

THE 90 DAY REPORT

*A Review of the 2012
Legislative Session*



Department *of* Legislative Services
MARYLAND GENERAL ASSEMBLY

Cover Photograph by Marion E. Warren

The Department of Legislative Services
General Assembly of Maryland
prepared this document.

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: (410-946-5400) Washington Area: (301-970-5400)

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

Karl S. Aro
Executive Director

April 13, 2012

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
The Honorable Members of the General Assembly

Ladies and Gentlemen:

I am pleased to present you with *The 90 Day Report – A Review of the 2012 Legislative Session*.

Once again *The 90 Day Report* consists of a single volume. The report is divided into 12 parts, each dealing with a major policy area. Each part contains a discussion of the majority of bills passed in that policy area, including comparisons with previous sessions and current law, background information, as well as a discussion of significant bills that did not pass. Information relating to the operating budget, capital budget, and aid to local governments is found in Part A.

I hope that you will find *The 90 Day Report* as helpful this year as you have in the past. *The Effect of the 2012 Legislative Program on the Financial Condition of the State* will be issued after the Governor has taken final action on all bills.

Sincerely,

Karl S. Aro
Executive Director

KSA/ncs

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Part A

Budget and State Aid

Operating Budget

Overview

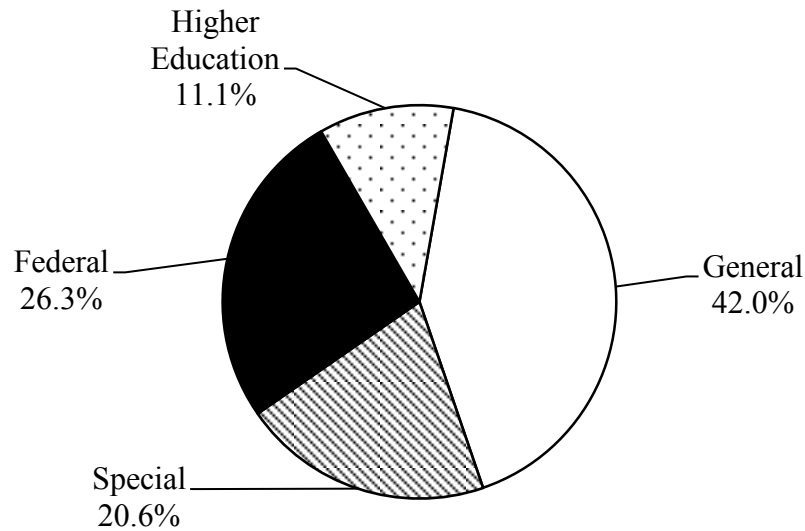
Budget activity at the 2012 session focused on continued efforts to reduce the size of the structural deficit, representing the second year in a three-year effort to eliminate the ongoing shortfall between general fund revenues and spending. However, failure to reach agreement on a package of revenues and budget reconciliation legislation led to the activation of \$436.3 million in contingent reductions.

Budget in Brief

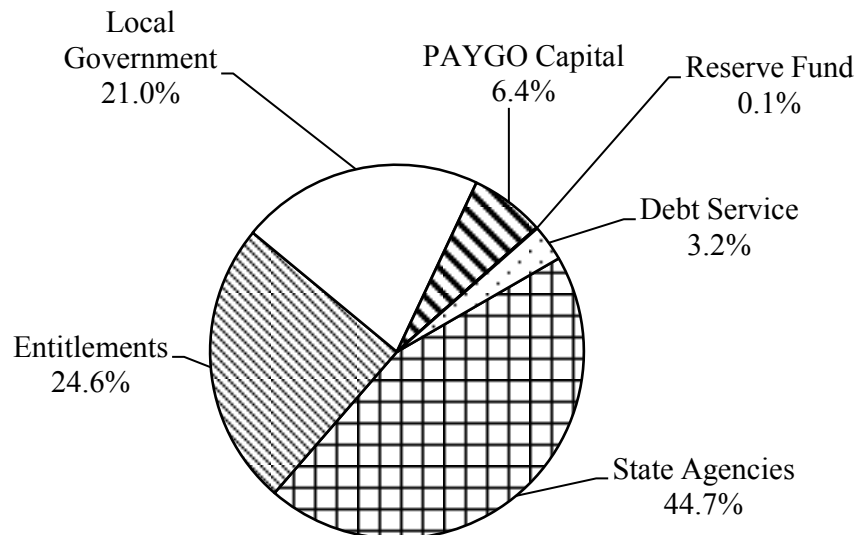
The Fiscal Year 2013 Budget Bill, *Senate Bill 150 (enacted)*, provides \$35.4 billion in appropriations for fiscal 2013 – an increase of \$687.0 million (2.0%) above fiscal 2012. Per the methodology recommended by the Spending Affordability Committee (SAC), the enacted budget reduced the projected fiscal 2013 general fund structural deficit by \$637 million, or 58%. The general fund cash balance is estimated at \$4.0 million at the end of fiscal 2013, in addition to 5% reserves totaling \$723.7 million in the Rainy Day Fund. **Exhibit A-1.1** illustrates funding by type of revenue.

General fund spending accounts for 42% of the total budget. Federal funds support 26% of all spending. Special funds constitute about 21% of the budget, and higher education revenue provides the remaining 11%. State agency operations constitute the largest area of spending, representing 45% of the total budget. Aid to local governments accounts for 21% of the budget, and 25% supports entitlement programs. Remaining appropriations fund pay-as-you-go (PAYGO) capital spending, debt service on State general obligation bonds, and transfers to the State Reserve Fund.

Exhibit A-1.1
Maryland's \$35.4 Billion Fiscal 2013 Budget
Where It Comes From: Budget by Fund Source



Where It Goes: Budget by Purpose



PAYGO: pay-as-you-go capital

General fund appropriations decrease by \$160.2 million, or 1.1%, below fiscal 2012. Reductions of \$436.3 million in Sections 42 and 43 of the budget bill went into effect due to the failure of *Senate Bill 152 (failed)* and *Senate Bill 523 (failed)*. State agency spending falls by \$82.5 million, or 1.4% as a result of cuts in operating expenses, the abolition of 500 positions, the elimination of the 2% general salary increase, and savings in health insurance. Local aid reductions also decline by \$63.2 million, or 1.0%. Most of these reductions affect education funding based on the elimination of funding for the Geographic Cost of Education Index (GCEI). PAYGO capital spending also decreases chiefly due to one-time spending for school construction in fiscal 2012 that was funded from the increase in the sales tax on alcoholic beverages.

Special funds grow by \$880.1 million, or 8.5%, compared to the fiscal 2012 working appropriation. The largest area of growth is in PAYGO capital programs for transportation, bay restoration, water quality, and drinking water related projects supported by fund balances and an increase in the Bay Restoration fee. Due to the failure of *Senate Bill 152 (failed)* approximately \$65.5 million in Program Open Space spending is included in the fiscal 2013 budget. Due to the timing of the opening of the Video Lottery Terminal (VLT) facility in Anne Arundel County as well as the license fee revenue for the site proposed in Baltimore City, special funds for education aid were withdrawn in fiscal 2012. Thus VLT revenue to the school boards increases by more than \$160.0 million in fiscal 2013. Smaller increases are found in the budget for debt service on State General Obligation bonds and payments to VLT operators.

Federal fund spending decreases by \$33.0 million, or 0.4%. Federal aid increases due to Medicaid enrollment, and additional federal aid for transportation PAYGO capital. These increases were offset however, by lower food stamp caseloads, which are entirely federally funded, and the end of one-time mortgage assistance aid received in fiscal 2012.

The budgets for public higher education institutions decrease by \$51.2 million in total funds, or 3.4%, in fiscal 2013. The bulk of this decrease is due to across-the-board contingent reductions implemented through Section 43 of the budget bill. Aid to community colleges decreases by \$14.0 million in fiscal 2013 to \$194.4 million. Aid to nonpublic colleges and universities is reduced by \$2.9 million, to \$35.6 million.

With respect to personnel, the size of the regular State workforce decreases by 0.47%, or 374.2 positions, to 78,746 regular positions in fiscal 2013. State employees do not receive a general salary increase in fiscal 2013, and a statutory prohibition on merit increments remains in force until April 1, 2014. The addition of coinsurance to the Preferred Provider Organization (PPO) and Point of Service (POS) plans increases the cost of services to State employees in these plans that require hospital services. Health insurance copays also increase in fiscal 2013, and Section 43 requires the Governor to increase the employees' share of health insurance premiums. The Governor is required to abolish 500 positions by June 1, 2012, and an additional 64 positions by January 1, 2013. For a more detailed discussion of personnel issues, see the subpart "Personnel" within Part A of this *90 Day Report*.

Framing the Session: 2011 Interim Activity

Board of Revenue Estimates Revenue Revisions

The fiscal 2012 general fund revenue estimate was increased by \$195.0 million, to \$14.1 billion, or 4.2%, growth. This was due to stronger performance in the individual income tax, offset by declines in corporate income taxes, sales tax receipts, and interest income. In December 2011, the Board of Revenue Estimates (BRE) noted that economic growth remained sluggish, with possible downside risks based on future federal deficit reduction and financial conditions in Europe. Modest downward adjustments were adopted for fiscal 2012 and 2013.

SAC Recommendations

SAC prepared its final report to the Governor in December 2011, which continued the methodology adopted for the 2011 session to eliminate the State's general fund structural deficit over three years.

Spending Limit and Sustainability: The committee recommended that the budget submitted by the Governor and approved by the General Assembly for fiscal 2013 reduce the general fund structural deficit by 50%. This action would reduce the projected \$1.1 billion structural deficit to approximately \$552.5 million.

Personnel: The committee recommended that the current complement of 79,119 regular positions was appropriate for the delivery of State services given the fiscal condition of the State. It was recommended that any new positions be accommodated within the current overall level, with exceptions provided for critical security issues in State facilities, reduced costs attributed to converting contracts to State operations, and positions necessary to implement and execute an accelerated capital program.

State Reserve Fund: SAC recommended that the balance of the Rainy Day Fund should be maintained at or above 5% of estimated revenues.

Governor's Spending Plan as Introduced

For fiscal 2012, the Governor proposed \$325.7 million of fiscal 2012 deficiencies. The largest items include \$144.7 million to support Medicaid provider reimbursements and mental hygiene fee for service expenses, and \$101.2 million based on the delayed opening of a new VLT facility. The fiscal plan submitted by the Administration provided for \$36.3 billion in total spending for fiscal 2013. Relative to the 50.0% recommendation made by SAC, the budget reduced 61.8%, or \$682.4 million, from the projected fiscal 2013 structural deficit. The Governor's proposed spending plan estimated a closing fiscal 2013 general fund balance of \$163.6 million, including a \$315.0 million transfer from the Rainy Day Fund. **Exhibit A-1.2**, details the Governor's original general fund spending plan for fiscal 2012 and 2013. As shown, general fund spending increases by \$284.0 million in the fiscal 2013 allowance.

Exhibit A-1.2
Governor's Original Budget Plan
Fiscal 2012-2013
(\$ in Millions)

	<u>2012</u>	<u>2013</u>
Opening Balance	\$990.1	\$285.3
BRE Revenues	\$14,055.2	\$14,423.0
Additional Revenues	52.4	298.8
Transfers	228.3	481.0
Subtotal	\$14,335.9	\$15,202.9
Appropriations and Deficiencies	\$15,077.8	\$15,727.2
Contingent Reductions	0.0	-367.6
Targeted Reversions	-7.1	-5.0
Subtotal	\$15,070.7	\$15,354.7
Reversions	-\$30.0	-\$30.0
Closing Balance	\$285.3	\$163.6

BRE: Board of Revenue Estimates

Source: Maryland Budget Highlights, Fiscal 2013

Slightly more than half of the increase in spending was covered by additional ongoing revenues estimated by BRE. The remainder was addressed through additional revenue assumptions, proposed fund transfers, and spending cuts contingent upon legislative action through budget reconciliation legislation.

Revenue Assumptions: The Governor's fiscal 2013 spending plan assumed \$335.9 million in additional revenues, as well as an offsetting loss of \$37.1 million. Of this, proposed changes to income tax deductions and exemptions would raise a combined \$182.3 million. The Administration also assumed \$39.0 million based on an extension of a federal payroll tax cut that was set to expire at the end of February 2012. Another \$31.1 million was based on expansion of the sales tax to remote Internet sellers, and the proposed repeal of selected sales tax exemptions. An increased tax on tobacco products was assumed to yield \$19.9 million. These increases would be offset by the loss of \$37.1 million from local jurisdiction payments for retirement contributions for federally funded teachers. The Governor proposed to repeal these payments as part of a larger package of offsets related to the shift of teacher and librarian retirement costs to local jurisdictions.

Fund Transfers: Fiscal 2012 was balanced in part by \$225.5 million in transfers approved at the 2011 session, largely from the Transfer Tax (\$94.5 million) and the Bay Restoration Fund (\$90.0 million). For fiscal 2013, the Governor proposed \$466.3 million in fund balance transfers, including \$315.0 million from the Rainy Day Fund balance above 5%, another \$96.9 million from the transfer tax, \$50.0 million from the Injured Workers' Insurance Fund and smaller miscellaneous transfers. The transfer tax was proposed to be replaced by general obligation debt in fiscal 2013 through 2015.

Contingent Reductions: The Governor also proposed \$367.6 million in general fund reductions, contingent on the enactment of *Senate Bill 152 (failed)*. Larger provisions would transfer a portion of teacher and librarian retirement costs to local jurisdictions (\$124.4 million), defer repayment of a prior year transfer from Program Open Space (\$50.0 million), and level funding mandated formula increases (\$33.5 million). Another \$35.8 million in reductions, mostly in the Medicaid area, were intended to be replaced with either one-time or ongoing sources of special fund revenues or balances.

Legislative Consideration of the Budget

Revenue and Spending Changes

Supplemental Budget No. 1: The Governor introduced one supplemental budget that increased spending by a total of \$72.3 million. Some of the larger items that were funded include \$24.5 million in special funds for low-income weatherization programs, \$14.6 million in federal Race To The Top education aid, \$13.0 million in federal aid for information technology upgrades in the Department of Labor, Licensing, and Regulation, and \$8.4 million for bail review hearings in the Office of the Public Defender. Spending increases are offset by withdrawn appropriations, including \$60.0 million in over budgeted Medicaid funding in fiscal 2012 and \$12.7 million in savings based on a new prescription drug contract for State employees.

Reductions: The legislature reduced the fiscal 2012 budget by \$154.6 million, with most of this in Medicaid based on revised estimates of funding needs and due to the availability of other funding. Changes adopted in the fiscal 2013 budget eliminated 589 regular positions and reduced \$1.0 billion in all funds. Of this amount, \$15.9 million in general fund cuts are intended to be replaced by special funds.

Notable reductions included:

- \$362.7 million in mandated appropriations to the Dedicated Purpose Account (\$50.0 million) and the Revenue Stabilization Account (\$312.7 million) of the State Reserve Fund. A corresponding provision in the budget bill prohibits the transfer of Rainy Day Fund balance to the general fund, effectively avoiding the redundant movement of the fiscal 2011 unappropriated surplus to reserve and back to the general fund in support of the fiscal 2013 budget; and
- \$85.5 million from Medicaid including a 1% cut to managed care organization rates (\$32.0 million) and early takeover of the Maryland Medicaid Information System and fiscal agent operations (\$24.5 million).

The budget does not reflect special funds that are intended to replace general funded items, which were reduced at the 2012 session but which have yet to be appropriated. This includes \$11.3 million in the Department of Health and Mental Hygiene for Medicaid through use of balances from the Cigarette Restitution Fund and use of \$4.6 million of fund balances from the Community Health Resources Commission and the Senior Prescription Drug Assistance Program Fund for kidney disease services.

Contingent Reductions: Legislative action on the budget included two sections of contingent reductions, embodied in Sections 42 and 43 of *Senate Bill 150 (enacted)*. Section 42 contains \$262.2 million in reductions that were contingent on the failure of *Senate Bill 152 (failed)* containing a provision to implement sharing of a portion of teacher retirement costs with local jurisdictions. **Exhibit A-1.3** includes a detailed list of the reductions that went into effect when Senate Bill 152 did not pass. This includes elimination of the GCEI (\$128.8 million), local law enforcement grants (\$20.8 million), and supplemental disparity grants (\$19.6 million). Because constitutionally mandated aid to education cannot be reduced without enacting changes in underlying education statute, \$75.9 million of the reductions in Section 42 cannot be implemented.

Exhibit A-1.3 also shows the effects of Section 43, which contains \$250.0 million in reductions contingent on the failure of *Senate Bill 523 (failed)*. Larger reductions include \$50.0 million through an 8% cut in agency operating expenses, a 3% reduction in higher education funding of \$38.5 million, a savings of \$33.8 million from the State employee 2% general salary increase, \$30.0 million related to the abolition of 500 regular positions, and \$15.0 million tied to higher health insurance premium costs for State employees. Smaller reductions are made to tax credit programs, legislative scholarships, provider increases, community colleges and nonpublic higher education grants, stem cell research, and reduced capacity at Regional Institutes for Children and Adolescents.

Exhibit A-1.3

Section 42 and 43 Contingent Reductions

Section 42	<u>\$ in Millions</u>
<i>Contingent on Failure of SB 152 Local Contributions of Retirement Costs for Teachers</i>	
Eliminate GCEI	\$128.8
Eliminate National Board Certification fees	5.2
Reduce disparity grant by 10%	12.0
Supplemental disparity grant	19.6
Eliminate local law enforcement grants	20.8
<i>Subtotal</i>	<i>\$186.3</i>
<i>Contingent Reductions that are Invalid due to Failure of SB 152</i>	
Reduce per pupil foundation amount from \$6,761 to \$6,650	\$70.9
Reduce library and State library network funding by 10%	5.0
<i>Subtotal</i>	<i>\$75.9</i>
Total Section 42	\$262.2
Section 43	
<i>Contingent on Failure of SB 523 Raising General Fund Revenues</i>	
Eliminate Stem Cell Research Fund	\$10.4
Eliminate Biotechnology Tax Credit	8.0
Eliminate Sustainable Communities Tax Credit	7.0
Eliminate provider increases for DDA, MHA, foster care, non-public placements	15.2
Reduce capacity at the RICAs; patients can be absorbed in private RTCs	6.5
Reduce public higher education 10%	38.5
Reduce funding for community colleges 10% below BRFA	19.9
Reduce nonpublic higher education grants by 10%	3.8
Eliminate Delegate and Senatorial scholarships	11.8
Eliminate State employee COLA	33.8
Increase employee share of health insurance costs	15.0
Eliminate 500 positions	30.0
Reduce agency operating expenses by 8%	50.0
Total Section 43	\$250.0
Grand Total	\$436.3

BRFA: Budget Reconciliation and Financing Act
 COLA: cost-of-living adjustment
 DDA: Developmental Disabilities Administration
 GCEI: Geographic Cost of Education Index
 MHA: Mental Hygiene Administration
 RTC: Residential Treatment Center

Final Actions Related to SAC

Limiting Spending Growth: Exhibit A-1.4 indicates that final revenue and spending actions by the legislature reduced the fiscal 2013 structural deficit by \$637 million. This represents a reduction of 58% of the \$1.1 billion deficit exceeding the 50% goal.

Exhibit A-1.4
Operating Budget Affordability Limit
(\$ in Millions)

Target

Estimated Structural Gap (December 2011)	-\$1,105
Target Reduction	-553
Target Reduction Percentage	50%

Ongoing Revenues	\$14,451
Federal Payroll Tax Cut Extension	-39
Other One-time Items	-20

Subtotal	\$14,391
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Ongoing Spending	\$15,177
Contingent Reductions Sections 42 and 43	-385
One-time Reductions	44
Rainy Day Fund	-28
CHIPRA Bonus in Medicaid	28
Supplemental Budget No. 1	16
Local Management Board Fund Swap: Earned Reinvestment	7
Pay-as-you-go Capital	-1

Subtotal	\$14,859
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Structural Reductions from Baseline Spending	-\$637
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Percent of Fiscal 2013 Structural Deficit	-58%
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CHIPRA: Children's Health Insurance Program Reauthorization Act

Personnel: The budget as introduced funded 79,244.3 positions. Exemptions for enhanced facility security, in-sourcing, and facilitation of accelerated capital projects, result in 79,115.8 positions on a spending affordability basis. Supplemental Budget No. 1 created 91.0 positions, chiefly for bail review hearing representation by the Office of the Public Defender. The legislature abolished 25.0 positions and required the Governor to abolish another 64.0 positions by January 1, 2013. Due to the failure of *Senate Bill 523 (failed)* Section 43 requires the Governor to abolish another 500 positions by June 1, 2012. At 78,618 positions, the fiscal 2013 complement is below the 79,119 cap recommended by SAC for the 2012 session. Thus, the final action for State employment is consistent with the SAC recommendation.

State Reserve Fund Balance: No funds are transferred to support fiscal 2013 spending, maintaining a \$723.7 million balance in the Rainy Day Fund. This constitutes a 5% balance. Final action on the budget complied with the SAC recommendation to maintain at least a 5% balance.

Summary of Fiscal 2013 Legislative Activity

Exhibit A-1.5 shows the impact of the legislative budget on the general fund balance for fiscal 2012 and 2013. The fiscal 2012 balance is estimated to be \$279.5 million, assuming \$7.1 million in targeted reversions and another \$30.0 million in unspecified reversions. At the end of fiscal 2013, the closing balance is estimated to be \$4.0 million assuming \$4.5 million in targeted reversions, \$30.0 million in unspecified reversions, and \$75.0 million in additional actions needed to have a balanced budget. Absent a special session, Section 7-213 of the State Finance and Procurement Article authorizes the Governor to reduce appropriations by up to 25% through the Board of Public Works. **Exhibit A-1.6** illustrates the posture of the general fund balance had the legislature passed *Senate Bill 152 (failed)* and *Senate Bill 523 (failed)*. The additional revenues, transfers, and contingent reductions that would have been authorized by those bills would have produced an estimated closing fund balance of \$153.2 million at the end of fiscal 2013, using the same reversion assumptions cited above.

Exhibit A-1.5 Final Legislative Budget Action Fiscal 2012-2013 (\$ in Millions)

	<u>FY 2012</u>	<u>FY 2013</u>
Opening Balance	\$990.1	\$279.5
BRE Revenues	\$13,975.1	\$14,372.3
Additional Revenues	65.0	83.7
Legislation	0.0	9.5
Transfers	225.5	0.0
Subtotal	\$14,265.7	\$14,465.5
Appropriations/Supplementals/Deficiencies	\$15,091.3	\$15,741.2
Reductions	-77.9	-454.4
Contingent Reductions	0.0	-436.3
Targeted Reversions	-7.1	-4.5
Subtotal	\$15,006.3	\$14,846.1
Reversions	-30.0	-30.0
Additional Budget Actions	0.0	-75.0 ¹
Closing Balance	\$279.5	\$4.0

BRE: Board of Revenue Estimates

¹ \$75.0 million in additional budget actions are necessary for the budget to be balanced due to the failure of SB 152 and SB 523.

Exhibit A-1.6
Final Legislative Budget Action with SB 152 and SB 523
Fiscal 2012-2013
(\$ in Millions)

	<u>FY 2012</u>	<u>FY 2013</u>
Opening Balance	\$990.1	\$282.3
BRE Revenues	\$13,975.1	\$14,372.3
Additional Revenues	65.0	83.7
Legislation	0.0	287.9
Transfers	228.3	154.2
Subtotal	\$14,268.5	\$14,898.1
Appropriations/Supplementals/Deficiencies	\$15,091.3	\$15,741.2
Reductions	-77.9	-459.4
Contingent Reductions	0.0	-220.2
Targeted Reversions	-7.1	-4.5
Subtotal	\$15,006.3	\$15,057.2
Reversions	-30.0	-30.0
Closing Balance	\$282.3	\$153.2

BRE: Board of Revenue Estimates

Outlook for Future Budgets

As shown in **Exhibit A-1.7**, there is a cash balance of \$4 million projected at the end of fiscal 2013, while ongoing spending exceeds ongoing revenues by \$468 million. The fiscal 2013 cash deficit is closed by the use of the fiscal 2012 fund balance (\$275 million), one-time revenues (\$59 million), one-time reductions (\$91 million), and other budget actions.

The actions taken by the Governor and the General Assembly reduce the fiscal 2013 structural deficit from over \$1.0 billion (estimated in the December 2011 SAC report) to under \$500 million. However, the structural deficit increases to \$596 million in fiscal 2014 due to increases in local aid and slow revenue growth. After fiscal 2014, revenue growth picks up and local aid growth drops off, resulting in a structural deficit of \$483 million by fiscal 2017.

Exhibit A-1.7
General Fund Budget Outlook
Fiscal 2012-2017
(\$ in Millions)

	2012	2013	2014	2015	2016	2017	2013-17
	<u>Working</u>	<u>Leg. Approp.</u>	<u>Est.</u>	<u>Est.</u>	<u>Est.</u>	<u>Est.</u>	<u>Avg Annual Change</u>
<u>Revenues</u>							
Opening Fund Balance	\$990	\$280	\$4	\$0	\$0	\$0	
Transfers	240	15	64	63	57	49	
One-time Revenues and Legislation	50	59	0	0	0	0	
<i>Subtotal One-time Revenue</i>	<i>\$1,280</i>	<i>\$354</i>	<i>\$68</i>	<i>\$63</i>	<i>\$57</i>	<i>\$49</i>	<i>-39.0%</i>
Ongoing Revenues	\$13,976	\$14,382	\$14,931	\$15,642	\$16,360	\$17,154	
Revenue Adjustments and Legislation	0	10	7	5	5	5	
<i>Subtotal Ongoing Revenue</i>	<i>\$13,976</i>	<i>\$14,391</i>	<i>\$14,939</i>	<i>\$15,648</i>	<i>\$16,365</i>	<i>\$17,159</i>	<i>4.5%</i>
Total Revenues and Fund Balance	\$15,256	\$14,745	\$15,007	\$15,710	\$16,422	\$17,208	3.9%
<u>Ongoing Spending</u>							
Operating Spending	\$15,037	\$15,212	\$15,936	\$16,680	\$17,394	\$18,170	
VLT Revenues Supporting Education	-101	-254	-386	-483	-513	-524	
Multi-year Commitments	7	7	7	7	7	7	
Ongoing Spending – Legislation	0	0	8	9	10	19	
<i>Subtotal Ongoing Spending</i>	<i>\$14,944</i>	<i>\$14,964</i>	<i>\$15,565</i>	<i>\$16,212</i>	<i>\$16,897</i>	<i>\$17,672</i>	<i>4.2%</i>
<u>One-time Spending</u>							
PAYGO Capital	\$48	\$1	\$1	\$1	\$1	\$1	
One-time Reductions	0	-91	0	0	0	0	
One-time Adjustments/Fund Swaps	0	-51	0	0	0	0	
Appropriation to Rainy Day Fund	15	23	100	100	100	100	
<i>Subtotal One-time Spending</i>	<i>\$63</i>	<i>-\$118</i>	<i>\$101</i>	<i>\$101</i>	<i>\$101</i>	<i>\$101</i>	<i>n/a</i>
Total Spending	\$15,006	\$14,846	\$15,666	\$16,313	\$16,998	\$17,773	4.6%
Anticipated Reversions	-\$30	-\$30	-\$30	-\$30	-\$30	-\$30	
Other Budget Actions	0	-75	0	0	0	0	
Subtotal	-\$30	-\$105	-\$30	-\$30	-\$30	-\$30	
Ending Balance	\$280	\$4	-\$629	-\$573	-\$606	-\$536	
Rainy Day Fund Balance	\$673	\$724	\$758	\$794	\$831	\$871	
Balance Over 5% of GF Revenues	-26	5	2	2	2	2	
As % of GF Revenues	4.82%	5.04%	5.01%	5.01%	5.01%	5.01%	
Structural Balance	-\$938	-\$468	-\$596	-\$534	-\$502	-\$483	

GF: general fund

PAYGO: pay-as-you-go

VLT: video lottery terminal

Legislation also affecting out-year deficits includes:

- *Senate Bill 864 (passed)*, which make permanent the authority for existing qualified organizations and commercial bingo licenses to operate electronic instant bingo machines. The legislation also alters the admissions and amusement tax rate. This is expected to increase revenues by \$9.5 million annually beginning in fiscal 2013;
- *Senate Bill 362 (passed)* phases in the age of compulsory school attendance from 15 to 17. The bill is expected to increase general fund expenditures by \$8.8 million in fiscal 2017;
- *Senate Bill 848 (Ch. 6)* requires a county governing body to apply to the State Board of Education (SBE) for waiver from the State's public school maintenance of effort (MOE) requirement if the county is unable to fully fund MOE. If a county does not file, it must fully fund or the State will intercept the county's local income tax revenues. State expenditures are expected to increase in fiscal 2014 by \$4.6 million and climb to \$5.9 million by fiscal 2017. This is due to an increase in the Guaranteed Tax Base, which provides additional assistance to low-wealth jurisdictions;
- *House Bill 1227 (passed)/Senate Bill 293 (passed)* requires SBE and the State Superintendent of Schools to implement assessment programs in reading, language, mathematics, science, and social studies. This projected to increase general fund costs by \$3.4 million in fiscal 2014 and \$2.0 million annually thereafter; and
- *House Bill 444 (passed)/Senate Bill 294 (passed)* exempts from the estate tax up to \$5.0 million of qualified agricultural property. The legislation is expected to reduce general fund revenues by \$1.8 million in fiscal 2013 and increases to \$2.8 million in fiscal 2017.

Budget Reconciliation and Financing Legislation

Senate Bill 152 (failed), the Budget Reconciliation and Financing Act (BRFA) of 2012, would have implemented a number of fund transfers, reductions, and changes to policies and mandates. As agreed by the Conference Committee but ultimately not passed, the BRFA of 2012 would have had the impact on the general fund shown in **Exhibit A-1.8**.

Exhibit A-1.8
General Fund Actions Which Would Have Been Implemented by SB 152

Fiscal 2012 Fund Transfers	\$2.8 million
Fiscal 2013 Fund Transfers	154.2 million
Fiscal 2013 Contingent Reductions and Fund Swaps	165.1 million
Fiscal 2013 Revenues	22.8 million
Fiscal 2013 Additional Expenditures	-5.0 million
Total Budgetary Action	\$339.9 million

The single most significant provision in the BRFA of 2012 would have been the cost-sharing between the State and local boards of education for teacher retirement expenses. The Conference Committee had agreed to shift the normal cost (*i.e.*, the current cost of retirement for active employees) over a period of four years, with concurrent increases in county appropriations to the school boards. In fiscal 2013, after accounting for planned offsets to school boards and counties, this provision would have resulted in general fund savings of \$109.0 million; savings would have reached \$154.0 million when fully phased-in in fiscal 2016.

Among the fund transfers, the largest would have been \$96.9 million from the transfer tax funding for Program Open Space and related programs (with the failure of the BRFA of 2012, the PAYGO spending is not reduced even as replacement general obligation bond funding is provided) and \$50.0 million from the Injured Workers' Insurance Fund. Other actions would have moderated the growth in certain higher education formulas, adjusted nursing home and hospital assessments to generate savings for Medicaid, directed additional motor fuel tax revenue to the general fund, and maintained the current commission percentage paid to lottery agents.

Revenue Legislation

Senate Bill 523 (failed) would have raised \$261.6 million in new general fund revenue. The largest component of this bill pertained to changes to income tax rates and exemptions which combined would have raised \$247.3 million. Further detail on the revenue proposals can be found in subpart "Income Tax" in Part B – Taxes of this *90 Day Report*.

Senate Bill 523 (failed) would have also raised:

- \$15.0 million by requiring that a fiduciary include the amount of income of an electing small business trust derived from stock in an S corporation for the purpose of calculating federal adjusted gross income;
- \$7.4 million through the proposed repeal of the corporate income tax credit for telecommunications property taxes;
- \$5.0 million from an increase in taxes on other tobacco products;
- \$0.7 million by repealing the State sales and use tax exemption for demurrage charges;
- \$0.7 million by doubling the fee for the first death certificate, from \$12 to \$24; and
- \$0.5 million by increasing the maximum filing fee from \$125 to \$150 for an appeal of a decision by the Motor Vehicle Administration to suspend or revoke a driver's license.

State Reserve Fund

The Rainy Day Fund, Dedicated Purpose Account, and Catastrophic Event Account are projected to have a combined \$724.7 million fund balance at the end of fiscal 2013. Activity in fiscal 2012 and 2013 is shown on **Exhibit A-1.9**. For fiscal 2013, \$27.8 million was appropriated into the Rainy Day Fund. This amount is sufficient to provide balance that is 5% of estimated fiscal 2013 general fund revenues. The amount also provides \$5.0 million for appropriations to Anne Arundel and Baltimore counties contingent on the enactment of legislation providing for teacher retirement supplemental grants. These grants were authorized in *Senate Bill 152 (failed)*, which did not pass the General Assembly, so the \$5.0 million remains in the fund.

The end-of-year Rainy Day Fund balance is projected to be 5.04% of general fund revenues in fiscal 2013. State law provides that a \$50 million appropriation is required if the Rainy Day Fund balance is less than 7.5% of general fund revenues and a \$100 million appropriation if the fund balance is less than 3.0% of general fund revenues. The out-year forecast assumes \$50 million appropriations from fiscal 2014 to 2017.

Personnel

State expenditures for employee compensation, estimated to be \$7.0 billion in fiscal 2013, constitute a major component of the budget. Regular employee expenditures decrease by \$19.8 million, or 0.28%, from fiscal 2012 levels while contractual employee expenditures for fiscal 2013 total \$235.3 million.

Exhibit A-1.9
State Reserve Fund Activity
Fiscal 2012-2013
(\$ in Millions)

	Rainy Day Fund	Dedicated Purpose Account	Catastrophic Event Acct.
Estimated Balances 6/30/11	\$624.4	\$0.0	\$1.0
Fiscal 2012 Appropriations ¹		15.0	
Transfer from Transportation Trust Fund	40.0		
Expenditures			
Prince George's County Health System		-15.0	
Estimated Interest	8.7		
Estimated Balances 6/30/12	\$673.1	\$0.0	\$1.0
Fiscal 2013 Appropriations	27.8		
Estimated Interest	22.8		
Estimated Balances 6/30/13	\$723.7	\$0.0	\$1.0
Balance in Excess of 5% General Fund Revenues	\$5.1		

¹ Chapter 484 of 2010 (the Budget Reconciliation and Financing Act) did not require the Governor to appropriate funds into the Rainy Day Fund in fiscal 2012.

Source: Department of Budget and Management

Employee Compensation

Benefits such as salary increments for employees performing at or above established standards, cost-of-living adjustments, and the State match of \$600 for employees participating in deferred compensation plans were not funded. The general prohibition on merit increments was maintained through April 1, 2014; failure to enact the BRFA of 2012, eliminated exemptions to this prohibition for agency staff deemed "operationally critical."

Workforce Changes

In fiscal 2013, the size of the regular State workforce decreases by 0.47%, or 374.2 positions. The General Assembly deleted 589.0 positions, as shown in **Exhibit A-10**, 500 of which result from the failure of *Senate Bill 523 (failed)*. Offsetting position creation was concentrated in the Department of Health and Mental Hygiene to enhance security at service facilities and the Office of the Public Defender to provide indigent representation at bail hearings. In total, the State workforce will include 78,746.3 regular full-time equivalent positions in fiscal 2013.

Exhibit A-1.10
Regular Full-time Equivalent Positions
Fiscal 2012-2013

<u>Department/Service Area</u>	<u>2012 Working Approp.</u>	<u>2013 Allowance</u>	<u>Legis. Reductions</u>	<u>2013 Legis. Approp.</u>
Health and Human Services				
Health and Mental Hygiene	6,350	6,457	-8	6,449
Human Resources	6,545	6,539	0	6,539
Juvenile Services	2,140	2,133	0	2,133
Subtotal	15,035	15,129	-8	15,121
Public Safety				
Public Safety and Correctional Services	11,053	11,051	0	11,051
Police and Fire Marshal	2,367	2,393	0	2,393
Subtotal	13,420	13,444	0	13,444
Transportation	8,745	8,733	0	8,733
Other Executive				
Legal (Excluding Judiciary)	1,426	1,511	-13	1,498
Executive and Administrative Control	1,574	1,579	0	1,579
Financial and Revenue Administration	1,969	1,973	0	1,973
Budget and Management	420	435	0	435
Retirement	200	205	0	205
General Services	574	576	0	576
Natural Resources	1,279	1,299	0	1,299
Agriculture	392	386	0	386
Labor, Licensing, and Regulation	1,652	1,650	0	1,650
MSDE and Other Education	1,918	1,897	0	1,897
Housing and Community Development	302	302	0	302
Business and Economic Development	225	227	0	227
Environment	931	931	0	931
Subtotal	12,861	12,969	-13	12,956
Executive Branch Subtotal	50,061	50,274	-21	50,253
Higher Education	24,730	24,724	0	24,724
Judiciary	3,581	3,589	-4	3,585
Legislature	748	748	0	748
<i>Section 43 Contingent Reduction</i>			-500	-500
<i>Section 47 Executive Branch Reduction</i>			-64	-64
Grand Total	79,121	79,335	-589	78,746

MSDE: Maryland State Department of Education

Source: Department of Budget and Management; Department of Legislative Services

Employee and Retiree Health Insurance

State subsidies for employee and retiree health insurance total \$951.1million in fiscal 2013. This amount is \$15.7 million more than the fiscal 2012 level across all fund types. Three actions reduce the State's fiscal 2013 outlays for this fringe benefit:

- The addition of coinsurance to the benefit design of PPO and POS plans increases the cost of services to employees and retirees in these plans that require hospital services. Exclusive Provider Organizations are not included in the change. The coinsurance change obliges all members requiring a hospital stay to pay out-of-pocket expenses equal to 10% of the cost. An out-of-pocket maximum of \$1,000 for an individual and \$2,000 for a family puts a cap on the new coinsurance exposure that will be faced by PPO/POS members. Additionally, copays are increased for all plans in three areas: copays for Specialist Office Visits increase from \$25 to \$30; those for Urgent Care Facilities increase from \$20 to \$30; and the Emergency Room Physician Services copay and the related facility copay each increase from \$50 to \$75 per visit. In total, these changes reduce the State's costs, and increase the costs of employees/retirees, by \$43.9 million.
- The reduced cost to the State to administer the prescription plan offering based on the new Pharmacy Benefit Manager contract awarded to Express Scripts, Inc in March 2012. The vendor change should reduce State costs by \$16.9 million in all funds.
- Contingent reductions in Section 43 of the budget require the administration to increase the employee share of health insurance costs by an additional \$15.0 million in general funds, which represents a \$25.0 million all funds reduction to implement the action across all members as required by the provision.

By the Numbers

A number of exhibits summarize the legislative budget action. These exhibits are described below.

Exhibit A-1.11, the fiscal note on the budget bill, depicts the Governor's allowance, funding changes made through Supplemental Budget No. 1, legislative reductions, and final appropriations for fiscal 2012 and 2013 by fund source. The Governor's original request provided for \$36.3 billion in fiscal 2013 expenditures and \$325.7 million in fiscal 2012 deficiencies.

The Governor added \$72.3 million in fiscal 2012 and 2013 spending in the supplemental budget. The legislature made \$154.6 million in reductions to fiscal 2012 appropriations, resulting in a net appropriation of \$34.7 billion for fiscal 2012. The fiscal 2013 budget was reduced by a net of \$985.0 million, consisting of \$1.0 billion in total fund reductions offset by \$15.9 million in special funds that replace general fund cuts. This resulted in a final appropriation of \$35.4 billion.

Exhibit A-1.11
Fiscal Note – Summary of the Fiscal 2013 Budget Bill (Senate Bill 150)

	<u>General Funds</u>	<u>Special Funds</u>	<u>Federal Funds</u>	<u>Education Funds</u>	<u>Total Funds</u>
Governor's Allowance					
Fiscal 2012 Budget	\$15,070,713,009	\$6,544,124,381	\$9,437,921,197	\$3,812,660,171	\$34,865,418,758 ⁽¹⁾⁽²⁾
Fiscal 2013 Budget	15,727,220,337	7,254,467,259	9,342,921,799	3,929,128,287	36,253,737,682 ⁽²⁾
Supplemental Budget No. 1					
Fiscal 2012 Deficiencies	\$13,490,910	-\$16,856,611	-\$29,500,000	\$0	-\$32,865,701
Fiscal 2013 Budget	14,022,956	53,214,511	37,942,028	0	105,179,495
Subtotal	\$27,513,866	\$36,357,900	\$8,442,028	\$0	\$72,313,794
Contingent Reductions (Sections 42 and 43)					
Fiscal 2012 Deficiencies	\$0	\$0	\$0	\$0	\$0
Fiscal 2013 Contingent Reductions	-436,328,994	-13,003,653	-19,637,778	0	-468,970,425
Subtotal	-\$436,328,994	-\$13,003,653	-\$19,637,778	\$0	-\$468,970,425
Conference Committee Reductions					
Fiscal 2012 Deficiencies	-\$77,933,214	\$0	-\$76,660,000	\$0	-\$154,593,214
Fiscal 2013 Budget	-454,351,022	-3,765,035 ⁽³⁾	-57,917,065	0	-516,033,122
Total Reductions	-\$532,284,236	-\$3,765,035	-\$134,577,065	\$0	-\$670,626,336
Appropriations					
Fiscal 2012 Budget	\$15,006,270,705	\$6,527,267,770	\$9,331,761,197	\$3,812,660,171	\$34,677,959,843
Fiscal 2013 Budget	14,846,063,277 ^{(4) (5)}	7,290,913,082	9,298,808,984 ⁽⁵⁾	3,929,128,287	35,364,913,630 ^{(4) (5)}
Change	-\$160,207,428	\$763,645,312	-\$32,952,213	\$116,468,116	\$686,953,787

⁽¹⁾ Reflects \$325.7 million in proposed deficiencies, including \$296.7 million in general funds, -\$11.7 million in special funds, \$40.5 million in federal funds, and \$150,000 in current unrestricted funds. Reflects an estimated \$7.1 million in targeted reversions.

⁽²⁾ The Governor's allowance, as introduced, includes unspecified general fund reversions of \$30.0 million in each fiscal year, which are not reflected in the data.

⁽³⁾ Includes \$15.9 million in special funds that will be added back to the budget by budget amendment to replace general fund reductions.

⁽⁴⁾ Does not include additional budget actions of \$75.0 million which are necessary for the budget to be balanced due to the failure to pass SB 152 and SB 523.

⁽⁵⁾ Reflects \$9.0 million in targeted reversions, including \$4.5 million in special funds and \$4.5 million in federal funds, due to the failure to pass SB 152, which included a provision to access a claims processing fee for services received from hospitals located in the District of Columbia.

Exhibit A-1.12 illustrates budget changes by major expenditure category by fund. Total spending decreases by \$687.0 million, or 2.0%, after accounting for the special fund appropriations that replace general funds cuts during the session. Debt service grows by 4.4%; aid to local government decreases by 2.6% almost entirely due to additional special fund education aid derived from VLT income. Entitlement spending grows by 0.2% as growth in Medicaid is offset by expected decreases in Temporary Cash Assistance caseloads. State agency spending (net of across-the-board reductions) only increases by 0.5%. PAYGO capital expenditures increase by 17.8%, buoyed by additional spending for transportation and water/wastewater projects from fund balances and an increase in the Bay Restoration fee.

Exhibit A-1.12
State Expenditures – General Funds
(\$ in Millions)

Category	Work. Appr. FY 2012	Conference Approp. FY 2013	BRFA ⁽¹⁾ Reductions FY 2013	Contingent ⁽²⁾ Reductions FY 2013	Legislative Approp. FY 2013	FY 2012 to FY 2013	
						\$ Change	% Change
Debt Service	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	n/a
County/Municipal	186.6	214.1	-5.0	-49.8	159.4	-27.2	-14.6%
Community Colleges	263.3	269.3	0.0	-19.9	249.4	-13.9	-5.3%
Education/Libraries	5,620.2	5,596.8	138.5	-136.1	5,599.2	-21.1	-0.4%
Health	38.3	37.3	0.0	0.0	37.3	-1.0	-2.6%
Aid to Local Governments	\$6,108.4	\$6,117.5	\$133.5	-\$205.8	\$6,045.2	-\$63.2	-1.0%
Foster Care Payments	237.7	235.7	0.0	-1.4	234.3	-3.4	-1.4%
Assistance Payments	87.8	81.7	0.0	0.0	81.7	-6.1	-6.9%
Medical Assistance	2,509.0	2,534.7	10.2	0.0	2,544.9	35.9	1.4%
Property Tax Credits	81.8	82.0	0.0	0.0	82.0	0.1	0.2%
Entitlements	\$2,916.4	\$2,934.1	\$10.2	-\$1.4	\$2,942.9	\$26.5	0.9%
Health	1,446.3	1,485.6	6.2	-18.2	1,473.6	27.3	1.9%
Human Resources	276.5	275.9	0.0	0.0	275.9	-0.6	-0.2%
Systems Reform Initiative	26.1	16.9	0.0	0.0	16.9	-9.2	-35.1%
Juvenile Services	269.2	263.5	0.0	0.0	263.5	-5.7	-2.1%
Public Safety/Police	1,275.3	1,297.8	4.2	0.0	1,302.0	26.7	2.1%
Higher Education	1,133.9	1,146.9	0.2	-38.5	1,108.6	-25.2	-2.2%
Other Education	382.3	353.4	1.3	-15.7	339.0	-43.3	-11.3%
Agric./Nat'l. Res./Environment	105.8	103.8	0.0	0.0	103.8	-2.0	-1.9%
Other Executive Agencies	545.1	640.8	0.0	-54.8	586.0	40.9	7.5%
Legislative	76.8	78.3	0.0	0.0	78.3	1.5	1.9%
Judiciary	374.6	387.4	0.0	0.0	387.4	12.8	3.4%
Across-the-board Reductions	0.0	-10.6	0.0	-95.0	-105.6	-105.6	n/a
State Agencies	\$5,912.0	\$6,039.6	\$12.0	-\$222.2	\$5,829.5	-\$82.5	-1.4%
Total Operating	\$14,936.8	\$15,091.3	\$155.7	-\$429.3	\$14,817.6	-\$119.2	-0.8%
Capital ⁽³⁾	54.5	7.7	0.0	-7.0	0.7	-53.8	-98.7%
Reserve Funds	15.0	22.8	5.0	0.0	27.8	12.8	85.1%
Appropriations	\$15,006.3	\$15,121.7	\$160.7	-\$436.3	\$14,846.1	-\$160.2	-1.1%
Reversions	-30.0	-30.0	0.0	0.0	-30.0	0.0	0.0%
Additional Budget Actions ⁽⁴⁾	0.0	0.0	0.0	-75.0	-75.0	-75.0	n/a
Grand Total	\$14,976.3	\$15,091.7	\$160.7	-\$511.3	\$14,741.1	-\$235.2	-1.6%

⁽¹⁾ The fiscal 2013 Conference Committee reductions included \$164.9 million contingent on the Budget Reconciliation and Financing Act (SB 152) and \$0.2 million contingent on the State and Local Revenue and Financing Act of 2012 (SB 523). The Conference Committee appropriation also reflected Medicaid spending of \$4.5 million related to a processing fee, authorized by SB 152, for claims paid to hospitals in the District of Columbia. Since these bills did not pass, the reductions are added back to the Conference Committee appropriation and a \$4.5 million targeted reversion is added in Medicaid for a net impact of \$160.7 million.

⁽²⁾ The budget as adopted (SB 150) included \$436.3 million in reductions contingent on the failure of SB 152 and SB 523. The failure to pass those bills also results in the need for \$75 million in additional budget actions for the general fund budget to be balanced bringing the total reductions to \$511.3 million.

⁽³⁾ Includes the Sustainable Communities Tax Credit Reserve Fund.

⁽⁴⁾ Additional budget actions of \$75 million are necessary for the budget to be balanced due to the failure to pass SB 152 and SB 523.

Note: The fiscal 2012 working appropriation includes deficiencies, targeted reversions and legislative reductions to the deficiencies.

Exhibit A-1.12 (Continued)
State Expenditures – Special and Higher Education Funds*
(\$ in Millions)

Category	Work. Appr.	Conference	BRFA ⁽¹⁾	Contingent ⁽²⁾	Legislative	FY 2012 to FY 2013	
	FY 2012	Approp. FY 2013	Reductions FY 2013	Reductions FY 2013	Approp. FY 2013	\$ Change	% Change
Debt Service	\$1,055.9	\$1,102.4	\$0.0	\$0.0	\$1,102.4	\$46.6	4.4%
County/Municipal	205.1	228.3	13.6	0.0	241.9	36.8	17.9%
Community Colleges	0.8	0.6	0.0	0.0	0.6	-0.1	-16.7%
Education/Libraries	107.0	291.8	-1.9	0.0	290.0	183.0	171.0%
Health	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Aid to Local Governments	\$312.8	\$520.8	\$11.7	\$0.0	\$532.5	\$219.6	70.2%
Foster Care Payments	0.0	1.1	0.0	0.0	1.1	1.1	4336.3%
Assistance Payments	16.4	19.4	0.0	0.0	19.4	3.0	18.3%
Medical Assistance	910.3	938.7	-13.4	0.0	925.3	15.0	1.6%
Property Tax Credits	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Entitlements	\$926.7	\$959.2	-\$13.4	\$0.0	\$945.8	\$19.1	2.1%
Health	491.3	507.4	-6.2	0.0	501.1	9.9	2.0%
Human Resources	78.0	81.9	0.0	0.0	81.9	3.9	5.0%
Systems Reform Initiative	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Juvenile Services	3.6	2.7	0.0	0.0	2.7	-0.9	-25.5%
Public Safety/Police	214.7	216.9	-4.2	0.0	212.7	-2.0	-0.9%
Higher Education	3,878.3	3,986.3	-0.2	0.0	3,986.0	107.7	2.8%
Other Education	50.2	52.7	0.0	0.0	52.7	2.5	4.9%
Transportation	1,479.8	1,514.8	0.0	0.0	1,514.8	35.0	2.4%
Agric./Natl Res./Environment	207.2	211.8	8.0	0.0	219.8	12.6	6.1%
Other Executive Agencies	607.7	690.6	0.0	-8.0	682.6	74.9	12.3%
Legislative	0.1	0.0	0.0	0.0	0.0	-0.1	-100.0%
Judiciary	52.7	56.3	0.0	0.0	56.3	3.6	6.7%
Across-the-board Reductions	0.0	-2.9	0.0	-5.0	-7.9	-7.9	n/a
State Agencies	\$7,063.6	\$7,318.3	-\$2.7	-\$13.0	\$7,302.7	\$239.0	3.4%
Total Operating	\$9,359.0	\$9,900.8	-\$4.4	-\$13.0	\$9,883.4	\$524.3	5.6%
Capital	980.9	1,284.7	51.9	0.0	1,336.7	355.8	36.3%
Grand Total	\$10,339.9	\$11,185.5	\$47.6	-\$13.0	\$11,220.0	\$880.1	8.5%

* Includes higher education fund (current unrestricted and current restricted) net of general and special funds.

⁽¹⁾ The Conference Committee reductions included \$73.5 million contingent on the Budget Reconciliation and Financing Act (SB 152). The Conference Committee appropriation also reflected \$25.9 million in additional special fund spending due to funding swaps authorized by SB 152. As SB 152 did not pass, the net effect is to increase the Conference Committee appropriation by \$47.6 million.

⁽²⁾ The budget as adopted (SB 150) included \$13 million in reductions contingent on the failure of the State and Local Revenue and Financing Act of 2012 (SB 523).

Note: The fiscal 2012 working appropriation includes -\$28.6 million in deficiencies.

Exhibit A-1.12 (Continued)
State Expenditures – Federal Funds
(\$ in Millions)

Category	Work. Appr. FY 2012	Conference Approp. FY 2013	BRFA ⁽¹⁾ Reductions FY 2013	Contingent ⁽²⁾ Reductions FY 2013	Legislative Approp. FY 2013	FY 2012 to FY 2013 \$ Change	% Change
Debt Service	\$11.5	\$12.0	\$0.0	\$0.0	\$12.0	\$0.5	4.0%
County/Municipal	57.6	51.9	0.0	0.0	51.9	-5.8	-10.0%
Community Colleges	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Education/Libraries	760.2	796.9	0.0	0.0	796.9	36.7	4.8%
Health	4.5	4.5	0.0	0.0	4.5	0.0	0.0%
Aid to Local Governments	\$822.3	\$853.3	\$0.0	\$0.0	\$853.3	\$31.0	3.8%
Foster Care Payments	86.3	79.5	0.0	-0.4	79.1	-7.2	-8.3%
Assistance Payments	1,293.1	1,141.9	0.0	0.0	1,141.9	-151.2	-11.7%
Medical Assistance	3,464.4	3,600.4	-3.3	0.0	3,597.1	132.8	3.8%
Property Tax Credits	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Entitlements	\$4,843.8	\$4,821.8	-\$3.3	-\$0.4	\$4,818.2	-\$25.6	-0.5%
Health	1,098.9	1,154.2	0.0	-9.1	1,145.1	46.2	4.2%
Human Resources	547.3	552.5	0.0	0.0	552.5	5.2	0.9%
Systems Reform Initiative	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Juvenile Services	10.6	8.3	0.0	0.0	8.3	-2.3	-21.5%
Public Safety/Police	30.5	29.0	0.0	0.0	29.0	-1.5	-4.9%
Higher Education	0.0	0.0	0.0	0.0	0.0	0.0	n/a
Other Education	279.2	263.1	0.0	0.0	263.1	-16.1	-5.8%
Transportation	87.7	85.4	0.0	0.0	85.4	-2.3	-2.6%
Agric./Natl Res./Environment	75.8	70.2	0.0	0.0	70.2	-5.6	-7.4%
Other Executive Agencies	624.7	532.6	0.0	-5.1	527.5	-97.2	-15.6%
Judiciary	3.6	3.4	0.0	0.0	3.4	-0.2	-5.3%
Across-the-board Reductions	0.0	-2.2	0.0	-5.0	-7.2	-7.2	n/a
State Agencies	\$2,758.4	\$2,696.6	\$0.0	-\$19.2	\$2,677.3	-\$81.1	-2.9%
Total Operating	\$8,436.0	\$8,383.6	-\$3.3	-\$19.6	\$8,360.7	-\$75.3	-0.9%
Capital	895.8	938.1	0.0	0.0	938.1	42.3	4.7%
Grand Total	\$9,331.8	\$9,321.7	-\$3.3	-\$19.6	\$9,298.8	-\$33.0	-0.4%

⁽¹⁾ The Conference Committee reductions included \$1.3 million contingent on the Budget Reconciliation and Financing Act (SB 152). The Conference Committee appropriation also reflected Medicaid spending of \$4.5 million related to a processing fee, authorized by SB 152, for claims paid to hospitals in the District of Columbia. Since this bill did not pass, the reductions are added back to the Conference Committee appropriation and a targeted reversion for the Medicaid spending is added for a net impact of -\$3.3 million.

⁽²⁾ The budget as adopted (SB 150) included \$19.6 million in reductions contingent on the failure of the State and Local Revenue and Financing Act of 2012 (SB 523).

Note: The fiscal 2012 working appropriation reflects deficiencies and legislative reductions to the deficiencies.

Exhibit A-1.12 (Continued)
State Expenditures – State Funds
(\$ in Millions)

<u>Category</u>	<u>Work. Appr.</u> <u>FY 2012</u>	<u>Conference</u> <u>Approp.</u> <u>FY 2013</u>	<u>BRFA ⁽¹⁾</u> <u>Reductions</u> <u>FY 2013</u>	<u>Contingent ⁽²⁾</u> <u>Reductions</u> <u>FY 2013</u>	<u>Legislative</u> <u>Approp.</u> <u>FY 2013</u>	<u>FY 2012 to FY 2013</u>	
						<u>\$ Change</u>	<u>% Change</u>
Debt Service	\$1,055.9	\$1,102.4	\$0.0	\$0.0	\$1,102.4	\$46.6	4.4%
County/Municipal	391.7	442.4	8.6	-49.8	401.2	9.6	2.4%
Community Colleges	264.1	270.0	0.0	-19.9	250.0	-14.0	-5.3%
Education/Libraries	5,727.2	5,888.6	136.6	-136.1	5,889.1	161.9	2.8%
Health	38.3	37.3	0.0	0.0	37.3	-1.0	-2.6%
Aid to Local Governments	\$6,421.2	\$6,638.2	\$145.2	-\$205.8	\$6,577.7	\$156.5	2.4%
Foster Care Payments	237.8	236.8	0.0	-1.4	235.4	-2.3	-1.0%
Assistance Payments	104.2	101.1	0.0	0.0	101.1	-3.1	-2.9%
Medical Assistance	3,419.3	3,473.4	-3.3	0.0	3,470.2	50.9	1.5%
Property Tax Credits	81.8	82.0	0.0	0.0	82.0	0.1	0.2%
Entitlements	\$3,843.1	\$3,893.4	-\$3.3	-\$1.4	\$3,888.7	\$45.6	1.2%
Health	1,937.6	1,993.0	0.0	-18.2	1,974.8	37.2	1.9%
Human Resources	354.5	357.8	0.0	0.0	357.8	3.3	0.9%
Systems Reform Initiative	26.1	16.9	0.0	0.0	16.9	-9.2	-35.1%
Juvenile Services	272.8	266.2	0.0	0.0	266.2	-6.6	-2.4%
Public Safety/Police	1,489.9	1,514.7	0.0	0.0	1,514.7	24.7	1.7%
Higher Education	5,012.2	5,133.1	0.0	-38.5	5,094.6	82.4	1.6%
Other Education	432.6	406.1	1.3	-15.7	391.7	-40.8	-9.4%
Transportation	1,479.8	1,514.8	0.0	0.0	1,514.8	35.0	2.4%
Agric./Nat'l Res./Environment	313.0	315.6	8.0	0.0	323.6	10.6	3.4%
Other Executive Agencies	1,152.8	1,331.3	0.0	-62.8	1,268.6	115.8	10.0%
Legislative	76.9	78.3	0.0	0.0	78.3	1.4	1.8%
Judiciary	427.4	443.7	0.0	0.0	443.7	16.3	3.8%
Across-the-board Reductions	0.0	-13.5	0.0	-100.0	-113.5	-113.5	n/a
State Agencies	\$12,975.6	\$13,358.0	\$9.3	-\$235.2	\$13,132.1	\$156.5	1.2%
Total Operating	\$24,295.8	\$24,992.0	\$151.3	-\$442.3	\$24,701.0	\$405.2	1.7%
Capital ⁽³⁾	1,035.4	1,292.4	51.9	-7.0	1,337.4	302.0	29.2%
Reserve Fund	15.0	22.8	5.0	0.0	27.8	12.8	85.1%
Appropriations	\$25,346.2	\$26,307.2	\$208.2	-\$449.3	\$26,066.1	\$719.9	2.8%
Reversions	-30.0	-30.0	0.0	0.0	-30.0	0.0	0.0%
Additional Budget Actions ⁽⁴⁾	0.0	0.0	0.0	-75.0	-75.0	-75.0	n/a
Grand Total	\$25,316.2	\$26,277.2	\$208.2	-\$524.3	\$25,961.1	\$644.9	2.5%

(1) The fiscal 2013 Conference Committee reductions included \$238.4 million contingent on the Budget Reconciliation and Financing Act (SB 152) and \$0.2 million contingent on the State and Local Revenue and Financing Act of 2012 (SB 523). The Conference Committee appropriation also reflected \$25.9 million in additional special fund spending due to funding swaps authorized by SB 152 and Medicaid spending of \$9.0 million related to a processing fee, authorized by SB 152, for claims paid to hospitals in the District of Columbia. Since these bills did not pass, the net effect of \$208.2 million is added back to the Conference Committee appropriation.

(2) The budget as adopted (SB 150) included \$449.3 million in reductions contingent on the failure of SB 152 and SB 523. The failure to pass those bills also results in the need for \$75 million in additional budget actions for the general fund budget to be balanced bringing the total reductions to \$524.3 million.

(3) Includes the Sustainable Communities Tax Credit Reserve Fund.

(4) Additional budget actions of \$75 million are necessary for the general fund budget to be balanced due to the failure to pass SB 152 and SB 523.

Note: The fiscal 2012 working appropriation includes deficiencies, targeted reversions and legislative reductions to the deficiencies.

Exhibit A-1.12 (Continued)
State Expenditures – All Funds
(\$ in Millions)

<u>Category</u>	Conference		BRFA ⁽¹⁾	Contingent ⁽²⁾	Legislative	FY 2012 to FY 2013	
	Work. Appr. FY 2012	Approp. FY 2013	Reductions FY 2013	Reductions FY 2013	Approp. FY 2013	\$ Change	% Change
Debt Service	\$1,067.4	\$1,114.4	\$0.0	\$0.0	\$1,114.4	\$47.0	4.4%
County/Municipal	449.3	494.3	8.6	-49.8	453.1	3.8	0.8%
Community Colleges	264.1	270.0	0.0	-19.9	250.0	-14.0	-5.3%
Education/Libraries	6,487.4	6,685.5	136.6	-136.1	6,686.0	198.6	3.1%
Health	42.8	41.8	0.0	0.0	41.8	-1.0	-2.3%
Aid to Local Governments	\$7,243.5	\$7,491.5	\$145.2	-\$205.8	\$7,431.0	\$187.4	2.6%
Foster Care Payments	324.1	316.4	0.0	-1.8	314.6	-9.5	-2.9%
Assistance Payments	1,397.3	1,243.0	0.0	0.0	1,243.0	-154.3	-11.0%
Medical Assistance	6,883.7	7,073.8	-6.5	0.0	7,067.3	183.6	2.7%
Property Tax Credits	81.8	82.0	0.0	0.0	82.0	0.1	0.2%
Entitlements	\$8,686.9	\$8,715.2	-\$6.5	-\$1.8	\$8,706.9	\$20.0	0.2%
Health	3,036.5	3,147.2	0.0	-27.3	3,119.9	83.4	2.7%
Human Resources	901.8	910.2	0.0	0.0	910.2	8.5	0.9%
Systems Reform Initiative	26.1	16.9	0.0	0.0	16.9	-9.2	-35.1%
Juvenile Services	283.4	274.5	0.0	0.0	274.5	-8.9	-3.1%
Public Safety/Police	1,520.5	1,543.7	0.0	0.0	1,543.7	23.2	1.5%
Higher Education	5,012.2	5,133.1	0.0	-38.5	5,094.6	82.4	1.6%
Other Education	711.8	669.2	1.3	-15.7	654.8	-57.0	-8.0%
Transportation	1,567.5	1,600.2	0.0	0.0	1,600.2	32.7	2.1%
Agric./Nat'l. Res./Environment	388.8	385.8	8.0	0.0	393.8	5.0	1.3%
Other Executive Agencies	1,777.5	1,864.0	0.0	-67.9	1,796.1	18.5	1.0%
Legislative	76.9	78.3	0.0	0.0	78.3	1.4	1.8%
Judiciary	431.0	447.1	0.0	0.0	447.1	16.1	3.7%
Across-the-board Reductions	0.0	-15.8	0.0	-105.0	-120.8	-120.8	n/a
State Agencies	\$15,734.0	\$16,054.5	\$9.3	-\$254.4	\$15,809.5	\$75.5	0.5%
Total Operating	\$32,731.8	\$33,375.6	\$148.1	-\$462.0	\$33,061.7	\$329.9	1.0%
Capital ⁽³⁾	1,931.2	2,230.5	51.9	-7.0	2,275.5	344.3	17.8%
Reserve Funds	15.0	22.8	5.0	0.0	27.8	12.8	85.1%
Appropriations	\$34,678.0	\$35,628.9	\$205.0	-\$469.0	\$35,364.9	\$687.0	2.0%
Reversions	-30.0	-30.0	0.0	0.0	-30.0	0.0	0.0%
Additional Budget Actions ⁽⁴⁾	0.0	0.0	0.0	-75.0	-75.0	-75.0	n/a
Grand Total	\$34,648.0	\$35,598.9	\$205.0	-\$544.0	\$35,259.9	\$612.0	1.8%

⁽¹⁾ The fiscal 2013 Conference Committee reductions included \$239.7 million contingent on the Budget Reconciliation and Financing Act (SB 152) and \$0.2 million contingent on the State and Local Revenue and Financing Act of 2012 (SB 523). The Conference Committee appropriation also reflected \$25.9 million in additional special fund spending due to funding swaps authorized by SB 152 and Medicaid spending of \$9 million related to a processing fee, authorized by SB 152, for claims paid to hospitals in the District of Columbia. Since these bills did not pass, the net effect of \$205 million is added back to the Conference Committee appropriation.

⁽²⁾ The budget as adopted (SB 150) included \$469.0 million in reductions contingent on the failure of SB 152 and SB 523. The failure to pass those bills also results in the need for \$75 million in additional budget actions for the general fund budget to be balanced bringing the total reductions to \$544.0 million.

⁽³⁾ Includes the Sustainable Communities Tax Credit Reserve Fund.

⁽⁴⁾ Additional budget actions of \$75 million are necessary for the general fund budget to be balanced due to the failure to pass SB 152 and SB 523.

Note: The fiscal 2012 working appropriation includes deficiencies, targeted reversions and legislative reductions to the deficiencies.

Capital Budget

The 2012 General Assembly passed a capital budget program totaling \$3.470 billion, including \$1.773 billion for the transportation program. Apart from transportation, the program totals \$1.702 billion: \$1.075 billion is funded with general obligation (GO) bonds authorized in the Maryland Consolidated Capital Bond Loan of 2012 (MCCBL), the 2012 capital budget *Senate Bill 151 (passed)*; \$15.324 million is funded with Qualified Zone Academy Bonds (QZAB) authorized in *Senate Bill 153 (passed)*; \$572.6 million is funded on a pay-as-you-go (PAYGO) basis in the operating budget; and \$32.0 million is funded with Academic Revenue Bonds (ARB) for University System of Maryland facilities authorized in *Senate Bill 1036 (passed)*.

Exhibit A-2.1 presents an overview of the State's capital program for fiscal 2013, **Exhibit A-2.2** lists capital projects and programs by function and fund source, and **Exhibit A-2.3** provides the individual legislative initiative projects funded in the MCCBL of 2012. The MCCBL of 2012 includes funding for:

- State facilities, including colleges and universities, hospitals, Department of Disabilities accessibility modifications, correctional facilities, and the public safety communication system;
- grants to local governments for public school construction, community college facilities, and local detention centers;
- health and social services facilities, such as juvenile services facilities, community health and addiction facilities, and low-income housing;
- environmental programs, such as the Chesapeake Bay Water Quality programs, Community Parks and Playgrounds, Program Open Space (POS), Maryland Agricultural Land Preservation, and Tobacco Transition programs, and Drinking and Stormwater programs; and
- local projects and legislative initiatives.

In addition to GO debt, the State's capital program is funded with general, special, and federal funds appropriated in the operating budget referred to as PAYGO funds which are used primarily to support housing and environmental programs. The use of PAYGO funds is generally restricted to capital grant and loan programs for which the use of tax-exempt debt is limited under federal tax guidelines, programs that are administered through the use of special nonlapsing funds for which revenue from principal and interest payments are used to support additional appropriations, and in instances where federal funds assist in the capitalization of State revolving grant and loan fund programs.

Exhibit A-2.1
Capital Program Summary for the 2012 Session
(\$ in Millions)

<u>Function</u>	Bonds		Current Funds (PAYGO)			<u>Total</u>
	<u>General Obligation</u>	<u>Revenue</u>	<u>General</u>	<u>Special</u>	<u>Federal</u>	
State Facilities						\$142.3
Facilities Renewal	\$33.4	\$0.0	\$0.0	\$0.0	\$0.0	
State Facilities – Other	37.8	0.0	0.7	0.0	70.4	
Health/Social						43.5
Health – Other	1.2	0.0	0.0	0.0	0.0	
Health – State Facilities	9.0	0.0	0.0	0.0	0.0	
Private Hospitals	33.4	0.0	0.0	0.0	0.0	
Environment						666.3
Agriculture	10.6	0.0	0.0	25.8	0.0	
Energy	0.0	0.0	0.0	4.3	0.0	
Environment	62.6	0.0	0.0	307.7	44.8	
MD Environmental Service	7.5	0.0	0.0	0.0	0.0	
Natural Resources	143.3	0.0	0.0	56.1	3.6	
Public Safety						51.3
Local Jails	0.1	0.0	0.0	0.0	0.0	
State Corrections	4.7	0.0	0.0	0.0	7.9	
State Police	38.7	0.0	0.0	0.0	0.0	
Education						382.8
Education – Other	10.0	0.0	0.0	0.0	0.0	
School Construction	372.8	0.0	0.0	0.0	0.0	
Higher Education						309.6
Community Colleges	44.3	0.0	0.0	0.0	0.0	
Higher Education – Other	3.0	0.0	0.0	0.0	0.0	
Morgan State University	29.7	0.0	0.0	0.0	0.0	
Private Colleges/Universities	11.0	0.0	0.0	0.0	0.0	
St. Mary's College	0.3	0.0	0.0	0.0	0.0	
University System	189.3	32.0	0.0	0.0	0.0	
Housing/Community Development						103.1
Housing	51.3	0.0	0.0	26.4	24.2	
Housing – Other	1.2	0.0	0.0	0.1	0.0	
Local Projects						39.9
Local Project Administration	16.4	0.0	0.0	0.0	0.0	
Local Project Legislative	23.4	0.0	0.0	0.0	0.0	

<u>Function</u>	Bonds		Current Funds (PAYGO)			<u>Total</u>
	<u>General Obligation</u>	<u>Revenue</u>	<u>General</u>	<u>Special</u>	<u>Federal</u>	
De-authorizations						-44.4
De-authorizations Introduced	-37.7	0.0	0.0	0.0	0.0	
De-authorizations – Additional	-6.7	0.0	0.0	0.0	0.0	
Total	\$1,090.3	\$32.0	\$0.7	\$420.4	\$150.9	\$1,694.4
Fiscal 2012 Deficiencies	\$0.0	\$0.0	\$0.0	\$0.8	\$2.4	\$3.1
Transportation CTP	\$0.0	\$315.0	\$0.0	\$618.9	\$839.0	\$1,773.0
Grand Total	\$1,090.3	\$347.0	\$0.7	\$1,040.1	\$992.3	\$3,470.5

CTP: Consolidated Transportation Program

PAYGO: pay-as-you-go

Exhibit A.2.2
Capital Program Summary for the 2012 Session

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			Total Funds
		General Obligation	Revenue	General	Special	Federal	
	State Facilities						
D55P04A	DVA: Crownsville Veterans Cemetery Expansion and Burial Capacity Phase III	\$0	\$0	\$700,000	\$0	\$0	\$700,000
DA0201A	MDOD: Accessibility Modifications	1,600,000	0	0	0	0	1,600,000
DE0201B	BPW: Annapolis Post Office	3,782,000	0	0	0	0	3,782,000
DE0201C	BPW: Saratoga State Center – Garage Improvements	4,445,000	0	0	0	0	4,445,000
DE0201D	BPW: William Donald Schaefer Tower – Fire Alarm System	2,475,000	0	0	0	0	2,475,000
DE0201E	BPW: Facilities Renewal Fund	20,592,000	0	0	0	0	20,592,000
DE0201F	BPW: Asbestos Abatement Program	157,000	0	0	0	0	157,000
DE0201G	BPW: Court of Appeals Building – Lobby and ADA Improvements	340,000	0	0	0	0	340,000
DE0201H	BPW: New Catonsville District Court	250,000	0	0	0	0	250,000
DH0104A	MD: Dundalk Readiness Center – Alterations and Addition	5,691,000	0	0	0	15,723,000	21,414,000
DH0104B	MD: Gunpowder Military Reservation Firing Range	0	0	0	0	3,000,000	3,000,000
FB04A	DoIT: Public Safety Communications System	25,250,000	0	0	0	0	25,250,000
FB04B	DoIT: One Maryland Broadband Network	5,000,000	0	0	0	51,678,068	56,678,068
PA1301	DLLR: 1100 North Eutaw Street Elevator Replacements	1,620,000	0	0	0	0	1,620,000
	Subject Category Subtotal:	\$71,202,000	\$0	\$700,000	\$0	\$70,401,068	\$142,303,068

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			
		General Obligation	Revenue	General	Special	Federal	Total Funds
	Health/Social						
DA07A	MDOA: Senior Citizens Activities Center Grant Program	\$1,150,000	\$0	\$0	\$0	\$0	\$1,150,000
MA01A	DHMH: Federally Qualified Health Centers Grant Program	2,871,000	0	0	0	0	2,871,000
MI0401B	DHMH: Deer’s Head Hospital Center	313,000	0	0	0	0	313,000
MM06C	DHMH: Henryton Center – Abate Asbestos and Raze Buildings	3,530,000	0	0	0	0	3,530,000
MM06D	DHMH: Dorsey Run – Secure Evaluation and Therapeutic Treatment Center	2,150,000	0	0	0	0	2,150,000
RQ00A	UMMS: Trauma, Critical Care, and Emergency Medicine Services Expansion	10,000,000	0	0	0	0	10,000,000
RQ00B	UMMS: R Adams Cowley Shock Trauma Center Renovation – Phase I	3,500,000	0	0	0	0	3,500,000
VE01A	DJS: Baltimore Regional Treatment Center	3,000,000	0	0	0	0	3,000,000
ZA00G	MISC: Kennedy Krieger Institute	1,000,000	0	0	0	0	1,000,000
ZA00P	MISC: Prince George’s Hospital System	10,000,000	0	0	0	0	10,000,000
ZA00Q	MISC: Sinai Hospital	1,000,000	0	0	0	0	1,000,000
ZA01A	MHA: Kennedy Krieger Children’s Hospital	500,000	0	0	0	0	500,000
ZA01B	MHA: Howard County General Hospital	707,500	0	0	0	0	707,500
ZA01C	MHA: Franklin Square Hospital Center	1,000,000	0	0	0	0	1,000,000
ZA01D	MHA: Brook Lane Health Services	1,100,000	0	0	0	0	1,100,000
ZA01E	MHA: Northwest Hospital Center	700,000	0	0	0	0	700,000
ZA01F	MHA: Union Memorial Hospital	242,500	0	0	0	0	242,500
ZA01G	MHA: Upper Chesapeake Medical Center	750,000	0	0	0	0	750,000
	Subject Category Subtotal:	\$43,514,000	\$0	\$0	\$0	\$0	\$43,514,000
	Environment						
DA1302	MEA: Jane E. Lawton Program	\$0	\$0	\$0	\$1,750,000	\$0	\$1,750,000
DA1303	MEA: State Agency Loan Program	0	0	0	2,500,000	0	2,500,000
KA05A	DNR: Community Parks and Playgrounds	2,500,000	0	0	0	0	2,500,000
KA05B	DNR: Natural Resources Development Fund	10,874,000	0	0	4,161,061	0	15,035,061

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			
		General Obligation	Revenue	General	Special	Federal	Total Funds
KA05C	DNR: Program Open Space	60,649,000	0	0	32,256,777	3,000,000	95,905,777
KA05D	DNR: Critical Maintenance Program	10,119,000	0	0	4,000,000	0	14,119,000
KA05E	DNR: Waterway Improvement Fund	7,431,000	0	0	2,879,000	600,000	10,910,000
KA05F	DNR: Rural Legacy Program	5,622,000	0	0	12,799,044	0	18,421,044
KA1402A	DNR: Chesapeake Bay 2010 Trust Fund	38,013,000	0	0	0	0	38,013,000
KA17A	DNR: Oyster Restoration Program	8,060,000	0	0	0	0	8,060,000
LA11A	MDA: Maryland Agricultural Land Preservation Program	8,706,000	0	0	25,003,258	0	33,709,258
LA12A	MDA: Tobacco Transition Program	1,894,000	0	0	842,000	0	2,736,000
UA010312	MDE: Septic System Upgrade Program	0	0	0	17,000,000	0	17,000,000
UA01A	MDE: Enhanced Nutrient Removal	18,175,000	0	0	105,700,000	0	123,875,000
UA01B	MDE: Maryland Water Quality Revolving Loan Fund	7,143,000	0	0	156,571,000	34,286,000	198,000,000
UA01C	MDE: Maryland Drinking Water Revolving Loan Fund	3,004,000	0	0	28,436,000	10,560,000	42,000,000
UA04A1	MDE: Biological Nutrient Removal Program	24,760,000	0	0	0	0	24,760,000
UA04A2	MDE: Supplemental Assistance Program	7,000,000	0	0	0	0	7,000,000
UA04B	MDE: Water Supply Financial Assistance Program	2,500,000	0	0	0	0	2,500,000
UB00A	MES: Infrastructure Improvement Fund	7,462,000	0	0	0	0	7,462,000
	Subject Category Subtotal:	\$223,912,000	\$0	\$0	\$393,898,140	\$48,446,000	\$666,256,140
	Public Safety						
QB02A	DPSCS: Maryland House of Correction Deconstruction Project	\$3,500,000	\$0	\$0	\$0	\$0	\$3,500,000
QB0604A	DPSCS: Dorsey Run Correctional Facility – 560-bed Minimum Security Compound	1,200,000	0	0	0	7,900,000	9,100,000
WA01A	DSP: State Police Helicopter Replacement	38,674,000	0	0	0	0	38,674,000
ZB02A	DPSCS: Wicomico County Detention Center	50,000	0	0	0	0	50,000
	Subject Category Subtotal:	\$43,424,000	\$0	\$0	\$0	\$7,900,000	\$51,324,000

		Bonds		Current Funds (PAYGO)			
Budget Code	Project Title	General Obligation	Revenue	General	Special	Federal	Total Funds
Education							
DE0202A	BPW: Public School Construction Program	\$326,393,000	\$0	\$0	\$0	\$0	\$326,393,000
DE0202AQ	BPW: Qualified Zone Academy Bond Program	15,324,000	0	0	0	0	15,324,000
DE0202B	BPW: Aging Schools Program	31,109,000	0	0	0	0	31,109,000
RA01A	MSDE: Public Library Capital Grant Program	5,000,000	0	0	0	0	5,000,000
ZA00M	MISC: Maryland School for the Blind	5,000,000	0	0	0	0	5,000,000
Subject Category Subtotal:		\$382,826,000	\$0	\$0	\$0	\$0	\$382,826,000
Higher Education							
RB21A	UMB: Health Sciences Research Facility III	\$4,672,000	\$0	\$0	\$0	\$0	\$4,672,000
RB22A	UMCP: Physical Sciences Complex	29,550,000	0	0	0	0	29,550,000
RB22B	UMCP: Campuswide Building System and Infrastructure Improvements	5,000,000	5,000,000	0	0	0	10,000,000
RB22C	UMCP: University Learning and Teaching Center	2,050,000	0	0	0	0	2,050,000
RB22D	UMCP: Remote Library Storage Facility	435,000	0	0	0	0	435,000
RB22E	UMCP: University of Maryland Athletic Fields	1,000,000	0	0	0	0	1,000,000
RB22F	UMCP: New Bioengineering Building	5,000,000	0	0	0	0	5,000,000
RB23A	BSU: Campuswide Site Improvements	2,166,000	0	0	0	0	2,166,000
RB23B	BSU: Natural Sciences Center	3,100,000	0	0	0	0	3,100,000
RB24A	TU: Campuswide Safety and Circulation Improvements	6,000,000	0	0	0	0	6,000,000
RB24B	TU: Smith Hall Expansion and Renovation	5,700,000	0	0	0	0	5,700,000
RB26A	FSU: New Center For Communications and Information Technology	44,550,000	0	0	0	0	44,550,000
RB27A	CSU: New Science and Technology Center	28,775,000	10,000,000	0	0	0	38,775,000
RB28A	UB: New Law School Building	4,037,000	0	0	0	0	4,037,000
RB29A	SU: New Library	1,900,000	0	0	0	0	1,900,000
RB31A	UMBC: New Performing Arts and Humanities Facility	33,225,000	0	0	0	0	33,225,000
RB31B	UMBC: Campus Traffic and Safety Circulation Improvements	1,000,000	0	0	0	0	1,000,000

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			Total Funds
		General Obligation	Revenue	General	Special	Federal	
RB34A	UMCES: New Environmental Sustainability Research Laboratory	1,150,000	0	0	0	0	1,150,000
RB36A	USMO: Facilities Renewal Program	10,000,000	17,000,000	0	0	0	27,000,000
RC00A	BCCC: Main Building Renovation	6,686,000	0	0	0	0	6,686,000
RD00A	SMCM: Anne Arundel Hall Reconstruction	310,000	0	0	0	0	310,000
RI00A	MHEC: Community College Facilities Grant Program	37,629,000	0	0	0	0	37,629,000
RM00A	MSU: New School of Business Complex and Connecting Bridge	20,685,000	0	0	0	0	20,685,000
RM00B	MSU: Facilities Renewal Projects	5,000,000	0	0	0	0	5,000,000
RM00C	MSU: New Jenkins Behavioral and Social Sciences Center	3,500,000	0	0	0	0	3,500,000
RM00D	MSU: Soper Library Demolition	500,000	0	0	0	0	500,000
ZA00H	MICUA: Johns Hopkins University	4,000,000	0	0	0	0	4,000,000
ZA00I	MICUA: McDaniel College	1,500,000	0	0	0	0	1,500,000
ZA00J	MICUA: Notre Dame of Maryland University	4,000,000	0	0	0	0	4,000,000
ZA00K	MICUA: St. John's College	1,500,000	0	0	0	0	1,500,000
ZA00S	MISC: High Performance Computing Data Center	3,000,000	0	0	0	0	3,000,000
	Subject Category Subtotal:	\$277,620,000	\$32,000,000	\$0	\$0	\$0	\$309,620,000
	Housing/Community Development						
D40W1112	MDOP: Sustainable Communities Tax Credit Program	\$0	\$0	\$0	\$0	\$0	\$0
DW0110A	MDOP: African American Heritage Preservation Program	1,000,000	0	0	0	0	1,000,000
DW0110B	MDOP: Maryland Historical Trust Capital Grant Fund	150,000	0	0	120,000	0	270,000
S00A2502	DHCD: Community Development Block Grant Program	0	0	0	0	12,300,000	12,300,000
S00A2514	DHCD: MD-BRAC Preservation Loan Fund	0	0	0	4,000,000	0	4,000,000
SA24A	DHCD: Community Legacy Program	6,000,000	0	0	0	0	6,000,000

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			
		General Obligation	Revenue	General	Special	Federal	Total Funds
SA24B	DHCD: Neighborhood Business Development Program	2,350,000	0	0	1,900,000	0	4,250,000
SA24C	DHCD: Strategic Demolition and Smart Growth Impact Project Fund	2,500,000	0	0	0	0	2,500,000
SA25A	DHCD: Partnership Rental Housing Program	6,000,000	0	0	0	0	6,000,000
SA25B	DHCD: Homeownership Programs	8,000,000	0	0	500,000	1,900,000	10,400,000
SA25C	DHCD: Shelter and Transitional Housing Facilities Grant Program	2,000,000	0	0	0	0	2,000,000
SA25D	DHCD: Special Loan Programs	6,900,000	0	0	500,000	3,000,000	10,400,000
SA25E	DHCD: Rental Housing Program	17,500,000	0	0	19,475,000	7,000,000	43,975,000
	Subject Category Subtotal:	\$52,400,000	\$0	\$0	\$26,495,000	\$24,200,000	\$103,095,000
	Local Projects						
DA03A	MSA: Ocean City Convention Center	\$2,200,000	\$0	\$0	\$0	\$0	\$2,200,000
ZA00A	MISC: Alice Ferguson Foundation – Potomac Watershed Study Center	1,700,000	0	0	0	0	1,700,000
ZA00B	MISC: Annapolis High School	2,000,000	0	0	0	0	2,000,000
ZA00C	MISC: Baltimore Museum of Art	2,500,000	0	0	0	0	2,500,000
ZA00D	MISC: Baltimore City Convention Center	2,500,000	0	0	0	0	2,500,000
ZA00E	MISC: Charles E. Smith Life Communities – Revitz House Renovation	675,000	0	0	0	0	675,000
ZA00F	MISC: Everyman Theatre	1,000,000	0	0	0	0	1,000,000
ZA00L	MISC: Maryland Science Center	550,000	0	0	0	0	550,000
ZA00N	MISC: Maryland Zoo in Baltimore	5,000,000	0	0	0	0	5,000,000
	Infrastructure Improvements						
ZA00O	MISC: Mount Vernon Square Redevelopment	1,000,000	0	0	0	0	1,000,000
ZA00R	MISC: USS Constellation Education Center and Heritage Center	1,000,000	0	0	0	0	1,000,000
ZA00T	MISC: Green Branch Athletic Complex	1,000,000	0	0	0	0	1,000,000
ZA00U	MISC: Hospice of the Chesapeake	600,000	0	0	0	0	600,000
ZA00V	MISC: Coastal Hospice	500,000	0	0	0	0	500,000

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			
		General Obligation	Revenue	General	Special	Federal	Total Funds
ZA00W	MISC: National Aquarium Infrastructure Improvements	2,500,000	0	0	0	0	2,500,000
ZA00X	MISC: YWCA Counseling and Community Service	125,000	0	0	0	0	125,000
ZA02	Local Senate Initiatives	7,500,000	0	0	0	0	7,500,000
ZA03	Local House Initiatives	7,500,000	0	0	0	0	7,500,000
	Subject Category Subtotal:	\$39,850,000	\$0	\$0	\$0	\$0	\$39,850,000
	De-authorizations						
ZF00	De-authorizations as Introduced	-\$37,724,000	\$0	\$0	\$0	\$0	-\$37,724,000
ZF00A	Additional De-authorizations	-6,700,000	0	0	0	0	-6,700,000
	Subject Category Subtotal:	-\$44,424,000	\$0	\$0	\$0	\$0	-\$44,424,000
	Current Year Total	\$1,090,324,000	\$32,000,000	\$700,000	\$420,393,140	\$150,947,068	\$1,694,364,208
	Fiscal 2012 Deficiencies						
DH0104B	MD: Gunpowder Military Reservation Firing Range	\$0	\$0	\$0	\$0	\$250,000	\$250,000
QB0604A	DPSCS: Dorsey Run Correctional Facility – 560-bed Minimum Security Compound	0	0	0	0	2,100,000	2,100,000
SA25E	DHCD: Rental Housing Program	0	0	0	775,000	0	775,000
	Subject Category Subtotal:	\$0	\$0	\$0	\$775,000	\$2,350,000	\$3,125,000

Budget Code	Project Title	Bonds		Current Funds (PAYGO)			
		General Obligation	Revenue	General	Special	Federal	Total Funds
	Entire Budget Total:	\$1,090,324,000	\$32,000,000	\$700,000	\$421,168,140	\$153,297,068	\$1,697,489,208
	Transportation Consolidated Transportation Program	\$0	\$315,000,000	\$0	\$618,945,317	\$839,030,000	\$1,772,975,317
	Grand Total	\$1,090,324,000	\$347,000,000	\$700,000	\$1,040,113,457	\$992,327,068	\$3,470,464,525

ADA: Americans with Disabilities Act
BCCC: Baltimore City Community College

BPW: Board of Public Works

BSU: Bowie State University

CSU: Coppin State University

DHCD: Department of Housing and Community Development

DHMH: Department of Health and Mental Hygiene

DLLR: Department of Labor, Licensing, and Regulation

DJS: Department of Juvenile Services

DoIT: Department of Information Technology

DNR: Department of Natural Resources

DPSCS: Department of Public Safety and Correctional Services

DSP: Department of State Police

DVA: Department of Veterans Affairs

FSU: Frostburg State University

MD: Military Department

MDA: Maryland Department of Agriculture

MD-BRAC: Maryland Base Realignment and Closure

MDE: Maryland Department of the Environment

MDOA: Maryland Department of Aging

MDOD: Maryland Department of Disabilities

MDOP: Maryland Department of Planning

MEA: Maryland Energy Administration

MES: Maryland Environmental Service

MHA: Maryland Hospital Association

MHEC: Maryland Higher Education Commission

MICUA: Maryland Independent College and University Association

MISC: miscellaneous

MSDE: Maryland State Department of Education

MSA: Maryland Stadium Authority

MSU: Morgan State University

PAYGO: pay-as-you-go

SMCM: St. Mary's College of Maryland

SU: Salisbury University

TU: Towson University

UB: University of Baltimore

UMB: University of Maryland, Baltimore

UMBC: University of Maryland Baltimore County

UMCES: University of Maryland Center for Environmental Science

UMCP: University of Maryland, College Park

UMMS: University of Maryland Medical System

USMO: University System of Maryland Office

YWCA: Young Women's Christian Association

Note: Numbers may not sum to total due to rounding. The Governor's plan was to reduce \$96.9 million in transfer tax special fund appropriation contingent upon the transfer of the funding to the general fund through the Budget Reconciliation and Financing Act (BRFA) of 2012. This funding would have been comprised of the following: Program Open Space (POS) – State (\$14.7 million), POS – Local (\$13.6 million), POS – Capital Development (\$8.2 million), Rural Legacy Program (\$12.8 million), Agricultural Land Preservation (\$16.3 million), and unallocated revenues from fiscal 2013 (\$31.4 million). The BRFA of 2012 did not pass, and so the fiscal 2013 transfer tax special funds are reflected above.

Exhibit A.2.3
Legislative Projects – 2012 Session
(Project Count: 122)

<u>Project Title</u>	<u>Senate Initiative</u>	<u>House Initiative</u>	<u>Other</u>	<u>Total Funding</u>	<u>Match/ Requirements</u>
Allegany					
Allegany Museum	\$100,000	\$100,000		\$200,000	Soft (1, 2) Hist. Ease.
Friends Aware, Inc. Site and Project Development	125,000	125,000		250,000	Hard
Subtotal:				<u>\$450,000</u>	
Anne Arundel					
Annapolis and Anne Arundel County Conference and Visitors Bureau – Roof Replacement	100,000			\$100,000	Soft (all)
Coordinating Center for Home and Community Care Building Facilities		200,000		200,000	Hard
Deale Elementary School Technology Enhancement Project	23,000			23,000	Hard
Hospice of the Chesapeake Renovation Phase 1			600,000	600,000	Soft (all)
Meade High School Concession Stand	150,000			150,000	Hard
Samaritan House Addition	100,000			100,000	Hard
Shiplap House		250,000		250,000	Soft (all)
YWCA Counseling and Community Service Building Renovation	75,000	125,000	125,000	325,000	Soft (all)
Subtotal:				<u>\$1,748,000</u>	
Baltimore City					
Academy of Success Community Empowerment Center	100,000	100,000		\$200,000	Soft (all)
Arch Social Club Historic Site Restoration	50,000	68,000		118,000	Hard Hist. Ease.
Baltimore Design School	100,000			100,000	Hard
Brooks Robinson Statue – Babe Ruth Birthplace Foundation	100,000			100,000	Soft (all)
Community Resource Center	175,000			175,000	Soft (all)
East Baltimore Historical Library	100,000	150,000		250,000	Grant Hist. Ease.

