapolis, MD
8. Point Breeze Business Park, Baltimore, MD
9. Baltimore Washington International Airport, Baltimore, MD
10. State Office Building #1, Baltimore, MD
11. HSF III, University of Maryland Baltimore City, Baltimore, MD
- 5th Armory Regiment, Baltimore, MD

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. If the Committee or its members would care to pursue these or other STO developments further, 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.

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

Department of Legislative Services
Annapolis, Maryland

December 2017



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF THE EXECUTIVE DIRECTOR
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Executive Director

MEMORANDUM

To: Members of the Legislative Policy Committee

From: Lori Mathis
Human Resources Manager

Date: December 12, 2017

Re: Maryland General Assembly Personnel Guidelines

Attached for your review is a revision of the MGA Personnel Guidelines. The Guidelines were updated with the assistance of the Attorney General's Office, Ethics Counsel, and the presiding officers' chiefs of staff. Updates include:

- p. 7 – Added language: “The employment of relatives in any supervisor – employee capacity is not permitted.”
- p. 17 – Health benefit changes – no longer offer long-term care insurance; effective date of health benefits for new employees revised
- p. 27 – Updated language to accurately describe Ethics Law
- p. 28 – Added clarifying language to Conflicts of Interest
- p. 39 – Clarified two statements in the Employment Fact Sheet for Benefited Employees
- p. 43 – Replaced Attachment A – General Information: Ethics Law; information updated 11/7/17 by the State Ethics Commission
- p. 59 – MGA Internet and Email Policy
Policies for use; Item 1 amended to read: “No one may use General Assembly facilities for commercial use or for personal gain **or campaign purposes.**”
- p. 61 – Revisions to the Maryland General Assembly Anti-Harassment Policy and Procedures

Please let me know if you have additional questions.

LORI L. MATHIS, HUMAN RESOURCES MANAGER
Legislative Services Building · 90 State Circle · Annapolis, Maryland 21401-1991
410-946-5120 · FAX 410-946-5140 · TTY 410-946-5401
301-970-5120 · FAX 301-970-5140 · TTY 301-970-5401
Other areas in Maryland 800-492-7122

Maryland General Assembly Personnel Guidelines

REVISED PAGES

Issued January 1, 2018

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 vary 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

The employment of relatives in any supervisor – employee capacity is not permitted.

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. 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.

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.

~~Some contractual employees are eligible to enroll in the same health benefits as benefited employees, with the exception of flexible spending accounts and long term care insurance.~~ Contractual employees who work 30 or more hours a week (or on average 130 hours per month) may be eligible for *subsidized medical and prescription* coverage for themselves and any eligible enrolled dependents. Contractual employees who do not meet the minimum work requirements may apply for unsubsidized health insurance at a cost determined by the State's Department of Budget and Management. Dental coverage, accidental death and dismemberment insurance, and life insurance are available to contractual employees at full premium costs. **Contractual employees may not enroll in flexible spending accounts.**

New employees eligible to participate in the State plans have 60 days from their hire date to enroll themselves and the eligible dependents they want to cover and to submit the required documentation. Generally, changes can be made only during annual open enrollment periods, usually during the fall of each year for coverage effective January 1 through December 31. However, changes in family status (birth or adoption, death of a dependent, marriage or divorce, loss of other coverage, etc.) may be made within 60 days of the qualifying event.

Dependent children of an employee may be covered on the employee's benefits coverage through the end of the month in which they reach age 26. Disability certification is required to cover children beyond age 26. Other child relatives are eligible for coverage through the end of the month in which they turn age 25. Employees will be required to provide verification for all dependents to be enrolled in the plan.

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 ~~either the first or sixteenth of the month, based on the pay period in which the first deduction is taken.~~ **following date of hire.** 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 <http://dbm.maryland.gov/benefits>.

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 ensures 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 of 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 and 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 any 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 for 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 or a qualifying relative, as defined in the Public Ethics Law, has an 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.

VIII. Employment Fact Sheet for Benefited Employees Maryland General Assembly Human Resources Office

Benefited full- and 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. **The member and the employee agree to accept all policies that govern the employment relationship.**

“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 without cause and without prior notice 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

Employees must work a regular, established bi-weekly schedule during the legislative session and the interim. To receive **the full state subsidy for health** 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. The supervising member must provide to the Human Resources Office an employee work schedule (session and interim). 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.

Funding approval is required in advance of employment. 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. For Maryland General Assembly-funded positions, approval of the Presiding Officer(s) is required.

A benefited employee may be employed by an individual member or by two or three members **of the House of Delegates** 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.”

General Information: Ethics Law

WHAT IS THE PURPOSE OF THE PUBLIC ETHICS LAW?

The Law, set forth in Md. Code Ann., General Provisions (§§ 5-101 through 5-1001), was enacted for the following purposes:

1. To assure the people of the impartiality and independent judgment of officials and employees (including State board and commission members).
2. To avoid improper influence or even the appearance of improper influence.
3. To require officials and employees to disclose financial affairs and to meet minimum standards of ethical conduct.

WHAT DOES THE PUBLIC ETHICS LAW ADDRESS?

The Law addresses:

1. Definitions of terms. Title 5 Subtitle 1.
2. A State Ethics Commission to administer the Law. Title 5 Subtitle 2.
3. Advisory opinion procedures. Title 5 Subtitle 3.
4. Complaint and enforcement. Title 5 Subtitle 4.
5. Standards of conduct through conflict of interest provisions. Title 5 Subtitle 5.
6. A financial disclosure program for certain board and commission members, employees, and elected officials. Title 5 Subtitle 6.
7. A program for disclosure by and regulation of lobbyists. Title 5 Subtitle 7.
8. Requirements that local governments and boards of education (if a board of education is not covered by county ethics law) establish ethics programs. Title 5 Subtitle 8.
9. Judicial enforcement of Commission orders. Title 5 Subtitle 9.

WHO IS SUBJECT TO THE JURISDICTION OF THE STATE ETHICS COMMISSION?

The following officials and employees are subject to Commission jurisdiction:

1. All employees of the Executive Branch of government.
2. All employees of the Judicial Branch of government with the exception of judges and certain judicial officers. Judges and certain judicial officers are subject to the Public Ethics Law, but for these individuals the Law is administered by the Judicial Disabilities Commission.
3. All employees of the Legislative Branch of government.
4. Elected members of the General Assembly for the purpose of annual financial disclosure but not for standards of conduct. Elected members of the General Assembly are subject to the standards of conduct provisions of the Public Ethics Law, but those provisions are administered by the Joint Ethics Committee in the General Assembly.
5. State officials, including those elected to the offices of Governor, Lt. Governor, Attorney General, Comptroller, State's Attorney, Clerk of Circuit Court, Register of Wills and Sheriff.
6. Individuals serving as members of Executive Branch boards or commissions created by or pursuant to law or regulation, or Executive Order having the force of law. Refer to Md. Code Ann., General Provisions §§ 5-103, 5-609 and 5-611 for more specific direction related to individuals identified as public officials solely because of their membership on boards or commissions.

Conflicts of Interest:

WHAT KINDS OF ACTIVITIES ARE GOVERNED BY THE CONFLICT OF INTEREST PROVISIONS AND ADMINISTERED BY THE STATE ETHICS COMMISSION?

The Ethics Law contains the following general types of prohibitions. Please refer to Md. Code Ann., General Provisions §§5-501 through 5-507 for the specific prohibitions.

1. An employee or official may not participate in a matter in which he or she has an interest. This prohibition also applies where an official's or employee's relatives (spouse, children, brother, sister or parents), or certain entities has/have an interest. Non-participation includes any discussion, advising or deciding of the matter and requires disclosure of the conflict.