<u>Project Title</u>	<u>Senate Initiative</u>	<u>House Initiative</u>	<u>Other</u>	<u>Total Funding</u>	<u>Match/ Requirements</u>
Garrett-Jacobs Mansion		200,000		200,000	Soft (2, 3)
Grace Outreach Center	90,000			90,000	Soft (U, 1, 2)
Healthy Start Client Service Center	100,000			100,000	Hard
Meals on Wheels Green Building	75,000	75,000		150,000	Soft (3)
Miles Washington Family Support Center	175,000			175,000	Soft (U, 1, 3) Hist. Ease
Mt. Lebanon CDC Community Center and Gymnasium	50,000	50,000		100,000	Soft (3)
National Aquarium Infrastructure			2,500,000	2,500,000	Soft (2, 3)
Patterson Park Public Charter School Facade Restoration		50,000		50,000	Soft (3)
PMO Community Youth Center	125,000			125,000	Soft (2)
Roland Water Tower Stabilization		250,000		250,000	Soft (2, 3)
	<i>Subtotal:</i>			<i>\$4,683,000</i>	
Baltimore					
Acorn Hill Natural Play Area		215,000		\$215,000	Soft (2)
Arrow Child and Family Ministries		154,000		154,000	Hard
Catonsville Family Center Y	235,000	265,000		500,000	Hard
Children's Home Therapeutic Group Home Building	200,000	200,000		400,000	Soft (2)
Lansdowne Volunteer Fire Department	20,000			20,000	Soft (all)
Lighthouse Youth and Family Services Center	34,000			34,000	Soft (2)
Neighbor-Space of Baltimore County	150,000			150,000	Soft (3)
Owings Mills High School Stadium	100,000			100,000	Soft (U, 2)
Turf Field Security Investment		50,000		50,000	Soft (1, 2)
	<i>Subtotal:</i>			<i>\$1,623,000</i>	
Calvert					
Calvert Marine Museum Exhibition Building	250,000			\$250,000	Hard
Chesapeake Beach Skate Park	125,000			125,000	Soft (all)
End Hunger Kitchen	100,000			100,000	Soft (all)
North Beach Fishing Platform	100,000			100,000	Soft (all)
	<i>Subtotal:</i>			<i>\$575,000</i>	

<u>Project Title</u>	<u>Senate Initiative</u>	<u>House Initiative</u>	<u>Other</u>	<u>Total Funding</u>	<u>Match/ Requirements</u>
Caroline					
Senior Housing for the Disabled		250,000		\$250,000	Hard
The Wharves at Choptank Crossing Heritage and Welcome Center	165,000			165,000	Soft (2, 3)
Subtotal:				<u>\$415,000</u>	
Carroll					
Goodwill Industries of Monocacy Valley – Westminster Renovation	75,000			\$75,000	Hard
Subtotal:				<u>\$75,000</u>	
Cecil					
Jacob Tome Gas House		80,000		\$80,000	Soft (2) Hist. Ease.
Milburn Stone Theatre		100,000		100,000	Hard
Subtotal:				<u>\$180,000</u>	
Charles					
Heritage House		100,000		\$100,000	Soft (all)
Indian Head Center for the Arts Renovation	100,000	70,000		170,000	Soft (all)
Jude House	50,000			50,000	Soft (U, 2)
Southern Maryland Carousel	25,000			25,000	Soft (2)
Subtotal:				<u>\$345,000</u>	
Frederick					
Downtown Frederick Hotel and Conference Center		250,000		\$250,000	Grant Hist. Ease.
Goodwill Industries of Monocacy Valley	75,000			75,000	Soft (3)
Mental Health Association Building	75,000			75,000	Soft (2, 3)
Subtotal:				<u>\$400,000</u>	
Harford					
Aberdeen Youth Baseball Field		150,000		\$150,000	Hard
Subtotal:				<u>\$150,000</u>	

<u>Project Title</u>	<u>Senate Initiative</u>	<u>House Initiative</u>	<u>Other</u>	<u>Total Funding</u>	<u>Match/ Requirements</u>
Howard					
Carroll Baldwin Hall	100,000	50,000		\$150,000	Soft (1)
Roger Carter Recreation Center	65,000	300,000		365,000	Hard
Supported Living Facility	130,000			130,000	Hard
<i>Subtotal:</i>				<u>\$645,000</u>	
Montgomery					
City of Rockville – Swim and Fitness Center		200,000		\$200,000	Hard
Homecrest House – Edwards Building	40,000			40,000	Soft (all)
Inter-Generational Center Expansion for Programs – Easter Seals	100,000			100,000	Hard
Greater Washington-Baltimore Region					
Lower Montgomery County Bikesharing System		250,000		250,000	Grant
Montgomery Village Sports Association	125,000			125,000	Hard
Muslim Community Center	125,000	100,000		225,000	Soft (1, 2)
National Center for Children and Families Youth Activities Center	225,000	25,000		250,000	Soft (2, 3)
Olney Police Satellite Station		10,000		10,000	Hard
Potomac Community Resources Home	50,000			50,000	Hard
Quebec Terrace Lighting	58,000	62,000		120,000	Soft (2)
TLC’s Katherine Thomas School	150,000	125,000		275,000	Hard
VisArts	25,000			25,000	Hard
Woodlawn Barn Visitor’s Center	50,000	250,000		300,000	Soft (all) Hist. Ease.
<i>Subtotal:</i>				<u>\$1,970,000</u>	
Prince George’s					
Dinosaur Park Improvements	25,000			\$25,000	Soft (2)
Elizabeth Seton High School Window Upgrades	50,000			50,000	Hard
Family Crisis Center Security System	70,000			70,000	Soft (2)
Forestville Military Academy Track	50,000			50,000	Soft (U,all)
Fort Foote Elementary School Marquee Project		8,000		8,000	Soft (2)
Gateway Arts Center at Brentwood		20,000		20,000	Hard

<u>Project Title</u>	<u>Senate Initiative</u>	<u>House Initiative</u>	<u>Other</u>	<u>Total Funding</u>	<u>Match/ Requirements</u>
Glenarden Veterans Memorial	75,000	150,000		225,000	Soft (1)
Green Branch Athletic Complex			1,000,000	1,000,000	Soft (1)
Hamilton Street Parking		250,000		250,000	Soft (1)
Harbor Light Community Development Center	40,000			40,000	Hard
Knights of St. John Woodville School Building		50,000		50,000	Soft (1)
Labor of Love Learning Center	100,000	100,000		200,000	Hard
Largo High School PTSA Track Renovation	225,000			225,000	Soft (U,all)
Laurel Boys and Girls Club Renovation	150,000	50,000		200,000	Soft (all)
Riverdale Park Youth and Community Center	150,000	133,000		283,000	Hard
Riverdale Sportsplex		350,000		350,000	Soft (2, 3)
Southern Area Indoor Aquatic Center	75,000	25,000		100,000	Hard
Subtotal:				<u>\$3,146,000</u>	
St. Mary's					
Sotterley Plantation Post-Hurricane Restoration		50,000		<u>\$50,000</u>	Soft (2) Hist. Ease.
Subtotal:				<u>\$50,000</u>	
Talbot					
Easton Head Start Center		250,000		<u>\$250,000</u>	Hard
Subtotal:				<u>\$250,000</u>	
Washington					
Antietam Chapter #312 Korean War Veterans Monument	40,000			\$40,000	Soft (all)
Lockhouse 44, Lock 44, and Western MD Railroad Lift Bridge	175,000			<u>175,000</u>	Soft (2, 3)
Subtotal:				<u>\$215,000</u>	
Worcester					
Coastal Hospice at the Ocean Residence Project			500,000	\$500,000	Soft (1, 3)
Ocean City Center for the Arts	180,000	70,000		<u>250,000</u>	Soft (2)
Subtotal:				<u>\$750,000</u>	

<u>Project Title</u>	<u>Senate Initiative</u>	<u>House Initiative</u>	<u>Other</u>	<u>Total Funding</u>	<u>Match/ Requirements</u>
Statewide					
Broad Creek Memorial Scout Reservation		200,000		\$200,000	Soft (1, 2)
Chesapeake Grove Senior Housing and Intergenerational Center	60,000	190,000		250,000	Soft (1)
Food & Friends, Inc.	155,000			155,000	Hard
Linwood Center	345,000	155,000		500,000	Hard
Maryland Alliance of Boys and Girls Clubs – Renovations		250,000		250,000	Hard
Maryland Food Bank Sustainability Project	250,000	50,000		300,000	Hard
Patricia and Arthur Modell Performing Arts Center at the Lyric	250,000			250,000	Hard Hist. Ease.
Port Discovery		150,000		150,000	Hard
				<u>\$2,055,000</u>	
<i>Subtotal:</i>					
Total Senate and House Initiatives	\$7,500,000	\$7,500,000			

Match Key: 1 = Real Property; 2 = In Kind Contribution; 3 = Prior Expended Funds; U = Unequal Match

Operating Budget Relief and Fund Transfers

As shown in **Exhibit A-2.4**, the GO bond program was used to reduce operating budget appropriations and to replace funds transferred from various capital accounts to the general fund. The fiscal situation continues to limit the use of PAYGO funds to support the capital program and has resulted in the shift of \$83.5 million of funding for certain grant and loan programs to the bond program. GO bond funding of \$38.5 million reflects the phased multi-year funding for the acquisition of new Medevac helicopters in place of special funds from the Helicopter Replacement Fund. The 2012 capital program also includes \$106.8 million of GO bond authorizations provided as part of a multi-year replacement for revenue and fund balance transfers. Of this amount, \$97.9 million reflects GO bond replacement for transfers made in prior year budgets and budget reconciliation and financing acts (BRFA). In addition, the BRFA of 2012 proposed \$99.5 million of additional revenue transfers to be replaced over a multi-year period. While the BRFA of 2012 failed and the proposed transfers did not take place, the MCCBL of 2012 still provides \$8.9 million of GO bond replacement (\$4.0 million for the Department of Natural Resources' (DNR) Critical Maintenance Program and \$4.9 million for the DNR Natural Resources Development Fund). Proposed GO bond replacement for fiscal 2013 transfer tax revenue transfers to the general fund (transfers that did not take place due to the failure of the BRFA of 2012) that would have impacted the Stateside and Local POS, Rural Legacy, and Maryland Agricultural Land Preservation Program were not authorized. Instead, the funds were used for other shovel-ready capital priorities including environmental and natural resources projects. **Exhibit A-2.5** illustrates the transfers and multi-year replacement associated with both fiscal 2011 through 2013 as they overlap and planned out-year GO bond replacement pre-authorized in the MCCBL of 2012.

Exhibit A-2.4

Use of General Obligation Bond Program to Support Operating Budget Relief (\$ in Millions)

	<u>Fiscal 2013</u>
<p>Special Fund Revenue and Fund Balance Replacement: The budgets and the Budget Reconciliation and Financing Acts (BRFA) of 2010 and 2011 provided for the transfer of \$611.3 million of unexpended fund balance and estimated fiscal 2011 and 2012 revenue from multiple capital program accounts. The multi-year general obligation (GO) bond replacement plan accounts for \$97.9 million of GO bond authorizations in the Maryland Consolidated Capital Bond Loan (MCCBL) of 2012. In addition, the BRFA of 2012 proposed \$99.5 million of additional revenue transfers to be replaced over a multi-year period. While the BRFA of 2012 failed, and the proposed transfers did not take place, the MCCBL of 2012 still provided \$8.9 million of GO bond replacement (\$4.0 million for the Department of Natural Resources' (DNR) Critical Maintenance Program and \$4.9 million for the DNR Natural Resources Development Fund).</p>	\$106.8
<p>Medevac Helicopter Replacement: Multi-year plan to use GO bond funds to fund the replacement of the Medevac helicopter fleet in place of using special funds from the Helicopter Replacement Fund.</p>	38.5
<p>Use of GO Bond Funds to Fund Capital Programs Traditionally Funded with General Funds: This principally includes funding for grant and loan programs administered by the Department of Housing and Community Development and the Maryland Department of the Environment and use of bonds to fund the Aging Schools Program.</p>	83.5
Total	\$228.8

Exhibit A-2.5
Fiscal 2010 through 2013 Fund Transfers and Multi-Year General Obligation Bond Replacement Plan
(\$ in Millions)

<u>Program</u>	<u>Transfers</u>						<u>Fund Replacement</u>						<u>Total Amount of Fund Transfers to Be Replaced in the CIP</u>	<u>Not Replaced</u>
	<u>Special Fund Balances</u>	<u>Special Funds 2010</u>	<u>Special Funds 2011</u>	<u>Special Funds 2012</u>	<u>Special Funds 2013</u>	<u>Total Transfers</u>	<u>Replaced 2010</u>	<u>Replaced 2011</u>	<u>Replaced 2012</u>	<u>Replaced 2013</u>	<u>Replaced 2014</u>	<u>Replaced 2015</u>		
Waterway Improvement Program	\$12.5	\$0.0	\$3.9	\$1.1	\$0.0	\$17.5	\$0.0	\$10.2	\$7.3	\$0.0	\$0.0	\$0.0	\$17.5	\$0.0
Program Open Space (POS) – Stateside	172.3	4.6	13.1	24.2	0.0	214.2	172.3	11.0	4.8	12.8	15.1	7.9	223.9	4.9 ***
POS – Local	103.1	0.0	12.4	24.0	0.0	139.5	0.0	54.1	23.6	46.6	17.9	10.9	153.1	0.0
Rural Legacy	10.6	0.0	12.6	14.2	0.0	37.4	0.0	17.0	4.5	5.6	9.4	4.9	41.4	8.9 ***
Ocean City Beach Replenishment –POS	2.1	0.0	1.0	1.0	0.0	4.1	0.0	3.1	1.0	0.0	0.0	0.0	4.1	0.0
Ocean City Beach Replenishment – Local	3.4	0.0	0.0	0.0	0.0	3.4	0.0	3.4	0.0	0.0	0.0	0.0	3.4	0.0
Natural Resources Development Fund	17.7	0.0	0.0	4.6	0.0	22.3	0.0	10.1	3.5	8.9	0.0	0.0	22.5	4.0 *
Critical Maintenance Program	3.2	0.0	3.2	4.0	0.0	10.4	0.0	6.3	3.0	4.0	0.0	0.0	13.3	1.0 *
Dam Rehabilitation Program	0.7	0.0	0.0	0.5	0.0	1.2	0.0	0.2	1.0	0.0	0.0	0.0	1.2	0.0
House Assessment Program	0.9	0.0	0.0	0.0	0.0	0.9	0.0	0.3	0.4	0.1	0.0	0.0	0.8	0.2 *
Hurricane Isabel Funds	0.2	0.0	0.0	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2 *
Neighborhood Business Development	3.6	0.0	3.2	0.0	0.0	6.8	0.0	6.7	0.0	0.0	0.0	0.0	6.7	0.1 **
Community Legacy Program	0.4	0.0	0.0	0.0	0.0	0.4	0.0	0.4	0.0	0.0	0.0	0.0	0.4	0.0
Homeownership Programs	0.0	0.0	3.0	1.5	0.0	4.5	0.0	3.0	1.5	0.0	0.0	0.0	4.5	0.0
Special Loan Programs	2.1	0.0	2.5	2.2	0.0	6.8	0.0	4.7	2.2	0.0	0.0	0.0	6.9	0.0
Tobacco Transition Program	0.0	0.0	2.0	1.5	1.9	5.4	0.0	2.0	1.5	1.9	0.0	0.0	5.4	0.0

Program	<u>Transfers</u>						<u>Fund Replacement</u>						Total Amount of Fund Transfers to Be Replaced	Not Replaced	
	<u>Special Fund Balances</u>	<u>Special Funds 2010</u>	<u>Special Funds 2011</u>	<u>Special Funds 2012</u>	<u>Special Funds 2013</u>	<u>Total Transfers</u>	<u>Replaced 2010</u>	<u>Replaced 2011</u>	<u>Replaced 2012</u>	<u>Replaced 2013</u>	<u>Replaced 2014</u>	<u>Replaced 2015</u>	<u>Replaced in the CIP</u>		
Agricultural Land Preservation Program	10.0	0.0	11.8	21.1	0.0	42.9	0.0	17.8	4.4	8.7	12.7	6.1	49.7	9.4	***
Bay Restoration Fund	205.0	0.0	45.0	40.0	0.0	290.0	0.0	125.0	146.8	18.2	0.0	0.0	290.0	0.0	
Helicopter Replacement Fund	113.7	0.0	0.0	0.0	0.0	113.7	52.5	0.0	22.7	38.5	0.0	0.0	113.7	0.0	****
Total	\$661.5	\$4.6	\$113.7	\$139.9	\$1.9	\$921.6	\$224.8	\$275.3	\$228.2	\$145.3	\$55.1	\$29.8	\$958.5	\$28.7	

* Indicates amount not to be replaced based on other budget priorities or funds not needed to complete projects.

** The Budget Reconciliation and Financing Act (BRFA) of 2011 included the transfer of \$2.1 million of special funds from the Neighborhood Business Development Program that was replaced with \$2.1 million in general obligation (GO) bonds. The 2012 capital budget bill deletes the bonds replaced in recognition that the program received \$2.1 million of special fund appropriation through budget amendment, thereby making the replacement unnecessary.

*** In the 2010 session, the General Assembly also reduced the fiscal 2011 GO bond amount for the Maryland Agricultural Land Preservation Foundation (MALPF) by \$4.0 million to reflect the availability of special funds available from funds not used by the Maryland Agricultural and Resource-Based Industry Development Corporation. In the 2011 session, the General Assembly reduced the fiscal 2012 GO bond amount for Rural Legacy by \$4.6 million which is not being replaced. In the 2012 session, the General Assembly reduced the fiscal 2013 GO bond replacement funding for Stateside Program Open Space (POS) by \$4.908 million, Rural Legacy by \$4.267 million, and MALPF by \$5.418 million and made no provision to replace these funds in future years choosing instead to redirect the funds to provide additional funding for shovel-ready environmental and natural resources projects.

**** Helicopter Replacement Fund transfers include both fund balance transfers and revenue diversions – the amount needed to complete the new fleet purchase will exceed the amount transferred; therefore, the amount shown as replacement only reflects replacement of the transfers and diversions.

Note: SB 152 (BRFA of 2012), which failed, included \$96.9 million of special fund revenue transfers comprised of \$2.6 million from the Waterway Improvement Fund and \$96.9 million of transfer tax revenue. Although the revenues are not transferred due to the failure of the BRFA of 2012, the Maryland Consolidated Capital Bond Loan (MCCBL) of 2012 includes GO bond replacement provisions for these intended revenue diversions over a three-year period (fiscal 2013 through 2015). The final actions on the MCCBL of 2012 included the \$2.6 million of GO bond replacement for the Waterway Improvement Fund. The House and Senate agreed to strike the provision that would have transferred the \$2.6 million of revenue with the intent of providing an additional source of funding for shovel-ready projects to be undertaken in fiscal 2013. With respect to the transfer tax revenue GO bond replacement, the final actions on the MCCBL of 2012 resulted in the deletion of the \$19.1 million of planned GO bond replacement for POS (Stateside and Local), Rural Legacy, and MALPF. Instead, these authorizations were used to fund shovel-ready projects, of which \$14.6 million was directed to environmental and natural resources projects. The MCCBL of 2012 did include \$4.0 million and \$4.2 million, respectively, of GO bond replacement to the Department of Natural Resources' Critical Maintenance Program and Natural Resources' Development Fund which results in \$8.2 million of "overfunding" from what was intended from the transfer tax revenue diversion and GO bond replacement plan embodied in the BRFA and MCCBL of 2012, as introduced. The \$4.5 million for local POS, while not provided for in fiscal 2013, was added to the out-year pre-authorizations (the out-year pre-authorizations provided \$21.4 million in each of fiscal 2014 and 2015 to complete the replacement funding of the transfer tax despite the revenues not being transferred to the general fund due to the failure of the BRFA of 2012).

Debt Affordability

As shown in **Exhibit A-2.6**, the long range plan adopted by the Capital Debt Affordability Committee (CDAC) in December 2011 provides for a total of over \$5.885 billion in debt authorizations from 2012 to 2017. In December 2011, CDAC increased its recommended level of new GO bond authorizations for the 2012 session by \$150 million over what was recommended by the committee last year. However, the long range plan remains unchanged because the committee adjusted the planned 2017 session level downward by \$150 million. This restructuring in the level of authorizations keeps the State within affordability ratios which limit State debt outstanding to 4% of State personal income and limit State debt service cost to no more than 8% of revenues supporting State debt.

Exhibit A-2.6
Capital Debt Affordability Committee Recommended Levels of
General Obligation Bond Authorizations
2012-2017 Legislative Sessions
(\$ in Millions)

<u>Session</u>	<u>2010 Report Recommended Authorizations</u>	<u>2011 Report Recommended Authorizations</u>	<u>Authorization Change</u>
2012	\$925	\$1,075	\$150
2013	925	925	0
2014	935	935	0
2015	945	945	0
2016	955	955	0
2017	1,200	1,050	-150
Total	\$5,885	\$5,885	\$0

Source: *Report of the Capital Debt Affordability Committee on Recommended Debt Authorizations*, November 2010 and November 2011

The MCCBL of 2012 passed by the General Assembly is consistent with the \$1,075.0 million level of new GO debt authorizations recommended by CDAC. An additional \$15.3 million in QZABs which are not counted in the debt limit, and an additional \$44.4 million in GO bonds from prior years is de-authorized in the 2012 capital budget, thereby increasing the amount of new GO debt included in the capital program to \$1.090 billion. Included in the \$1.090 billion of new debt is \$183.8 million authorized in the MCCBL of 2011 to complete the

funding for various projects that were split-funded over fiscal 2011 through 2013 as a mechanism to allow the projects to be bid and construction to commence during fiscal 2011 and 2012, respectively.

The State's capital program for fiscal 2012 also includes other actions that affect debt affordability, debt issuance, and future capital budgets.

- ***Senate Bill 1037 (passed)*** amends prior authorization bond bills by extending matching fund deadlines, extending deadlines for expending or encumbering funds, altering the purposes for which funds may be used, modifying certification requirements, renaming grant recipients, or altering project locations which are consolidated into an omnibus bill. Prior to the 2008 session, individual prior authorization bills were passed by the General Assembly. For the 2011 session, the prior authorization bills approved by the General Assembly were included in the MCCBL of 2011 rather than through an omnibus prior authorization bill, but for the 2012 session, the separate prior authorization bill (***Senate Bill 1037***) was passed.
- The MCCBL of 2012 includes \$338.9 million of GO bond authorizations that will not take effect until fiscal 2014. Of this amount, \$183.8 million is needed to either continue the funding for existing construction contracts or allow projects expected to be contracted during fiscal 2012 and 2013 to proceed without the full amount of the construction authorization provided in the fiscal 2012 and 2013 budgets, \$62.2 million provides pre-authorizations for various GO bond replacement funding for special fund transfers, \$21.5 million is pre-authorized for the final installment for the InterCounty Connector, \$24.2 million is needed to provide an authorization for the contract for the replacement of the State's Medevac helicopters, and \$47.2 million reflects future commitments to projects. The MCCBL of 2012 also provides another \$104.8 million that will not take effect until fiscal 2014 and \$51.2 million that will not take effect until fiscal 2015. **Exhibit A-2.7** shows the pre-authorizations for the 2013 through 2015 sessions.

Exhibit A-2.7

Pre-authorizations Included in the MCCBL of 2012 for 2013 through 2015 Sessions

<u>Project Title</u>	<u>2013 Session</u>	<u>2014 Session</u>	<u>2015 Session</u>
BPW: Old Senate Chamber	\$5,100,000		
DNR: Program Open Space – Local	17,846,000	\$10,899,000	
DNR: Program Open Space – Stateside	15,093,000	7,900,000	
DNR: Rural Legacy	9,456,000	4,867,000	
MDA: Agricultural Land Preservation Program	12,653,000	6,134,000	
DHMH: Henryton Center – Abate Asbestos and Raze Buildings	3,050,000		
DPSCS: House of Correction Deconstruction	3,022,000		
UMCP: New Bioengineering	5,000,000		
TU: Campuswide Safety and Circulation	7,812,000		
FSU: Center for Communications and Information Technology	4,700,000		
CSU: New Science and Technology Center	47,050,000		
SU: New Library	4,000,000	49,000,000	\$51,200,000
UMBC: Campuswide Safety and Circulation	10,000,000		
UMBC: New Performing Arts Complex	30,600,000		
USM: Biomedical Sciences Engineering Shady Grove	5,000,000		
MHEC: Community College Grant Program	30,437,000		
MSU: New School of Business Complex	43,550,000	3,050,000	
DJS: Southern Maryland Children's Center	2,068,000		
DSP: Helicopter Replacement	24,250,000	8,000,000	
MISC: InterCounty Connector	21,475,000		
MISC: Ocean City Convention Center Expansion	3,500,000		
MISC: Maryland School for the Blind	5,000,000		
MISC: Johns Hopkins High Performance Data Center	12,000,000	15,000,000	
MISC: Southern Maryland Higher Education Center	10,000,000		
MISC: St. Mary's County Detention Center	6,266,000		
Total	\$338,928,000	\$104,850,000	\$51,200,000

BPW: Board of Public Works
 CSU: Coppin State University
 DJS: Department of Juvenile Services
 DNR: Department of Natural Resources
 DHMH: Department of Health and Mental Hygiene
 DPSCS: Department of Public Safety and Correctional Services
 DSP: Department of State Police
 FSU: Frostburg State University
 MCCBL: Maryland Consolidated Capital Bond Loan

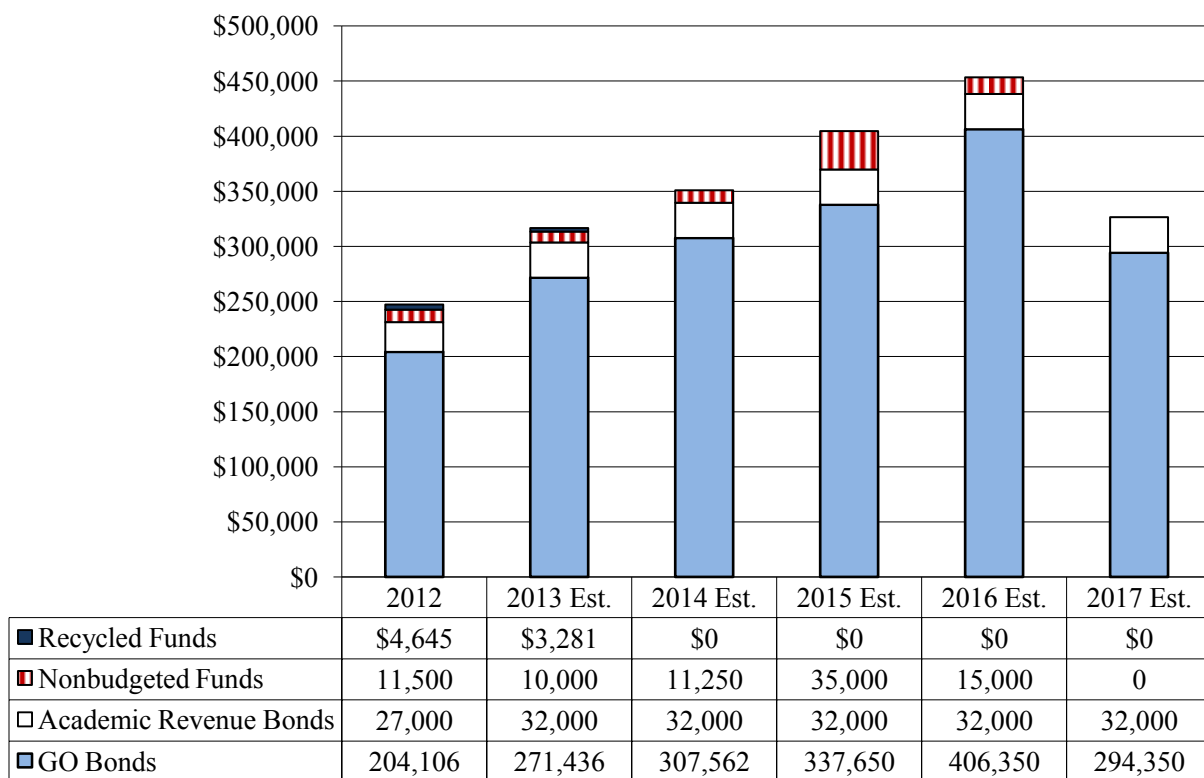
MDA: Maryland Department of Agriculture
 MHEC: Maryland Higher Education Commission
 MISC: miscellaneous
 MSU: Morgan State University
 SU: Salisbury University
 TU: Towson University
 UMBC: University of Maryland Baltimore County
 UMCP: University of Maryland, College Park
 USM: University System of Maryland Office

Note: The proposed pre-authorization for the MHEC Community College Grant Program would allow for the split funding of community college projects started last session by the legislature. This year's list includes \$11.7 million for the Cecil College Engineering and Math Building; \$1.1 million for the Anne Arundel Community College Administration Building Renovation and Expansion; \$12.95 million for the Community College of Baltimore County Catonsville F Building Renovation and Expansion; and \$4.7 million for the Harford Community College New Nursing and Allied Health Building.

Higher Education

The fiscal 2013 capital program for all segments of higher education is \$309.6 million, including GO bonds and ARBs. Of the total funding, four-year public institutions receive \$251.3 million, and independent colleges receive \$14.0 million. Community colleges, including Baltimore City Community College, receive \$44.3 million in fiscal 2013. The *Capital Improvement Program* (CIP), after legislative changes to the fiscal 2013 capital budget, shows \$1.617 billion in State capital spending for higher education projects from fiscal 2013 through 2017 all funds. **Exhibit A-2.8** shows the fiscal 2012 and 2013 legislative appropriation for higher education capital projects and the funds anticipated in the CIP for fiscal 2014 through 2017. **Exhibit A-2.9** shows the fiscal 2013 capital funding by institution.

Exhibit A-2.8
Higher Education Authorized and Planned Out-year Capital Funding
Fiscal 2012-2017
(\$ in Thousands)



GO: general obligation

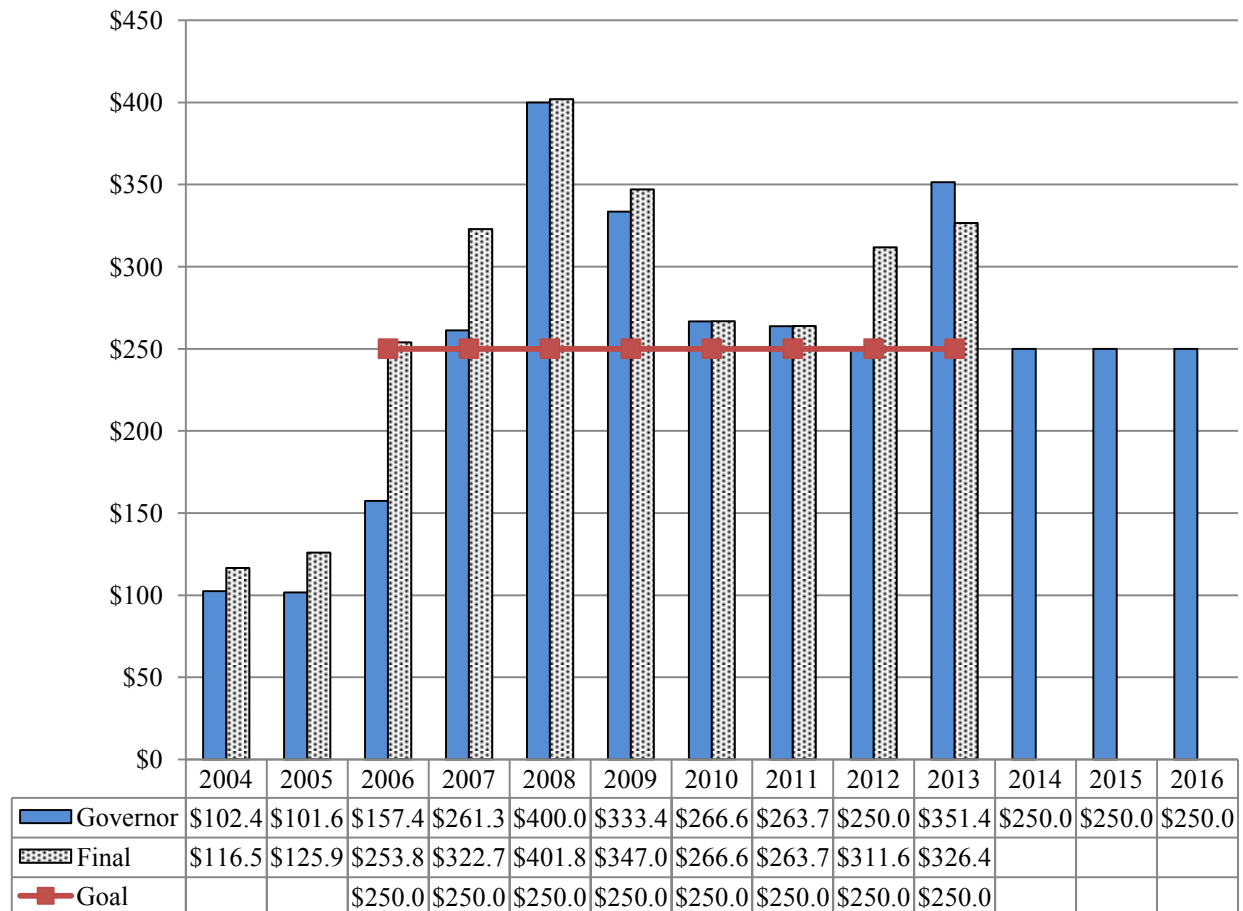
Exhibit A-2.9
Fiscal 2013 Higher Education Capital Funding by Institution
(\$ in Thousands)

<u>Institution</u>	<u>Capital Funding</u>
University of Maryland, Baltimore	\$4,672
University of Maryland, College Park	48,035
Towson University	11,700
Coppin State University	38,775
University of Baltimore	4,037
Bowie State University	5,266
Salisbury University	1,900
University System of Maryland – Facility Renewal	27,000
University of Maryland Eastern Shore	1,150
Frostburg State University	44,550
University of Maryland Baltimore County	34,225
Morgan State University	29,685
Independent Colleges	14,000
Community Colleges	44,315
St. Mary's College of Maryland	310
Total	\$309,620

School Construction

The fiscal 2013 capital budget includes \$326.4 million in GO bonds for public school construction, of which \$25.0 million is restricted to fund projects that improve the energy efficiency of schools including renewable energy systems. The local school systems requested approximately \$576.2 million for fiscal 2013, of which \$444.5 million is eligible for State funding. The Public School Facilities Act of 2004 (Chs. 306 and 307) established a State goal to provide \$2.0 billion in State funding over eight years to address school construction needs, or \$250.0 million per year from fiscal 2006 to 2013. Fiscal 2013 will be the eighth consecutive year that the goal has been met or exceeded, with the State providing a total of \$2.48 billion for school construction since fiscal 2006, as illustrated in **Exhibit A-2.10**.

Exhibit A-2.10
Public School Construction Funding
 (\$ in Millions)



Aging Schools and Qualified Zone Academy Bond Programs

The Aging Schools Program is funded with GO bond funds in fiscal 2013. The capital budget as passed by the General Assembly includes \$31.1 million in GO bonds allocated as grants to county boards of education as provided for under § 5-206 of the Education Article, as shown in **Exhibit A-2.11**.

Exhibit A-2.11
Aging Schools Program

<u>County</u>	<u>FY 2013</u>	<u>Add \$25 M</u>	<u>Total</u>
Allegany	\$97,791	\$400,193	\$497,984
Anne Arundel	506,039	2,070,874	2,576,913
Baltimore City	1,387,926	5,679,842	7,067,769
Baltimore	874,228	3,577,625	4,451,853
Calvert	38,292	156,703	194,996
Caroline	50,074	204,919	254,993
Carroll	137,261	561,717	698,978
Cecil	96,024	392,962	488,986
Charles	50,074	204,919	254,993
Dorchester	38,292	156,703	194,996
Frederick	182,622	747,349	929,972
Garrett	38,292	156,703	194,996
Harford	217,379	889,586	1,106,966
Howard	87,776	359,208	446,984
Kent	38,292	156,703	194,996
Montgomery	602,652	2,466,246	3,068,898
Prince George's	1,209,428	4,949,370	6,158,798
Queen Anne's	50,074	204,919	254,993
St. Mary's	50,074	204,919	254,993
Somerset	38,292	156,703	194,996
Talbot	38,292	156,703	194,996
Washington	134,904	552,072	686,976
Wicomico	106,627	436,353	542,980
Worcester	38,292	156,703	194,996
Total	\$6,109,000	\$25,000,000	\$31,109,000

Public school construction funding is further supplemented with \$15.3 million of QZABs authorized in *Senate Bill 153 (passed)*. QZABs may be used in schools located in federal Enterprise or Empowerment Zones or in schools in which 35% of the student population qualifies for free or reduced price meals. QZAB funds are distributed to local school systems through competitive grants. However, *Senate Bill 153* makes the Breakthrough Center and public charter schools eligible for QZAB distributions, as was the case with the QZAB bill from the 2011 session.

Transfer Tax

The property transfer tax is the primary funding source for State land conservation programs. The Governor proposed the transfer of \$96.9 million in special funds to the general fund through the BRFA of 2012. This was comprised of \$65.5 million in fiscal 2013 transfer tax special fund appropriation from programs that purchase conservation easements and acquire land and from programs for capital development, as well as \$31.4 million in fiscal 2013 unallocated revenues. The Governor proposed to replace a portion of the fiscal 2013 transfer tax special fund appropriation with GO bond authorizations in fiscal 2013 and pre-authorizations in fiscal 2014 and 2015. The General Assembly agreed in concept with the transfer but reduced the fiscal 2013 GO bond authorization replacement funding programmed to purchase conservation easements and acquire land. Since the BRFA of 2012 did not pass, and fiscal 2013 replacement GO bond funding for POS – Capital Development projects was not reduced, the fiscal 2013 funding for the Natural Resources Development Fund and the Critical Maintenance Program is higher than originally planned.

With the exception of POS – Local, there are fiscal 2014 and 2015 GO bond pre-authorizations in the MCCBL of 2012 for the programs that purchase conservation easements and acquire land in order to replace funding for two-thirds of the fiscal 2013 transfer tax special funds that were to be transferred to the general fund. POS – Local is fully funded by additional pre-authorizations for fiscal 2014 and 2015. **Exhibit A-2.12** shows the fiscal 2013 allocation of funding for programs traditionally funded with transfer tax revenue. **Exhibit A-2.13** shows the fiscal 2013 allocation of GO bonds provided for the State's land acquisition and land easement programs.

Exhibit A-2.12
Programs Traditionally Funded with Transfer Tax Revenue
Fiscal 2013
(\$ in Millions)

	<u>Transfer Tax Special Funds</u>	<u>Other Special Funds</u>	<u>Federal</u>	<u>GO Bonds</u>	<u>Total</u>
Department of Natural Resources					
Program Open Space					
State ¹	\$16.7	\$0.0	\$3.0	\$14.1	\$33.8
Local ²	13.6	0.0	0.0	46.6	60.2
Capital Development ³	8.2	0.0	0.0	21.0	29.2
Rural Legacy Program ⁴	12.8	0.0	0.0	5.6	18.4
Heritage Conservation Fund	1.7	0.0	0.0	0.0	1.7
Department of Agriculture					
Agricultural Land Preservation ⁵	16.3	8.8	0.0	8.7	33.7
Total	\$69.2	\$8.8	\$3.0	\$96.0	\$176.9

GO: general obligation

Note: Numbers may not sum to total due to rounding. The Governor's plan was to reduce \$96.9 million in transfer tax special fund appropriation contingent upon the transfer of the funding to the general fund through the Budget Reconciliation and Financing Act (BRFA) of 2012. This funding would have been comprised of the following: Program Open Space (POS) – State (\$14.7 million), POS – Local (\$13.6 million), POS – Capital Development (\$8.2 million), Rural Legacy Program (\$12.8 million), Agricultural Land Preservation (\$16.3 million), and unallocated revenues from fiscal 2013 (\$31.4 million). The BRFA of 2012 did not pass, and so the fiscal 2013 transfer tax special funds are reflected above.

¹ The POS – State funding reflects \$16.7 million in special funds from the transfer tax for the purchase of conservation easements and acquisition of land (\$13.0 million), the Baltimore City Direct Grant (\$1.5 million) operating expenses per the BRFA of 2011 (\$1.2 million), and land acquisition costs that are not general obligation (GO) bond eligible (\$1.0 million). The \$3.0 million in federal funding reflects estimated revenue appropriations from three separate federal grant sources. The \$14.1 million in GO bond authorization reflects an additional \$1.3 million for the Baltimore City Direct Grant and a total of \$12.8 million in replacement of transfer tax transferred to the general fund comprised of funding transferred before fiscal 2011 (\$1.6 million), in fiscal 2011 (\$1.4 million), from fiscal 2010 overattainment (\$2.6 million), and in fiscal 2012 (\$7.2 million). There is an additional \$15.1 million in GO debt pre-authorized for fiscal 2014 and \$7.9 million pre-authorized for fiscal 2015 to replace transfers to the general fund.

² The POS – Local funding reflects \$13.6 million in special funds from the transfer tax for the purchase of conservation easements, and acquisition of land, and development of recreational facilities. The \$46.6 million in GO bond authorization reflects the replacement of transfer tax transferred to the general fund comprised of funding transferred before fiscal 2011 (\$36.4 million), from fiscal 2010 overattainment (\$3.2 million), and in fiscal 2012 (\$6.9 million). There is an additional \$17.8 million in GO debt pre-authorized for fiscal 2014 and \$10.9 million pre-authorized for fiscal 2015 to replace transfers to the general fund.

³ The Capital Development funding reflects \$8.2 million in transfer tax special funds, which is comprised of \$4.2 million for the Natural Resources Development Fund and \$4.0 million for the Critical Maintenance Program. The \$21.0 million GO bond authorization reflects \$10.9 million for the Natural Resources Development Fund and \$10.1 million for the Critical Maintenance Program. Therefore, the Natural Resources Development Fund received a total of \$15.0 million and the Critical Maintenance Program a total of \$14.1 million.

⁴ The Rural Legacy Program funding reflects \$12.8 million in transfer tax special funds and \$5.6 million in GO bond authorization. The GO bond authorization reflects the replacement of transfer tax transferred to the general fund comprised of funding transferred in fiscal 2011 (\$0.6 million), from fiscal 2010 overattainment (\$0.4 million), and in fiscal 2012 (\$4.6 million). There is an additional \$9.5 million in GO debt pre-authorized for fiscal 2014 and \$4.9 million for fiscal 2015 to replace transfers to the general fund.

⁵ The Agricultural Land Preservation funding reflects \$16.3 million in transfer tax special funds and \$8.8 million in other special funds, primarily from county funds. The GO bond authorization of \$8.7 million reflects the replacement of transfer tax transferred to the general fund comprised of funding transferred from fiscal 2010 overattainment (\$1.5 million), and in fiscal 2012 (\$7.2 million). There is an additional \$12.7 million in GO debt pre-authorized for fiscal 2014 and \$6.1 million for fiscal 2015 to replace transfers to the general fund.

Exhibit A-2.13
Land Acquisition/Easement Program GO Bond Funding

<u>Program</u>	<u>Time Period</u>	<u>Allowance FY 2013</u>	<u>Final FY 2013</u>	<u>Difference</u>
POS – State	Prior Transfers	\$1.600	\$1.600	\$0.000
	FY 2011 Transfers	1.393	1.393	0.000
	FY 2012 Transfers	7.193	7.193	0.000
	FY 2010 Overattainment	2.606	2.606	0.000
	FY 2013 Transfers	4.908	0.000	-4.908
	<i>Subtotal</i>	<i>\$17.700</i>	<i>\$12.792</i>	<i>-\$4.908</i>
POS – Local	Prior Transfers	\$36.401	\$36.401	\$0.000
	FY 2011 Transfers	0.000	0.000	0.000
	FY 2012 Transfers	6.947	6.947	0.000
	FY 2010 Overattainment	3.239	3.239	0.000
	FY 2013 Transfers	4.522	0.000	-4.522
	<i>Subtotal</i>	<i>\$51.109</i>	<i>\$46.587</i>	<i>-\$4.522</i>
Rural Legacy	FY 2011 Transfers	\$0.602	\$0.602	\$0.000
	FY 2012 Transfers	4.589	4.589	0.000
	FY 2010 Overattainment	0.431	0.431	0.000
	FY 2013 Transfers	4.267	0.000	-4.267
	FY 2013 Statutory Amount	5.000	0.000	-5.000
	<i>Subtotal</i>	<i>\$14.889</i>	<i>\$5.622</i>	<i>-\$9.267</i>
MALPF	FY 2012 Transfers	\$7.236	\$7.236	\$0.000
	FY 2010 Overattainment	1.470	1.470	0.000
	FY 2013 Transfers	5.418	0.000	-5.418
	<i>Subtotal</i>	<i>\$14.124</i>	<i>\$8.706</i>	<i>-\$5.418</i>
Tobacco Transition	FY 2013	\$1.894	\$1.894	\$0.000
	<i>Subtotal</i>	<i>\$1.894</i>	<i>\$1.894</i>	<i>\$0.000</i>
Total		\$99.716	\$75.601	-\$24.115

GO: general obligation

MALPF: Maryland Agricultural Land Preservation Foundation

POS: Program Open Space

Note: The Maryland Consolidated Capital Bond Loan (MCCBL) of 2012 included \$99.7 million of GO bond funding for the State's land acquisition and easement purchase programs. This funding reflects phased and multi-year replacement for both prior year transfer tax diversions to the general fund and partial replacement for fiscal 2013 transfer tax revenues proposed to be diverted to the general fund in SB 152 – the Budget Reconciliation and Financing Act (BRFA) of 2012 – which failed. With the failure of the BRFA of 2012, the fiscal 2013 transfer tax revenue remains with the programs according to the statutory formula. While this would result in an “overfunding” for the Stateside and Local POS, Rural Legacy, and MALPF based on the three-year GO bond replacement plan included in the MCCBL of 2012 (reflecting both fiscal 2013 GO bond replacement as well as pre-authorizations included in the MCCBL of 2012 for fiscal 2014 and 2015), the final actions on the MCCBL of 2012 resulted in the deletion of the \$19.1 million of planned GO bond replacement for POS (Stateside and Local), Rural Legacy, and MALPF. Instead these authorizations were used to fund shovel-ready projects, of which \$14.6 million was directed to environmental and natural resources projects. The MCCBL of 2012 includes \$4.0 million and \$4.2 million, respectively, of GO bond replacement to the Department of Natural Resources' Critical Maintenance Program and Natural Resources Development Fund which results in \$8.2 million of “overfunding” from what was intended from the transfer tax revenue diversion and GO bond replacement plan embodied in the BRFA and MCCBL of 2012, as introduced. The \$4.5 million for Local POS, while not provided for in fiscal 2013, was added to the out-year pre-authorizations (the out-year pre-authorizations provided \$21.4 million in each of fiscal 2014 and 2015 to complete the replacement funding of the transfer tax despite the revenues not being transferred to the general fund due to the failure of the BRFA of 2012).

State Aid to Local Government

Overview

State aid allocations for fiscal 2013 are impacted by the failure of *Senate Bill 152 (failed)*, the Budget Reconciliation and Financing Act (BRFA) of 2012; and *Senate Bill 523 (failed)*, the State and Local Revenue and Financing Act of 2012. This legislation in conjunction with the State budget bill comprised the General Assembly's fiscal 2013 budget plan. The conference committees for *Senate Bill 152* and *Senate Bill 523* reached agreement on the legislation, but both bills failed to pass on the final day of the legislative session. The budget bill includes reductions impacting State aid that are contingent on the failure of *Senate Bill 523* and a specific provision of *Senate Bill 152*. With the failure of the legislation, the contingent reductions go into effect unless modified by subsequent action of the General Assembly. This summary of State aid to local governments incorporates the contingent reductions and compares State aid amounts to the level of funding that would have resulted from the passage of *Senate Bill 152* and *Senate Bill 523* as amended by the respective conference committees.

State aid to local governments will total \$6.6 billion in fiscal 2013, representing a \$75.3 million increase over the amount provided in the prior year. This funding level is slightly lower than the amount established in the conference committee plan which was not adopted by the General Assembly. Under the conference committee plan, local governments would have received \$6.7 billion in funding in fiscal 2013, a \$136.7 million increase over the prior year.

Exhibit A-3.1 compares State aid to local governments under the conference committee plan and the final legislative action. Under the conference committee plan, public schools would have received \$137.0 million in additional funding in fiscal 2013. However, due to the contingent reductions required by the failure to adopt *Senate Bill 152*, overall State funding for public schools will only increase by \$1.9 million in fiscal 2013. State aid increases for county and municipal governments are also reduced from \$70.4 million under the conference committee plan to \$27.4 million. Due to the contingent reductions required by the failure to adopt *Senate Bill 523*, State funding for local community colleges will decrease by \$18.2 million in fiscal 2013, instead of increasing by \$1.7 million as provided under the conference committee plan. **Exhibit A-3.2** shows the change in State aid for each county in fiscal 2013 under both the conference committee plan and the final legislative action. **Exhibit A-3.3** shows the State aid actions resulting from the failure to pass both *Senate Bill 152* and *Senate Bill 523*; while **Exhibit A-3.4** shows the impact by county for each affected program.

Exhibit A-3.1
State Aid by Governmental Entity
Conference Committee Plan Compared to Final Legislative Action
(\$ in Millions)

	<u>FY 2012</u>	<u>Conference¹</u> <u>FY 2013</u>	<u>Difference</u>	<u>Percent</u> <u>Difference</u>	<u>Final Action²</u> <u>FY 2013</u>	<u>Difference</u>	<u>Percent</u> <u>Difference</u>
Public Schools	\$4,948.7	\$5,085.7	\$137.0	2.8%	\$4,950.5	\$1.9	0.0%
Libraries	48.8	49.7	0.9	1.9%	49.7	0.9	1.9%
Community Colleges	230.4	232.1	1.7	0.7%	212.2	-18.2	-7.9%
Local Health Departments	38.3	37.3	-1.0	-2.6%	37.3	-1.0	-2.6%
Counties/Municipalities	387.5	458.0	70.4	18.2%	415.0	27.4	7.1%
Subtotal – Direct Aid	\$5,653.7	\$5,862.8	\$209.1	3.7%	\$5,664.8	\$11.0	0.2%
Retirement Payments	882.2	809.8	-72.4	-8.2%	946.4	64.2	7.3%
Total	\$6,535.9	\$6,672.6	\$136.7	2.1%	\$6,611.2	\$75.3	1.2%

¹ Conference Committee Plan includes funding under the Conference Committee Reports for [*Senate Bill 152*](#) (Budget Reconciliation and Financing Act) and [*Senate Bill 523*](#) (State and Local Revenue and Financing Act).

² Final Legislative Action includes reductions based on the failure to enact [*Senate Bill 152*](#) and [*Senate Bill 523*](#).

Exhibit A-3.2
Change in State Aid to Local Governments
Conference Committee Plan Compared to Final Legislative Action

<u>County</u>	<u>FY 2012</u>	<u>Conference FY 2013</u>	<u>Percent Difference</u>	<u>Contingent Actions</u>	<u>Final Action FY 2013</u>	<u>Percent Difference</u>
Allegany	\$106,044,073	\$104,440,029	-1.5%	-\$1,570,552	\$102,869,477	-3.0%
Anne Arundel	421,227,842	445,000,292	5.6%	329,045	445,329,337	5.7%
Baltimore City	1,191,052,679	1,215,653,723	2.1%	-31,213,456	1,184,440,267	-0.6%
Baltimore	698,504,038	717,805,272	2.8%	6,543,261	724,348,533	3.7%
Calvert	104,933,302	103,493,234	-1.4%	466,180	103,959,414	-0.9%
Caroline	53,025,202	55,972,462	5.6%	-219,287	55,753,175	5.1%
Carroll	179,749,241	177,815,021	-1.1%	1,087,295	178,902,316	-0.5%
Cecil	126,804,294	126,811,009	0.0%	2,131,544	128,942,553	1.7%
Charles	192,829,585	192,283,075	-0.3%	54,941	192,338,016	-0.3%
Dorchester	41,458,185	42,989,611	3.7%	41,675	43,031,286	3.8%
Frederick	272,907,823	276,489,995	1.3%	-968,322	275,521,673	1.0%
Garrett	34,883,107	34,154,735	-2.1%	-1,310,210	32,844,525	-5.8%
Harford	262,680,088	257,178,571	-2.1%	4,796,524	261,975,095	-0.3%
Howard	298,823,692	301,449,090	0.9%	4,716,021	306,165,111	2.5%
Kent	13,903,464	13,967,607	0.5%	176,321	14,143,928	1.7%
Montgomery	808,681,776	825,362,809	2.1%	-8,025,720	817,337,089	1.1%
Prince George's	1,075,599,829	1,119,485,906	4.1%	-33,761,184	1,085,724,722	0.9%
Queen Anne's	42,755,529	42,763,562	0.0%	447,198	43,210,760	1.1%
St. Mary's	113,310,533	115,630,567	2.0%	2,177,296	117,807,863	4.0%
Somerset	34,212,622	34,488,306	0.8%	-452,134	34,036,172	-0.5%
Talbot	18,630,691	19,073,266	2.4%	551,819	19,625,085	5.3%
Washington	187,200,010	190,495,135	1.8%	2,477,621	192,972,756	3.1%
Wicomico	140,586,142	146,085,869	3.9%	-209,500	145,876,369	3.8%
Worcester	32,800,039	33,019,228	0.7%	1,242,538	34,261,766	4.5%
Unallocated	83,278,498	80,689,635	-3.1%	-10,946,386	69,743,249	-16.3%
Total	\$6,535,882,284	\$6,672,598,009	2.1%	-\$61,437,474	\$6,611,160,536	1.2%

Exhibit A-3.3
State Aid Contingent Actions Due to the Failure of *Senate Bill 152* and *Senate Bill 523*
Fiscal 2013
(\$ in Millions)

Actions Resulting from the Failure to Pass *Senate Bill 152* (Budget Reconciliation and Financing Act)

Restore State Funding for Teachers Retirement Payments	\$136.6
Increase Local Program Open Space Grants	13.6
Eliminate Geographic Cost of Education Index	-128.8
Eliminate Proposed Teacher Retirement Supplemental Grants	-24.6
Eliminate Targeted Local Law Enforcement Grants	-18.0
Reduce Disparity Grants by 10%	-12.0
Eliminate Senator Amoss Fire and Rescue Aid Enhancement	-2.0
Eliminate Hold Harmless Grant for Garrett County Public Schools	-1.2
Eliminate Quality Teacher Incentives/National Board Certification Fees	-5.2
<i>Subtotal</i>	<i>-\$41.5</i>

Actions Resulting from the Failure to Pass *Senate Bill 523* (State and Local Revenue and Financing Act)

Reduce Community College Funding by 10%	-\$19.9
<i>Subtotal</i>	<i>-\$19.9</i>

Total Effect	-\$61.4
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Exhibit A-3.4

State Aid Actions Resulting from the Failure to Pass *Senate Bill 152* and *Senate Bill 523* – Fiscal 2013

County	Teachers Retirement	Program Open Space	GCEI Funding	Supplemental Grants ¹	Crime Grants	Disparity Grants	Amoss Fire Aid	Community College	Other Grants ²	Total
Allegany	\$1,487,742	\$151,000	\$0	-\$1,632,106	\$0	-\$729,851	-\$43,919	-\$803,418	\$0	-\$1,570,552
Anne Arundel	11,493,684	1,634,000	-9,042,800	0	-295,855	0	-162,590	-3,297,394	0	329,045
Baltimore City	12,922,862	1,081,000	-22,396,367	-6,972,596	-7,908,419	-7,754,249	-185,687	0	0	-31,213,456
Baltimore	15,755,802	1,838,000	-5,478,127	-3,000,000	0	0	-232,934	-2,339,480	0	6,543,261
Calvert	2,835,938	163,000	-2,291,041	0	0	0	-40,000	-201,717	0	466,180
Caroline	793,934	71,000	0	-685,108	0	-213,178	-41,726	-144,209	0	-219,287
Carroll	4,005,782	365,000	-2,535,378	0	0	0	-52,107	-696,002	0	1,087,295
Cecil	2,459,819	189,000	0	0	0	0	-41,146	-476,129	0	2,131,544
Charles	3,936,516	334,000	-3,498,074	0	0	0	-48,871	-668,630	0	54,941
Dorchester	656,543	62,000	0	-308,913	0	-202,269	-41,342	-124,344	0	41,675
Frederick	5,893,461	386,000	-6,379,612	0	0	0	-73,021	-795,150	0	-968,322
Garrett	664,714	76,000	0	-406,400	0	-213,127	-40,000	-230,388	-1,161,009	-1,310,210
Harford	5,529,741	546,000	0	0	0	0	-76,477	-1,202,740	0	4,796,524
Howard	9,821,066	971,000	-5,119,581	0	0	0	-79,927	-876,537	0	4,716,021
Kent	366,147	46,000	-137,992	0	0	0	-40,684	-57,151	0	176,321
Montgomery	27,227,553	2,460,000	-32,796,296	0	0	0	-261,473	-4,655,504	0	-8,025,720
Prince George's	19,554,579	2,092,000	-38,292,762	-9,628,702	-3,760,902	-2,169,477	-228,227	-1,327,693	0	-33,761,184
Queen Anne's	1,105,527	99,000	-558,377	0	0	0	-40,000	-158,952	0	447,198
St. Mary's	2,485,697	185,000	-226,253	0	0	0	-40,000	-227,148	0	2,177,296
Somerset	480,124	44,000	0	-381,999	0	-490,817	-41,781	-61,662	0	-452,134
Talbot	628,456	105,000	0	0	0	0	-43,153	-138,484	0	551,819
Washington	3,094,113	287,000	0	0	0	0	-46,323	-857,169	0	2,477,621
Wicomico	2,173,593	191,000	0	-1,567,837	-327,254	-219,704	-46,333	-412,966	0	-209,500
Worcester	1,271,561	188,000	0	0	0	0	-52,279	-164,744	0	1,242,538
Unallocated	0	0	0	0	-5,714,386	0	0	0	-5,232,000	-10,946,386
Total	\$136,644,954	\$13,564,000	-\$128,752,660	-\$24,583,662	-\$18,006,816	-\$11,992,672	-\$2,000,000	-\$19,917,609	-\$6,393,009	-\$61,437,474

GCEI: Geographic Cost of Education Index

¹Teacher Retirement Supplemental Grants.²Includes funding for Quality Teacher Incentives, National Board Certification Fees, and the Hold Harmless Grant for Garrett County Public Schools.

Changes by Program

As shown in Exhibit A-3.1, State aid for public schools, libraries, and county and municipal governments increase in fiscal 2013. State aid to community colleges decreases by \$18.2 million, and aid to local health departments decreases by \$1.0 million. As discussed above, State aid amounts are significantly impacted by the failure of *Senate Bill 152* and *Senate Bill 523* to pass during the 2012 legislative session. In recent years, the great majority of the annual increase in State aid is received by public schools. However, in fiscal 2013, State aid to public schools increases by \$1.9 million, while aid to county and municipal government increases by \$27.4 million. **Exhibit A-3.5** compares State aid for fiscal 2013, as it passed during the 2012 legislative session, to fiscal 2012 State aid.

Exhibit A-3.5 State Aid to Local Governments Fiscal 2012 Working Appropriation and Fiscal 2013 Final Legislative Action

<u>Program</u>	<u>2012</u>	<u>2013</u>	<u>Difference</u>
Foundation Aid	\$2,773,083,702	\$2,810,405,122	\$37,321,420
Supplemental Program	47,916,276	46,496,416	-1,419,860
Geographic Cost of Education Index	127,328,154	0	-127,328,154
Compensatory Education	1,083,838,457	1,146,261,309	62,422,852
Student Transportation – Regular	224,353,387	228,064,845	3,711,458
Student Transportation – Special Education	23,890,000	23,264,000	-626,000
Special Education – Formula	264,259,713	266,494,716	2,235,003
Special Education – Nonpublic Placements	112,770,182	113,897,886	1,127,704
Special Education – Infants and Toddlers	10,389,104	10,389,104	0
Limited English Proficiency Grants	162,699,226	177,405,509	14,706,283
Aging Schools	8,608,996	31,109,001	22,500,005
Quality Teacher Incentives	7,777,204	158,000	-7,619,204
Adult Education	6,933,622	6,933,622	0
Food Service	7,156,664	7,716,664	560,000
Out-of-county Foster Placements	5,842,000	5,410,989	-431,011
Head Start	1,800,001	1,800,002	1
Judy Hoyer Centers	10,575,000	10,575,000	0
Guaranteed Tax Base	50,063,544	44,205,671	-5,857,873
Other Programs	19,387,025	19,957,112	-570,087
Total Primary and Secondary Education	\$4,948,672,257	\$4,950,544,968	\$1,872,711

<u>Program</u>	<u>2012</u>	<u>2013</u>	<u>Difference</u>
Library Formula	\$32,987,938	\$33,664,772	\$676,834
Library Network	15,803,108	16,058,820	255,712
Total Libraries	\$48,791,046	\$49,723,592	\$932,546
Community College Formula	\$194,407,431	\$179,258,503	-\$15,148,928
Grants for ESOL Programs	4,380,729	5,397,957	1,017,228
Optional Retirement	15,409,000	17,104,001	1,695,001
Small College Grant/Allegany and Garrett Grant	3,916,669	3,869,010	-47,659
Other Community College Aid	12,329,284	6,601,040	-5,728,244
Total Community Colleges	\$230,443,113	\$212,230,511	-\$18,212,602
Highway User Revenue	\$146,926,008	\$162,984,602	\$16,058,594
Elderly and Handicapped Transportation Aid	4,305,938	4,305,938	0
Paratransit	2,926,702	2,926,702	0
Total Transportation	\$154,158,648	\$170,217,242	\$16,058,594
Police Aid	\$45,420,982	\$45,420,982	\$0
Fire and Rescue Aid	10,000,000	10,000,000	0
Vehicle Theft Prevention	1,610,000	0	-1,610,000
9-1-1 Grants	14,400,000	14,400,000	0
Community Policing	1,974,000	0	-1,974,000
Foot Patrol/Drug Enforcement Grants	4,228,210	0	-4,228,210
Law Enforcement Training Grants	50,000	0	-50,000
Stop Gun Violence Grants	928,478	0	-928,478
Violent Crime Grants	4,750,714	0	-4,750,714
State's Attorney Grant	1,959,195	2,809,195	850,000
Domestic Violence Grants	196,354	0	-196,354
War Room/Sex Offender Grant	1,445,313	0	-1,445,313
Annapolis/Salisbury Crime Grant	623,109	0	-623,109
School Vehicle Safety Grant	550,000	0	-550,000
Body Armor	49,088	0	-49,088
Total Public Safety	\$88,185,443	\$72,630,177	-\$15,555,266
Program Open Space	\$8,847,000	\$28,628,000	\$19,781,000
Critical Area Grants	265,900	263,900	-2,000
Total Recreation/Environment	\$9,112,900	\$28,891,900	\$19,779,000
Local Health Formula	\$38,272,819	\$37,283,484	-\$989,335

<u>Program</u>	<u>2012</u>	<u>2013</u>	<u>Difference</u>
Disparity Grant	\$119,747,040	\$107,934,045	-\$11,812,995
Payments in Lieu of Taxes	1,053,843	1,103,550	49,707
Video Lottery Terminal Impact Aid	10,333,310	28,854,100	18,520,790
Senior Citizens Activities Center	500,000	500,000	0
Statewide Voting Systems	4,455,755	1,769,317	-2,686,438
Teacher Retirement Supplemental Grant	0	0	0
Total Other Direct Aid	\$16,342,908	\$35,301,967	\$18,959,059
Total Direct Aid	\$5,653,726,174	\$5,664,757,886	\$11,031,712
Retirement – Teachers	\$832,978,012	\$892,190,255	\$59,212,243
Retirement – Libraries	16,559,768	17,032,759	472,991
Retirement – Community Colleges	32,618,330	37,179,636	4,561,306
Total Payments-in-behalf	\$882,156,110	\$946,402,650	\$64,246,540
Total State Assistance	\$6,535,882,284	\$6,611,160,536	\$75,278,252

ESOL: English for Speakers of Other Languages

Primary and Secondary Education

Foundation Program: The foundation program is the basic State education funding mechanism for public schools which ensures a minimum per pupil funding level and requires county governments to provide a local match. The formula is calculated based on a per pupil foundation amount and student enrollment. The per pupil foundation amount for fiscal 2013 is set at \$6,761. The student enrollment count used for the program totals 823,452 students. Enrollment for the formula is based on the September 30, 2011, full-time equivalent student enrollment count. Less affluent local school systems, as measured by assessable base and net taxable income, receive relatively more aid per pupil than wealthier school systems. The State provides funding for roughly 50% of the program's cost.

State aid under the foundation program will total \$2.8 billion in fiscal 2013, a \$37.3 million, or 1.3%, increase from the prior year. In addition, \$46.5 million in supplemental grants will be provided to nine local school systems. The supplemental grants were established during the 2007 special session to guarantee increases of at least 1.0% in State education aid for all local school systems during the two years, fiscal 2009 and 2010, that inflationary increases for the per pupil foundation amount were eliminated. Supplemental grants continued at fiscal 2010 levels in fiscal 2011, less a \$4.7 million reduction that recaptured overpayments to

eight local school systems due to a miscalculation in school system wealth bases in fiscal 2009. Fiscal 2012 supplemental grants remained at the fiscal 2011 level. However, the BRFA of 2011 limited decreases in direct education aid to 6.5% from fiscal 2011 to 2012, resulting in a \$779,300 grant to Allegany County and a \$640,600 grant to Garrett County for fiscal 2012. *Senate Bill 586/House Bill 660 (both failed)* would have resulted in a fiscal 2013 education grant of approximately \$1.2 million to Garrett County by limiting the annual decrease in specified education aid to 5.0%; a similar provision in the BRFA of 2012 would also have resulted in such a grant to Garrett County.

Geographic Cost of Education Index: This is a discretionary formula that provides additional State funds to local school systems where costs for educational resources are higher than the State average. Funding for the geographic cost of education index (GCEI) formula was provided in fiscal 2009 for the first time. Planned funding of GCEI for fiscal 2013 totaled \$128.8 million. Thirteen local school systems would receive funding from the GCEI formula under the plan. However, failure of the BRFA of 2012 results in no local funding through GCEI.

Compensatory Education: The compensatory education program provides additional funding based on the number of economically disadvantaged students. The formula recognizes disparities in local wealth by adjusting the grants per eligible student by local wealth. The formula is calculated based on 97.0% of the annual per pupil amount used in the foundation program and the number of students eligible for free and reduced-price meals. The State provides funding for 50.0% of the program's cost. State aid under the compensatory education program will total \$1.1 billion in fiscal 2013, representing a \$62.4 million, or 5.8%, increase over the prior year. The per pupil State funding amount for fiscal 2013 is set at \$3,279, and the student enrollment count used for the program totals 335,978.

Special Education: State aid for special education recognizes the additional costs associated with providing programs for students with disabilities. Most special education students receive services in the public schools; however, if an appropriate program is not available in the public schools, students may be placed in a private school offering more specialized services. The State and local school systems share the costs of these nonpublic placements.

The special education formula is calculated based on 74.0% of the annual per pupil foundation amount and the number of special education students from the prior fiscal year, with the State providing funding for 50.0% of the program's cost. The per pupil State funding amount for fiscal 2013 is set at \$2,502, and the student enrollment count used for the program totals 102,649. State funding for public special education programs will total \$266.5 million in fiscal 2013, representing a \$2.2 million, or a 0.8% increase over the prior year. Funding for nonpublic placements increases from \$112.8 million in fiscal 2012 to \$113.9 million in fiscal 2013. A local school system pays its respective local share of the basic cost of education for each nonpublic placement plus two times the total basic cost of education in the system, as well as 30.0% of any expense above that sum. The State pays 70.0% of the costs above the base local funding.

Student Transportation: The State provides grants to assist local school systems with the cost of transporting students to and from school. The grants consist of three components: regular student ridership funds; special education student ridership funds; and additional enrollment funds. The regular student ridership funds are based on the local school system's grant in the previous year increased by inflation. The BRFA of 2010 set the inflation rate for student transportation grants at 1.0% for fiscal 2011 through 2015 and reduced the minimum annual inflation adjustment from 3.0 to 1.0%. Local school systems with enrollment increases receive additional funds. The special education student ridership funds are based on a \$1,000 per student grant for transporting disabled students. The fiscal 2013 State budget includes \$228.1 million for regular transportation services and \$23.3 million for special transportation services. This represents a \$3.1 million, or 1.2%, increase from the prior year.

Limited English Proficiency: The State provides grants based on non- and limited-English proficient (LEP) students using a definition consistent with federal guidelines. The LEP formula is based on 99% of the annual per pupil foundation amount, with the State providing funding for 50% of the program's cost. The fiscal 2013 grant per LEP student is \$3,347. State funding for the program will total \$177.4 million in fiscal 2013, representing a \$14.7 million, or 9%, increase over the prior year. The number of LEP students in Maryland totals 51,600 for the 2011-2012 school year.

Guaranteed Tax Base Program: Jurisdictions with less than 80% of statewide per pupil wealth that contributed more than the minimum required local share under the foundation program in the prior year receive funding under this program. Grants are based on local support for education relative to local wealth. A grant cannot exceed 20% of the per pupil foundation amount. Nine local school systems will qualify for grants totaling \$44.2 million in fiscal 2013.

Aging Schools Program: The Aging Schools Program provides State funding to local school systems for improvements, repairs, and deferred maintenance of public school buildings. These repairs are generally not covered by the capital school construction program and are necessary to maintain older public schools. State funding for the Aging Schools Program will total \$31.1 million in fiscal 2013, a \$22.5 million increase over the prior year.

Judy Hoyer and Head Start Programs: These programs provide financial support for the establishment of centers that provide full-day, comprehensive, early education programs, and family support services that will assist in preparing children to enter school ready to learn. This program also provides funding to support childhood educators, and statewide implementation of an early childhood assessment system. The fiscal 2013 State budget includes \$7.6 million for Judy Center grants, \$3.0 million for school readiness and program accreditation, and \$1.8 million for Head Start programs.

Quality Teacher Incentives: The State provides salary enhancements for teachers obtaining national certification and a stipend for teachers and other nonadministrative certificated school employees working in low-performing schools. The planned fiscal 2013 State budget included \$4.2 million for quality teacher incentives; \$96,000 for the Governor's Teacher

Excellence Award Program which distributes awards to teachers for outstanding performance; and \$1.1 million for teacher quality and national certification grants. However, due to the failure of the BRFA of 2012, the fiscal 2013 budget provides only the \$96,000 for Governor’s Teacher Excellence Award Program as well as \$62,000 for national certification, or a total of \$158,000.

Food and Nutrition Services: In addition to federal funds provided under the School Lunch Act of 1946, the State provides matching funds to support food and nutrition programs for low-income children. The programs provide free and reduced price breakfasts, lunches, and snacks to public or private nonprofit school students. All public schools in the State are required to provide subsidized or free nutrition programs for eligible students. The fiscal 2013 State budget includes \$7.7 million for food and nutrition services, an increase of \$560,000.

Infants and Toddlers Program: This program involves a statewide community-based interagency system of comprehensive early intervention services for eligible children who are less than three years old. Eligible children include those who have developmental delays or disabilities. State funding for infants and toddlers programs will total \$10.4 million in fiscal 2013, the same amount that was provided in each of the past four years.

Adult Education: The State provides funding for adult education services, including adult secondary education, an external diploma program, tutoring, and family literacy instruction. The State budget includes \$6.9 million for adult education programs in fiscal 2013, the same amount that was provided in the prior year.

School-based Health Centers: The fiscal 2013 State budget includes \$2.6 million (the same amount as the prior year) for school-based health centers, which provide primary medical care as well as social, mental health, and health education services for students and their families.

Healthy Families/Home Visits Program: The Healthy Families program aims to promote positive parenting to enhance child health and development to prevent child abuse and neglect through home visits prenatally through early childhood. The program had been funded through federal Temporary Assistance for Needy Families funds. However, general funds totaling \$4.6 million will be used in fiscal 2012 and 2013.

Science and Math Education Initiative: This program includes summer sessions for teachers and an equipment incentive fund to strengthen science and math education. The State budget includes \$2.2 million for this initiative in fiscal 2013, the same amount provided in the prior year.

Teachers’ Retirement Payments: The State pays 100.0% of the employer’s share of retirement costs for local school system employees in the Teachers’ Retirement and Pension Systems maintained by the State. Rather than distributing the aid to the local boards of education and billing them for the retirement contributions, the State appropriates a lump-sum payment to the retirement system “on behalf of” the local boards. Teachers’ retirement payments will total \$892.2 million in fiscal 2013, representing a \$59.2 million, or 7.1%, increase over the prior year.

The BRFA of 2012, which failed to pass, phased-in over four years the requirement that local school systems pay a portion of teacher retirement costs. Counties were required to increase their appropriations to the local school boards to fund these teacher retirement costs. The local government share in fiscal 2013 totaled \$136.6 million. For a more detailed discussion of this issue, see the subpart “Primary and Secondary” within Part L – Education of this *90 Day Report*.

Local Libraries

Minimum Per Capita Library Program: The State provides assistance to public libraries through a formula that determines the State and local shares of a minimum per capita library program. The minimum library program is specified in statute. Overall, the State provides 40.0% of the minimum program, and the counties provide 60.0%. The State/local share of the minimum program varies by county depending on local wealth. The BRFA of 2011 set per capita funding for local library grants at \$14 through fiscal 2016 and phases the per capita grant up to \$15 in fiscal 2019. The fiscal 2013 State budget includes \$33.7 million for local library grants, a 2.1% increase.

State Library Network: The network consists of the Central Library of the Enoch Pratt Free Library System in Baltimore City, three regional resource centers, and metropolitan cooperative service programs. The Enoch Pratt Free Library operates as the designated State Library Resource Center. In addition to the State center, regional resource centers serve Western Maryland (Hagerstown), Southern Maryland (Charlotte Hall), and the Eastern Shore (Salisbury). The BRFA of 2011 set per capita funding for regional resource centers at \$6.75 through fiscal 2016 and increases the rate to reach \$7.50 in fiscal 2019. Similarly, per capita funding for the State Library Resource Center is set at \$1.67 through fiscal 2016 and increases to \$1.85 in fiscal 2019. State funding in fiscal 2013 will total \$9.6 million for the State Library Resource Center and \$6.4 million for the regional centers.

Retirement Payments: The State pays 100.0% of the employers’ share of retirement costs for local library employees in the Teachers’ Retirement and Pension Systems maintained by the State. State funding for library retirement payments will total \$17.0 million in fiscal 2013, a 2.9% increase from the prior year.

Community Colleges

Senator John A. Cade Funding Formula: The Senator Cade funding formula is based on several factors including the amount of State aid received in the previous year and enrollment. There is a hold harmless provision to ensure that no community college receives less funding than in the prior year. The BRFA of 2010 reduced funding under the Cade formula to \$194.4 million in fiscal 2011 and 2012 and reset the phase-in of scheduled formula enhancements. The BRFA of 2011 did not impact fiscal 2012 funding but revised the phase-in of formula enhancements. Under the formula, three counties would have received an increase in

fiscal 2013; however, the General Assembly reduced these amounts to level fund the formula grants.

In addition, local community colleges received additional funding in fiscal 2012 if the colleges held tuition rate increases to 3% or less for the 2011-2012 academic year. All community colleges held tuition growth to 3% or less and received a share of the additional funding which totaled \$4.8 million. Under the State budget, the community colleges continue to receive this funding in fiscal 2013.

The budget bill included a reduction in community college funding contingent on the failure of *Senate Bill 523*. With the failure of that legislation, there is a 10% or \$19.9 million reduction in State aid. Accordingly, community college funding under the Senator Cade formula will total \$179.3 million in fiscal 2013, a \$15.1 million decrease from the prior year.

Special Programs: State funding in fiscal 2013 will total \$3.3 million for the small college grants and \$0.6 million for the Allegany/Garrett counties unrestricted grants. Funding for statewide and regional programs will total \$6.6 million. The English as a Second Language program will receive \$5.4 million.

Retirement Payments: The State pays 100% of the employer's share of retirement costs for community college faculty in the Teachers' Retirement and Pension Systems maintained by the State. State funding for community college retirement payments will total \$37.2 million in fiscal 2013, a 14% increase. In addition, State funding for the optional retirement program will total \$17.1 million in fiscal 2013, representing a \$1.7 million, or 11%, increase.

Local Health Departments

The State provides funds to support the delivery of public health services in each of Maryland's 24 jurisdictions. These services include child health, communicable disease prevention, maternal health, family planning, environmental health, and administration of the departments. Due to declining State revenues, the fiscal 2010 appropriation for grants to local health departments was reduced from \$57.4 million to \$37.3 million by the Board of Public Works (BPW) in August 2009. Under the statute, funding would have increased to \$41.0 million in fiscal 2011; however, the BRFA of 2010 reduced the base appropriation for the targeted local health formula for fiscal 2011 and 2012 to \$37.3 million. The fiscal 2013 budget maintains funding at the \$37.3 million level.

County and Municipal Governments

Highway User Revenues: The State shares various transportation revenues, commonly referred to as highway user revenues (HUR), with the counties and municipalities. Due to declining State revenues, local highway user grants were significantly reduced in fiscal 2010 to \$163.5 million, with the State's general fund receiving a share of highway user revenues.

Prior to the fiscal 2010 reductions, Maryland local governments received 30.0% of HUR. Most recently, in accordance with the BRFA of 2011 (Chapter 397), from the \$1.65 billion in estimated fiscal 2012 HUR local aid was distributed as follows: \$123.8 million (7.5%) to Baltimore City; \$13.2 million (0.8%) to counties; and \$9.9 million (0.6%) to municipalities. In fiscal 2013, \$132.0 million (8.1%) is distributed to Baltimore City; \$24.4 million (1.5%) is distributed to counties; and \$6.5 million (0.4%) is distributed to municipalities. The remaining funds accrue to the Maryland Department of Transportation. Under the BRFA of 2011, other Transportation Trust Fund (TTF) revenues, primarily the TTF share of the State sales tax, were shifted to the general fund.

Other Transportation Aid: State funding for elderly/disabled transportation grants will total \$4.3 million in fiscal 2013, while State funding for paratransit grants will total \$2.9 million.

Police Aid Formula: Maryland's counties and municipalities receive grants for police protection through the police aid formula. The police aid formula allocates funds on a per capita basis, and jurisdictions with a higher population density receive greater per capita grants. Municipalities receive additional grants based on the number of sworn officers. The Maryland State Police recovers 30% of the State crime laboratories costs relating to evidence-testing services from each county's formula allocation. Due to declining State revenues, the fiscal 2010 appropriation for police aid was reduced from \$66.0 million to \$45.4 million by BPW in August 2009. The BRFA of 2010 limits the amount a local government may receive through the police aid formula in both fiscal 2011 and 2012 to the amount the jurisdiction receives in fiscal 2010. In fiscal 2013, police aid remains at the \$45.4 million level.

Public Safety Grants: The budget bill includes the targeted local law enforcement grants among those programs reduced contingent on the failure of the BRFA of 2012. Consequently, with the failure of the BRFA these grants will not be funded in fiscal 2013. Together, these grants total \$18.0 million. They include violent crime grants for Baltimore City and Prince George's County, police foot patrol and community policing grants for Baltimore City, a drug enforcement grant for Prince George's County, S.T.O.P. gun violence grants, school bus traffic enforcement grants, domestic violence grants, law enforcement and correctional officers training grants, Baltimore City war room, sex offender and compliance enforcement, vehicle theft prevention, and the body armor grants. The \$18.0 million total would also have included \$2.2 million provided through the Safe Streets program, which was slated to expand to several cities in fiscal 2013; only Annapolis and Salisbury received grants in fiscal 2012. However, \$2.5 million will be provided in fiscal 2013 to the Baltimore City State's Attorney Office to assist in the prosecution of gun offenses and repeat violent offenders, and \$350,000 will be provided to Prince George's County State's Attorney Office to prosecute violent, repeat and chronic offenders.

Fire, Rescue, and Ambulance Services: The State provides formula grants to the counties, Baltimore City, and qualifying municipalities for local and volunteer fire, rescue, and ambulance services. The grants are for equipment and renovation projects, not operating costs. The program is funded through the Maryland Emergency Medical System Operations Fund. An

additional \$2 million was provided through the BRFA of 2012 for fiscal 2013, however, due to failure of the BRFA, funding remains at \$10 million, the same amount provided in the prior year.

9-1-1 Emergency Systems Grant: The State imposes a 25-cent fee per month on telephone subscribers that is deposited into a trust fund that provides reimbursements to counties for improvements and enhancements to their 9-1-1 systems. Counties may only use the trust fund money to supplement their spending, not to supplant it. State funding to local 9-1-1 emergency systems will total \$14.4 million in fiscal 2013.

Program Open Space Grants: Under Program Open Space (POS), the State provides grants to local governments for land acquisition and the development of parks and recreation facilities. POS is funded from State transfer tax revenues; however, in recent years the transfer tax has been shifted to the State's general fund and POS grants have been funded with State general obligation bonds. The BRFA of 2012 would have directed transfer tax revenues to the State's general fund. The State capital budget bill, *Senate Bill 151 (passed)*, authorizes \$13.6 million in bond funds for local grants over several years. The failure of the BRFA of 2012 results in an additional \$13.6 million in funding, and a \$19.8 million increase in authorized open space grants. In addition, Baltimore City will receive \$1.5 million in special POS grant funding.

Horse Racing Impact Aid: To assist services and facilities for communities within two miles of the Pimlico racetrack and three miles of the Laurel racetrack, the State has provided impact aid for live racing. Also, the City of Bowie has received aid for each day training facilities are open at the Bowie Training Center. In addition, for each day wagering is conducted at a track where live racing is not held, there has been impact aid provided for simulcast wagering. However, the fiscal 2011 budget transferred \$500,000 of the \$1.2 million allocated for local impact aid to the general fund and the fiscal 2012 and 2013 budgets include no funding for horse racing impact aid.

Video Lottery Terminal Local Impact Grants: From the proceeds generated at video lottery terminal (VLT) facilities in the State, 5.5% is distributed in the form of local impact grants to local governments where video lottery facilities are located; 18.0% of which is distributed for 15 years (starting in fiscal 2012 and ending in fiscal 2027) to Baltimore City through the Pimlico Community Development Authority, except for \$1.0 million annually which is provided to Prince George's County for the community surrounding Rosecroft. VLT local impact grants total \$28.9 million in fiscal 2013. The significant increase reflects the planned June 2012 opening of the VLT facility in Anne Arundel County.

Disparity Grants: Disparity grants address the differences in the abilities of counties to raise revenues from the local income tax, which is the third largest revenue source for counties after State aid and property taxes. Through fiscal 2011, counties with per capita local income tax revenues less than 75.0% of the State's average received grants. Aid received by a county equaled the dollar amount necessary to raise the county's per capita income tax revenues to 75.0% of the State average. The BRFA of 2009 included a provision, beginning in fiscal 2011, that capped each county's funding under the program at the fiscal 2010 level. Under the BRFA of 2011, for fiscal 2012 only, the disparity grant is based on income tax revenues below 77.0% of

the State average, instead of 75.0%. This change solely benefits Prince George's County, which received \$8.8 million above the grant that would have resulted under previous law. Planned disparity grant funding totaled \$119.9 million in fiscal 2013, an \$180,000 or 0.2% increase from the prior year. However, due to failure of the BRFA of 2012, disparity grant funding totals \$107.9 million, a 9.9% decrease from the prior year.

Teacher Retirement Supplemental Grant: The BRFA of 2012 would have established this grant program, beginning fiscal 2013. Under the BRFA, grants totaling \$24.6 million would have been distributed to nine counties (including Baltimore City) in fiscal 2013 to help offset the impact of sharing teachers' retirement costs with the counties. However, because the BRFA did not pass, the grants are not provided.

Capital Grants and Capital Projects for State Facilities

Selected State Grants for Capital Projects

The State provides capital grants for public schools, community colleges, local jails, community health facilities, water quality projects, waterway improvements, homeless shelters, and other cultural, historical, and economic development projects. Projects are funded from either bond sales or current revenues. Part A lists projects in the counties authorized by the fiscal 2013 State operating and capital budgets. Projects at facilities that serve more than one county (such as regional community colleges or certain wastewater treatment plants) are included in each relevant county. The projects listed for the various loan programs are those currently anticipated for fiscal 2013. The actual projects funded and/or the amount of funding for specific projects could change depending on which projects are ready to move forward and final costs.

The fiscal 2013 budget includes \$326.4 million in general obligation bond funding for local school construction. As of the publication of this report, \$187.5 million of the total fiscal 2013 funding has been allocated to specific projects. These projects are listed in part A for each county.

Capital Projects for State Facilities Located in the County

Part B for each county shows capital projects, authorized by the fiscal 2013 operating and capital budgets, at State facilities and public colleges and universities by the county in which the facility is located. If a facility is located in more than one county, such as a State park, the total amount of the capital project is shown for all relevant counties. For each capital project, the total authorized amount is given, regardless of funding source, although federally funded projects are generally shown separately. For the universities, projects funded from both academic and auxiliary revenue bonds are included. The projects funded with auxiliary revenue bonds are those anticipated for fiscal 2013 but the actual projects funded could be different. This report does not include transportation projects.