2. An official or employee may not participate in a matter when one of the parties is a business entity in which he or she has an employment, contractual or creditor relationship. This prohibition also applies when certain relatives (spouse, children, brother, sister or parents) have such a relationship. Non-participation includes any discussion, advising or deciding of the matter and requires disclosure of the conflict.
3. An official or employee may not participate in a matter in which he or she is negotiating employment with a party to the matter. This prohibition also applies where certain relatives are negotiating employment with a party to the matter.
4. In most instances an official or employee may not have a financial interest in, or be employed by an entity subject to, the authority of the official or employee, or of the agency with which he or she is affiliated.
5. In most instances an official or employee may not have a financial interest in or be employed by an entity having or negotiating a contract with the agency with which he or she is affiliated.
6. An official or employee may not hold any employment relationship that would impair his or her impartiality or independence of judgment.
7. An official or employee may not intentionally use the prestige of his or her office for personal gain or that of another. This prohibition means an official or employee may not use any influence he/she may have to obtain a special benefit for himself/herself or another or use state resources for personal benefit or to benefit another. This includes but is not limited to: influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; or using public resources or title to solicit a political contribution.
8. An official or employee whose duties include matters substantially relating to the subject matter of any contract with the State may not become, while he or she is an official or employee of the State, an employee of the party contracting with the State.
9. An official or employee may not assist or represent a party for contingent compensation in any matter involving any State agency or political subdivision other than in a judicial or quasi-judicial proceeding. Additionally, judicial branch employees may not represent persons before the judicial branch even if not for contingent compensation.
10. A former official or employee may not assist or represent anyone other than the State for compensation in a case, contract or other specific matter involving the State, if that matter is one in which he or she significantly participated as an official or employee.

11. An official or employee may not solicit any gift for him or herself or for others. Subject to certain exceptions, an official or employee may not knowingly accept any gift directly or indirectly from any person whom the official or employee knows or has reason to know:
 - is doing or seeking to do business of any kind with his/her agency or department;
 - is engaged in activities that are regulated or controlled by his/her agency or department;
 - has financial interests that may be substantially affected in a specific way by the official or employee; or
 - is a lobbyist with respect to the matters within the employee's or official's functional jurisdiction.

There are limited exceptions for certain nominal gifts addressed in Md. Code Ann., General Provisions § 5-505.

12. An official or employee may not disclose or use for personal economic benefit, or that of another, confidential information acquired by reason of his or her public position.
13. An official or employee subject to the Ethics Law may not also be registered as a lobbyist.

Financial Disclosure:

WHAT IS FINANCIAL DISCLOSURE?

Financial disclosure is the filing of a form with the State Ethics Commission disclosing certain employment or interests that may relate to the conflict of interest provisions of the Law. The Commission website has a link to a State website that maintains a list of businesses doing business with the State, which an official or employee may use to assist in completing financial disclosure forms and which may help evaluate potential conflict of interest situations. The Law also requires each agency to provide its filers with a list of businesses doing business with the agency. Md. Code Ann., General Provisions §§ 5-601 through 5-611 contain the provisions related to Financial Disclosure, and the Commission staff is available to assist persons required to file.

WHAT ARE SOME OF THE PURPOSES OF FINANCIAL DISCLOSURE?

Some of the purposes are:

1. To provide the Commission, officials, employees, other agency personnel and the public access to documents disclosing possible conflicts of interests.
2. To provide access to documents that demonstrate to the public that financial interests are not hidden and that, generally, officials and employees do not have conflicts of interest.
3. To provide those who complete the form an annual opportunity to review matters that might need some attention to avoid possible conflicts of interest.
4. To assist voters in evaluating the suitability of candidates for the office they are seeking.

WHO HAS TO FILE DISCLOSURE STATEMENTS WITH THE COMMISSION?