Allegany County**A. Selected State Grants for Capital Projects****Public Schools**

Fort Hill High School – renovations (roof)	\$300,000
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Community Parks and Playgrounds

Constitution Park Pool	23,000
Frostburg Community Park	14,000

Chesapeake Bay Water Quality Projects

Evitts Creek Combined Sewer – overflow improvements	350,000
Jennings Run – sanitary sewer rehabilitation	875,000
Westernport Combined Sewer – overflow improvements	500,000

Water Supply Financial Assistance Program

Westernport – water distribution system replacement	530,000
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Other Projects

Allegany Museum	200,000
Friends Aware, Inc. – site and project development	250,000

B. Capital Projects for State Facilities in the County**Department of Natural Resources**

Western Region – public boating facilities improvements	\$50,000
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Maryland Environmental Service

Rocky Gap State Park – replace water treatment plant	3,644,000
Rocky Gap State Park – wastewater treatment plant (WWTP) improvements	341,000

University System of Maryland

Frostburg State – Center for Communications and Information Technology	44,550,000
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Anne Arundel County

A. Selected State Grants for Capital Projects

Public Schools

Annapolis Elementary School – construction	\$1,817,000
Annapolis High School – renovations (heating, ventilation, and air conditioning (HVAC))	900,000
Bodkin Elementary School – kindergarten addition	720,000
Broadneck High School – construction	706,000
Broadneck High School – science facilities	600,000
Central Middle School – construction	2,463,000
Chesapeake High School – renovations (HVAC)	1,892,000
Deale Elementary School – renovations (roof)	690,000
Folger McKinsey Elementary School – construction	1,100,000
Glen Burnie Park Elementary School – renovations (roof)	271,000
J. Albert Adams Academy – renovations (electrical)	58,000
Northeast High School – construction	3,914,000
Oak Hill Elementary School – kindergarten addition	882,000
Phoenix Annapolis @ Germantown Elementary School – construction	992,000
Point Pleasant Elementary School – construction	2,053,000
Severna Park Elementary School – kindergarten/pre-k addition	766,000
Solley Elementary School – renovations (electrical)	58,000

Public Libraries

Severna Park Library – renovation	50,000
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Anne Arundel Community College

Administration Building – renovation and expansion	1,300,000
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Community Health Facilities Grant Program

Supported Housing Developers, Inc.	660,000
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Community Parks and Playgrounds

Truxton Park	102,000
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Chesapeake Bay Restoration Fund

Cox Creek WWTP – enhanced nutrient removal	55,000,000
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Waterway Improvement

Annapolis – public boating facilities improvements	25,000
Fort Smallwood Park – public boating facility	250,000
Severn River – headwaters channel dredging	350,000

African American Heritage Preservation Grant Program

Wilson Farmstead – improvements	100,000
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Other Projects

Annapolis and Anne Arundel County Conference and Visitors Bureau	100,000
Annapolis High School – stadium and athletic fields	2,000,000
Coordinating Center for Home and Community Care Building Facilities	200,000
Deale Elementary School – technology enhancement project	23,000
Hospice of the Chesapeake	600,000
Meade High School – concession stand	150,000
Samaritan House	100,000
Shiplap House	250,000
St. John’s College – Hodson Hall and Carroll-Barrister House	1,500,000
YWCA Counseling and Community Service Building	325,000

B. Capital Projects for State Facilities in the County**General Government**

Annapolis Post Office	\$3,782,000
Court of Appeals Building – lobby and ADA improvements	340,000

Department of Natural Resources

Sandy Point State Park – boat ramp area improvements	2,500,000
Sandy Point State Park – green infrastructure improvements	1,700,000

Department of Public Safety and Correctional Services

Dorsey Run Correctional Facility – construction	1,200,000
Dorsey Run Correctional Facility – construction (federal funds)	7,900,000
Maryland House of Correction – deconstruction project	3,500,000

Maryland Department of Veterans Affairs

Crownsville Veterans Cemetery – expansion	700,000
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Baltimore City

A. Selected State Grants for Capital Projects

Public Schools

Alexander Hamilton Elementary School #145 – renovations (roof)	\$340,000
Baltimore City College High School #480 – science facilities	1,100,000
Barclay Elementary/Middle School #54 – renovations (fire safety)	280,000
Beechfield Elementary/Middle School #246 – renovations (fire safety)	232,000
Callaway Elementary School #251 – renovations (windows)	600,000
Gilmor Elementary School #107 – renovations (elevator)	272,000
Govans Elementary School #213 – renovations (HVAC)	1,400,000
Hilton Elementary School #21 – renovations (HVAC/windows/doors)	2,200,000
James McHenry Elementary/Middle School #10 – renovations (HVAC)	260,000
Leith Walk Elementary School #245 – construction	819,000
Mary A. Winterling Elementary School #150 – renovations (windows/doors)	1,100,000
Medfield Heights Elementary School #249 – renovations (HVAC)	1,600,000
Mt. Royal Elementary/Middle School #66 – renovations (elevator)	264,000
Patapsco Elementary/Middle School #163 – renovations (HVAC)	1,800,000
Patterson High School #405 – renovations (fire safety)	380,000
Paul Laurence Dunbar Middle School #133 – renovations (fire safety/elevator)	656,000
Professional Development Building #93 – renovations (fire safety/elevator)	2,108,000
Rosemont Elementary/Middle School #63 – renovations (roof)	680,000
Sinclair Lane Elementary School #248 – renovations (fire safety)	224,000
Thomas G. Hayes Building #102 – renovations (plumbing)	400,000
Thurgood Marshall Building #170 – renovations (roof)	1,339,000
Walbrook Building #411 – renovations (elevator)	288,000
West Baltimore Building #80 – renovations (fire safety/boilers/windows/doors)	2,648,000
William S. Baer School #301 – renovations (windows/doors)	936,000
Woodhome Elementary/Middle School #205 – renovations (HVAC/windows)	902,000

Community Health Facilities Grant Program

Institute for Behavioral Resources	898,000
Main Street Housing, Inc.	755,000

Federally Qualified Health Centers Grant Program

Chase Brexton Health Services	1,000,000
Family Health Centers of Baltimore	1,100,000
Health Care for the Homeless	321,000

Senior Centers Grant Program

Waxter Senior Center	350,000
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Shelter and Transitional Facilities

Gaudenzia Women and Children Center	1,000,000
Project PLASE Vets Transitional	100,000

Partnership Rental Housing Program

Thompson 22	1,650,000
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Chesapeake Bay Water Quality Projects

Back River WWTP – nutrient removal	12,385,000
Stoney Run – sanitary sewer improvements	1,500,000

African American Heritage Preservation Grant Program

Two Sisters' Houses – restoration	100,000
Union Baptist Church of Baltimore – improvements	40,000

Other Projects

Academy of Success Community Empowerment Center	200,000
Arch Social Club Historic Site	118,000
Baltimore City Convention Center – expansion	2,500,000
Baltimore Design School	100,000
Baltimore Museum of Art	2,500,000
Baltimore Zoo – infrastructure improvements	5,000,000

Brooks Robinson Statue – Babe Ruth Birthplace Foundation	100,000
Community Resource Center	175,000
East Baltimore Historical Library	250,000
Everyman Theatre	1,000,000
Garrett-Jacobs Mansion	200,000
Grace Outreach Center	90,000
Healthy Start Client Service Center	100,000
Johns Hopkins University – High Performance Computing Data Center	3,000,000
Johns Hopkins University – Undergraduate Teaching Laboratory	4,000,000
Kennedy Krieger Children’s Hospital	500,000
Kennedy Krieger Institute	1,000,000
Maryland School for the Blind – Life Education Building	5,000,000
Maryland Science Center – planetarium improvements	550,000
Meals on Wheels Green Building	150,000
Miles Washington Family Support Center	175,000
Mount Vernon Place Conservancy	1,000,000
Mt. Lebanon CDC Community Center and Gymnasium	100,000
National Aquarium in Baltimore – infrastructure improvements	2,500,000
Notre Dame of Maryland University – academic building	4,000,000
Patricia and Arthur Modell Performing Arts Center at the Lyric	250,000
Patterson Park Public Charter School – facade restoration	50,000
Payne Memorial Outreach Community Youth Center	125,000
Port Discovery	150,000
Roland Water Tower Stabilization	250,000
Sinai Hospital – Neurological Rehabilitation Center	1,000,000
Union Memorial Hospital	242,500
USS Constellation Education and Heritage Center	1,000,000

B. Capital Projects for State Facilities in the City

General Government

Saratoga State Center – garage improvements	\$4,445,000
William Donald Schaefer Tower – fire alarm system	2,475,000

Baltimore City Community College

Liberty Campus – renovate main building	6,686,000
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Department of Labor, Licensing & Regulation

1100 North Eutaw Street – elevator replacement	1,620,000
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Morgan State University

Campuswide – facilities renewal projects	5,000,000
Jenkins Behavioral and Social Sciences Center	3,500,000
School of Business and Management – new complex	20,685,000
Soper Library – demolition	500,000

University System of Maryland

Baltimore – Grand Garage elevator replacement	2,000,000
Baltimore – Health Sciences Research Facility	4,672,000
Coppin State – Science and Technology Center	38,775,000
University of Baltimore – Law School	4,037,000
University of Baltimore – streetscape project	250,000

Other

University of Maryland Medical System – patient care building	10,000,000
University of Maryland Medical System – Shock Trauma Center	3,500,000

Baltimore County

A. Selected State Grants for Capital Projects

Public Schools

Dundalk High/Sollers Point Technical High School – construction	\$12,150,485
Grange Elementary School – renovations (roof)	806,000
Hawthorne Elementary School – renovations (roof)	572,000
Jacksonville Elementary School – renovations (roof)	474,000
Landsdowne High School – renovations (windows/doors)	600,000
Milford Mill Academy – construction	2,434,095
Parkville High School – construction	1,715,000
Parkville Middle School – renovations (boilers)	354,000
Stoneleigh Elementary School – construction	3,800,420

Public Libraries

Reisterstown Library – roof replacement	65,000
Rosedale Library – roof replacement	157,000
Towson Library – HVAC replacement	220,000

Baltimore Community College

Catonsville – F Building renovation and expansion	1,000,000
Owings Mills Education Center	2,700,000

Chesapeake Bay Water Quality Projects

Back River WWTP – nutrient removal	12,385,000
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African American Heritage Preservation Grant Program

Mt. Gilboa AME Church – renovation	100,000
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Other Projects

Acorn Hill Natural Play Area	215,000
Arrow Child and Family Ministries	154,000
Baltimore County Schools – turf field security investment	50,000
Catonsville YMCA – Family Center Y	500,000
Children’s Home, Inc. – Therapeutic Group Home Building	400,000
Franklin Square Hospital	1,000,000
Lansdowne Volunteer Fire Department	20,000
Lighthouse Youth and Family Services Center	34,000
Maryland Food Bank Sustainability Project	300,000
Neighbor-Space of Baltimore County	150,000
Northwest Hospital Center	700,000
Owings Mills High School – stadium	100,000

B. Capital Projects for State Facilities in the County**General Government**

Catonsville District Court	\$250,000
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Department of Natural Resources

Dundee Creek Marina – improvements	675,000
North Point State Park – pier replacement/shore erosion control	1,910,000

Military

Dundalk Readiness Center – alteration and addition	5,691,000
Dundalk Readiness Center – alteration and addition (federal funds)	15,723,000
Gunpowder Military Reservation – upgrade safety standards (federal funds)	3,000,000

University System of Maryland

Baltimore County – campus traffic safety and circulation improvements	1,000,000
Baltimore County – parking improvements	710,000
Baltimore County – Performing Arts and Humanities Facility	33,225,000
Baltimore County – residence hall renovations	10,350,000

Towson University – Burdick renovation	13,500,000
Towson University – campuswide safety and circulation improvements	6,000,000
Towson University – residence tower renovation	2,370,000
Towson University – Smith Hall expansion and renovation	5,700,000

Calvert County**A. Selected State Grants for Capital Projects****Public Schools**

Appeal Elementary School – renovations (roof)	\$148,000
Calvert High School – construction	5,000,000

College of Southern Maryland

La Plata – Continuing Education Building renovation and expansion	5,457,000
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African American Heritage Preservation Grant Program

Biscoe Gray Heritage Farm – George E. Rice House improvements	50,000
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Other Projects

Calvert Marine Museum – exhibition building	250,000
Chesapeake Beach – Skate Park	125,000
End Hunger Kitchen	100,000
North Beach – fishing platform	100,000

B. Capital Projects for State Facilities in the County**University System of Maryland**

Center for Environmental Science – Environmental Sustainability Research	\$1,150,000
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Caroline County**A. Selected State Grants for Capital Projects****Community Parks and Playgrounds**

Austin Park	\$25,000
Ober Community Park	200,000
Third Street Basketball Court	95,000

Waterway Improvement

Public boating facilities – improvements	10,000
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Other Projects

Senior Housing for the Disabled	250,000
The Wharves at Choptank Crossing Heritage and Welcome Center	165,000

Carroll County**A. Selected State Grants for Capital Projects****Public Schools**

Freedom Elementary School – renovations (boilers)	\$1,450,000
Mt. Airy Middle School – construction	4,700,000
Westminster Elementary School – construction	600,000
William Winchester Elementary School – renovations (roof)	541,000

Public Libraries

Westminster Library – renovation	47,000
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Chesapeake Bay Water Quality Projects

New Windsor WWTP	2,000,000
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Chesapeake Bay Restoration Fund

Westminster WWTP – enhanced nutrient removal	16,920,000
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Water Supply Financial Assistance Program

Taneytown – replace water treatment building	368,000
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Other Projects

Goodwill Industries of Monocacy Valley – Westminster	75,000
McDaniel College – Hoover Library and Alumni Hall	1,500,000

B. Capital Projects for State Facilities in the County**Department of Health and Mental Hygiene**

Henryton Center – abate asbestos and raze buildings	\$3,530,000
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Maryland Environmental Service

Freedom – WWTP improvements

259,000

Cecil County**A. Selected State Grants for Capital Projects****Public Schools**

Rising Sun Elementary School – renovations (HVAC)	\$1,013,000
Thomson Estates Elementary School – renovations (windows/doors)	100,000

Cecil Community College

Math and Engineering Building – construction	2,000,000
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Community Parks and Playgrounds

Meadow Park	24,000
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Other Projects

Jacob Tome Gas House	80,000
Milburn Stone Theatre	100,000

B. Capital Projects for State Facilities in the County**Department of Natural Resources**

Elk Neck State Park – improvements	\$241,000
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Charles County**A. Selected State Grants for Capital Projects****Public Schools**

St. Charles High School – construction	\$7,000,000
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College of Southern Maryland

La Plata – Continuing Education Building renovation and expansion	5,457,000
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Waterway Improvement

Public boating facilities – improvements	50,000
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African American Heritage Preservation Grant Program

Old Pomomkey High School – renovation	50,000
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Other Projects

Heritage House	100,000
Indian Head Center for the Arts	170,000
Jude House	50,000
Southern Maryland Carousel	25,000

Dorchester County**A. Selected State Grants for Capital Projects****Community Parks and Playgrounds**

Cosby Avenue Park	\$117,000
Vienna Riverwalk	220,000

Water Supply Financial Assistance Program

Secretary – water system improvements	102,000
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Waterway Improvement

Bestpitch Ferry – boating facility parking lot improvements	99,000
Cambridge Municipal Marina – restrooms	50,000
Public boating facilities – improvements	10,000
Secretary – public boat slips and dock improvements	99,000
Wingate – public dock bulkhead replacement	85,000

African American Heritage Preservation Grant Program

Christ Rock Methodist Episcopal Church – renovation	100,000
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Other Projects

Chesapeake Grove – Senior Housing and Intergenerational Center	250,000
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B. Capital Projects for State Facilities in the County**Department of Natural Resources**

Harriet Tubman Underground Railroad State Park	\$2,683,000
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Frederick County

A. Selected State Grants for Capital Projects

Public Schools

Carroll Manor Elementary School – construction	\$2,633,782
Lincoln “B” Elementary School – construction	800,218
Linganore High School – construction	6,003,000
Walkersville Elementary School – construction	2,905,000

Frederick Community College

Science and Technology Hall – renovation and addition	250,000
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Community Parks and Playgrounds

Emmitsburg Walking Trail	29,000
Thurmont Community Park	105,000

Chesapeake Bay Water Quality Projects

Emmitsburg WWTP – nutrient removal	2,211,000
Frederick WWTP – nutrient removal	1,000,000
Thurmont – wastewater system improvements	515,000

Chesapeake Bay Restoration Fund

Emmitsburg WWTP – enhanced nutrient removal	8,103,000
Frederick WWTP – enhanced nutrient removal	27,411,000

Other Projects

Downtown Frederick Hotel and Conference Center	250,000
Goodwill Industries of Monocacy Valley – Frederick	75,000
Mental Health Association Building	75,000

B. Capital Projects for State Facilities in the County

Department of Natural Resources

Western Region – public boating facilities improvements	\$50,000
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Maryland Environmental Service

Cunningham Falls State Park – wastewater collection/water distribution	200,000
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Garrett County**A. Selected State Grants for Capital Projects****Community Parks and Playgrounds**

Glades Park	\$95,000
Loch Lynn Community Park	122,000

Waterway Improvement

Friendsville – boat launch improvements	10,000
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B. Capital Projects for State Facilities in the County**Department of Natural Resources**

Deep Creek Lake State Park – dredging analysis project	\$65,000
Garrett County State Park – trail construction	150,000
Western Maryland Recreational Access and Trail Restoration Project	150,000
Western Region – public boating facilities improvements	50,000

Harford County**A. Selected State Grants for Capital Projects****Public Schools**

Magnolia Middle School – renovations (HVAC)	\$2,646,000
Red Pump Elementary School – construction	9,648,000

Harford Community College

Campuswide – parking and site improvements	357,000
Nursing and Allied Health Building – construction	3,000,000
Student Center and Chesapeake Center – roof replacement	375,000
Susquehanna Center – renovation and expansion	1,164,000

Community Health Facilities Grant Program

Key Point Health Services, Inc.	209,000
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Community Parks and Playgrounds

Aberdeen Festival Park	100,000
Plumtree Park	200,000

Other Projects

Aberdeen Youth Baseball Field	150,000
Broad Creek Memorial Scout Reservation	200,000
Upper Chesapeake Medical Center, Inc.	750,000

Howard County

A. Selected State Grants for Capital Projects

Public Schools

Atholton High School – construction	\$5,877,000
Burleigh Manor Middle School – renovations (roof)	917,000
Gorman Crossing Elementary School – construction	1,773,000
New Elementary School #41 – construction	2,902,000
Phelps Luck Elementary School – construction	4,500,000
Running Brook Elementary School – construction	248,000

Public Libraries

Central Library – renovation	408,000
East Colombia Library – renovation	515,000
Miller Branch Library – space conversion	1,747,000

Howard Community College

Campuswide – utilities upgrade	1,974,000
Health Sciences Building – construction	3,300,000

Partnership Rental Housing Program

Hilltop	1,900,000
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Other Projects

Carroll Baldwin Hall	150,000
Howard County General Hospital	707,500
Linwood Center	500,000
Roger Carter Recreation Center	365,000
Supported Living Facility	130,000

B. Capital Projects for State Facilities in the County

Department of Health and Mental Hygiene

Dorsey Run Secure Evaluation and Therapeutic Treatment Center

\$2,150,000

Kent County**A. Selected State Grants for Capital Projects****Chesapeake Bay Water Quality Projects**

Betterton WWTP – improvements	\$477,000
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Waterway Improvement

Chestertown Marina – bulkhead and pier improvements	40,000
Public boating facilities – improvements	25,000

Montgomery County

A. Selected State Grants for Capital Projects

Public Schools

Bannockburn Elementary School – renovations (HVAC)	\$791,000
Brookhaven Elementary School – construction	241,000
Colonel Zaduk Magruder High School – renovations (HVAC)	882,000
Damascus Elementary School – renovations (roof)	367,000
Dr. Charles R. Drew Elementary School – renovations (roof)	351,000
East Silver Spring Elementary School – renovations (HVAC)	617,000
Fairland Elementary School – construction	741,000
Fox Chapel Elementary School – construction	172,000
Garrett Park Elementary School – construction	4,982,518
Harmony Hills Elementary School – construction	323,000
Jackson Road Elementary School – construction	1,254,000
Judith A. Resnick Elementary School – renovations (roof)	656,000
Montgomery Knolls Elementary School – construction	1,059,000
Neelsville Middle School – renovations (HVAC)	624,000
Piney Branch Elementary School – renovations (HVAC)	977,000
Rachel Carson Elementary School – renovations (HVAC)	722,000
Redland Middle School – construction	2,419,000
Ridgeview Middle School – construction	1,512,482
Rosemary Hills Elementary School – renovations (HVAC)	744,000
Sequoiah Elementary School – renovations (roof)	415,000
Seven Locks Elementary School – construction	2,158,000
South Lake Elementary School – renovations (roof)	351,000
Stedwick Elementary School – renovations (roof)	369,000
Waters Landing Elementary School – renovations (HVAC)	759,000
Whetstone Elementary School – construction	150,000
Whetstone Elementary School – renovations (roof)	372,000

Public Libraries

Silver Spring Library – construction	1,000,000
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Montgomery College

Germantown – Science and Applied Studies Building renovation	1,856,000
Rockville – Science Center	7,365,000
Rockville – Student Services Center	5,014,000

Partnership Rental Housing Program

Aspen Court	900,000
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Community Parks and Playgrounds

David Scull Park	154,000
Kensington Tennis Court	83,000

Chesapeake Bay Water Quality Projects

Blue Plains WWTP – nutrient removal	5,260,000
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Waterway Improvement

Lake Needwood – public dock improvements	38,000
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African American Heritage Preservation Grant Program

Sandy Spring Odd Fellows Lodge – renovation	100,000
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Other Projects

Charles E. Smith Life Communities	675,000
Easter Seals Inter-Generational Center	100,000
Homecrest House	40,000
Lower Montgomery County Bikesharing System	250,000
Montgomery Village – South Valley Park	125,000
Muslim Community Center	225,000
National Center for Children and Families – Youth Activities Center	250,000
Olney Police Satellite Station	10,000

Aid to Local Government – Montgomery County

A-107

Potomac Community Resources Home	50,000
Quebec Terrace – lighting	120,000
Rockville – Swim and Fitness Center	200,000
The Treatment and Learning Centers, Inc. – Katherine Thomas School	275,000
VisArts	25,000
Woodlawn Barn Visitor’s Center	300,000

Prince George's County

A. Selected State Grants for Capital Projects

Public Schools

Arrowhead Elementary School – renovations (piping)	\$367,000
Beacon Heights Elementary School – renovations (boilers)	306,000
Beltsville Academy – renovations (piping)	489,000
Buck Lodge Middle School – renovations (roof)	1,643,000
Crossland High School – construction	1,336,000
Crossland High School – renovations (mechanical)	1,223,000
Deerfield Run Elementary School – construction	400,000
Edgar Allen Poe Academy – renovations (piping)	367,000
Eleanor Roosevelt High School – renovations (mechanical)	1,529,000
Flintstone Elementary School – renovations (unit ventilators)	183,000
Fort Foote Elementary School – renovations (piping)	428,000
Gaywood Elementary School – renovations (piping)	367,000
Henry G. Ferguson Elementary School – construction	2,227,000
High Point High School – renovations (boilers)	489,000
Hyattsville Elementary School – construction	2,590,000
Laurel High School – renovations (fire safety)	153,000
Oxon Hill High School – construction	8,867,000

Public Libraries

Beltsville Library – renovation	489,000
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Prince George's Community College

Campus Fire Alarm System – upgrade	1,901,000
Lanham Hall – renovation and addition	1,340,000

Federally Qualified Health Centers Grant Program

CIVISTA Health Foundation	450,000
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Community Parks and Playgrounds

Laurel Hill Playground	86,000
Martin Luther King Community Park	214,000

Chesapeake Bay Water Quality Projects

Blue Plains WWTP – nutrient removal	5,260,000
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Other Projects

Alice Ferguson Foundation, Inc. – Potomac Watershed Study Center	1,700,000
Dinosaur Park – improvements	25,000
Elizabeth Seton High School – window upgrades	50,000
Family Crisis Center – security system	70,000
Forestville Military Academy – track renovation	50,000
Fort Foote Elementary School – marquee project	8,000
Gateway Arts Center at Brentwood	20,000
Glenarden Veterans Memorial	225,000
Green Branch Athletic Complex	1,000,000
Hamilton Street Parking	250,000
Harbor Light Community Development Center	40,000
Knights of St. John Woodville School Building	50,000
Labor of Love Learning Center	200,000
Largo High School – track renovation	225,000
Laurel Boys and Girls Club	200,000
Prince George’s Hospital System	10,000,000
Riverdale – Sportsplex	350,000
Riverdale Park – Youth and Community Center	283,000
Southern Area Indoor Aquatic Center	100,000

B. Capital Projects for State Facilities in the County**University System of Maryland**

Bowie State – campuswide site improvements	\$2,166,000
Bowie State – Natural Sciences Center	3,100,000
College Park – athletic fields	1,000,000
College Park – Bioengineering Building	5,000,000
College Park – campuswide infrastructure improvements	10,000,000
College Park – Carroll, Caroline, Wicomico dormitory replacement	51,080,000
College Park – Central Maryland Research and Education Center	1,750,000
College Park – Learning and Teaching Center	2,050,000
College Park – Physical Sciences Complex	29,550,000
College Park – remote library storage facility	435,000

Queen Anne’s County

A. Selected State Grants for Capital Projects

Partnership Rental Housing Program

Gravel Run	\$1,550,000
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Waterway Improvement

Public boating facilities – improvements	25,000
Queenstown – public boating facilities improvements	10,000

African American Heritage Preservation Grant Program

Kennard High School – renovation	100,000
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St. Mary's County

A. Selected State Grants for Capital Projects

Public Schools

Greenview Knolls Elementary School – renovations (HVAC)	\$800,000
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College of Southern Maryland

La Plata – Continuing Education Building renovation and expansion	5,457,000
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Chesapeake Bay Restoration Fund

Leonardtown WWTP – enhanced nutrient removal	6,441,000
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Waterway Improvement

Piney Point Landing – improvements	99,000
Public boating facilities – improvements	50,000
Wicomico Shores – boating facility restroom	99,000

African American Heritage Preservation Grant Program

Brome Plantation – slave quarter restoration	20,000
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Other Projects

Sotterley Plantation – post-hurricane restoration	50,000
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B. Capital Projects for State Facilities in the County

Department of Natural Resources

Point Lookout State Park – lighthouse restoration	\$398,000
Point Lookout State Park – parking lot improvements	950,000

St. Mary’s College

Anne Arundel Hall – reconstruction

310,000

Somerset County**A. Selected State Grants for Capital Projects****Public Libraries**

Crisfield Library – construction	\$250,000
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Senior Centers Grant Program

Somerset County Senior Activity Center	600,000
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Waterway Improvement

Crisfield – public boating pier	99,000
Public boating facilities – improvements	50,000
Wenona – public boating facilities improvements	45,000

B. Capital Projects for State Facilities in the County**Department of Natural Resources**

Somers Cove Marina – improvements	\$100,000
Wellington WMA – office renovation	342,000

Maryland Environmental Service

Eastern Correctional Institution – WWTP improvements	1,514,000
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Talbot County

A. Selected State Grants for Capital Projects

Waterway Improvement

Public boating facilities – improvements	\$25,000
St. Michaels – public boating facility improvements	99,000
West Chew Avenue – boating facility improvements	50,000

African American Heritage Preservation Grant Program

Ashbury Methodist Episcopal Church – improvements	14,000
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Other Projects

Easton Head Start Center	250,000
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Washington County**A. Selected State Grants for Capital Projects****Public Schools**

Barbara Ingram School for the Arts – construction	\$390,000
Bester Elementary School – construction	3,600,000
Pleasant Valley Elementary School – renovations (boiler)	247,000
Ruth Ann Monroe Primary School – construction	2,770,000

Hagerstown College

Student Center – expansion	357,000
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Senior Centers Grant Program

Washington County Senior Activity Center	800,000
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Shelter and Transitional Facilities

Way Station Homeless Vets	900,000
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Community Parks and Playgrounds

Veterans Park	33,000
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Chesapeake Bay Water Quality Projects

Winebrenner WWTP – nutrient removal	1,600,000
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Chesapeake Bay Restoration Fund

Winebrenner WWTP – enhanced nutrient removal	6,900,000
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Water Supply Financial Assistance Program

R.C. Wilson Water Plant – improvements	1,500,000
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African American Heritage Preservation Grant Program

Tolson's Chapel Cemetery – improvements	35,000
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Other Projects

Brook Lane Health Services, Inc.	1,100,000
C&O Canal Nat'l Park – Lockhouse 44/Lock 44/Western MD Railroad Lift Bridge	175,000
Korean War Veterans Assoc. Antietam Chapter – Korean War Veterans Monument	40,000

B. Capital Projects for State Facilities in the County

Department of Natural Resources

Western Region – public boating facilities improvements	\$50,000
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Department of Natural Resources

C&O Canal National Park – boat ramp improvements	25,000
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Wicomico County**A. Selected State Grants for Capital Projects****Public Schools**

Bennett Middle School – construction	\$4,500,000
Delmar Elementary School – renovations (roof)	199,000
Pittsville Elementary/Middle School – renovations (HVAC/windows/doors)	700,000

Public Libraries

Salisbury Library – elevator replacement	52,000
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Local Jail Loan

County Detention Center – fire alarm system upgrade	50,000
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Community Parks and Playgrounds

Fruitland Playground	78,000
Northside Park	119,000
Salisbury Skatepark	262,000

Chesapeake Bay Water Quality Projects

Crown Sports Center – sewer extension	105,000
Salisbury WWTP – nutrient removal	2,842,000

Chesapeake Bay Restoration Fund

Fruitland WWTP – enhanced nutrient removal	3,100,000
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Waterway Improvement

Nanticoke Harbor – improvements	100,000
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African American Heritage Preservation Grant Program

Charles H. Chipman Center – improvements	72,000
San Domingo Rosenwald School – renovation	90,000
Wetipquin Community Center – rehabilitation	29,000

B. Capital Projects for State Facilities in the County

Department of Health and Mental Hygiene

Deer’s Head Hospital Center – new kidney dialysis unit	\$313,000
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University System of Maryland

Salisbury University – campuswide dormitory renovations	7,500,000
Salisbury University – Library	1,900,000

Worcester County**A. Selected State Grants for Capital Projects****Chesapeake Bay Water Quality Projects**

Snow Hill WWTP – nutrient removal	\$140,000
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Waterway Improvement

64th Street – public boating facility channel dredging and parking lot	815,000
Shell Mill Road – boat ramp improvements	99,000

Other Projects

Coastal Hospice at the Ocean Residence Project	500,000
Ocean City Center for the Arts	250,000
Ocean City Convention Center – expansion	2,200,000

B. Capital Projects for State Facilities in the County**Department of Natural Resources**

Pocomoke River State Park – fuel pier improvements	\$175,000
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Part B Taxes

Property Tax

Property Tax Administration

Homestead Property Tax Credit Reform Act

The Homestead Property Tax Credit Program (assessment caps) provides tax credits against State, county, and municipal real property taxes for owner-occupied residential properties for the amount of real property taxes resulting from an annual assessment increase that exceeds a certain percentage or “cap” in any given year. The State requires the cap on assessment increases to be set at 10% for State property tax purposes; however, local governments have the authority to establish assessment caps from 0% to 10%.

Over the past decade, there has been a significant increase in the number of properties receiving the homestead property tax credit. The increase in the number of recipients and the inability to verify eligibility prompted concern over potential abuses or fraud. In response to this concern, Chapters 564 and 565 of 2007 were enacted to require homeowners to apply to the State Department of Assessments and Taxation (SDAT) for the credit. Any property owner seeking the credit must apply by December 31, 2012.

SDAT reports that as of January 17, 2012, the department had received approximately 725,000 homestead tax credit applications statewide. This number represents approximately 90% of the statewide recipients of the homestead tax credit for fiscal 2012.

House Bill 1081 (passed) provides that a person who has been granted a homestead property tax credit and is subsequently found to not qualify for the credit must be assessed all State, county, and municipal property taxes otherwise due for each taxable year the person did not qualify to receive the tax credit. A person who has willfully misrepresented facts and has been granted a homestead property tax credit based on this willful action is subject to a 25% penalty. The amount of the penalty must be separately itemized on the person’s property tax bill

and constitutes a lien on the property until paid in full or the property has been sold in foreclosure.

Tax Sales

Right of Redemption – Notice

Senate Bill 182 (passed) prohibits a holder of a certificate of tax sale from filing a complaint to foreclose the right of redemption until at least 30 days after sending the second of two required notices. *Senate Bill 182* also conforms the method by which the first of the two required notices must be sent to the method for the second notice. The required notice must state that a tax-delinquent owner may be required to reimburse the certificate holder for the postage and certified mailing costs incurred for the notices in order to redeem a property.

Frederick and Harford Counties – Auctioneer’s Fees

The auctioneer’s fee for properties sold at a tax sale auction in Frederick County and in Harford County is set at a maximum of \$10 on a day when up to three properties are sold and \$3 per property on a day when four or more properties are sold. *Senate Bill 265/House Bill 518 (both passed)* alter the auctioneer fee for property sold at a tax sale in Frederick County by setting the fee amount at the lowest responsive bid for each property sold. *Senate Bill 425 (passed)* alters the auctioneer fee for property sold at a tax sale in Harford County by setting the fee at \$10 for each property sold.

Local Option Property Tax Credits

Neighborhood Conservation Act

House Bill 923 (Ch. 141) authorizes local governments to grant a property tax credit for owner-occupied residential real property that is purchased from July 1, 2012, through June 30, 2018, and is located in a neighborhood conservation area established or renewed by application to the Department of Housing and Community Development (DHCD) based on specified criteria adopted by DHCD. DHCD must adopt regulations that establish application procedures for the designation of a neighborhood conservation area based on (1) the concentration of foreclosure activity; (2) the concentration of blighted or vacant properties; and (3) the location within a priority funding area, with preference given to specified sustainable communities.

High-performance Buildings

Chapter 519 of 2004 authorized a county or municipality to provide a property tax credit against the local property tax for high-performance buildings. A high-performance building is defined as a building that (1) achieves at least a silver rating according to the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) Green Building Rating System as adopted by the Maryland Green Building Council; (2) achieves at least a

comparable rating according to any other appropriate rating system; or (3) meets comparable green building guidelines or standards approved by the State.

House Bill 158 (passed) expands the definition of “high-performance building” for purposes of the property tax credit for high-performance buildings to include a residential building that achieves at least a silver rating according to the International Code Council’s 700 National Green Building Standards.

Local Property Tax Credits, Exemptions, and Payments

Anne Arundel County

Senate Bill 32/House Bill 59 (both passed) authorize Anne Arundel County to provide a property tax payment deferral for residential real property occupied as the principal residence of the owner. To be eligible, the property owner must have lived in the dwelling for the previous five years; be at least 62 years of age, or be permanently and totally disabled; and meet specified income requirements. The amount of the deferral is limited to the increase in county property taxes from the date of deferral.

Carroll County

Senate Bill 666/House Bill 136 (both passed) authorize Carroll County, or a municipality in the county, to grant a property tax credit for that portion of real property owned by an independent living retirement community that is used as housing units. An independent living retirement community is a community or facility for the aged that (1) provides specified continuing care; (2) is licensed as a hospital or related institution; (3) is certified by the Maryland Department of Aging; and (4) is exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code or is owned or operated by a person that is exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code; or offers an age-restricted life occupancy agreement and requires payment of an entrance fee.

Charles County

House Bill 1054 (passed) authorizes Charles County to grant a property tax credit against the county property tax imposed on real property that is subject to a perpetual conservation easement donated to the Conservancy for Charles County Inc. or another qualified entity approved by the county commissioners. The property tax credit must (1) benefit the original grantor of the perpetual conservation easement; (2) be granted for the duration that the original grantor of the perpetual conservation easement continues to reside on the property subject to the easement; (3) terminate on transfer of the property subject to the conservation easement by the grantor; and (4) be applicable to preexisting conservation easements.

Frederick County

Senate Bill 266/House Bill 125 (both passed) authorize Frederick County to grant a property tax credit against the county property tax imposed on real property owned or leased by a

new or expanding business that creates new jobs. The county must provide, by law, for (1) the specific eligibility requirements for the property tax credit; (2) any additional limitations on eligibility for the tax credit; and (3) any other provision appropriate to implement the tax credit.

Montgomery County

House Bill 726 (Ch. 135) authorizes Montgomery County to grant a property tax credit against the county property tax for real or personal property that is (1) owned or leased by a specified “benefit corporation” or “benefit limited liability company”; (2) not used for residential purposes; and (3) used in a trade or business by a benefit corporation or benefit limited liability company.

Prince George’s County

House Bill 897 (passed) authorizes Prince George’s County to provide for an installment payment schedule of no more than six payments each year for county, municipal, and special taxing district property taxes due on owner-occupied residential property if the homeowner is at least 62 years old and the property is not subject to a deed of trust, mortgage, or other encumbrance.

House Bill 898 (passed) authorizes Prince George’s County, by resolution, to exempt specified economic development projects located in designated focus areas from county real property taxes. Specifically, the exemption may be granted if (1) the owner or owners of the economic development project demonstrate to the satisfaction of the county executive and county council that the county or its designated agency has conducted an economic analysis of the project; (2) the owner or owners of the economic development project and the county enter into a specified payment in lieu of taxes agreement; (3) prior to or no later than 18 months from the date of entering into the payment in lieu of taxes agreement, construction of the project has commenced and all conditions for the financing required for the construction of the project have been satisfied or waived; and (4) the authorizing resolution states that the project may not involve gambling activities.

Washington County

Senate Bill 266/House Bill 125 (both passed) authorize Washington County to grant a property tax credit against the county property tax imposed on real property owned or leased by a new or expanding business that creates new jobs. The county must provide, by law, for (1) the specific eligibility requirements for the property tax credit; (2) any additional limitations on eligibility for the tax credit; and (3) any other provision appropriate to implement the tax credit.

House Bill 216 (Ch. 112) alter the amount that Washington County must distribute to the Town of Williamsport under an existing payment in lieu of property taxes agreement from an electricity generation facility. Under *Chapter 112*, the electricity generation facility must be located within the Town of Williamsport in order for the municipality to receive a payment from the county. Under current law, the electricity generation facility does not have to be located

within the municipal corporate limits in order for the Town of Williamsport to receive a payment from the county.

Income Tax

State and Local Revenue and Financing Act of 2012

As introduced, *Senate Bill 523 (failed)* would have increased the State income tax rates by 0.25%. General fund revenues would have increased by \$527.7 million in fiscal 2013 and \$375.0 million in fiscal 2014. As subsequently amended by the conference committee, the bill would have both increased State income tax rates and altered the income tax brackets to which the rates applied. In addition, the conference committee amendments reduced the amount certain taxpayers may claim as a personal exemption. **Exhibit B-1** shows the changes that the conference committee amendments would have made to the State income tax rates and brackets. **Exhibit B-2** shows the changes that the conference committee amendments would have made to the personal exemption amounts. The Department of Legislative Services (DLS) estimates that the income tax changes made by the conference committee amendments would have increased State revenues by \$247.3 million in fiscal 2013 and \$178.9 million in fiscal 2014.

Exhibit B-1

Senate Bill 523 Conference Committee Income Tax Rate and Bracket Changes

Single Taxpayers			Joint Taxpayers		
Lower	Upper	Current/Proposed	Lower	Upper	Current/Proposed
1	\$1,000	2.00%	1	\$1,000	2.00%
1,001	2,000	3.00%	1,001	2,000	3.00%
2,001	3,000	4.00%	2,001	3,000	4.00%
3,001	100,000	4.75%	3,001	150,000	4.75%
100,001	125,000	4.75%/5.00%	150,001	175,000	4.75%/5.00%
125,001	150,000	4.75%/5.25%	175,001	225,000	4.75%/5.00%/5.25%
150,001	250,000	5.00%/5.50%	225,001	300,000	5.00%/5.50%
250,001	500,000	5.00%/5.25%/5.75%	300,001	500,000	5.00%/5.25%/5.75%
500,001	99,999,999	5.50%/5.75%	500,001	99,999,999	5.50%/5.75%

Exhibit B-2
***Senate Bill 523* Conference Committee Income Tax Exemption Changes**

Federal Adjusted Gross Income			Amount Per Exemption	
Lower	Upper	Filing	Proposed	Current
1	100,000	Single	3,200	3,200
100,001	125,000	Single	1,600	2,400
125,001	150,000	Single	800	1,800
150,001	200,000	Single	0	1,200
200,001	99,999,999	Single	0	600
1	150,000	Joint	3,200	3,200
150,001	175,000	Joint	1,600	2,400
175,001	200,000	Joint	800	1,800
200,001	250,000	Joint	0	1,200
250,001	99,999,999	Joint	0	600

As amended by the conference committee, *Senate Bill 523* also included a provision requiring a fiduciary of certain trusts (electing small business trusts) to include the income derived from certain stock holdings for the purpose of calculating federal adjusted gross income beginning in tax year 2013.

As introduced, *Senate Bill 152 (failed)*, the Budget Reconciliation and Financing Act of 2012, contained a provision that would have repealed the corporate income tax credit for 60% of the amount of State and local property taxes paid on certain telecommunications property. As amended by both the House and Senate, the repeal of the corporate income tax credit provision was struck from *Senate Bill 152* and included in *Senate Bill 523*.

New and Extended Tax Credits

Security Clearances Tax Credit

Senate Bill 296 (passed) creates a tax credit against the State income tax for certain qualified costs incurred by a business to (1) obtain security clearances for its employees located in the State; and (2) construct or renovate a sensitive compartmented information facility located in the State. The Department of Business and Economic Development is required to administer the tax credit and is authorized to award a maximum of \$2.0 million in credits each year. The credit may be claimed in tax years 2013 through 2016.

The amount of the credit for security clearance administrative expenses is equal to 100% of eligible expenses, not to exceed \$100,000. The amount of the credit for sensitive compartmented information facility expenses is equal to 50% of eligible expenses, not to exceed \$100,000 for a single qualifying facility or \$250,000 for multiple qualifying facilities.

Qualifying Employees with Disabilities Tax Credit

Senate Bill 167 (passed) extends through June 30, 2013, the Qualifying Employees with Disabilities Tax Credit, which is scheduled under current law to terminate on June 30, 2012.

Tax Credit Administration

Sustainable Communities Tax Credit

House Bill 568 (passed) allows the Sustainable Communities tax credit to be allocated among the partners, members, or shareholders of an entity in any manner agreed to by those persons in writing. This provision does not apply to any commercial rehabilitation project for which an application was approved by the Maryland Historic Trust before July 1, 2012.

Electronic Filing Requirement

Senate Bill 1086/House Bill 1456 (both passed) require a taxpayer to submit a claim for a tax credit by electronic means if the taxpayer claims the (1) Job Creation tax credit; (2) One Maryland tax credit; (3) Biotechnology Investment Incentive tax credit; or (4) Enterprise Zone income tax credit. In addition, the Comptroller's Office may require by regulation any other tax credit claim to be submitted electronically, if the office determines this requirement does not create a material adverse impact or undue administrative burden.

Tax Credit Evaluation Act

Senate Bill 739/House Bill 764 (both passed) establish a legislative process for evaluating certain tax credits. The evaluation process is conducted by a legislative evaluation committee and must be done in consultation with the Comptroller's Office, Department of Budget and Management (DBM), DLS, and the agency that administers the credit being evaluated. The committee is appointed jointly by the President of the Senate and the Speaker of the House and must include at least one member of the Senate Budget and Taxation Committee and one member of the House Ways and Means Committee.

The following credits are required to be reviewed by the date indicated:

- *July 1, 2014:* enterprise zone and One Maryland economic development credits;
- *July 1, 2015:* earned income and film production activity credits;
- *July 1, 2016:* sustainable communities and research and development credits; and
- *July 1, 2017:* businesses that create new jobs and biotechnology investment credits.

In lieu of the evaluation dates listed above, if a tax credit has a termination date provided for by law, an evaluation of that credit must be made on or before July 1 of the year preceding the calendar year of the termination date.

By June 30 of the year prior to a tax credit's evaluation date, the evaluation committee is required to meet with the Comptroller's Office, DBM, DLS, and the agency that administers the credit to prepare a plan for evaluation. By October 31 of the same year, DLS is required to publish a report evaluating the tax credit. By December 14 of the same year, the evaluation committee must hold a public hearing on the evaluation report. By the twentieth day of the legislative session before the evaluation date of a tax credit, the committee is required to submit a report to the General Assembly that states whether or not the tax credit should be continued, with or without changes, or terminated.

New Subtraction Modifications

Mortgage Forgiveness Debt Relief

Senate Bill 580/House Bill 600 (both passed) create a subtraction modification against the State income tax for qualified mortgage debt relief. The subtraction modification is equal to the amount of the discharge of qualified principal residence indebtedness allowable under the federal Mortgage Forgiveness Debt Relief Act of 2007, as amended. The maximum value of the subtraction modification is limited to \$1.0 million for individuals and \$2.0 million for joint returns. The tax benefit is recaptured if the taxpayer claiming the subtraction modification sells or otherwise disposes of the property for which the subtraction modification is claimed. The subtraction modification applies to tax year 2013 only.

Forest Conservation and Management Program Expenses

The Forest Conservation and Management Program within the Department of Natural Resources (DNR) allows qualifying landowners a reduction in the assessment of forest land to \$125 per acre in return for following a written forest management plan. *House Bill 975 (passed)* creates a subtraction modification against the State income tax for qualified forest conservation program expenses incurred by an individual for an approved application to the Forest Conservation and Management Program within DNR. Eligible expenses include the costs of hiring a professional land surveyor and preparing the land management program for a conserved property. The subtraction modification that may be claimed may not exceed \$500.

Partial Land Acquisition by the Maryland Department of Transportation

Gains and losses from an involuntary conversion of property are usually taxable unless the property is a principal residence. However, if a sale involves the land on which a residence is located, but not the residence itself, any gain received from the sale of the land may not be excluded. *Senate Bill 807 (passed)* creates a subtraction modification against the State income tax for payments received from the Maryland Department of Transportation (MDOT) by an individual for the acquisition of a portion of the individual's property. The subtraction is limited

to the amount of gain resulting from a payment for the acquisition of a portion of the individual's property on which the individual's principal residence is located.

Foreclosure Settlement Payments

House Bill 1374 (passed) creates a subtraction modification against the State income tax for payments to an individual made as the result of a foreclosure settlement negotiated by the Attorney General. For further discussion of this issue, see subpart "Real Property" in Part F – Courts and Civil Proceedings of this 90 Day Report.

Maryland Income Tax Refund – Anne Arundel County – Warrants

Senate Bill 8/House Bill 120 (both passed) authorize an official of the federal, State, or local government charged with serving a criminal arrest warrant to certify to the Comptroller that an individual who is either a Maryland resident or who receives income from Maryland has an outstanding warrant and to request the Comptroller to withhold the income tax refund of the individual. The program applies only to individuals who are residents of Anne Arundel County or have an outstanding warrant from Anne Arundel County. The program terminates September 30, 2013.

Sales Tax

Alcoholic Beverages – Calculation of Tax

Chapters 571 and 572 of 2011 increased the State sales and use tax rate imposed on the sale of alcoholic beverages from 6% to 9%. *Senate Bill 852/House Bill 918 (both passed)* address concerns raised by the Maryland Restaurant Association regarding the application of the 9% sales tax rate to mandatory gratuities and items such as labor and material (glassware) used in conjunction with the sale of an alcoholic beverage.

Senate Bill 852/House Bill 918 modify the State sales and use tax rate applicable to charges for labor, materials, or property used in connection with the sale of an alcoholic beverage so that the general 6% sales tax rate applies to these items, rather than the 9% rate that applies to the sale of an alcoholic beverage. *Senate Bill 852/House Bill 918* also specify that the sales tax rate of 6% applies to a mandatory gratuity or service charge in the nature of a tip for serving food or any type of beverage to a group containing more than 10 individuals.

Dyed Diesel Fuel

Senate Bill 446/House Bill 434 (both passed) specify that for the sale of dyed diesel fuel by a marina the 6% sales and use tax rate must be applied to 94.5% of gross receipts of dyed diesel fuel sales. Marinas are required to pay the sales tax to the Comptroller's Office and may not collect the tax from the buyer as a separately stated item. The tax reported to the Comptroller's Office will be handled in a similar manner as retail sales made through vending

machines where the sales tax is imposed on a percentage of sales rather than by the bracket system used for other retail sales.

Energy Star Windows and Doors

Senate Bill 40/House Bill 1301 (both passed) exempt from the State sales and use tax the sale of machinery or equipment used directly and predominantly to produce Energy Star windows or Energy Star entry doors for residential real property; or electricity, fuel, and other utilities used to operate that machinery or equipment.

Veterans Organizations

Chapters 217 and 218 of 2006 provided for a three-year State sales and use tax exemption for sales made to a bona fide nationally organized and recognized veterans' organization or an auxiliary of the organization or its units if the organization is qualified as tax exempt under Section 501 (c)(19) of the Internal Revenue Code. Chapter 506 of 2009 extended the termination date to June 30, 2012.

Senate Bill 19/House Bill 319 (both passed) repeal the termination date for the State sales and use tax exemption for sales made to these veterans' organizations.

Budget Reconciliation and Financing Act of 2012

As introduced, *Senate Bill 152 (failed)* contained provisions that would have (1) required the collection of State sales and use taxes by Internet sellers such as Amazon.com if they have affiliate relationships with vendors in the State (online sales presumption); (2) imposed the sales and use tax on the sale of certain digital products; and (3) repealed sales and use tax exemptions for specified cylinder demurrage charges, sales of precious metal bullion and coins, and certain sales of mobile homes. These provisions were amended out of the bill by the Senate.

For a further discussion of the various provisions of *Senate Bill 152* see the subpart "Budget Reconciliation and Financing Act" within Part A – Budget and State Aid of this *90 Day Report*.

State and Local Revenue and Financing Act of 2012

As passed by the Senate, *Senate Bill 523 (failed)* included the online sales presumption provision as well as the repeal of the exemption for certain cylinder demurrage charges included in *Senate Bill 152*. As subsequently amended by the House, the online sales presumption provision was taken out of the bill. The House amendments to *Senate Bill 523* would have repealed the sales and use tax exemption for sales of out-of-State direct mail literature. As amended by the conference committee, *Senate Bill 523* did not include the repeal of the sales and use tax exemption for sales of out-of-state direct mail literature.

For a further discussion of the various State and local revenue provisions of *Senate Bill 523* see the subparts “Income Tax” and “Miscellaneous Taxes” within Part C – Taxes of this *90 Day Report*.

Miscellaneous Taxes

Motor Fuel Tax

Senate Bill 971/House Bill 1302 (both failed) would have imposed an additional tax, called a sales and use tax equivalent rate, on motor fuel based on the retail price of regular, unleaded gasoline, excluding federal and State taxes, as determined by the Comptroller’s Office and specified by the bill. The tax rate would have been determined by multiplying the applicable semiannual average retail price determined by the Comptroller’s Office, less State and federal taxes, by the percentage tax rate to the nearest tenth of a cent. A 2% rate would have been imposed in fiscal 2013 and would have increased by 2% annually beginning in fiscal 2014, subject to a maximum rate of 6%. The rate increase would have been imposed only if the Comptroller’s Office determined that the average retail price of regular, unleaded gasoline including federal and State taxes in the past 12 months had increased by an annual rate of 15% or less. If the Comptroller’s Office determined that the annual price of gasoline increased by more than 15% annually, the rate would have remained unchanged.

The bills would have created a Local Transportation Infrastructure Aid Account within the Transportation Trust Fund (TTF). The revenue from the sales and use tax equivalent rate would have been distributed to local governments according to a formula, depending on the tax rate imposed during the fiscal year.

The bills also would have attempted to create some protections for TTF, which is a nonlapsing special fund that provides funding for transportation projects.

The bills would have required a three-fifths majority vote of the full standing committees assigned the legislation in the General Assembly before enactment of an authorization of a reversion or transfer from TTF to the general fund or a special fund. The bills also would have authorized use of funds from TTF for defense or relief purposes only if the State was invaded or a catastrophe had occurred and the Governor had declared a state of emergency.

Maryland Estate Tax – Qualified Agricultural Property

Maryland estate tax law does not explicitly provide for an exemption for agricultural property. However, estates may generally exclude up to \$1.0 million in assets, including agricultural property, from the Maryland estate tax. In addition, estates with agricultural property qualify for deductions under the federal estate tax available to all taxpayers that lower estate tax liabilities, as well as special treatment under the federal estate tax.

Senate Bill 294/House Bill 444 (both passed) exempt from the State estate tax up to \$5.0 million of qualified agricultural property. In order to qualify for the exemption, the

property must pass from a decedent to a qualified recipient who enters into an agreement to use the property for farming purposes after the decedent's death. In addition, the bills specify that the estate tax imposed on an estate with qualified agricultural property valued in excess of \$5.0 million cannot exceed the sum of (1) 16% of the amount by which the taxable estate excluding the value of qualifying agricultural property exceeds \$1.0 million; and (2) 5% of the value of the qualified agricultural property in excess of \$5.0 million.

If qualified agricultural property ceases to be used for farming purposes within 10 years, the bills require recapture of the estate tax relief. The bills apply to decedents dying after December 31, 2011.

Enhanced Businesses That Create New Jobs Tax Credit

Businesses located in Maryland that create new positions and establish or expand business facilities in the State may be entitled to a tax credit. To be eligible for the tax credit, the businesses must first have been granted a property tax credit by a local government of Maryland for creating the new jobs.

The credit may be taken against the corporate income tax, personal income tax, or insurance premiums tax. The credit may be applied to only one of these tax types in addition to the property tax.

House Bill 592 (Ch. 128) extends, from 12 to 24 years, the duration of the enhanced businesses that create new jobs tax credit. The Act also specifies the intent of the General Assembly that the extension of the duration of the tax credits under the Act apply to any business entity that qualified for the tax credit before July 1, 2012, the effective date of the Act.

Job Creation Tax Credit

Senate Bill 477/House Bill 1107 (both passed) extend the termination date of the job creation tax credit to January 1, 2020. This tax credit may be applied against the corporate or personal income tax, insurance premium tax, or public service franchise tax, but only against one of the taxes. The bills also provide that after termination of the tax credit, a business entity may be considered for eligibility for the tax credit based on positions filled before termination if other requirements for the tax credit are satisfied.

Recordation Tax – Indemnity Mortgages

Senate Bill 523 (failed) incorporated provisions initially introduced in *Senate Bill 152 (failed)*, the Budget Reconciliation and Financing Act, that would have applied the local recordation tax to an “indemnity mortgage” in the same manner as if the guarantor were primarily liable for the guaranteed loan, unless the recordation tax is paid on another instrument of writing that secures the payment of the guaranteed loan or the indemnity mortgage secures a guarantee of repayment of a loan for less than \$1.0 million.

Communications Tax Reform Commission

Senate Bill 567/House Bill 563 (both passed) establish the Communications Tax Reform Commission to assess (1) the feasibility and fiscal implications of a competitively neutral communications tax and fee system that eliminates the disparate treatment of similar communications service providers; and (2) the efficacy of tax and other incentives to encourage investment in broadband networks and emerging technologies. The Comptroller and the State Department of Assessments and Taxation are to provide staff for the commission. The commission must submit an interim report of its findings to the Governor and the General Assembly by December 31, 2012, and a final report by June 30, 2013.

Other Tobacco Products Tax

Senate Bill 523 incorporated provisions initially introduced in *Senate Bill 152*, the Budget Reconciliation and Financing Act of 2012, related to taxes on other tobacco products. The bill would have increased the tax rate for other tobacco products, including cigars and smokeless tobacco.

Miscellaneous Local Taxes

Baltimore City

Senate Bill 243/House Bill 97 (both passed) extend until July 1, 2017, the requirement that Baltimore City appropriate at least 40% of hotel room tax proceeds to convention center marketing and tourism promotion, and specifies that this appropriation be made to Visit Baltimore (formerly the Baltimore Area Convention and Visitors Association).

Garrett County

Senate Bill 333/House Bill 224 (both passed) are local bills that authorize Garrett County to increase its hotel rental tax rate from 5% to 6%. The bills also redefine a transient charge in Garrett County to mean a hotel charge for sleeping accommodations of up to 30 days.

Part C

State Government

State Agencies, Offices, and Officials

State Agencies

Authority of Agencies

PlanMaryland, the State's first comprehensive development plan, is a policy framework for growth and preservation in the State and a blueprint to help guide State agencies in their decisionmaking on programs and funding for growth and preservation. In response to concern that PlanMaryland could weaken local government authority, *House Bill 1201 (passed)* requires the Smart Growth Subcabinet to meet at least biannually with county and municipal elected leaders and planning officials to discuss local government issues relating to activities that affect smart growth, development, neighborhood conservation, and resource management. The bill also prohibits the State Development Plan from being used to deny a State-issued permit or State funding mandated by statute or regulation or provided for in the State operating budget or capital budget. *House Bill 1201* specifies, among other things, that the plan does not supersede any local ordinance or regulation. Also, the plan is prohibited from requiring a local government to change or alter a local ordinance, regulation, or comprehensive plan.

Chapters 600 and 601 of 2008 required the State Treasurer, Maryland Automobile Insurance Fund, Injured Workers' Insurance Fund, and State Retirement and Pension System to attempt to use minority business enterprise brokerage and investment management services to the extent feasible, consistent with MBE standards and their respective fiduciary duties. *Senate Bill 343/House Bill 277 (both passed)* extend that requirement to the Department of Business and Economic Development, Maryland Higher Education Commission, Department of Housing and Community Development, and the State Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans.

Chapters 640 and 641 of 2010 set up a statutory framework for transportation and nontransportation public-private partnerships (P3s). *Senate Bill 358/House Bill 576 (both failed)* would have expanded on that framework. The bills would have authorized certain

agencies to enter into P3 agreements subject to Board of Public Works approval. The bills also specified provisions required to be included in a P3 agreement and added provisions governing solicited and unsolicited proposals for P3 agreements.

Governor's Office of Minority Affairs

House Bill 1369 (passed) expands the authority of the Special Secretary for the Governor's Office of Minority Affairs to include promoting and coordinating training regarding the requirements of the Minority Business Enterprise program. The bill also requires the Special Secretary to participate in State plans, programs, and operations that affect the establishment, preservation, and strengthening of minority business enterprises.

Advisory Councils, Committees, and Commissions

Chapter 266 of 2011 set up the Task Force on the Establishment of a Statewide Spay/Neuter Fund to study and make recommendations regarding the funding and establishment of a spay/neuter fund in the State. The task force was required to report its findings and legislative recommendations by January 1, 2012, and was to terminate on June 30, 2012. Because the task force did not have sufficient time to complete its charge, **Senate Bill 609/House Bill 936 (both passed)** extend the reporting deadline to January 1, 2013 and the termination date to June 30, 2013.

House Bill 288 (Ch. 118) reestablishes the Baby Boomer Initiative Council, which is tasked with developing a plan for a communications tool that connects Maryland businesses, nonprofits, academic institutions, and State agencies to meet the demands and take advantage of the resources associated with Maryland's age wave. Also, the council is required to make recommendations regarding policy initiatives for using the baby boomer population as a source of social capital and as a way to address community needs. Beginning on December 31, 2013, the council must annually report its findings and recommendations to the Governor and the General Assembly. The Act terminates May 31, 2015.

Public Information Act

The Public Information Act, with specified exceptions, prohibits a person from disclosing a public record of the Motor Vehicle Administration that contains personal information. **Senate Bill 998/House Bill 1279 (both passed)** add to the exceptions by requiring a custodian at the Motor Vehicle Administration to disclose personal information, for use by an electric company, that describes a plug-in vehicle, identifies the address of the registered owner of the vehicle, and will be used in planning for the availability and reliability of the electric power supply. The information may only be disclosed if it will not be published or further disclosed by the electric company, including to an affiliate, or used for marketing or solicitation purposes.

State Officials

Under Section 2 of Article XV of the Maryland Constitution, any elected State or local official who, while in office, is convicted of or enters a plea of *nolo contendere* to a felony, or

specified misdemeanors related to the official's public duties and responsibilities, is suspended from office automatically without pay or benefits. If the conviction becomes final, the elected official is removed from office automatically, and the office is deemed vacant. If the conviction is reversed or overturned, the elected official is reinstated automatically to the office for the remainder, if any, of the term of office during which the elected official was suspended or removed. **House Bill 211 (passed)** proposes an amendment to the Maryland Constitution to alter the removal process. If the voters of Maryland approve the change, an official who enters a plea of guilty or *nolo contendere* will be removed automatically from office when the plea is entered.

The Military and Veterans

Maryland Veterans Commission Membership

Two bills were passed to alter the membership of the Maryland Veterans Commission. The commission includes one member who is a representative of the Black Veterans of All Wars, Inc. Recently, however, all black veterans' organizations have merged into the National Association for Black Veterans. **House Bill 1435 (passed)** alters the membership to reflect that merger. A veteran of the Iraq or Afghanistan conflict is added to the membership of the commission by **Senate Bill 149 (Ch. 36)**. The Act also removes the requirement that one member of the commission be a representative of the Pearl Harbor Survivors Association, due to declining mobility of the association's membership, and instead adds an honorary nonvoting member from the association.

Task Force on Military Service Members, Veterans, and the Courts

Due to the strain that the operations in Iraq and Afghanistan have placed on military personnel and their families, veterans and military service members are at an increased risk of mental health disorders and substance abuse, which sometimes results in violence or criminal activity. To address these concerns, **Senate Bill 18/House Bill 252 (both passed)** establish the Task Force on Military Service Members, Veterans, and the Courts. The task force, among other things, is charged with studying ways the courts may address drug and alcohol use and crimes committed by armed service members or veterans. The task force is required to report its findings and recommendations to the Governor, the Chief Judge of the Maryland Court of Appeals, and the General Assembly by December 1, 2013.

State Designations

House Bill 766 (passed) requires the Governor annually to proclaim April 3 as Crime Victims and Advocates Commemorative Day to give recognition to the individuals in the State who have become crime victims and to honor the advocates who serve those victims. In addition to issuing the proclamation, the Governor is also required to take appropriate steps to publicize Crime Victims and Advocates Commemorative Day. April 3 was chosen as the date for the commemorative day in memory of Stephanie Roper, who was murdered on that day in 1982 and whose family members established the Maryland Crime Victims' Resource Center, Inc.

Miscellaneous

The Governor, under *House Bill 1429 (passed)*, is required to authorize a gift of a statue of Harriet Tubman from the citizens of Maryland to the United States government. The bill also requires the Governor to (1) request the United States Congress to place the statue in Emancipation Hall in the U.S. Capitol Visitor Center or another appropriate federal property in Washington, DC; and (2) establish the Harriet Tubman Statue Commission to raise funds to pay for the costs associated with the statue and represent the State in selecting the sculptor of the statue.

Elections

Election Administration

Voter Registration

Maryland moved forward with a variety of initiatives in recent years to utilize technology to make voter registration more accurate, efficient, and convenient. The General Assembly passed legislation in 2011 authorizing the State Board of Elections (SBE) to exchange data with other states for the purpose of maintaining accurate voter registration lists and implementing online voter registration. SBE recently completed a project to automate voter registration at the Motor Vehicle Administration (MVA). Individuals registering to vote at MVA now enter their voter registration information electronically using a touch screen. The data is then transmitted electronically directly to election officials. *House Bill 173 (Ch. 106)* extends this type of automated voter registration to other voter registration agencies. Under the National Voter Registration Act, the State is required to provide the opportunity to register to vote to all offices that offer public assistance, offices that provide services to individuals with disabilities, military recruitment offices, and other offices designated by the State. In Maryland, voter registration agencies include local departments of social services, offices on aging, marriage license offices of the clerks of court, and institutions of higher education. *Chapter 106* allows SBE to implement an automated voter registration system at these agencies by authorizing the use of an electronic copy of an individual's signature that is on file with a voter registration agency to complete a voter registration application. A copy of the electronic signature must be forwarded to SBE within five days after the application is submitted.

Baltimore City Election Dates

With the exception of the 2004 Baltimore City general election, held concurrently with the 2004 presidential general election, Baltimore City elections have traditionally been held in the year after the gubernatorial election. Baltimore City voters were given the power to change the city's election dates, through charter adoption or amendment, by the General Assembly in 1920. In 1999, Baltimore City voters approved a charter amendment moving the elections to presidential election years, beginning in 2004. The 1999 charter amendment, however, was determined to be effective only with respect to the Baltimore City general election. As a result,

the primary election remained in September 2003, consistent with State law, resulting in an extended period of time between the primary and general election (held in September 2003 and November 2004, respectively).

Bills were introduced in the General Assembly each year from 2000 to 2003 that would have allowed for both the city primary and general elections to be held in presidential election years and eliminated the period of over a year between the 2003 primary and 2004 general election and future Baltimore City primary and general elections, but none were successful. A 2004 Baltimore City charter amendment subsequently returned the city's general election to the year after the gubernatorial election, and the past two Baltimore City primary and general elections occurred in September and November of 2007 and 2011.

After very low turnout for the 2011 Baltimore City elections, a renewed effort to move the city elections to coincide with statewide elections was made in the 2012 General Assembly session culminating in the passage of State legislation to move the elections. Under *Senate Bill 597/House Bill 250 (both passed)*, the Baltimore City elections will coincide with presidential elections, beginning in 2016. Greater voter turnout and cost savings have been among the reasons given by supporters for aligning the city's elections with statewide elections. Officials elected in 2011 will serve a five-year term. It is estimated that Baltimore City will be able to forego spending approximately \$3.7 million for the elections that otherwise would occur in 2015.

Montgomery County Voting by Mail

Conducting elections by mail is an option utilized in several states in an effort to increase voter turnout, decrease costs, and reduce the administrative burden of running an election. Oregon and Washington conduct all elections by mail, and 17 additional states conduct certain elections by mail, typically smaller scale local elections or special elections, according to the National Conference of State Legislatures.

Voting by mail is not currently authorized by Maryland law. In Montgomery County, Maryland, the option of voting by mail gained increased attention in recent years due to the high cost and low turnout of two special elections to fill vacancies on the county council in 2008 and 2009. *House Bill 725 (passed)* authorizes the Montgomery County Council to direct that a special election for the county council be conducted by mail. The bill requires the local board of elections to mail a ballot and postage-paid return envelope to each registered voter who is eligible to vote in a special election at least 14 days before the election. The local board must establish voting centers for the use of any eligible voter who chooses to cast a ballot in person in the special election. Among other things, the voting centers must provide access to a voting system that is accessible to voters with disabilities in accordance with federal law. *House Bill 725* also specifies procedures for returning ballots to the local board, determining the timeliness of ballots returned, issuance of replacement ballots, and other administrative procedures for conducting an election by mail.

Congressional Redistricting

Federal case law requires the states to adjust congressional district boundaries every 10 years following the census to maintain districts of equal population. Congressional district boundaries are also required to comply with the Voting Rights Act, which is designed to protect the voting rights of minorities. Following the 2010 census, the U.S. Census Bureau determined that Maryland would retain eight congressional districts with a population of 721,529 residents each. The Governor's Redistricting Advisory Committee held public hearings prior to proposing a congressional map for the General Assembly's consideration during a special session in October 2011. Chapter 1 of the 2011 special session, which was based on the recommendation of the Governor's Redistricting Advisory Committee, redrew the boundaries of the State's congressional districts. Chapter 1 was an emergency measure to ensure the new boundaries would be in effect for the State's April 3, 2012 primary election. For information concerning State legislative redistricting, see the subpart "General Assembly" within Part C – State Government of this *90 Day Report*.

Ratification of the 17th Amendment

The 17th Amendment of the U.S. Constitution was ratified in 1913 and specifies that U.S. senators be elected by the people of each state. Under the original U.S. Constitution, senators were elected by the state legislatures. In the latter half of the 1800s, difficulties in the election of senators by state legislatures, including voting deadlocks that kept seats vacant for extended periods of time, were experienced in a number of states. Momentum for reform built, and in the early 1900s, a number of states implemented direct election processes on their own. Increasing support for direct election of senators eventually led to the 17th Amendment's approval in the Senate in 1911 and House of Representatives in 1912. Ratification by three-fourths of the states necessary for it to become part of the U.S. Constitution occurred on April 8, 1913. The Delaware General Assembly recently ratified the 17th Amendment in 2010. *Senate Joint Resolution 2/House Joint Resolution 3 (both passed)* establish that the 17th Amendment to the U.S. Constitution is ratified by the State of Maryland.

Campaign Finance

The General Assembly established the Commission to Study Campaign Finance Law during the 2011 session to examine the State's campaign finance laws; collect information on campaign financing practices and standards in other jurisdictions, including the federal government; and consider or examine various specific issues ranging from contribution limits to public campaign financing to enforcement of election laws. The commission issued an interim report in January 2012, containing its initial recommendations for changes to State campaign finance law. A final report from the commission is due in December 2012. Bills passed during the 2012 session that implement or are related to the recommendations of the commission are discussed below.

Campaign Finance Entity Notification and Contact Information

SBE is required under State campaign finance law to provide notice to campaign finance entities in certain instances, including prior to the filing deadlines for campaign finance reports and when campaign finance reports are not filed or are filed incompletely. *Senate Bill 1033/House Bill 1285 (both passed)* give the responsible officers of a campaign finance entity (chairman and treasurer) the option to receive notices provided by SBE of campaign finance report deadlines by email instead of by regular postal mail. The bills also require the chairman or treasurer to notify SBE of a change in residence address (or email address, if receiving notices by email) no later than 21 days before the deadline for the campaign finance entity's next campaign finance report.

Contribution Receipts

On receiving and before depositing a contribution, the treasurer of a campaign finance entity is required to issue a contribution receipt to a person that makes a contribution over a certain amount. The commission's report indicated that based on feedback and questions received by SBE from campaign finance entities, the existing requirement has proven to be difficult for campaign finance entities to comply with on a consistent basis. Accordingly, *Senate Bill 1033/House Bill 1285* modify the timing of when a receipt must be issued from "on receiving and before depositing" a contribution to requiring instead that a receipt be issued by the next deadline for filing a campaign finance report after receiving a contribution.

Contributions through Payroll Deductions and Membership Entities

State law allows voluntary campaign contributions to be collected by an employer, through payroll deductions, and by membership entities, and then forwarded to a campaign finance entity or entities, including a political action committee. Records of the names of the contributors must be kept by the employer or membership entity and forwarded to the applicable campaign finance entity or entities along with the contributions. Campaign finance entities, however, must report both the name and address of contributors, with the exception of certain smaller contributions that are allowed to be reported as a lump sum without identification of the contributors. Creating consistency between the information reported by the employer or membership entity and information reported by the campaign entity, *Senate Bill 763/House Bill 694 (Chs. 88 and 89)* require that the address of a contributor, in addition to the contributor's name, be recorded and forwarded by the employer or membership entity to the political action committee or other campaign finance entity receiving the contribution.

Retention of Records

According to the commission's report, campaign finance entities have indicated that an existing requirement that account books and records be retained from the establishment of a campaign finance entity until two years after a final campaign finance report is filed can be cumbersome, particularly for campaign finance entities in existence for a long period of time. *Senate Bill 919/House Bill 1007 (both passed)* limit the period of time for which account books and related records must be preserved to the earlier of 10 years after the creation of an account

book entry or related record or two years after the campaign finance entity files a final campaign finance report.

Reporting of Occupation and Employer of Campaign Contributors

Under SBE regulations, the name and address of a contributor is the only identifying information concerning campaign contributors that is required to be reported in a campaign finance report. While the commission did not go so far as recommending legislation requiring the inclusion of the occupation and employer from donors who donate more than a threshold amount, it did recommend that hearings be held by the General Assembly to gain further information concerning such a requirement. The commission's report noted that occupation/employer reporting requirements exist in over 30 states and in the federal campaign finance law.

Senate Bill 918/House Bill 1103 (both passed) require the treasurer of a campaign finance entity, to the extent practicable, to record and report the occupation and employer of an individual who makes contributions to the campaign finance entity in a cumulative amount of \$500 or more during an election cycle.

Ethics

Ethics Law Reform

In January 2012, the President of the Senate established the Senate Special Committee on Ethics Reform to review existing public ethics laws to determine whether and what reforms should be made.

The members of the special committee introduced *Senate Bill 920 (passed)* which, in its final version, requires a legislator to file electronically with the Joint Ethics Committee various currently required ethics forms. The forms include disclosure of certain representation before a State or local agency, disclosure of representation of the State or a local government for compensation, disclosure of certain ownership interests in a business enterprise subject to regulation by the State, disclosure of a contractual relationship (including employment) with the State or a local government, the disclaimer of an apparent or presumed conflict of interest, and the documentation of a recusal from participating in certain legislative action. A new form is added to require the disclosure of "any primary employment or business interest and the employer of the legislator or the spouse of the legislator, except for employment as a legislator."

As to forms filed on or after January 1, 2013, the Department of Legislative Services is required to publish the forms for public review on the Internet through an online registration program. Information on the forms relating to salary or other consideration will not be published on the Internet, nor will the members' annual financial disclosure statements.

The bill also establishes a workgroup to be appointed jointly by the Speaker of the House of Delegates and the President of the Senate. The purpose of the workgroup is to carry out a

comprehensive and coordinated review of public ethics issues, including disclosure requirements that apply to other branches of State government and to local governments. The workgroup is required to submit on or before December 31, 2012, a report to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee.

Baltimore County

House Bill 175 (passed) alters the definition of “local official” in Baltimore County to include each member and the chief executive of the Baltimore County Revenue Authority for purposes of inclusion in the provisions of the Baltimore County Ethics Law relating to conflicts of interest and lobbying, as well as financial disclosure.

Censure

On November 21, 2011, the President of the Senate referred to the Joint Committee on Legislative Ethics the alleged violations of the Maryland Public Ethics Law by Senator Ulysses Currie. This action followed the conclusion of a federal investigation and the Senator’s acquittal at a criminal trial for public corruption. The joint committee commenced its review and proceedings to determine whether there were violations of the Public Ethics Law. On February 15, 2012, the joint committee submitted the *Report of the Joint Committee on Legislative Ethics In Re: State Senator Ulysses Currie*. Subsequently, the Senate passed *Senate Simple 1 (passed)*, a Resolution of Censure, adopting the findings and conclusions contained in the report and ordering the censure of Senator Ulysses Currie.

Procurement

After maintaining the basic structure of the State’s Minority Business Enterprise (MBE) program for more than 20 years, the General Assembly reauthorized the program with substantial changes during the 2012 legislative session. The General Assembly also adopted new restrictions on firms that may participate in State procurement, redefined which businesses are eligible to participate in the State’s small business set-aside program, instituted additional procurement preferences, and provided greater flexibility to State agencies that procure health, human, social, or educational services.

MBE Reauthorization

The State’s MBE program establishes a goal that at least 25% of the total dollar value of each agency’s procurement contracts be awarded to MBEs; long-standing subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses were repealed by Chapters 252 and 253 of 2011. There are no penalties for agencies that fail to reach the 25% target. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements. The MBE program had been scheduled to terminate July 1, 2012.

House Bill 1370 (passed) extends the termination date of the MBE program for four years, until July 1, 2016, and requires the completion of a new disparity study by September 30, 2015. It also repeals the existing statewide goal of having at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs and instead requires the Special Secretary for the Governor's Office of Minority Affairs (GOMA), in consultation with specified State agencies and other stakeholders, to establish a statewide goal biennially through the regulatory process. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the statewide goal or guidelines, the previous year's goal or guidelines apply.

House Bill 1369 (passed) expands the authority of the Special Secretary to include promoting and coordinating training regarding the requirements of the MBE program. It also requires the Special Secretary to participate in State plans, programs, and operations that affect the establishment, preservation, and strengthening of MBEs.

Restrictions on Participation in Procurement

Senate Bill 235/House Bill 440 (both passed) prohibit a person who is identified as engaging in investment activities in Iran – generally defined as investing at least \$20 million in Iran's energy sector – from participating in procurement with a public body in the State. The bills require the Board of Public Works to develop, by December 31, 2012, and regularly update a list of persons who engage in investment activities in Iran. Beginning January 1, 2013, a public body in the State must require persons engaging in procurement to certify that they are not engaged in investment activities in Iran. Persons who falsely certify to a public body that they are not engaged in investment activities in Iran are subject to civil action by the State within three years of the false certification. If the action is successful, the person is ineligible to bid on a public contract for three years and is subject to civil fines and other penalties.

Senate Bill 551/House Bill 425 (both passed) bar a State procurement unit from knowingly procuring supplies or services from a person that does not comply with federal law related to disclosing the use of "conflict minerals" that originated in the Democratic Republic of the Congo (DRC) or its neighboring countries. A noncompliant person is one that does not file the necessary federal disclosure, is considered under federal law to have provided an unreliable determination, or includes false information in the disclosure. Procurement units must include notice of this requirement in any solicitation for supplies or services.

Senate Bill 659/House Bill 865 (both passed) prohibit a public employer, including the State and local governments, from knowingly entering into a contract for architectural, construction, engineering, or energy performance contract services with an estimated value of at least \$2 million unless the services are to be provided in the United States, subject to specified exemptions. The bills also require bidders on any procurement contract with an estimated value of at least \$2 million to disclose whether the bidder or a subcontractor has plans, at the time the bid is submitted, to perform any services under the contract outside the United States. If so, the

bidder must disclose where the services will be performed and why it is necessary or advantageous to perform them outside the country.

Procurement Preferences

Senate Bill 549/House Bill 456 (both passed) allow a business to qualify as a small business under the Small Business Reserve Program if it does not exceed specified limits for the number of employees *or* average gross sales, instead of qualifying only if it does not exceed both limits. The Senate bill includes a related reporting and program evaluation requirement for the Department of General Services that is not included in the House bill.

House Bill 448 (passed) requires State agencies to purchase only electronic products that have either gold or silver ratings from the Electronic Product Environmental Assessment Tool or meet other nationally recognized and consensus-based standards approved by the Department of Information Technology. Upon request, the Secretary of Information Technology may waive this requirement. Beginning on October 1, 2014, a procurement contract for electronic recycling services must be awarded to a recycler that is R2 or e-Stewards certified, or that meets comparable standards that are approved by the Maryland Department of the Environment, in consultation with the Department of General Services.

Procurement of Health, Educational, and Social Services

Chapters 438 and 439 of 2008 established a Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies to evaluate and make recommendations regarding the methods used by State agencies to procure the delivery of health and social services. Several bills during the 2012 session implement some of the task force's recommendations, which generally relate to granting greater flexibility to agencies in the procurement of health, education, and social services; streamlining and standardizing State procurement processes; making State payments to providers in a more timely fashion; and enhancing the use of technology in the procurement and contract monitoring processes. *Senate Bill 315/House Bill 217 (both passed)* establish a Council for the Procurement of Health, Educational, and Social Services to advise the Board of Public Works and monitor the implementation of recommendations made by the task force. *House Bill 1196 (passed)* alters the conflict of interest provision for participation in procurement by allowing a person who provides comments in response to a request by a procurement unit for information from two or more persons related to a procurement for health, human, social, or educational services to submit a proposal for the procurement. Additionally, the legislation specifies that oral comments on a specification or solicitation for a bid or proposal that are provided from two or more persons in response to a request by an Executive Branch procurement unit do not constitute assisting the unit in drafting a procurement.

Personnel

State Employees

Impact of Budget Actions on State Employees

For the second consecutive year, no furlough or temporary salary reduction plan was included in the budget. There are, however, a number of budget actions that will affect State employees in fiscal 2013. The budget included a 2% cost-of-living adjustment (COLA) for State employees; however, State employees may not receive this salary enhancement. In order to balance the budget, a number of budget reductions were contingent on the failure of *Senate Bill 523 (failed)*, the State and Local Revenue and Financing Act of 2012. Among these contingent reductions was the elimination of funding for the State employee COLA (\$33.8 million) and an increase in the State employee share of health insurance costs (\$15 million). Subsequent action of the General Assembly could avoid these reductions, however. For a more detailed discussion of *Senate Bill 523* see Part B – Taxes of this *90 Day Report*.

Salary increments for employees performing at or above established standards and the State match of \$600 for employees participating in deferred compensation plans also were not funded in the budget. The Budget Reconciliation and Financing Act of 2012, *Senate Bill 152 (failed)* would have included an exception for salary increases for operationally critical staff. For a more detailed discussion of *Senate Bill 152* see Part A – Budget and State Aid of this *90 Day Report*.

Another action contingent on the failure of *Senate Bill 523* is the elimination of 500 positions in the Executive Branch – most of which will be filled positions. As a result, in fiscal 2013, the size of the regular State workforce would be 78,746 positions. This number represents a decrease of 374 positions over fiscal 2012, and is within the limit established by the Spending Affordability Committee.

Collective Bargaining

Chapter 298 of 1999 established statutory collective bargaining rights for many State employees in the principal departments within the Executive Branch of State government. Chapter 341 of 2001 extended the same collective bargaining rights to most nonfaculty employees of the State's public universities and colleges. Currently, approximately 40,000 State employees have collective bargaining rights. However, several groups of State employees – including employees of the Legislative and Judicial branches, employees of certain constitutional officers, and employees of certain State boards or authorities, do not have collective bargaining.

Senate Bill 783/House Bill 537 (both passed) expand the State's collective bargaining law to include employees of the Office of the Comptroller, the Maryland Transportation Authority (who are not police officers), the State Retirement Agency, and the Maryland State Department of Education. Rather than create new bargaining units for these employees, at the

request of the appropriate exclusive representative of existing bargaining units, the State Labor Relations Board must determine the appropriate existing bargaining unit for each employee affected and add all affected positions to the appropriate unit. The board must also, again at the request of the exclusive representative, conduct self-determination elections for the newly added members of each bargaining unit. These elections will allow employees of each of the added units to decide whether or not to have representation.

Employee Classification

Special appointments are at-will positions in the Executive Branch. A category of special appointments may be filled with regard to political affiliation. Positions that may be filled with regard to political affiliation must be so designated and disclosed to the appointee. All positions within Maryland Correctional Enterprises (MCE) and the Office of the Attorney General (OAG) are designated in statute as special appointments, except for office clerks and secretaries in MCE that are not otherwise designated as special appointments. Most positions may not be filled with regard to political affiliation, except for designated senior management positions within OAG.

Senate Bill 455/House Bill 526 (both passed) repeal the special appointment status for selected OAG employees and MCE employees. OAG staff who are not attorneys or who do not provide direct support to the Attorney General, or to specified positions within OAG, are no longer designated as special appointments. Even so, the Attorney General retains existing recruitment authority for positions currently designated as special appointments within the office. Only managerial, supervisory, and confidential positions within MCE remain special appointments, and MCE may hire individuals and inmates consistent with current policies and practices. The bills' provisions apply to newly hired employees. Positions that lose their special appointment status remain at-will until they become vacant.

Personnel Actions

Hiring Prohibitions

A December 2011 audit of the Department of Budget and Management, Office of Personnel Services and Benefits, by the Office of Legislative Audits found that policies governing the rehiring of employees terminated from State service were not uniform among the State's various personnel systems, and information on terminations was not being shared among the various personnel systems. A review of terminations and hirings across personnel systems found that 61 employees working in the State Personnel Management System had been terminated with prejudice by the Maryland Department of Transportation.

House Bill 525 (passed) specifically bars an appointing authority in the Executive, Legislative, or Judicial branches of State government from hiring any individual who has been terminated with prejudice from State service. The bill applies only prospectively and does not affect an application or offer for employment made before October 1, 2012.

Disciplinary Actions

The Division of Parole and Probation in the Department of Public Safety and Correctional Services does not currently have statutorily mandated caseload levels. However, maintaining manageable caseload ratios remains an important issue for the agency because larger caseloads can limit a parole and probation agent's ability to detect violations and intervene effectively. Maryland supervises offenders based on risk level, dividing the population into three categories: violence prevention initiative (VPI), sex offenders, and general cases.

The ideal average caseload ratio is 30:1 for VPI, 30-40:1 for sex offenders, and 100:1 for general cases. The division does well managing VPI and sex offender caseloads; however, the agency often has between 16 and 18 jurisdictions operating every month for at least the past 15 months with general caseload ratios in excess of the 100:1 target. *Senate Bill 885/House Bill 1121 (both passed)* require the division to consider the size of an employee's active caseload and the classification of the offenders within the employee's active caseload when considering disciplinary actions relating to employee performance.

State Employee Benefits

Between September 2010 and October 2011, three patients at Clifton T. Perkins Hospital, the State's maximum-security mental hospital, were murdered in three separate incidents, including two within one week of each other. In at least one of the three murders, the body of the victim was found by staff making routine checks. State personnel law does not address the provision of mental health services to State employees who experience a traumatic event at their place of work. However, the Employee Assistance Program is a confidential service offered to help State employees who face personal matters that adversely affect job performance.

Senate Bill 314/House Bill 1193 (both passed) require Executive Branch agencies to obtain mental health support services for any employee affected by a traumatic event resulting in the death of an individual that occurs in a State facility used for providing health, juvenile, or correctional services. Services must be provided within 48 hours of the traumatic event.

Pensions and Retirement

After passing comprehensive pension benefit reform legislation during the 2011 session, in 2012, the General Assembly made several adjustments to that legislation and increased member contributions for the Judges' Retirement System (JRS) to conform with similar increases for most teachers and regular State employees included in that legislation. It also expanded exemptions for earnings limitations for reemployed retirees and enhanced the State Retirement and Pension System's (SRPS) authority to establish compensation for senior members of its Investment Division. Provisions of the Budget Reconciliation and Financing Act of 2012, which failed, would have shifted a portion of the annual employer pension contributions for members of the Teachers' Retirement System (TRS) and Teachers' Pension System (TPS) from the State to local employers.

Benefits

Senate Bill 335 (passed) increased the member contribution for JRS members from 6 to 8% of earnable compensation. The increase matches the two percentage point increase in member contribution rates enacted in 2011 for members of TPS and the Employees' Pension System (EPS). It also instituted a five-year vesting requirement for JRS members hired on or after July 1, 2011; currently, there is no vesting requirement for JRS members.

Following the enactment of pension benefit reform legislation (Chapter 397 of 2011), which reduced benefits for most new SRPS members hired after its July 1, 2011 effective date, the General Assembly became aware that some State employees who transferred from one SRPS system to another were considered new members and, therefore, subject to the less generous benefits than those retained by existing members. *Senate Bill 880/House Bill 801 (both passed)* allow a member of any one of the several SRPS systems who was a member on June 30, 2011, and who transfers from one system into another designated system on or after July 1, 2011, and without a break in employment of more than 30 days, to be subject to the same requirements for the new system that apply to existing members. The bill applies retroactively to any SRPS member who transfers to one of the designated systems on or after July 1, 2011.

House Bill 19 (passed) expands eligibility for SRPS members who are members of a reserve component of the U.S. Armed Forces to earn military service credit currently available only to members of the Maryland National Guard. Specifically, the bill allows reservists to earn four months of additional service credit for every year of active service or inactive training duty in the reserves that interrupts employment. It also allows SRPS members with at least 10 years of service credit to earn four months of service credit for every year of duty in the reserves that occurred prior to membership, up to three years of credit. The bill does not apply to members of the Legislative Pension Plan.

Reemployment of Retirees

In general, SRPS retirees may be reemployed, but they are subject to an earnings limitation if they are reemployed by the same employer for whom they worked at the time of retirement. Exemptions from the reemployment earnings limitation, if reemployed under specified circumstances, exists for public school teachers and principals, nurses in State hospitals, correctional officers, State Police officers, and judges. Also, retirees of the Employees' Retirement System (ERS), EPS, TRS, and TPS are exempt if they have been retired for more than five years, while retirees of the Correctional Officers' Retirement System (CORS) and State Police Retirement System (SPRS) are exempt if they have been retired for more than nine years.

Several bills were passed during the 2012 legislative session that address the reemployment earnings limitation. *Senate Bill 250/House Bill 84 (both passed)* reduce from nine to five the number of years that a CORS or SPRS retiree must wait in order to be exempt from a reemployment earnings limitation. *Senate Bill 497/House Bill 630 (both passed)* exempt ERS and EPS retirees from the earnings limitation if they are reemployed as contractual parole

and probation officers for up to four years. *Senate Bill 251/House Bill 98 (both passed)* add the Maryland School for the Deaf to the types of schools in which a TRS/TPS retiree may be reemployed without being subject to the earnings limitation.

System Administration

Salary Setting for Investment Division

Senate Bill 672/House Bill 806 (both passed) give the Board of Trustees of SRPS independent authority to determine the qualifications and compensation for the deputy chief investment officer and managing director positions within the State Retirement Agency's Investment Division, subject to specified limitations. Any salary increase for either position may not be greater than 10% of the lowest salary for the position in the prior fiscal year. The board may not provide a bonus to an employee in a position covered by the bills.

Study of Asset Management

Senate Bill 779/House Bill 916 (both passed) require the Governor's Office of Minority Affairs to conduct a study of the funds managed by SRPS to determine its capacity to select minority fund managers across all asset classes and determine methods that assure the recruitment and selection of minority companies for fund-to-fund management or direct management of assets.

Medical Board Participation

Senate Bill 357 (Ch. 64) allows a physician who participates in the Optional Retirement Program to serve on a medical board that assesses an SRPS member's eligibility for disability benefits if the physician is not eligible for a disability benefit under State pension law. The physician may not participate in a case concerning disability benefits for a member who is employed by the same institution that employs the physician.

Technical Funding Changes

House Bill 807 (passed) makes technical and clarifying changes to the funding provisions of Chapter 397 of 2011. *Senate Bill 273/House Bill 162 (both passed)* change the date by which the SRPS Board of Trustees must certify to each local employer, other than libraries, the amount payable to the system for its pro-rata share of SRPS operational and administrative expenses, from May 1 to February 1 of each year. If the amount certified is greater than the actual amount due, the difference will be credited against the State or local employer's quarterly or annual payments over the next two fiscal years. If the amount certified is less than the actual amount due, the employer must make up the difference through quarterly or annual payments over the next two fiscal years.

Pension Cost Sharing for TRS/TPS Members

Since the inception of TRS in the 1920s, and continuing with the establishment of TPS in 1980, the State has paid the full employer contribution on behalf of TRS/TPS members who are employed by local jurisdictions and whose salaries are paid by State or local funds, including teachers, principals, community college faculty, librarians, and other education-related personnel specified in statute. As of June 30, 2011, the combined plans have a total active membership of 105,528, with all but about 1,900 employed by local jurisdictions. In fiscal 2012, the total State contribution on behalf of members employed by local jurisdictions is \$881.4 million; of that, \$833.0 million is for employees of local school boards, and the remainder is for community college and public library personnel.

Maryland is 1 of 11 states that pay the full employer pension contribution for teachers and other related staff employed by local jurisdictions. The remaining 39 states either share the cost with local employers or require local employers to pay the full cost. In 2011, the Public Employees' and Retirees' Benefit Sustainability Commission recommended a phase-in of a requirement for local employers to pay 50% of the combined pension and Social Security contributions for their employees.

The Budget Reconciliation and Financing Act of 2012, *Senate Bill 152 (failed)*, would have phased in a requirement that local employers pay the employer “normal cost” for active members of TRS/TPS. The employer normal cost represents the employer’s share of the payment that is necessary to fund the benefits that members accrue in a given year. It is one of two components of the total employer contribution for pension benefits; the other being the amount necessary to pay down liabilities accrued in prior years. In fiscal 2013, the employer normal cost for TRS/TPS is projected to be 4.62% of payroll, with the total employer contribution projected to be 13.29% plus an additional \$129 million in accordance with the financing provisions of Chapter 397.

For a further discussion of how the proposed pension cost sharing would have affected local school and county budgets, see the subpart “Education – Primary & Secondary” within Part L – Education of this *90 Day Report*.

General Assembly

Ethics

Issues regarding legislative ethics played a notable role in the 2012 session, with a resolution of censure, *Senate Simple Resolution 1 (passed)*, being brought to the Senate of Maryland and adopted. It was the first time since 1998 that a disciplinary action for an ethics violation had been brought to the Senate or House of Delegates.

Senate Bill 920 (passed), a bill proposed by the Senate Special Committee on Ethics Reform, requires that several types of disclosure statements (Forms A through E) filed by

members of the General Assembly with the Joint Ethics Committee will be posted on the Internet. The annual financial disclosure statements will not be posted on the Internet, nor will information contained on the applicable disclosure forms concerning members' salary amounts or other compensation amounts.

For a more comprehensive overview of these matters, see the discussion under the subpart "Ethics" of this Part C.

Tax Credit Evaluation

In the interest of fiscal accountability, *Senate Bill 739/House Bill 764 (both passed)* will provide a formal system of legislative review, beginning in 2013, to determine whether specific statutory tax credits are necessary and beneficial. The bills establish a legislative committee evaluation process in consultation with the Comptroller's Office, the Department of Budget and Management, the Department of Legislative Services (DLS), and agencies administering tax credits. The tax credits covered by the bills are Enterprise Zone Credits; One Maryland Economic Development Credits; Earned Income Credits; Film Production Activity Credits; Sustainable Communities Credits; Research and Development Expenses Credits; New Job Creating Businesses Credits; and Biotechnology Investment Incentive Credits.

Redistricting

Legislative Redistricting

The reconfiguring of the State's 47 legislative districts is governed by the Constitution of Maryland (Article III, Section 5), which requires the Governor to prepare a legislative districting plan following the decennial census and to present the plan to the presiding officers of the General Assembly in the form of a joint resolution on the first day of the regular session in the second year following the census. The Constitution further provides that if the General Assembly does not adopt another redistricting plan by the 45th day of the session, the Governor's plan as presented becomes law.

By practice since 1981, there has been an advisory committee appointed by the Governor to formulate proposed changes and adjustments to State legislative districts. The advisory committee that was appointed during the 2011 interim by Governor Martin J. O'Malley consisted of Jeanne D. Hitchcock as chairman, Thomas V. Mike Miller, Jr., President of the Senate of Maryland, Michael E. Busch, Speaker of the House of Delegates, former Delegate James King, and Richard Stewart. The committee set the legal and policy guidelines it used in formulating a redistricting plan and received input from legislators, community organizations, and the general public through a series of public hearings held throughout the State in the summer and fall of 2011. The Department of Planning serves as the official repository of the documents of the Governor's Redistricting Advisory Committee. DLS provided staff support to the General Assembly for the redistricting, including the drafting of alternative redistricting plans and the preparation of maps and reports of data.

The Legislative Districting Plan complied with the requirements of Chapter 67 of 2010, which requires that population counts used to create legislative districts exclude incarcerated individuals who were not State residents prior to their incarceration in either State or federal correctional facilities and that incarcerated individuals who were State residents prior to their incarceration be counted as residents at their last known address.

The Districting Plan of 2012, contained in *Senate Joint Resolution 1/House Joint Resolution 1 (both enacted)*, was introduced on January 11, 2012, and became law on February 24, 2012, without action by the General Assembly. While several alternative State redistricting plans were prepared and introduced as joint resolutions during the session, none passed.

Congressional Redistricting

The 2012 primary election for congressional candidates was held quite early in the year, due to it being combined with the presidential primary. Consequently, the Congressional Districting Plan, which was also prepared by the advisory committee described above, was enacted as an emergency bill in a special session that was held in October 2011. For a more comprehensive description of the Congressional Districting Plan of 2011, see the discussion under the subpart “Elections” of this Part C.

New Study Committees and Task Forces with Legislative Membership

Each year, the General Assembly creates study committees and task forces that will conduct in-depth studies of important public policy issues. The following bills relate to study committees and task forces that include members of the General Assembly in their membership. They are discussed in greater detail in the appropriate subject-area parts of this *90 Day Report*.

Military Service Members, Veterans, and the Courts

A Task Force on Military Service Members, Veterans, and the Courts is established by *Senate Bill 18/House Bill 252 (both passed)* to study ways that the court system can better address the incidence of dysfunction related to combat stress – including substance abuse, mental health conditions, and violence – among veterans and active members of the armed services. The task force will include one member of the Senate of Maryland and three members of the House of Delegates.

Procurement of Health, Educational, and Social Services

Senate Bill 315/House Bill 217 (both passed) create a Council for the Procurement of Health, Educational, and Social Services to advise the Board of Public Works. The council will include among its members one senator and one delegate.

Deaf Culture Digital Library

A Task Force to Study the Establishment of a Deaf Culture Library will be established by *Senate Bill 571/House Bill 390 (both passed)*. Two members of the Senate of Maryland and two members of the House of Delegates are included in the membership of the task force.

Financial Education and Capability

In order to monitor the implementation of public and private initiatives to improve the financial literacy of Maryland's citizens, *Senate Bill 476/House Bill 515 (both passed)* create a Financial Education and Capability Commission. Among the commission's members will be two senators and two delegates. One senator and one delegate will be designated the co-chairs by their respective presiding officers.

Apprenticeships

House Bill 493 (passed) establishes a Task Force to Study Economic Development and Apprenticeships. The task force will primarily study the effectiveness of apprenticeship programs in other states and in countries such as Germany and Switzerland. The membership will include two members of the Senate of Maryland and three members of the House of Delegates.

Lead Paint Liability Protection

The issue of lead paint in residential rental properties has been a serious problem for both tenants and landlords. In order to evaluate and make recommendations relating to lead liability protection for owners of pre-1978 rental property, the Maryland Insurance Commissioner is directed by *House Bill 472 (passed)* to convene a workgroup on the subject. The membership of the workgroup will include two senators and two delegates.

Virtual Learning

The Maryland Advisory Council for Virtual Learning, within the Department of Education, is established by *Senate Bill 689/House Bill 745 (both passed)*. Two members of the Senate of Maryland and two members of the House of Delegates are to be included in the council's membership.

Program Evaluation ("Sunset Review")

The Maryland Program Evaluation Act, enacted in 1978, is utilized by the General Assembly as a mechanism to monitor and evaluate approximately 70 regulatory boards, commissions, and other agencies of the Executive Branch of State government. DLS is required under this law periodically to undertake the evaluations according to a statutorily based schedule. These evaluations are more commonly known as "sunset review" because the agencies subject to review are usually also subject to termination ("sunset") unless legislation is enacted to reauthorize them. The methodology for conducting the evaluations by DLS involves an

extensive evaluation process by DLS staff. The goals of the process have evolved to reflect the General Assembly's interest in identifying the strengths and weaknesses of the various regulatory entities that are subject to program evaluation and addressing through legislation appropriate issues relating to the structure, performance, and practices of the agencies.

This session, the evaluation and termination dates on the following regulatory agencies were extended. Some of these bills also contain substantive changes in an agency's powers and duties, and those changes are discussed in the appropriate subject-area parts of this *90 Day Report*.

- ***Senate Bill 94/House Bill 72 (both passed)*** extend the State Board for Certification of Residential Child Care Program Professionals until 2024.
- ***Senate Bill 95/House Bill 73 (both passed)*** extend the State Board of Social Work Examiners until 2024.
- ***Senate Bill 96/House Bill 74 (both passed)*** extend the State Board of Certified Interior Designers until 2024.
- ***Senate Bill 187/House Bill 341 (both passed)*** extend the State Commission of Real Estate Appraisers and Home Inspectors until 2023.
- ***Senate Bill 274/House Bill 283 (both passed)*** extend the State Board of Pharmacy until 2023.
- ***Senate Bill 282/House Bill 394 (both passed)*** extend the Office of Cemetery Oversight until 2023.
- ***Senate Bill 450/House Bill 511 (both passed)*** extend the State Board of Environmental Sanitarians – renamed by the bills to be the State Board of Environmental Health Specialists – until 2017.
- ***Senate Bill 921/House Bill 395 (both passed)*** extend the State Board of Nursing until 2023.
- ***Senate Bill 134 (passed)*** extends the State Real Estate Commission until 2022.

A proposal to revise the Maryland Program Evaluation Act was unsuccessful this session. As introduced, ***Senate Bill 378/House Bill 405 (both failed)*** would have eliminated further sunset reviews for the majority of entities covered by the Act and required DLS to develop and implement annual research agendas, subject to the approval of the Presiding Officers, and present findings and recommendations to relevant committees of the General Assembly.

Annotated Code

Code Revision – Land Use Article

The General Assembly is nearing the completion of the long-term project to revise Maryland's entire code of statutory laws. The purpose of the Code Revision project is to reorganize statutory provisions and restate them in clear language and a modern format. There are no substantive changes made to the law being revised. The Code Revision project is staffed by DLS, and the work is exhaustively reviewed by prominent members of the legal community prior to being introduced as bills.

House Bill 1290 (passed) revises, restates, and recodifies the laws of the State relating to land use. The new Land Use Article as a whole governs the establishment and implementation of land use mechanisms by local governments in their jurisdictions. Division I is derived from Article 66B – Land Use and contains statewide enabling authority and planning requirements and other provisions concerning land use in commission counties, municipal corporations, and Baltimore City. Division II is derived from Article 28 – Maryland-National Capital Park and Planning Commission (M-NCPPC) and contains provisions on M-NCPPC and on land use in Montgomery and Prince George's counties.

House Bill 1130 (passed), a companion bill to the revision, corrects cross-references to the new Land Use Article that appear in other parts of the Annotated Code of Maryland.

Annual Corrective and Curative Bills

Because the General Assembly delegates very little editorial control to the publishers of the Annotated Code with respect to making nonsubstantive and technical changes in the Code, DLS has long had the statutory authority to prepare legislation to make these sorts of changes both in the statutory text and bill titles of prior years' enactments.

These corrective measures are the Annual Corrective Bill, ***Senate Bill 379 (Ch. 66)*** and the Annual Curative Bill, ***Senate Bill 380 (Ch. 67)***, respectively. Neither enactment contains any substantive change.

Part D

Local Government

Local Government – Generally

Local Government Investments

Local Government Investment Pool – Authorized Participants

The Maryland Local Government Investment Pool (MLGIP) is a vehicle administered by the State Treasurer and provided to local governments for the short-term investment of funds. The MLGIP consists of all funds from local governments placed in the custody of the State and any funds of the State that are placed in the pool by the State Treasurer. Investment guidelines for the pool are the same as those for State funds. Local governments that may participate in the pool include:

- the governing body of a county or municipality;
- a county board of education;
- the governing body of a road, drainage, improvement, construction, or soil conservation district or commission in the State;
- the Upper Potomac River Commission;
- any other political subdivision or body politic of the State; and
- a local government insurance pool formed under Title 19, Subtitle 6 of the Insurance Article.

The State Treasurer sets investment policies for, and administers, the MLGIP. Administrative procedures must include specification of minimum amounts that may be deposited in the pool and minimum periods of time for deposits to remain in the pool; payment

of administrative expenses from the pool; and equitable distribution of earnings (or allocation of losses) from the pool to participants in the pool.

Senate Bill 542/House Bill 575 (both passed) expand the list of participants that may place funds in the MLGIP to include, with the approval of the State Treasurer, a unit of State government, or an entity of the State if its funds are not State money over which the State Treasurer has investment authority. The bills make clarifying technical changes regarding specified monies and also allow the State Treasurer to specify maximum amounts that may be deposited by any authorized participant.

Investment Guidelines

Local governments are required to establish and follow a local investment policy for public funds that is consistent with guidelines established by the State Treasurer. The guidelines are intended to govern the investment of public funds by local governments in a manner that facilitates sound cash management while protecting the public interest and assuring that the local government has access to the public funds it needs. For purposes of this requirement, local government means Baltimore City, counties, municipalities, community colleges, the Washington Suburban Sanitary Commission, public corporations, and authorities of the State that issue debt. The public funds subject to the local investment policy do not include revenues held as part of a pension fund, other postemployment fund, or trust fund account.

Senate Bill 463/House Bill 174 (both passed) exclude revenues held by certain units of local government for self-insurance purposes from those public funds that must be invested in accordance with a local investment policy.

Land Use

Local Historic District Commissions and Historic Preservation Commissions

Under provisions of law that are generally applicable to noncharter counties and municipalities, a local jurisdiction may create an “historic district commission” or “historic preservation commission,” which must have at least five members. Each member of an historic district commission or historic preservation commission must possess specified interest, knowledge, or training in one of a number of specified fields or related disciplines. A local jurisdiction that creates an historic district commission or historic preservation commission must establish and publicly adopt criteria for qualifying as a member. A majority of the members must be residents of the local jurisdiction that created the commission.

Each member of an historic district commission or historic preservation commission must be appointed for a three-year term, and terms of the members must be staggered. A member is eligible for reappointment. The appointing authority must fill any vacancy on a commission for the unexpired term of the vacant position.

House Bill 858 (Ch. 138) authorizes a local jurisdiction that has an historic district commission or historic preservation commission to designate one alternate member who may sit

on the commission when any other member is absent. In addition, when the alternate member is absent, the local jurisdiction may designate a temporary alternate.

Code Revision

House Bill 1290 (passed) revises, restates, and recodifies the laws of the State that relate to land use. The new Land Use Article as a whole governs the establishment and implementation of land use mechanisms by local governments in their jurisdictions. Division I is transferred from Article 66B – Land Use and contains statewide enabling authority and planning requirements and other provisions concerning land use in commission counties, municipalities, and Baltimore City. Division II is transferred from Article 28 – Maryland-National Capital Park and Planning Commission (M-NCPPC) and contains provisions on M-NCPPC and on land use in Montgomery and Prince George’s counties.

House Bill 1130 (passed) corrects cross-references to the new Land Use Article of the Annotated Code of Maryland; adds a reference to laws governing the Critical Area Program to a list in the Land Use Article of other public general laws that may affect land use in a local jurisdiction; and specifies that, under provisions relating to historic preservation in Title 8 of the Land Use Article, which are generally applicable to noncharter counties and municipalities, “person” includes a unit of local government.

The Land Use Article is a product of the continuing nonsubstantive revision of the Annotated Code of Maryland by the legal staff of the Office of Policy Analysis of the Department of Legislative Services.

Bi-county Agencies

Washington Suburban Sanitary Commission

The Washington Suburban Sanitary Commission (WSSC) is the eighth largest water and wastewater utility in the country, providing water and sewer services to 1.8 million residents in Montgomery and Prince George’s counties. It has over 460,000 customer accounts, serves an area of around 1,000 square miles, and currently employs more than 1,500 people. The commission operates four reservoirs, two water filtration plants, and six wastewater treatment plants. Additionally, the Blue Plains Water Pollution Control Plant handles approximately 169 million gallons per day under a cost-sharing agreement with WSSC. The commission maintains nearly 5,500 miles of water main lines and over 5,400 miles of sewer main lines.

Transparency and Rate Relief Act of 2012

House Bill 896 (passed) establishes the Task Force to Study Rates and Charges in the Washington Suburban Sanitary District. The task force must (1) determine whether other states have a cap on the percentage that a public utility may increase water and sewer usage rates in a single year; (2) complete a comparison of the water and sewer usage rates and rate increases charged by WSSC with rates charged in other states; (3) determine the effect of a

General Assembly imposed rate cap or prepayment discount on WSSC; (4) study the process developers follow in charging for the construction of and connection to water and sewer facilities; and (5) make recommendations on standards for construction of and connection to water and sewer facilities and improving transparency in these practices.

The task force must report its findings and recommendations to the Governor and the Montgomery County and Prince George's County legislative delegations by December 31, 2012. The task force terminates on May 31, 2013.

House Bill 896 also requires in Prince George's County, beginning June 1, 2013, each property tax bill to include a notice indicating the number of annual payments remaining for WSSC front foot benefit charge for the property.

Pipeline Construction

WSSC replaces 35 to 40 miles of water mains per year. When entering into contracts for pipeline construction, WSSC must enter into a design/bid/build contract process where there may be separate contractors for the design and construction of a water or sewer pipeline, rather than a design/build contract. A design/build contract provides for both architectural and engineering design services and construction services as part of a single contract.

House Bill 890 (Ch. 140) expands the definition of a "facilities construction contract" to include the construction of a pipeline in order to authorize WSSC to enter into a design/build contract for pipeline construction with costs exceeding \$2.0 million. The bill also repeals a prohibition on WSSC from entering into a design/build contract for a pipeline.

High-performance Buildings

House Bill 901 (passed) requires a building that is constructed or undergoes a major renovation as part of a WSSC capital project and is 7,500 square feet or greater to be constructed or renovated as a high-performance building, except for certain types of unoccupied buildings. A high-performance building must meet the criteria and standards established under the "High Efficiency Green Building Program" adopted by the Maryland Green Building Council. WSSC may request a waiver from the high-performance building requirement from the county where a proposed capital project is located and the waiver may be granted if the county council, with the approval of the county executive, determines that the use of a high-performance building is not practicable. **House Bill 901** also establishes that it is the intent of the General Assembly that WSSC employ green building technologies when constructing or renovating commission-owned buildings that are not required to be high-performance buildings.

Minority Business Enterprise Utilization Program

The minority business enterprise utilization program within WSSC helps facilitate the participation of responsible certified minority business enterprises for design/build construction contracts. **House Bill 902 (passed)** extends, from July 1, 2012, to July 1, 2017, the authorization of WSSC's minority business enterprise utilization program.

Human Resources

House Bill 889 (Ch. 139) modifies certain human resources procedures at WSSC. Specifically, the bill repeals requirements that WSSC submit specified information regarding its merit system or classified service to the Secretary of Budget and Management. The bill also repeals provisions of law regarding testing requirements for filling vacant positions under the merit system or classified service. Finally, the bill clarifies that honorably discharged veterans of the U.S. Armed Forces who were bona fide residents of the State when entering the Armed Forces receive a certain credit in competitive selection processes.

Part E

Crimes, Corrections, and Public Safety

Criminal Law

Drug Crimes

Possession of a *DeMinimis* Quantity of Marijuana

According to the *2010 Uniform Crime Report*, there were 23,729 arrests in the State for possession of marijuana. While District Court disposes of the greater number of marijuana possession cases, the Maryland State Commission on Criminal Sentencing Policy reported 385 convictions in the circuit courts for possession of marijuana in fiscal 2010. Because these reports do not distinguish arrests or convictions by the quantity of marijuana possessed, the number of arrests or convictions involving very small amounts of marijuana is unknown.

The use or possession of marijuana is a misdemeanor, with maximum penalties of one year imprisonment and/or a \$1,000 fine. If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine.

Senate Bill 214/House Bill 350 (both passed) establish reduced maximum penalties of 90 days incarceration and/or a \$500 fine for possession of less than 10 grams of marijuana and prohibit the use or possession of less than 10 grams of marijuana from being considered a lesser included crime of any other crime unless specifically charged by the State. In addition, a court is required to stay a sentence, without requiring an appeal bond, after a conviction for possession of less than 10 grams of marijuana, if the sentence includes an unserved, nonsuspended period of imprisonment.

Synthetic Drugs as a Controlled Dangerous Substance

Mephedrone (Bath Salts): “Bath salts” is the common name for synthetic drugs such as mephedrone and MDPV that are sold in powder or tablet form. The drugs have amphetamine-like qualities and produce side effects such as increased blood pressure, delusions, paranoia, and psychosis. Users often report experiencing effects similar to cocaine, ecstasy, and

methamphetamines. Published research indicates that the products have been confirmed or suspected in more than 15 deaths nationwide. According to the Department of Health and Mental Hygiene (DHMH), the State's poison control center is aware of 22 cases of bath salts poisoning, including one death. As of March 28, 2012, the National Conference of State Legislatures reports that at least 39 states have banned certain bath salt chemicals.

In October 2011, the U.S. Drug Enforcement Administration (DEA) invoked its "emergency scheduling authority" to make mephedrone, MDPV, and methylone illegal. The emergency action will remain in effect for one year but may be extended beyond that period. Under Maryland law, if the federal government places a substance on Schedule I, it is automatically considered a Schedule I substance in the State unless DHMH objects to the designation. Not only did DHMH not object, but in August 2011, DHMH also proposed emergency regulations adding six bath salt substances to Maryland's Schedule I. The emergency regulations were approved in October 2011, and the permanent regulations went into effect on December 26, 2011.

House Bill 589 (passed) designates mephedrone, MDPV, methylone, and three other similar chemical compounds (the same substances previously added to Schedule I by regulation) as statutory Schedule I controlled dangerous substances.

Synthetic Cannabinoids: Another class of synthetic drugs is synthetic cannabinoids that are chemically engineered substances similar to the active ingredient in marijuana. **Senate Bill 76 (failed)** would have added synthetic cannabinoids to the list of Schedule I controlled dangerous substances under State law. The DEA has temporarily designated five synthetic cannabinoids as Schedule 1 substances, and since DHMH raised no objection, these synthetic cannabinoids are now also illegal in Maryland.

Child Abuse

Chapter 167 of 2003 established the crimes of child abuse in the first and second degrees and provided that a parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not cause abuse resulting in severe physical injury or death to the minor. A violator convicted of the felony of child abuse in the first degree is subject to maximum imprisonment for 25 years for causing severe physical injury to the victim or, if the violation results in the death of the victim, maximum imprisonment for 30 years. Child abuse in the second degree means abuse that does not result in serious physical injury or death to the minor with a maximum imprisonment for 15 years.

Senate Bill 521/House Bill 604 (both passed) expand the list of persons who can be convicted of first degree child abuse to specifically include a family member or household member and increase the maximum penalties for first degree child abuse and a subsequent conviction for child abuse resulting in death of the victim to 40 years imprisonment.

Crimes Involving Vehicles or Theft

Causing a Life-threatening Injury While Driving Impaired by Illegal Drugs

A person may not cause a life-threatening injury to another person by negligently driving or operating a motor vehicle while impaired by a controlled dangerous substance that the person is not entitled to use under State law. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$3,000 fine and/or two years imprisonment.

A person who is in a motor vehicle accident that results in death or life-threatening injury to another person must submit to a test if detained by an officer who has reasonable grounds to believe the person committed an alcohol and/or drug-related driving offense. The Motor Vehicle Administration must assess 12 points against the license of a person who is convicted of causing a life-threatening injury by motor vehicle while under the influence of alcohol and/or drugs, and the license is subject to revocation.

House Bill 1334 (passed) increases the maximum penalties for this crime to a \$5,000 fine and/or three years imprisonment.

Failure to Return a Rental Vehicle

A person who enters into an agreement to rent a motor vehicle may not abandon the vehicle or refuse or willfully neglect to return it at the end of the rental period. Violators are guilty of a misdemeanor and subject to maximum imprisonment for one year and/or a \$500 fine.

House Bill 111 (passed) adds a five-day notice requirement to the law. A person may not be prosecuted if, within five days after a written demand for the return of the vehicle is sent, the person returns the vehicle. A prosecution for abandoning or failing to return a rental vehicle may not be commenced until after the five-day grace period has lapsed.

Theft from a Motor Vehicle

A person may not possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a crime involving the breaking and entering of a motor vehicle. Also, a person may not be in or on another person's motor vehicle with the intent to commit theft of the motor vehicle or property that is in the motor vehicle. A violator is guilty of a misdemeanor and subject to maximum imprisonment for three years.

House Bill 545 (passed) adds language to the crime to prohibit a person from being in or on another person's motor vehicle with the intent to commit theft of property that is *on* the vehicle.

Online Crimes

Harassment by Electronic Communication

A person may not use electronic mail with the intent to harass (1) one or more persons; or (2) by sending lewd, lascivious, or obscene material. “Electronic mail” means the transmission of information or a communication by the use of a computer or other electronic means that is sent to a person identified by a unique address and that is received by the person. Violators are guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$500 fine.

Senate Bill 175/House Bill 8 (Chs. 42 and 43) prohibit a person from maliciously engaging in a course of conduct through the use of electronic communication that alarms or seriously annoys another (1) with the intent to harass, alarm, or annoy the other; (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and (3) without a legal purpose. *Chapters 42 and 43* substitute the term “electronic communication” for former references to “electronic mail”; eliminate the requirement that the recipient of the transmission be identified by a unique address; and include the transmission of data as a form of electronic communication. The bills retain the current exemptions for peaceable activities intended to express a political view or provide information to others and the penalties.

According to the Office of the Attorney General, *Chapters 42 and 43* apply to Facebook messages and instant messaging; however, because of the requirement that the communication be sent “to a person” and “received by the person,” the bills may not include communications on web pages, blogs, Twitter, bulletin boards, or the Facebook or Myspace pages of the poster or of a person other than the person the poster intends to harass.

Fantasy Competitions

Although fantasy competitions originated as paper and pencil games, now they operate most prevalently over the Internet. Recent estimates indicate that nearly 30 million people in the United States actively participate in fantasy games with competitions related to the sports of football and baseball being most common. The legality of a given fantasy competition is not directly addressed by Maryland’s gambling law.

House Bill 7 (passed) explicitly exempts a “fantasy competition” from State law prohibitions against betting, wagering, and gambling. *House Bill 7* defines “fantasy competition” as an online fantasy or simulated game or contest in which:

- participants own, manage, or coach imaginary teams;
- all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;
- the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals; and

- no winning outcome is based solely on the performance of an individual athlete, or on the score, point spread, or any performances of any single real-world team, or combination of real-world teams.

The Comptroller's Office may adopt regulations to carry out the bill's provisions.

Criminal Procedure

Office of the Public Defender

The Office of the Public Defender (OPD) is responsible for the legal representation of indigent criminal defendants throughout the State. The Maryland Public Defender Act, § 16-201 *et seq.* of the Criminal Procedure Article, created the office and established the scope of OPD representation.

In Maryland, within 24 hours after arrest, a criminal defendant is taken before a judicial officer – typically a District Court commissioner – for an initial appearance. At the initial appearance, the defendant is advised of (1) each offense charged; (2) the right to counsel; and (3) the right to a preliminary hearing, if applicable. A defendant who is denied pretrial release by the commissioner, or one who remains in custody 24 hours after the commissioner has set the conditions of release, is entitled to a bail review hearing before a judge. The primary purpose of the bail review hearing is to determine whether the conditions of release set by the commissioner should be continued, amended, or revoked.

Despite broad language in the Maryland Public Defender Act requiring OPD to provide representation to an indigent individual in “all stages of” a criminal proceeding, OPD historically has not represented clients at initial appearances before District Court commissioners, and only provides legal representation at judicial bail reviews in three particular jurisdictions.

On January 4, 2012, the Maryland Court of Appeals issued a decision in *DeWolfe v. Richmond*, (No. 34, Sept. Term, 2011), a case initiated in 2006, holding that under the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived. The court did not address claims made by the plaintiffs in the case of a right to representation under the U.S. and State constitutions.

Due to the extensive costs associated with the requirement that OPD provide legal representation at initial appearances before District Court commissioners, the lack of budgeted resources available for OPD to meet the requirement, the short timeframe in which OPD would have been required to implement the court's ruling, and the repercussions that the mandate could have on other entities (prosecutors, local law enforcement and detention facilities, and the District Court), several emergency bills were introduced to amend the Maryland Public Defender Act to specify that OPD is not required to provide legal representation at an initial appearance before a District Court commissioner.

After extensive deliberations, bills were passed to override *DeWolfe v. Richmond* and make several changes to the arrest and initial appearance process. *Senate Bill 422/House Bill 261 (both passed)*:

- establish that OPD is required to provide legal representation to an indigent defendant at a bail review hearing occurring on or after June 1, 2012;
- specify that OPD is not required to represent indigent criminal defendants at an initial appearance before a District Court commissioner;
- prohibit a statement made during an initial appearance before a District Court commissioner from being used as evidence against the defendant in a criminal proceeding or a juvenile proceeding;
- require a police officer to charge by citation for a misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less (with specified exceptions), or possession of marijuana, if certain conditions are met, beginning January 1, 2013;
- require that a defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under Maryland Rule 4-216 be presented to a District Court judge immediately if the court is in session, or if the court is not in session, at the next session of the court;
- specify that a District Court commissioner may only issue an arrest warrant on a finding that there is probable cause to believe that a defendant committed the offense charged and (a) the defendant has previously failed to appear; (b) the whereabouts of the defendant are unknown; (c) the defendant is in custody for another offense; or (d) the defendant poses a danger to another person or to the community;
- establish a Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by OPD; and
- establish data collection and reporting requirements relating to the issuance of citations.

The bills express the intent of the General Assembly to continue to monitor the issues relating to the representation of indigent defendants and to determine whether modification of the provisions of the bills is required during the 2015 legislative session or earlier if an appellate court issues a decision related to relevant issues in *DeWolfe v. Richmond* or the task force issues its report and recommendations.

Warrants

Invalidation and Destruction

Senate Bill 496 (passed) authorizes a law enforcement agency to make a written request for the State's Attorney within the appropriate jurisdiction to have a specified warrant, summons, or other criminal process for a misdemeanor offense in the possession of the law enforcement agency invalidated and destroyed due to the age of the document and unavailability of the defendant, or other special circumstances. The document that a law enforcement agency may request to be invalidated and destroyed must have remained unexecuted for a specified period of time and include a warrant, summons, or other criminal process issued (1) for the arrest of the defendant in order that the defendant might stand for trial; (2) for the failure of the defendant to make a deferred payment of a fine or costs as ordered by the court; (3) for a violation of probation; and (4) for the arrest of the defendant for the failure of the defendant to appear as directed by the court.

Based on the length of time the document has remained unexecuted, a State's Attorney who receives a request is authorized or required to petition the administrative judge of the district for the invalidation and destruction of the document. Additionally, a State's Attorney may argue against the invalidation and destruction of the document due to a justifiable continuing active investigation of the case.

The court must order the invalidation and destruction of the document unless the court determines that preservation of the document is justifiable. At the time of the order, the State's Attorney may enter a *nolle prosequi* or place the applicable case on the *stet* docket. An arrest cannot be made based on a warrant or other criminal process that has been ordered invalidated and destroyed.

The bill's provisions do not (1) prevent the reissuance of a warrant, summons, or other criminal process; (2) affect the time within which a prosecution for a misdemeanor may be commenced; or (3) affect any pending criminal charge.

Wiretapping

Except as otherwise provided in statute, it is unlawful for a person to (1) willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication; (2) willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; and (3) willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of several specified

crimes. The exception applies so long as the interceptor is a party to the communication or one of the parties to the communication has given prior consent to the interception.

In addition, the Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction to grant an order authorizing interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of specified crimes.

House Bill 398 (passed) adds a theft scheme or continuing course of conduct involving an aggregate value of property or services of at least \$10,000 to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications. The bill also adds these types of theft offenses to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Pretrial Procedures/Events

Warrantless Arrests

Senate Bill 131/House Bill 115 (Chs. 29 and 30) expand the authority of a police officer to make a warrantless arrest by authorizing a police officer to make a warrantless arrest if the officer has probable cause to believe that a person has committed a theft crime involving property with a value of less than \$1,000, rather than the current threshold of \$500. The Acts' provisions reflect changes made to the general theft statute by Chapter 655 of 2009.

Arrest of Minor

House Bill 1138 (passed) requires a law enforcement officer who charges a minor with a criminal offense to make a reasonable attempt to notify the parent or guardian of the minor of the charge. If a law enforcement officer takes a minor into custody, the law enforcement officer or the officer's designee must make a reasonable attempt to notify the parent or guardian of the minor within 48 hours of the arrest of the minor. This bill expands the current requirement that a law enforcement officer notify a parent or guardian of a child taken into custody as a juvenile to include a child who is taken into custody and charged as an adult.

Bail Bond Solicitation

A bail bondsman or an agent of a bail bondsman may not engage in specified activities on the grounds of a courthouse or correctional facility relating to the solicitation of business as a bail bondsman. Violators are guilty of a misdemeanor, punishable by maximum fines of \$100 for a first offense and \$1,000 for a subsequent offense. A person convicted of this offense must be referred to the Insurance Commissioner for appropriate action.

House Bill 573 (passed) adds an employee of a courthouse and an employee of a correctional facility to the statutory prohibition against solicitation by a bail bondsman and clarifies that the statutory prohibition applies to approaching, enticing, or inviting a person to use

the services of a specific bail bondsman. The bill also increases the penalties for this offense. First-time offenders are subject to a maximum fine of \$2,500 and a 30-day license suspension if licensed under the Insurance Article; subsequent offenders are subject to a maximum fine of \$5,000 and a 90-day license suspension if licensed under the Insurance Article.

Probation Before Judgment

A court may place a defendant on probation before judgment when a defendant pleads guilty or *nolo contendere* or is found guilty of a crime, the court finds that probation before judgment would be in the best interest of the defendant and the public welfare, and the defendant gives written consent to the probation. Probation before judgment may include (1) custodial confinement or imprisonment; (2) payment of a fine or restitution; (3) participation in a rehabilitation program or other specified programs; or (4) participation in an alcohol or drug treatment or education program approved by the Department of Health and Mental Hygiene.

A court is prohibited from imposing probation before judgment on defendants for specified crimes, including a second or subsequent controlled dangerous substance crime. *House Bill 96 (passed)* authorizes a court to impose probation before judgment for a second offense of possession of a controlled dangerous substance if (1) the defendant has been convicted once previously of or received probation before judgment once previously for possession of a controlled dangerous substance; (2) the court requires the defendant to graduate from drug court or successfully complete a substance abuse treatment program as a condition of probation; and (3) the defendant graduates from drug court or successfully completes a substance abuse treatment program as required.

Postconviction and Post-trial Procedures

Conditional Guilty Plea

A criminal defendant generally has the right to an appeal of a final judgment entered in a criminal case, even if imposition or execution of the sentence has been suspended. However, several exceptions to this general rule exist. One exception is that a criminal defendant who pleads guilty in circuit court does not have the right to a direct appeal following final judgment. Instead, the appeal is discretionary and the defendant is required to file an application for leave to appeal with the Court of Special Appeals.

House Bill 1031 (passed) authorizes a criminal defendant to file a direct appeal with the Court of Special Appeals of a final judgment entered following a “conditional plea of guilty” in circuit court in accordance with the Maryland Rules. A “conditional plea of guilty” is a guilty plea with which the defendant preserves in writing any pretrial issues that the defendant intends to appeal.

Writ of Error *Coram Nobis*

Under the English common law, a writ of error *coram nobis* was a remedy allowing a court to correct an error in fact. The writ was used to bring facts before the court that were not

presented at trial but are material and valid to the proceedings and, had they been known to the trial court, would have prevented the judgment. The Court of Appeals extended the writ to apply to errors in law in 2000. A petition for a writ of error *coram nobis* provides a remedy for a person who is not incarcerated and not on parole or probation, is faced with a significant collateral consequence of his or her conviction, and can legitimately challenge the conviction on constitutional grounds.

In a 2007 decision, the Court of Appeals held that there is a rebuttable presumption that an individual waives his/her right to file a petition for a writ of error *coram nobis* if he/she enters a guilty plea and does not file an application for leave to appeal despite having been informed of his/her right to file the application, unless the individual can demonstrate that there are special circumstances to excuse his/her failure to file the application for leave to appeal. **House Bill 1418 (passed)** nullifies the 2007 decision by establishing that the failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for a writ of error *coram nobis*.

Expungement

Under the Criminal Procedure Article, a person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, *stet* of charge, and gubernatorial pardon. **House Bill 187 (passed)** authorizes a person's attorney or personal representative to file a petition for expungement on behalf of the person if the person died before disposition of the charge by *nolle prosequi* or dismissal.

Senate Bill 678 (passed) authorizes a person to file, and requires a court to grant, a petition for expungement of a criminal charge that was transferred to the juvenile court for disposition at sentencing. For further discussion of bills related to juvenile law, see subpart "Juvenile Law" within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Sex Offenders

Statute of Limitations for Possession of Child Pornography

A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child under the age of 16 (1) engaged as a subject of sadomasochistic abuse; (2) engaged in sexual conduct; or (3) in a state of sexual excitement. Violators are guilty of misdemeanor possession of child pornography and are subject to imprisonment for up to 5 years and/or a maximum fine of \$2,500. A repeat offender is guilty of felony possession of child pornography and is subject to imprisonment for up to 10 years and/or a maximum fine of \$10,000.

In general, a prosecution of a misdemeanor has a one year statute of limitations. *Senate Bill 889/House Bill 349 (both passed)* increase the statute of limitations from one year to two years for the initiation of a prosecution for misdemeanor possession of child pornography.

Sex Offender Registry

Generally, a person convicted of a sex crime or other specified crime, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence.

Senate Bill 565/House Bill 942 (both passed) alter the definition of a “Tier III sex offender,” for which registration with the State’s sex offender registry is required for kidnapping, by providing that registration is required if the victim is a minor; or if the victim is an adult, and the person has been ordered by the court to register. The bill’s provisions apply retroactively to affect all persons convicted of kidnapping who have been required to register on the State sex offender registry since the enactment of Chapters 174 and 175 of 2010.

Death Penalty

Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. During the 2009 session, the General Assembly passed legislation altering the application of the death penalty in Maryland. Chapter 186 of 2009 restricted death penalty eligibility only to cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation, and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant may not be sentenced to death if the State relies solely on evidence provided by eyewitnesses in the case.

Senate Bill 872/House Bill 949 (both failed) would have repealed the death penalty and all provisions relating to it, including those relating to its administration and post-death sentence proceedings. The bills would have required a person found guilty of murder in the first degree to be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. The bills also specified that if the State has already properly filed a notice of intent to seek a death sentence, that notice must be considered withdrawn. In such instance, the State must also be considered to have properly filed notice to seek a sentence of life imprisonment without the possibility of parole. The bills also required that beginning in fiscal 2014, the Governor must include \$500,000 in the annual budget submission for the State Victims of Crime Fund. The \$500,000 was to be redirected from general fund savings resulting from repeal of the death penalty.

State Commission on Criminal Sentencing Policy

The State Commission on Criminal Sentencing Policy is required to conduct an annual review of sentencing policy and practice and submit a report to the General Assembly on or

before December 1 of each year. The report must (1) include any changes to the sentencing guidelines made during the preceding year; (2) review judicial compliance with the sentencing guidelines, including compliance by crime and by judicial circuit; (3) review reductions or increases in original sentences that have occurred because of reconsiderations of mandatory sentences for crimes of violence; and (4) categorize information on these reconsiderations of sentences by offense and by judicial circuit.

Senate Bill 59/House Bill 117 (Chs. 14 and 15) change the date by which the State Commission on Criminal Sentencing Policy must submit its annual report to the General Assembly from December 1 to January 31. The Acts also clarify that the report will contain information about the activities of the preceding calendar year.

Juvenile Law

Juvenile Arrests

Under current State law, a child may be taken into custody by any of the following methods:

- in accordance with an order of the court;
- by a law enforcement officer in accordance with the law of arrest;
- by a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection; or
- by a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child's parents, guardian, or legal custodian.

Senate Bill 414/House Bill 598 (both passed) authorize an intake officer of the Department of Juvenile Services (DJS), after conducting an inquiry in accordance with statutory provisions, to file with the juvenile court an application for an arrest warrant prepared by a law enforcement officer. An arrest warrant may only be issued by the court on a finding of probable cause and must direct the law enforcement officer to take immediate custody of the child.

The bills establish that an application for an arrest warrant must be in writing and signed and sworn to by the law enforcement officer. The application must also be accompanied by an affidavit that sets forth the basis for there being probable cause to believe that (1) the child who is the subject of the warrant has committed a delinquent act; and (2) unless the child who is the subject of the warrant is taken into custody, the child is likely to leave the jurisdiction; may not be apprehended; may cause physical injury or property damage to another; or may tamper with, dispose of, or destroy evidence.

House Bill 1138 (passed) requires a law enforcement officer who charges a minor with a criminal offense to make a reasonable attempt to notify the parent or guardian of the minor of the charge within 48 hours of the arrest of the minor. For a more detailed discussion of **House Bill 1138**, see the subpart “Criminal Procedure” within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Confinement in Juvenile Facilities

Report by the Department of Juvenile Services

Legislation to require juveniles charged as adults to be confined in juvenile facilities has been enacted recently in a number of states, including Pennsylvania and Virginia. Interest in the pretrial detention of youth in the State has been heightened in recent years due to the plans to build a new Youth Detention Center in Baltimore, after an investigation in 2000 by the U.S. Department of Justice found the conditions in the current detention center facility (the Juvenile Unit at the Baltimore City Detention Center) to be inadequate.

According to a 2011 report by the National Council on Crime and Delinquency, over two-thirds of the youth committed to the Baltimore Center Detention Center left without a conviction in adult court, either because they were transferred to the juvenile justice system, were released for various reasons (such as a finding of not guilty or a decision not to pursue the charges), were released on bail, or placed on probation. The report found that only 7% of the children detained in the detention center were eventually tried and sentenced to adult prison. However, 22% of the children detained reached the age of 18 before they were tried and were moved into the general adult population upon reaching 18 years of age.

House Bill 1122 (passed) requires DJS to report to the General Assembly, on or before December 1, 2012, on the manner in which the department will work toward ensuring that youth charged as adults can be detained in juvenile detention facilities. The report shall include information on (1) the number of youth charged as adults held in adult detention facilities from January 1, 2011, through December 31, 2011; and (2) the department’s plan to reduce the overall number of youth in juvenile detention, including: (i) the number of youth transferred from adult detention to juvenile detention pending a transfer determination; (ii) the number of youth transferred to juvenile court jurisdiction on a motion to transfer from adult court jurisdiction; (iii) the number of youth in juvenile detention receiving Detention Risk Assessment Instrument (DRAI) screening; (iv) the use of the Juvenile Detention Alternative Initiative; (v) the use of prevention and diversion services; (vi) the plan for reducing the number of youth in detention pending placement; and (vii) the average length of stay for youth charged as adults in juvenile facilities.

Transfer of Placement

Under current law, in making a disposition on a delinquency petition, the juvenile court may commit the child to DJS on terms that the court considers appropriate, including the type of facility where the child is to be accommodated. **Senate Bill 245 (passed)** authorizes DJS, on approval of the Director of Behavioral Health, to transfer a child committed for residential

placement from one facility to another if the change is necessary to appropriately administer the commitment of the child. A facility to which the child is transferred must be consistent with the type of facility designated by the court under the statute or one that is more secure. DJS must notify the court, counsel for the child, the State's Attorney, and the parent or guardian of the child prior to the transfer of the child. The juvenile court may conduct a hearing at any time for the purpose of reviewing the commitment order and the transfer of a child.

The bill requires DJS to report to the General Assembly, on or before January 1, 2014, on the implementation of the legislation. The bill also takes effect June 1, 2012, remains effective for two years and one month, and terminates at the end of June 30, 2014.

Expungement of Juvenile Records

Under current law, prior to trial, a circuit court exercising criminal jurisdiction in a case involving a child may transfer the case to the juvenile court if such transfer is believed to be in the interests of the child or society ("reverse waiver"). A reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. A court is required to grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions.

At sentencing, a court exercising criminal jurisdiction in a case involving a child may transfer jurisdiction to the juvenile court if (1) as a result of trial of a plea entered (in lieu of trial), all charges that precluded the juvenile court from exercising jurisdiction did not result in a finding of guilty; and (2) pretrial transfer was prohibited because the alleged crime was first degree murder and the child was 16 or 17 years old at the time of its commission; or the court did not transfer jurisdiction after a hearing on a motion for reverse waiver. Current law does not provide for the expungement of a criminal charge that was transferred to the juvenile court at sentencing.

In *In re Nancy H.*, 297 Md. App. 419, 14 A.3d 19 (2011), the Court of Special Appeals held that although the expungement statute relating to juvenile records does not permit expungement if a case was transferred to the circuit court at sentencing, the statute should be interpreted to permit a juvenile who has been waived to juvenile court from circuit court for disposition to also have the benefit of the court's discretion as to whether expungement of the proceedings is appropriate. The Court of Special Appeals examined the legislative history of the statute and concluded that the legislature could not have intended to provide a juvenile in such a circumstance with all the benefits afforded to juveniles whose cases originated in juvenile court, yet still subject the juvenile to the collateral sanctions that accompany a criminal conviction. ***Senate Bill 678 (passed)*** authorizes a person to file, and requires a court to grant, a petition for expungement of a criminal charge that was transferred to the juvenile court for disposition at sentencing.

Public Safety

Firearms and Explosives

The use and possession of firearms and handguns are regulated by the State. A regulated firearm is any handgun or any of the 45 assault weapons identified in State law. Among other restrictions, a person may not possess a regulated firearm in the State, including a rifle or a shotgun, if a person was previously convicted of a crime of violence or drug-related felony. A violator is guilty of a felony and subject to a nonsuspendable, nonparolable, mandatory minimum sentence of 5 years and a maximum penalty of 15 years.

Crimes Committed in Other States

Senate Bill 640/House Bill 209 (both passed) prohibit a person from possessing a regulated firearm or a rifle or shotgun if the person was previously convicted of a federal charge or an offense in another state that would constitute a disqualifying crime of violence or drug crime if committed in Maryland.

A violator is guilty of a felony and subject to a nonsuspendable, mandatory minimum sentence of 5 years and a maximum sentence of 15 years. Each violation must be considered a separate offense.

Transfer of Service Weapon to Family of Slain Officer

Officer Christopher Nicholson of the Smithsburg Police Department in Washington County was killed in the line of duty on December 19, 2007. The father of Officer Nicholson requested to have the officer's service weapon transferred to him so that it can be maintained as part of his son's legacy; however, transfer of a handgun owned by a law enforcement agency is allowed only in circumstances specified in State law. *Senate Bill 514/House Bill 396 (both passed)* authorize a law enforcement agency to transfer the handgun of a deceased law enforcement officer to the next of kin if the officer is killed or dies in the performance of duty. This transfer is contingent upon all firearms application requirements being met.

Task Force to Study Access of the Mentally Ill to Regulated Firearms

Recent fatal shootings in several states by persons with histories of mental instability and who were able to legally purchase and possess firearms have given rise to several studies and the introduction of legislation in some states.

House Bill 618 (Ch. 131) establishes a Task Force to Study Access of Individuals with Mental Illness to Regulated Firearms. The task force must (1) study the adequacy of State laws and policies relating to the access of individuals with a history of mental illness to regulated firearms and the access of law enforcement officers to mental health records; (2) consider whether existing law adequately protects the public, as well as the civil rights of individuals with mental illness, and make recommendations as appropriate; and (3) consider whether, and to what extent, there should be limits on the access of individuals with a history of mental illness to

regulated firearms, and the State should expand access of law enforcement officers to certain mental health records. The task force will be staffed by the Governor's Office of Crime Control and Prevention. The task force must report its findings and recommendations by December 31, 2012.

Explosives – Definition to Include Components

With certain exceptions, a person must obtain a license before engaging in business as a manufacturer or dealer, possessing explosives other than explosives for use in firearms, or possessing or storing explosives for use in firearms in the State. An unlicensed person who possesses explosives other than explosives for use in firearms in the State is guilty of a misdemeanor and subject to maximum penalties of imprisonment of five years and/or a fine of \$5,000.

According to the Department of State Police, "kits" are being sold that contain all of the components required to create an explosive when mixed together, even though the separate components in the kits do not constitute an explosive under the statutory definition. Such kits typically include a step-by-step instruction guide on how to make a bomb. *Senate Bill 421/House Bill 875 (both passed)* prohibit the sale of these kits by expanding the definition of the term "explosives" to include two or more components that are advertised and sold together with instructions on how to combine the components to create an explosive.

Building and Safety Practices

Licensure of Accessibility Lift Mechanics

Senate Bill 814/House Bill 89 (both passed) require the Elevator Safety Review Board to license accessibility lift mechanics and establish fees for the application, issuance, and renewal of lift mechanic licenses. The bills define the scope of the accessibility lift mechanic profession and license, establish education and experience requirements for licensure, and prohibit a person from working as an accessibility lift mechanic without a license. The bills also require the board to adopt regulations to certify licensed accessibility lift mechanics as "accessibility lift mechanic specialists" to work on private residential elevators. Finally, the bills authorize the board to issue a conditional accessibility lift mechanic license that is effective until January 1, 2017, to a candidate actively completing specified education requirements for licensure.

Under the bills, a person must be licensed as an accessibility lift mechanic by the board before the person erects, constructs, wires, alters, replaces, maintains, repairs, dismantles, or services commercial stairway chairlifts, vertical platform lifts, or incline platform lifts. Licensure as an accessibility lift mechanic is not required for (1) a crane mechanic performing work on elevators or lifts located on a port facility owned, leased, or operated by the Maryland Port Administration; (2) a person installing a residential stairway chairlift; or (3) a person already licensed as an elevator mechanic.

Elevator Safety Review Board

Membership: The Elevator Safety Review Board was established by Chapter 703 of 2001 within the Department of Labor, Licensing, and Regulation to license elevator contractors and elevator mechanics. The original board, though fully appointed by January 2003, did not receive funding and, therefore, did not operate, until fiscal 2009. *Senate Bill 23/House Bill 109 (both passed)* increase the number of members of the Elevator Safety Review Board from 9 to 10 by adding a representative from the elevator interior renovation industry.

Under current law, the board has the authority to (1) consult with engineering authorities and organizations concerned with standard safety codes about regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of elevator units and qualifications that are adequate, reasonable, and necessary for elevator mechanics and elevator contractors; (2) recommend applicable legislation; (3) adopt bylaws for the conduct of its proceedings; and (4) adopt regulations to carry out the elevator contractor and mechanic licensing law.

Licensure: The board must issue licensing certifications and reinstate expired licenses under specified circumstances under *Senate Bill 232 (Ch. 49)*. The Act expands the conditions under which the board may deny a new or renewal license to an applicant, suspend or revoke a license, or reprimand a licensee. It also increases the sanctions available to the board to discipline a licensee and requires that a majority of board members currently serving approve a sanction or license denial.

Chapter 49 makes certifications of licensure status available to any person upon request, subject to payment of a fee set by the board. A certification must include a statement of the licensing status of the person who is the subject to the request. A certification may include information related to examination results, license issuance, and disciplinary actions. If authorized by the licensee, information pertaining to any complaints about the licensee may also be included.

The board must reinstate the license of a person that, for any reason, has failed to renew the license if the person (1) applies for reinstatement within two years after the license expires; (2) meets established renewal requirements; and (3) pays a reinstatement fee (capped at \$100) as set by the board. If a person applies for license reinstatement longer than two years after the license expires, the board may either require the person to reapply for an original license or approve the reinstatement, subject to specified conditions.

In addition to its current statutory powers, the board may deny a license to an applicant; refuse to renew, suspend, or revoke a license; or reprimand a licensee, if the person is convicted of a felony or a misdemeanor pertinent to offering elevator mechanic or elevator renovator mechanic services or being an elevator contractor or elevator renovator contractor. The board may also impose a fine (capped at \$5,000) for each violation or choose to only impose a fine. For both actions relating to criminal activity and the issuance of fines, the board must consider specified criteria in determining the extent and nature of the penalty.

Automatic Sprinkler Systems

State law requires that a sprinkler system be installed in every dormitory, hotel, lodging or rooming house, or multifamily residential dwelling which either received a permit or was constructed after July 1, 1990, as well as every townhouse which received a permit or was constructed after July 1, 1992.

Senate Bill 602/House Bill 366 (both passed) generally prohibit a local jurisdiction from adopting a local amendment to the Maryland Building Performance Standards (MBPS) that weakens the automatic fire sprinkler systems provisions for townhouses and one- and two-family dwellings.

The bills do not apply, however, to (1) standards governing issuance of a building permit for a property not connected to an electrical utility; or (2) until January 1, 2016, standards governing issuance of a building permit for a new one- or two-family dwelling constructed on a lot subject to a valid unexpired public works utility agreement executed before March 1, 2011, or a lot served by a specified existing water service line from a water main to the property line.

The bills apply only prospectively and may not be applied or interpreted to have any effect on or application to any building permit for which an application is submitted before October 1, 2012.

Hotel Master Control Lighting Device

Several jurisdictions throughout the country have enacted requirements to require that specified types of rooms in buildings must have an occupant sensor installed that automatically turns lighting off within 30 minutes of all occupants leaving a space. In following this trend, *Senate Bill 869/House Bill 940 (both passed)* require each hotel guest room in a newly constructed hotel to be equipped with a master control device that automatically turns off the power to all of the lighting fixtures in the guest room no more than 30 minutes after the room has been vacated. A master control device may also control other specified items. The bills require that the Department of Housing and Community Development (DHCD) adopt the bills' provisions as part of MBPS.

The bills apply to a building permit application submitted to a local jurisdiction and to industrialized building plans submitted to DHCD on or after October 1, 2012.

Emergency Procedures

Local State of Emergency – Duration

Declared local emergencies in the State can occur with some frequency and have included tornadoes, hurricanes, floods, droughts, snow storms, ice storms, and power outages. According to the Maryland Emergency Management Agency, under current law, if a local state of emergency continues beyond the seven-day statutory limit for a declaration made by the principal executive officer, the affected jurisdiction would continue to receive State and local

emergency responses as needed. In addition, the local state of emergency may be extended with the consent of the local governing body.

Senate Bill 88/House Bill 437 (both passed) increase the time period that a local state of emergency may continue or be renewed with the consent of the local governing body from 7 to 30 days.

Human Service Facilities and Dialysis Centers – Emergency Plans

In August 2011, when Maryland began preparing for the onslaught of Hurricane Irene, concerns arose regarding (1) the ability of dialysis centers to transport patients to other dialysis centers; and (2) whether dialysis centers had adequate emergency generator capacity to provide services in the event of a power outage. Moreover, questions arose about whether human service facilities are responsible for any financial obligation arising from activation of any aspect of their emergency plans.

In response, *House Bill 658 (passed)* requires a kidney dialysis center to have an emergency plan that includes policies and procedures to be followed before, during, and after an emergency. The Department of Health and Mental Hygiene must adopt, by January 1, 2013, regulations governing the development of emergency plans by kidney dialysis centers.

Next Generation 9-1-1 Services

Maryland's 9-1-1 emergency number system adapts to the Internet age under *House Bill 1235 (passed)*. The bill requires the Emergency Number Systems Board to establish planning guidelines for Next Generation 9-1-1 services system plans and deployment of Next Generation 9-1-1 services. The bill defines Next Generation 9-1-1 services to mean an Internet protocol-based system, comprised of hardware, software, data, and operational policies and procedures that:

- provides standardized interfaces from emergency call and message services to support emergency communications;
- processes all types of emergency calls, including voice, text, data, and multimedia information;
- acquires and integrates additional emergency call data useful to call routing and handling;
- delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;
- supports data or video communications needs for coordinated incident response and management; and
- provides broadband service to public safety answering points or other first responder entities.

Law Enforcement and Correctional Officers

The movement to create a Bill of Rights for local correctional officers was started in 2008, when a law was enacted to guarantee to correctional officers in Cecil and St. Mary's counties specified procedural safeguards in an investigation that could lead to disciplinary action. These safeguards are similar to those given to law enforcement officers under the Law Enforcement Officers' Bill of Rights enacted in 1974.

Bill of Rights for Charles County Correctional Officers

A Correctional Officers' Bill of Rights for a correctional officer employed by Charles County, established by *House Bill 1457 (passed)*, addresses issues relating to employment, investigation, and discipline, and establishes procedures for the investigation or interrogation of a correctional officer. The bill establishes a certain limitation on administrative charges, provides for procedures for a hearing board for an investigation, provides for expungement of a record of a formal complaint, and provides for disciplinary actions by the sheriff's office under specified circumstances. The bill's provisions supersede conflicting provisions of any other State or local law. The bill does not define misconduct and differs from the State Correctional Officers' Bill of Rights with respect to some notifications, timeframes for investigations and the filing of charges, actions of hearing boards, and the final settlement of disputes. The bill's provisions are also not identical to the provisions in Cecil or St. Mary's counties.

Bill of Rights for Garrett County Correctional Officers

Senate Bill 205 (passed) extends certain rights relating to employment, investigation, and discipline to correctional officers in Garrett County. The bill's provisions are the same as the provisions of the Correctional Officers' Bill of Rights applicable in Cecil and St. Mary's counties.

The bill does not limit the authority of the appointing authority in Garrett County to regulate the competent and effective operation and management of the local correctional facility by reasonable means, including the transfer and reassignment of employees if (1) that action is not punitive in nature; and (2) the appointing authority determines the action to be in the best interests of the internal management of the correctional facility.

State Correctional Officers – Rescission of Emergency Suspension

Senate Bill 899/House Bill 930 (both passed) require a State correctional officer who receives an emergency suspension without pay after being charged with a felony and who is not convicted of the felony to have the emergency suspension rescinded. Additionally, any lost time, compensation, status, and benefits must be restored. The bills do not apply to a correctional officer who resigns before disposition of the criminal matter for which the emergency suspension was imposed or is no longer employed by the Division of Correction (DOC) when a determination on that criminal matter is made by a court.

Impersonating a Police Officer

In Maryland, a person may not, with fraudulent design on person or property, falsely represent themselves to be a police officer, special police officer, sheriff, deputy sheriff, or constable. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two years and/or a fine of \$2,000. *Senate Bill 650/House Bill 631 (both passed)* prohibit a person from falsely representing that the person is a member of the Washington Metropolitan Area Transit Authority Metro Transit Police.

Department of Public Safety and Correctional Services

Delegation of Secretary's Authority

The Department of Public Safety and Correctional Services (DPSCS) is undergoing a major reorganization. DPSCS announced the reorganization at the end of calendar 2011. It is expected to be completed by the end of September 2012.

The focus of the reorganization is on successful offender re-entry and lower recidivism, achieved by eliminating DOC, the Division of Pretrial Detention and Services, and the Division of Parole and Probation (DPP). Under the reorganization plan, the functions of these divisions will be integrated into three regions across the State.

House Bill 198 (Ch. 108) grants a newly created Deputy Secretary of Operations, in addition to the Secretary, the authority to exercise any power, duty, responsibility, or function of any unit, unit head, or appointing officer in the department.

Earned Compliance Credits

Senate Bill 691/House Bill 670 (both passed) require DPSCS to establish a program to implement earned compliance credits, which create a reduction in the period of active supervision for a supervised individual. A “supervised individual” is defined as an individual placed on probation by a court or serving a period of parole or mandatory release supervision after release from a correctional facility. The bill’s provisions are to be applied prospectively only. Certain persons are ineligible for earned compliance credits, including anyone incarcerated, on probation, or convicted of a violent crime, a sex offense, homicide by motor vehicle or vessel, or a serious drug offense. The bills take effect January 1, 2013.

“Earned compliance credit” means a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual:

- exhibits full compliance with the conditions, goals, and treatment as part of probation, parole, or mandatory release supervision, as determined by DPSCS;
- has no new arrests;
- has not violated any conditions of no contact requirements;

- is current on court ordered payments for restitution, fines, and fees relating to the offense for which earned compliance credits are being accrued; and
- is current in completing any community supervision requirements included in the conditions of the supervised individual's probation, parole, or mandatory release supervision.

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on "abatement" until the expiration of the individual's sentence, unless consenting to continued active supervision or unless violating a condition of probation, parole, or mandatory release supervision. "Abatement" means an end to active supervision of a supervised individual without effect on the legal expiration date of the case or the supervised individual's obligation to obey all laws, report as instructed, and obtain written permission from DPP before relocating residence outside the State.

Twenty-five percent of the savings realized by DPSCS as a result of the application of earned compliance credits must revert to the department. Any remaining savings are required to revert to the general fund.

Parole and Probation – Employee Caseloads

DPP does not have statutorily mandated caseload levels. However, maintaining manageable caseload ratios remains an important issue for the agency because larger caseloads can limit an agent's ability to detect violations and intervene effectively. DPP is working with union representatives to discern the appropriate general caseload average.

Under *Senate Bill 885/House Bill 1121 (both passed)*, DPP must consider the size of an employee's active caseload and the classification of the offenders within the employee's active caseload when considering disciplinary actions relating to employee performance.

Part F

Courts and Civil Proceedings

Judges and Court Administration

Judicial Compensation

The Judicial Compensation Commission, established in 1980, is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. The commission's recommendations are required to be introduced as a joint resolution not later than the fifteenth day of the session. The General Assembly may amend a joint resolution from the commission to decrease, but not increase, any of the commission's salary recommendations. The General Assembly may not reduce a judge's salary below its current level. Failure to adopt or amend the joint resolution within 50 calendar days of its introduction results in adoption of the salaries recommended by the commission. If the General Assembly rejects any or all of the commission's recommendations, the affected judges' salaries remain unchanged, unless modified by other provisions of law.

General State employee salary increases apply to judges only in years in which judges' salaries are not increased in accordance with a resolution resulting from the commission's recommendations.

The last salary increase for judges was generated by a four-year, phased-in salary plan that was recommended by the commission in 2005 and implemented after the General Assembly did not adopt or amend the joint resolution containing the salary plan. Although the commission made recommendations for a four-year, phased-in salary plan in the 2009 and 2010 sessions, these recommendations were not adopted.

The commission met in 2011 to consider salary recommendations. In October 2011, the commission recommended a multi-year, phased-in increase of judicial salaries for fiscal 2014 through 2016. The commission proposed that judicial salaries remain at current levels in fiscal 2013, and that judicial salaries increase by \$29,006 in fiscal 2014 through 2016. As

originally proposed, the commission's recommendations would have increased general fund expenditures for judicial salaries and fringe benefits by \$4.3 million in fiscal 2014.

Senate Joint Resolution 3 (passed) increases the salaries of all Maryland judges by \$14,081 over a three-year period (fiscal 2014 through 2016). Under the resolution, judicial salaries will remain at current levels through fiscal 2013, with salary increases to begin in fiscal 2014 (based on a 3% annual increase of the average salary structure in the preceding year). The increases are phased in as follows: (1) \$4,556 in fiscal 2014; (2) \$4,692 in fiscal 2015; and (3) \$4,833 in fiscal 2016. General fund expenditures are projected to increase in fiscal 2014 by \$2.1 million for judicial salaries and fringe benefits.

Judicial Pensions

Maryland judges contribute 6% of their annual salary for the first 16 years of service toward a full retirement benefit of 2/3 of the salary of an active judge in a comparable position to the retired member. As part of its 2011 report to the Governor and General Assembly, the Judicial Compensation Commission recommended that the contribution rate for newly appointed judges be increased from the current rate of 6% to 8% effective July 1, 2012. ***Senate Bill 335 (passed)*** increases the pension contribution rate to 8% for both newly appointed and existing judges effective July 1, 2012. The bill also establishes a five-year judicial retirement vesting period for newly appointed judges. For further discussion regarding judicial retirement, see the subpart "Pensions and Retirement" within Part C – State Government of this *90 Day Report*.

Court Administration

Jury Service – Prohibited Acts by an Employer

An employer may not deprive an individual of employment or coerce, intimidate, or threaten to discharge an individual because of employment time lost due to jury service. ***House Bill 353 (Ch. 121)*** prohibits an employer from requiring an employee who spends four or more hours in one day, including travel time, in jury service to start a work shift that begins on or after 5 p.m. on the day of jury service or before 3 a.m. on the following day.

Victims of Crime – Interpreters

If a party or witness in a judicial proceeding is deaf or cannot readily understand or communicate the spoken English language, any party may apply to the court for the appointment of a qualified interpreter to assist that person. On application of a party or witness who is deaf, the court is required to appoint a qualified interpreter for the applicant. In addition, the court is required to appoint a qualified interpreter to help a defendant in a criminal proceeding when the defendant is deaf or cannot readily understand or communicate the English language and cannot understand a charge or help present the defense. ***House Bill 1148 (passed)*** authorizes a victim or victims' representative to apply for, and requires the court to appoint, a qualified interpreter if the person is deaf or cannot readily understand or communicate the spoken English language. The bill also requires the court to maintain a directory of interpreters to assist persons who cannot readily understand or communicate the spoken English language.

Task Force on Military Service Members, Veterans, and the Courts

Senate Bill 18/House Bill 252 (both passed) establish a Task Force on Military Service Members, Veterans, and the Courts. The task force is charged with various responsibilities, including:

- studying military service-related mental health issues and substance abuse problems of members or veterans of the armed services that may appear in civil, family, and criminal cases;
- studying ways the courts may address violence, drug and alcohol use and addiction, mental health conditions, and crimes committed by armed service members or veterans; and
- making recommendations regarding the creation of a special court for defendants who are current or former service members and who may suffer from mental illness, substance abuse, or post-traumatic stress syndrome related to military service and the readjustment to civilian life.

The task force must report its findings and recommendations to the Governor, the Chief Judge of the Maryland Court of Appeals, and the General Assembly by December 1, 2013.

Maryland Mediation Confidentiality Act

Rule 17-109 of the Maryland Rules establishes confidentiality in mediations only for civil actions in circuit court. *Senate Bill 856 (passed)* extends to mediations that occur outside the court system the same confidentiality protections that apply to court-ordered mediations. The provisions of the bill apply to specified mediations in which the parties are required to mediate by law or are referred to mediation by an administrative agency or arbitrator or agree in writing that the mediation communications will remain confidential. The mediator must also state in writing to all parties that the mediator has read, and will abide by, the Maryland Standard of Conduct for Mediators during the mediation.

Except for certain disclosures required under the bill or otherwise by law or agreed upon in writing by the parties, a mediator, a party to a mediation, and any other person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding. The parties may also enter into a written agreement to maintain the confidentiality of all mediation communications and may require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of all mediation communications.

A court may order mediation communications to be disclosed only to the extent that the court determines that disclosure is necessary to prevent an injustice or harm to the public interest

that is of sufficient magnitude in the particular case to outweigh the integrity of mediation proceedings.

Mediation communications that are confidential under the bill are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Access to Legal Services

Maryland Legal Services Corporation Fund

The Maryland Legal Services Corporation (MLSC) was established by legislation in 1982. It receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases. MLSC's primary sources of revenue are from the Interest on Lawyer Trust Accounts program and surcharges on filing fees in civil cases.

A provision of Chapter 397 of 2011 (Budget Reconciliation and Financing Act) required that all interest earned on special funds of the State be credited to the general fund, except for certain funds and accounts that are specifically exempted from the requirement. *House Bill 1238 (passed)* adds the MLSC Fund to the list of special funds and accounts exempted from this requirement. The bill also establishes that the Treasurer may not charge interest against the fund if the average daily net cash balance for the month is less than zero.

Civil Right to Counsel in Maryland

The Maryland Access to Justice Commission was created by Chief Judge Robert M. Bell in 2008 to develop, consolidate, coordinate, and implement policy initiatives to expand access to and enhance the quality of justice in civil legal matters for persons who encounter barriers in gaining access to the State's civil justice system. In 2011, the commission published a report entitled *Implementing a Civil Right to Counsel in Maryland*. The report made recommendations on implementation strategies, such as specifying the types of cases for which the right to civil counsel should attach. *Senate Bill 280/House Bill 265 (both failed)* would have established a Task Force to Study Implementing a Civil Right to Counsel in Maryland.

Civil Actions and Procedures

Civil Actions

Wrongful Death and Survival Causes of Action

A survival action is a lawsuit brought on behalf of a decedent's estate for injuries or damages sustained by the decedent prior to his or her death – damages that the decedent would have been able to recover if he/she had survived. In contrast, a wrongful death action is a lawsuit brought by a decedent's *survivors* for their damages resulting from the wrongful act that caused

the decedent's death. In general, a civil wrongful death or survival action must be filed within three years after the death of the injured person.

Senate Bill 453/House Bill 707 (both passed) delay the accrual of the cause of action in civil wrongful death and survival actions arising from a criminal homicide. Under the bills, if the conduct of an adverse party or an accessory or accomplice of an adverse party prevents a party from acquiring knowledge of a cause of action or the identity of the person whose wrongful act contributed to the homicide, the statutory period of limitations begins to run at the time the party discovered the homicide and the identity of the person who contributed to the homicide or the time at which the party should have discovered this information through ordinary diligence. A civil wrongful death or survival action meeting these criteria must be filed within three years after the cause of action accrues. The bills also create a presumption that a party exercising ordinary diligence should have discovered the identity of the person who contributed to the homicide after (1) a charging document is filed against the person alleged to have participated in the homicide; and (2) the charging document is unsealed and available to the public.

The bills apply retroactively to any cause of action that is not barred by application of any time condition or limit before October 1, 2012, but may not revive a cause of action barred before October 1, 2012.

Strategic Lawsuits Against Public Participation (SLAPP Suits)

Twenty-eight states, including Maryland, have enacted laws to protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Covered/protected activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions.

Plaintiffs in these lawsuits, commonly referred to as strategic lawsuits against public participation or "SLAPP suits" may allege a number of legal wrongs. The more common causes of action include defamation, invasion of privacy, intentional infliction of emotional distress, interference with contract or economic advantage, and abuse of process. Their goal is often not to win the case but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.

Senate Bill 221 (failed) would have made several changes to the current law pertaining to SLAPP suits, including (1) redefining what constitutes a SLAPP suit; and (2) establishing procedural requirements regarding a motion to dismiss or a motion to stay a SLAPP suit.

Privileged Communications – Labor Organization or Its Agent

There are several instances under State law in which a person may not be compelled to testify regarding information obtained in the course of his/her profession. Examples include the attorney-client privilege and the psychiatrist/psychologist-patient privilege. *Senate Bill 797 (passed)* prohibits a labor organization or an agent of a labor organization (labor

organization/agent) from being compelled to disclose any communication or information the labor organization/agent received or acquired in confidence from an employee while the labor organization/agent was acting in a representative capacity concerning an employee grievance. An “employee” is defined as an individual represented by a labor organization regardless of whether the individual is a member of the labor organization.

The bill specifies (1) that the privilege does not apply to a criminal proceeding; (2) the extent to which the privilege applies; (3) situations under which a labor organization/agent *must* disclose a privileged communication or information; and (4) situations under which a labor organization/agent *may* disclose a privileged communication or information.

The bill applies prospectively and does not affect or apply to any collective bargaining agreement or contractual agreement in effect on October 1, 2012, or any communication or information received or acquired by a labor organization/agent before October 1, 2012.

Lead Poisoning

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within the Maryland Department of the Environment (MDE). Chapter 114 established a comprehensive plan to provide compensation for children who are poisoned by lead paint, require landlords to treat affected residential rental properties to reduce risks, and limit the liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements.

If a landlord complied with the regulatory provisions, Chapter 114 provided liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically necessary treatments and to not more than \$9,500 for relocation benefits, for a total of \$17,000. Compliance with Chapter 114 includes having registered with MDE, having implemented all lead risk reduction treatment standards, and having provided notice to tenants about their legal rights and specified lead poisoning prevention information.

In a decision filed October 24, 2011 (*Jackson, et al., v. Dackman Co. et al.*, 422 Md. 357), the Court of Appeals ruled that the limits on landlord liability under Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts. The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

The court’s decision generated the introduction of several lead poisoning related bills during the 2012 session.

House Bill 644 (passed) makes various changes to the Reduction of Lead Risk in Housing Law (“lead law”) administered by MDE. Among other things, the changes:

- expand the application of the law to residential rental property built between 1950 and 1978 (beginning January 1, 2015);
- repeal a rebuttable presumption that an owner of an affected property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care with respect to lead hazards;
- provide that evidence that an owner of an affected property was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care; and
- require a court, in an action for damages arising from the ingestion of lead in an affected property, to require a party who alleges or denies time and place of residence of or visitation by a person at risk without a good faith basis, the party's attorney, or both to pay reasonable costs, including attorney's fees, incurred by the adverse party in opposing the allegation or denial.

House Bill 21 (failed) would have established judicial procedures for claims for injury allegedly caused by the ingestion of lead-based paint or lead-contaminated dust, including requirements related to the filing of a certificate of a qualified expert. The bill would have applied prospectively to civil actions filed on or after June 1, 2012.

For a detailed discussion of lead poisoning and lead paint legislation, see subpart "Environment" within Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

Family Law

Same-sex Marriage

In 2004, Massachusetts became the first state to issue marriage licenses to same-sex couples. Same-sex marriage is legal in the District of Columbia (2010) and five other states: Connecticut (2008); Iowa (2009); Vermont (2009); New Hampshire (2010); and New York (2011). In February, the Washington state legislature passed legislation which was signed by the Governor to legalize same-sex marriage. Unless voters successfully petition the measure to referendum, the bill goes into effect in June 2012.

Maryland Law

Since 1973, Maryland law has provided that only a marriage between a man and a woman is valid in this State. In July 2004, nine same-sex couples filed suit in Baltimore City against the clerks of the circuit courts from five counties, contending that the State law banning same-sex marriage is unconstitutional. The Court of Appeals upheld the State's marriage statute.

as constitutional but cautioned that the opinion "...should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex." See *Conaway, et al. v. Deane, et al.* 401 Md. 219 (2007) at 325.

On February 23, 2010, the Attorney General issued a formal opinion on the question of State recognition of same-sex marriages legally entered into in other states and concluded that although not free of all doubt, the Court of Appeals "... is likely to respect the law of other states and recognize a same-sex marriage contracted validly in another jurisdiction." (See 95 Op. Att'y Gen. 3 (2010) at 54.) The formal opinion advised that in light of evolving State public policies that favor, at least for some purposes, same-sex intimate relationships, the Court would probably be reluctant to prohibit recognition of same-sex marriages sanctioned in other states or jurisdictions. A major consideration would be the uncertainty that could be created by enforcing such a prohibition against those same-sex spouses and their families who visit or pass through Maryland if some event occurs which causes them to extend their connection with Maryland. As a result of the opinion, State agencies began to alter policies and actions to recognize same-sex spouses married in other jurisdictions who enter, visit, or reside in Maryland.

Civil Marriage Protection Act

House Bill 438 (Ch. 2), the Civil Marriage Protection Act, legalizes same-sex marriage by repealing the reference to a man and a woman in the current statute and specifying instead that a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland. If a petition to refer the Act to referendum is filed with the Secretary of State and a dispute arises as to the validity or sufficiency of the signatures required to complete the referendum petition, it will not take effect until the resolution of any litigation resulting from the dispute. Otherwise, the Act takes effect January 1, 2013.

Numerous exemptions for religious entities are included in the Act. A religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by a religious organization, association, or society may not be required to provide services, accommodations, advantages, facilities, goods, or privileges if they are related to (1) the solemnization of a marriage or its celebration that it is in violation of the entity's religious beliefs; or (2) the promotion of marriage through any social or religious programs or services, in violation of the entity's religious beliefs, unless State or federal funds are received for that specific program or service. A refusal by such an entity or any individual employed by such an entity to provide any of the services, accommodations, facilities, advantages, goods, or privileges may not create a civil claim or cause of action, or result in State action to penalize, withhold benefits from, or discriminate against the entity or individual. Nothing in the Act may be deemed or construed to prohibit any such entity from limiting admission to or giving preferences to individuals of the same religion or denomination when otherwise permitted by law.

The Act further specifies that each religious organization, association, or society has exclusive control over its own theological doctrine, policy teachings, and beliefs regarding who

may marry within that faith. Also, a fraternal benefit society that is operated, supervised, or controlled by a religious organization may not be required to admit an individual or provide insurance benefits if doing so would violate the society's religious beliefs. Such a refusal may not create a civil claim or cause of action or constitute the basis for the withholding of governmental benefits or services from the fraternal benefit society.

Child Abuse and Neglect

Mandatory Reporting

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An "educator or human service worker" includes any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute. Individuals (other than those who are required to report because of their professional capacity) who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

Penalties for Failure to Report

According to the Child Welfare Information Gateway, every state and the District of Columbia has laws that identify those people who are required to report suspected incidences of child abuse and neglect. As of 2009, 47 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The states that do not impose a penalty, in addition to Maryland, are North Carolina and Wyoming.

Several bills introduced this session would have criminalized the failure to report child abuse or neglect or established a civil penalty for failing to do so. *Senate Bill 63/House Bill 1067 (both failed)* would have made it a misdemeanor for those professionals who are required to report suspected child abuse or neglect to knowingly fail to do so. Violators would have been subject to a maximum fine of \$1,000. *Senate Bill 140 (failed)*, *House Bill 496 (failed)*, and *House Bill 999 (failed)* would have made it a misdemeanor for any person to knowingly fail to report suspected child abuse or neglect. Under *House Bill 496* and

House Bill 999 a violator would have been subject to a maximum penalty of 10 years imprisonment and/or a \$10,000 fine. Under **Senate Bill 140**, a violator would have been subject to a maximum penalty of one year imprisonment and/or a \$1,000 fine.

Senate Bill 626/House Bill 1102 (both failed) would have authorized the Attorney General to institute a civil action against a professional who fails to report abuse or neglect of a child. The bills would have authorized a maximum civil penalty of \$100,000 to be recovered for each violation if (1) a child communicated directly with the person regarding the child's own abuse or neglect and the child was younger than 18 when the communication occurred; or (2) the person observed the abuse or neglect.

Senate Bill 613/House Bill 1256 (both failed) would have required the State Board of Education, after consultation and input from local school systems, the Department of Human Resources, and the State Council on Child Abuse and Neglect, to develop a model program for training professional school employees on the prevention, identification, and reporting of sexual abuse.

House Bill 20 (failed), "Caylee's Law," would have created several reporting requirements regarding the disappearance or death of a minor and imposed criminal penalties for failure to report the disappearance or death of a minor. For a further discussion of **House Bill 20**, see the subpart "Criminal Law" within Part E – Crimes, Corrections, and Public Safety of this 90 Day Report.

Alternative Response

According to the Department of Human Resources (DHR), an "alternative response" program is an intervention different from a traditional child protective services investigation. Allegations referred for an alternative response represent substantially lower concerns for a child's safety compared to the concerns requiring a traditional investigation. An alternative response program provides assessment and refers families to supportive services rather than initiating an investigation. Under this program, reports of abuse and neglect are not to be "substantiated," perpetrators are not to be "identified," and names are not to be entered into the central registry. Instead, assessment of the capacity to parent replaces the adversarial intervention in which determining who is responsible for alleged abuse or neglect is a primary mission. DHR reports that alternative response programs exist in at least 23 states, including Delaware, New York, and Virginia, as well as the District of Columbia.

House Bill 834 (passed) authorizes the Secretary of DHR to establish an alternative response system, instead of a traditional investigation, for selected reports of suspected abuse or neglect. "Alternative Response" is defined under the bill as a component of the child protective services program that provides for a comprehensive assessment of (1) risk of harm to the child; (2) risk of subsequent child abuse or neglect; (3) family strengths and needs; and (4) the provision of or referral for necessary services. An alternative response does not include an investigation or a formal determination as to whether child abuse or neglect has occurred. Only a low-risk report of abuse or neglect may be considered for an alternative response. Reports that

are not assigned for an alternative response must be assigned for investigation in accordance with existing statutory provisions.

DHR must convene a multidisciplinary alternative response advisory council to advise the department on (1) the development of the alternative response implementation plan, which may include a pilot program; (2) oversight and monitoring of the alternative response implementation plan; (3) consulting with local citizens review panels, local services affiliates, and other local partners for feedback and recommendations on the alternative response implementation plan; (4) defining the scope of the independent evaluation of the implementation of the alternative response program; and (5) defining the scope of the ongoing evaluation of the alternative response program. The bill specifies membership of the advisory council, which is to be chaired by the Secretary of Human Resources, or the Secretary's designee.

DHR must also contract with an independent agency to conduct an evaluation of the alternative response program and submit specified reports to the Governor and the General Assembly. DHR may not begin actual implementation of alternative response in local departments of social services before July 1, 2013.

“Justice’s Law”

Senate Bill 521/House Bill 604 (both passed), “Justice’s Law,” were named for Justice Christopher Calvin Myers-Cannon, a baby boy who died due to injuries from child abuse in January 2007. The bills expand the list of persons who may be convicted of first degree child abuse to include a family member or household member. The bills also increase the maximum penalties for first degree child abuse resulting in the death of the victim and for a subsequent conviction for child abuse resulting in the death of the victim from 30 years imprisonment to 40 years imprisonment. For a further discussion of *Senate Bill 521* or *House Bill 604*, see the subpart “Criminal Law” within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Sexual Abuse – Definition

“Sexual abuse” is defined in statute as any act involving sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision, or by any household or family member. Sexual abuse includes incest, rape, a sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.

Senate Bill 1082/House Bill 860 (both passed) alter the definition of “sexual abuse” in provisions of law relating to a “child in need of assistance” and in provisions of law relating to the reporting and investigation of child abuse and neglect. The bills establish that “sexual abuse” includes human trafficking and allowing or encouraging a child to engage in (1) obscene photography, films, poses, or similar activity; (2) pornographic photography, films, poses, or similar activity; or (3) prostitution. These bills codify the current regulations defining sexual molestation for purposes of child in need of assistance and child abuse and neglect cases.

Missing Children

According to the National Center for Missing and Exploited Children, an estimated 800,000 children are reported missing every year. Under current law, law enforcement agencies are required to take specified actions to locate a missing child if the child is under the age of 14. *House Bill 1120 (passed)* raises this age to 17 and requires a law enforcement agency, when instituting appropriate intensive search procedures relating to a missing child, to coordinate volunteer search teams. The bill also establishes that for children who have disappeared from or are thought to be located in the State, the State Clearinghouse for Missing Children must publish the names of and relevant available information on missing children and annual statistics regarding missing children. The clearinghouse may also establish and maintain a list of organizations and groups that provide volunteer search teams or resources relating to missing children.

State Council on Child Abuse and Neglect

The State Council on Child Abuse and Neglect (SCCAN) is responsible for evaluating the extent to which State and local agencies are effectively discharging their child protection responsibilities in accordance with (1) the State plan required by the federal government; (2) the child protection standards set forth in State and federal law; and (3) any other criteria it considers important to ensure the protection of children. SCCAN also reviews the extent to which the State child protective services system is coordinated with the foster care and adoption program established under Title IV-E of the Social Security Act and conducts reviews of child fatality and near fatality reports. SCCAN is required to examine the policies and procedures of State and local agencies and specific cases that it considers necessary to perform its duties.

House Bill 264 (Ch. 116) transfers SCCAN to the Department of Human Resources for budgetary and administrative purposes. Because the Department of Human Resources already provides administrative support for SCCAN, this provision simply codifies the existing arrangement. The Act also alters, from three to one, the number of required standing committees for the council and repeals the duties of the eliminated standing committees.

Permanency Planning and Guardianship Review Hearings

At least every 12 months at a permanency planning or guardianship review hearing for a child in an out-of-home placement, the court is required to consult on the record with the child in an age-appropriate manner. *Senate Bill 70 (passed)* sets forth specific methods by which a juvenile court may satisfy the requirement to consult on the record with the child in cases in which the child is medically fragile or the child's placement is out-of-state.

If the juvenile court determines, after a hearing or with the agreement of all parties, that a child is medically fragile and that it is detrimental to the child's physical or mental health to be transported to court, the court may (1) visit the child at the child's placement and use appropriate technology to document the consultation for the record; or (2) use video conferencing to consult with the child on the record during the hearing.

A court is also authorized to use video conferencing to consult with the child on the record if the child's placement is outside the State and the court determines, after a hearing or with the agreement of all parties, that it is not in the best interest of the child to be transported to the court.

If the court visits the child or video conferencing is used in either of the above situations, the court is required to give each party notice and an opportunity to attend the visit or the video conferencing, unless the court determines that it is not in the best interest of the child for a party to attend.

Domestic Violence

Shielding of Records

Court records, including those relating to a peace order or protective order proceeding that are maintained by a court, are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person, upon personal appearance in the custodian's office during normal business hours, to inspect the record. In addition, the Judiciary's website includes a link to "CaseSearch," which provides public Internet access to information from court records maintained by the Judiciary.

However, a respondent in a peace order or protective order case is authorized to file a written request to "shield" all related court records if a petition for a peace order or protective order was denied or dismissed at any stage of the proceedings. "Shield" is defined as removing information from public inspection. "Shielding" means (1) with respect to a record kept in a court house, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and (2) with respect to electronic information about a proceeding on the website maintained by the Maryland Judiciary (CaseSearch), removing the information from the public website.

The Judiciary advises that a person attempting to use CaseSearch to access a shielded case is still able to see that a case existed, along with the following statement: "No electronic record exists or case not subject to electronic inspection." *House Bill 92 (Ch. 99)* clarifies that "shielding" means to completely remove all information concerning the proceeding, including the names of the parties, case numbers, and any reference to the proceeding or any reference to the removal of the proceeding, from CaseSearch. The Act is intended to ensure that an individual searching for a case which has been shielded would find no entry for it.

Unemployment Insurance Coverage for Domestic Violence Victims

Senate Bill 291 (Ch. 53) specifies that an individual is eligible to receive unemployment insurance benefits if the Department of Labor, Licensing, and Regulation (DLLR) determines the individual voluntarily left employment because the individual or the individual's spouse, minor child, or parent was a victim of domestic violence.

An individual must (1) reasonably believe that the individual's continued employment would jeopardize the safety of the individual or the individual's family; and (2) provide documentation to DLLR substantiating the domestic violence. DLLR must adhere to certain privacy protections and may not charge the benefits payable to a claimant against the rating record of an employer. For a more detailed discussion of this issue, see the subpart "Unemployment Insurance" within Part H – Business and Economic Issues of this *90 Day Report*.

Reporting Domestically Related Crimes

Senate Bill 647/House Bill 1146 (both passed) require the court, on request of a State's Attorney, to make a finding of fact, based on evidence produced at trial, as to whether a crime for which a defendant is convicted or receives a probation before judgment disposition is a "domestically related crime." A "domestically related crime" is a crime committed by a defendant against a victim who is a "person eligible for relief," as defined under the domestic violence statute or who had a sexual relationship with the defendant within 12 months before the commission of the crime. The State must prove by a preponderance of the evidence that the crime is a domestically related crime. If the court finds that the crime is a domestically related crime, that finding must become part of the court record for purposes of reporting to the Criminal Justice Information System Central Repository.

Interim and Temporary Protective Orders – Duration

House Bill 1160 (Ch. 142) establishes that if the court is closed on the day on which an interim peace or protective order is due to expire, the interim order is effective until the next day on which the court is open, at which time the court shall hold a temporary peace or protective order hearing. If the court is closed on the day on which a temporary peace or protective order is due to expire, the temporary order is effective until the second day on which the court is open, by which time the court must hold a final peace or protective order hearing. The Act is intended to ensure that an order will not expire in case of an unplanned court closing due to inclement weather or other reasons.

Child Support

Incarcerated Parents

According to a 2007 report from the Center for Law and Social Policy, about 65% of women and 55% of men in state prisons have children younger than 18. Approximately 50% of inmates throughout the United States have open child support cases, with typical support orders ranging from \$225 to \$300 per month. At the time an incarcerated parent enters prison, he or she is likely to owe about \$10,000 in arrearages. By the time an incarcerated parent leaves prison, he or she is likely to owe \$20,000 or more in arrearages. The Office of Child Support Enforcement in the U.S. Department of Health and Human Services has noted a growing awareness of the need to provide services to this population.

Under state law, a court may modify a child support award subsequent to a motion for modification and a showing of a material change in circumstances. However, a court may not retroactively modify a child support award prior to the date that the motion for modification was filed. In *Wills v. Jones*, 340 Md. 480 (1995), the Court of Appeals ruled that incarceration of an obligor parent may constitute a material change in circumstances that could justify a downward adjustment of the child support obligation if the effect on the prisoner's ability to pay child support is sufficiently reduced due to incarceration.

House Bill 651 (passed) stemmed from one of the legislative recommendations made by the Task Force on Prisoner Re-entry. The bill establishes that a child support payment is not past due and arrearages may not accrue during any period when the obligor is incarcerated, and continuing for 60 days after the obligor's release if (1) the obligor was sentenced to a term of imprisonment for 18 consecutive months or more; (2) the obligor is not on work release and has insufficient finances to make child support payments; and (3) the obligor did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished.

In any case in which the Child Support Enforcement Administration (CSEA) is providing child support services, CSEA, without filing any motion with the court, may adjust the incarcerated obligor's account to reflect suspension of the accrual of arrearages. Before making such an adjustment, CSEA must send written notice of the proposed action to the obligee, including the obligee's right to object to the proposed action, along with an explanation of procedures for filing an objection.

Human Relations

Housing Discrimination Based on Source of Income

State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, or disability. **Senate Bill 277/House Bill 168 (both failed)** would have added discrimination based on a person's source of income to this list. Under the bills, "source of income" was defined as any lawful source of money paid directly or indirectly to or on behalf of a renter or buyer of housing, including income from specified sources. The measures provided exceptions if the source of income is rental assistance for (1) the rental of rooms or apartments in an owner's principal residence; and (2) the rental of a unit in an assisted rental housing development. The bills would not have prohibited a person from refusing to consider income derived from any criminal activity or from determining the ability of a potential buyer or renter to pay by verifying, in a commercially reasonable and nondiscriminatory manner, the source and amount of income of the potential buyer or renter.

Discrimination in Places of Public Accommodation

Under State law, an owner or operator of a place of public accommodation may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's race, sex, age, color,

creed, national origin, marital status, sexual orientation, or disability. A “place of public accommodation” includes (1) a hotel, motel, or other lodging establishment; (2) a facility serving food or alcoholic beverages, including facilities on the premises of a retail establishment or gasoline station; (3) an entertainment, sports, or exhibition venue; and (4) a public or privately operated retail establishment offering goods, services, entertainment, recreation, or transportation. A person alleging discrimination by a place of public accommodation may file a complaint with the Maryland Commission on Civil Rights (MCCR). Remedies are limited to granting nonmonetary relief to the complainant and assessing civil penalties against the respondent.

Senate Bill 491/House Bill 287 (both failed) would have expanded the remedies available for discrimination by a place of public accommodation to include (1) monetary damages; (2) enjoining the respondent from engaging in the discriminatory act; (3) ordering appropriate affirmative relief, including the provision of a reasonable accommodation; and (4) ordering any other appropriate equitable relief. The bills would have added discrimination by a place of public accommodation to the alleged discriminatory acts for which a complainant or respondent may elect to have MCCR bring a civil action in circuit court in lieu of an administrative hearing before an administrative law judge. The bills also would have authorized a complainant to bring a civil action against the respondent alleging discrimination by a place of public accommodation if (1) the complainant initially filed a timely administrative charge or complaint; (2) at least 180 days have elapsed since the filing of the charge or complaint; and (3) the action is filed within two years after the alleged discrimination occurred. If the court found that discrimination by a place of public accommodation occurred, the respondent would be subject to the expanded remedies. The measures would also have authorized the court to award punitive damages if the respondent is not a governmental unit or political subdivision and the court found that the respondent acted with actual malice.

Similar bills, *Senate Bill 278/House Bill 183 (both failed)*, would have expanded the remedies as discussed above and also would have extended provisions of law related to discrimination by a place of public accommodation to the website of a business entity that (1) is a place of public accommodation or provides goods, services, entertainment, recreation, or transportation to any person in the State through the Internet; and (2) had gross revenue of at least \$1.0 million in the entity’s most recently completed fiscal year. The measures also would have repealed the definition of “disability” applicable to provisions relating to discrimination in housing, which is consistent with the federal fair housing law, and replaced it with language that parallels the definition of “disability” under the State employment discrimination law, and amended the definition of “disability” applicable to provisions relating to employment discrimination by replacing a reference to “retardation” with a reference to “intellectual disability.”

Gender Identity

Thirteen states and the District of Columbia have passed laws prohibiting discrimination based on gender identity. Since 2002, Baltimore City has had laws prohibiting discrimination based on gender identity and expression in employment, public accommodations, education, and

housing. In 2007, Montgomery County added gender identity as a covered basis under county law prohibiting discrimination in employment, housing, cable television services, and taxicab services. Similar laws were adopted in Howard County in 2011 and in Baltimore County in 2012. Governor Martin O'Malley issued an executive order in August 2007 that included gender identity and expression as a proscribed basis for discrimination in State personnel actions.

Senate Bill 212 (failed) would have prohibited discrimination based on gender identity in public accommodations, labor and employment, and housing and by persons licensed or regulated by a unit of the Department of Labor, Licensing, and Regulation. The bill defined “gender identity” as a persistent, bona fide gender-related identity and the consistent, public manifestation of that identity in the gender-related appearance of an individual regardless of the individual’s assigned sex at birth. The bill would have provided exemptions from provisions of the bill relating to housing discrimination for the rental of rooms or apartments in an owner’s principal residence. The bill specified that it is not unlawful for an employer to establish and require an employee to adhere to certain reasonable workplace appearance, grooming, and dress standards as long as an employee is allowed to appear, groom, and dress consistent with the employee’s gender identity. The measure would also have prohibited discrimination based on gender identity and sexual orientation in State personnel actions and in the leasing of property for commercial usage.

Service Animal Trainers

Individuals with disabilities and the parents of a minor child with a disability have the same rights as individuals without disabilities to the full and free use of roads, sidewalks, public buildings and facilities, and other public places. These individuals are entitled to full and equal rights and privileges with respect to public transportation conveyances, public accommodations, and other places to which the general public is invited, subject only to the generally applied conditions and limitations established by law. ***Senate Bill 804 (passed)*** alters the definition of “service animal trainer” in provisions of law relating to the rights and privileges of individuals with disabilities by including an individual who raises service animals and specifying that the trainer may be a professional or a volunteer. The measure establishes that service animal trainers who are accompanied by an animal being trained or raised as a service animal have the same rights to housing accommodations as individuals with disabilities. The bill specifies that service animal trainers who are accompanied by an animal being trained or raised as a service animal have the same rights as individuals without a disability to the full and free use of roads, sidewalks, and other public places. The bill also specifies that service animal trainers who are accompanied by an animal being trained or raised as a service animal are entitled to full and equal rights and privileges with respect to common carriers and other public conveyances, places of public accommodation, and other places to which the general public is invited.

Same-sex Marriage

House Bill 438 (Ch. 2) legalizes same-sex marriage in the State by altering the definition of a valid marriage to repeal the reference to a man and a woman and specifying instead that only a marriage between two individuals who are not otherwise prohibited from marrying is valid in

Maryland. An official of a religious order or body authorized to solemnize marriages may not be required to solemnize or officiate any particular marriage or religious rite of marriage in violation of the right to the free exercise of religion as guaranteed by the United States and Maryland Constitutions and is not subject to any fine or other penalty for the failure or refusal to do so. For a more detailed discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *90 Day Report*.

Real Property

Ground Leases

Ground leases have been a form of property holding in Maryland since colonial times. A ground lease creates a leasehold estate in the grantee that is personal – not real – property. The grantor retains a reversion in the ground lease property and fee simple title to the land. Ground leases generally have a 99-year term and are renewable perpetually. Ground rent is paid to the grantor (the ground lease holder) for the use of the property for the term of the lease in annual or semi-annual installments. Under a typical ground lease contract, the tenant agrees to pay all fees, taxes, and other costs associated with ownership of the property. Prior to 2007, when a tenant failed to pay rent, the ground lease holder could bring an action for the past-due rent or for possession of the premises. Because the tenant had a leasehold estate, a tenant whose property was seized in an ejectment action received no other compensation.

After a series of news articles in 2006 chronicled serious problems with the ground rent system. The General Assembly passed several bills addressing ground leases during the 2007 session. Chapter 286 of 2007 altered the remedy for nonpayment of ground rent on residential property, by abolishing ejectment and providing for the creation of a lien if ground rent is unpaid at least six months after its due date, notwithstanding any provision in a ground lease giving the ground lease holder the right to reenter the property.

Chapter 290 of 2007 required ground lease holders to register their ground leases with the State Department of Assessments and Taxation (SDAT) by September 30, 2010. If a ground lease holder failed to register, the holder’s reversionary interest was extinguished and ground rent would no longer be payable. SDAT was then required to issue a ground lease extinguishment certificate to the tenant. The extinguishment conclusively vested a fee simple title in the leasehold tenant, free and clear of any and all right, title, or interest of the ground lease holder, the ground lease holder’s lienholders, and any person claiming by, through, or under the ground lease holder when the certificate was recorded in the land records.

According to SDAT, 85,000 ground leases were registered prior to the September 30, 2010 deadline and SDAT issued 1,160 extinguishment certificates to tenants of the ground lease holders who had not registered.

In 2011, the Maryland Court of Appeals held that the retrospective extinguishment and transfer provisions of Chapter 290 violated the due process and takings provisions under Maryland’s Declaration of Rights and Constitution and were, therefore, unconstitutional. *Muskin*

v. State Dept. of Assessments and Taxation, 422 Md. 544 (2011). However, the court held that the registration requirement was valid. The court suggested that alternative statutory approaches might include one where failure to register a ground lease triggers an interim consequence, such as restrictions on collecting ground rents prospectively or a denial of access to the courts for collection of unregistered ground rents. 442 Md. at 550.

Legislation was introduced during the 2012 session to address the holding in the *Muskin* decision. ***Senate Bill 135/House Bill 177 (both passed)*** require a holder of a ground lease to comply with the existing requirement to register with SDAT before the holder may (1) collect any ground rent payments due under the ground lease; (2) bring a civil action against the leasehold tenant to enforce any rights the ground lease holder may have under the ground lease; or (3) obtain a lien on the property. The measures do not prohibit a ground lease holder who registers a ground lease from collecting not more than three years of back ground rent payments or taking any other enforcement actions after the ground lease is registered. Before a holder can collect any yearly or half-yearly ground rent installment payment or obtain a lien, the holder must mail, at least 60 days before the payment is due, a bill for the amount owed to the leasehold tenant's last known address and the address of the property subject to the ground lease.

The measures also repeal provisions relating to the extinguishment of a ground lease not registered with SDAT prior to September 30, 2010, and void any extinguishment certificates issued by SDAT for failure to register. On request of the ground lease holder or the leasehold tenant, SDAT is required to file a notice in the county land records where an extinguishment certificate was filed stating that the certificate is void and the underlying leasehold interest is in full effect unless otherwise redeemed.

Residential Foreclosures

Background

The State's multifaceted approach to the foreclosure crisis has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the last four sessions (1) created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute; (2) tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan; (3) prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers; (4) reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold; (5) required additional notices to be given to residential tenants renting properties pending foreclosure; (6) required a lender, under specified circumstances, to provide to a borrower a written notice regarding homebuyer education or housing counseling in connection with specified mortgage loans; (7) required the secured party to file a final loss mitigation affidavit and send to the mortgagor or grantor a copy of the affidavit and a request for foreclosure mediation form; and (8) lengthened the time period within which a homeowner may elect to participate in foreclosure mediation. Consumer outreach efforts have included statewide

public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project.

Due to a multitude of factors, including the State's new foreclosure mediation process, consumer outreach efforts, and legal issues surrounding many lenders' foreclosure practices, the number of foreclosure events decreased significantly from 50,563 in 2010 to 16,049 in 2011. Foreclosure events encompass real estate-owned (REO) purchases, notice of foreclosure sales, and notices of mortgage loan default. REO property is property acquired by a financial institution as a result of an unsuccessful foreclosure sale on the property. This type of acquisition often occurs when the amount of the outstanding loan owed to the financial institution is greater than the value of the property. The low level of foreclosure events seems to be holding, although the fourth quarter of 2011 saw the first increase in the number of foreclosure events from the previous quarter since the second quarter of 2010.

The Governor convened the Maryland Foreclosure Task Force in the fall of 2011. The task force members and participants included the Department of Labor, Licensing, and Regulation (DLLR), the Department of Housing and Community Development, members of the General Assembly, the Judiciary, local governments, consumer advocates, and representatives from private industry. In January 2012, the task force issued its report, including 12 recommendations aimed at further addressing the foreclosure crisis in Maryland.

Foreclosed Property Registry

According to the task force, the period of time between a foreclosure sale and the recordation of a deed transferring title to the property ranges from 9 to 18 months. During this "limbo period," local governments have difficulty in knowing who to contact about issues that may arise with the property. This is of special concern when the property is vacant. Local governments have experienced increased costs for code enforcement relating to securing and maintaining vacant foreclosure property. One of the task force's recommendations was the creation of a registry in order to allow government officials to identify parties responsible for the maintenance of foreclosed property during this limbo period. *House Bill 1373 (passed)* creates such a registry.

House Bill 1373 requires DLLR to establish and maintain an Internet-based Foreclosed Property Registry for information relating to foreclosure sales of residential property. The measure also establishes the Foreclosed Property Registry Fund, the purpose of which is to support the registry's development, administration, and maintenance. Under *House Bill 1373* foreclosure purchasers must submit an initial registration form, and the appropriate fee, within 30 days of the foreclosure sale and a final registration form within 30 days after a deed transferring title to the property has been recorded.

A local jurisdiction may enact a local law imposing a maximum \$1,000 fine for failure to register. Additionally, a local government that abates a nuisance on or maintains a registered property may collect any incurred costs as a charge included on the property's tax bill, as long as specified notice requirements are met. Finally, although *House Bill 1373* repeals provisions of law that authorize a county or municipal corporation to enact a local law requiring notice of

foreclosure actions, the bill expresses the intent that it does not repeal any local law that was enacted under Chapter 149 of 2009 and that is in effect as of October 1, 2012.

DLLR is required to report to the General Assembly by January 1, 2013, on the status of the Foreclosed Property Registry and the Foreclosed Property Registry Fund.

Foreclosure Prefile Mediation

As noted above, part of Maryland's response to the foreclosure crisis was the requirement that lenders allow borrowers to participate in foreclosure mediation after an order to docket or complaint to foreclose a mortgage or deed of trust has been filed. Borrowers have requested mediation on only 22.7% of eligible orders to docket or complaints to foreclose a mortgage or deed of trust on residential property. According to the task force, many borrowers are so far in default and have accumulated such a large amount of arrears that postfile mediation is unable to produce an acceptable retention option. One of the task force's recommendations was the introduction of prefile mediation triggered by the delivery of the notice of intent to foreclose.

House Bill 1374 (passed) authorizes a secured party to offer prefile mediation with a mortgagor or grantor to whom the secured party has delivered a notice of intent to foreclose. If the mortgagor or grantor elects prefile mediation, an order to docket or complaint to foreclose may not be filed until the completion of the mediation. The measure requires a secured party that offers prefile mediation to include specified information and a prefile mediation application with the notice of intent to foreclose.

If a mortgagor or grantor elects to participate in prefile mediation, the mortgagor or grantor must notify the secured party by submitting an application within 25 days after the secured party mails the notice of intent to foreclose. Once the secured party receives the application, the secured party must notify the Office of Administrative Hearings (OAH). OAH is required to (1) schedule a prefile mediation session within 60 days after it receives the notice from the secured party; (2) notify the parties and their attorneys, if any, of the date of the prefile mediation session; and (3) issue a report describing the result of the mediation upon its completion.

The bill also requires the Commissioner of Financial Regulation, by regulation, to (1) establish the fee for prefile mediation; and (2) prescribe the form and content of the notice about prefile mediation, the application to participate in prefile mediation, and instructions to complete the application. The fee must be distributed to the Housing Counseling and Foreclosure Mediation Fund. *House Bill 1374* also authorizes local jurisdictions to issue certificates of vacancy and certificates of property unfit for human habitation if properties meet specified requirements. Accordingly, if a mortgage or deed of trust on residential property is in default, a person with a secured interest in the property may request that a county or municipal corporation issue a certificate of vacancy or a certificate of property unfit for human habitation. If a local jurisdiction determines the property meets the appropriate standards, it must issue the certificate. The record owner or occupant of the property may challenge the certificate. If a certificate is valid at the time of filing an order to docket or complaint to foreclose, a secured

party may expedite the foreclosure process. However, if a challenge to the certificate is upheld, the process may not be expedited.

Finally, *House Bill 1374* exempts from the State income tax any payment to an individual made as a result of a foreclosure settlement negotiated by the Attorney General. On February 9, 2012, the U.S. Department of Justice, U.S. Department of Housing and Urban Development, and 49 state Attorneys General announced an agreement with five major banks providing for compensation for damages arising from improper foreclosure procedures and providing relief to states and homeowners from underwater mortgages. According to the Attorney General, Maryland is expected to receive almost \$960.0 million in funding, of which \$24.1 million will be distributed to specified homeowners who have had their homes foreclosed on.

Notice to Local Supervisor of Assessments of Residential Property Foreclosure Sale

Often when a secured party acquires residential property after a foreclosure sale, it delays recording the deed until it sells the property to another party, thus avoiding the payment of any recordation fee or transfer tax until absolutely necessary. When it does sell the property, the financial institution will record the deed twice and pay the transfer taxes twice: once for the transfer between the foreclosed-on property owner and the financial institution and again for the transfer between the financial institution and the new purchaser. According to SDAT, this delay in recording the transfer of the deed causes many foreclosed residential properties to improperly retain tax credits because SDAT traditionally uses the recordation of a deed in the land records to determine whether to remove the Homestead Property Tax Credit. Property owned by a financial institution does not qualify for the tax credit because the property must be the owner's primary residence.

Senate Bill 123 (passed) requires a purchaser of residential property sold in an action to foreclose a mortgage or deed of trust on the property to provide a copy of the court order ratifying the foreclosure sale to the supervisor of assessments for the county in which the residential property is located. The copy must be provided within specified time periods. By requiring the purchaser to provide the supervisor of assessments with this information, SDAT may more efficiently remove any improper tax credits.

Common Ownership Communities

Common Interest Community Managers

Common Interest Communities (CICs) include condominium councils of unit owners, homeowners associations, and cooperative housing corporations. Many CICs employ the services of professional property managers to engage in business, legal, financial, and other transactions for the CIC. As of February 2012, the Community Associations Institute estimates that approximately 1,000 to 1,500 professional property managers conduct business in Maryland. State law does not designate a statewide office to regulate CIC management services. As of January 1, 2011, however, all common ownership community (COC, the more commonly used name in Maryland) management entities in Prince George's County must register with that

county's Office of Community Relations. Also, COCs in Montgomery County have been required to register since the county created a 15-member volunteer Commission on Common Ownership Communities in 1991.

Senate Bill 372/House Bill 433 (both failed) would have created the State Board of Common Interest Community Managers to regulate the provision of CIC property management services under the authority of the Secretary of Labor, Licensing, and Regulation. The measures would have (1) set forth qualifications for a CIC manager's license; (2) authorized the board to discipline a licensee or deny a license to an applicant; and (3) required specified CICs to register and pay fees per unit or lot. ***House Bill 352 (failed)*** would have required a service provider that assists in providing management services to a CIC under the direction of a governing body to enter into a written contract with the CIC before providing the management services. This bill was referred to interim study.

Condominiums

House Bill 126 (Ch. 101) broadens the right of a council of unit owners of a condominium or its authorized designee to enter a unit to make repairs by authorizing the entry in order to investigate damage when the investigation reasonably appears necessary for public safety or to prevent damage to other portions of the condominium. ***Chapter 101*** requires that the council of unit owners make a reasonable effort to notify the owner of a unit to be entered in order to investigate damage unless the situation involves manifest danger to public safety or property.

Senate Bill 725/House Bill 740 (both failed) would have established that any provision of an instrument, including a declaration, bylaw, or contract for sale, made by a developer in accordance with the Maryland Condominium Act is unenforceable if the provision places specified limitations on warranty claims or other statutory or common law rights. Additionally, the measures would have established that a provision requiring the council of unit owners to obtain a vote of unit owners or the approval of the developer or any nonunit owners before instituting a lawsuit, arbitration, mediation, or a similar proceeding is unenforceable unless the vote to adopt the provision was held after the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors.

Manufactured Housing

In Maryland, an ownership interest in a manufactured or mobile home, like an ownership interest in a car, is documented by listing the owner's name on the certificate of title. This process of titling a manufactured home may limit the availability of credit to finance the purchase and refinancing of manufactured homes and make it more difficult for a homeowner to resell a manufactured home. Secondary market investors require certainty that a valid lien and marketable title exists before the loan may be sold. Without access to the secondary market, available credit is limited. In *Droney v. Droney*, 102 Md. App. 672, 651 A.2d 415 (1995), the Maryland Court of Special Appeals ruled that a mobile home became a fixture upon real property when significant changes and improvements were made to it, including the removal of

the wheels and attachment of utility lines. A manufactured home that is used for residential purposes and is permanently attached to land or connected to utilities must be assessed as an improvement to real property to the owner of the land, unless the home is located on a rented space in a manufactured home park.

To address concerns about the titling of manufactured homes, *Senate Bill 591/House Bill 678 (both passed)* establish requirements that must be met to affix a manufactured home to or sever it from real property. Once the affixation requirements are met, the manufactured home is governed by the laws applicable to real property. A manufactured home is converted to real property when (1) the manufactured home is attached to a permanent foundation; (2) the ownership interests in the manufactured home and the parcel of real property to which it is affixed are identical; and (3) an affidavit of affixation complying with statutory requirements has been recorded.

Senate Bill 591/House Bill 678 require an affidavit of affixation to include or be accompanied by information or documentation describing the manufactured home and the real property to which it is being affixed. The owner of the manufactured home must file a certified copy of the recorded affidavit of affixation with the Motor Vehicle Administration (MVA). The measures require the owner to file an affidavit of severance if a manufactured home that has been converted to real property is to be severed from real property. MVA is required to develop a model affidavit of affixation that meets the statutory requirements for use in affixing a manufactured home to real property.

Disclosure of Energy Usage

House Bill 935 (failed) would have required the landlord of a commercial building with more than 10,000 square feet of interior space to provide to a prospective tenant, on written request, energy usage information for the building or a space for rent in the building if specified requirements are met.

Senate Bill 968/House Bill 1331 (both failed) would have required a vendor of single-family residential real property to provide prospective purchasers with copies of specified utility bills or a document detailing utility cost and usage history for the 12-month period before the property was first marketed for sale. Currently, the written residential property disclosure or disclaimer statement a vendor is required to provide to a purchaser does not address utility cost or usage history.

Nuisance Abatement

A community association may bring an action for the abatement of a nuisance in several jurisdictions, including Baltimore City. *Senate Bill 130 (passed)* alters several provisions in the nuisance abatement statute for Baltimore City. The measure amends the definition of a “community association” to conform to the definition of “community association” in the State law for abating a nuisance when property is used for illegal drug activity. The definition of “nuisance” is also amended by repealing a requirement that a nuisance must diminish the value

of a neighboring property. The measure repeals a requirement that a community association must file a bond with the court before seeking relief in a legal action. Additionally, a community association may not seek injunctive relief for abatement of a nuisance if the Baltimore City Department of Housing and Community Development has provided the community association with specified notice that the property is part of an active code enforcement plan. Finally, the bill grants standing to a community association to file a nuisance complaint when a vacant dwelling is boarded, if the property otherwise qualifies as a nuisance.

Estates and Trusts

Orphans' Court

An orphans' court hears all contested matters regarding a decedent's estate, including validity of wills and legal questions involving transfers of property. The court also supervises estates that are probated judicially; approves accounts, awards of personal representatives' commissions, and attorney's fees in all estates; and has concurrent jurisdiction with the circuit courts in the guardianship of minors and their property.

Jurisdiction under the Maryland Uniform Transfers to Minors Act

Whenever a personal representative of an estate is required to distribute property to a minor, the orphans' court may approve a transfer by the personal representative to a custodian to hold or dispose of the property in accordance with the Maryland Uniform Transfers to Minors Act. Under current law, however, with respect to provisions under the Act that require court authorization to take certain action or that authorize certain persons to petition the court to compel an action to be taken, "court" is defined to mean the circuit courts.