1. Members of Executive Branch boards and commissions may be required to file financial disclosure. However, the Ethics Law allows the Commission to grant an exemption if it determines that the board or commission is advisory only. Requests for exemptions must be filed with the Commission on a form provided by the Commission.
2. All State elected officials, including members of the General Assembly, are required to file disclosure statements with the Commission. Judges and judicial officers file with the Judiciary, but copies of the statements are kept on file with the Commission. Candidates for office as a State official must also file with the Commission. Candidates for local office file with local agencies.
3. Certain employees are designated under standards set in the Law to be public officials required to file financial disclosure statements. The criteria for this designation vary by branch of government and take into consideration a variety of factors, primarily the employee's salary and specific duties. You may refer to Md. Code Ann., General Provisions § 5-103 for a definition of the term "public official." The Commission also has memoranda available that specifically address the filing requirements.

WHEN ARE FINANCIAL DISCLOSURE STATEMENTS TO BE FILED?

The general rules governing the timing for filing are as follows:

1. Newly appointed employees or officials file for the previous calendar year within 30 days of taking a State position that requires filing.
2. Incumbent officials and employees serving in a State position requiring filing file no later than April 30th each calendar year for the previous calendar year.
3. Officials and employees terminating service in a State position requiring filing must file for the calendar year immediately preceding (unless that statement has previously been filed) and for any portion of the current calendar year served prior to leaving, within 60 days of leaving the position.

4. State candidates must submit a statement when they file for office and in the year of the election by the earlier of April 30th or the last day for the withdrawal of a candidacy.

ARE FINANCIAL DISCLOSURE STATEMENTS AVAILABLE FOR PUBLIC INSPECTION?

Financial disclosure statements are available for public inspection subject to two requirements:

1. Individuals wishing to examine or copy a statement must appear at the Commission office in person and register their names and home addresses and the names of the persons whose statements they wish to examine or copy.
2. A person who has a statement on file is entitled, upon request, to be notified of the name and address of anyone inspecting his or her statement.

Md. Code Ann., General Provisions § 5-606 addresses this process.

WHAT KIND OF INFORMATION IS INCLUDED ON THE FINANCIAL DISCLOSURE STATEMENT?

Officials and employees are specifically required by law to disclose the following information:

1. Interests held in real property.
2. Interests in corporations, partnerships, LLP or LLC.
3. Interests in non-corporate business entities such as partnerships or sole proprietorships that do business with the State.
4. Gifts over \$20 in value or series totaling more than \$100.00 received from a person doing business with the State, regulated by the State, or registered as a lobbyist.
5. Offices, directorships, salaried employment or partnerships or similar interests in business entities that do business with the State, held by the official or employee or his or her immediate family (spouse and dependent children).
6. Debts (excluding retail credit accounts) of the filer or a member of his or her immediate family owed to persons doing business with or regulated by the filer's agency.
7. Names and positions of members of the official or employee's immediate family (spouse or dependent children) who were employed by the State.
8. The name of each place of salaried employment of the official, employee or member of his immediate family, and the identification of any business entity in which the official, employee or member of his immediate family was the sole or partial owner and from which income was earned.

Lobbyist Disclosure:

WHAT IS LOBBYIST DISCLOSURE?

Lobbyist disclosure consists of a general requirement that certain people who expend funds or receive compensation to influence State government action, or who give gifts, such as meals and beverages, to influence action, must register and report their compensation and expenditures. Certain persons who seek to influence executive action on a procurement or to secure a business loan or grant from the State, must also register and report as a lobbyist.

The specific provisions related to lobbying activities are set forth in Md. Code Ann., General Provisions §§ 5-701 through 5-715 and are further explained by memoranda available from the Commission and on the Commission's web site.

WHAT KIND OF LOBBYIST INFORMATION IS FILED AND REPORTED WITH THE ETHICS COMMISSION FOR PUBLIC VIEWING?

Information on the registration form includes the name of the person or organization registered, the name of the employer and the topics that will be involved in lobbying activity. Expenditure reports include meals and beverages for employees and officials, compensation paid to the lobbyists, and the lobbyist's administrative expenses. There are special lobbyist reports for the disclosure of gifts, special events, contributors to special purpose lobbyist entities, individual lobbyists doing business with certain officials, and individual lobbyist campaign contribution reports. Officials, employees and the public can review report totals on the State Ethics Commission's website.