Senate Bill 396/House Bill 822 (Chs. 68 and 69) expand the definition of "court" under the Maryland Uniform Transfers to Minors Act to include an orphans' court, or a court exercising the jurisdiction of an orphans' court.

Qualifications of Baltimore County Orphans' Court Judges

Under the Maryland Constitution, each county elects three judges to the orphans' court of their respective jurisdictions, with the exception of Montgomery and Harford counties where a circuit court judge sits as the orphans' court. The judges must be citizens of the State and residents, for the preceding 12 months, in the city or county in which they may be elected. Other than in Baltimore City, orphans' court judges are not required to be attorneys or members of the State Bar. In accordance with Chapter 394 of 2011, a proposed constitutional amendment to require orphans' court judges in Prince George's County to be members in good standing of the Maryland Bar and admitted to practice law in the State will be submitted to the voters for adoption or rejection in the November 2012 general election.

Senate Bill 48 (passed), a proposed constitutional amendment, prescribes additional qualifications for judges of the Orphans' Court for Baltimore County. If adopted, an orphans'

court judge in Baltimore County would be required to be a member in good standing of the Maryland Bar who is admitted to practice law in the State. The amendment continues the requirements that an orphans' court judge in Baltimore County be a citizen of the State and a resident of Baltimore County for the 12 months preceding the election. This proposed constitutional amendment is to be submitted to the voters for adoption or rejection in the November 2012 general election.

Probate

Eligibility Thresholds for Small Estate Administration

Small estate administration can allow for estates below the statutory thresholds to be administered in a simplified manner and shorter timeframe in comparison to administration of a regular estate. The inheritance tax also does not apply to property distributed from a small estate, though property distributed from an estate not administered as a small estate may, in many cases, also qualify for other exemptions from the inheritance tax, such as an exemption for property passing to lineal relatives, a spouse, or siblings. *Senate Bill 353/House Bill 318 (Chs. 62 and 63)* increase the eligibility thresholds for small estate administration from \$30,000 to \$50,000, for estates in general, and from \$50,000 to \$100,000 for an estate in which the surviving spouse is the sole legatee or heir of the decedent. The Acts also eliminate duplication in the probate fee schedules for small estates and regular estates under different sections of the Estates and Trusts Article. The Acts do not have any effect on or application to any estate opened before their effective dates.

Funeral Expenses

The personal representative of a decedent must pay the funeral expenses of the decedent within six months of the first appointment of a personal representative, in accordance with an order of payment of claims against an estate that is specified in statute. The definition of "funeral expenses" has been interpreted differently by registers of wills and orphans' court judges in different jurisdictions and the interpretations can often exclude expenses traditionally considered a part of the funeral process. The limits established for funeral expenses were last changed by Chapter 107 of 2005, which established separate limits for regular estates and small estates, by raising the limit for regular estates from \$5,000 to \$10,000 and retaining the \$5,000 limit for small estates. The cost of funerals in many jurisdictions in the State reportedly often exceeds \$5,000.

Senate Bill 397/House Bill 773 (both passed) define the term "funeral expenses" for purposes of determining the expenses that may be paid from the assets of an estate. "Funeral expenses" are defined under the bills to include the costs of a funeral, a burial, a cremation, a disposition of the decedent's remains, a memorial, a memorial service, food and beverages related to bringing together the decedent's family and friends for a wake or prefuneral or postfuneral gathering or meal, and any other reasonable expenses authorized by the decedent's will. The bills also raise the limit on funeral expenses that can be paid from a small estate, without a court order, from \$5,000 to \$10,000.

Posthumous Use of Donor Sperm and Eggs

House Bill 101 (passed) allows a child conceived from the genetic material of a person after the person's death to inherit if (1) the person had consented in a written record to use of the person's genetic material for posthumous conception in accordance with the bill's requirements; (2) the person consented in a written record to be the parent of a child posthumously conceived using the person's genetic material; and (3) the child posthumously conceived using the person's genetic material is born within two years after the person's death.

A donor's consent to the posthumous use of the donor's sperm or eggs given on or after October 1, 2012, is not valid unless it is in writing and signed by the donor.

The bill also prohibits a person from using, for the purpose of assisted reproduction, a known donor's sperm or eggs if (1) the person knows that the donor died and did not give consent for the posthumous use of the sperm or eggs; or (2) the donor or the individual who intends to become a parent through the use of the sperm or eggs receives any remuneration for the donation or use of the sperm or eggs.

A person that violates the provisions of the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 for a first offense and a fine of up to \$5,000 for a second or subsequent offense. For further discussion of **House Bill 101**, see the subpart "Public Health – Generally" within Part J – Health and Human Services of this *90 Day Report*.

Trusts

Maryland Uniform Principal and Income Act – Payments to and from Trusts

Senate Bill 787/House Bill 772 (both passed) modify provisions of the Maryland Uniform Principal and Income Act (MUIA) to include recent amendments approved and recommended for adoption by the National Conference of Commissioners on Uniform State Laws.

The bills modify provisions of MUIA that govern how certain payments to a trustee are allocated between income and principal of a trust and how certain tax payments paid by a trustee are allocated. The provisions under MUIA apply where the terms of a trust or will do not contain a different provision and where a trustee does not otherwise exercise a discretionary power of administration under the terms of a trust or will that produces a result different from a result required or permitted under MUIA.

Allocation of Payments from a "Separate Fund": The bills establish requirements for the allocation of payments from a "separate fund" to specified trusts that qualify for a marital deduction from the federal taxable estate (for purposes of the federal estate tax), or for which an election to qualify has been made, under specified sections of the federal Internal Revenue Code. A "separate fund" includes a private or commercial annuity; an individual retirement account; and a pension, profit-sharing, stock-bonus, or stock-ownership plan. "Payment" includes any payment from a separate fund, regardless of the reason for the payment. These changes are in

response to a 2006 Internal Revenue Service Revenue Ruling (No. 2006-26), which indicated that existing law could cause a trust not to qualify for the marital deduction.

Payment of Taxes by a Trustee: Existing provisions governing the payment of taxes by a trustee are amended to specify when a tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid from income, principal, or both. The bills address instances where a trust owns an interest in a pass-through entity (where taxes on the entity's income are passed through to the entity's owners), such as a partnership or S-corporation. The trustee is responsible for taxes on the trust's share of the entity's income whether or not the income is distributed to the trust. The bill's changes are intended to provide clearer direction to a trustee in meeting that tax liability.

The bills also require that the trustee adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Maryland Trust Act

Senate Bill 722/House Bill 682 (both failed) would have established the Maryland Trust Act to partially codify the existing law in Maryland governing trusts, which is based in both case law and statute, and also make changes and additions to existing law. The bills would have repealed certain existing statutory provisions governing trusts and generally incorporated those provisions, with certain modifications, into the newly established Maryland Trust Act. The bills were a modified version of the Uniform Trust Code (UTC) drafted by the National Conference of Commissioners on Uniform State Laws. Twenty-three states and the District of Columbia have enacted a version of the UTC, including Virginia and Pennsylvania.

Special and Supplemental Needs Trusts

House Bill 553 (failed) would have specified that regulations adopted by certain State agencies that provide public benefits to individuals with disabilities may not be more restrictive than State statutes, regulations, or common law regarding trusts and may not require disclosure of a beneficiary's personal or confidential information without the consent of the beneficiary. In addition, the regulations would have been required to allow funds remaining in an individual beneficiary's account to be retained by a pooled asset special needs trust after the death of the beneficiary, without limit. These and other existing requirements applicable to special needs, supplemental needs, and pooled asset special needs trusts could not be interpreted to require a court order to authorize a disbursement from a special or supplemental needs trust. Finally, a regulation regarding pooled asset special needs trusts would have applied only to trust beneficiaries who are State residents or who receive State-funded benefits.

Powers of Attorney

The Maryland General and Limited Power of Attorney Act (MGLPOAA) was established under Chapters 689 and 690 of 2010. MGLPOAA included various new provisions derived in part from the Uniform Power of Attorney Act and also incorporated existing provisions of

Maryland law governing powers of attorney, with minor alterations. Changes were made to MGLPOAA by Chapters 74 and 75 of 2011.

Senate Bill 711/House Bill 774 (Chs. 84 and 85) make additional changes to the statutory form powers of attorney under MGLPOAA relating to designation of coagents, specified authority granted to an agent, and nomination of a guardian of the principal's property. The Acts also specify that coagents must act unanimously unless the power of attorney provides otherwise and clarify that a power of attorney substantially in one of the statutory forms in effect when the document is executed continues to be effective, notwithstanding the enactment of subsequent legislation altering the statutory form.

Designation of Coagent and How Coagents May Act

The statutory form personal financial power of attorney and statutory form limited power of attorney are amended to allow a principal (individual granting authority to an agent in the power of attorney) to designate two or more coagents in the statutory forms. The Acts specify, in the statutory forms and under MGLPOAA itself that coagents must act together unanimously unless the power of attorney provides otherwise.

Beneficiary Designation and Gift Authority in Statutory Forms

The Acts amend the statutory form personal financial power of attorney to state that the principal recognizes that granting the principal's agent the authority to create or change a beneficiary designation for a retirement plan may affect the benefits that the principal may receive if that authority is exercised. The form is also amended to alert the principal that granting the agent the authority to designate the agent, the agent's spouse, or a dependent of the agent as a beneficiary of a retirement plan may constitute a taxable gift by the principal and may make the property subject to that authority taxable as a part of the agent's estate. An authorization of an agent to create or change a beneficiary designation for any retirement plan, and in particular an authorization of the agent to designate as the principal's beneficiary the agent, the agent's spouse, or a dependent of the agent, must be explicitly stated in the special instructions section of the statutory form or in a separate power of attorney.

In the statutory form limited power of attorney, the Acts alert the principal that granting the principal's agent the authority to make gifts to, or to designate as the beneficiary of any retirement plan, the agent, the agent's spouse, or a dependent of the agent may constitute a taxable gift by the principal and may make the property subject to that authority taxable as part of the agent's estate. An authorization of an agent to designate the agent, the agent's spouse, or a dependent of the agent as a beneficiary must be explicitly stated in the special instructions section of the statutory form or in a separate power of attorney.

Nomination of Guardian(s) in Statutory Forms

Under provisions allowing a principal to nominate a guardian, if it becomes necessary for a court to appoint a guardian, the Acts replace a reference in the statutory form personal financial power of attorney to a guardian of the principal's "estate," instead referring to a guardian of the

principal's "property," a reference used elsewhere in the form and in the statutory form limited power of attorney.

Part G

Transportation and Motor Vehicles

Transportation

Public Transit Services

Washington Suburban Transit Commission Membership

The Washington Suburban Transit Commission, established in 1965, is responsible for administering the Washington Suburban Transit District and is authorized to develop a transportation system, including mass transit facilities, for Montgomery and Prince George's counties. The commission coordinates mass transit programs with the two county governments, the Washington Metropolitan Area Transit Authority (WMATA), and the Maryland Department of Transportation (MDOT). MDOT provides annual operating grants to the commission, which then provides funding to WMATA for operation of the Metrorail, Metrobus, and MetroAccess systems.

House Bill 1329 (passed) provides that the commission's members are public officials and are subject to the restrictions and requirements of the Maryland Public Ethics Law, including financial disclosure requirements. Also, commission members' terms are increased from three to four years, but members are prohibited from serving more than two consecutive terms. The terms of all commission members appointed and serving as of October 1, 2012, must expire on June 30, 2013, and new members must be appointed by July 1, 2013 under the bill. Generally, staggered terms are specified for the new commissioners.

Maryland Transportation Authority

Toll Increase Procedures

Established in 1971 as an independent, nonbudgeted State agency, the Maryland Transportation Authority (MDTA) manages, operates, and maintains the State's eight toll facilities (four bridges, two tunnels, and two highways) and provides law enforcement for these facilities, as well as the Baltimore/Washington International Thurgood Marshall Airport and the

Port of Baltimore. Toll revenues and bonds are used to finance these facilities. In September 2011, the MDTA Board approved a revised tolling plan that phases in toll increases at MDTA facilities on November 1, 2011, January 1, 2012, and July 1, 2013.

Senate Bill 820 (passed) requires MDTA to implement additional public notification, review, and comment procedures before adopting an increase in tolls, fees, or other charges on any part of a fixed toll transportation facilities project or in mileage rate ranges, pricing periods, toll zones, fees, or other charges on a variably priced project. Among other things, MDTA is required to hold at least one public meeting in each county in which the increase is proposed to be implemented; post information about the charge increase on the MDTA website within a specified time period; accept written comments from the public on the proposal; and provide a summary and analysis of the public comments. If MDTA determines that an immediate increase in is required and there is not sufficient time to implement specified public notification and review procedures, MDTA may adopt temporary adjustments to the charges if it first determines that an emergency status exists. Upon taking action under an emergency status, the MDTA must comply with specified notice procedures. A determination of emergency status may not exceed 180 days, after which the temporary adjustments expire.

Several bills were introduced that limited MDTA's authority to fix or revise tolls. ***Senate Bill 828 (failed)***, ***House Bill 685 (failed)***, and ***House Bill 1157 (failed)*** would have generally prohibited MDTA from fixing or revising tolls that exceeded the amount of the toll in effect on or before October 1, 2011, unless the General Assembly approved the toll through legislation. ***Senate Bill 3 (failed)*** would have established a similar prohibition on toll increases but placed limitations on any amount greater than the amount in effect on February 1, 2012. ***Senate Bill 62 (failed)*** would have generally prohibited MDTA from fixing or revising tolls, unless the General Assembly approved the toll through legislation, and authorized MDTA to continue to charge and collect a toll in effect before July 1, 2012.

State Highways

The State Highway Administration (SHA) is responsible for more than 5,200 miles or approximately 16,800 lane miles of road, 2,500 bridges, 3,500 small stream crossing structures, and 80 miles of sound barriers. It also has responsibility for planning, designing, constructing, and maintaining these roads and structures to safety and performance standards while considering sociological, ecological, and economic concerns.

Highway Construction and Supportive Services

In accordance with federal law, a state may use up to one-half of 1% of federal surface transportation and federal bridge program funding to develop, conduct, and administer highway construction training, including skill improvement programs. In December 2011, the Secretary of Transportation used these federal funds to launch the BuildUp transportation job training program to prepare 150 individuals for transportation careers in construction craft skills, computer-aided design and drafting systems, and commercial driving. ***House Bill 457 (passed)*** requires MDOT to use the maximum feasible amount of federal surface transportation and bridge

funding to develop, conduct, and administer highway or capital transit construction training and supportive services, including skill improvement programs. MDOT must administer the training programs in collaboration with the Governor's Workforce Investment Board (GWIB) to ensure that highway or capital transit construction training and supportive services are provided to the greatest extent feasible to individuals in each relevant workforce investment area. In addition, MDOT and GWIB must submit an annual report on compliance with these requirements to specified committees of the General Assembly.

Human Trafficking Hotline Information Signs

Human trafficking is an umbrella term used to describe the activities involved when someone obtains or holds a person in compelled service. Major forms of human trafficking include forced labor, sex trafficking, bonded labor, debt bondage, involuntary domestic servitude, forced child labor, child soldiers, and child sex trafficking. *Senate Bill 352/House Bill 607 (both passed)* require SHA and a business owner of a bus station or truck stop to post a specified National Human Trafficking Resource Center hotline information sign in restrooms. Signs must be posted in privately owned bus stations and truck stops and SHA rest areas within the right-of-way of an interstate or State highway. If signs are not posted within a specified timeframe, a business owner is subject to a civil penalty of up to \$1,000.

Signs along State Highways

Federal and State laws require SHA to regulate signs within State highway rights-of-way and outdoor advertising signs on private property adjacent to State roads. Generally, a person may not erect or maintain any outdoor sign outside the limits of any municipal corporation and within 500 feet of a State highway unless the person has a permit issued by SHA for that sign. In 2011, the General Assembly passed legislation (Chapters 466 and 467 of 2011) to prohibit the placement or maintenance of signs on State highway rights-of-way without SHA authorization and to establish a civil penalty of \$25 per commercial sign for violations. Several bills were introduced during the 2012 session, including *House Bill 359 (failed)*, *House Bill 360 (failed)*, *Senate Bill 964/House Bill 1139 (both failed)*, and *House Bill 1131 (failed)*, that would have established various exemptions from prohibitions against placing or maintaining a sign on State highway rights-of-way.

Bicycle and Pedestrian Access

Institutions of higher education periodically develop facility master plans that establish a framework to guide growth and development of the campus. *Senate Bill 977/House Bill 1278 (both passed)* require each public institution of higher education, when it revises its facility master plan, to address bicycle and pedestrian transportation circulation between the institution and adjacent communities and within the campus. The plan must include measures that the institution proposes to incorporate bikeways and pedestrian facilities and to promote biking and walking.

Motor Vehicles

Titling and Registration

Mopeds and Motor Scooters

Recent spikes in gas prices have contributed to the popularity of mopeds and motor scooters, as many people regard these vehicles as a less expensive and more efficient alternative to automobiles for short trips. Traffic safety advocates, however, have expressed concerns about the increasing number of mopeds and motor scooters on high-speed thoroughfares, as these vehicles cannot achieve the speeds of automobiles and, as a result, make integration with automobile traffic difficult.

Senate Bill 309/House Bill 149 (both passed) require mopeds and motor scooters to be titled and require an excise tax to be imposed on any moped or motor scooter for which sales and use tax is not collected at the time of purchase. On issuance of a title for a moped or motor scooter, the Motor Vehicle Administration (MVA) is required to issue a permanent decal with a unique number sequence to be displayed on the vehicle.

The bills require the operator of a moped or a motor scooter to carry a vehicle liability insurance policy and to possess proof of this insurance when operating a moped or motor scooter. The bills also expand the definition of a “covered vehicle,” for which the Maryland Automobile Insurance Fund is required to provide insurance coverage to eligible individuals, to include mopeds, motor scooters, and any motor vehicle required to be registered with MVA.

Under the bills, an individual who rides or operates a motor scooter or moped is required to wear protective headgear and, if the vehicle does not have a windscreen, an eye-protection device is required. The bills authorize an insurer either to exclude certain economic loss benefits from personal injury protection coverage of policies written for mopeds or motor scooters or to offer the economic loss benefits with deductibles, options, or specific exclusions, as is authorized under current law for motorcycles.

Finally, the bills require MVA to waive the fee for titling a moped or motor scooter for an individual who owns the moped or motor scooter on October 1, 2012, and titles the vehicle during the first year that the law is in effect.

Special and Commemorative Registration Plates

MVA is authorized to issue a number of special registration plates including one plate honoring Maryland agriculture and another plate for commemoration of a geographical, historical, natural resource, or environmental theme of statewide significance. Currently, MVA issues both an agriculture plate and a plate for commemoration of the Chesapeake Bay. MVA collects additional fees for the issuance and renewal of these special plates for the benefit of the Maryland Agricultural Education Foundation and the Chesapeake Bay Trust. The authorization for both special registration plate programs is set to terminate on June 30, 2013.

House Bill 94 (passed) repeals the termination date of the authorization for MVA to issue special Maryland agriculture and Chesapeake Bay commemorative registration plates. The bill also repeals the authorization for MVA to produce a special commemorative geographical, historical, natural resource, or environmental registration plate and instead explicitly requires MVA to issue the Chesapeake Bay commemorative registration plate.

Historic Motor Vehicles – Trucks, Tractors, and Motor Homes

An historic motor vehicle is a motor vehicle, including a passenger vehicle, motorcycle, or truck, that is at least 20 years old, has not been substantially altered from the manufacturer's original design, and meets criteria contained in MVA regulations. Vehicles registered as "historic" are exempt from the requirement to contain certain equipment unless the presence of the equipment was specifically required by a statute of this State as a condition of sale when the vehicle was manufactured. Historic vehicles are also exempt from any periodic vehicle inspections required by statute, including inspection of emission controls. Historic motor vehicles are subject to certifications regarding compliance with strict limitations on use.

House Bill 668 (passed) establishes separate historic motor vehicle registration requirements that apply to trucks (Class E) with a gross vehicle weight of greater than 10,000 pounds, tractors (Class F), or multipurpose (Class M) motor homes. For one of these vehicles to be registered as an historic vehicle, the vehicle must be at least 25 years old. These vehicles may not be used for general daily transportation or any commercial transportation of passengers or property on highways. In addition, the bill clarifies that, although historic vehicles are exempt from safety inspections, police officers are not limited in their authority to issue a safety equipment repair order for defective equipment.

Driver Licensing

Provisional Drivers' Licenses – Driver Education Requirements

Senate Bill 506/House Bill 292 (both passed) reduce the period of time, from nine months to 45 days, during which a learner's instructional permit holder age 25 or older must wait before taking a driver skills or road examination necessary to obtain a provisional driver's license. This waiting period is not reduced for a learner's instructional permit holder who has been convicted of, or granted probation before judgment for, a moving violation. Under the bills, a learner's instructional permit holder age 25 or older must also complete the underlying minimum of 30 hours of classroom and 6 hours of highway driving instruction, and is subject to a reduced requirement of 14 hours of supervised driving.

Drivers' Licenses and Identification Cards – Notation of Veteran Status

Senate Bill 276/House Bill 358 (Chs. 50 and 51) require MVA to ensure that the driver's license or identification card of an applicant who presents a certification of veteran status from the Maryland Department of Veterans Affairs (MDVA), or certain other forms of documentation, includes a notation that the applicant is a veteran. Under the Acts, MDVA is required to produce a document certifying veteran status. Applications for drivers' licenses and identification cards

must allow applicants to indicate veteran status and to consent to being contacted by appropriate Executive Branch agencies regarding eligibility for veterans' benefits. On the request of an Executive Branch agency, MVA is required to electronically transmit appropriate information about an applicant who consents to be contacted.

Drivers' Licenses and Identification Cards – Period of Validity

The maximum validity period for an identification card reserved by MVA is five years for an applicant younger than 65 and eight years for an applicant 65 or older. MVA has set the validity period for identification cards for all applicants at five years by regulation. The maximum validity period of a driver's license for all applicants older than age 21 is five years.

Senate Bill 111 (passed) increases the maximum validity period, from five years to eight years, for all identification cards and for drivers' licenses held by individuals age 21 or older. The maximum validity period in effect, however, must still be determined in regulations adopted by MVA. The maximum eight year validity period is consistent with that allowed under the federal REAL-ID Act.

U.S. Foreign Service Members Absent from State – Effective Period of Driver's License

A driver's license of a member of the armed forces of the United States, or the member's dependent, remains in full force and effect during the member's absence from the State on active service. If the driver's license of a member of the armed forces of the United States or member's dependent expires while the member is out of the State on active service, the driver's license may remain in full force and effect until 30 days after the individual returns to the State.

Members of the Foreign Service are employed by the U.S. Department of State and serve in over 265 locations worldwide. Members' initial tours typically last about two years. *Senate Bill 741 (passed)* establishes license expiration provisions applicable to members of the Foreign Service of the United States that are similar to the expiration provisions applicable to members of the armed services. Under the bill, the driver's license of a member of the Foreign Service of the United States, or the member's spouse or dependent, remains in full force and effect during the individual's absence from the State due to the member's employment in the Foreign Service. An expired driver's license of a member, or a member's spouse or dependent, also remains in full force and effect for 30 days following the individual's return to the State or separation from employment if (1) the individual possesses the individual's driver's license and documentation showing the member's service outside of the State; and (2) the license is not otherwise suspended, revoked, or canceled.

Vehicle Accidents – Penalties

A person who causes a life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se* is guilty of a misdemeanor and subject to maximum penalties of three years imprisonment or a fine of \$5,000 or both. A person who similarly causes a

life-threatening injury while impaired by a controlled dangerous substance (that the person is not legally entitled to use) is subject to the less stringent maximum penalties of two years imprisonment or a fine of \$2,000 or both. *House Bill 1334 (passed)* increases the penalties for causing a life-threatening injury to another by motor vehicle or vessel while impaired by a controlled dangerous substance to a maximum of three years imprisonment or a fine of \$5,000 or both. As a result, the maximum penalties are identical to the maximum penalties for causing life-threatening injuries while operating a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

Rules of the Road

Automated Monitoring Systems

School Bus Monitoring: In 2011, Chapter 273 was enacted to authorize local law enforcement agencies, in consultation with the local county board of education, to place school bus monitoring cameras on county school buses, if authorized by local law after reasonable public notice and a public hearing. A driver who fails to stop for a stopped school vehicle with alternately flashing lights and whose rear license plate is captured by a monitoring camera is subject to a maximum fine of \$250. At least five counties (Charles, Frederick, Harford, Montgomery, and Washington) are considering implementation of a school bus monitoring camera program.

House Bill 431 (Ch. 124) further clarifies the authority to implement a school bus monitoring camera program by specifying that a school bus monitoring camera also may record, for enforcement purposes, images of the front registration plate of a motor vehicle that fails to stop for a stopped school vehicle in violation of State law. The Act also clarifies that school bus monitoring cameras may be placed by a local law enforcement agency on any school buses in the relevant county, including buses used by private schools.

Vehicle Height Monitoring: Baltimore City has established numerous designated truck routes and restricted truck traffic on other streets between the hours of 7 a.m. and 7 p.m. Baltimore City advises, however, that it has received many complaints about trucks violating the restrictions. A commercial vehicle regulatory compliance study noted that truck routes are intended to relieve congestion on city streets, and large trucks can damage roadways that do not have the proper pavement strength to support their weight. Also, noise and exhaust fumes are a nuisance to residents who live directly adjacent to city streets. The study suggested that new technologies could help the city determine those “hot spots” where violations are occurring.

Senate Bill 306/House Bill 476 (both passed) authorize Baltimore City to place vehicle height monitoring systems on highways in Baltimore City if authorized by the Baltimore City Council after notice and a public hearing. The bills require both an analysis to determine the appropriateness of the location and the approval of the Baltimore City Police Commissioner. Before activation of a monitoring system, Baltimore City must publish notice of the location in a newspaper and on the Baltimore City website. Baltimore City is also required to ensure that all signs stating restrictions on the presence of certain vehicles during certain times are in

accordance with State Highway Administration specifications and state that a vehicle height monitoring system is in use. For the first violation by the vehicle owner of a vehicle height restriction recorded by a vehicle height monitoring system, a warning must be issued. For a second violation by the vehicle owner, the maximum fine is \$250. For the third and subsequent violations by the vehicle owner, the maximum fine is \$500.

Traffic Control

The duty of a driver when approaching a nonfunctioning traffic signal is not specified in the Maryland Vehicle Law except in the limited circumstance when a driver is approaching a highway from the exit ramp of an expressway. Vehicular traffic approaching a highway from an expressway exit ramp and facing a nonfunctioning traffic control signal at the intersection of the exit ramp and the highway must stop at a clearly marked stop line. If there is no clearly marked stop line, the vehicle must stop before entering any crosswalk. If there is no crosswalk, the vehicle must stop before entering the highway. Vehicular traffic must remain stopped until it is safe to continue onto the highway.

Senate Bill 177/House Bill 67 (Chs. 44 and 45) alter the duties of a driver approaching a nonfunctioning traffic signal by expanding the applicability of those duties to any intersection, rather than just when approaching a highway from the exit ramp of an expressway. Under the Acts, it is the duty of a driver approaching an intersection with a nonfunctioning traffic control signal to stop (1) at a clearly marked stop line; (2) if there is no clearly marked stop line, before entering any crosswalk; or (3) if there is no clearly marked stop line or crosswalk, before entering the intersection. The driver must then yield to any vehicle or pedestrian in the intersection and remain stopped until it is safe to enter and continue through the intersection. A violation is a misdemeanor, punishable by a maximum fine of \$500.

Vehicle Security

MVA regulations state that lapses and terminations of vehicle insurance coverage must be reported immediately to MVA by the insurer. If the insurer writes fewer than 5,000 policies in the State, the insurer must report lapses and terminations on either a specified form or electronically in a format prescribed by MVA. If the insurer writes 5,000 or more policies in the State, the insurer must transmit lapses and terminations electronically. *House Bill 1180 (passed)* requires an insurer or other provider of required vehicle security to immediately notify MVA electronically of the issuance of new motor vehicle insurance policies. For fleet policies, an insurer or provider of required security must electronically notify MVA every 30 days of any additions, deletions, or modifications to the fleet policy, including the policy numbers affected. In addition, the bill requires insurers or other providers of required security to immediately notify MVA *electronically* of terminations or other lapses in coverage.

Towing and Disposition of Vehicles

Towing Practices and Procedures

Senate Bill 401 (passed) implements certain recommendations of the Task Force to Study Motor Vehicle Towing Practices. These recommendations relate primarily to the regulation of nonconsensual towing of vehicles from private property and the disposition of towed vehicles. The Task Force to Study Motor Vehicle Towing Practices was created by Chapter 514 of 2008 and extended by Chapter 704 of 2009. The task force met 12 times between October 14, 2008, and December 8, 2009, and expired on December 31, 2009. In addition to specified areas of study, the task force considered two main proposals: (1) creation of an independent tow licensure board; and (2) for purposes of private nonconsensual towing, the creation of penalties (civil and criminal), consumer protection measures, and a process through which towers could dispose of unclaimed vehicles.

The bill makes the private parking lot towing protections for Baltimore City and Baltimore County applicable statewide. It also requires signage at private parking lots to include the name of the tow company and a statement that the vehicle can be reclaimed 24 hours per day, seven days per week. A towed vehicle must be moved immediately to the storage facility location indicated on the posted sign and the tower is prohibited from moving the vehicle from that facility for at least 72 hours. The maximum tow distance is established to be not more than 15 miles or another limit established by a local government, and a vehicle may not be towed out of State. The bill establishes the towing and daily storage rates based on the limits set by the political subdivision for a public safety tower, or, if no limit is established, no more than \$250 for towing and \$30 per day for storage. A tower may also charge the actual cost of providing required notice.

In addition, towers are required to notify police within one hour of the tow and photograph the violation or event that precipitated the violation. The tower must provide specified notice to the owner of the vehicle, any secured party, and the vehicle's insurer, within three days (exclusive of the days the towing business is closed) after the vehicle's removal from a parking lot. The bill also prohibits towing a vehicle solely for failing to display current registration, unless 72 hours have passed since a notice of the violation is first placed on the vehicle. MVA is required under the bill to establish and maintain a database containing the proper address of each insurer authorized to write a vehicle liability insurance policy in the State. The database is intended to be used by towers in providing required notice to insurers and it must be made available to any tower free of charge. In addition, *Senate Bill 401* sets a "drop fee" of one-half of the cost of the full towing charge.

The storage facility must accept as payment either cash or at least two major credit cards. If the facility accepts only cash, it must have an automated teller machine (ATM) on the premises. If the storage facility is unable to process a credit card payment (unless the payment was declined by the credit card company) and does not have an operable ATM on the premises, the storage facility must accept a personal check. The storage facility must make a towed

vehicle available to the owner (or agent), secured party, or insurer, under supervision, for inspection or retrieval of personal property not attached to the vehicle.

The minimum required insurance for specified tow trucks is increased to match federal requirements. Also repealed is the requirement for a tower to obtain a \$20,000 surety bond. *Senate Bill 401* creates misdemeanor penalties for towing violations related to the removal of vehicles from private parking lots, including a fine of up to \$500, up to two months imprisonment, or both. Additional penalties added by the bill for improperly registered tow trucks include required impounding of the vehicle and imprisonment for up to one year.

The bill does not prevent a local authority from adopting a law or regulation relating to the registration or licensing of towers or establishing a more stringent standard for parking, towing, removing, or impounding vehicles.

Vehicle Disposition

MVA issues licenses to conduct the business of an automotive dismantler and recycler or scrap processor (ADR/SP). If a licensed ADR/SP takes possession of a vehicle and does not receive a certificate of title or other documentary evidence of ownership acceptable to MVA, ADR/SP must comply with specified notice requirements. Any person who possesses or on whose property is found an abandoned vehicle may apply to the police department of the jurisdiction in which the vehicle is located for a certificate of authority to transfer the vehicle to an ADR/SP.

House Bill 499 (passed) repeals the authorization for a person to transfer vehicles that are abandoned or without acceptable title and are more than eight years old with no engine or are otherwise totally inoperable (vehicle “hulks”), to an ADR/SP without complying with specified notice procedures. The bill also repeals provisions specifying certain notice required to be provided by ADR/SPs relating to vehicles without a title or other documentary evidence of ownership. The bill establishes substitute notice provisions that address constitutional concerns; specifies additional documentation that an ADR/SP must obtain (including an affidavit of lawful possession signed under penalty of perjury); and specifies records that an ADR/SP must keep on file for three years for inspection by law enforcement. The bill further prohibits an ADR/SP from accepting a vehicle from an improperly registered tow truck.

Lastly, the bill establishes that knowingly making a false statement on an affidavit of lawful possession or an application for a certificate of authority to transfer a vehicle is a felony subjecting the violator to a fine not exceeding \$1,000 or imprisonment not exceeding 10 years or both. These penalties mirror the penalties for counterfeiting a motor vehicle title with fraudulent intent.

Salvage – Defective, Lost, or Destroyed Certificates of Title

An insurance company must obtain a salvage certificate for each vehicle acquired as a result of a claim settlement arising from an accident that occurred in the State. Along with the required fee and the vehicle’s certificate of title, the company must provide one of several

statements regarding the condition of the vehicle on the application. Insurance companies that obtain a vehicle following settlement of a claim, however, are not always able to obtain a valid certificate of title, which is necessary to obtain a salvage certificate allowing the lawful disposal of the vehicle. Thus, insurance companies have been forced to incur additional expenses to store inoperable vehicles and forego income from the sale of these vehicles.

Senate Bill 487/House Bill 435 (Chs. 76 and 77) authorize an insurance company or its authorized agent that applies for a salvage certificate to submit an affidavit of ownership of the vehicle and a copy of the settlement check or other evidence of final payment instead of a certificate of title, if the certificate of title is defective, lost, or destroyed.

Equipment and Inspections

Child Safety Seats

Senate Bill 185/House Bill 313 (Chs. 46 and 47) repeal the exception for a child who weighs over 65 pounds to the requirement that a child under the age of eight be restrained in a child safety seat. The Acts retain the exception for a child who is four feet nine inches or taller.

Motor Carriers – Application of Federal Standards

MVA regulations that are jointly formulated with the Department of State Police (DSP) must be consistent with or duplicate Federal Motor Carrier Safety Regulations contained in 49 C.F.R. Parts 390 through 399. *House Bill 544 (Ch. 126)* requires that these MVA regulations also be consistent with or duplicate Federal Motor Carrier Safety Regulations contained in 49 C.F.R. Part 385, Subparts A, C, and D (“New Entrant Safety Assurance Program”) and 49 C.F.R. Part 386, Subparts F and G (“Injunctions and Imminent Hazards; Penalties”). Adoption of these regulations allows DSP to enforce these federal laws.

Weight and Load Requirements – Vehicles Carrying Perishable Products

According to the State Highway Administration, there is a need to allow some leniency to perishable product haulers. At the same time, there is concern that some larger haulers have been exploiting the statutory exemption that allows, once during the calendar year, the driver of an overweight vehicle carrying perishable products as its only load to proceed to the vehicle’s destination without being required to unload any product. *Senate Bill 116 (passed)* alters the exemption provided to these vehicles. The bill requires a police officer who detains an overweight vehicle carrying perishable products to allow the vehicle to proceed to its destination only if the overweight does not exceed 5,000 pounds and if it is the first violation by the driver in the previous 365 days. For a second or subsequent violation for which the overweight does not exceed 5,000 pounds, a police officer has discretion as to whether to allow the vehicle to proceed or require the vehicle to unload the excess weight. For every violation for which the overweight exceeds 5,000 pounds, the excess weight must be unloaded.

Miscellaneous

Use of Highways by Snowmobiles

Generally, a local authority may designate a portion of a highway for use by snowmobiles to gain access to trails designated by the Department of Natural Resources (DNR); however, only highways that divide DNR snowmobile trails and obstruct direct access between the trails may be designated for such use. In Garrett County, a local authority may also permit a person to cross a highway on a snowmobile at a right angle on designated portions of highways to gain access to snowmobile trails designated by DNR.

According to the DNR website, there are 12 designated trails for use by snowmobiles registered with the State Forest Service. Recently, DNR closed three trails due to the results of environmental assessments and a forest certification audit. The decision to close the trails was done in part to protect the Western Maryland forest products industry. It is unknown how many other snowmobile trails exist in the State. In response, *House Bill 924 (passed)* repeals a reference to the designation of snowmobile trails by DNR, thereby allowing snowmobiles to travel on portions of highways to gain access to *any* snowmobile trails that have been obstructed and divided by highways, if authorized by local authorities.

Part H

Business and Economic Issues

Business Occupations

Plumbing and Heating, Ventilation, Air Conditioning, and Refrigeration Professionals

Classification of Licensees on Public Works Contracts

An individual must be licensed by the State Board of Plumbing, the Baltimore County Plumbing Board, or the Washington Suburban Sanitary Commission in order to perform plumbing work in the State. Similarly, an individual who performs heating, ventilation, air conditioning, or refrigeration (HVACR) services must be licensed by the State Board of HVACR Contractors.

The Division of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) advised that it had been notified that some contractors were employing plumbing apprentices on State public works projects and paying them to perform work at the higher journeyman level. However, the apprentices were not registered with the Maryland Apprenticeship Training Council and, although they were paid the prevailing wage for plumbing journeymen, they were not authorized by their apprentice licenses to perform the full range of independent work that journeymen perform under public works contracts.

To avoid future misclassifications, *House Bill 1445 (passed)* prohibits a person from employing an individual to provide or assist in providing plumbing or HVACR services under a public works contract that is subject to the State prevailing wage law unless the individual is licensed by an appropriate regulatory entity. A person may not classify an employee higher than the employee's license type (apprentice, journeyman, master) under a public works contract subject to prevailing wage law.

State Board of Plumbing

The State Board of Plumbing is housed within DLLR's Division of Occupational and Professional Licensing. Maryland statute sets out three purposes for the board (1) to protect the integrity of the potable water supply; (2) to provide for the efficient and safe discharge of storm drainage and sanitary drainage; and (3) to ensure that qualified individuals carry out the board's charge.

Membership: The board consists of seven members from the plumbing industry and two consumer members. Board members representing the industry must each reside in specific geographic areas of the State. *House Bill 368 (Ch. 122)* alters the membership requirements of the board by requiring that – of the board's seven plumber members – one member must be from Carroll or Howard counties and one member must be from Cecil or Harford counties. The Act takes effect May 1, 2013, so that it does not unseat a member but rather requires that the Governor appoint a plumber from Cecil or Harford counties at the expiration of the next member's term.

Apprentice License Renewal: A person must be licensed by the board to provide plumbing services throughout most of the State. The board issues three different plumbing licenses: master, journey, and apprentice. These licenses are typically held in conjunction with the equivalent gas fitters license. Journey plumbers and journeyman natural gas fitters are licensed to provide plumbing services while under the direction and control of a master plumber. Apprentice plumbers or gas fitters must have at least four years of experience and at least 7,500 hours under the direction and control of a master plumber or natural gas fitter to qualify to sit for the journey examination. Licenses are valid for two years and are issued on a staggered basis.

Senate Bill 607 (passed) specifies that the board may not renew an apprentice plumber license or an apprentice natural gas fitter's license for more than three consecutive terms if the licensee has not taken or registered to take the journey plumber or journeyman natural gas fitters examination. This provision applies prospectively to apprentice plumbers or apprentice natural gas fitters issued an initial license on or after October 1, 2012. However, the board is required to renew an apprentice license for an additional two-year term each time the licensee fails the journey examination, regardless of the date of initial licensure.

Lead-free Plumbing Materials: Contamination from lead-based paint, dirt, and dust accounts for most lead exposure. Nonetheless, lead from drinking water can be responsible for up to 20% of a person's total exposure to lead. Chapter 407 of 2010, which took effect January 1, 2012, requires that pipes, pipe fittings, plumbing fittings, fixtures, solder, and flux used in the installation or repair of plumbing intended to dispense water for human consumption be lead-free.

House Bill 1268 (Ch. 143) alters the definition of "lead-free" for individual plumbing fittings and fixtures and for pipes and pipe fittings. Specifically, "lead-free" means containing, at most, 4% lead by dry weight for individual plumbing fittings and fixtures, or 8% lead by dry weight for individual pipes and pipe fittings, unless a lower percentage is necessary to comply

with the standards established under the federal Safe Drinking Water Act of 1974. When calculating weighted average lead content, only the individual pipes, pipe fittings, plumbing fittings, or fixtures that are installed or repaired may be considered.

Real Estate Professionals

State Commission of Real Estate Appraisers and Home Inspectors

The State Commission of Real Estate Appraisers and Home Inspectors licenses and issues certificates to real estate appraisers and home inspectors and is otherwise responsible for regulating the real estate appraisal and home inspection industries. Chapter 594 of 1990 established the commission (formerly the State Commission of Real Estate Appraisers) to administer a real estate appraiser licensing and certification program that complies with the federal Financial Institutions Reform, Recovery, and Enforcement Act (better known as FIRREA). Chapter 470 of 2001 incorporated home inspectors into the former State Commission of Real Estate Appraisers, and Chapters 269 and 270 of 2011 require appraisal management companies to register with the commission.

Senate Bill 187/House Bill 341 (both passed) implement the recommendations of the 2011 sunset evaluation conducted by the Department of Legislative Services (DLS) and extend the commission's termination date by 10 years to July 1, 2023. The bills require an evaluation of the commission by July 1, 2022.

The bills alter the name of the commission to be the State Commission of Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors to reflect its recently expanded regulatory authority over appraisal management companies. By October 1, 2012, the commission is required to report to specified committees of the General Assembly on reciprocal licensing agreements with other states and related issues. By October 1, 2013, the commission has to report on the status of the appraisal technical review panel and its fee schedules for each profession it regulates.

State Real Estate Commission

The State Real Estate Commission protects the health, safety, and welfare of the public through its regulatory activities in regard to real estate transactions. The commission licenses all real estate brokers, associate brokers, and salespersons; processes complaints against licensees; and administers the Real Estate Guaranty Fund (that compensates consumers who suffer financial loss as a result of licensee misconduct).

Implementation of Sunset Evaluation Recommendations: During the 2010 interim, DLS conducted a full evaluation of the commission under the Maryland Program Evaluation Act. Legislation to reauthorize the commission was introduced during the 2011 legislative session but did not pass. *Senate Bill 134 (passed)* implements the recommendations of the 2010 sunset evaluation conducted by DLS and extends the commission's termination date by 10 years to July 1, 2022. The bill requires an evaluation of the commission by July 1, 2021.

Senate Bill 134 increases the amount a consumer may recover due to licensee misconduct by raising the statutory cap on the amount of a claim to the Guaranty Fund from \$25,000 to be \$50,000. The bill also increases, from \$3,000 to \$5,000, the amount a consumer may recover from the Guaranty Fund without a hearing before the commission. The bill requires the commission to submit additional information in its annual report to the Secretary of Labor, Licensing, and Regulation regarding various issues related to the payment of Guaranty Fund claims. In particular, the commission must report the number of awards that reach the new statutory cap, the total amount included in the claim by the consumer, and the amount of potential damages owed to the consumer if the cap did not exist. The bill also requires licensees to pay a fee for, and submit notice to the commission of, an address change and raises the fee for a dishonored check.

Continuing Education Requirements: All licensed real estate brokers, associate brokers, and salespersons must meet certain continuing education requirements in order to qualify for license renewal. The business or instructor that conducts a continuing education course must issue to the licensee a certificate of completion that states the number of clock-hours of that course. The commission accepts the original certificate, a photocopy, an email certificate, or a photocopy of an email certificate as evidence of completion of a continuing education course. In its October 2010 full evaluation report, DLS recommended that the commission develop a more sophisticated system of tracking the continuing education credits of licensees.

Senate Bill 145 (Ch. 34) allows the State Real Estate Commission to accept certificates of completion for continuing education course work by electronic submission directly from the business or instructor that conducted the course and authorizes electronic copies of completion certificates to be provided to licensees. Beginning January 1, 2013, the commission may require the electronic submission of the certificates by course providers. The Act also requires continuing education course work to include discussion of recent changes in federal, State, or local laws and regulations and information on recent court cases and industry trends affecting those laws and regulations. By December 1, 2012, the commission must submit recommendations to specified committees of the General Assembly regarding the collection and use of electronically available information on licensees and whether and to what extent the information should be made publicly available.

Design Boards

Occupational and Professional Licensing Design Boards' Fund

DLLR has five “design boards” within its purview: the State Board for Professional Engineers, the State Board for Professional Land Surveyors, the State Board of Architects, the State Board of Examiners of Landscape Architects, and the State Board of Certified Interior Designers. A pilot program established under Chapter 227 of 2003 created the State Occupational and Professional Licensing Design Boards’ Fund to ensure that costs for the five design boards, in the aggregate, were covered by their combined revenues. All five design boards favored the clustering approach that was taken. Prior to the enactment of Chapter 227,

the design boards were all general funded as individual programs, with some fees set in statute and others set by regulation.

The design boards' fund, fee-setting authority for all five design boards, and related reporting requirements were set to terminate on June 30, 2008; however, Chapter 273 of 2008 extended the respective termination dates to June 30, 2013. *Senate Bill 96/House Bill 74 (both passed)* make permanent (1) the fee-setting authority for all five design boards; (2) the Occupational and Professional Licensing Design Boards' Fund; and (3) related reporting requirements.

State Board of Certified Interior Designers

Chapter 663 of 1991 (the Maryland Certified Interior Designers Act) established the State Board of Certified Interior Designers, which regulates the title of "certified interior designer." As of November 2011, there were 315 active certificate holders in the State. *Senate Bill 96/House Bill 74* also implement the recommendations of the 2011 preliminary sunset evaluation conducted by DLS on the board by extending its termination date by 10 years to July 1, 2024, and requiring another evaluation of the board by July 1, 2023. These recommendations were adopted at the December 13, 2011 meeting of the Legislative Policy Committee.

State Board of Architects

The State Board of Architects regulates the practice of architecture in Maryland. The purpose of the board is to safeguard life, health, public safety, and property to promote the public welfare by regulating persons who practice architecture in the State.

Senate Bill 109 (Ch. 20) repeals the statutory continuing education requirements related to license renewal for architects. In their place, the Act requires the board to adopt regulations to require a licensee to demonstrate continuing professional competency by completing at least 24 hours of professional development activities as a condition of license renewal, reactivation, or reinstatement.

Business Regulation

Amusement Attractions

The Safety Inspection Program within DLLR conducts approximately 4,000 certificate inspections of amusement rides and attractions each fiscal year, of which about one-third are for inflatable amusement attractions. Over the past year, there have been several instances around the country, but none in Maryland, of inflatable attractions being blown over or carried by strong wind, often resulting in serious injuries to people inside the attractions as well as spectators on the ground. *Senate Bill 226 (Ch. 48)* exempts an inflatable amusement attraction from required annual inspections if the attraction is designed so that an individual on the attraction is lower than four feet above the ground. The department requires inflatable attractions to be secured

during operation and advises operators not to use them in gusty wind; thus, DLLR has determined that these attractions pose a minimal risk to users.

Elevator Safety

The Elevator Safety Review Board within DLLR licenses and regulates elevator mechanics, elevator contractors, elevator renovator mechanics, and elevator renovator contractors. Several bills related to the board's regulatory role were passed during the 2012 session.

Senate Bill 232 (Ch. 49) requires the board to issue licensing certifications and reinstate expired licenses under specified circumstances; expands the conditions under which the board may deny a new or renewal license to an applicant, suspend or revoke a license, or reprimand a licensee; and increases the sanctions available to the board as well as the number of board members who must approve a sanction. *Senate Bill 814/House Bill 89 (both passed)* require the board to also license accessibility lift mechanics – who must operate under the direct supervision of a licensed elevator mechanic – and to adopt regulations to certify licensed accessibility lift mechanics as accessibility lift mechanic specialists in order to work on private residential elevators. *Senate Bill 23/House Bill 109 (both passed)* increase membership on the board to encompass a representative of the elevator interior renovation industry. For a more detailed discussion of these bills, see the subpart “Public Safety” within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Cemeteries

Senate Bill 282/House Bill 394 (both passed) implement the recommendations of the DLS 2011 sunset evaluation of the Office of Cemetery Oversight and extend its termination date by 10 years to July 1, 2023. The bills require another evaluation of the office by July 1, 2022.

The bills exempt private family cemeteries that do not sell goods to the public from the laws regulating cemeteries. Provisions of the law governing the Advisory Council on Cemetery Operations are altered, primarily by increasing the membership to 12 and requiring the advisory council to meet at least four times each year. The bills also alter requirements for the annual report to the General Assembly, authorize the transfer of a registration for the same individual from one cemetery to another, and clarify various registration and disclosure requirements. Further, the bills address additional financial reporting requirements relating to perpetual care and preneed trusts by:

- retaining the exemption from perpetual care requirements for government, religious, or not for profit owned and operated cemeteries;
- requiring perpetual care and preneed trust reports to be accompanied by an annual summary statement of assets that include specified information; and

- requiring persons subject to perpetual care and preneed trust requirements to provide additional documentation to the office if the director determines it is necessary.

Cigarettes

Other Tobacco Products

Chapter 388 of 2010 established licensure requirements for other tobacco products (OTPs) wholesalers, manufacturers, storage warehouses, and retailers. OTPs include premium cigars, pipe tobacco, and rolled tobacco products, other than cigarettes, that are intended for consumption by smoking, chewing, or snuff. That Act specified that persons in the business of selling or distributing OTPs may not sell or ship any OTP that is ordered or purchased by mail or over the telephone, Internet, or other electronic network to unlicensed recipients except in limited circumstances.

Senate Bill 452/House Bill 570 (both passed) change these requirements by exempting out-of-state sellers that sell, hold for sale, ship, or deliver premium cigars or pipe tobacco to consumers in Maryland from the provisions of law relating to the regulation of OTPs. The bills further specify that provisions regulating the sale and distribution of OTPs do not apply to the order, purchase, sale, or shipment of premium cigars or pipe tobacco by a licensed OTP retailer or licensed tobacconist. Additionally, the bills require the Comptroller to submit to the General Assembly a report, on or before November 1, 2012, on the viability and efficacy of instituting a policy of permitting direct shipment of premium cigars and pipe tobacco to consumers in the State. The report shall include an evaluation of public policy and regulatory issues and a determination regarding: the best practices for preventing access by minors to premium cigars and pipe tobacco that is shipped directly to consumers, any documented results of direct shipment of these products, the best means for collecting tax revenues, the benefits and costs to consumers, and the effect of shipping these products on in-state other tobacco products retailers, tobacconists, and other local businesses.

Electronic Cigarettes

Electronic cigarettes (sometimes referred to as “e-cigarettes”) are battery-operated devices that typically contain nicotine cartridges and other chemicals imitating flavors such as chocolate, mint, or strawberry. When a user draws on an electronic cigarette, a light-emitting diode causes the tip to glow, and the inhaled nicotine vapor is exhaled in a cloud that resembles cigarette smoke but dissipates more quickly and does not have a lingering odor. State law does not address nontobacco nicotine products. However, *House Bill 1272 (passed)* prohibits a person from selling, distributing, or offering for sale to a minor an electronic device – including an electronic cigarette, cigar, cigarillo, or pipe – that can be used to deliver nicotine to the individual inhaling from the device. The bill establishes penalties and requirements for enforcement. For a more detailed discussion of this issue, see the subpart “Public Health – Generally” within Part J – Health and Human Services of this *90 Day Report*.

License Regulation

Licensees on Military Deployment

DLLR licenses, regulates, and monitors various professions and trades in the State through regulatory boards and commissions and other programs. Almost every license issued by DLLR is renewed on a biennial basis. Of the 20 boards and commissions housed within DLLR's Division of Occupational and Professional Licensing, 9 require their licensees to fulfill a continuing education or continuing professional competency requirement.

DLLR advises that military deployment overseas makes it difficult to renew a license in a timely fashion or meet any applicable continuing education or continuing professional competency requirements. Thus, *Senate Bill 144 (Ch. 33)* allows for the accommodation of these deployment-related difficulties by authorizing licensing units within DLLR to allow a member of the armed forces to renew a professional license late, without payment of a penalty or reinstatement fee, if the late renewal is a direct result of an out-of-state deployment. Additionally, the Act authorizes a licensing unit to allow a licensee to complete any continuing education or competency requirements for renewal, within a reasonable time, after the license has been renewed. The Act, which takes effect July 1, 2012, does not apply to professional licenses for mortgage lenders and mortgage loan originators.

Athlete Agents

The Maryland Uniform Athlete Agents Act took effect October 1, 2003, pursuant to Chapter 421 of 2003, and was intended to improve sports agent laws by increasing protections for student-athletes and educational institutions and by providing a uniform registration, certification, and background check for sports agents from state to state.

Under the Athlete Agents Act, an athlete agent may not communicate with a student-athlete, directly or indirectly, with the intention of recruiting or soliciting the student-athlete to enter into an agency contract, without being licensed. *House Bill 920 (passed)* expands the definition of "agency contract" to include current or future representation in which the agent is authorized to assess and plan the financial situation of the student-athlete's professional sports career. The bill also expands the definition of "athlete agent" to include someone who facilitates or encourages a connection between a student-athlete and another agent. The bill further prohibits an athlete agent from soliciting an individual who is not an athlete agent to commit a prohibited act on the agent's behalf.

Secondhand Precious Metal Object Dealers

DLLR regulates dealers who acquire and trade secondhand precious metal objects, including gold and silver. Dealers of these objects, including individuals, retail jewelers, and pawnbrokers not otherwise regulated by a county, must be licensed before doing business in the State in accordance with the Maryland Secondhand Precious Metal Object Dealers and Pawnbrokers Act.

Licensees are required to record specified information for each transaction on a form provided by DLLR. Records must be kept for at least three years at a location within the State. Further, dealers must submit records electronically, in a format acceptable to the receiving law enforcement unit, by noon of the business day following the transaction. Licensees are required to maintain written records of all transactions that involve the acquisition of secondhand precious metal objects, including identifying information and a physical description of the person from whom the object was acquired. Generally, any secondhand precious metal object acquired by a dealer must be held for at least 18 days in the county where the dealer holds a license, after a record of the transaction is submitted to law enforcement. The primary law enforcement agency may require a dealer to hold a precious metal object for an additional 12 days if the agency has reason to believe the item is stolen.

Senate Bill 246/House Bill 206 (both passed) authorize a secondhand precious metal object dealer to place all items acquired in a single transaction into a secure container approved by local law enforcement during the required holding period, as long as each item in the transaction is recorded separately in the required written record of the transaction and the container is tagged with a number which corresponds to the transaction and the written record entry.

Miscellaneous Business Regulation

Retail Pet Stores

Many dogs sold as pets in the United States are bred in commercial dog breeding facilities that mass-produce dogs for sale to pet stores (often called puppy mills). Substandard conditions are commonly reported at these facilities. Due to the potential for poor breeding conditions, puppies bred by commercial breeders can be ill-tempered and may suffer from poor health. Recent legislative action has sought to address these concerns. Chapter 297 of 2011 requires a person to obtain a kennel license if (1) the person owns or has custody of 15 or more unspayed female dogs over six months old; (2) the dogs are kept for the purpose of breeding and selling their offspring; and (3) the person sells dogs from six or more litters per year. By January 15 of each year, each county must report the information collected for the preceding year to DLLR. Approximately 20 states, including Pennsylvania, Virginia, and Delaware, have enacted laws that provide specific recourse for the purchaser of a sick or diseased animal from a retail pet store. A similar number of states have established comparable recordkeeping requirements.

Senate Bill 317/House Bill 131 (both passed) establish conditions and requirements for remedy when a dog sold at a “retail pet store” is found to have an undisclosed disease, illness, or prior condition. A purchaser is entitled to a remedy if, within a specified period, the dog: suffers from or has died of a disease or illness adversely affecting the dog’s health and that existed on or before the purchase date; or possesses or has died of a congenital or hereditary condition adversely affecting the dog’s health or that requires hospitalization or a nonelective surgical procedure. The purchaser may return the dog for a refund, exchange the dog for another dog, or retain the dog and be reimbursed by the retail pet store for veterinary fees, not exceeding the

purchase price. The bills also establish certification, recordkeeping, and public disclosure requirements for retail pet stores that conduct business in the State, as well as penalties for noncompliance.

A violation of the bills is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions and enforcement by the Consumer Protection Division of the Office of the Attorney General.

National Human Trafficking Resource Center

The U.S. Department of Health and Human Services (DHHS) funds the National Human Trafficking Resource Center hotline, which provides callers with a wide range of services such as crisis intervention, urgent and nonurgent referrals, and anti-trafficking resources and technical assistance. Through the hotline, DHHS seeks to provide up-to-date resources on human trafficking; increase access to services for foreign U.S. citizens, including victims; and provide law enforcement and social service providers with tools to identify human trafficking victims in their communities.

Senate Bill 352/House Bill 607 (both passed) require the State Highway Administration and a business owner of a bus station or "truck stop" to post a hotline information sign in restrooms. The bill establishes requirements for the sign and penalties for noncompliance. For a more detailed discussion of this issue, see the subpart "Transportation" within Part G – Transportation and Motor Vehicles of this *90 Day Report*.

Public Service Companies

Electricity

Legislation on electricity and energy during the 2012 session dealt with the State's Renewable Energy Portfolio Standard (RPS), electric safety and reliability, and other issues.

Renewable Energy Portfolio Standard

Maryland's RPS requires that renewable sources generate specified percentages of Maryland's electricity supply each year through the creation and exchange of renewable energy credits (RECs), increasing to 20% by 2022, including 2% from solar power. The changes to RPS in the 2012 session include an acceleration of the solar energy carve out and the addition of specific geothermal and thermal biomass systems – which do not produce electricity – to RPS.

Offshore Wind Energy: For the second consecutive year, the General Assembly considered legislation proposed by the Administration to develop an offshore wind farm in the waters off the coast of the State. Currently, wind is a Tier 1 renewable source under RPS. *Senate Bill 237/House Bill 441 (both failed)* would have established a substantially smaller project than that proposed in 2011. The bills would have specified that an amount set by the Public Service Commission (PSC), not to exceed 2.5% of RPS be derived from offshore wind

energy each year beginning in 2017. As amended by the House, *House Bill 441* would have established a project of approximately 200 megawatts and would have included a window of maximum rate impacts for both residential and nonresidential electric customers of \$1.50 per month for an average residential customer, and 1.5% for a nonresidential customer. An offshore wind generator of a size consistent with the rate-cost caps in the bill would have had the potential to produce between 5% and 8.5% annually of the Tier 1 RECs necessary for RPS compliance (known as OREGS).

Solar Energy: Maryland continues to move toward its Tier 1 solar RPS goal of 2% of annual retail electricity sales by 2022. At the end of 2011, the State had 40.37 megawatts of installed solar capacity, and several large-scale solar photovoltaic systems are scheduled to be completed in 2012, such as the 17.4 megawatt system at Mount St. Mary's University. *Senate Bill 791/House Bill 1187 (both passed)* accelerate the solar portion of RPS beginning in calendar 2013 and continuing through 2019, making the goal of 2% by 2020, instead of by 2022. The incremental cost of compliance with the legislation is highly sensitive to future solar renewable energy credit (SREC) prices and whether or not PSC caps the compliance cost of the solar RPS at 1% of annual retail electricity sales, as authorized in statute. The total compliance cost of the legislation ranges from \$3 million to \$326 million under different combinations of these assumptions.

Additionally, to facilitate the transfer of SRECs from small solar installations to electricity suppliers, *House Bill 258 (Ch. 115)* removes the 15-year minimum duration requirement for contracts for the purchase SRECs between an electricity supplier and a renewable on-site generator with a capacity not exceeding 10 kilowatts.

Geothermal Energy: The Geothermal Heat Pump Grant Program administered by the Maryland Energy Administration promotes geothermal energy generating systems. The program awarded over 1,400 grants during fiscal 2008 through 2012. Currently, geothermal is a Tier 1 renewable source under RPS. *Senate Bill 652/House Bill 1186 (both passed)* further promote the installation of geothermal heating and cooling systems by allowing the heat output of the systems, converted from British Thermal Units (BTUs) to kilowatt-hours, to substitute for the electricity use it displaces in the form of RECs.

Thermal Biomass Energy: There are generally two ways to produce energy with a thermal biomass system: directly burning the biomass for fuel (thermochemical) or anaerobic digestion to convert waste solids to methane, which can then be burned to produce thermal energy. *Senate Bill 1004 (passed)* defines energy from certain thermochemical and anaerobic digestion thermal biomass systems as a Tier 1 renewable source and as eligible for inclusion in meeting RPS. Owners of eligible systems in Maryland may receive RECs for the amount of energy generated by the system, converted from BTUs to kilowatt-hours.

Contact Voltage

Contact voltage occurs when an exposed object or surface is inadvertently energized, often by underground wiring. Contact voltage has caused deaths in many states including Maryland. On May 5, 2006, 14-year-old Deanna Camille Green was electrocuted by 277 volts

on a fence in Baltimore City. In October 2011, PSC adopted regulations that require electric companies to establish voltage survey plans, conduct contact voltage surveys, use best efforts to mitigate any contact voltage discovered, and submit a yearly compliance report to PSC. *Senate Bill 929/House Bill 520 (both passed)* codify the regulations and require PSC to submit a report to the General Assembly by January 1, 2013, on the progress of the implementation of the bill and the associated regulations.

Service Quality and Reliability

The Maryland Electricity Service Quality and Reliability Act of 2011 (Chapters 167 and 168) required PSC to adopt regulations implementing service quality and reliability standards for the delivery of electricity to retail customers by electric companies. PSC finished drafting the required regulations in December 2011 after several days of public rulemaking sessions, and the draft regulations were published for comment in the *Maryland Register* on April 7, 2012. During the rulemaking sessions, it became apparent that the statutory reporting and evaluation deadlines for prior year electric company reliability performance needed to be adjusted. *Senate Bill 449/House Bill 280 (Chs. 72 and 73)* push back the yearly deadlines for electric companies to submit compliance reports, and for PSC to determine whether each electric company has met certain annual service quality and reliability standards, to April 1 and September 1, respectively.

Other Electricity Issues

Electric Universal Service Program

The Department of Human Resources advised in its fiscal 2011 Electric Universal Service Program (EUSP) Annual Report that the program faces a fundamental challenge of more individuals and families seeking help with their home energy costs in a time of limited resources. The number of households receiving benefits has been increasing concurrently with the average benefit amount decreasing. *House Bill 770 (passed)* requires PSC to consider the adequacy of current funding for EUSP if an electric company or an affiliate is required to distribute a customer rate credit under an agreement with PSC in connection with a merger or acquisition. Any funds deposited into EUSP are in addition to, and may not substitute for, other funds collected under the program.

Electric Vehicles

Instituting a transition to vehicles that require stored electricity creates a number of operational and regulatory concerns. *Senate Bill 997/House Bill 1280 (both passed)* are a result of the Maryland Electric Vehicle Infrastructure Council's January 2012 interim report, which advised that the definitions of "electricity supplier" and "public service company" contained in the Public Utilities Article could be construed to include the owner or operator of an electric vehicle charging station. Much like regular gas stations, electric vehicle charging stations purchase a commodity (electricity) and then resell it to a customer. The bills establish that charging stations are retail electric customers, subject to paying for electricity on a per kilowatt-hour basis. However, the bills exempt the charging stations from the definition of "electricity supplier" or "electric company." This allows charging stations to set prices for

electricity and other services through any method they wish (such as a flat fee), rather than through PSC-regulated rates.

Also as a result of the council's report, *Senate Bill 998/House Bill 1279 (both passed)* require a custodian of personal records at the Motor Vehicle Administration to release specified personal information for use by an electric company, but only (1) information describing a plug-in vehicle, and identifying the address of the registered owner of the vehicle; (2) for use in planning for the availability and reliability of the electric power supply; and (3) if the information is not published or further disclosed, including to an affiliate, or used for marketing or solicitation purposes.

Certificate of Public Convenience and Necessity

In 2010, Baltimore Gas and Electric Company requested PSC to waive the requirement for a certificate of public convenience and necessity (CPCN) for proposed work on an overhead transmission line, arguing that the project was a proposed "modification" under PSC regulations that allow PSC to waive the CPCN requirement in its discretion. However, PSC indicated in its decision to deny the request that the proposed work fell under the term "construction" as defined in statute. The electric company was required to obtain a full CPCN, as there was no statutory provision allowing PSC to waive the CPCN requirement in such a case. *Senate Bill 1073/House Bill 1427 (both passed)* address this issue by authorizing PSC to waive the CPCN requirement for construction relating to existing overhead transmission lines for good cause. The bills also require PSC to waive the CPCN requirement under specified circumstances of limited construction and in situations which affect public safety and require a CPCN review for the construction of small land-based wind energy generating stations that are within 46 miles of the Patuxent River Naval Air Station.

Retail Electric and Gas Choice

The Electric Customer Choice and Competition Act of 1999 (Chapters 3 and 4) authorized the restructuring of the electric utility industry in Maryland. The resulting system of customer choice allows the customer to purchase electricity from a competitive electricity supplier or continue receiving electricity under standard offer service (SOS) from an electric company. A competitive natural gas market was expanded to all customers by regulation in 1996. In an attempt to facilitate the continued adoption of customer choice for residential gas and electric customers, *House Bill 771 (failed)* would have required each distribution utility (electric, gas, or electric and gas company) other than a cooperative, on request, to provide competitive suppliers with specified customer account information for its residential and small commercial customers, subject to certain conditions. A customer would have been deemed to have authorized a distribution utility to provide the information if the customer did not inform the distribution utility of the customer's refusal within 45 days of a notice sent by the distribution utility.

Gas Service

In Case No. 9267, Washington Gas Light Company (WGL) requested that PSC approve an accelerated pipe replacement plan in addition to a rate increase. WGL planned to spend \$115 million over five years to replace piping infrastructure and sought to recover the costs through a customer surcharge. In a November 2011 decision, PSC declined to authorize the surcharge for the recovery of future pipe replacement expenses. *Senate Bill 541/House Bill 662 (both failed)* would have authorized gas companies to file a plan with PSC requesting authorization to include a surcharge on customers' bills to recover specified costs associated with proposed eligible infrastructure replacement projects. The bills would have established a limit for the monthly surcharge of \$2 per month for all gas customers.

Tenant Utility Services

When a developer constructs a new apartment building, the developer must select individual electric and gas meters for each occupancy unit or a master meter arrangement where the owner is able to bill tenants for electricity charges. A building owner who selects a master meter arrangement must determine electric and gas charges for tenants by installing submeters which measure actual energy use and are approved by PSC. However, in apartment buildings, centralized HVAC systems may offer greater efficiencies than having individual systems for each building occupant. Chapters 314 and 315 of 2010, which are set to terminate on June 30, 2013, authorized PSC to allow the use of a master electric or gas meter for HVAC services without requiring individual metering or submetering in a residential multiple occupancy building as long as the utility bill for HVAC services is included in the rent for that unit. *Senate Bill 655/House Bill 913 (both passed)* repeal the termination provision.

The legislature began the process of establishing a fair and reasonable framework in the event that a landlord defaults on utility payments. *Senate Bill 765/House Bill 1269 (both passed)* require PSC to convene a workgroup to study and make recommendations on how to develop a mechanism to allow tenants in residential properties to pay for their utilities when the landlord is responsible for utility payments defaults. By December 1, 2012, PSC must report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee.

In a similar attempt to ensure the fair treatment of tenants whose landlords are in default on utility payments, *House Bill 884 (passed)* requires utilities and other suppliers of electric, gas, water, or sewer service to condominiums to post a notice conspicuously at or near the entry to the common area of the condominium if a charge is in default for at least 60 days.

Telephone Service

Universal Service Trust Fund

The Maryland Relay Service was initiated by Telecommunications Access of Maryland in December 1991 to convey dual-party telephone messages for persons with disabilities. The

Universal Service Trust Fund (USTF) pays for the Maryland Relay Service and additional services and equipment for persons with disabilities. The Comptroller collects fees for this purpose through a monthly surcharge determined by PSC, on individuals' phone bills (landline services only). The surcharge is currently 18 cents, but is capped at 45 cents. *Senate Bill 746/House Bill 1087 (both passed)* expand the communication services that are subject to the USTF surcharge in the State from only landline service to also include cellular and VoIP service. The bills change the surcharge from a per-line charge to a per-account charge and cap the surcharge at 18 cents.

Directory Assistance Charges

In May 2011, Verizon Maryland filed a revised tariff page that, had it taken effect, would have decreased the number of free residential directory assistance calls included as part of Verizon's local service offerings from four calls per month to two calls per month. Current law requires two free calls per month but allows PSC to increase this number. In November 2011, PSC issued a proposed order that denied Verizon's proposed tariff revision, which Verizon appealed. However, on March 2012, in Order No. 84727, PSC denied the appeal and thus the request to reduce the free residential directory assistance call allowance from four calls per month to two. *House Bill 677 (failed)* would have required PSC to authorize telephone company charges to be levied for directory assistance calls made subsequent to the first two calls made to directory assistance from each residence per month, except on an individual who suffers from a physical or visual disability that precludes the use of a telephone directory.

Insurance (Other Than Health Insurance)

Insurance Fraud

Fraud Disclosure Statement

House Bill 301 (Ch. 120), a departmental bill, makes the fraud disclosure statement required to be included on all claim and application forms for insurance consistent with the description of a fraudulent insurance act under § 27-406 of the Insurance Article. This will put people on notice of the actual violation that constitutes insurance fraud. The Act takes effect January 1, 2013.

Fraud Violations – Investigations and Administrative Penalties

Under Maryland insurance law, acts of insurance fraud are subject to criminal penalties. *Senate Bill 811/House Bill 1094 (both passed)* provide a mechanism to deal with insurance fraud short of criminal prosecution.

The bills require the Fraud Division of the Maryland Insurance Administration (MIA) to investigate allegations of civil fraud. On a showing by clear and convincing evidence that a fraudulent insurance act has occurred, the Maryland Insurance Commissioner may impose an administrative penalty of up to \$25,000 for each act of insurance fraud and order restitution to an

insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim. If an administrative penalty is not paid after all rights of appeal have been waived or exhausted, the Commissioner may bring a civil action in a court of competent jurisdiction to collect the penalty. The bills do not affect an insurer's right to take any independent action to seek recovery against a person that commits a fraudulent insurance act.

Suspected Fraud – Liability for Reporting or Furnishing or Receiving Information

Senate Bill 812/House Bill 1097 (both passed) provide that a person is not subject to civil liability for a cause of action by virtue of reporting suspected insurance fraud, or furnishing or receiving information relating to suspected, anticipated, or completed fraudulent insurance acts, if (1) the report was made or the information was furnished to or received from specified persons or entities; and (2) the person or entity acted in good faith when making the report or furnishing or receiving the information. The specified persons and entities include the Maryland Insurance Commissioner; the Fraud Division of MIA; an appropriate federal, state, or local law enforcement authority; the National Association of Insurance Commissioners; a not-for-profit organization established to detect and prevent fraudulent insurance acts; a person that contracts to provide special investigative unit services to an insurer; and a provider of a recognized comprehensive database system that the Commissioner approves to monitor activities involving insurance fraud.

Fraudulent Insurance Acts – Individual Sureties

Except in specified circumstances, a person may not act as an insurer and an insurer may not engage in the insurance business in the State unless the person has a certificate of authority issued by the Maryland Insurance Commissioner. In November 2010, MIA issued a bulletin stating that the certificate of authority requirement includes providing surety insurance or directly or indirectly acting as an insurance producer or otherwise assisting an unauthorized insurer. The Office of Attorney General confirmed this in a January 2011 letter to the Maryland General Assembly. In general, only corporate entities and reciprocal insurers may receive a certificate of authority.

Senate Bill 764/House Bill 885 (both passed) establish that it is a fraudulent insurance act for an individual surety to solicit or issue a surety bond or contract of surety insurance. An "individual surety" is defined as a person that issues surety bonds or contracts of surety insurance and that does not have a certificate of authority issued by the Commissioner. This fraudulent insurance act, however, does not apply to (1) contractors who are authorized to submit individual surety bonds to meet the requirements for bid and performance bonds on certain State projects; and (2) uncompensated bail bondsmen operating in circuit courts. A violation of the bills is a felony and punishable by a fine of up to \$10,000, imprisonment for up to 15 years, or both if the claim or act that is the subject of the fraud has a value of \$300 or more. If the claim or act that is the subject of the fraud has a value of less than \$300, a violation is a misdemeanor and punishable by a fine of up to \$10,000, imprisonment for up to 18 months, or both.

The bills also require MIA to conduct an analysis of the practices of corporate sureties and individual sureties in the State. In its analysis, MIA must consider the possibility of

licensing individual sureties, the current state of the individual surety market, the regulation of individual sureties in other states, the adequacy of current State law, and the existence of any programs that enhance the availability of surety bonds or contracts of surety insurance for specified businesses. MIA must submit an interim report on its findings and recommendations to specified legislative committees by December 1, 2012, and a final report to the committees by December 1, 2013.

Property and Casualty Insurance

Certificates of Insurance and Certificate of Insurance Forms

As established by Chapters 514 and 515 of 2011, a “certificate of insurance” is defined as any document or instrument, however titled or described, that is prepared or issued by an insurer or insurance producer as evidence of property insurance or casualty insurance coverage. A certificate of insurance does not include a policy of insurance or an insurance binder.

Senate Bill 297/House Bill 463 (both passed) require a certificate of insurance form to be filed with and approved by the Maryland Insurance Commissioner. The bills require the Commissioner to disapprove a certificate of insurance form if the form (1) is unjust, unfair, misleading, or deceptive or violates public policy; (2) fails to comply with the requirements specified in the bills; or (3) violates any law or any regulation adopted by the Commissioner. A standard certificate of insurance form adopted by the Association for Cooperative Operations Research and Development or the Insurance Services Office that otherwise complies with the requirements of the bills is considered to be approved by the Commissioner. The Commissioner may designate a certificate of insurance form required by a federal agency as deemed approved. The bills also prohibit a person from altering or modifying an approved certificate of insurance. The Commissioner must adopt regulations to carry out the statutory provisions governing certificates of insurance, including regulations that establish an approval process for certificate of insurance forms.

Notices of Renewal Premium Increases

Generally, if an insurer seeks to increase the premium on a renewal policy, the insurer is required to send notice to the named insured and any insurance producer at least 45 days prior to the renewal date of the policy. *Senate Bill 256/House Bill 876 (both passed)* exempt insurers that issue policies of commercial insurance and workers’ compensation insurance from this requirement if the renewal policy premium is (1) in excess of \$1,000; and (2) an increase over the expiring policy premium of the lesser of 3% or \$300. Accordingly, insureds under policies of commercial insurance or policies of workers’ compensation insurance with high premiums and small renewal premium increases will not receive notice of the increase. All other insureds will continue to receive a notice for any amount of renewal premium increase.

Discovery of Material Risk Factor during Underwriting Period

A binder or policy of personal insurance property or casualty insurance is issued to an individual, trust, estate, or similar entity that is intended to insure against loss arising principally

from personal, noncommercial activities of the insured is subject to a 45-day underwriting period beginning on the effective date of coverage. A binder is a written or oral acknowledgment that an insurance applicant has accepted an insurer's offer to purchase insurance coverage. During this underwriting period, an insurer may cancel a binder or policy if the risk does not meet the underwriting standards of the insurer. An insurer must provide notice of the insurer's right to cancel either at the time of application or when a binder or policy is issued.

In 2006, MIA released a bulletin to address the discovery of a previously unknown risk factor during the 45-day underwriting period. MIA advised that, if an insurer discovers the risk factor and still determines that an insured is eligible for coverage but not on the terms previously quoted, the insurer should cancel the binder or policy and offer to re-write the insurance on the new terms. However, in *Insurance Commissioner for State v. State Farm Fire & Casualty Company*, No. 41 (September Term 2010), the Maryland Court of Appeals ruled that an insurer is not required to cancel a binder or policy when an underwriting investigation reveals that the risk does not adhere to the insurer's underwriting standards. The court further ruled that the standard requirements for an insurer of a private passenger motor vehicle liability insurance policy to provide notice of a premium increase do not apply to binders.

Senate Bill 531/House Bill 1095 (both passed) require an insurer that discovers a material risk factor during the 45-day underwriting period to recalculate the binder or policy premium based on the material risk factor if the risk continues to meet the underwriting standards of the insurer in accordance with the insurer's rates and supplementary rating information filed with the Maryland Insurance Commissioner.

The bills define "material risk factor" as a risk factor that (1) was incorrectly recorded or not disclosed by the insured in an application for insurance; (2) was in existence on the date of the application; and (3) modified the premium charged on the binder or policy in accordance with the rates and supplementary rating information filed by the insurer under Title 11, Subtitle 3 of the Insurance Article. "Material risk factor" does not include information that constitutes a material misrepresentation or a change initiated by an insured, including any request by the insured that results in a change in coverage, deductible, or other change to a policy.

The bills require an insurer that recalculates a risk based on the discovery of a material risk factor to provide written notice informing the insured of (1) the amount of the recalculated premium; (2) the reason for the increase or reduction in the premium; and (3) the insured's right to terminate the policy. At the time of application or when a binder or policy is issued, an insurer must also provide written notice of its ability to recalculate the premium from the effective date of the policy during the underwriting period. The notice requirements for a premium increase for a policy of private passenger motor vehicle liability insurance do not apply to any increase in premium due to discovery and recalculation of a material risk factor made by an insurer during the 45-day underwriting period.

Motor Vehicle Insurance

Recision of Policy or Binder – Dishonor of Remittance

Senate Bill 938/House Bill 1059 (both passed) authorize an insurer to rescind a policy or binder of personal automobile insurance if the initial premium payment for the policy or binder is made by a check or other remittance that is not honored on presentation to the financial institution where the check or other remittance is drawn.

To rescind a policy or binder, an insurer is required to send, immediately or the next business day after receipt of a notice that the check or other remittance was not honored, written notice to the applicant and any secured creditor, by certificate of mail and, if available, by electric means, to the applicant's or secured creditor's last known address. The notice must state that the policy or binder is rescinded as of its proposed effective date because the applicant's check or other remittance was not honored and that no coverage is in effect under the policy or binder. However, if the financial institution failed to honor the check or other remittance in error, or if the applicant or secured creditor pays the initial premium within five business days after notice that the check or other remittance was dishonored, the insurer shall continue or reinstate the policy or binder without a lapse in coverage.

An insurer may rescind a policy or binder if the applicant's initial premium payment is not honored only if the insurer has disclosed to the applicant at the time of application that no coverage will be in effect if the initial premium payment is not honored. The bills apply to policies and binders of personal automobile insurance issued or delivered in the State on or after January 1, 2013.

Uninsured Motorist Coverage – Consent to Settlement

All motor vehicle insurance policies issued, sold, or delivered in the State are required to include coverage for damages and injuries caused by other uninsured motor vehicles. An "uninsured motor vehicle" means a motor vehicle for which the ownership, maintenance, or use of which has resulted in the bodily injury or death of an insured; and for which the sum of the limits of liability under all valid and collectible liability insurance policies, bonds, and securities applicable to bodily injury or death (1) is less than the minimum amount of coverage required by law; or (2) has been reduced by payment to other persons for claims arising from the same occurrence to an amount less than the required minimum.

If an injured person receives a written offer from a motor vehicle insurance liability insurer to settle a claim for bodily injury or death, and the amount of the settlement offer would exhaust the bodily injury or death limits of the applicable liability insurance policies, the injured person is required to send a copy of the liability insurer's written settlement offer to any insurer that provides uninsured motorist coverage for the bodily injury or death. Within 60 days after receipt, the uninsured motorist insurer is required to send written consent to or refusal of acceptance of the settlement offer to the injured person. If the uninsured motorist insurer refuses consent, it must pay to the injured person the amount of the settlement offer within 30 days after

the refusal, but such payment preserves the uninsured motorist insurer's subrogation rights against the liability insurer and its insured.

Senate Bill 604/House Bill 715 (both passed) allow uninsured motorist insurers to consent to settlements by persons claiming uninsured motorist benefits without the consent (1) limiting their right to raise any issue relating to liability or damages in an action against the insurer; or (2) constituting an admission by the insurer as to any issue raised in an action against the insurer.

Maryland Automobile Insurance Fund

Fund Producers – Commissions: Senate Bill 1006 (passed) authorizes the Maryland Automobile Insurance Fund (MAIF) to determine the rate of commission MAIF's Insured Division must pay to a fund producer of a policyholder to whom a policy is issued. Under the bill, the commission rate for private passenger auto insurance must be between 10 and 15% of the total premium, instead of at a rate of 10%.

The bill also requires MAIF to report by October 1, 2014, to specified legislative committees on MAIF's implementation of a commission payment structure that provides commissions between 10 and 15% to fund producers. The report must provide information on whether and how the commission payment structure has (1) incentivized fund producers to use advanced electronic technology; (2) incentivized fund producers to devote resources to retain policyholders; (3) resulted in administrative cost savings for MAIF, and (4) resulted in fewer uninsured motorists.

Uninsured Division – Maximum Payment Amounts: The Uninsured Division of MAIF exists to compensate, if specified conditions are met, qualifying individuals who file accident-related claims against unidentified, disappearing, or unavailable and uninsured vehicles.

Maryland law requires an owner of a motor vehicle that is required to be registered in the State to maintain insurance for the vehicle during the registration period. The required insurance must provide for the payment of claims for bodily injury or death arising from an accident of up to \$30,000 for any one person and up to \$60,000 for any two or more persons, in addition to interest and costs.

Senate Bill 82 (passed) increases the maximum amount MAIF's Uninsured Division is authorized to pay on authorized unsatisfied claims arising from an injury or death of one individual from \$20,000 to \$30,000 and one or more individuals from \$40,000 to \$60,000, exclusive of interest and costs. The bill also increases the amount allocated to MAIF from fines levied by the Motor Vehicle Administration against uninsured drivers beginning in fiscal 2014.

Homeowner's Insurance

House Bill 1068 (passed) requires an insurer that offers homeowner's insurance in the State to provide an applicant or insured with a specified written notice at the time of application, issuance, and each renewal that states that, in addition to other reasons allowable under Maryland

law, the insurer may cancel or refuse to renew coverage on the basis of the number of claims made by the policyholder within the preceding three-year period. Allowable reasons are currently codified in the law; however, consumers were not required to be notified. The notice also must state that the cancellation or refusal to renew may be based on (1) three or more weather-related claims within the preceding three-year period; (2) one or more weather-related claims made within the preceding three-year period if the insurer has provided written notice to the insured for reasonable or customary repairs or replacement specific to the property that the insured failed to make and that, if made, would have prevented the loss; and (3) a change in the physical condition or contents of the property that increases the hazard insured against and that, if present and known to the insurer before issuance of the policy, would have caused the insurer to refuse to issue the policy. The written notice must refer to specific conditions known to the insurer and may not be a general notification of repairs or replacement common to that type of premises or dwelling.

Portable Electronics Insurance

Chapters 316 and 317 of 2009 established a regulatory framework for portable electronics insurance coverage – policies that provide for the replacement of portable electronic devices that are lost or stolen. *Senate Bill 861/House Bill 1093 (both passed)* amend various provisions of Maryland’s portable electronics insurance law.

The bills authorize a vendor of portable electronics that bills and collects a premium from a covered customer for coverage under a policy of portable electronics insurance to maintain the premium in a segregated account if, along with other specified requirements, the funds received by the vendor from a covered customer for the sale of portable electronics insurance are held in trust by the vendor in a fiduciary capacity for the benefit of the vendor’s appointing insurer. In the event that portable electronics insurance coverage is included in the price of the purchase or lease of portable electronics or related services, the bills require the vendor to provide clear and conspicuous written notice to the customer that the coverage is included in the price.

The bills require a vendor to provide the Maryland Insurance Commissioner with a sworn application for a limited lines license in order to sell or offer to sell coverage under a policy of portable electronics insurance to a customer. A vendor also must provide the contact information and any other information requested by the Commissioner for an officer or employee of the vendor who is designated by the vendor as the person responsible for the vendor’s compliance with the law. However, if the vendor derived more than 25% of its total revenue in the preceding year from the sale of portable electronics insurance, the vendor must also provide the same information for all officers, directors, and shareholders of record under the federal securities law. The bills require the supervising entity to maintain a registry of all vendor locations that are authorized to sell or offer portable electronics insurance coverage in the State. The registry must be open for inspection and examination within 10 days after a request by the Commissioner.

The bills also require that specified disclosures provided to customers at vendor locations must state that, in the event of a cancellation of coverage, any unearned premium will be refunded to the person paying the premium in accordance with applicable law.

If any required training program the vendor provides for an employee or authorized representative who sells coverage to customers is conducted in electronic form, the bills require the supervising entity to implement a supplemental education program about the portable electronics insurance product. The supplemental education program must be conducted and overseen by licensed insurance producers employed by the supervising entity.

Finally, the bills alter the notice requirements related to an insurer or vendor terminating or changing the terms of a policy. If the insurer or vendor provides the notice by mail, the notice must be mailed to the vendor and covered customer at the last known address of each. The insurer or vendor responsible for mailing the notice must maintain proof of mailing. An insurer responsible for providing notice to a vendor or covered customer must meet specified requirements before the insurer may provide notice by electronic means.

Life Insurance and Annuities

Comparison of Policies with Social Security Administration Master Death File

The Social Security Administration's (SSA) Death Master File contains over 89 million records of deaths. Each record contains, if possible, the deceased's Social Security number, name, date of birth, date of death, state or country of last residence, zip code of last residence, and zip code of lump sum payment.

In response to concerns that life insurers were using SSA's Death Master File to stop annuity payments once a contract holder dies rather than using the file to find beneficiaries who have yet to file a claim, *Senate Bill 77 (passed)* requires an insurer that issues, delivers, or renews a life insurance policy or annuity contract in the State, to perform, at least semiannually, a good-faith comparison of the insurer's in-force life insurance policies, annuity contracts, and retained asset accounts against the most recent Death Master File maintained by SSA or a comparable database or service. The purpose of the comparison is to identify any death benefit payments that may be due as a result of the death of an insured, annuitant, or retained asset account holder. Specified annuity contracts, life insurance policies, pre-need insurance contracts, credit life insurance policies, and accidental death and dismemberment insurance policies are excluded from the requirements of the bill. The bill also specifies that an insurer is not required to perform a search for a group life insurance policy unless the insurer provides full record keeping services for the group life insurance policy holder.

If a comparison results in a match with an insured, annuitant, or retained asset account holder, the insurer is required, within 90 days, to make a good-faith effort to confirm the death of the insured, an annuitant, or account holder and locate any beneficiaries. The bill authorizes an insurer to disclose the minimum necessary personal information about an insured, annuitant, account holder, or beneficiary to a person that may be able to assist in locating a beneficiary.

The insurer may not charge for any fees or costs incurred in complying with the bill's requirements.

The failure of an insurer to comply with any of the bill's requirements is an unfair claim settlement practice. The bill takes effect October 1, 2013, to give insurers time to comply with its requirements.

Life and Health Insurance Guaranty Corporation Act – Revisions

Senate Bill 1003/House Bill 1340 (both passed) revise various provisions of the Life and Health Insurance Guaranty Corporation Act. For a discussion of the bills, see the subpart Health Insurance within Part J – Health and Human Services of this *90 Day Report*.

Title Insurance

In response to recent and possible monetary losses by consumers, title insurers, mortgage lenders, and other parties that have or may result from theft, misappropriation, or misuse of funds held in escrow by a title insurance provider, *House Bill 866 (passed)* requires the Maryland Insurance Commissioner to (1) study closing or settlement protection practices of the title insurance industry; and (2) make recommendations for changes to these practices. In conducting the study, the Commissioner may consult with any person or entity that the Commissioner determines appropriate, and must consider:

- title insurance producer defalcations (fund misappropriations) reported to MIA by title insurers;
- title insurance producer defalcations discovered by MIA as a result of a complaint received by MIA;
- the extent to which any regulations relating to the onsite review by title insurers of their appointed title insurance producers have addressed the problem of title insurance producer defalcations;
- the availability and affordability of fidelity bonds, escrow bonds, reinsurance, or other coverage to protect title insurers against the theft, misappropriation, or misuse of closing or settlement funds by their appointed title insurance producers, other agents, or employees;
- the manner in which closing or settlement protection is being addressed by other states, the National Association of Insurance Commissioners, and the National Coalition of Insurance Legislators; and
- any other relevant matter, as determined by the Commissioner.

The Commissioner must report the findings and recommendations of the study to specified legislative committees by December 1, 2012.

Bail Bondsmen

Senate Bill 489/House Bill 742 (both passed) authorize a bail bondsman to accept installment payments for a bail bond premium, a current practice that has, generally, not been regulated. If a bail bondsman agrees to accept installment payments, the bail bondsman must (1) include specified information in the installment agreement; (2) secure a signed affidavit of surety by the defendant or the insurer containing the same information included in the installment agreement and provide it to the court; (3) take all necessary steps, including any debt collection remedies provided by law, to collect the total amount owed; (4) keep and maintain records of all collection attempts, installment agreements, and affidavits of surety; and (5) certify each year to the Maryland Insurance Commissioner that the maintained records are accurate and true.

The installment agreement and signed affidavit of surety must include (1) the total amount of the premium owed; (2) the amount of any down payment; (3) the balance amount owed to the bail bondsman or the bail bondsman's insurer; (4) the amount and due date of each installment payment; and (5) the total number of installment payments required to pay the amount due.

A bail bondsman must keep and maintain the records required under the bill in an office that is generally accessible to the public during normal business hours and must make the records available for inspection by the Commissioner. If a bail bondsman violates any provision of the bills, the Maryland Insurance Commissioner may take specified actions authorized under the Insurance Article.

Task Force to Study Maryland Insurance of Last Resort Programs

House Bill 1017 (passed), an emergency bill, establishes the Task Force to Study Maryland Insurance of Last Resort Programs. The task force includes members of the Senate of Maryland and of the House of Delegates; the Commissioner or the Commissioner's designee; and representatives of the property and casualty insurance industry, the private passenger automobile insurance industry, the Injured Workers' Insurance Fund, MAIF, the Property and Casualty Insurance Guaranty Corporation, the Maryland Health Insurance Plan, the Joint Insurance Association (JIA), the Consumer Protection Division of the Office of Attorney General, and the public. The affected State entities include: the Injured Workers' Insurance Fund, MAIF, the Maryland Health Insurance Plan, and the JIA. The Department of Legislative Services is required to provide staff for the task force.

The task force must study and make recommendations regarding:

- potential benefits to the State from the affiliation of one or more of the State-created insurers of last resort;

- potential legal and corporate structures for such an affiliation, including whether the affiliation should be accomplished through a holding company structure;
- the extent to which the affiliation would support or impair each entity in performing its statutory duties;
- whether each entity should retain a separate existence with its own board of directors or governing committees;
- the extent to which an affiliation would affect the State’s ability to regulate the entities in terms of solvency, rates, and market conduct;
- the extent to which an affiliation would affect the financial condition of any of the entities and whether safeguards are necessary to protect policyholders and other stakeholders;
- whether or not each entity should be financially independent and the extent of each entity’s responsibility, if any, for the debts and liabilities of the other entities;
- the tax status of the affiliated entity and the effect of the affiliation on the tax status of each entity with respect to federal, State, and local taxation;
- whether JIA should become an authorized insurer with a broader mandate;
- whether MAIF should be converted into a statutorily created, private, nonprofit, nonstock insurer for automobile and other forms of insurance;
- whether and under what circumstances any subsidiaries should be permitted to issue dividends; and
- any other relevant issues or considerations identified by the task force.

The task force must report its preliminary findings to specified legislative committees by December 1, 2012, and its final findings and recommendations, including proposed legislation, by December 1, 2013.

Horse Racing and Gaming

Horse Racing

Payment of Taxes and Impact Aid and Arabian Breed Racing Authorization

House Bill 597 (Ch. 130) extends the time period from 3 to 10 days within which mile thoroughbred licensees who operate a sending track must pay pari-mutuel racing taxes and local impact aid to the Maryland Racing Commission after each day of intertrack betting on thoroughbred racing at a receiving track. The bill also authorizes Arabian breed races to be conducted at Pimlico Race Course, provided specified conditions are met.

Maryland Standardbred Race Fund Advisory Committee – Registration of Horses

House Bill 590 (Ch. 127) alters one of the criteria by which a horse is registered with the Maryland Standardbred Race Fund Advisory Committee to enable the horse to start in a Foaled Stakes Program race. The bill specifies that a horse is eligible, provided it was foaled in Maryland, if it was conceived during the previous season by the horse's dam having been covered by a Maryland stallion registered with the advisory committee.

Maryland-Bred Race Fund – Administration

Senate Bill 49 (passed) authorizes the Maryland Racing Commission to allocate a portion, rather than up to 5%, of the Maryland-Bred Race Fund to races that are restricted to horses that are conceived, but not necessarily foaled, in Maryland. The bill also requires the commission to set the amount of specified breeder awards for races both in the State and outside the State. In addition, *Senate Bill 49* allows the payment of a breeding incentive to a thoroughbred horse owner when their horse participates at a racetrack outside the State and qualifies for the incentive.

Purse Dedication Account – Use of Funds for Operating Assistance

Chapter 412 of 2011 provided a distribution of up to \$1.2 million from the Purse Dedication Account to Ocean Downs Race Course and Rosecroft Raceway for operating assistance for calendar 2012. *Senate Bill 794 (passed)* extends this \$1.2 million annual operating assistance distribution through calendar 2015. The bill also prohibits any funds received for operating assistance from being used to contribute to a campaign finance entity or to make independent campaign expenditures.

Gaming

Expansion of Video Lottery Terminal Locations and Additional Types of Gaming

Several bills were introduced to expand the number of video lottery terminal (VLT) licenses authorized in the State or to expand gambling opportunities to include table games. None of these bills passed.

As passed by the Senate, *Senate Bill 892 (failed)* would have authorized a sixth video lottery operation license with up to 4,750 VLTs to be awarded at a location in Prince George's County while also allowing all video lottery operation licensees to offer table games in the State. Additional provisions in the legislation would have increased the maximum number of authorized VLTs in the State from 15,000 to 19,750, removed prohibitions on multiple license ownership, transferred ownership of VLTs from the State to video lottery operation licensees, and increased the percentage of VLT revenues distributed to licensees. The proposed expansion of commercial gaming in the State would have been submitted to a voter referendum at the November 2012 general election, along with a constitutional amendment that, if passed, would have prohibited the Video Lottery Facility Location Commission from awarding a license for a VLT facility in Prince George's County unless the majority of voters in the county approved the referendum.

As amended by the House Ways and Means Committee, *Senate Bill 892* would have authorized a voter referendum for a sixth video lottery operation license with up to 3,000 VLTs at National Harbor in Prince George's County. If a majority of Prince George's County residents voting on the referendum voted against the sixth location, the bill specified the General Assembly's intent that the Video Lottery Facility Location Commission would not award a VLT license in the county. The bill would have restricted a Prince George's County facility from opening to the public with VLTs before the earlier of July 1, 2016, or 30 months after the date a Baltimore City VLT facility opens to the public. Under the bill, the percentage of VLT proceeds retained by the State would not have exceeded 60% once the Prince George's County facility opened with VLTs.

While *Senate Bill 892*, as amended by the Ways and Means Committee, would have authorized table games for all VLT licensees subject to voter approval at referendum, the bill also would have allowed a location at National Harbor to begin offering table games in a temporary facility. Separate legislation would have been required to implement table games and a Prince George's County VLT facility, if approved by voters. The bill would have also required the Department of Legislative Services to hire a consultant to study various issues related to commercial gaming and the expansion of commercial gaming to a sixth location in the State and report to the General Assembly by December 31, 2012.

State Regulation of Electronic Bingo and Electronic Gaming Machines

Chapter 474 of 2008 prohibited certain gaming machines, primarily electronic bingo and tip jar machines, from operating after July 1, 2009. While Chapter 661 of 2009 extended this termination date to July 1, 2012, *Senate Bill 864 (passed)* makes permanent the authority for existing qualified organizations and licensed commercial bingo licensees to operate electronic instant bingo machines that would otherwise be illegal under State law after July 1, 2012.

Under *Senate Bill 864*, an entity licensed to offer instant bingo under a commercial bingo license on July 1, 2007, or by a qualified nonprofit organization may continue to operate a game of instant bingo in the same manner using electronic machines, provided that (1) the machines were in operation for a one-year period ending December 31, 2007, or under a commercial bingo

license on December 31, 2007; (2) the entity does not operate more than the number of machines in operation on February 28, 2008; and (3) the conduct of the gaming and operation of the machines are consistent with all other provisions of the Criminal Law Article.

Senate Bill 864 also requires the State Lottery Commission to certify and regulate the operation, ownership, and manufacture of certain electronic gaming devices and determine whether such devices are legal and lawfully operated. Under the bill, a gaming device that is not licensed or otherwise compliant with necessary requirements as of January 1, 2013, is an illegal gaming device that may not legally operate in the State.

General fund revenues will increase by an estimated \$9.5 million annually beginning in fiscal 2013 as a result of continued collection of the State admissions and amusement tax on electronic bingo machines currently in operation.

Online Fantasy Competitions – Exemption from State Gaming Prohibitions

House Bill 7 (passed) explicitly exempts a specified “fantasy competition” from prohibitions against betting, wagering, and gambling in State law. The bill defines “fantasy competition” as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals (*e.g.*, professional sports players and teams). Winning outcomes may not be based solely on the performance of an individual athlete and may not be based on the score, point spread, or any performances of any single real-world team, or combination of real-world teams.

Slot Machines for Eastern Shore Nonprofit Organizations – Use of Proceeds

Chapter 315 of 2011 added Worcester County to the list of Eastern Shore counties in which eligible nonprofit fraternal, religious, and war veterans’ organizations may own and operate up to five slot machines at its principal meeting hall. With respect to any eligible organization operating slot machines on the Eastern Shore, Chapter 315 also required that at least half of the gross proceeds must go to charity, and the remainder to further the organization’s purposes. *Senate Bill 10/House Bill 325 (Chs. 8 and 9)* clarify that at least one-half of net after payout proceeds, instead of gross proceeds, from authorized slot machines operated by nonprofit organizations in Eastern Shore counties are to be used for the benefit of charitable organizations.

Accountability and Oversight of Tip Jars in Washington County

Senate Bill 670/House Bill 1005 (both passed) authorize the Washington County Commissioners to require the Washington County Volunteer Fire and Rescue Association to submit financial reports of the association. The bills also require the fire and rescue association to annually submit its budget to the county commissioners. The county commissioners may withhold funds that would otherwise be distributed from the Washington County Gaming Fund (WCGF) if the financial reports are not submitted on time or until the budget of the fire and

rescue association is accepted by the county commissioners. The county commissioners may not require that funds distributed from the WCGF be used for fire and rescue services for which funds previously have been appropriated in the county operating budget.

Economic Development

Science and Technology

Maryland Innovation Initiative and Fund

House Bill 442 (passed) establishes the Maryland Innovation Initiative and the Maryland Innovation Initiative Fund (MIIF) in the Maryland Technology Development Corporation (TEDCO) to promote technology transfer from Maryland's public and private nonprofit research institutions to the private sector.

Maryland Innovation Initiative: Participating members of the initiative are a State government official and two members of the private sector with experience commercializing technology in the State, all of whom are not affiliated with Maryland higher education, and one representative from each of five specified public or private nonprofit research universities located in the State: Johns Hopkins University, Morgan State University (MSU), University of Maryland, College Park, University of Maryland Baltimore County, and University of Maryland, Baltimore (UMB). To qualify for participation in the initiative, the University of Maryland, College Park; Johns Hopkins University; and UMB must each provide at least \$200,000 annually to the initiative to carry out the initiative's established purpose, which is generally to promote the commercialization of research conducted by universities in the State through strategic partnerships. MSU and UMBC must each provide at least \$100,000 annually to the initiative.

Maryland Innovation Initiative Fund: TEDCO will administer MIIF, which may be funded by (1) appropriations as provided in the State budget; (2) contributions by qualifying universities; (3) grants or funds from federal laboratories located in the State; (4) interest or other income earned on the investment of money in the fund; and (5) any other money accepted for the benefit of the initiative. Funds may only be used to award grants to promote the commercialization of pertinent research and to pay the necessary administrative costs of the initiative.

The initiative may:

- provide grant funding to a qualifying university, qualifying university-based entrepreneur, or other start-up entity to promote the commercialization of technology developed in whole or in part by a qualifying university;
- pursue grants, other funds, and in-kind contributions for the initiative or its qualifying universities;

- develop and implement guidelines for technology transfer; and
- identify projects at qualifying universities that may be viable for commercialization.

Only qualifying universities may submit proposals for grant funding from the initiative. Grant funding must be awarded:

- to support pre-commercial research on intellectual property;
- to defray costs of evaluating the feasibility of a technology becoming commercialized through a start-up company;
- to defray the direct costs of developing early-stage technology through a start-up company;
- to assess intellectual property issues, including licensing and patents; or
- for any other costs that the initiative's participating members determine are appropriate, given the initiative's purpose.

High-impact Economic Development Activity: The University System of Maryland (USM) and MSU must undertake high-impact economic development activities that support job creation and workforce development, technology transfer, commercialization and entrepreneurship, and increased sponsored research funding. An institution in the system may establish, invest in, finance, or operate a corporation, foundation, consortium, or other entity that is intended to support high-impact economic development activity. Subject to certain restrictions, an official or employee of a public institution of higher education may be a director, official, or employee of an entity intended to support high-impact economic development activity.

“High-impact economic development activity” means an initiative, transaction, or other undertaking by USM or one of its constituent institutions, or MSU, to create or facilitate:

- 20 or more new jobs in the State;
- the award or completion of at least \$1 million in externally funded research or other projects;
- the establishment or relocation of one or more new companies doing business in the State;
- the production of at least \$1 million of annual gross revenue;

- the licensing and potential commercialization of a promising new technology or product; or
- an academic program to meet workforce demand in a documented labor shortage field.

State procurement law (State Finance and Procurement Article, Division II) generally does not apply to transactions between an entity established, financed, or operated under the bill, and the institution or consortium which established, financed, or operated the entity. The USM and MSU Boards of Regents are responsible for developing policies and procedures which require recognition of an entity by the appropriate board, an annual independent audit of the entity, and adequate ethical and business practice standards.

The USM and MSU Boards of Regents are responsible for developing policies and procedures governing the establishment of high-impact economic development entities within the scope of current provisions that govern the sale or transfer of personal or real property; under the bill, these will also apply to intellectual property. Further, the boards are responsible for administering a review and comment process, including by specified legislative committees and units of State government.

Board of Public Works: Additionally, the bill raises, from \$500,000 to \$1 million, the minimum value for which any contract for services or capital improvement by USM, MSU, or St. Mary's College of Maryland must be submitted to BPW for review and approval. In addition, dispositions of personal property, except those that were purchased with the proceeds of a general obligation loan, in excess of \$1 million must be reviewed and approved by BPW.

Life Sciences Advisory Board

The life sciences include biotechnology, pharmaceuticals, biomedical technologies, life systems technologies, food sciences, environmental sciences, and biomedical devices. Chapter 304 of 2007 established the 15-member Maryland Life Sciences Advisory Board in the Department of Business and Economic Development, and *Senate Bill 405/House Bill 141 (both passed)* increase the membership of the board to include three additional members with executive small business experience in the life sciences. The bills also state that the purpose of the board is to recommend State and federal policies priorities, practices, and legislation to expedite the creation of private-sector jobs through the commercialization of life sciences research.

Economic Development Tax Credits

Job Creation Tax Credit

The job creation tax credit provides a tax credit to businesses that expand or establish a facility in Maryland that results in the creation of new jobs. The credit may be applied against the following taxes: corporate or personal income, insurance premium, and public service

franchise. In any year, however, the credit may only be applied against one tax. The credit may be recaptured during any of the three taxable years following the claiming of the credit.

The tax credit was scheduled to terminate on January 1, 2014; however, *Senate Bill 477/House Bill 1107 (both passed)* extend the termination date of the tax credit to January 1, 2020. Credits may be earned through credit year 2019 and claimed for qualified positions at a newly established or expanded facility that begins operations before January 1, 2019.

One Maryland Economic Development Tax Credit

To qualify as a distressed county, a county must have an average unemployment rate that exceeds 150% of the State's average during the preceding 24-month period or a per capita personal income that does not exceed 67% of the State's average during the preceding 24-month period.

House Bill 1289 (passed) alters the definition of “qualified distressed county” to include counties with unemployment rates at least two percentage points higher than the State average. It also authorizes qualified business entities to claim a prorated share of the One Maryland tax credits awarded by the Department of Business and Economic Development in specified circumstances.

For any taxable year before the fifteenth taxable year after which a business entity may first take the One Maryland tax credit, the business entity may claim a prorated share of the credit for eligible project or start-up costs if the number of qualified positions filled by the business entity falls below 25, but does not fall below 10, and the business entity has maintained at least 25 qualified positions for at least 5 years. The prorated credit is calculated based on the number of qualified positions filled for the taxable year divided by 25. A business entity may also claim a prorated share of a tax refund for eligible project or start-up costs in any taxable year after the fourth but before the fifteenth taxable year following the year in which the business entity may first take the credit.

Miscellaneous

Economic Development and Apprenticeships

House Bill 493 (passed) establishes the 19-member Task Force to Study Economic Development and Apprenticeships. The task force must:

- primarily research the effectiveness of apprenticeship programs in other states and international programs, particularly those in Germany and Switzerland and those in which U.S. businesses participate abroad;
- consider how existing State apprenticeship programs could be improved based on those programs;

- address the contribution of secondary schools to successful apprenticeship programs and make specified recommendations;
- determine whether a major expansion of apprenticeship in the State, through specified programs, is appropriate and feasible;
- if a major expansion is determined appropriate and feasible, develop and recommend a multi-year expansion plan; and
- develop and recommend for implementation in the State a pilot apprenticeship program based on the study and research of the task force.

The Department of Legislative Services must provide staffing for the task force and the task force must report its findings and recommendations to the Governor and General Assembly by December 1, 2013.

Baltimore City Transit-Oriented Development Fund

House Bill 213 (passed) establishes the Baltimore City Community Enhancement Transit-Oriented Development Fund to promote and assist community-based initiatives in qualified project areas. A “qualified project area” is a community located in Baltimore City directly impacted by and within a half mile of a transit-oriented development project.

Funding Sources: One of the funding sources may be ground rents or land sale proceeds realized from the sale or lease of real property to a private entity for transit-oriented development projects, at the discretion of the State agency disposing of the property. Money contributed to the fund by private developers must be separately accounted for so that the revenue derived from a development returns to a qualified recipient in the qualified project area. Generally, the bill requires that money paid into the fund be held separately by the State Treasurer and accounted for by the Comptroller. The Comptroller must, except for the money contributed by the private developers and held separately, pay money in annual installments to the Mayor and City Council of Baltimore.

Fund Uses: The fund may be used by the Mayor and City Council of Baltimore, or awarded to a qualified recipient by the Mayor and City Council, only for:

- operating support for, or capacity building of, qualified recipients;
- economic and physical improvements that revitalize the community;
- development of women-owned, minority-owned, and small businesses;
- development of recreational facilities, parks, or improvements to the natural environment;
- development and preservation of affordable and workplace housing;

- expansion of school programs and capital improvements to area school facilities;
- job training and workforce development; or
- counseling for housing and small business development.

The Comptroller must ensure that money distributed from the fund is used in the manner that best accomplishes the purposes of the fund. Additionally, the bill adds this fund to the list of special funds excluded from the requirement that interest earned be credited to the general fund.

Small Business Linked Deposit Program

Chapter 396 of 2006 established a Linked Deposit Program in the Department of Housing and Community Development (DHCD) to provide low-interest loans to minority-owned business enterprises. *Senate Bill 792/House Bill 571 (both passed)* establish a Linked Deposit Program for Small Businesses in DHCD to stimulate opportunities for small businesses to have access to credit by assisting these businesses in obtaining loans at lower-than-market interest rates.

DHCD must confirm with the Department of General Services (DGS) that each loan under the program is made to a qualified small business and establish procedures for notification by DGS if a business that has an outstanding loan under the program no longer qualifies as a small business. DHCD must also require small businesses and lenders to provide notice concerning final loan disposition.

The Treasurer may establish the program for investment of deposits in any financial institution that the Treasurer designates as a depository for State money. The Treasurer may make one or more interest-bearing deposits that are equal to the amount of the loan made by the financial institution, or equal to the total amount of two or more loans made by one or more financial institutions. The Treasurer may use up to \$50 million to make such deposits. In making the interest-bearing deposit, the Treasurer may accept a rate that is two percentage points below current market rates or an index selected by the Treasurer.

If DHCD provides notice that a business no longer qualifies as a small business, the Treasurer must reduce the amount of the interest-bearing deposit with the participating financial institution by the outstanding balance of the loan made under the bill to the business; however, a business that loses its small business qualification due to revenue or employee growth is not subject to such a reduction in its deposit. A loan assisted by a linked deposit is not a debt of the State or pledge of the credit of the State and the Treasurer and the State are not liable for payment of the principal or interest on such a loan.

The State Treasurer must meet with Maryland banking industry representatives and related stakeholders and identify impediments to participating in the procurement process for the selection of designated State depositories, including State agency and linked deposit programs, and identify possible solutions to these impediments. By December 31, 2012, the Treasurer must report to the General Assembly on the results of the meetings.

Housing and Community Development

Lead Paint

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within the Maryland Department of the Environment (MDE). Chapter 114 established a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements. In a decision filed October 24, 2011 (*Jackson, et al., v. Dackman Co. et al.*, No. 131, September Term 2008), the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights, which protects a right to a remedy for an injury and a right of access to the courts. Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of rental units built between 1950 and 1978 that voluntarily opted to comply will be impacted by the court's decision, as they will no longer have the liability protection previously afforded to them.

In response to the *Jackson* decision, the General Assembly considered a number of bills to address reducing the incidence of lead poisoning in compliance with the court's decision. **House Bill 472 (passed)** requires the Maryland Insurance Commissioner to convene a workgroup to evaluate and make recommendations relating to lead liability insurance coverage for owners of rental property built before 1978. The commissioner must report the findings and recommendations of the workgroup to the Governor and General Assembly by December 1, 2012.

House Bill 644 (passed) makes changes to the Reduction of Lead Risk in Housing Law to (1) beginning January 1, 2015, expand the application of the law to owners of residential rental property built between January 1, 1950 and December 31, 1977; (2) exempt properties constructed between January 1, 1950 and December 31, 1977 from a provision of law requiring 100% of an owner's properties to meet the risk reduction standard by February 24, 2006; (3) increase the annual registration fee for every rental dwelling in the State from \$15 to \$30; (4) alter the definition of "abatement" to include renovation, repair, and painting of a lead-containing substance in residential, public, or commercial properties built before 1978; (5) authorize MDE to adopt regulations related to abatements involving renovation, repair, and painting of lead-containing substances in specified properties; and (6) authorize evidence that the owner of an affected property was in compliance to be admitted as evidence that the owner exercised reasonable care with respect to lead hazards, or in the alternative that the property was not in compliance as evidence that the owner failed to exercise reasonable care. For a more detailed discussion of this issue, see the subpart "Environment" within Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

Disaster Relief Housing Program

Under the Maryland Emergency Management Agency Act, if the Governor finds that an emergency has developed or is impending due to any cause, the Governor must declare a state of

emergency by executive order or proclamation. The state of emergency continues until the Governor (1) finds that the threat or danger has passed or the emergency has been dealt with to the extent that emergency conditions no longer exist; and (2) terminates the state of emergency by executive order or proclamation. A state of emergency may not continue for longer than 30 days unless renewed by the Governor. The General Assembly by joint resolution may terminate a state of emergency at any time.

Chapter 66 of 2008 created the Disaster Relief Housing Program to provide financial assistance in a State or federally declared disaster area to rehabilitate or replace a primary residence damaged or destroyed by a natural disaster. The Department of Housing and Community Development (DHCD) and the Maryland Emergency Management Agency, however, found that the statute was too vague as to when the program may be authorized. In addressing this issue, *House Bill 271 (Ch. 117)* clarifies that the purpose of the program is to provide financial assistance to rehabilitate or replace primary residences in an area covered by a state of emergency declared under Article 14 of the Public Safety Article. The Act also authorizes DHCD to continue to provide financial assistance in an area covered by a state of emergency after the expiration of the state of emergency.

Sustainable Communities

Under Chapter 487 of 2010, the Sustainable Communities Act of 2010, there are multiple pathways and associated timeframes for an area to be designated as a sustainable community. Chapter 487 eliminated community legacy areas and community legacy plans, as well as designated neighborhoods under the community legacy program and neighborhood business development program, and replaced them with sustainable communities, sustainable community plans, and sustainable community designations.

Under the Sustainable Communities Act, a community legacy area approved by the Community Legacy Board prior to January 1, 2008, would be considered a sustainable community until June 1, 2012. A community legacy area approved by the board on or after January 1, 2008, would be considered a sustainable community until June 1, 2013. A designated neighborhood approved by the Secretary of Housing and Community Development prior to June 1, 2010, would be considered a sustainable community until June 1, 2012. By June 1, 2012, a sponsor would be required to file an application to redesignate any approved designated neighborhood as a sustainable community for projects to remain eligible for financial assistance from the various programs that support sustainable communities. There are approximately 150 sustainable communities in the State, including Base Realignment and Closure and Transit-Oriented Development districts that are automatically designated.

House Bill 1327 (passed) extends the date to December 31, 2013, through which a community legacy area or designated neighborhood designated as a sustainable community retains the designation and by which a sponsor may apply for redesignation of a designated neighborhood as a sustainable community with DHCD.

Maryland Building Performance Standards

Fire Safety

State law requires that a sprinkler system be installed in every dormitory, hotel, lodging or rooming house, or multifamily residential dwelling which either received a permit or was constructed after July 1, 1990, as well as every townhouse which either received a permit or was constructed after July 1, 1992. *Senate Bill 602/House Bill 366 (both passed)* expand this requirement by prohibiting, except under specified conditions, a local jurisdiction from adopting a local amendment to the Maryland Building Performance Standards if the amendment weakens the automatic fire sprinkler systems provisions for townhouses and one- and two-family dwellings. The bills do not apply to standards governing issuance of a building permit for a property not connected to an electrical utility or, until January 1, 2016, standards governing issuance of a building permit for a new one- or two-family dwelling constructed on (1) a lot subject to a valid unexpired public works utility agreement executed before March 1, 2011; or (2) a lot served by a specified existing water service line from a water main to the property line.

Hotel Master Control Devices

Senate Bill 869/House Bill 940 (both passed) require each hotel guest room in a newly constructed hotel to be equipped with a master control device that automatically turns off the power to all of the lighting fixtures in the guest room no more than 30 minutes after the room has been vacated. In addition to controlling power to the lighting fixtures, a master control device may control the heating, ventilation, or air conditioning default settings in hotel guest rooms 30 minutes after a room has been vacated by increasing or decreasing the set temperature by at least three degrees Fahrenheit when in air conditioning mode or heating mode, respectively. To accommodate the bills' changes, the measures authorize DHCD to adopt as part of Maryland Building Performance Standards a modification of a building code requirement that is more stringent than the requirement in the International Building Code.

Tax Credits

Neighborhood Conservation

House Bill 923 (Ch. 141) authorizes local governments to grant a property tax credit for owner-occupied residential real property that is purchased from July 1, 2012, through June 30, 2018, and is located in a neighborhood conservation area established or renewed by application to the DHCD based on criteria adopted by DHCD. DHCD must adopt regulations that establish application procedures for the designation of a neighborhood conservation area based on (1) the concentration of foreclosure activity; (2) the concentration of blighted or vacant properties; and (3) the location within a priority funding area, with preference given to specified sustainable communities. To qualify for the tax credit, an individual's principal residence may not have been located in a neighborhood conservation area unless the individual was not an owner of the property that was the individual's principal residence for the 12-month period

immediately prior to purchasing the property. In addition, the residential real property must have been purchased in conformance with the eligibility requirements for the credit.

By January 1, of the calendar year following the year in which the neighborhood conservation tax credit is initiated, and each succeeding year, local governments that grant the tax credit must submit a report to the Senate Budget and Taxation Committee and the House Ways and Means Committee that describes (1) the tax credit program; (2) the designated neighborhood conservation areas; (3) the number of residential properties within neighborhood conservation areas that qualify for the tax credit; and (4) the economic impact of the tax credits granted on the neighborhood conservation areas.

High-performance Buildings

Chapter 519 of 2004 authorized a county or municipality to provide, by law, a property tax credit against the local property tax for high-performance buildings, defined as a building that (1) achieves at least a silver rating according to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System as adopted by the Maryland Green Building Council; (2) achieves at least a comparable rating according to any other appropriate rating system; or (3) meets comparable green building guidelines or standards approved by the State. *House Bill 158 (passed)* expands the definition of "high-performance building" for purposes of the local option property tax credit for high-performance buildings to include a residential building that achieves at least a silver rating according to the International Code Council's 700 National Green Building Standards.

Department of Housing and Community Development Loans for Small Businesses

Senate Bill 792/House Bill 571 (both passed) establish a Linked Deposit Program for Small Businesses in the DHCD to stimulate opportunities for small businesses to have access to credit by assisting these businesses in obtaining loans at lower-than-market interest rates. The Department of General Services must confirm the small business status of a business at the point of the initial loan and notify DHCD if a business receiving a loan under the program no longer qualifies as a small business. For a more detailed discussion of this issue, see the subpart "Economic Development" within this Part H – Business and Economic Issues of this *90 Day Report*.

Senior Home Owners

House Bill 991 (passed) requires DHCD, with the assistance of the Department of Aging, the Department of Health and Mental Hygiene, and the Department of Human Resources, to create a task force to study the renovation and repair needs of senior homeowners. Specifically, the task force must study methods for (1) identifying, on a statewide basis, seniors of limited income who own and occupy single-family homes; (2) identifying census tracts with high concentrations of senior homeowners; (3) understanding the needs of low-income seniors regarding home repairs, safety, and energy savings; (4) addressing the impact of high

concentrations of low-income senior homeowners on neighborhood stability and preservation; (5) identifying existing and new public resources on the federal, State, and local levels to assist low-income and limited-income senior homeowners with home renovation and repairs; and (6) identifying the challenges for low-income and limited-income senior homeowners in accessing public resources. The task force is to report its finding to the Governor and the General Assembly on or before December 21, 2012.

Workers' Compensation

Injured Workers' Insurance Fund

Conversion to Chesapeake Employers' Insurance Company

The Injured Workers' Insurance Fund (IWIF) is a statutorily created independent State entity that is required to serve as a competitive insurer in (and only in) the marketplace for workers' compensation insurance in Maryland. IWIF must guarantee the availability of workers' compensation insurance in the State and, as the workers' compensation insurer of last resort, provides workers' compensation to firms that are unable to procure insurance in the private market. IWIF also operates as a third-party administrator for the State (the State is self-insured).

Senate Bill 745 (passed), an emergency bill, converts IWIF from an independent State entity into a statutorily created, private, nonprofit, nonstock workers' compensation insurer to be named the Chesapeake Employers' Insurance Company. The company is required, before October 1, 2013, to take all steps necessary to become a private, nonprofit, nonstock corporation that is subject to – and has the powers, privileges, and immunities granted by – provisions of law applicable to other insurers authorized to write workers' compensation insurance in the State. Beginning on October 1, 2013, the company must serve as the workers' compensation insurer of last resort in the State.

The company is generally regulated in the same manner as other authorized property and casualty insurers and, like other insurers in the State (including IWIF), is a member of the Property and Casualty Insurance Guaranty Corporation. However, the company must continue to set actuarially sound rates in the same manner in which IWIF sets rates, subject to review by the Insurance Commissioner. The company may not be sold, dissolved, or converted into a mutual or stock company and is not, for any purpose, a department, unit, agency, or instrumentality of the State.

All debts, claims, obligations, and liabilities of the company are not the debts, claims, obligations of the State. Further, money of the company is not part of the general fund, and the State may not budget for or provide general fund appropriations to the company. Additionally, the company may not cancel or refuse to renew or issue a policy except for nonpayment of a premium, failure to provide payroll information, or failure to cooperate in a payroll audit. The company is subject to requirements, currently applicable to IWIF, related to the use of minority business enterprises for specified brokerage and investment management services.

Correspondingly, the company must submit, to the Governor's Office of Minority Affairs, specified reports that are currently submitted by IWIF.

The bill requires IWIF to remain in existence for as long as it continues to have employees. Employees of the company are not employees of the State. On and after October 1, 2013, IWIF may not hire new employees. Employees of IWIF may continue as IWIF employees or elect to be employees of the company. Employees of IWIF may be assigned to perform functions of the company under a contract between IWIF and the company. Before October 1, 2013, IWIF must continue to serve as the workers' compensation insurer of last resort for workers' compensation insurance and as a competitive workers' compensation insurer under the same terms and conditions as IWIF serves under current law. On and after October 1, 2013, IWIF may not issue new policies or otherwise engage in the business of insurance, although IWIF may continue to serve as the third-party administrator for the State under a contract with the State. The board for IWIF is the board for the company.

The Maryland Insurance Administration (MIA) must, in consultation with IWIF and the National Council on Compensation Insurance (NCCI), study whether the company should be subject to specified ratemaking requirements – including the requirement for NCCI membership – that apply to other workers' compensation insurers. MIA must report its findings and recommendations to specified committees of the General Assembly by October 1, 2012.

MIA must also contract with an independent consulting firm to conduct a study to determine the fair value of any financial contribution made by the State to IWIF and any financial benefit received by IWIF from the State. In conducting the study, the firm must consult with IWIF, the Insurance Commissioner, and the Secretary of Budget and Management. The study shall consider, under certain circumstance, the fair value of start-up funds, IWIF real estate or other assets, and property, transfer, sales, excise, and premium taxes not paid by IWIF. IWIF is responsible for the cost of the study. MIA is required to report the firm's findings and conclusions to IWIF, the Governor, and specified committees of the General Assembly by October 1, 2012. If the study concludes that the fair value of IWIF is \$50 million or more, (1) MIA must contract with consultants to conduct a comprehensive assessment of the long-term effect of transferring the fair value to the State on the adequacy of IWIF surplus; and (2) the company owes to the general fund a debt in an amount equal to the fair value less \$50 million (the amount to be transferred from IWIF to the general fund under the Budget Reconciliation and Financing Act (BRFA) of 2012), less the cost of the study and the assessment. The company must, depending on the adequacy of its surplus, pay the debt in installments beginning in fiscal 2014 or over an alternative period of time as agreed by IWIF and the Secretary of Budget and Management. An installment shall be suspended or delayed in any year in which the company's risk-based capital ratio is less than 100% of its authorized control level. If this ratio is over the threshold, MIA may still suspend or delay an installment based on the adequacy of company's surplus or the company's ability to meet its financial obligations. IWIF is responsible to pay for the costs of retirement and retiree health benefits.

Cancellation for Nonpayment of Premium

Senate Bill 30/House Bill 65 (Chs. 10 and 11) modify the manner in which IWIF may cancel a policy for nonpayment of a premium. Specifically, the Acts align IWIF's cancellation procedures with those of private workers' compensation insurers by allowing IWIF to cancel under the same conditions and circumstances. IWIF is authorized to pursue collection of the debt of any policyholder whose insurance is cancelled for nonpayment of a premium, rather than being required to refer those cases to the Attorney General.

Insurers of Last Resort Programs, Including IWIF

House Bill 1017 (passed) is an emergency bill that establishes the Task Force to Study Maryland Insurance of Last Resort Programs. The task force consists of members of the General Assembly, representatives of State entities that provide insurance of last resort, representatives of the private insurance industries, and others. The bill requires the task force to study and make recommendations regarding various issues related to the State's insurance of last resort programs. The affected State entities are IWIF, the Maryland Automobile Insurance Fund, the Maryland Health Insurance Plan, and the Joint Insurance Association. Among those issues are:

- potential benefits to the State from the affiliation of one or more of the State-created insurers of last resort;
- the extent to which the affiliation would support or impair each entity in performing its statutory duties;
- the extent to which an affiliation would affect the State's ability to regulate the entities in terms of solvency, rates, and market conduct; and
- the extent to which an affiliation would affect the financial condition of any of the entities and whether safeguards are necessary to protect policyholders and other stakeholders.

The task force, is required to issue its preliminary findings by December 1, 2012, with a final report of its findings and recommendations (including any proposed legislation) required by December 1, 2013. For further discussion of this bill, see subpart "Insurance (Other than Health Insurance)" within this Part of this *90 Day Report*.

Subsequent Injury Fund and Uninsured Employers' Fund

The Workers' Compensation Commission (WCC) is required to impose a 6.5% assessment, payable to the Subsequent Injury Fund (SIF) on each amount payable by an employer or its insurer – or by the Property and Casualty Guaranty Corporation on behalf of an insolvent insurer – under a settlement agreement approved by WCC. Additionally, WCC is required to impose a 1% assessment, payable to the Uninsured Employers' Fund (UEF) on each amount payable by the employer or its insurer under a settlement agreement approved by WCC.

Recently, the Center for Medicare and Medicaid began to require significantly higher Medicare set-asides in workers' compensation settlement agreements in order to pay for future workers' compensation medical benefits.

Senate Bill 174/House Bill 114 (Chs. 40 and 41) exclude from those assessments the amount of medical benefits specified in a formal set-aside allocation that is part of an approved settlement agreement if (1) the amount of the medical benefits exceed \$50,000 and the payment of the benefits by the employer or its insurer is made directly to an authorized insurer that provides periodic payments to the covered employee pursuant to a single premium authority; or (2) the amount of medical benefits is in any amount and the payment of medical benefits by the employer or its insurer is to an independent third-party administrator that controls and pays the medical services in accordance with the formal set-aside allocation, provided there is no reversionary interest to the covered employee or the covered employee's beneficiaries.

House Bill 293 (Ch. 119) specifies that the director of the Uninsured Employers' Fund (UEF), rather than the UEF board is the appointing authority for all staff and has immediate supervision and direction over administration of UEF. The bill also authorizes the director to employ staff in accordance with the State budget. The UEF board is required to review the administration of the UEF fund by the director. An employee is authorized to appeal to the board a disciplinary action taken by the director.

Benefits

Workers' compensation dependency death benefits were revised last session. Death benefits are generally paid at the rate of two-thirds of the deceased covered employee's average weekly wage. As a correction to the revised provisions, *House Bill 421 (passed)* alters the calculation of workers' compensation benefits for a dependent of a deceased covered employee who died due to an occupational disease by calculating the average weekly wage by using the date of the last injurious exposure of the covered employee to the hazards of the occupational disease, rather than from the date of disablement from the occupational disease.

House Bill 835 (passed) specifies that police officers employed by the Washington Metropolitan Area Transit Authority (WMATA), like other police officers, are eligible for enhanced workers' compensation benefits for permanent partial disabilities. Specifically, WMATA is required to compensate WMATA police officers who are awarded claims of fewer than 75 weeks for permanent partial disabilities at the higher rate (two-thirds of the officer's average weekly wage, not to exceed one-third of the State average weekly wage) that is established for claims of 75 to 250 weeks.

Whether a member of a volunteer fire company is a covered employee under workers' compensation law may depend on whether the member was on duty when the injury occurred. *Senate Bill 431/House Bill 1085 (both passed)* alter the definition of "on duty" to include the performance of a duty assigned to (1) a member of a fire company appointed as a deputy sheriff under certain provisions of law; or (2) an individual appointed to serve as a member of the fire police in Washington County under a certain provision of law. The bills also expand the

definition of “volunteer company” to include a volunteer fire police unit. In addition, a member of a volunteer fire company who is a covered employee may not be considered a paid covered employee for receiving, as a membership benefit, a yearly stipend for expenses of up to \$5,200 to off-set out-of-pocket expenses. Also, such a stipend may not be used when determining the average weekly wage of an injured volunteer.

Workers’ compensation law establishes a presumption of compensable occupational diseases for certain public employees who are exposed to unusual hazards in the course of their employment. An individual is presumed to have a compensable occupational disease if the individual (1) has leukemia or pancreatic, prostate, rectal, or throat cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty; (2) has completed at least five years of service as a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member (or in a combination of those jobs) in the department where the individual currently serves; (3) is unable to perform the normal duties of a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently serves; and (4) in the case of a volunteer, has met a suitable standard of physical examination before becoming a volunteer. Effective June 1, 2013, *House Bill 1101 (passed)* expands the list of diseases to include multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, and breast cancer. Pancreatic cancer is no longer considered under the presumption statute. The bill also increases the minimum service requirement to 10 years

The Department of Legislative Services is required to contract with a medical expert affiliated with an academic research institution or organization to conduct a study of all types of cancers that firefighters, firefighting instructors, members of the Office of the State Fire Marshal, rescue squad members, and advanced life support unit members, as specified under the workers’ compensation cancer presumption law, may contract in the line of duty, as compared to the general population. The purpose of the study is to provide the General Assembly guidance as to the types of cancers firefighters and others are likely to contract in the line of duty in order for the General Assembly to determine which types of cancers should be included in the workers’ compensation cancer presumption law. The bill requires the results of the study be provided to the Department of Legislative Services on or before December 1, 2012 and then forwarded to the Senate Finance Committee and the House Economic Matters Committee.

Also, the Maryland Association of Counties, in consultation with the Professional Firefighters of Maryland, is required to determine the appropriate statistics to maintain relating to firefighters and others who have contracted cancer in order to evaluate the impact of the workers’ compensation cancer presumption law.

Coverage

Senate Bill 388/House Bill 1175 (both passed) authorize the Board of Education in Howard County to waive the requirement that a participating employer reimburse the county for the cost of workers’ compensation insurance coverage provided for students placed in unpaid work-based learning experiences. An unpaid work-based learning experience is a program that

provides a student with structured employer-supervised learning that occurs in the workplace, links with classroom instruction, and is coordinated by a county board of education. Under current law, an employer must secure the workers' compensation coverage for a student who is in a program at the employer's workplace, unless the county elects to provide the coverage. If the county provides the coverage, the employer is required to reimburse the county the cost of the premium, up to \$250.

Unemployment Insurance

Unemployment Insurance (UI) provides temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who are able to work, available to work, and actively seeking work. An individual performing services for a business in return for compensation in the form of wages is likely covered for UI purposes. Unemployment benefits are funded through Maryland employers' State UI taxes. All private business employers and nonprofit employers employing one or more persons, at any time, are subject to the Maryland UI Law. An employer's tax rate is based on the employer's unemployment history and ranges within a certain percentage of the total taxable wages of the employer's employees. The taxes are deposited in the Unemployment Insurance Trust Fund and can be used only to pay benefits to eligible unemployed individuals.

Both the federal and state governments have responsibilities for unemployment compensation. The U.S. Department of Labor oversees the UI system, while each state has its own program that is administered pursuant to state law by state employees. Each state has laws that prescribe the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

Under State law, an individual who is otherwise eligible to receive UI benefits is disqualified from receiving benefits and is subject to a disqualification penalty if the Department of Labor, Licensing, and Regulation (DLLR) find that the unemployment results from voluntarily leaving work without good cause. An individual who leaves work for good cause is eligible to receive UI benefits without a disqualification penalty. DLLR is authorized to determine whether an individual who voluntarily leaves work left for good cause only in specified situations. *Senate Bill 291 (Ch. 53)* authorizes DLLR to find that an individual voluntarily left employment for good cause if the cause is directly attributable to the individual or the individual's spouse, minor child, or parent being a victim of domestic violence. The individual must (1) reasonably believe that the individual's continued employment would jeopardize the safety of the individual or the individual's spouse, minor child, or parent; and (2) provide specified documentation to DLLR. Documentation may include only an active or recently issued temporary protective order or any other court order or police record that substantiates the domestic violence to DLLR. DLLR may notify the employer in general terms that the individual has left employment as a result of domestic violence. Information relating to the domestic violence that is received by DLLR is confidential and not subject to disclosure, except under certain circumstances. Also, DLLR may not charge the benefits payable to a

claimant against the rating record of an employer. The Act applies to new claims for UI benefits effective on or after October 1, 2012.

Labor and Industry

Workplace Fraud Act – Revisions

Chapter 188 of 2009 created the Workplace Fraud Act for the purpose of establishing a presumption that work performed by an individual paid by an employer created an employer-employee relationship, subject to specified exemptions. The Act prohibited construction companies and landscaping businesses from failing to properly classify an individual as an employee and established investigation procedures and penalties for noncompliance.

An employer misclassifies an employee when an employer-employee relationship exists, but the employer did not classify the individual as an employee. An employer-employee relationship is presumed to exist unless an employer could demonstrate that a worker was an exempt person or independent contractor, as defined in statute. The Act also distinguished between an employer who *improperly* misclassified an employee and an employer who *knowingly* misclassified an employee.

Investigation of a misclassification complaint could be initiated by the Commissioner of Labor and Industry, on receipt of a written complaint, or on referral from another unit of State government. The Act authorized the commissioner to enter a place of business or work site to observe work being performed, interview employees and contractors, and review records as part of the investigation. In September 2010, the Workplace Fraud Unit under the Commissioner of Labor and Industry began conducting audits to determine if businesses were misclassifying employees. The unit initiated audits by sending letters that requested different types of records that a business was supposed to have maintained for a period of time for all individuals working for the company. Some business owners reported that the unit's enforcement activities caused administrative and financial challenges and left cases open or unresolved for extended periods of time.

Senate Bill 272/House Bill 1364 (both passed) make various changes to the Workplace Fraud Law with the purpose of enhancing employer compliance with the law. The bills provide an exemption from the presumption mentioned above, if an employer produces several specified documents attesting to the status of employees, including (1) a contract signed by the employer and the business entity; (2) an affidavit signed by the business entity indicating that it is an independent contractor; (3) a certificate of status of the business entity by the State Department of Assessments and Taxation; and (4) proof that the business entity holds all required occupation licenses. The employer is required to provide to each individual classified as an independent contractor or exempt person notice describing the implications of being classified as an independent contractor. Otherwise, the bills leave intact the law's provisions regarding the

presumption and provisions concerning individuals exempt (generally sole proprietors) from the presumption.

The bills also alter various provisions relating to the audit process and enforcement, to provide employers with a more definitive timeframe and greater flexibility to comply with information requests from the unit. The bills specify that copies of records may satisfy the requirement to produce records, and an employer would now receive up to 30 days, rather than 15 days, to comply with a request to copy or inspect records, unless the commissioner and the employer agree to an extension of time. Within 90 days of receiving all requested records, the commissioner must either issue a citation or close the investigation. If the employer requests a hearing on the citation, the hearing must be held within 90 days of the request, unless the employer waives that right. Lastly, for the purpose of a public body withholding funds, the commissioner may only issue a citation for a *knowing* violation of the law if the employer is engaged in a public work project.

Electronic Account Privacy Protection

In 2010 and 2011, the Department of Public Safety and Correctional Services asked prospective employees for their user names and passwords to social media websites as part of the department's background investigation process. The practice was discontinued after an employee in the recertification process to return to work with the agency claimed that the process was a violation of his personal privacy.

Senate Bill 433/House Bill 964 (both passed) prohibit an employer, including the State and local governments, from requesting or requiring an applicant for employment or an employee, to disclose a user name, password, or other means of accessing a personal email account or Internet service. The bills prohibit an employer from penalizing or threatening to penalize an employee or applicant for refusing to disclose this information.

The bills impose two limitations and two exceptions regarding the privacy protections. First, an employer may require an employee to disclose a user name, password, or other means for accessing nonpersonal email accounts or Internet services that provide access to the employer's internal computer or information systems. Second, unless authorized by the employer, an employee may not download an employer's proprietary or financial information to the employee's personal website or other Internet site or account. An employer, however, may conduct an investigation to ensure compliance with applicable securities or financial law or regulations if the employer receives information about the use of a personal account or website for business purposes. In addition, an employer may investigate an employee's actions if the employer receives information about the unauthorized downloading of proprietary information to a personal website or similar Internet site or account.

Alcoholic Beverages

Statewide Bills

Manufacturers' Licenses

In 2010, the General Assembly greatly expanded the ability of wineries in the State to sell their product to visitors to their facilities. Among its provisions, the 2010 legislation allowed wineries to hold wine tastings and promotional events and to sell or serve its visitors a wide variety of food items.

Using the 2010 winery legislation as its model, the General Assembly this session granted similar authority to farms that grow grain used in the manufacture of beer. Distilleries and rectifying facilities (facilities that color, flavor, or otherwise process liquor) also were granted expanded authority. Neither distilleries nor rectifying facilities, however, were granted the authority to sell or serve food.

Senate Bill 579/House Bill 1126 (both passed) establish a new Class 8 Farm Brewery manufacturer's license in Maryland with an annual license fee of \$200. A holder of this license is authorized to sell and deliver beer manufactured in a facility on the licensed farm or in a facility other than one on the licensed farm to (1) a wholesaler licensed to sell and deliver beer in the State; or (2) a person in another state authorized to acquire beer. The beer to be sold and delivered must be manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed farm.

A Class 8 farm brewery may be located only at the place stated on the license. A licensee may (1) sell beer produced by the licensee for consumption on the licensed farm; (2) provide samples of beer, in an amount not exceeding six fluid ounces per brand that the licensee produces to a consumer at no charge or for a fee; and (3) sell or serve bread and other baked goods, chili, chocolate, crackers, cured meat, fruits (whole and cut), salads and vegetables (whole and cut), hard and soft cheese (whole and cut), ice cream, jelly, jam, vinegar, pizza, prepackaged sandwiches and other prepackaged foods ready to be eaten, soup, and condiments.

The licensee may operate seven days a week, except in Garrett County, where a licensee may open on Sundays during specified hours only in an election district where it has been approved by voters in referendum.

The bills allow the license holder to brew, bottle, or contract for not more than 15,000 barrels of beer each calendar year. A licensee may sponsor a multi-brewery activity at the licensed farm that includes the products of other Maryland breweries.

In addition, a licensee may conduct up to 12 promotional events a year, at which the licensee may provide samples of not more than six fluid ounces per brand to consumers and sell beer produced by the licensee to persons who participate in the event.

House Bill 717 (passed) expands the privileges of a distillery license so that the license holder may conduct guided tours of the licensed premises; serve not more than three samples (not more than one-half ounce from a single product) of products manufactured at the licensed premises; and sell up to three 750-milliliter bottles of products manufactured on the licensed premises for consumption off the licensed premises, and related merchandise, to persons of legal drinking age who participated in a guided tour of the licensed premises. If the distiller manufactures more than 27,500 gallons of products annually, such sales of the distilled products are not allowed.

Senate Bill 1018/House Bill 1316 (both passed) expand the privileges of a rectifying license so that the license holder may conduct guided tours of the licensed premises, serve not more than three samples (not more than one-half ounce from a single product) of products manufactured at the licensed premises, and sell products manufactured on the licensed premises for consumption off or on the licensed premises during specified hours.

House Bill 595 (passed) authorizes the holder of a specified manufacturer's license (distillery, rectifying, winery, limited winery, or brewery) to hold additional licenses of the same or of a different class for the same or additional premises.

Criminal History Records Checks

According to the Comptroller's *Alcohol and Tobacco Tax Annual Report* for fiscal 2011, the State has 7,011 active retail alcoholic beverages licensees. Generally, local alcoholic beverages licensing boards may obtain criminal records of any alcoholic beverages license applicant from the State's Criminal Justice Information System's Central Repository and from other law enforcement agencies. Some boards may require an applicant to be fingerprinted and forward these fingerprints to the Central Repository for transmittal to the Federal Bureau of Investigation for a national criminal records check, and some boards may set fees to cover the cost of obtaining fingerprints and State and national criminal records.

When the 2012 session began, several jurisdictions sought statutory authority to have follow-up criminal history records checks performed by the Central Repository. In a statewide action, **House Bill 110 (Ch. 100)** requires the Central Repository to provide local alcoholic beverages licensing boards with a revised printed criminal record statement of an alcoholic beverages license applicant or license holder if information is reported to the Central Repository after the initial criminal history records check is completed. Additionally, the Central Repository is required to stop providing a local licensing board with revised statements if the board informs the Central Repository that an individual is no longer an alcoholic beverages license applicant or license holder.

The Act details standard procedures for any local licensing board to obtain State and national criminal history records checks from the Central Repository, including fingerprinting; application processes and fees; and the storage, dissemination, and disposal of reports provided by the Central Repository.

Restaurants, Clubs, and Hotels – “Corkage”

With limited exceptions, it is unlawful in Maryland to consume on a licensee’s premises alcoholic beverages that were not purchased from the license holder. The practice commonly referred to as “corkage,” however, allows customers to bring their own bottles of wine to drink with a meal at a restaurant. Although local laws may be more restrictive, a survey by Marylanders for Better Beer and Wine Laws indicates that 26 states, including Virginia and the District of Columbia, allow individuals to bring and consume their own wine at a restaurant with an alcoholic beverages license in at least some of their local jurisdictions. Restaurants that allow corkage are typically allowed to charge a corkage fee, which covers service, the cost of the glass (breakage and/or cleaning), and the lost revenue from not selling the customer a bottle of wine.

Senate Bill 755/House Bill 228 (Chs. 86 and 87) allow an individual in a restaurant, club, or hotel with a Class B or Class C alcoholic beverages license to consume wine not purchased from or provided by the restaurant or facility if (1) the wine is consumed with a meal; (2) the individual receives the approval of the license holder; (3) the wine is not available for sale on the license holder’s wine list; and (4) the license holder obtains a specified permit from the local licensing board. The license holder is allowed to charge a fee for the privilege of consuming the wine, on which the sales tax must be imposed. The license holder must dispose of any wine that remains after the meal is finished. Any unconsumed wine may be removed from the premises by the individual if the bottle is corked or capped.

Enforcement by the Comptroller

Senate Bill 1059/House Bill 1432 (both passed) require the Comptroller to enforce provisions of law applicable to the purchase or importation of alcoholic beverages by a department of liquor control or a liquor control board as well as the sale of alcoholic beverages to a wholesaler or retail dealer by a department of liquor control or a liquor control board. The bills take effect June 1, 2012.

Adult Entertainment

Under provisions of the Alcoholic Beverages Article relating to nudity and sexual displays, restrictions are placed on certain types of conduct – including completely nude entertainment, certain types of sexual touching, and certain actual or simulated sexual displays – in establishments holding alcoholic beverages licenses in specified Maryland counties, including Prince George’s County. In the recently decided U.S. District Court for the District of Maryland case of *Legend Night Club v. Prince George’s County Board of License Commissioners*, Civ.A.No.MJG-05-2138 (D.Md.), originally filed in 2005, the plaintiff challenged the validity of the prohibitions on first amendment grounds. The plaintiff prevailed and the U.S. District Court held the provisions to be unconstitutional. The Fourth Circuit has affirmed that ruling which limited its application to Prince George’s County. The State was ordered to pay \$90,000 in attorneys’ fees to the plaintiff’s lawyer.

In order to preclude future challenges, including potential claims for attorneys’ fees, *House Bill 1050 (passed)* specifies that prohibitions against nudity and sexual displays in

specified jurisdictions applicable to alcoholic beverages licensees allowing entertainment do not apply to licensees who are operators of theaters, art centers, or similar establishments that present performances expressing matters of serious literary, artistic, scientific, or political value.

Local Laws

Multiple Jurisdictions – Additional Licenses

Senate Bill 627 (passed) alters provisions of law relating to the issuance of additional Class B and/or Class BLX (where applicable) alcoholic beverages licenses in Anne Arundel, Baltimore, Calvert, Charles, Howard, Montgomery, and Prince George’s counties and Baltimore City. See each individual jurisdiction’s respective section below for additional details related to this bill.

Growlers

No retail dealer, or agent or employee of such retail dealer of alcoholic beverages in Maryland may refill any container of alcoholic beverages with any substance whatsoever after the container has once been emptied of its original contents.

Senate Bill 874/House Bill 401 (Chs. 93 and 92) and *House Bill 1047 (passed)* allow a refillable container license in Baltimore City and Howard County, respectively. The license entitles the holder to sell draft beer for consumption off the licensed premises in refillable containers (called “growlers”). Interest in refillable container laws was expressed by other jurisdictions during the 2012 session, and may result in additional bills from those counties who are interested in future years. See the Baltimore City and Howard County sections below for additional details.

Anne Arundel County

Additional Licenses: *Senate Bill 627 (passed)* increases, from 6 to 10, the maximum number of restaurant alcoholic beverages licenses a licensee may hold in Anne Arundel County subject to additional provisions. The bill specifies that the potential seventh, eighth, ninth, and tenth licenses added by this provision must all be a Class BLX (deluxe restaurant) (on sale) beer, wine, and liquor license. The bill authorizes these additional licenses to be located anywhere within the county, and repeals a previous provision that limited the location of the fifth alcoholic beverages license, and any additional licenses sought beyond the fifth, to specific community revitalization zones as defined and adopted by the Anne Arundel County Council.

Senate Bill 1024 (passed) increases, from 30 to 60, the maximum number of additional Class H alcoholic beverages licenses authorized in Anne Arundel County.

House Bill 329 (passed) aligns the authorized hours for sale and consumption of alcoholic beverages under an entertainment facility (EF) on-sale license or an entertainment concessionaire (EC) on-sale license in Anne Arundel County with authorized hours of operation for a video lottery terminal (VLT) facility. The bill prohibits the holder of an EF or EC license

or an employee from knowingly allowing a person to consume alcoholic beverages on the licensed premises of the VLT facility except during the VLT facility's hours of operation.

Baltimore City

Additional Licenses: *Senate Bill 627 (passed)* generally increases, from three to five, the maximum number of Class B (on-sale – hotels and restaurants) beer, wine, and liquor licenses issued to any person, or for the use of any partnership, corporation, unincorporated association, or limited liability company in Baltimore City or Baltimore County. While current provisions of law authorize additional licenses beyond this new maximum of five licenses in certain circumstances (e.g., a licensee with a location within the Liberty Road Commercial Revitalization District currently has the potential to qualify for up to seven Class B (on-sale – hotels and restaurants) beer, wine, and liquor licenses), the bill does not serve to further expand these additional maximums.

Senate Bill 328/House Bill 13 (both passed) prohibit a landlord from renting out a premises in the 45th Legislative District in Baltimore City for the sale of alcoholic beverages if the landlord knows, or has reason to know, that the use violates a certain minimum distance requirement between a licensed premises and a place of worship or school. A violator is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$1,000. The bills do not apply to premises rented out for the sale of alcoholic beverages before the effective date of the bills.

In Baltimore City, with certain exceptions, a new license, or removal of an existing license, to sell alcoholic beverages may not be granted in any building located within 300 feet of the nearest point of the buildings of a church or school, although an existing license within such proximity may be renewed or extended for the same building. *Senate Bill 327/House Bill 12 (Chs. 59 and 60)* prohibit the issuance of a new Class A license for the sale of alcoholic beverages in a building located in the 45th Legislative District in Baltimore City that is within 500 feet of a place of worship or school. The Acts' prohibitions are applied only prospectively and do not affect any Class A license issued before July 1, 2012.

Senate Bill 984 (passed) authorizes the Board of Liquor License Commissioners to issue a Class BWLT (on-premises) beer, wine, and liquor tasting license within precinct 48 of Ward 27 of the 43rd Legislative District of Baltimore City.

Senate Bill 354 (passed) establishes a Class BWLT beer, wine, and liquor tasting (on-premises) license in specified legislative districts in Baltimore City to allow holders of such a license to hold tastings daily throughout the year. The bill sets the annual license fee at \$750, which is in addition to the required Class A annual license fee, and specifies the legislative districts as (1) Ward 27, precincts 42 and 44 of the 41st Legislative District; (2) Ward 27, precinct 41 of the 43rd Legislative District; and (3) Ward 11, precinct 5 of the 44th Legislative District. The bill also authorizes the transfer of one existing Class B-D-7 license from a certain location to another location in Baltimore City.

Growlers: *Senate Bill 874/House Bill 401 (Chs. 92 and 93)* authorize the Board of License Commissioners to issue a refillable container license to a holder of any class of alcoholic beverages license issued by the board, except a Class C license or a Class M-G (municipal golf course) license. Under these bills, a refillable container license entitles the holder to sell draft beer for consumption off the licensed premises in a refillable container with a capacity of not less than 32 ounces and not more than 128 ounces. The refillable container must be sealable, branded with an identifying mark of the license holder, bear the federal health warning statement, display instructions for cleaning the container, bear a label stating that cleaning the container is the responsibility of the consumer, and that the contents of the container are perishable and should be refrigerated immediately and consumed within 48 hours after purchase.

A refillable container license applicant must complete the form that the board provides and pay an annual license fee of \$50 if the applicant already has an off-premises sale privilege or \$500 if the applicant does not already have that privilege. The bills also require the sale of refillable containers to end at midnight, and authorizes license holders to refill only those containers that were purchased and branded by the license holder. The board is required to adopt implementary regulations.

For Baltimore City, there is no authorized alcoholic beverages license specific to a VLT facility or to a concessionaire to sell beer, wine, or liquor for consumption within a VLT facility. In anticipation of the opening of a VLT facility in Baltimore City, *Senate Bill 883/House Bill 962 (Chs. 94 and 95)* establish a Class BWL-VLF (Video Lottery Facility) and a Class BWL-VLC (Video Lottery Concessionaire) beer, wine, and liquor license in Baltimore City. The BWL-VLF and BWL-VLC licenses authorize the sale of beer, wine, and liquor for consumption anywhere within the VLT facility or on the grounds controlled by the BWL-VLF licensee.

The Class BWL-VLF and BWL-VLC licenses authorize (1) music and dancing; and (2) the sale and providing of beer, wine, and liquor for consumption throughout the VLT facility and grounds controlled by the BWL-VLF licensee during the days and hours that the VLT facility is open for business. The annual license fee is \$15,000 for a BWL-VLF license and \$5,000 for a BWL-VLC license.

Since 1992, the Maryland Zoo in Baltimore, located in Druid Hill Park, has been State-owned and currently holds a beer and light wine, on-sale only, license. *Senate Bill 975/House Bill 1319 (both passed)* authorize the Board of Liquor License Commissioners to issue a special Class BWL-MZ license for use at the zoo in exchange for the alcoholic beverages license currently held.

If an application for an alcoholic beverages license in Maryland is made for a limited liability company, the license must be applied for by and be issued to three of the authorized persons of that limited liability company, as individuals, for the use of the limited liability company, at least one of whom must be a registered voter and taxpayer of the county or city, or the State when the application is filed with the Comptroller and must also have resided there at least two years before the application. *Senate Bill 534/House Bill 232 (both passed)* repeal the

requirement that an authorized person of a limited liability company who holds an alcoholic beverages license in Baltimore City for the use of the limited liability company be a registered voter in Baltimore City.

Senate Bill 51 (Ch. 13), an emergency enactment, alters a prohibition against the Board of Liquor License Commissioners issuing an alcoholic beverages license or transferring a license into specified locations in Baltimore City by authorizing the board to allow a transfer of one Class D license into the residential planned unit development for Silo Point, located in Ward 24, precinct 5, which was enacted by a specified city ordinance on June 23, 2004. This license transfer may only occur if the license holder operates the establishment in accordance with that ordinance.

Senate Bill 377 (passed) prohibits an alcoholic beverages licensee in Baltimore City from advertising falsely in the conduct of any business. The Board of License Commissioners is required to enforce the prohibition. A violator is guilty of a misdemeanor and subject to a maximum fine of \$1,000. Under the bill, to “advertise falsely” means to use any advertisement that is untrue, deceptive, or misleading in a material respect. It includes the use and placement of an advertisement by a person on the Internet that contains an affirmative representation that an alcoholic beverages licensee may offer for sale a container of alcoholic beverages that the licensee is not authorized to sell.

House Bill 392 (passed) specifies that, in Baltimore City, if a community association and an applicant for the issuance or renewal of a Class B or Class D alcoholic beverages license have entered into a memorandum of understanding (MOU) that expressly acknowledges the authority of the Board of Liquor License Commissioners, the board may make the issuance or renewal of the license conditional on the substantial compliance of the applicant with the MOU. The existence of such an MOU does not affect any requirement of any individuals to file a protest under specified current provisions of the Alcoholic Beverages Article.

Lastly, in Maryland, unless otherwise specified in statute, the hours during which the privileges conferred by a Class A beer and light wine license or a Class A beer, wine, and liquor license may be exercised are from 6 a.m. to midnight on every day except Sunday. In the Park Heights Redevelopment Area that is specified in the Park Heights Master Plan adopted in 2006, the hours of sale for either license type begin at 9 a.m. each day. ***Senate Bill 363/House Bill 263 (both failed)*** would have established 10 p.m. as the time at which alcoholic beverages sales must stop for establishments with a Class A beer and light wine license or a Class A beer, wine, and liquor license in the Park Heights Redevelopment Area. There are currently six Class A beer, wine, and liquor and one Class A beer and light wine licensed package stores in the Park Heights Redevelopment Area.

Baltimore County

Additional Licenses: Senate Bill 627 (passed) generally increases, from three to five, the maximum number of Class B (on-sale – hotels and restaurants) beer, wine, and liquor licenses issued to any person, or for the use of any partnership, corporation, unincorporated association, or limited liability company in Baltimore City or Baltimore County. While current

provisions of law authorize additional licenses beyond this new maximum of five licenses in certain circumstances (e.g., a licensee with a location within the Liberty Road Commercial Revitalization District currently has the potential to qualify for up to seven Class B (on-sale – hotels and restaurants) beer, wine, and liquor licenses), the bill does not serve to further expand these additional maximums.

Senate Bill 654/House Bill 737 (both passed), emergency bills, alter provisions of law relating to the transfer and issuance of alcoholic beverages licenses within Baltimore County.

Transfers of Licenses: The bills authorize the Board of Liquor License Commissioners, effective May 1, 2012, through April 30, 2017, to approve the transfer of no more than 25 Class B or Class D alcoholic beverages licenses in existence in Election District 15 on May 1, 2012, from the district to other election districts within the county. No more than two licenses can be transferred into any single election district each year. If, during that period, fewer than five Class B or Class D licenses transfer from Election District 15 to other election districts within any one year from May 1 through April 30, the board must create and issue a new Class B SB beer and wine license, with an annual license fee of \$5,000 and subject to additional requirements, to achieve a requirement of not fewer than five new licenses each year.

In any year, if the board approves the transfer of more Class B or Class D licenses than are needed to meet the minimum total required for that year, the excess will be counted against the minimum total required for the following year.

Conversion of Class D Licenses: The bills require the board to convert a Class D license that is transferred from Election District 15 to a Class B license in the election district to which it is transferred. The subsequent transfer or conversion of the transferred Class B license to another class of license is prohibited. The board may not transfer from the licensed premises or convert to another class of license any new license issued by the board based on an increase in population under the rule of the board limiting the total number of licenses available by population. Additionally, a license that has been revoked and reissued by the board cannot be transferred.

Alcoholic Beverages License Applications on Behalf of Partnerships: The bills require that if an application for an alcoholic beverages license in Baltimore County is made for a partnership of two or more individuals, at least one must be a registered voter of any county of the State, or of the City of Baltimore and must reside there at the time of application. If there is only one general partner, the board must issue the license to that partner as an individual, if the partner is a registered voter in any county of the State or the City of Baltimore, and resides there at the time of the application.

Increases in Number of Direct and Indirect Interests in Class B (on-sale) Licenses: Generally, the bills increase, from 6 to 12, the maximum number of Class B (on-sale – hotels and restaurants) alcoholic beverages licenses an individual or a sole proprietorship, partnership, corporation, unincorporated association, or limited liability company in the county may obtain a direct or indirect interest. However, if one of the restaurants for which a license is issued is

located in the Liberty Road Commercial Revitalization District as defined by the county council on October 18, 1999, the maximum number of licenses increases from 7 to 13.

Task Force and Additional Provisions: No later than June 15, 2016, the Baltimore County Executive must appoint a task force to examine further reductions in the rule of the board limiting the total number of alcoholic beverages licenses available by population and other issues related to the distribution of alcoholic beverages licenses in the county.

The bills require an applicant of an alcoholic beverages license to sign a statement affirming they have been a resident of the State for a period of at least two years immediately preceding the date the application is filed. The bills clarify the previous requirement that an applicant for an alcoholic beverages license in the county submit a certificate signed by at least 10 citizens who own real estate and reside within one mile of the premises for which an alcoholic beverages license is being sought will no longer be required in Baltimore County.

The board must allow a reduction of 20% of the required square footage applicable to office buildings and shopping centers in the rule of the board limiting the total number of alcoholic beverages licenses available by population and other issues related to the distribution of alcoholic beverages licenses in the county.

The bills establish a uniform requirement for restaurants with Class B beer, wine, and liquor licenses located within the Towson Commercial Revitalization District (Class B TCRD license), the Hunt Valley Commercial/Mixed Use Focal Point (Class B HV license), the Quarry at Greenspring (Class B QG license), the Metro Center at Owings Mills (Class B MCOM license), and the Promenade at Catonsville (Class B PC license) to maintain average daily receipts from the sale of food of at least 60% of the total daily receipts of the respective establishment. This new requirement is lower than the requirements listed for these licenses under current law which range from a minimum of 65% to a minimum of 70% of total daily receipts in their respective establishments.

The bills allow the board to require restaurants for which a Class B or Class D license may be transferred, and a Class B TCRD beer, wine, and liquor license may be issued must have a maximum seating capacity of 100 persons with a seating capacity in the bar area not exceeding 25% of the total seating capacity of the restaurant. This is an increase from current law which requires the bar area in an applicable establishment to not exceed more than 15% of the total seating capacity of the restaurant.

Finally, ***Senate Bill 654/House Bill 737*** must be construed to apply retroactively and be applied to and interpreted to affect restaurants for which alcoholic beverages licenses covered in this provision have been issued or are sought in the Towson Commercial Revitalization District, the Hunt Valley Commercial/Mixed Use Focal Point, the Quarry at Greenspring, the Metro Center at Owings Mills, the Promenade at Catonsville, and the Liberty Road Commercial Revitalization District.

Calvert County

Additional Licenses: *Senate Bill 627 (passed)* increases, from three to four, the maximum number, in any combination, of Class B and Class BLX alcoholic beverages licenses in Calvert County an individual, corporation, limited liability company, partnership, limited partnership, joint venture, association, or other person or combination of persons may have a direct or indirect interest in.

Cecil County

Capital Investment: *House Bill 254 (passed)* lowers the minimum capital investment for dining room facilities and kitchen equipment required for a restaurant to qualify for a Class BLX beer, wine, and liquor on-sale license in Cecil County from \$600,000 to \$450,000.

Pub Brewery: *House Bill 324 (passed)* adds Cecil County to the list of jurisdictions in which the holder of a Class 6 pub-brewery license may sell malt beverages in refillable containers for off-premises consumption under certain conditions. There are currently no Class 6 pub-breweries located within the county.

Charles County

Additional Licenses: *Senate Bill 627 (passed)* increases, from one to two, the maximum number of additional Class BLX alcoholic beverages licenses authorized in Charles County for use in a luxury-type restaurant for each Class BLX licensee who applies in the county.

Winery Special Event Permit: *House Bill 1387 (passed)* authorizes the Comptroller's Office to issue a winery special event permit to a Class 4 Maryland limited winery for unlimited use for one day each week at a farmers' market in Charles County that is listed on the Farmers' Market Directory of the Maryland Department of Agriculture (MDA).

Dorchester County

Farmer's Markets: *House Bill 171 (Ch. 105)* authorizes the Comptroller's Office to issue a winery special event permit to a Class 4 Maryland limited winery for unlimited use for one day each week at a farmers' market in Dorchester County that is listed on the Farmers' Market Directory of MDA. The Act also authorizes the same permit in St. Mary's County.

Alcohol Awareness Program: *House Bill 58 (Ch. 96)* prohibits a certificate of completion from a certified alcohol awareness program, that is held by an employee or an employee's employer, from being used at more than one licensed establishment in Dorchester County.

Hours of Sale: *Senate Bill 103 (Ch. 17)* expands the hours for sale of alcoholic beverages on Sundays in Dorchester County by enabling a Class B (on-sale) beer, wine, and liquor license to begin sales at 10 a.m. instead of at noon.

Obsolete References: *Senate Bill 33/House Bill 51 (both passed)* correct obsolete references that require the Dorchester County Council (previously the Dorchester County Commissioners) to submit the alcoholic beverage licensing fee paid by an organization obtaining a Class C beer, wine, and liquor license to the mayor and city council of a municipality for any organization located within the municipal corporate limits. For any organization not located within the municipal corporate limits, the fee must be paid to the Dorchester County Finance Department (previously the Dorchester County Treasurer).

Sailwinds of Cambridge, Inc.: Sailwinds of Cambridge, Inc. is authorized under *Senate Bill 104/House Bill 57 (both passed)* to obtain, renew, and be subject to the provisions of a Class C beer, wine, and liquor license previously authorized to Sailwinds Park, Inc. in Dorchester County. Additionally, the bills authorize Sailwinds of Cambridge, Inc. to distribute wristbands to each individual 21 years and older who attends an event open to the public at the park where alcoholic beverages will be served. At events where wristbands are distributed, an individual who is not wearing a wristband may not be served an alcoholic beverage.

Frederick County

Alcoholic Beverages Inspectors: *Senate Bill 439 (passed)* authorizes an alcoholic beverages inspector in Frederick County to carry a firearm in the course of his/her duties including issuing alcoholic beverages citations for misrepresentation of one's age to obtain alcoholic beverages, the underage possession of alcohol, possession and use of false documentation to obtain alcohol, and the possession or altering the registration form of a keg. *House Bill 379 (passed)* is a similar bill which includes the additional provision that the alcoholic beverages inspector must be a retired law enforcement officer to carry a firearm in the course of his/or her duties.

Restaurant Special Events: *Senate Bill 321/House Bill 787 (both passed)* authorize a holder of a Class B beer, wine, and liquor license in Frederick County to remove its tables and chairs to accommodate additional patrons at no more than four special events held at the restaurant within a calendar year. The restaurant must give notice to the Frederick County Board of License Commissioners at least one week prior to the event. The tables and chairs removed for the event must be stored in an appropriate location within the restaurant in a manner that does not block the exits of the restaurant. The restaurant cannot exceed the maximum number of occupants that the Frederick County Fire Marshal allows for the establishment.

Middletown Wine Festival: A special Middletown Wine Festival (MWF) alcoholic beverages license in Frederick County is established under *Senate Bill 1040/House Bill 1368 (both passed)*. The Board of License Commissioners may issue a special MWF alcoholic beverages license to a holder of a Class 3 winery license or a Class 4 limited winery license. The special MWF license fee is \$20. The MWF license allows a holder to display and sell at retail, within the municipal boundaries of Middletown, wine for consumption on or off the premises on the days and hours designated for the Middletown Wine Festival. A holder of a special MWF license is not prohibited from holding another alcoholic beverages license of a different class or nature. Additionally, the Burgess and Commissioners of Middletown must choose the days and

locations of the Middletown Wine Festival, but may not hold more than two, one-day festivals each year.

Garrett County

Hotels, Motels, Inns, and Restaurants: *House Bill 504 (Ch. 125)* establishes a Class B beer license in Garrett County for specified hotels, motels, inns, and restaurants. The Act authorizes the Garrett County Board of License Commissioners to issue such a license with or without a catering option to:

- a bona fide hotel, motel, or inn that accommodates the public, is equipped with at least 10 bedrooms for public accommodation, and has a lobby with a registration and mail desk, and seating facilities; or
- a restaurant that seats at least 20 persons at tables, not including seats at bars or counters, and has the ability to prepare and serve full-course meals for at least 20 persons at one seating.

Under *House Bill 504*, a holder of a Class B beer license without a catering option may sell beer for consumption on or off the licensed premises. A holder of a Class B beer license with a catering option may sell beer for consumption on or off the licensed premises, and may keep for sale and sell beer for consumption at events the holder may cater off the licensed premises. In order to exercise the catering option, the holder must provide food if beer will be provided at the catered event off the licensed premises, and the catering option may only be exercised during the hours and days allowable under the license.

The issuing fee for a Class B beer license without a catering option is \$150 with an additional \$150 annual fee. The issuing fee for a Class B beer license with a catering option is \$250 with an additional \$250 annual fee.

Special Class C Beer, Wine, and Liquor License: *Senate Bill 585 (Ch. 81)* authorizes the holder of a special Class C beer, wine, and liquor license in Garrett County to purchase beer and light wine from a wholesale dealer.

Nudity and Sexual Displays: *House Bill 222 (Ch. 113)* authorizes the Board of License Commissioners to revoke the alcoholic beverages license of a licensee, after a hearing, if it is found the licensee has engaged in specified activities regarding nudity or sexual displays on the premises or location for which the license was issued.

Harford County

Wine Festivals: *House Bill 205 (Ch. 109)* alters provisions relating to wine festivals in Harford County by eliminating requirements that the festivals must be held during certain months, for one weekend per year, and not conflict with specified other wine festivals.

Country Clubs: *House Bill 248 (Ch. 114)* eliminates a requirement in Harford County for a country club to maintain tennis courts to be eligible for a Class C-3 club alcoholic beverages license.

County Residency: *Senate Bill 67/House Bill 204 (both passed)* alter the residency requirement for applicants of alcoholic beverages licenses in Harford County by requiring each applicant to be a bona fide county resident for at least one year before filing the application. Previously, an alcoholic beverages license applicant in the county had to be a bona fide county resident at the time of filing the application and remain a resident as long as the license is in effect.

Howard County

Additional Licenses: *Senate Bill 627 (passed)* increases, from five to nine, the maximum number, in any combination, of Class B and Class BLX alcoholic beverages licenses in Howard County a person, including a corporation, limited liability company, partnership, limited partnership, joint venture, association, or other combination of persons may have a direct or indirect interest in. The bill additionally specifies that the Howard County Board of License Commissioners are authorized to issue a maximum of two (unchanged from current law) Class B (on-sale) beer, wine, and liquor licenses and seven (an increase from the present three) Class BLX (luxury restaurant) (on-sale) beer, wine, and liquor licenses, or nine (an increase from the current five) Class BLX (luxury restaurant) (on-sale) beer, wine, and liquor licenses for separate premises to an individual; or for the use of a partnership, corporation, or unincorporated association.

Growlers: *House Bill 1047 (passed)* authorizes the Howard County Board of License Commissioners to issue a refillable container permit to a holder of any class of alcoholic beverages license issued by the board, except for a Class C and a Class GC license. A refillable container license may be issued, at no cost, to the holder of the license upon completion of the application provided by the board. The license entitles the holder to sell draft beer for consumption off the licensed premises in a refillable container with a capacity of not less than 32 ounces and not more than 128 ounces and only to an individual who has purchased food or an alcoholic beverage from the licensed premises.

The refillable container must be sealable, branded with an identifying mark of the license holder, bear the federal health warning statement, display instructions for cleaning the container, bear a label stating that cleaning the container is the responsibility of the consumer, and that the contents of the container are perishable and should be refrigerated immediately and consumed within 48 hours after purchase.

The term of a refillable container permit issued to an applicant, and the hours of sale for the permit are the same as that of the applicant's B-SBW alcoholic beverages license. Additionally, a holder of a refillable container permit may refill only a refillable container that was branded by the permit holder.

Golf Courses: *House Bill 1046 (passed)* expands the hours for sale of alcoholic beverages at golf courses in Howard County for holders of a 7-day Class GC beer, wine, and liquor license to begin sales at 6:30 a.m. instead of at 11:00 a.m., Monday through Sunday, inclusive.

Kent County

Micro-breweries: *House Bill 192 (passed)* adds Kent County to the list of jurisdictions authorized to issue a Class 7 micro-brewery license. The license may be issued to a holder of a Class B beer, wine, and liquor (on-sale) license for use on the premises of a restaurant, or to a holder of a Class D beer (off-sale) alcoholic beverages license so long as it is used on the same premises of the existing Class D license in Kent County. For a Class 7 micro-brewery license issued to a holder of a Class D license, the hours and days for consumer sales are the same as established for the Class D license.

Montgomery County

Additional Licenses: *Senate Bill 627 (passed)* increases, from five to nine, the maximum number of additional Class B beer, wine, and liquor (on-sale) licenses, and from 6 to 10, the total number of Class B beer, wine, and liquor (on-sale) licenses a holder of an original Class B license may obtain in Montgomery County.

Art Gallery: *House Bill 691 (Ch. 134)* establishes a special art gallery beer and wine license in Montgomery County, that may be issued to a nonprofit or for-profit retail business that displays and sells original artwork. A business that displays and sells commercially prepared or mass-produced artistic products may not be issued the license. The special art gallery BW license enables the holder to sell or serve beer and wine at retail for consumption on the premises when snacks are served during normal business hours, but no later than midnight. The license is not transferrable to another location. The annual license fee is \$100.

Rock Spring Centre: *House Bill 687 (Ch. 132)* authorizes the Board of License Commissioners by unanimous vote to approve applications for alcoholic beverages licenses for establishments located in Rock Spring Centre in Montgomery County if certain conditions are met. The licenses will authorize the holder to keep for sale and sell alcoholic beverages for on-premises consumption only. In addition to the board's vote having to be unanimous, the issuance of the license must not adversely affect nearby schools, churches, youth centers, or the nearest residential community.

Takoma Park: *House Bill 686 (passed)* adds an off-sale privilege to Class B beer and light wine licenses issued for hotels and restaurants in the City of Takoma Park. The bill takes effect July 1, 2012, and terminates June 30, 2014.

Damascus: *House Bill 690 (Ch. 133)* authorizes the Board of License Commissioners to issue Class H (on-sale) beer and light wine, hotel, and restaurant alcoholic beverages licenses to hotels and restaurants in Damascus (12th Election District). A license may not be issued to any

restaurant in which recreational devices are used. The enactment is contingent on the approval of the voters of Damascus at the November 2012 general election.

Prince George's County

Additional Licenses: *Senate Bill 627 (passed)* increases, from \$800,000 to \$1,000,000, the minimum capital investment for dining room facilities and kitchen equipment, not including the cost of land, buildings or a lease, a luxury type restaurant must have in order to be issued a Class BLX alcoholic beverages license in Prince George's County. The bill increases, from 6 to 10, the maximum number of Class BLX alcoholic beverages licenses a licensee may hold in the county. Prior to issuing an additional BLX alcoholic beverages license authorized by the bill, the Prince George's County Board of License Commissioners must consider the number of licensed establishments existing in the area surrounding the site of the proposed licensed establishment, and only issue an additional license if the board determines that the proposed licensed establishment will enhance the recreational, business, and economic development of the area.

Entertainment Permits: Chapter 684 of 2010 authorized the Prince George's County Board of License Commissioners to issue a special entertainment permit to the holder of any Class B (on-sale) license. Prior to the enactment of Chapter 684, some alcoholic beverages licenses in Prince George's County already permitted some entertainment – such as for charitable organizations, country inns, and convention centers. Chapter 613 of 2011 provided that an alcoholic beverages license holder does not need an entertainment permit if the board determines that the licensee's principal business is to provide family entertainment or if the license is issued under related specified provisions. *House Bill 817 (Ch. 137)* adds to these exemptions by including establishments that hold (1) a Class B (on-sale) restaurant license that provides entertainment for adults and children that is ancillary to the business and not the primary focus of marketing or promotion for the business; and (2) a Class C veterans or fraternal license that provides entertainment under direct supervision of the license holder for adults, children, and families of the organization or the public ending no later than midnight.

Hyattsville: Countywide, alcoholic beverages may not be sold within 500 feet of a church, unless the governing body of the church consents in writing. This does not apply to a transfer or assignment of a license within 1,000 feet to another place within the specified distance or to an assignee of the license within the distance of the same church. Renewals of licenses for establishments where churches later moved in are permitted. *House Bill 813 (Ch. 136)* prohibits an alcoholic beverages license from being granted to sell alcoholic beverages in a building located within 350 feet of a place of worship in the Gateway Arts and Entertainment District located in the City of Hyattsville. The Act specifies how the distance restriction must be measured.

Unpaid Taxes: *House Bill 919 (passed)* prohibits the Board of License Commissioners from issuing or renewing an alcoholic beverages license unless the board is provided with verification from the Comptroller and Prince George's County that the applicant has (1) paid all undisputed taxes payable to the Comptroller and the county; or (2) provided for satisfactory payment of such taxes. If a license application is made on the behalf of a corporation, club, or

other entity, the tax payment verification requirements apply to undisputed taxes payable by each owner or principal of the entity. The bill authorizes the board to condition the issuance of a license for which a transfer has been approved on the same verifications.

St. Mary's County

Golf Course: *House Bill 1296 (passed)* authorizes the St. Mary's County Alcohol Beverage Board to issue a special Class M-G beer, wine, and liquor license for use at a municipal golf course located on land owned by St. Mary's County and operated by a St. Mary's County golf course manager or under a management agreement with the county. Under the bill, the Class M-G license may be issued to the golf course manager. The annual license fee is set at \$600, and the license may be used to sell beer, wine, and liquor for consumption only on the land and in the facilities used for golfing purposes.

Farmers' Markets: *House Bill 171 (Ch. 105)* authorizes the Comptroller's Office to issue a winery special event permit to a Class 4 Maryland limited winery for unlimited use for one day each week at a farmers' market in St. Mary's County that is listed on the Farmers' Market Directory of MDA. The Act also authorizes the same permit in Dorchester County.

Talbot County

Wineries: *Senate Bill 448 (Ch. 71)* repeals specified provisions of law that limit the wine sampling privileges of Class 3 manufacturer's winery and Class 4 limited winery license holders in Talbot County. The Act also provides that current statewide wine sampling privileges of licensed wineries will now apply in Talbot County.

Alcoholic Beverages Violations: *Senate Bill 106/House Bill 16 (both passed)* authorize alcoholic beverages inspectors in Talbot County to issue civil citations for alcoholic beverages violations relating to the misrepresentation of one's age to obtain alcoholic beverages, the underage possession of alcohol, possession and use of false documentation to obtain alcohol, and the possession or altering the registration form of a keg.

Wicomico County

Entertainment and Amusement Centers: *Senate Bill 1044/House Bill 1347 (both passed)* establish a Class D beer, wine, and liquor entertainment and amusement license in Wicomico County for specified entertainment amusement centers. The Wicomico County Board of License Commissioners may issue a Class D beer, wine, and liquor entertainment and amusement license to an entertainment amusement center that:

- operates as a business establishment having a minimum seating capacity of 140 persons, not including the bar area or dancing floor area, that accommodates the public;
- meets the minimum requirements of the fire code applicable for the jurisdiction in which the premises is located;

- is fully equipped with a proper and adequate dining room with facilities for preparing and serving regular meals;
- has more than 50% of its floor space (excluding the kitchen and any floor space occupied by a jukebox or similar passive entertainment device) dedicated to or occupied by equipment for foosball, billiards, darts, virtual reality simulation games, and other games requiring active physical participation of one or more players approved by the board (not including keno, card games, pinball machines, and bar games); and
- has an initial capital investment of at least \$300,000, excluding the cost of the land and building.

Worcester County

Beer and Wine Festivals: *Senate Bill 1075/House Bill 1436 (both passed)* increase the number of beer and wine festivals authorized in Worcester County in which special festival licenses are issued by the Worcester County Board of License Commissioners beyond the present one for the Worcester County Beer and Wine Festival (WBWF). The bills authorize the board to issue no more than three special festival licenses each year, including WBWF and other similar festivals featuring beer and wine that the board approves.

Part I

Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Lending and Banking Institutions – Interest on Accounts

A lending institution may require borrowers of loans secured by mortgaged property to place funds into an escrow account. The funds maintained in the escrow account are then used to pay annual taxes and insurance on the mortgaged property. While the lending institution generally determines whether the borrower must maintain an escrow account, lending institutions are required to establish escrow accounts for some federal programs, including any Federal Housing Administration-insured loans. A lending institution must pay interest to the borrower on the funds in an escrow account at the greater of 3% per annum simple interest or the rate regularly paid by the lending institution on regular passbook savings accounts. Similarly, a banking institution is required to pay at least 3% annual interest on each interest-bearing account that is instituted for a specific purpose, including “Christmas” or “vacation” accounts, for a period of one year or less.

Senate Bill 507/House Bill 533 (both passed) alter the method used to calculate the amount of interest paid by (1) a lending institution on an escrow account created in connection with a loan, including a closed-end credit transaction, secured by a first mortgage or first deed of trust; and (2) a banking institution on each interest-bearing account that is instituted for a specific purpose for a period of one year or less. The bills require the amount of interest to be an annual rate not less than the six-month average dealer bid rate on nationally traded certificates of deposits, as published by the Federal Reserve in “Selected Interest Rates (Daily) – H.15,” as of the first business day of the calendar year. For lending institutions, the amount of interest must be adjusted, if applicable, as of the first day of each calendar year to reflect the rate to be paid during that year.

The bills apply to escrow accounts and specific purpose accounts established on or after June 1, 2012.

Savings Banks – Conversions

There are 45 State-chartered capital stock commercial banks, 2 State-chartered mutual savings banks, and 16 federally chartered mutual savings banks currently operating in Maryland. While a savings bank may convert to a capital stock commercial bank under the State's "wild-card" statute (which authorizes a banking institution to engage in any activity, service, or practice that a national banking institution may perform under federal law), *Senate Bill 290 (Ch. 52)* clarifies that a mutual savings bank may convert to a capital stock savings bank with the approval of its members and the Commissioner of Financial Regulation. The Act also requires the commissioner to charge and collect, in advance, an application fee of \$5,000 for a conversion, and to adopt regulations governing conversions. There were no conversions to capital stock savings banks in fiscal 2009 or 2010 and only one in fiscal 2011.

Credit Unions and Depository Institutions – Savings Promotions Raffles

Federal law currently prohibits all federally regulated banks, thrifts, and trust institutions from engaging in lotteries, including prize-linked savings products. However, federal credit unions may use promotional raffles and provide prize-linked savings products under the National Credit Union Administration. *House Bill 786 (passed)* gives effect to Chapters 627 and 628 of 2010 by repealing contingency language that required enabling federal regulatory or legislative action. The Act, thus, authorizes a State-chartered credit union and a depository institution to conduct a savings promotion raffle if specified conditions are met. The Act also repeals a related requirement for the Commissioner of Financial Regulation to (1) monitor federal regulatory and legislative action relating to whether credit unions and depository institutions may provide prize-linked savings products; and (2) notify the Department of Legislative Services within 30 days after learning of the federal action.

Fiduciary Institutions – Reporting of Financial Abuse of Elder Adults

In fiscal 2010, the Maryland Long-Term Care Ombudsman Program within the Maryland Department of Aging received 2,797 complaints, including 50 financial exploitation cases. *Senate Bill 941/House Bill 1257 (both passed)* create an affirmative duty for a fiduciary institution to make an abuse report to specified persons if an employee, while acting within the scope of employment, has (1) direct contact with an elder adult or reviews or approves an elder adult's financial documents, records, or transactions in connection with financial services provided to or for the elder adult; and (2) observes or obtains knowledge of unusual circumstances that lead the employee to know or have reasonable cause to suspect that the elder adult is the victim of financial abuse. An "elder adult" is defined in the bills as an individual who is believed to be at least 65 years old and residing in the State. The bills do not require a fiduciary institution to either investigate an allegation of financial abuse or make an abuse report if an abuse report has already been submitted. A fiduciary institution that fails to file an abuse report is subject to civil penalties of up to \$1,000, or up to \$5,000 if the failure is willful. Finally, the bills require fiduciary institutions to establish and implement a training program to assist employees in recognizing signs of elder financial abuse and inform employees about the bills' disclosure requirements.

Mortgage Lenders and Mortgage Loan Originators

Licensing Requirements

In fiscal 2011, there were 1,353 licensed mortgage lenders and 5,078 licensed mortgage loan originators operating in Maryland. *Senate Bill 546 (passed)*, a departmental measure, alters various provisions of law relating to the licensing of mortgage lenders and mortgage loan originators, including (1) requiring an applicant for a mortgage lender license or mortgage loan originator license to complete, sign, and submit the application to the Commissioner of Financial Regulation according to the process the commissioner requires and provide all information the commissioner requests; and (2) making any mortgage lender license or mortgage loan originator license application fee paid to the commissioner nonrefundable.

Mortgage Lenders: *Senate Bill 546* requires a mortgage lender licensee renewing a license to provide the commissioner with proof of satisfying specified minimum net worth requirements within 90 days after the last day of the licensee's most recent fiscal year.

The bill also alters the length of time a mortgage lender license is valid and extends the amount of time a licensee is able to renew a license before its expiration. The frequency with which a mortgage lender licensee must provide a call report to the Nationwide Mortgage Licensing System and Registry (NMLSR) is also altered from once a year to once a quarter. A mortgage lender exempt from licensing by the commissioner must submit call reports on behalf of its mortgage loan originators licensed under laws governing mortgage loan originators.

Mortgage Loan Originators: *Senate Bill 546* alters the circumstances under which an individual may act as a mortgage loan originator under a name or for an employer that is different than the one that appears on the individual's license. In the case of a new employer, the individual must amend the sponsorship information on NMLSR by submitting the amendment in the form required by the commissioner. The individual is no longer required to return the license, or an affidavit stating that the license has been lost or destroyed, to the commissioner.

The bill applies to an affiliated insurance producer-mortgage loan originator the same requirements a mortgage loan originator licensee must meet to (1) act under a name or for an employer that is different from the name or employer on the licensee's license; or (2) enter into and remain in nonactive status. The bill also authorizes the commissioner to issue an affiliated insurance producer-mortgage loan originator license to an individual who is not employed by a commissioner-approved financial institution, provided that the license is placed into and remains in nonactive status until the licensee complies with specified requirements.

Regulation of Mortgage Lenders

Another departmental measure, *Senate Bill 302 (Ch. 55)*, removes the mortgage lender licensing exemption for (1) a person who makes three or fewer mortgage loans per calendar year; (2) a person who brokers at most one mortgage loan per calendar year; and (3) a subsidiary or affiliate of certain financial institutions, subject to audit or examination of the federal government; and (4) a subsidiary or affiliate of certain financial institutions incorporated under

federal law. The Act also provides the Commissioner of Financial Regulation with investigative and enforcement powers over a subsidiary or affiliate of specified financial institutions over which the commissioner has jurisdiction.

Money Transmitters – Licensing Requirements and Participation in Nationwide Licensing System

Senate Bill 545 (Ch. 78) authorizes the Commissioner of Financial Regulation to participate in the establishment and implementation of a multistate automated licensing system for persons who engage in money transmission. The system is intended to operate similarly to NMLSR, a web-based system that allows State-licensed mortgage lenders, mortgage brokers, and mortgage loan originators to apply for, amend, update, or renew a license online using a set of uniform applications.

Under the Act, each licensee or license applicant must apply for a license or renewal and obtain a valid unique identifier issued by the nationwide licensing system when forming an account with the system on or after November 1, 2012, or, if the commissioner has not joined the system by November 1, 2012, on the date specified by the commissioner. The Act requires each principal office to display the licensee's unique identifier, and each office of an authorized delegate and, if applicable, website to prominently display a notice that states the licensee's license number and unique identifier. An applicant for an initial license, including a branch location license, must pay the nationwide licensing system the appropriate fee in connection with processing the application.

The Act also makes several changes relating to licensing requirements for persons engaged in money transmission under the Maryland Money Transmission Act, including requiring money transmitters to (1) pay the application processing fee imposed by the nationwide licensing system for each branch location license; (2) renew a license every year; and (3) pay a per-day fee set by the commissioner for each of the commissioner's employees engaged in an on-site examination of the licensee. The Act also makes license and investigation fees nonrefundable and authorizes the commissioner to enter into information-sharing agreements with other governmental agencies.

Linked Deposit Program for Small Businesses

Senate Bill 792/House Bill 571 (both passed) establish a Linked Deposit Program for Small Businesses in the Department of Housing and Community Development. The purpose of the program is to stimulate opportunities for qualifying small businesses to have access to credit by assisting these businesses in obtaining loans from financial institutions at lower-than-market interest rates. For a more detailed discussion of *Senate Bill 792/House Bill 571*, see the subpart "Economic Development" within Part H – Business and Economic Issues of this *90 Day Report*.

Commercial Law – Generally

Credit Regulation

A balloon note motor vehicle loan allows a dealer to offer a consumer low monthly payments with a larger balloon amount due at the end of a specified period, typically 24 or 36 months. A new hybrid form of motor vehicle financing involves a balloon note with a “walk away” feature that combines a traditional motor vehicle loan with elements of a lease agreement. In a “walk away” balloon note, the vehicle is titled in the consumer’s name with the leasing company as the lien holder. At the end of the term stated in the note, the consumer may return the vehicle to the dealer and owe nothing more, or the consumer may elect to purchase the motor vehicle at the agreed-on price, the “balloon” amount due on the loan. *Senate Bill 258/House Bill 730 (both passed)* alter the circumstances under which a credit grantor may require a consumer borrower to pay a balloon payment at maturity of an installment loan for purchase of a motorcycle. The installment loan must be secured by a lien on the motorcycle and exceed \$10,000 instead of \$30,000, as required for passenger cars.

As of January 2012, Maryland licensed 36 debt management services providers. A debt management services provider may not provide debt management services until the provider and the consumer have executed a debt management services agreement describing the debt management services to be performed. *Senate Bill 303 (Ch. 56)* alters a notice that must be included in a debt management services agreement to state that a party to the agreement may rescind the agreement *at any time* by giving written notice of rescission to the other party. In addition, the Act prohibits a licensee from violating any provision of federal or State law governing debt management services or other related services.

Senate Bill 901/House Bill 1027 (both passed) alter the definition of “debt cancellation agreement” in relation to retail installment sales and closed-end credit transactions by including an agreement under which the outstanding balance or remaining loan balance payable on an installment loan is reduced by the actual cash value of a motor vehicle at the time of loss, determined under the agreement, if the buyer does not have insurance. The bills also alter the definitions of “outstanding balance” and “remaining loan balance” in relation to retail installment sales and closed-end credit transactions to exclude any deferred payments and the portion of any financed taxes or charges, including charges for credit life insurance, credit health insurance, credit involuntary unemployment benefit insurance, and mechanical repair contracts, actually refunded to the buyer or credited as a reduction to the loan balance.

Rental-purchase Agreements

Under *Senate Bill 778/House Bill 997 (both passed)*, a lessor in a rental-purchase agreement is required to maintain a copy of the rental-purchase agreement for three years after final payment. A lessor must provide the consumer with a written receipt for each payment under a rental-purchase agreement made in person by cash or money order or, if the payment is made in any other form, on request. The written receipt must contain the total amount paid, the total amount due that week or month, and the total remaining rental payments necessary to

acquire ownership of the item. The lessor must provide the consumer with a written statement of account within three days after the consumer requests it. A lessor may not bring a court action to recover property subject to a rental-purchase agreement until 15 days after the consumer has been sent a specified notice of default. If applicable, the notice must include any amount the consumer must pay to reinstate the rental-purchase agreement. The bills require the Attorney General's website to include the sample rental-purchase agreements.

Uniform Commercial Code

House Bill 700 (passed) revises, updates, reorganizes, and clarifies Title 1 of the Maryland Uniform Commercial Code (MUCC), the general provisions applicable to all of MUCC. The bill clarifies the transactions to which Title 1 of MUCC applies. As of February 2012, 40 states and the U.S. Virgin Islands had enacted identical provisions to Title 1. Three states and the District of Columbia are currently considering similar amendments.

The bill (1) alters the definition of "good faith" to mean honesty in fact in the conduct or transaction concerned; and (2) authorizes evidence of "course of performance" to be used to interpret a contract. The bill defines "course of performance" as a sequence of conduct between parties to a particular transaction that exists if (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and (2) the other party, with knowledge of the nature of the performance and opportunity to object to it, accepts the performance or acquiesces in it without objection. If the express terms of an agreement contradict course of dealing, usage of trade, and course of performance, the express terms control course of performance, course of dealing, and usage of trade. However, if course of performance contradicts course of dealing and usage of trade, course of performance prevails. In addition, the bill specifies that, with two exceptions, Title 1 of MUCC modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act.

House Bill 713 (passed) alters various provisions of Title 9 of MUCC, the State law of secured transactions. As of February 2012, 10 states had enacted identical revisions to Title 9. Another 20 states and the District of Columbia are currently considering similar amendments.

The bill clarifies that, in order for a secured party to have control of electronic chattel paper, a system employed for evidencing the transfer of interests in the chattel paper must reliably establish that the secured party is the person to whom the chattel paper was assigned.

The bill establishes specific rules that apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction. Additionally, the bill establishes rules regarding when a financing statement naming an original debtor is filed under State law regarding the perfection of a security interest and the new debtor is located in another jurisdiction. The bill alters the circumstances in which (1) a security interest created by a new debtor is perfected; and (2) a record of a mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut. In addition to other requirements, a record of a mortgage must satisfy the requirements for a financing statement with certain exceptions. The bill alters the

circumstances in which a financing statement sufficiently provides the name of a debtor. The bill authorizes a secured party of record to file an information statement with respect to a record even though the secured party believes that the person that filed the record was not entitled to do so. The secured party must identify the record by specified means, indicate that the filing is an information statement, and provide the basis for the person's belief that the person that filed the record was not entitled to do so.

Commercial Law – Consumer Protection

Consumer Reporting Agencies – Security Freezes

Senate Bill 295/House Bill 555 (both passed) establish a procedure for a protected consumer's representative to request that a consumer reporting agency place a security freeze on the protected consumer's consumer report. A "protected consumer" is (1) an individual under the age of 16 years; or (2) an incapacitated person or a protected person for whom a guardian or conservator has been appointed.