DOES THE ETHICS LAW REGULATE WHAT LOBBYISTS CAN DO?

Yes, there is a variety of conduct prohibitions in the Ethics Law including, for example, prohibitions against contingent fees, limits on campaign finance activity, gift limitations, prohibitions against deceptive conduct, and restrictions on using certain methods for generating business. Additionally, individual lobbyists cannot be involved in charitable fundraising at the request of an official or employee. An inclusive list of prohibitions is contained in Md. Code Ann., General Provisions § 5-714, and the Commission has also prepared memoranda further explaining the prohibitions.

Procedures:

HOW CAN AN OFFICIAL OR EMPLOYEE FIND OUT IF SOMETHING HE OR SHE INTENDS TO DO IS CONSISTENT WITH THE LAW?

If you anticipate engaging in some activity that you believe may raise an issue under the Ethics Law, you should contact the Ethics Commission staff. Often the issue can be resolved by guidance at the staff level, or on an informal basis by the Commission. If the question is more complex or if you

believe a formal written opinion is necessary, you may request an advisory opinion. Any official, employee, or lobbyist subject to the Law may request an advisory opinion concerning the application of the Law to him or her. An official or employee may also request an advisory opinion concerning the activities of another official or employee under his supervision. Persons who are not officials, employees, or lobbyists may also request an opinion of the Commission, and the Commission, in its discretion, may issue such an opinion. A formal advisory opinion is an official statement of the Commission itself and can legally be relied upon by the person requesting it. Note, however, that the vast majority of advice provided by the Commission is done informally.

HOW DO I REQUEST AN ADVISORY OPINION?

General Provisions, Title 5 Subtitle 3 addresses requests for opinions. All requests for advisory opinions should be in writing and addressed to the State Ethics Commission at 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401. The request should include the signature, address, and telephone number of the requestor and set forth the facts and circumstances giving rise to the request.

HOW ARE ADVISORY OPINIONS ISSUED?

Advisory opinions are issued in writing to the person requesting the opinion. All advisory opinions are also published in the *Maryland Register*. The person who is the subject of the opinion may request confidentiality. Advisory opinions are written, to the extent possible, so as to prevent disclosure of the identity of the person subject to the opinion. A person requesting an opinion should have an answer within 60 days of the request. Formal advisory opinions are published in the COMAR and are available on the Internet through the State Ethics Commission web page or directly on the Office of Secretary of State's – Division of State Documents web page. The Commission, in its discretion, may decide to issue a letter of advice rather than a formal opinion.

HOW IS ENFORCEMENT OF THE ETHICS LAW INSTITUTED?

Any person may file a complaint with the Commission. A complaint must be written, signed and under oath, and allege a violation of the Ethics Law by an official, employee or other person subject to the Commission's jurisdiction. The Commission may reject a complaint it deems plainly frivolous. The Commission may also issue a complaint on its own initiative. The complaint process is addressed in the General Provisions Title 5 Subtitle 4.

WHAT HAPPENS AFTER A COMPLAINT IS FILED OR ISSUED?

After a complaint is issued or accepted, staff counsel initiates an investigation. Based on this investigation, the Commission determines, if the complaint has merit, whether to accept a cure or settlement of the violation in accordance with Md. Code Ann., General Provisions § 5-403 or conduct a formal contested case hearing in accordance with § 5-404. Consideration of the complaint and the hearing process are confidential. The matter becomes public if the Respondent waives confidentiality, the Commission, after a hearing, finds that a violation occurred, or as a result of an agreed upon settlement. The Commission also has the authority to refer cases to the appropriate prosecuting authority as set forth in § 5-408.

WHAT POSSIBLE SANCTIONS CAN THE COMMISSION IMPOSE AFTER IT CONCLUDES THE LAW HAS BEEN VIOLATED?