The bills require a consumer reporting agency to place a security freeze for a protected consumer if the agency receives such a request from the protected consumer's representative. The agency must place the freeze within 30 days of receipt of the request. The bills prohibit a consumer reporting agency from releasing the protected consumer's consumer report, any information derived from the report, or any record created for the protected consumer, unless a security freeze is removed, with certain exceptions.

The bills establish a similar procedure for a protected consumer or the representative to request the agency to remove the security freeze. The agency must remove the freeze within 30 days after receiving the request. The agency may also remove a security freeze for a protected consumer or delete a record of a protected consumer if the freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Senate Bill 295/House Bill 555 prohibit a consumer reporting agency from charging a fee for any service related to a security freeze other than its placement and removal. Additionally, an agency may not charge a fee for the placement and removal of the security freeze in a case of reported identity theft or for a minor for whom a consumer report already exists. The exclusive remedy for a violation of the bills' provisions is a complaint filed with the Office of the Commissioner of Financial Regulation.

Retail Pet Stores – Purchase of Dogs

Senate Bill 317/House Bill 131 (both passed) establish remedies for a purchaser of a dog from a "retail pet store" when the dog is found to have an undisclosed disease, illness, or prior condition. The bills establish recordkeeping, notification, and public disclosure requirements for retail pet stores that conduct business in the State, as well as penalties for noncompliance. It is

an unfair or deceptive trade practice for a retail pet store to include any false or misleading statements in the health certificate or written record provided to a purchaser. Any violation of the bills is subject to the civil and criminal penalty provisions of the Maryland Consumer Protect Act. For a more detailed discussion of this issue, see the subpart “Business Occupations” within Part H – Business and Economic Issues of this *90 Day Report*.

Financial Education

To address ongoing concerns regarding the need to improve the financial literacy of residents of the State, *Senate Bill 476/House Bill 515 (both passed)* establish the Financial Education and Capability Commission to (1) monitor the implementation of public and private initiatives to improve the financial education and capability of residents of the State; and (2) make recommendations on the coordination of financial education and capability efforts across State agencies. The bills require the commission to report to the Governor and the General Assembly, by December 1 of each year, on its recommendations and the status of the State’s efforts to improve the financial education and capability of residents of the State. Every three years, the report must include a comprehensive discussion of these statewide efforts, including initiatives funded by the State or a local government and those undertaken in the private sector by nonprofit organizations, financial institutions, and other persons.

Corporations and Associations

Limited Liability Company Act

Senate Bill 855/House Bill 777 (both passed) alter various provisions of the Maryland Limited Liability Company (LLC) Act, including provisions relating to LLC articles of organization, conversion of a partnership, operating agreements, member consent for various actions, proxy voting, assignments of interest, withdrawal of a member, rights of a creditor, abandonment of a merger, and information regarding an LLC’s affairs.

Articles of Organization

The articles of organization for an LLC must set forth the name of the LLC, the purpose for which the LLC is formed, the address of its principal office in the State, the name and address of its resident agent, and any other provision consistent with law which the members elect to set out in the articles of organization. *Senate Bill 855/House Bill 777* repeal the requirement that the articles of organization of an LLC must include the purpose for which the LLC is formed. The bills also alter one of the requirements for an amendment to the articles of incorporation by specifying that the amendment must be approved by the members “unless otherwise agreed,” which as defined, means unless otherwise stated in the articles of organization, in the operating agreement, or by unanimous consent of all the members and any other person required by the operating agreement.

Conversion of a Partnership to an LLC

A partnership may convert to an LLC by filing articles of organization that meet specified requirements and include specified information. *Senate Bill 855/House Bill 777* authorize a conversion to be abandoned by (1) a vote of the partners in the manner provided in the partnership agreement for amendments to the agreement; or (2) unanimous agreement of the partners, if no such provision is made in the partnership agreement.

Operating Agreement

Except for requirements that specified consents be in writing, members of an LLC may enter into an operating agreement to regulate or establish any aspect of the affairs of the LLC or the relations of its member. *Senate Bill 855/House Bill 777* expand the list of provisions that may be included in an operating agreement to include procedures relating to specified meeting notice requirements and voting rights.

The bills further clarify that an amendment to an operating agreement must be evidenced by a writing signed by an authorized person if an economic interest in the LLC has been assigned to a nonmember.

Consent by Members

Unless otherwise provided by the LLC's operating agreement, members must vote in proportion to their respective interest in the LLC's profits. Any decision regarding the LLC's affairs requires the consent of members holding at least a majority of the interests in the LLC's profits. *Senate Bill 855/House Bill 777* authorize a meeting of the members to be called by the written request of members holding at least 25% of the interests in profits of the LLC. The bills authorize members of an LLC to participate in a meeting by means of conference telephone or other communications equipment or by remote communication if specified requirements are met. Additionally, a member may not take any of the following actions without the consent of members holding at least two-thirds of the interest in profits of the LLC: (1) dispose of all or substantially all of the business or property of the LLC; or (2) approve a merger.

The bills also prohibit a member from taking any of the following actions without the unanimous consent of the members: (1) institute a voluntary proceeding under the federal bankruptcy code; (2) assign the property of the LLC in trust for creditors or on the assignee's promise to pay the debts of the LLC; (3) alter the allocation of profit or loss to the members of the LLC; (4) alter the allocation of or the manner of computing distributions payable to LLC members; and (5) do any other act that would make it impossible to carry on the ordinary business of the LLC.

Proxy Voting

A stockholder of a corporation may authorize another person to act as proxy for the stockholder. *Senate Bill 855/House Bill 777* authorize a member of an LLC to authorize another

person to act as proxy for the member. The bills establish procedures by which a member may assign a proxy.

Information Regarding Affairs of the LLC

A member may inspect and copy specified information, in person or by agent, from time to time on reasonable written demand. *Senate Bill 855/House Bill 777* limit that right by requiring that it be done for a purpose reasonably related to the member's membership interest and according to standards established in the articles of organization or operating agreement.

Assignment of Interest

Unless otherwise provided in the operating agreement, an interest in an LLC is assignable in whole or in part. *Senate Bill 855/House Bill 777* clarify that unless otherwise agreed, only an economic interest may be assigned, and that an economic interest may be assigned wholly or partly. The bills also clarify that by assigning all of a member's economic interest, the member forfeits the member's noneconomic interest in the LLC.

Member Withdrawal

Senate Bill 855/House Bill 777 specify that, unless otherwise agreed, a member may withdraw from an LLC prior to the dissolution and winding up of the LLC by giving at least six months prior written notice to the other members at their respective addresses as shown on the LLC's books and records.

Rights of a Creditor

Senate Bill 855/House Bill 777 specify that, upon application by a creditor of a debtor holding an economic interest in an LLC, a court having jurisdiction may charge the economic interest of the debtor in the LLC for the unsatisfied amount of the debt. The bills further clarify that a charging order placed against an economic interest of a debtor in the LLC requires the LLC to pay the creditor only any distributions that would otherwise be paid to the debtor. Any such charging order does not affect the noneconomic interest of a debtor. The bills specify that, before a foreclosure on an economic interest under a charging order, the economic interest may be redeemed with property of the LLC with the consent of the members as provided in the operating agreement. If the operating agreement does not address the issue, all members whose economic interests are not so charged must consent.

Electric Cooperatives – Electronic Notices and Voting

An electric cooperative is a nonprofit, private business and must be governed by its consumers, meaning every consumer-member may vote to elect the cooperative's board. This is a federal requirement and true of all types of cooperatives. There are three electric cooperatives operating in the State.

Senate Bill 668/House Bill 623 (both passed) authorize an electric cooperative to provide notice of a meeting by electronic transmission. A person entitled to receive notice of a meeting may waive notice by electronic transmission. The bills also authorize the cooperative's bylaws to provide that voting by a member at a meeting may be by electronic transmission if the bylaws establish the conditions under which voting by electronic transmission is allowed.

Part J

Health and Human Services

Public Health – Generally

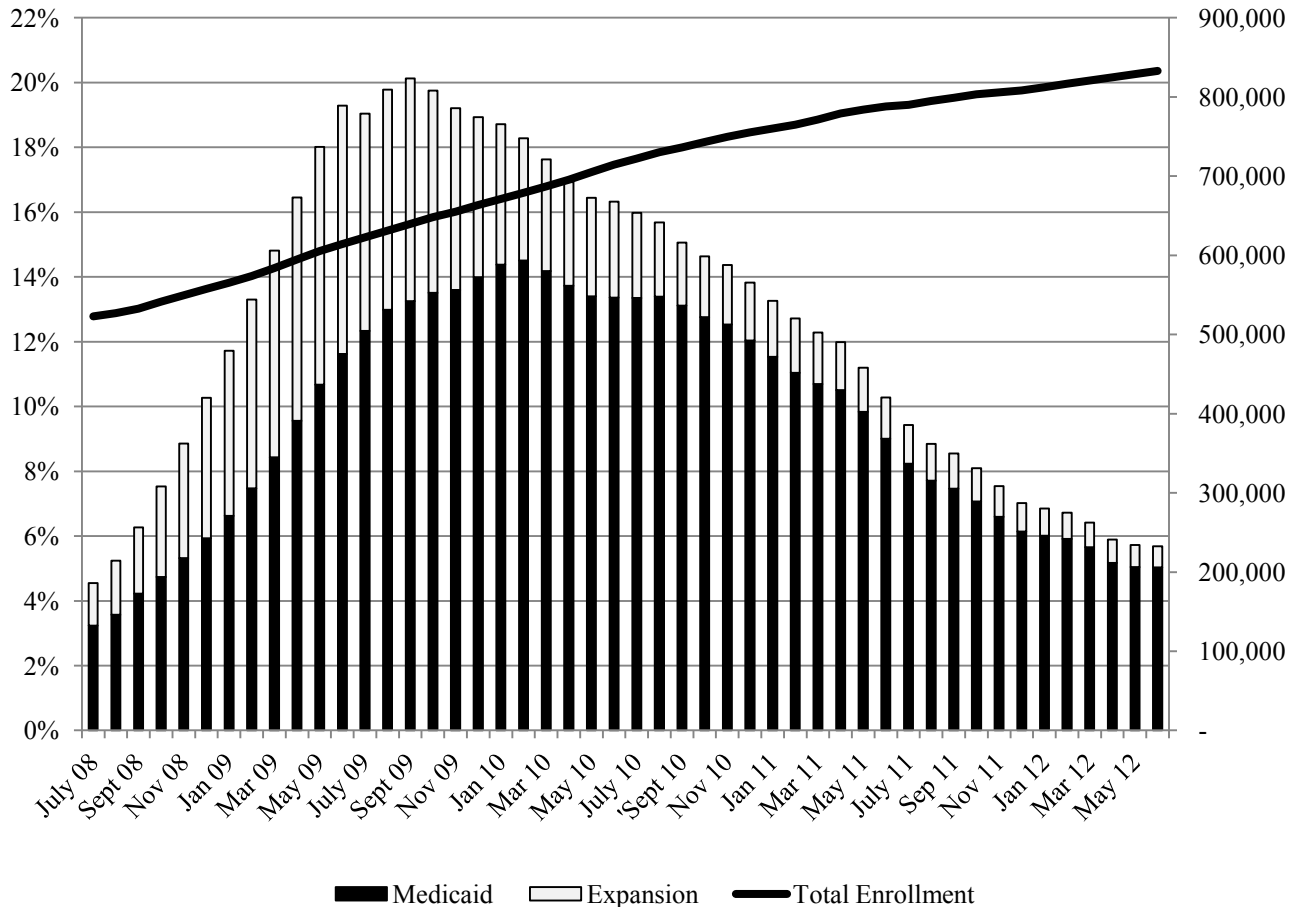
Medicaid

Budget

The fiscal 2013 budget for Medicaid as introduced by the Governor included almost \$195.0 million in deficiencies. Of these, \$130.6 million in total funds (\$63.9 million in general funds, \$66.7 million in federal funds) was to cover fiscal 2011 bills rolled-over into fiscal 2012. However, legislative review of projected claims paid in fiscal 2012 that derive from fiscal 2011 revealed lower than anticipated needs. Further, when combined with the availability of other funding (notably the Children’s Health Insurance Program Reauthorization Act (CHIPRA) bonus awarded in December 2011) as well as projected surpluses in other areas, such as savings from higher than anticipated pharmacy rebates, the legislature struck almost \$128.0 million of the deficiency. Subsequently, in the supplemental budget, an additional \$85.5 million (\$42.75 million in each of general and federal funds) was removed from the fiscal 2012 Medicaid appropriation to recognize additional anticipated surpluses.

The fiscal 2013 budget for Medicaid increases by over \$260.0 million, 3.7%, over the fiscal 2012 working appropriation to just under \$7.3 billion. The fiscal 2013 Medicaid budget assumes just over \$259.0 million in enrollment/utilization growth in fiscal 2013 (including the cost of 300 new slots under the Older Adults Waiver, discussed further below). This estimate assumes a continuation of the recent sharp drop in enrollment growth (see **Exhibit J-1**). Enrollment growth in fiscal 2013 is estimated at just over 3.7%, down from 7.2% in fiscal 2012.

Exhibit J-1
Medicaid Year-over-year Average Monthly Enrollment
Fiscal 2009-2012



Source: Department of Health and Mental Hygiene; Department of Legislative Services

Other initiatives include \$18.2 million (\$9.1 million each of general funds and federal funds) to add 300 additional slots under the Older Adults Waiver and 180 slots under the Living at Home Waiver. There is also \$7.7 million included in the budget for the planning and implementation of Chronic Health Homes. The budget as passed also included a \$2.5 million expansion of personal care services through repurposing funds currently budgeted for nursing home expenditures. Specifically, the Governor proposed savings from eliminating payments for temporary (up to 15 days) absences from nursing homes (so-called bed hold payments). However, the change in the bed hold policy required statutory change in *Senate Bill 152 (failed)*.

The fiscal 2013 budget also includes a variety of rate actions. Specifically, there are modest increases in nursing home and waiver services rates (1%); significant increases (estimated at 18%-24%) for certain evaluation and management diagnostic code services for primary and specialty care physicians; and significant reductions in Managed Care Organization (MCO) rates. MCO rates were reduced by 1.5% for calendar 2012 as a result of the annual rate-setting process and cut an additional 2% in the final budget for a total reduction of just under \$111.0 million in fiscal 2013.

The budget as introduced also included a significant amount of cost containment actions, almost \$211.0 million in total. The three largest cost containment actions included altering the distribution of Disproportionate Share Payments to produce Medicaid savings of \$18.2 million; reinstating tiered outpatient rates to generate savings of \$60.0 million; and limiting the inpatient hospital benefit for the medically needy eligibility group to save \$72.0 million. However, the savings from Disproportionate Share Payment reform will not occur as it required authorizing language contained in *Senate Bill 152*.

Maryland Health Improvement and Disparities Reduction Act of 2012

A workgroup formed by the Maryland Health Quality and Cost Council (MHQCC) examined ways to reduce health disparities in the State and issued several recommendations, including the collection of performance incentive data by race and ethnicity and the creation of Health Enterprise Zones (HEZs) through which community-based organizations may apply for funds to improve health within a designated zone. Other aspects of the HEZs model include loan repayment assistance repayment and tax credits to support existing and new primary care clinicians in HEZs, as well as assistance for health information technology and other practice expenses.

Senate Bill 234 (Ch. 3) defines an HEZ as a contiguous geographic area that (1) demonstrates measurable and documented health disparities and poor health outcomes; (2) is small enough to allow for the incentives offered under the Act to have a significant impact on improving health outcomes and reducing racial, ethnic, and geographic health disparities; and (3) is designated as an HEZ by the Community Health Resources Commission and the Secretary of Health and Mental Hygiene. The Act establishes an HEZ designation process in order to target State resources to reduce health disparities, improve health outcomes, and reduce health costs and hospital admissions and readmissions in specific areas of the State.

The Act also authorizes incentives for HEZ practitioners, including tax credits against the State income tax. In addition, the Act (1) requires the Maryland Health Care Commission (MHCC), as part of its system of comparative evaluation of the quality of care and performance of health benefit plans, to implement a standard set of measures regarding racial and ethnic variations in quality and outcomes and provide information on carriers' actions to track and reduce health disparities; (2) specifies that each nonprofit hospital must include a description of the hospital's efforts to track and reduce health disparities, in its annual community benefit report; (3) requires each Maryland institution of higher education that offers a program necessary for the licensing of health care professionals to report on actions taken by the institution to

reduce health disparities; (4) requires the Health Services Cost Review Commission and MHCC to study and report on issues related to racial and ethnic performance data tracking; (5) establishes a Health Enterprise Zone Reserve Fund; and (6) requires MHQCC to convene a Cultural and Linguistic Competency Workgroup, which must examine and report on issues related to multicultural health care. The legislative appropriation for fiscal 2013 includes \$4.0 million for the Community Health Resources Commission to implement the Act.

Medical Marijuana

In 1996, California became the first state to allow the medical use of marijuana. Since then, 15 other states (as well as the District of Columbia) have enacted similar laws. States with medical marijuana laws generally have some form of patient registry and provide protection from arrest for possession of up to a certain amount of marijuana for medical use. Maryland is an exception. Although State law allows for medical necessity as an affirmative defense, it does not provide a means for patients to obtain marijuana.

A workgroup convened by the Secretary of Health and Mental Hygiene during the 2011 interim was required to draft legislation that would establish a program to provide access to marijuana in the State for medical purposes. Due to a lack of consensus, the workgroup ultimately submitted two separate plans for consideration by the General Assembly. One proposal was based on an investigational use model while the other proposal closely resembled the traditional medical marijuana program model used in other states. Ultimately, three comprehensive proposals dealing with the legalization of the medical use of marijuana in the State all failed to pass: *House Bill 1024 (failed)*, *Senate Bill 995/House Bill 1158 (both failed)*, and *House Bill 15 (failed)*.

Food Establishments

A cottage food business, under *Senate Bill 550/House Bill 399 (both passed)*, is authorized to sell cottage food products (nonhazardous food that is sold at a farmer's market or public event) without receiving a license from the Department of Health and Mental Hygiene if the products are (1) stored on the premises of the business; and (2) are prepackaged with a label that gives certain information about the product and contains a statement that the business is not subject to the State's food safety regulations. The bills only apply to a business that produces or packages cottage food products in a residential kitchen, sells the products in accordance with certain labeling and storage requirements, and has annual revenues from the sale of the products of \$25,000 or less. Although the cottage food business is not subject to the State's food safety regulations, *Senate Bill 550/House Bill 399* require a cottage food business to comply with all applicable county and municipal laws and ordinances and authorizes the Department of Health and Mental Hygiene to investigate any complaint regarding a cottage food business.

House Bill 841 (passed) allows a food service facility to operate with the outer windows or doors open unless, while the windows are doors are open, the local health department finds (1) evidence of vermin in food preparation or food storage areas; or (2) evidence of flying insects in food preparation or food storage areas that pose a significant threat to sanitation or public health. If a local health department finds evidence of vermin or flying insects, the local health

department is required to take immediate action to eliminate the vermin or flying insects. The local health department may close the facility or order the temporary closure of the outer windows and doors until the vermin or flying insects are eliminated or until another action approved by the local health department is taken. If evidence of vermin or flying insects is found on three or more separate occasions, the facility is required to keep the outer windows and doors closed at all times until modifications are approved by the local health department to protect against the vermin or flying insects or another action approved by the local health department is taken.

Hepatitis B and C

As funds are available, the Department of Health and Mental Hygiene (DHMH) is required to conduct certain public awareness activities, needs assessments, and other activities related to the hepatitis C virus. *House Bill 641 (passed)* requires DHMH to conduct some of those same activities for hepatitis B. The bill also requires DHMH, among other things, to coordinate with the Maryland Office of Minority Health and Health Disparities to (1) develop a hepatitis B virus plan and a hepatitis C virus plan for the education, testing, and treatment of high risk populations and ethnic and racial populations who are affected disproportionately by those viruses; and (2) develop a plan to increase the availability of hepatitis B virus vaccinations in the State.

Handling of Human Remains

Senate Bill 415/House Bill 540 (both passed) require a funeral establishment or crematory to store and maintain the body of a decedent in a specified manner. If the funeral establishment or crematory is not able to store or maintain the body as required, the funeral establishment or crematory is required to notify the State Board of Morticians and Funeral Directors (board) or the Office of Cemetery Oversight (office), as well as the person authorized to arrange for the final disposition of the body. The body of a decedent may not be transported for preparation or storage to a facility that is not within the jurisdiction of the State, licensed by the board, or permitted by the office unless the facility has entered into an agreement with the board or office and the person authorized to arrange for the final disposition of the body has given permission for the transport.

Reproductive Technology

In recent years, advances in reproductive technology have led courts to confront a variety of legal questions that remain unsettled. Cases regarding children conceived from posthumously donated sperm have generally centered on whether the child can inherit or claim Social Security benefits. *House Bill 101 (passed)* prohibits a person from using sperm or eggs from a donor known to the individual who intends to become a parent through the use of the sperm or eggs if (1) the person knows that the donor died and did not give consent for the posthumous use of the sperm or eggs; or (2) the donor or the individual receives any remuneration for the donation of the sperm or eggs. A donor's consent to the posthumous use of the donor's sperm or eggs given on or after October 1, 2012, is not valid unless it meets certain criteria. The bill does not apply to the use of sperm or eggs donated to a tissue bank or fertility clinic if the donor intends to

remain anonymous. For a discussion on the inheritance-related portions of *House Bill 101*, see the subpart “Estates and Trusts” within Part F – Courts and Civil Proceedings of this *90 Day Report*.

Minor Consent to Medical Treatment

Senate Bill 72 (passed) provides that a minor has the same capacity as an adult to consent to medical or dental treatment if the minor is (1) married; (2) the parent of a child; or (3) is living separate from the minor’s parent, parents, or guardian and is self-supporting. The bill also expands the existing law providing that a minor who is married or a parent has the same capacity as an adult to consent to medical treatment, to a minor who is living separate and apart from the minor’s parent, parents, or guardian and is self-supporting. The bill provides that a licensed health care practitioner who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because a minor lacked the capacity to consent to treatment, and is not required to give the parent, guardian, or custodian of a minor information about treatment needed by the minor or provided to the minor, except information about an abortion.

Electronic Cigarettes

Electronic cigarettes (sometimes referred to as “e-cigarettes”) are battery-operated devices that typically contain nicotine cartridges and other chemicals imitating flavors such as chocolate, mint, or strawberry. The American Lung Association, American Cancer Society, American Heart Association, and Campaign for Tobacco-Free Kids have called for electronic cigarettes – which are not regulated by the U.S. Food and Drug Administration (FDA) – to be removed from the market, positing that children may be attracted to the flavored products and that the products have not been proven safe. *House Bill 1272 (passed)* prohibits a person from selling, distributing, or offering for sale to a minor an electronic device – including an electronic cigarette, cigar, cigarillo, or pipe – that can be used to deliver nicotine to the individual inhaling from the device. The bill does not apply to State-regulated tobacco products or to devices that have been approved for human consumption by FDA. A person that violates the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 for each violation. However, the bill specifies that it is a defense in a prosecution for such a violation that the defendant examined the purchaser or recipient’s driver’s license or other valid identification (issued by an employer, government unit, or institution of higher education) that positively identified the purchaser or recipient as at least 18 years of age.

Health Occupations

Athletic Trainers

Chapters 529 and 530 of 2009 required that, on or after October 1, 2011, an individual be licensed by the State Board of Physicians before practicing athletic training in the State. *Senate Bill 870/House Bill 688 (both passed)* require the State Board of Physicians to waive specified educational requirements for a license to practice athletic training if an individual was certified

by the National Athletic Trainers' Association Board of Certification, Inc. on or before October 1, 2012. The bills also authorize an athletic trainer to accept an "outside referral" from a nonsupervising physician or a licensed health care practitioner under specified circumstances, and they clarify the acceptable mechanisms that a physician may use to supervise an athletic trainer. Physicians, hospitals, institutions, alternative health systems, and other employers are generally prohibited from employing an athletic trainer without a license or an approved evaluation and treatment protocol.

Dentists and Dental Hygienists

Examinations

The American Board of Dental Examiners, Inc. is a test development board serving member state dental boards in developing initial licensure examinations for dentists and dental hygienists, specifically the American Dental Licensing Examination (ADLEX) and the American Dental Hygiene Licensing Examination (ADHLEX), which are accepted in 44 states. *Senate Bill 841/House Bill 754 (both passed)* standardize the examination requirements for all individuals coming into the State seeking licensure as a dentist or dental hygienist from the State Board of Dental Examiners by requiring passage of ADLEX or ADHLEX, as appropriate.

Administration of Local Anesthesia

Chapters 565 and 566 of 2009 expanded the scope of practice for dental hygienists by authorizing manual curettage in conjunction with scaling and root planing and administration of local anesthesia by local infiltration. *Senate Bill 344/House Bill 172 (both passed)* further expand the scope of practice by authorizing a dental hygienist to administer local anesthesia by inferior alveolar nerve block in order to anesthetize soft tissue and facilitate dental hygiene procedures. Administration of local anesthesia may be performed by a dental hygienist if a dentist is physically present on the premises and prescribes the administration of local anesthesia by the dental hygienist. In addition, before administering the local anesthesia, the dental hygienist must successfully complete any educational requirements established by the board and a written and clinical examination as required by the board. A dental hygienist who completed the educational and exam requirements prior to October 1, 2011, is required to complete a refresher course and clinical exam from an accredited dental hygiene program.

Morticians

Mental or Physical Competency Examinations

Several issues regarding the potential competency of applicants or licensees for reasons such as suspected dementia, substance abuse, or physical limitations have arisen in the past year. In response, *Senate Bill 14/House Bill 70 (both passed)* authorize the State Board of Morticians and Funeral Directors to require an applicant or licensee to submit to a mental or physical examination by a health care practitioner designated by the board if:

- when investigating an allegation brought against an applicant or a licensee, the board finds reasonable evidence indicating that the applicant or licensee cannot practice mortuary science or funeral direction competently;
- the board makes a written request for the applicant or licensee to submit to the examination and provides the applicant or licensee with a list of three health care practitioners from which to choose to conduct the exam; and
- the applicant or licensee consents to submit to the exam and waives any claim or privilege to the exam report.

The bills require the board to pay the reasonable cost of an examination for a licensee; however, an applicant who does not hold a valid license with the board has to pay the reasonable cost of the exam. If the applicant is deemed competent to practice mortuary science or funeral direction as a result of the evaluation, the board is required to reimburse the applicant for the reasonable cost of the evaluation.

Mortuary Transport Services

Both the State Board of Morticians and Funeral Directors and the Office of the Chief Medical Examiner have received numerous complaints regarding unprofessional conduct by transport service employees. *Senate Bill 895/House Bill 753 (both passed)* require a “mortuary transport service” to hold a permit issued by the board. An individual employed by a permit holder is required to be registered with the board as a “transporter” before removing and transporting human remains in the State. The definition of “mortuary transport service” does not include a licensed funeral establishment or an employee of a licensed establishment that removes and transports human remains. Likewise, it does not include a cemetery or an employee of a cemetery that removes or transports human remains within the boundaries of the cemetery. The bills require a permit holder to employ only registered transporters to remove and transport human remains. Among other requirements, permit holders must be bonded and carry liability insurance, and transporters have to submit a criminal history records check to become registered. Vehicles used for transport have to pass an inspection conducted by an inspector designated by the board. Signs and advertisements for a mortuary transport service are required to display the name of the service as it appears on the permit.

Nurses

The Nurse Licensure Compact, administered by the National Council of State Boards of Nursing, enables multistate licensure for registered nurses and licensed practical nurses. A “party state” is any state that has adopted the compact, which allows nurses to practice across state lines, enables cooperation among state boards of nursing, and improves enforcement of licensure laws across state bounds. Twenty-four states, including Maryland, are party states. *Senate Bill 337/House Bill 238 (both passed)* facilitate the State Board of Nursing’s compliance with the Nurse Licensure Compact, clarify several requirements related to licensure, extend the

statute of limitations for prosecution of certain disciplinary violations, and repeal the board's authority to accept a criminal history records check from another state.

Nursing Home Administrators

Senate Bill 737/House Bill 1118 (both passed) prohibit a nursing home or a “nursing home management firm” from knowingly employing or retaining as a consultant an individual who has surrendered a nursing home administrator license for specified disciplinary grounds or had such a license revoked by the State Board of Examiners of Nursing Home Administrators. Additionally, the Department of Health and Mental Hygiene is prohibited from reimbursing a nursing home or related institution if the facility or a “management firm” of the facility knowingly employs or retains as a consultant such an individual.

Pharmacists

Nonresident Pharmacies

Although all pharmacists have to be licensed before practicing pharmacy in Maryland and all pharmacy technicians have to be registered, the State Board of Pharmacy has not interpreted this requirement as applying to nonresident pharmacies, even if they provide services to Maryland patients. Instead, the board refers cases to the regulatory or licensing agency in the state in which the nonresident pharmacy is located and must rely on the actions of that entity. *Senate Bill 132/House Bill 334 (both passed)* require a nonresident pharmacy to not only hold a pharmacy permit issued by the board but also to have a pharmacist on staff who is licensed by the board and designated as the pharmacist responsible for providing pharmaceutical services to patients in the State. The bills expand the board's authority over nonresident pharmacies by clarifying inspection requirements, repealing the requirement that the board defer disciplinary action until certain actions have been taken by the regulatory agency in the state in which the nonresident pharmacy is located, and broadening the scope of disciplinary actions that may be taken against nonresident pharmacies.

Wholesale Distributors

Although the board has regulated wholesale distributors of prescription drugs since 1987, its regulation of distributors has tightened in recent years in an effort to enhance patient safety and secure the State's prescription drug supply chain. *Senate Bill 133/House Bill 316 (both passed)* alter the application process for wholesale distributor permits issued by the State Board of Pharmacy by creating separate requirements for criminal history records checks for applicants located in Maryland versus those outside the State. Wholesale distributor permit applicants located in Maryland must submit two sets of fingerprints to the Criminal Justice Information System for both State and national criminal history records checks rather than submit the fingerprints directly to the board. Applicants located outside of Maryland must submit to a national criminal history records check and a criminal history records check for their state of residence rather than submitting to a Maryland criminal history records check. The designated representative of the wholesale distributor and the designated representative's

immediate supervisor must request that the results of their respective state criminal history records checks be forwarded to the board and the applicant. The bills exempt applicants who do not hold prescription drugs or devices (virtual manufacturers) from the requirement to be inspected prior to issuance of a permit. The bills also exempt a manufacturer that distributes its own prescription devices that are approved or authorized by the U.S. Food and Drug Administration from specified wholesale distributor permit requirements.

Physician Assistants

Senate Bill 479/House Bill 584 (both passed) repeal the requirement that specified patients being treated by a physician assistant be seen initially by a supervising physician and as frequently as the patient's condition requires, but no less than within every five appointments or within 180 days, whichever occurs first. Instead, the bills require that a delegation agreement between a physician assistant and a supervising physician include a statement that the primary supervising physician and the physician assistant attest that:

- they will establish a plan for the types of cases that require a physician plan of care or require that the patient initially or periodically be seen by the supervising physician; and
- the patient will be provided with access to the supervising physician on request.

Physicians

Appointment and Term for the Chair of the State Board of Physicians

Statute requires the State Board of Physicians to elect a chair and any other officers that it considers necessary. *Senate Bill 629/House Bill 824 (both passed)* instead require the Governor to appoint the chair of the board and specify that the term of office for the chair is two years.

Disclosure of Professional Credentials and Reports on Advertising

Senate Bill 395/House Bill 957 (both passed) prohibit a physician from representing to the public that the physician is certified by a public or private board, including a multidisciplinary board, or that the physician is board certified, unless the physician makes specified disclosures and the certifying board meets specified requirements. Specifically, the physician must disclose the full name of the certification board and the name of the specialty or subspecialty. Further, for purposes of certifying physicians, a certifying board must require a physician to:

- complete a postgraduate training program that provides complete training in the specialty or subspecialty being certified and is accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; and
- be certified by the American Board of Medical Specialties or American Osteopathic Association in the same training field.

Additionally, the bills require each health occupations board to submit any existing regulation or policy governing advertising by health care practitioners to specified committees of the General Assembly by December 31, 2012.

Polysomnographic Technologists and Respiratory Care Practitioners

The practice of polysomnography means monitoring and recording physiologic data during sleep, including sleep-related respiratory disturbances under the supervision of a licensed physician, or using these data for the purposes of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders. It also includes diagnosing and treating individuals who suffer from sleep disorders under certain circumstances. Both polysomnographic technologists and respiratory care practitioners practice polysomnography.

Education Requirements for Polysomnographic Technologists

Chapter 595 of 2006 required the State Board of Physicians to license and regulate the practice of polysomnography although numerous acts have delayed the licensing requirement, the latest until October 1, 2013.

House Bill 827 (passed) adds an alternative educational pathway that an individual may complete in order to meet the requirements for licensure as a polysomnographic technologist. An individual may have graduated from a sleep technologist educational program accredited by the American Academy of Sleep Medicine and have completed a clinical component of an educational program as approved by the State Board of Physicians. Additionally, the bill requires the board to waive the educational requirements if, on or before September 30, 2013, an individual has passed the national certifying exam or another exam approved by the board.

Exemption for Respiratory Care Practitioners

Senate Bill 350/House Bill 833 (both passed) clarify that licensed respiratory care practitioners have the right to practice respiratory care within the scope of their license, including practicing respiratory care in a sleep laboratory. The bills exempt respiratory care practitioners whose duties include practicing polysomnography and who are licensed by the State Board of Physicians to practice respiratory care by December 31, 2012, from the requirement to be licensed as a polysomnographic technologist by October 1, 2013.

Professional Counselors

Certified Professional Counselor-Alcohol and Drug

In 2007, the Department of Legislative Services (DLS) conducted a full sunset evaluation of the State Board of Professional Counselors and Therapists. The evaluation report recommended that the board review the certification structure for alcohol and drug counselors to determine whether the three-tiered certification structure is of continued benefit to the profession and the public. The review led the board to conclude that two of the three tiers should be continued, while the third tier (for certified professional counselor-alcohol and drug or CPC-AD)

should be discontinued. More specifically, the board recommended that the credential be repealed for new applicants, while authorizing currently certified CPC-ADs to renew their certification and continue practicing nonclinical alcohol and drug counseling. Approximately 25 counselors hold the CPC-AD certification. *Senate Bill 474/House Bill 348 (both passed)* implement the board's recommendations.

Alcohol and Drug Counselor Trainees

An individual may practice clinical alcohol and drug counseling without a license for a limited period of time, as determined by the board, if the individual is working as a trainee under the supervision of an approved alcohol and drug supervisor while fulfilling experiential or course of study requirements. An approved alcohol and drug supervisor must be a CPC-AD, a licensed clinical alcohol and drug counselor, or a health care provider licensed or certified under the Health Occupations Article with documented expertise in alcohol and drug counseling, as approved by the board. *House Bill 1009 (passed)* requires the State Board of Professional Counselors and Therapists to maintain a registry of individuals working as trainees and adopt a code of ethics for trainees working under the supervision of approved alcohol and drug counselor supervisors.

Art Therapists

Art therapy is a mental health profession that uses the creative process of art making to improve and enhance the physical, mental, and emotional well-being of individuals of all ages. Some art therapists, depending on their educational backgrounds, currently qualify to be licensed by the board as a professional counselor. However, it has been difficult for the board to determine which art therapy credentials should qualify for licensure. *Senate Bill 969/House Bill 1207 (both passed)* require the State Board of Professional Counselors and Therapists to license and regulate the practice of "art therapy." An individual may not practice, attempt to practice, or offer to "practice clinical professional art therapy" in the State unless licensed by the board, with some exceptions.

Psychologists

According to the State Board of Examiners of Psychologists, the board handles an average of one case annually of an individual impersonating a psychologist and four cases annually of individuals practicing without a license. *Senate Bill 262/House Bill 276 (both passed)* increase the maximum penalties that the board may assess on an individual for misrepresentation as a psychologist or practicing psychology without a license. On conviction of a misdemeanor, an individual is subject to a fine of up to \$10,000 or imprisonment for up to one year, or both. Practicing psychology without a license is subject to a civil fine of up to \$50,000 to be assessed by the board in accordance with regulations adopted by the board and payable to the State Board of Examiners for Psychologists Fund.

Residential Child and Youth Care Practitioners

Chapter 218 of 2008 expanded the purview of the State Board for Certification of Residential Child Care Program Administrators to include the certification of residential child and youth practitioners, by October 1, 2013, and renamed the board accordingly. Chapter 583 of 2010 delayed the date by which residential child and youth care practitioners must be certified by two years – until October 1, 2015. The requirement applies to practitioners employed by programs licensed by the departments of Health and Mental Hygiene, Human Resources, and Juvenile Services and subject to the Governor’s Office for Children licensing requirements. *Senate Bill 868/House Bill 262 (both passed)* require the State Board for Certification of Residential Child Care Program Professionals to establish a tiered certification structure for residential child and youth care practitioners and establish training and continuing education requirements for the residential child and youth care practitioners certified by the board. The board must set reasonable fees for the issuance and renewal of certificates, including approving training programs, but may waive the fees, based on demonstrated need as determined by the board. The board may not require applicants for certification as a residential child and youth care practitioner to pay an examination fee. Employees of the Maryland School for the Blind who hold a current paraprofessional certificate are exempt from the certification requirement as are individuals, for up to 180 days, participating in a board-approved training program.

Sunset Evaluations and Related Legislation

Approximately 70 entities, including each of the boards regulated under the Health Occupations Article, are subject to periodic evaluation conducted by DLS in accordance with the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most agencies evaluated are also subject to termination or “sunset.” In 2011, DLS conducted preliminary sunset evaluations of, and recommended that full evaluations be waived for, the State Board for Certification of Residential Child Care Program Professionals and the State Board of Social Work Examiners. The General Assembly reauthorized both boards through *Senate Bill 94/House Bill 72 (both passed)* and *Senate Bill 95/House Bill 73 (both passed)*, respectively. In addition, the State Board of Pharmacy, State Board of Environmental Sanitarians, and State Board of Nursing underwent full evaluations by DLS in 2011; the termination dates for all three boards were extended as discussed below. Although the State Board of Physicians and its allied health advisory committees also underwent full evaluation by DLS in 2011, legislation was not passed to extend the board’s and associated committees’ termination dates.

State Board of Pharmacy

Senate Bill 274/House Bill 283 (both passed) extend the termination date of the State Board of Pharmacy by 10 years to July 1, 2023, and require an evaluation of the board by July 1, 2022. The bills remove the requirement that the State Board of Pharmacy and the State Board of Physicians jointly approve physician-pharmacist agreements and protocols used under the Drug Therapy Management Program and, instead, require physicians and pharmacists who

enter into such agreements to submit a copy of the agreement and any subsequent modifications to their respective licensing board.

State Board of Environmental Health Specialists

Environmental sanitarians perform inspections and investigations to secure compliance with environmental and health laws and regulations. The diverse practice areas of the profession include food safety; air quality; disease investigation and prevention; animal, insect, and rodent control; and lead, well, septic system, swimming pool, and campground inspections. Most environmental sanitarians work for local health departments and State agencies. *Senate Bill 450/House Bill 511 (both passed)* transfer the State Board of Environmental Sanitarians, which regulates the profession, from the Maryland Department of the Environment to the Department of Health and Mental Hygiene and change the name of the board to the State Board of Environmental Health Specialists. Correspondingly, environmental sanitarians are renamed environmental health specialists, and environmental sanitarians-in-training are renamed environmental health specialists-in-training. The bills also change the funding source for the board by creating a special fund. The bills also expand the individuals who are exempt from licensure requirements, modify examination and equivalent course work requirements to facilitate licensure, and make various changes to the board's authority consistent with other health occupations boards. Finally, the bills extend the termination date of the board by four years to July 1, 2017, and require a direct full evaluation of the board be conducted by July 1, 2016.

State Board of Nursing

Senate Bill 921/House Bill 395 (both passed) extend the termination date of the State Board of Nursing by 10 years to July 1, 2023, and require an evaluation of the board by July 1, 2022. The bills also require the Department of Health and Mental Hygiene, in consultation with the Department of Budget and Management, to contract with an independent entity to perform a management and personnel study of the board. Additionally, the bills include provisions to:

- repeal the board's authority to grant a waiver from the criminal history records check requirements to registered nurse, licensed practical nurse, and certified nursing assistant applicants who have completed such a check through another state board of nursing within the previous five years;
- require the board to expand its annual report to include specified information and submit the report to the General Assembly; and
- add a certified medication technician to the Nursing Assistant Advisory Committee and require the advisory committee to meet at least monthly.

Dentists, Physicians, and Podiatrists Who Dispense Prescription Drugs

According to the respective health occupations boards, a total of 1,265 dispensing permits are held by nonpharmacist practitioners in Maryland, including approximately 1,170 physicians, 55 dentists, and 40 podiatrists. Beginning July 1, 2013, in addition to existing requirements, *Senate Bill 603 (passed)* requires a dentist, physician, or podiatrist who personally prepares and dispenses prescription drugs to:

- comply with drug recalls and specified child-resistant packaging requirements;
- maintain biennial inventories and comply with any other federal and State recordkeeping requirements relating to controlled dangerous substances;
- purchase prescription drugs from a pharmacy or wholesale distributor that holds a permit issued by the State Board of Pharmacy;
- report annually to the respective board of licensure whether the dentist, physician, or podiatrist has personally prepared and dispensed prescription drugs within the previous year;
- complete, as a condition of permit renewal, 10 continuing education credits, phased in over a five-year period, relating to the preparing and dispensing of prescription drugs, as offered by the Accreditation Council for Pharmacy Education or as approved by the Secretary of Health and Mental Hygiene, in consultation with each respective board of licensure; and
- on inspection by the Division of Drug Control (DDC), sign and date an acknowledgement form relating to these and existing requirements.

The bill also requires the boards of Pharmacy, Dental Examiners, Physicians, and Podiatric Medical Examiners to report annually to DDC specified information regarding licensees who are authorized to personally prepare and dispense prescription drugs. DDC has to inspect the office of licensees and report the results of these inspections to the respective licensure boards. The boards may charge a fee to a dentist, physician, or podiatrist who holds a dispensing permit in an amount that will produce funds to approximate but not exceed the documented costs to DDC for inspections of dispensing permit holders.

Health Care Facilities and Regulation

Maryland Health Care Commission

Cardiac Surgery and Percutaneous Coronary Intervention

Percutaneous coronary intervention (PCI) services at noncardiac surgery hospitals have been regulated by the Maryland Health Care Commission (MHCC) or its predecessor since 1990.

State law and regulations require hospitals to obtain a certificate of need to provide cardiac surgery; MHCC regulations also prohibit hospitals from performing PCI without onsite cardiac surgery. Ten hospitals with onsite cardiac surgery programs are currently approved by MHCC to perform PCI.

In 2006, MHCC initiated a waiver program under the State Health Plan that allowed community hospitals without onsite cardiac surgery programs to perform *emergency* angioplasty for patients experiencing certain types of heart attacks. Thirteen hospitals currently participate in this “primary PCI waiver program.” In 2007, MHCC initiated a nonprimary PCI research waiver program under the State Health Plan. Under this program, 8 of the 13 hospitals in the primary PCI waiver program are also allowed to perform *elective* angioplasties. The hospitals participating in the PCI waiver programs are subject to periodic waiver renewal and must demonstrate adherence to performance requirements. Under the waiver programs, hospitals have demonstrated that PCI services generally can be safely performed in a setting without onsite cardiac surgery. As a result, a new regulatory framework is needed for these services.

Chapter 616 of 2011 required MHCC to report on statutory changes needed to provide appropriate oversight of PCI services. In its report, MHCC recommended that PCI be identified as a service regulated by MHCC and, when provided in hospitals without cardiac surgical backup, require an exemption from certificate of need. The report also recommended that MHCC be given statutory authority to oversee PCI and cardiac surgery, including in existing cardiac surgery hospitals, on an ongoing basis after the issuance of a certificate of need or an exemption from a certificate of need. MHCC advised that this ongoing regulatory authority would require PCI and cardiac surgery programs to meet minimum performance standards as a condition of continuing to provide PCI and cardiac surgery services.

House Bill 1141 (passed) requires an acute general hospital to obtain a certificate of conformance from MHCC before establishing emergency or elective PCI services. MHCC may issue a certificate of conformance only if specified conditions are met. Hospitals that already provide emergency PCI or elective PCI and meet other specified requirements are exempt from the certificate of conformance for the service they already provide. In addition, the bill requires an acute general hospital to obtain and maintain a certificate of ongoing performance in order to continue to provide cardiac surgery services, emergency PCI services, or elective PCI services. MHCC must adopt specified regulations to implement the bill.

Health Information Sharing

In a December 2011 report focusing on regulatory oversight of PCI in Maryland, MHCC recommended that in order to ensure that MHCC has the information necessary to provide appropriate regulatory oversight and strengthen the quality of PCI services, statute should be amended to identify MHCC as a State agency that can share information for the purpose of investigating quality or utilization of care in regulated facilities. **Senate Bill 749/House Bill 1140 (both passed)** adds MHCC to the list of entities (1) to which the Health Services Cost Review Commission (HSCRC) within the Department of Health and Mental Hygiene may disclose specified identifying information; (2) to which the State Board of Physicians must

disclose, for the purpose of investigating quality or utilization of care in any entity regulated by the Office of Health Care Quality or HSCRC, any information contained in a record; and (3) that must jointly adopt regulations for the efficient and secure transfer of any information in a record that may indicate that an investigation may be appropriate. The bill also extends the date by which such regulations must be adopted from January 1, 2012, to January 1, 2013.

Continuing Care Retirement Communities

Continuing care retirement communities (CCRCs) offer a range of residential and health care services to serve aging residents and their changing needs. According to the Maryland Department of Aging, which regulates 37 CCRCs across the State, concerns have arisen among various stakeholders regarding the administration of continuing care law – particularly as related to the unique nature of the contract between providers and subscribers and the increasing complexity of CCRCs' corporate structures. *Senate Bill 485/House Bill 556 (both passed)* modify several provisions of law relating to CCRCs. Specifically, the bills establish additional requirements with regard to continuing care agreements, disclosure statements, and grievance procedures; require providers to make specified information available to subscribers; modify requirements for the sale or transfer of a facility; restrict the pledging or encumbering of operating reserve assets; and increase the operating reserve that a provider must set aside for each facility.

Health Insurance

Maryland Health Benefit Exchange

The federal Affordable Care Act (ACA) requires states that elect to operate a health benefit exchange to implement the exchange by January 1, 2014. *House Bill 443 (passed)*, the Maryland Health Benefit Exchange Act of 2012, expands the operating structure of the Maryland Health Benefit Exchange established in 2011. The primary function of the exchange is to certify and make available qualified health plans to individuals and businesses and to serve as a gateway to an expanded Medicaid program under the ACA. The legislation establishes the Small Business Health Options Program (SHOP) Exchange and the Individual Exchange. The SHOP Exchange must be a separate insurance market within the exchange for small employers.

Market Participation Rules

House Bill 443 establishes requirements for insurance carriers that want to participate in the individual and small group health insurance markets. Subject to certain exceptions, carriers may not offer health benefit plans in the small group market unless they also offer qualified health plans (QHPs) in the SHOP Exchange. Similarly, carriers may not offer health benefit plans in the individual market unless they offer QHPs in the Individual Exchange. Beginning January 1, 2014, the exchange must allow any qualified plans that meet minimum standards to be offered in the exchange. The exchange may employ alternative contracting options and active purchasing strategies, however, beginning January 1, 2016. Before employing such an option or

strategy, the exchange must submit a plan to specified committees of the General Assembly and allow the committees 90 days for review and comment. The exchange may not require Medicaid managed care organizations to offer QHPs in the exchange.

SHOP Exchange and Navigator Program

The SHOP Exchange must allow qualified employers to designate a coverage level within which their employees may choose any QHP, or designate a carrier or insurance holding company system and a menu of QHPs offered by the carrier or insurance holding company system from which their employees may choose. The SHOP Exchange may allow qualified employers to designate qualified dental plans and qualified vision plans as options for their employees.

House Bill 443 establishes a SHOP Exchange Navigator Program that must focus outreach efforts and provide health insurance enrollment and eligibility services to small employers that do not offer health insurance to their employees already. A SHOP Exchange navigator must hold a SHOP Exchange navigator license, be engaged by and receive compensation only through the SHOP Exchange, and complete and comply with specified training requirements.

Individual Exchange Navigator Program

House Bill 443 also establishes a Navigator Program for the Individual Exchange. Among other requirements, the program must focus outreach efforts and services on individuals without health insurance coverage; enable the Individual Exchange to comply with the ACA by providing seamless entry and transition among Medicaid, the Maryland Children's Health Program, and qualified plans; and use Individual Exchange navigator entities to provide comprehensive consumer assistance services. Services include education and outreach; facilitating selection of qualified plans, assessment of tax implications and premium and cost-sharing requirements, and application, enrollment, renewal, and disenrollment processes; and facilitating eligibility determinations. The program must provide information and services in a culturally and linguistically appropriate and accessible manner.

The legislation defines an Individual Exchange navigator entity as a community-based organization or other entity or partnership of entities authorized by the Individual Exchange that employs or engages Individual Exchange navigators. Services that involve the sale, solicitation, and negotiation of QHPs offered in the Individual Exchange must be provided by an Individual Exchange navigator. An Individual Exchange navigator must be certified, be employed or engaged by an Individual Exchange navigator entity, receive compensation only through the Individual Exchange or through an Individual Exchange navigator entity, and meet other requirements. An Individual Exchange navigator entity may employ or engage individuals other than Individual Exchange navigators to perform limited functions, such as education and outreach.

Insurance Producers

To sell QHPs in the SHOP Exchange or Individual Exchange, a licensed insurance producer must register and have authorization and complete and comply with any specified training requirements. Insurance producers authorized to sell plans in the SHOP Exchange must inform small employers of all QHPs and options available in the SHOP Exchange. Insurance producers authorized to sell plans in the Individual Exchange must refer individuals seeking insurance who may be eligible for Medicaid or MCHP to the navigator program for the Individual Exchange. An insurance producer may not be compensated by either exchange but must be compensated directly by a carrier. The exchange may not require navigators to hold an insurance producer license.

Certification of Plans and Vision and Dental Benefits

House Bill 443 authorizes the exchange to require a health benefit plan, in order to be certified as a QHP, to include transition of care language in contracts, meet criteria that encourage and support QHPs in facilitating cross-border enrollment, and demonstrate compliance with the Mental Health Parity and Addiction Equity Act of 2008. The exchange must certify dental plans as qualified dental plans and vision plans as qualified vision plans. Carriers may offer dental and vision benefits in the exchange as stand-alone plans, as an endorsement to a medical plan, and in conjunction with a medical plan. The legislation authorizes the exchange to determine whether a carrier may elect to include nonessential oral and dental benefits or nonessential vision benefits in a qualified health plan and to determine the standards of disclosure for pricing the benefits.

Essential Health Benefits

The ACA requires health plans offered in the exchange to include a comprehensive set of items and services known as “essential health benefits.” Essential health benefits must be included in plans offered in the small group and individual markets, both inside and outside the exchange. To satisfy federal requirements, states may choose, from a list of specified plan categories, a benchmark plan that includes benefits and services that will constitute the essential health benefits package. *House Bill 443* requires the Maryland Health Care Reform Coordinating Council (MHCRC) to select the State benchmark plan by September 30, 2012. The MHCRC must determine the 10 health benefit plans deemed eligible by the U.S. Secretary of Health and Human Services to be the benchmark plan, conduct a comparative analysis of the benefits of each plan, solicit the input of stakeholders and the public, and select a plan that complies with all requirements of specified State and federal laws.

Transitional Reinsurance, Risk Adjustment, and Risk Corridors

House Bill 443 requires the exchange, with the approval of the Insurance Commissioner, to implement or oversee the implementation of ACA requirements relating to transitional reinsurance and risk adjustment. The exchange may not, however, assume responsibility for the program of risk corridors for health benefit plans in the Individual and SHOP exchanges. In consultation with the Maryland Health Care Commission and with the approval of the

Commissioner, the exchange must operate or oversee a transitional reinsurance program for coverage years 2014 through 2016. The exchange, with the approval of the Commissioner, also must operate or oversee a risk adjustment program. Beginning in 2014, the exchange, with the approval of the Commissioner, must strongly consider using the federal model adopted by the U.S. Secretary of Health and Human Services in the operation of the State's risk adjustment program.

Fraud, Waste, and Abuse Detection and Prevention

The exchange must establish a full-scale fraud, waste, and abuse detection and prevention program. Before establishing the program, the exchange must submit a plan for the program to the Senate Finance and House Health and Government Operations committees and allow the committees 60 days for review and comment.

Regulations and Interim Policies

House Bill 443 requires the Exchange Board to submit proposed regulations to specified committees of the General Assembly at least 30 days prior to submitting any proposed regulation to the *Maryland Register* unless this requirement is waived by the committee chairs. The legislation also authorizes the board to adopt interim policies, pending adoption of regulations, if necessary to comply with federal law and regulations and to allow carriers offering qualified plans sufficient time to design and develop such plans and file rates. The board must obtain comment from specified legislative committees, carriers, and the public.

Uncodified Study and Reporting Requirements

House Bill 443 includes multiple requirements regarding further study and reporting. A joint legislative and executive committee must conduct a study and report its findings and recommendations on the financing mechanisms that should be used to enable the exchange to be self-sustaining by 2015. The report must include recommendations on the specific mechanisms that should be used to finance the exchange for consideration by the General Assembly during the 2013 session.

The legislation also establishes study and reporting requirements concerning the development of risk adjustment and reinsurance programs, the establishment of continuity of care requirements in the State's health insurance markets, whether the exchange should remain an independent public body, and whether to continue to maintain separate small group and individual markets or to merge the two markets.

Mandated Benefits and Services

Cancer Chemotherapy

Senate Bill 179/House Bill 243 (Chs. 4 and 5) prohibit health insurance carriers that provide coverage for cancer chemotherapy from imposing cost-sharing requirements on coverage for orally administered chemotherapy that are less favorable to an insured or enrollee than the

cost-sharing requirements that apply to coverage for chemotherapy that is administered intravenously or by injection. A carrier may not reclassify chemotherapy or increase a cost-sharing requirement imposed on chemotherapy to achieve compliance with the legislation. The legislation does not apply to a policy that provides the essential health benefits required under the federal Affordable Care Act.

Telemedicine

Senate Bill 781/House Bill 1149 (both passed) require health insurance carriers to cover and reimburse health care services appropriately delivered through telemedicine. A carrier may impose cost-sharing requirements for services delivered through telemedicine. A carrier may also undertake utilization review, including preauthorization, to determine the appropriateness of a health care service – whether delivered in-person or through telemedicine – if the appropriateness of the service is determined in the same manner. The legislation also requires specified departments of State government to study and report on issues relating to telemedicine, including its use in delivering services to inmates in correctional facilities and to enrollees in the Medicaid program.

Habilitative Services

Health insurance carriers must provide coverage of habilitative services for children up to 19 years of age who have a congenital or genetic birth defect. *Senate Bill 744/House Bill 1055 (both passed)* require the Insurance Commissioner to establish a workgroup on access to habilitative services benefits. The Department of Health and Mental Hygiene must also establish a technical advisory group on the use of habilitative services to treat autism and autism spectrum disorders. The Commissioner must adopt regulations based on the recommendations of this group and – beginning on November 1, 2013 – health insurance carriers must make coverage determinations relating to the treatment of autism and spectrum disorders in accordance with these regulations. The legislation also clarifies the definition of a “congenital or genetic birth defect” to include congenital or genetic developmental disabilities.

Dental Preventive Care

House Bill 1356 (passed) establishes requirements for coverage of dental preventive care – a preventive dental visit, screening, oral examination, teeth cleaning, fluoride treatment, or routine preventive service that is a covered benefit under a policy or contract issued by a health insurance carrier or dental plan organization. If benefits for dental preventive care are available and all other requirements for coverage are met, coverage for such care must be provided at any time during the plan year for a policy that covers one visit a year. If a policy covers more than one dental preventive care visit during a plan year, a carrier or organization may impose a frequency limitation on visits, but at an interval that is no greater than 120 days during a plan year.

Oversight of Health Insurance Carriers

Health Benefit Plan Premium Rate Review

Senate Bill 456/House Bill 465 (both passed) clarify and codify the rate filing and approval process for health insurance carriers by applying the same review standards to health insurers, nonprofit health service plans, and health maintenance organizations. Carriers, including association plans, may not charge a premium rate or change a premium rate charged without approval from the Insurance Commissioner. The legislation lists factors that the Commissioner must consider, when reviewing a rate filing, to the extent appropriate, such as past and prospective loss experience within and outside the State, a reasonable margin for reserve needs, and any other relevant factors within and outside the State. The Commissioner must disapprove or modify a proposed premium rate filing if the proposed premium rates appear, based on statistical analysis and reasonable assumptions, to be inadequate, unfairly discriminatory, or excessive in relation to benefits.

Each proposed rate and any supporting information filed must be open to public inspection. A carrier may, however, request a finding by the Commissioner that information included in a rate filing be considered confidential commercial information and not subject to public inspection.

Evaluation of Health Benefit Plans for Racial and Ethnic Variations in Quality and Outcomes

The Maryland Health Improvement and Disparities Reduction Act of 2012, *Senate Bill 234 (Ch. 3)*, requires the Maryland Health Care Commission to establish and implement a system to evaluate health benefit plans for racial and ethnic variations in quality of care and outcomes. The evaluation system must include information on actions taken by health insurance carriers to reduce health disparities, including whether the health benefit plan provides culturally appropriate educational materials for its members.

For additional discussion of the Maryland Health Improvement and Disparities Reduction Act of 2012, see subpart “Public Health” within this Part J – Health and Human Services of this *90 Day Report*.

Sharing of Medical Information to Enhance or Coordinate Patient Care

Senate Bill 954 (passed) authorizes specific medical information or medical data contained in an individual’s medical or claims records to be disclosed to the individual’s treating provider or to the individual’s health insurance carrier or accountable care organization (ACO) for the sole purposes of enhancing or coordinating patient care or assisting the treating provider’s clinical decisionmaking. A disclosure for these purposes may occur if the disclosure is made in accordance with statutory limitations on disclosure of mental health records; the federal Health Insurance Portability and Accountability Act of 1996, and any other applicable federal privacy laws; and any applicable statutory requirements for disclosures made through a health information exchange.

A disclosure may not be used for underwriting or utilization review purposes. Carriers, ACOs, and health care providers must provide a specific notice regarding the information to be shared, with whom it will be shared, and the specific types of uses and disclosures that may be made. This notice must include an opportunity for an individual to opt-out of the sharing of the individual's medical record.

Preauthorization of Health Care Services

Senate Bill 540/House Bill 470 (both passed) require the Maryland Health Care Commission (MHCC) to work with specified health care payors and providers to attain benchmarks for standardizing and automating the process required by payors for preauthorizing health care services. The legislation establishes dates by which benchmarks must be met and requires MHCC to establish by regulation a process for waiving a payor or provider from the benchmarks for extenuating circumstances. Among other benchmarks, payors must establish an online preauthorization system by July 2013, and by July 2015, providers must use either the online preauthorization system, or an alternative system that meets a national transaction standard, if established and adopted by the health care industry.

If necessary to attain the benchmarks, MHCC may adopt regulations to adjust benchmark dates, require payors and providers to comply with the benchmarks, and establish penalties for noncompliance. The legislation also establishes multiple reporting requirements and requires MHCC to reconvene a multi-stakeholder workgroup to review progress and make recommendations relating to the benchmarks.

Regulation of Pharmacy Benefit Managers

Senate Bill 903/House Bill 838 (both passed) modify and expand provisions governing audits and reimbursement of pharmacies and pharmacists by a pharmacy benefits manager (PBM). The provisions include when a PBM may recoup by setoff any monies for an overpayment or denial of a claim and the circumstances under which a PBM may retroactively deny or modify reimbursement to a pharmacy or pharmacist for a claim that has been approved by a PBM.

With the exception of overpayments, a PBM may not retroactively deny or modify reimbursement for an approved claim unless the claim was fraudulent, the pharmacy or pharmacist had been reimbursed for the claim previously, the services reimbursed were not rendered by the pharmacy or pharmacist, or the claim otherwise caused monetary loss to the PBM if the PBM allowed the pharmacy a reasonable opportunity to remedy the cause of the loss.

The legislation also authorizes the Insurance Commissioner to adopt regulations regarding the documentation that may be requested during an audit and the process a PBM may use to conduct an audit.

Authorization of Insurance Producers to Charge Fees for Administrative Services

Senate Bill 928/House Bill 982 (both passed) authorize an insurance producer who is licensed to sell health insurance to charge reasonable fees for an administrative service that is sold to an employer, such as assisting an employer in providing an employee benefit on behalf of the employer. Fees may not be charged for services that are compensated by commissions or other compensation paid by a health insurance carrier. Likewise, fees may not be charged for services that are performed by the insurance producer acting as a third-party administrator or an insurance adviser. An insurance producer must disclose specified information to an employer before charging a fee.

Life and Health Insurance Guaranty Corporation

The Maryland Life and Health Insurance Guaranty Corporation is a statutory entity composed of all insurers licensed to sell life insurance, health insurance, and annuities in the State. Under the Life and Health Insurance Guaranty Corporation Act, the corporation provides limited protection to Maryland residents who hold life or health insurance policies and annuities issued by the corporation's member insurers by making payments to insured residents in the event that a member insurer becomes impaired or insolvent.

Senate Bill 1003/House Bill 1340 (both passed) revise the Life and Health Insurance Guaranty Corporation Act to bring the Act in line with a model act developed by the National Association of Insurance Commissioners. In addition to a number of clarifying changes, the legislation requires the corporation to provide coverage to payees of structured settlement annuities under certain circumstances. It also establishes rights and obligations of the corporation relating to reinsurance contracts assumed by the corporation and specifies how new insurance products, such as equity-indexed annuities, are to be covered by the corporation. The legislation increases the maximum amounts of contractual obligations of impaired or insolvent member insurers for which the corporation may be liable.

Social Services

The Elderly

House Bill 991 (passed) requires the Department of Housing and Community Development, with the assistance of the Maryland Department of Aging, the Department of Health and Mental Hygiene, and the Department of Human Resources, to create a task force to study the renovation and repair needs of senior homeowners and report its findings to the Governor and the General Assembly by December 31, 2012. The task force, in consultation with a wide range of stakeholders, is required to study methods for:

- identifying, on a statewide basis, seniors of limited income who own and occupy single-family homes;

- identifying census tracts with high concentrations of senior homeowners;
- understanding the needs of low-income seniors regarding home repairs, safety, and energy savings;
- addressing the impact of high concentrations of low-income senior homeowners on neighborhood stability and preservation;
- identifying existing and new public resources on the federal, State, and local levels to assist low-income and limited-income senior homeowners with home renovation and repairs; and
- identifying the challenges for low-income and limited-income senior homeowners in accessing public resources.

The Disabled

Attendant Care Program

The Attendant Care Program in the Department of Disabilities provides financial assistance for attendant care services to individuals between 18 and 65 years of age with a severe chronic or permanent disability that precludes or significantly impairs independent performance of essential activities. *Senate Bill 231 (passed)* gives the department more flexibility to manage the program and help disabled individuals maintain independence by:

- allowing individuals to continue to participate in the program after they turn 65;
- authorizing the department to establish separate sliding payment scales for each category of eligible individuals, including individuals who are working and individuals residing in, or at risk of placement in, a nursing facility;
- clarifying the criteria for placement on a waiting list for program services; and
- allowing the Secretary to deviate from a 50% participation rate per category to match resources with program participation.

Service Animal Trainers

Under Maryland law, a service animal trainer may be accompanied by an animal that is being trained as a service animal in any place where an individual with a disability or a parent of a minor child with a disability has the right to be accompanied by a service animal, except where the animal being trained would create a clear danger of disturbance or physical harm to an individual. *Senate Bill 804 (passed)* alters the definition of “service animal trainer” to include an individual who raises service animals and specifies that the trainer may be a professional or a volunteer. The bill establishes that service animal trainers who are accompanied by an animal being trained or raised as a service animal (1) have the same rights to housing accommodations

as individuals with disabilities and the parents of a minor child with a disability who use service animals; (2) have the same rights as individuals without a disability to the full and free use of roads, sidewalks, and other public places; and (3) are entitled to full and equal rights and privileges with respect to common carriers and other public conveyances, places of public accommodation, and other places to which the general public is invited.

Developmental Disabilities Administration

Budget for the Community Services Program: Providing services to individuals in a community-based setting rather than in an institution continues to be the model of service delivery pursued by the Developmental Disabilities Administration (DDA). As proposed by the Governor, the fiscal 2013 budget for the Community Services Program totaled \$830.7 million. Actions taken through the supplemental budget reappropriated \$13.3 million of fiscal 2012 surplus funding in fiscal 2013, increasing the program's appropriation to \$844 million. It is important to note that this action was taken in order to prevent the reversion of general funds during the fiscal 2012 budget closeout. However, since the General Assembly failed to pass *Senate Bill 523 (failed)* – which would have increased general fund revenues – several contingent reductions took effect, including a provision that eliminated funding for a 2.0% provider rate increase within DDA (\$8.6 million in general funds). After accounting for this reduction, federal matching funds that the agency will no longer receive due to reductions in general funding spending, and actions taken through the supplemental budget, as enacted, the fiscal 2013 budget for the Community Services Program totals \$828.2 million or \$41.8 million greater than the fiscal 2012 working appropriation. As discussed below, it is difficult to compare the fiscal 2013 budget for the program to the current year's working appropriation because spending is growing by more than \$41.8 million.

More specifically, spending growth is attributable to four areas: (1) the annualization of fiscal 2012 placements (\$33.4 million); (2) fiscal 2013 expansion costs (\$25.3 million); (3) additional funding for the provision of community-based services that were appropriated through the supplemental budget (\$13.3 million); and (4) increased funding for resource coordination (\$0.9 million). The sum of these four initiatives totals \$72.9 million. This spending is supported in four ways: (1) additional funding above the fiscal 2012 working appropriation (\$41.8 million); (2) underspending in prior fiscal years, which inflates the current year's base (up to \$17.0 million); (3) budget efficiencies which resulted from improved budget projections (\$8.3 million); and (4) funding for one-time services under the alcohol tax that was not removed from the agency's budget in fiscal 2013 (\$5.8 million).

Transfer to a Dedicated Account: The Budget Reconciliation and Financing Act of 2012, *Senate Bill 152 (failed)*, would have allowed the Developmental Disabilities Administration to transfer up to \$5.0 million of unspent general funds at the end of fiscal 2012 into a dedicated account to be used in fiscal 2013 only. Of that total amount, \$750,000 could have been used in lieu of the Office of Health Care Quality licensure fees for developmental disability providers.

Children

Home Visit Accountability

The federal Patient Protection and Affordable Care Act established a Maternal, Infant, and Early Childhood Home Visiting Program to provide \$1.5 billion over five years to states to establish home visiting program models for at-risk pregnant women and children from birth to age five. States must use 75% of funds on evidence-based home visiting programs, as identified in a 2009 U.S. Department of Health and Human Services review of existing home visiting literature and assessment of home visiting program model effectiveness. The fiscal 2013 budget passed by the General Assembly includes \$3.0 million in federal funds from the Maternal, Infant, and Early Childhood Home Visiting Program. (This funding is in addition to other home visiting programs supported through the Governor’s Office for Children and the Maryland State Department of Education.) *Senate Bill 566/House Bill 699 (Chs. 79 and 80)* require the State to fund only “evidence-based” and “promising” home visiting programs with these funds and require the recipients of this funding to submit reports to the Governor’s Office for Children with accounting, demographic, and outcome information.

Child Abuse and Neglect

House Bill 834 (passed) (1) authorizes the Secretary of Human Resources to establish an alternative response program, instead of a traditional investigation, for low-risk reports of suspected child abuse or neglect; (2) requires the Department of Human Resources to convene an advisory committee to advise the department on development, implementation, and oversight of the alternative response program; and (3) requires the Department of Human Resources to develop a data collection process to assess the impact of alternative response in specified areas. For a more detailed discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *90 Day Report*.

Residential Child and Youth Care Practitioners

Senate Bill 868/House Bill 862 (both passed) require the State Board for Certification of Residential Child Care Program Professionals to establish a certification process and training and continuing education requirements for residential child and youth care practitioners. For a more detailed discussion of this issue, see the subpart “Health Occupations” within Part J – Health and Human Services of this *90 Day Report*.

Part K

Natural Resources, Environment, and Agriculture

Natural Resources

Boating

Marine Gathering Permits

Large marine party events continue to grow in size and public disturbance, presenting the Natural Resources Police (NRP) with significant challenges. These social gatherings typically involve nearly 1,000 vessels and thousands of people, and they frequently demand the presence of at least 10 to 20 NRP officers per event to maintain public safety on the water. *Senate Bill 127 (passed)* requires a person to obtain a written permit from the Department of Natural Resources (DNR) prior to sponsoring or holding a gathering of at least 100 vessels in State waters, subject to specified exceptions. Organizers or sponsors must submit a permit application and fee to DNR prior to sponsoring or holding a marine gathering. DNR is required to establish an application fee that does not exceed the cost of processing the permit and must adopt regulations governing the application and issuance of a permit. The bill establishes enforcement provisions, including criminal penalties.

Disclosure of Personal Information

In 2004, the State Boat Act was amended to allow disclosure of personal information about the owner of a registered vessel to a financial institution under certain circumstances. In the same year, provisions were added to the Public Information Act (PIA) prohibiting a custodian from knowingly disclosing a DNR public record containing personal information except to a financial institution in certain circumstances. The changes to PIA were intended to be conforming; however, they were not limited to records related to vessel registration, even though the State Boat Act is limited to boating. *House Bill 269 (passed)* narrows the scope of the PIA prohibition on disclosing personal information held in all DNR records to apply exclusively to personal information about the owner of a registered vessel, effectively making the prohibition consistent with the State Boat Act. Additionally, an owner of a registered vessel

is no longer required to submit a written request to DNR to keep their personal identification information confidential.

Land Use, Conservation, and Stewardship

Reserving Abandoned Land for Public Use

There are several relatively small tracts of land that are not owned by the State and which are wholly within or immediately adjacent and contiguous to land owned and managed by DNR. The presence of small, isolated, private tracts of land within and adjacent to DNR lands makes it difficult to manage the entire property as a whole for the benefit of the public. *Senate Bill 128 (passed)* repeals the September 30, 2012 termination date for Chapter 92 of 2007, giving DNR permanent statutory authority to obtain certificates of reservation for these abandoned properties in order to protect natural resources and expand public access to natural areas.

Program Open Space

Program Open Space (POS), established in 1969 and administered by DNR, provides funds for State and local conservation acquisitions and development of public outdoor recreational sites, facilities, and open space. The State share focuses on the acquisition of land for natural resource conservation with the inclusion of low-impact recreational activities where appropriate. The local jurisdictions' share is used primarily for the acquisition and development of high-impact recreational sites and facilities.

Senate Bill 442/House Bill 1058 (both passed) clarify and modify how local POS funds are distributed to land acquisition and recreational facility projects. The State is required to provide 90% of the total project funding when a local government builds a recreational facility, rather than acquires land, within a Priority Funding Area (PFA) and limits the amount of impervious surface on the land to no more than 10%. The State must also provide 90% instead of 50% of the total project funding when a local government builds a recreational facility outside of a PFA if DNR determines that (1) an indoor recreational facility is designed to serve multiple PFAs or multiple census designated places within a PFA; (2) the indoor recreational facility contains equipment or facilities, including a swimming pool, that cannot be supported in multiple locations; and (3) the applicable local government planning and zoning agency has verified that the location of an indoor recreational facility is consistent with the local comprehensive plan.

To ensure POS funds are focused on meeting the most important preservation and recreational needs, the State and each local jurisdiction must prepare a Land Preservation and Recreation Plan (LPRP) every six years. The LPRPs must identify and recommend for State acquisition areas facing the most intense and immediate development pressure. DNR, in cooperation with the Maryland Department of Planning, must prepare and revise the Maryland LPRP every six years. *Senate Bill 126 (Ch. 28)* requires that LPRPs be prepared and revised every five years, instead of six years, and requires DNR to consult with local governments when preparing and revising the Maryland LPRP.

Pamela J. Kelly Tree-Mendous Maryland Program

Although not established in statute or regulations, DNR administers a program called Tree-Mendous Maryland which provides native trees and shrubs for plantings on public lands. *House Bill 594 (Ch. 129)* codifies this program by establishing the Pamela J. Kelly Tree-Mendous Maryland Program for the purpose of planting native trees and shrubs on public lands, community open spaces, school grounds, and rights-of-way. The program is funded by donations and grants received by DNR for the program. DNR is authorized to seek, accept, and expend donations and grants for the implementation and administration of the program.

Hunting and Fishing

Hunting

Licensing

Chapter 367 of 2010 required the Department of Natural Resources (DNR) to submit a report identifying changes to statute needed to improve the effectiveness and efficiency of the Natural Resources Police Force. In December 2010, DNR submitted a report that made a recommendation to authorize the courts and DNR to suspend the hunting license or privileges of a person who is convicted of a State or federal hunting violation. The report noted that this authority would enable DNR to properly penalize egregious or chronic wildlife violators and improve the deterrence of future violations. *House Bill 1052 (passed)* repeals current law governing the suspension of hunting licenses; authorizes the courts and DNR to suspend, for up to five years, a hunting license or the hunting privileges of a person who is convicted of violating State or federal hunting laws; and requires DNR to list the criteria for suspension of a hunting license or hunting privileges by regulation. The enforcement mechanisms under the bill substantially mirror the current law enforcement mechanisms for fisheries. The bill also establishes the grounds for the immediate suspension of a hunting license and timing and hearing requirements for the suspension of a hunting license or hunting privileges.

Bow Hunting

A safety zone is an area surrounding a dwelling house, residence, church, or other building or camp occupied by human beings within which a person, other than an owner or occupant, may not shoot or discharge any firearm or other deadly weapon while hunting. *Senate Bill 662/House Bill 134 (both passed)* decrease the archery hunting safety zone radius in Carroll County from 150 yards to 50 yards, thus making available additional hunting grounds.

Sunday Hunting

There are three seasons to hunt deer in Maryland: bow hunting season, firearms season, and muzzle loader season. Wild turkey hunting takes place in Maryland during the fall in Allegany, Garrett, and Washington counties and the spring in all counties. With specified exceptions, hunting game birds or mammals on Sundays is prohibited.

Senate Bill 390/House Bill 129 (both passed) and *Senate Bill 346 (passed)* authorize deer hunting on private property in Caroline County and Harford County, respectively (1) with a bow and arrow or crossbow on the last three Sundays in October and the second Sunday in November; and (2) on each Sunday of the deer firearms season.

House Bill 1446 (passed) authorizes deer hunting on private property in Somerset and Worcester counties on each Sunday of the deer firearms season.

Senate Bill 105 (Ch. 18) and *House Bill 1431 (Ch. 145)* authorize turkey hunting on private property in Caroline and Dorchester counties, and Calvert, Charles, and St. Mary's counties, respectively, on Sundays during the spring turkey hunting season.

Fishing

Licenses

Fisheries management needs and costs have increased recently as the State has responded to public scrutiny for improved accountability, enforceability, and sustainability of fisheries resources. Two special funds provide significant support to the DNR Fisheries Service: the Fisheries Research and Development Fund and the Fisheries Management and Protection Fund. Both special funds are projected to have no end-of-year fund balance in fiscal 2013, primarily due to the fund balances being used to offset DNR general fund reductions in recent years. The projected program deficit may grow to \$3.2 million by fiscal 2014. Of the Fisheries Service's total \$5.6 million fiscal 2012 general fund appropriation, 65% is allocated to commercial programs, 19% is allocated to aquaculture programs, and 16% is allocated to recreational programs.

House Bill 1372 (passed) makes changes relating to commercial fishing licenses and authorizations and fees and surcharges paid by license holders. The changes include modifications to provisions governing transfers of commercial fishing licenses and authorizations as well as an authorization for DNR to annually assess, on most tidal fish license holders, a surcharge for costs incurred by DNR for fish tags issued to the license holder and the use by a license holder of a specified "hailing (harvest reporting) system." The bill requires a fair and reasonable allocation of general fund appropriations for fishery management between the recreational and commercial fisheries (appropriations for aquaculture are not included in this calculation). The bill also requires DNR to undertake a review of the existing laws, regulations, fees, and processes associated with commercial fishing licenses and to report findings and recommendations for changes to the commercial fish license and permit fee structure to the Governor and the General Assembly by October 1, 2012.

Aquaculture Leasing

Affected by diseases, habitat loss, and harvest pressures, the Chesapeake Bay's oyster population has declined to about 1% of historic levels. Consequently, the number of oyster harvesters in the Chesapeake Bay has dwindled from 2,000 in the mid-1980s to approximately 550 annually since 2002. To help reverse this trend, DNR unveiled a new management and

restoration plan for oysters and the State's oyster industry in December 2009. The plan established oyster aquaculture leasing opportunities and related financial assistance programs.

House Bill 1306 (passed) clarifies and streamlines the aquaculture program. The bill requires DNR to establish water column application fees, rents, and surcharges in consultation with the Aquaculture Coordinating Council (as is the case with other leases). The bill also reduces required advertising in local newspapers for a submerged land or water column lease application from weekly for four weeks to weekly for two weeks. The bill further prohibits placement of unlawfully harvested oysters on a lease and authorizes aquaculture demonstration leases in specified portions of oyster sanctuaries (as is the case with other leases). DNR's authority to regulate the taking, possession, transport, or sale of oysters from leased oyster bottoms is altered to allow for the harvest of oysters under three inches in size from leased bottom.

Free Fishing Areas

Generally, to recreationally fish a person must possess (1) an angler's license to fish in nontidal waters of the State; (2) a trout stamp to fish in a catch-and-release trout management area or to possess trout while fishing in nontidal waters; and (3) a Chesapeake Bay and coastal sport fishing license or, as appropriate, registration to fish for finfish in the Chesapeake Bay or in State waters of the Atlantic Ocean. **House Bill 1305 (passed)** explicitly authorizes DNR to adopt regulations establishing free recreational finfishing areas in tidal and nontidal waters of the State. A Chesapeake Bay and coastal sport fishing license, an angler's license, or a trout stamp is not required to fish in these areas; however, a person must register with DNR before fishing in free areas located in tidal waters.

Environment

Chesapeake Bay Restoration

The federal Clean Water Act requires states to designate intended uses, such as swimming or fishing, for their water bodies and to set water quality standards to achieve these uses. Water bodies that do not meet the water quality standards are designated as *impaired* and are assigned a Total Maximum Daily Load (TMDL) or "pollution diet," which (1) sets the maximum amount of pollution that the water body can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements among the various contributing sources.

The U.S. Environmental Protection Agency (EPA) has been working with watershed states and the District of Columbia to develop a Chesapeake Bay TMDL since 2000 in order to prepare for a federal court-ordered deadline. In December 2010, EPA established the first baywide TMDL that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. All

pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

Each bay jurisdiction then submitted a Phase I Watershed Implementation Plan (WIP) that details how to achieve the individual pollution reduction goals under the TMDL and a Phase II WIP which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland's portion of the Susquehanna River basin).

Bay Restoration Fee Increase

Chapter 428 of 2004 established the Bay Restoration Fund, which is administered by the Maryland Department of the Environment (MDE). One of the main goals of the Bay Restoration Fund is to provide grants to owners of wastewater treatment plants to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology.

Upgrading the State's 67 major publicly owned wastewater treatment plants with ENR technology by 2017 is a key pollution-reduction strategy identified in the State's Phase II WIP. Through February 29, 2012, a total of \$389.7 million has been collected from wastewater facility users. As of March 2012, this revenue has supported ENR upgrades to 23 major facilities. Additionally, 20 other facilities are under construction, and 24 are in the planning or design stages.

While the estimated capital costs of upgrading the major wastewater treatment plants were originally \$750.0 million to \$1.0 billion, engineering estimates now indicate total costs of about \$1.38 billion. However, based on data provided by MDE, projected revenues available for grant awards (from the bay restoration fee and bond proceeds) total only about \$1.0 billion. Thus, a deficit of roughly \$380.0 million is expected for the program. Unless addressed in some way, the funding shortfall may jeopardize the State's ability to meet the pollution limits identified in the TMDL. In order to comply with federal permits, any wastewater treatment plants not upgraded with State funding will likely be required to upgrade using local funding.

The Bay Restoration Fund Advisory Committee, which was also established by Chapter 428 of 2004, is charged with making recommendations regarding any increase in the bay restoration fee deemed necessary to meet the financing needs of the fund. The advisory commission has explored a number of options for addressing the anticipated deficit in the Wastewater Account. The committee's preferred solution, as reiterated in its January 2012 annual report, is to increase the fee by 100% (from \$30 to \$60 per year). Originally, it was thought that the additional revenue generated from such a fee increase could be used to leverage the issuance of additional bay restoration bonds in order to eliminate the projected deficit. However, it is unlikely that MDE will now be able to leverage the additional revenue bonds originally anticipated due to overall State debt capacity limitations. Therefore, a shortfall of at least \$75.0 million is estimated even with a 100% fee increase under the timeline of wastewater treatment plants upgrades required by the WIP.

The other primary purpose of the bay restoration fee is to support septic system upgrades and the planting of cover crops, which are also key components of Maryland's Phase II WIP. Through February 29, 2012, \$49.1 million has been deposited into MDE's Septics Account, and \$41.5 million has been transferred to the Maryland Department of Agriculture for the Cover Crop Program.

To reduce the significant shortfall identified as necessary to complete upgrades of the State's major wastewater treatment plants, and to fund the strategies identified in the WIP, including septic system upgrades and the planting of cover crops, *House Bill 446 (passed)* generally doubles the bay restoration fee beginning July 1, 2012. The fee increases from (1) \$2.50 to \$5.00 per month for those receiving an individual water or sewer bill from a billing authority; (2) \$30 to \$60 per year for each user of an on-site sewage disposal (septic) system or sewage holding tank that does not receive a water bill; and (3) \$2.50 to \$5.00 per month for each equivalent dwelling unit (EDU) up to 2,000 EDUs for multiunit residential users that do not receive an individual sewer bill and for nonresidential users.

House Bill 446 makes several other changes including (1) requiring a local government to establish a financial hardship exemption program; (2) establishing an exemption from the fee for local career or volunteer fire departments; (3) establishing an exemption from the *fee increase* for septic systems and sewage holding tanks and properties served by wastewater treatment plants that are not located in the Chesapeake Bay or Atlantic Coastal Bay watersheds; (4) prohibiting any change in the fee that would reduce the amount of funds available for repayment of outstanding bonds; (5) establishing additional uses of the Bay Restoration Fund beginning in fiscal 2018; and (6) reducing the fee to current levels beginning July 1, 2030. Despite the various exemptions provided, it is likely that the bill will increase fee revenues by more than \$53.0 million in fiscal 2013 and by more than \$55.0 million annually beginning in fiscal 2014.

Fee Collection in Dorchester County: Generally, the bay restoration fee must be collected by a local government or a billing authority for the appropriate local water or wastewater facility. A local government, billing authority for a water or wastewater facility may use all of its existing procedures and authority in order to enforce the collection of bay restoration fees. For example, in Dorchester County, an unpaid bay restoration fee is a lien against the property served by a wastewater facility, septic system, or holding tank. However, the Dorchester County Sanitary District advises that its current fee collection authority is insufficient. Thus, *House Bill 61 (Ch. 97)* authorize the Dorchester County Council, with its more effective collection authority, to collect the bay restoration fee on behalf of the Dorchester County Sanitary District.

Reducing Nutrient Pollution from Septic Systems and Sprawl

According to MDE, septic systems account for about 6% of the total nitrogen load to the Chesapeake Bay from Maryland. However, MDE advises that, while nitrogen loading from other sources is declining, nitrogen loading from septic systems continues to increase due to development. According to PlanMaryland, development on septic systems generates 10 times

more nitrogen per household to the environment (including to groundwater) than development using advanced centralized treatment systems. Even septic systems that have been upgraded with best available technology do not reduce nitrogen to the same degree as modern community wastewater plants. If current trends continue, the O'Malley Administration indicates that about 120,000 new septic systems will be installed over the next 25 years, generating 2.5 million pounds of nitrogen pollution to surface waters. While the number of new households projected to use public sewer systems is three times the number projected to use septic systems, the Administration indicates that the pollution to rivers and streams from development on septic systems is likely to be twice the pollution from all new households on public sewer.

In order to steer more future residential growth toward more urban forms of development served by public sewer and away from the sprawling development on previously undeveloped lands that would be required to use septic systems, *Senate Bill 236 (passed)* establishes a system of land use tiers, which may be adopted by local jurisdictions. Beginning December 31, 2012, the bill prohibits a jurisdiction from approving a major residential subdivision served by on-site sewage disposal systems, community sewerage systems, or shared systems unless it adopts the growth tiers established by the bill. However, a jurisdiction that does not adopt a growth tier may authorize either a minor residential subdivision served by on-site sewage disposal systems, or any subdivision in a "Tier I" area served by "public sewer."

Senate Bill 236 establishes land use and sewerage criteria and restrictions applicable to each of the four growth tiers. Property within minor residential subdivisions is generally restricted from further subdivision beginning December 31, 2012. The bill establishes several exceptions from these restrictions, and allows for the transfer of subdivision rights among specified agricultural property owners to mitigate the effect of the bill's restrictions. Finally, the bill requires MDE to propose, in consultation with counties and other stakeholder groups, regulations that establish nutrient offset requirements for new residential major subdivisions within Tier III areas to be served by on-site sewage disposal systems or shared systems.

Reducing Nutrient Pollution from Stormwater

According to MDE, while nitrogen loading to the Chesapeake Bay from agricultural and wastewater sources in Maryland has been decreasing since 1985, stormwater runoff has been increasing from newly developed impervious surfaces. Maryland's Phase II WIP identifies strategy options to reduce nitrogen and phosphorus from stormwater runoff. Of the major sources of nutrient pollution in Maryland, stormwater runoff contributes about 18.0% of the nitrogen and 21.8% of the phosphorus entering the bay from Maryland sources, and it will be required to contribute to just under 17% of the nitrogen reduction and just under 45% of the phosphorus reduction under Maryland's Phase II WIP.

The State began reducing the adverse effects of stormwater runoff in 1982 with the passage of the Stormwater Management Act. State regulations followed in 1983, which required each county and municipality to adopt ordinances necessary to implement a stormwater management program. Maryland's stormwater management regulations were significantly strengthened in 2000 with the adoption of the Stormwater Design Manual in State regulations.

More recently, Chapters 121 and 122 of 2007 attempted to further enhance the State's stormwater management program by requiring a new form of management practice known as environmental site design.

Chapters 121 and 122 of 2007 also required MDE to evaluate options for a stormwater management fee system and an appropriate fee schedule necessary to improve enforcement of stormwater management laws. In its May 2008 report, developed in response to that charge, MDE noted that Maryland's stormwater management program is implemented locally with little financial support from the State, and that it does not have the authority under current law to assess fees or charges at the State level. In 1992, the General Assembly adopted enabling legislation that allows localities to develop a "system of charges" to finance stormwater programs. Legislative Services is aware of seven local jurisdictions (Charles, Montgomery, and Prince George's counties and the cities of Annapolis, Frederick, Rockville, and Takoma Park) that have developed programs to raise revenues dedicated for stormwater management to date, although several others have explored the creation of dedicated stormwater revenue sources. In the May 2008 report, MDE noted its continuing support for the development of a system of charges by local governments to provide the funding needed to meet local obligations under State and federal law.

House Bill 987 (passed) requires each county and municipal corporation subject to a National Pollutant Discharge Elimination System Phase I municipal storm sewer system permit (MS 4 permit) (currently Baltimore City and the nine most populous counties), by July 1, 2013, to adopt local laws or ordinances necessary to establish an annual stormwater remediation fee and a local watershed protection and restoration fund to provide financial assistance for the implementation of local stormwater management plans. The bill exempts a jurisdiction that has enacted and implemented a similar watershed protection and restoration program by July 1, 2012, that is consistent with the bill, and exempts governmental properties and regularly organized volunteer fire departments from the fee. While *House Bill 987* does not establish the amount of any local fee, it is likely that fee revenues for the jurisdictions covered by the bill will increase by tens of millions of dollars annually. *House Bill 529 (failed)*, on the other hand, would have subjected specified State-owned property to county or municipal stormwater management charges if the charges were proportionate to the share of stormwater management services provided by the local government to the property and if established along with a system of credits or exemptions.

Additionally, *House Bill 1117 (passed)*, among other things, specifies that for the purposes of issuing a stormwater permit for a project to install a solar panel, any calculation relating to the impervious surface of the project may include only the foundation or base supporting the solar panel. For a further discussion of *House Bill 1117*, see the subpart "Local Government – Generally" within Part D – Local Government of this *90 Day Report*.

Water Management

Wetlands and Waterways

The Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways, including the 100-year floodplain. Chapter 142 of 2008 established the Wetlands and Waterways Program Fund to be supported by application fees and other compensation revenues for various wetlands and waterways permits and licenses. Chapter 142 also required MDE to convene a workgroup to review and assess whether the Wetlands and Waterways Program had successfully improved the level of service to the regulated community as a result of the new fees and fund established by the law.

The workgroup analyzed the effect that the new funding source had on increasing program personnel. Between 1991 and 2008, the Wetlands and Waterways Program lost 28 of its 70 positions, a decline in staffing capacity of 40%. The funding provided by the application fees established by Chapter 142 allowed MDE to add 34 new positions for the program between June 2008 and January 2009. The additional staffing, in conjunction with implementation of new standard operating procedures, tracking of measurable milestones, and monitoring of permit review performance, allowed the program to essentially eliminate the program's sizable backlog by October 1, 2010.

However, despite the enhanced performance of the Wetlands and Waterways Program following the addition of 34 positions, the workgroup noted that the current fee schedule has not been sufficient to support the program even with ongoing general fund appropriations. Thus, [*House Bill 1411 \(passed\)*](#) alters wetlands and waterways application fees, fee exemptions, and minimum compensation rates. The bill also alters the definition of a "major project" and establishes several new definitions. Finally, the bill requires MDE to convene a workgroup by January 1, 2015, which must report findings and recommendations on the effect of the bill by December 1, 2015.

Water Appropriation and Use Permits – Notice in Dewatering Projects

In order to conserve, protect, and use water resources in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as is feasible, the appropriation or use of surface waters and groundwaters of the State. A permit must be obtained from MDE to appropriate or use any waters of the State. Generally, a water appropriation or use permit must be accompanied by notice published in a newspaper, service of notice to contiguous property owners, and the holding of a public informational hearing. [*Senate Bill 117 \(Ch. 24\)*](#) authorizes MDE to waive the water appropriation permit notice and hearing requirements for a construction dewatering project. Dewatering is the temporary removal of ground or surface water from a construction site to allow for construction under dry conditions. According to MDE, dewatering associated with construction projects typically has a short duration and often needs to begin on short notice; the Act reduces the permit processing time for most construction dewatering projects.

Water Well Drilling – Notice Requirements

The goal of MDE's well construction regulatory program is to ensure that wells are constructed in a manner to protect groundwater quality and provide an adequate source of safe drinking water. A person may not drill a well to explore for, obtain, or monitor groundwater, to inject water into any underground formation from which groundwater may be produced, or to transfer heat to or from groundwater or the ground under specified circumstances, without a well drilling permit from MDE. *Senate Bill 994 (passed)* requires a well driller applying for a permit to drill a well (or a person operating under a certain exemption from the requirement to obtain a permit) to notify a municipality if the well will be drilled within, or one mile or less from, a municipality's boundary.

Waterworks and Wastewater Works Operators

The State Board of Waterworks and Waste Systems Operators was established in 1957 to examine and certify the superintendents of waterworks and waste systems. In 1982, the board's regulatory purview increased to include operators in addition to the superintendents, thus establishing a two-tier system of regulation. The board's regulation of operators and superintendents predates by decades similar requirements of federal law, which requires that waterworks employ certified operators, but not superintendents.

Senate Bill 115 (Ch. 23) authorizes specified waterworks, wastewater works, and industrial wastewater works to have a certified operator serve in responsible charge instead of a certified superintendent on approval from MDE. In order to qualify for the exemption from the requirement to be under the supervision of a certified superintendent, the system must serve fewer than 500 persons, have minimal treatment requirements, and employ no more than two operators.

Lead Poisoning Prevention

According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland. Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 establishes a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements. According to the most recent data available, the number of children in Maryland with elevated blood lead levels has continued to decrease since the onset of the program. At the State level, out of the 114,829 children age six who were tested for lead in 2010, 531 (0.5%) were found to have blood lead levels greater than or equal to 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which these data were tracked, and is the eighteenth straight year in which the rate has dropped in Maryland.

Previously, if a landlord complied with the program's regulatory provisions, Chapter 114 provided liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically necessary treatments and to not more than \$9,500 for relocation benefits, for a total of \$17,000. However, in a decision filed

October 24, 2011, the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts. The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and, thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of rental units built between 1950 and 1978 that voluntarily opted to comply will be impacted by the court’s decision, as they will no longer have the liability protection previously afforded to them. However, it is not yet clear how landlords, along with tenants, will be impacted by the decision.

Unrelated to the Court of Appeals decision, Chapter 610 of 2011 required MDE to conduct a study in consultation with members of the General Assembly and representatives of several State and local agencies and organizations reflecting the interests of landlords, housing owners, lead poisoning prevention advocates, and others. The study was required to evaluate processes that reduce the incidence of lead poisoning in residential properties not currently regulated by MDE, including rental properties built from 1950 through 1978 and owner-occupied properties.

The study group met seven times between July and December of 2011 and made recommendations regarding six different issues, including, among other things, expanding the scope of regulation to include rental properties built before 1978 and owner-occupied properties; increasing the program’s property registration fee to address the program’s declining revenue sources; and evaluating whether to require MDE to seek delegation of the federal renovation, repair, and repainting rule, which requires renovation companies to be registered and follow lead safe work practices while doing renovation in pre-1978 constructed homes.

House Bill 644 (passed) makes various changes to the Reduction of Lead Risk in Housing Law administered by MDE to address the disruptive effect of the recent Court of Appeals decision and some of the issues examined by the study group. Among other things, the changes (1) expand the application of the law to owners of residential rental property built between 1950 and 1978 beginning January 1, 2015; (2) increase the annual registration fee from \$15 to \$30; (3) alter the definition of “abatement” to include renovation, repair, and painting in specified properties built before 1978; (4) authorize MDE to adopt regulations related to abatements involving renovation, repair, and painting; (5) repeal a rebuttable presumption that an owner of property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care; (6) provide that evidence that a property owner was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care; and (7) require a party who makes certain allegations or denials without a good

faith basis to pay reasonable costs, including attorney's fees, incurred by the adverse party in opposing the allegation or denial.

House Bill 644 is likely to result in a significant increase in revenues for MDE's Lead Poisoning Prevention Fund and Lead Accreditation Fund as a result of the doubling of the fee paid by property owners that register with the Lead Poisoning Prevention Program and as additional lead contractors pay accreditation fees. Registration fee revenues will increase to a significantly greater extent beginning in fiscal 2015 as additional properties become subject to the requirements of the program and pay registration fees. Once these additional properties become subject to registration and other regulatory requirements in 2015, MDE expenditures will also increase by over \$1.0 million annually, mostly for personnel costs, contractual costs, and to provide additional grants to local governments.

House Bill 472 (passed) also seeks to address the effect of the Court of Appeals decision on rental property owners. The bill requires the Maryland Insurance Commissioner to convene a workgroup to evaluate and make recommendations relating to lead liability protection for owners of rental property built before 1978. The Maryland Insurance Commissioner must report the findings and recommendations of the workgroup to the Governor and the General Assembly by December 1, 2012.

A number of other bills were introduced to address the effect of the court's decision and the various issues examined by the workgroup. **House Bill 1013 (failed)** would have established a Lead Poisoning Primary Prevention Fund within MDE to be used primarily to provide grants to eligible recipients for lead poisoning prevention activities. **House Bill 21 (failed)** would have established judicial procedures for claims for injury allegedly caused by the ingestion of lead-based paint or lead-contaminated dust, including requirements related to the filing of a certificate of a qualified expert. **House Bill 1477 (failed)** would have repealed the statutory amounts payable under a qualified offer for medically necessary treatments and relocation benefits that were deemed unconstitutional by the Maryland Court of Appeals to be replaced with a methodology established by MDE to determine a reasonable payment for a qualified offer. **House Bill 977 (failed)**, among other things, would have required an activity that disturbs more than three square feet of painted surface in an owner-occupied or rental dwelling unit built before 1978 to pass a test for lead-contaminated dust. Finally, **House Bill 955 (failed)** would have required an owner of property that receives notice of an elevated blood lead level of at least *five* micrograms per deciliter (lower than the current threshold of 10 micrograms per deciliter) to take certain actions including replacement of all windows containing lead-based paint with new windows.

Natural Gas Drilling in the Marcellus Shale

The Marcellus Shale formation is a geologic feature in the Appalachian Range which has recently attracted significant attention from the energy industry for its rich natural gas deposits contained within 117 counties in seven states. In Maryland, the formation is located in Allegany, Garrett, and Washington counties; however, the only anticipated areas of gas production are in Garrett and western Allegany counties. Applications for permits to produce gas from the

Marcellus Shale in Maryland using horizontal drilling and high-volume hydraulic fracturing were first filed in 2010. According to MDE, there is currently only one pending permit application.

Geologists have long known about the natural gas resources contained within the formation but had considered the gas to be not economically recoverable until the recent development of new drilling technologies including horizontal drilling and high-volume hydraulic fracturing, which have led to a boom in domestic energy production in the United States. However, as the use of hydraulic fracturing has increased, so has concern about its potential impact. MDE advises that, although accidents are relatively rare, exploration for and production of natural gas in nearby states have resulted in injuries, well blowouts, releases of fracturing fluids, releases of methane, spills, fires, forest fragmentation, road damage, and evidence of water contamination.

In June 2011, Governor Martin O'Malley established the Marcellus Shale Safe Drilling Initiative by executive order to ensure that, if drilling for natural gas from the Marcellus Shale proceeds in Maryland, it is done in a way that protects public health, safety, natural resources, and the environment. The executive order directs MDE and the Department of Natural Resources (DNR) to assemble and consult with an advisory commission in the study of specific topics related to horizontal drilling and hydraulic fracturing in the Marcellus Shale. Specifically, the executive order tasks MDE and DNR, in consultation with an advisory commission, with conducting a three-part study and reporting findings and recommendations.

Part I of the study, a report on findings and recommendations regarding sources of revenue and standards of liability, was released in December 2011. In consultation with the advisory commission, MDE and DNR examined the current liability structure in Maryland and problems and gaps in this structure. The study offered several potential recommendations, including that Maryland create a statutory presumption that certain types of damage are caused by a drilling activity or operation if resulting damage occurred close in time and place to the gas operations. The study noted that establishing a presumption of causation for damage related to drilling within the Marcellus Shale would provide an incentive for those drilling gas wells to test drinking water wells prior to undertaking drilling.

House Bill 1123 (passed) establishes a presumptive impact area that applies to areas around a deep shale deposit gas well for which MDE has issued a gas exploration or production permit. In a presumptive impact area, it is presumed that contamination of a "water supply" was caused by the activities of gas exploration or production. The presumptive impact area is in effect within a radius of 2,500 feet from the vertical wellbore and for 365 days after the last event of well drilling, completion, or hydraulic fracturing. The bill establishes the conditions under which a permittee must replace a water supply or compensate a property owner, specifies when a permittee's actions are deemed adequate to resolve contamination presumed to be caused by the permittee, and provides specified exceptions to the presumption of causation and the requirement that a permittee compensate a property owner or replace a water supply.

House Bill 1204 (failed), as amended in the House, would have required the owner of a gas interest in real property underlain by the Marcellus Shale to pay a fee of \$15 per acre by specified dates, depending on when the interest was acquired. The fees collected would have been paid into the Oil and Gas Fund within MDE and used only to fund the cost of conducting the ongoing study of the Marcellus Shale by the Marcellus Shale Safe Drilling Initiative.

House Bill 907 (failed), as amended in the House, would have established a 7.5% severance tax on the wholesale market value of natural gas, including natural gas liquids, from a well in Maryland subject to certain exemptions. The severance taxes would have been paid to a newly established account within the Oil and Gas Fund primarily to support activities related to monitoring and remediating environmental and other impacts of gas exploration and production. Finally, the bill would have allowed MDE to recover costs in a civil action from a person responsible for negative impacts of gas exploration and production. Similarly, **Senate Bill 768 (failed)** would have established a 2.5% severance tax and required that the tax revenues be deposited into a new Natural Gas Impact Fund, administered by MDE in consultation with DNR, and used to address the impact of gas exploration and production on the environment and natural resources of the State.

Dormant Mineral Interests

Chapters 268 and 269 of 2010 codified provisions of the Uniform Dormant Mineral Interests Act, thereby establishing criteria by which a severed mineral interest in Maryland becomes dormant; authorizing the owner of the surface estate to bring an action to terminate a mineral interest; specifying who may preserve a mineral interest and how it may be preserved; and governing the disposition of a terminated mineral interest. **Senate Bill 472 (passed)** requires that a court order that terminates a mineral interest under the Maryland Dormant Mineral Interests Act contain specific identifying information, which is generally consistent with current requirements of the Maryland Rules.

House Bill 402 (passed) establishes the same requirements as **Senate Bill 472**, but also prohibits a clerk of a circuit court from recording an instrument that effects a real property lease dealing in natural gas and oil unless the instrument is accompanied by a complete intake sheet. Generally, a deed or other instrument affecting property and presented for recordation in the land records must be (1) accompanied by a complete intake sheet on the form provided by the Administrative Office of the Courts; or (2) if the deed or other instrument effects a change in ownership on the assessment books, endorsed by the assessment office for the county where the property is located.

Recycling

In 1988, the Maryland Recycling Act required each county to submit a recycling plan. Jurisdictions with more than 150,000 residents were required to reduce their solid waste by 20%, and jurisdictions with less than 150,000 residents were required to reduce their solid waste by 15%. According to MDE, by 2000, every county had met or exceeded their percentage requirements under the Maryland Recycling Act. Further legislation enacted in 2000 established

a voluntary statewide diversion goal of 40% by 2005. MDE reports that, in 2010, Maryland had a recycling rate of 41% (up from 39.1% in 2009, but down from 43.9% in 2008) and a waste diversion rate of almost 45% (up from 42.6% in 2009, but down from 47.5% in 2008). The waste diversion rate is equal to the recycling rate, plus any source reduction credit granted to reward waste prevention projects.

In addition, the Office of Recycling within MDE, in cooperation with the Department of General Services and other State agencies, must develop a recycling plan that reduces the amount of the solid waste stream generated for disposal by the State government by at least 20%, or to an amount that is determined practical and economically feasible, but not less than 10%. The recycling plan must include a system for recycling aluminum, glass, paper, and plastic generated for disposal by the State government, including the placement of collection bins in State-owned or State-operated office buildings in locations determined to be practical and economically feasible. Under current law, each unit of State government was required to implement the recycling plan by January 1, 2012.

State and County Recycling Targets

House Bill 929 (passed) increases the reduction through recycling targets that must be included in a county recycling plan. For a county with a population of over 150,000, the bill increases the target rate from 20% to 35%; if the county plan instead provides an adequate justification as to why the reduction cannot be met, as authorized under current law, the bill increases the minimum recycling requirement from 10% to 15%. For a county with a population of less than 150,000, the target rate increases from 15% to 20% and the corresponding minimum requirement is raised from 5% to 10%. Each county plan must include the new targets by July 1, 2014. Full implementation of each plan is required by December 31, 2015. This bill establishes provisions that provide for some flexibility for counties, however.

The bill also increases, from 20% to 30%, the required reduction through recycling of the waste stream generated by the State government. If this target is determined to not be practical or economically feasible, the bill increases, from 10% to 15%, the minimum required level of recycling that must be achieved. Each unit of State government must implement a recycling plan reflecting these new requirements by July 1, 2014.

Finally, the bill establishes a voluntary statewide recycling goal of 55% by 2020 and a voluntary statewide waste diversion goal of 60% by 2020.

Recycling in Multifamily Housing

Senate Bill 208/House Bill 1 (both passed) require the property owner or manager of an apartment building or the council of unit owners of a condominium containing 10 or more units to provide for the collection and removal of recyclable materials by October 1, 2014. A county may require these owners and managers to report to the county on recycling activities. The bills establish a penalty of \$50 for each day that recycling is not provided for or carried out in accordance with the county recycling plan. Enforcement, including the authority to conduct inspections, is to be provided by a local government, and any penalties collected are paid to the

jurisdiction that brought the enforcement action. Effective October 1, 2013, each county must address the bills' requirements in its currently required recycling plan. The bills do not preempt any other law, rule, or ordinance that is more stringent and do not affect local government authority to enact and enforce recycling requirements that are more stringent, including the establishment of any civil penalties.

Recycling of Electronic Devices

House Bill 879 (passed) makes various changes to the existing Statewide Electronics Recycling Program, including increasing the administrative penalties for selling devices without registering with MDE, transferring enforcement authority from the Comptroller to MDE, and altering the current registration requirements and fee structure. The bill changes the criteria by which MDE classifies a manufacturer for purposes of registration and fee requirements to be based on the number of electronic devices *sold in Maryland* rather than the number of devices *manufactured*. The bill's new fee structure exempts manufacturers that sold fewer than 100 covered electronic devices in the State in the prior year, but increases (from March 1, 2013, through March 1, 2016) the highest fees for the largest manufacturers from \$5,000 (previously based on devices manufactured) to \$10,000 for a manufacturer that sold at least 1,000 devices in the State in the prior year. The bill maintains the current \$500 annual fee for any manufacturer that establishes a device takeback program, thereby incentivizing manufacturers to establish such programs. Finally, the bill requires the Secretary of the Environment to convene a workgroup, by October 1, 2015, to review and assess the impact of the new fees and to report its findings and recommendations to specified legislative committees by December 31, 2015.

Miscellaneous

Asbestos Worker Protection

The General Assembly finds that exposure to asbestos, a known carcinogenic agent, creates a significant hazard to health and that projects to remove asbestos expose increasing numbers of asbestos removers to this hazard. Thus, an individual may not engage in an asbestos occupation unless accredited by MDE, and a person who willfully violates asbestos removal laws or regulations is liable for a civil penalty of up to \$5,000 to be collected in a civil action. In addition, MDE may impose criminal and administrative penalties for asbestos removal violations. **Senate Bill 649/House Bill 1262 (both passed)** increase the maximum civil penalty for violating, whether willfully or not, any asbestos removal provision, from \$5,000 to \$25,000. The bills also establish an Asbestos Worker Protection Fund within MDE to be used for asbestos worker protection and enforcement activities; the fund consists of all civil and criminal penalties and fines related to asbestos removal. Finally, the bills alter the conditions for accreditation of an individual engaged in an asbestos occupation.

Noise Control

Because noise can have negative impacts on quality of life, MDE's noise control program was established to handle noise complaints throughout the State. MDE is required to adopt environmental noise standards, sound level limits, and noise control rules as necessary to protect

public health, general welfare, and property. However, in 2005, MDE's noise control program was defunded, and currently there are no personnel fully dedicated to implementing the program. Although MDE continues to receive telephone and written complaints about noise, these are generally referred to local governments for action. *House Bill 190 (passed)* repeals the requirements for MDE to enforce noise control standards and implement a coordinated statewide noise control program. Environmental noise standards, sound level limits, and noise control units may instead be adopted and enforced by local governments. The bill does not repeal the requirement for MDE to adopt noise standards, limits, or rules, and requires MDE to revise such standards and limits as necessary or appropriate.

Controlled Hazardous Substance Driver Certification

A controlled hazardous substance may not be transported from any source in Maryland to any controlled hazardous substance facility in Maryland unless a driver certificate has been issued by MDE. According to MDE, the U.S. Department of Transportation has ruled that the application of Maryland's controlled hazardous substance driver certification program to *out-of-state* drivers was preempted by federal hazardous materials transportation law due to certain State requirements that were stricter than corresponding federal requirements. Since that time, Maryland has continued to require certification of *in-state* drivers. MDE advises that the certification program has generally not resulted in the elimination of unfit drivers and that there is no evidence that the program has resulted in a better driver record for in-state drivers than out-of-state drivers. Thus, *Senate Bill 114 (passed)* repeals the controlled hazardous substance driver certificate. The bill also requires MDE, in consultation with federal and State transportation officials, to conduct a review relating to the efficiency and regulatory consistency of its controlled hazardous substance vehicle certification process and reports its findings and recommendations to specified legislative committees by December 15, 2012.

Board of Environmental Health Specialists

Senate Bill 450/House Bill 511 (both passed) transfer the State Board of Environmental Sanitarians from MDE to the Department of Health and Mental Hygiene and change the name of the board to the State Board of Environmental Health Specialists. The bills extend the termination date of the board by four years to July 1, 2017, and require that a direct full evaluation of the board be conducted by July 1, 2016. For a further discussion of *Senate Bill 450/House Bill 511*, see the subpart "Health Occupations" within Part J – Health and Human Services of this *90 Day Report*.

Judicial Review of Environmental Permits

Chapters 650 and 651 of 2009 expanded standing for individuals, associations, and organizations in bringing challenges related to the issuance of many environmental licenses and permits. Thus, Chapters 650 and 651 replaced administrative hearing procedures with provisions regarding judicial review of permit determinations. According to MDE, the repeal of the provisions regarding administrative cases also resulted in the inadvertent deletion of a reference to the right to appeal to the Court of Special Appeals for a party who is aggrieved by a final judgment of a circuit court after a contested case hearing under the Administrative Procedure

Act. **House Bill 186 (passed)** addresses this issue by authorizing a decision of the circuit court to be appealed to the Court of Special Appeals in a case involving a petition for judicial review of specified environmental permits. The bill applies retroactively.

Agriculture

Nutrient and Sediment Management

Sediment Trading on Agricultural Land

Nutrient and sediment trading is a market-based approach for protecting and improving water quality. Nutrient and sediment trading involves (1) establishing a total amount of allowable pollution in a specified area and allocating this amount among the participating sources; and (2) allowing sources to trade in ways that meet local and watershed-wide water quality goals. Once pollution allowances are allocated, sources with low-cost pollution reduction options have an incentive to reduce nutrient loadings beyond what is required of them and to sell the excess credits to sources with higher control costs. This framework allows sources facing high pollution reduction costs to purchase less costly reductions from other sources.

Chapter 447 of 2010 authorized the Maryland Department of Agriculture (MDA) to certify nitrogen and phosphorus credits as part of a nutrient credit certification program. The program is a joint effort between MDA and the Maryland Department of the Environment (MDE) to address the need for growth offsets and the certification and verification of nutrients credits in the agricultural sector. While the nutrient credit certification program began with nitrogen and phosphorus, it was designed with the capacity to include both sediment and carbon. **Senate Bill 118 (Ch. 25)** adds sediment trading to the program by authorizing MDA to establish requirements for the voluntary certification and registration of sediment credits on agricultural land. The multi-year \$512,000 federal grant from the U.S. Department of Agriculture's Natural Resources Conservation Service that was used to initiate the nutrient credit certification program may be used for the sediment credit certification program as well.

Cost Sharing for Water Pollution Control

The Maryland Agricultural Water Quality Cost-Share Program (MACS) was established in 1983 to help farmers pay the cost of installing pollution controls that protect water quality. MACS provides farmers with grants to cover up to 87.5% of the cost to install best management practices (BMPs) on their farms to control soil erosion, manage nutrients, and safeguard water quality in streams, rivers, and the Chesapeake Bay.

The cost of installing a BMP varies from farm to farm and project to project and depends on a number of factors. **House Bill 1303 (passed)** increases from \$100,000 to \$200,000 the maximum dollar amount of State cost-sharing for water pollution control projects under MACS. This change is anticipated to help farmers install animal waste storage and treatment projects that will be needed to comply with nutrient management requirements and help the State achieve the reductions called for in the baywide pollution diet, or Total Maximum Daily Load.

Animal Waste Technology Fund

The Maryland Economic Development Assistance Fund (MEDAF), within the Department of Business and Economic Development (DBED), was established as a revolving loan fund under Chapter 301 of 1999. The fund provides below-market, fixed-rate financing to local jurisdictions and businesses. Animal waste technology projects were incorporated as eligible projects under MEDAF by Chapter 305 of 2000, which consolidated six programs including an existing animal waste technology fund. According to DBED, however, MEDAF has not provided financial assistance for any animal waste technology projects in recent years.

House Bill 1304 (passed) establishes an Animal Waste Technology Fund administered by MDA to provide financial assistance for animal waste technology projects to individuals and business enterprises that (1) conduct research or develop technologies that are intended to reduce the amount of nutrients in animal waste; (2) alter the composition of animal waste; (3) develop alternative animal waste management strategies; or (4) use animal waste in a production process. The stated goal of the fund is to encourage the development and implementation of economically feasible technologies that help protect the public health and the environment by reducing the amount of nutrients from animal waste to enable farmers to meet nutrient management requirements and provide alternative animal waste management strategies to farmers. Among other things, the bill also repeals provisions relating to financial assistance for animal waste technology projects from MEDAF and requires MDA to establish the Animal Waste Technology Fund Advisory Committee to develop program criteria, review proposals, and make project funding determinations.

Bay Restoration Fund – Cover Crops

Chapter 428 of 2004 established the Bay Restoration Fund and, as a revenue source for the fund, a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks. Although MDE administers the fund, 40% of the revenue collected from users of septic systems and sewage holding tanks is transferred to MDA to provide assistance to farmers for planting cover crops. Through February 29, 2012, \$41.5 million has been transferred to MDA for the Cover Crop Program.

Among other things, **House Bill 446 (passed)** increases the bay restoration fee for specified users beginning July 1, 2012. It is estimated that the bill's changes will generate at least \$4.2 million annually in additional revenue for MDA's Cover Crop Program. The bill reduces the fee to current levels beginning July 1, 2030. For further discussion of **House Bill 446**, see the subpart "Environment" within this Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

Agricultural Land Preservation

Maryland Agricultural Land Preservation Foundation

The Maryland Agricultural Land Preservation Foundation (MALPF) purchases agricultural preservation easements that restrict development on prime farmland and woodland in

perpetuity. As of the end of fiscal 2011, MALPF had cumulatively purchased 2,043 farms covering 279,223 acres.

Several bills were introduced during the 2012 session relating to MALPF. *Senate Bill 148 (Ch. 35)* alters the provisions governing the release of family lots from MALPF easement restrictions. The Act applies to a person who is subject to MALPF easement requirements and who either is granted a preliminary or final lot release before the Act takes effect or has requested a release after the Act takes effect. According to MDA, the Act clarifies and strengthens the administration of the program and will effectively prevent the misuse of family lots by (1) establishing a minimum age that a child of a landowner must be to build a personal residential dwelling on a farm; (2) setting a time limit on preliminary lot releases; and (3) ensuring proper stewardship of family lots in the future.

Senate Bill 112 (Ch. 21) requires the Department of General Services (DGS), at the direction of MALPF, to order two, instead of one, fair market value appraisals after approval of a request for termination of a MALPF easement. The land must be appraised as of the date of the approval of the request for termination. DGS must review the two appraisals, determine the land's value, and issue a written statement on the approved fair market value to MALPF. MALPF must use the DGS statement to notify the landowner of the land's approved fair market value. According to MALPF, requiring two appraisals to establish value at termination is consistent with the requirements associated with acquiring an easement and disposing of property. MALPF further advises that having two appraisals provides a more accurate estimate of the easement's value.

Senate Bill 129 (passed) modifies the easement application and approval process for the MALPF program to clarify responsibilities and repeal obsolete provisions concerning agricultural districts. MALPF is authorized to assign agricultural district agreements that have not been purchased by MALPF or have not otherwise terminated as of June 30, 2012, to willing county governing bodies. County governing bodies that accept agreements are authorized to enforce their terms and are required to determine whether to terminate or modify them.

Montgomery County On-site Sewage Disposal System and Well Easements

In Montgomery County, in order to preserve the maximum amount of agricultural land, current law limits the area of newly subdivided lots to one acre, or a maximum of two acres if necessary to accommodate a septic system. County septic system requirements, however, typically restrict a newly subdivided lot served by a septic system to three acres. *House Bill 723 (passed)* authorizes a practice the county has used for several decades to satisfy both the agricultural land preservation and septic system requirements. Specifically, the bill authorizes the use of a septic system or well located on a property in a Montgomery County "rural zone" to serve one additional lot or parcel that has been subdivided from the property containing the septic system or well under a septic system or well easement, provided that (1) the property on which the septic system or well is located does not have an existing septic system or well easement; (2) the subdivision of the property was made in accordance with a State or county agricultural land conservation program if the property is subject to an agricultural land

conservation easement; and (3) a septic system easement may apply to only one subdivided lot or parcel. The bill specifies that a septic system or well may not (1) serve land that is designated by the State or the governing body of Montgomery County as a special protection area; or (2) decrease the land available for agricultural production by more than 4,000 square feet.

Family Farm Preservation Act of 2012

The Maryland estate tax does not explicitly provide for an exemption for agricultural property. *Senate Bill 294/House Bill 444 (both passed)* exempt from the State estate tax up to \$5 million of qualified agricultural property. For a more detailed discussion of these bills, see the subpart “Miscellaneous Taxes” within Part B – Taxes of this *90 Day Report*.

Sustainable Growth and Agricultural Preservation Act of 2012

In 2011, the State engaged in several substantial efforts to determine how Maryland should grow and develop in the future, including the Task Force on Sustainable Growth and Wastewater Disposal, the development of PlanMaryland, and the development of the State’s Phase II Watershed Implementation Plan. In December 2011, the task force submitted a report containing numerous recommendations relating to growth and development. *Senate Bill 236 (passed)* implements some of the task force’s recommendations. The bill establishes four tiers to guide growth on central sewer and septic systems. The growth tiers, which are based on specified land use characteristics, must be adopted by local jurisdictions before the jurisdiction may approve a major residential subdivision served by on-site sewage disposal systems, community sewerage systems, or shared systems. Among other things, the bill sets out to reduce sprawl development, which threatens the availability of viable agricultural lands. Tier IV areas are areas that are not planned for sewerage service and are areas planned or zoned for land, agricultural, or resource protection, preservation, or conservation; areas dominated by agricultural lands, forest lands, or other natural areas; or other specified areas. In these areas, minor subdivisions on septic systems and major subdivisions are allowed only under certain conditions. Other provisions relevant to agriculture include specific exemptions from certain restrictions on the further subdivision of land for nonresidential agricultural purposes; the authorization of the transfer of subdivision rights among owners of property used for specified agricultural activities; an exception for local transfer of development rights programs; and an exception for certain covenants, restrictions, conditions, or conservation easements that were entered into for the purpose of conserving agricultural land. For further discussion of *Senate Bill 236*, see the subpart “Environment” within this Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

Food Safety

The Secretary of Agriculture has the authority to establish a farm quarantine and issue appropriate orders necessary to control or restrict the use of farmland, crops, livestock, poultry, or a farm product existing on a farm that (1) has been exposed to or contaminated by a radiological or chemical toxic material or agent; or (2) is infected or infested with a disease or pest. *Senate Bill 142 (Ch. 32)* expands the Secretary’s authority to allow the establishment of a

farm quarantine and issuance of related orders in the event of a pathogen infection or infestation. The Act also expands a prohibition against concealment of an infection or infestation to include pathogen infection or infestation.

The Secretary also has the authority, when requested by a person financially interested in a farm product, to examine the product on the basis of MDA or U.S. Department of Agriculture standards and provide the person with an official certificate. *Senate Bill 142* amends the Secretary's authority to allow for food safety certification of farm products and farm production practices in accordance with U.S. Food and Drug Administration (FDA) standards. The Act also requires the Secretary to deny access to business-related information concerning any person who applies for a certificate or is certified unless disclosure is necessary to protect the public health.

Commercial Feed

Roxarsone, an additive that contains organic arsenic, is used in commercial feed to control parasites that cause coccidiosis, a common avian disease affecting poultry. FDA regulations also approve the use of roxarsone in chicken feed for “increased rate of weight gain, improved feed efficiency, and improved pigmentation.”

According to FDA, organic arsenic is less toxic than inorganic arsenic, a known carcinogen, and is not known to be carcinogenic. Scientific reports have raised concerns, however, that organic arsenic in poultry feed additives could transform into inorganic arsenic. In response to concerns about related health and environmental effects, FDA conducted a study that detected inorganic arsenic at higher levels in the livers of chickens treated with roxarsone than in untreated chickens. Although FDA indicated that the levels of inorganic arsenic detected were very low, and that continuing to eat chicken as sales of roxarsone were suspended did not pose a health risk, Alpharma, a subsidiary of Pfizer Inc., voluntarily suspended sales of roxarsone (or 3-Nitro) in July 2011.

The only remaining arsenic-based poultry feed additive being marketed is nitarson, in a feed additive called Histostat, which is primarily used for the prevention of blackhead disease (or histomoniasis) in turkeys.

House Bill 167 (passed), which takes effect January 1, 2013, prohibits a person from using, selling, or distributing within the State any commercial feed intended for use as poultry feed that contains roxarsone or any other additive that contains arsenic, with the exception of Histostat. The bill terminates with respect to a specific arsenical additive if FDA, on review of new information, issues a finding that (1) approves the use of the arsenical additive; and (2) includes in its approval an evaluation of human food safety, the impact on the environment, safety to animals, the effectiveness of the drug for its intended use, and chemistry and manufacturing procedures.

Standard of Identity for Honey

Honey is produced in every state and a significant amount of honey is also imported. Concern exists about adulterated and contaminated honey, largely, but not exclusively, with regard to imported honey. Adulterants such as corn sugar, cane sugar, high fructose corn syrup, and water may be added to honey to increase profit, and pesticides and antibiotics may be present in honey because of bad manufacturing practices. There is currently no mandatory federal or State standard for honey. *Senate Bill 193 (passed)* establishes a Maryland standard of identity for honey and requirements applicable to the labeling of honey. The bill's provisions reflect a standard developed by the Maryland State Beekeepers Association. MDA is not required to enforce the bill's provisions, but the bill authorizes actions to be brought in court by specified persons and entities, including the Attorney General.

Departmental Boards, Regulatory Functions, and Fees

Maryland Horse Industry Board

The Maryland Horse Industry Board (MHIB) has licensed and inspected horse stables in the State for more than 40 years. The board currently regulates approximately 600 stables. In addition, the board has a broad mission related to serving as an information resource about, supporting research on, and promoting the equine industry in Maryland. *Senate Bill 108 (Ch. 19)* clarifies and expands the definition of the types of establishments MHIB regulates. The Act also combines existing initial license and inspection fees and annual license renewal and inspection fees into one initial license fee and one annual license renewal fee; eliminates a fee for more than one inspection in a licensing period; and increases and clarifies penalties for violations.

Weights and Measures Registration Fees

The Weights and Measures Section within MDA inspects weighing and measuring devices and prepackaged commodities to ensure honest and accurate transactions between consumers and businesses. Weights and measures used for commercial purposes generally must be registered, and an applicant for registration must pay a registration fee. Annual registration fees are specified in statute for various types of weights and measures. Fee revenue is credited to the Weights and Measures Fund, which is used to defray the expenses associated with the program. MDA advises that the fee revenue is not sufficient to pay program operating expenses and replace essential vehicles and related equipment.

Senate Bill 113 (Ch. 22) increases the per device fee for (1) scales with a capacity of more than 100 pounds up to 2,000 pounds (from \$50 to \$60); (2) scales with a capacity of more than 2,000 pounds (from \$75 to \$100); (3) vehicle scales (from \$225 to \$250); and (4) retail motor fuel dispenser meters of 20 gallons per minute or more (from \$35 to \$45). The Act decreases the per device fee for retail motor fuel dispenser meters under 20 gallons per minute (from \$15 to \$12.50). The Act also increases the maximum fee per business location for registration of scales with a capacity of up to 100 pounds (from \$325 to \$375), eliminates the

maximum fee per business location for retail motor fuel dispenser meters under 20 gallons per minute, and establishes a new \$50 fee per business location for scales with a capacity of up to 100 pounds and retail motor fuel dispenser meters of under 20 gallons per minute. According to MDA, this Act reflects an agreement with industry groups to provide sufficient funding for the program for the next five years or more.

Part L Education

Primary and Secondary Education

State Aid

State aid for primary and secondary education will increase by \$63.6 million in fiscal 2013 to \$5.84 billion, 1.1% more than fiscal 2012 aid. State aid provided directly to the local boards of education increases by \$4.4 million or 0.1%, and teachers' retirement costs, which are paid by the State on behalf of the local school systems, increase from \$833.0 million to \$892.2 million, an increase of 7.1%. Appropriations to support teachers' retirement costs are paid into the State's pension fund and do not pass through local school system budgets.

The Budget Reconciliation and Financing Act of 2012 (BRFA), *Senate Bill 152 (failed)*, would have required local school systems to begin paying a share of teacher pension costs and would have increased county funding for local school systems to provide school systems with additional revenues to pay the new costs. With the failure of the bill, however, the State will continue to pay the full amount of teachers' retirement costs. Instead, the fiscal 2013 budget specifies \$212.0 million in direct education and library aid reductions if the BRFA of 2012 and a comprehensive revenue bill, *Senate Bill 523 (failed)*, are not enacted. Budget cuts of \$128.8 million to eliminate the geographic cost of education index (GCEI), \$70.9 million to reduce the per pupil foundation amount, \$5.2 million to eliminate teacher development grants, and \$5.0 million in library aid are contingent on the failure of the BRFA of 2012. Another \$2.1 million reduction to eliminate a rate increase for providers of nonpublic special education placements is contingent on the failure of the comprehensive revenue bill. However, mandated education and library aid programs are constitutionally protected and cannot be reduced without separate legislation executing the reductions. Because the legislature did not pass legislation to specifically authorize the reduced aid calculations, only \$136.1 million of the \$212.0 million in cuts to education and library aid specified in the fiscal 2013 budget will actually be implemented. Education and library aid reductions contingent on the failure of the BRFA of 2012 and the comprehensive revenue bill are shown by program in **Exhibit L-1**.

Exhibit L-1
Education and Library Aid Reductions
Contingent on the Failure of *Senate Bill 152* and *Senate Bill 523*
(\$ in Millions)

<u>Program</u>	<u>Reduction Specified in Budget Bill</u>	<u>Actual Reduction</u>
Eliminate Geographic Cost of Education Index	\$128.8	\$128.8
Reduce Per Pupil Foundation Amount		
Foundation Program	44.8	0.0
Compensatory Education Formula	18.9	0.0
Special Education Formula	4.4	0.0
Limited English Proficiency Formula	2.9	0.0
Eliminate Teacher Quality Incentives	4.2	4.2
Eliminate National Board Certification Fees	1.0	1.0
Eliminate Nonpublic Placement Provider Rate Increases	<u>2.1</u>	<u>2.1</u>
Education Aid Subtotal	\$207.0	\$136.1
Library Aid Formula	3.4	0.0
State Library Network	<u>1.6</u>	<u>0.0</u>
Total	\$212.0	\$136.1

Source: Department of Legislative Services

Fiscal 2012 to 2013 changes in major State education aid programs are shown in **Exhibit L-2** and include the reductions taken due to the failure of the BRFA and revenue bill. State aid through the Bridge to Excellence formulas decreases by \$14.8 million or 0.3%, a decrease that is mostly attributable to the elimination of fiscal 2013 GCEI funding. Increases in several other programs help to offset the deletion of GCEI funding and reflect the first increase since fiscal 2008 in the per pupil foundation amount, which grows 1.0% from \$6,694 to \$6,761. The largest aid increase is in the compensatory education formula, which provides funding based on the number of students in the State eligible for free and reduced-priced meals. This population increased by more than 15,000 students (4.7%) from fall 2010 to fall 2011 and, when combined with the increase in the per pupil foundation amount, results in an increase of \$62.4 million for the program. State aid for the limited English proficiency formula increases by \$14.7 million or 9.0%. The growth in this formula is mostly due to an increase of 3,700 students (7.7%) with limited English proficiency. The foundation program increases by \$37.3 million or 1.3% from fiscal 2012 to 2013, due to the 1.0% increase in the per pupil foundation amount and 0.3% growth in total student enrollment. In addition, the Maryland Consolidated Capital Bond Loan of 2012, *Senate Bill 151 (passed)*, provides a total of \$31.1 million in general obligation bonds for the Aging Schools Program, \$25.0 million more than is required in State law and \$22.5 million more than the amount provided for the program in fiscal 2012.

Exhibit L-2
Change in Education Aid
Fiscal 2012 to 2013
(\$ in Millions)

<u>Program</u>	<u>FY 2012</u>	<u>Budget As Enacted</u>		<u>If <i>Senate Bill 152</i> and <i>Senate Bill 523</i> Had Been Enacted</u>	
		<u>FY 2013</u>	<u>Change</u>	<u>FY 2013</u>	<u>Change</u>
Foundation Program	\$2,773.1	\$2,810.4	\$37.3	\$2,810.4	\$37.3
Geographic Cost Index	127.3	0.0	(127.3)	128.8	1.4
Supplemental Grants*	47.9	46.5	(1.4)	47.7	(0.3)
Compensatory Education	1,083.8	1,146.3	62.4	1,146.3	62.4
Special Education Formula	264.3	266.5	2.2	266.5	2.2
Limited English Proficiency	162.7	177.4	14.7	177.4	14.7
Guaranteed Tax Base	50.1	44.2	(5.9)	44.2	(5.9)
Student Transportation	<u>248.2</u>	<u>251.3</u>	<u>3.1</u>	<u>251.3</u>	<u>3.1</u>
Bridge to Excellence Subtotal	\$4,757.4	\$4,742.6	(\$14.8)	\$4,872.5	\$115.1
Nonpublic Special Education	112.8	111.8	(1.0)	113.9	1.1
Aging Schools Program	8.6	31.1	22.5	31.1	22.5
Other Direct Aid	<u>65.3</u>	<u>62.9</u>	<u>(2.3)</u>	<u>68.2</u>	<u>2.9</u>
Direct Aid Subtotal	\$4,944.1	\$4,948.8	\$4.4	\$5,085.7	\$141.6
Teachers' Retirement	<u>833.0</u>	<u>892.2</u>	<u>59.2</u>	<u>755.5</u>	<u>(77.4)</u>
Education Aid Total	\$5,777.1	\$5,840.6	\$63.6	\$5,841.2	\$64.2

*Supplemental grants for fiscal 2012 include \$1.4 million in grants that limited reductions in direct aid from fiscal 2011 to 2012. If BRFA of 2012 had been enacted, fiscal 2013 would have included a similar \$1.2 million grant for fiscal 2013.

Source: Department of Legislative Services

Exhibit L-2 also shows State aid amounts if the BRFA of 2012 (and the comprehensive revenue bill) had passed. The direct aid amounts that are reduced due to the failure of those bills would have been restored, and an additional \$1.2 million would have been provided to Garrett County Public Schools based on a provision in the 2012 BRFA that would have established a 5.0% limit on direct State aid decreases from fiscal 2012 to 2013. Without this provision, State aid for Garrett County schools will decrease by 10.3%. In total, direct aid would have increased from \$4.9 billion in fiscal 2012 to \$5.1 billion in fiscal 2013 if the bills had not failed. However,

teachers' retirement payments would have decreased by \$77.4 million due to a shift of \$136.6 million in teacher pension costs to the local school boards.

Teacher Pension Cost-sharing

If it had passed, the BRFA of 2012 would have begun a teacher pension cost-sharing arrangement in fiscal 2013 that would have represented a second phase of efforts to ensure the sustainability of the State's pension system. Costs for teacher pensions, which are paid by the State, more than doubled over a five-year period from \$406.9 million in fiscal 2006 to \$849.8 million in fiscal 2011. The 2011 BRFA (Chapter 397) implemented the initial phase of pension cost containment efforts by restructuring retirement benefits for State employees and local teachers and requiring higher employee contributions to the system. As a result of the restructuring, teacher pension costs declined from \$849.8 million in fiscal 2011 to \$833.0 million in fiscal 2012. The Public Employees' and Retirees' Benefit Sustainability Commission, which was established in the BRFA of 2010 (Chapter 484), recommended in its January 2011 report and again in its July 2011 final report that the State enact legislation to have local school boards share in the cost of teacher pensions.

As introduced, *Senate Bill 152* would have shifted \$226.3 million in local school employee pension costs to the counties in fiscal 2013, an amount based on total pension payments including reinvested savings from the 2011 reforms and unfunded liabilities from prior years. The House and Senate plans altered the Governor's cost-sharing plan to focus exclusively on normal costs (the estimated pension costs for current employees) and to establish phase-in periods that reduced the local costs (and the savings for the State) in fiscal 2013. In addition, the plans adopted by the House and Senate would have required that pension costs be paid by the local school boards, rather than the counties. Counties would instead fund the new costs for school boards through increases in minimum county funding levels for public schools.

Although the BRFA of 2012 was not passed, the conference committee on the bill had agreed to a pension cost-sharing plan that would have shifted 50% of the normal costs of teacher pensions, \$136.6 million, to local school boards in fiscal 2013 and would have increased minimum county public school maintenance of effort (MOE) levels by an equal amount. Fiscal 2014 through 2016 school board payments and county MOE increases would have been set in statute, and beginning in fiscal 2017, school systems would have been responsible for 100% of the normal costs for local school employees each year. County MOE amounts for fiscal 2017 and subsequent years would have been based on the additional amounts the counties were required to provide in fiscal 2016.

County Maintenance of Effort for Public Schools

Background

The State's public school MOE law was established in 1984 and requires each county government (including Baltimore City) to provide on a per pupil basis at least as much funding for the local school board as was provided in the prior fiscal year. Since 1996, the law has allowed a county to apply to the State Board of Education for a one-year waiver of the MOE

requirement if the county's fiscal condition significantly impedes its ability to fund the full MOE amount. If a county does not appropriate to the local school board sufficient funds to meet the MOE requirement and does not get a waiver from the State board, the county's school board is penalized the following year in an amount equal to the increase in the State aid under Section 5-202 of the Education Article (the State share of the foundation, GCEI, and supplemental grants).

In anticipation of the first-ever waiver requests, the 2009 BRFA (Chapter 487) included language setting the required per pupil MOE amount in the year after the State board grants an MOE waiver at the higher of the per pupil MOE amount from the prior year and the second prior year. However, the new language did not give further guidance on setting a county MOE amount for the following year when a county funds below the MOE amount but does not receive or does not seek a waiver.

As expected, the waiver process was first tested in spring 2009 when three counties – Montgomery, Prince George's, and Wicomico – applied for waivers from the fiscal 2010 MOE requirement. All three waiver requests were denied by the State board, mostly because the board did not believe that the economic downturn had a greater impact on those three counties than it had on the other 21 jurisdictions, all of which met their MOE funding levels. Ultimately, Montgomery and Prince George's counties did not meet the required MOE amounts in fiscal 2010, although neither county was penalized for the infraction.

In order to provide greater direction to the State board when reviewing future waiver applications, the General Assembly considered legislation during the 2010 session that would have specified factors for the State board to consider in evaluating waiver requests. However, that legislation died on the last day of session when a final vote was not taken on the bill as amended by the conference committee. Later that spring, Montgomery and Wicomico counties applied for and were granted MOE waivers for fiscal 2011, in part because the State board used the factors specified in the failed legislation to make the waiver determinations. For fiscal 2012, several counties initially expressed intent to file MOE waiver requests but, in the end, no counties applied for waivers.

In December 2011, the Maryland State Department of Education (MSDE) notified seven counties (Anne Arundel, Dorchester, Kent, Montgomery, Queen Anne's, Talbot, and Wicomico) of their noncompliance with MOE for fiscal 2012. For the seven counties that did not meet MOE in MSDE's preliminary evaluation, **Exhibit L-3** shows the difference between required fiscal 2012 county school appropriations and the actual amounts appropriated. Anne Arundel County has appealed MSDE's preliminary determination to the State Board of Education.

Exhibit L-3
Counties That Did Not Fully Fund Maintenance of Effort in Fiscal 2012
 (\$ in Millions)

<u>County</u>	<u>Required MOE Amount</u>	<u>Preliminary Certification of Appropriation</u>	<u>Difference</u>
Anne Arundel*	\$568.1	\$556.1	(\$12.0)
Dorchester	17.2	16.5	(0.8)
Kent	16.9	16.1	(0.8)
Montgomery	1,497.3	1,370.1	(127.2)
Queen Anne's	48.0	43.5	(4.5)
Talbot	34.2	32.4	(1.8)
Wicomico	50.1	36.2	(13.9)

*Anne Arundel County has challenged the initial finding of noncompliance and is awaiting a final determination from the State Board of Education.

Source: Maryland State Department of Education; Department of Legislative Services

Although the State Board of Education affirmed that counties were not required to apply for waivers in order to fund below required MOE levels, county decisions to bypass the waiver process and rebase their school appropriations below the required MOE amounts caught the attention of legislators and renewed interest in a comprehensive evaluation of the State's MOE law. Many of the issues that have arisen with the MOE law over the last three years are addressed in *Senate Bill 848 (Ch. 6)*. Specifically, the legislation alters the MOE penalty, refines the MOE waiver process and sets procedures for counties that want to rebase their required MOE amounts, and modifies the calculation of annual MOE amounts.

Maintenance of Effort Penalty

Chapter 6 eliminates any penalties for failing to meet MOE in fiscal 2012, saving two or three local school systems from reductions to their fiscal 2013 State education aid. Among the six counties that have acknowledged that they missed MOE in fiscal 2012, only Montgomery and Queen Anne's counties received increases under Section 5-202 aid programs for fiscal 2012. These two counties would have been subject to MOE penalties of \$26.2 million and \$456,000, respectively, in fiscal 2013. If the State board finds that Anne Arundel County's fiscal 2012 school appropriation is not in compliance with the MOE law, an additional \$3.9 million could have been withheld from the county's school aid. In total, the legislation prevents reductions in fiscal 2013 education aid of up to \$30.5 million.

In future years, a county that does not receive a waiver from the MOE requirement is required to fund the full MOE amount, or the State will intercept the county's local income tax revenues in the amount by which the county is below MOE and forward the funds directly to the local school board. This ensures annual MOE funding as the floor on a county's appropriation to the local school board, except in years when the State board grants a waiver from the requirement. A county that appropriates less than the local share of the foundation program is

penalized by withholding the State share of the foundation from the county's school board and redirecting county income tax revenues in an amount necessary to pay the State *and* local shares of the foundation.

Maintenance of Effort Waiver Process

Chapter 6 requires a county governing body to apply to the State Board of Education for a waiver from the State's MOE requirement if the county is unable to fund the full MOE amount. A county must apply for a waiver no later than the seventh day following the end of the legislative session or by April 20, whichever is earlier. The State Superintendent of Schools must provide a preliminary assessment of the waiver request, and the State board must hold a public hearing before acting on a request. The State board must inform a county of its decision within 30 days after receipt of the application or by May 20, whichever is earlier.

One-year Maintenance of Effort Waiver: Factors that the State board must consider in reviewing one-year waiver requests are specified and include a broad economic downturn, a county's history of exceeding its required MOE amount, and reductions in State aid to the county and its municipalities. Factors for consideration in determining a waiver request were previously enumerated in State regulations and were not as broad as the factors identified in the new law, meaning that it may be easier for a county to obtain a one-year MOE waiver from the State board. The legislation also makes it clear that a county may not request or receive a waiver from the local share of the foundation program, further clarifying the local share of the foundation as the absolute floor for local education funding.

Maintenance of Effort Rebasing Waivers: A county that is successful in securing a one-year MOE waiver and provides above-average support to the local school board (relative to its local wealth) may also request a "rebasing waiver." The waiver requires a county to demonstrate ongoing problems with meeting MOE through an additional set of factors the State board must consider and allows for limited decreases to the county's required MOE amount. The State board may grant a multi-year rebasing waiver that encompasses up to three years.

The amount of any reduction to the annual per pupil MOE amount that may be authorized under a rebasing waiver is tiered based on local education effort (the local appropriation divided by local wealth). Counties with very high local education effort may be allowed reductions of up to 3% of their required MOE amounts; counties with somewhat lower education effort levels are allowed reductions of 1% or 2%. However, rebasing waivers may not allow a county to provide funding that represents less than the State average education effort level for the previous five years.

Maintenance of Effort Waivers for Reductions in Recurring Costs: Finally, to encourage efficiencies among county governments and school systems, the Act establishes a separate waiver that, like the rebasing waiver, allows a county to reduce its required annual MOE amount. To qualify, a county and the local school board must identify specific reductions to recurring costs. The State board is required to grant the waiver when a county and the local school board have agreed to the reductions and have agreed on the amount of the waiver. The agreed upon waiver amount may be less than the total amount of savings generated through the

reduction in recurring costs but may not exceed the savings. The waiver reduces the county's required MOE amount for the following fiscal year.

A county seeking a waiver for reduced recurring costs must apply for the waiver through the normal process, including an initial review by the State Superintendent and a public hearing before the State board. However, the review is not subject to consideration of the factors required for a normal MOE waiver.

Calculation of Annual Maintenance of Effort Amounts

Unless a county receives a rebasing waiver or a waiver for reductions in recurring costs, **Chapter 6** sets the county's per pupil MOE amount for the following year at the per pupil MOE amount the county provided in the most recent year in which it met MOE. For a county that did not meet MOE in fiscal 2012, the required fiscal 2013 per pupil MOE appropriation is set at the per pupil amount the county was required to provide in fiscal 2012. A county with a 3.2% local income tax rate, the maximum allowed under State law, is exempt from this provision and is instead subject to current law, which simply requires that the county provide the local school board with at least as much per pupil funding in fiscal 2013 as the county appropriated in fiscal 2012.

Among the six (or seven) counties that did not meet MOE in fiscal 2012, only Montgomery and Queen Anne's counties have 3.2% local income tax rates. The other counties that did not fully fund MOE in fiscal 2012 will have their required fiscal 2013 MOE amounts increase by \$29.5 million collectively, as shown in **Exhibit L-4**. The counties will still have the option of requesting waivers from the fiscal 2013 MOE requirements, and based on its local education effort level, Anne Arundel County will be eligible to pursue a rebasing waiver that could reduce its required MOE level by up to 1%.

Exhibit L-4 Estimated Fiscal 2013 Maintenance of Effort Amounts For Counties That Did Not Fully Fund Maintenance of Effort in Fiscal 2012 (\$ in Millions)

<u>County</u>	<u>Current Law</u>	<u>Bill</u>	<u>Difference</u>
Anne Arundel*	\$561.0	\$573.1	\$12.1
Dorchester	16.6	17.3	0.8
Kent	16.2	17.0	0.8
Talbot	32.5	34.3	1.8
Wicomico	36.4	50.4	14.0
Total			\$29.5

*Anne Arundel County has challenged the initial finding of noncompliance and is awaiting a final determination from the State Board of Education.

Note: MSDE will make the actual calculations of required MOE amounts. The amounts shown in the chart are estimates. The table assumes that, based on its education effort, Anne Arundel County will qualify for a 1% waiver in fiscal 2013. Due to low local education effort levels, the other counties do not qualify for rebasing waivers.

If the increases in required MOE levels shown in Exhibit L-4 result in higher fiscal 2013 school appropriations from Dorchester and Wicomico counties, State aid for the Dorchester County and Wicomico County schools will increase in future years due to the use of local education effort as a factor in the calculation of the guaranteed tax base program. If the full required MOE amounts are provided by the counties, State aid will increase by an estimated \$4.6 million in fiscal 2014. If the BRFA of 2012 had passed with the conference committee amendments, it would have included a provision to allow a county that did not meet MOE in fiscal 2012 to rebase at the per pupil amount provided in fiscal 2012 (rather than the amount *required* for fiscal 2012) if the county maximized its local taxing authority. It is likely that Wicomico County would have met the requirements, which would have allowed the county to rebase at a lower fiscal 2013 MOE level and eliminated most of the fiscal 2014 impact on State aid.

Chapter 6 also excludes debt service from the MOE calculation. Beginning in fiscal 2015, the legislation requires counties that are below the statewide five-year moving average education effort level to increase their annual per pupil MOE amounts by the lesser of (1) the increase in local wealth per pupil; (2) the statewide average increase in local wealth per pupil; or (3) 2.5%.

To help ensure that counties have the fiscal ability to meet the new MOE requirements, the bill also gives counties the authority to exceed county charter limitations on local property taxes for the purpose of funding the approved budget of the local school board. If a local property tax rate is set above the limit, the county governing body may not reduce funding provided to the school board from any other local source and must appropriate to the school board all of the revenues generated from any increase beyond the existing limit. Any use of this authority must be reported annually to the Governor and the General Assembly. Five counties – Anne Arundel, Montgomery, Prince George’s, Talbot, and Wicomico – currently have limits on property tax rates or revenue levels that could be subject to this provision.

The Act also alters the MOE certification timeline. No later than seven days after the approval of its budget or by June 30 of each year, whichever is earlier, each county must submit its budget to the State Superintendent. The State Superintendent must certify whether a county has met the MOE requirement within 15 days after receiving the county budget and must notify the county and school board of the certification. By December 31 of each year, MSDE must report on all waiver requests, MOE calculations, MOE certifications, and any other information relating to county waiver requests and MOE decisions.

Public School Construction

Capital Funding

The fiscal 2013 capital budget, [*Senate Bill 151*](#), includes \$326.4 million for public school construction, financed using general obligation bonds. Of this amount, \$25.0 million is reserved for projects that improve the energy efficiency of schools, including improvements to HVAC systems; lighting; mechanical systems; windows and doors; and any other type of improvement

that is specifically designed to improve the energy efficiency of a school building. These funds are restricted until the Interagency Committee on Public School Construction (IAC) submits a report to the budget committees detailing the standards that will be used to allocate such funds among projects. The Governor had originally proposed \$50.0 million for energy efficient projects, but the General Assembly reallocated \$25.0 million to the Aging Schools Program (discussed further in this Part L).

Local school systems requested a total of \$576.2 million for fiscal 2013, of which \$444.5 million is eligible for State funding. The Public School Facilities Act of 2004 (Chapters 306 and 307) established a State goal to provide \$2 billion in State funding over eight years to address school construction needs or \$250 million per year from fiscal 2006 to 2013. The State surpassed the \$2 billion goal in fiscal 2012. From fiscal 2006 through 2013, the State has provided \$2.5 billion to support public school construction.

House Bill 304/Senate Bill 533 (both failed) would have required the State to provide an annual block grant to the Baltimore City Board of School Commissioners to pay the cost of public school construction and capital improvement projects in Baltimore City. As proposed, the grant would have been for the greater of 15% of the entire State public school construction capital program or \$32 million, adjusted annually for inflation. The bill stipulated that the block grant could not be funded by the proceeds of tax-exempt obligations unless proceeds from nontax-exempt obligations were not available. The budget committees instead adopted *Joint Chairmen's Report* committee narrative directing IAC and other agencies to study the implications of implementing block grant funding through the Public School Construction Program (PSCP). The study must evaluate the feasibility and process of providing a block grant for school construction purposes, review how providing a block grant with proceeds from taxable and tax-exempt debt could impact the State's bond rating, examine how other states have implemented such a block grant and the resulting benefits and consequences, and evaluate whether such a block grant could be applied to other jurisdictions with significant school facility needs, among other factors.

Aging Schools

The fiscal 2013 capital budget also includes \$31.1 million for the Aging Schools Program financed using general obligation bonds, an increase of \$25.0 million over the Governor's proposed fiscal 2013 amount. ***Senate Bill 152*** would have specified that mandated State funding and local allocations for the Aging Schools Program were not based on prior year funding beginning in fiscal 2013, so that program enhancements did not obligate the State to the increased funding level in the years following the enhancement.

Qualified Zone Academy Bonds

Senate Bill 153 (passed) authorizes \$15.3 million in Qualified Zone Academy Bonds (QZABs) to be issued by December 31, 2012. Since 2001, the State has issued \$67.9 million in QZABs allocated by the federal government to Maryland. QZABs are an alternative bond program that the federal government authorizes with bond holders receiving federal tax credits in lieu of interest.

Federal rules for QZABs require a 10% private-sector match, limit the use of QZABs to schools in which at least 35% of students qualify for free and reduced-price meals, and since 2008, have required that funds be encumbered within six months and spent within three years of the date of issuance. These requirements have presented challenges for local school systems and, as of December 31, 2011, the unexpended QZAB balance was \$25.0 million. With the additional \$15.3 million approved in the 2012 legislative session and another \$4.5 million for fiscal 2014 already allocated to Maryland by the federal government, there is concern about the capacity of school systems to use QZAB funds from imminent issuances. To help speed up spending and broaden the reach of QZABs, the 2012 legislation allows the \$15.3 million in QZAB proceeds to be used in two ways: (1) for competitively awarded grants by IAC; and (2) for targeted grants awarded by the Maryland State Department of Education (MSDE) under the Breakthrough Center Program. The Breakthrough Center's primary focus is to efficiently coordinate MSDE's resources for low-performing schools in Baltimore City and Prince George's County. *Senate Bill 153* also specifies that charter schools are eligible for the funds.

Maryland School for the Blind

The Maryland School for the Blind (MSB) is a private, nonprofit statewide educational and resource center located in northern Baltimore City that serves students referred by all 24 school systems. Its programs include residential, day, and outreach services. *House Bill 1391 (Ch. 144)* makes MSB eligible for PSCP funding from fiscal 2013 through 2028. The Board of Public Works must develop regulations to implement the Act's requirements. PSCP funding for MSB does not affect funds allocated to Baltimore City or Baltimore County for school construction or capital improvements. The Act does not preclude MSB from receiving other funds allocated to it under the State's capital budget. MSB receives \$5 million in the fiscal 2013 capital budget for construction of a new education building and pre-authorizations that permit the project to be bid for construction in fiscal 2013.

Statewide Education Policy

In addition to addressing funding for public schools, the General Assembly considered and passed bills relating to the age for compulsory public school attendance, core content areas, student health and safety, online courses and services, individuals with disabilities, domicile requirements for enrollment, and comprehensive master plans.

Age for Compulsory Public School Attendance

An average of approximately 9,500 students per year dropped out of Maryland public high schools from the 2000-2001 school year to the 2010-2011 school year. Chapter 449 of 2006 established the Task Force to Study Raising the Compulsory Public School Attendance Age to 18, and the task force submitted a final report in December 2007. The task force noted that students who drop out of high school face "harsh futures" characterized by lower wages, disproportionate representation in prisons, and shorter overall life spans. The costs to society were also described, including greater dependency on public assistance among dropouts and high incarceration costs for the population.

After considering legislation for more than a decade, *Senate Bill 362 (passed)* phases in increases in the age of compulsory school attendance from 15 to 17 years old. Beginning with the 2015-2016 school year, the age of compulsory school attendance increases from 15 to 16 years old for any child who turns 16 on or after July 1, 2015. Beginning with the 2017-2018 school year, the age of compulsory school attendance increases from 16 to 17 years old for any child who turns 17 on or after July 1, 2017. The bill specifies that the compulsory school attendance ages do not apply to an individual who (1) has obtained a Maryland high school diploma, an equivalent out-of-state high school diploma, or a GED; (2) is a student with disabilities and has completed the requirements for a Maryland high school certificate of completion; (3) is receiving regular, thorough instruction during the school year in the studies usually taught in the public schools, or has completed such a program; (4) is severely ill and requires home or hospital instruction; (5) is married; (6) is in military service; (7) is committed by a court order to an institution without an educational program; (8) provides financial support to his or her family; (9) has been expelled from school; (10) is pregnant or a parent and is enrolled in an alternative educational program; (11) attends an alternative educational program; (12) attends a public school on a part-time basis while also attending a private career school; or (13) is waived from the compulsory attendance age requirements by the State Superintendent of Schools.

Beginning July 1, 2015, the bill requires a child under the legal dropout age to return to attendance at a public school regularly during the school year if the child is no longer participating in GED courses and has not obtained a passing score on the GED test that resulted in the issuance of a Maryland high school diploma. The bill also requires MSDE, in consultation with the Department of Labor, Licensing, and Regulation (DLLR), to develop a GED Options Program and request departmental legislation necessary to implement the program. The GED Options Program allows a student to participate in a GED preparation program without dropping out of school, while the traditional GED program does not allow a student to be enrolled in school while participating in preparation programs.

Additionally, *Senate Bill 362* establishes numerous reporting requirements to help the State prepare for and monitor the implementation of the bill. By September 1, 2013, MSDE must submit a compilation of reports prepared by local boards of education and recommend programs, interventions, and services that are necessary prior to the implementation of the bill. Costs for the initiatives recommended by MSDE could be significant and will likely begin in fiscal 2015. Costs will also increase due to higher student enrollments beginning in fiscal 2017. State education aid is expected to increase by approximately \$35 million in fiscal 2018 and by roughly twice that amount by fiscal 2020 due to increased enrollments.

Core Content Areas

Since social studies assessments are not a No Child Left Behind (NCLB) requirement, many schools are spending less time teaching the subject. In November 2004, the State Superintendent convened the Maryland Social Studies Task Force to evaluate social studies instruction in the State. In a 2005 survey, half of the surveyed Maryland elementary teachers noted a reduction in social studies time, as did one-quarter of middle school teachers. One of the

recommendations of the task force was to develop a statewide social studies assessment to ensure that, in the era of NCLB, adequate time was devoted to social studies. Nonetheless, in fiscal 2012 the State's Government High School Assessment (HSA) was eliminated due to budget constraints.

Senate Bill 293/House Bill 1227 (both passed) require the State Board of Education and the State Superintendent of Schools to implement assessment programs at the middle school and high school levels in reading, language, mathematics, science, and social studies. The assessments must include written responses and must be administered annually beginning with the 2014-2015 school year. The middle school assessment program must be a statewide, comprehensive, grade band program and the high school assessment program must be a statewide, standardized, end-of-course assessment. The fiscal 2013 budget includes \$3.5 million to reinstate the Government HSA and begin developing an essay portion for implementation in fiscal 2014.

Student Health and Safety

In response to two carbon monoxide leaks within a one-week period at a public school, ***Senate Bill 173/House Bill 2 (Chs. 38 and 39)*** require newly constructed and substantially remodeled school buildings to install carbon monoxide detectors in areas used for educational purposes where fuel fired equipment is present. The detectors must be installed in accordance with the National Fire Protection Association's Standard 720 of 2009, or any other version referenced in the State Fire Prevention Code. A signal from the carbon monoxide detector must be transmitted automatically to an approved supervising station or constantly attended on-site location. Local governments may not charge a fee for any permits necessary to comply with the bill's requirements.

According to the National Institutes of Health, the prevalence of food allergies is between 6% and 8% in children younger than age four and 3.7% in adults, and appears to be increasing. The most common treatment for a severe allergic reaction known as anaphylaxis is epinephrine. ***Senate Bill 621/House Bill 497 (both passed)*** require each local board of education to establish a policy authorizing the school nurse and other school personnel to administer auto-injectable epinephrine, if available, to a student who is determined to be or perceived to be in anaphylaxis, regardless of whether the student (1) has been identified as having an anaphylactic allergy; or (2) has a prescription for epinephrine as prescribed by an authorized licensed health care practitioner. The policy must also include training for school personnel on how to recognize the symptoms of anaphylaxis; procedures for the emergency administration of auto-injectable epinephrine; proper follow-up emergency procedures; and a provision authorizing a school nurse to obtain and store at a public school auto-injectable epinephrine to be used in an emergency situation.

Heat-related illnesses during practice or competition are a leading cause of death and disability among U.S. high school athletes according to the Centers for Disease Control and Prevention. ***House Bill 1080 (passed)*** requires MSDE, in collaboration with the Department of Health and Mental Hygiene, each local board of education, the Maryland Public Secondary

Schools Athletic Association, the Maryland Athletic Trainers' Association, and representatives of licensed health care providers who treat student athletes, to develop a model policy for preseason-practice heat acclimatization guidelines for student athletes. Likewise, each local board of education must adopt heat acclimatization guidelines for its student athletes.

According to the U.S. Office of the Surgeon General, tooth decay is the single most common chronic childhood disease and over 50% of children aged five to nine years old have at least one cavity or filling. *Senate Bill 867/House Bill 1401 (both passed)* require MSDE to support and facilitate oral health education, including oral disease prevention and dental health promotion, in every jurisdiction and develop a process to monitor implementation of oral health education. The State Board of Education must encourage the local boards of education to incorporate age-appropriate lessons on oral disease prevention and dental health promotion into the local board's health education curriculum. By December 1, 2015, and every five years thereafter, MSDE must submit to the Governor and the General Assembly a summary of the information reported by local superintendents of schools to the State Superintendent of Schools in the certification of the health education State curriculum.

As required by Chapter 454 of 2009, local boards of education must procure, to the extent practicable and economically feasible, green product cleaning supplies for use in schools. *Senate Bill 708/House Bill 1019 (both passed)* modify requirements related to procurement of green product cleaning supplies in local school systems. By July 1, 2013, each local board of education must adopt a written policy that contains specified elements for the procurement of green product cleaning supplies for use in its schools and requires the use of such supplies, to the extent practicable and economically feasible. By June 30 of each year, a local board of education that does not procure green product cleaning supplies for use in its schools must provide written notice to MSDE.

Virtual Learning

In Maryland, supplemental online courses are offered through the Maryland Virtual Learning Opportunities Program (MVLO). MVLO is managed by MSDE and is designed to expand the access of Maryland public school students to challenging curricula aligned to the Maryland Content Standards and other appropriate standards through the delivery of high-quality online courses.

Senate Bill 674/House Bill 1219 (both passed) authorize a local board of education to request that MSDE develop or review and approve online courses and services. If MSDE delegates this authority to a local board, the local board must request approval of the online course from MSDE once it has completed the development or the review and approval. The bills authorize the local board to impose reasonable fees to be paid by the vendor to cover the cost of reviewing and approving online courses and services and require the local board to remit 15% of the fees collected to MSDE. Also, the State Board of Education may set reasonable fees for developing or reviewing online courses and services and for processing approvals for online courses and services.

Senate Bill 689/House Bill 745 (both passed) establish the Maryland Advisory Council for Virtual Learning within MSDE with the mission of encouraging and supporting the education of students in accordance with national standards of online learning and State law. By December 1 of each year, the council must report its recommendations regarding professional development, funding strategies, assessment and accountability, infrastructure, coordination of programs, expanded curriculum, increasing opportunities, and implementation plans.

Individuals with Disabilities

Chapters 664 and 665 of 2010 required appropriate school personnel to provide the parents of a child with a disability with a copy of the completed individualized education program (IEP) or, if it has not been completed, a draft copy of the IEP, no later than five business days after a scheduled meeting. The completed or draft IEP must be provided to the parents in an accessible format. ***House Bill 596 (passed)*** authorizes school personnel who must provide the parents of a child with a disability with a copy of a completed or draft IEP following an IEP meeting to do so through any reasonable and legal method of delivery.

Domicile Requirements for Enrollment

Senate Bill 178/House Bill 617 (both passed) alter the conditions under which a county superintendent must allow a child who is a resident of the State to attend a public school outside the attendance area or county where the child is domiciled if the child lives with a relative providing informal kinship care. The bills repeal the requirement that an affidavit verifying informal kinship care be supported by documentation of serious family hardships and, where possible, contact information of any authority who is authorized to reveal information that can verify assertions in the affidavit. Instead, a local superintendent of schools *may* require the supporting documentation and specified contact information after the student is enrolled. Also, instructions that accompany the affidavit form that is prescribed by statute are modified to indicate that the supporting documentation is necessary only when appropriate (*i.e.*, when required by the local superintendent).

Senate Bill 605/House Bill 757 (both passed) allow a child who is in the custody of, committed to, or otherwise placed by a local department of social services or the Department of Juvenile Services (DJS) and is subject to the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 to remain at the school the child is attending, regardless of where the child is domiciled, if the local department of social services or DJS determines, in consultation with the local school system, that it is in the best interests of the child to continue at the school. The local department of social services or DJS must pay for the cost of transporting the child to and from school.

Comprehensive Master Plans

Senate Bill 143 (Ch. 103) requires local boards of education to continue submitting annual updates to their master plans in 2012 through 2014 and delays the requirement that local boards of education submit new five-year comprehensive master plans until October 15, 2015,

rather than October 15, 2012. Beginning in 2016, rather than 2013, each annual master plan update must cover a five-year period.

Local Boards of Education

Membership

The Frederick County Board of Education consists of seven members elected from the county at large and one nonvoting student member. State law governing board membership specifies that an individual who is married to an administrator or teacher of the county board may not be elected to or serve on the county board. Similarly, an individual who is married to a member of the county board may not be hired as an administrator or teacher unless the individual's spouse first resigns from the county board. *Senate Bill 320 (Ch. 57)* repeals both prohibitions.

The Harford County Board of Education consists of six elected members, three appointed members, the county superintendent of schools who serves as an *ex officio* nonvoting member, and one nonvoting student member. The student member must be in grade 11 or 12, in good standing, regularly enrolled in the public school system, and a high school student government association representative. The county's high school students elect the student member, who serves a one-year term. Unless invited to attend by an affirmative vote of a majority of the county board, the student member may not attend an executive session. *Senate Bill 816 (Ch. 91)* gives limited voting rights to the student member, prohibits the student member from attending specified closed sessions of the county board, specifies that only nonstudent members of the county board are entitled to reimbursement for travel and other board related expenses, and otherwise gives the student member the same rights and privileges as the elected and appointed members of the county board.

Governance

Bills proposing changes to the governance of the Baltimore County Board of Education were introduced in the 2012 session but were unsuccessful. The Baltimore County Board of Education is one of five appointed school boards in the State, including one (Caroline County) that is in the process of transitioning to a hybrid board of appointed and elected members. Harford County has a hybrid board, and the other 18 local boards are elected by county voters.

As introduced, *Senate Bill 407/House Bill 481 (both failed)* would have restructured the Baltimore County Board of Education from a 12-member appointed board, including 1 student member, to a 10-member board consisting of 9 nonpartisan elected board members and a student member. As amended by the Senate, the bills would have restructured the board to instead consist of six members elected from school board districts established by the County Council of Baltimore County after consultation with the existing school board, five members appointed by the Governor, and one student member. The House Ways and Means Committee voted on the final day of the legislative session to concur with the Senate amendments to *House Bill 481*, but a final vote on the Senate's version of the bill did not take place before adjournment.

Fiscal Accountability

Chapters 488 and 489 of 2011 require the Prince George’s County Board of Education to develop and operate a free, public, searchable website by January 1, 2013, that includes data on specified board payments of \$25,000 or more. The legislation does not require disclosure of information that is confidential under federal, State, or local law or payments to public school employees and retirees as compensation or retirement allowance. *House Bill 802 (passed)*, which takes effect July 1, 2013, alters the requirements for the website to include specified budget data and to allow users to search for data by individual school.

Employee Collective Bargaining Units

Five bargaining units are permitted for Baltimore County Board of Education employees: one exclusively for certificated employees; three exclusively for noncertificated employees; and one that consists of certificated and noncertificated supervisory employees. The Council of Administrative and Supervisory Employees is the designated bargaining unit for certificated and noncertificated supervisory employees in the Baltimore County Public School System. The unit includes building administrators, including principals and assistant principals; central office administrators, including curriculum specialists; and other administrative and supervisory personnel, including pupil personnel workers. *Senate Bill 853/House Bill 1006 (both passed)*, which take effect July 1, 2013, alter the definition of “public school employee” as it relates to collective bargaining units for employees of the Baltimore County Board of Education by eliminating the reference to supervisory noncertificated employees. The bills also establish a collective bargaining unit for administrative and supervisory certificated employees and provide that one of the three collective bargaining units for noncertificated employees is specifically for supervisory employees.

Workers’ Compensation Insurance for Students

An employer is required to secure workers’ compensation insurance coverage for a student who is placed in an unpaid work-based learning experience with the employer unless the county board elects to provide coverage for the student. If the county board elects to provide coverage, the employer must reimburse the board in an amount equal to the lesser of the cost of the premium for the coverage or a \$250 fee. An “unpaid work-based learning experience” is a program that provides a student with structured employer-supervised learning that occurs in the workplace, links with classroom instruction, and is coordinated by a county board of education or private noncollegiate institution. The county boards of education in Allegany and Cecil counties are authorized to waive the requirement for reimbursement. *Senate Bill 388/House Bill 1175 (both passed)* authorize the county board of education in Howard County to waive the reimbursement requirement as well.

Operation of Schools on a Year-round Basis

The State Board of Education must divide the school year into the terms it considers appropriate. Generally, public schools must be open for 180 days and 1,080 school hours during

a 10-month period. Under certain conditions (a natural disaster, civil disaster, or severe weather conditions), schools only have to be open for 1,080 school hours. The local boards of education for Baltimore City and Allegany, Anne Arundel, Calvert, Howard, and Montgomery counties are authorized to operate one or more public schools on a year-round basis, provided that the 180-day and the minimum-hour requirements are met. In addition, any county board may conduct a year-round pilot study or program that is locally funded. *House Bill 803 (passed)* adds Prince George's County to the list of counties that may operate one or more schools on a year-round basis.

Recycling

In 1988, the Maryland Recycling Act required each county to submit a recycling plan. Although counties have flexibility to determine the best way to reach the required recycling rates, the county recycling plan must address specified issues. Chapters 264 and 265 of 2009 added to this list a strategy for collecting, processing, marketing, and disposing of recyclable materials from county public schools. While Chapters 264 and 265 require counties to revise recycling plans to incorporate a recycling strategy for public schools, recycling at public schools is not required. In 2010, the Maryland Department of the Environment tentatively approved Prince George's County's incorporation of public schools into its triennial recycling plan that is due in 2012. *House Bill 805 (passed)* requires the Prince George's County Board of Education to develop and implement a recycling program for all facilities under its jurisdiction. The bill also requires the board to submit a report regarding the recycling program to the Prince George's County legislative delegation by September 1, 2012.

Hotline Number on Signs Designating Drug Free School Zones

A county board of education may adopt regulations requiring the posting of signs designating areas within 1,000 feet of public or nonpublic elementary or secondary schools as "drug free school zones." The signs must be designed to provide notice of relevant provisions of the Criminal Law Article. In Baltimore City, all new and replacement signs also must include a hotline number to report information concerning suspected illegal drug activity. *House Bill 904 (passed)* imposes this same requirement in Prince George's County.

School Bus Operation

A conventional school bus generally may be operated for up to 12 years, unless the bus fails to meet applicable safety standards. In Caroline, Dorchester, Somerset, Talbot, Wicomico, and Worcester counties, a conventional school bus may be operated for up to 15 years. Conventional school buses may also be operated beyond the 12-year limit if (1) the State Superintendent of Schools grants approval; (2) the bus is maintained under a preventive maintenance plan that is approved by the Motor Vehicle Administration (MVA) and the Department of State Police and includes a 12-year inspection and subsequent semiannual inspections; (3) any structural repairs to the bus meet or exceed the manufacturer's original manufacturing standards, as certified by an independent expert approved by MVA; and (4) the bus is properly equipped with specified safety features. *House Bill 210 (Ch. 110)*, *House*

Bill 245 (passed), and **House Bill 1308 (passed)** add St. Mary's, Charles, and Calvert counties, respectively, to the list of counties in which a conventional school bus may be operated for up to 15 years before these requirements apply.

Higher Education

Funding

For higher education institutions, the fiscal 2013 budget, which includes general funds and Higher Education Investment Funds (HEIF), declines \$51.2 million or 3.4% from fiscal 2012 as shown in **Exhibit L-5**. This reflects legislative reductions to the budget and reductions that were contingent on the failure of **Senate Bill 152 (failed)** – the Budget Reconciliation and Financing Act of 2012 (BRFA) – or **Senate Bill 523 (failed)** – comprehensive revenue bill. If those bills were enacted, funding for higher education institutions would increase by \$10.0 million or 0.7%.

University System of Maryland and Morgan State University

The General Assembly reduced by \$5.3 million and \$0.4 million, respectively, the appropriations for the University System of Maryland (USM) and Morgan State University (MSU) in fiscal 2013. Additional reductions of \$34.7 million to USM and \$2.4 million to MSU were made contingent on the failure of the comprehensive revenue bill, which reflects their shares of the \$38.5 million reduction to public higher education contained in Section 43 of the budget bill. Fund balance transfers of \$5.0 million from USM and \$0.4 million from MSU were included in the BRFA of 2012 but do not occur since the legislation failed. Finally, budget bill language restricts \$1.0 million of USM's general fund appropriation to be used only as incentive funding for those USM institutions choosing to offer new programs at any of the six non-USM regional higher education centers.

Exhibit L-5
State Support for Maryland Institutions of Higher Education
Fiscal 2012-2013

	Budget as Enacted			If <i>Senate Bill 152</i> and <i>Senate Bill 523</i> Had Been Enacted ³	
	<u>FY 2012</u>	<u>FY 2013²</u>	<u>\$ Change FY 12-13</u>	<u>FY 2013</u>	<u>\$ Change FY 12-13</u>
University System of Maryland	\$1,060,360,086	\$1,029,960,419	-\$30,399,667	\$1,064,204,839	\$3,844,753
Morgan State University	73,001,828	71,324,285	-1,677,543	73,695,695	693,867
St. Mary's College of Maryland	17,961,643	17,569,943	-391,700	18,537,953	576,310
MD Higher Ed. Comm. Special Grants	7,689,594	7,543,000	-146,594	7,543,000	-146,594
Community Colleges ¹	264,054,574	250,033,714	-14,020,860	269,951,325	5,896,751
Baltimore City Community College	40,742,671	39,095,406	-1,647,265	40,395,261	-347,410
Private Institutions	38,445,958	35,555,727	-2,890,231	38,056,175	-389,783
Total	\$1,502,256,354	\$1,451,082,494	-\$51,173,860	\$1,512,384,248	\$10,127,894

¹Community college funds include the Senate John A. Cade formula, other programs, and fringe benefits.

²Fiscal 2013 legislative appropriation as enacted by *Senate Bill 150 (passed)* – Budget Bill – includes legislative and contingent reductions.

³Fiscal 2013 appropriation if the BRFA of 2012 and the comprehensive revenue bill were adopted. Does not include budget bill reductions that are contingent on the failure of the BRFA of 2012 or the comprehensive revenue bill.

Note: Includes general funds and Higher Education Investment Funds.

Source: Maryland State Budget Books; Department of Legislative Services

Resident Tuition Rates Increase

For a third consecutive year, the budget includes funds for USM institutions, excluding Salisbury University (SU), and MSU to limit increases in resident undergraduate tuition to 3%. SU will increase tuition by 6% to align its resident tuition with rates charged by its peer institutions. The budget as introduced provided funds to USM and MSU equivalent to an additional 2% increase in tuition rates; however, tuition increases are contingent upon the approval of the Boards of Regents of USM and MSU.

The budget included a provision to allow St. Mary's College of Maryland (SMCM) to receive up to \$383,840 from HEIF to offset a 2% increase in the in-state undergraduate tuition rate in fiscal 2013, similar to funding received by USM and MSU. However, a provision to make SMCM eligible for HEIF was needed in the BRFA of 2012 to allow the tuition offset to occur.

Community Colleges

Overall, funding for community colleges declines \$14.0 million after accounting for reductions taken directly from the community colleges' budget, contingent reductions, and a \$1.0 million deficiency appropriation to address an accrued liability in the Statewide and Health Manpower Grant Programs. This figure includes the Senator John A. Cade Funding Formula, State-paid retirement, and miscellaneous grant programs. The General Assembly reduced funds for the Cade formula by \$1.5 million to allow for growth only by the amount each college received from the Keeping Maryland Community Colleges Affordable (KMCCA) Grant in fiscal 2012. Funding for KMCCA was deleted in fiscal 2013, reducing community colleges by an additional \$2.5 million. Finally, a back-of-the-bill reduction contingent on the failure of the comprehensive revenue bill further reduces the Cade formula by \$19.9 million. If the comprehensive revenue bill was enacted, community colleges would receive an increase of \$5.9 million in fiscal 2013.

Under the legislative appropriation, funding for the Cade formula declines \$15.1 million, miscellaneous grant programs decline \$5.2 million, and State-paid retirement costs increase \$6.3 million. The Cade formula is funded at \$179.3 million in fiscal 2013, the lowest level since fiscal 2007.

Baltimore City Community College (BCCC), Maryland's only State-operated community college, has its own formula, which was also reduced to allow for only KMCCA growth (\$1.6 million) before a contingent reduction was applied (\$1.3 million). The General Assembly made an additional \$0.3 million reduction to account for bonus payments incorrectly paid to staff at the college. In fiscal 2013, BCCC's funding declines \$1.6 million, or 4%. The formulas for BCCC, the other community colleges, and independent institutions are unchanged due to the failure of the BRFA of 2012, which included changes to the formulas in the out-years.

Independent Institutions

Independent institutions receive \$35.6 million through the Joseph A. Sellinger Formula in fiscal 2013, a 7.5% decrease from fiscal 2012 due to contingent reductions to the Sellinger program as well as a further reduction due to one institution, Baltimore International College (BIC), which is no longer eligible for Sellinger aid because it is now partnered with a for-profit institution. If the BRFA of 2012 and the comprehensive revenue bill were enacted, the Sellinger formula would be level funded in fiscal 2013 after accounting for BIC's ineligibility.

Financial Aid

Student financial aid programs receive a total of \$102.9 million in the fiscal 2013 budget, a \$0.7 million, or 0.7%, increase from fiscal 2012. The three programs that constitute need-based aid are level funded at the fiscal 2012 total of \$82.7 million. However, several changes to financial aid programs took effect. The Veterans of Afghanistan and Iraq Conflicts Scholarship and the Charles W. Riley Fire and Emergency Medical Services Tuition Reimbursement Program both received additional funding to restore these programs to fiscal 2011 funding levels, after reductions were made in fiscal 2012.

The budget bill included a provision to eliminate funds for the Senatorial Scholarships (\$6.5 million) and Delegate Scholarships (\$5.3 million) in fiscal 2013, contingent on the failure of the comprehensive revenue bill. Any scholarship funds carried forward by State legislators will still be available for distribution by the respective individual legislator, but under the enacted budget, no new funds will be available for legislative scholarships.

Capital Funding

Capital funding for public four-year institutions totals \$251.3 million for fiscal 2013, which includes \$32.0 million in academic revenue bonds authorized by *Senate Bill 1036 (passed)*. Community colleges receive \$37.6 million for the Community College Facilities Grant Program and BCCC receives \$6.7 million for its Main Building renovation. Independent institutions receive \$14.0 million in capital funding for fiscal 2013. For more information on authorized capital projects, see Part A – Capital of this *90 Day Report*.

Student Financial Assistance

Loan Assistance Repayment Program

The Janet L. Hoffman Loan Assistance Repayment Program (LARP) provides loan repayment assistance in exchange for certain service commitments to help ensure that underserved areas of the State have sufficient numbers of primary care physicians, dentists, and professionals serving underserved areas of the State or low-income families. Eligible employment fields include lawyers, nurses, nurse faculty members, physical and occupational therapists, social workers, speech pathologists, physician assistants, and teachers who have received a Resident Teacher Certificate from the Maryland State Department of Education (MSDE) after completing an approved alternative teaching preparation program.

Senate Bill 364/House Bill 613 (both passed) establish the Nancy Grasmick Teacher Award within LARP for Maryland public school teachers who have taught in Maryland for at least two years in (1) science, technology, engineering, or math subjects; or (2) a school in which at least 75% of the students are enrolled in the free and reduced-price meal program. To qualify for the award, the teacher must also have received the highest performance evaluation rating for the most recent year available.

Under the existing LARP criteria, priority is given to individuals who have graduated from an institution of higher education in the last three years, and priority employment fields are legal services and nursing. Priority is also given to applicants who are employed as nurse faculty members or applicants who teach in schools designated as federal Title I schools or schools identified for improvement by MSDE, or who teach in designated critical shortage subject fields. Under ***Senate Bill 364/House Bill 613***, priority among teacher applicants must be given to an individual who qualifies for a Nancy Grasmick Teacher Award. However, no more than 50% of the total number of awards for teacher applicants may be awarded to Nancy Grasmick Teacher Scholars.

Public Safety and Veterans' Scholarships

Conroy Memorial Scholarship Program: The Edward T. Conroy Memorial Scholarship Program awards postsecondary education financial assistance to the children, and in certain cases the surviving spouse, of certain Armed Forces members and public safety employees, specified veterans, and victims of the 9/11 attacks.

House Bill 404 (Ch. 123) expands the eligibility requirements for the Edward T. Conroy Memorial Scholarship Program to include the surviving spouse of a member of the Armed Forces who suffered a service-connected 100% permanent disability. A service-connected disability means a disability that resulted from a disease or an injury that was incurred or aggravated during active military service. A veteran with a 100% rating will have one or more disabilities that significantly interfere with normal life functions.

As with the other categories of students who are eligible to apply for this scholarship, the surviving spouse must be a resident of Maryland or have been a resident of the State at the time of the event that made the surviving spouse eligible for the scholarship. Scholarships may be used for undergraduate or graduate study at private or public four-year institutions or community colleges.

Fire and Emergency Medical Services Scholarship: The Charles W. Riley Fire and Emergency Medical Services Tuition Reimbursement Program provided tuition reimbursement to any career or volunteer firefighter or ambulance or rescue squad member who received credit for courses toward degrees in fire service technology or emergency medical technology. Approximately 118 firefighters and ambulance and rescue squad personnel received tuition reimbursements under this program in fiscal 2012.

Senate Bill 365 (passed) repeals the Charles W. Riley Fire and Emergency Medical Services Tuition Reimbursement Program and instead establishes the Charles W. Riley Fire and

Emergency Medical Services Scholarship. To be eligible for a scholarship, a firefighter or rescue worker must be a Maryland resident and must be accepted for admission or enrolled in an eligible program. A volunteer firefighter or rescue worker may use the scholarship for any courses, but a career firefighter or rescue worker is authorized only to use the scholarship for courses credited toward a degree in fire service technology or emergency medical technology. A scholarship recipient must work at least one year as a volunteer or career firefighter or rescue worker in an organized fire department or ambulance or rescue squad in the State after completion of an eligible program in an eligible institution. Scholarship recipients must maintain a grade point average of at least 2.5 on a 4.0 scale and may hold the scholarship for up to five years of full-time study or eight years of part-time study.

The fiscal 2013 budget includes \$355,984 in special funds from the Maryland Emergency Medical Services Operations Fund for the tuition reimbursement program. However, *Senate Bill 365* repeals the tuition reimbursement program effective July 1, 2012, and replaces it with the scholarship program. Therefore, neither the tuition reimbursement program nor the new scholarship program are statutorily authorized and funded for fiscal 2013. In order for the scholarship program to be funded in fiscal 2013, a budget amendment will need to be processed by the Governor authorizing the tuition reimbursement appropriation to instead be used for the scholarships.

Veterans of the Afghanistan and Iraq Conflicts Scholarship: The Veterans Advocacy and Education Act of 2006 (Chapter 290) established the Veterans of the Afghanistan and Iraq Conflicts Scholarship Program to provide postsecondary education scholarships to veterans returning from Iraq and Afghanistan. Chapter 604 of 2008 extended the termination date for the Office of Student Financial Assistance to make an initial award of a Veterans of the Afghanistan and Iraq Conflicts Scholarship from June 30, 2012, to June 30, 2016.

Senate Bill 292 (passed) again extends the termination date for this scholarship from June 30, 2016, to June 30, 2020. Scholarships may be awarded for five years of full-time study or eight years of part-time study and approximately 120 veterans will receive the scholarships for fiscal 2013.

Tuition Waivers for Disabled Individuals

Chapter 576 of 2011 allowed an individual who is out of work due to a disability to obtain a tuition waiver at a community college for up to 6 credits per semester or 12 credits per semester if the individual is enrolled in classes as part of a degree or a certificate program designed to lead to employment. This resulted in limiting the number of credit hours that could be taken for life skills to 6 credit hours per semester.

Life skills, which include skills such as communication, cooperation, problem solving, self-initiation, and responsibility, have been shown to be related to job stability and expand an individual's community participation. *Senate Bill 656/House Bill 53 (Chs. 82 and 83)* expand the coursework that qualifies for a tuition waiver so that an individual with a disability who is out of the workforce is exempt from paying tuition at a community college if the individual is

enrolled in classes for continuing education instruction designed to lead to employment, including life skills instruction.

Maryland Higher Education Commission

Online Distance Education Programs

Online learning is rapidly growing in both availability and popularity. Many institutions of postsecondary education offer online courses in addition to traditional face-to-face courses, and some institutions only offer online courses. From 2009 to 2010, the number of college students taking at least one online course increased by 1.0 million, from 4.6 million to 5.6 million students. Approximately 1,300 public, private nonprofit, and for-profit institutions offer online postsecondary higher education in the United States.

In 2010, the U.S. Department of Education released regulations that would affect online learning. One set of these regulations, referred to as the “state authorization rule,” requires that an institution must have legal approval to operate in every state in which it has students if the state requires online institutions to be regulated. An institution not in compliance with the regulation would risk losing federal financial aid. The rule was scheduled to go into effect July 1, 2011, but a U.S. District Court struck down the provision because the U.S. Department of Education did not give institutions sufficient time to review and comment on the rule. According to the National Conference of State Legislatures, about 30% of institutions that offer online courses have yet to apply for approval in any state; many are waiting to see if the federal regulation will be upheld.

Senate Bill 843/House Bill 1223 (both passed) require an institution of postsecondary education that enrolls Maryland students in a fully online distance education program to file an application to register with the Maryland Higher Education Commission (MHEC) within three months of enrolling its first Maryland student. A fully online distance education program is defined as a program in the State in which (1) 100% of the program is offered through electronic distribution of instruction to one or more sites other than the principal location of an institution; or (2) 51% or more of the program is offered through electronic distribution of instruction to one or more sites other than the principal location of an institution and MHEC has determined that the portion of the program offered at a location in the State, if any, does not require a certificate of approval for the institution to operate in the State.

Under *Senate Bill 843/House Bill 1223*, an institution required to register with MHEC must be accredited by an accrediting body recognized and approved by the U.S. Department of Education and also must meet a number of specified financial conditions and business practices, including complying with the student refund policy and procedures established by MHEC. An institution required to register with MHEC must promptly notify MHEC of a change in ownership or a change in majority control, must comply with the principles for good practice for distance education established by MHEC through regulation, is subject to complaint investigation by the Office of the Attorney General or MHEC or both, and must post on its

website and make public whether the institution is registered in Maryland and the process by which complaints can be made against the institution.

MHEC must make public and post on its website a list of registered institutions of postsecondary education that offer fully online distance education programs in the State as well as the names of institutions for which MHEC denied or revoked registration. MHEC may impose various penalties on institutions that fail to comply with the requirements of the bill, including prohibiting an institution from enrolling Maryland students in fully online distance education programs in the State, imposing a fine on an institution, and revoking the registration of an institution. However, Maryland students who already attend an institution prohibited from enrolling Maryland students are allowed to complete a fully online distance education program in the State that is already in progress.

MHEC is authorized to create a guaranty fund to reimburse Maryland students who attend a fully online distance education program. The fund must be used to reimburse any student at any of the institutions required to register, who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student or has failed to comply with any provision of the Education Article.

Regional Higher Education Centers

Funding Formula

A regional higher education center (RHEC) is a facility that has the participation of two or more institutions of higher education, consists of a variety of program offerings, and offers multiple degree levels. RHECs are designed to ensure access to higher education in underserved areas of the State where students do not have access to higher education due to geographical distance, commute time, or the limited capacity of local four-year institutions.

MHEC is responsible for the coordination of the eight RHECs currently approved in the State. USM operates two of the centers, and the other six are independent centers that exist in areas not served by comprehensive four-year institutions. The two USM centers, Shady Grove and Hagerstown, are funded as line-items in the USM System Office operating budget. MHEC is responsible for administering operating funding to the six centers that are independent of USM, and these six centers are funded by grants through the MHEC operating budget. The fiscal 2013 budget includes \$1,750,000 for the RHEC funding formula, an increase of \$250,000 over fiscal 2012.

House Bill 1228 (passed) codifies the funding formula that MHEC must use to calculate the amount of the annual funding for each of the six RHECs administered by MHEC as follows:

- a base allocation for each center of \$200,000;
- incentive funding for degree-seeking, full-time equivalent students (FTES) that is tied to the inflation-adjusted fiscal 2005 general fund appropriations per FTES at Shady Grove;

- lease funding for centers with leased space that have not received capital funding support; and
- special funding for one-time projects or start-up costs.

Additionally, the bill clarifies that a new RHEC must be approved by MHEC before the center is authorized to operate in the State. Also, MHEC must review and make recommendations regarding the inclusion of outcome and performance measures in the RHEC funding formula and report its findings and recommendations to the Governor and the General Assembly by October 1, 2013.

Northeast Maryland Higher Education Advisory Board: Chapter 614 of 2011 established a Task Force to Study the Creation of a Regional Higher Education Center in Northeastern Maryland. The task force was required to examine the need for higher education in Northeastern Maryland and the role of various segments of higher education in meeting the needs of the region and report findings and recommendations by December 1, 2011.

The task force found that there is a need for expanded bachelor, master, and doctoral programs in the Northeastern Maryland region. The task force recommended that a coordinating body known as the Northeast Maryland Higher Education Advisory Board be established in statute to bring together a comprehensive and disciplined understanding of higher education demands of the region.

House Bill 362 (passed) establishes the Northeast Maryland Higher Education Advisory Board and specifies board membership and duties, including assisting in the development of higher education in Cecil and Harford counties. The board consists of representatives of each of the four-year institutions that offer an MHEC-approved program at the Higher Education and Conference Center (center) at the Higher Education and Applied Technology (HEAT) Center and 10 representatives appointed in accordance with the bylaws of the board. The bill also expresses the intent of the General Assembly that the center change its name to the Northeast Maryland Higher Education Center.

Approval of Towson University Facility on Harford Community College Campus: In 2004, the president of one of the Northeastern Maryland higher education institutions, Harford Community College (HCC), and the president of Towson University (TU) initiated discussions about ways to meet the demands for higher education in Harford and Cecil counties. These discussions led to the concept of a TU off-campus site located on the west campus of HCC to allow for a seamless transition from HCC to TU and take advantage of TU's proximity to HCC, TU's range of undergraduate programs, and the large number of TU's students that transfer from HCC.

Due to a lack of space at the nearby HEAT Center, TU proposed building and financing a facility to house TU's undergraduate programs on HCC's campus. MHEC is required to review all proposals for capital projects proposed by higher education institutions and regional higher

education centers in the State; consequently, TU submitted its proposal to MHEC for review in the fall of 2010.

Since a decision on TU's proposal had not been made by the start of the 2012 session, *House Bill 1381 (failed)* would have required MHEC to make all necessary decisions for the proposed 2+2 facility on the campus of HCC by August 1, 2012. However, no action was taken on *House Bill 1381* because MHEC issued a letter on March 30, 2012, that approved TU's proposal, subject to several conditions. MHEC determined that TU's proposal is consistent with the State Plan for Postsecondary Education, TU's mission, and the educational needs of Northeastern Maryland. This will be the first four-year institution building on the campus of a two-year college in the State.

Student Transfer Advisory Committee

According to the Code of Maryland Regulations, MHEC must establish a permanent Student Transfer Advisory Committee that meets regularly to review transfer issues and recommend policy changes as needed. The Student Transfer Advisory Committee must address issues of interpretation and implementation of student transfer regulations.

The committee has been defunct for several years; therefore, *Senate Bill 967 (passed)* codifies a Student Transfer Advisory Committee and charges the committee with reviewing and analyzing articulation and student support services, including admission and advising practices, and any other student transfer-related issues as referred to the committee by MHEC. The committee must report its findings and recommendations to the Governor and the General Assembly by December 1, 2013, and in each odd-numbered year thereafter until the legislation terminates on June 30, 2022.

Community Colleges

With the exception of Harford Community College, all of the locally operated community colleges have the authority for their boards of community college trustees to borrow money to acquire an interest in personal property for the operation of their respective colleges. *House Bill 214 (Ch. 111)* extends this authority to the Board of Community College Trustees for Harford County to borrow money to acquire an interest in personal property for the operation of Harford Community College.

Economic Development

Maryland Innovation Initiative and Fund: *House Bill 442 (passed)* establishes the Maryland Innovation Initiative and the Maryland Innovation Initiative Fund in the Maryland Technology Development Corporation to promote technology transfer from Maryland's public and private nonprofit research institutions to the private sector. The initiative may include the five public and private research institutions in the State: Johns Hopkins University; MSU; University of Maryland, Baltimore; University of Maryland Baltimore County; and University of Maryland, College Park (UMCP). The initiative is authorized to provide grant funding to qualifying entities under specified conditions. In addition, the bill requires USM and MSU to

undertake qualified high-impact development activities and requires the Boards of Regents to adopt policies related to the establishment of high-impact development activities. The bill also alters the review and approval process for certain types of higher education contracts by the Board of Public Works. For a more detailed discussion of *House Bill 442*, see the subpart “Economic Development” within Part H – Business and Economic Issues of this *90 Day Report*.

Small Business Development Center Network Fund: The Small Business Development Center offers free business consulting services to new and existing small business. Under existing law, the Governor is required to include in the annual budget bill a general fund appropriation of at least \$750,000 to the Small Business Development Center Network Fund. Beginning in fiscal 2014, *House Bill 1254 (passed)* increases from \$750,000 to \$950,000 the minimum general fund appropriation to the Small Business Development Center Network Fund that the Governor is required to include in the annual budget bill. The additional general fund appropriation will enable the Small Business Development Center, which is operated by UMCP, to have a one-to-one match of general funds to federal funds.

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