If the Commission determines that a violation has occurred, it may

1. Issue a cease and desist order.
2. Issue a reprimand.
3. Recommend to the appointing authority censure, removal, or other discipline.
4. Assess late fees up to \$500.00.
5. In cases involving regulated lobbyists, the Commission can also levy substantial fines and as to individual regulated lobbyists, suspend, or revoke the lobbyist's registration in accordance with the provisions of Md. Code Ann., General Provisions § 5-405(d).

Additionally, the Commission may ask a circuit court to:

1. Issue a cease or desist order.
2. Set aside certain official action.
3. Impose substantial fines.

The Law also specifically provides that violation of the Law by officials and employees can be the basis for termination, disciplinary action or suspension of compensation pending compliance with an order. General Provisions Title 5 Subtitles 4 and 9 specifically address the sanctions that may be imposed.

Local Government:

HOW DOES THE LAW IMPACT ON LOCAL GOVERNMENT?

The Ethics Law requires local governments to enact similar laws for their jurisdictions. In the case of elected local officials, local governments' laws must be equivalent to or exceed the requirements of State law with respect to conflict of interest provisions and financial disclosure provisions. The State Ethics Commission may exempt certain small municipalities from the requirement to enact ethics laws, or certain parts of ethics laws, for their jurisdictions. School boards may enact their own ethics regulations and thus become independent from county laws. If a State official or employee is also a local government official or employee, he or she may need to consult with the local ethics commission in addition to the State Ethics Commission with regard to some activities. The Ethics Commission issues model laws, approves enacted laws or regulations, and assists in local law development. Md. Code Ann., General Provisions §§ 5-801 through 5-862 address various matters pertaining to local governments.

Maryland General Assembly Internet and Email Policy

The General Assembly provides access to the Internet and email for its staff. **E-mail accounts are generally not provided to contractual employees.** Offices in the Annapolis complex have access through our local area network and wireless network. Members who have the Legislative Office Package may contact the Office of Information Systems to request high-speed setup for their district offices. Internet services provided in members' district offices fall under the same guidelines detailed below.

Email and the Internet are intended to be useful tools to assist members and staff in their legislative work. This policy is not intended to unnecessarily restrict use of these tools, but rather to provide a guide to appropriate use and protect the General Assembly, its members, and staff from repercussions which might stem from inappropriate use.

Policies for Use

1. Primary use shall be for legislative purposes; that is, conducting the business of the legislature, the legislative business of its members, and the business of its staff agencies. No one may use General Assembly facilities for commercial use or for personal gain **or campaign purposes.**
2. Individuals may use email and the Internet for the purpose of training, familiarization with the technology, and/or familiarization with the information resources available. This may include incidental personal use. However, any use which interferes with the operation of the General Assembly's computer systems or network or which adversely affects other users must be discontinued immediately upon notice or discovery of such effects.
3. Any intentional use which is illegal, abusive, or harassing is prohibited. Staff are expected to conduct themselves in a professional manner when using Internet resources and communicating via the Internet and email and to observe customary standards of "Netiquette." The General Assembly will maintain and distribute a compilation of guidelines and standards for its users.
4. The department applies industry standard filters that restrict access to websites that host inappropriate content. However, **users are still cautioned that they are responsible for exercising the appropriate discretion in use of sites.** Users are advised that the Department has the capability to track or monitor Internet use. Internet and email usage is subject to audit.
5. On matters reflecting Internet uses that are not covered in the above paragraphs, use of General Assembly and other State computer and communication resources will be governed by applicable existing policies concerning use of State owned and/or operated equipment, facilities, and resources and those concerning actions of members and staff.
6. Violations of this policy will be considered as personnel matters to be resolved by the individual's supervisor or supervising member in the case of legislative staff, and by the Presiding Officers in the case of members. Violation may lead to disciplinary action commensurate with the severity of the violation.